

IP Management in Horizon 2020

European IPR Helpdesk

Jörg Scherer/Eurice
GmbH

Tallinn, 04-03-2015



EU research funding – Outcome of FP7 impact assessments

- Less than 50% of industrial partners use the publicly funded applied research projects strategically
- Only about 22% of SMEs participating in EU research programs are strategic innovators
- Most academics engage with industry to further their research rather than to commercialise their knowledge
- Results are not exploited because projects were not designed for exploitation



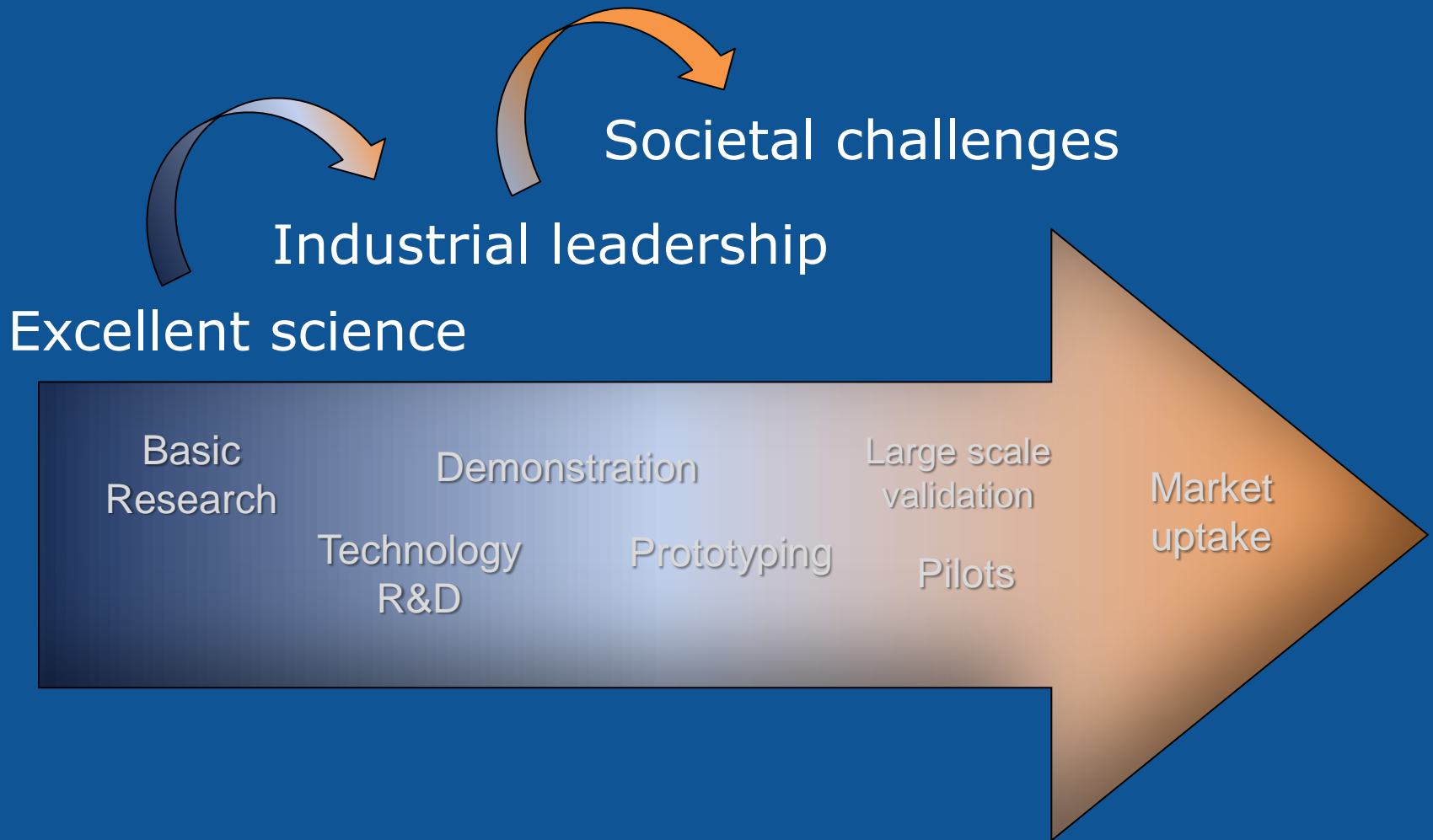
HORIZON 2020

The New EU Framework Programme for Research and
Innovation (2014-2020)



HORIZON 2020

Coverage of the full innovation chain



Why is it important to consider IP in H2020?

- The Rules for Participant establish **best efforts** commitment of participants to **exploit their own results**.
- IP and exploitation issues are subject to evaluation regarding **impact and feasibility** of the proposal.
- A **convincing outline of IP management and exploitation strategies** on individual and consortium level within the proposal is a relevant matter.
- Results of research and development activities require further and often substantial investments to take them to market, which is **appealing** if the results are well protected through **intellectual property**.
- Properly managing IP in the projects, helps participants to **avoid future conflicts** among the consortium.

Expectation on IP management

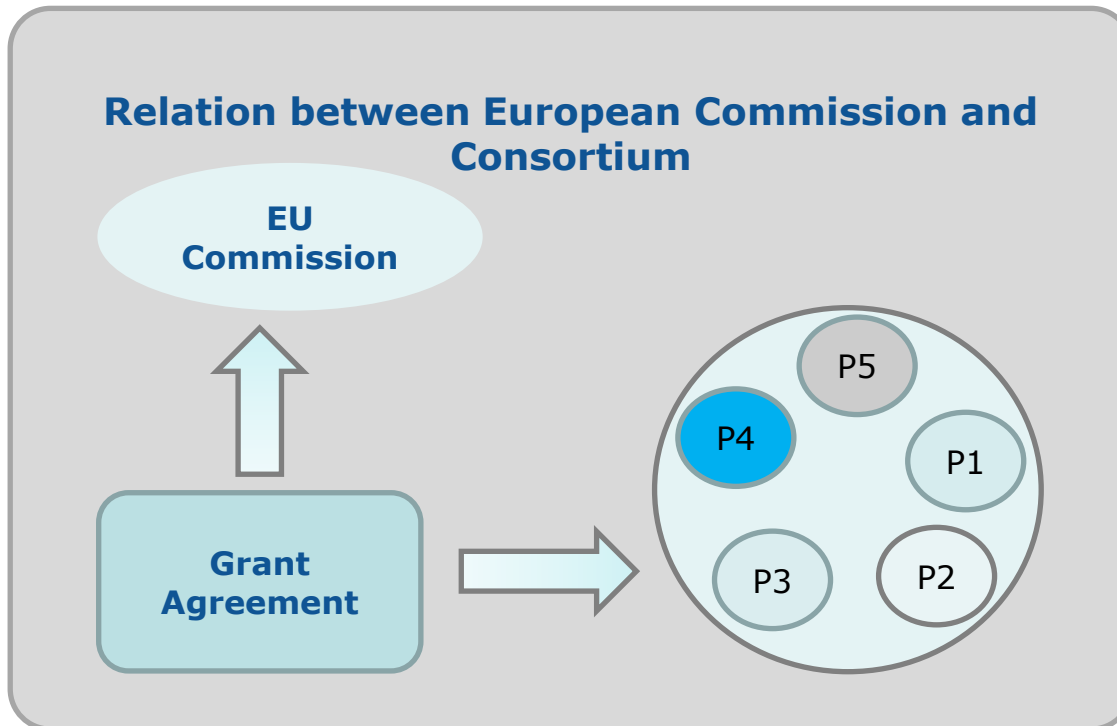
Expectation on sound IP management in H2020/ COSME differs according to:

- **Specific Programme (i.e. SME instrument, Joint Undertakings with strong industrial participation)**
- **Applicability of results/Technology Readiness Level (TRL)**
- **Participation of SMEs/Industry**
- **Financing Instrument (i.e. Innovation actions/SME instrument)**
- **Size of consortium/International partners**
- **Stage of proposal/maturity of project implementation**
- **Specific requirements called for in the work programme/topic description**

STOP

IP Framework under H2020

Grant Agreement (I)





Horizon 2020

Annotated Model Grant Agreements

*General Model Grant Agreement
and specific Model Grant Agreements (ERC, SME Instrument, ERA-NET Cofund,
PCP-PPI Cofund, EJP Cofund, Framework Partnerships and Specific Agreements)*

Version 1.6.1
16 June 2014

H2020 – Annotated Model Grant Agreements

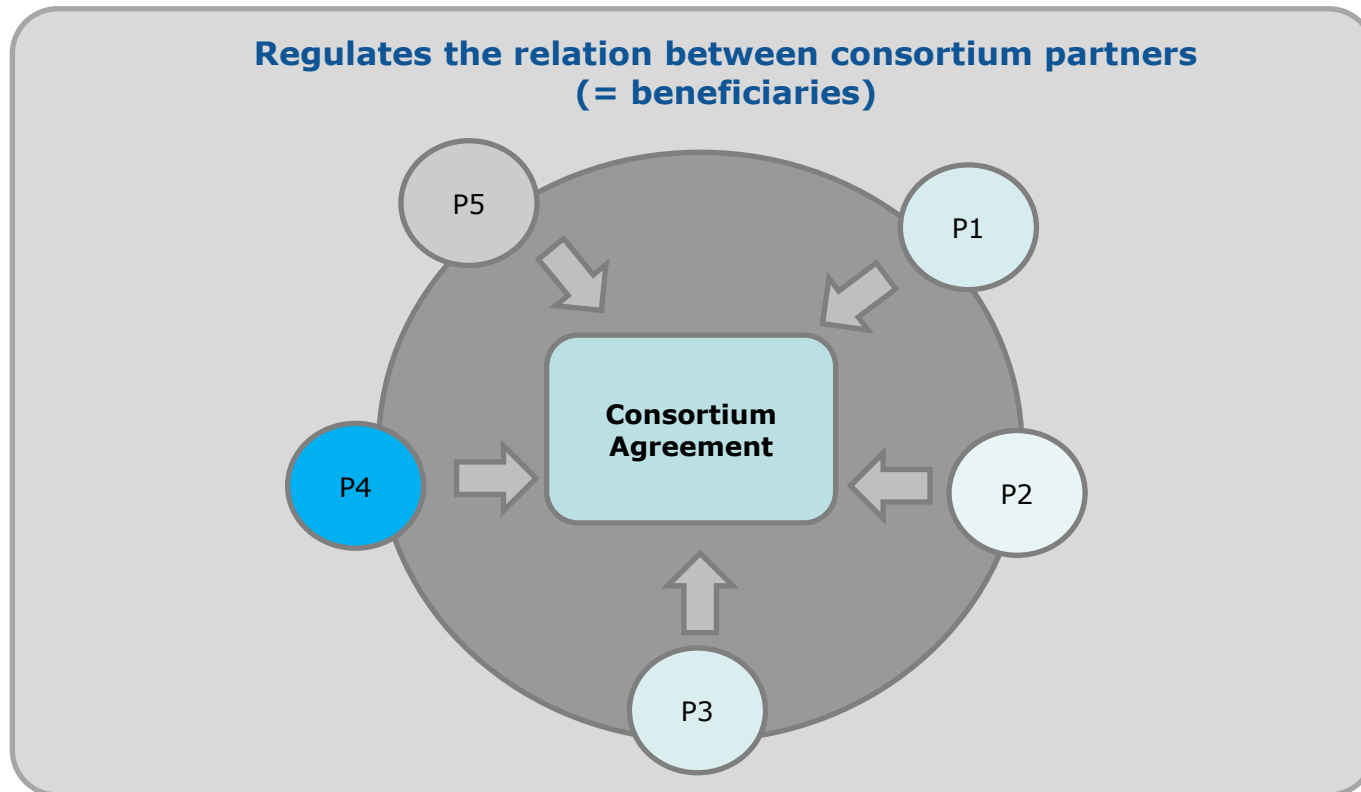
- **General Model Grant Agreement** (over 500 pages.....)
Section 3 addressing „Rights and Obligations related to Background and Results“
- In addition: Specific Model Grant Agreements, in particular for ERC & SME-Instruments, MSCA

Structure:

- Core text with relevant articles
- Annotations to articles
- Examples, best practices, lists and procedures, exceptions

The document will be periodically updated with new examples and explanations, based on practical experience and on-going developments

Consortium Agreement (CA)



Consortium Agreement (II)

- A legal document that regulates the internal work of the Consortium
- Mandatory for the majority of projects
- Legal basics: Grant agreement (+ Annexes)/ RfP
- Implements the provisions of the Grant Agreement/programme rules -May in no way contradict the prerequisites laid out in the EU Agreement/programme rules; the latter always take precedence!
- The CA should be worked out during the "*time to grant*" at the latest ; be prepared!
- Consortia are responsible for set up the governing rules; the Commission has no binding model
- DESCA (Development of a Simplified Consortium Agreement) model; other model templates: EUCAR, MCARD

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





*Where are the rules regarding
IP in Horizon 2020 to be found?*

Intellectual Property rules

The IP rules in Horizon 2020 can be found in:

- (i) the **Rules for Participation**
- (ii) the (model) **Grant Agreement**
- (iii) the applicable **work programme**
- (iv) H2020 **Online Manual**: IP section is a work in progress (IP Guide?)

How to find: **Participant Portal**

http://ec.europa.eu/research/participants/docs/h2020-funding-guide/index_en.htm





European
Commission

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Specific Vocabulary

Key terms in the context of Horizon 2020 projects are:

- Background
- Results
- Exploitation
- Dissemination
- Access rights



Definitions (I)

Background

Tangible or intangible input (data, knowhow, information) which is held by the project partners prior to their accession to the agreement. Includes IP as copyright, patents/ patent applications (filed prior to access to agreement).

Examples: *prototypes; cell lines; database rights, licences with the right to sublicense*

Project partners **must identify their background in writing**

Results

All results which are generated under the project – whether or not protectable. Such results may include copyrights, design or patent rights, trademarks or others, and belong to the partners who have generated them.



Ownership of Results

- **In Horizon 2020, generally the grant agreement establishes that the results of the project belong to the participant generating them.**
- It is advisable to take appropriate measures to properly manage ownership issues, such as keeping laboratory books or other kinds of documentary evidence (e.g. a properly completed Invention Disclosure Form)
- Given the collaborative nature of most projects, some results can be jointly developed by several participants. Hence, situations of joint ownership might arise.
 - > **Joint Ownership Agreements** (i.e. defining specific conditions for granting licenses or issues related to costs of protection and sharing of potential revenues); Default rule in Consortium Agreement ..

Access Rights (II)

Granting of Access Rights

	Access to background	Access to results
Project implementation	Royalty-free	Royalty-free
Use of results	Royalty-free, or on fair and reasonable conditions	Royalty-free, or on fair and reasonable conditions

Obligations to disseminate

Project partners are obliged to disseminate the results swiftly (i.e. to scientific community/broader public) by any appropriate means other than that resulting from the formalities for protecting it or **exploiting the results**, and including the publication of results in any medium.

But:

- no dissemination of results may take place before decision is made regarding their possible protection, and*
- all patent applications, publications or any other dissemination (also in electronic form) shall include a statement that the action received financial support from the Union – The same applies to results incorporated in standardisation activities.*



Dissemination checklist

- Take a decision about the protection of foreground and all required steps
- Inform the other consortium partners in writing 45 days before the planned dissemination activities and include enough information to allow them to analyse whether their interests are affected or not. Note that this time limit can be changed (for more or less days) in the CA. Wait 30 days for any objection to the dissemination (unless otherwise agreed in the CA).
- Beware not to infringe third parties' intellectual property rights
- Open access as a general principle of scientific dissemination
- List the dissemination activities in the Exploitation and Dissemination Plan

Open Access

More information?

Fact Sheets published by

- the European Commission and
- the European IPR Helpdesk



General obligation to protect

Each beneficiary must examine the possibility of protecting its results and must adequately protect them — for an appropriate period and with appropriate territorial coverage — if:

- (a) the results can reasonably be expected to be commercially or industrially exploited and
- (b) protecting them is possible, reasonable and justified (given the circumstances).

When deciding on protection, the beneficiary must consider its own interests and the interests (especially commercial) of the other beneficiaries.

Protection by subject matters

Subject Matter	Patent	Utility Model	Industrial Design	Copyright	Trade Mark	Confidential Information
Invention (e.g. device, process, method ¹)	X	X				X
Software	X ²	X		X		X
Scientific article				X		
Design of a product			X	X	X	
Name of a technology/product					X	
Know How	X	X				X
Website			X	X	X	X

^[1] Except methods excluded from patentability by virtue of Articles 52(2)(c) and (3) and 53(c) EPC.

^[2] Software patentability is still a debated issue given its exclusion as subject matter as by Article 52(2)(c) and (3) EPC.

Costs reimbursements

- **Costs of intellectual property rights (IPR)**, including protecting results (e.g. fees paid to the patent office for patent registration) and royalties on access rights **are eligible costs**
- **Cost for open access** publications are also considered **eligible** by the GA, e.g. Author Processing Charges (APCs)

General obligation to exploit

Each beneficiary must — **up to four years after the project completion** take measures aiming to ensure '**exploitation**' of its results (either directly or indirectly, in particular through transfer or licensing by:

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

Routes for use/exploitation

Basic options

- Use for further research
- Developing and selling own products/services
- Spin-Off activities
- Cooperation agreement/Joint Ventures
- Selling IP rights/Selling the (IP based) business
- Licensing IP rights (out-licensing)
- Standardisation activities (new standards/on-going procedures)



IP downstream routes/Next steps

- *Understanding the scene (Terms, Rules, Model Agreements, etc)*
- Setting the scene (Which IP provisions are negotiable?)
- Getting to know the individual interests, motivations and expectations of individual partners regarding IP management and exploitation
- Strategies and Plans to capture, manage and exploit results of H2020 projects on consortium level
- Developing the right innovation management structures
- Definition of appropriate activities and tasks to implement innovation-related activities
- Exploitation pathways, route to market, business models

Thank you.

We look forward to getting in touch with you!

For further questions and general IP advice, please contact our Helpline team:

service@iprhelphdesk.eu

Phone +352 25 22 33-333 (Helpline)

Fax + 352 25 22 33-334 (Helpline)

www.iprhelphdesk.eu

For questions related to our training activities, please send us an email at:

training@iprhelphdesk.eu

