

Session 5: Understanding  
IP in the Model Contract  
Agreements



**DESCA**  
Horizon 2020 Model  
Consortium Agreement  
www.DESCA-2020.eu



---

---

---

---

---

---

---

---


Model Contract Agreements

**H2020 (optional clauses)**

- DESCA (academic and research industries)
- DE (ICT)
- EU-Car (automotive industry)

**FP7**

- IMG (aerospace industries)
- IPCA (ICT telecom industries)



---

---

---

---

---

---

---

---

H2020 Model Consortium agreements

**DESCA (academic and research industries)**

- One balanced core text
- Two modules for Governance Structure (size / complexity)
- Optional clauses

**DE (ICT)**


- IPR, liability and software sections different to DESCA
  - Access rights to foreground much broader
  - Access rights to side ground are granted

**EU-Car (automotive industry)**

- IPR provisions strongly favor commercial project participants

**IMG (aerospace industries)**

- Differ from DESCA in IPR, liability and governance clauses
- Flexibility of different options (DESCA) are not provided



---

---

---

---

---

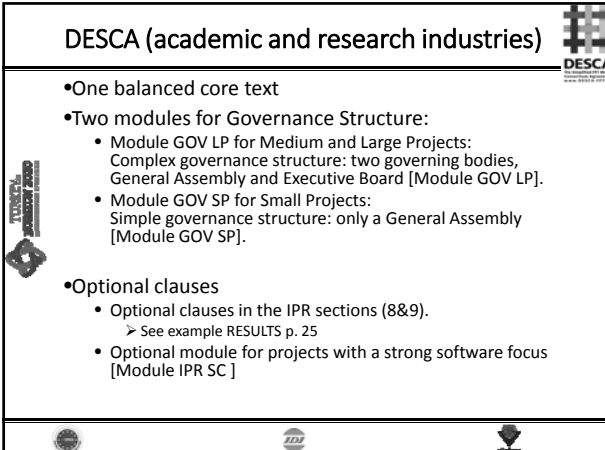
---

---

---

**DESCA (academic and research industries)**

- One balanced core text
- Two modules for Governance Structure:
  - Module GOV LP for Medium and Large Projects:  
Complex governance structure: two governing bodies,  
General Assembly and Executive Board [Module GOV LP].
  - Module GOV SP for Small Projects:  
Simple governance structure: only a General Assembly  
[Module GOV SP].
- Optional clauses
  - Optional clauses in the IPR sections (8&9).  
➢ See example RESULTS p. 25
  - Optional module for projects with a strong software focus  
[Module IPR SC]



---

---

---

---

---

---

---

---

**DESCA 2020**

**DESCA 2020 (Development of a Simplified Consortium Agreement)**

- comprehensive Model Consortium Agreement for Horizon 2020
- offers a reliable frame of reference for project consortia.
- **Section 1 (p. 6) : Definitions (“Needed” p. 7)/ GA**
- **Section 3 (p. 8) : Termination (3.3. Survival of rights/ obligations)**
- **Section 8 (p. 25) : Results**
- **Section 9 (p. 28): Access Rights**
  - Attachment 1 (p.41) : Background
- **Section 10 (p. 33) : Non disclosure of info**  
Attachment 3 (p. 43) : Third parties  
[MODULE IPR SC] p. 51

<http://www.desca-2020.eu/>



---

---

---

---

---

---

---

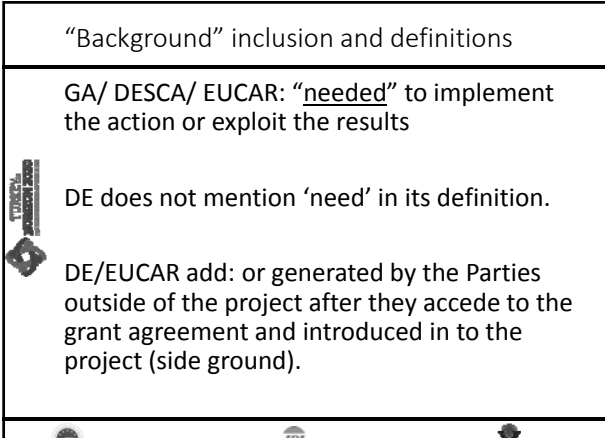
---

“Background” inclusion and definitions

GA/ DESCA/ EUCAR: “needed” to implement the action or exploit the results

DE does not mention ‘need’ in its definition.

DE/EUCAR add: or generated by the Parties outside of the project after they accede to the grant agreement and introduced in to the project (side ground).



---

---

---

---

---

---

---

---

“Need” and “access rights” (see p. 7 DESCAs)

	DESCA	AMGA	DE	EUCAR
<b>Project</b>				
1. Cannot be implemented as planned	✓	✓		
2. Would be significantly delayed	✓	✓		
3. Would require significant extra resource	✓	✓		
4. Technically or legally impossible			✓	
<b>Exploitation</b>				
1. Technically or legally impossible	✓	✓	✓	
2. Would require significant extra resource		✓		

- = silent (no mention)      AMGA= annotated model grant agreement

---

---

---

---

---

---

---

---

---

---

Agreement on background

**DESCA** has a ‘positive’ list (p. 40 Attachment 1)

- not on the list then not included! (section 9.1.1)
- “anything not identified in Attachment 1 shall not be the object of Access Rights obligations” plus limitations

**DE** has either

- Positive lists – with a safeguard “if a Party uses Unlisted Background held by it in a manner that such Unlisted Background becomes Needed by any other party for the implementation of the Action of Exploitation of any Results then such Unlisted background shall be deemed to not be excluded from obligations to grant Access Rights!”.
- Or
- Negative list
- **EUCAR**: has a + list

---

---

---

---

---

---

---

---

---

---

Confidentiality: summary and comparison

DESCA Section 10. p. 33

	GA	DESCA	DE		EUCAR
			DE1	DE2	
Marked	Silent	Yes	Yes	No	No
Oral – confirm (days)	15	15	30	n.a.	n.a.
Included affiliates	If needed	No	Yes	Yes	Yes
Includes subcontractors	If needed	No	Yes	Yes	No

---

---

---

---

---

---

---

---

---

---

Access to background						
	Needed	Royalty		Process		
		Project	Exploitation	Individual requests	Written grant	
Grant agreement	Yes	Free/Fair	Fair	Silent	Silent	
DESCA (section 9)	Yes	Free-fair	Fair	Implied	Option	
DE	Project	Yes	Free	n.a.	No	No
	Exploitation	Yes but	n.a.	Fair	Yes	Yes
EU Car	Project	Yes but	Free	n.a.	No	No
	Exploitation		n.a.	Fair	No	Yes

Needed= to carry out own project tasks or exploit own results  
 Free= royalty free                      Fair = fair and reasonable conditions  
 DE/EUCAR included side-ground      EUCAR subject to legitimate interests  
 \*includes sub-licensing                  n.a. = not applicable

---

---

---

---

---

---

---

---

---

---

DESCA Ownership of results: Section 8 p.25

8.1 Results are owned by the Party that generates them.

**8.2 Joint ownership (arising from co-creation)**

Joint ownership is governed by **Grant Agreement Article 26.2** with the following additions:

[Option 1:]

Unless otherwise agreed:

- each of the joint owners shall be entitled to use their jointly owned Results for non-commercial research activities on a royalty-free basis, and without requiring the prior consent of the other joint owner(s), and
- each of the joint owners shall be entitled to otherwise Exploit the jointly owned Results and to grant non-exclusive licenses to third parties (without any right to sub-license), if the other joint owners are given:
  - at least 45 calendar days advance notice; and
  - Fair and Reasonable compensation.

---

---

---

---

---

---

---

---

---

---

DESCA Joint Ownership of results: Section 8.2

[Option 2:]

In case of joint ownership, each of the joint owners shall be entitled to Exploit the joint Results as it sees fit, and to grant non-exclusive licences, without obtaining any consent from, paying compensation to, or otherwise accounting to any other joint owner, unless otherwise agreed between the joint owners.

The joint owners shall agree on all protection measures and the division of related cost in advance.

---

---

---

---

---

---

---

---

---

---

Joint ownership: summary and comparison

	Exploit	License	Sub- license	Notice	Royalty	Protect
GA	Through licensing	Yes	No	45 days	Fair	-
DESCA 1	Research (non commercial)	-	-	-	Free	-
	Yes	Yes	No	45 days	Fair	
DESCA 2	Yes	Yes	-	-	Free	tba
DE 1	Yes	Yes	-	-	Free	Costs shared
DE 2	Yes	Yes	-	-	Free	tba
EUCAR	Yes	Yes	-	-	Free	tba

---

---

---

---

---

---

---

---

---

---

Access Rights to Results for exploitation  
(Section 9.4 p. 30)

[Option 1:]  
**Access Rights to Results if Needed for Exploitation of a Party's own Results shall be granted on Fair and Reasonable conditions.**  
Access rights to Results for internal research activities shall be granted on a royalty-free basis.

[Option 2:]  
**Access Rights to Results if Needed for Exploitation of a Party's own Results shall be granted on a royalty-free basis.**

---

---

---

---

---

---

---

---

---

---

Additional Access Rights (9.6 p. 32)

[Option 1:]  
For the avoidance of doubt any grant of Access Rights not covered by the Grant Agreement or this Consortium Agreement shall be at the absolute discretion of the owning Party and subject to such terms and conditions as may be agreed between the owning and receiving Parties.

[Option 2:]  
The Parties agree to negotiate in good faith any additional Access Rights to Results as might be asked for by any Party, upon adequate financial conditions to be agreed.

---

---

---

---

---

---

---

---

---



---

Access rights to results – rational for options

**Option 1** in the IPR clauses reflects the preference of most stakeholders (some Industry sectors as well as universities and research organisations) where fair and reasonable remuneration for having access to other partners' project results for exploitation is foreseen.

**Option 2** in the IPR clauses reflects a situation preferred by some industries, where all project results are available for Exploitation without any form of remuneration to the owners.

Advice note: A mix of Option 1 and Option 2 can in some cases lead to inconsistencies.


---

---

---

---

---

---

---


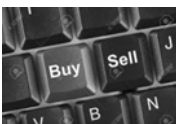
---

---



---

4. Benefits and 'Exploitation rights'.


Free vs. 'Fair and reasonable remuneration'

Business

Public Research Organisations




---

---

---

---

---

---

---

---

---

---

Access to results: summary and comparison

	Needed	Royalty		Process		
		Project	Exploitation	Individual requests	Written grant	
Grant agreement	Yes	Free	Fair/free	Silent	Silent	
DESCA 1	Yes	Free	Fair/ free	Implied	Option	
DESCA 2			Free			
DE (option 1)	Project	Yes	Free	No	No	
	exploitation	Yes/no	n.a.			
EUCAR	project	Yes	n.a.	No	No	
	Sub project	No	n.a.			Free
	other	Yes	n.a.			Fair

Needed = to exploit own results  
Free = royalty free

n.a.= not applicable  
Fair = fair and reasonable conditions

---

---

---

---

---

---

---

---

---

---

DE access to results for exploitation (art 9.4.1)

Option	Results		Needed	Royalty for exploitation		Process	
	IPR	Other		Internal R&D/teach	Other	Individual requests	Written grant
1	✓		Yes/No	Free		No	No
2	(i)	✗	✓	Yes	Free		Yes
	(ii)	✓	✗	Yes/No	n.a.	Fair	Yes
	(iii)	✓	✗	Yes/No	Free	n.a.	No
3	(i)	✓		Yes	Free	n.a.	Yes
	(ii)	✓		Yes	n.a.	Fair	Yes

Needed = to exploit own results      n.a.= not applicable  
Free = royalty free                      Fair = fair and reasonable conditions

---

---

---

---

---

---

---

---

---

---

Affiliates – access for exploitation

	EU/AC only	Direct vs. sub license	Cease to be affiliate	Refuse – legitimate interest	Party loses access
GA	Yes	Direct	-	-	-
DESCA (S 9.5) p. 31	Yes	Both	Rights lapse	Yes	So does affiliate
DE	No limit	Either	Lapses unless in product service/process, except...	No, except if ceases to be affiliate*	So does affiliate
EUCAR	No limit	Both (implied)	-	Yes for background	-

-- silent    \* except confidential information  
DESCA: see Attachment 4

---

---

---

---

---

---

---

---

---

---

Transfer Results – waiver – summary and comparison

	Before signing consortium agreement	After signing consortium agreement	Notification
GA	Agree in writing	Agree in writing	Agree in writing
DESCA Section 8.3 p. 26	List, <b>attachment 3</b>	General Assembly decides	Yes
	List, attachment 3	General Assembly decides	On request
DE	plus		
	Any of its affiliates	Any of its affiliates	No
EUCAR	List of specific affiliates	Silent	Silent

---

---

---

---

---

---

---

---

---

---

Negotiating IPR: summary of the main issues

1. Access results: what?	6. Background: +VE &/or -VE lists and safeguards
2. Access results: royalty or free	7. Side-ground
3. Access request: individual or collective	8. Royalty for background for project
4. Access included/ excluded sub-license	9. Affiliates
5. “Need”	10. Joint ownership: sub licensing, royalty.

---

---

---

---

---




---

---

---

A word or two about (free/ open source) software...

- Open Source
- Free
- GPL licence
- LINUX
- Android


---

---

---

---

---

---

---

---

[MODEL IPR SC] p. 51  
'Controlled license terms'

Terms in any license that require that the use, copying, modification and/ or distribution of software or another [copyright] work (“Work”) and/or of any [copyright] work that is a modified version of or is a derivative work of such Work (in each case “Derivative Work!) be subject, in who or part, to one or more of the following

- (where the Work or derivative work is Software) that the Source Code be made available as a right to any third party on request, whether royalty free or not;
- That permission to create modified versions or derivative works of the Work or Derivative Work be granted to any third party;
- That a royalty-free license relating to the Work of Derivative Work be granted to any third party.

---

---

---

---

---

---

---

---



To translate!

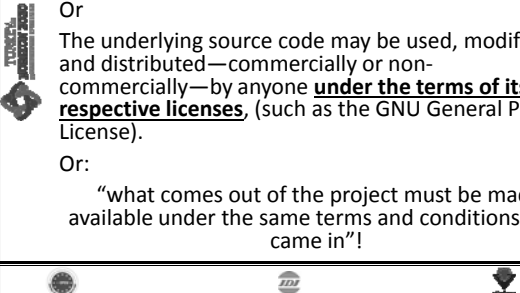
modifications of the original program be distributed under the same terms as the GPL (General Public License) itself.

Or

The underlying source code may be used, modified and distributed—commercially or non-commercially—by anyone **under the terms of its respective licenses**, (such as the GNU General Public License).

Or:

“what comes out of the project must be made available under the same terms and conditions as it came in”!




---

---

---

---

---

---

---

---

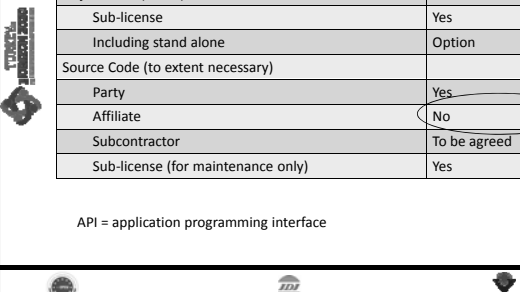
---

---

Access to software results

	DESCA	DE
Object code (+API*)		
Sub-licence	Yes	Yes
Including stand alone	Option	Yes
Source Code (to extent necessary)		
Party	Yes	Yes
Affiliate	No	Yes
Subcontractor	To be agreed	Yes
Sub-licence (for maintenance only)	Yes	Yes

API = application programming interface




---

---

---

---

---


---

---


---

---

---



“Mr. Osborne, may I be excused?  
My brain is full.”




---

---

---

---

---

---

---

---

---

---

Documents and resources

- Grant agreement, Annotated Model grant agreement Guidance “How to draw up your consortium agreement”
  - [http://ec.europa.eu/research/participants/data/ref/h2020/other/gm/h2020-guide-cons-a\\_en.pdf](http://ec.europa.eu/research/participants/data/ref/h2020/other/gm/h2020-guide-cons-a_en.pdf)
- DESCA
  - [www.desca-2020.eu](http://www.desca-2020.eu)
- Digital Europe
  - [www.digitaleurope.org](http://www.digitaleurope.org)
- EUCAR
  - [www.eucar.be](http://www.eucar.be)
- IPR Helpdesk (MoU)
  - [www.iprhelpdesk.eu](http://www.iprhelpdesk.eu)

---

---

---

---

---

---

---

---

Summary: IP in Horizon 2020?

**Pre-proposals**

- Confidentiality (NDA) and MoU

**Proposal**

- ‘Measures to maximise impact’
  - Dissemination and exploitation of results
    - Knowledge management and protection strategy
      - Open access
        - Green/ Gold model of publication

**Grant Agreement**

- Section 3

**Consortium Agreement (DESCA)**

- Results (DESCA Section 8)
- Access Rights (DESCA Section 9)
- Non-disclosure of information (Section 10)

---

---

---

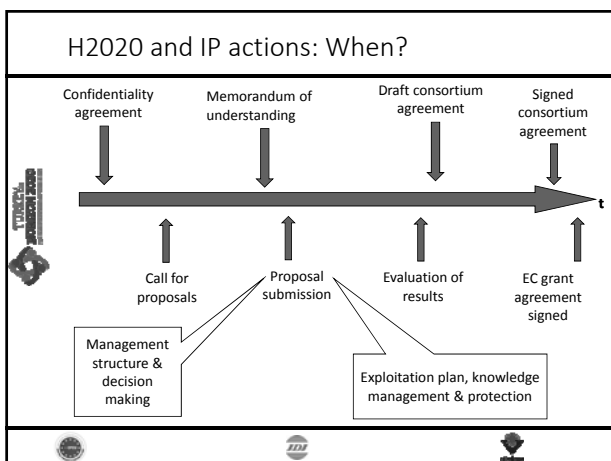
---

---

---

---

---




---

---

---

---

---

---


---

---

Summary of useful resources

1. Open Access in Horizon 2020 (Fact sheet)  
[https://ec.europa.eu/programmes/horizon2020/sites/horizon2020/files/FactSheet\\_Open\\_Access.pdf](https://ec.europa.eu/programmes/horizon2020/sites/horizon2020/files/FactSheet_Open_Access.pdf)
2. How to manage IP in Horizon 2020: grant preparation stage
3. IP management in Horizon 2020: project implementation and conclusion
4. IP Management in Horizon 2020: proposal stage
5. The Plan for the Exploitation and Dissemination of Results in Horizon 2020
6. NDA/ MoU
7. Your Guide to IP in Horizon 2020

**European IPR Helpdesk**  
<https://www.iprhelpdesk.eu>



[https://www.iprhelpdesk.eu/sites/default/files/documents/EU\\_IPR\\_IP-Guide.pdf](https://www.iprhelpdesk.eu/sites/default/files/documents/EU_IPR_IP-Guide.pdf)

Logos: Horizon 2020, European IPR Helpdesk, IPR, and a download icon.

---

---

---

---

---

---

---

---

Open Discussion: H2020



Logos: Horizon 2020, IPR, and a download icon.

---

---

---

---

---

---

---

---

Contact

Dr Lisa Cowey

Email: [l.cowey@t3i.co.uk](mailto:l.cowey@t3i.co.uk)

Skype: lisacowey oxford UK

LinkedIn: [uk.linkedin.com/pub/lisa-cowey/3/868/6a/](https://uk.linkedin.com/pub/lisa-cowey/3/868/6a/)

Logos: Horizon 2020, IPR, and a download icon.

---

---

---


---

---


---

---

---






TURKEY IN HORIZON 2020  
ALTUN/HORIZ/TR2012/0740.14-2/SER/005



This project is co-financed by the  
European Union and the Republic of Turkey  
by using European funds as Turkey contributes intellectual  
property administration

Contact:

Office Address  
Turkey in Horizon 2020 Project  
No:6/2 Mustafa Kemal Mah. 21191 Sok  
06520 Çankaya/Ankara Turkey  
Tel: +90 312 219 60 30  
<http://www.turkeyinh2020.eu/>



---

---

---

---

---

---

---

---

---

---