



VCI Position on open access to research data in public-private collaborations

The German Chemical Industry Association (VCI) acknowledges generally the potential benefits of making research data from publicly funded research projects more widely available. In principle VCI supports efforts to make the results of publicly funded research accessible to a broad public via open access models.

However, caution is needed to avoid hampering the public-private collaboration along the innovation chain that is crucial for leveraging all Europe's research and innovation resources and boosting its global competitiveness. In particular, the protection of intellectual property (IP) and confidential business information (CBI) is key for innovation, growth, competitiveness and job creation in Europe. IP generates 39% of the EU GDP. 1 in 3 jobs in Europe rely on IP-intensive industries. This is evidenced in a joint European Intellectual Property Office (EUIPO) -European Patent Office (EPO) study from 2016.¹ Only with a strong IP policy accompanied by the protection of CBI as well as privacy and security, Europe will be able to remain competitive as well as keep its ability to generate and attract R&D investment. Considering this, any regulation has to be pragmatic and create a balance between the possibility to facilitate public opinion making on the one hand, and freedom of research and adequate IP protection on the other hand. Without such a balanced approach, open access will be to the detriment of the researching companies - and also the universities / research institutions.

Therefore, VCI advocates for clear legal frameworks and IP protection instruments, which do not force an "Open to the World"-approach for scientific data. IP protection for commercial valorisation of research by the European industry should have priority over open access to project data. Legislative schemes should support the Innovation Principle and address the high regulatory burdens in the case of market entry, especially of chemistry and life science-related products.

In consequence, open access should not apply by default to data from private-sector R&D performed in public programs for research and innovation, nor from public-sector research performed in collaboration with industry or (co-) financed by industry. In those cases a tailor-made approach is needed, in which public and private partners contractually agree on a voluntary and case-by-case basis whether access can be given, and if so, to which data and to whom. These contractual agreements on access to data and their publication are already common and well-established in public-

¹ EUIPO-EPO Joint Study, IP rights intensive industries and economic performance in the European Union, Industry-Level Analysis Report, October 2016, second edition, page 3, available at: [http://documents.epo.org/projects/babylon/eponet.nsf/0/419858BEA3CFDD08C12580560035B7B0/\\$File/ipr_intensive_industries_report_en.pdf](http://documents.epo.org/projects/babylon/eponet.nsf/0/419858BEA3CFDD08C12580560035B7B0/$File/ipr_intensive_industries_report_en.pdf)

private-partnerships. Furthermore, it should be kept in mind that patenting also contributes to the dissemination of research results: in exchange for typically twenty years of exclusivity on the protected invention, patents publicly disclose information that would be kept secret otherwise.

Also the Commission seems to acknowledge the need for a differentiated approach when it comes to open access to research data. According to Article 10 of the Commission's proposal of 7 June 2018 for the 9th Framework Programme for Research and Innovation (COM(2018)435, COM(2018)436) open access to research data shall be ensured in line with the principle 'as open as possible, as closed as necessary'. This wording, however, suggests that an open access to research data should be granted unless this is not possible or is incompatible with the further exploitation of the research results. It would, rather, be desirable for the Commission to substantiate this in the way that this is true for reasons, in particular, of privacy, trade secrets, security concerns, legitimate commercial interests and to IP rights of the involved industry partner or third parties. Such an understanding would be in line with the Commission's recommendation of 25.4.2018 on access to and preservation of scientific information.² VCI welcomes in this context the proposals of the European Parliament to amend Article 10 of the mentioned draft directive.³

It should further be clarified that any data, know-how and/or information, whatever its form or nature, which is held by private parties in a joint public-private-partnership prior to the research action should not be affected by these policies or national action plans;

Failing to do so would endanger the interest of private parties in participating and/or co-investing in public programs for research and innovation. Companies (especially those operating globally) could even prefer to perform their collaborations with universities and research institutes in other regions outside of Europe. As companies participating in such public programs carry a substantial part of their R&D costs themselves, it is reasonable that they expect a return on their investments. Widely sharing all data from a research project could destroy the competitive advantage that consortium partners have gained in the project and negatively impact the worldwide competitiveness of Europe. Pushing the open access concept too far could also hamper the creation of start-ups from public-sector research, since start-ups often build on IP generated in universities or research institutes as their key asset for attracting loans and venture capital.

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² C(2018) 2375 final

³ P8_TA-PROV(2018)0509

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The VCI represents the politico-economic interests of around 1,700 German chemical companies and German subsidiaries of foreign businesses. For this purpose, the VCI is in contact with politicians, public authorities, other industries, science and media. The VCI stands for over 90 percent of the chemical industry in Germany. In 2018 the German chemical industry realised sales of more than 204 billion euros and employed around 462,000 staff.