




## IPR in Horizon 2020

The consortium agreement in Horizon 2020”  
Follow –up with practical exercises  
27th – 28th June 2017, Berlin  
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### IPR in H2020



- Rules for dealing with results and background of H2020 projects
- Flexibility – „... unless agreed otherwise“  

BACKGROUND	RESULTS
Definition	Definition
Ownership	Joint/Ownership
Access Rights	Access Rights
	Protection
	Exploitation
	Dissemination

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Art. 9.1  
CA DESCA

### Background



- 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.

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**Background**

**NCP**  
ACADEMY Leading National  
Consortia Partners

**CA**

- any data, know-how or information — whatever its form or nature (tangible or intangible) — including any intellectual property rights, which are created, developed, owned, used or disclosed to the Agreement, and which are needed to implement the results,
- is identified and agreed upon in writing by beneficiaries.

**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)

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**CA DESCA**  
**Attachement 1**

**NCP**  
ACADEMY Leading National  
Consortia Partners

**[Attachment 1: Background included]**

According to the Grant Agreement (Article 24) Background is defined as "data, know-how or information (...) that is needed to implement the action or exploit the results". Because of this need, Access Rights have to be granted in principle, but parties must identify and agree amongst them on the Background for the project. This is the purpose of this attachment.

**PARTY 1**

As to [NAME OF THE PARTY], it is agreed between the parties that, to the best of their knowledge (please choose),

Option 1: The following background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

Describe 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)

Option 2: No data, know-how or information of [NAME OF THE PARTY] shall be needed by another Party for implementation of the Project (Article 25.2 Grant Agreement) or exploitation of that other Party's Results (Article 25.3 Grant Agreement).

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

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Art. 9.3  
Art. 9.4  
CA DESCA  
Art. 25 MGA

**Background**

**ACCESS RIGHTS**

**NCP**  
ACADEMY Leading National  
Consortia Partners

**CA**

- rights to use background under the terms and conditions laid down in GA
- WHO is allowed to use my background?**
  - Project partners (other beneficiaries in project consortium)
  - Affiliated entities
  - Third parties – e.g. Research Infrastructures' users

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**Background**  
**ACCESS RIGHTS FOR OTHER BENEFICIARIES**  
 (Art. 25.2, 25.3 MGA)



**YES**

- Project implementation
- Exploitation of own results

**NO**  
**Restrictions + informing other beneficiaries before acceding to GA!**

- See CA DESCA Att.1

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**CA DESCA**  
**Attachement 1**



**[Attachment 1: Background included]**

According to the Grant Agreement (Article 24) Background is defined as "data, know-how or information (...) that is needed to implement the action or exploit the results". Because of this need, Access Rights have to be granted in principle, but parties must identify and agree amongst them on the Background for the project. This is the purpose of this attachment.

**PARTY 1**

As to [NAME OF THE PARTY], it is agreed between the parties that, to the best of their knowledge (please choose),

Option 1: The following background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

Describe 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)

Option 2: No data, know-how or information of [NAME OF THE PARTY] shall be needed by another Party for implementation of the Project (Article 25.2 Grant Agreement) or exploitation of that other Party's Results (Article 25.3 Grant Agreement).

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

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**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!**

- See CA DESCA Att.1

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**Background**  
**ACCESS RIGHTS FOR OTHER BENEFICIARIES**  
 (Art. 25.2, 25.3 MGA)

**NCP ACADEMY**  
Leading National Contract Parties

**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>

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**Art. 26.1 MGA**

**Results**

**NCP ACADEMY**  
Leading National Contract Parties

- ‘Results ’ means 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.
- *Sideground* **CA**

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**Joint/Ownership of Results**

**NCP ACADEMY**  
Leading National Contract Parties

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    graph TD
      A[Partner A] --> J[Jointly owned Results]
      B[Partner B] --> J
      C[Partner C] --> J
      B --- XYZ[XYZ, Ltd.]
    
```

- Results are owned by the beneficiary that generates them;
- *Definition of Joint Ownership*
- *Unless agreed otherwise*
  - *Non-exclusive licence to third parties*
  - *No sublicence*
  - *Notification and fair and reasonable compensation to other joint owners*

**Art. 26.2 MGA**

**Art. 8.1, 8.2 CA DESCA**

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Art. 8.3 CA  
DESCA

Art. 30.1 MGA

### Transfer of Results

Partner 1

Partner 2

Partner 3

mother company of Partner 2

- Sole ownership of Results
- **Notify** other Partners about intended transfer 45days/CA in advance
- May **raise objections** within 30days/CA

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Art. 8.3 CA  
DESCA

Art. 30.1 MGA

### Transfer of Results

Partner 2

mother company of Partner 2

- Mergers and acquisitions ...
- Specifically identified 3rd parties
  - No notifications
  - No objections

See Attachement 3 of CA DESCA

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Art. 9.3  
Art. 9.4  
CA DESCA

Art. 31 MGA

### Results ACCESS RIGHTS

- rights to use results under the terms and conditions laid down in GA **CA**
- **WHO** is allowed to use my results?
  - Project partners (other beneficiaries in project consortium)
  - Affiliated entities
  - Third parties – e.g. Research Infrastructures' users
  - EU institutions, bodies, offices, member states

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**Results**  
**ACCESS RIGHTS FOR OTHER BENEFICIARIES**

**CA DESCA**

**NCP**  
ACADEMY Leading National Contact Points

**FINANCIAL and TIME conditions**

RESULTS	FINANCIAL – for free or for a fee?	TIME – when to request access?
<i>Project implementation</i>	Royalty-free <b>(vs Background)</b>	Anytime during project implementation
<i>Exploitation of own results</i>	<b>Option 1 – fair and reasonable; internal research for free</b> <b>Option 2 – for free</b>	<b>Up to twelve months</b>

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**Protection of Results**

**NCP**  
ACADEMY Leading National Contact Points

**Art. 27 MGA**

- *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...

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**Exploitation of Results**

**NCP**  
ACADEMY Leading National Contact Points

**Art. 28 MGA**

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

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**NCP**  
ACADEMY Training National Contact Points

### Dissemination of Results

- Obligation to disseminate results immediately using appropriate means unless it goes against other beneficiaries' legitimate interests
  - **Notification** (45/CA)
  - **Objections** (30/CA) provided their legitimate interests (R,B) could be endangered
- Further exploitation obligations – possible, in WP

Art. 29 MGA

Art. 8.4 CA  
DESCA

*Objections – how to deal with repeated/contionous objections of partner/s (8.4.2.3)*

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**NCP**  
ACADEMY Training National Contact Points

**THANK YOU FOR YOUR ATTENTION!**

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