



BACKGROUND

in Horizon 2020 projects

IPR in Horizon 2020 training

Prague, 27th April 2017

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NCP for Legal&Financial issues (CZ), TC AS CR

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- Definition of Background
- Who can use my Background?
 - Access Rights
- Background & ownership issues
- *Quick exercise*

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- **Definition of Background**
- Who can use my Background?
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Background (Art. 24.1 MGA)

- 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

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

- In CA
- Different kind of agreement

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)

- is needed to implement results,
- is identified and agreed upon in writing by beneficiaries.

Example – Background identification in CA DESCA

Background	
<p>The Parties agree to consider that the Background included is constituted by all public domain documents and published literature. As such, there are no specific limitations and/or conditions for use, implementation and exploitation.</p> <p>Background data will include:</p> <ul style="list-style-type: none">- description of surveillance systems,- former laboratory or data analyses, <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>	

This represents the status at the time of signature of this Consortium Agreement.

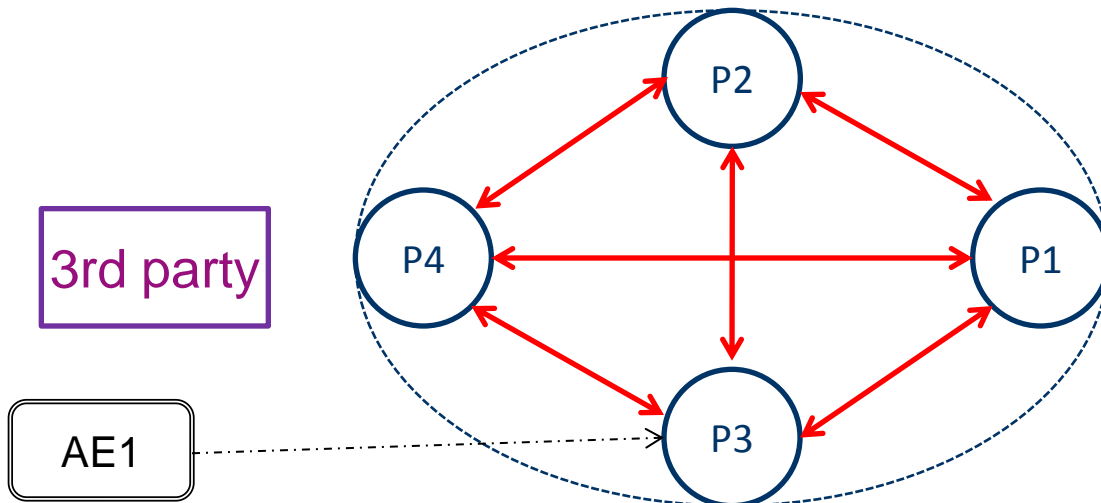
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Background ACCESS RIGHTS

- 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

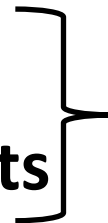
Background

ACCESS RIGHTS FOR OTHER BENEFICIARIES

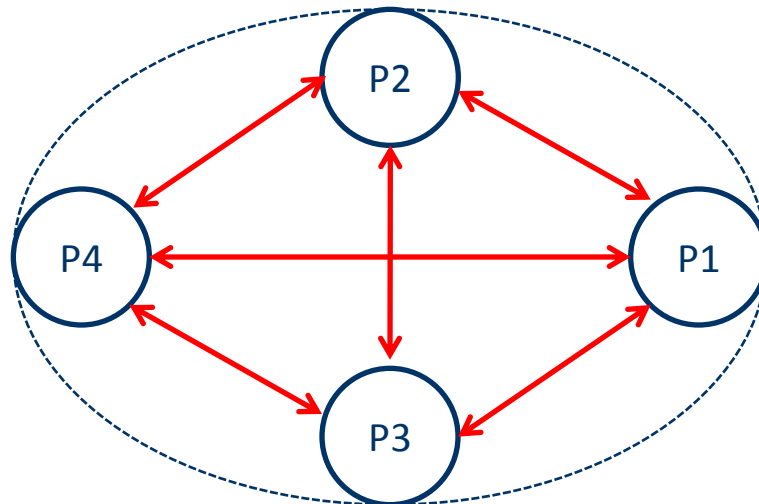
(Art. 25.2, 25.3 MGA)

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

(Art. 25.2, 25.3 MGA)

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 CA	Anytime during project implementation
<i>Exploitation of own results</i>	Fair and reasonable (royalty-free possible) CA	Unless agreed otherwise, up to one year after the period set out in Art. 3 GA CA

Example – Background identification in CA (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>The Parties agree to consider that the Background included is constituted by all public domain documents and published literature. As such, there are no specific limitations and/or conditions for use, implementation and exploitation.</p> <p>Background data will include:</p> <ul style="list-style-type: none"> - description of surveillance systems, - former laboratory or data analyses, <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>[REDACTED] hereby excludes:</p> <ol style="list-style-type: none"> 1. Background and/or Material deriving from personnel and/or departments of [REDACTED] not directly involved in the Project; 2. Background and/or Material derived from other projects that, due to third party rights, [REDACTED] is not able to grant access rights to; 3. Background and/or material that has been created or obtained by personnel of [REDACTED] directly involved in the Project but which is unrelated to the work plan, aims and objectives of the Project. 4. All Background and/or material not explicitly listed here; 5. Nevertheless, access may be possible through specific agreements signed by the concerned Parties. 	

This represents the status at the time of signature of this Consortium Agreement.

Background

ACCESS RIGHTS FOR AFFILIATED ENTITIES

(Art. 25.4 MGA)

YES

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

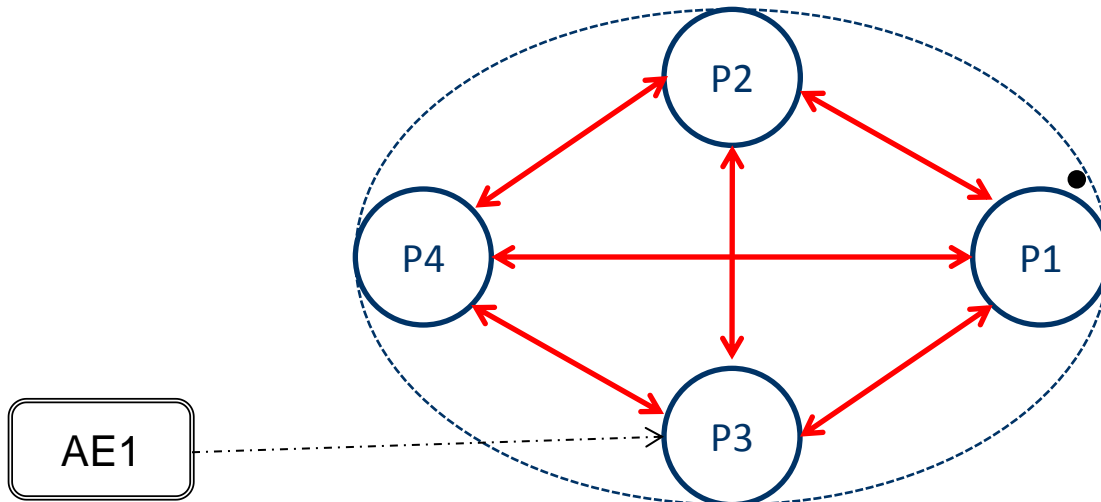
FINANCIAL and TIME conditions

CA

NO

- **CA excludes!**

Restrictions + informing other beneficiaries before acceding to GA!

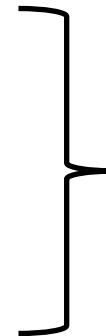


Background

ACCESS RIGHTS FOR THIRD PARTIES (Art. 25.5 MGA)

YES

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



**FINANCIAL
conditions**

NO

**Restrictions + informing
RI user**

OPTION

3rd party

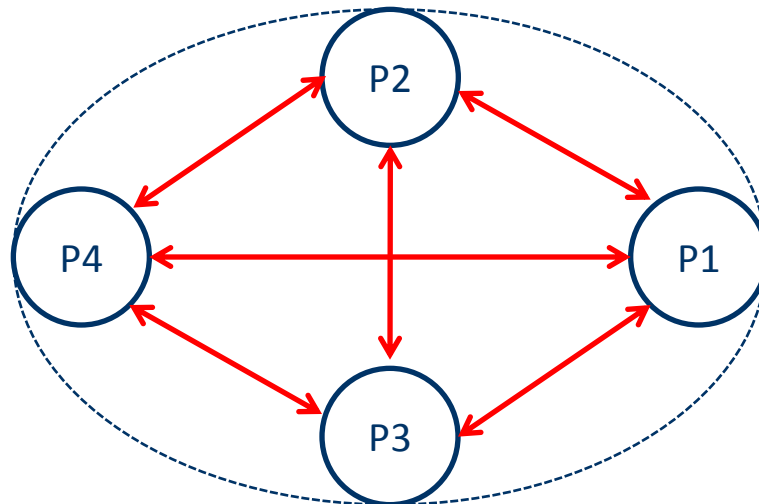


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Background OWNERSHIP

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

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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 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.

THANK YOU FOR YOUR ATTENTION

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