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IP in EU-funded projects

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St. Kliment Ohridski University / Sofia

20 March 2013



Today's speaker

Sabine Albrecht

- *University studies of Biology and Agriculture; PhD in plant breeding*
- *Responsible for public relations and regulatory affairs at a German seed company with emphasis on genetic engineering and biotechnology*
- *Build-up of a patent department at a spin-off company (later affiliate of a chemicals company).*
- *Core area: inventions in the field of genetic engineering and biotechnology / IP training of scientists and technical staff*
- *Since August 2011: Eurice GmbH, core area: IPR Training & Business Development*



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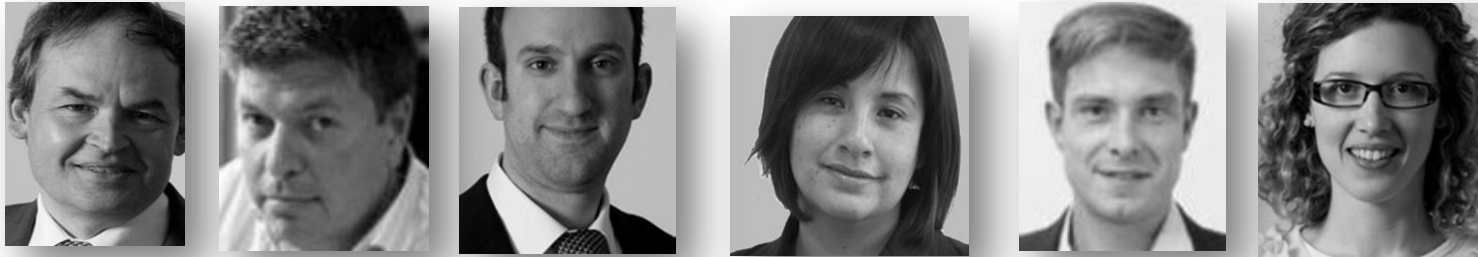
*What is the European IPR
Helpdesk?*



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***The Intellectual Property – Service Initiative
of the European Commission***

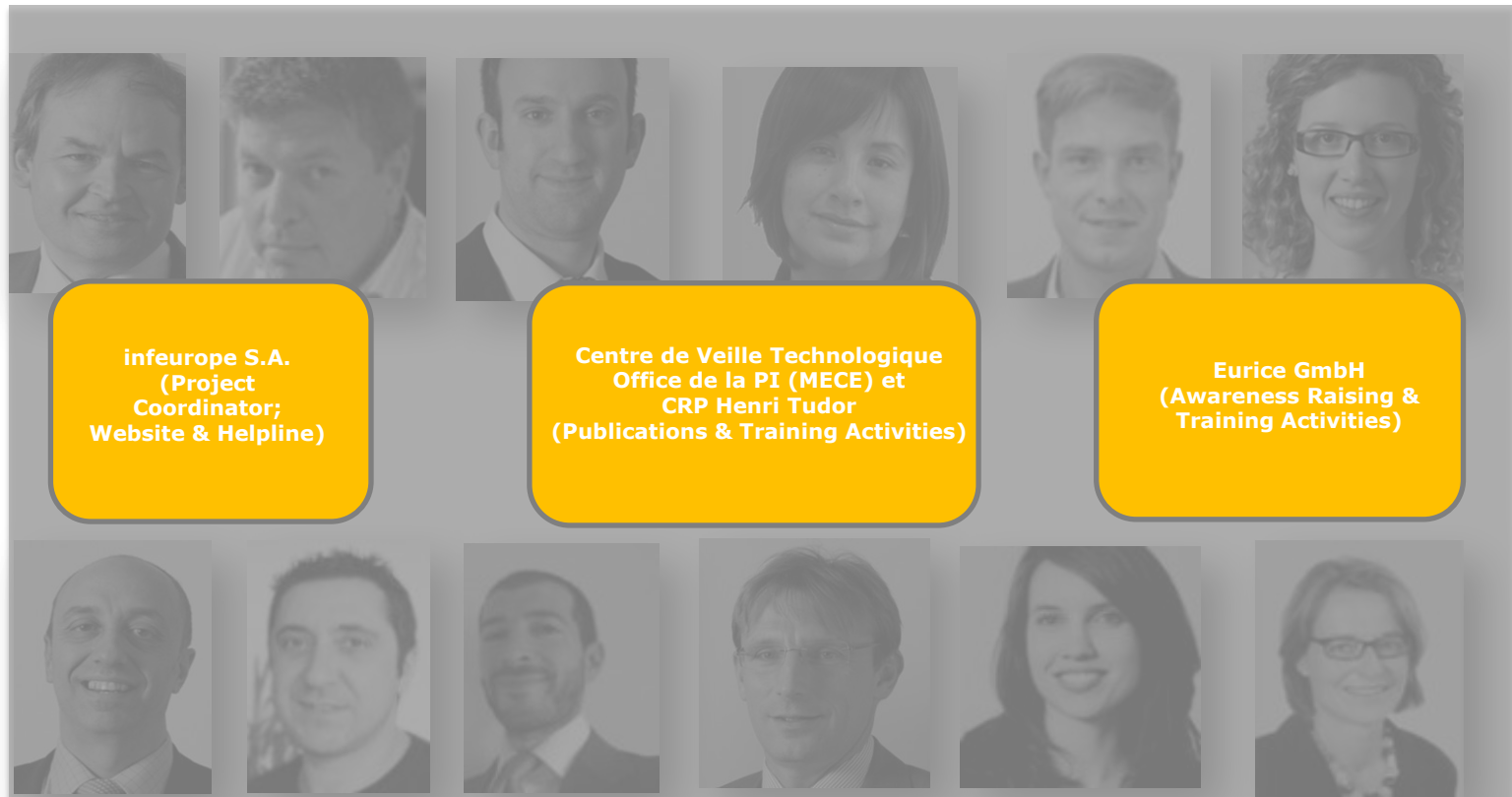
The faces ...



... behind the EU IPR Helpdesk



Consortium



The consortium consists of 12 members, with three roles highlighted in yellow boxes:

- infeurope S.A.**
(Project Coordinator;
Website & Helpline)
- Centre de Veille Technologique
Office de la PI (MECE) et
CRP Henri Tudor**
(Publications & Training Activities)
- Eurice GmbH**
(Awareness Raising &
Training Activities)



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Roadmap

- *General Frame*
- *Rules and Agreements*
- *Specific Vocabulary in EU-funded coll. projects*
- *IP in Project Life Cycle*
- *IP in Horizon 2020*
- *In a Nutshell*





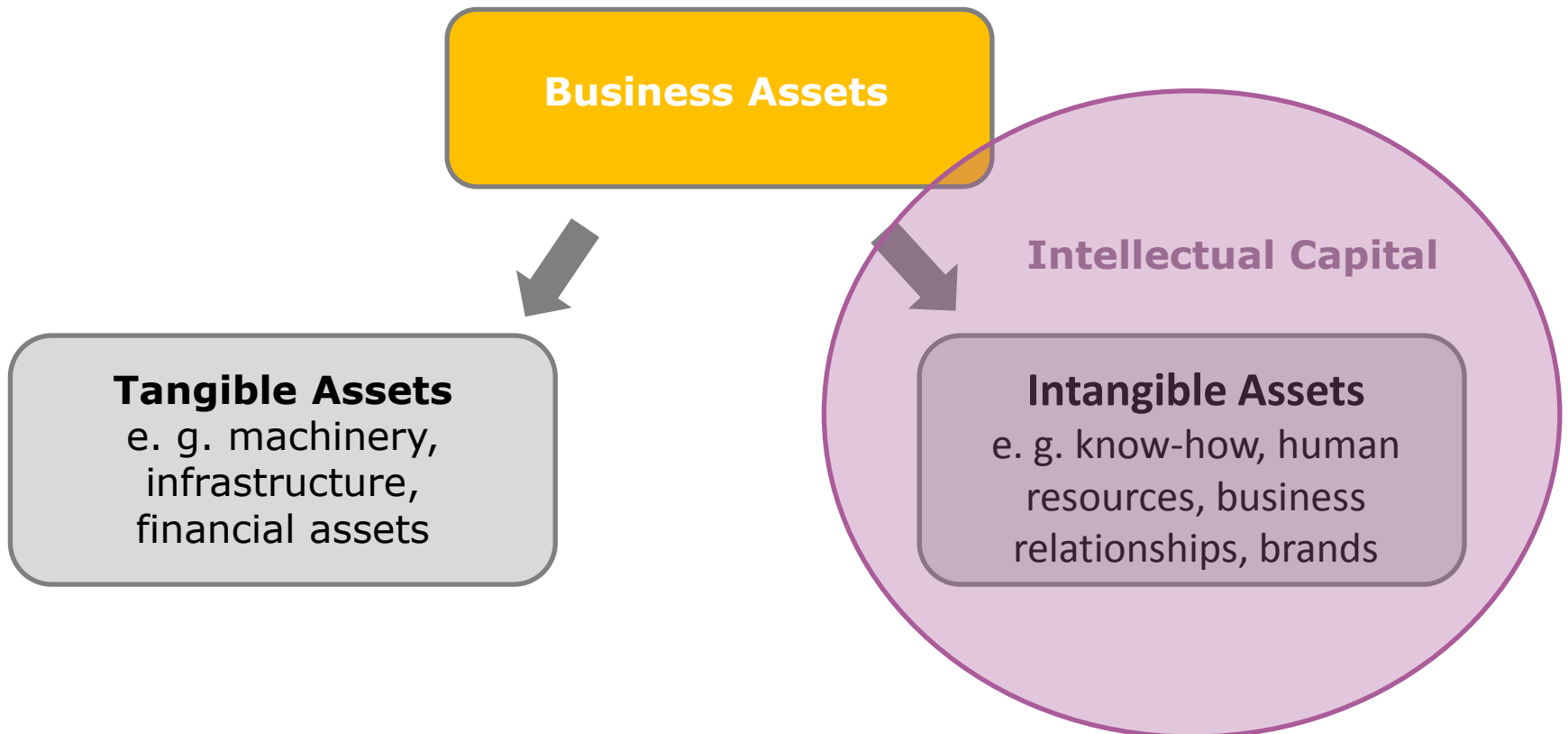
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General Frame

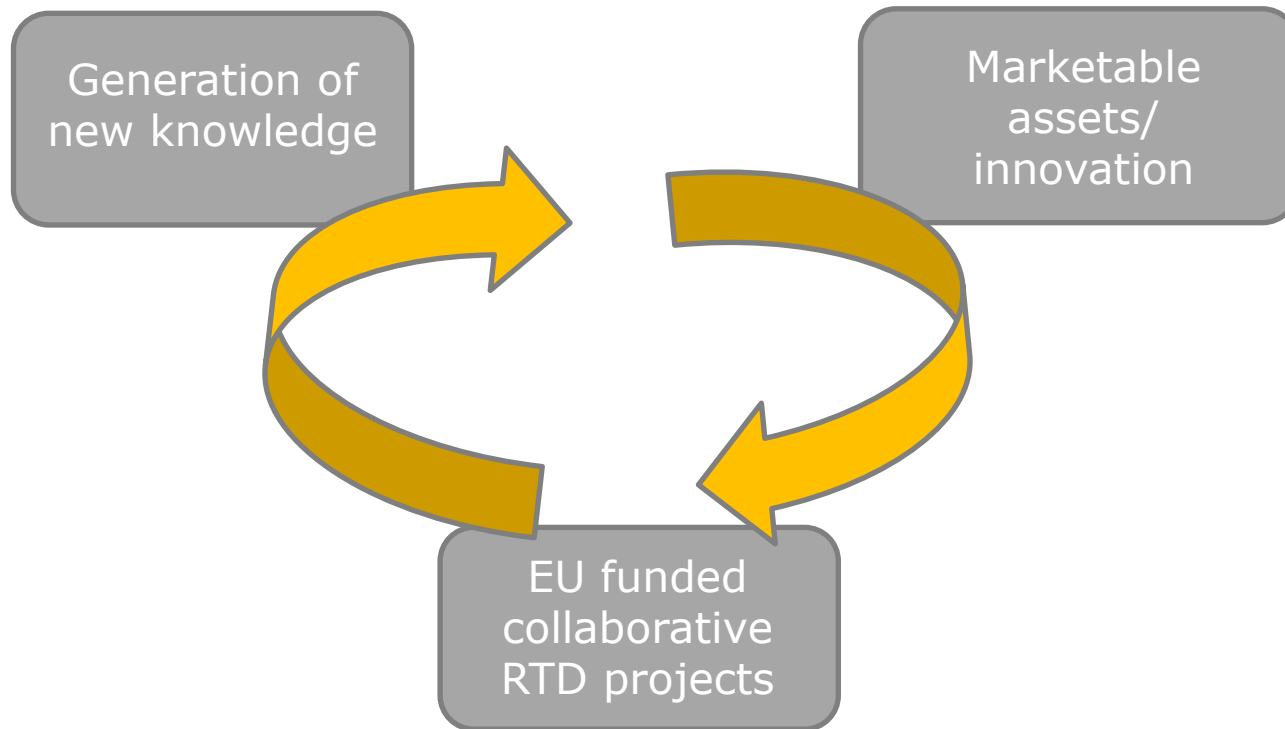
Knowledge Society

Changing business environment in the knowledge society



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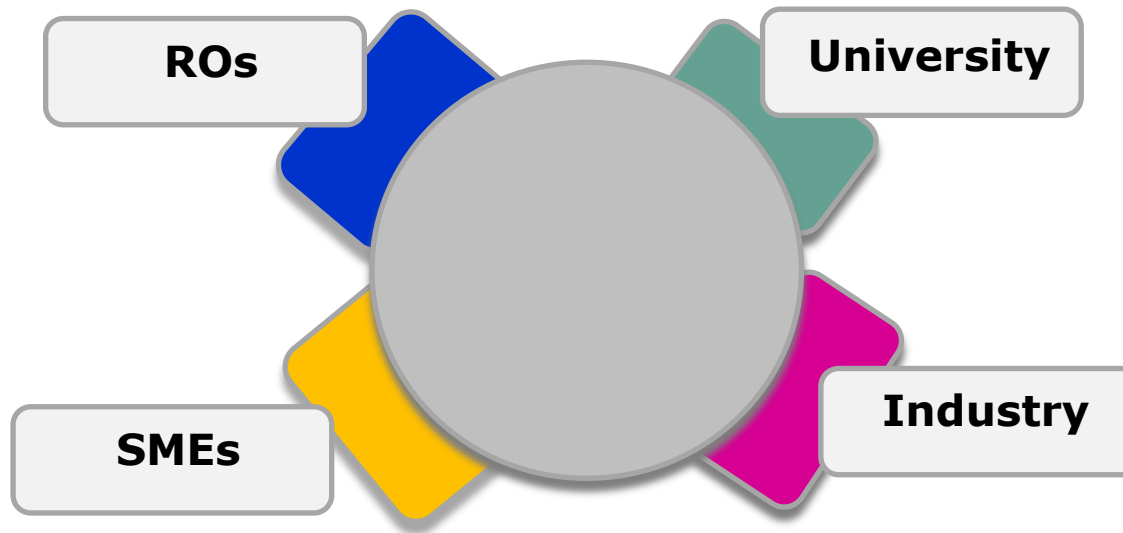
Innovation Circle



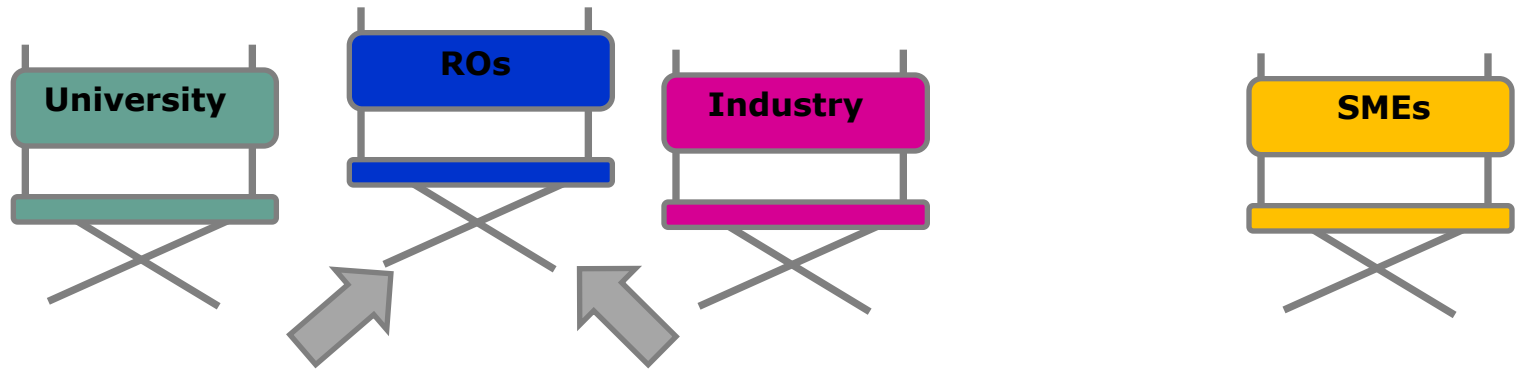
What are the characteristics of an EU funded project?

Collaborative Projects

It is in the nature of collaborative projects that different partners with varying mindsets and interests come to sit at one table.



Characteristics



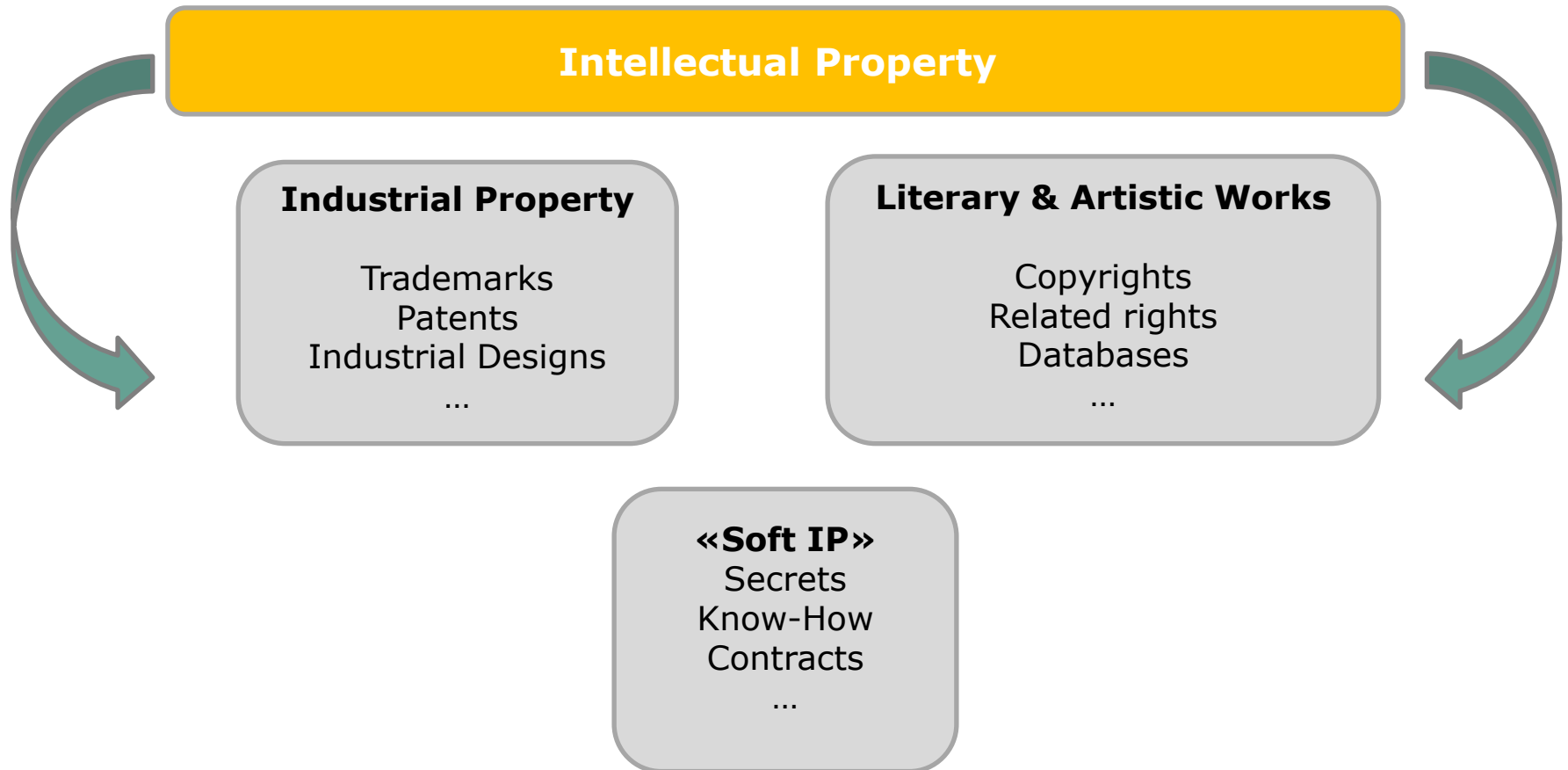
- Goal: publication
- Using results for future research and teaching activities
- Insufficient exploitation strategy
- Lacking legal/IPR expertise

- Goal: commercialisation of results
- Application-oriented approach
- Strong in-house legal/IPR expertise

- Goal: keeping control over own research results
- Protection of existing know-how, that is brought into the project
- Lacking legal/IPR expertise

What does intellectual property mean and comprise?

Intellectual Property (IP)





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Rules and Agreements

***Where do I find rules
regarding IP in EU funded
collaborative projects?***

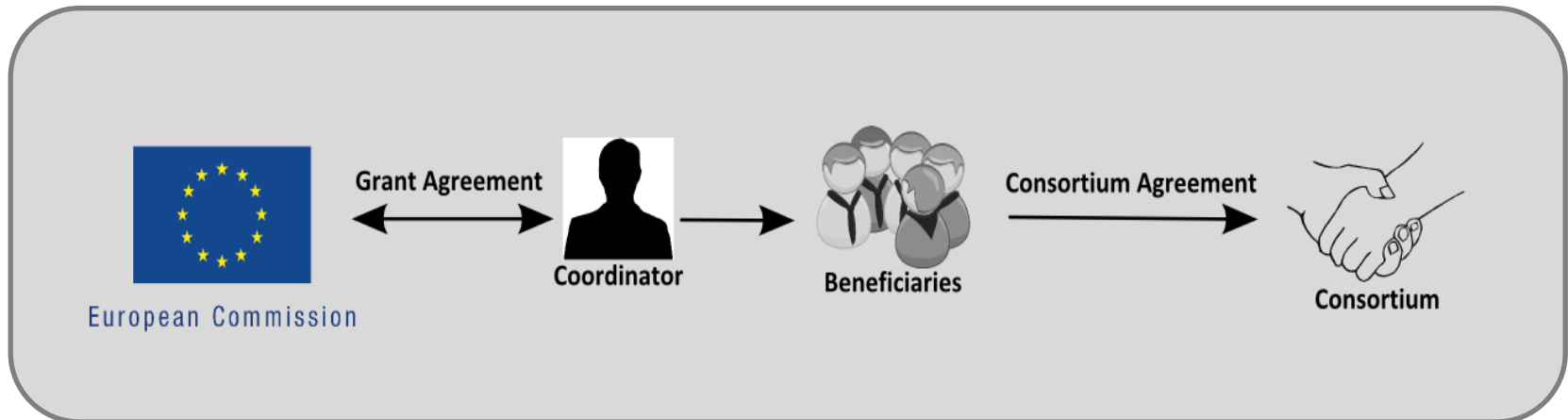
IP Rules

Protection of IP in EU-funded collaborative projects is dealt with in the ...

- ... Grant Agreement
- ... Consortium Agreement
- ... *Guide to Intellectual Property Rules for FP7 projects*
- ... *Patent Law (national / european)*

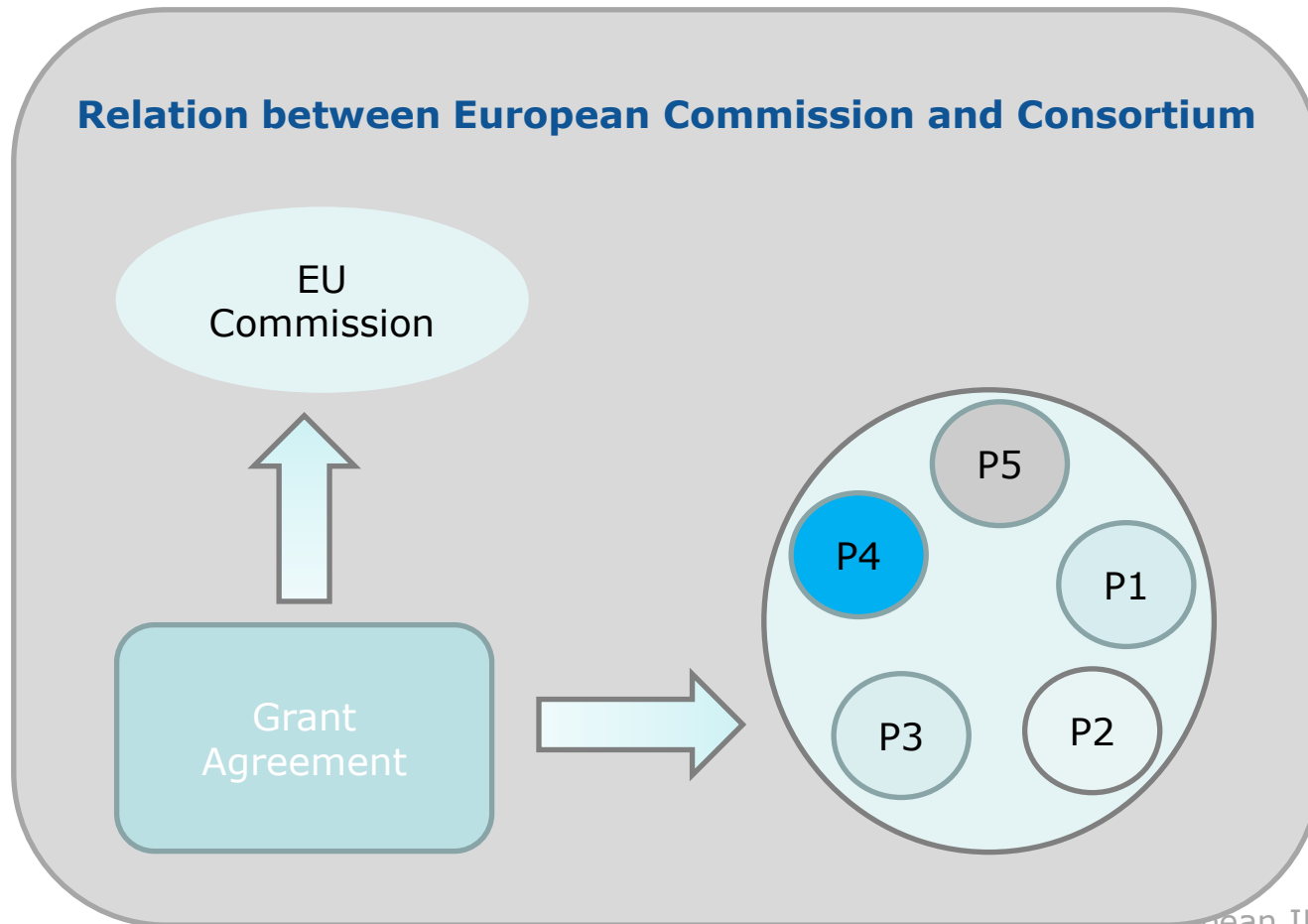


Overview: Agreements



What about the Grant Agreement?

Grant Agreement (I)



Grant Agreement (II)

Components of the Grant Agreement

Core agreement	Standard with project specifics
Annex I	Technical Annex/work plan
Annex II	General Conditions (applies to all measures)
Annex III	Specific conditions for each type of measure
Annex IV	Form A: Entry of partners
Annex V	Form B: Entry of partners after project start
Annex VI	Form C: Declaration of costs; specific for individual project types
Annex VII	Forms D&E: Auditor's or Internal Assessor's report for certifying costs (Certificate on Financial Statement)



Grant Agreement (II)

Annex II – General Conditions

- 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 – Technical Annex

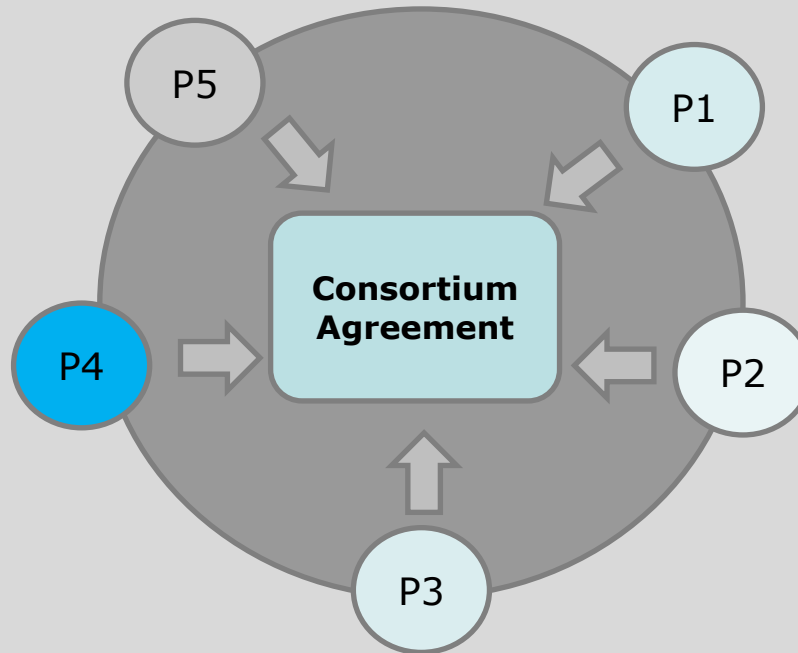
- Project work plan, which is worked out during agreement negotiations
- Whatever is promised must be delivered (Deliverables)
- A well-structured, practical and realistic Technical Annex is the basis for the successful implementation of a project



What does the Consortium Agreement encompass?

Consortium Agreement (CA)

Regulates the relation between consortium partners
(= beneficiaries)



Consortium Agreement II

- A legal document that regulates the internal work of the Consortium
- Implements the provisions of the Grant Agreement/programme rules
- Mandatory for the majority of projects
- Legal basics: Grant agreement (+ Annexes)/ Participation regulations
- The CA may in no way contradict the prerequisites laid out in the EU Agreement; the latter always takes precedence!
- The CA should be worked out during Grant Agreement negotiations at the latest
- Consortia are responsible for defining the regulations; the Commission has no binding model
- The coordinator works on the template



Clauses & Issues

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, Severability, assignment



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Specific Vocabulary

Definitions (II)

Access rights

User rights (incl. licenses) to foreground or background of project partners.

Use

Utilisation (direct/indirect) of foreground in research activities, which are **not** part of the project. As well as utilisation for further development, creation and marketing of a product or process.

Dissemination

Means through which research results are presented to the public. Official publications (e.g. patent applications) are not considered as dissemination.

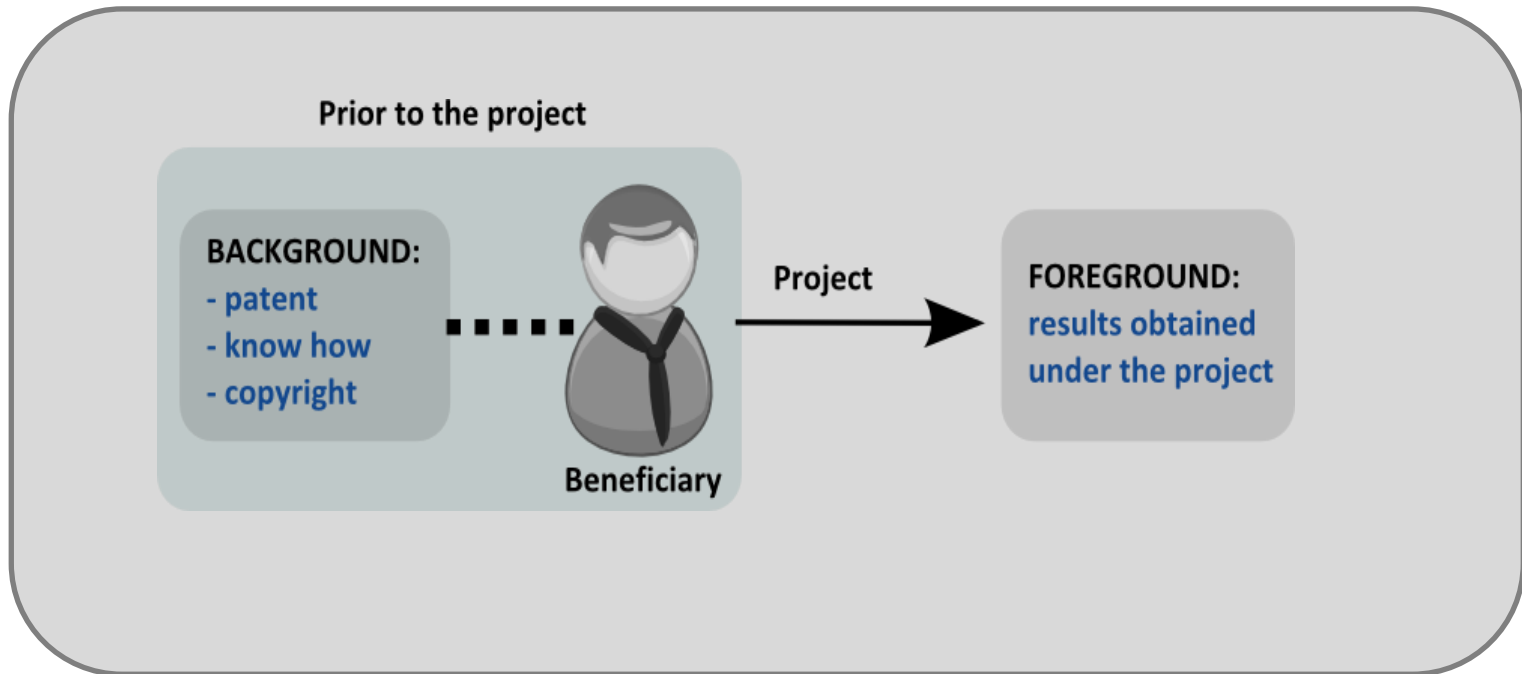


Definitions in Detail

Let's take a closer look!



Background & Foreground



Background

- Information which is needed for the project (includes IP rights).
- Remains the property of the project partner that brings it into the project.
- Project partners have the right to define the background that each of them is going to make available to the project and / or exclude from their obligation to grant access rights.
- This can be done as „positive“ or „negative“ list – in writing and attached to the Consortium agreement.

Foreground (I)

Ownership:

- Each beneficiary is the owner of the results it generates during the project.
- Personnel rights have to be taken into consideration.

Joint ownership:

- Appears for Foreground generated in common while respective parts of the partners can not be determined.
- Project partners must therefore conclude a **joint ownership agreement** to deal with allocation and exercise.
- In absence of such an agreement, a default joint ownership regime applies.

Foreground (II)

Transfer of Ownership:

- A beneficiary may transfer ownership of **its** foreground.
- The other project partners should be informed about the envisaged transfer – objection possible if their access rights are not preserved.

Licensing:

- A project partner may grant non-exclusive license to third parties to exploit the jointly owned results (without any right to sub-licence), subject to:
 - the other participants shall waive their access rights
 - fair and reasonable compensation to the other joint owners

Access Rights (I)

- Each project partner has the right to **request access rights** to the other project partner's background and foreground as long as it needs them in order to carry out its work under the project or to use its own foreground.
- Shall be made in writing.
- Are to be granted throughout the duration and up to 1 year* after the end of the project for use needs (* or as otherwise agreed)
- Access rights do **not** confer the right to grant sub-licences.
- **Affiliated entities** may get some access rights for use purposes. Therefore they need ownership of foreground (in whole or in part).

Access Rights (II)


Granting of Access Rights

Project participants have to grant other partners access to their know-how, if those need the know-how in order to be able to implement the project or to use the results of the project

	Access to background	Access to foreground
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

Dissemination

Annex II of the Grant Agreement = the disclosure of foreground by any appropriate means other than that resulting from the formalities for protecting it, and including the publication of foreground in any medium.

Research & Innovation
European Commission > Research > Science-society > Guide to successful communications

Guide to successful communications

- Homepage
- Communications strategy
- Media relations
- Websites
- Publications
- Presentations
- Audiovisual media

With a view to enhancing the impact of research funded by the EU, and to foster dialogue and debate, the Seventh Framework Programme (FP7) grant agreement requires project participants to communicate and engage with actors beyond the research community. The **relevant clauses in the grant agreement** (22 kB) are shown here. Plans for these outreach activities should already be outlined at proposal stage. These plans are in turn taken into account during the evaluation process.

This website is intended to assist project coordinators and team leaders to generate an effective flow of information and publicity about the objectives and results of their work, the contributions made to European knowledge and scientific excellence, the value of collaboration on a Europe-wide scale, and the benefits to EU citizens in general. The content particularly addresses communications via the 'mass media' (TV, radio and the written press), the workings of which may be less familiar to scientific/academic partners. It also covers websites and other internally generated support such as print publications, CDs and video.

It outlines good practices that can be employed in:

- Defining key messages;
- Establishing target audiences;
- Selecting the appropriate modes of communication;
- Tailoring information to the intended outlets;
- Building good relationships with the media;
- Evaluating results;
- Maximising the exposure of messages; and
- Tapping useful Commission and other external resources.

Events
Links
Bibliography

Presentation:
Communicating EU Research (3MB)

Communicating research for evidence-based policymaking – a practical guide for researchers in Socio-economic sciences and humanities

Download the brochure:
1.4 MB

Obligation

Project partners are obliged to disseminate the results swiftly.

But:

No dissemination of foreground may take place before decision is made regarding its possible protection.

What is not covered.....

Official publications in connection with the protection of rights

→ *Applications for patents are not covered because they are made public not until 18 months after the filing date.*

Open Access

... with regard to dissemination through scientific publications:

- *terms and conditions to be defined in Grant Agreement (open access vs. preservation & protection of research data)*
- *work programme / work plan shall indicate requirements of open access*
- *prior notice shall be given to the other participants*
- *grant agreement shall lay down time-limits in this respect*

Statement

All patent applications, publications or any other dissemination (also in electronic form) shall include a statement that the action received financial support from the Union.



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IP in Project Life Cycle

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At which stages of my project does IP matter?

IP in Project Life Cycle

Before Project Start

- **Proposal preparation, incl. plan for the use and dissemination of research results**
- **Defining project-related know-how**
- **Defining IP protected areas**
- **Negotiating a CA/NDA**

During Implementation

- Strategy for securing and managing research results
- Granting of access rights

After Project End

- Disseminating and securing generated IP
- Exploitation of the results
- Valorisation of intangible values
→ Commercialisation

IPR issues are relevant at all stages of the project

Before Project Start

Every project starts with an idea ...

- Define the **state of the art**
 - **Screen** already existing project landscape
 - Search in **patent databases & documents**
 - **Protect technical drawings** (e. g. by copyright or trade secrets)
 - Protect all **information linked to the idea**
- ▶ ***being a researcher: please contact your legal/patent department as early as possible!***



Before Project Start

Ways to protect intangible assets

Industrial Property

Trademarks
Patents
Industrial Designs



Literary & Artistic Works

Copyrights
Databases



«Soft IP»

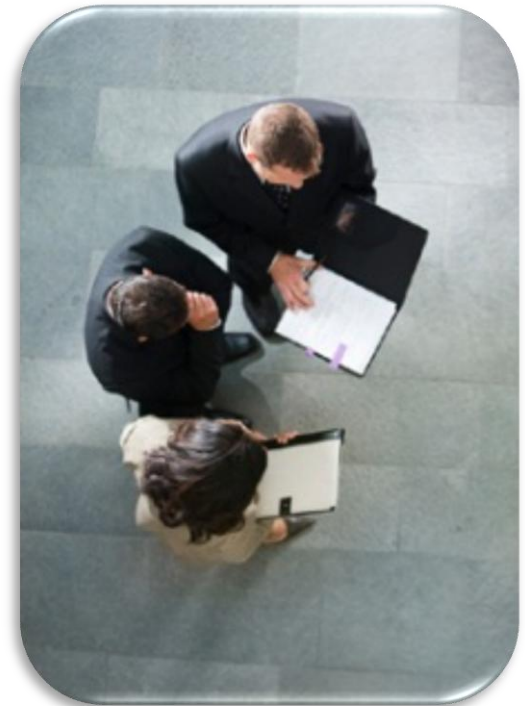
Secrets
Know-How
Contracts



Before Project Start

**No project without partners –
no project without negotiations**

- **Define ...**
 - ... intangible assets of the project,
i. e. „**background**“ & „**foreground**“
 - ... **use & dissemination strategy**
 - ... **access rights** regime
- Set up **confidentiality agreement !!!**
- Sign **Consortium and Grant Agreement**
- ▶ **being a researcher: please contact your
legal/patent department as early as
possible!**



Before Project Start

Confidentiality agreement

- Identifys **relevant information**
- **Defines use of information** as well as **restrictions**
- Already very **important at the proposal stage**, when valuable information is exchanged between potential project partners
- Includes **possible sanctions**



Before Project Start

Use and dissemination strategy

- **Strategic plan**
- Every contracting party has to **ensure**, that project **results are secured, disseminated and used** → all results have to be used
- Project **partners have to be informed** in advance (e.g. 45 days) about publication activities



IP in Project Life Cycle

Before Project Start

- Proposal preparation, incl. plan for the use and dissemination of research results
- Defining project-related know-how
- Defining IP protected areas
- Negotiating a CA/NDA

During Implementation

- **Strategy for securing and managing research results**
- **Granting of access rights**

After Project End

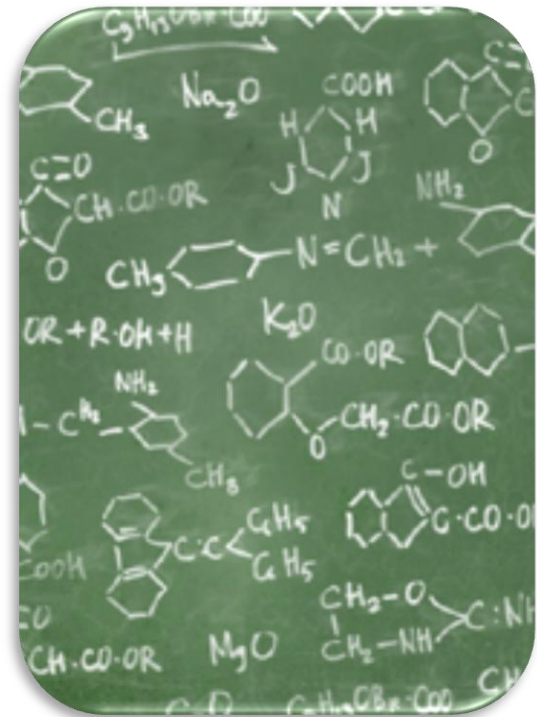
- Disseminating and securing generated IP
- Exploitation of the results
- Valorisation of intangible values
→ Commercialisation

IPR issues are relevant at all stages of the project

During Implementation

Secure and manage research results

- Have a **clear strategy for securing and managing** newly generated know-how
- **Continuously update** the use and dissemination strategy plan
- Be clear about ...
 - ... **publication regime**
 - ... **access right regime**



During Implementation

Let's take a closer look!



During Implementation

Ownership of results

- All know-how gained in the project belongs to the **project partner, who generated it**
- If project **partners generate knowledge jointly** without being able to identify the single contribution of each partner
→ **joint ownership**
- Handling of **ownership has to be clearly regulated** by the project partners
(→ Consortium Agreement)



IP in Project Life Cycle

Before Project Start

- Proposal preparation, incl. plan for the use and dissemination of research results
- Defining project-related know-how
- Defining IP protected areas
- Negotiating a CA/NDA

During Implementation

- Strategy for securing and managing research results
- Granting of access rights

After Project End

- **Disseminating and securing generated IP**
- **Exploitation of the results**
- **Valorisation of intangible values
→ Commercialisation**

IPR issues are relevant at all stages of the project

Towards Project End

Use and dissemination of research results

- **First of all**, be clear about **how to protect newly gained intangible assets**
- **Make use of research results** – either in **further research** or by **commercial use**
- **Communicate project work** (and results) via different dissemination channels





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Dissemination – *Example:*



EUCO-Net

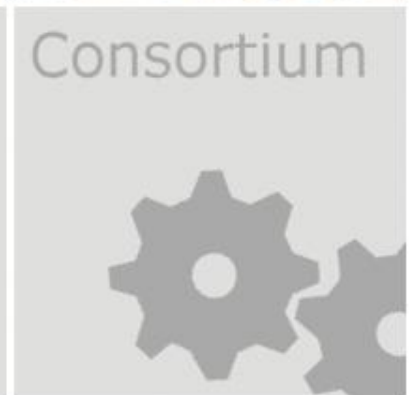
The EUCO-Net movie

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www.euco-net.eu

Dissemination – *advocacy*:

Presentation on public television:
Science programme "nano" (ZDF/3Sat) on world AIDS day



3sat  Kontakt Impressum Service Unternehmen

Programm Mediathek Sendungen A-Z Themenlage Kultur Wissen Film

3sat.de Homepage > Sendungen A-Z > nano

Montag bis Freitag 18.30 Uhr

"Kinder mit HI-Virus sind sehr anfällig für Tuberkulose"

Aids zusammen mit der Bakterienerkrankung häufigste Todesursache in Südafrika



Aids ist in Südafrika die Todesursache Nummer eins. Aids und das zugrundeliegende HI-Virus seien "die führende Todesursache in allen Provinzen", ausgenommen des westlichen Kaps, hieß es 2005 in einem Bericht des südafrikanischen Medizinischen Forschungsrates (MRC). Landesweit sei jeder dritte Todesfall auf Aids zurückzuführen. Das Amt für Statistik hatte kurz zuvor mitgeteilt, dass die meisten Südafrikaner an Tuberkulose (Tb) starben - dies könne aber mit Aids in Zusammenhang stehen.

Gehen Sie diesen Beitrag in unserer Mediathek

"Vor einigen Jahren hatten wir hier nur ab und zu HIV-Patienten, die auch an Tuberkulose litten", erinnert sich Krankenschwester Susan van Zyl vom Uitsig-Community-Hospital. "Das ist auf fast 20 Prozent angestiegen." Tuberkulose tritt oft als Folgekrankheit von Aids auf. "Die Koinfektionsrate ist sehr hoch", sagt Mark Cotton, der den Verlauf der Krankheit bei Kindern untersucht. "Kinder mit HIV sind sehr anfällig für die Tuberkulose."

Infografik
Die wichtigsten Figuren der Weltkarte
China
USA
Indien
Brasilien
Russland
Japan
UK
Frankreich
Deutschland
Italien
Südkorea
Mexiko
Indonesien
Nigeria
Pakistan
Neue und alte Seuchen

Archiv & Vorschau

◀ Juni 2010 ▶

Mo	Di	Mi	Do	Fr	Sa	Su
31	01	02	03	04	05	06
07	08	09	10	11	12	13

After Project End

Exploitation and valorisation of generated IP

- Be clear about **different options of valorising** generated project results
- Implement **IP portfolio management**



After Project End

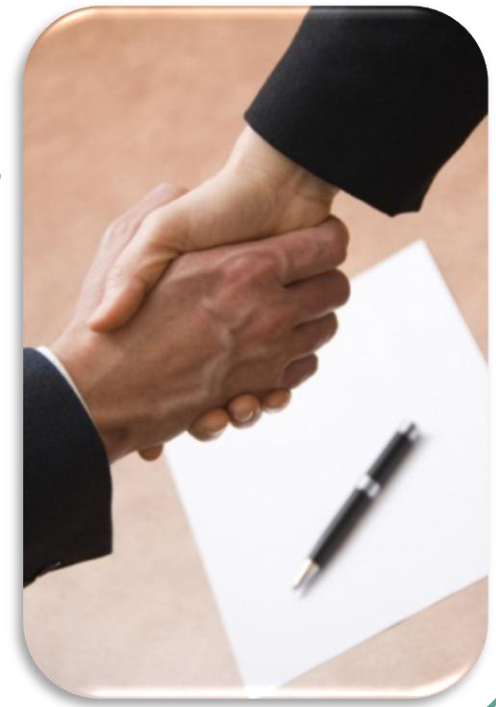
Let's take a closer look!



After Project End

Valorisation of intangible assets: basic options

- **Developing and selling** own products/services
- Developing and selling products/services by starting up a **spin-off company**
- Making a **cooperation agreement**
- **Selling IP rights**
- **Selling** the (IP based) **business**
- **Licensing IP rights** (out-licensing)





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Horizon 2020

Horizon 2020

The EU-framework programme for research and innovation
2014-2020

► **EU – Building an Innovation Union**

Three priorities:

1. Excellent science
2. Industrial leadership
3. Societal challenges

Horizon 2020

Priority 1: Excellent science

Why:

- world class science is the foundation of tomorrow's technologies, jobs and wellbeing
- Europe needs to develop, attract and retain research talent
- Researchers need access to the best infrastructures

Horizon 2020

Priority 2: Industrial leadership

Why:

- strategic investments in key technologies (e.g. advanced manufacturing, micro-electronics) underpin innovation across existing and emerging sectors
- Europe needs to attract more private investment in research and innovation
- Europe needs more innovative SMEs to create growth and jobs

Horizon 2020

Priority 3: Societal challenges

Why

- concerns of citizens and society/EU policy objectives (climate, environment, energy, transport, etc) cannot be achieved without innovation
- breakthrough solutions come from multi-disciplinary collaborations, including social sciences & humanities
- promising solutions need to be tested, demonstrated and scaled up

What will be new in Horizon 2020 concerning IPR?

Horizon 2020

Improved rules on Intellectual Property

- Built on basis of proven FP7 provisions

with:

- Balance between legal security and flexibility
- Tailor-made IPR provisions for new forms of funding
- A new emphasis on open access to research publications

Horizon 2020 – Results

Results / Background:

- **Ownership** for the participant that generates result / joint-ownership where jointly generated (default regime: fair & reasonable compensation in case of transfer)
- Results must be disseminated and best effort obligation **to exploit**; work programmes/grant agreements can foresee specific exploitation obligations (Art 40 (1) – recital 19)
- **Transfer**: right to object to transfer outside the EU/AC will be maintained (A 41(3))

Horizon 2020 – Access rights

Access Rights:

- For participants for implementation and for exploitation purposes
- For the EU for non-commercial, policy purposes
- Specific cases – to be addressed in the Grant Agreement: security-related activities, ERC frontier research, mobility, etc.



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In a Nutshell

In a Nutshell ...

- General frame of EU-funded collaborative Projects
- Rules + Agreements: GA / CA
- Vocabulary: background / foreground /
access rights / use / dissemination
- Project Life Cycle
- IPR in Horizon 2020



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