



European IPR Helpdesk

Get your ticket to innovation!

II. IP in Horizon 2020

La Propriété intellectuelle dans le programme
Horizon 2020 – Formation des PCN





Roadmap

- *Rules and Agreements*
- *Specific Vocabulary*
- *IP management in project life cycle*





Why is it important to consider IP in H2020?

- The Rules for Participation establish **best efforts** commitments 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 **avoid future conflicts** among the consortium.

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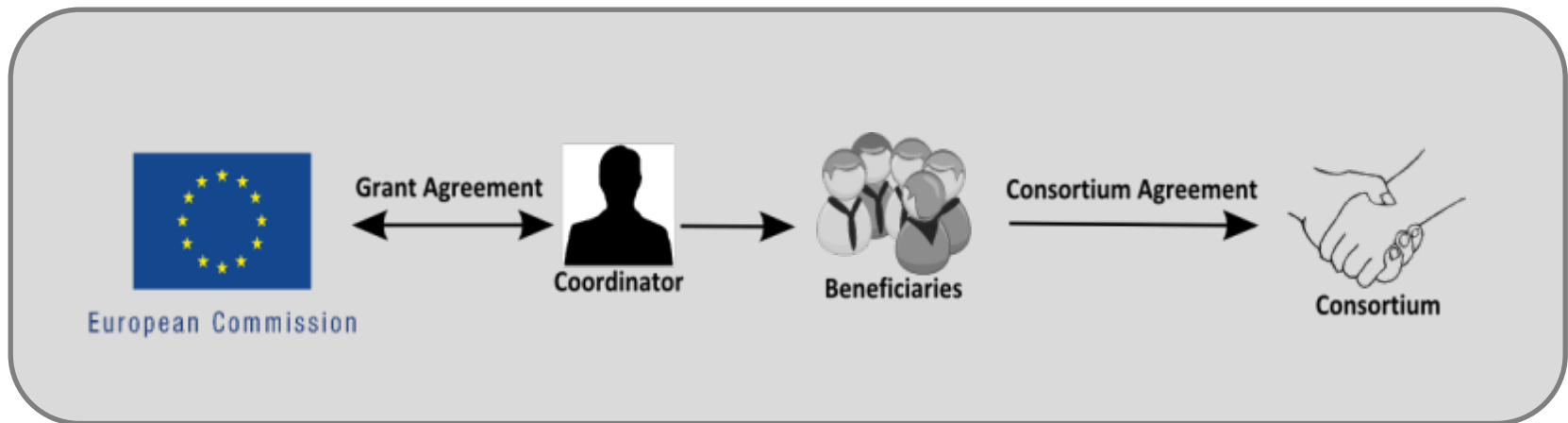
STOP

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Rules and Agreements

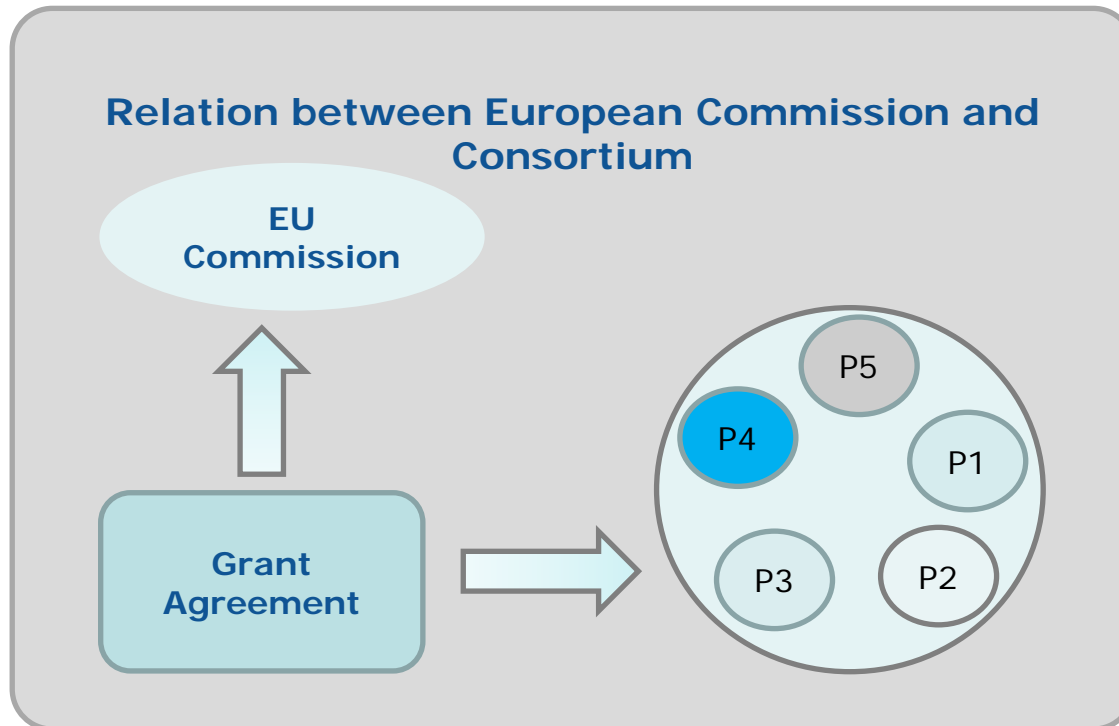


Overview: Agreements



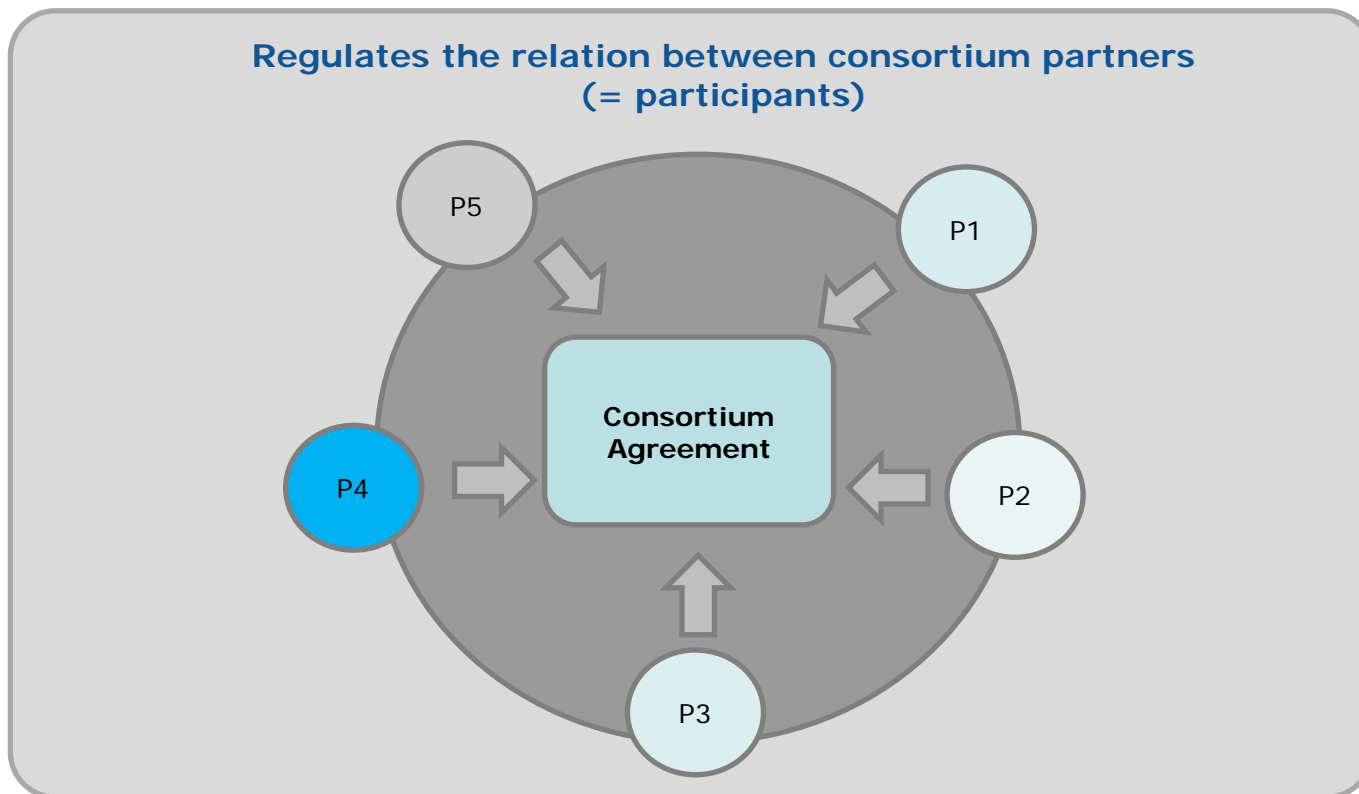


Grant Agreement (GA)





Consortium Agreement (CA)





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

How to find them: **Participant Portal**

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





STOP

The background of the slide features several overlapping, semi-transparent lines in various colors (blue, green, purple, yellow, brown, grey) that create a complex, abstract pattern. A yellow rectangular box with rounded corners and a white border contains the word "STOP" in white, bold, uppercase letters. A yellow line with a circular end connects this box to a larger yellow rounded rectangle containing the text "Specific Vocabulary".

Specific Vocabulary



Vocabulary

Key terms in the context of Horizon 2020 projects are:

- Background
- Results
- Exploitation
- Dissemination
- Access rights





Access Rights (I)

- Each project partner has the right to **request access rights** to the other project partners' background and results as long as it **needs them** in order to carry out its work under the project or to exploit its own results (these are **minimum access rights**).
- Shall be requested in writing. Can be granted in any form.
- Are to be requested/granted throughout the duration and **up to 1 year** (or as otherwise agreed in the CA) **after the end of the project** for exploitation needs. Once requested, access rights may be exercised as long as they are needed for exploiting the results (e.g. until the background patent expires).

⊘ *Access rights do **not** confer the right to grant sub-licences!*



Access Rights (II)

Granting of minimum Access Rights (*note: additional Access Rights can always be agreed upon!*)

	Access to background	Access to results
Project implementation	Royalty-free	Royalty-free
Exploitation of results	On fair and reasonable conditions	On fair and reasonable conditions

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STOP

A yellow callout box with rounded corners and a white border, containing the text "IP in Project Life Cycle". The box is connected to a yellow line that starts from the left side of the slide and ends at the "STOP" sign.

IP in Project Life Cycle



Expectations on IP management

Expectations on sound IP management in H2020/ COSME differ depending on:

- **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)**
- **Size of consortium/International partners**
- **Stage of proposal/maturity of project implementation**
- **Many others: Check the work programme/topic description carefully!!!**



Before Project Start

Every project starts with an idea ...

- Define the **state of the art**
- Search in **patent databases & documents**
- **Protect technical drawings** (e.g. by copyright)
- Protect all **information linked to the idea: make use of Confidentiality Agreements**
- **Beware of Third Parties' IPR infringement** (check acronyms against registered Trade Marks)

Participants should contact their legal/patent department as early as possible!





Before Project Start

Exploitation and dissemination planning

- Draw a convincing outline of exploitation strategies at individual/consortium level
- IP exploitation issues are subject to evaluation regarding impact and implementation. Identifying relevant **bodies/competences** within the consortium should demonstrate the potential of addressing IP management properly
- Include relevant **activities/deliverables**: PEDR, Innovation-related workshops, Market Analysis, Business Plans, Risk-Analysis, Freedom-to-Operate analysis, Specific contracts/agreements





Exploitation and Dissemination Plan

Beneficiaries have an obligation to define the expected results and their strategy for exploitation and dissemination.

Hence the following information must be included:

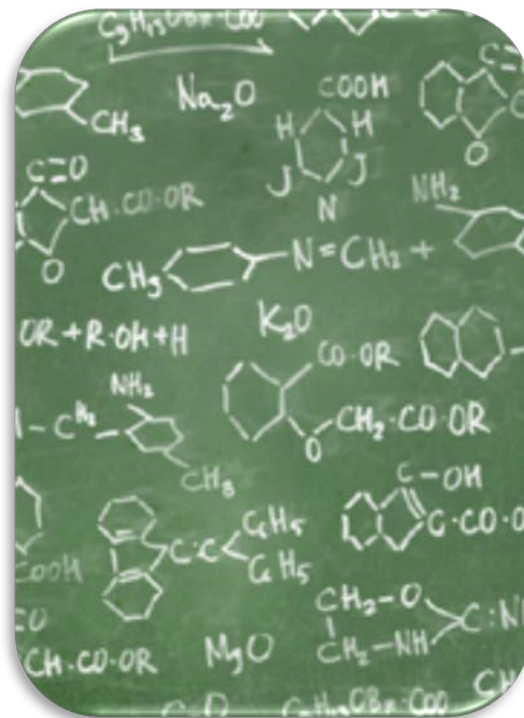
- A list of expected results that might be exploited (i.e. with commercial or industrial applicability) including their:
 - description
 - sector of application, and
 - protection measures
- A list of all the means through which they intend to bring the results to the public knowledge
- A potential/expected impact – quantifiable – in terms of marketability and research advancement



During implementation

Secure and manage research results:

- Have a **clear strategy for securing and managing** newly generated knowledge
- **Continuously update** the plan for the exploitation and dissemination of results
- **Monitor regularly relevant external factors** affecting your exploitation potential (other projects, publications, patents, markets, competing technologies, standards, norms, etc.)





Reminder: asserting the ownership of results

Ownership rules can be found in the GA (default regime) and in the CA.

Principle = results belong to the participant generating them.

If results have been generated by several partners jointly = joint ownership. GA = default joint ownership regime.

Best practice: agree on a tailored joint ownership agreement adapted to each jointly owned result.

It is always advisable to clarify the ownership of results within the consortium once they have been created, in line with your CA, before the partners start setting up exploitation strategies!



General obligation to protect

Each participant 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 can be secured by **IPR or other means** (e.g. trade secret protection).



Protection by IPR

IPR	What for?	Registration?
Patent	New inventions	Registration is required
Utility model	New inventions	Registration is required, but conditions are less stringent than for patentability
Trade Marks	Distinctive signs	Registration is required
Industrial Design	Appearance of products	Registration is usually required, but it is possible to acquire an unregistered design right
Copyright	Literary, artistic and scientific works	Not required, but it can be registered in some countries
Confidentiality	Confidential business information/trade secrets	Not required, but internal protection measures needed (i.e. NDAs)

Always use IPR symbols, such as © for copyright, ™ and ® for trademarks, or any other equivalent indicating that it is protected by one or more different IPR



Obligation 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:

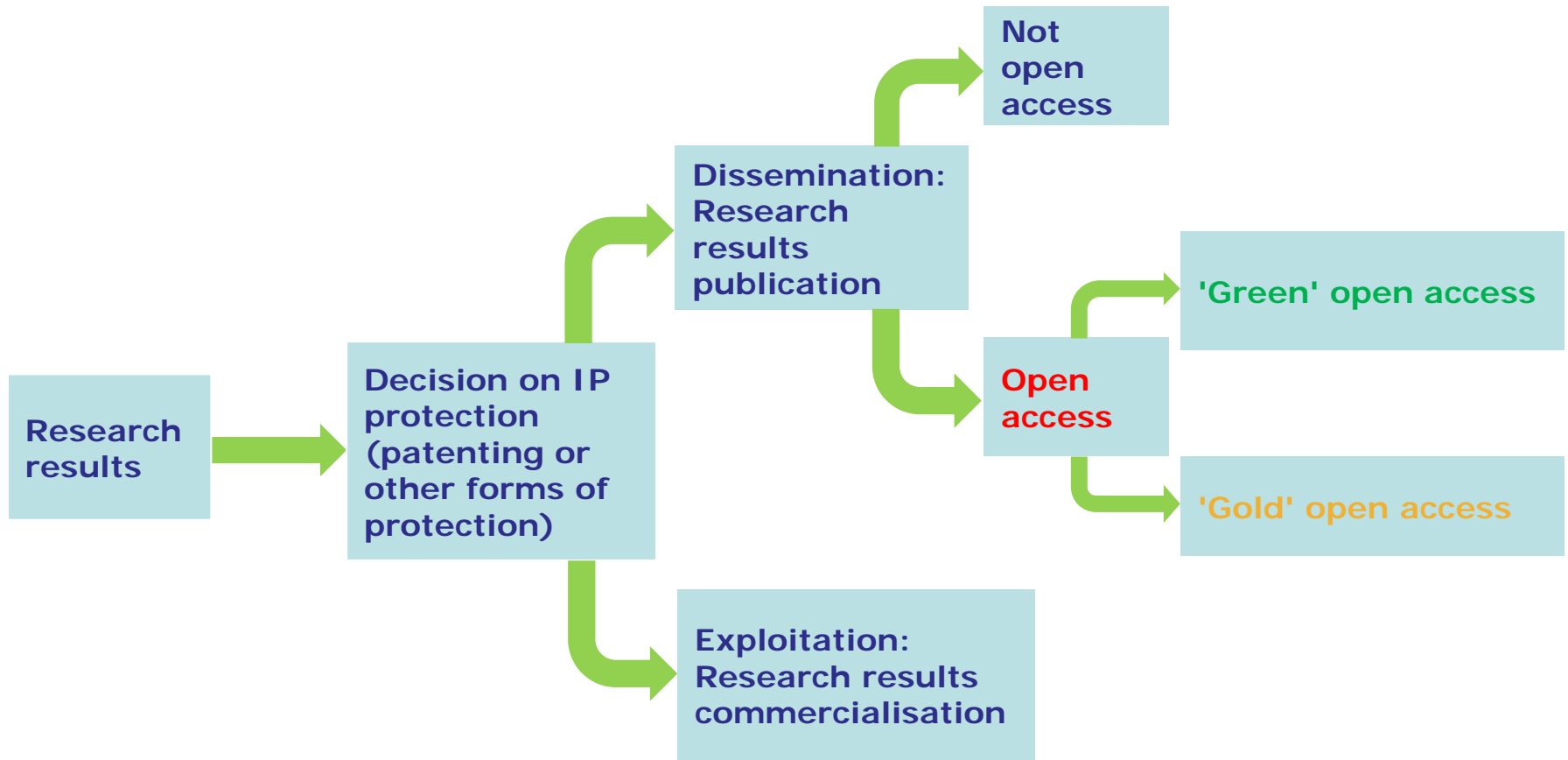
- no dissemination of results may take place before decision is made regarding their possible protection, and*
- all patent applications and publications or any other type of dissemination (also in electronic form) shall include a statement that the action received financial support from the Union –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





Dissemination checklist

- Take a decision about the protection of results 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





Questions about Open Access?

The European Commission has published a **fact sheet** and **guidelines** on Open Access to Scientific Publications and Research Data in Horizon 2020, that can be downloaded at:

- https://ec.europa.eu/programmes/horizon2020/sites/horizon2020/files/FactSheet_Open_Access.pdf
- http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/hi/oa_pilot/h2020-hi-oa-pilot-guide_en.pdf

For more guidance and support on Open Access: **the OpenAIRE initiative** aims to support the implementation of the Open Access policies of the European Commission and the European Research Council. <https://www.openaire.eu/>



Costs Reimbursement

- **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)
- For more information on costs eligible for reimbursement in H2020: contact a Legal & Financial [National Contact Point!](#)



General obligation to exploit

Each participant receiving EU funding 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.



Setting up an Exploitation Strategy

Strategic plans for the future exploitation of results should include the following elements:

- ✓ The purpose of the results;
- ✓ How they might be exploited, when and by whom;
- ✓ IPR exploitable measures taken or intended;
- ✓ Further research required, if any;
- ✓ Potential/expected impact (quantifiable)



Routes for 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)





H2020 IP exploitation: remember access rights!



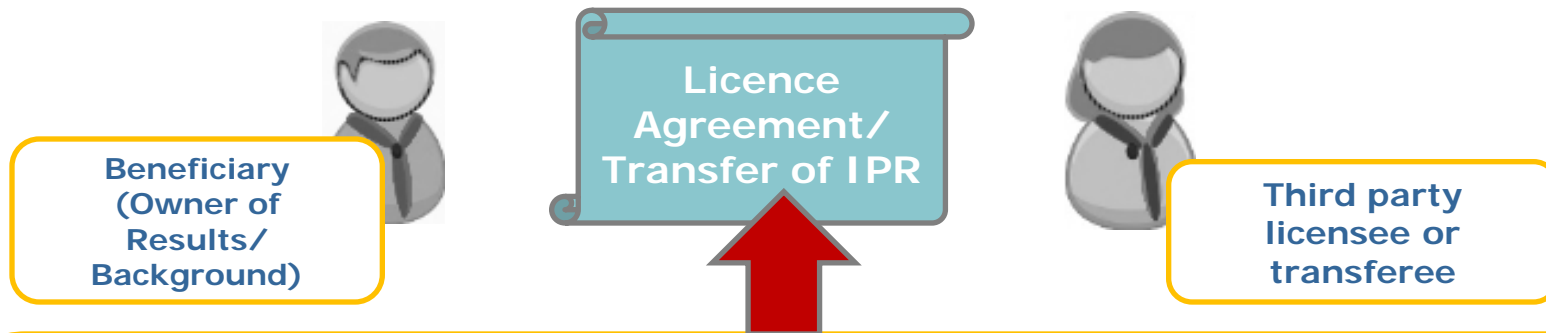
The other beneficiaries' access rights need to be maintained

- as long as they can be requested,
- or to the extent, as they have already been granted

The other beneficiaries need to be **notified** if IPR is transferred to a third party and may object to the transfer if their access rights are not maintained.



H2020 IP exploitation: limits to transfers and exclusive licences



Consequences:

- Non-exclusive licenses can be granted to third parties at anytime
- In an **exclusive license** the obligation to grant access rights has to be passed on to the third party – not really “exclusive”
- In a **transfer** of ownership the obligation to grant access rights must also be passed on to the transferee

Exceptions:

- For licensing: “real” exclusive licensing is possible if the other beneficiaries **waive** their access rights in writing
- For transfers: notification is not necessary in case of a transfer to **specifically identified third parties**



H2020 IP exploitation: further limits to transfers of results



Further obligations to remember in case of a transfer:

- Obligation to pass on **all obligations linked to the results to the transferee**: access rights, but also obligations linked to the protection, exploitation and dissemination of results
- *If clause 30.3 is included in your Grant Agreement*: **obligation to notify the Commission** before you transfer the results to a third party located in a non-EU country non-associated to H2020. The EC may in this case object to the transfer.
 - The same clause also applies to exclusive licences!



Further information

Fact sheets

- IP management in Horizon 2020: at the proposal stage
- IP management in Horizon 2020: at the grant preparation stage
- IP management in Horizon 2020: implementation and conclusion
- Open access in Horizon 2020
- Publishing v. patenting
- Exploitation channels for public research results, and series on “Commercialising IP”

Check www.iprhelpdesk.eu/library!



Thank you.

We look forward to getting in touch with you!

For questions on this presentation, please contact:
lea.montesse@iprhelpdesk.eu

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

service@iprhelpdesk.eu

Phone +352 25 22 33-333 (Helpline)

Fax + 352 25 22 33-334 (Helpline)

www.iprhelpdesk.eu

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

training@iprhelpdesk.eu





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