

## European open source strategy: two significant setbacks between the draft circulated in late May and the text adopted on 3 June

While the essence of the historic shift is confirmed, in the *Cloud and AI Development Act (CADA)* proposal the *open source first* principle is reduced to an obligation to *encourage*, subject to broad derogations; and *public money, public code* becomes a conditional obligation dependent on a discretionary decision by the administration. The fight now moves to the trilogue.

Paris, 3 June 2026 – For immediate release

The Conseil National du Logiciel Libre (CNLL) takes note of the adoption, on **3 June 2026**, by the European Commission, of the *Communication on European Technological Sovereignty, accompanied by an EU Open Source Strategy* (COM(2026) 503 final). [In the press release published after the circulation of the draft](#) in late May, the CNLL welcomed a **historic turning point**: the elevation of open source software to the rank of an **instrument of European industrial policy**. **This essential point is confirmed**. But the CNLL **must publicly regret** that, between the version that circulated in late May and the version adopted on 3 June, **two fundamental principles** that the European open source industry has carried for more than ten years **have been significantly weakened**:

- *open source first* in public procurement;
- the *public money, public code* obligation.

These two principles remain **named** in the text, but their **normative force** is by contrast considerably attenuated by the wording adopted.

### Two significant setbacks introduced before adoption

#### 1. The *open source first* principle: a strong article title, a weak article body

The adopted text of the CADA introduces, in Chapter V, an article 41 whose **title announces an ambitious principle** — “*Promoting open source solutions and open source first*” — but whose **body is considerably weaker**:

“The Union and Member States shall take the necessary measures to **encourage** Union entities and public sector bodies to use and facilitate the reuse of open standards and components released under an open source licence when building their cloud and AI ecosystem or stack, taking into account functionalities, including security, total cost, and other relevant, duly justified objective criteria.”  
(Proposal for a Regulation — Cloud and AI Development Act, COM(2026) 502 final, article 41)

Five elements of this wording call for critical reading:

- **The verb is “encourage”, not “require”.** The obligation borne by the Union and the Member States is to “*take the necessary measures to encourage*” — the most classical *soft law* formulation. **This is, word for word, the verb used since 2016 by Article 16 of the French *Loi pour une République numérique* (“Lemaire Law”): “*encourager l’utilisation des logiciels libres et des formats ouverts*” (“encourage the use of free software and open formats”).**
- **The scope is restricted to the “cloud and AI ecosystem or stack”.** The “encouragement” does not apply to all software acquired or used by European public administrations, but only to the components of the cloud and AI.
- **The derogations are very broad.** The text allows derogation from the “encouragement” on the basis of “functionalities, including security, total cost, and other relevant, duly justified objective criteria”. **This last open-ended clause allows a contracting authority to justify *ex post* almost any of its decisions.**
- **The requirement for a documented and auditable assessment, demanded by European software publishers in their open letter of July 2025, does not appear in article 41.**
- **The announcement effect is manifest.** The expression *open source first* appears in the **title** of the article. **It does not appear in its body.**

The complementary text in section 4.3 of the accompanying Communication confirms the *soft* nature of the device: operational reach is transferred to “**guidelines and best practices**” that the Commission will develop to help public administrations draft their calls for tender (Communication, section 4.3, p. 24).

## 2. *Public money, public code*: a conditional and discretionary obligation

The draft circulated in late May presented the *public money, public code* principle as an **obligation** imposed on public administrations to make available for reuse the software they purchase or develop. The adopted text of the CADA — article 42 — formulates the obligation in a **strictly conditional** manner:

*“When making software to which they hold intellectual property rights available for reuse under an open source licence, a Union entity or public sector body shall do so using a catalogue or repository that is connected to, and made accessible through, the EU OSS Catalogue referred to in Article 43.”*  
(CADA, article 42)

The obligation introduced by article 42 bears on the *mechanism of making software available* — passing through a catalogue connected to the *EU OSS Catalogue* —, not on the *decision to publish under an open source licence*. Three consequences follow:

- article 42 itself **imposes on no entity an obligation to make available under an open source licence a software financed with public money**; it only defines the cataloguing modality *when* such a decision is taken, where applicable pursuant to other pre-existing European instruments (Interoperable Europe Act, internal doctrines, etc.);
- the scope is limited to **software for which the entity itself holds the intellectual property rights**. Software developed on public funds by contractors that retain the rights — a frequent case in European public procurement — remains **outside the scope** of the obligation;
- article 42 thus operationalises the *public money, public code* principle in its **accessibility and discoverability dimension** for software already published under an open source licence, but **not**

**in its structuring dimension as a publication obligation** that the European open source industry has been defending for ten years.

The complementary text in section 4.3 of the accompanying Communication confirms this: “*The Commission, guided by the ‘public money, public code’ principle [...], will prioritise openness, [...] while not excluding the use of other solutions where security, confidentiality or legal constraints require it, following a pragmatic risk-based approach.*” (Communication, section 4.3, p. 25). This formulation engages **only the Commission itself** as a matter of internal guidance, and reproduces the **same exception clauses** as article 41.

### **3. Articles 43 and 44: codification of an existing tool and OSPO work in progress**

For completeness, Chapter V “Open source” of the CADA contains two additional articles, the reading of which is more nuanced than the first two — neither major setbacks nor structuring achievements.

**Article 43 — “EU Open Source Solutions Catalogue” — codifies an already existing practice.** The Commission already operates an *EU Open Source Solutions Catalogue* hosted on the *Interoperable Europe* portal, freely accessible. Inscribing this tool in European law costs the Commission nothing — the instrument exists — but **does not advance the cause one iota**. No new obligation is attached to the catalogue: it remains a reference tool, not a lever for transforming public procurement.

**Article 44 — “Network of Open Source Programme Offices” — is, by contrast, an important institutional achievement, for which the CNLL and its European partners have been advocating since at least 2021.** The institutionalisation of a European network of public OSPOs, coordinated by the Commission, in charge of exchanging best practices on licensing, security, maintenance and public procurement of open source software, constitutes a welcome institutional recognition. The CNLL welcomes this achievement.

**This achievement nevertheless calls for a concerning observation at the national level.** At the very moment when the Commission institutionalises a network of public OSPOs at European level, **France saw, in early 2024, the effective dismantling of its own *Mission Logiciel Libre*** — the OSPO of the French government hosted by the DINUM, which had structured the policy on open source in the administration since 2021. The CNLL calls for the **immediate reinstatement of a strengthened *Mission Logiciel Libre***, with adequate resources, as a prerequisite for France to be a full stakeholder in the European network provided for by the CADA — and, more generally, as a tool of interministerial steering of *open source first* which the national legal frameworks alone have, since 2016, failed to make work.

### **Synthesis of Chapter V “Open source” of the CADA**

Taken together, the four articles of Chapter V constitute a **soft law mechanism complemented by networking instruments**: a principle of “encouragement” without constraint (article 41), a cataloguing obligation conditional on a discretionary decision (article 42), the codification of a pre-existing catalogue (article 43), and an OSPO network that is welcome but to be articulated with national policies (article 44). **None of the four articles, in their current wording, creates an enforceable obligation either to purchase open source software or to publish under an open source licence the software developed on public funds.** The CADA being only a *proposal* for a regulation, it is in the **upcoming trilogue** that the effective normative reach of *open source first* and *public money, public code*

will be decided — through parliamentary amendments and negotiation with the Council — before the implementing acts and guidelines come, subsequently, to specify the modalities of implementation.

### Two lexical softenings in the accompanying Communication

The Communication accompanying the CADA proposal also contains **two notable lexical modifications** between the draft circulated in late May and the text adopted on 3 June. Taken together, they bring the political status of open source back to a less ambitious register.

**First softening: “key lever” → “crucially contributes”.** The qualification of open source as a “**key lever**” in the draft circulated in late May has been replaced, in the 3 June text, with a more tepid formulation: “**crucially contributes**” (Communication, section 4). The shift is not anodyne: it **demotes open source from a structuring instrument of the strategy to the rank of an important auxiliary factor**. This is, in the political register of the Communication, the exact echo of the shift made in the legal register of the CADA, where *open source first* is brought back to an “encouragement” without constraint.

**Second softening: the disappearance of the term “sovereignty washing”.** The phrase, which expressly appeared in the draft circulated in late May as the stated objective of the CADA’s sovereignty risk assessments, **has been removed** from the adopted text. The corresponding mechanism — the mandatory risk assessments on four levels of cloud and AI sovereignty — is entirely preserved (section 3.1). The political label has been smoothed away; the operational mechanism is preserved.

The CNLL can only regret these two softenings, since the political language of a Communication has a function of its own: to make recognised, at the highest European level, in explicit and opposable terms, the nature and reach of the phenomena described. “*Key lever*” committed; “*crucially contributes*” comments. “*Sovereignty washing*” qualified a practice; its disappearance makes it harder to name publicly, even though the underlying mechanism — the sovereignty risk assessment — is preserved.

### A wording that textually replicates the French framework of 2016 — and its operational failure

The parallel with **Article 16 of the *Loi pour une République numérique* of 7 October 2016** (“Lemaire Law”) is striking: the verb used by article 41 of the CADA to qualify the obligation borne by Member States — “*encourage*” — is **word for word** the verb that the Lemaire Law has used since 2016: “*encourager l’utilisation des logiciels libres et des standards ouverts*” (“encourage the use of free software and open standards”). This framework has been in force in France for almost ten years. **It has not, over this period, produced the expected results in terms of substitution to non-European proprietary solutions and services.** The *Health Data Hub* case — French health data hosted on Microsoft Azure —, the (fortunately aborted) attempt at the migration of the *École polytechnique* to Microsoft 365, and the major digital procurement contracts signed in recent years by the French Ministry of Education with non-European proprietary publishers, all illustrate the **structural limit** of a wording that “encourages” without enforceable constraint or documented assessment.

**The 28 May draft promised to go beyond the limit France has known since 2016; the 3 June text reproduces it at European scale.** The direction is right; the enforcement mechanism is missing.

### The essence of the historic turning point is confirmed

Beyond these setbacks, the political architecture of the text remains the one the CNLL had welcomed. The EU Open Source Strategy is confirmed as one of the four initiatives of the *Technological Sovereignty*

*Package*. The **EUR 264 billion** of annual European spending on proprietary IT (Astérès / Cigref, April 2025) is retained as a reference figure; **APELL** is named as representing the national open source business associations in **eight Member States** (footnote 69); the **Open Source Maintenance Instrument** with **fork capability** is confirmed, as is the **mirroring programme** for critical source code (section 4.2); the **four-level Cloud and AI Sovereignty Framework** is introduced by the CADA; the **legal definition of open source software** is now explicitly anchored on that of the *Open Source Initiative*, with a list of licences including **GPL, Apache-2.0, MIT, MPL-2.0, EPL-2.0 and the EUPL** (footnote 61); the **budgetary envelope** rises from one to **two billion euros over seven years** (public and private, section 2.1).

## Moving forward: the battle shifts to the legislative and implementation phase

One essential point must be recalled: **the CADA is, at this stage, a proposal for a regulation, not a definitive legislative text**. Its examination by the European Parliament and the Council — the trilogue — opens now. It is in this phase, as well as in the drafting of the implementing acts and Commission guidelines, that the actual reach of *open source first* and *public money, public code* will be decided. The CNLL calls on all actors of the French and European open source industry to mobilise, over the next twelve months, around **four operational priorities**.

*First, turn article 41 of the CADA into an enforceable obligation, in the trilogue*. The fight to move the wording of article 41 from an obligation to “encourage” to an **obligation to purchase open source software in public procurement**, with a **documented and auditable assessment** of derogations, is now the reference legislative battle. The CNLL will carry this line, in convergence with [the European companies that signed the open letter initiated by SUSE](#) , in coordination with APELL and its [Digital Independence Declaration](#) , and with [EuroStack](#) , before the co-rapporteurs and shadow rapporteurs of the European Parliament and the attachés of the Council.

*Second, mobilise the national legal acquis*. The weakness of *open source first* in the European text makes the national acquis **proportionately more important**: Article 16 of the *Loi pour une République numérique*, Article L. 123-4-1 of the *Code de l'éducation*, Article 68 of the Italian *Codice dell'Amministrazione Digitale*, the German IT-Planungsrat decision, and Dutch frameworks. These texts have existed (in France) since 2013 and 2016; they have never been fully applied. The CNLL will publicly carry the demand for their strict application in French public procurement, and their consolidation at the level of the European Union.

*Third, defend the licence-based legal definition of open source software*. The explicit anchoring, in the adopted text, on the *Open Source Initiative* definition is an **achievement to be preserved** in the trilogue and in the implementing acts. Any additional condition of “open governance” added to public procurement criteria would in practice exclude the majority of European open source publishers, to the benefit of foundations predominantly dominated by US and Chinese *big tech* funding, which the Commission itself acknowledges (section 4.2, p. 21). For artificial intelligence systems, the CNLL will carry the explicit adoption of the *Open Source AI Definition* published by the OSI in October 2024 (OSAID).

*Fourth, neutralise the practice of “sovereignty washing”, without the word*. The phrase “**trusted international partners**” that structures the entire adopted Communication constitutes, in the absence of an enforceable qualification test, the **structural entry path** for industrial façade arrangements — a

practice that the draft expressly designated by the term *sovereignty washing*, and which the adopted text has removed from its vocabulary but not from reality. The CNLL will carry, in the CADA implementing acts, the introduction of **enforceable jurisdictional immunity criteria** (absence of exposure to the *CLOUD Act*, *FISA Section 702* and equivalent regimes) at the highest level of the Cloud and AI Sovereignty Framework, verified by an independent European body.

The phase that opens now — trilogue on the CADA, drafting of the implementing acts and Commission guidelines, negotiation of the Multiannual Financial Framework 2028-2034, mid-term review of the Digital Decade — is the moment when the actual reach of the commitments made will be decided. The direction is right; the enforcement mechanism remains to be built. **The collective work led for ten years by the European open source industry is not over: as of 3 June, it enters its most demanding phase.**

The text adopted on 3 June confirms the elevation of open source software to the rank of an instrument of European industrial policy — the essence of the shift we welcomed in late May. But we must regret that, between the draft circulated in late May and the version adopted, two fundamental principles have been weakened: *open source first* in public procurement, and the *public money, public code* obligation. The CADA is, however, only a proposal for a regulation. The fight now moves to the trilogue, where the European Parliament and the Council still hold a decisive power of amendment. That is where, over the next twelve months, the actual reach of the commitments made will be decided.

— *Stéfane Fermigier, Co-Chair of the CNLL*

### About the CNLL ( <https://cnll.fr/> )

The CNLL — Union des Entreprises du Logiciel Libre et du Numérique Ouvert — is the representative body of the open source software industry in France. Born from the federation of 12 regional clusters in 2010, it represents more than 200 “pure player” companies (specialised or with significant activity in open source software): publishers, integrators, consulting firms, and others. The CNLL promotes the professional open source ecosystem, its software and services offering, its specific strengths, and its needs — in particular in terms of employment and training. It enables the community of industry actors to exchange and work together for the development of the market, in keeping with shared values.