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SPAIN

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Report on the event “Open Source Driving the European Digital Decade | Spain”

Capital Series - Madrid, Spain

The OFE Capital Series, organised by OpenForum Europe (OFE), is a series of events hosted in each EU Member State when they hold the Council Presidency. These events have successfully taken place in France, Czechia, and Sweden, and are an action in line with OFE's commitment to fostering a dialogue between the European governments and open source communities throughout Europe. Looking ahead, the next event is scheduled for 2024 in Belgium.

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Introduction

On 16 November 2023, OpenForum Europe, Red Hat, Linux Foundation Europe, TODO Group and Bitergia [hosted an event](#) in Madrid, Spain. As part of the Capital series taking place in the Member State that holds the Presidency of the Council of the EU (Spain, at the moment), this event sought to bridge the gap between the EU inner workings and the Open Source Software (OSS) communities active all over Europe.

In today's digital landscape, OSS plays a pivotal role, underpinning a significant portion of our software-driven world. However, concerns have emerged regarding the potential impact of the Cyber Resilience Act (CRA) on the OSS ecosystem. This legislative proposal, currently in negotiation between the European Commission, the European Parliament and the Council of the European Union, could considerably harm the OSS ecosystem and innovation in Europe.

In a nutshell, the CRA creates obligations when software is “made available”, and this puts extra burden on OSS as it is a software being constantly made available at every stage of development and supply. OSS licences and development models give Europe's companies and governments full access to audit, modify and commercialise the software, thus forming Europe's best opportunity for digital sovereignty and cybersecurity. At the same time, the open source innovation model is the way Europe can create competitive solutions at scale, fast. This has been shown by the rapid innovation in open source AI, most recently, but is relevant across all industrial and economic verticals.

In Madrid, we brought EU and national policymakers together with businesses and organisations from the OSS ecosystem to shed light on the intersection between the CRA and OSS by providing a platform for critical discussions, insights, and solutions. The event featured two high-level keynotes, a presentation on how a good or a bad CRA could impact OSS in the EU, and two panel discussions (one on the CRA and one on OSS in Spain) with Q&A sessions. The panels included prominent figures from the OSS community and cybersecurity domain.

The first panel examined current EU policy concerns on how to safeguard OSS and the benefits it brings in terms of innovation, strategic autonomy, EU competitiveness and security. The second panel, held in Spanish, focused on gathering many of the local initiatives active in Spain, showing their similarities and differences, as well as discussing how to enable vibrant open source communities in a dynamic private and third sector landscape. How would these actors like to see their cooperation in the future? What are the shared goals?

Welcome address from OpenForum Europe & Presentation of the Cyber Resilience Act



Ciarán O'Riordan – Senior Policy Advisor, *OpenForum Europe*

Ciarán O'Riordan opened the event with an overview of the Cyber Resilience Act (CRA). He highlighted the collaborative efforts of the organising partners and emphasised the diverse perspectives that would be presented throughout the event.

Key takeaways:

Overview of the Cyber Resilience Act:

- The CRA aims to apply product safety regulations to software, posing new challenges beyond previous legislation focused on copyrights and patents.
- The collaborative and transparent nature of OSS development may cause the CRA's obligations to be triggered much more frequently.

Challenges and Complexity in OSS Development:

- OSS development involves collaboration among entities of varying sizes, making it difficult to create a one-size-fits-all idea of what burden is reasonable.
- Frequent releases and commercialisation by multiple companies add to the intricacies.

Clarifications, in the context of OSS, of acts which do not trigger CRA obligations:

- The CRA includes a clarification that sharing free and open source software, if non-commercial, does not trigger CRA obligations. There is also a lighter regime for certain entities.

Challenges for Contributors:

- Contributors, especially casual and SME contributors, may face difficulties determining their commercial status under the Act.
- Increased legal considerations and obligations may discourage contributions.

Impact on OSS Projects:

- OSS projects may become hesitant to accept contributions, potentially affecting community growth and software quality.
- Concerns about financial support and the acceptance of financing due to potential classification as commercial entities.

Current Legislative Status:

- The CRA is in the final stages, with ongoing efforts to clarify definitions, exemptions, and risk assessment criteria. **Note:** on 30 November, the Commission, Council and Parliament reached agreement on the parts of the text which deal with free and open-source software. This final version contained additional useful clarifications, beyond what was in all the previous proposals and drafts. We believe the Madrid event, both in the venue and through meetings which the event enabled, was crucial to helping the Council negotiators understand our requests.

Concerns and Solutions:

- Concerns include potential nervousness among developers, less interest in starting OSS-related businesses, and hesitancy to accept financing.
- Ongoing work on terminology and a lighter regime for foundations/stewards.

Collaborative Solutions Needed:

- Emphasis on the community organising and collaborating to comply with the CRA, minimising the potential departure of businesses from the EU.
- Importance of commercial companies taking an interest in free and open source software to enhance security through increased contributors.

Looking Ahead:

- Anticipation of increased market regulation for OSS in the future.
- Stress on balancing regulation and procedures with the unique opportunities provided by open source software to enhance cybersecurity.

Keynote 1 – The state of play of the Cyber Resilience Act



Javier Augusto Gil-Ruiz Gil-Esparza – Advisory Member for Cybersecurity, *Secretariat of State for Digitalisation and Artificial Intelligence, Ministry of Economic Affairs and Digital Transformation of Spain*

Javier Augusto Gil-Ruiz, as a representative of the Spanish Presidency of the Council of the EU, delivered a keynote address that aimed to provide an update on the negotiations around the Cyber Resilience Act (CRA) and navigate the intricate legislative process associated with it.

Key takeaways:

Overview of the Legislative Process:

- Javier Augusto Gil-Ruiz outlined the complexities of the legislative process, involving the Council of the EU, the European Parliament, and the European Commission, shedding light on Spain's role as holding the presidency of the Council of the EU for this semester.

Discussion on Recital 10 of the CRA:

- An exploration of Recital 10 focused on criteria such as non-commercial status, indications of commercial activity, and circumstances of development and financing, determining entities within or outside the CRA's scope.

Importance and Rationale for the CRA:

- The speaker underscored the significance of the Cyber Resilience Act in addressing cybersecurity challenges posed by malware and ransomware, underscoring the need for regulations in the evolving digital landscape.

Taxonomy of Open Source Software:

- To illustrate the diverse nature of open source software (OSS), Javier presented a taxonomy based on monetary support and collaboration governance, discussing potential impacts on different OSS development models.

Discussion on Council and Parliament Mandates:

- Insights into the mandates of the Council and the European Parliament highlighted ongoing negotiations and potential compromises, including the emergence of the "steward" concept with a light-touch supervision regime.

Global Implications and Q&A:

- Addressing global implications, Gil-Ruiz considered the interconnected nature of value chains and how the CRA would apply to software developed across different countries. The Q&A session explored potential impacts on European businesses and citizens.

Closing remarks:

- Javier Augusto Gil-Ruiz concluded by stressing the urgency of ongoing negotiations due to the imminent end of the Spanish presidency and EU elections. He highlighted the need for a balanced and effective regulatory framework.

Panel 1 – The Cyber Resilience Act: Policy concerns and the role of the FOSS community



Panel, moderated by Daniel Izquierdo (*Bitergia*):

- **James Lovegrove** – *Red Hat*
- **Mirko Boehm** – *Linux Foundation Europe*
- **Beatriz Benítez-Alahija** – *Across Legal*
- **Enzo Ribagnac** – *Eclipse Foundation*

Key takeaways:

Acknowledgment of Progress:

- The participants in Panel 1 expressed gratitude for the opportunity to discuss the Cyber Resilience Act (CRA) and its implications for open source. There was recognition of the progress made in the CRA discussions, especially in clarifying issues related to open source software (OSS).

Diverse Panellist Backgrounds:

- The panellists represented various organisations, including Red Hat, Linux Foundation Europe, the Eclipse Foundation and a law firm, showcasing a diverse range of perspectives, including legal, community development, and public policy.

EU Legislative Process:

- The discussion touched on the legislative process of the CRA, noting that the leak of the text had initiated valuable discussions and motivated the OSS community to engage more actively in shaping the legislation. The early engagement of the OSS ecosystem in the legislative process proved to be pivotal in driving the conversation.

Evolution of the CRA text:

- The panellists discussed the evolution of the CRA text, praising the improvements made along the way. They noted increased clarity in defining open source software and a deeper understanding of the differences between commercial actors and collaborative development processes, representing a positive shift in the provisions.

Concerns about Definitions:

- The panel raised concerns about defining roles within the open source ecosystem, especially regarding the concept of a steward. There was a need for clarity in distinguishing between various actors, such as foundations, public administrations, and universities, and understanding their roles in collaborative development.

Challenges in Collaborative Development Definition:

- The definition of collaborative development came under scrutiny, particularly the challenge of determining when one entity exercises control. The lack of clarity in this area raised questions about potential unintended consequences for diverse open source communities.

Impact on Small Foundations:

- There was a shared concern about the impact of CRA obligations on small open source foundations and communities. The participants stressed the need to differentiate between the capabilities and resources of large foundations and smaller, volunteer-driven initiatives.

Protecting Volunteer-Driven Innovation:

- The panellists highlighted the fragility of volunteer-driven open source ecosystems and the importance of protecting and fostering these communities. They emphasised the role of these communities as incubators for knowledge and talent that contributes significantly to European innovation.

Adaptation by Open Source Community:

- There was a consensus that, in the face of impending legislative changes, the open source community needed to adapt its governance, transparency, and practices to align with the evolving legal landscape.

Responsibility for Software Usage:

- A crucial theme revolved around the one-sided action in software development. While traditional upstream communities have a degree of separation from end users, downstream product manufacturers must bear sole responsibility for the decisions they make in incorporating open source components.

Closing Remarks:

- The panel concluded with an understanding that the open source community should be proactive in shaping its practices to align with the evolving legal landscape while advocating for clear definitions and protections for diverse open source initiatives.

Keynote 2 (English & Spanish) – Innovation and Open Source in Spain



Juan Lobato Gandarias – Secretary General, *Spanish Socialist Workers' Party (PSOE) of the Community of Madrid*

In his keynote address, Juan Lobato emphasised the pressing need for a strategic focus on education to address the challenges faced by Madrid. He underscored the region's untapped potential in innovation and urged for a collaborative effort between the political sphere and the technology sector. Lobato highlighted the importance of bridging the gap between politicians and the dynamic world of technology to foster a Madrid that thrives on knowledge, collaboration, and shared prosperity.

Key takeaways:

Introduction and Regional Perspective:

- Juan Lobato Gandarias opened the keynote with a warm welcome to participants from around the world, and emphasised the importance of the event in addressing critical issues for the future of the Madrid region.

Current Political Situation:

- Highlighted the complexity and polarisation in Spanish politics, acknowledging that important and interesting topics are often overshadowed by political conflicts.

Vision for Madrid:

- Expressed the vision for Madrid to become a region known for high quality of life, sustainable economic growth, and harmonious coexistence.
- Emphasised Madrid's potential for fostering economic development in sectors with added value.

Economic Landscape of Madrid:

- Shared key statistics:
 - Only a small percentage of new jobs created in the last year in Madrid were in the industrial sector.
 - Madrid ranks 79th in Europe in terms of investment in innovation and development.
 - Ranked 93rd in labour productivity and 100th in Europe for registered patents.

Challenges and Solutions:

- Addressed the challenge of high youth unemployment (30%) and the mismatch between young people seeking education in innovative sectors and the demand from forward-looking companies.
- Advocated for breaking the cycle through education, calling it the key to addressing unemployment, providing opportunities in innovation, and meeting the needs of future industries.

Role of Education in Economic Development:

- Stressed the centrality of education in Madrid's development, with a focus on vocational training and addressing the mismatch between skills and industry demands.
- Advocated for strategic investments in education to support future sectors with added value.

Call to Action:

- Urged attendees to actively engage with politicians and push for policies supporting the knowledge economy, connectivity, and collaborative growth.
- Encouraged a shared vision of economic growth, underscoring knowledge, connectivity, and collaboration as essential skills for sustainable development.

Technology and Politics Gap:

- Acknowledged a gap between the political and technological spheres, expressing the need for collaboration and understanding.

- Requested the technology sector's continued engagement in political discussions and emphasised the importance of mutual understanding.

Closing Remarks:

- Appreciated the invitation and encouraged active participation in political discussions.
- Expressed gratitude for the opportunity to learn from the event and urged attendees to continue pushing for the importance of developing future sectors.

Panel 2 (Spanish) – Open Source Communities and Enablement in Spain



Panel, moderated by Ana Jimenez (*Linux Foundation*):

- **Juan Luis Cano** – *QuantumBlack, AI by McKinsey*
- **Julia Bernal** – *Red Hat*
- **Tomas Olivares** – *Andes Digital*
- **Clara Pezuela** – *FIWARE Foundation*
- **Jesús María González Barahona** – *Rey Juan Carlos University*

Key takeaways:

Motivations for Open Source Participation:

- The panel underlined that the OSS movement is driven not only by practical considerations such as skill development, job opportunities, or gaining visibility but also by intrinsic motivations rooted in ideology and a desire to contribute to the common good. The participants highlighted the transformative impact of a cultural shift towards openness and collaboration, moving away from traditional notions of proprietary innovation.

Upstream First Model:

- A significant topic of discussion was the "upstream first" model, where organisations prioritise contributing back to the original OSS projects. This approach was exemplified by several companies, which have dedicated decades to collaborating with numerous OSS projects and adhering to a philosophy of sharing improvements upstream before integrating them downstream.

Security Concerns:

- Security emerged as a common concern. The need for robust processes to ensure code security, protect intellectual property, and manage potential risks was underscored. The participants argued that the transparency inherent in open source makes it, in fact, a more secure option, with the collective eyes of a global community scrutinising the code for vulnerabilities.

Challenges in Open Source Collaboration:

- The panel acknowledged several challenges hindering effective collaboration. Notably, the fragmentation within the public sector, lack of awareness, and the need for a more cohesive ecosystem were highlighted. The absence of forums where diverse stakeholders could converge and exchange ideas was considered a significant impediment.

Role of Communities and Incentives:

- Communities were identified as crucial elements in the OSS landscape. The participants discussed the role of communities in offering recognition, visibility, and certifications to individual contributors. Incentives for companies were also explored, including access to marketplaces, training services, and enhanced networking opportunities within the OSS ecosystem.

Exemplary Spanish Open Source Initiatives:

- The panel recognised the vibrant landscape of small to medium-sized Spanish companies actively contributing to the OSS domain.
- Within the enterprise sphere, two standout examples were two Spanish small companies which play a leading role globally in browser technology development, showcasing the potential of smaller entities to scale up and excel on the international stage.
- Another example seen in the public sector is the [Educa Madrid](#) Initiative, a public services platform for the educational community, serving as an online platform in schools. It is worth noting the presence of specialised open source entities (AKA [FOSS Offices](#), OSPOs, etc) across different universities dedicated to spreading the values of open source in education. In Madrid, an outstanding example is [OfiLibre](#), from Rey Juan Carlos University.

Need for Local Ecosystem Development:

- While acknowledging the global nature of open source, the panel stressed the importance of nurturing local ecosystems. A call for more physical and virtual forums that facilitate dialogue, collaboration, and the exchange of experiences among diverse stakeholders was stressed.
- During the panel, it was also mentioned the active local open source and FOSS community that organises [EsLibre](#) every year, a gathering of people interested in the dissemination of free culture and free technologies, both in the form of free software and hardware, as well as the communities that make this possible.

Closing Remarks:

- The panellists provided valuable insights into the motivations, challenges, and potential strategies for fostering effective collaboration within the Spanish OSS landscape. The need for a cultural shift, the significance of the upstream first model, and the role of communities were highlighted as essential elements in driving successful collaboration. To overcome challenges, the panel called for the development of cohesive local ecosystems and the establishment of forums for diverse stakeholders to engage and innovate collectively.

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