

During the preparation of the Seminar on Research Data Management several questions came in, indicating a need for 'issues to check and discuss' when starting a cooperation with third parties.

We decided that a set of clauses indicating which issues to discuss between cooperating parties, and offering food for thought on wordings to start with, would be helpful to discuss during the workshops. The texts hereunder have been recompiled from the presentation of workshop 3, and are mainly based on the arrangements of Horizon 2020 as these have condensed wisdom and compromises reached during the past decades...

Rob Posthumus, LLM  
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**Please be aware that this is food for thought, and suggestions only, to help you consider offers brought to you and items to discuss before starting cooperating in a research project. Using texts will be done at your own risk, and should be checked within your institute first!**

Interesting items in H2020:

- A broad definition of results
- A best effort obligation to exploit results
- Provisions for joint ownership
- Provisions for rights of third parties (including personnel)

How to get there:

- Obligatory Consortium Agreement
- 'Plan for the exploitation and dissemination of the results'

Opt out options to protect results, confidentiality and security obligations

H2020 Grant Agreement:

SUBSECTION 3 RIGHTS AND OBLIGATIONS RELATED TO RESULTS

ARTICLE 26 OWNERSHIP OF RESULTS

26.1 *Ownership by the beneficiary that generates the results*

Results are owned by the beneficiary that generates them.

'Results' means any (tangible or intangible) output of the action such as data, knowledge or information — whatever its form or nature, whether it can be protected or not — that is generated in the action, as well as any rights attached to it, including intellectual property rights.

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26.3 *Rights of third parties (including personnel)*

If third parties (including personnel) may claim rights to the results, the beneficiary concerned must ensure that it complies with its obligations under the Agreement.

*As stated during workshop 3 in the Netherlands copyrights of scientific staff may vest in/with the researcher, and not the Institute. Whereas in general the Institute will be the contracting party this requires a transfer of rights to the Institute.*

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ARTICLE 29 —DISSEMINATION OF RESULTS—OPEN ACCESS—VISIBILITY OF EU FUNDING

29.1 *General obligation to disseminate results*

Unless it goes against their legitimate interests, each beneficiary must — as soon as possible—‘disseminate’ its results by disclosing them to the public by appropriate means (other than those resulting from protecting or exploiting the results), including in scientific publications (in any medium).

This does not change the obligation to protect results in Article 27, the confidentiality obligations in Article 36, the security obligations in Article 37 or the obligations to protect personal data in Article 39, all of which still apply.

A beneficiary that intends to disseminate its results must give advance notice to the other beneficiaries of —unless agreed otherwise—at least 45 days, together with sufficient information on the results it will disseminate. Any other beneficiary may object within — unless agreed otherwise—30 days of receiving notification, if it can show that its legitimate interests in relation to the results or background would be significantly harmed. In such cases, the dissemination may not take place unless appropriate steps are taken to safeguard these legitimate interests. If a beneficiary intends not to protect its results, it may— under certain conditions (see Article 26.4.1)— need to formally notify the [Commission][Agency]before dissemination takes place.

#### *29.2 Open access to scientific publications*

Each beneficiary must ensure open access (free of charge, online access for any user) to all peer-reviewed scientific publications relating to its results.

In particular, it must:

(a)

as soon as possible and at the latest on publication, deposit a machine-readable electronic copy of the published version or final peer -reviewed manuscript accepted for publication in a repository for scientific publications;

Moreover, the beneficiary must aim to deposit at the same time the research data needed to validate the results presented in the deposited scientific publications.

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#### *29.3 Open access to research data [OPTION for actions participating in the open Research Data Pilot:*

Regarding the digital research data generated in the action (‘data’), the beneficiaries must:

(a) deposit in a research data repository and take measures to make it possible for third parties to access, mine, exploit, reproduce and disseminate—free of charge for any user—the following:

(i) the data, including associated metadata, needed to validate the results presented in scientific publications as soon as possible;

(ii) other data, including associated metadata, as specified and within the deadlines laid down in the ‘data management plan’ (see Annex 1);

(b) provide information—via the repository—about tools and instruments at the disposal of the beneficiaries and necessary for validating the results (and—where possible—provide the tools and instruments themselves).

This does not change the obligation to protect results in Article 27, the confidentiality obligations in Article 36, the security obligations in Article 37 or the obligations to protect personal data in Article 39, all of which still apply.

As an exception, the beneficiaries do not have to ensure open access to specific parts of their research data if the achievement of the action’s main objective, as described in Annex 1, would be jeopardised by making those specific parts of the research data openly accessible. In this case, the data management plan must contain the reasons for not giving access.]

#### *24.1 Agreement on background*

- The beneficiaries must identify and agree (in writing) on the background for the action (‘agreement on background’).

- 'Background' means any data, know-how or information — whatever its form or nature (tangible or intangible), including any rights such as intellectual property rights — that:
- (a) is held by the beneficiaries before they acceded to the Agreement, and
- (b) is needed to implement the action or exploit the results.

#### 25.1 *Exercise of access rights — Waiving of access rights — No sub-licensing*

To exercise access rights, this must first be requested in writing ('request for access').

'Access rights' means rights to use results or background under the terms and conditions laid down in this Agreement.

Waivers of access rights are not valid unless in writing.

Unless agreed otherwise, access rights do not include the right to sub-license.

#### 25.2 *Access rights for other beneficiaries, for implementing their own tasks under the action*

The beneficiaries must give each other access — on a royalty-free basis — to background needed to implement their own tasks under the action, unless the beneficiary that holds the background has — before acceding to the Agreement —:

- (a) informed the other beneficiaries that access to its background is subject to legal restrictions or limits, including those imposed by the rights of third parties (including personnel), or
- (b) agreed with the other beneficiaries that access would not be on a royalty-free basis.

#### 26.1 *Ownership by the beneficiary that generates the results*

Results are owned by the beneficiary that generates them.

'Results' means any (tangible or intangible) output of the action such as data, knowledge or information — whatever its form or nature, whether it can be protected or not — that is generated in the action, as well as any rights attached to it, including intellectual property rights.

#### 26.2 *Joint ownership by several beneficiaries*

Two or more beneficiaries own results jointly if: (a) they have jointly generated them and

(b) it is not possible to:

- (i) establish the respective contribution of each beneficiary, or
- (ii) separate them for the purpose of applying for, obtaining or maintaining their protection (see Article 27).

The joint owners must agree (in writing) on the allocation and terms of exercise of their joint ownership ('joint ownership agreement'), to ensure compliance with their obligations under this Agreement.

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

- (a) at least 45 days advance notice and
- (b) fair and reasonable compensation.

Once the results have been generated, joint owners may agree (in writing) to apply another regime than joint ownership (such as, for instance, transfer to a single owner (see Article 30) with access rights for the others).

#### 27.1 *Obligation to protect the results*

Each beneficiary must examine the possibility of protecting its results and must adequately protect them — for an appropriate period and with appropriate territorial coverage — if:

- (a) the results can reasonably be expected to be commercially or industrially exploited and
- (b) protecting them is possible, reasonable and justified (given the circumstances).

When deciding on protection, the beneficiary must consider its own legitimate interests and the legitimate interests (especially commercial) of the other beneficiaries.

#### 28.1 *Obligation to exploit the results*

Each beneficiary must — up to four years after the period set out in Article 3 — take measures aiming to ensure ‘exploitation’ of its results (either directly or indirectly, in particular through transfer or licensing; see Article 30) by:

- (a) using them in further research activities (outside the action);
- (b) developing, creating or marketing a product or process;
- (c) creating and providing a service, or
- (d) using them in standardisation activities.

#### 29.1 *Obligation to disseminate results*

Unless it goes against their legitimate interests, each beneficiary must — as soon as possible — ‘disseminate’ its results by disclosing them to the public by appropriate means (other than those resulting from protecting or exploiting the results), including in scientific publications (in any medium).

A beneficiary that intends to disseminate its results must give advance notice to the other beneficiaries of — unless agreed otherwise — at least 45 days, together with sufficient information on the results it will disseminate.

Any other beneficiary may object within — unless agreed otherwise — 30 days of receiving notification, if it can show that its legitimate interests in relation to the results or background would be significantly harmed. In such cases, the dissemination may not take place unless appropriate steps are taken to safeguard these legitimate interests.

#### 29.2 *Open access to scientific publications*

Each beneficiary must ensure open access (free of charge, online access for any user) to all peer-reviewed scientific publications relating to its results.

In particular, it must:

- (c) ensure open access — via the repository — to the bibliographic metadata that identify the deposited publication.

The bibliographic metadata must be in a standard format and must include all of the following: *identification EU-funding*.

#### **Publication clause:**

- #.1 Company recognizes the desire of Academic Institute to publish details of academic results in scientific journals. Academic Institute undertakes and agrees not to engage in any dissemination of data from and Results of the Project, without first obtaining the written consent of Company, which consent shall not be delayed and shall be given within a period of 30 (thirty) days from the receipt of Academic Institute’s written request for consent. In case Company has not responded in writing to such request within the above mentioned term, Academic Institute will be free to proceed with the publication without further delay.
- #.2 Without prejudice to article #.1 here above, Company shall have the right to withhold such consent only in case the publication:
  - a. Contains information that may be subject of a patent application, in respect of which no patent application has yet been filed;
  - b. Contains confidential proprietary information of Company.

In case of (a.) such withholding of consent will not lead to a delay of publication for more than three months.

In case of (b.) Company will inform Academic Institute within the thirty (30) day period stating that the proposed publication contains confidential proprietary information of Company. In such a situation Company will indicate the proprietary information and Academic Institute will then adapt the proposed publication in such a way that it will not publish such proprietary information of Company.

#.3 In oral presentations or written publications concerning the Research, Academic Institute will acknowledge Company's contribution to the Project, unless otherwise requested.

#.4 It is expressly understood between the Parties, that Company shall not publish any information regarding the Project or disseminate any results of the Project without Institution's prior written consent before Academic Institute has been able to publish such information as a Science Citation Index (SCI) Publication:

(a) SCI Publication shall mean that the publication has been fully referenced in the CSI with volume and page numbers;

(b) The publication of a mere abstract shall not be considered a SCI Publication.