



The Consortium Agreement

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Contents

- Horizon 2020 Agreements:
Grant Agreement (GA) & Consortium Agreement (CA)
- understanding the basics for proper contract preparation
- The CA in detail – Structure and clauses
- CA models
- Useful resources and support services
- Summary Checklist (I)

Burning questions

- I am a scientist – why do I need contracts at all?
- What is a Grant Agreement?
- What is a Consortium Agreement, and how does it relate to the Grant Agreement?
- What is obligatory, and where do I have room for negotiation?
- I am not a legal expert... what do I do with this freedom?

Burning questions

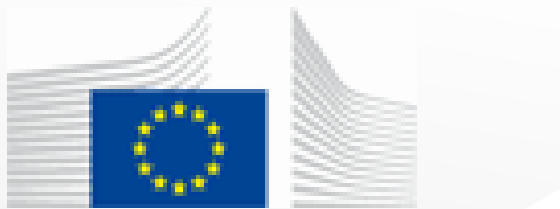
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Understanding the basics The Grant Agreement (GA)

defines the relation between the European Commission and the
Coordinator / the Consortium



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Understanding the basics

Components of the Grant Agreement

Core agreement	Standard text with project specifics
Annex 1:	Description of the Action
Annex 2:	Estimated budget
Annex 3:	Accession forms of beneficiaries
Annex 3a:	Declaration on joint liability of third parties
Annex 4:	Model financial statements
Annex 5:	Model certificate on financial statements
Annex 6:	Model certificate on the methodology



→ Additional explanations:
[Annotated Model Grant Agreement](#) (AGA)

Understanding the basics Grant Agreement

Documents to really look at...

Grant Agreement

- Reference for EU regulations on project implementation (refundable costs, reporting, payment schedule...)
- Answers many questions that arise during the project
- The Commission must also observe these conditions

Annex I: Description of the Action

- Project work plan, which is finalized during GA preparation; based on proposal
- Whatever is promised must be delivered (Deliverables)
- A well-structured, practical and realistic Description of the Action is the basis for the successful implementation of the action

Understanding the basics The Consortium Agreement (CA)

regulates the relation between consortium partners
(= beneficiaries)



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Understanding the basics

The Consortium Agreement (CA) is

- a legal document that regulates the **internal relations** within the Consortium;
- **mandatory** for the majority of projects;
- to be worked out during GA preparations at the latest;
- building on MGA as a legal basis;
- **in no way allowed to contradict the Grant Agreement**; the latter always takes precedence!

Understanding the basics

Why do we need another agreement if we already have the GA?

- The GA is largely a standard agreement and sets the main frame;
- The CA regulates all project specific aspects in detail, incl. IP management;
- The CA makes project management (decision making) quicker and easier;
- In case of conflict, the CA provides clear guidance.

Understanding the basics

Why do we need another agreement if we already have the GA?

The Horizon 2020 Rules for Participation and Dissemination require members of a consortium participating in a multi-beneficiary action to conclude an internal agreement (referred to as a **consortium agreement**) to establish their rights and obligations with respect to the implementation and organisation of the action, in accordance with the Grant Agreement.

Understanding the basics

What should the Consortium Agreement cover?

- the **internal organisation** of the consortium;
- the distribution of the EU **financial contribution**;
- Intellectual Property Rights (IPR); additional rules on future **exploitation and dissemination of results, access rights**;
- the settlement of **internal disputes**;
- **liability, indemnification and confidentiality** arrangements.

Understanding the basics

The EC requests us to conclude a Consortium Agreement.

How are they involved in the process?

Do they provide any model contract, or guidance?

- The **EC is not a partner** to the Consortium Agreement;
- The CA regulates the relation between consortium members only; Consortia are completely free in designing their CA;
- The **EC does not provide any model agreement**;
- BUT: The “Checklist for a Consortium Agreement“ gives clear **guidance**;
- The existence but not the content of the CA is checked by the EC before the end of contract negotiations.

Understanding the basics

Draft Guidance:

Establishing a Consortium Agreement



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

Further practical information and assistance:

IPR Helpdesk



<https://www.iprhelpdesk.eu/library>

Understanding the basics

‘These fact sheets and model agreements may assist the parties during negotiations, and can be used as inspiration, or as a checklist of topics to be discussed, or as a starting point or framework for the actual agreement to be concluded.

However, note that these model agreements have not been endorsed by the Commission and are just samples, not one-size-fits-all agreements. [...]

Source: Guidance - Establishing a Consortium Agreement

The CA in detail

Structure & Clauses

...are there any standard clauses which need to be included?

The CA in detail

The CA can be tailor-made for your specific project, but as any contract, it should contain:

Preliminary Clauses

Central Clauses

Final Clauses

The CA in detail

Preliminary Clauses

- Preamble:
 - ▶ Summary of project framework
 - ▶ Title
- Parties
- Language
- Definitions (!)

Central Clauses

- Financial and administrative management:
 - ▶ Consortium bodies
 - ▶ Decision-making procedures
 - ▶ Financial organisation
- Technical provisions
- Intellectual property issues (!)
- Liability

Final Clauses

- Applicable law
- Dispute resolution = jurisdiction
- Other: e.g. confidentiality, duration

The CA in detail

Intellectual Property (IP) issues: key terminology

- Background
- Results
- Exploitation
- Dissemination/publication
- Access rights

The CA in detail

- **Background:** information, know-how and IP rights that participants hold before the signature of the GA and which are needed for the project.
- **Results:** data and knowledge originating from the project and related IP rights.
- **Dissemination/publication:** making Results available to the public.
- **Exploitation:** direct or indirect utilisation of Results (for further research, European or international standards, economic purposes).
- **Access rights:** licenses and user rights to Results and Background.

Burning questions

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Room for negotiation

Project participants have to grant other partners access...

to their **Background**,

- **On a royalty-free basis** if those need the know-how in order to be able to implement the action
- **Under fair and reasonable conditions** if those need the know-how in order to be able to exploit their results of the action

Unless otherwise agreed before accession to the GA!

to their **Results**,

- **On a royalty-free basis** if those need the know-how in order to be able to implement the action
- **Under fair and reasonable conditions** if those need the know-how in order to be able to exploit their results of the action

Basic framework as laid out in the GA

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Room for negotiation: Access to Background

25.2 Access rights for other beneficiaries, for implementing their own tasks under the action

The beneficiaries must give each other access — on a royalty-free basis — to background needed to implement their own tasks under the action, unless the beneficiary that holds the background has — before acceding to the Agreement —:

- (a) informed the other beneficiaries that access to its background is subject to legal restrictions or limits, including those imposed by the rights of third parties (including personnel), or
- (b) agreed with the other beneficiaries that access would not be on a royalty-free basis.

25.3 Access rights for other beneficiaries, for exploiting their own results

The beneficiaries must give each other access — under fair and reasonable conditions — to background needed 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 restrictions or limits, including those imposed by the rights of third parties (including personnel).

‘**Fair and reasonable conditions**’ means appropriate conditions, including possible financial terms or royalty-free conditions, taking into account the specific circumstances of the request for access, for example the actual or potential value of the results or background to which access is requested and/or the scope, duration or other characteristics of the exploitation envisaged.

Requests for access may be made — unless agreed otherwise — up to one year after the period set out in Article 3.

Room for negotiation

- Granting of access rights for exploitation
- Where do I have room for negotiation?

- ...e.g. with regards to
 - the conditions of granting access;
 - the procedure of requesting access;
 - the time limits.

- What do I do with this freedom?

CA models



**Development of a
Simplified Consortium
Agreement**

European Initiative by
key FP actors, co-
developed by the FP
community

www.desca-2020.eu



**European Council for
Automotive R&D**

www.eucar.be

...others

CA models

What are the differences between different model agreements?

CA models – comparison

Access Rights for Exploitation: conditions

DESCA

**To Results:
royalty-free
or on fair &
reasonable
conditions**

**To Background:
on fair and
reasonable
conditions**

EUCAR

**To Results:
royalty-free (only
within a WP) or on
fair & reasonable
conditions; world-
wide & permanent**

**To Background:
on fair and
reasonable
conditions; world-
wide (permanent)**

...others

...

CA models – comparison

Access Rights: procedures & time limits

DESCA	EUCAR	...others
Written request	Deemed granted	
Access rights for use up to 1 year after the project	No time-limit for access rights requests	...

CA models – flexibility

Flexibility within a Model Agreement

DESCA

Written request

**Access rights for use
up to 1 year after the
project**

- Am I free to change the text of the Model Agreement that I am using?

YES.

- The Model Agreements provide recommendations, suggestions forming a coherent legal framework.
- Changes are absolutely possible (but should be done carefully!).

Useful resources and support services

- **CORDIS Community Research and Development Information Service** (<http://cordis.europa.eu>)
- **Participant Portal** (<https://ec.europa.eu/research/participants/portal/desktop/en/home.html>)
- **European IPR Helpdesk** (www.iprhelphdesk.eu)
- **LIBRARY** (<http://www.iprhelphdesk.eu/library>)



The screenshot shows the 'EUROPEAN IPR HELPDESK' website. The header includes the European Commission logo and the tagline 'Get your ticket to innovation!'. Below the header is a navigation menu with a 'quick search' box and five colored buttons: 'services', 'news', 'events', 'library', and 'training'. The 'Library' section is highlighted, displaying a grid of nine resource categories: fact sheets, newsletters, bulletins, frequently asked questions, case studies, IP matters of high interest, useful documents, links, and glossary.

Summary Checklist (I)

- ✓ Don't be scared: the rules laid out in the GA & CA are relevant and helpful for your project; they provide a safe framework for project implementation.
- ✓ Familiarize yourself with the Programme rules (GA and AGA) NOW ...you can start in the train on the way home 😊.
- ✓ Chose the most relevant CA model.
- ✓ GA and CA are complementary agreements: Consistency should be ensured; redundancy should be avoided.
- ✓ **Do not hesitate to seek support**

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Thank you!

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