



## European IPR Helpdesk

### Case Study

## Confidentiality considerations during project preparation

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### Project details

*Name:* Anonymous

*Business sector:* Energy

*EU Funded Programme:* Horizon 2020



### 1. Background

Within the framework of the Horizon 2020, a group of nine partner organisations from eight different countries, including SMEs and research organisations, has initiated discussions for the joint preparation of a proposal to be submitted under the topic “organisational innovation to increase energy efficiency in industry”.

To enable more efficient administration in setting up the proposal, the partner leading the discussions invited all partners to make use of cloud server software, where all partners could easily keep in contact with each other and share information.

One of the SMEs involved in these negotiations was concerned about the disclosure of information to the partners through the cloud without any prior agreement between the partners. At the same time, however, the period for the preparation of the proposal was of six months duration and therefore the SME was concerned about finding an easy and quick solution, to avoid losing time that should be used for the preparation of the proposal.

## **2. Confidentiality in Horizon 2020**

When preparing a Horizon 2020 proposal, and more generally any type of collaborative project proposal, it is very important to tackle issues of confidentiality from the early stages. Ideally, such matters should be discussed and dealt with by the partners before the negotiations start - i.e. before any exchange of information occurs between the potential project partners. Ensuring that confidentiality obligations are duly put into place allows partners to safely disclose know-how and information which, although not protectable by intellectual property rights, brings a commercial advantage to them.

Furthermore, setting confidentiality obligations allows partners to disclose information related to potentially patentable inventions without putting at risk the novelty requirement and, consequently, the success of a future patent application. Indeed, generally inventions in all fields of technology can be protected by a patent, but one of the requirements they must fulfil is novelty. Patent applicants must therefore have an invention with a new characteristic which is not known in the existing knowledge within the technical field of the invention, i.e. not being part of the state of the art. Disclosures under confidentiality obligations are examples of disclosures not harming this novelty requirement.

During the project implementation, partners conclude consortium agreements where it is best practice to include confidentiality obligations, in this way ensuring that any confidential information is kept secret and used merely for the purposes of the project. However, consortium agreements are only concluded at a later stage, once the discussions for the preparation of the proposal are over.

Therefore, during the preparation of project proposals and for the purpose of ensuring confidentiality in the negotiations, partners simply need to conclude non-disclosure agreements (NDA). An NDA sets out procedures for the definition and handling of all confidential information during the negotiations. It also allows the definition of the purpose for which such information is shared and can be used.

## **3. Action undertaken**

The SME partner shared its concerns with the coordinator of the prospective project, who agreed with the importance of indeed entering a non-disclosure agreement before any partner started to use the cloud platform. For this purpose the coordinator drafted a non-disclosure agreement based on the model available on the European IPR Helpdesk website<sup>1</sup>.

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<sup>1</sup> The model of a mutual non-disclosure agreement of the European IPR Helpdesk is available at <http://www.iprhelpdesk.eu/node/921>.

To facilitate the signature of the agreement, which can be a huge administrative burden when there are nine partners involved, it was decided that each partner should sign a separate signature page as many times as there are parties. Once all partners sent the originals to the leading partner, this partner delivered the agreement and signature pages to all the others.

To avoid any further uncertainty, the coordinator verified once again the terms of use made available by the cloud provider when signing up to the service, in order to guarantee that this provider and relevant third parties are bound by appropriate confidentiality obligations with regards to all the information which would be held in the cloud. Moreover, the coordinator also sent around to the other partners a copy of these terms of use, to make sure they were well aware of the level of security of the service.

In fact, cloud storage by its nature involves the use of several storage locations across the globe, without those locations always being clearly defined; it also involves staff working for the storage provider and/or its contractors, who might at some point have to handle the data. Resorting to cloud storage for confidential information, even if provided by well-established companies with the promise of security, will therefore always involve a risk. Hence, the coordinator took a close look in particular at the disclaimers and provisions surrounding confidentiality as well as the provider's liability in the event of data loss or unauthorised disclosure established in the terms and conditions.

#### **4. Lessons learned and suggestions**

- In the negotiations for the preparation of the project proposal, conclude a non-disclosure agreement (NDA) to keep valuable information in confidence between partners.
- In partnerships with a large number of partners it is possible to facilitate the signature of agreements, for example by requesting each partner to sign a separate signature page as many times as there are parties.
- Before relying on a cloud provider's services, it is highly recommended to carefully go through the provider's terms and conditions before making the final decision to use the service and consider resorting to a private cloud, which generally provides for better control of confidentiality.