

NCP Academy IPR Training in Prague – Background and Results in Specific Types of Actions

ERC grant

In ERC projects there are two subjects – **host institution and principal investigator**. Relationship between principal investigator and host institution is regulated through Supplementary Agreement.

An ERC grant is connected with principal investigator who can move himself with a grant to another institution. Therefore a plan for transfer of results should be prepared.

Because of subjects there are special provisions regarding access rights. Host institution must grant access rights to principal investigator on **royalty-free** principle to background and results during the duration of an action for the purpose of its implementation. Principal investigator has no claim on access rights after the end of the project.

Principal investigator		Implementation
	Background	Royalty-free
	Results	
Time conditions – during the duration of an action		

Marie Skłodowska Curie Action

There could be some special provisions regarding ownership of results in a partnership agreement between beneficiary and partner organization(s). The standard provision of MGA is valid – results are owned by beneficiary who generates them. That means that results generated by a researcher would be an ownership of his institution. Some partner institutions may have a problem with this provision so the ownership should be specified in partnership agreement.

In most states the legislation stipulates that owner of the result is an employer of a researcher. But in some states law can be different. Beneficiary must ensure his obligations from GA. For this purpose there must be special provisions in an employment contract with a researcher that stipulates beneficiary's ownership of results.

Access rights are also an issue in multi-beneficiary MSCA projects. Beneficiaries must provide each other access rights like in a standard RIA/IA project. Moreover partners must ensure access rights for researchers seconded to their institution.

Basic provisions of GA are these:

Among partners		Implementation	Exploitation
	Background	Royalty-free, if not agreed otherwise before accession to GA	Fair and reasonable conditions
	Results	Royalty-free	Fair and reasonable conditions
Time conditions – during the duration of an action and 1 year after the end of an action if not agreed otherwise			

Researcher/seconded staff members		Research, innovation and training activities
	Background	Royalty-free
	Results	
Time conditions – during the duration of an action		

ICA – Partners may modify basic provisions of GA in their consortium agreement but not contrary to their GA (“unless agreed otherwise”).

PCP/PPI

Aim of PCP and PPI projects is to develop or bring to the market a specific new solution according to specifications of beneficiaries in a role of public procurers.

Beneficiaries are obliged to provide each other access right according to standard provisions.

Basic rule is the same – results belong to those who generate them. In the case of these projects results were created by subcontractors. That means that beneficiaries do not have ownership rights to results.

But there are some limitations of subcontractors’ rights in **PCP**:

1. Procurers may ask for **royalty-free access rights** to results of an action for their own use.
2. Procurers may **grant licenses** (without any right to sublicense) for exploitation of results to third parties under fair and reasonable conditions.
3. Subcontractors must transfer an ownership of results to beneficiaries if they don’t ensure **commercial exploitation** of their results within a given period after the PCP.
4. Procurers must inform tenderers of the procurers' right to **publish**.

SME Instrument

Distinguish between **Phase 1 and Phase 2**. In Phase 1 - no provisions regarding background and results are applicable in GA. Phase 2 has the same basic provisions like RIA/IA actions.

In SME instrument Phase 2 **subcontracting is not restricted** to a limited part of the action. Beware that subcontractors must provide for the right of the beneficiaries to **commercially exploit the results** generated by subcontractors during the subcontract implementation.

Distinguish between **mono-beneficiary and multi-beneficiary** actions. In mono-beneficiaries there are no access rights to other beneficiaries of affiliated entities.