IP Management in Horizon 2020
Focus on MSCA

European IPR Helpdesk
Jörg Scherer
Head of Training & Communication
CEO Eurice GmbH

Webinar
04-05-2015
Brussels
Roadmap

IP Management in H2020/ MSCA

- Knowing the rules
- Anticipating risks
- Avoiding problems

- Further assistance: EU IPR Helpdesk services
Jörg Scherer

- Managing Director of **European Research and Project Office (Eurice) GmbH** – PMO (45 staff members) for international R&I projects with offices in Berlin & Saarbrücken

- Eurice & FP7: 35 co-ordinations; WP Leader Exploitation/Dissemination; New: 7 H2020 co-ordinations

- Involved in European IPR Helpdesk activities since 2005; **Coordinator of current EU IPR Helpdesk Training activities**

- Evaluator in EC programmes, Innovation Coach (i.e. EEN activities)
HORIZON 2020
The EU Framework Programme for Research and Innovation
(2014-2020)
# Marie Skłodowska-Curie actions: From FP7 to H2020

<table>
<thead>
<tr>
<th>ITN</th>
<th>Early stage researchers</th>
<th>ITN</th>
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<tbody>
<tr>
<td>ITN</td>
<td>Early stage researchers</td>
<td>• European Training Networks</td>
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<tr>
<td>IEF</td>
<td>Early stage researchers</td>
<td>• European Industrial Doctorates</td>
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<tr>
<td>IOF</td>
<td>Early stage researchers</td>
<td>• European Joint Doctorates</td>
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<tr>
<td>IIF</td>
<td>Early stage researchers</td>
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<td>CIG</td>
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<td>IAPP</td>
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<td>IRSES</td>
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<tr>
<td>COFUND</td>
<td>Early stage researchers</td>
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<td>RISE</td>
<td>Early stage researchers</td>
<td></td>
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<tr>
<td>COFUND</td>
<td>Early stage researchers</td>
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</tbody>
</table>

### Actions

- **Early stage researchers**
  - ITN: European Training Networks, European Industrial Doctorates, European Joint Doctorates
  - IEF: European Fellowship, Global fellowship
  - COFUND: Co-funding of regional, national and international programme

- **Experienced researchers**
  - IEF: European Fellowship, Global fellowship
  - COFUND: Co-funding of regional, national and international programme

- **Exchange of staff**
  - IAPP: Exchange of staff
  - IRSES: Exchange of staff
  - COFUND: Co-funding of regional, national and international programme

- **Dedicated support for career restart and reintegration**
  - RISE: Research and Innovation staff exchange
  - COFUND: Co-funding of regional, national and international programme

- **Co-funding of regional, national and international programme**
  - RISE: Research and Innovation staff exchange
  - COFUND: Co-funding of regional, national and international programme
Boosting SME-involvement in MSCA

Business: partner with Academia

- Gain competitiveness
- Leverage funding
- Access Academia’s cutting-edge Research & Infrastructure, Network of experts
- Gain international visibility
- Enhance your recruitment strategy
- Extend your network

Share costs/risks/ROI
Key success factors for „bridging“ academic/non-academic sector

- Mutual Trust
- Managerial Capacities
- Governance Structures
- Clear and transparent contracts
- Active involvement of all parties
- Agreements on IPR

Win-Win-Situation
MSCA – IP relevant characteristics

- Intersectoral exchange – academic/non-academic (i.e. SMEs) – Different IP policies/interests; Publication vs. Exploitation
- International dimension EU-MS/AC vs. Third Countries – Different IP laws/regulations
- Joint research and innovation activities between the participants - Exchange and sharing of knowledge (IP); joint protection and exploitation of results
- Secondments of research and innovation staff (exchanges) focusing on the exploitation of complementary competences of the participants – Granting access to background/results for/by “Visitors“
Rules and Agreements
IP rules are part of different type of agreements to be used within MSCA instruments

<table>
<thead>
<tr>
<th>Agreement Type</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grant Agreement</td>
<td>to be signed with EC/REA</td>
</tr>
<tr>
<td>Consortium Agreement</td>
<td>to be signed among beneficiaries</td>
</tr>
<tr>
<td></td>
<td>recommended but only mandatory for EIDs</td>
</tr>
<tr>
<td>Partnership Agreement</td>
<td>to be signed with partner organisations</td>
</tr>
<tr>
<td>Researcher Agreement</td>
<td>to be signed between fellow and host institution</td>
</tr>
<tr>
<td></td>
<td>(on individual basis but model contracts are available); ask your NCP</td>
</tr>
<tr>
<td>Additional Agreements</td>
<td>i.e. Confidentiality Agreement to be signed between secondee and host institution (if not already specified in the PA or RA)</td>
</tr>
</tbody>
</table>
Grant Agreement (I)

Relation between European Commission and Beneficiaries

EU Commission

Grant Agreement

P4

P1

P3

P2

P5
The Grant Agreement/MSCA model templates

• Templates:

  - Model Grant Agreement for MARIE SKŁODOWSKA-CURIE INNOVATIVE TRAINING NETWORKS
  - Model Grant Agreement for MARIE SKŁODOWSKA-CURIE INDIVIDUAL FELLOWSHIP
  - Model Grant Agreement for MARIE SKŁODOWSKA-CURIE COFUND
  - MODEL GRANT AGREEMENT FOR MARIE SKŁODOWSKA-CURIE RESEARCH AND INNOVATION STAFF EXCHANGE (MSC-RISE — MULTI)
Consortium Agreement (CA)

Regulates the relation between beneficiaries

Consortium Agreement

P1

P2

P3

P4

P5
Consortium Agreement (II)

- A legal document that regulates the internal work of the Consortium
- Mandatory for the majority of projects
- Legal basics: Grant agreement (+ Annexes)/ RfP
- Implements the provisions of the Grant Agreement/programme rules
- May in no way contradict the prerequisites laid out in the EU Agreement/programme rules; the latter always take precedence!
- The CA should be worked out during the “time to grant” at the latest; be prepared!
- Consortia are responsible for set up the governing rules; the Commission has no binding model, but... see participant portal
  - DESCA (Development of a Simplified Consortium Agreement) model; Different options/modules, i.e. related to software development
    IPCA - ICT industry; EUCAR – Automotive industry

http://www.desca-2020.eu/
Partnership Agreement

A MSCA partnership is composed of two types of participants:

**Beneficiaries** (= legal entities established in MS/AC) - signatories to the Grant Agreement

**Partner Organisations** (=legal entities established in TC) - not signatories to the Grant Agreement (consent expressed by Letter of Commitment); i.e. hosting a secondee for a limited period of time

Management and IP issues within the MSCA partnership are preferably be dealt by means of a **Partnership Agreement** (not required but recommended)
Partnership Agreement

- The Partnership Agreement regulates the relationship among the parties signatories to the Grant Agreement (beneficiaries) and partner organisations.

- Partnership agreements must be compliant with the obligations laid down in the Grant Agreement; it usually extends rules & obligations of the GA/CA to the partner organisations.

- As no models currently exist, in this case participants are highly encouraged to seek for information and assistance from our helpline.
Researcher Agreement

- The Researcher Agreement establishes the relationship between the host organisation and the research fellow.

- The beneficiaries must — on a royalty-free basis — give access to the recruited researchers to background necessary for their research training activities under the action.

- Further issues: Confidentiality Arrangements; Ownership, Protection and Exploitation of Results; Publication Rights (PhD thesis)

Questions/looking for templates??: ask your NCP/EU IPR Helpdesk !!
Specific Vocabulary
Vocabulary

Key terms in the context of Horizon 2020 projects are:

• Background
• Results
• Exploitation
• Dissemination
• Access rights
Definitions (I)

**Background**
Tangible or intangible input (data, knowhow, information) which is held by the project partners prior to their accession to the agreement. Includes IP as copyright, patents/ patent applications (filed prior to access to agreement).

Examples: prototypes; cell lines; database rights, licences with the right to sublicense

Project partners must identify their background in writing

**Results**
All results which are generated under the project – whether or not protectable. Such results may include copyrights, design or patent rights, trademarks or others, and belong to the partners who have generated them.
Definitions (II)

**Access rights**
User rights (incl. licenses) to results or background of project partners.

**Exploitation**
Utilisation (direct/indirect) of results 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.
Ownership of Results

• **In Horizon 2020, generally the grant agreement establishes that the results of the project belong to the participant generating them.**

• It is advisable to take appropriate measures to properly manage ownership issues, such as keeping laboratory books or other kinds of documentary evidence (e.g. a properly completed Invention Disclosure Form)

• Given the collaborative nature of most projects, some results can be jointly developed by several participants. Hence, situations of joint ownership might arise.

> **Joint Ownership Agreements** (i.e. defining specific conditions for granting licenses or issues related to costs of protection and sharing of potential revenues); Default rule in Consortium Agreement ..
## Access Rights (II)

### 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>Use of results</td>
<td>Royalty-free, or on fair and reasonable conditions</td>
<td>Royalty-free, or on fair and reasonable conditions</td>
</tr>
</tbody>
</table>
General obligation to protect

Each beneficiary must examine the possibility of protecting its results and must adequately protect them — for an appropriate period and with appropriate territorial coverage — if:

(a) the results can reasonably be expected to be commercially or industrially exploited and

(b) protecting them is possible, reasonable and justified (given the circumstances).

When deciding on protection, the beneficiary must consider its own interests and the interests (especially commercial) of the other beneficiaries.
## Protection by subject matters

<table>
<thead>
<tr>
<th>Subject Matter</th>
<th>Patent</th>
<th>Utility Model</th>
<th>Industrial Design</th>
<th>Copyright</th>
<th>Trade Mark</th>
<th>Confidential Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Invention (e.g. device, process, method(^1))</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Software</td>
<td>X(^2)</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Scientific article</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
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<tr>
<td>Design of a product</td>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
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</tr>
<tr>
<td>Name of a technology/product</td>
<td></td>
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<td>X</td>
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<tr>
<td>Know How</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Website</td>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
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</tbody>
</table>

\(^1\) Except methods excluded from patentability by virtue of Articles 52(2)(c) and (3) and 53(c) EPC.

\(^2\) Software patentability is still a debated issue given its exclusion as subject matter as by Article 52(2)(c) and (3) EPC.
Obligations to disseminate

Project partners are obliged to disseminate the results swiftly (i.e. to scientific community/broader public) by any appropriate means other than that resulting from the formalities for protecting it or exploiting the results, and including the publication of results in any medium.

But:

• no dissemination of results may take place before decision is made regarding their possible protection, and

• 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 – The same applies to results incorporated in standardisation activities.
Dissemination checklist

• Take a decision about the protection of foreground and all required steps

• Inform the other consortium partners in writing 45 days before the planned dissemination activities and include enough information to allow them to analyse whether their interests are affected or not. Note that this time limit can be changed (for more or less days) in the CA. Wait 30 days for any objection to the dissemination (unless otherwise agreed in the CA).

• Beware not to infringe third parties' intellectual property rights

• Open access as a general principle of scientific dissemination

• List the dissemination activities in the Exploitation and Dissemination Plan
Research results

Decision on IP protection (patenting or other forms of protection)

Dissemination: Research results publication

Exploitation: Research results commercialisation

Open access

'Green' open access

'Gold' open access
Open Access

The European Commission has published a **fact sheet** and **guidelines** on Open Access to Scientific Publications and Research Data in Horizon 2020, that can be downloaded at:

Each beneficiary must — **up to four years after the project completion** — take measures aiming to ensure ‘exploitation’ of its results (either directly or indirectly, in particular through transfer or licensing by):

(a) using them in further research activities (outside the action);

(b) developing, creating or marketing a product or process;

(c) creating and providing a service, or

(d) using them in standardisation activities.
**Transferable skills training**

- IP & Innovation related training activities dedicated to the needs of Young Researchers could/should be included in your capacity building programme

- Contact us for any further assistance in setting-up IP & Innovation related training and capacity building programmes/activities

- 2014: > 2,500 researchers, SMEs, research managers participating in our on-site/on-line training modules

- Network of high-level experts (i.e. EPO, Patent attorneys, License managers)
Related training modules

- Exploitation of research results - strategies and case studies
- Impact and Innovation in H2020
- Licensing and Technology Transfer
- IP Management
- Introduction to IP
- IP for Business Development
- IP in Biotech/Health
- IP & Software
EU IPR Helpdesk: Further assistance
All of our services are offered free of charge.
Website & Publications

• **Information on exploitation of results**? we have clear and practical fact sheets on
  a) Exploitation channels for public research results
  b) Non-disclosure agreement
  c) Licence agreement
  d) Assignment agreement
  e) Joint ventures
  f) Spin-offs
  g) Internal product development

• Events & news

• Case Studies

• Glossary & FAQs

• Bulletin
Intellectual Property rules

Guide to IP in Horizon 2020
Sample Publications

Horizon 2020 fact sheet series:

- IP management in MSCA
Helpline

- **First-line support**
- **User-friendly** service provided in English
- **Personalised answers** to individual questions within **three working days**
- **Wide range of IP topics**: IP protection, IP management and exploitation, revision of agreements, etc.
- **Understandable** for non-legal experts and **business oriented**
Helpline

- **Understandable** for non-legal experts and **business oriented**

- Topics in H2020 (non-exhaustive):
  - Revision of MoU and non-disclosure agreements
  - Analysis of plans on exploitation and IP within proposal
  - Questions on commercial exploitation of IP
  - Revision of consortium agreement
  - Questions of IP rules in projects
  - Questions on interpretation of IP clauses in the grant agreement and other agreements...
Sample questions/requests sent to Helpline

- Who owns the results generated during the secondment period?

- Our TC partner is requesting to be assigned all patent rights generated during the researcher’s secondment period. What can we do?

- Review of IP and confidentiality clauses contained in draft Partnership Agreements (compatibility with MSCA rules...).
Sample questions sent to Helpline

• Questions sent by **beneficiaries** of MSCA actions (formerly Marie Curie):
  - Who owns the results generated during the secondment period?
  - Our associated partner (a University located in the US) is requesting to be assigned all patent rights generated during the researcher’s secondment period. What can we do?
  - Is the IP policy of our associated partner compatible with our obligations under the Grant Agreement?
  - Can we reach an agreement transferring part of the results to our associated partner if this partner is located outside the EU?

• Questions sent by **partner organisations**:
  - We have been contacted to become involved in an MSCA action as a partner organisation. Will we have any rights over the results?

• Questions sent by **researchers**:
  - As a researcher, how can I be sure to have rights to exploit the results of my research at the end of the fellowship?
Training offers

• “Capacity building“: IP & Innovation Management

• Practical and comprehensive training approach

• Individual organisation of on-location training events in cooperation with multipliers/ intermediaries

• Training Catalogue

• Web-based training sessions
Webinars 2015

UPCOMING WEBINARS:

- May 27, 2015: Impact and innovation in H2020 (proposal stage)
- June 17, 2015: IP in EU funded projects
- July 8, 2015: Maximizing the impact of H2020 Projects
New training formats on IP strategies in Horizon 2020

- Maximizing the impact of H2020 projects – for proposers
- Exploitation of H2020 project results

Next to come: Bergen/Norway – 12/13 May
Thank you.

We look forward to getting in touch with you!

For further questions and general IP advice, please contact our Helpline team:

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Phone +352 25 22 33-333 (Helpline)
Fax + 352 25 22 33-334 (Helpline)
www.iprhelpdesk.eu

For questions related to our training activities, please send us an email at:

training@iprhelpdesk.eu
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