



## European IPR Helpdesk

### Fact Sheet

# How to manage IP in Horizon 2020: at the implementation stage

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## Introduction

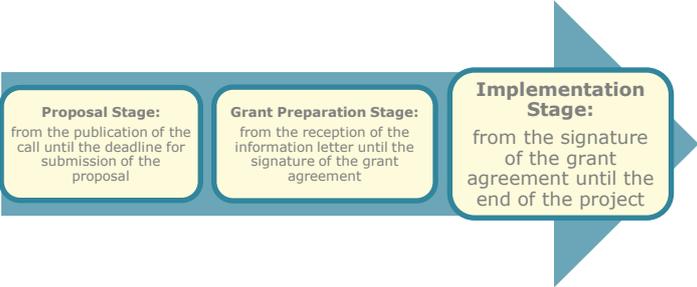
You have succeeded in the evaluation of your Horizon 2020 project proposal and finally signed the [grant agreement](#) (GA), as well as the [consortium agreement](#). It is now time to start **implementing** the project for which you will receive funding from the EU.

Hence, in terms of Intellectual Property (IP), the implementation stage assumes particular importance as the **exploitation** and **dissemination** of project results is a **key objective** of Horizon 2020 projects. This final fact sheet<sup>1</sup> of our Horizon 2020 series therefore highlights the steps you need to follow to pave the way for

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<sup>1</sup> The European IPR Helpdesk has already published two previous fact sheets on the management of IP at the proposal stage and at the grant preparation stage. You can access them in the European IPR Helpdesk [library](#).

the exploitation and dissemination of the IP generated during the implementation of your project.



**1. Implementation stage**

**1.1 Access rights**

After the signature of the grant agreement, as well as the consortium agreement, it is time to start the project implementation. The research work well detailed in the project [work packages](#) is developed in accordance with the timing and [milestones](#) established.

Thus, it is during the implementation stage that project partners need to give [access rights](#) to their [background](#) and [results](#) being created in order for other partners to carry out their work on the project and/or exploit their results. The requests should be done in writing, which can take for instance the format of an email with acknowledgement of receipt, if participants so decide in their consortium agreement. The participant granting access rights may request to have in place an agreement, particularly when it wishes to make the access rights limited to some conditions (e.g. stronger confidentiality commitments).

Purpose	Access to background	Access to results
<b>Implementation of project</b>	Royalty-free, unless otherwise agreed by participants before their accession to the grant agreement	Royalty-free
<b>Exploitation of owned project results</b>	Subject to agreement, access rights shall be granted under fair and reasonable conditions (which can be royalty-free)	

**1.2 Results ownership**

In Horizon 2020, generally the grant agreement establishes that the results of the project belong to the [participant](#) generating them. Given the collaborative

nature of most projects, some results can be jointly developed by several participants. Hence, situations of joint ownership might arise.

### 1.2.1 Joint Ownership

In Horizon 2020, results are jointly owned if:

- i. they have been jointly generated by two or more participants and
- ii. it is not possible to:
  - a. establish the respective contribution of each beneficiary, *or*
  - b. separate them for the purpose of applying for, obtaining or maintaining their protection.

In most cases joint ownership will occur in very specific situations, mainly for results of a technological nature.

It is best practice to regulate in the consortium agreement the rules among the consortium partners concerning possible jointly owned results. However, since this agreement is entered into force before the launch of the project<sup>2</sup> and the creation of the results, participants should establish during the project implementation a **separate joint ownership agreement**, defining in concrete terms the allocation and terms of exercising their ownership.

Unless otherwise agreed in the consortium agreement or the joint ownership agreement, according to the default grant agreement rules each joint owner may grant non-exclusive licences to third parties to exploit the jointly-owned results (without any right to sub-license), if the other joint owners are given:

- i. at least 45 days advance notice and
- ii. fair and reasonable compensation.

Given the natural complexity of managing results jointly owned, participants have the possibility to decide under a written agreement and once the results have been generated, to implement a different ownership system. In fact, they may decide for instance to transfer ownership to one of the joint owners, in accordance with the rules established in the grant agreement concerning the transfer of results.

Further details on joint ownership are available in our fact sheet "IP Joint Ownership", available in our library

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<sup>2</sup> See the fact sheet "IP management in Horizon 2020: at the grant preparation stage" available in the European IPR Helpdesk [library](#).

### 1.2.2 Transfer of results

Transferring the ownership of their results to other parties is indeed a possibility for those participating in Horizon 2020. However, it is fundamental that, whenever transferring the ownership of their results, participants follow the requirements established in their grant agreement:

- the transfer should be done through an **agreement** (preferably **in written form**), since beneficiaries must ensure that the obligations of the participant(s) under the grant agreement<sup>3</sup> are passed on to the new owner and that this owner has the obligation to pass them on in any subsequent transfer;
- **prior notice** is given, at least 45 days before the intended transfer, to the other consortium partners that still have (or still may request) access rights to the results, with sufficient information about the new owner. The right to prior notice can be waived in the case of transfers to a specifically identified third party, which is usually done through the consortium agreement;
- if established in the grant agreement, participants are bound to **formally request authorisation from the European Commission** in advance, in cases of foreseen transfers to third parties established in a non-EU country not associated with Horizon 2020, including information on:
  - (i) the identification of the results at stake;
  - (ii) the new owner and the planned or potential exploitation of the results, and
  - (iii) the likely impact of the transfer or licence on EU competitiveness and its consistency with ethical principles and security considerations.

This notification must be done up to four years after the project.

Further details on transfer of ownership are available in our fact sheet "Commercialising Intellectual Property: Assignment Agreements", available in our library

### 1.3 Protecting results

Protection of results is indeed **essential** in Horizon 2020, since an effective exploitation depends on it. Thus, participants must assess the possibility of protecting their results once these are generated.

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<sup>3</sup> The obligations that must be passed on refer to joint ownership (article 26.2), ownership by the Commission (article 26.4), protection of results (article 27), exploitation (article 28), dissemination (article 29) transfer and licensing (article 30) and access rights (article 31).

Should the results be reasonably expected to be commercially or industrially exploited and their protection possible, reasonable and justified, then participants must provide for adequate protection of the results during an appropriate period and in a suitable territory. Thus, although IP **protection** is vital for a prospective commercial or industrial exploitation, on the other hand it **is not always mandatory**.

The choice of the most **suitable form of IP protection**, as well as the duration and geographical coverage depends on the results at stake (is it an invention, software or a database?), but also the business plans for their exploitation and legitimate interests of consortium partners.

Subject Matter	Patent	Utility Model	Industrial Design	Copyright	Trade Mark	Confidential Information
<b>Invention</b>	X	X				X
<b>Software</b>	X <sup>4</sup>	X		X		X
<b>Scientific article</b>				X		
<b>Design of a product</b>			X	X	X	
<b>Name of a technology/project</b>					X	
<b>Know How</b>	X	X				X
<b>Website</b>			X	X	X	X

Although it is not mandatory to inform other partners about your personal protection activities, it is considered **good practice to consult with them** before deciding whether to protect your own results or not – particularly if you are dealing with potentially joint IP.

### 1.3.1 What to consider when deciding not to protect results?

Where a participant does not intend to protect a result, it is also best practice to **consider offering to transfer it** to other consortium partners or third parties established in a Member State or associated country, better positioned for the exploitation of the results and willing to seek their protection.

If such transfer is not done, participants that have received European Union funding but do not intend to protect their results which are capable of industrial or commercial application for reasons other than legal impossibility, must be careful **not to perform any dissemination activities without first informing**

<sup>4</sup> Software patentability is still a debated issue given its exclusion as subject matter as by Article 52(2)(c) and (3) EPC. However, the Enlarged Board of Appeal of the European Patent Office is inclined to its patentability as long as the claim related to a computer program defines or uses technical means (a hardware element).

**the Commission.** This notification is mandatory up to four years after the end of the project.

The European Commission may decide, with the consent of the participant to whom the result belongs to, to assume ownership and take the necessary measures to protect it. In this case, the Commission must formally notify the concerned participant within 45 days of receiving the notification.

### **1.3.2 What to consider when deciding to stop protection or not to seek the extension of protection?**

Participants may decide to stop protection, for instance by deciding not to keep paying the necessary fees to maintain for instance a patent. It may also be the case that participants may decide for different reasons not to extend protection of the right to further territories.

When confronted with these decisions participants that have received European Union funding **must notify the European Commission** at least 60 days before the protection lapses or its extension is no longer possible up to four years after the project, except if:

- (a) the protection is stopped because of a lack of potential for commercial or industrial exploitation or
- (b) the extension to further territories would not be justified.

The Commission must inform the participant on its decision also within 45 days of receiving the notification.

## **1.4 Exploitation of results**

Participants receiving European Union funding **must** use their best efforts to **take measures aiming at ensuring the exploitation of their results** up to four years after the project. This means that participants must take steps to make sure the results they owned are used:

- (a) in further research activities other than those covered by the project concerned, or
- (b) in developing, creating and marketing a product or process, or
- (c) in creating and providing a service, or
- (d) in standardisation activities<sup>5</sup>.

The exploitation does not need necessarily to be done by participants, who may prefer to ensure its use by another entity. Such indirect exploitation can be performed by licensing the results or assigning them to third parties, in

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<sup>5</sup> For information on standards in Horizon 2020, we suggest that you consult the website of CEN-CENELEC at [www.cencenelec.eu](http://www.cencenelec.eu), where you can find practical information and the contacts of a dedicated Helpdesk. We also suggest that you consult our fact sheet "Standardisation in R&D projects", available in our [library](#).

accordance with the requirements established in the grant agreement<sup>6</sup>. Further detailed obligations concerning the exploitation of results can be included in your concrete grant agreement, following the indication in the work programme.<sup>7</sup>

For detailed information on exploitation, consult our fact sheet "Exploitation channels for public research results", available in our library

## 1.5 Disseminating results

Dissemination takes an important role in Horizon 2020. In this context dissemination refers to the public disclosure of results by any appropriate means, except those resulting from protecting or exploiting the results. Scientific publications, general information on web sites, participation in conferences or trade fairs are some examples of dissemination activities.

According to the grant agreement, participants have the **obligation to disseminate** their results as soon as possible, unless it goes against their legitimate interests and subject to any necessary restriction due to their commitments concerning particularly the protection of results and confidentiality. **Protecting results before any public disclosure is indeed crucial**, since such disclosure can destroy the participants' chances of being granted intellectual property rights, in particular patents and utility models that require novelty. During the project you should therefore put in place the procedures established in the description of the action and the consortium agreement for the protection of results and their dissemination.

Prior to any dissemination activity **other partners should be consulted** in order for them to exercise their **right to object** in the case where such dissemination could cause significant harm to their background or results. The grant agreement sets out some terms both for the notification of the planned activity to other partners and for them to object to such dissemination. Beneficiaries may nevertheless agree on different time limits within their consortium agreement and therefore it is advisable to verify once again the terms of your consortium agreement when planning a dissemination activity.

### 1.5.1 Maintaining confidentiality

It is worth noting that **written or oral information** given to a person who is not bound by the secrecy or confidentiality obligations **constitutes a disclosure**. In such cases, disclosures could be detrimental to future filings for protection of project results. Thereafter, it is vital to keep information confidential, mainly with

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<sup>6</sup> See paragraph 1.2.2.

<sup>7</sup> Exploitation is crucial in Horizon 2020 and should be considered since the beginning of the project, as explained in our fact sheet "IP management in Horizon 2020: at the proposal stage", available in our [library](#).

regard to those project results for which registration has not been done or decided yet.

Besides, you should be very cautious and also **deal with confidentiality internally** in your own organisation. That is, having a proper management system in place within your organisational structure is vital in order to make sure that you comply with the confidentiality obligations set by the consortium. In fact, you might have a disclosure of confidential information made from other beneficiaries to your organisation and the other way round. Therefore, someone in your organisation should be in charge for deciding which information has to be classified and marked as confidential (confidentiality labelling), otherwise valuable information may be lost during the implementation of the project.

*How do I manage confidential information internally?*

**a) concluding confidentiality agreements with employees**

- ✓ having confidentiality agreements in place with employees in order to make sure that they are under the same obligations as your organisation;
- ✓ raise awareness on the importance of confidentiality among employees and remind them of their obligations during and after the project;

**b) storing confidentiality information safely**

- ✓ mark documents as "CONFIDENTIAL";
- ✓ store these documents separately and safely, making sure that you can limit and monitor access to them;
- ✓ review the documents periodically to assess whether confidentiality obligations are still in force and whether you must return or destroy them;

**c) disclosing information to the other beneficiaries**

- ✓ review communications before any disclosure to assess the confidential character of them;

### **1.5.2 Reporting**

For more effective governance of the dissemination activities, participants may use the reporting to the European Commission for self-monitoring their own dissemination (and exploitation) strategies and to continuously refine them. In fact, according to the grant agreement, periodic technical reports must contain details on the exploitation and dissemination of the results and — if required in Annex 1 — an updated plan for the exploitation and dissemination of the results. The final technical report on the other hand should include a publishable overview of the activities.

Indeed, more than an obligation established in the grant agreement, dissemination activities have a positive effect particularly on market-oriented

exploitation of results.<sup>8</sup> One of the main reasons for this is because dissemination activities such as participation in workshops or publication of information in websites enable participants “to get feedback on the economic potential and recommended market-oriented exploitation pathways”.<sup>9</sup>

### 1.5.3 Open access of publications

Each participant must ensure open access, that is online access which is free of charge for any user, to all peer-reviewed scientific publications relating to its Horizon 2020 project’s results. This does not mean that participants have the obligation to publish their results, nor does this affect their plans for exploitation. In fact, firstly participants must decide on the protection of their results and, once the decision is taken, consider if and when dissemination should be done through scientific publication.<sup>10</sup>

## 2. Project conclusion

### 2.1 Post-project obligations

**After the conclusion** of the project, the **IPR provisions will remain in force**, such as the obligations regarding confidentiality, exploitation and dissemination. Consequently, participants are required to properly manage the post-contract phase too:

- During implementation of the action and for four years after the project, in accordance with the grant agreement participants must keep confidential any data, documents or other material (in any form) that is identified as confidential. Such a confidentiality time limit may be extended for the information shared among the consortium partners in their consortium agreement, which should be checked so that you know for how long participants are bound by confidentiality commitments in your project.
- Measures to ensure the exploitation of results must be performed up to four years after the project, requiring participants to be truly engaged in the use of their results.
- When disseminating the results without protecting them first, deciding to stop protection or not to seek extension, participants that have received EU funding must up to four years after the project formally notify the Commission in advance according to the requirements established in the grant agreement.

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<sup>8</sup> *How to convert Research into Commercial Success Story?: Part 1*, European Union, 2013, available at [http://ec.europa.eu/research/industrial\\_technologies/pdf/how-to-convert-research-into-commercial-story-part1\\_en.pdf](http://ec.europa.eu/research/industrial_technologies/pdf/how-to-convert-research-into-commercial-story-part1_en.pdf).

<sup>9</sup> *Idem*.

<sup>10</sup> Detailed information on open access is available in the “*Guidelines on Open Access to Scientific Publications and Research Data in Horizon 2020*”, available at: [http://ec.europa.eu/research/participants/data/ref/h2020/grants\\_manual/hi/oa\\_pilot/h2020-hi-oa-pilot-guide\\_en.pdf](http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/hi/oa_pilot/h2020-hi-oa-pilot-guide_en.pdf). Moreover, valuable assistance may be provided by the OpenAIRE initiative.

- The obligation to protect results remains, including the need to include the statement of financial support in any application for protection of results, whenever possible.
- Dissemination obligations also stay in force, including the need to mention the EU funding and to include a disclaimer.
- Participants are entitled to request access rights up to one year (or any other time limit agreed) after the conclusion of the project and therefore exclusive licences require during this period a prior written waiver of rights from the other consortium partners concerned.
- Obligations regarding the transfer of results also remain in force.

Are you unsure to whom certain result(s) belong in your project? Would you like some help when drafting a joint ownership agreement, an assignment for the transfer of results or a licence agreement for the exploitation? Do you have questions on the interpretation of your obligations in the grant agreement or consortium agreement? Need help in your exploitation strategy?

**Contact our Helpline! We provide free-of-charge assistance to these and other concerns!**

## Useful Resources

For further information please see:

- "IP management in Horizon 2020: at the proposal stage"  
[http://www.iprhelpdesk.eu/IP\\_Management\\_in\\_Horizon\\_2020\\_at\\_the\\_proposal\\_stage](http://www.iprhelpdesk.eu/IP_Management_in_Horizon_2020_at_the_proposal_stage)
- "IP management in Horizon 2020: at the grant preparation stage"  
[http://www.iprhelpdesk.eu/How\\_to\\_manage\\_IP\\_in\\_H2020\\_at\\_the\\_grant\\_preparation\\_stage](http://www.iprhelpdesk.eu/How_to_manage_IP_in_H2020_at_the_grant_preparation_stage)
- "Commercialising Intellectual Property: knowledge transfer tools"  
<http://www.iprhelpdesk.eu/node/2108>
- "Commercialising Intellectual Property: Assignment Agreements"  
<http://www.iprhelpdesk.eu/node/2034>
- "IP joint ownership"  
[http://www.iprhelpdesk.eu/IP\\_joint\\_ownership](http://www.iprhelpdesk.eu/IP_joint_ownership)
- "Commercialising Intellectual Property: Licence Agreements"  
<http://www.iprhelpdesk.eu/node/1664>
- "Exploitation channels for public research results"  
<http://www.iprhelpdesk.eu/node/1664>

## GET IN TOUCH

**For comments, suggestions or further information, please contact**

European IPR Helpdesk  
c/o infeuope S.A.  
62, rue Charles Martel  
L-2134, Luxembourg

Email: [service@iprhelphelpdesk.eu](mailto:service@iprhelphelpdesk.eu)

Phone: +352 25 22 33 - 333

Fax: +352 25 22 33 - 334



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## ABOUT THE EUROPEAN IPR HELPDESK

The European IPR Helpdesk aims at raising awareness of Intellectual Property (IP) and Intellectual Property Rights (IPR) by providing information, direct advice and training on IP and IPR matters to current and potential participants of EU funded projects focusing on RTD and CIP. In addition, the European IPR Helpdesk provides IP support to EU SMEs negotiating or concluding transnational partnership agreements, especially through the Enterprise Europe Network. All services provided are free of charge.

**Helpline:** The Helpline service answers your IP queries within three working days. Please contact us via registration on our website – [www.iprhelphelpdesk.eu](http://www.iprhelphelpdesk.eu) – phone or fax.

**Website:** On our website you can find extensive information and helpful documents on different aspects of IPR and IP management, especially with regard to specific IP questions in the context of EU funded programmes.

**Newsletter and Bulletin:** Keep track of the latest news on IP and read expert articles and case studies by subscribing to our email newsletter and Bulletin.

**Training:** We have designed a training catalogue consisting of nine different modules. If you are interested in planning a session with us, simply send us an email at [training@iprhelphelpdesk.eu](mailto:training@iprhelphelpdesk.eu)

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