



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR RESEARCH & INNOVATION

Directorate J – Common Support Centre
The Director

Brussels, 20 December 2018
 RTD.J/AP

NOTE FOR THE ATTENTION OF THE EXECUTIVE DIRECTORS OF JOINT UNDERTAKINGS

Subject: Access to JUs project results and confidential information

Following a series of recommendations to the JUs made recently by the IAS regarding the Commission's access to JUs confidential data and our subsequent discussions on this issue, the CSC carried out a further analysis of the legal framework and needs of both the Commission and the JUs. The outcome of this analysis confirmed the legal basis and safeguards in place to ensure the Commission's full access to your beneficiaries' project results and confidential information.

Indeed, as analysed in my Note of 20 June 2017 (ARES(2017)3097367), the Commission has the right to access the results of participants who received Union funding under Horizon 2020 for the duly justified purpose of developing, implementing and monitoring Union policies or programmes (see Article 49(1) of the Horizon 2020 Rules for Participation¹). In fact, this right is embedded in the JU MGAs under Article 31(5) as a form of obligation imposed on beneficiaries to grant the Union institutions with access to project results for policy purposes. This access right/obligation covers the content of proposals and the project results, and also extends to any confidential information included therein (as explicitly stipulated in Article 36(1) of the JU MGA).

In accordance with the JU MGA, project confidential information is defined as any data, documents or other material (in any form) that is identified as confidential at the time it is disclosed and this for a specific period of time. In any case, the Commission is under a general duty to maintain confidentiality under Article 3 of the Horizon 2020 Rules for Participation and under Article 20 of the Delegation Agreements between the Commission and the JUs. In addition, the Commission staff has an obligation to refrain from any unauthorised disclosure of information received in the line of duty. Moreover, the Commission processes personal data in accordance with Regulation (EC) No 45/2001. On this basis, it is clear that the Commission has the right to access the JUs project results and related information, including confidential information, and that there is no margin for the beneficiaries or the JUs to prevent such access without breaching their contractual obligations or infringing the applicable rules.

Besides, this approach will benefit both the Commission services and the JUs since having access to the entire corpus of the Horizon 2020 R&I information and results will considerably contribute to the framework programme (FP) reaching its objectives but also to the Commission and the JUs

¹ Regulation (EU) No 1290/2013 of the European Parliament and of the Council of 11 December 2013 laying down the rules for participation and dissemination in "horizon 2020 – the Framework Programme for Research and Innovation (2014-2020)", OJ L 347, 20.12.2013, p. 81.

fulfilling their respective mandates. The benefits also include having a global overview at FP level of the R&I areas already explored and funded, participation data and statistics and identifying synergies among the different parts of the programmes.

In this context, and as already announced in my previous note, my services assessed the principles that should govern the Commission's access to the JUs project results, documents and related information, including confidential information. In this respect, I propose the following approach:

- ✓ Commission services dealing with JUs and other Commission services dealing with the evaluation of FP and analysis of FP data and statistics will be granted full access on the basis of necessity and proportionality.
- ✓ Such full access will cover proposals and project results, documents (e.g. description of the action, periodic reports, deliverables) and related information, including confidential information, and any personal data.
- ✓ Project results shall be deemed to refer to any tangible or intangible output of actions generated in the JUs projects.
- ✓ In order to provide an additional safeguard to beneficiaries and to allow for an IT trail, if necessary, access will be granted on a need-to-know basis. In this respect, I enclose a list of names of Commission staff (subject to changes, if needed) who will be granted access, as provided above. Access rights will be given in the standard way, through the Appointed Single Points of Contact (SPOCs)².

In view of the above, I consider it opportune to have the above approach validated by your respective Governing Boards. I believe that this will contribute to legal certainty to the benefit of both the Commission on the one hand and the JUs and their beneficiaries on the other.

I trust on your cooperation in implementing the above as soon as possible in order to provide full access to projects results and related information, including confidential information, to ensure that the FP objectives are achieved in accordance with the applicable legal provisions.



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Encl.: List of names of Commission staff having access to JUs project results and related information [pending]

² <https://webgate.ec.europa.eu/fpts/wikis/pages/viewpage.action?pageId=90444938>