The Consortium Agreement

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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
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 (optional)
Annex 3b: Administrative Arrangement (optional)
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)

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Understanding the basics
Grant Agreement

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

Documents to really look at…
Understanding the basics
The Consortium Agreement (CA)

regulates the relation between consortium partners
(= beneficiaries)
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.
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 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

...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.
Attachment: 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

<table>
<thead>
<tr>
<th>PARTY 9</th>
</tr>
</thead>
<tbody>
<tr>
<td>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:</td>
</tr>
<tr>
<td>Describe Background</td>
</tr>
<tr>
<td>About 500 breeding lines, local accessions traditional varieties, wild and allied species of eggplant and pepper owned and maintained at CREA.</td>
</tr>
</tbody>
</table>

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.

<table>
<thead>
<tr>
<th>PARTY 11</th>
</tr>
</thead>
<tbody>
<tr>
<td>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).</td>
</tr>
</tbody>
</table>

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

### Granting of Access Rights

<table>
<thead>
<tr>
<th></th>
<th>Access to background</th>
<th>Access to results</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project implementation</td>
<td>Royalty-free</td>
<td>Royalty-free</td>
</tr>
<tr>
<td>For exploitation</td>
<td>Royalty-free, or on fair and reasonable conditions</td>
<td>Royalty-free, or on fair and reasonable conditions</td>
</tr>
</tbody>
</table>
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 DESCA Model Agreement

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

YES. Depending on the project you are running. DESCA 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!).

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Useful resources and support services

- CORDIS Community Research and Development Information Service (http://cordis.europa.eu)
- European IPR Helpdesk (www.iprhelpdesk.eu)
- LIBRARY (http://www.iprhelpdesk.eu/library)
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