

Open innovation and IP Management of publicly funded research projects - “Open R&D”

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Presentation outline

- **Open R&D – Horizon 2020**
- **Basics**
- **Legal Framework**
- **Managing IP**
- **Summary**

Horizon 2020

Open R&D

- “..... benefits of Horizon 2020 grants is the collaborative character of the project which means that participants will be **sharing** their experience, innovation and **intellectual property** rights for the purpose of creating results that they would not be able to develop alone within the same timeframe*.”

*Cited from ‘Fact Sheet IP Management in Horizon 2020: at the proposal stage’

Europe 2020 strategy

Europe 2020 – 10 year initiative for smart, sustainable, inclusive growth

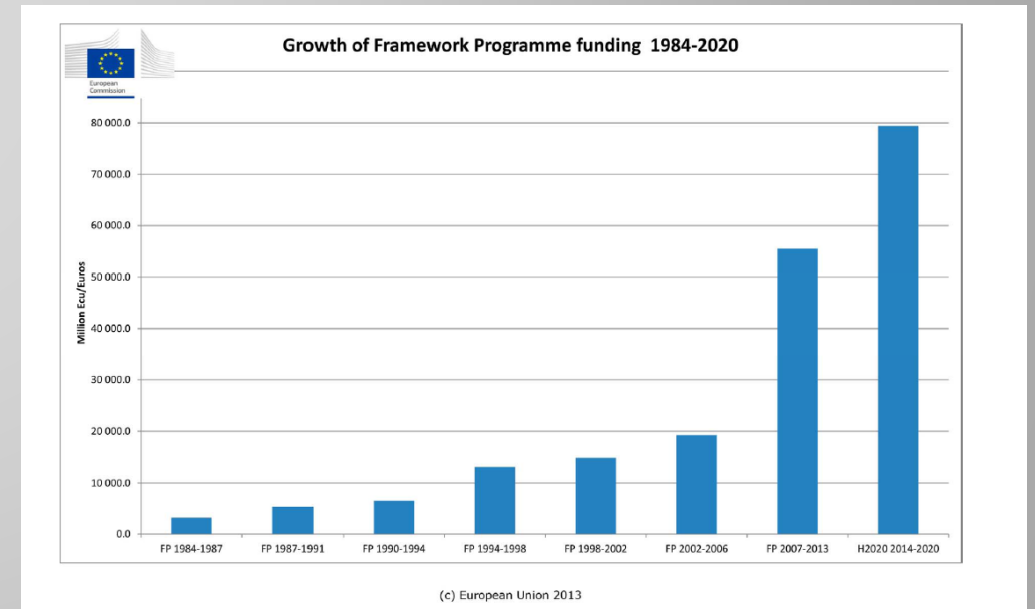
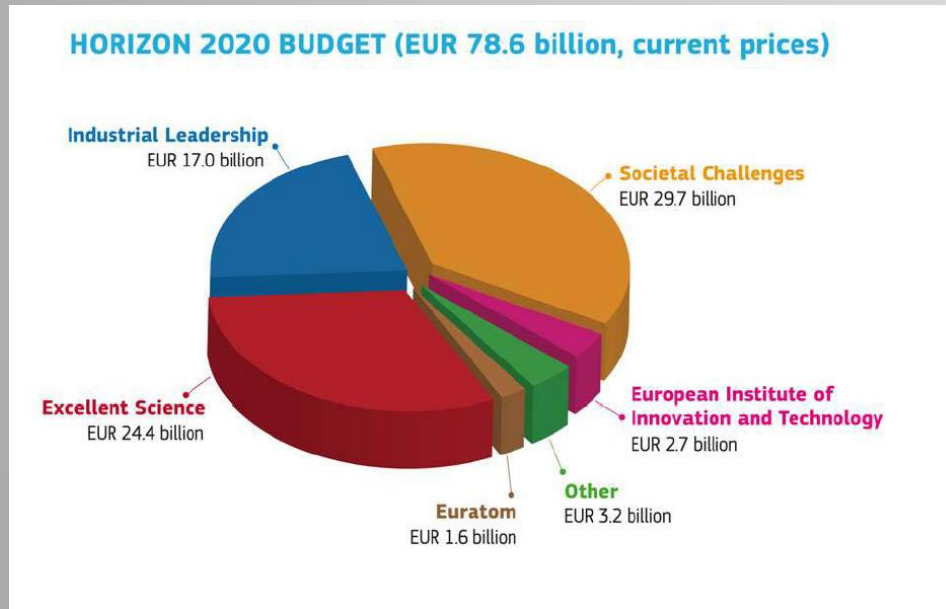
Innovation Union as one of seven flagship initiatives

“to **improve framework conditions** and access to finance for research and innovation so as to strengthen the innovation chain [...]”

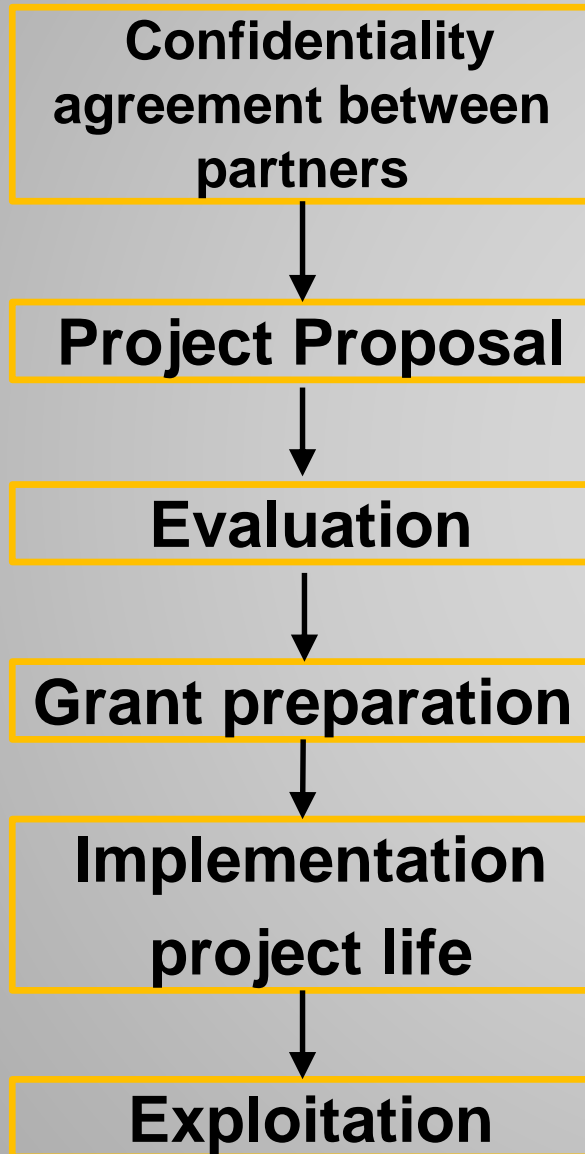
Horizon 2020 is the financial instrument implementing the **Innovation Union**

Some basic facts about H2020

Horizon 2020 is the biggest EU Research and Innovation program ever, with **79 billion euros** of funding available from 2014 to 2020



Lifecycle of an R&D project in H2020

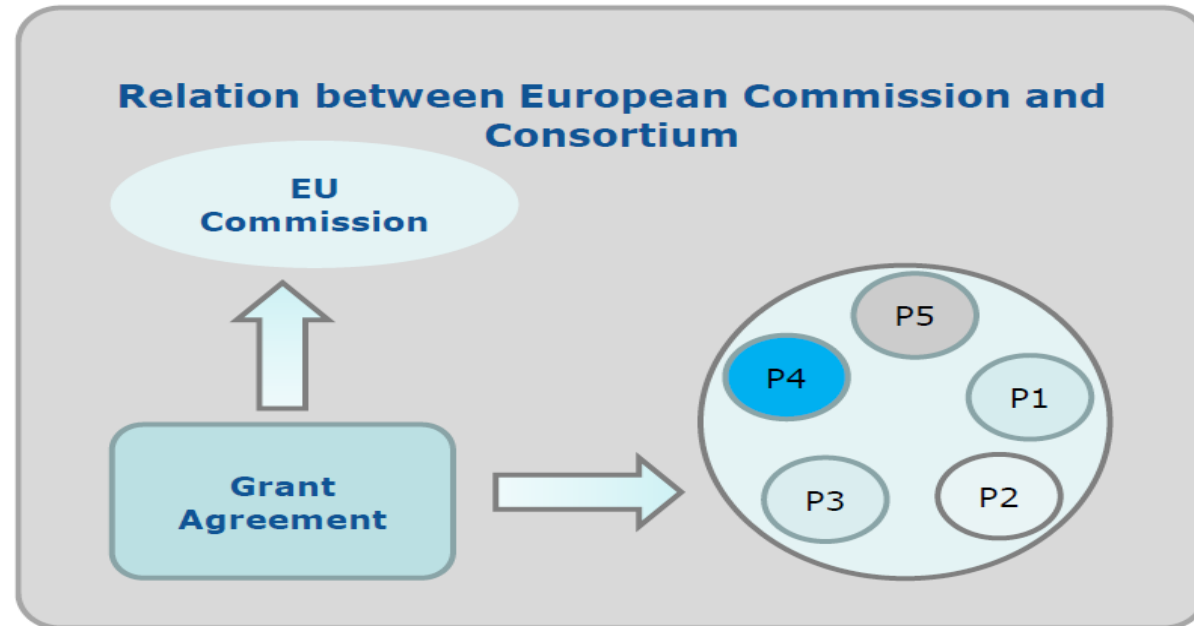


Comments:

- no negotiation meetings (!), no update of the DOW, therefore everything needs to be specified in the proposal
- model grant agreement – with minor options
- target 6 month from submission deadline to project start

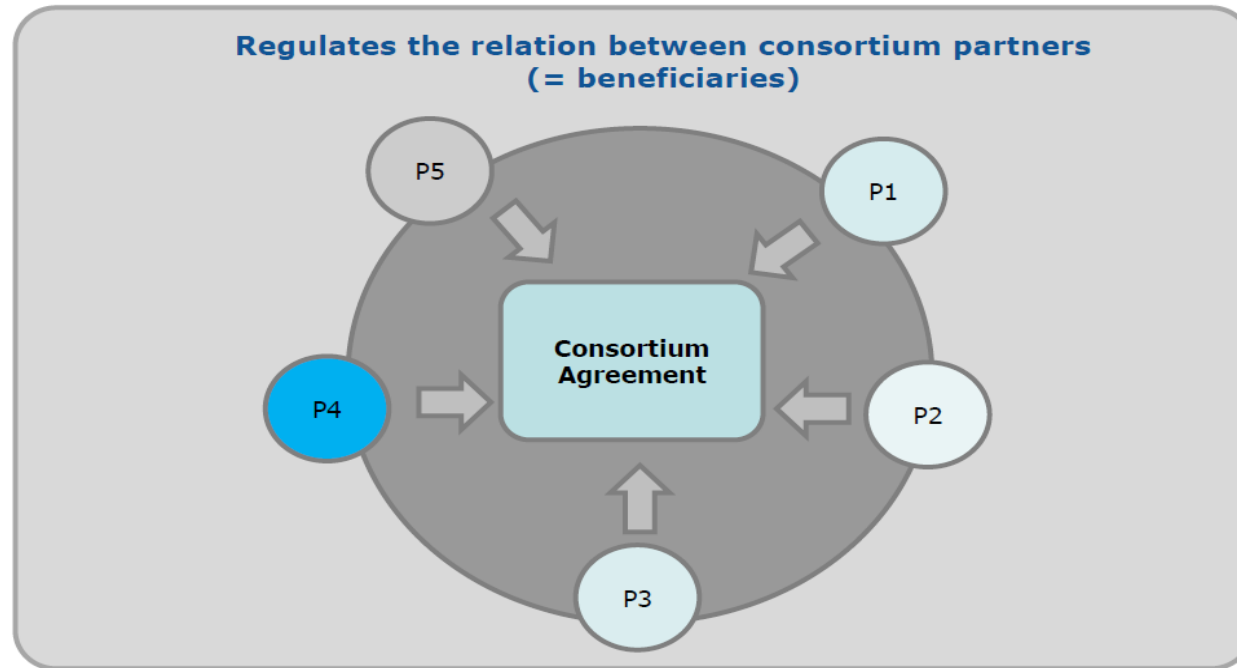
Managing IP in H2020 – legal Framework

Grant Agreement (GA)



Managing IP in H2020 – legal Framework

Consortium Agreement (CA)



Managing IP in H2020 – legal Framework

DOCUMENT	SIGNATURE <i>WHEN</i>	PARTIES <i>WHO</i>	CONTENT <i>WHAT</i>
Grant Agreement	<i>End of negotiations phase</i>	Beneficiaries and the European Commission	Establishes the rights and obligations of beneficiaries with regard to the EU <i>IP rules are not negotiable</i>
Consortium Agreement	<i>During negotiations phase</i>	Project Coordinator and Other Beneficiaries	Sets out the legal basis for the share of rights, obligations and responsibilities among beneficiaries <i>IP rules need to be agreed upon by partners</i>

Managing IP in H2020 - definitions

- **Background – IP (copyright, patents, ...)** held prior required for the project, must be identified in writing
- **Results - generated under the project (IP and non IP related)** belong to the partners who have generated them
- **Access rights – user rights to results or background of project partners** must be requested in writing
- **Exploitation (of results)** – best effort obligation to use result for further activities
- **Dissemination** – disclosing the results to the public

Managing IP in H2020 - Access Rights

Each project partner has the right to request **access rights** to other partner's **background** and **results** as long as it **needs** them in order to carry out its work or to use its own results

May be requested for up to **1 year after the end of the project** for exploitation (..may be exercised as long as needed for exploiting results)

	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

Be explicit about **background**

EC stipulates in Grant Agreement: if access to background has different regulations - than it needs to be specified prior to accessing the GA – overrules the general guidelines

Consider to requested special license agreement for background in EU projects – to better control access to background IP related to exploitation of project results

- Access only during projects life time
- Data as background IP

**Best practice is to explain details already in the proposal
Background needs to be specified in writing (pos. or neg. list)**

Access rights to results - what means “need”

Access to results must be provided if it is needed!

Annotated Grant Agreement: definition of need should to be clarified in the CA

- Technical need vs business need (you can provide the technical capabilities by a standard tool, but not the commercial product which is superior in speed, usability, ... e.g. open source service vs commercial service)
- Cloud scenario: access to a services required (via an standardized interface) but not to the platform as such

Access rights must be requested in writing

Problem(s) with **licenses**

Be aware of 3rd party licenses agreement in your platform/ product ?

- Limitation to sub-licensing (royalty free access to project partners may not be possible)

Partners do not get the right to sublicense background (default in GA)!

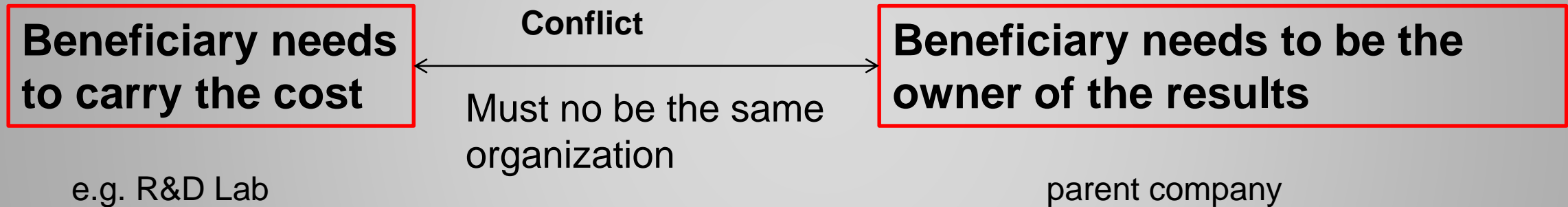
What type of license is needed by whom?

- Developer license (for technology partner) vs user license (for use case partners)

Beneficiary vs owner of IP

For organizations with different legal entities

- Which legal entity owns the IP and who participates in the project ?



R&D Labs cannot be considered as 3rd party as only non essential work can be subcontracted

Potential solution in H2020: contribution in kind against payments (not officially approved)

Summary

- Ideal framework for collaborative projects through the provision of a legal framework
- Funding guidelines simplified compared to FP7 – less overhead
- But some precaution for IP Management required when preparing for the project

disclaimer

The opinions expressed here represent my own and not those of my employer

references

IPR Helpdesk and useful documents

<https://www.iprhelpdesk.eu>

Fact Sheet IP Management in Horizon 2020: at the proposal stage

Fact Sheet How to manage IP in Horizon 2020: at the grant preparation stage

Fact Sheet How to manage IP in Horizon 2020: project implementation and conclusion

Managing Intellectual Property in Horizon 2020: Presentation by Léa Montesse, European IPR Helpdesk

http://www.ukro.ac.uk/aboutukro/conference/Documents/142626_ip_management_h2020%20lea_montesse.pdf

Annotated Model Grant Agreement

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

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