



Eesti Teadusagentuur
Estonian Research Council

Intellectual property



Zagreb
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Intellectual Property Rights:

- ✓ Terminology
- ✓ Why?
- ✓ For whom?
- ✓ How?
- ✓ Hints for Horizon 2020

Terminology

Pre-existing know-how (FP6) → background

Knowledge (FP6) → foreground

Terminology

Background (Art. II 1.4 GA) - information and attached rights

- held by participants prior to their accession to the Grant Agreement
- needed for carrying out the project or for using the foreground
- may be defined by the participants

Application for protection must be filed before accession to the Grant Agreement!

Ownership is not affected by participation in an FP7 project!

Terminology

Foreground (Art. II 1.7 GA)

- **the results, including information, materials and knowledge generated in a given project, whether or not they can be protected**
 - **Tangible (e.g. prototypes, micro-organisms, etc)**
 - **Intangible (IPR) results of the project**

Belongs to the participant(s) generating the result!

Protection, use, dissemination and publication

- Valuable foreground of industrial or commercial application should be protected, although it is not mandatory
- If the consortium leaves the foreground unprotected, the Commission (JRC) may take ownership
- Ownership of foreground may be transferred from one to another partner or to a third party (or to the Commission)
- **Commission may exercise their right of objection to the planned transfer of rights**

Protection, use, dissemination and publication

- Foreground should be used by the owner(s) in further research or product, process and service related activities
- Foreground must be disseminated (**but not before protection has been granted if it is an issue**)
- Notice of dissemination (including publication) must be given to other partners, unless agreed otherwise
- Community financial assistance must be clearly indicated on publications and patent applications

Access rights

- **Access rights = licences and user rights to foreground or background owned by another participant in the project**
- **Access rights are never automatically granted**
- **Access rights must be requested in writing**
- **Access right must be granted to another partner only if it is needed to carry out the project activities**
- **The owner may exclude some specific elements of the background or impose some conditions in the access agreement**
- **Sublicensing must be agreed separately**

Conditions for access rights

- **Royalty-free** – no money or other compensation is requested.

Access rights to foreground **for implementing the project** must be granted royalty free

- **Fair and reasonable conditions for compensation–**
 - **financial** (lump sum of royalty-percentage on sales, net income, turnover etc)
 - or
 - **non-financial** (access to other partner's technology or know-how, agreement for further cooperation)

Issues to bear in mind

- **National rules and regulations**
- **Institutional rules and regulations**
- **Possibility of third party's rights**
- **Proof of ownership (both background and foreground)**
- **Time limits and deadlines**
- **(Written) agreements**
- **Interests of a partner/person**
- **Competitiveness**
- **Relations with publishers**
- **Post-contract phase**

Eligible costs

- Patent search during the project (**but not before signing the Grant Agreement**)
- IPR protection, dissemination and management
- Licencing royalties paid to a third party (not a project partner)
- Royalties paid for access rights granted by other partners (in exceptional cases)

Summary of notification requirements and the possibilities to reject

	Notifications to the Commission	Objections by	Notifications to other participants	Objections by
Dissemination of foreground (incl. publications)	No (except where foreground is capable of industrial or commercial application and is not protected – Article 44.2 RfP / Article II.28.3 of GA)		Yes (Article 46.4 RfP / Article II.30.3 of GA)	
Transfer of ownership of foreground	No (except for transfers or exclusive licences if a special clause is inserted in GA but this may exclude transfers or licences intended by beneficiaries not receiving EU funding – Article 42.5 RfP – but remember Article 18.6 RfP ⁵³ -)	No in most cases Yes, for transfers to third parties in “non-associated” third countries (Article 43 RfP / Article II.27.4 of GA) but this may exclude transfers or licences intended by beneficiaries not receiving EU funding if a special clause to this effect is inserted	Yes – prior notice (except in case of : – “authorised” transfers to a specifically identified third party under Article 42.3 RfP / Article II.27.2 of GA, or – overriding confidentiality obligations such as in M&A (Article 42.3 RfP / Article II.27.2 of GA))	Yes, if the access rights of other participants are affected (Article 42.4 RfP)
Granting of licences to third parties	No (except for transfers or exclusive licences if a special clause is inserted in GA but this may exclude transfers or licences intended by beneficiaries not receiving EU funding – Article 42.5 RfP – but remember Article 18.6 RfP ⁵³ -)	No in most cases Yes, for granting exclusive licences to third parties in “non-associated” third countries (Article 43 RfP / Article II.32.8 of GA) but this may	No (except where access rights are affected (Article 48.5 RfP / Article II.32.3 of GA) or under the default joint	No

Summary of the access rights

	Projects	Access rights to background	Access rights to foreground
For implementing the project	General	Yes, if a participant needs them for carrying out its own work under the project (Article 49.1-2 RfP ; Article II.33.1-2 of GA)	Royalty-free (Article 49.1 RfP ; Article II.33.1 of GA)
		Royalty-free, unless otherwise agreed before acceding to the grant agreement (Article 49.2 RfP ; Article II.33.2 of GA)	
	FRA's	Royalty-free (Article 51.1 RfP)	
	ABSG's	Access to the background of RTD Performers is always royalty-free (Article 49.2 RfP, last sentence)	
For use purposes (exploitation + further research)	General	Yes, if a participant needs them for using its own foreground (Article 50.1-2 RfP ; Article II.34.1-2 of GA)	
		Either royalty-free, or on fair and reasonable conditions to be agreed (Article 50.1-2 RfP ; Article II.34.1-2 of GA)	
	FRA's	For further R&D : royalty-free For other use purposes (exploitation) : Royalty-free, unless otherwise agreed in the grant agreement (Article 51.1 RfP)	
		RTD Performers shall grant access on a royalty-free basis, or on fair and reasonable conditions to be agreed prior to signing of the grant agreement (Article 50.6 RfP)	

Type of deliverable and levels of dissemination and access

❖ Deliverables:

R = Report,

P = Prototype,

D = Demonstrator,

O = Other

❖ Dissemination level

PU = Public

PP = Restricted to other program participants (including the Commission Services)

RE = Restricted to a group specified by the consortium (including the Commission Services)

CO = Confidential, only for members of the consortium (including the Commission Services)

Restreint UE = EU Restricted:

Classified with the classification level "Restreint UE" according to Commission Decision 2001/844 and amendments

Confidentiel UE = EU Confidential

Classified with the mention of the classification level "Confidentiel UE" according to Commission Decision 2001/844 and amendments

Secret UE = EU Secret

Classified with the mention of the classification level "Secret UE" according to Commission Decision 2001/844 and amendments

WT3: Work package description

Person-Months per Participant

Participant number ¹⁰	Participant short name ¹¹	Person-months per participant
11	ETAG	4.00
12	FCT	3.00
13	UNEW	1.00
15	ARC FUND	2.50
16	HIT	1.00
Total		51.60

List of deliverables

Deliverable Number ⁶¹	Deliverable Title	Lead beneficiary number	Estimated indicative person-months	Nature ⁶²	Dissemination level ⁶³	Delivery date ⁶⁴
D4.1	D4.1a Report on recommendation activities on CORDIS PS	1	10.00	R	CO	15
D4.2	D4.1b Report on recommendation activities on CORDIS PS	1	9.05	R	CO	30
D4.3	D4.2a Report on Brokerage Events	6	4.94	R	PP	7
D4.4	D4.2b Report on Brokerage Events	6	4.94	R	PU	15
D4.5	D4.2c Report on Brokerage Events	6	4.94	R	PU	22
D4.6	D4.2d Report on Brokerage Events	6	4.93	R	PP	30
D4.7	D4.3a Report on ETNA Plus partnering measures' effectiveness	8	6.40	R	PP	15
D4.8	D4.3b Report on ETNA Plus partnering measures' effectiveness	8	6.40	R	PP	30
Total			51.60			

Description of deliverables

- D4.1) D4.1a Report on recommendation activities on CORDIS PS: [month 15]
 D4.2) D4.1b Report on recommendation activities on CORDIS PS: [month 30]
 D4.3) D4.2a Report on Brokerage Events: [month 7]
 D4.4) D4.2b Report on Brokerage Events: [month 15]
 D4.5) D4.2c Report on Brokerage Events: [month 22]
 D4.6) D4.2d Report on Brokerage Events: [month 30]
 D4.7) D4.3a Report on ETNA Plus partnering measures' effectiveness: [month 15]
 D4.8) D4.3b Report on ETNA Plus partnering measures' effectiveness: [month 30]

ENV-NCP-TOGETHER

CONSORTIUM AGREEMENT

Table of Contents

CONSORTIUM AGREEMENT	4
Section 1: Definitions.....	5
1.1 Definitions	5
1.2 Additional Definitions.....	5
Section 2: Purpose	6
Section 3: Entry into force, duration and termination	6
3.1 Entry into force	6
3.2 Duration and termination.....	6
3.3 Survival of rights and obligations.....	7
Section 4: Responsibilities of Parties	7
4.1 General principles	7
4.2 Breach.....	7
4.3 Involvement of third parties.....	8
Section 5: Liability towards each other.....	8
5.1 No warranties	8
5.2 Limitations of contractual liability.....	8
5.3 Damage caused to third parties	8
5.4 Force Majeure	8
Section 6: Governance structure.....	9
6.1 General structure.....	9
6.2 General operational procedures for all Consortium Bodies	9
6.3 Specific operational procedures for the Consortium Bodies	11
6.4 Coordinator	12
Section 7: Financial provisions.....	13
7.1 General Principles	13
7.2 Budgeting	14
7.3 Payments.....	14
Section 8: IPR rights, Dissemination and Publication.....	15
8.1 Intellectual Property Rights	15
8.2 Access Rights	15
8.3 Publication.....	15
Section 8.4: Foreground	16

FP7 Grant Agreement - Annex II General Conditions

SEVENTH FRAMEWORK PROGRAMME

GRANT AGREEMENT No _____

PROJECT TITLE [ACRONYM]

(indicate FUNDING SCHEME)

The [European Union ("the Union"), [European Atomic Energy Community] ("the Community"), or the European Atomic Energy Community represented by the European Commission (the "Commission"),

of the one part,

and (name of the coordinator and legal form) (national registration number) (full address city/state/province/country), represented by (name of legal representative) [and/or (name of legal representative), (function)], or her/his/their authorised representative acting as coordinator of the consortium (the "coordinator")¹, ("beneficiary")

of the other part

HAVE AGREED to the following terms and conditions including those in the Annexes which form an integral part of this grant agreement (the "grant agreement").

- Annex I - Description of Work [Joint Programme of Activities Excellence]
- Annex II - General conditions (Ref to English version OJ)
- Annex III - [Specific provisions related to [this funding scheme or in (Reference to English version of OJ)] [Non applicable]
- [Annex IV - Form A – Accession of beneficiaries to the grant agreement (Reference to English version of OJ)]
- [Annex V - Form B – Request for accession of a new beneficiary to the consortium as published in (Reference to English version of OJ)]
- [Annex VI - Form C – Financial statement per funding scheme (Reference to English version of OJ)]
- [Annex VII - Form D – Terms of reference for the certificate of participation and Form E - Terms of reference for the certificate of participation published in (Reference to English version of OJ)]

Article 1 – Accession to the grant agreement of the other beneficiaries

1. The coordinator shall endeavour to ensure that each legal entity identified in this grant agreement as a beneficiary, assuming the rights and obligations established in the grant agreement with effect from the date on which the grant agreement enters into force, in three originals, countersigned by the coordinator.

- (full name and legal form of the beneficiary) (national registration number) established in (full address city/state/province/country), represented by (name of legal representative) (function), [and/or (name of legal representative), (function)] (authorised representative ("beneficiary no. 2")),
- (full name and legal form of the beneficiary) (national registration number) established in (full address city/state/province/country), represented

¹ NOTE: For Research actions for the benefit of specific groups (including Cooperative research and innovation) the nature of the participant must be identified in the grant agreement: RTD Performer/ SME/ End

II.1. Definitions.....	2
Part A IMPLEMENTATION OF THE PROJECT.....	3
SECTION 1 – GENERAL PRINCIPLES.....	3
II.2. Organisation of the consortium and role of coordinator.....	3
II.3. Specific performance obligations of each beneficiary.....	4
SECTION 2 – REPORTING AND PAYMENTS.....	6
II.4. Reports and deliverables.....	6
II.5. Approval of reports and deliverables, time-limit for payments.....	8
II.6. Payment modalities.....	10
SECTION 3 – IMPLEMENTATION.....	11
II.7. Subcontracting.....	11
II.8. Suspension of the project.....	11
II.9. Confidentiality.....	12
II.10. Communication of data for evaluation, impact assessment and standardisation purposes.....	13
II.11. Information to be provided to Member States or Associated Countries.....	13
II.12. Information and communication.....	14
II.13. Processing of personal data.....	15
Part B FINANCIAL PROVISIONS.....	15
SECTION 1 – GENERAL FINANCIAL PROVISIONS.....	15
II.14. Eligible costs of the project.....	15
II.15. Identification of direct and indirect costs.....	17
II.16. Upper funding limits.....	19
II.17. Receipts of the project.....	20
II.18. The financial contribution of [the Union] [Euratom].....	21
II.19. Interest yielded by pre-financing provided by the Commission.....	21
SECTION 2 – GUARANTEE FUND AND RECOVERIES.....	21
II.20. Guarantee fund.....	21
II.21. Reimbursement and recoveries.....	23
SECTION 3 – CONTROLS AND SANCTIONS.....	24
II.22. Financial audits and controls.....	24
II.23. Technical audits and reviews.....	25
II.24. Liquidated damages.....	26
II.25. Financial penalties.....	27
Part C INTELLECTUAL PROPERTY RIGHTS, USE AND DISSEMINATION.....	27
SECTION 1 – FOREGROUND.....	27
II.26. Ownership.....	27
II.27. Transfer.....	28
II.28. Protection.....	28
II.29. Use.....	29
II.30. Dissemination.....	29
SECTION 2 – ACCESS RIGHTS.....	30
II.31. Background covered.....	30
II.32. Principles.....	30
II.33. Access rights for implementation.....	31
II.34. Access rights for use.....	32
FINAL PROVISIONS.....	32
II.35. Competitive calls.....	32
II.36. Requests for amendments and termination at the initiative of the consortium.....	33
II.37. Approval of amendments and termination requested by the consortium.....	34

TEMPLATE B1: LIST OF APPLICATIONS FOR PATENTS, TRADEMARKS, REGISTERED DESIGNS, ETC.

Type of IP Rights:	Confidential Click on YES/NO	<u>Foreseen</u> embargo date <u>dd/mm/yyyy</u>	Application reference(s) (e.g. EP123456)	Subject or title of application	Applicant (s) (as on the application)



Guide to Intellectual Property Rules for FP7 projects

Version 3

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SME Corner

- Designed for growth: Design to push innovation
- New case study on project results protection
- New fact sheet on "Confidential business information"
- From ideas to growth: Helping SMEs get value from their intellectual property
- New fact sheet on "How to search for trademarks"
- 'Guide to R&D in China for European SMEs'
- New fact sheet on "IP issues in brokerage events"
- New guide for SMEs on the management of Intellectual Property in FP7



<http://www.iprhelpdesk.eu/>

fact sheets

<p>IP management in Marie Curie Actions</p> 	<p>How to manage confidential business information</p> 	<p>How to reap the benefit of standardisation in R&D</p> 
<p>Foreground in FP7 projects</p> 	<p>How to deal with IP-related issues in transnational negotiations</p> 	<p>How to search for trademarks</p> 
<p>Non-Disclosure Agreement: a business tool</p> 	<p>How to deal with IP related clauses within Consortium Agreements</p> 	<p>How to manage IP in FP7 during the negotiations stage</p> 
<p>IP specificities in research for the benefit of SMEs</p> 	<p>IP issues in brokerage events</p> 	<p>IP rules applicable to Ambient Assisted Living Joint Programme Projects</p> 

The Commission proposal for

HORIZON 2020



on IPR, exploitation and dissemination

DISSEMINATION

- ❖ **General rule:** each participant must disseminate its results as soon as possible, subject to restrictions due to the protection of results, security rules or legitimate commercial interests.
- ❖ **Additional dissemination obligations:** more specific dissemination obligations may be laid down in the grant agreement.
- ❖ **Open access:**
 - mandatory open access to research publications;
 - opening to experiment with open access to other results in appropriate areas.
- ❖ **Prior notice:** before dissemination, a participant must notify the other participants who may object if their legitimate interests would suffer significant harm.
- ❖ **EU support:** any dissemination (also patent applications, standards) must indicate EU support (for visibility and traceability reasons).

ACCESS RIGHTS

<i>Within a project</i>	<i>a participant must grant access to its background</i>	<i>a participant must grant access to its results</i>
<i>if needed by another participant to carry out own work</i>	<i>Royalty-free unless otherwise agreed by participants before accession to the grant agreement</i>	<i>Royalty-free</i>
<i>if needed by another participant to exploit own results [*]</i>	<i>Fair and reasonable conditions (to be agreed by participants and may be royalty-free)</i>	

[*] Unless otherwise agreed in consortium agreement, an affiliate entity established in a MS or AC has access rights if needed to exploit results generated by the participant to which it is affiliated.

PROJECT CYCLE

BEFORE

DURING

AFTER

Start

End

Agreement on the Consortium Agreement including any IPR related aspects

Creation of Results

Proposal

incl. draft plan for exploitation and dissemination of results

Evaluation

e.g. impact criterion

Negotiation

incl. agreed final plan

⇒ **Ownership**

⇒ **Protection**

⇒ **Exploitation**

⇒ **Dissemination**

⇒ **Access Rights**

○ to results for implementation or exploitation

○ to background for implementation or exploitation

○ to results for exploitation

○ to background for exploitation

SPECIFIC CASES AND NEW FORMS OF FUNDING

- ❖ **Tailor-made provisions** may be laid down in grant agreement regarding security-related activities, ERC frontier research, training and mobility actions, CSAs, KICs, etc.

- ❖ **Flexible provisions** for:
 - **pre-commercial procurement:** a contractor will own at least the generated IPR and contracting authorities will enjoy at least royalty-free access rights and the right to grant non-exclusive licences to third parties under fair and reasonable conditions.

 - **procurement of innovative solutions:** specific provisions may be laid down in grant agreement, if needed to ensure maximum uptake of the results and to avoid any unfair advantage.

 - **prizes:** award may be subject to dissemination or exploitation conditions.

Practical exercise – group work

- 1. Think about a possible project idea in your field**
- 2. Please fill in at least two examples of exploitable foreground**
- 3. Present the result to the other groups**