



European IP Helpdesk

Stay ahead of the innovation game.

Consortium Agreements
(focus on H2020 and Horizon Europe)

01.02.2022





European IP Helpdesk

- Service initiative of the European Commission
- Addressing **current and potential beneficiaries of EU-funded projects, researchers and EU SMEs**
- Free-of-charge first-line support on intellectual property (IP)
- Hands-on IP and innovation management support
- International pool of IP experts from various thematic fields
- Unique cooperation scheme with the Enterprise Europe Network: 48 ambassadors from 27 EU countries



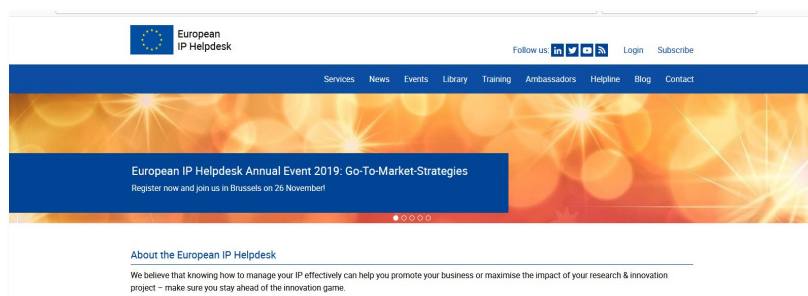


The EC IP Helpdesks

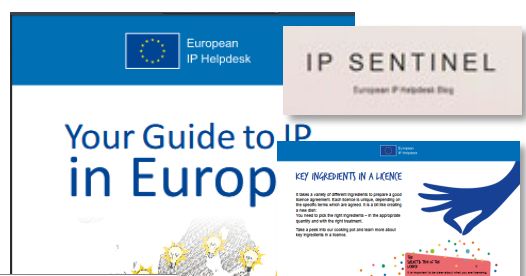




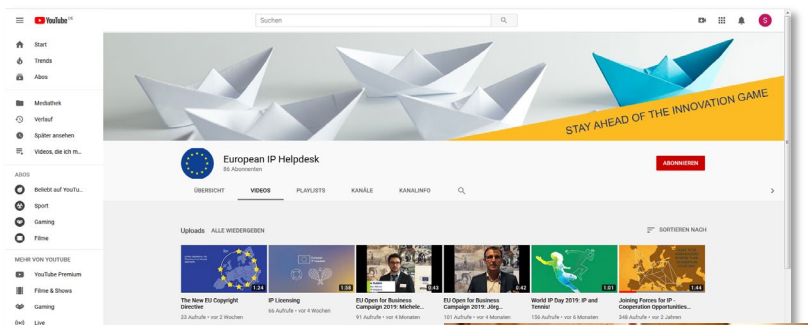
Communication Formats & Outreach Tools



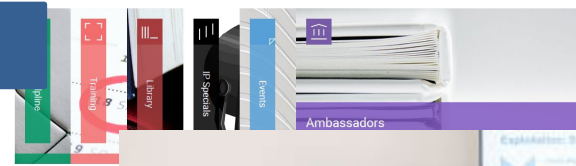
Website



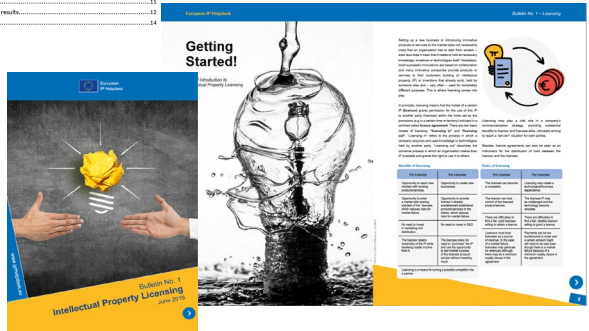
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Training



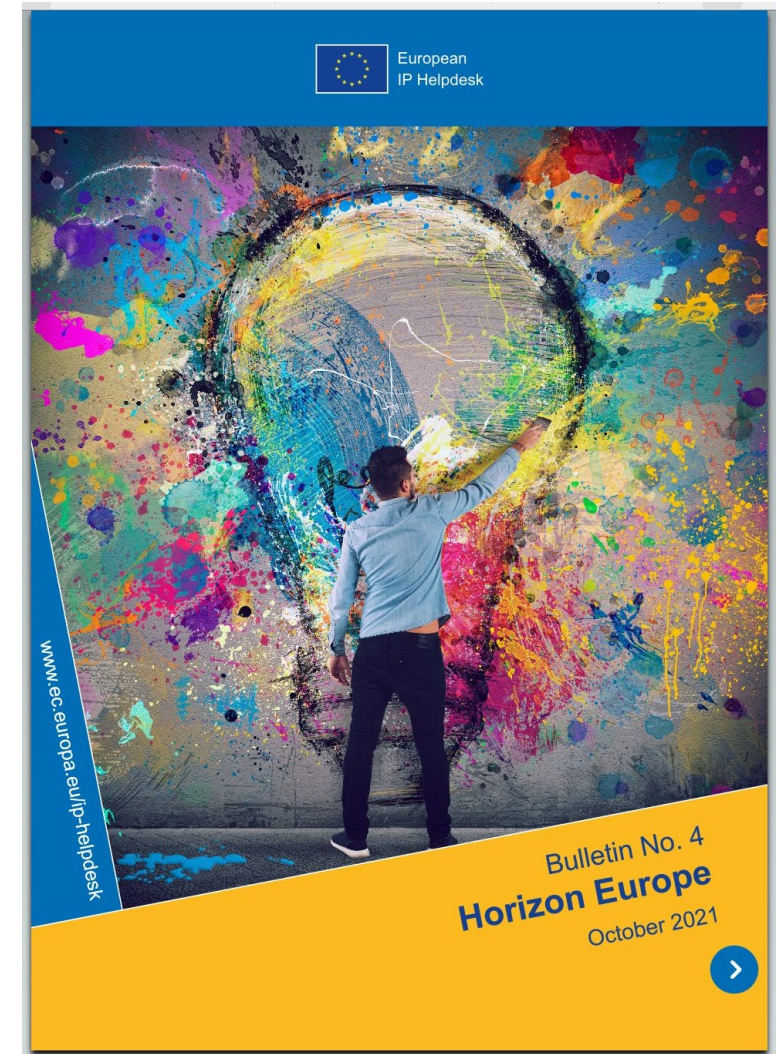
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New Bulletin! Horizon Europe

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Ambassador Scheme

- **Cooperation scheme** with the Enterprise Europe Network (EEN): 48 ambassadors – 28 countries
- **Building IP capacities** among European SMEs
- **Overcoming language barriers**
- Making the topic **more accessible**
- Exchange and feedback from ambassadors on **needs of SMEs**
- **Local awareness and training events**





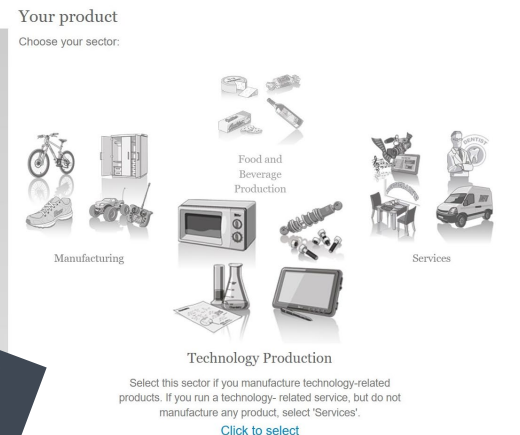
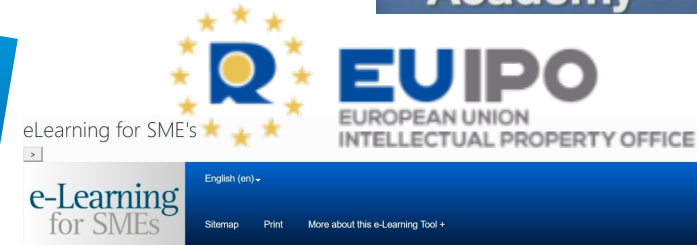
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Further learning opportunities:

1. [European IP Helpdesk Ambassadors and EEN](#)
2. [EUIPO learning portal](#)
3. [EUIPO – Ideas Powered for business website](#)
4. [WIPO Academy / Diagnostics](#)
5. [The Ideas Powered for business SME Fund](#)
6. [IPA4SME](#)
7. [Horizon IP Scan](#)
8. [\(IP Booster\)](#)
9. [Horizon Results Booster](#)
10. [Leadership4SMEs](#)
11. [EPO Academy](#)
12. [4IPCouncil](#)





Roadmap

- **Introduction – Rules and Agreements in H2020 / HE**
- **Consortium Agreements: FAQ and general contents**
- **How can your CA complement the IP provisions of the GA?**
- **Closing remarks**



A photograph of several blue paper boats on a reflective blue surface. The boats are arranged in a line, with some in the foreground and others in the background, creating a sense of depth. The lighting is soft, casting gentle shadows on the surface.

Introduction - Rules & Agreements



Intellectual Property rules

The IP rules in H2020 / HE can be found in:

- (i) the **Rules for Participation (legal basis)**
- (ii) the (model) **Grant Agreement**
- (iii) the applicable **work programme**
- (iv) the **Online Manual**

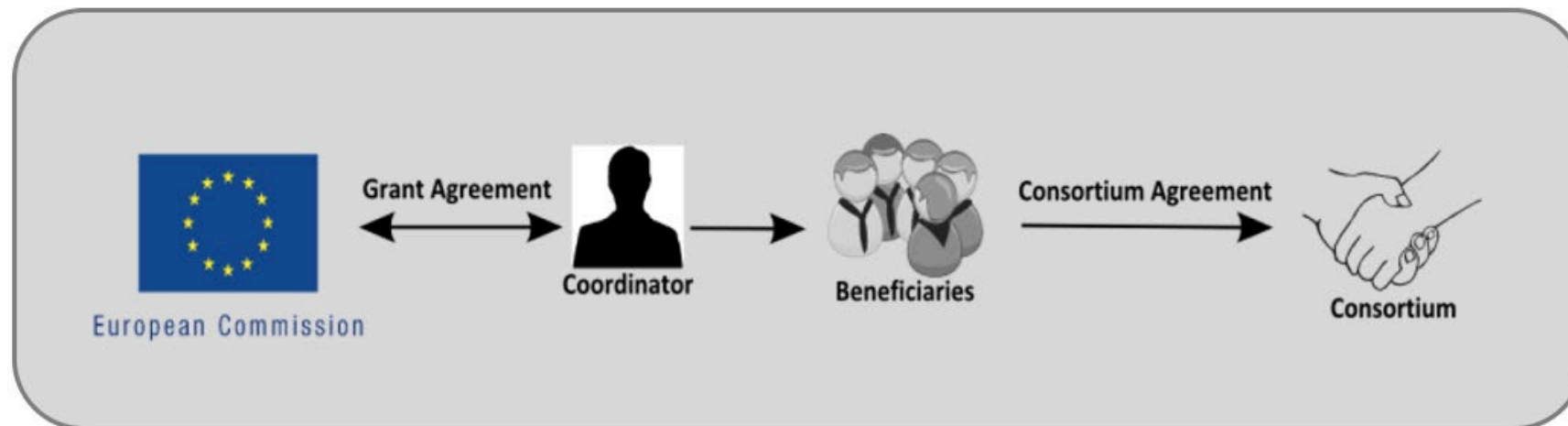
How to find them: **EC Funding & Tenders Portal**

<https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/how-to-participate/reference-documents>



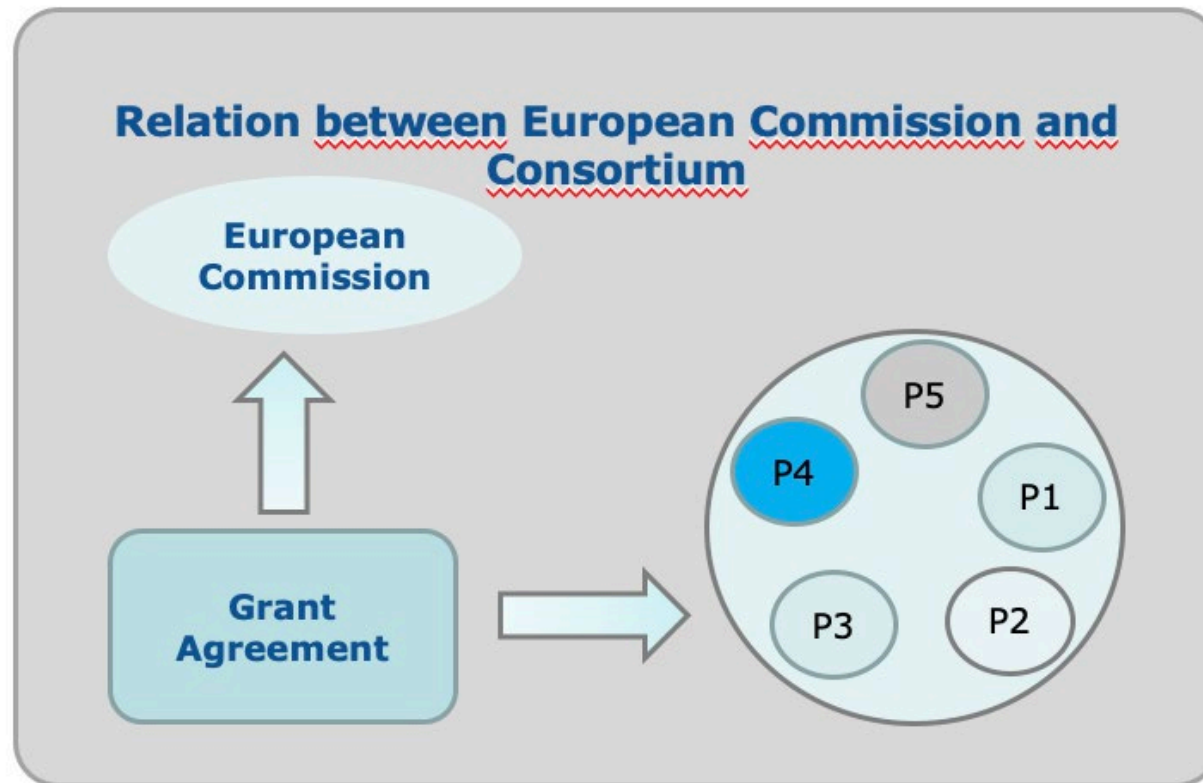


Overview: Agreements



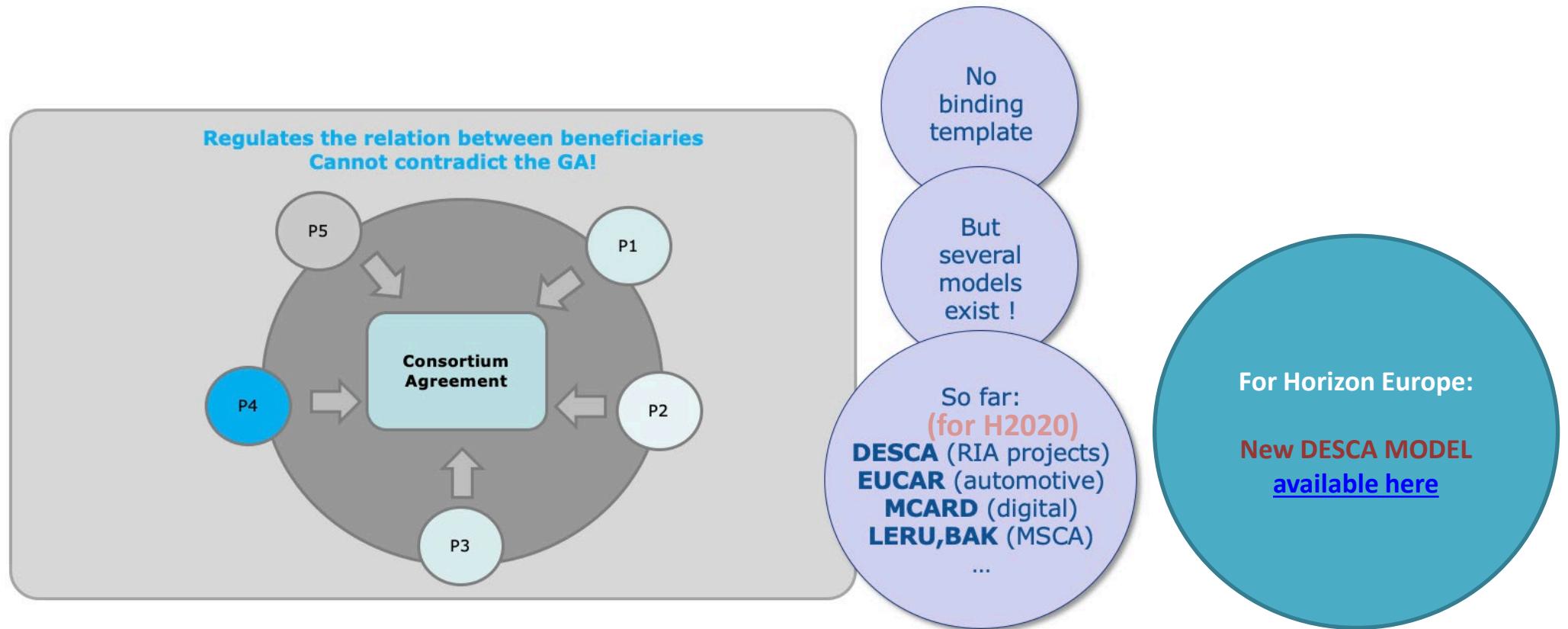


Grant Agreement (GA)



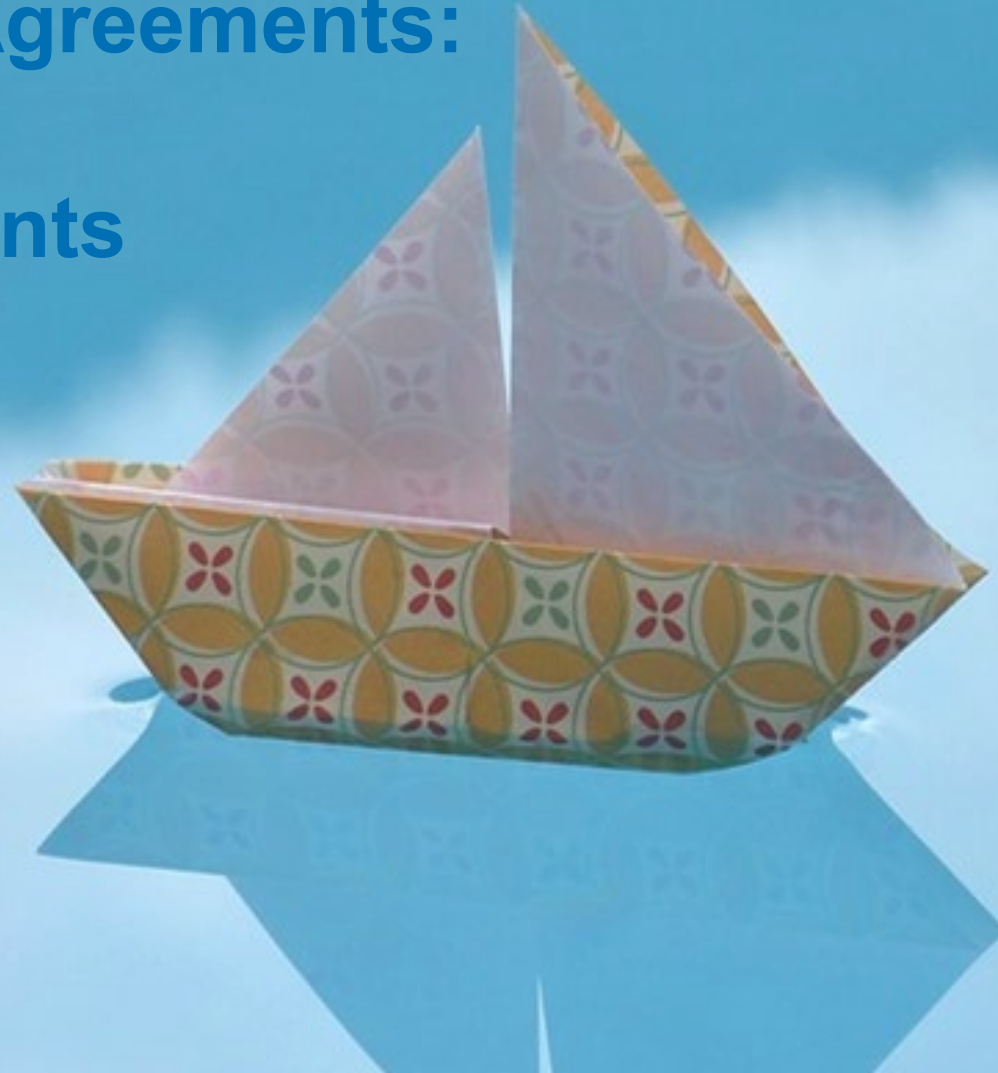


Consortium Agreement (CA)





Consortium Agreements: FAQ and general contents





Is there always an obligation to conclude a CA?

Most of the time, yes. If this obligation does not apply, the work programme applicable to the particular call will usually state so – and even then, it is recommended to conclude one if the project is multi-beneficiary.

When should the CA be signed?

The CA should be worked out during the “time to grant” at the latest, i.e. before the GA is signed: be prepared!

What happens if we do not sign the CA on time?

Remember that article 7 GA (H2020) / article 11 GA (HE) set forth an obligation to “properly implement the action”. If the lack of a signed CA leads to issues or deadlocks in project implementation, there is a risk of breach of the GA (> possible sanctions!).

Who should sign the CA?

The CA should be signed by consortium members i.e. project beneficiaries. Third parties should in principle not sign it.





What should the CA include?

- Designation of the parties (beneficiaries)
- Preamble (context and purpose, identify the project clearly)
- Definitions (do not repeat nor deviate from those included in the GA and RfP!)
- Subject (description of the work to be done – this may refer to the description of the action)
- Technical provisions (project schedule, etc. if relevant in the CA - do not forget provisions addressing any substantial changes in the work foreseen!)
- Managerial provisions (management bodies and respective tasks, decision-making processes)

- Financial provisions complementing those already included in the GA (payments, costs, changes to financial plans)
- **Provisions on IPR, exploitation and dissemination. These must be flexible and support both the cooperation between the parties and a sound implementation of the project, while encouraging protection, exploitation and dissemination.**
- General provisions (entry into force, duration and termination, amendment procedure, **confidentiality**, breach and liability, survival, law and jurisdiction, signatures...)

***Attention: the CA cannot contradict the GA!
However, some flexibility is possible when the GA allows it.***





**How can your CA
complement the IP
provisions of the GA?**



Note

The following slides describe:

- **Key IP-related obligations in Horizon projects**, with references to the corresponding articles in both model grant agreements (MGA) for Horizon 2020 and Horizon Europe
- Examples of CA clauses complementing / giving flexibility to GA rules (when allowed) and derived **from existing CA templates**
- **The IP rules are very similar in H2020 and HE and for this reason the good practices described in this webinar are applicable to CA negotiations in both contexts.**





Identify your background

H2020 24.1 MGA / HE Annex 5 MGA: obligation to identify the background in writing.

In the CA:

- Define **how the background will be listed**: positive list (DESCA, MCARD), negative list (MCARD), or both.
 - ✓ Definitions and/or exclusions should be clear enough to avoid disputes!
- Draft the background list and include it in attachment.
- Mention **possible existing restrictions** linked to the grant of access rights over specific background.
- Identify a procedure for the amendment of the background list: can partners freely add and withdraw background from the list?





Refine ownership provisions

H2020 26.1 MGA / HE Annex 5 MGA : “results are owned by the beneficiary that generates them”

In the CA:

- Possibility to **make this provision more precise i.e. identify the owners** of certain foreseen results in writing (for clarity/certainty purposes).
 - ✓ *In HE: this will help prepare the Results Ownership List (ROL) due at the end of the project.*
- Possibility to **set up different ownership arrangements** e.g. for all results to be jointly owned by all, or for all results to be owned by only 1 exploitation partner, or for a specific result to be transferred from one partner to another, etc.
- **Set up mechanisms to clarify the ownership of results upon their creation:**
 - ✓ Identify a person/body in charge of **monitoring** the creation of new results.
 - ✓ Set up a procedure to **inform** all partners upon the creation of new results and allow them to claim/confirm ownership.





Set up tailored joint ownership rules

H2020 26.2 MGA / HE Annex 5 MGA: “unless otherwise agreed, in the joint ownership agreement each joint owner may grant non-exclusive licences to third parties to exploit jointly-owned results [...]”

In the CA:

- Possibility to **create a default joint ownership regime which differs from the default one set forth in the MGA.**
 - ✓ Define whether or not an authorisation from the co-owner is requested before exploiting the joint results.
 - ✓ Deal with profit-sharing.
 - ✓ Distinguish commercial and non-commercial exploitation (DESCA) and/or direct and indirect exploitation.
 - ✓ Set up procedures to handle joint ownership in practice (MCARD).
- Possibility to create **specific joint ownership regimes for some of the joint results already foreseen.**
 - ✓ This will be useful for results to be jointly owned by all partners.
 - ✓ For results to be jointly owned by only some of the partners, it is advisable to resort to a separate joint ownership agreement (risk of confusion otherwise).



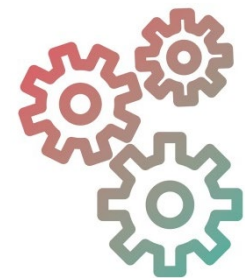


Shape access rights provisions

The H2020 and HE MGA only set up “minimum” access rights that are non-negotiable. But more favourable access rights can always be granted.

In the CA:

- **Determine procedures for the request and grant of access rights (GA says they have to be requested in writing).**
 - ✓ *Access rights can be deemed requested and/or granted in the CA (EUCAR, MCARD)*
- **Set up time limits for the request of access rights for exploitation (GA: 1 year after the end of the project but MCARD: 5 years; EUCAR: no time limit).**
- Possibility to **broaden the scope of access rights**: give access to sideground, grant right to sublicense...
- Determine a procedure for the waiving of access rights.
- Access rights for implementation = usually royalty-free. For exploitation: in the MGA, on fair and reasonable conditions.
- Possibility to **refine the conditions for the grant of access rights for exploitation.**
 - ✓ *Example: royalty-free for further research or teaching (DESCA), on fair and reasonable conditions if needed for commercial exploitation.*
 - ✓ *Example: distinction depending on the sub-project involved (EUCAR).*
- Possibility to adjust or exclude **the right for affiliates to request access rights.**
- Clarify access rights for parties entering / leaving the project (DESCA, MCARD).
- Include **specific access rights provisions for software** (DESCA, MCARD).





Deal with confidentiality and non-disclosure obligations

H2020 36.1 MGA / HE 13.1 MGA set out confidentiality requirements; such requirements will usually be strengthened in security-related actions.

In the CA:

- Define “confidential information” (H2020) / “sensitive information” (HE).
- Set up procedures surrounding the **identification and disclosure of such information**.
- Specify which acts constitute non-authorized disclosure and which acts are allowed.
 - ✓ *Example: EUCAR and MCARD offer a possibility to automatically allow disclosures to affiliates.*
- Address confidentiality during the project **and beyond**.
 - ✓ Specify how long the non-disclosure obligations will last for once the project is over.
 - ✓ In general: try to align this with the duration foreseen in the confidentiality clause of the GA (for consistency purposes)
- Manage confidentiality issues with **External Advisory Board Members** and if relevant attach a NDA.
 - ✓ *Example: the new DESCA (HE) suggests a specific Coordinator PoA to conclude NDAs on behalf of the consortium members & suggests to attach the NDA in Annex 5*





Set up procedures to decide on the protection of results

H2020 27.1 MGA / HE Annex 5 MGA : obligation for beneficiaries to adequately protect project results.

In the CA:

- Designate person/body to **monitor the creation of results and related ownership claims**.
- Designate person/body to **ensure that all “valuable” results are being protected** by their owner(s).
 - ✓ *This will usually have to be done while setting up management provisions in your CA.*
- Implement a procedure to make sure **no inventors are left out** of a patent application (if applicable).
- Implement a procedure to make sure the **choice of a protection route** does not affect other partners' commercial interests.





Anticipate the transfer or exclusive licensing of results

According to 30.1 & 30.2 H2020 MGA / Annex 5 HE MGA:

- Transfers of results to third parties are subject to prior notice to all interested partners and right to object, “unless agreed otherwise (in writing) for specifically-identified third parties”.
- Exclusive licences over project results can be granted “only if all the other beneficiaries concerned have waived their access rights”.

In the CA:

- Draw up a **list of third parties** (e.g. affiliates) to which transfers of results will not be subject to notification/objection. **This allows to make transfers easier and faster.** *See an example in EUCAR model / see Attachment 3 in DESCA.*
- Set up procedures surrounding the amendment of that list.
- If a partner already intends to grant exclusive licences over a particular result: if relevant and acceptable, the other partners can **waive their access rights** to that result in the CA (e.g. in annex).
 - ✓ *Best practice: avoid waivers that are too general!*





Pave the way to exploitation

H2020 28.1 MGA / HE Annex 5 MGA: obligation to exploit project results for up to 4 years after the end of the action.

NB - new in HE: if no exploitation activity is achieved during the first year following the end of the action, obligation to use the Horizon Results Platform

In the CA:

- Possibility to **mention exploitation routes / milestones** if they have already been agreed upon.
 - ✓ *Example: agreement on the creation of a joint-venture or spin-off company once the project is over.*
 - ✓ *The exploitation strategy must be consistent with what was planned in the PEDR / D&E plan!*
- Possibility to refer to further/future exploitation agreements involving only some of the partners.
- If **standardisation activities** are foreseen, this type of exploitation can also be dealt with in the CA (see an example in MCARD).





Set up procedures surrounding the dissemination of results

H2020 29.1 MGA / HE 17 & Annex 5 MGA: obligation to disseminate results.

Remember: Open Access to scientific publications, Open Data, and – in HE – possible additional Open Science obligations (depending on call)

In the CA:

- Refine dissemination provisions on the basis of the MGA.
- In particular, possibility to agree upon:
 - ✓ **Different notice period** before any dissemination occurs (*e.g. shorten it for more flexibility – if not, in H2020 the default timeline is 45 days prior to publication / in HE it is reduced to 15 days*).
 - ✓ **Different notice periods** depending on the type of dissemination activity
 - ✓ **Different timeframe** during which partners can object to dissemination (upon being notified).
 - ✓ Who the objection should be addressed to (DESCA: to coordinator and partner wishing to disseminate / MCARD: to all partners).
 - ✓ **How objections should be handled** and can be overcome.
 - ✓ **Procedures to ensure coherent dissemination** e.g. co-authorship.



Contact OpenAIRE for any doubts regarding Open Access & Open Science obligations in H2020 / HE:
<https://www.openaire.eu/>



Set up IP Management structures

H2020 7 MGA / HE 11 MGA: general obligation for the parties to properly implement the action.

- ✓ *A proper implementation of the action involves the setting up of appropriate management structures!*
- ✓ *It is good practice to identify the tasks related to IPR management and to include them in your management provisions.*

In the CA:

- **Identify a management body or person** responsible for IPR matters within the consortium (e.g. IP manager, IP management board... this will depend on the size of the consortium).
- **Identify its relevant tasks**, e.g.: monitoring the creation of results and their ownership, monitoring protection measures, monitoring dissemination measures...





Closing remarks





Conclusion

- ✓ Allocate **enough time** to draft your CA.
- ✓ If you use templates, read all provisions carefully and **adapt them** to your project's needs.
- ✓ Do not keep model clauses you are not sure about or you do not fully understand!
- ✓ **Make sure that all partners understand the same thing** – if needed, clarify / rephrase problematic clauses.
- ✓ Nothing in your CA should block the implementation of your project or its exploitation phase!
- ✓ A good CA is a tool upon which you will be able to base your exploitation strategy.

Further Support:

- ✓ **Legal & Financial [National Contact Points](#)** can provide guidance and explanations on the GA's legal and financial rules.
- ✓ **OpenAIRE's [helpdesk](#)** can support you with all issues and questions related to Open Access / Open Data / Open Science policies and obligations.
- ✓ **The European IP Helpdesk's Helpline is here for any IP questions.** (1) Register for free on our website (2) submit your questions [via our online form](#) (3) get a written reply within three working days!





Further information

- European IP Helpdesk's *Guide to IP in Horizon 2020*
- Brochure on *Making the Most of your H2020 project*
- New!** Bulletin No.4 on Horizon Europe
- Additional Horizon Europe resources in the works!*

Visit our online library: https://intellectual-property-helpdesk.ec.europa.eu/regional-helpdesks/european-ip-helpdesk_en

- DESCA 2020 model : <http://www.desca-agreement.eu/>
- EUCAR 2020 model : <http://www.eucar.be/>
- MCARD-2020 model : <http://www.digitaleurope.org/>
- LERU model (based on DESCA 2020): <http://www.leru.org/>
- BAK model (based on DESCA 2020): <http://www.uni-giessen.de/bak/dokumente>
- New!** DESCA for Horizon Europe : <https://www.desca-agreement.eu/desca-model-consortium-agreement/>



Thank you!

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The European IP Helpdesk is managed by the European Commission's European Innovation Council and SMEs Executive Agency (EISMEA), with policy guidance provided by the European Commission's Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (DG Grow).

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