



European IPR Helpdesk

Intellectual Property in Horizon 2020 – overview with a focus on comparison with FP7

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Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020) is the European Union (EU)'s new programme for research and innovation for the period 2014-2020. As the successor to the Seventh Framework Programme (FP7) Horizon 2020 implements the Innovation Union¹ and is therefore one of the driving forces to create growth and jobs in the EU.

With the clear goal of simplifying access to EU funding, Horizon 2020 merges all research and innovation funding into one comprehensive scheme. Hence, in Horizon 2020 participants work with a single set of rules, including those related to intellectual property (IP).

According to the European Commission, the rules concerning intellectual property, exploitation and dissemination "have been modelled on the widely acknowledged Seventh Framework Programme provisions with further improvements and clarifications." The FP7 provisions had in fact been considered as adequate by the respondents in a public consultation launched by the European Commission at the preparation of Horizon 2020, and therefore in general the main changes are rather small improvements or clarifications.²

However, many stakeholders in the consultation expressed support for open access and stressed the importance of proper dissemination and exploitation of the project's results. In fact, in the proposed new intellectual property framework, it is evident that open access to research publications has gained a strengthened role in EU funding and the door has been opened to test the use of open access with other kinds of results, such as research data. Another important change in the rules concerns the extension of access rights to the European Union, and in some fields, also to Member States.

¹ The Innovation Union initiative is an integral part of the Europe 2020 strategy, aiming at creating smart, sustainable and inclusive growth in the European Union. The Innovation Union, in particular by strengthening the access to finance for research and innovation, will guarantee that innovative ideas will become products and services that create growth and jobs.

² See the Green Paper on Common Strategic Framework for EU Research and Innovation Funding: analysis of public consultation, European Union, 2011.

Let us have a closer look at the proposed intellectual property rules in Horizon 2020 and examine the main differences from FP7:

1. Changes in terminology

BACKGROUND	
FP7	Horizon 2020
<p>“Background means information which is held by participants prior to their accession to the grant agreement, (...) copyrights or other intellectual property rights pertaining to such information, the application of which has been filed before their accession to the grant agreement, and which is needed for carrying out the indirect action or for using the results of the indirect action”</p>	<p>“Background means <i>any data, know-how and/or information</i> whatever their form or nature as well as any rights such as intellectual property rights which are</p> <ul style="list-style-type: none"> (i) held by participants prior to their accession to the action and (ii) <i>identified by the participants in accordance with Article 42</i>”
<p>Main difference:</p> <p>Existing information and/or intellectual property rights are necessary for carrying out the project or for using the project’s results. Participants in FP7 therefore have the possibility to concretely define in a written agreement what is needed for their project, i.e. their background. This is done in the consortium agreement under “positive and/or negative lists of background”.</p> <p>In Horizon 2020, the Rules for Participation are more demanding and stipulate that participants have the obligation to identify the background, which they will bring into the project, in a written agreement.</p>	

FOREGROUND	
FP7	Horizon 2020
<p>“foreground means the results, including information, whether or not they can be protected, which are generated by actions. Such results include rights related to copyright; design rights; patent rights; plant variety rights; or similar forms of</p>	<p>“<i>results</i> mean any data, knowledge and information, whatever their form or nature, whether or not they can be protected, which are generated in the action as well as any attached rights, including intellectual property rights”.</p>

protection”.

Main difference:

In FP7 the term used is “foreground”, whereas in Horizon 2020 it is referred to as “results”.

AFFILIATED ENTITY

FP7

Horizon 2020

“affiliated entity means any legal entity that is under the direct or indirect control of a participant, or under the same direct or indirect control as the participant (...)”.

“affiliated entity means any legal entity that is under the direct or indirect control of a participant, or under the same direct or indirect control as the participant, or is directly or indirectly controlling a participant”.

Main difference:

The definition of affiliated entity has been extended. Under Horizon 2020 the definition additionally comprises legal entities that have direct or indirect control over participants (parent companies), potentially enlarging access rights.

2. Ownership, protection and licensing of results

Regarding ownership of results, the differences in comparison to FP7 are minimal. The principle that participants own the results they generate is maintained, as well as the default joint ownership regime. Identical to the FP7 framework, transfers of results are allowed in Horizon 2020, as well as exclusive licensing of results.

Concerning the protection of results, Horizon 2020 is built on the rules of FP7. However, in the proposed rules of Horizon 2020, it is expressly stated that participants are obliged to inform the European Commission or other funding bodies of their intention in case of:

- abandonment of the protection of results (for instance, by deciding not to pay the patent renewal fees), or
- not seeking an extension of the protection (for example when deciding not to extend patent protection to countries other than the priority application) for reasons other than the lack of potential for commercial exploitation.

3. Use (exploitation) and dissemination of results

As in FP7, under Horizon 2020, participants are obliged to exploit their own results, either commercially and in further research, or by establishing licensing deals, assignments or other partnerships to allow exploitation by other entities. However, a reservation is foreseen so that additional exploitation obligations may be laid down as part of the grant agreement. Moreover, it is clearly established that participants must use their best efforts in the exploitation of their own results.

The general rule in terms of dissemination does not change as well: each participant needs to ensure that the results which it owns are disseminated as soon as possible and through appropriate means. However, dissemination is subject to the restrictions resulting from intellectual property protection, security rules or legitimate commercial interests.

Nevertheless, significant improvements have been made in terms of dissemination in Horizon 2020. In fact, open access is meant to be a general principle in the case of dissemination through research publication. However, in the case of other results (including research data), the open access platform will be mandatory only if specific clauses of the grant agreement specifically state this, thereby opening the door to the use of open access for results in certain projects other than publications. What open access actually is, and what participants will be required to do, is dependent on the model grant agreements.

4. Access rights

Regarding access rights to background and results for other participants, again there is not much difference to FP7.

An improvement can be found in terms of access rights for the affiliated entities established in a Member State or associated country. Due to extension of the definition of affiliated entity in Horizon 2020, "parent" companies also have minimum access rights to results or background under the same conditions as other affiliates, if such access is needed to exploit the results generated by the participant to which it is affiliated, and unless the participants have agreed otherwise in the consortium agreement.

One new feature of Horizon 2020 concerns the granting of access rights of a project's results, not only to the European Union, but also in specific cases to Member States.

Access rights to European Union institutions and bodies will be granted on a royalty-free basis, limited however to non-commercial and non-competitive use since their purpose relates merely to the development, implementation and monitoring of EU policies and programmes. In the case of projects in the

framework of “Secure societies” (specific objective “inclusive, innovative and secure societies”), not only the European Union institutions and bodies, but also Member States authorities, enjoy access rights to the results.

Summing up, the new rules of Horizon 2020 are built on the proven regulations of FP7, which will certainly ease the participation of small and medium-sized enterprises, universities and any person involved in this new framework. There are however important changes with impact on the implementation and management of projects in Horizon 2020. The application of the open access principle to research publications is certainly one of them, promoting further dissemination of knowledge developed with public funding. It also seems that the exploitation of results gains a stronger role in projects since participants in Horizon 2020 are expected to use their best efforts to exploit their own results, in this way, also ensuring that the funds of Horizon 2020 directly create industrial leadership, growth and employment in the EU.

ABOUT THE EUROPEAN IPR HELPDESK

The European IPR Helpdesk is the official IP service initiative of the European Commission providing free-of-charge, professional first-line advice and information on Intellectual Property (IP) and Intellectual Property Rights (IPR). The service targets researchers and European Small and Medium-sized Enterprises (SMEs) participating in EU-funded collaborative research projects, but also addresses SMEs involved in international technology transfer processes.

Whether you need personal assistance on a specific IPR issue, would like to be informed about latest developments in the world of IP and R&D in Europe, or are interested in training sessions on IPR – the European IPR Helpdesk is the right partner to turn to.

Helpline

The Helpline service is operated by a team of experienced IP experts. It offers tailored advice on individual IP & IPR questions, and provides written answers within three working days. The service also includes the revision of working papers, agreements or other documents regarding IPR matters (e.g. licensing or manufacturing agreements, joint ventures, consortia agreements etc.).

Awareness Raising & Training

The European IPR Helpdesk team participates in brokerage events or conferences to inform about its services, and organises individual IPR training sessions throughout Europe: either as in-house training or as web-based seminars, which participants can join conveniently from their own computers.

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Various publications such as guides, fact sheets or case studies provide useful information and practical guidance on how to tackle IP issues in business or during an EU-funded collaborative research project. All documents can be found at the online library on the European IPR Helpdesk website. In addition, a bi-weekly e-mail Newsletter, and a quarterly Bulletin make sure that you are kept up to date on the latest IP and IPR news. The team also provides informative material upon request, which can be distributed at events or during daily business interactions.

Want to know more about the EU IPR Helpdesk? Please visit the European IPR Helpdesk website or get in touch directly with the Helpdesk team:

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