

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

Intellectual Property & Horizon 2020:  
*Write a Better Proposal, Manage a Successful Project*

Session 7a: Understanding IP in the Horizon 2020

Lisa Cowey

Istanbul, 13.9.2017

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Session 7a: Understanding IP in the Horizon 2020  
Grant agreement  
Ch 4 Sub-Section 3: Rights and obligations related to results

HORIZON 2020  
AGA - Associated Model Grant Agreement

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Addressing the main IP issues in the GA

1. **Access Rights**
  - back-ground and foreground
  - For the project and the future
  - For partners and affiliates;
2. **Ownership** of results
3. **Dissemination** -Right to publish/confidentiality
4. **Benefits** -Share in commercial profits (Exploitation)

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Summary: Background IP access rights (art 25, 31)

Art 25.2	Art 25.3
The beneficiaries must give each other access	
- on a royalty free basis -	- under fair and reasonable conditions -
To background <u>needed</u>	
to implement their own tasks under the action,	for exploiting their own results
<b>Unless</b> the beneficiary that holds the background has – before acceding to the agreement – informed the other beneficiaries that access to its background is subject to legal restriction or limits, including those imposed by the rights of third parties (including personnel)	

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Ownership and Protection: Management of 'Results' (at. 26-27)

- Ownership (Art. 26)
  - 'under control of partners'
  - Results owned by creating party.
- Joint ownership (art. 26.2)
- Protection (Art. 27)
  - If 'possible, reasonable and justified'
  - Or offer to EC

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3a. Dissemination (29.1)  
Open Science: Open Publication (Art 29.2) Open Data 29.3)

**Open Access ('Gold Standard' Publishing)**

- an article is immediately provided in open access mode by the scientific publisher.
- associated costs are usually shifted away from readers, and instead (for example) to the university or research institute to which the researcher is affiliated, or to the funding agency supporting the research.

Green Standard Publication:  
Self-archiving ('Green' Open Access)

- the published article or the final peer reviewed manuscript is archived by the researcher /representative - in an online repository before, after or alongside its publication.
- Access to this article is often delayed ('embargo period'), as some scientific publishers may wish to recoup their investment by selling subscriptions and charging pay-per-download/view fees during an exclusivity period.

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### 3b. Confidentiality (art 36)

During implementation of the action and for **four years** after the period set out in Article 3, the parties must keep confidential any data, documents or other material (in any form) that is identified as confidential at the time it is disclosed (**'confidential information'**).

If information has been identified as confidential only **orally**, it will be considered to be confidential only if this is confirmed in writing within 15 days of the oral disclosure.

Unless otherwise agreed between the parties, they may use confidential information only to implement the Agreement.



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### 4. Exploitation Obligation to exploit the results (article 28.1)

Each beneficiary must — for up to four years after the period set out in Article 3 — take measures aiming to ensure **'exploitation' of its results (either directly or indirectly, in particular through transfer or licensing) by:**

- (a) using them in further research activities (outside the action);
- (b) developing, creating or marketing a product or process;
- (c) creating and providing a service, or
- (d) using them in standardisation activities.



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### Useful Handout: 'Unless otherwise agreed...'



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### Useful resources



European IPR Helpdesk Fact Sheets  
1. How to manage IP in Horizon 2020: grant preparation stage

<https://www.iprhelpdesk.eu>



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This project is cofunded by the European Union and the Republic of Turkey.  
Bu proje Avrupa Birliği ve Türkiye Cumhuriyeti tarafından finanse edilmiştir.

### Session 7b: Understanding IP in the Model Contract Agreements



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Grant Agreement (GA)



Silent/" unless otherwise agreed"

Consortium agreement



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Model Contract Agreements

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**H2020**

- DESCA (**Development of a Simplified Consortium Agreement**) (academic and research industries)
- DE: ICT
- EU-Car: Automotive industry

**FP7**

- IMG: Aerospace industries
- IPCA: ICT telecom industries




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Overview of IPR in H2020 Model Consortium agreements

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**DESCA (academic and research industries)**

- Optional clauses (1 or 2) including for IPR
  - Joint ownership of Results
  - Access rights for Exploitation
  - Additional Access rights
  - Background (how it is 'captured')

**DE (ICT)**

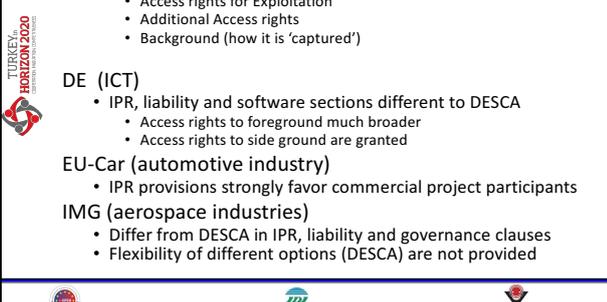
- IPR, liability and software sections different to DESCA
  - Access rights to foreground much broader
  - Access rights to side ground are granted

**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




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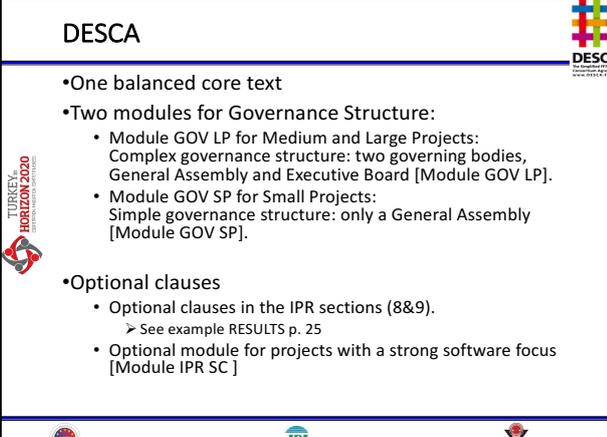
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**DESCA**

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- 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 ]




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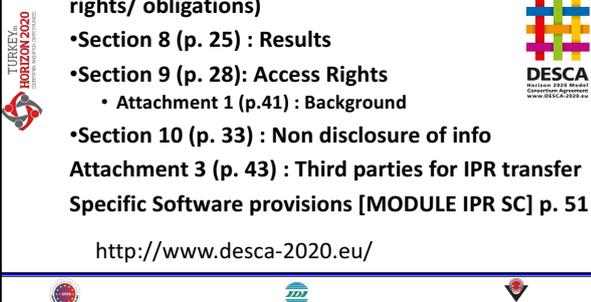
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**DESCA 2020 IPR**

- 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 for IPR transfer  
 Specific Software provisions [MODULE IPR SC] p. 51

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




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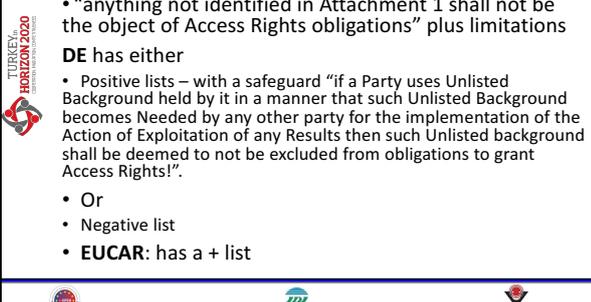
Agreement on background (needed): + and - lists

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




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**Grant Agreement (GA)**

↓ Silent/ unless otherwise agreed

**Consortium agreement**

OR

Option 1



Option 2

IPR:

- Section 8.2 Joint ownership of Results
- Section 9.4 Access Rights for Exploitation
- Attachment 1: Background included (+/-)
- Software




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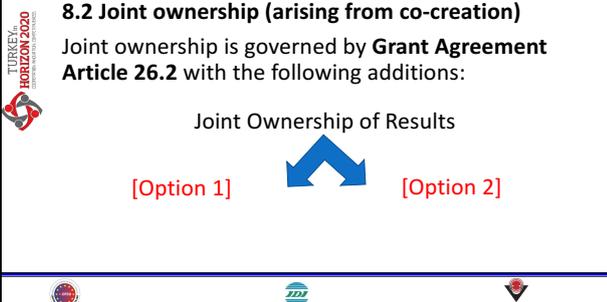
DESCA Options: Joint ownership of results: 'Co-creation)

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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:

Joint Ownership of Results





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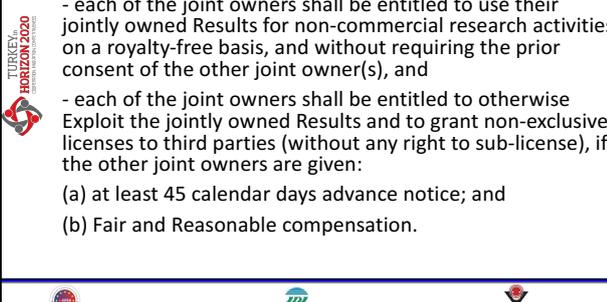
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DESCA Ownership of results: Section 8 p.25

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**[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:
  - (a) at least 45 calendar days advance notice; and
  - (b) Fair and Reasonable compensation.



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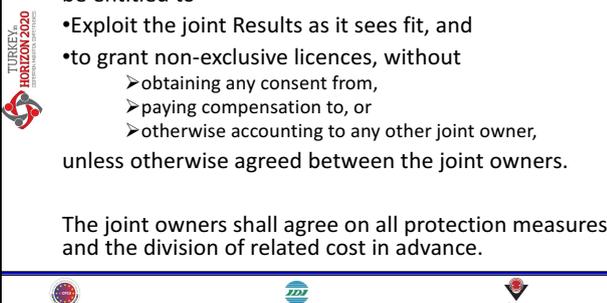
DESCA Joint Ownership of results: Section 8.2

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**[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.



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Case Study/ Group work 1: Joint Ownership

A H2020 consortium has prepared a proposal in the automotive field. Their anticipated results will include a new 'feature' for an engine management system.

It is expected that this result will be produced through a close collaboration on a single work-package by an enterprise (an 'OEM' to the automotive industry) and a university.



- What are the issues to be considered in joint ownership?
- Which Joint Ownership option might you prefer as
  - Group 1: The enterprise
  - Group 2: The university
- And why?




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Feedback and discussion

Preferred Option for the enterprise ('OEM')  
Preferred Option for the university

Issues

1. The enterprise will not wish to have the results transferred to a competitor. It will wish to keep the results for itself.
    - It may prefer Option 1.
  1. The university is not an established supplier to the industry. It cannot make money unless it licenses the IPR to another group.
    - It may prefer Option 2
- What other approach might the two groups 'agree' on to deal with the issues?

Other issues? (costs of protection of the Results)




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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.**




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### Case Study/ Group work 2: Access to results for exploitation

The enterprise and the University also have individual work packages.

The enterprise expects to generate a totally new feature for a car engine which is can then protect through the patent system. It will be the only engine supplier in the world to be able to offer this new feature.

One of the University's individual work packages is expected to generate software Results which will be needed by the enterprise to make their new feature work.

- What are the issues to be considered in access to Results for exploitation?
- Which exploitation Option might you prefer as
  - Group 1: The enterprise
  - Group 2: The university
- And why?



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### Feedback and discussion

Preferred Option for the university?  
Preferred Option for the enterprise ('OEM')?

#### Issues

1. The university cannot license the new software to any other engine manufacturer. It cannot make money unless the enterprise pays for using the university's Results.
    - It may prefer Option 1
  1. The enterprise knows that no other company can benefit from the Software. It will prefer to be able to have access to the Software results without paying royalties to the university.
    - It may prefer Option 2.
- What other approach might the two groups 'agree' on to deal with the issues?



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### 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.



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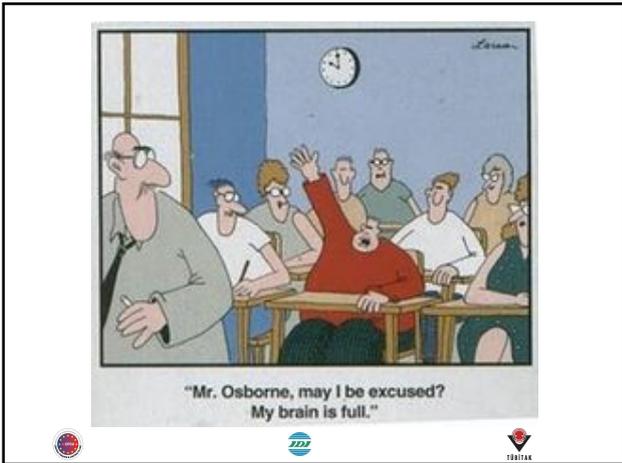
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Documents and resources

- 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)

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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)

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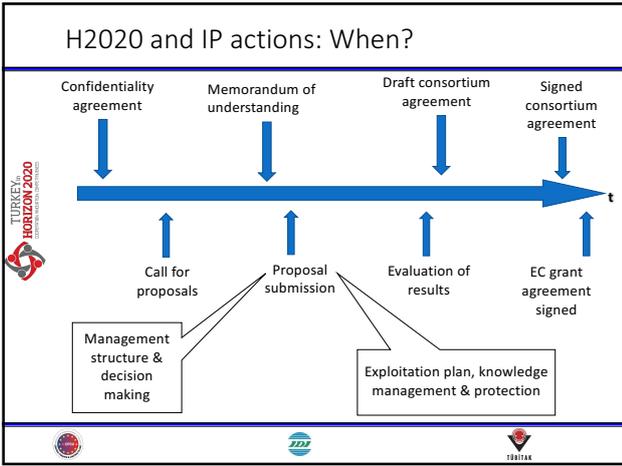
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### Summary of useful resources

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>

The European IPR Helpdesk  
**Your Guide to IP in Horizon 2020**

[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)

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### Open Discussion: H2020

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This project is co-financed by the European Union and the Republic of Turkey.  
Bu proje Avrupa Birliği ve Türkiye Cumhuriyeti tarafından finanse edilmektedir.

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