



## **IPR management in CA and GA**

HNN2.0 training - Legal and Financial  
Framework in H2020 proposals

Rome, 28 October 2015

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# IPR management

## IPR = intellectual property rights

- Rights to protect intellectual property

## H2020 project/action lifecycle

- Pre – project phase
  - Project proposal preparation & grant preparation
- Project phase
  - Project implementation
- Post – project phase
  - After the project end

IPR management in H2020 projects/actions

=

dealing with “information, data, know-how and pertaining IPR” :

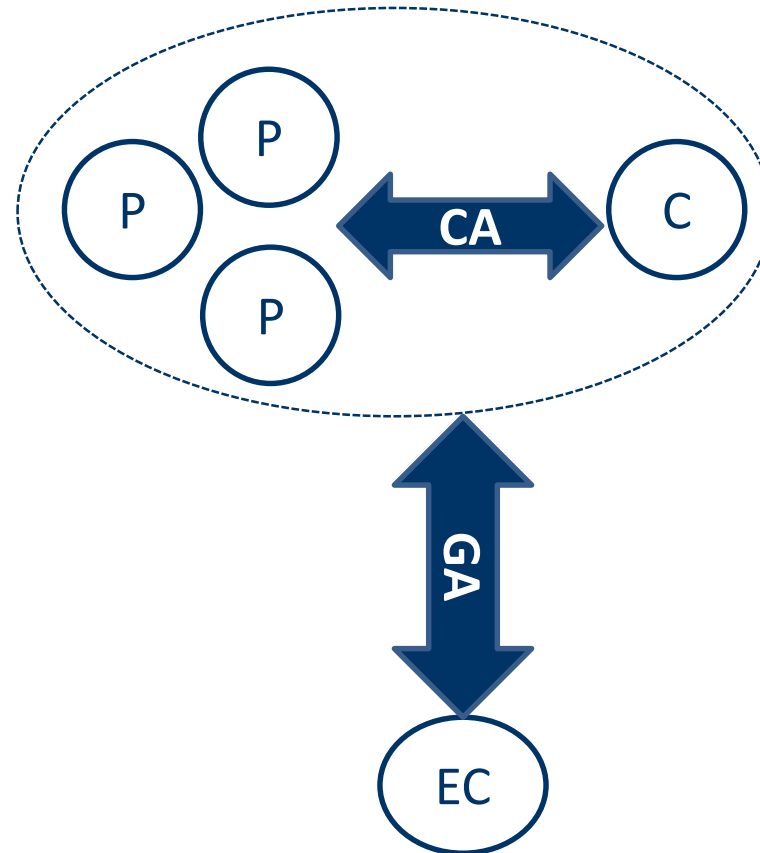
BROUGHT INTO THE PROJECT

CREATED IN THE PROJECT

# IPR management in CA and GA

## CA

- Obligation to enter into, unless...
- Must be in line with GA
- Written



# Background

## BROUGHT INTO THE PROJECT

- any data, know-how or information — whatever its form or nature (tangible or intangible), including any rights such as intellectual property rights — that:
  - is held by the beneficiaries before they acceded to the Agreement, and
  - is needed to implement the action or exploit the results,
  - is identified and agreed upon in writing by beneficiaries.

# Background

## BROUGHT INTO THE PROJECT

- any data, know-how or information — whatever its form or nature (tangible or

CA

- In CA – for everybody,
- Different kind of agreement

- Positive list*
- Negative list*

Exclusion of specific Background:

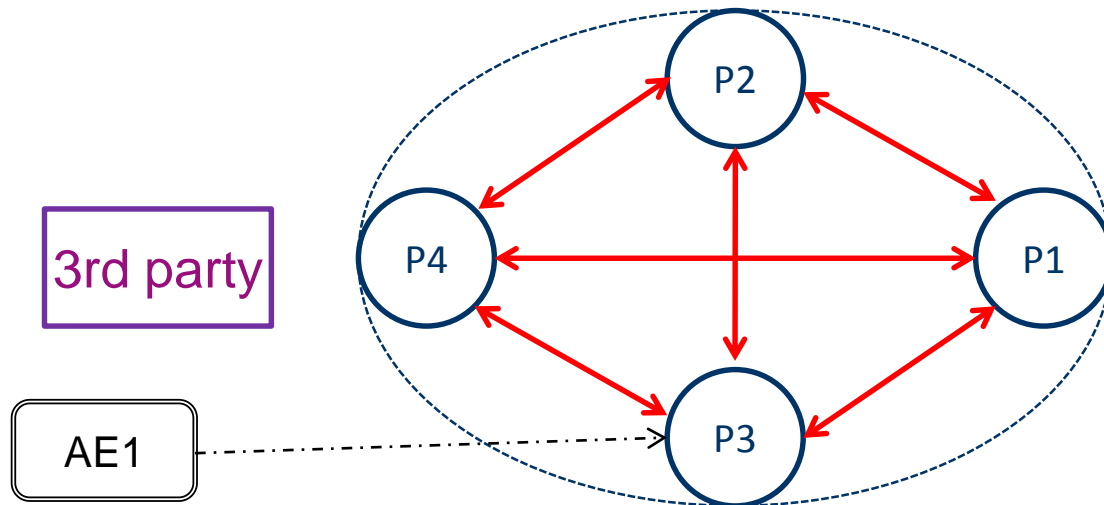
- E.g. temporarily,
- E.g. for particular partners,
- ...

- is identified and agreed upon in writing by beneficiaries.

# Background ACCESS RIGHTS

- rights to use background under the terms and conditions laid down in GA
- **WHO** is allowed to use my background?

CA



- **Written request**
- **No sublicense, but...**
- **Termination of a beneficiary's participation**

CA

CA

CA

# Background

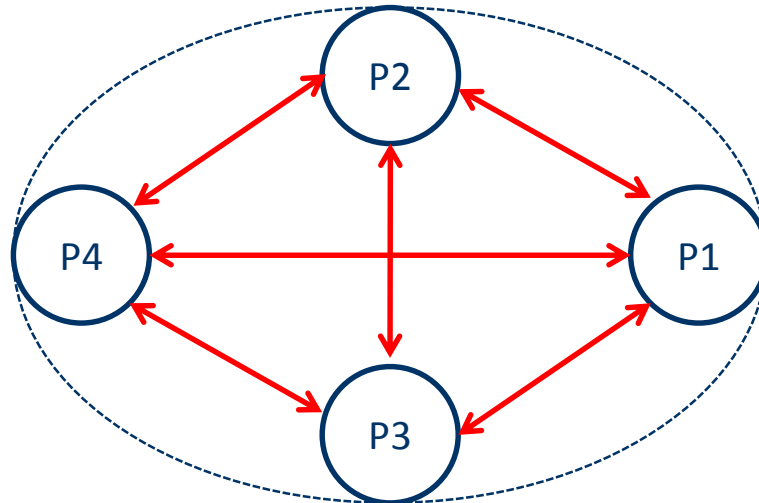
## ACCESS RIGHTS FOR OTHER BENEFICIARIES

### YES

- Project implementation
- Exploitation of own results



**FINANCIAL and TIME  
conditions**



### NO

**Restrictions + informing  
other beneficiaries  
before acceding to GA!**

# Background

## ACCESS RIGHTS FOR OTHER BENEFICIARIES

### FINANCIAL and TIME conditions

BACKGROUND	FINANCIAL – for free or for a fee?	TIME – when to request access?
<i>Project implementation</i>	Royalty-free unless agreed otherwise before acceding to GA <b>CA</b>	Anytime during project implementation
<i>Exploitation of own results</i>	Fair and reasonable (royalty-free possible) <b>CA</b>	Unless agreed otherwise, up to one year after the period set out in Art. 3 GA <b>CA</b>



# Background

## ACCESS RIGHTS FOR AFFILIATED ENTITIES

**YES**

AE needs access to P3 's background in order to use results created by P1 to whom the AE is affiliated

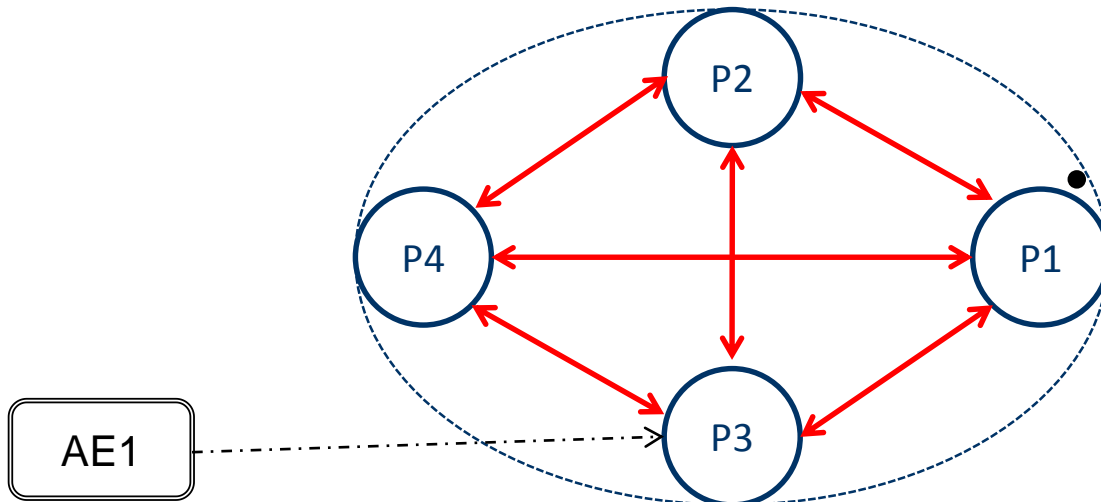
**FINANCIAL and TIME conditions**

**CA**

**NO**

- **CA excludes!**

**Restrictions + informing other beneficiaries before acceding to GA!**



# Background

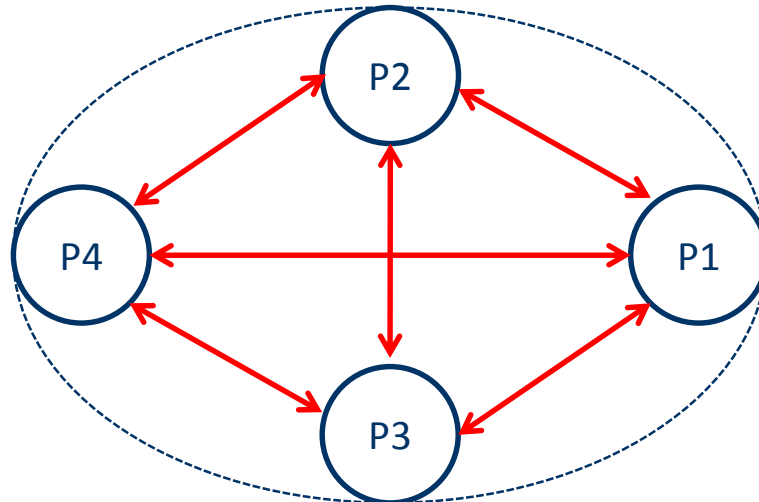
## ACCESS RIGHTS FOR THIRD PARTIES

### YES

- RI user needs access to access provider's background needed to implement the project



**FINANCIAL  
conditions**



3rd party

### NO

**Restrictions + informing  
RI user**

**OPTION**

# Background OWNERSHIP

- Participation in H2020 project does not affect background ownership
  - Contracting on background - access rights must be kept!

## EXERCISE

### AR to background among project partners

As soon as H2020 project is over, me as Background owner,

1. Need to provide access to my Background to other project ex-beneficiaries anytime they prove in a written form they need my Background to use their results;
2. Don't need to provide access to my Background anymore;
3. Need to provide access to my Background to other project ex-beneficiaries if they request access within time-limit as set out in GA or CA and they prove they need my Background to use their results;
4. Need to provide access to my Background to other project ex-beneficiaries if they request access within time-limit as set out in GA and they prove they need my Background to use their results.

# EXERCISE

## AR to background for AE

P1 generates processed data (results). AE affiliated to P1 would like to use these data (results), but in order to do that AE needs P3's data (background). AE is allowed to access P3's (background) data:

1. Provided access rights of AEs is agreed in CA;
2. Provided access rights of AEs is not excluded by CA;
3. Provided access rights of AEs is not restricted by GA.

## Results

- any (tangible or intangible) output of the action such as data, knowledge or information — whatever its form or nature, whether it can be protected or not — that is generated in the action, as well as any rights attached to it, including intellectual property rights.

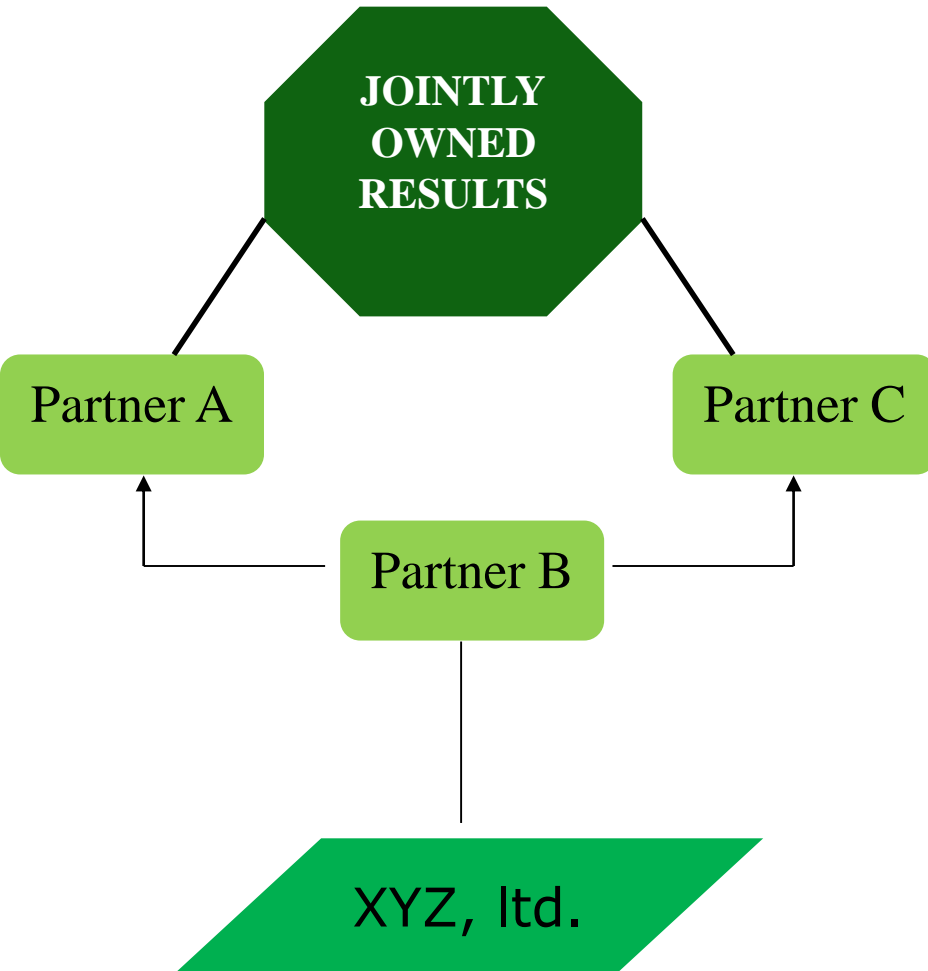
# Results

## OWNERSHIP

- Results are owned by the **beneficiary** that generates them
- Rights of **third parties** - employees, students, subcontractors, etc.
- EU – **assuming ownership** in order to *protect* Results
- **Joint Ownership**

# Results

## JOINT OWNERSHIP



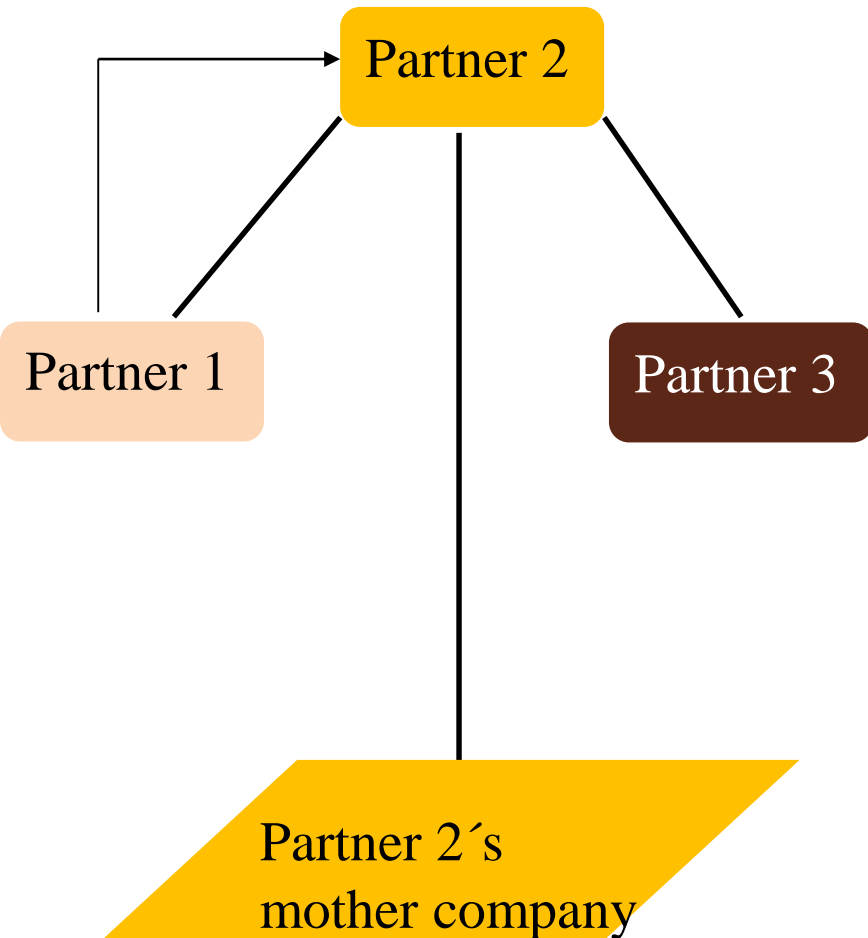
- Definition
- JOA – **unless agreed otherwise**, any joint owner:
  - Non-exclusive license,
  - No sublicense,
  - Notification and fair and reasonable compensation.
- **Agreement on different regime**

CA



# Results

## TRANSFER OF OWNERSHIP



- Ensure that owner's obligations (regarding the results) **apply to the new owner**
- **Notify** your partners 45/CA (less) days in advance **CA**
- **Objections** possible within 30/CA (less) days **CA**

# Results

## TRANSFER OF OWNERSHIP

Partner 2

- **Mergers & Acquisitions**
- **Specifically identified 3<sup>rd</sup> parties (CA)**
  - No notification
  - No objection

CA

Partner 2's  
mother company

# EXERCISE

## transfer of background

P1 (university) designated its spin-off as specifically identified 3<sup>rd</sup> party in CA. P1 wishes to transfer its Background to its (in the CA) identified spin-off.

- Is there is a need to notify other partners on this intention?
- What would be the situation if P1 had not identified its spin-off as specifically identified 3<sup>rd</sup> party in CA?

# Results

## GRANTING NON/EXCLUSIVE LICENSES



### Exclusive licenses

- Only when all other partners waive their access rights to results

### Nonexclusive licenses

- Waiver is not necessary
- Access rights to results must be kept

# Results

## TRANSFER OF OWNERSHIP & GRANTING EXCLUSIVE LICENSES

Partner 2

Notification to EC

### OPTION

TRANSFER/EXCL.LICENSE

**EC can object if**

- Competitiveness
- Ethical principles
  - Security considerations

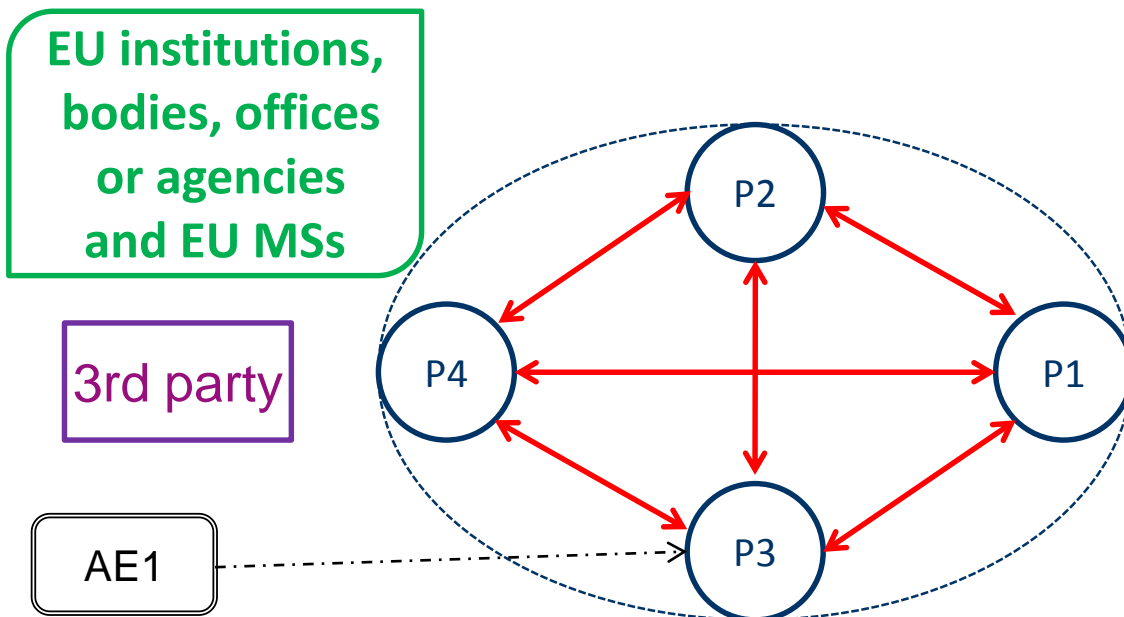
NEW owner/exclusive licensee:

- Non-EU country
- Country not associated to H2020

# Results ACCESS RIGHTS

- rights to use results under the terms and conditions laid down in GA
- **WHO** is allowed to use my results?

CA



- **Written request**
- **No sublicense, but...**
- **Termination of a beneficiary's participation**

CA

CA

CA

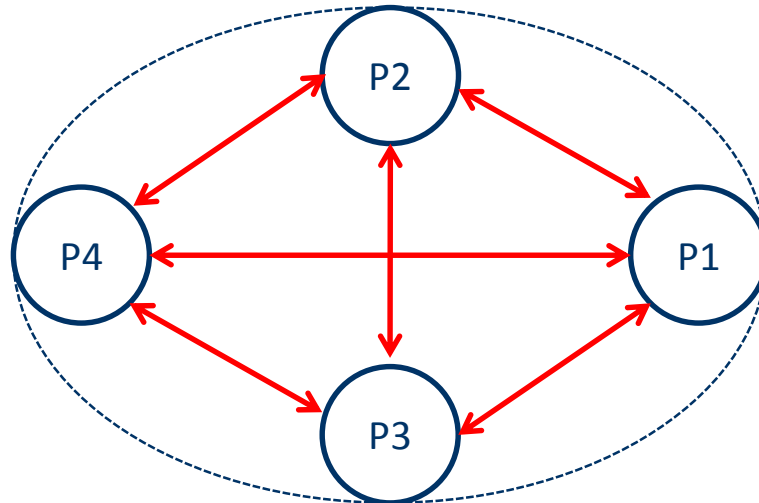
# Results

## ACCESS RIGHTS FOR OTHER BENEFICIARIES

### YES

- Project implementation
- Exploitation of own results

**FINANCIAL and TIME  
conditions**



# Results

## ACCESS RIGHTS FOR OTHER BENEFICIARIES

### FINANCIAL and TIME conditions

RESULTS	FINANCIAL – for free or for a fee?	TIME – when to request access?
<i>Project implementation</i>	Royalty-free unless agreed otherwise before acceding to GA <b>X Background</b>	Anytime during project implementation
<i>Exploitation of own results</i>	Fair and reasonable (royalty-free possible) <b>CA</b>	Unless agreed otherwise, up to one year after the period set out in Art. 3 GA <b>CA</b>



# Results

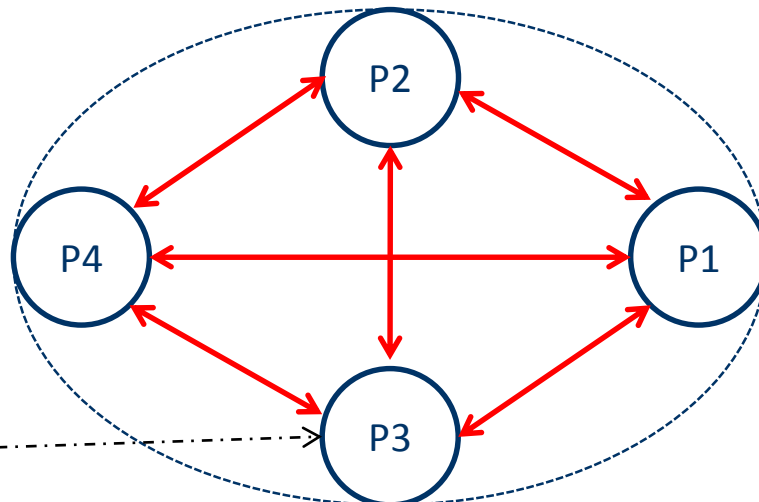
## ACCESS RIGHTS FOR AFFILIATED ENTITIES

**YES**

- AE needs access to P3's results in order to use results created by P1 to whom the AE is affiliated

**FINANCIAL and TIME conditions**

**CA**



**NO**

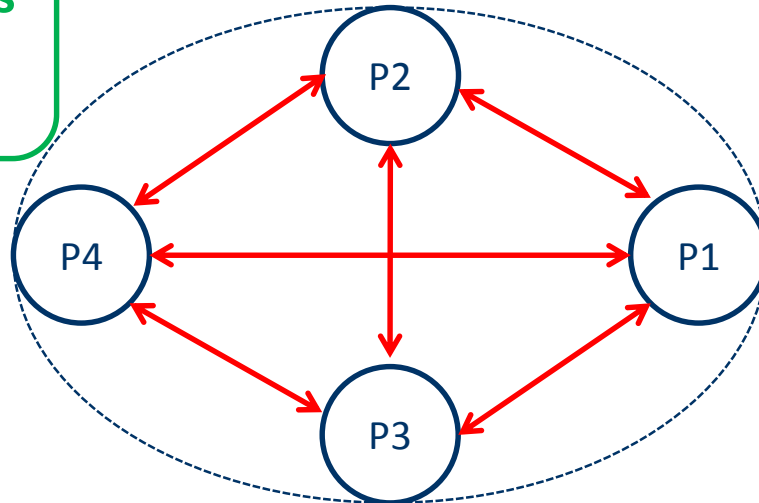
- CA excludes!

**CA**

# Results

## ACCESS RIGHTS FOR EU INSTITUTIONS, BODIES, OFFICES OR AGENCIES AND EU MSs

EU institutions,  
bodies, offices  
or agencies  
and EU MSs



- Only for developing, implementing or monitoring EU policies or programmes
- Limited to non-commercial and non-competitive use
- Royalty-free

## EXERCISE

# joint ownership, transfer of ownership, AR to results /1/

Within H2020 ICT related project following results have been generated so far:

- one result (software, SW) jointly created and owned by three partners (A,B,C);
- one result owned only by Partner B (diagrams);
- one result owned only by Partner C (data).

Partner B designated its mother company as specifically identified 3<sup>rd</sup> party in project CA, the rest of the partners signed the CA and thus agreed to this specifically identified 3<sup>rd</sup> party. CA has the same provisions on joint ownership as GA does and no JOA has been concluded yet.

## EXERCISE

# joint ownership, transfer of ownership, AR to results /2/

1. Is B allowed to license SW to its mother company on exclusive basis?
  - If yes – under what conditions?
  - If no, what should be done to allow B to license SW exclusively to its mother company?
2. Is C allowed to transfer its data to e.g. its spin-off?
  - If no – why?
  - If yes – under what conditions?
3. B would like to transfer its diagrams to its mother company based in China. Does B need to notify somebody on this?
4. B claims it needs C's data in order to perform its work on the project (project implementation). C agrees and asks B to pay a royalty fee for using the data claiming the data is valuable. Is it possible? If no, what can C do to make B pay for using the data?

# Results PROTECTION

- *Examine* the possibility to protect results and *adequately* protect them:
  - Commercially/industrially exploitable (reasonably be expected)

AND

- Protection is possible, reasonable and justified.
- Legitimate interests – its and other beneficiaries, but...

*“The project leading to this application has received funding from the [European Union’s Horizon 2020 research and innovation programme][Euratom research and training programme 2014-2018] under grant agreement No [number]”.*

# Results EXPLOITATION

- Obligation to take measures to exploit results:
  - Directly
  - Indirectly – transfer, licensing
- Further research, development of products and services, ...
- Up to 4 years after ...
- Further exploitation obligations – possible, in WP

# Results

## DISSEMINATION

- Obligation to disseminate *immediately* using *appropriate means* unless it goes against other beneficiaries' legitimate interests

CA • Notification (45/CA)

CA • Objection (30/CA) provided their legitimate interests (R,B) could be endangered

- Open Access to scientific information
- Further exploitation obligations – possible, in WP

# IP MANAGEMENT

## **ARTICLE 23a — MANAGEMENT OF INTELLECTUAL PROPERTY**

### **23a.1 Obligation to take measures to implement the Commission Recommendation on the management of intellectual property in knowledge transfer activities**

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[http://ec.europa.eu/invest-in-research/pdf/ip\\_recommendation\\_en.pdf](http://ec.europa.eu/invest-in-research/pdf/ip_recommendation_en.pdf)

Beneficiaries that are universities or other public research organisations must take measures to implement the principles set out in Points 1 and 2 of the Code of Practice annexed to the Commission Recommendation on the management of intellectual property in knowledge transfer activities<sup>37</sup>.

This does not change the obligations set out in Subsections 2 and 3 of this Section.

The beneficiaries must ensure that researchers and third parties involved in the action are aware of them.

### **23a.2 Consequences of non-compliance**

If a beneficiary breaches its obligations under this Article, the *[Commission][Agency]* may apply any of the measures described in Chapter 6.



This project has received funding from the European Union's Horizon 2020 research and innovation programme