



# The Consortium Agreement

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Grant Agreement (GA) & Consortium Agreement (CA)  
- understanding the basics for proper contract preparation
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## Burning questions

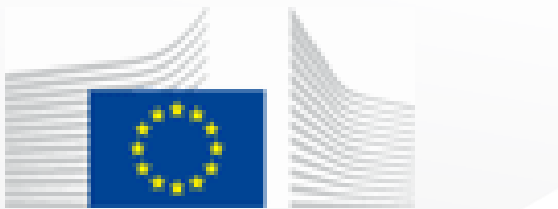
- What is a Grant Agreement?
- What is a Consortium Agreement, and how does it relate to the Grant Agreement?
- What is obligatory, and where do I have room for negotiation?
- I am not a legal expert... what do I do with this freedom?

## Burning questions

- What is a Grant Agreement?
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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
<i>Annex 3a:</i>	<i>Declaration on joint liability of third parties (optional)</i>
<i>Annex 3b:</i>	<i>Administrative Arrangement (optional)</i>
Annex 4:	Model for the financial statements
Annex 5:	Model for the certificate on financial statements
Annex 6:	Model for the 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

## 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: There is an EC Guidance Document “How to draw up your Consortium Agreement“;
- The existence but not the content of the CA is checked by the EC before the end of contract negotiations.

# Understanding the basics

## EC guidance document:

### How to draw up your consortium agreement



[http://ec.europa.eu/research/participants/data/ref/h2020/other/gm/h2020-guide-cons-a\\_en.pdf](http://ec.europa.eu/research/participants/data/ref/h2020/other/gm/h2020-guide-cons-a_en.pdf)

*...aims to assist applicants/beneficiaries in drawing up a consortium agreement for H2020 projects.*

*The guidance document is necessarily general and may not address your specific needs.*

*Model consortium agreements are available from different sources:*

- *Model consortium agreement are just samples, not one-size fits-all agreements.*
- *Note, that these have NOT been developed or endorsed by the Commission.*

*Source: Guidance - How to draw up your Consortium Agreement*

# Understanding the basics

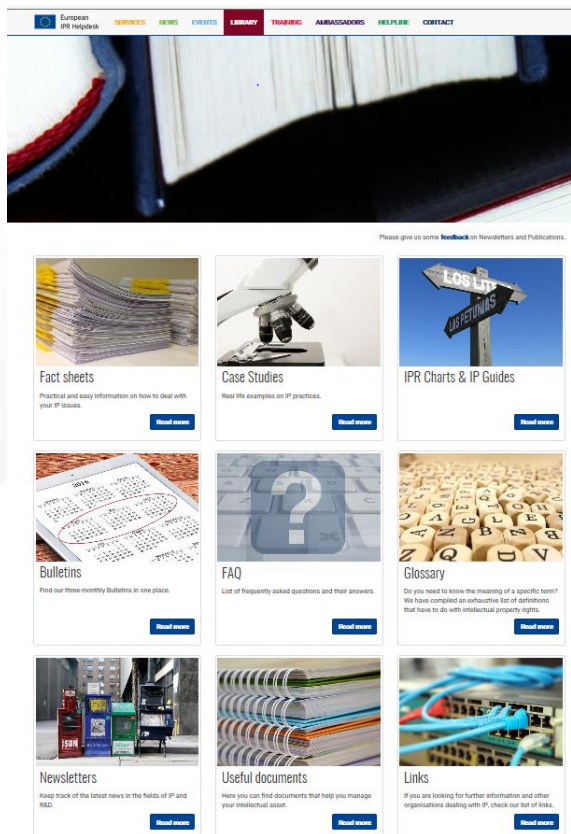
For further practical information, assistance and information on model consortium agreements:

## IPR Helpdesk

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

Useful documents

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

- 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?

## 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.

# Attachement: Background included

It gives the chance to the parties to limit the background they bring into the project

- Option 1: The background included brought into the project is expressly written down

#### PARTY 9

As to CONSIGLIO PER LA RICERCA IN AGRICOLTURA E L'ANALISI DELL'ECONOMIA AGRARIA, it is agreed between the parties that, to the best of their knowledge, the following background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

Describe Background	Specific limitations and/or conditions for implementation (Article 25.2 Grant Agreement)	Specific limitations and/or conditions for exploitation (Article 25.3 Grant Agreement)
About 500 breeding lines, local accessions traditional varieties, wild and allied species of eggplant and pepper owned and maintained at CREA.	To be used only for the project's purposes.	To be used only for the project's purposes.

This represents the status at the time of signature of this Consortium Agreement.

- Option 2: No data know how or information of the party shall be needed by another party for implementation of the project or exploitation of that party results.

#### PARTY 11

As to EURICE EUROPEAN RESEARCH AND PROJECT OFFICE GMBH, it is agreed between the parties that, to the best of their knowledge, no data, know-how or information of EURICE EUROPEAN RESEARCH AND PROJECT OFFICE GMBH shall be Needed by another Party for implementation of the Project (Article 25.2 Grant Agreement) or exploitation of that other Party's Results (Article 25.3 Grant Agreement).

This represents the status at the time of signature of this Consortium Agreement.

# Access Rights

## Granting of Access Rights

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



## 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 – flexibility

### Flexibility within the DESCAs 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. Depending on the project you are running. DESCAs model though is by far the most used (80 to 85% of the projects base their CA on it)**

- 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](http://www.iprhelphdesk.eu))
- **LIBRARY** (<http://www.iprhelphdesk.eu/library>)



### European IPR Helpdesk

We believe that knowing how to manage **Intellectual Property (IP)** and **Intellectual Property Rights (IPR)** is the ticket to innovation and competitiveness in Europe. The **European IPR Helpdesk** offers **free of charge**, first-line support on IP and IPR matters to beneficiaries of EU funded research projects and EU SMEs involved in transnational partnership agreements, especially within the Enterprise Europe Network (EEN).

 <p><b>IPR Helpline</b></p> <p>Place a phonecall or raise an issue and we will get back to you within three working days. Free of charge.</p> <p><a href="#">Contact us</a></p>	 <p><b>Training Support</b></p> <p>Build up your capacity and take part in onsite or online training events to get you ready for the journey.</p> <p><a href="#">Get more info</a></p>	 <p><b>Publications</b></p> <p>Find the tools to help you by visiting our huge library of fact sheets, FAQs, case studies and a whole lot more.</p> <p><a href="#">Visit the library</a></p>
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# IPR Helpdesk Webinar Consortium Agreements

- Date: Wednesday 15/11/2017
- Registration open from: 17/11/2017
- Registration at the following link:  
<https://www.iprhelpdesk.eu/event/4161-webinar-consortium-agreements>

## 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**

13.09.2017

Brussels, Belgium

The Consortium Agreement



Thank you!

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