



European IPR Helpdesk

Fact Sheet

IP management in Horizon 2020 Marie Skłodowska-Curie Actions

April 2015

Introduction.....	2
1. Marie Skłodowska-Curie Actions – understanding how it works	2
1.1. Opportunities for researchers and SMEs	2
1.2. How to apply	3
1.3. Entities involved.....	3
2. Intellectual Property: essential at all stages of the project	5
3. The proposal.....	5
3.1. Assessing the state of the art.....	6
3.2. Project name and acronym	6
3.3. Strategy for the dissemination and exploitation of the project results.....	7
4. Grant Preparation stage	7
4.1. The Grant Agreement	7
4.2. The Consortium Agreement	10
4.3. The Partnership Agreement	12
4.4. The Researcher Agreement.....	13
5. Implementation stage	14
Useful Resources	15

Introduction

Intellectual property (IP) management is a very important part of any successful project within the Horizon 2020 framework programme. Marie Skłodowska-Curie (MSC) Actions are not an exception and participants should take the time to understand the IP rules and establish an effective and tailored plan for the protection and exploitation of research results and intellectual property (IP) arising within their projects.

The aim of this fact sheet is to outline the main IP-related issues that participants in Marie Skłodowska-Curie Actions should consider in the different stages of their projects¹. The specific rules of the model grant agreements related to IP are explained in this document, as well as the content of other agreements commonly used in Marie Skłodowska-Curie Actions. Yet, potential participants in these projects should be aware that Marie Skłodowska-Curie Actions follow, with a few exceptions, the main Horizon 2020 IP-related rules. Thus, we strongly encourage you to read our fact sheets on IP management in Horizon 2020 projects² before continuing to read this fact sheet.

1. Marie Skłodowska-Curie Actions – understanding how it works

1.1. Opportunities for researchers and SMEs

Horizon 2020 (hereinafter “H2020”) is the biggest EU funding instrument supporting research and development projects, created in order to implement the Innovation Union, a Europe 2020 flagship initiative aimed at securing Europe's global competitiveness. This instrument is structured in the three following programmes sections: “Excellent Science”, “Industrial Leadership” and “Societal Challenges”.

The “Excellent Science” section aims, inter alia, at supporting world leading scientists and researchers, providing training and career development opportunities. Within this programme, the so-called Marie Skłodowska-Curie Actions (hereinafter also “MSC Actions”) are activities specifically supported in order to allow researchers to go abroad and collaborate with private companies with the chance to acquire competences for a successful career, either in the public or the private sector. This set of actions which are managed by the Research Executive Agency (REA) of the European Commission, consists of:

¹ The contents of this fact sheet exclusively refer to the Marie Skłodowska-Curie Actions funded under the Horizon 2020 framework programme. Information on the IP issues to be considered in Marie Curie Actions funded under the former innovation framework programme (FP7) can be found in a separate fact sheet entitled “IP management in FP7 Marie Curie Actions” published in the European IPR Helpdesk online [library](#).

² You can find three fact sheets dedicated to IP management in H2020 projects: “IP Management in Horizon 2020: project proposal”, “IP management in Horizon 2020: grant preparation ” and “IP management in Horizon 2020: project implementation and conclusion”, in the European IPR Helpdesk online [library](#)

- **Innovative Training Networks (ITN)**: an action providing training opportunities for Early Stage Researchers usually provided by a network of universities, businesses and research institutes;
- **Individual Fellowships (IF)**: an individual grant allowing experienced researchers undertaking mobility between countries (in Europe or outside Europe), optionally to the non-academic sector to pursue his/her research;
- **Research and Innovation Staff Exchanges (RISE)**: a short-term staff exchange scheme fostering collaboration between universities, research institutions or non-academic organisations based in Europe or in third countries, to develop careers combining scientific excellence with exposure to other countries and sectors;
- **Co-funding of Regional, National and International Programmes (COFUND)**: a co-funding mechanism providing an extra financial support to national, regional and international research mobility programmes;
- **European Researchers' Night (NIGHT)**: a Europe-wide public event dedicated to popular science and fun learning. The events showcase what researchers really do for society, in interactive and engaging ways, and promote research careers to young people and their parents. In particular, ITN and RISE foster collaboration with the private sector. This is an opportunity for many **SMEs** to integrate some of the best researchers of the scientific community into their research projects and gain access to the resources of academic organisations.

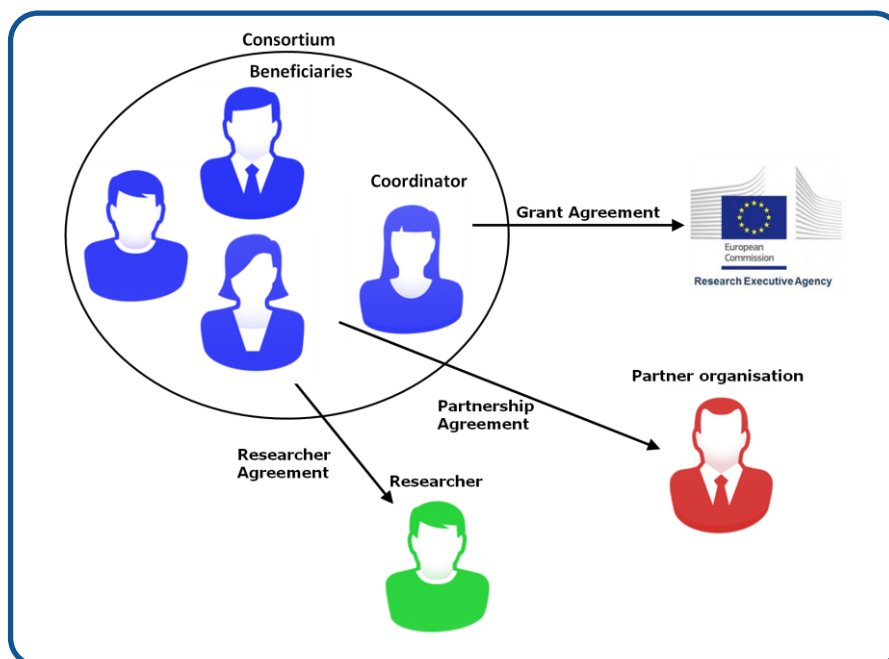
1.2. How to apply

In MSC Actions, as with other H2020 programmes, the decision to fund projects is made through the publication of calls for proposals, which are published in the EC Research & Innovation Participant Portal³. Independent experts carry out the evaluation of all eligible proposals. The coordinators of the proposals who have successfully passed the evaluation stage are then invited to sign the grant agreement with REA.

1.3. Entities involved

In MSC projects there are different entities involved, all with different roles, as well as rights and obligations. In order to understand the IP rules in these projects and to whom they apply, it is therefore important to know who those different entities are.

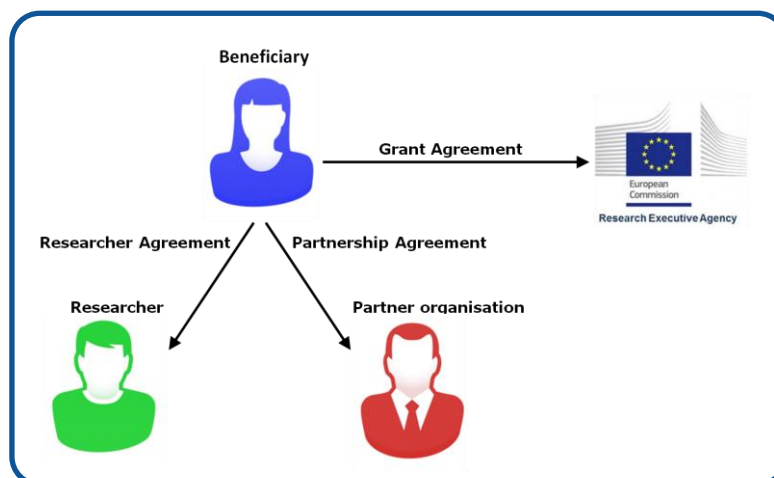
³ The Participant Portal can be found at:
<http://ec.europa.eu/research/participants/portal/desktop/en/home.html>



The beneficiary is the legal person, other than REA, which concludes the grant agreement. These can be universities, public or private research centres, SMEs, large enterprises, etc. All project beneficiaries together form the consortium.

Not all programmes in MSC Actions include several beneficiaries. IF and COFUND are **mono-beneficiary** projects and therefore only one organisation concludes the grant agreement with REA. The projects where more than one organisation signs the grant agreement are designated as **multi-beneficiary** projects.

Beneficiaries are represented by the coordinator in the communications with REA. In IF the researcher can act as the proposal coordinator with the purpose of submitting the proposal. In fact, in these projects, researchers together with an organisation (i.e. the beneficiary) apply for the grant and not the organisation by itself. However, after the call deadline the beneficiary will be the single contact point.



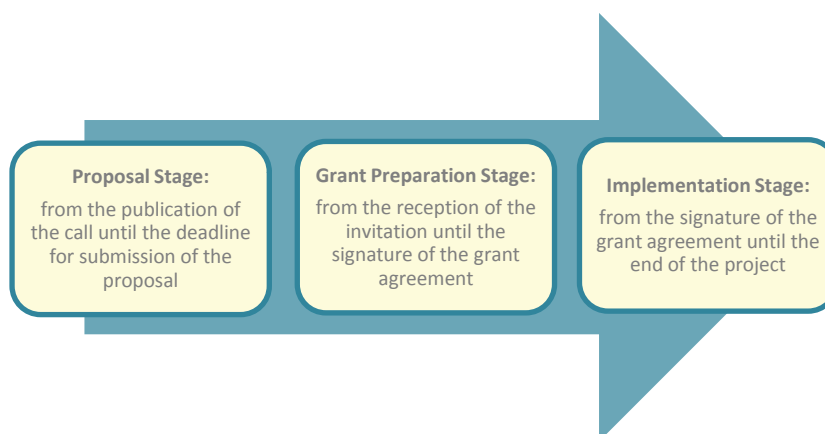
Often, organisations other than beneficiaries also participate in MSC projects. These entities are commonly designated as *partner organisations*. These

organisations are generally responsible for allowing the mobility of the MSC Fellows during the project.

Researchers or MSC Fellows are central to any Marie Curie Action. Beneficiaries are generally requested in these projects to sign contracts with the Fellows (i.e. researcher agreement), establishing the rights and obligation of both parties in accordance with the rules of the grant agreement.

2. Intellectual Property: essential at all stages of the project

IP is essential at all stages of a MSC project as in any other H2020 project. Understanding the different IP-related issues that require consideration during these different stages is therefore essential for an easier and effective management of these projects.



3. The proposal

Before starting to draft the proposal, applicants should take the time to **read all the documents** concerning the call for proposal and be familiar with the specific IP rules related to MSC Actions. In terms of Intellectual Property (IP), it is of particular importance to consider the following documents:

- the Rules for Participation⁴, for the general legal framework;
- the specific model grant agreement applicable to this programme⁵ (by reading this document, in particular Section 3, applicants can anticipate the specific IP rules with which they will have to comply if the proposal is accepted);
- the Work Programmes summarising the conditions surrounding the call for proposals (including possible specific IP rules);

⁴ See http://ec.europa.eu/research/participants/data/ref/h2020/legal_basis/rules_participation/h2020-rules-participation_en.pdf

⁵ See http://ec.europa.eu/research/participants/portal/desktop/en/funding/reference_docs.html#doc4 and select the model grant agreement related to the specific MSC programme

- the Guides for Applicants applicable to the specific call which may help to identify the concrete evaluation criteria that may take IP issues into consideration⁶;
- the H2020 Online Manual⁷, which explains important aspects that beneficiaries may encounter when they are preparing and participating in H2020 projects;
- the Annotated Model Grant Agreement⁸, providing useful guidance for the understanding and interpretation of the clauses of the contract including those related to IP issues.

Moreover, for a successful project it is as well important to consider the following IP-related issues at this stage⁹.

3.1. Assessing the state of the art

Based on the criteria set out in the Rules for Participation, the excellence of the project is one of the principles under which the rules for the submission, evaluation and selection of proposals in relation to H2020 rest.

The proposals must therefore demonstrate a high scientific and technological quality of the project. In some actions (e.g IF), in order to show this quality, applicants must explain in the proposal the originality and innovative nature of their project, as well as how the project is expected to go beyond the state of the art. Hence, it is advisable to perform a bibliographic search with the purpose of assessing and showing the current state of the art within the project field. In this regard, **searches in patent databases** take an essential role and should be performed¹⁰.

3.2. Project name and acronym

Applicants should select a project name and acronym already at the proposal stage. To **avoid any trade mark infringement** it is generally advisable to be careful not to choose a sign which is similar to a registered trade mark owned by a third party for goods and services in the same area of business.

Performing searches in trade mark databases is therefore essential as well as highly recommended¹¹.

⁶ Applicants should consult the applicable guide to their call.

⁷ See http://ec.europa.eu/research/participants/docs/h2020-funding-guide/index_en.htm

⁸ See http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/amga/h2020-amga_en.pdf

⁹ For further details, please consult the fact sheet "IP Management in Horizon 2020: project proposal", which is available in our library.

¹⁰ For further information on patent searches, we suggest that you consult the fact sheet "How to search for patent information", which is available in our [library](#).

¹¹ For further information on trade mark searches, we suggest that you consult the fact sheet "How to search for trademarks", available in our online [library](#).

3.3. Strategy for the dissemination and exploitation of the project results

Already at the proposal stage, under the “impact” section, in most MSC Actions (for example, in ITN) applicants should outline the practical measures that they intend to take with the purpose of **ensuring an effective dissemination and exploitation of the project results**. Given the relevance of this part of the proposal in the evaluation, it is highly advisable to start drafting it in advance and with care, bearing in mind the principles of the European Charter for Researchers¹².

Moreover, a good description of the plan for the protection and exploitation of IP may also be essential to demonstrate not only the credibility of the project idea but also that the project’s results are likely to contribute to European competitiveness in the research field at stake.

4. Grant Preparation stage

4.1. The Grant Agreement

The overall purpose of the preparation is to refine the scientific-technical details of the project and to collect financial and legal information needed for drafting the grant agreement. Before beginning the grant preparation, applicants are invited to read again the relevant model grant agreement. Indeed this is of help to understand the different IP-related rules that will apply once the project starts.

In this regard, Section 3 of the model grant agreements is very relevant, since it **includes most of the obligations concerning IP**, in particular the rules related to ownership, transfer, protection, use and dissemination of results, as well as the rules surrounding the identification and access to background.

What needs to be highlighted is that, unless explicitly provided, the dispositions of Section 3 are non-negotiable since they specify the rules for use and dissemination of the IP rights applicable to any H2020 project¹³.

4.1.1 The IP rules in detail

The IP provisions in the MSC model grant agreements (Section 3) are almost **identical to the provisions applicable to any H2020 project**. Yet, there are some special provisions that will be highlighted below. It is therefore important that project beneficiaries and researchers get informed about their rights and duties as laid down in the grant agreement, including the IP rules for a smooth project negotiation and implementation.

A copy of the grant agreement or an explanatory document should also be provided to researchers.

¹² See <http://ec.europa.eu/euraxess/index.cfm/rights/europeanCharter>

¹³ There are different versions of the model GA. Hence, please ensure that you use the version applicable to your call.

a) Access Rights

Access rights mean rights to use another beneficiary's results or background. Thus, they allow participants in multi-beneficiary projects to benefit from each other's knowledge, taking full advantage of their collaboration. For this purpose, participants have to identify the background for their action in a written agreement.

Following the general rule in H2020, in multi-beneficiary projects, access rights to another participant's results and/or background are only to be granted if the requesting participant needs such access in order to carry out the project or to use its own results.

Unlike in other H2020 projects, **the MSC Fellows are entitled to access rights** to the beneficiaries' background and results for the purpose of allowing them to undertake the research activities under the project¹⁴. These access rights are granted on a royalty-free basis, and only for the duration of the project.

The chart below provides a brief summary of the main rules governing the access rights granted in MSC Actions for the implementation of the project and/or for the exploitation of the results.

ACCESS RIGHTS TO BACKGROUND AND RESULTS			
		Background	Results
Between beneficiaries (in multi-beneficiary projects)	Project implementation	Royalty-free, unless otherwise agreed before acceding to the grant agreement.	Royalty-free
	Use of its own results (exploitation or further research)	on fair and reasonable conditions	
To researchers (in multi and mono beneficiary projects)	If needed for his/her researcher activities under the project.	Royalty-free	

¹⁴ This obligation is established at Section 3 of the H2020 model grant agreements for MSC Actions.

b) Results ownership

Results arising from the project remain the property of the beneficiary that has generated it, as it is the general rule in H2020 projects.

This principle should also apply to the results generated by the researcher during the **secondment period** at a partner organisation or a participant's premises (other than those of the participant which has appointed him/her). In this case, the participant which has appointed the researcher is generally the owner of such results.

Nevertheless, participants may decide to establish a different ownership system and agree to transfer the ownership of the results created during secondment to the organisation hosting the researcher. Granting a license is another option that participants may consider.

When considering a transfer, participants of MSC Actions must comply with the general obligations concerning the **transfer of results**.

(i) The transfer should be done through an **agreement** where the owner should ensure that its contractual obligations with respect to protection, dissemination, exploitation, and the granting of access rights are passed on to the new owner (the "assignee"), as well as by the latter to any subsequent assignee;

(ii) The owner must give **prior notice to the other consortium partners**, with sufficient information about the new owner;

(iii) In the case where the intended transfer is done to a partner organisation **with establishment in a third country not associated to H2020**, the EC may have to be notified of the transfer beforehand, and may object to it, if the grant agreement includes a special clause to this effect (optional clause 30.3). Check your grant agreement to see if this obligation to notify applies to your project!

4.2. The Consortium Agreement

The consortium agreement is a **private contract between beneficiaries** concerning internal arrangements on work organisation, IP management, liability and further matters of their interest. This agreement should embrace all of the beneficiaries' rights and obligations related to these issues that are necessary for the execution of the project. **REA is not party to this agreement** and does not verify its content.

The IP provisions within this contract are complementary to those in the grant agreement, in the sense that the consortium agreement regulates aspects particular to each project (e.g. the concrete background beneficiaries intend to grant access to) and supplements others not entirely defined in the grant agreement (e.g. joint ownership rules). Furthermore it **finds its boundaries in the grant agreement** since it is not allowed to contradict or negate the provisions enclosed therein. *The basic principle to follow when drafting a consortium agreement is to provide flexible and efficient mechanisms to support the co-operation between the parties, to encourage protection and maximum exploitation of results as well as to ensure a swift dissemination thereof.*

In mono-beneficiary projects it is not necessary to conclude a consortium agreement. On the contrary, in multi-beneficiary projects, it is best practice to conclude one (even if not mandatory in a concrete call) in order to regulate the relationship between beneficiaries and avoid potential future conflicts.

Although the European Commission does not provide any binding model for the consortium agreement, it has released the guidance "*How to draw up your consortium agreement*"¹⁵ providing practical recommendations on the main issues that beneficiaries in H2020 projects should consider when negotiating this contract.

Examples of IP related rules that may be included in the consortium agreement could concern the following issues:

a) Identification of the background

Given that in H2020 actions beneficiaries have to identify the background in a written agreement, inserting it in a consortium agreement could be a valid option within a multi-beneficiary project. Such identification could be performed agreeing on a positive and/or negative list of knowledge and IPR included or excluded.

¹⁵ See http://ec.europa.eu/research/participants/data/ref/h2020/other/gm/h2020-guide-cons-a_en.pdf

b) *Protection, dissemination and exploitation of results*

Considering that parties may have different interests as regards the dissemination of results (e.g. publishing them or keeping them confidential), the consortium agreement should set out plain rules on how results will be identified, reported, protected, disseminated and exploited.

c) *Joint ownership*

The model grant agreements provide for a default joint ownership regime, applicable in the absence of any other arrangement. Joint owners are however obliged to agree in writing on the terms of their joint ownership. Therefore, the consortium agreement could be the right place to agree on, at least, a default ownership regime which would most closely match the needs of the partners. Often, more tailored individual joint ownership agreements will then be concluded on a case by case basis, between the respective co-owners only, once a specific result has been created. Alternatively, it is also possible for beneficiaries to agree on a different regime than joint ownership. Indeed, once the results have been generated, joint owners may agree (in writing) to apply another regime than joint ownership (such as, for instance, transfer to a single owner with access rights for the others).

As no binding or official model of the agreement exists, several organisations have developed different models for consortium agreements¹⁶ with the intention to create a contractual framework that helps H2020 beneficiaries draft their own agreement. Such models are nevertheless **mere samples** and not a one-size-fits-all contract. Furthermore, they are not specifically conceived for MSC Actions and so not fully tailored to the rules governing the actions. Therefore, a thorough analysis is required in order to ascertain which one is the most suitable for your project specificities. Afterwards, the consortium **must adapt** and **reshape** the chosen model to its specific needs.

The models currently available are the following:

- **DESCA¹⁷**: sets a contractual framework seeking to balance the interests of all of the main participant categories in H2020 research projects: large and small firms, universities, public research institutes and Research and Technology Organisations (RTOs).
- **EUCAR¹⁸**: it is meant to fit the needs of the automotive industry and contains provisions encouraging exploitation and dissemination of the project results. It is less detailed than the other models but proposes alternatives for the access rights regime and the background management.
- **M-CARD 2020¹⁹**: It is meant to suit the needs of the ICT industry and contains several clauses supporting the commercial exploitation of the results. Nevertheless, consortia in any scientific field, not just in the ICT domain, are free to adapt and use it.

¹⁶ These models have not been developed by the European Commission or under its supervision. Therefore, they cannot be considered official.

¹⁷ See <http://www.desca-2020.eu/>

¹⁸ See <http://www.eucar.be/eucar-publishes-its-model-consortium-agreement-for-horizon-2020/>

¹⁹ See <http://www.digitaleurope.org/Services/H2020ModelConsortiumAgreement.aspx>

4.3. The Partnership Agreement

In some MSC Actions, there can be partner organisations involved in the project. This is the case, for example, in RISE, IF and ITN. These organisations are not signatories to the grant agreement and do not receive EU funding, but take an essential role in the project, which may include:

- providing research and transferable skills training (ITN and COFUND);
- providing secondment opportunities (RISE, IF, ITN and COFUND).

Partnership agreements should be concluded with the purpose to **regulate the relationship between beneficiaries and these partner organisations** as well as the secondment period framework. Beneficiaries must be careful to conclude these agreements in compliance with their obligations laid down in the grant agreement and, depending on the project, the consortium agreement as well.

What to include in Partnership Agreements?

- ✓ The commitment of partner organisation to implement the project in accordance with the provisions of the grant agreement and the description of work;
- ✓ The obligations of partner organisations towards the researcher during the secondment period;
- ✓ Costs;
- ✓ Audit rights of REA;
- ✓ Confidentiality;
- ✓ Ownership of results;
- ✓ Information and reporting obligations of partner organisations towards beneficiaries;
- ✓ ☐ Rules on the acknowledgement of EU financial support and other communication obligations.

No official model for the partnership agreement is available. Some organisations have however created their own models for some MSC Actions²⁰. As any other model, participants are highly encouraged to seek legal advice when using these documents and to adapt them to their own needs and applicable law.

²⁰ Kowi, a joint service platform of the German research organisations financed by the German Research Foundation (Deutsche Forschungsgemeinschaft, DFG), is one of those organisations. On their website participants have free access to a model for a partnership agreement, which is available at: http://www.kowi.de/en/desktopdefault.aspx/tabid-266/1013_read-931/

4.4. The Researcher Agreement

The conclusion of an **agreement between the appointing beneficiary and the researcher** is compulsory in MSC Actions as a way to regulate the relationship between these two parties. This agreement must be compatible with the beneficiary's obligations stemming from the grant agreement and the consortium agreement. Moreover, it should include provisions on the rights and obligations of researchers, in accordance with Section 4 of the grant agreement. No official model for this agreement is available.

4.4.1 Confidentiality

Beneficiaries in MSC projects are bound by confidentiality obligations stemming from the grant agreement and the consortium agreement. The researcher agreement should therefore establish the **confidentiality obligations of researchers** in detail, in order to reflect the beneficiary's own obligations.

An information session or explanatory document regarding these confidentiality obligations (and consequences of their breach) could be considered as a management measure to ensure a full commitment and understanding by researchers.

4.4.2 Ownership of results

As explained before, results generated in **MSC Actions should belong to beneficiaries**. Since, in practice, results are created by the researchers, the latter may be entitled to the ownership of their creations pursuant to national laws.

Should this be the case in a determined project, beneficiaries should ensure that the agreement with the researcher clearly defines that the ownership of results is the property of the beneficiary (or at least that it has sufficient user rights).

4.4.3 Access Rights

In accordance with Section 3 of the model grant agreement, beneficiaries should grant access rights in the researcher agreement to their background and results to the MSC Fellow with the purpose of allowing him/her to undertake the research activities under the project²¹.

These access rights must be granted on a royalty-free basis.

²¹ This obligation is established in Section 3 of the relevant MSC model grant agreement.

Grant Agreement	•concluded between REA and participants/beneficiaries •models available at H2020 Participant Portal
Consortium Agreement	•concluded between participants/beneficiaries •no official model is available, the European Commission released the guidance "How to draw up your consortium agreement"
Partnership Agreement	•concluded between participants/beneficiaries and partner organisations (not signatories of the grant agreement) •no official model is available
Researcher Agreement	•concluded between participants/beneficiaries and researchers •no official model is available

5. Implementation stage

In terms of IP, the implementation stage is of particular importance, as the **exploitation** and **dissemination** of results are **key objectives** of any H2020 project.

In H2020 there is an **obligation to disseminate** the results swiftly. In this context, dissemination refers to the disclosure of project results by any appropriate means. Scientific publications, general information on websites or conferences are some examples of potential dissemination activities²².

Furthermore, in all H2020 projects, each beneficiary must ensure open access (free of charge, online access for any user) to all peer-reviewed scientific publications relating to its results.

To assist coordinators and team leaders to create an effective dissemination strategy, the European Commission has prepared a *Communicating EU research and innovation guidance for project participants*²³ where many best practices are outlined.

However, no dissemination activity (including publication of scientific articles) should be performed until a decision on the results protection has been taken in order to avoid early disclosures that would hinder effective protection, in particular through patents. Researchers, in particular, should therefore be aware of the procedure in case they intend to publish a scientific article, give a lecture or present the project in a conference.

²² For further information, please see "Strategic Guide to Successful Use and Dissemination of the Results of Research and Development Projects", available at http://ec.europa.eu/research/sme-techweb/pdf/use_diffuse.pdf

²³ The guide is available at: http://ec.europa.eu/research/participants/data/ref/h2020/other/gm/h2020-guide-comm_en.pdf

Useful Resources

Sources of model consortium agreement:

- **DESCA**: <http://www.desca-2020.eu>
- **EUCAR** (European Council for Automotive R&D):
<http://www.eucar.be/eucar-publishes-its-model-consortium-agreement-for-horizon-2020/>
- **M-CARD 2020** (Digital Europe):
<http://www.digitaleurope.org/Services/H2020ModelConsortiumAgreement.aspx>

For further information on the topic please also see:

- Fact sheet on "IP Management in Horizon 2020: project proposal":
http://www.iprhelphelpdesk.eu/sites/default/files/newsdocuments/FS_IP%20Management%20in%20Horizon%202020_project_proposal_0.pdf
- Fact sheet on "IP management in Horizon 2020: grant preparation":
http://www.iprhelphelpdesk.eu/sites/default/files/newsdocuments/FS_How_to_manage_IP_in_H2020_grant_preparation_0.pdf
- Fact sheet on "IP management in Horizon 2020: project implementation and conclusion":
http://www.iprhelphelpdesk.eu/sites/default/files/newsdocuments/FS_IP_Management_h2020_implementation_0.pdf
- Your guide to IP in Horizon 2020:
http://www.iprhelphelpdesk.eu/sites/default/files/documents/EU_IPR_Guide-to-IP-H2020.pdf

GET IN TOUCH

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ABOUT THE EUROPEAN IPR HELPDESK

The European IPR Helpdesk aims at raising awareness of Intellectual Property (IP) and Intellectual Property Rights (IPR) by providing information, direct advice and training on IP and IPR matters to current and potential participants of EU funded projects. In addition, the European IPR Helpdesk provides IP support to EU SMEs negotiating or concluding transnational partnership agreements, especially through the Enterprise Europe Network. All services provided are free of charge.

Helpline: The Helpline service answers your IP queries within three working days. Please contact us via registration on our website – www.iprhelppdesk.eu – phone or fax.

Website: On our website you can find extensive information and helpful documents on different aspects of IPR and IP management, especially with regard to specific IP questions in the context of EU funded programmes.

Newsletter and Bulletin: Keep track of the latest news on IP and read expert articles and case studies by subscribing to our email newsletter and Bulletin.

Training: We have designed a training catalogue consisting of nine different modules. If you are interested in planning a session with us, simply send us an email at training@iprhelppdesk.eu.

DISCLAIMER

The European IPR Helpdesk project receives funding from the European Union's Horizon 2020 research and innovation programme under Grant Agreement No 641474. It is managed by the European Commission's Executive Agency for Small and Medium-sized Enterprises (EASME), with policy guidance provided by the European Commission's Internal Market, Industry, Entrepreneurship and SMEs Directorate-General.

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