



TURKEYⁱⁿ
HORIZON 2020
COOPERATION, INNOVATION, COMPETITIVENESS



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INTELLECTUAL PROPERTY RIGHTS

A Practical guide to managing
IPR in Horizon2020 at concept, proposal
and implementation stages



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ACRONYMS

AGA	Annotated Model Grant Agreement
CA	Confidentiality Agreement or Consortium Agreement
DESCA	Development of a Simplified Consortium Agreement
EBOA	Expanded Board of Appeal
EPO	European Patent Office
EU	European Union
GA	Grant Agreement
GATT	General Agreement on Tariffs and Trade
GI	Geographical Indicator
IP	Intellectual Property
IPR	Intellectual Property Rights
NDA	Non-Disclosure Agreement
OA	Open Access
OD	Open Data
OHIM	Office for Harmonisation in the Internal Market
PCT	Patent Cooperation Treaty
PEDR	Plan for Exploitation and Dissemination of results
PRO	Public Research Organisation
SME	Small and Medium Enterprise
TM	Trade Mark
WIPO	World Intellectual Property Organisation

A note on the use of quotation marks and SMALL CAPITALS

Intellectual property involves the use of many terms that have very precise legal meanings, for example: *disclosure*, *enablement*, *novelty*, *person skilled in the art*. Where we enclose a term in single quotation marks in the text and use small capitals e.g. 'PERSON SKILLED IN THE ART' this is to show that we are using this with a particular legal meaning. These terms can vary according to territory e.g. in the USA they use the term 'NON-OBVIOUS' while in the EU they refer to 'INVENTIVE STEP' and in the Polish language they refer to the 'SURPRISINGNESS' of an invention. And as far as possible we have tried to explain the terms and any important regional variations.

Where a term is not legal but has a quite specific meaning for IPR and H2020 we have used quotation marks without small capitals e.g. '*results*', '*foreground*', '*background*' and '*freeride*' to indicate that we are using this with a particular meaning.

The reader can refer to the following glossaries by EPO, WIPO or the EU IPR Helpdesk:

EPO: <https://www.epo.org/service-support/glossary.html>

WIPO: <http://www.wipo.int/ipstats/en/statistics/glossary.html>

EU IPR Helpdesk: <https://www.iprhelpdesk.eu/glossary> (More related to FP7 and Horizon 2020 terms)

CONTENTS

1. What This Document is About?	6
2. Intellectual Property & 'Rights' – A Brief Overview for H2020	10
2.1 What is Intellectual Property?	11
2.2 IP Rights	11
2.3 IP Rights and Geographical Territory	12
2.4 IP Rights and Different Protection Regimes	13
2.5 Registration and Invalidation of Rights	13
2.6 Detecting and Taking Action Against IPR Infringement	13
2.7 Why Do We Have an IPR System and When Did It Start?	14
2.8 What is The Rational for the IP Right System?	14
2.9 Industrial Rights	14
2.9.1 Patents & Utility Models	15
2.9.2 Trademarks and Service Marks	17
2.9.3 Industrial Designs (Registered Designs)	19
2.10 Copyrights and Related Rights	20
2.11 Know-how and Trade Secrets	22
2.12 Summary Infographic	23
3. Intellectual Property and Rights in H2020: relevant concepts, definitions and documents	26
3.1 Definitions and Explanations	27
3.1.1 Background	27
3.1.2 Foreground (Results) and Access to Foreground	27
3.1.3 Public Research Organisations (PRO)	27
3.1.4 Access and Transfer of Rights to Background and Foreground	28
3.1.5 Sideground (FP7)	28
3.1.6 Claim to Ownership and Rights to Exploitation: Understanding The Issues	28
3.2 Exploitation and Dissemination of Results	29
3.2.1 H2020 Open Access 'Dissemination' and The Requirements for Patentability	29
3.2.1.1 Gold Standard	29
3.2.1.2 Green Standard	29
4. Concept Stage: From the Idea to Proposal	32
4.1 Understanding the Main Issues in Concept Stage	33
4.2 Using an NDA to Manage IP at The Concept Stage	34
4.3 Using a Memorandum of Understanding (MoU)	35

5. Proposal Stage: From Proposal to Potential Project	38
5.1 Understanding The Main Issues	38
5.2 Demonstrating research EXCELLENCE	39
5.2.1 State of The Art	39
5.2.2 Innovation Potential	41
5.3 Demonstrating IMPACT	41
5.3.1 PEDR (Plan for Exploitation and Dissemination of Results)	41
5.3.2 Exploitation of Results	43
5.3.3 ‘Exploitation’ and Public Research Organisations (PRO)	43
5.3.4 Dissemination of Results – Open Access	44
5.3.5 Other IRP Issues at The Proposal Stage	45
5.4 Demonstrate Quality and Efficiency of IMPLEMENTATION	46
5.4.1 Relevant Skills and Experience	46
5.5 Check List at The Proposal Stage:	46
6. Negotiation Stage: Signing the Agreements	50
6.1 Introduction to Model Consortium Agreements	51
6.1.1 The Definition of “Needed”	53
6.1.2 Confidentiality	53
6.1.3 Background (Positive & Negative Lists)	54
6.1.4 Termination and Survival of Rights/ Obligations	54
6.1.5 Ownership of Results	55
6.1.6 Access Rights to Results	56
6.1.7 Transfer Results – Waiver – Summary and Comparison	58
6.1.8 Open Source and Controlled License Terms	59
6.2 Check List at The Negotiation Stage:	60
7. Implementation Stage: IP in a H2020 Grant Agreement	64
7.1 Management of Intellectual Property (Subsection 1 Article 23a and Subsection 3 Article 26.3)	64
7.2 Rights and Obligations Related to ‘BACKGROUND’ (Subsection 2)	66
7.3 Rights and Obligations Related to ‘RESULTS’ (Subsection 3)	68
7.4 Transfer of Rights and Granting Licenses (Article 30)	69
7.5 Confidentiality (Article 36)	70
8. Further Information / Resources	72





**1. WHAT THIS
DOCUMENT IS
ABOUT?**

1. WHAT THIS DOCUMENT IS ABOUT?

The purpose of this document is to provide the participant with a more comprehensive knowledge and guidance on the handling of **Intellectual Property** issues related to **Horizon 2020 programme**.

According to the EC (European Commission) Horizon 2020 is *“the biggest EU Research and Innovation programme ever with nearly €80 billions of funding available over 7 years (2014 to 2020) – in addition to the private investment that this money will attract. It promises more breakthroughs, discoveries and world-firsts by taking great ideas from the lab to the market. Horizon 2020 is the financial instrument implementing the Innovation Union, a Europe 2020 flagship initiative aimed at securing Europe’s global competitiveness.”*

Horizon 2020 is an excellent tool for all kinds of organisations (public and private) and especially SMEs to realise their research and innovation ideas and access grants otherwise unreachable by them.

The document introduces the Intellectual Property ideas and tools available to researchers and entrepreneurs for securing their intellectual assets and transforming them into exploitable results.

In the following chapters the reader will find:

- The key concepts of **Intellectual Property Rights in Horizon 2020**
- How to manage your Intellectual Property in H2020 in the different stages of a project:
 - o At the **concept** stage, when you only have a rough idea
 - o At the **proposal** stage, when you transform your idea into a detailed work plan
 - o At the **Implementation** stage, when you execute your plan and seek results

Learning outcome

After a user gets familiar with this manual, he/she:

- *Should feel able to confidently manage the IP aspect at each of the main stages;*
- *Know which documents are key and which processes will be helpful;*
- *Know how to avoid common mistakes and pitfalls; Rapidly locate furthermore detailed information or sources of relevant help.*

We have also tried to go a little bit beyond the Horizon 2020 and discuss the impact of your results and exploitation potentials. Throughout this guide, we offer links to many more sources of information and documentation on IPR. Nevertheless, this document is neither exhaustive nor “all inclusive”. It is not intended to be used as a guide for H2020 proposal writing or as a sole source of information for IPR. We have sought as much as possible to avoid duplication with existing documents produced either by our or other relevant projects and initiatives. Wherever possible additional available resources are referenced.

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2. INTELLECTUAL PROPERTY & 'RIGHTS' – A BRIEF OVERVIEW FOR H2020

2. INTELLECTUAL PROPERTY & 'RIGHTS' – A BRIEF OVERVIEW FOR H2020

Horizon 2020 is an excellent tool for all kinds of organisations (public and private) and especially SMEs to realise their research and innovation ideas and access grants otherwise unreachable by them.

Horizon 2020 programme places a **great importance in the market aspect of research projects: technology transfer, dissemination, exploitation and commercialisation** of the research results. This in turn means that protecting your intellectual assets with a clear and well-structured strategy is today more important than ever.

A successful Horizon 2020 proposal and project will address all these issues of innovation management, including Intellectual Property and improved access to project results through **open access/open data**. The IP rules for Horizon 2020 are built upon proven regulations of FP7 but several new modifications simplify the approach and make it more applicable and understandable. There is no point in examining here in detail the changes, since these can be easily found in online as well as in the Rules of Participation.

<https://www.iprhelpdesk.eu/kb/1512-are-there-any-changes-terms-ip-between-fp7-and-horizon-2020>

http://ec.europa.eu/research/participants/data/ref/h2020/legal_basis/rules_participation/h2020-rules-participation_en.pdf

In this chapter, we introduce the broad concept of intellectual property (IP) and associated legal 'RIGHTS' (IPRs). We introduce the main categories of IP and their different forms. We briefly look at the issue of how IPRs are dependent on geographical territory for both 'REGISTRATION' and use. Finally, we look at how and why the IPR system emerged.

Rather than filling this chapter with a lot of detailed information on the different types of IP and how to obtain their specific associated 'RIGHTS' in both Turkey and other territories we focus on the issues that are important for H2020. When needed more detailed information has been placed in annexes.

REMEMBER

- *IPR regimes can differ between countries.*
- *H2020 projects take place in an international consortium and exploitation environment and this should be reflected at all stages of an H2020 project.*
- *There are notable differences between the national IPR regime and the regime in other territories.*
- *Use tables where possible to highlight commonalities and differences.*

2.1 What is Intellectual Property?

If you ask someone what intellectual property is, then there is a good chance that they will give you an example rather than a clear definition. The most common response is ‘a patent’. Patents are a very good example of a form of intellectual property and they have very specific legal ‘RIGHTS’ associated with them. But if you want to get a real understanding of IP then it helps to start by thinking more broadly and to think about where IP originate from and what it is used for. Understanding this will help you see why we have different forms of IP and different types of IP rights for each one. A good way to define IP is as: *“a product of the mind that has commercial value”*.

This definition introduces two important concepts – firstly that there needs to be an *intellectual* part – e.g. coming from the mind. Secondly that IP has its roots in the commercial world where it has value for commercial purposes. Intellectual property can be divided in to three main types or forms:

1. **Industrial property** – a class that includes ‘patentable inventions’ (including ‘computer implemented’ inventions), utility models, industrial designs and trademarks. Other less well known forms of industrial property include, New Plant Varieties (NPV), geographical indicators (GI) and semiconductor topographies. Industrial property has associated industrial property rights.
2. **Original literary and artistic creations** – a class that was originally applied mainly to books, architectural designs, musical scores, painting and textiles but that now embraces software code, television, film, broadcasting, advertising and other multimedia. Most literary or artistic creations are governed by some form of ‘copyright’. New categories that have emerged from copyright with their own protection regimes and rights include database rights.
3. **Trade Secrets and know-how** – this form of IP is sometimes explicitly recognised by national law (more commonly labour laws) and is often embedded in and regulated by legal agreements such as employment contracts, confidentiality agreements and consortium agreements. Know-how is normally defined in a H2020 consortium agreement and individual partner know-how can be captured in an associated annex.

2.2 IP Rights

Each type of IP mentioned above has different legal ‘RIGHTS’ associated with them – their ‘IPRs’. For example, the rights associated with being the holder of a patent right are very different to those of a copyright © and these differ again to the rights associated with a trade-mark. It is important to understand your specific legal rights and how your consortium will be using them to help you commercialise the results and maximise the impact of an H2020 project.

Some rights need to be ‘REGISTERED’ to be usable e.g. a patent, but others come in to existence automatically e.g. copyright. Some can be both registered and unregistered with associated levels of strength; trademarks™ and design rights DR are strengthened if they are recognised through a registration ®. We will come back to this issue in more detail later in this chapter.

A granted ‘right’ e.g. a patent right, is an exclusion right. It gives the legal holder (the owner) a limited legal monopoly. This monopoly is limited by *time*, *territory* and *scope*. A person who is not the holder of the right, who carries out an act covered by the rights (e.g. copying a work that is protected by copyright) is known as an ‘INFRINGER’. The rights holder can bring a legal action against an infringer to restore the monopoly. However, the rights holder can also:

- Transfer ('assign') their rights (by sale or licensing);
- 'Waive' their rights (intentionally or voluntarily relinquish a known right); and
- Offer 'access rights' to background IP and/ or foreground IP

'Access rights' are particularly important in H2020 projects as they are often

- needed in a project to undertake tasks or for
- exploitation of results.

It is important both to understand exactly what your specific rights are and how you will use them to exploit an innovation by controlling who can make use of it and where. This brings us to the important aspect of territory.

2.3 IP Rights and Geographical Territory

As stated in the section above, one of the limitations on an IPR monopoly is **territory**. For example, the rights that come with a patent for an invention registered in Turkey only cover the invention in Turkey. They offer no protection at all in other countries. If you want to be able to use rights in other countries then you will need to secure the rights in other territories. This is likely to require you to enter in to a further national registration process for each target territory and may require you to produce documentation in different languages. As this can be expensive it is important to understand what the specific rights are and why you might need some or all of them in different countries.

The international dimension of IPR is particularly important in H2020 as consortia partners come from different countries and the EU wishes to see resulting innovations exploited in the largest market possible.



2.4 IP Rights and Different Protection Regimes

Although many of the 'rights' you obtain for a type of IPR, e.g. a patent or a copyright, are very similar in different countries they do sometimes have variations. Variations in particular effect how long the right lasts, (for example, the length of copyright varies in different countries), and how difficult it might be to secure it. For example, some countries require 'SUBSTANTIVE EXAMINATION' of a patent application while others simply issue a granted patent without checking to see if the invention is new or if it meets other important patentability criteria such as inventiveness; a patent that has not been examined is often called a 'CONSENSUAL PATENT'. Consensual patents are not strong as they can easily be challenged by the market and then 'INVALIDATED'.

Different territories also require IP applications to be prepared in different ways. The US patent application requires the applicant to describe the 'PREFERRED EMBODIMENT' while the EU patent has no such requirement. Again, for an international action such as H2020 this aspect is particularly important as you may need to seek protection in a number of countries where you wish to use exploitation rights. Different partners in your consortium may be familiar with their own national regimes but not with the situation in other territories. You may need to make cross-checks and to consult lawyers who have a good understanding of the different requirements and regimes.

2.5 Registration and Invalidation of Rights

It is important to understand that even if a recognise IP office grants your IP rights, e.g. by examining and granting your patent and then registering it, there can still be challenges by others. Challenging the 'VALIDITY' of a granted patent or a trademark is a common strategy for many competing companies who would rather than your IPRs had not been granted. You can successfully challenge a granted IPR by proving to a court that:

1. *It should not have been granted in the first place* (not 'VALID') because it does not actually meet the criteria for patentability (novelty, inventiveness and use in industry and not being in an excluded class) or for protection as a trademark etc.
2. *It is no longer eligible for protection*, perhaps because as a trademark it has become a 'GENERIC' or vulgarised term or it is not being used properly. In this case, the rights can be 'REVOKED'.

Consensual patents that have not been examined are weak and are often simply infringed because companies know they will be easily invalidated in court. Even patents that have been examined can be invalidated for example if another individual or company can produce proof that they were made public before the filing date through a scientific publication or a seminar. INVALIDATION and REVOCATION are complex and usually require specialised legal advice. But it is important at this stage to be aware that just because you are granted IPRs they may not survive contact with the market.

2.6 Detecting and Taking Action Against IPR Infringement

If you have been granted IPRs by a national or regional patent office then as you have the responsibility for monitoring for infringement and taking action against an infringer; nobody else will do this for you. The exception to this general rule is when an exclusive license of rights has been agreed. In this case, the person who has taken the license (the 'LICENSEE') is also allowed to bring an action against an infringer and sometimes the terms of the licensing deal require licensee to take on these responsibilities of monitoring for infringement and 'ENFORCEMENT'.

2.7 Why Do We Have an IPR System and When Did It Start?

The IP rights system is not a very recent one. Examples of patents can be found dating back over 600 years. For example, in 1449 King Henry VI of England granted a patent to a man called John of Utynam. It was for a method of making the stained glass that can still be seen today in the chapel of Eton College School in England. Examples of other patents for stained glass can be found linked to the famous glass makers of Murano in Italy.

These early patents granted the inventor a 20-year legal monopoly on their method of making stained glass. This concept of a limited monopoly, limited by time, territory and scope has remained in patent law ever since and is now recognised in international Treaties for example the Patent Cooperation Treaty (PCT) administered by the **World Intellectual Property Organisation (WIPO)**. You can also find reference to international agreements regarding patenting in international trading agreements e.g. General Agreement on Tariffs and Trade (GATT). There are also international agreements that enable copyrights to be recognised simultaneously in many countries without the need for formal registration, for example the Berne Convention.

2.8 What is the Rational for the IP Right System?

Why did this system of Patent and Copy Rights arise? The rational is rather simple. It is designed to be *a mutually beneficial contract between the State on the one side and an inventor on the other*. The state, usually represented by the State Intellectual Property Office, grants the inventor a limited monopoly on the commercial use of an invention (limited in terms of its scope, duration and territory). This provides a financial incentive to commercialize an invention: after all, why spend a lot of time and effort in R&D if other companies can then just *'freeride'* on the commercial benefits. In return for the limited monopoly rights the State obtains and publishes a full written description of how the invention works (a so called 'ENABLING DISCLOSURE'). The word Patent comes from the Latin *Patere* - to lay open.

The enabling disclosure adds to the sum of public knowledge and enables other inventors to understand exactly how the invention works. However, they are excluded by the monopoly from using it themselves for commercial gain (look but don't touch!) and are therefore incentivized in to further efforts to invent beyond the published invention (or *'STATE OF THE ART'*). The system therefore encourages new inventions and promotes innovations while still protecting the original inventors, allowing them to make a living from their ideas.

Different forms or types of IP have different associated legal monopoly rights. It therefore makes sense to understand the different types of IP and their specific associated 'rights' and how obtaining and benefiting from these rights varies between different countries. Below we have outlined the main forms of IP with a focus on those frequently used in H2020. We have highlighted the issues you need to consider for each form when preparing and implementing an H2020 project. You may wish to refer to them when they become relevant to your H2020 application or granted project. You are also recommended to consult the IPR brochure produced by this project.

2.9 Industrial Rights

The main types of Industrial property encountered in H2020 are:

- Patents and Utility Models
- Trademarks and Service Marks
- Industrial designs

Below we briefly explain the rights associated with each form of property and how these are important for H2020. We

look at how you can obtain the rights and we highlight any notable differences between Turkey and other countries with regard to the rights.

2.9.1 Patents & Utility Models

Patents are traditionally used to protect an 'invention' but many research projects generate 'Results' that are patentable and patents are one of the most frequently sought forms of intellectual property in H2020.

A patent can be used to protect a new product or process. A granted patent gives the legal owner (the 'ASSIGNEE') a set of exclusion rights. This means that the rightful owner can bring an action against another person who is making unlawful use of the Rights ('INFRINGEMENT'). The legal rights that accompany a patent are strongly industrial and commercial in nature. They are the right to:

- Use the invention (e.g. to use a process on your own production line)
- Make the invention (manufacture)
- Offer the invention for sale (e.g. advertise)
- Import and store the invention (in to a protected territory)
- Sell the invention (in a protected territory)

Two notable points emerge from considering these Rights.

1. Firstly, that if you might want to make you product in one country where costs are low ('Make' the product) and sell it in another one where the price is high, (requiring you to 'Import', 'Store' and 'Sell' the product) and you wish to prevent other companies from doing the same thing, you will need to *obtain patent protection in multiple territories*. This will require you to develop an *international IP strategy*.
2. Secondly, you will see that all the rights for the assignee are linked to commercial benefit and economic advantage. The critical role of the inventors in having an idea is recognised by being listed as 'INVENTORS' on the patent application/ grant. But the legal rights of the owners of the IP/ patent (the applicant/ patent assignee) are only linked to exploiting the innovation in commerce. It is often said that intellectual property rights don't protect an idea, they protect the *expression of the idea* e.g. turned in to a product, process and protected by a patent or transformed in to a film or piece of music and protected by copyright.



The fifth right is the right to transfer the 4 main rights to others by sale or licensing. This right is particularly important in H2020 where you may have a number of different organisations involved in the project and they may wish to assign their rights to other partners for exploitation, or even to assign rights to new owners. This aspect is deal with in much more detail in the **Model Consortium Agreements and the Grant Agreement**.

In order to be eligible for patent protection the invention must meet 3+1=4 conditions:

1. It is new (also termed 'NOVEL').
2. It contains an Inventive Step (or is 'not obvious' to a 'person skilled in the art' e.g. an expert in the technical field)
3. It is capable of use in industry
4. It is not inherently non-patentable and does not fall in to an excluded category

*Patentability requirements are explained in detail in the 1st Chapter of the European Patent Convention:
https://www.epo.org/law-practice/legal-texts/html/epc/2016/e/acii_i.html*

Obtaining a Patent

When an 'APPLICANT' applies for a patent to be 'REGISTERED' in a certain territory then a national intellectual property office or similar organization will usually 'EXAMINE' the patent against these 4 criteria. In many territories, this is known as 'SUBSTANTIVE EXAMINATION' and it is quite a rigorous process. For example, the examiner will check several international patent databases to make sure they cannot find an identical invention and the new idea is not obvious when they consider existing inventions. If the examiner agrees that the application meets the criteria for patentability then the patent will be 'GRANTED' and 'REGISTERED'. The applicant is then known as the owner or 'ASSIGNEE' and is in a position to enforce their monopoly rights, if necessary by taking legal action against an infringer.

Term: If granted, then most patents will last for 20 years provided the owner keeps up the necessary registration payments. The 20 years starts from the date that the application was first received and not from the date on which the patent was granted.

Territory and Priority: it is possible to have an invention granted for the same invention in many different territories provided other applications are filed within 12 months of the first filing date. This is known as the 'PRIORITY DATE'. Many countries require that a first application must be filed with the national authorities before other applications are filed (within 12 months) in other territories or via international patenting routes e.g. by using the European Patent office or the 'PCT' (Patent Cooperation Treaty) route which is administered by WIPO (the World Intellectual Property Organization).

Utility Model or 'Petty Patent'

A **utility model** is also an intellectual property right to protect inventions. It is very similar to a patent, but usually has a shorter term of exclusivity (often 6 to 15

years). This shortened term reflects the fact that they are for “minor” inventions or improvements. A utility model is subject to less stringent registration requirements with the lower threshold of inventiveness consisting of a particular effectiveness in terms of, e.g. ease of application or use, or a practical or industrial advantage. Utility models are sometimes referred to as “petty patents” or “innovation patents”. They are available only in certain countries.

Patents and Utility Models in Turkey

In Turkey, similar to the system in EU, one can obtain patent for their inventions or innovative products or processes on condition that it meets the criteria listed above; novelty, inventive step and being industrially applicable. The application should be made to Turkish Patent and Trademark Institution (TURKPATENT, <http://www.turkpatent.gov.tr/>) and as it is explained above, the territory for a patent obtained in Turkey covers Turkey and protection term is 20 years.

It is presently possible to obtain a utility patent in Turkey. Utility models are protected for 10 years, on condition they met the novelty and being industrially applicable criteria.

For consortiums of H2020, we should state that Turkey is member of both PCT and EPC systems. Again, as it is explained above, one can ask for priority right in Turkey within 12 months of the first filing date both for patent and utility model. <http://www.turkpatent.gov.tr/TurkPatent/commonContent/PAbout>)

2.9.2 Trademarks and Service Marks

A Trademark is a sign or indicator used by an individual or organization to indicate the source of their goods and services. A mark enables a consumer to distinguish between similar products from different suppliers that look similar but may have different levels of quality.

Trademarks identify goods. Service marks identify services. A trademark or service mark is typically a name, word, phrase, logo, symbol, design, image, or a combination of these elements. It is also now possible to use colour, smell and sound provided there is a way to clearly record them and deposit them with the registration authority.



The trademark rights can be acquired:

- by being the **first to use** the mark in commerce
- by being the **first to register** the mark with the appropriate territorial Trade Mark office

Marks do not need to be formally registered. If you are the first to use a mark and you build up consumer recognition then you may be able to claim protection from the law if someone starts to use the same or a very similar mark. But your position will be stronger if you have a registration and this means that an external authority has decided that you meet the minimum requirements for the registration and they will also have carried out a search for other similar trademarks before they register your mark. A trademark may be registered if it performs the essential trademark function, and has **distinctive character**.

An application for a trademark will be refused if it is deemed to be purely descriptive e.g. a term with a dictionary meaning used in connection with products directly related to that or a Generic mark e.g. a common name for the products in connection with which it is used. It is also possible to lose a registered trademark if it becomes '**VULGARISED**' or '**GENERIC**' because the mark has become synonymous with the device e.g. Xerox for photocopying or Aspirin for a painkiller.

Registration

A registered trademark is associated with one or more '**classes**'. Classes are internationally recognized categories of goods and services. If you are applying for a trademark you need to decide which classes your trademark might be used for.

If you are considering registering a mark for your H2020 project, for example a domain name or a new product or service that you have developed, or even for a new spinoff company then it is important that you start by searching the database of registered rights to see if your mark might be confused with a similar one in the classes where you would like mark protection.

If you do not register your mark and someone else starts to use it then you may be able to get some assistance from the law on the basis that your unregistered mark is established and recognised by the relevant consumers.

Registration of a trademark is a very straightforward procedure that can be done through the EU Intellectual Property Office: <https://euipo.europa.eu>

Geographic Coverage of a Trademark

In a similar way to a patent, a trademark is registered for a well-defined geographical region. Making sure your mark is registered not only for the classes of goods and services that you may want to use it in but also for the geographical territories where you wish to trade is an important consideration for a company. If your business is limited to Turkey you may wish only to register the mark in Turkey. But if you are trading in to other countries then it may be worth extending the mark in to these other countries. If you trade through Europe you might also decide to make use of the European Community Mark. The Community trade mark gives protection in all European Union (EU) countries. You can apply for a European Community trade mark through the European route via EUIPO).

You can also make use of the Madrid system for the international registration of trademarks. This provides one single procedure for the registration of a mark in several territories. It is governed by two treaties, the Madrid Agreement and the Madrid Protocol, and is administered by the International Bureau of WIPO in Geneva, Switzerland.

Duration, Maintenance and Loss of a Trademark

Unlike a patent that is granted with a finite lifetime of 20 years a Trademark can be renewed indefinitely and the costs are quite low. Using both patent and trademark protection is a powerful way to extend the lifetime of a product.

Trademarks in Turkey

You need to apply to TURKPATENT to register your trademark (www.turkpatent.gov.tr) Initial protection term for trademark is 10 years, and with renewal in each 10 years, one can protect their registered brand indefinitely. Owners of trademark right can ask for priority right in Turkey, within 6 months from the first filing date of the trademark application. Similarly, protection only covers Turkey and applicants can apply to TURKPATENT to register their trademark abroad, by using Madrid System or vice versa. (<http://www.turkpatent.gov.tr/TurkPatent/commonContent/MAAbout>)

2.9.3 Industrial Designs (Registered Designs)

Industrial design right is an IP right that protects visual design (ornamental, aesthetic aspects) of utilitarian objects. This means that an industrial design is primarily of an aesthetic nature, and does not protect any technical features of the article to which it is applied. The design may consist of three-dimensional features, such as the shape or surface of an article, or of two-dimensional features, such as patterns, lines or colour. Design right is widely used to help protect a wide variety of products of industry and handicraft. The range of products using design rights is very wide. For example, from technical and medical instruments to watches, jewellery, and other luxury items; household goods and electrical appliances to vehicles and architectural structures; and from textile to leisure goods.

In order to qualify for protection the design must be novel and sufficiently unique. Objects are not entitled to design protection if their appearance is wholly determined by their technical function. Examples of well-known design that are protected through a design right include the distinctive three-dimensional Coca-Cola bottle. More recent examples of designs that have become locked in legal dispute over ownership or infringement of a design are the Apple iPhone and Samsung SMART phones.

Industrial Designs and International Protection Strategies

It is possible to register a design so that you can claim and enforce rights in other countries. To protect your design throughout the entire EC, you can apply for a Registered Community Design (RCD) at the EU Intellectual Property Office (EUIPO). Application details are available on their website. To get protection in some individual EC countries, you must make a separate application to each country.

Registration, Renewal and Duration

Registered Community Designs are protected for a period of five years. They can be then renewed four times giving a maximum life of 25 years protection. An unregistered design may also have some automatic protection in the EU through Community Unregistered Design Right and copyright laws in individual Member States.

You may also wish to register a design in countries outside of the EU, for example the USA. The Hague System for the International Registration of Industrial Designs allows you to simultaneously apply for a design in many different countries or territories, through a single application to the World Intellectual Property Organisation (WIPO). The Hague System for the International Registration of Industrial Designs provides a practical business solution for registering up to 100 designs in over 60 territories through filing one single international application.

Design rights are particularly useful when used in conjunction with other rights – this is called taking a ‘portfolio approach to protection’. You can combine patent rights and copyright and design right for a single product to give you a very strong bundle of rights protection¹.

Design Protection in Turkey

In Turkey, a design should be new and have individual character, in order to be registered and enjoy the registered design right. Duration of protection is 25 years, on condition that the owner of the right asked for renewal in every 5-year-term. Unregistered designs can still benefit from the protection in Turkey for 3 years, starting from the first date that the design made available to the public. As it is the case for other industrial property rights, territory of the protection is limited to Turkey. Owners of design right can ask for priority right in Turkey, within 6 months from the first filing date of the design application. Turkey is a member of Hague system for the international register of industrial designs, meaning that you can apply for registration in other countries of Hague system via TURKPATENT or you can ask for registration for your industrial design in Turkey via WIPO or other members of the System. (<http://www.turkpatent.gov.tr/TurkPatent/commonContent/TAbout>)

2.10 Copyrights and Related Rights

Copyright is a bundle of exclusive rights granted to the author of certain literary or artistic work for a limited period of time to make 'copies' of the work for publication and sale. Copyright provides its holder several exclusive rights to control the reproduction, import and export of literary and artistic works. Such type of works can also be protected by trademark or industrial design or all of them, if the work meets the criteria for these types of industrial property. The copyrights can also be assigned to other parties and assignment of copyright is almost automatic for a scientist publishing a scientific paper in a journal or as part of conference proceedings.

Copyright can protect:

- literary works, including novels, instruction manuals, computer programs, song lyrics, newspaper articles and some types of database.
- dramatic works, including dance or mime.
- musical works.
- artistic works, including paintings, engravings, photographs, sculptures, collages, architecture, technical drawings, diagrams, maps and logos.
- layouts or typographical arrangements used to publish a work, a book for instance.
- recordings of a work, including sound and film.
- broadcasts of a work.

Copyright provides 2 types of rights:

- **Economic:** financial reward / reproduction, distribution, public performance, broadcasting, translation, adaptation.
- **Moral:** attribution / recognition, fame, right to object to changes, adaptations.

It is important to remember that copyright does not extend to ideas but only to expression of thoughts. For example, an artistic photograph of the moon is protected under copyright, the idea to take that photo is not protected.

By definition, your works, are protected under copyright. There is no need for registration in most countries although many have a system to allow voluntary registration of works. These systems can help resolve disputes over ownership or creation. They can also facilitate transfer of rights to another party under specific agreements. Protection period for a copyright is 50 years, 70 or more years after the death of a creator depending on the country. (In Turkey, it is 70 years)

¹ For an illustrative case study on taking a portfolio approach to protection see <http://www.wipo.int/ipadvantage/en/details.jsp?id=3110>



*A modernization of the EU copyright law is under way and recently the European Commission has presented legislative proposals to “make sure that consumers and creators can make the most of the digital world”. This initiative falls under the Digital Single Market strategy.
<https://ec.europa.eu/digital-single-market/en/modernisation-eu-copyright-rules>*

Another worth mentioning initiative is **Creative Commons (CC)**. Started from an American non-profit organisation “devoted to expanding the range of creative works available for others to build upon legally and to share”. CC has created a number of easy to use and understand licences that are available to everyone. Such licenses do not replace copyright but rather build upon it. They provide an understandable framework to assign specific rights on a standardized way. Creative Commons classify specific rights between copyright owner (licensor) and licensee, to provide a kind of “some rights reserved” management. They are simple to understand and use, low cost to implement and have a very low overhead even in cases of IP management of large collections.

*In Turkey, copyright protection is granted without any application or registration, as in many countries of the World. Protection starts upon creation of the works. Copyright issues are governed by the Copyright Directorate of the Ministry of Culture and Tourism of Turkey.
For further information: <http://www.telifhaklari.gov.tr/>*

You can learn more about copyright on the WIPO dedicated section: <http://www.wipo.int/copyright/en/>

2.11 Know-how and Trade Secrets

Every company, entrepreneur or even researcher has a know-how related to his work which may prove as an important competitive advantage. Naturally such know-how should be kept secret. So, a trade secret is virtually anything that the owner does not want to reveal to his competitors. It may be technical and scientific information, such as formulae, manufacturing methods and specifications, designs, computer code and the like receive protection as trade secrets. Commercial and financial information may also qualify as trade secrets. Customer lists, customer buying preferences and requirements, the identity of customer decision-makers, pricing information, marketing and business plans, internal cost structure, supplier arrangements, and other similar non-public information should be protected through legal binding agreements.

There is no system for registration of such Intellectual Property. Each owner of this IP needs to ensure specific measures to protect his/hers IP.

Several legal documents can be used to protect our trade secrets. These include:

- Non-Disclosure Agreements (NDA) or Confidentiality Agreements (CA): These are legal agreements between at least two parties that outline knowledge, or information that the parties wish to share with one another for certain purposes under confidentiality. Under these agreement, the parties agree not to disclose any information covered by it. These agreements are often used between potential partners in project. E.g. in the context of Horizon 2020 when 2 parties start discussions for a new project and need to exchange technical or scientific information. The EU IP Helpdesk has published templates for both mutual or one way NDA as well as a Memorandum of Understanding (MoU) with NDA clauses. <https://www.iprhelpdesk.eu/node/971>
- Employment Contracts: A confidentiality clause can be included in any work/employment or even assignment contract to prevent individuals to share any information they have gained during their time in the company. A typical clause looks like this: “Any employee disclosing confidential information, trade secrets, know-how, records or information to any unauthorised person or persons will render the employee subject to disciplinary action, which may result in dismissal.”
- Consortium Agreement: This is the legal document that is used in the context of Horizon 2020 projects. Standardised templates like DESCAs exist to simplify the process. Partners are encouraged to explicitly mention in it any IP related matters and how they are going to be handled by the consortium. Issues include Confidentiality, Ownership/Joint ownership, Protection of results, exploitation and/or dissemination of results, access rights – scope, conditions, time limits, etc. Consortium Agreements are presented in detail in later chapters.

EU Directive on Trade Secrets

Recently (June 2016) the EC has adopted a Directive that aims to standardise the national laws in EU countries against the unlawful acquisition, disclosure and use of trade secrets. Learn more about this here: http://ec.europa.eu/growth/industry/intellectual-property/trade-secrets_en

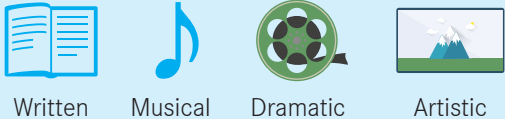
2.12 Summary Infographic


**COPYRIGHTS, DESIGNS, PATENTS AND TRADE MARKS
WHAT'S THE DIFFERENCE?**




Copyright

A copyright is a form of protection provided to authors for their original work. This includes creative and intellectual work like:



 The owner has exclusive rights to reproduce, distribute or perform the work publicly.


 Copyright do not require registration and the owner will have protection in most countries.




Trade Mark

A trade mark is a sign which distinguishes a company's product or service from its competitors. A trade mark can be a:



 The owner has exclusive rights to use the trade mark and legally prevent its unauthorised use.


 Trade marks are specific to a country or a union like the EU. Trade marks last for 10 years.




Patent

A patent is an intellectual property right granted by the government to an inventor for the exclusive exploitation of their invention.



 The owner has legal rights to exclude others from making, using or selling the patent.


 Patents are specific to a country. A patent normally last for 20 years.




Registered Design

A registered design is a protection provided to the appearance of a product or part of a product. It defines how a product looks.



 The owner has legal protection from others copying the design for their product.

 Registered designs are specific to a country. A registered design normally last for 25 years.

Copyright

Rights

Analys

TRAD

Identify

Owner

Work

are



**3. INTELLECTUAL
PROPERTY AND
RIGHTS IN H2020:
RELEVANT
CONCEPTS,
DEFINITIONS AND
DOCUMENTS**

EMARK

3. INTELLECTUAL PROPERTY AND RIGHTS IN H2020: RELEVANT CONCEPTS, DEFINITIONS AND DOCUMENTS

H2020 research projects involve both **private sector enterprises** (often SMEs) and **Public Research Organizations (PROs)**. These two groups have very different goals and traditionally have had very different ways of approaching the management of new knowledge and research results.

Enterprises are focused on increasing their profits and typically use employment contracts, **Non-Disclosure Agreements (NDAs)**, trade secrets and patents to control dissemination and use of information and innovations.

PROs are focused on increasing the pool of knowledge and ensuring academic career progression. They have traditionally have enjoyed academic freedom to disseminate their research results through meetings, conference proceedings and peer review journal articles.

Public-Private Partnerships (PPPs)

When enterprises and PROs collaborate, there is an immediate need to recognize the differing goals and reward systems. Typically, this means a tighter management of **DISCLOSURE** of information and in particular, the **planned timing of disclosures**. There is no reason why both an academic peer reviewed paper and/or a PhD thesis and a patent cannot emerge from an H2020 project provided the disclosure process is well planned so that the **'NOVELTY'** aspect required for patentability is preserved. These issues should always be addressed in the consortium agreement but often need to be addressed at the concept and proposal stages of a project.

The main issues to be addressed are:

- **Confidentiality**—identifying and maintaining the confidentiality of existing information (**BACKGROUND**);
- **Access Rights**—access to and control of existing information and IP (**BACKGROUND**) and new information and IP (**FOREGROUND**) including the right to publish and continue to use information for research and the right to use **BACKGROUND** and **FOREGROUND** to implement project tasks and exploit **RESULTS**;
- **Ownership** of any new intellectual property (**RESULTS**) including joint ownership.
- **Protection** – taking steps to secure the most appropriate protection for **RESULTS** so that they can be used to maximum impact and benefit
- **Dissemination** –Rights and requirements to publish including the issue in H2020 of **Open Access Publications**
- **Exploitation**—To ensure impact and enable partners to share benefits and commercial profits but also to exploit the results for non-commercial purposes e.g. teaching, research and policy making.

3.1 Definitions and Explanations

Below we offer some useful definitions to terms that are linked to these issues. These definitions are largely taken from the **Annotated Model Grant Agreement (AMGA)** and **Model Consortium Agreements (CAs)**².

3.1.1 Background

'BACKGROUND' is intellectual property of any format (granted patents, unpatented inventions, copyrights, trade secrets etc.) which is held by beneficiaries prior to their accession to the grant agreement and which is needed for carrying out the project or for using the 'RESULTS' / 'FOREGROUND'.

'BACKGROUND' can include copyrights or other intellectual property rights linked to the information, the application for which has been filed before their accession to the CA and GA agreement, and which is needed for carrying out the project or for using foreground.

Ownership of background is not changed by participating in Horizon 2020. IP that is owned before the project will be the property of the same owner after the project unless they have taken deliberate steps to transfer rights. However, formalized long term access rights to the owned background IP by other parties may be required for the results of the project to be fully exploited.

3.1.2 Foreground (Results) and Access to Foreground

FOREGROUND is the intellectual property contained in the RESULTS generated under the project, including information, whether or not they can be protected; Such RESULTS include rights related to copyright; design rights; patent rights; plant variety rights; or similar forms of protection.

RESULTS and therefore FOREGROUND are generally owned by the party that created them. In some cases when 'co-creation' has taken place the foreground/ results may be jointly owned by one or more of the partners.

3.1.3 Public Research Organisations (PRO)

A Public Research organisation (PRO) is an entity, such as university or research institute, "irrespective of its legal status (organised under public law) or way of financing, whose primary goal is to conduct fundamental research, industrial research or experimental development and to disseminate their results by way of teaching, publication or technology transfer; all profits are reinvested in these activities, the dissemination of their results or teaching; undertakings that can exert influence upon such an entity, in the quality of, for example, shareholders or members, shall enjoy no preferential access to the research capacities of such an entity or to the research results generated by it."³

² The Legal Documents of Horizon 2020 proposal can be found in our helpdesk and in H2020 Participant Portal.

<https://th2020.zendesk.com/hc/en-us/articles/209442329-Legal-Documents-of-H2020>

http://ec.europa.eu/research/participants/portal/desktop/en/funding/reference_docs.html

³ According COMMUNITY FRAMEWORK FOR STATE AID FOR RESEARCH AND DEVELOPMENT AND INNOVATION (2006/C 323/01) here:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:323:0001:0026:EN:PDF>

3.1.4 Access and Transfer of Rights to Background and Foreground

When one partner is the legal owner of IP needed to carry out project tasks or exploit new results then it will need to take formal steps to make these rights available to other partners. If this is not done then the other partner may be guilty of 'INFRINGING' the legal rights. Making rights available like this is known as giving **ACCESS RIGHTS**. Access right may come with a simple written document 'WAIVING' rights or they might be captured in a more complex 'LICENSE OF RIGHTS'.

Rights associated with Foreground may also be **TRANSFERRED** to other parties, including **AFFILIATES** of the project partners so that the results can be better exploited.

When **BACKGROUND** and **FOREGROUND** is used during and after the project this may be free of charge, or it might be 'Fair and reasonable remuneration' and incur a cost (a **ROYALTY**). This approach is taken to ensure that all partners can gain benefit from participating, including financial benefit. This issue is particularly pertinent for PROs as they are not able to drive commercialisation in the same way as an enterprise so they may prefer that they get paid by others who want to use the results the PRO generated.

3.1.5 Sideground (FP7)

SIDEGROUND is a term that was coined under FP7. It is not so well used in H2020 but you may still come across the term in your consortium agreement. **SIDEGROUND** is Intellectual Property created by the parties during the period of the "agreement, but outside the framework of the original agreement". **SIDEGROUND** is distinguished from background, which covers only the information that participants hold before entering the project.

3.1.6 Claim to Ownership and Rights to Exploitation: Understanding the Issues

A university or R&D institution would 'normally' own any intellectual property that is:

"made, designed, discovered or created by a member of staff, students, guest researchers etc., in the course of their employment and responsibilities or which makes significant use of the institution's resources (including institution-administered funds or R&D institution-funded time, facilities, or equipment) in connection with its development".

However, there are exceptions to this standard IP Policy in countries where 'professors privilege' is recognized in law or where ownership of research results has not yet entered into national law or been regulated in PRO by-laws. Even when the claim to ownership of the PRO is clear, good practice calls for a further provision in a **legal agreement** to determine the ownership of IP that is "made, discovered or created in the course of research that has been **funded by a sponsor under a grant or research agreement**".

It is critical in Horizon 2020 that the PROs in the partnership can ensure that they are able to claim rights to results created by their own researchers (including students and visiting researchers etc.) and these can be co-owned with another external partner where they have worked together. In the same way, it is critical that enterprises can claim rights to results generated by their employees, any sub-contractors or affiliates. If this is not the case then the Commission might fund research where the results are pre-assigned and therefore are not under the ownership and control of the Beneficiaries. This is not acceptable.

The particular issue of PROs being able to claim ownership of IPR for H2020 is dealt with in more detail under section "**Management of intellectual property**" (Subsection 1 Article 23a and Subsection 3 Article 26.3). Under H2020 it is required that the consortium can control access to, and exploitation of, results.

3.2 Exploitation and Dissemination of Results

The rights that are attached to a patent and other forms of IP rights are designed to aid exploitation in industry. If the technology readiness level (TRL)⁴ is sufficiently high then partners may use their rights directly to make and sell a product or service or they might transfer their rights to others and take royalties in return. If the results of the project are still quite early stage then they may need to be developed further through more R&D.

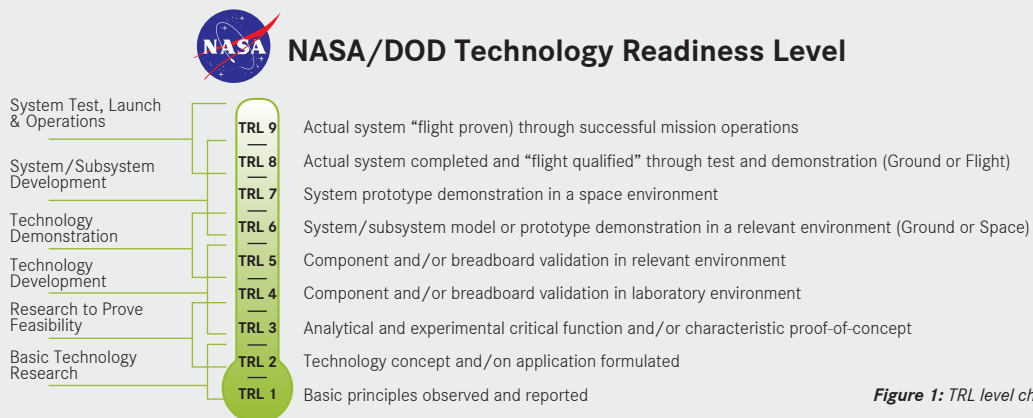


Figure 1: TRL level chart by NASA

In all cases, there needs to be a plan to guide the project and realist impact from the results. In Horizon 2020 this is the **Plan for Exploitation and Dissemination of results (PEDR)**.

3.2.1 H2020 Open Access 'Dissemination' and the Requirements for Patentability

As we have seen in the previous chapter, the requirement for most forms of legally protection and enforceable monopoly rights are that an invention or a creation is 'new' (novel). This requirement for novelty includes public dissemination of your own results. Publishing a description of an invention *before* you apply for a patent or other form of IP may make it impossible to meet the requirement for novelty. As a result, it is very important that the desire for academic publications are carefully timed so that they don't prevent the partners for applying to register their IP e.g. in the form of a patent of other industrial property right. While it is a requirement of Horizon 2020 that you 'disseminate' your results this should be done in a carefully timed manner so that it does not conflict with exploitation. In Horizon 2020 when dissemination takes place via scientific journal publications these must be **Open Access**, either at **Gold** or **Green** standard.

3.2.1.1 Gold Standard

Open Access ('Gold Standard' Publishing) means:

- 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.

3.2.1.2 Green Standard

Open Access ('Green/ Self-Archiving standard' Publishing) means that:

- 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.

⁴ Invented by NASA, but widely accepted today. You can learn more here: https://www.nasa.gov/directorates/heo/scan/engineering/technology/txt_accordion1.html





**4. CONCEPT STAGE:
FROM THE IDEA
TO PROPOSAL**

4. CONCEPT STAGE: FROM THE IDEA TO PROPOSAL

Innovation management for an H2020 project is quite similar to managing a large sailing boat and crew on a long journey or race. You need to make sure you are staying on target and adjusting for the external conditions (wind and tide) and internal situation (crew and equipment). A skilled navigator, strategist and ‘helm’ do this by working closely together, planning and anticipating for events and making small adjustment to the set-up of the boat and the rudder. However, they will know that each time they apply the rudder to change direction they will slow the boat down very slightly. It is important therefore to try and make very small, regular and planned interventions rather than sudden major interventions and changes of direction.

Managing a Horizon 2020 project for IP means planning both one-off and regular activities. The table below is indicative but not restrictive. Many of these activities are anticipated by the **Grant Agreement and the Consortium Agreement**. This is why it is important that they are used regularly as reference documents for innovation management across the lifetime of the project rather than as milestones for starting the project.

One-off Activities	Regular Activities
<ul style="list-style-type: none"> • Identifying and documenting ‘BACKGROUND’ IP (positive or negative lists as required by the selected CA); • Preparing a Plan for Exploitation and Dissemination of Results (PEDR) • Identifying and documenting named affiliates (if required by the selected CA); • Preparing confidentiality agreements (NDA or CA). • Preparing and finalising (signing) the agreed CA. 	<ul style="list-style-type: none"> • IP auditing to see if steps need to be taken to protect emerging results through formal registration (drafting and filing a patent) and to correctly assign ownership or agree joint ownership; • Dissemination to ensure that they are in line with the H2020 Grant Agreement (e.g. open Access publication) and are timed so that they do not effect protection (managed disclosure); • Notifications, requests and waivers e.g. to pass confidential information to an affiliate to use ‘BACKGROUND’ or ‘FOREGROUND’ materials; • Checking and updating the PEDR;

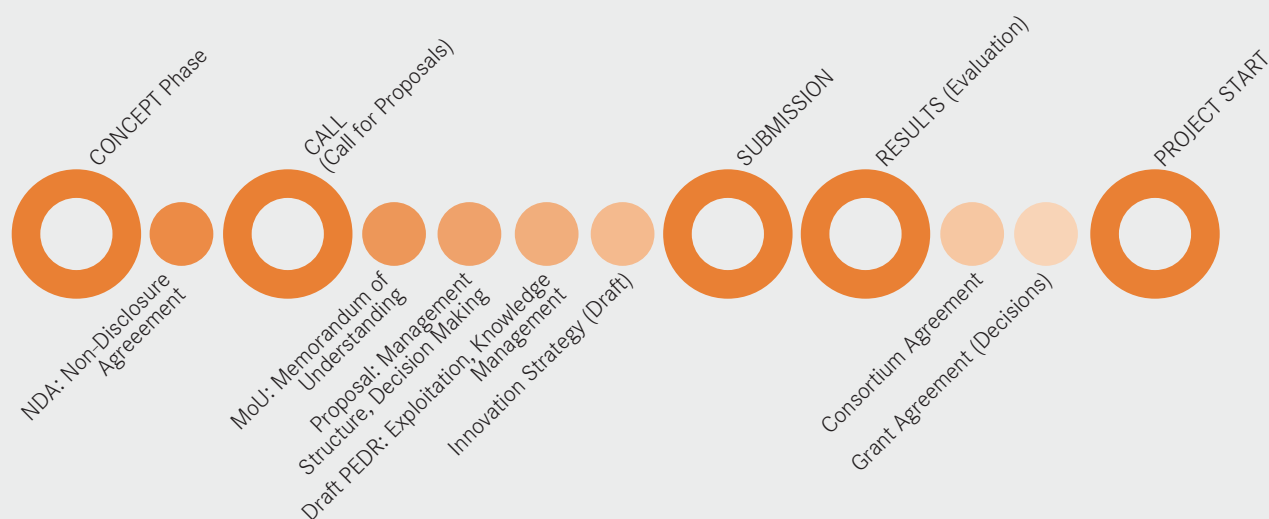


Figure 2: Intervention Points and Related Documents

4.1 Understanding the Main Issues in Concept Stage

At the concept stage, a number of different entities (large and small enterprises, universities, and research institutes) need to exchange ideas and information so that they can develop a strong **project concept**. The prospective consortium partners may need to exchange existing knowledge that they regard as commercially valuable and proprietary to their organisation. They may not be sure that they will all ultimately work together. They may have no previous experience of working together that would have established communication norms and trust. There may even be concerns that one party might ‘steal’ an emerging idea and then work with other partners in another consortium.

When preparing a Horizon 2020 proposal it is very important to **tackle issues of confidentiality from the early stages**. Ideally, the issue of confidential information exchange and management should be discussed and dealt with by the partners **before the negotiations start** - i.e. before any exchange of information relating to the project concept occurs between the potential project partners.

Ensuring that confidentiality obligations are in place allows partners to safely disclose know-how and information which is not protectable by intellectual property rights and that gives them a commercial advantage.

Disclosures under confidentiality obligations do not threaten the requirement for ‘**NOVELTY**’ as they are not ‘**PUBLIC DISCLOSURES**’.

4.2 Using an NDA to Manage IP at the Concept Stage

During the implementation of a H2020 project the partners will have a consortium agreement in place and such an agreement would normally automatically contain confidentiality obligations ensuring that any confidential information is kept secret and used merely for the purposes of the H2020 project. However, consortium agreements are only signed at a later stage, once the discussions for the preparation of the proposal are over. During the preparation of concept development and project proposal stage, partners can use a ‘NON-DISCLOSURE AGREEMENT’ (NDA) for ensuring confidentiality in the discussions and negotiations.

A ‘NON-DISCLOSURE AGREEMENT’ or NDA (also known as a ‘CONFIDENTIALITY AGREEMENT’ or CA) is a good way to enable all partners to feel secure about sharing information with each other to build the strongest project concept. An NDA sets out procedures for the definition and handling of all confidential information during the negotiations. It also allows the definition of the purpose for which such information is shared and can be used.

The NDA identifies:

- the **purpose of the confidential information** exchange e.g. to build a H2020 concept with the objective of building strong consortium and submitting a winning proposal;
- the **confidential information** that will be exchanged to support that purpose (and no other);
- the **legal parties involved** and, if necessary, the named individuals who will have access to the information and must be aware that it is confidential, and
- the **length of time** for which all signatories must take reasonable steps to keep the information confidential and not disclose it to anyone else;
- any **penalties for disclosing** the information to external parties/ individuals who are not signatories to the agreement.

NDAs can be either		
<ul style="list-style-type: none">• One way – only one of two entities will disclose information	<ul style="list-style-type: none">• 2 way – two parties will both exchange information to each other.	<ul style="list-style-type: none">• N way (n partners in a consortium all receiving and disclosing information and ideas)

Multi-party NDAs are normally required for a H2020 concept development because of the number of potential partners involved. To be legally binding they must be signed by legal representatives of all the organisations involved. As this can be time consuming a lead partner can arrange for each organisation to sign a separate sheet and send it to the lead partner. For more information on this approach see the Case Study at the end of this chapter.

NDA Checklist

Ensure that as a minimum your NDA identifies:

- The confidential information;
- Who has access to it;
- What they may do with it;
- how it will be kept confidential;
- how long it will be kept confidential;
- (penalties for breaking the agreement)

Model NDA templates for use in H2020 projects have been developed by the EU IPR helpdesk:
<https://www.iprhelpdesk.eu/node/971>



4.3 Using a Memorandum of Understanding (MoU)

A Memorandum of Understanding (MoU) is an agreement that defines the framework of the negotiations among the partners of a consortium. They are generally concluded at the very beginning of the negotiations on the involvement in a project, even before submitting a proposal.

The MoU

“expresses a convergence of will between the parties, indicating an intended common line of action, helping to explain any protocols for communication, information exchange, reporting, confidentiality issues, and modifications and conditions for terminating the agreement”. (IPR Helpdesk)

The MoU can be very useful as a tool for facilitating effective collaboration and linkages as a commitment by the parties, become a beneficial agreement that joins parties together in order to achieve a specific outcome, and help to solidify partnership among the partners of a consortium. MoUs are similar to a letters of intent expressing an interest from the participants in performing services or the intention of taking part in activity but that do not legally obligate any party. They are not fully binding in the way that contracts are, but they are stronger and more formal than a traditional gentleman’s agreement. They set out an agreement ‘in good faith’ among the signatories, on the basis that it is a fair and honest representation of their intentions.

MoU Checklist

Ensure that as a minimum your MoU identifies:

- protocols for communication;
- information exchange;
- reporting;
- confidentiality issues, and
- modifications and conditions for terminating the agreement.

A model MoU template for use in H2020 projects has been developed by the EU IPR Helpdesk. This template should be used taking into consideration that it should be adjusted to the concrete situation or needs of the partner signing it. Some of the terms and conditions are essential requirements of the MoU, while others should be included only when appropriate. A good rule is to include that which appears reasonable. Download it here: https://www.iprhelpdesk.eu/H2020_MoU

The EU IP Helpdesk has published a Case Study that will help you to understand all issues discussed in the previous paragraphs for dealing with IP in the Concept stage. It can be found here: <https://www.iprhelpdesk.eu/sites/default/files/newsdocuments/CS-Confidentiality-considerations-during-project-preparation.pdf>





**5. PROPOSAL
STAGE: FROM
PROPOSAL TO
POTENTIAL
PROJECT**

5. PROPOSAL STAGE: FROM PROPOSAL TO POTENTIAL PROJECT

5.1 Understanding the Main Issues

In this chapter, we introduce and explain the IPR issues that need to be addressed at the proposal stage including demonstrating research excellence and impact. We look at practical ways of demonstrating your knowledge of the **State of the Art**, the content of a good **Plan for Exploitation and Dissemination of Results (PEDR)**, and how to meet the H2020 requirements for Open Science (Open Access and Open Data). We also look at the IPR aspect of the grant agreement and draft consortium agreement.

During the proposal development stage the consortium partners need to continue to exchange confidential information and develop an understanding of how they will function as a consortium if they are successful in their application. This agreed management structure and individual tasks and responsibilities will ultimately need to be captured in an appropriate **consortium agreement**.

The partners need to develop a proposal that meets the aims and objectives of H2020. In particular, the proposal needs to reflect the criteria that will be used for evaluation, namely:

Excellence	Impact	Implementation
		(Quality & Efficiency)

In order to score highly in the first category (excellence) proposals will need to offer evidence that they have **'ambition, innovation potential and results beyond State-of-the-Art'**. It is therefore necessary to consider what proof can be offered to convince the reviewers that the proposed research meets the EU definition of 'excellence'. This is likely to include the **results of a patent database search and interpretation**.

In order to score highly in the second category (Impact), proposals will need to submit a high quality **Plan for Exploitation and Dissemination of Results (PEDR)** and convince the reviewers that they understand and have planned for the main IPR issues inherent in both legal documents (Grant Agreement and Consortium Agreement). They need to prove the clear ownership of results, access to background needed to implement the project and access to foreground and background to enable them to exploit and use their own results.

*Make sure you have access to the H2020 Annotated Model Grant Agreement and a DESCA Model Consortium Agreement.
<https://th2020.zendesk.com/hc/en-us/articles/209442329-Legal-Documents-of-H2020>*

To address impact the proposal will also need to address the issue of **Open Access** publications and possibly also **Open Data**. This may mean thinking carefully about the journals they will target, allowing funds in the proposal budget for Gold Standard Open Access Publishing. Where Gold Standard is not possible through the journals they wish to target the consortium needs to ensure they can offer green standard (delayed) open access publishing, perhaps via a journal repository hosted by one of the partners⁵.

To score highly in the final category (implementation) you have to prove that you have the qualifications, skills, experience and track record within the consortium to successfully implement the plan. Where skills and expertise are missing, the consortium needs to be able to offer a convincing argument for how they can be accessed as and when they are needed. The budget proposed will need to reflect the PEDR by including costs for the protection and exploitation routes envisaged e.g. costs for professional patenting and licensing.

Remember, that at this stage you should already have a Non-Disclosure or MoU with the rest of the partners to ensure a confidential flow of information throughout the consortium. See previous chapter.

This is also be a good time to start to define each partner's '**BACKGROUND**' IP and to consider when there will be a '**need**' to share this with other partners for the proposed project to go ahead, through '**ACCESS RIGHTS**'. This '**BACKGROUND**' and '**ACCESS RIGHTS**' will form part of the final consortium agreement. Partners may also identify '**BACKGROUND**' that they realise could be more strongly protected e.g. through a patent application.

5.2 Demonstrating Research Excellence

5.2.1 State of the Art

According to the Rules for Participation in H2020 selected projects must demonstrate research excellence. This means they can convince a reviewer that they show '**ambition, innovation potential and results beyond State-of-the-Art**'. To offer a convincing case it is first necessary to show you are fully aware of the current 'state of the art'.

The 'state of the art' represents the present state of R&D&I that your new project will extend. To demonstrate that you have a clear understanding of the present state you must be able to present the **results of both academic journal and patent database** searches and interpret them in a knowledgeable manner. This interpretation should be reflected in the exploitation plan of your PEDR.

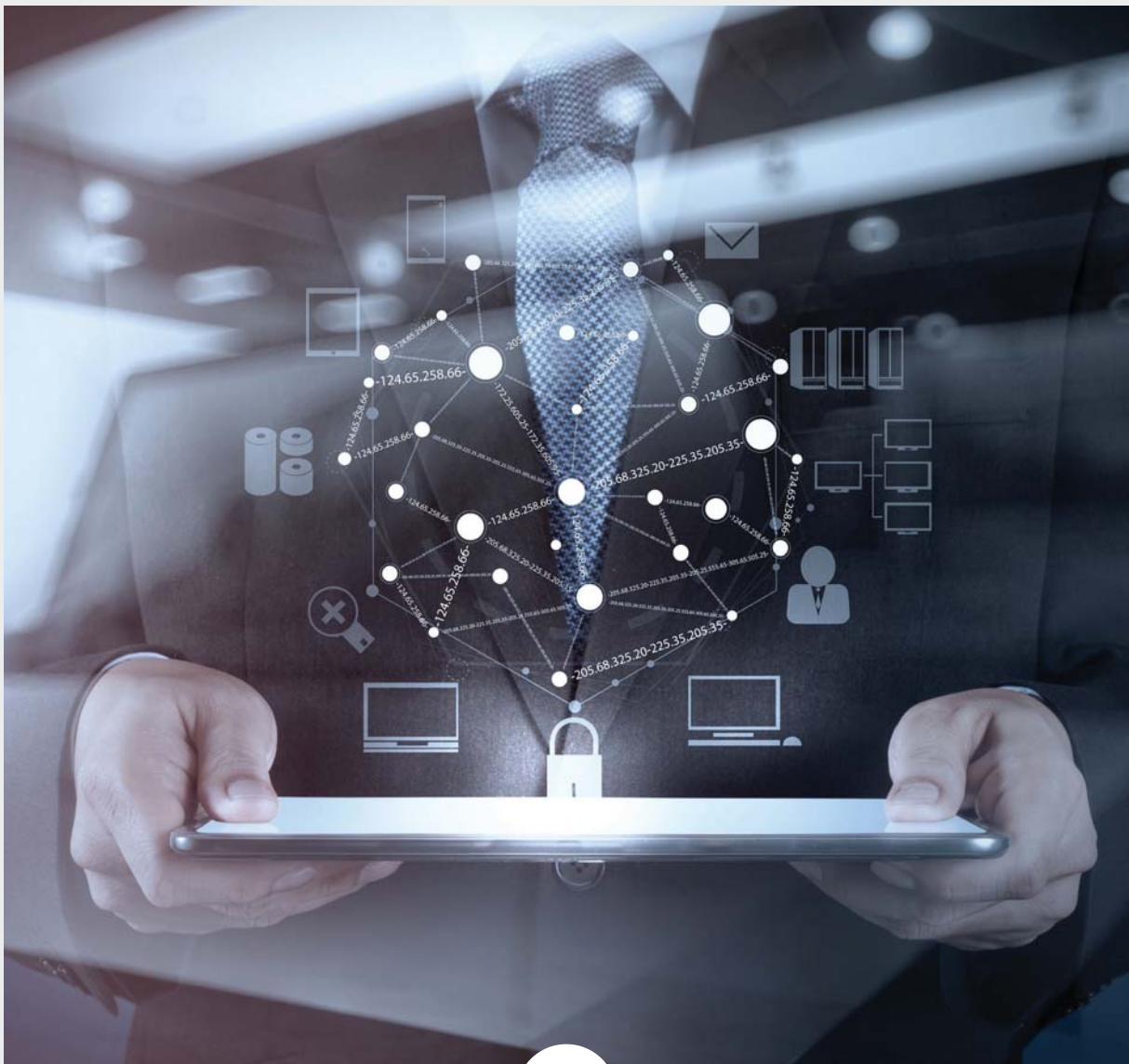
Academic partners will often feel they have a very good understanding of the academic state of the art and will be able to cite the most recent papers and interpret them in the light of the new project proposal. However, **investigating and interpreting the patent landscape is often much less well tackled in H2020 proposals.**

⁵ See more on Open Access here: https://ec.europa.eu/programmes/horizon2020/sites/horizon2020/files/FactSheet_Open_Access.pdf

It is extremely important that you reflect the results of patent database searches in your proposal because **only 20% of R&D results are published in academic peer review journals**. The other 80% are to be found as published patent applications or granted patents. This reflects the fact that a very large amount of R&D is carried out by the private sector who then secure use for commercial activity via intellectual property rights. Many companies do not publish in academic journals but their R&D output is very strongly represented in patent publications.

A patent **APPLICATION** (request for a patent) is automatically published by a patent office after a maximum of 18 months from the time of filing. This document is freely available to anyone and forms part of the **'STATE OF THE ART'**. Its application number is accompanied by the letter **A** to show it was an application.

If the application is granted, normally following **'SUBSTANTIVE EXAMINATION'** and the patent is then **'REGISTERED'** then the granted patent document is also published. The granted/ registered patent now carries the letter **B** next to its grant number to show it is a granted patent. This new document may be significantly different to the application due to the negotiations during the examination procedure; these are similar to those that take place when an academic paper is peer reviewed before publication. If the patent is not granted then no **'B'** version will appear.



Make sure you present the results of your journal and patent searches in your proposal. Explain clearly to the reviewers why and how your own project will extend the present 'STATE OF THE ART'.

All consortium members are able to search for patent literature using patent databases such as **Google Patents** and **Espacenet**. Structuring a search so you are sure that you have found relevant documents and interpreting the results to strengthen your own research proposal can be quite demanding. This is the point where help from a University TTO, patent attorney or someone in the consortium with previous experience in this field can prove invaluable. If you cannot find relevant experience within your own consortium then start early and make use of the online patent searching tutorials offered by Espacenet.

5.2.2 Innovation Potential

The degree to which your research project results will have 'innovation potential' will partly depend on how you can enter and exploit them to the largest market. Many H2020 projects may result in the development of a 'product' or 'service'. However, whether you can successfully exploit this output will depend partly on a number of IP related factors.

The results of the 'STATE OF THE ART' search, and in particular the patent database search should help you to see how 'new' your product or service might be. **If it is rather similar to another solution or just a different way of solving a problem without any real advantages then you will not have much innovation potential.**

Make sure you clearly benchmark your product and service against those you find in the literature.

Demonstrate that you understand that you are meeting a real need or opportunity. Use the PEDR to show you understand market segments and you have a realistic plan for how to commercialise your results in the target markets.

Also check if your patent search reveals possible third party rights that will need to be considered when you try to exploit your own results to the market. If you may need to get permission, or take a commercial license, to existing IPRs then check that this will be possible and include the costs in your budget.

5.3 Demonstrating IMPACT

Impact is the **most important criterion** on which project proposals are assessed. The impact section of the H2020 application should set out the concept and goals that the partners intend to achieve within their project. This section will be assessed strongly in terms of the effectiveness of the proposed measures to build sound strategies for IP management exploitation of results.

5.3.1 PEDR (Plan for Exploitation and Dissemination of Results)

The Horizon 2020 Rules for participation make it clear that beneficiaries have an obligation to exploit and disseminate the outcomes of their funded activities.



The requirement is linked to the **Plan for Exploitation and Dissemination** and the requirement for **Open Access Publication**.

Horizon 2020 work programme explicitly states that the PEDR is a **compulsory submission** for H2020 proposals. It forms part of Annex 1 to the Grant Agreement if a project is funded. Although it will only be in draft form for most proposals, as it is expected to be updated regularly over the life time of the project, it will still be scrutinised strongly by the evaluators.

The PEDR should

- **define clear objectives** for the project that reflect the need to realise impact and that are adapted to the different relevant **target users**;
- set out **detailed strategies for protection, exploitation and dissemination** defining how research results will be implemented and how they will impact on the market, on future development and policy making;
- **translate this strategy in to practical measures** to identify, protect, exploit and disseminate the results of the project.

Make sure each of these issues is addressed. **As a minimum, make sure the proposal answers the following questions:**

- What kind of **needs** does the project respond to?
- What kind of **problem** the proposed solution will solve and why this solution will be better than existing ones and in which areas?
- What new knowledge (**results**) the project will generate (assessment of the state of the art)?
- Who will use these results (**users**)?
- What **benefits** will be delivered and how much benefit?
- How will end users be informed about the generated results (**awareness**)?

Some **examples of aspects you may need to analyze** to answer these questions:

- potential **geographical coverage** and **economic size** of the **target markets** where project results will be exploited and disseminated;
- potential **users**, main **competitors** and competitive advantages;
- analyses on the state of the art, which will allow applicants to **describe the planned developments and differences** from existing competing products and services;
- analyses on the intellectual property that is needed and will be brought to the project, including for example information on **knowledge and inventions**; these analyses could also cover **freedom to operate** searches;
- **facts and figures** on the planned exploitable results and their areas of application and intellectual property protection that will allow the evaluation of their potential impact;
- description of the **exploitation roadmap and business model** (see next sub-section);
- description and timeline of the planned dissemination activities including **Open Access** and where relevant,
- A description of the planned management structure and procedures including who will be involved in the exploitation and dissemination activities and how they will be managed.

5.3.2 Exploitation of Results

There are a number of different ways in which a project can ‘**exploit**’ the results. These might include:

- **further research** activities, particularly by the PROs
- Internal product/**service development** by the enterprise partners
- **Licensing** of some or all of the IP rights to a new external partner who is better placed to realise full commercial value
- **Spinoff** company formation where the new company will be exploiting the results

However, there are many others and it is critical to remember that your own project will naturally lead you towards some exploitation routes and away from others. Avoid presenting the proposal evaluator with a long list that covers all eventualities and possibilities; this is unlikely to win marks for your proposal. Focus instead on identifying the routes that fit to your own research project. Consider the **Technology Readiness Level (TRL)** of your results, the market norms for your products/ services, the skills and track record of your consortium and the availability of future funding.

5.3.3 ‘Exploitation’ and Public Research Organisations (PRO)

When developing the PEDR, PROs need to take note of the Commission **Recommendation on the management of intellectual property in knowledge transfer activities**⁶ and in particular the principals set out in Points 1 and 2 of the Code of Practice Annex.

⁶ Available download at http://ec.europa.eu/invest-in-research/pdf/download_en/ip_recommendation.pdf

- Point 1 deals with the **Principals for an internal intellectual property policy**.
- Point 2 deals with **Principals for a knowledge transfer policy**.

PROs who have an official, documented IP Policy and/or **Knowledge Transfer Policy** should make clear reference to this in their PEDR and link the Policy to the requirements for ownership, disclosure, management and exploitation of the results. They may also be able to cite the PRO track record in management of IP and successful commercialisation of research.

PROs who do not have a documented IP and KT policy need to pay particular attention to how they will manage the issues of ownership, disclosure, management and exploitation of the results. This point is revised under the relevant section on the Grant agreement.

5.3.4 Dissemination of Results – Open Access

The results of the project can and should be disseminated in a number of ways that fit to the aims, objective, activities and target users; these need to be set out in the PEDR. However, **Open Access** to peer review publications has been anchored as an underlying principal in the Horizon 2020 Regulation and Rules of Participation and it is now implemented through the Model Grant Agreement.

All projects receiving H2020 funding therefore have the obligation to make sure that their publications (Research Articles) meet the requirements of Open Access, set out by the Commission. (Open Access explained in Chapter 3).

It is important to note that ‘**dissemination**’ does not automatically confer the requirement to publish results in an academic paper format. Publication should always follow a decision on whether to seek protection for intellectual property rights and should not obstruct the exploitation of the results by the partners. But once a decision has been taken to publish results then the partners need to ensure that the publication is open Access at either Green or Gold Standard or a mixture of the two (hybrid publication model). The inclusion of the Green Standard means that authors are not prevented from publishing in their preferred target journal simply because it is not Gold Standard.

In addition, H2020 beneficiaries must ensure that Open Access through the selected repository to bibliographical metadata, including several states terms. They must also ‘aim to’ deposit the research data needed to validate the results presented in the scientific publication, ideally via a **data repository**. Participants may also wish to opt-in to the **Open Research Data Pilot**⁷.

Where Gold standard is selected then the partners are advised to consider including the **costs of the publication in to the eligible costs**. These can include article-processing charges, maintenance of electronic archives (repositories) etc. Where Green (self-archiving) Open Access is selected then the partners should cite the online repository where they will place their publications.

⁷ You can read more on Open Research Data Pilot here: <https://www.openaire.eu/opendatapilot>. The requirements for participation are in article 29.3 (optional) of the general Model Grant Agreement.

This is a derivative based on a scheme by “www.fosteropenscience.eu”, used under CC BY.

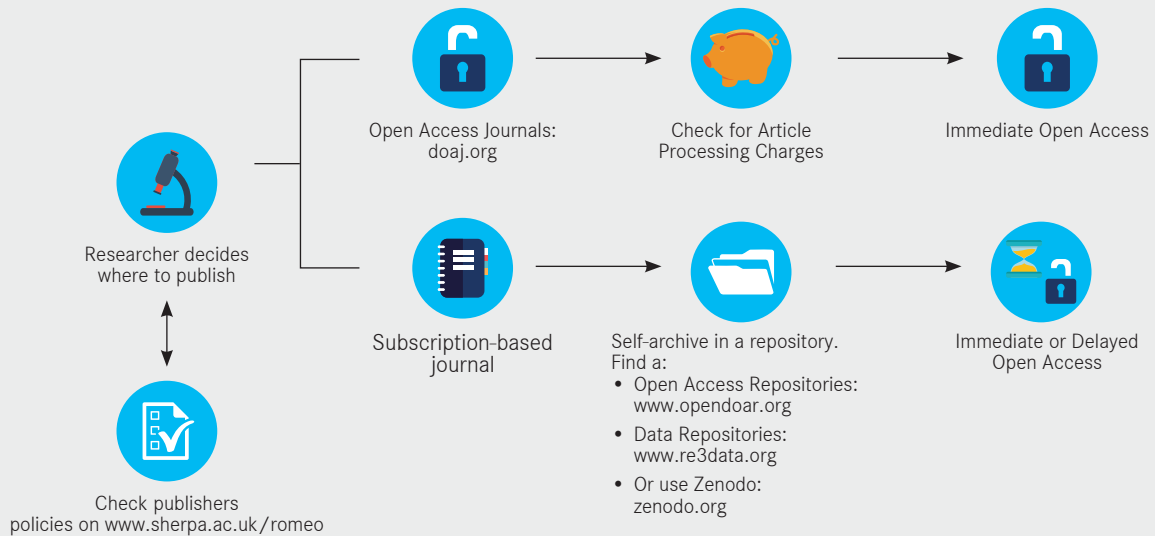


Figure 3: A decision-making diagram to decide on the use of Open Access (considering also IPR). Used under Creative Commons (CC BY). Full article here: <https://openaccess.be/what-is-open-access/>

5.3.5 Other IPR Issues at the Proposal Stage

Eligible costs for IPR

Make sure that you have fully and accurately reflected IP related costs in your proposed budget. If you are proposing to patent your results then ensure you have included costs for drafting, filing and ‘PROSECUTING’ your patent application. Professional patent attorney costs can be high but a poorly drafted patent has very little value in a commercial market. Ensure you can gain access to professional advisors if you intend to negotiate a patent license or you need to carry out a ‘FREEDOM TO OPERATE/ CLEARANCE’ search.

Consider if you will need to license any existing IPR in order to exploit you own results. This may even be commercial IPR from one of the project partners. Reflect these licensing costs in your budget.

Don't try to impress an evaluator by producing a PEDR with a great deal of IPR related activity, (drafting and filing several patents), not reflected in your budget. Good evaluators will cross check!

Project name and acronym

Some project names and acronyms develop in to commercial trademarks/service marks. Think carefully about the names that you select and consider carrying out a search to ensure they do not INFRINGE on the rights of any established entity. Consult the databases of WIPO and the EUIPO (formally OHIM).

Project name and acronym

Some project names and acronyms develop in to commercial trademarks/ service marks. Think carefully about the names that you select and consider carrying out a search to ensure they do not INFRINGE on the rights of any established entity. Consult the databases of WIPO and the EUIPO (formally OHIM).

5.4 Demonstrate Quality and Efficiency of IMPLEMENTATION

5.4.1 Relevant Skills and Experience

Although quality and efficiency of implementation will depend on a wide range of factors **don't forget to showcase your assets in managing your IPR**. Alongside demonstrating that you understand the R&D&I landscape, make sure you showcase relevant R&D&T skills and track-record of the partners as well as support in the consortium for innovation management and commercialisation.

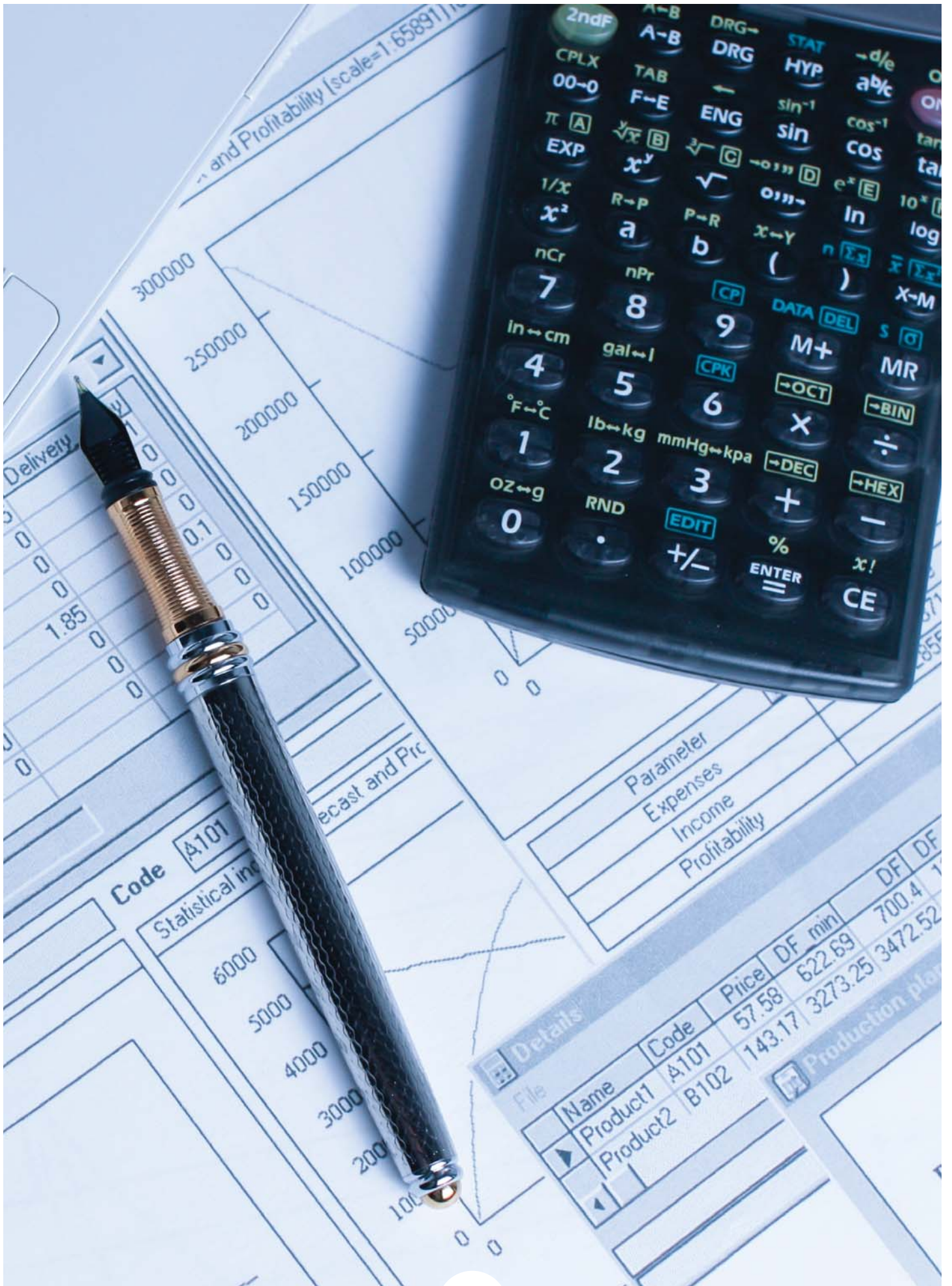
Most proposals emphasise the research track record of the partners by citing their publication and citation record. **Remember to showcase the innovation actions** of the partnership as well. This will increase the confidence of a reviewer that you will be able to implement the project and gain maximum impact from the action. For example, if your consortium has previous experience of successfully patenting results, (particularly if using international patenting strategies), bringing new products and services to the market, licensing and/or enforcing IPR or starting a new spinoff company to commercialise IPR then make sure this is mentioned.

All this detail will help you reinforce the case for the research excellence and impact of your proposal and the quality and efficiency of implementation.

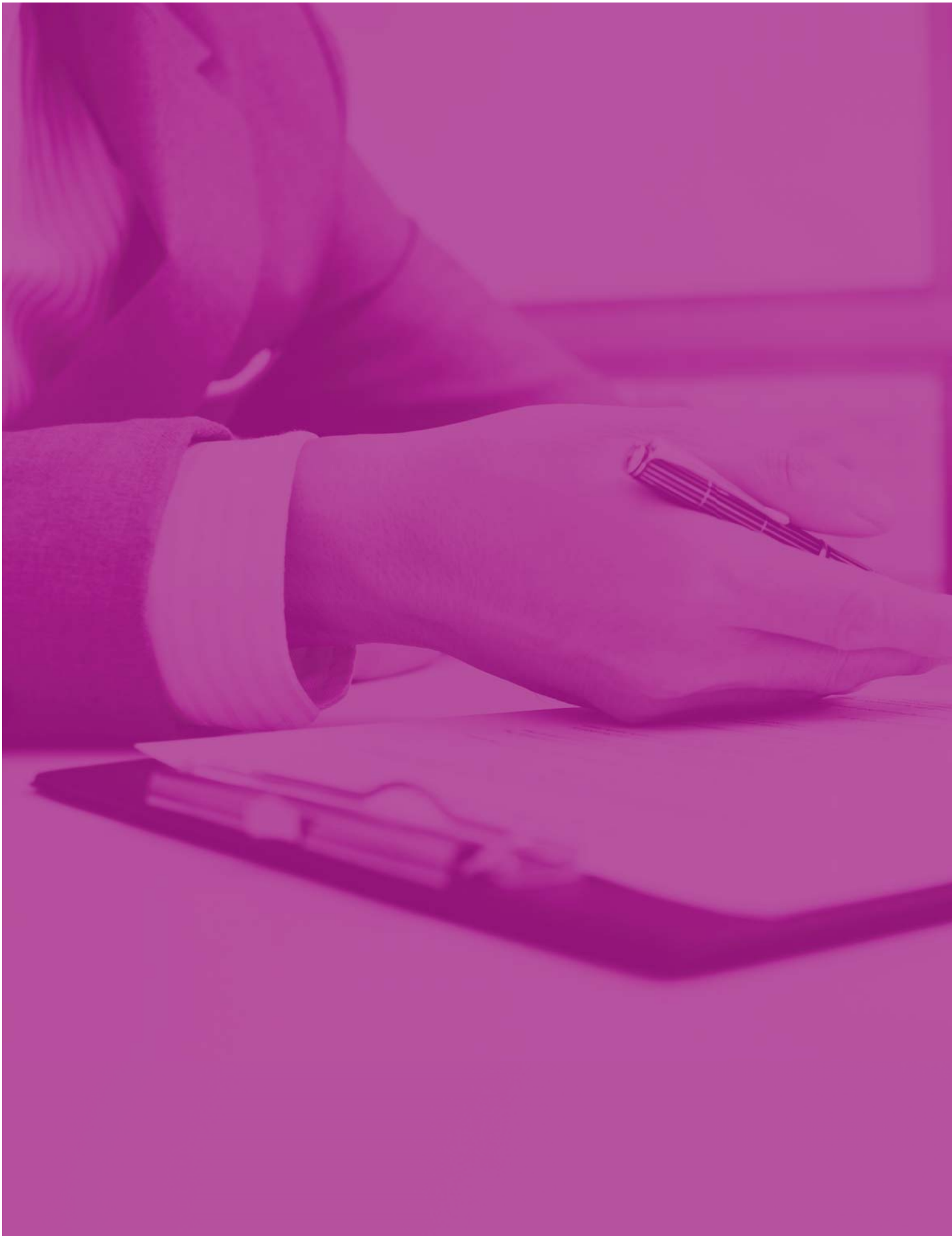
5.5 Check List at the Proposal Stage:

Make sure you have included all that apply:

- The results of SoA searches of scientific databases
- Patent databases (Espacenet/ Google patents)
- Skills and experience of partners in managing and exploiting IP
- Outsider 3rd party rights
- Freedom to operate (Espacenet/ Google patents)
- Eligible costs (patent drafting, filing, licensing fees)
- Project name and acronym Infringement searches (OHIM, WIPO)
- Strategy for exploitation
- PRO IP Policy
- PRO Knowledge Transfer Policy



Name	Code	Price	DF_min	DF	DF
Product1	A101	57.58	622.69	700.4	1
Product2	B102	143.17	3273.25	3472.52	1





**6. NEGOTIATION
STAGE:
SIGNING THE
AGREEMENTS**

6. NEGOTIATION STAGE: SIGNING THE AGREEMENTS

Although there is no official Negotiation stage at H2020, we refer as such to the stage where you know that your proposal is successful but you have not yet started the project since you must go through all formalities and sign the legal documents.

If your proposal is approved for funding then you will need to sign a **consortium agreement (CA)** between all the project partners before you can sign the **grant agreement (GA)**. Many of the IP and IPR issues that you will deal with in your proposal will be reflected in the consortium agreement. **It is therefore very useful to develop your draft consortium agreement even earlier at the proposal stage.** If you use a Horizon 2020 ‘model’ consortium agreement this will also ensure you have dealt with all the IP issues during the proposals stage and there will be no surprises. You can indicate in the proposal the agreement you intend to use and the default IP clauses or their amendment. The consortium agreement can then be quickly finalised before you sign the grant agreement.

In this chapter, we look at the main IP issues in a consortium agreement through the ‘lens’ of the Horizon 2020 Model consortium agreements. We look in particular at **DESCA (DEvelopment of a Simplified Consortium Agreement)** but we also compare and contrast DESCA to other model consortium agreements.⁸

You should also note definitions or explanations of some of the terms that are used in the Grant Agreement are only found in the **Annotated Model Grant Agreement (AMGA)**⁹.

The main IPR issues that need to be addressed in a consortium agreement for R&D&I are:

- **Background/Foreground** and “**needed**” according to the definitions given in Chapter 3.1.
- **Confidentiality and disclosure:** how materials will be identified as being confidential, who will have access to them and how these individuals will know they are confidential; the duration of confidentiality and the terms under which information will be disclosed e.g. through scientific publications with a period in which partners can object to the planned publication. Confidentiality is closely linked to **background** and **foreground**.
- **Results** including how they will be owned, protected and exploited.
- **Access Rights** including access to background and results ‘needed’ in the project and for exploitation.
- **Affiliates** and their access to background and results.

⁸ You may find it very useful to consult a copy of DESCA while you read this chapter. DESCA is available to download from the website at: <http://www.desca-2020.eu/>

⁹ You can download the AMGA at http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/amga/h2020-amga_en.pdf

- **Termination** including survival of rights and obligations
- **Sector specific conditions** e.g. those relating to software and in particular use of software in the project under so called ‘controlled licensing terms’.

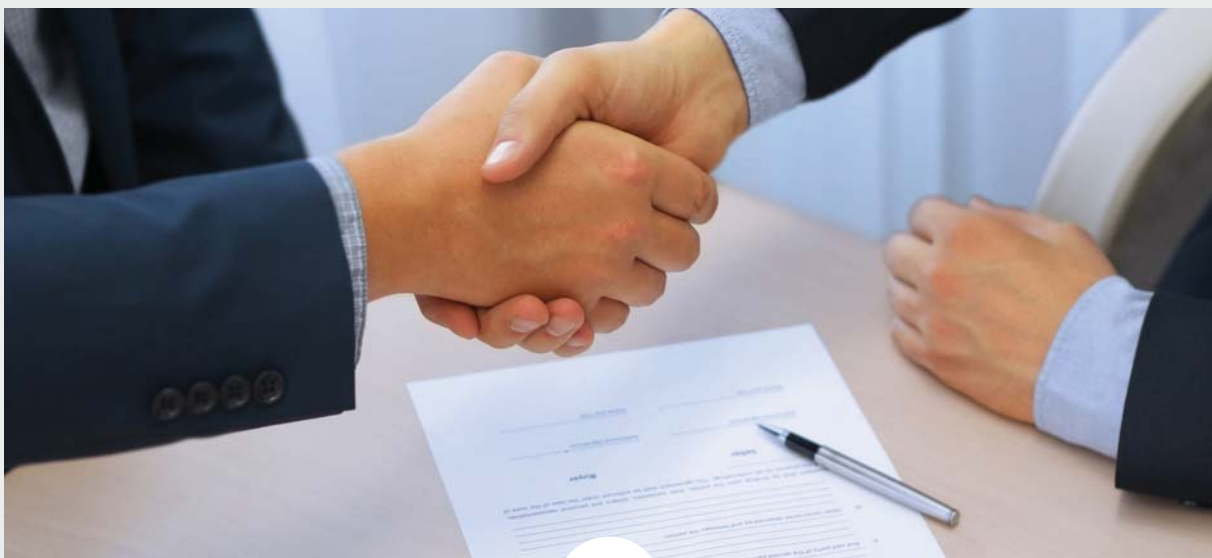
Many of these issues are addressed in the GA. It is important therefore to remember that the **CA cannot contradict the GA** (the GA is the ‘higher authority’) but where the GA allows for an alternative approach (“*unless otherwise agreed in writing*”) this can be laid out in the CA. It is equally important to remember that **if an alternative approach is not documented in the CA then the default conditions of the GA will be automatically applied.**

6.1 Introduction to Model Consortium Agreements

A consortium agreement is required by the EC for H2020 and partners are free if they wish to draft their own agreements provided they do not conflict with the GA. However, a number of “model” agreements have been developed, either under PF7 or national programmes that are intended to make this process much simpler for the partners and to reflect particular sector specific preferences and IP exploitation norms. You are strongly urged to consider using a model agreement if you are applying for an H2020 R&D&I project. They are designed to save time and to offer practical starting point for further refinement.

The most commonly used model agreement is: **DESCA**. This was designed for academic and research industries. The acronym reflects the fact that it was originally developed in FP7 (**DE**velopment of a Simplified Consortium Agreement for FP7). DESCA has been updated for Horizon 2020. Two other model agreements tailored for H2020 include:

- **DE MCARD-2020 CA** from **Digital Europe (DE)** for ICT project available from <http://www.digitaleurope.org/Services/H2020-Model-Consortium-Agreement>
- **EU-Car** (automotive industry) Available to download at <http://www.eucar.be/eucar-model-consortium-agreement-horizon-2020/>
- **Sector specific agreement that were used in FP7 included IMG** (aerospace industries) and **IPCA** (ICT telecom industries)



A summary and comparison of the 3 main model agreements is shown in the table below.

Table 1: Summary and comparison of IPR in the model agreements	
DESCA (academic and research industries)	<p>One balanced core text</p> <p>Two modules for Governance Structure:</p> <ul style="list-style-type: none"> • 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]. <p>Optional clauses</p> <ul style="list-style-type: none"> • Optional module for projects with a strong software focus [Module IPR SC] • Optional clauses in the IPR sections (8 & 9). See for example RESULTS p. 25
DE MCARD (ICT)	<p>One balanced core text with optional clauses for IPR</p> <ul style="list-style-type: none"> • IPR, liability and software sections different to DESCAs • Access rights to foreground much broader • Access rights to side ground are granted
EU-Car (automotive industry)	<ul style="list-style-type: none"> • IPR provisions strongly favor commercial project participants

DESCA 2020

DESCA is a comprehensive Model Consortium Agreement for Horizon 2020. It offers a reliable frame of reference for project consortia. DESCAs are an example of an agreement that uses **one core balanced text** with optional clauses e.g. the use of a positive or negative list for background. DESCAs also have two possible models to reflect 2 possible Governance structures. The model selected will depend on the size and complexity of your project. However, this does not affect the IP clauses.

The clauses *related to IP* in DESCAs are to be found at:

- Section 1 (p. 6): **Definitions: “Needed”**
- Section 3 (p. 8): **Termination. 3.3. Survival of rights/ obligations**
- Section 8 (p. 25): **Results**
- Section 9 (p. 28): **Access Rights**
- Section 10 (p. 33): **Non-disclosure of information**
- Attachment 1 (p.41): **Background**
- Attachment 3 (p. 43): **Third parties**

For software related projects the following attachment is also relevant to IPR.

- [MODEL IPR SC] **Specific Software Condition**

The main IP related clauses in DESCAs are explored below and then compared to those of the other model agreements.

6.1.1 The Definition of “Needed”

DESCA Section 1 (p. 6): Definitions

DESCA defines ‘needed’ as:

- For the **implementation** of the Project: Access Rights are Needed if, without the grant of such Access Rights, carrying out the tasks assigned to the recipient Party would be technically or legally impossible, significantly delayed, or require significant additional financial or human resources.
- For **Exploitation of own Results**: Access Rights are Needed if, without the grant of such Access Rights, the Exploitation of own Results would be technically or legally impossible.

It is important to note that there are some important differences between how the different model agreements define ‘needed’.

The Annotated Model Grant agreement notes that: **“There is NO definition of ‘needed’”**. The beneficiary owning the results **must assess** (on a case by case basis and taking into account the action’s specificities), if the requesting beneficiary needs the access (and may refuse it, if it does not). Examples:

- Results needed for implementation: if without these results, action tasks could not be implemented, would be significantly delayed or would require significant additional financial or human resources.
- Background needed for exploitation: if without these results, exploiting a result would be technically or legally impossible or if. Best practice: To avoid conflicts, beneficiaries should agree (e.g. in the consortium agreement) on a common interpretation of what is needed.”

BEST PRACTICE: To avoid conflicts, beneficiaries should agree (e.g. in the consortium agreement) on a common interpretation of what is needed.

6.1.2 Confidentiality

There are a number of issues with regard to confidentiality which you should be aware of for your particular CA. This relate to how material can be identified as confidential e.g. whether it is marked as such and if it has been identified verbally, if this then has to be confirmed in writing and if so, what the time limit is for making this conformation.

The other main issues related to how far confidential information can be automatically shared without having to seek any further formal e.g. just between the partners or also with affiliates and subcontractors. For example, DESCA does not include affiliates or subcontractors. This can be an issue for larger organisation who may have a large number of affiliates involved or who regularly use short term subcontractors. Obtaining permission to add new entities or individuals can become time consuming and consortia are urged to think carefully about this and try to take a practical approach. The comparative situation is summarised below.

Table 2: Confidentiality: summary and comparison	GA	DESCA	DE MCARD		EUCAR
N/A: Not Applicable			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

6.1.3 Background (Positive & Negative lists)

Some projects take the approach of documenting all the information that they consider to be background and that will be ‘needed’ for the project. This is known as a ‘background included’ or ‘positive list’. Unless information is on the list and documented it cannot be used.

Alternatively, you can list/ document anything that you do not regard as background and therefore must not be used in the project. This is known as a ‘negative list’. Information that is not on the negative list can be regarded as ‘background’. The approach you take will depend on your particular project and circumstances. DESCAs offers 2 options¹⁰:

Option 1: POSITIVE LIST (9.1.1. & Associated Attachment 1)	Option 2 (section 9.1.1)
“anything not identified in Attachment 1 shall not be the object of Access Rights obligations” plus limitations	A declaration that no background will be needed by any other partner from the named partner.
<i>The following background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder</i>	<i>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).</i>

Identifying and documenting background must be done before you can sign a Grant Agreement so it is worth starting this early during the project preparation stage.

6.1.4 Termination and Survival of Rights/Obligations

Termination of a legal agreement has important implications in the case of IPR. Although a partner or partners may agree to terminate the CA before the original term of the project they will still have rights and obligations related to confidentiality as well as access to background and results. In particular, the requirements to keep background information confidential for a certain period will not change simply because the CA has been terminated and legal penalties will still apply for breaking confidentiality clauses. Termination in DESCAs is dealt with in **Section 3 (p. 8): Termination. The relevant IP aspect is 3.3 Survival of rights/ obligations**¹¹.

¹⁰ DE offers both Positive and Negative Lists while EUCAR has only a Positive List.

¹¹ For DE MCARD the relevant clauses are to be found at 3.3 Survival of rights and obligations. For EUROCAR the relevant clauses are to be found at 18.2 (p.15)

6.1.5 Ownership of Results

DESCA Ownership of results is dealt with in *Section 8 p.25*. DESCA follows the GA by stating that: “*8.1 Results are owned by the Party that generates them*”. In the case of Joint Ownership DESCA follows the Grant Agreement (Article 26.2) but then offers 2 possible additional options in *8.2 Joint ownership (arising from co-creation)*.

Joint ownership (Section 8.2)	
Option 1: Unless otherwise agreed	Option 2:
<ul style="list-style-type: none"> - 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: <ul style="list-style-type: none"> (a) at least 45 calendar days advance notice; and (b) Fair and Reasonable compensation. 	<p>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.</p> <p>The joint owners shall agree on all protection measures and the division of related cost in advance.</p>
Recognises that results are not yet known and there is a degree of uncertainty in making decisions about protections at this stage of the project	Partners must take all decisions before the project commences.

Your own preference for the two possible options may well relate to how confident you are about the results that will emerge and how you wish to disseminate and exploit them. For example, if you are not anticipating any patentable results and you anticipate disseminating the results for non-commercial purposes then Option 2 may be best for you. If the results may have considerable economic value and could perhaps be patented and exploited in commercial markets then you may wish to select option 1¹².

The situating with regard to joint ownership is summarised in the table below.

Table 3: 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 MCARD 1	Yes	Yes	-	-	Free	Costs shared
DE MCARD 2	Yes	Yes	-	-	Free	TBA
EUCAR	Yes	Yes	-	-	Free	TBA
<i>Free= royalty free</i>		<i>Fair= fair and reasonable cond.</i>		<i>- = silent</i>		<i>TBA = to be agreed</i>

¹² For DE MCARD the relevant clauses can be found at 8.2. For EUROCAR the relevant clauses are to be found at Article 10.

6.1.6 Access Rights to Results

Access rights will be needed to background so that partners, and possibly affiliates, can implement the project. Background access may also be needed by partners and affiliates to exploit the results.

The GA and all Consortium Agreements give access to background for use ‘needed’ in the project under either free of free/ fair conditions. ‘Fair’ conditions tend to apply when commercial IPR (often software) is going to be used in the project and it is seen as ‘fair’ to have this carry the normal royalty fee.

Access to background for exploitation can take a number of different approaches and require different conditions and processes. The summary situation is outlined in the table below but it is important that you check and remain familiar with the specific situation in your CA. This is particularly an issue if a process requires individual requests, permission granted in writing.

Table 4: Access to background: Summary and comparison		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 MCARD	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
<i>Needed = to carry put own project tasks to exploit own results</i>			<i>Free= royalty free</i>	<i>Fair= fair and reasonable conditions</i>	<i>N/A =not applicable</i>	

Affiliates Access

Access to background can be particularly important for affiliates who need this for exploitation. The situation for the model agreements is again summarized in the table below.

Table 5: Affiliates Access– summary and comparison					
	EU/AC	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 MCARD	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	-
		<i>-= silent</i>		<i>* except confidential information</i>	

Access Rights to Results for exploitation

DESCA allows for 2 options with regard to access rights for exploitation by the other partners. The main difference in DESCA between the two options relate to their used e.g. for commercial or non-commercial purposes.¹³

Access Rights to Results for Exploitation (Section 9.4 p. 30)	
Option 1:	Option 2:
<p>Access Rights to Results if Needed for Exploitation of a Party's own Results shall be granted on Fair and Reasonable conditions.</p> <p>Access rights to Results for internal research activities shall be granted on a royalty-free basis.</p>	<p>Access Rights to Results if Needed for Exploitation of a Party's own Results shall be granted on a royalty-free basis.</p>
<p>Reflects the preference of most stakeholders (some Industry sectors as well as universities and research organizations) where fair and reasonable remuneration for having access to other partners' project results for exploitation is foreseen.</p>	<p>Reflects a situation preferred by some industries, where all project results are available for Exploitation without any form of remuneration to the owners.</p>

DESCA also includes a further 2 options for 'additional access rights'.

Additional Access Rights (Section 9.6 p. 32)	
Option 1:	Option 2:
<p>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.</p>	<p>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.</p>

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

As you will see from comparing the difference approaches, in all cases the differences relate to if the results will be made available free, on fair and reasonable conditions (including free) or subject to a financial royalty. This is often a point of tension amongst partners. It is worth considering what each partner will want to use their results for. This can vary strongly between PROs and enterprises. However, PROs may wish to benefit financially from results that they have generated if they are not intending to exploit them commercially by direct actions. The table below is designed to help you see the main differences between the 3 CAs and the GA.

¹³ For DE MCARD the relevant clauses are to be found at Section 9.4 (page 30).

Table 6: Access to results: summary and comparison		Needed	Royalty		Process	
			Project	Exploitation	Individual requests	Written grant
Grant agreement		Yes	Free	Fair/free	Silent	Silent
DESCA Option 1		Yes	Free	Fair/ free	Implied	Option
DESCA Option 2				Free		
DE MCARD (Option 1) exploitation		Project	Yes	Free	No	No
		Yes/no	N/A			
EUCAR	project	Yes	Free	N/A	No	No
	Sub project	No	N/A	Free		
	other	Yes	N/A	Fair		
<i>Needed =to carry out own project tasks or to exploit own results</i>			<i>N/A = not applicable</i>	<i>Free = royalty free</i>	<i>Fair = fair and reasonable conditions</i>	

6.1.7 Transfer Results – Waiver – Summary and Comparison

Transfer of results between partners and affiliates is quite common as it may allow the partner/ affiliates best placed to exploit a result to generate financial return or other impact. However, transfer to an organisation that is not one of the original partner is always an important issue for collaborations involving a number of partners. Some CAs (DESCA and DE MCARD) propose that before the CA is signed, a list of pre-approved entities should be established and attached to the CA as an attachment (attachment 3) and that after the CA is signed, further transfers need to be approved by the General Assembly. Notification to transfer results to parties on the list may need to be made, possibly in writing. The situation for the GA and the CAs is summarised below. You are urged to make yourself familiar with the specific situation for the CA you select.

Table 7: 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	Yes	Yes	-
Section 8.3 p. 26	List, attachment 3	General Assembly decides	Yes
DE MCARD (Section 8)	List, attachment 3 + Affiliates	General Assembly + Affiliates	On request
EUCAR	List of specific Affiliates	Silent	Silent

6.1.8 Open Source and Controlled License Terms

For projects with a software aspect several specific issues come in to play. These are related to what is termed ‘Controlled license terms’. Such terms become very important when the Results of the project include software that is a ‘Derivative Work’. This means that the new software has been derived from existing software (the Work) and as a result of this the Derivative work automatically inherits specific licensing terms that will control Derivatives work. These include tradition copyrights but also newer software development licensing terms such as the General Public License , copyleft, sharealike etc. The DESCA [MODEL IPR SC]¹⁴ deals with this situation. This states that ‘Controlled license terms’ are:

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.*
- *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).*

This sounds very complicated but it can be understood in terms of new software inheriting the licensing terms that were attached to the software from which it was derived and so being made available under the same terms and conditions.

Table 8: Access to software results DESCA and MCARD	Before signing consortium agreement	After signing consortium agreement
Object code (+Application Programming Interface)		
Sub-license	Yes	Yes
Including stand alone	Option	Yes
Source Code (to extent necessary)		
Party	Yes	Yes
Affiliate	No	Yes
Subcontractor	To be agreed	Yes
Sub-license (for maintenance only)	Yes	Yes

¹⁴ to be found on p. 51 of the DESCA CA.

6.2 Check List at the Negotiation Stage:

Make sure you have included all that apply:

- “Need”
- Background: +VE &/or -VE lists and safeguards
- Royalty for background for project (e.g. for use of commercial software)
- Access to results: yours/all
- Access to results: royalty or free
- Access request: individual or collective
- Access included/ excluded sub-license
- Affiliates
- Joint ownership: sub licensing, royalty.

A CA is a legal requirement for Horizon 2020. However, they are also Best Practice for all collaboration agreement and it is worthwhile spending some time making sure that the CA you have selected has been thoroughly customised for your own project. Agreements are important because they allow parties to unambiguously assign the ownership and exploitation rights of IP generated by the collaboration and to apply good innovation management practices. However, agreements also come in to play when things go wrong and partners fall out!







**7. IMPLEMENTATION
STAGE: IP IN A
H2020 GRANT
AGREEMENT**

7. IMPLEMENTATION STAGE: IP IN A H2020 GRANT AGREEMENT

This stage, when the consortium agreement is finalised and the Grant agreement is signed is particularly important for IPR issues. This is the stage when final details relating to IP can be fine-tuned before the Description of the Work (DoW) becomes part of Annex 1 of the Grant Agreement.

If your project is approved for H2020 funding you will need to sign a Grant Agreement (GA) with the European Commission (EC). The GA defines the rights and obligations related to the project between beneficiaries and the EC. Before you can sign this agreement, you will need to finalize and sign your consortium agreement. In this chapter, we look at the relevant IP clauses in the Model Grant Agreement (GA).¹⁵

The main difference between IP rules in the GA and the CA are that while the GA is not negotiable, the CA is agreed between the partners. However, **what is written in the CA cannot conflict with what appears in the GA (The GA takes precedence)**. In addition, the GA contains ‘default’ clauses. These will automatically be used unless the CA has specified something different. For example, if the consortium does not document their approach to Joint ownership of results then the default regime provided by the general model GA will apply.

The GA cannot be signed until the CA is signed, so it is sensible to try and agree as much as possible of the CA during the proposal preparation stage. The main section of the grant agreement that relates to IP is **Section 3 Rights and obligations related to background and results**. However, two articles are important and need to be read when considering any of the IP clauses. These are:

- Article 43 Reduction of the grant
- Article 50 Termination of the agreement or of the participation of one or more beneficiaries.

When reading the GA it is worth remembering that the Commission refers to all the consortium partners as ‘beneficiaries’. This is the term we have therefore used below.

7.1 Management of Intellectual Property (Subsection 1 Article 23a and Subsection 3 Article 26.3)

Articles 23a Management of intellectual property and 26.3 Rights of third parties (including personnel) address the issue of consortium management of IP with a particular emphasis on ensuring that IP rights to foreground can be claimed, **background can be controlled and exploitation ensured**. The articles reflect the fact that national IP laws and organisational by-laws may not be optimised for H2020 IP management and in some cases, might even conflict with the **smooth exploitation of results**.

¹⁵ It will be helpful; to have a copy of the Model Grant agreement to hand when reviewing this chapter. There is a GA for each H2020 funding scheme. Make sure you have located the right GA for your call.
http://ec.europa.eu/research/participants/portal/desktop/en/funding/reference_docs.html#h2020-mga

	Background (Article 25)	Results (Article 31)
Project	Royalty free unless*	Royalty free
Exploitation	'Fair and Reasonable' (including royalty free) *Unless 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).	

Claim to ownership of foreground by a participating beneficiary can become an issue for countries where IP rights to research created in public research organisations (PROs) are automatically assigned to the researchers (so called 'Professors Privilege'). This is a potentially serious issue as the consortium must be able to take ownership of foreground and be able to exploit results as anticipated in the PEDR without discovering that rights have been pre-assigned to researchers. If the consortium contains beneficiaries whose researchers are able to claim professor's privilege then the beneficiary concerned must ensure that all researchers working on the H2020 project have pre-assigned their rights to results in the project to the partner.

While some countries have enshrined Professors Privilege in law some other countries have yet to establish clear laws relating to ownership of IP at PROs. In other countries, although national law assigns rights to the 'employer' (the institute, university or faculty) no IP policy has been adopted and the researchers themselves are accustomed to assuming ownership of results and commercialising their own work

The Commission has anticipated the potential problem of legal or entrenched "Professors Privilege" by making it a requirement that any PRO involved in H2020 must 'take measures' to implement Points 1 and 2 of the Code of Practice that is annexed to the Commission Recommendation on the management of intellectual property in knowledge transfer activities¹⁶. These two main points are:

- (1) *Develop an IP policy as part of the long-term strategy and mission of the public research organisation, and publicise it internally and externally, while establishing a single responsible contact point.*
- (2) *That policy should provide clear rules for staff and students regarding in particular the disclosure of new ideas with potential commercial interest, the ownership of research results, record keeping, the management of conflicts of interest and engagement with third parties.*

While the GA does not require that a PRO has a documented IP and Knowledge Transfer Policies (and many PROs in countries like Turkey still do not have these by-laws) it makes clear that the procedures outlined above must be established as if the Policies were in place and professors privilege did not exist. Clause 23a.2 indicates that possible measures that will be taken in the case of non-compliance. Measures include the options for the Commission to reduce the grant (GA Chapter 6).

Related options in Consortium Agreement:

*Option for alternative approach through the Consortium agreement: NO
 Penalties for breach: YES. Possible reduction of grant. See Article 43.*

¹⁶ Find the code here: http://ec.europa.eu/invest-in-research/pdf/download_en/ip_recommendation.pdf

In a similar way, Article 26.3 Rights of third parties (including personnel) anticipates the situation where seconded staff or sub-contractors of enterprises, or visiting researchers and PhD students of PROS might also be able to claim rights to their own research. Once again, this scenario needs to be anticipated and concrete steps taken to ensure all rights in the results have been pre-assigned to the official H2020 beneficiary and to make sure that researchers and third parties involved in the action are aware of them.

7.2 Rights and Obligations Related to ‘BACKGROUND’ (Subsection 2)

We have outlined above the importance of defining the relevant background of each partner and suggested that this should start early at the concept and proposal stages. The GA (Subsection 2) makes clear that documenting background and agreeing access to it, both to carry out the projects and to use the results is a non-negotiable requirement of the Commission.

Background IP is important both for implementing the project but also for being able to exploit the results after the project has ended. Access to background may also be needed by a wider group than the named beneficiaries e.g. affiliates and some named EU institutions, bodies, offices or agencies for developing, implementing or monitoring EU policies or programmes. The GA also allows for this situation.

Agreement of Background (Article 24)

Clauses 24.1 set out the requirement for the beneficiaries to agree and document their ‘BACKGROUND’ as well as the consequences for non-compliance. Once again **non-compliance can lead to a reduction on the size of the grant.**

Background is defined by the GA as: any data, know-how or information – whatever its form or nature (tangible or intangible), including any rights such as intellectual property rights – that:

- a) Is held by the beneficiaries before they accede to the Agreement, and*
- b) Is needed to implement the action or exploit their results.*

Point (b) is important. Partners need to agree what is needed to implement the project. This task should take place during proposal preparation using an NDA to aid open information exchange.

Access Rights to Background (Article 25)

Articles 25 deals with the *access to background* needed to implement tasks (Article 25) and Article 31 deal with the *access to results*. The most important point to note from Articles 25.2 and 25.3 regarding access to background is that beneficiaries **must** give each other access to background **needed** to implement their own tasks under the action. This should be done on a *royalty free basis*. Beneficiaries **must** also give each other access to background **needed** to exploit results. This must be done under *fair and reasonable conditions*.

The exception to this rule is when the beneficiary that holds the background has 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). Informing other beneficiaries must take place in writing before the GA is signed. The table below summarizes the situation in the GA with regard to access rights to background for the beneficiaries.

Table 9: Background access	
Art 25.2	Art 25.3
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
Unless 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)	

Access for Affiliate and Other Bodies (Articles 25, 31)

The default situation for Affiliate’s access rights for exploiting results is that access to background must be given to affiliated entities established in an EU member state or ‘associated country’. A definition for affiliated entities and associated countries can be found in the GA. However, the GA also makes clear that alternatives to the GA default on access, methods of making the request and duration in which the request can be made can be defined by the beneficiaries in their consortium agreement. Article 25 also deals with Access rights for other entities. The overall situation is summaries in the table below.

Table 10: GA IPR Summary: Access Rights	
For implementation	To background / results (royalty free) if needed
For exploitation	<ul style="list-style-type: none"> To background / results (under fair and reasonable conditions) if needed to exploit own results. Also applicable to affiliates established in MS/AC
For EU/MS	<ul style="list-style-type: none"> Non-commercial use and policy related purpose (under “Secure societies”) On a royalty-free basis For third parties Specific provisions for complementary beneficiaries, access to research infrastructures, interoperability

Other Issues in Access to Background (Article 25)

The GA also sets out that partners wanting to exercise access rights to background must do this in writing (25.1) and any partner wishing to waive their access rights might also set this out in writing. The GA default position is that access rights do not include the right to sub-license. However, *if agreed by the partners* this can be changed. In this case this must be written in to the consortium agreement.

Related options in Consortium Agreement:

Option for alternative approach through the Consortium agreement: Yes. See individual clauses.

Penalties for breach: Yes. Possible reduction of grant. See Article 43.

Access conditions quick GA look-up list

- *Written request (52.1)*
- *Sub-license (25.1)*
- *'Needed' (Article 25.2)*
- *Prior Agreement (25.2)*
- *Timing (25.3)*
- *Affiliates (25.4)*
- *Termination (Art. 50)*

7.3 Rights and Obligations Related to 'RESULTS' (Subsection 3)

Individual beneficiaries will develop and own different results during the project and these may be needed by beneficiaries to carry out their own project tasks. In addition, beneficiaries commonly need access to the results owned by another beneficiary after the project is finished in order to exploit their own results. This access to results is dealt with in a similar way to that of access to background. Results needed during the project are usually royalty free and results needed after the projects must be made available under fair and reasonable conditions. The GA deals with the issue of 'Results' at Articles. 26-29. This includes the issues of ownership, protection, exploitation and dissemination.

Ownership of Results (Article 26)

It is important to note that under the GA Results are automatically owned by the partner who generated them (26.1). However, joint ownership is possible (26.2) when

partners have jointly generated a result and it is not possible to establish the respective contributions of each beneficiary, or separate them for the purposes of applying for, maintain their protection

However, joint owners must conclude a 'joint ownership agreement' to regulate their situation.

The default GA situation is that each joint owner may grant non-exclusive licenses to third parties to exploit jointly owned results provided the other joint owners are given at least **45 days notice** and **fair and reasonable compensations**. However, the joint owners have the rights to agree other than this default position provided they write this in to the joint ownership agreement for example transfer of joint ownership to a single owner with access rights for the others.

Protection of Results (Article 27)

The GA makes very clear that each beneficiary has an obligation to protect their results. Protection must be 'adequate' and should be for an 'appropriate' period and territorial coverage. If for some reason the owner of the results is not able to protect or maintain protection then the EU may assume ownership and maintain the protection (27.3).

Exploitation of Results (Article 28)

The GA also makes very clear that each beneficiary has an obligation to exploit the results for up to 4 year after the

end of the project, either directly or indirectly in particular by transfer or licensing. This article sets out ways that the results may be exploited. Once again, the penalty for non-compliance with the article can be the reduction of the grant.

Dissemination of Results (Article 29)

The GA sets out clearly the obligation of the beneficiary to disseminate the results as soon as possible by ‘disclosing them to the public by appropriate means’. This can include scientific publication. However, the GA also notes that there is no obligation to disclose if this would go against the legitimate interests of each beneficiary. This clause makes clear that protection and exploitation must not be detrimentally effected by the need to disseminate.

The requirement for open access at Green or Gold standard for science publications is a requirement for Horizon 2020; the Commission also encourages project to engage with the Open Data pilot and to make data to support their publication available.

The GA deals with the issue of Open Science at Article 29.2 (Open Publication) and Article. 29.3 (Open Data). These are important requirements for all Horizon 2020 projects and participants are urged to read articles 29.2 and 29.3 in full.

In short, each beneficiary must ensure open access (free of charge, online access for any user) to all peer reviewed scientific publications relating to its results in a certain time frame. In addition, each beneficiary should also aim to deposit the research data needed to validate the results.

Beneficiaries who have taken up the option to participate in the Open Data pilot must also comply with the necessary data depositing conditions (29.3).

*Related options in Consortium Agreement:
Option for alternative approach through the Consortium agreement: YES, but quite limited and in some cases non-negotiable e.g. Open Access. See individual clauses.
Penalties for breach: Yes. Possible reduction of grant. See Article 43.*

7.4 Transfer of Rights and Granting Licenses (Article 30)

In order to exploit and benefit from the results that they have created in the project a partner may decide to transfer their rights to a third that is not part of the consortium. Such a transfer is common, particularly for PROs who are not intending to enter commercial activity themselves but wish to benefit financially from their results. However, other partners may object to the transfer, for example if they feel it will commercially benefit a competitor. The EC might also object to such a transfer if it takes the results out of the EU and therefore reduces the scope for direct economic, social and environmental benefit to the EU.

The GA deals with the issue of Transfer of Rights at Article 30. The GA sets out the rights and obligations of partners including the need to identify third parties, notify other partners so they can object to the transfer. It also permits objection from the EC as the grant awarding organization.

In a similar way, beneficiaries may decide that they wish to *grant licenses* (Article 20.2). It is important to note that as exclusive license for results may only be granted if all the other beneficiaries have *waived their access rights* (Article

31.1). It should also be noted that under certain conditions the Commission has the right to object to exclusive licenses.

Table 11: GA IPR Summary: Results	
Ownership	Beneficiary generating the results Joint-ownership in specific circumstances
Protection	If results capable of commercial/industrial exploitation If no protected, EU may assume ownership
Exploitation	Best efforts obligation; WP may foresee additional obligations
Transfer and exclusive licences to a third country	EC may object (competitiveness, ethical principles, security)
Dissemination	Open access to scientific publications and under certain conditions to research data

7.5 Confidentiality (Article 36)

Confidentiality is a critical issue for all collaborative research projects involving multiple entities and personnel. It is a standard condition that information identified as confidential should be used only for approved purposes and confidentiality maintained by all parties for a stated duration of time.

Confidentiality is dealt with in the GA at **Article 36**. The GA indicates that during implementation of the action and for four years after project has finished, 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.

It is important to note that 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. They may not use confidential information for other purposes e.g. other research projects, emerging commercial opportunities or teaching.

Related options in Consortium Agreement:

Option for changes in the Consortium agreement: Yes. Non-disclosure duration can be extended and usage expanded.

Penalties for breach: Yes. Possible reduction of grant



8. FURTHER INFORMATION / RESOURCES

8. FURTHER INFORMATION / RESOURCES

Furthermore, the following list summarises some of the best sources available in the web for dealing with Intellectual Property in H2020:

- 1) Organisations:
 - a) World IP Organisation: <http://www.wipo.int>
 - b) European Patent Office: <http://www.epo.eu>
 - c) World Trade Organisation: <http://www.wto.org>
 - d) EU Intellectual Property Office: <https://euipo.europa.eu>
 - e) European Policy for IP (NGO): <http://www.epip.eu>
 - f) Digital Europe: <http://www.digitaleurope.org>
 - g) European Council for Automotive R&D: <http://www.eucar.be>
 - h) Open Source Initiative: <https://opensource.org>
 - i) Free SW foundation: <http://www.fsf.org>
- 2) Organisations in Turkey:
 - a) Turkish Patent Institute (TPE): <http://www.tpe.gov.tr>
 - b) Technology Transfer Platform: <http://www.teknolojitransferi.gov.tr/>
 - c) Copyright Directorate of the Ministry of Culture and Tourism of Turkey: <http://www.telifhaklari.gov.tr/>
 - d) General Directorate Of Vegetative Production of the Ministry of Food, Agriculture and Livestock: <http://www.bugem.gov.tr>
- 3) Helpdesks & Portals
 - a) EU IPR Helpdesk: <https://www.iprhelpdesk.eu>
 - b) IPR SME Helpdesk: <http://www.ipr-hub.eu>
 - c) H2020 Participants Portal: <https://ec.europa.eu/research/participants/portal/desktop/en/home.html>
- 4) Guides & Documents
 - a) Your Guide to IP in Horizon 2020: <https://www.iprhelpdesk.eu/node/2598>
 - b) H2020 Official Documents: <https://ec.europa.eu/programmes/horizon2020/en/official-documents>
 - c) H2020 Online Manual <https://ec.europa.eu/research/participants/portal/desktop/en/funding/guide.html>
 - d) H2020 Reference Documents <https://ec.europa.eu/research/participants/portal/desktop/en/funding/guide.html>

You can find an abundance of more information, documents and a knowledge base in our helpdesk: <http://helpdesk.turkeyinh2020.eu>.



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