

# Ethics requirements: non-EU countries, requirements no 2, 4, 5

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# Revision history

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20/12/2017	Chiodelli, Luce	Draft
21/12/2017	Pfeiffer, Michael	1 <sup>st</sup> pass of review
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# Scope of this deliverable

This deliverable aims to present one ethical issue raised in the context of the ULPEC project : the transfer of information and results between ULPEC partners located in EU-Member States and ULPEC partners and work environment outside the EU.

We will start presenting here the legal context surrounding the exchange and transfer of technology and Horizon 2020 project outputs to non-EU countries; then we will place the focus on ULPEC's strategy, in order to comply with the European regulations.

This document is to be considered a work document.

Although listed as a deliverable, we aim to keep reflecting on the social and ethical impact of the technology we are developing in the context of ULPEC, letting this document evolve through time, accordingly with the evolution of our project.

# ULPEC and non-EU countries

In this document, we will present the way we address collaboration with non-EU countries in the context of ULPEC.

In accordance with the requirements listed in the Ethics Self-Assessment for Horizon 2020, we aim to provide answers to the following questions:

- To which extent is ULPEC's research carried out outside the EU territory?
- Do we have participants or resources issued from other countries?
- Do we import material from outside the EU, which could raise ethical questions, such as workforce and environmental exploitation, research fields forbidden on EU-territory?

## Project context

The ULPEC project brings together a consortium of eight partners, among which one partner is located in a non-EU country: IBM Research is located in Zurich, Switzerland. Swiss participants may participate to the Horizon 2020 framework programme, as detailed in [a specific guidance note issued by the European Commission](#).

Also, upon planning the project implementation, one ULPEC partner, Bosch, had foreseen to delegate some activities as a subcontract to its affiliate company RBEI (Robert Bosch Engineering and Business Solutions Private Limited India).

## Joint work on ULPEC with a non EU-country

### The case of IBM Research Zurich, Switzerland.

In the context of ULPEC, part of the research work is carried out at IBM Research Zurich's premises. Their work is namely to investigate new materials and structures, which will form the electronic chips we design specifically for our circuits. In this context, IBM works closely several other project participants, in France and in the Netherlands.

The collaboration aims to design new materials and cannot be linked to personal data<sup>1</sup> of any kind. Therefore the type of data we exchange with IBM Research is data we collect from experimentations from each partner's side; no material is imported from their premises to enable us to carry out the research on ULPEC.

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<sup>1</sup> We refer to the definition from the Horizon 2020 Ethics Self-Assessment:

*'Processing of personal data' means any operation (or set of operations) performed on personal data, either manually or by automatic means. This includes:*

- *collection (digital audio recording, digital video caption, etc.)*
- *recording*
- *organisation & storage (cloud, LAN or WAN servers)*
- *adaptation or alteration (merging sets, amplification, etc.)*
- *retrieval & consultation*
- *use*
- *disclosure by transmission, dissemination or otherwise making available (share, exchange, transfer)*
- *alignment or combination*
- *blocking, deleting or destruction.*

However, in the context of ULPEC's implementation, IBM Research contribution will be the subject of monitoring by ULPEC's Ethics Advisor, who will provide advice throughout the project and notice the coordinator of any breach of ethical engagements.

### Protection of personal data

Should any personal data be required for exchange in order to properly implement the project, we would refer to the following legislation:

- The [Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data](#)
- the [Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data](#), OJ L 281, 23.11.1995, p. 31–50
- the [2010/87/EU Commission Decision of 5 February 2010 on standard contractual clauses for the transfer of personal data to processors established in third countries under Directive 95/46/EC of the European Parliament and of the Council](#)

### Swiss and European standards for data protection

The European Union has reached several bilateral agreements on standards for data protection and transfer with several EEA countries, which own national legislation match the requirements determined by the European Union in the Directive 95/46/EC and in the 2010/87/EU Commission Decision.

This is the case for Switzerland, which protects personal data with the [CC 235.1 Federal Act of 19 June 1992 on Data Protection \(FADP\)](#).

Switzerland is indeed considered by the European Union a country with [adequate control and protection levels](#) for data processing. Therefore, a specific agreement has been settled between Switzerland and the European Union, to determine their collaboration and assess of the same legal requirements for data protection: the [2000/518/EC: Commission Decision of 26 July 2000 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data provided in Switzerland](#).

The ULPEC consortium was familiar to the legal framework surrounding our collaboration with IBM Research, from the time we joined forces to build up the project. We also clearly stated that we would abide by such legislation in ULPEC's Description of Action:

*ULPEC includes a partner from Switzerland (IBM Switzerland). Switzerland as a third country meets similar ethical standards as those set by the EC.*

*As regards data transfer during the term of ULPEC, Swiss law standards meet the same standard as EU member countries. The Commission Decisions 2001/497/EC of 15 June 2011 and 2010/87/EU2 on standard contractual clauses for the transfer of personal data to third countries under Directive 95/46/EC of the European Parliament and of the Council set out standard contractual clauses to ensure an adequate level of protection of personal data transferred from the EU to third countries. In cases where during ULPEC movement of material to the Swiss partner will be required, this will be dealt with through specific material transfer agreements, where the responsibilities of the party to whom the material is being sent are clearly set out (and which meet the same standards as EU).*

- Excerpts from ULPEC's Description of Action, section 5, Ethics and Security

The ethical dimension of ULPEC's research, also including the issue of protection personal data has also been addressed in ULPEC's [deliverable 8.2 – Project Management Guidelines \(Ethics section\)](#).

Useful information on the subject of data protection and transfer to Switzerland can also be found on Thompson Reuters Practical Law website: [Data protection in Switzerland: overview](#).

## Subcontracting outside EU territory

In ULPEC's Description of Action, a specific section was dedicated to inform on our requests for subcontracting. ULPEC's partner Bosch had listed a series of needs to allow project implementation, for which subcontracting was the only possibility.

By the time of drafting the project's proposal, Bosch had already appointed a subcontractor: its affiliate company RBEI in India. The pick was relevant for various reasons: the validation and control procedures were into force for a long time and such subcontracting was an internal usual practice.

In such a context, internal procedures to control the information exchange and circulation among both parties would not only have ensured data protection but also have protected the project against information leaks and misuse of the technology.

However, at this date, since no clear confirmation could be obtained that subcontracting to RBEI will be eligible as subcontracting to linked third parties under EU rules – although all internal evaluations are positive - Bosch has reconsidered the subcontracting to RBEI, which will be replaced by another subcontractor. This decision being on hold, we are currently not in capacity to inform further on the subject, as the start date to carry out the subcontracted activities was set for the end of 2018.

Should subcontracting be confirmed to be carried out outside EU territory, the Bosch group will be aware of the ethical challenges. Bosch and its subcontractor will abide by the legislation protecting data transfer to non-EU countries as mentioned in the previous sections of this document. The subcontractor will have to provide to Bosch and the ULPEC consortium guarantees for data protection, research in compliance with European standards, and prevention against workforce exploitation and environmental damage.

ULPEC's Ethics Advisor will also provide advice in order to monitor such issues. Should any abuse be noticed, Bosch will notify the Ethics Advisor and the University of Bordeaux (as ULPEC's coordinator) and take appropriate action.