



## Experiences with consortium agreements in H2020 IPR

### The consortium agreement in Horizon 2020

Grenanderhaus, DLR Project Management Agency

25 January 2017

Jana Kratenova, L&F NCP, [kratenova@tc.cz](mailto:kratenova@tc.cz)

TC CAS (NCP Academy partner)

My experiences with IPR in consortium agreements  
are based on following:



- **Art. 41.3 MGA**

---

- **41.3 Internal arrangements between beneficiaries — Consortium agreement**

*The consortium agreement must not contain any provision contrary to the Agreement.*

- **Modifications to IP rules - Art. 23 – 31 MGA** (esp. „unless agreed otherwise“)

- e.g. **ARTICLE 25 — ACCESS RIGHTS TO BACKGROUND**


Unless agreed otherwise, access rights do not include the right to sub-license.

- Selected IPR articles of **MGA**
  - 24, 25 – Background including Access Rights (time + financial conditions)
  - 29 – Dissemination of Results;
  - 31 – Access rights to Results (time conditions)
    - *Modifications in consortium agreements (CA)*
- Few references to IPR parts of **DESCA CA**

## Agreement on Background


- **24.1 MGA** - The beneficiaries must identify and agree (in writing) on the background for the action ('agreement on background').
- AGA – The agreement may take any form (e.g. positive list, negative list) . It may be a separate agreement or may be part of the consortium agreement (see Article 41)
  - *List of Background part of CA- mainly titled Background included (positive list), but in fact combination of negative and positive list*

### Background included, but in fact positive + negative list



Background	Specific limitations and/or conditions for implementation (Article 25.2 Grant Agreement)	Specific limitations and/or conditions for Exploitation (Article 25.3 Grant Agreement)
<p>Background data will include:</p> <ul style="list-style-type: none"> <li>- description of surveillance systems,</li> <li>- former laboratory or data analyses,</li> </ul> <p>that are already published or already available to public through documents or web sites.</p> <p>Access to other Background and/or Material may, however, be subject to specific agreement among parties</p>	<p>hereby excludes:</p> <ol style="list-style-type: none"> <li>1. Background and/or Material deriving from personnel and/or departments of not directly involved in the Project;</li> <li>2. Background and/or Material derived from other projects that, due to third party rights, is not able to grant access rights to;</li> <li>3. Background and/or material that has been created or obtained by personnel of directly involved in the Project but which is unrelated to the work plan, aims and objectives of the Project.</li> <li>4. All Background and/or material not explicitly listed here;</li> <li>5. Nevertheless, access may be possible through specific agreements signed by the concerned Parties.</li> </ol>	<div style="border: 1px solid black; border-radius: 15px; padding: 10px; width: fit-content; margin: 0 auto;"> <p>based on DESCA template</p> </div>
<p><b>This represents the status at the time of signature of this Consortium Agreement.</b></p>		

### Access rights to Background for other beneficiaries



- „Sharing Background“
- **25.2, 25.3 MGA**
- Action implementation
- Results exploitation

} purposes

- Financial conditions
- Time conditions

1/23/2017
6

## Access rights to **Background** for other beneficiaries for action implementation purposes



- „sharing Background“
  - Action implementation
  - Results exploitation
- MGA
  - Royalty-free or for a fee, if agreed before acceding to GA
- **Financial conditions**
- Time conditions
  - CA – often royalty-free option kept
    - a case – a fee requested, but during action implementation

1/23/2017

7

## Access rights to **Background** for other beneficiaries



- „sharing Background“
  - **25.2, 25.3 MGA**
  - Action implementation
  - Results exploitation
- } purposes
- Financial conditions
  - Time conditions

1/23/2017

8

## Access rights to **Background** for other beneficiaries for results exploitation purposes



- „sharing Background“
  - Action implementation
  - Results exploitation
  - Financial conditions
  - **Time conditions**
- MGA purposes
    - Requests for access may be made — unless agreed otherwise — up to one year ...
  - CA - *Almost always one year time period for making request kept*
    - *a case – one week after the project end*

1/23/2017

9

## Access rights to **Results** for other beneficiaries



- „sharing Results“
  - **31.2, 31.3 MGA**
  - Action implementation
  - Results exploitation
  - Financial conditions
  - Time conditions
- } purposes

1/23/2017

10

## Access rights to **Results** for other beneficiaries for Results exploitation purposes



- „sharing Results“
- 31.2, 31.3 MGA
- Action implementation ...
- Results exploitation purposes
- Financial conditions
- **Time conditions**
  - MGA
    - Requests for access may be made — unless agreed otherwise — up to one year
  - CA - *Almost always one year time period for making request kept*
    - *a case – access rights requested within one year time period*
    - A project partner published results – offer to enter into exclusive lic.agr. – other partners informed, no objections – lic.agr. entered into ½ year after the project was over – just before one year time period was over another project partner requested access rights to the exclusively licenced result*

1/23/2017

11

## Access rights for Affiliated Entities



- **25.4 MGA** (to Background), **31.4 MGA** (to Results)
  - Unless agreed otherwise in the consortium agreement, access to background/results must also be given ... to affiliated entities ...
- CA - *sometimes no access rights for affiliated entities*

1/23/2017

12

## Dissemination of Results



- **29.1 MGA** – intention to disseminate results
  - Advance notice – 45 days, unless agreed otherwise
  - Possibility to object – 30 days, unless agreed otherwise
- CA
  - *MGA regime or shorter time periods*
    - *30 days – advance notice*
    - *15 days – objections*
  - *Different time periods for different purposes*
    - *Longer for e.g. publications to be published in scientific journals*
    - *Shorter for e.g. abstracts for conferences*

1/23/2017

13

## Dissemination of Results



- **29.1 MGA** – ... may object ... legitimate interests ... significantly harmed .... in case of objections, the dissemination may not take place unless appropriate steps are taken to safeguard these legitimate interests.
- CA – *often further arrangements allowing/not allowing publications of results without undue delay*
  - *The objecting Party can request a publication delay of not more than 90 calendar days from the time it raises such an objection. After 90 calendar days the publication is permitted.*
  - *8.4.2.3 DESCA – sometimes completely deleted*

DESCA

1/23/2017

14

## SUMMARY



- IPR parts are still not among top priorities in consortium agreements (in CZ)
- „Everybody uses DESCA“ 😊 – modifications to DESCA template often raise doubts
- Final wording of consortium agreements’ IPR sections depends on the nature of consortium partners (industry vs academia)

1/23/2017

15



THANK YOU FOR YOUR ATTENTION!

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

1/23/2017

16