APELL

POLICY BRIEF

SEPTEMBER 2026

CLOUD AND AI DEVELOPMENT ACT FOR DIGITAL SOVEREIGNTY

Honourable Member of the European Parliament,
Dear colleagues,

The **Cloud and AI Development Act** as part of the Commission's Technological Sovereignty package offers a long awaited opportunity to realise the strategic goal of increasing Europe's **digital sovereignty**.

At APELL, the European Open Source business association, we welcome the Commission's renewed commitment, and increased ambition with regard to digital sovereignty.

In the accompanying *Communication on European Technological Sovereignty*, the Commission is remarkably clear that *"excessive technological dependencies"* have created *"strategic liabilities"* for the EU.

These liabilities are not only technical in nature, they also concern the availability of skilled individuals, a pipeline for education and training, and last but not least, a **strong and innovative European digital economy**.

Open Source guarantees control over digital technology, influence over its design, and the absence of lock-ins and capture effects. For the companies to succeed that contribute to an **economically sustainable, sovereign, digital ecosystem**, we need more active endorsement of the qualities that Open Source offers – and clear commitments to purchasing Open Source solutions. In public procurement as well as in the private sector.

Investing in Open Source products, services, and the business ecosystem that provides them, means an investment in a trustworthy ecosystem that advocates compliance, and **implements change**.

Open Source is a business model, and a **paradigm for research and innovation** that reduces dependencies and increases control over digital technology: from hardware design and software development, to networking, data, and compute infrastructure, to new technologies including artificial intelligence.

Sebastian Raible
Director EU Government Affairs

Sebastian Raible represents the European Open Source Software Business Association APELL in Brussels. He has previously worked as a policy advisor in the European Parliament.

Reducing dependencies

One of the main objectives of CADA and the wider Technological Sovereignty strategy is to **reduce European dependencies on critical technologies** (Art. 1(1)(d)), also reflected in the operational objective 2 of the Cloud and AI Leadership Initiatives (Art. 3(2)(b)).

Open Source as a business model, and research and innovation paradigm proactively gives users and customers the freedom to *use, study, share, and improve* technology by way of a licence agreement. For software, this means that it does not come as a 'black box', creating a technological, skill, and knowledge dependency on a single vendor. Open Source actively provides users or customers with the **freedom to choose a service provider**.

APELL recommendations

- *open cloud computing stacks and open-source middleware platforms* are explicitly mentioned in operational objective 2 (Art. 3(2)(b)), but **should be the default** also in the *development and deployment of data centre technologies* (objective 1, 3(2)(a)), as well as where *frontier AI capabilities* are being developed under CADA and other instruments
- Article 6 on the *implementation of Cloud and AI Leadership Initiatives* and Article 7 on the *national cloud and AI strategies* should **clearly reflect that operational objectives from Art. 3 must be reflected in implementations at all levels, in particular openness objectives.**

Data centre acceleration without lock-in

When designating data centre acceleration zones and designating strategic projects, the Commission and Member States must not endanger dependency reduction and digital sovereignty increase efforts.

APELL recommendations

- operators should receive priority that build on **open cloud stacks** that make the best effort to not only avoid proprietary components at all levels of the stack
- **priority must be given to Open Source** technologies
- users must **retain their switching and portability rights**
- providers must **make use of commonly used, and openly standardised formats and interfaces** to enable this.

Open cloud sovereignty

The Cloud computing sovereignty framework established with CADA is an important and decisive step to reduce technological dependencies, in particular in critical infrastructure. We welcome that the framework takes questions of control and extraterritorial influences into account. The recent months and years have shown that over-dependencies have created attack surfaces that third countries explicitly exploit to create economic and

political pressure on Europe.

However, the Union Assurance Levels established here must not lead to disproportionate requirements for providers of Open Source products and services.

APELL recommendations

- the delegation of power to the Commission in Article 16(2) to amend the Union assurance levels is very broad, causing legal uncertainty in particular for innovative technology and service providers
- as an essential element of the Regulation, the assurance levels established in Annexes II and III should not be lowered using a delegated power
- the growing importance of automated vulnerability scanning and eventually fixing, in particular relying on frontier AI models, could lead to a situation where state-of-the-art cybersecurity standards could create a requirement to rely on such proprietary, third country-provided, and not technologically sovereign tools/services and infrastructure. The Commission should clarify this in particular with regard to requirement 1.1(e) in Annex II, but also with regard to other laws and policies
- similarly, even the mere use of such automated vulnerability scanning tools/services and infrastructure by UAL1 qualified providers could mean exploitable security vulnerabilities exist that are not reported by the tool/service because of control or legal requirements by a third country. The Commission should provide guidance with regard to the integrity of the requirements in particular of UAL1. (in particular Annex II, 1.1(g))
- providers must **make use of commonly used, and openly standardised formats and interfaces** to enable this.

Union added value in procurement

Public procurement should prioritise Open Source over other criteria. However, the way Open Source projects are developed and contributed to can vary significantly from proprietary development models. In particular, **due to the freedoms given by the Open Source model, the same level of control and dependency does not emerge**, because developers and users have the freedom to *fork* a project at any point. The Commission's updated Open Source Strategy creates an **Open Source Maintenance Instrument** specifically to create forking capability to **avoid undue control or interference** where it should emerge.

When procuring Open Source, procurers must be given the means to **evaluate whether a tenderer contributes improvements and customisations back up-stream** to the Open Source ecosystem. This avoids price-dumping to the detriment of long-term quality and security. Procurers must then have the ability to **prioritise quality over price** in selection and awarding.

APELL recommendations

- Art. 32(2)(d) makes *non-price award criteria* ancillary and not decisive in the award of the contract. The provision **risks making all non-price criteria irrelevant and should be deleted**.
- when evaluating whether a *tenderer contributes to strengthening the digital techno-*

logy supply chain in the Union, it should be clarified in Art. 32(3)(a) that **contributions to the development of Open Source** software, hardware, or other technology projects **can be considered as contributing to *strengthening the Union supply chain* independently of whether a project is hosted, or contributed to, by entities or individuals in third-countries**

- similarly, in Art. 32(3)(b), it needs to be reflected that, while Open Source projects may receive contributions from third countries, or even be hosted by third country organisations, this **does not create the same level of control or dependency** as with non-Open Source technologies.

- **add evaluation criteria** specifically where Open Source is being procured: a tenderer's contribution to, familiarity and experience with the specific Open Source supply chain of a procured solution, and make these actionable as **effective selection criteria** in Article 32.

See also APELL's response to the publication of the Public Procurement Act and European Innovation Act proposals ("Put Open Source front and centre: Public Procurement Act and European Innovation Act proposals": https://apell.info/2026/09/16/public-procurement-act/), and to the Commission's prior consultations on the procurement revision ("Public Procurement revision: shift investments to Open Source": https://apell.info/2026/01/26/procurement-shift-investments/, and "APELL submission to the Public procurement directives evaluation": https://apell.info/2025/02/20/apell-submission-public-procurement-directives-evaluation/).

Central purchasing must ensure technological sovereignty

The Commission has the possibility to carry out procurement activities for *data centre services, cloud computing services, software and AI systems* not only for itself but for other Union entities, as well as to act as a central purchasing body also for the Member States. When acting as such, or where providing support to other entities' procurement efforts, the Commission **must ensure technological sovereignty goals are pursued.**

APELL recommendations

- any procurement activity must include an **assessment of the technological sovereignty goals**, in particular reduction of dependencies and increase of Union added value, taking into account the **effect of possible mergers and acquisitions in particular by economic entities established, or controlled by entities outside of the EU**

- any **procurement of proprietary products or services** must be thoroughly justified along a **fixed set of specific, measurable, achievable, and relevant criteria** to be added to Title IV, Chapter IV

- where the user experience or user interface are criteria in selection and awarding, tenders should allow for time-bound improvements involving the users

- the **performance of contracts** for proprietary products and services must be fixed to a **maximum of 3 years**, after which the contract must be opened for tenders again,

and the technological sovereignty goals re-assessed.

Open source *first*

We welcome the introduction of the Open Source chapter (Title IV, Chapter V) in CADA, and support the general direction. However, the provisions should be clarified to be **actionable and effective** in making use of the Open Source stack to contribute to European technological sovereignty.

A recently published study of German Bundestag research service (https://www.bundestag.de/resource/blob/1165534/WD-7-010-26.pdf) suggests **all new software specifically commissioned for use by public entities be published under relevant free and open source licence**, insofar as no security concerns, licence or intellectual property right restrictions exist that would prohibit this.

APELL recommendations

- rather than only encouraging the use of open standards and components under Open Source licence, Art. 41 should be modified to effectively prioritise their use
- a derogation from the provision can be introduced to allow a temporary derogation if necessary and justified, to use non-Open Source components. See our suggestion on the side
- beyond making available existing software, Article 42 should also encompass new developments of modifications or custom software, insofar as no conflicting legal requirements exist
- the existing EU Open Source catalogue now codified in Article 43 currently only contains solutions already in use by public sector organisations but should create added value by providing public sector institutions information on opportunities and new solutions. Furthermore, the Article holds the opportunity to follow through on the creation of an Open Source Maintenance Instrument as proposed in part 4.2 ("Strengthening and promoting a vibrant open source ecosystem") of the updated Commission Open Source Strategy
- Open Source Programme Offices can be a strategic driver when coordinated at EU level. The OSPO Network established in Article 44 should receive funding and staff to enable its full potential.

ABOUT APELL

APELL – L'Association Professionnelle Européenne du Logiciel Libre (ASBL) is Europe's Open Source Software Business Association. Founded in 2020 to bring national Open Source Software organisations together into a European network to provide them with peer support and collective marketing, as well as capacity building and policy support for public affairs, both nationally and on the EU-level.

APELL aims to increase opportunities for the members of the Association's member organisations, and to increase value and advancement for customers in both the public and the private sectors. At the same time, we see a real need to bring the Open Source perspective into the discussions on the shaping of Europe's digital future.

We support the digitisation of the economy and society — but it matters how we digitise. APELL promotes a sovereign, inclusive, ethical digital market. In order to achieve this, Europe's digital future should be based on Open.

APELL and its members represent hundreds of Open Source businesses with a collective turnover in the order of several tens of billions of euros each year, as well as public administrations, research institutions, and individuals throughout Europe.

MEMBERS

CH Open – Source | Business | Community

CNLL – Les entreprises du numérique ouvert

COSS – Centre for Open Systems and Solutions

OSBA

DOSBA – Dutch Open Source Business Alliance – Vereniging Open Source Nederland

DOSL – Danske Open Source Leverandører

OPEN SOURCE SWEDEN

ESOP

LATA

RIOS – RETE ITALIANA OPEN SOURCE

ofe – OpenForum Europe

APELL – L'ASSOCIATION PROFESSIONNELLE DU LOGICIEL LIBRE (ASBL)

APELL

APELL is the European umbrella organisation of national Open Source business associations. Together, we represent hundreds of Open Source businesses, as well as public administrations, research institutions, and individuals throughout Europe. Founded in 2020, it aims to increase opportunities for the members of the Association's member organisations, and to raise awareness for the strategic importance of Open Source for Europe. APELL promotes a sovereign, inclusive, ethical digital market.

APELL – L'Association Professionnelle Européenne du Logiciel Libre (ASBL) • 56 Avenue des Arts • 1000 Brussels, BE
VAT: BE 0757.465.575
European Commission Transparency Register: 765379449482-59
info@apell.info • https://apell.info/