



European
IP Helpdesk

Your Guide to IP in Horizon 2020



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STAY AHEAD OF THE INNOVATION GAME

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The purpose of this guide is to provide you with basic facts on central Intellectual Property (IP) aspects in Horizon 2020 projects.

This guide is making no claim to be exhaustive and is not an official document of the European Commission. It is provided as a service of the European IP Helpdesk.

Introducing Horizon 2020

Horizon 2020 is the new and, to date, the largest EU Framework Programme for Research and Innovation with nearly €80 billion of funding available over the next 7 years (2014-2020). Being the financial instrument to implement the Innovation Union, a Europe 2020 flagship initiative, Horizon 2020 aims to ensure Europe's global competitiveness and to create smart and sustainable growth in the European Union.

Based on a simplified structure that reduces the complexity of rules, bureaucracy and the time-to-grant, the programme offers a much stronger focus on innovation and close-to-market activities than the previous Seventh Framework Programme (FP7). Seen as the driving force behind economic development and job creation, Horizon 2020 couples research and innovation by merging all research and innovation funding previously provided by three separate programmes. Hence, in Horizon 2020 participants work with a single programme with a single set of rules aiming to ensure a seamless innovation chain, ranging from frontier research over technological development to "close to market" applications.

Recognized as a backbone for innovation and job creation in Europe, Horizon 2020 places particular emphasis on the participation of Small- and Medium-sized Enterprises (SMEs) across the whole programme structure. They are encouraged to engage in collaborative projects as part of a consortium and they are supported through a new dedicated SME instrument designed specifically for highly innovative smaller companies.

Horizon 2020 Programme Sections

Thematically, the programme is founded on three central pillars:

- *Scientific Excellence* – funding the best science through competition
- *Industrial Leadership* – support for innovative SMEs, and the development of enabling and industrial technologies;
- *Societal Challenges* – support for research in health, climate, food, security, transport and energy

Additional sections:

- Spreading Excellence and Widening Participation
- Science with and for Society
- European Institute of Innovation and Technology (EIT)
- Euratom

Horizon 2020 at a Glance

- €80 billion of funding over seven years (2014-2020)
- Strong market orientation
- Coupling research with innovation
- One single programme
- One single set of participation rules
- Easier access for all EU and international participants
- Core Sections: Scientific Excellence, Industrial Leadership and Societal Challenges
- Specific focus on supporting innovative SMEs

What's new in Horizon 2020 with regard to IP?

With the aim to better protect and reap commercial and economic benefits from EU-funded research and innovation initiatives, Horizon 2020 has established a set of rules concerning the exploitation and dissemination of project results, including their protection through intellectual property (IP).

Based on the overall aim to simplify the overall structure of the programme, these IP rules are part of a single set of rules detailed in the official "Rules of Participation". Furthermore, additional specifications concerning the handling and management of IP can be found in the provisions of the Grant Agreement or may be outlined in supporting documents as part of specific calls for proposal.

The IP rules of Horizon 2020 are built on the proven regulations of FP7. There are however some changes with an impact on the implementation and IP management of projects in Horizon 2020. The main differences concern **changes** and specifications with regard to terminology. For instance whereas results generated within the project were formally called "foreground", in Horizon 2020 the term "results" is now used. Additional **modifications** are related to matters concerning exploitation, dissemination (open access), ownership and access rights as well as protection and licensing of IP.

For the exact definition of these terms and further information, please have a look at the glossary and the FAQ section on Horizon 2020 on our website.



Your Project – Your Knowledge – Your IP

It is in the very nature of collaborative research and innovation projects that different partners with varying mindsets and interests come to sit at one table. Against this backdrop, properly managing and protecting your knowledge and know-how should be an integral part of the overall management of your project otherwise you will not be able to:

- disclose your knowledge and ideas safely
- prove the ownership
- profit from commercial exploitation
- prevent or discourage its unauthorised use by others.

Furthermore, with the emphasis of Horizon 2020 on better and more effectively exploiting project results, an efficient and strategic knowledge management including the safeguarding and protection of your intangible assets through Intellectual Property Rights (IPR) and confidentiality becomes more pressing than ever. Relevant IP questions will arise throughout the lifecycle of your project: from the very first idea and conceptualisation of your project, throughout its execution, until the end and the potential exploitation and commercialization of the results.



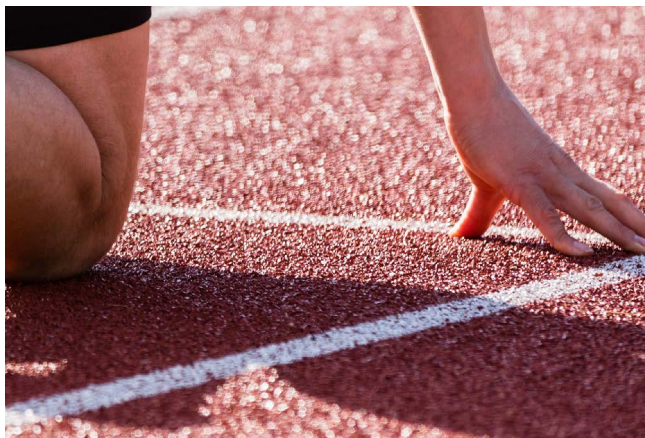


Why should you care?



1. Getting Your Project Started

IP issues to be considered at the project proposal stage



“Excellence” and “Impact” are key criteria under which your project will be evaluated by the European Commission. You should therefore demonstrate the high scientific and technological quality of your project (i.e. show how innovative it is), and outline the anticipated impact particularly in terms of the potential for commercial and industrial exploitation of project results.

With regard to proving “excellence” a good way of showing the innovative character of your project is to specify in the proposal the current state-of-the-art, with the purpose of further explaining how the expected outcomes of the project go beyond it. Performing bibliographic searches, including in scientific literature and in patent databases, are generally the best tools to demonstrate the current state-of-the-art.

In order to convince evaluators of the project’s impact, i.e. through the dissemination and exploitation of its results, it is essential for you to strategically consider and negotiate these central issues with your partners even at this early stage. How shall results be made accessible to a broader (scientific) public? What is the commercialization potential of your project’s results? Which exploitation channels seem the most appropriate, and what are thus the most suitable forms of IP protection? These are only a few of the questions you are required to tackle already in your proposal by providing a “Draft Plan for the Dissemination and Exploitation of Project Results” including your strategy for IP management.



What to bear in mind at this stage?



1. *Become familiar with the relevant IP provisions of your specific call.*

Before you start writing your project proposal you should take the time to carefully go through all the official documents, and become familiar with the specific IP-related rules applicable to your call. In general the set of important documents – also with regard to IP provisions – that you should look at include:

- the applicable work programme,
- the general Rules for Participation in Horizon 2020,
- the Model Grant Agreement applicable for your specific call (available in the participant portal), since this may include additional specifications concerning IP depending on the type of grant and work programme.

2. *Define your own background, i.e. consider existing knowledge, know-how, IP that you will bring to the project, and bear in mind potential rights of third parties that may be needed for the project.*

Participants need to use their background and know whether they are going to use background belonging to the other partners. This means that you should identify the tangible and intangible assets likely to be needed for the implementation of your project and/or for the use of the expected results. You should therefore consider identifying the components you are likely to bring to the project (i.e. scientific studies, methods, materials), and the potential Intellectual Property Rights attached to them (i.e. patent, copyright). You should also verify who owns them, ask for authorisation to

use them in case there are third party rights and, depending on the type of Intellectual Property, consider their registration before the project starts.

3. *Think about confidentiality issues when drafting, discussing and negotiating your ideas and project contribution with others.*

The preparation and submission of proposals usually requires that you meet and exchange information with your other partners, because you have to define the work packages, and describe the research idea, which may result in the disclosure of valuable information. To avoid any misappropriation and use of such information it is best-practice to conclude a Non-Disclosure Agreement (NDA) or include confidentiality obligations in a Memorandum of Understanding where you:

- identify relevant information
- define the use of information as well as restrictions
- include possible sanctions.

4. *Assess the state-of-the-art.*

Assessing the state-of-the-art, and demonstrating how your project goes beyond this in terms of innovative, scientific and/or technical quality, is crucial for a positive evaluation of your project proposal (of course depending on the nature of your project). State-of-the-art analyses should include the following actions:

- Screen the already existing project landscape
- Examine existing scientific literature
- Search in patent databases e.g. by using the openly accessible database Espacenet (www.espacenet.com) provided by the European Patent Office



5. *Have a clear plan concerning the dissemination and exploitation of project results.*

Participants in Horizon 2020 projects commit to disseminate project results as soon as possible by appropriate means and that beneficiaries use their best efforts to exploit the results of the project, either directly or through other organisations. You and your project partners are therefore required to already present a draft strategy concerning dissemination and exploitation of project results in the proposal. This draft plan should cover the following aspects:

- What kind of results are expected?
- How will background and results be organised and managed?
- How will joint ownership be treated?
- How will results be protected?
- How will results be made available and disseminated to the public?
- How will results be exploited?

Once the proposal has been successfully evaluated all these issues will need to be further detailed and agreed on by all partners in the Consortium Agreement. Please keep in mind that the plan has to be revised according to the development of project results.

6. *Think about a project name and acronym.*

Giving a convincing name and acronym to your project is an important task during the conceptualisation and proposal writing process of your project. In this context be careful not to use any acronym which is identical or similar to a trade mark which is registered or applied for identical or similar goods and/or services. This is extremely important if you plan to commercially exploit and market potential results under the acronym of the project, since such use may lead to trade mark infringement actions.

Therefore it is worthwhile that you think about registering your acronym as a trademark in case you want to carry out a commercial activity using this acronym.

7. *Include costs for potential IP protection in your budget planning.*

Costs which occurred during the project implementation, including those related to protecting results (e.g. fees paid to the patent office for patent registration) and royalties on access rights, can be eligible for reimbursement as costs of other goods and services. Hence, you should consider costs related to intellectual property already at this stage and include them in the budget.

Further Information



Fact Sheets and Model Agreements

IP Management in Horizon 2020: at the proposal stage
 Non-Disclosure Agreement: a business tool
 Memorandum of Understanding for Horizon 2020
 Non-Disclosure Agreements
 How to search for Patent Information

Helpline

Get in touch with our Helpline team for advice on the different IP issues to be considered when writing your proposal or to get feedback on your plans regarding IP management and exploitation.



Training

The training team offers specific training sessions and webinars on IP management at the proposal stage. Learn more about upcoming events in our events calendar.

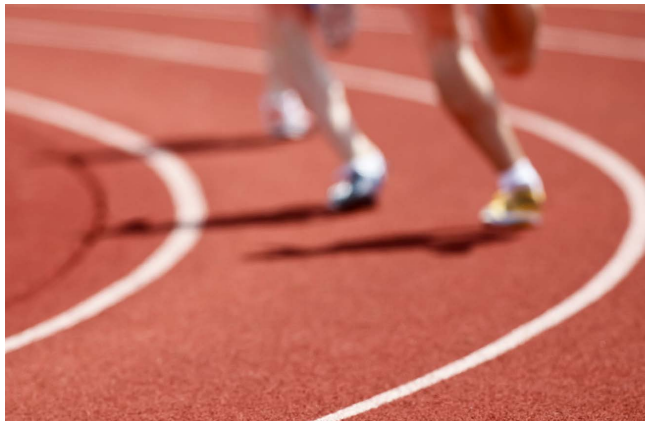


Why should you care?



2. Implementing Your Project

IP issues to be considered during grant preparation and project implementation



Congratulations! Your project has been positively evaluated and you are now ready to start putting your ideas and project work plan into practice.

However, before actually kicking off your project you will now enter the important grant preparation phase, which includes the signing of the two main agreements underpinning the contractual framework of EU-funded projects: the Grant Agreement (GA) and the Consortium Agreement (CA).

While the GA establishes the rights and obligations of beneficiaries towards the European Commission and is signed at the end of the grant preparation phase, the CA sets out the legal basis for the share of rights, obligations and responsibilities related to the implementation of the project among the beneficiaries themselves and needs to be signed before the signature of the GA. Defining central management principles and guidelines for all partners, the CA is a powerful management tool and an essential cornerstone for the successful execution and exploitation of your project. It is now of utmost importance to further define, specify and agree on relevant IP arrangements which have already been taken into consideration at the proposal stage. Purely an internal agreement between project partners, the European Commission does not intervene in the negotiation of the CA nor does it check its content. Yet, all arrangements laid down in the CA including those related to IP must comply with the overall provisions provided in the GA.

Once both agreements have been signed the course is set for you and your partners to actually implement your project. Properly handling IP



during project implementation assumes particular importance as the management and ownership of your results as a basis for any future exploitation are key objectives of any Horizon 2020 project. It is at this stage that questions related to ownership of results, the granting of access rights to background/results and the appropriate strategy to protect, disseminate and/or exploit project results will arise. The clearer your strategy has been formulated already in your proposal and consolidated in the plan for exploitation and dissemination of project results, the more you and your partners will now benefit from a smooth and successful project execution.

What to bear in mind at this stage?



1. *Re-read the IP-related provisions provided in the Grant Agreement.*

The overall purpose of the grant preparation stage is to refine the scientific and technical details of the project and to agree on them for the final signature of the GA. This will help you understand the different IP-related issues that are going to be established in the GA.

Horizon 2020 provides for two general model GAs addressing mono- or multi-beneficiary projects. In addition there are specific model GAs for particular funding schemes (e.g. for European Research Council (ERC) Grants or the SME Instrument). Hence, you should carefully go through the model GA applicable to your particular call.

2. *Specify and agree on central IP arrangements as part of a comprehensive and elaborated Consortium Agreement.*

Envisaged as an instrument to complement the provisions outlined in the GA by clearly defining IP management issues, your CA should among others address three central management areas:

- internal organisation and management of the consortium,
- IP provisions, and
- settlement of internal disputes.

You should thereby make sure that it meets the needs of your organisation and is suitable for an efficient implementation of the project. A CA may take different forms. The choice of the most suitable form should be carefully made in accordance with the needs of your consortium. To this end, it is highly advisable to review different Model Consortium Agreements and seek professional advice from an IP legal counsel if necessary.

Arrangements to be considered and established in the CA relevant for IP management should cover the following aspects:

- Knowledge management
- Confidentiality obligations
- Background
- Ownership and transfer of ownership of results
- Protection and exploitation of results
- Dissemination
- Access rights
- Settlement of disputes



3. Install efficient knowledge management for your project.

An efficient knowledge management including the management of IP should be an integral part of the overall project management structure. You should therefore carefully define how newly generated knowledge and related new IP will be managed within the project. Depending on the size and nature of your project you may want to consider to set up an exploitation committee or install an exploitation manager who helps screening and managing any new IP that arises.

4. Grant access rights to your background and results.

In Horizon 2020 you are obliged to define the pre-existing IP, know-how, knowledge or any additional data that is “needed for carrying out the project” (the so called “background”) that you will bring to the project by creating a positive list. Furthermore, you should assess and agree on the “need to” requirement with your partners, and make sure that any information needed for the smooth running of the project is accessible to your project partners.

Due to the fact that your project is based on collaboration with several participants, matters related to access rights, i.e. licences and user rights to results and background, are of utmost importance and should be duly addressed in the CA. In general, requests to access another participant’s background or results should be done in writing. The exact format may be defined in the CA.

The following table gives an overview of the general conditions concerning the granting of access rights as established in the GA:

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

Due to the extended definition of affiliated entity in Horizon 2020, “parent” companies also have minimum access rights to results or background under the same conditions of the other affiliates if such access is needed to exploit the results generated by the participant to which it is affiliated, and unless otherwise agreed in the consortium agreement (CA).

One new feature of Horizon 2020 concerns the granting of access rights to a project’s results, not only to the European Union, but also in specific cases to Member States. Access rights for the European Union’s 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 with 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’s institutions and bodies, but also Member States’ authorities, enjoy access rights to the results.



5. *Manage the ownership and transfer of ownership of your results.*

In principle, the GA stipulates that results belong to the partner who generated them. Yet, given the nature of collaborative projects it is likely that several partners are involved in fostering project results. In this case “joint ownership” of results may arise for which you may want to determine certain provisions including those for a potential transfer of ownership in the CA or in a separate joint ownership agreement.

Unless otherwise agreed in the CA or the joint ownership agreement, 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:

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

Since managing joint ownership is a complex matter you are given the flexibility and opportunity to set up an individual ownership regime with your partners based on a written agreement. Furthermore, there exists the option to transfer the ownership of results to one of the joint owners or even third parties, provided such a transfer is in line with the general conditions laid out in the applicable GA.

6. *Protect your project results.*

Participants are required to carefully consider and provide for adequate protection of results that promise to be of any potential for commercial and industrial exploitation. Regulations regarding this matter should therefore be part of your exploitation plan. Nevertheless, you should keep in mind

that although IP protection is vital for potential exploitation measures, it is not always mandatory.

The decision on the most suitable form of IP protection is highly dependent on the character of your results and overall exploitation and IP strategy. You may also decide not to protect results that are capable of industrial or commercial application. In this case you are obliged to notify the European Commission up to four years after the end of the project and be careful not to perform any dissemination activity before this notification. Alternatively you may also transfer the right to protect and exploit a specific result to another consortium partner.

7. *Start disseminating your results taking into account confidentiality obligations.*

You are required to disseminate project results as soon as possible and by appropriate means. However, keep in mind to protect any results that are capable of commercial or industrial exploitation before any dissemination activity, and make sure to consult with your partners – especially in case of joint ownership of results – before any public disclosure.

Given the importance of this matter you should establish conditions for such dissemination measures in the CA. The latter should include and specify for instance procedures concerning the notification process of partners prior to any planned publication on your side or open access publishing.

Another important issue related to dissemination is the specification of confidentiality obligations. Think about and agree with your partners on



what information will be deemed confidential within the project, to whom and under what conditions confidential information may be transferred or disclosed, and how long confidentiality obligations will be upheld.

8. *Constantly review and update the plan for the dissemination and exploitation of results.*

In your proposal you have already been asked to provide a draft plan for the dissemination and exploitation of project results. This plan is a very valuable and efficient tool for monitoring, managing and documenting any dissemination and exploitation activity during the course of your project, and should thus be continuously updated and reviewed. Furthermore, it will help you tremendously in your periodic and final reporting.

9. *Be prepared to handle internal conflicts and disputes within your consortium.*

The risk of potential conflicts related to IP can be best minimised by transparent discussion of varying related interests with your partners from the very beginning of your project, and by agreeing on specific terms and processes concerning crucial issues. However, disputes may still arise during the course of your project. For this reason you should establish certain provisions in the CA.

While the GA sets the rules for handling potential disputes between the EU and beneficiaries (Belgian law and jurisdiction in Brussels normally applies in this case), the CA is an appropriate instrument to define the applicable law in case of consortium disputes. Apart from agreeing on the jurisdiction institutions and law applicable in this case, you may also want to consider options for alternative dispute resolution (ADR) procedures.

Further Information



Fact Sheets

IP Management in Horizon 2020: at the grant preparation stage
IP Management in Horizon 2020: at the implementation stage
IP Joint Ownership

Helpline

Our Helpline team is happy to help you with IP clauses and issues in your CA/GA, provides assistance to any concerns related to ownership and access rights, and offers advice on issues related to exploitation and dissemination of results.



Training

The training team offers specific training sessions and webinars on IP management in EU-funded projects. Learn more about upcoming events in our events calendar.



3. Concluding Your Project

IP issues to be considered towards the end of your project and beyond



Why should you care?



Even though IP issues related to the management of your project results occur already during project implementation and should be considered from the very beginning of your project planning, it is in the nature of many projects that the full range of expected results is available towards the end of your project.

Therefore, questions concerning further dissemination and exploitation of your results become even more pivotal at this stage. Now is the time to reap the benefits of the results by using them in further research or in commercial activities. And it is also now that you have to showcase and present your results and the different communication and exploitation measures you have taken to the European Commission in your final report. The latter will be the basis on which your project's success and achievements will be conclusively assessed and evaluated.

Furthermore, you need to be aware that certain obligations concerning the management of project results generated in EU-funded projects – and especially regarding IPR provisions – remain in place beyond the project's official lifetime.

What to bear in mind at this stage?



1. Exploit your project results and valorize your IP.

Proper exploitation of the results of your project will allow you to profit from marketing and commercialisation of the intellectual assets acquired during your project. As mentioned repeatedly in this guide, exploitation



measures are vital in Horizon 2020 and should by no means only be considered at the end of the project! The successful implementation of exploitation measures must be based on a structured and targeted strategy already presented at the very beginning and further adjusted through the execution of your project. However, given the fact that in many cases the majority of the expected results are available towards the end of the project and exploitation obligations remain in force up to four years after the project end, the concluding phase of your project is particularly important for the actual implementation of exploitation measures.

These may include measures:

- to use research results in further research activities of your organisation either internally and/or as background to be brought into a new collaborative research project,
- to create new or contribute to on-going standardisation activities,
- to develop and create new services and/or products.

Commercial exploitation can be implemented by:

- Licensing
- Assignment
- Joint Venture
- Spin-off
- Franchising

Even though commercial exploitation may primarily be relevant for (research-intensive) companies (SMEs/industry), reaping commercial benefits from research results becomes increasingly important for public research organisations as well. Before taking any concrete exploitation

measures to exploit your project results you should always make sure not to violate any principle or provisions laid down in your applicable Horizon 2020 rules and agreements (CA/GA).

2. Disseminate your project results.

With the end of your project and your actual research activities approaching, it is very likely that dissemination activities will gain further momentum. In order to create visibility for your achievements and to ensure knowledge spillover and access to a broader public, you may use a broad variety of different dissemination channels:

- Scientific and non-scientific publications
- Conferences
- Networking events and business fairs
- Project websites
- Communication material (such as posters, leaflets)
- Social Media
- Open Access

A new feature in Horizon 2020 is a mandate for beneficiaries to publish scientific research articles under the open access models. However, this does not imply a general obligation to publish results and to neglect any related interest to protection of results. Both points should be taken into account before any decision to publish has been made. The decision on whether to protect any results is paramount. The specificities regarding open access for each individual project will be further defined in the respective model grant agreement (GA).



These may also include additional requirements concerning open access also to research data.

3. *Have a conclusive report on the dissemination and exploitation of project results ready.*

A conclusive report on your activities concerning the dissemination and exploitation of project results during the whole duration of your project has to be presented at the end of your project. Building on the plan that you have already drafted at the proposal stage, further elaborated and continuously updated during the project, you should now be able to provide the European Commission or the Research Executive Agency (REA), with a detailed overview of the different measures your consortium has already taken and/or will be taking in the future to exploit the project results.

4. *Be aware of post-project obligations concerning IPR provisions*

Although you have successfully concluded your project, you must be aware that obligations concerning IPR management and certain provisions in the agreements remain in force after the project conclusion.

Proper IPR management and exploitation of results therefore does not stop with the official ending of your project contract. Quite the contrary, measures to ensure the exploitation of results must be performed up to four years after the project. Apart from this general requirement of participants to actively engage in the use of their results beyond the project's actual lifetime, certain rights and obligations related to IPR remain in force, such as:

- Confidentiality obligations
- Provisions concerning the transfer of results
- Obligations to protect results capable of commercial exploitation
- Notification to the EC, when deciding to stop protection or not to seek extension
- Right of participants to request access rights

Further Information



Fact Sheets

IP Management in Horizon 2020: at the implementation stage

Open access to publications and data in Horizon 2020: FAQ
Exploitation channels for public research results

Commercialising Intellectual Property:

- Franchising
- Knowledge Transfer Tools
- Assignment Agreements
- Internal Product Development
- Spin-offs
- Joint Ventures
- Licence Agreements

Helpline

You may address any concern or question regarding the appropriate exploitation channel for your specific project results or remaining IP obligations after your project's end to our Helpline team.



Training

Our training team offers specific training sessions and webinars on IP exploitation in EU-funded projects. Learn more about upcoming events in our events calendar.

The European IP Helpdesk

We believe that knowing how to manage your IP effectively, can help you promote your business or maximise the impact of your research & innovation project – make sure you stay ahead of the innovation game.

Our main goal is to support cross-border SME and research activities to manage, disseminate and valorise technologies and other IP rights and assets at an EU level. The European IP Helpdesk enables IP capacity building along the full scale of IP practices: from awareness to strategic use and successful exploitation.

This strengthening of IP competencies focuses on EU SMEs, participants and candidates in EU-funded projects and EU innovation stakeholders for an increased translation of IP into the EU innovation ecosystem.



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Detailed IP knowledge provided through our high level publications



AMBASSADORS

Our regional ambassadors provide IP support throughout Europe



EVENTS

Meet us at key networking and brokerage events and conferences



www.iprhelpdesk.eu





GET IN TOUCH

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