WEBINAR FOR DATA PROVIDERS

Understanding open data: legal openness

18 November 2022

10.00 – 11.30 CET

Introduction

Inmaculada Farfan Velasco
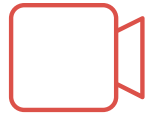*Project Manager, Open Data Reuse and Innovation, Publications Office of the EU*

Hans Graux
Lawyer, Timelex

Jean-Paul Triaille
Legal Officer, Joint Research Centre Intellectual Property

Rules of the game

The webinar will be recorded

Please mute yourselves during the webinar

Please reserve 3 min after the webinar to help us improve by filling in our feedback form

For questions, please use Teams chat.

Our agenda for today

1 — General introduction to legal openness

2 — Introduction to approach of Member States

3 — Approach to EU public administration

4 — Q&A and feedback

Our agenda for today

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General introduction to legal openness

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GENERAL INTRODUCTION TO LEGAL OPENNESS

Webinars for data providers: Legal openness

18 November 2022

Hans Graux

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WHAT IS "OPEN" FROM A LEGAL PERSPECTIVE?

Moving from concept to legal structure

OPENNESS AS A PHILOSOPHY

Openness is everywhere

- Open data, of course
- Open source
- Open government (FoI acts)
- Open access (journals)
- Open science (data management)
- Open standards

Perspectives on openness

- Negative: freedom from constraints
- Positive: freedom to access and use – disseminate, edit, expand, exploit

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OPENNESS FROM A LEGAL PERSPECTIVE

Translating the "openness philosophy" to a legal environment that will support it implies:

- Creating legal and policy frameworks that support and encourage openness
  - E.g. open science / open access as funding requirements; open source and open standards as procurement requirements; PSI/open data directives; portability laws, …
- Creating contractual or semi-contractual documents that remove barriers and grant permissions
  - E.g. creative commons licensing, other open/permissive licenses, public domain dedications

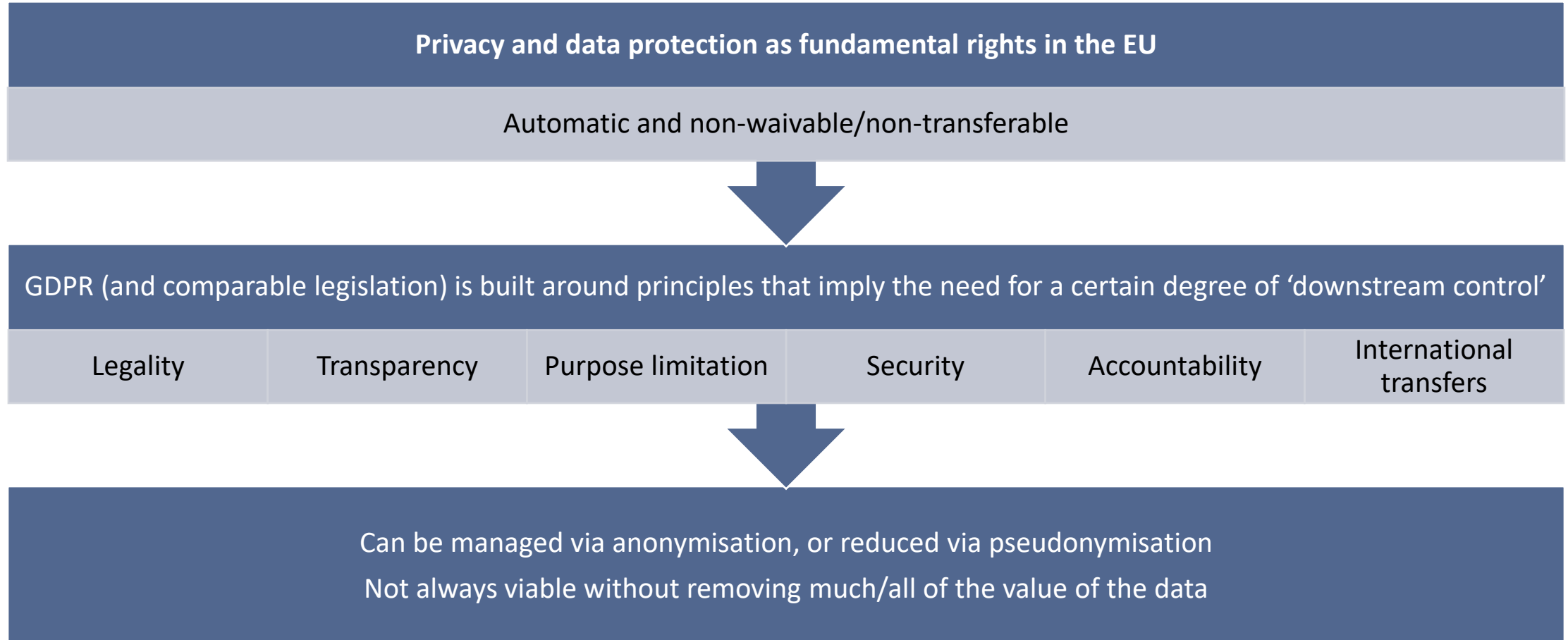**(And of course, operational and technical meaures to support openness)**

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ACHIEVING OPENNESS

Legal elements to keep in mind

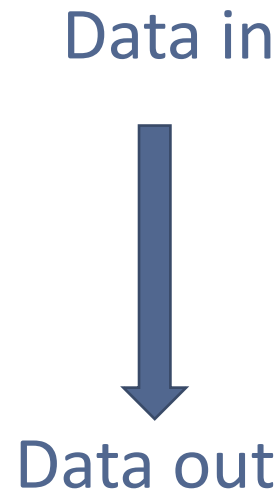# ENSURING OPENNESS – LEGAL BUILDING BLOCKS

- Intellectual property rights and ancillary rights as an enabler and blocker
  - Enabler? Yes, because they harmonise expectations to some degree
  - Blocker? Also yes, because they can automatically grant exclusivity rights where they might not be economically / societally necessary (especially in the public sector…)
- Key examples:
  - Copyrights (including moral rights) and neighbouring rights (including publisher rights)
  - Database rights
  - Trade secrets

DATA PROTECTION AND FUNDAMENTAL RIGHTS

Privacy and data protection as fundamental rights in the EU

Automatic and non-waivable/non-transferable

GDPR (and comparable legislation) is built around principles that imply the need for a certain degree of 'downstream control'

Legality	Transparency	Purpose limitation	Security	Accountability	International transfers

Can be managed via anonymisation, or reduced via pseudonymisation

Not always viable without removing much/all of the value of the data

TOOLS AND BEST PRACTICES

Upstream vs downstream

Data in

Data out

Upstream: getting rights to the data before disseminating it	• Transfers of IP rights / contributor agreements • National legislation as an enabler • Moral rights policies
Downstream: constraining usage	• Model licenses, such as CC family • But also AUPs, to manage future use cases • (inevitable for data protection)

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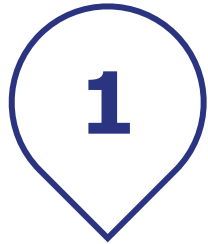
**Introduction to approach of Member States**

PRACTICAL EXAMPLES: OPENNESS VIA APIS, AND NATIONAL APPROACHES

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OPEN DATA MAKING ITS WAY INTO LEGISLATION

- Public Sector Information, via the 2019 Open Data Directive
  - Dynamic data access and APIs
  - Emphasis on high value datasets
- Energy, via the (2018 update of the) 2012 Directive on Energy efficiency
  - Mandates the use of intelligent metering systems (e.g. smart meters) to enhance energy saving and support the development of energy networks (smart grids).
- Automotive, via the (2019 update of the) 2007 Regulation on access to vehicle repair and maintenance information
  - Access to independent operators, in a non-discriminatory manner compared to the access granted to authorised dealers and repairers.
- Only occasionally *entirely* open…

APIS AS AN ENABLER TO OPENNESS?
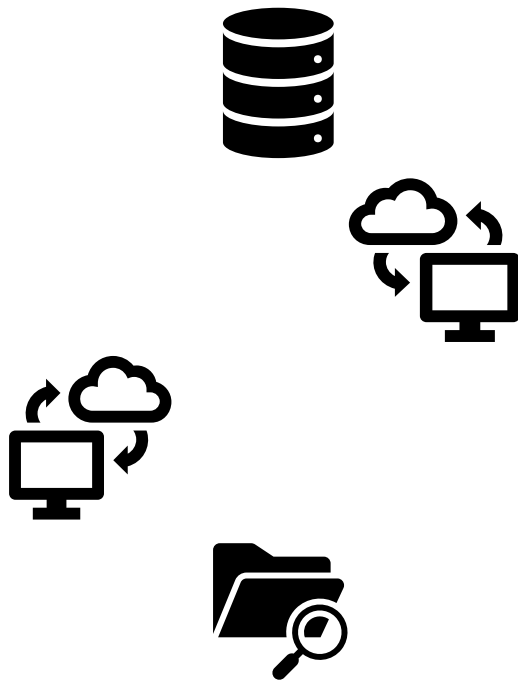
APIs are more conducive to establishing ecosystems

- Governance and consultation become more important

APIs don't depend on IPRs

- But the Open Data Directive continues to apply

But API does not equal open

- IPR claims and licenses can still exist in the same way
- Usage constraints and innovations
- Common constraints on availability, retention, and continued usage of historical data

NATIONAL LICENSING APPROACHES

- Examples from:
  - Belgium (federal) – CC0, CC-BY, and bespoke
  - Italy (AGID + open.gov.it) - CC-BY 3.0/4.0, and Italian Open Data Licence
  - Austria (data.gv.at) – CC-BY 4.0
  - Ireland (data.gov.ie) – CC-BY 4.0, CC0

- Others leave this up to the publisher. But the trend seems to be clear…
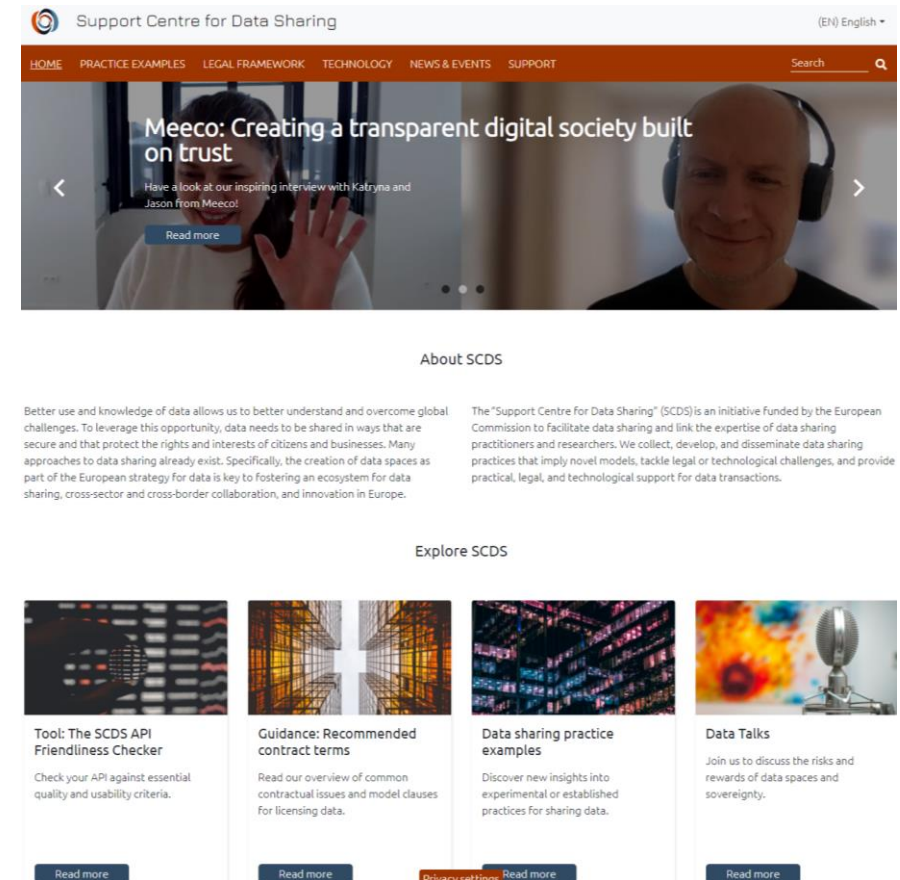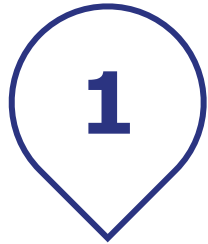
QUESTIONS WELCOME!

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Our agenda for today

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Approach to EU public administration

Understanding open data: legal openness

The approach by the EU institutions

Jean-Paul Triaille
Central IP Service (CIPS)
DG JRC (Joint Research Centre)

18 November 2022

The CIPS,
Commission Central IP Service

Who we are and what we do:

Managing the IP portfolio of the Commission

Giving IP advice to Commission services on IP aspects of their activities (sometimes also to other EU institutions)

Helping to develop best practices

Providing trainings

DG JRC – Joint Research Centre

**Find us on the homepage of MyIntracomm:
MyIntracomm/Work Resources/Intellectual Property**

Contents of the presentation

➢ Focus on the European Commission:

  ➢ Biggest producer of documents and data
  ➢ Most advanced on « legal openness »

➢ Documents, data, software, scientific articles

➢ A look at other EU institutions or agencies

Copyright and EU documents

➢ No copyright on official documents such as EU directives or regulations, decisions by the ECJ, discussions in the EU Parliament
  ➢ Freely reusable by publishers or other users

➢ Other documents, reports, datasets, software: copyright of the EU

➢ EU institutions: the European Union as one legal entity, yet various practices and ways of working)

➢ EU agencies: own legal personality, and own policies

Documents: reusable!

➢ Commission Decision 2011 (2011/833/EU) on the reuse of Commission documents ("Reuse Decision")

   ➢ Applies to **documents which have been published** (or were not published for practical reasons): studies, reports, impact assessments, etc.
   ➢ Direct inspiration: the PSI Directive

➢ To distinguish from access to documents rules: Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents

   ➢ Applies to **documents which have not been published**

What is « reuse »?

➤ **Article 3(2) Reuse Decision**
'The use by persons or legal entities of documents, for commercial **or** non-commercial purposes other than the initial purpose for which the documents were produced'

Examples: republish, modify, translate, copy, etc.

➤ **Article 2(4) PSI Directive**
'The use by persons or legal entities of documents held by public sector bodies, for commercial or non-commercial purposes other than the initial purpose within the public task for which the documents were produced'

Scope of the Decision
What is IN?

➤ The Reuse Decision concerns "documents"

➤ Definition of "documents":

Any content whatever the medium (paper or electronic)
Such as text, sound, image…

or any part of such content.

Scope of the Decision
What is OUT?

➢ Documents covered by IP rights (including copyright) of third parties

➢ Documents excluded (or partly excluded) from the rules on "right to access" (EC 1049/2001), i.e. if disclosure would undermine:

  ➢ **security, defence, privacy, trade secrets, etc.**

  ➢ **reasoning: if access should be refused, a fortiori reuse should also be refused**

➢ Some other categories of documents

Data: open data!

- ➢ The Reuse Decision applies to data and datasets

- ➢ What about "research data" (of the Joint Research Centre)?

  - ➢ **The initial PSI Directive did not include them**
  - ➢ **The initial Reuse Decision was excluding JRC research documents and data**
  - ➢ **But the current one (2011) does include it, even before reform of the PSI Directive**

- ➢ So, the Commission was in advance on this.

Research data from JRC

- **JRC Data Policy**: an open data policy
  - **https://joint-research-centre.ec.europa.eu/system/files/2019-05/jrc115832_2019_jrc_data_policy_2.pdf**

  - « Free, full, open, timely »
  - In accordance with FAIR principles (free, accessible, identifiable, retrievable)

- **JRC open data portal**, feeds into the EU open data portal
- **Data Policy Implementation Tool** (on-line)
- Trainings for researchers

For documents and data: which licence?

➢ Until 2019, a special copyright notice:

© European Union, 1995-2017

Reuse is authorised, provided the source is acknowledged. The Commission's reuse policy is implemented by the Decision of 12 December 2011 - reuse of Commission documents [PDF, 728 KB].

➢ For reusers to figure out what this meant…
➢ Not machine-readable
➢ Not standard

For documents and data: which licence?

➢ In 2018, "*Reuse policy: a **study on available reuse implementing instruments** and licensing considerations*", by the CIPS:

➢ **Reuse policy - Publications Office of the EU (europa.eu)**

➢ **Comparison** of the copyright notice with standard licences on a list of criteria
➢ **Conclusion:** recommendation to adopt Creative Commons CC BY 4.0 (and in special cases, CC 0)

For documents and data: which licence?

➢ *Commission Decision of 22.2.2019 adopting Creative Commons as an open licence under the European Commission's reuse policy:*

  ➢ **Register of Commission Documents - C(2019)1655 (europa.eu)**

  ➢ **CC BY 4.0. by default**
  ➢ **CCO in some special cases**

A few words on Creative Commons

➢ The issue: lack of a standard open licence

➢ The solution:
  ➢ **A set of standard copyright licences**
  ➢ **Open licence, plus disclaimer of liability/warranty**
  ➢ **Verified by many national legal experts**
  ➢ **Easy-to-use**
  ➢ **Machine-readable, including by search engines**

  ➢ **www.creativecommons.org**
  ➢ **(the Commission offered the translations in some languages)**

6 Creative Commons (CC) Licences
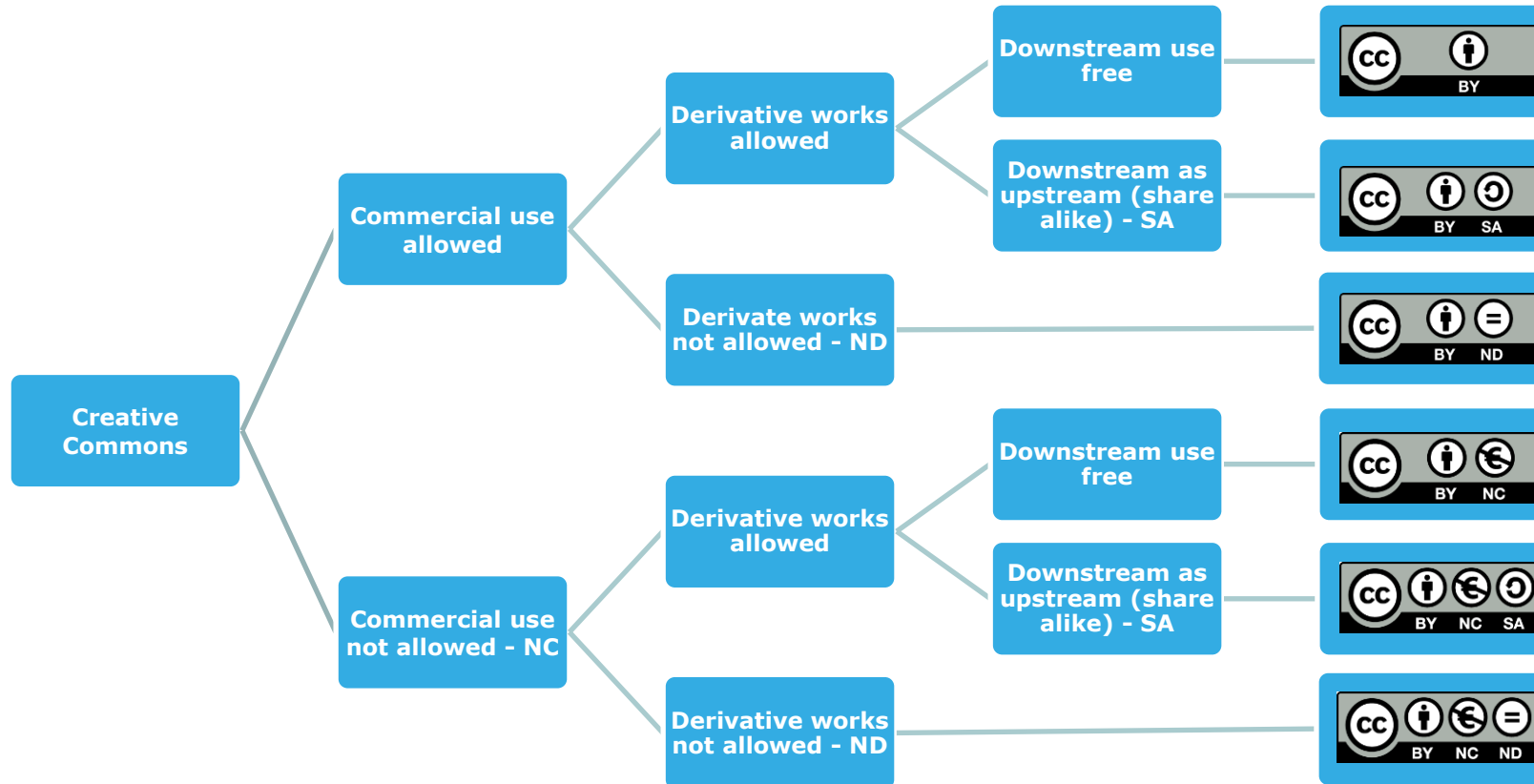
Licences Creative Commons - 3 Formats:

Common Deeds or Human Readable License – a summary of the licence in lay man's terms

Legal Code – the contract (the licence) as such

Machine Readable License – to associate the adequate metadata to the work

In addition to the Decision to adopt CC BY:

➢ *"**Reuse guidelines**: Using Creative Commons licences for the distribution and reuse of Commission documents",* by CIPS

https://myintracomm.ec.europa.eu/corp/intellectual-property/Documents/2019_Reuse-guidelines%28CC-BY%29_Jan2022.pdf

➢ Including **all appropriate copyright notices** for all situations, for documents, datasets, presentations, etc.
➢ Trainings for EC staff

Standard EC copyright notice:

Software: open source!

- ➤ **Commission Strategy** on open source (« Think open »)
  - ➤ Encourages use of open source software
  - ➤ Encourages contributions to third party open source projects
  - ➤ Encourages the open source licensing of EC own software
  - ➤ Reminder: PSI does not apply to software

- ➤ **Commission Decision of 8 December 2021 on the open source licensing and reuse of Commission software** (2021/C 495 I/01)

  - ➤ Official Journal, C 495 I/1, 9 December 2021

Software: open source

Commission Decision on the open source licensing and reuse of Commission software (2021/C 495 I/01):

- By default, EC-owned software should made available as open source
- Preferably under the EUPL licence; but if necessary, under another standard open source licence
- Facilitation of administrative internal procedures, also for contributions to third party projects

Github repository

Trainings for EC developers

Guidelines for EC services and developers (2022), from CIPS and DIGIT

Scientific articles: open access!

➢ Reuse Decision: « *Exclusive rights may be granted to publishers of scientific and scholarly journals for articles based on the work of Commission officials for a limited period."*

➢ For Joint Research Centre (most articles come from there):

> ➢ **Open access policy (CC BY 4.0)**
> ➢ **Gold open access as a principle**
> ➢ **Green open access as the exception**
> ➢ **Exclusive rights to publishers as the exceptional exception (monographies), for limited periods only**
>
> ➢ **Guidelines on publications, from CIPS**
> ➢ **Trainings**

Prerequisite: IP ownership…

➢ In order to make available as reusable documents, open data, open source or open access: you must be the IP owner:

  ➢ **Staff Regulations, article 18:** IP on creations by EU staff belong to the EU
  ➢ **Procurement contracts:** by default, the templates of our service contracts provide for a transfer of IP ownership on the results to the EU (with explicit reference to possible publication under Reuse)

As a conclusion, for the Commission

➢ The Commission walks the talk!
  ➢ **Documents reusable**
  ➢ **Open data, open research data**
  ➢ **Open source software**
  ➢ **Open access for scientific articles**

➢ Rules, strategies, policies per types of asset, CC BY, EUPL, practical guidelines, tools, trainings, CIPS helpdesk

➢ And the EC is even sometimes ahead of times… (research data, open source software…)

➢ Other EU institutions and agencies are encouraged to follow

What about other EU institutions?

➢ Many are looking at what the EC does and tend/try to follow

➢ Discussions have taken place to adopt a common approach and CC BY by default - not yet finalised – fingers crossed

➢ Agencies (separate legal entity):
  ➢ Sometimes have an explicit own policy on reuse
  ➢ More often take inspiration from the EC

Example:

➢ **The EU Council** - *Council Decision of 14 September 2017 (11563/17) on the open data policy of the Council and the reuse of Council documents*

  ➢ inspired from the Commission Reuse Decision; no decision to use CC BY

  ➢ Copyright notice on the website:

    © European Union, 2022.

    Reproduction is authorised, provided that the Council of the EU is always acknowledged as the original source of the material, unless otherwise stated and that the original meaning or message of the content is not distorted.

Example:

➢ The EU Parliament: work on-going on their own reuse policy

Copyright notice on their website:

(…)

As a general rule, the reuse (reproduction or use) (…) is authorised, for personal use or for further non-commercial or commercial dissemination, provided that the entire item is reproduced and the source is acknowledged. (…)

Example

➢ CEDEFOP (European Centre for the Development of Vocational Training)

Copyright notice on their reports:

Thank you for your attention!

Any question?

Jean-Paul TRIAILLE
Central IP Service (CIPS), DG JRC
jean-paul.triaille@ec.europa.eu

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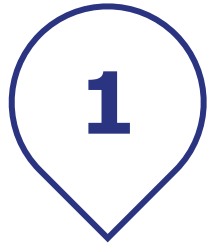
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Q&A and feedback

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