

EUROSTARS Consortium Agreement Skeleton

IMPORTANT NOTICE

The aim of this Skeleton is to sum up the main items for the drafting of a consortium agreement between participants of the same Eurostars project.

The consortium agreement (CA) may take time to negotiate and should be drafted carefully, taking into account the characteristics of a Eurostars project. The assistance of a legal advisor at the appropriate stage is strongly recommended.

The intellectual property rules applicable in Eurostars projects are those in the Rules for Participation¹ (RfP) of Horizon 2020 Programme in addition to national requirements.

The sections of this document related to intellectual property have been created with the support of the [European IPR Helpdesk](#). The Eurostars Team invites you to contact them for any additional help on this matter.

The main participant must provide a copy of the final consortium agreement signed by all consortium members, to the ESE within 12 weeks of the Eurostars communication of the funding results. The final consortium agreement signed by all participants must be uploaded on myEUREKA (www.myeureka.io) by the main participant.

¹ [OJ L 347, 20.12.2013](#), Title III, articles 41 to 49.



Consortium Agreement Skeleton

© EUREKA Secretariat, 2015

No part of this document
may be reproduced in whole
or in part without the
express written consent of
the EUREKA Secretariat.

Eureka Association - B - 1200 BRUSSELS
T +32 2 777 09 50
www.eurostars-eureka.eu

CONTACT > www.eurostars-eureka.eu/#in-your-country

Publication date: April 2015

European IPR Helpdesk



Eurostars is a joint programme between more than
30 EUREKA member countries and the European Union



DESIGNATION OF THE PARTIES

- › Identify all the participating parties and their official representatives.

PREAMBLE

- › Describe the context of the cooperation, its objectives and scope.
- › Define the purposes of the consortium agreement (i.e. to specify the relationship among the parties, in particular concerning the organisation of the work between the parties, the management of the Eurostars project and the rights and obligations of the parties, liability, intellectual property rights and dispute resolution).

ARTICLE 1 - DEFINITIONS

- › Define the key legal and technical terminology in order to avoid misunderstanding.

Note: for intellectual property terms: do not forget to define terms such as Background, Results; Access Rights... these terms should have the definition given to them in the Horizon 2020 Rules for Participation.

ARTICLE 2 - IMPLEMENTATION OF THE EUROSTARS PROJECT

- › Describe the Eurostars project in general terms and refer to technical annex for details, including work packages, allocation of tasks, milestones and planning of the Eurostars project.
- › Define the foreseen achievements in terms of deliverables.
- › Describe the technical responsibility and contribution (personnel, facilities, equipment, materials, etc.) of each party in the implementation of the Eurostars project.
- › Indicate how much and what kind of assistance parties are obliged to give to each other in order to secure the proper execution of the Eurostars project.
- › Determine reports (financial, technical...) to be submitted and timetable.

ARTICLE 3 - PROJECT MANAGEMENT

- › Define the roles and responsibilities of each party from an administrative, legal, financial and technical point of view? Specify the additional duties of the leading party.
- › Define the internal organisation of the consortium (e.g. management bodies, committees and/or working groups; communication between the parties, prior notification, etc.).

Note: it is good practice to set up a dedicated intellectual property management structure (e.g. IP management board or IP manager) responsible for IP matters within the consortium. Identify its relevant tasks (e.g. monitoring the creation of new results, monitoring the protection measures taken by partners, monitoring dissemination activities, etc.).

- › Describe the different bodies: role and internal rules (i.e. how are the members appointed? how decisions are taken? how many and when meeting will be organized?)
- › Define the procedures set up to monitor and follow up the Eurostars project from a scientific, technical and financial point of views.
- › Describe procedures in case of additional tasks or review of the initial work plan.
- › Determine conditions under which existing parties may withdraw from the Eurostars project, or reduce or increase their contribution.
- › Indicate to which extent subcontracting is possible while respecting our eligibility criteria
- › Define conditions under which additional parties may join the Eurostars project.
- › Indicate the Project start date and end date.

Note: The indicated project start date in the consortium agreement and end date will be considered as official dates of the project.

ARTICLE 4 - FINANCIAL ISSUES

- › Indicate the global budget of the Eurostars project and the planning of expenses for each participant.
- › If the planning is not observed, how and to which extent the schedule and budget may be adjusted?
- › Indicate any national requirements. (e.g. financial reports).

ARTICLE 5 - INTELLECTUAL PROPERTY RIGHTS

5.1 Background

- › Identify the parties' background (pre-existing know-how and information, protected or not) in writing. Determine which background will have to be exchanged for the proper implementation of the Eurostars project or for the proper exploitation of its results.
- › List this background by way of a positive and/or negative list, usually annexed to the consortium agreement. The list should be clear enough to avoid legal uncertainty, and can mention possible restrictions linked to the grant of access rights to the background.
- › Set up a procedure for the amendment of the background list: how can partners make more/less background available during the project?

Example of clause to be included here in case the parties opt for a positive list:

"The Parties define in Attachment <NUMBER> the Background which may be subject to Access Rights of other Parties.

For the avoidance of doubt, all Background not listed in Attachment <NUMBER> shall be, accordingly, excluded from Access Rights.

The Party which owns the Background may at any time expand the existing list by adding further Background to Attachment <NUMBER>.

However, any limitation to Attachment <NUMBER> after signature of this Agreement requires the acceptance of <THE ULTIMATE DECISION-MAKING BODY OF THE CONSORTIUM>."

Example of clause to be included here in case the parties opt for a negative list only:

"If Parties want to define specific Background as excluded from Access Rights they should list it in Attachment <NUMBER >.

For the avoidance of doubt, all Background not listed in Attachment <NUMBER > shall be available for the granting of Access Rights in accordance with the provisions of this Consortium Agreement.

The Party which owns the Background may at any time limit the existing list by removing Background from Attachment <NUMBER>.

However, any addition to Attachment <NUMBER> after signature of this Agreement requires the acceptance of <THE ULTIMATE DECISION-MAKING BODY OF THE CONSORTIUM>."

5.2 Ownership of project results – joint ownership

- › Define how the ownership of project results will be allocated between the parties. As a default rule in Eurostars projects, each project result is owned by the partner who generates it.

Note: Partners can depart from this default regime and allocate the ownership differently among the consortium members (e.g. joint ownership for all partners). In this case however, the rules related to transfers of ownership should be complied with (see clause 5.5 below).

- › Mechanisms can be put in place in the consortium agreement in order to ensure that the creation of new results is duly monitored and reported, and that all partners are regularly informed. Such mechanisms can be supervised by the IP management body.

Note: in order to assess the ownership regime of each result more easily, it is recommended that all partners keep proof of the work performed during the project (e.g. through the use of lab notes).

- › Deal with possible joint ownership situations: set up a default joint ownership regime.

Note: The RfP describe cases where joint ownership will automatically arise, and already contain a default joint ownership regime which will apply in case project partners have not agreed on more specific rules. It is possible to keep the same default regime in the consortium agreement, or to set up another default joint ownership regime which will apply whenever partners jointly generate results, and in the absence of any other agreement. A default joint ownership regime should at least address the issue of authorisations (e.g. does a partner need the authorisation of its co-owners before directly or indirectly exploiting the jointly owned results) and the issue of profit-sharing (does a co-owner have to pay royalties to its co-owners if it exploits the jointly owned results directly? Indirectly?).

Note: the consortium agreement can also contain specific joint ownership provisions tailored to specific jointly owned results, if partners have already reached an agreement on that point.

Note: Project partners may also agree not to continue with joint ownership and decide on an alternative regime, in the CA (e.g. a single owner with access rights for the other project partners that transferred their ownership share) or at a later stage (by way of subsequent transfer agreements).

5.3 Access rights to background and to project results

- › Determine procedures for the request of access rights. Determine a procedure for the waiving of access rights. Determine general conditions surrounding the grant of access rights.

Note: requests and waivers of access rights always have to be made in writing.

- › Determine whether or not access rights will include a right to sublicense.

Note: by default, access rights do not include a right to sublicense, but it is possible to agree on it.

- › Define the access rights (including financial conditions, if any) to be granted in relation to the background and project results (protected or not) needed for the implementation of the Eurostars project.

Note: access rights to background for implementation are always to be granted on a royalty-free basis, unless otherwise agreed by the partners before their accession to the grant agreement. Access rights to results for implementation are always to be granted on a royalty-free basis.

- › Define the access rights (including financial conditions, if any) to be granted in relation to the background and project results (protected or not) needed for the exploitation of the Eurostars project results. Set up time limits for the request of these rights (e.g. "after the termination of a partner's participation in the project"). Possibility to set up different conditions depending on the type of exploitation involved (e.g. royalty-free access rights if they are needed for the purpose of further research, fair and reasonable conditions if they are needed for the purpose of commercial exploitation).

Note: access rights to background and to results for exploitation purposes can be granted on royalty-free terms, or on fair and reasonable conditions.

- › Decide whether or not affiliated entities are entitled to request access rights for exploitation purposes.

Note: by default, an affiliate is entitled to access rights to results or background, if these results or background are needed to exploit the results of the participant to which it is affiliated. It is however possible to agree not to include this right, by way of a clause in the consortium agreement.

Example of clause excluding access rights for affiliates:

"According to this Consortium Agreement, no grant of Access Rights to Affiliated entities is foreseen."

Example of clause confirming the existence of access rights for affiliates, as per the default rule:

"An Affiliated entity established in a Member State or associated country shall also enjoy Access Rights to Results or Background for exploitation purposes, if those Results or Background are needed to exploit the Results generated by the participant to which it is affiliated.

Such Access Rights will be granted on <A ROYALTY-FREE BASIS or ON FAIR AND REASONABLE CONDITIONS>.

Further arrangements with Affiliated Entities may be negotiated in separate agreements."

- › Define possible wider access rights – if relevant – or leave an open clause allowing the grant of such wider access rights.

Note: the access rights provisions contained in the RfP are only minimum ones. It is always possible to agree on broader access rights, e.g. access rights to background which is not strictly needed for the purposes of the project, or access rights to "sideground" (know-how and information generated by one or several partners during the project's lifespan but outside the context of the project).

- › Clarify the issue of access rights granted to and from parties entering/leaving the consortium.

Example of access rights provisions for parties leaving the consortium:

"The termination of the participation of a Party shall in no way affect the obligation of this Party to grant Access Rights to the remaining Parties in the same Project.

A Party leaving the Consortium shall have Access Rights to the Results developed until the date of the termination of its participation. The period of time to request Access Rights should be the same as the one set out in section "ACCESS RIGHTS FOR EXPLOITATION".

However, in case of a Defaulting Party, Access Rights granted to it shall cease and its right to request Access Rights shall end immediately at the moment of decision of <THE ULTIMATE DECISION-MAKING BODY OF THE CONSORTIUM> to terminate the Defaulting Party's participation in the Consortium.

For the sake of clarity, Defaulting Party according to this Consortium Agreement means a Party which <THE ULTIMATE DECISION-MAKING BODY OF THE CONSORTIUM> has identified to be responsible of irregularity provoked by the non-compliance with the provisions of this Consortium Agreement."

54 Protection of project results

- › Indicate how the project's results will be protected (type of protection planned, geographical scope of protection envisioned, etc.). If applicable, identify the management body (e.g. IP manager) responsible for overseeing protection measures.

Note: valuable results (capable of industrial or commercial application) should be protected. Protection is not mandatory in all cases, though the decision to leave results without protection should preferably be made in consultation with the other project partners, which may wish to overtake ownership.

- › Possibility to set up notification procedures, in order for partners to be informed of the protection measures being taken and to be able to express concerns linked to the protection of their own interests.

5.5 Transfer and licensing of project results

- › Define conditions under which the ownership of project results can be transferred.

Note: remember that under the RfP, transfers are possible provided that certain obligations are complied with. One of these is the obligation to notify project partners before proceeding to the transfer; such partners will then have a right to object. It is however possible to avoid this notification/objection procedure by identifying specific third parties in the consortium agreement, for which transfers will be agreed to in advance.

- › In the consortium agreement: describe notification and objection procedures, identify third parties to which transfers are automatically allowed, i.e. for which the notification/objection procedure will not apply.

Example of such transfer clause:

"Each Party may transfer ownership of its own Results to any legal entity, subject to the following conditions:

Where a Party transfers ownership of Results, it shall pass on its obligations regarding those Results to the assignee, including the obligation to pass them on to any subsequent assignee.

Subject to its obligations concerning confidentiality, as in the context of a merger or an acquisition of a large part of its assets, where a Party wishes to transfer results which are still subject to access rights from other Parties, it shall give at least <NUMBER> days prior notice to the other parties of the envisaged transfer, together with sufficient information concerning the envisaged new owner of the Results to permit the other Parties to exercise their access rights.

Following notification in accordance with the previous paragraph, any other Party may object within <NUMBER> days of the notification or within a different time limit agreed in writing between all Parties, to any envisaged transfer of ownership on the grounds that it would adversely affect its access rights.

Where any of the other Parties demonstrate that their access rights would be adversely affected, the intended transfer shall not take place until an agreement has been reached between the Parties concerned.

Each Party may, however, identify specific third parties to which it can potentially transfer the ownership of its Results, in Attachment <NUMBER> to this Consortium Agreement. The other Parties hereby waive their right to object to a transfer to the listed third parties.

Modifications to Attachment <NUMBER> after signature of this Agreement require an acceptance of <THE ULTIMATE DECISION-MAKING BODY OF THE CONSORTIUM>."

- › Licensing project results is always allowed. Exclusive licensing is however restricted under the RfP and is possible only insofar as all concerned project partners have waived their access rights to that specific result. Such waivers can be done here in the CA if the intentions of the partners are clear enough at that stage.

Note: in doubt, and to avoid waiving rights without necessity, it is always better to waive them at a later stage, by way of a separate document. General waivers should be avoided.

5.6 Exploitation of project results

- › Indicate how the parties will exploit the project results, i.e. jointly or separately.
- › If already known, indicate whether exploitation will be direct (by the parties only), indirect (by third parties), or both. Mention potential exploitation routes (e.g. creation of a spin-off company).

Note: such indications should be consistent with the exploitation measures planned in the proposal.

- › Indicate conditions for the exploitation of results by third parties.
- › If foreseen, mention standardisation activities.
- › Possibility to refer to future, more specific exploitation agreements between the concerned partners only.

Note: Resorting to separate exploitation agreements signed by the owners or co-owners of specific results only, is in many cases more practical, although the consortium agreement can still include an outline of the measures planned.

5.7 Dissemination of project results

- › Indicate the dissemination activities foreseen, if already planned - or mention relevant plans or documents listing dissemination activities. Open access dissemination will apply to all scientific publications created in the course of the project and in relation to it.

Note: any dissemination activity described here should be consistent with the dissemination measures planned in the proposal.

- › Set up dissemination procedures: set up a notice period to be complied with before any dissemination occurs, set up a time period following notification to allow possible objections, describe how objections should be raised, handled and overcome.
- › Set up procedures to ensure coherent dissemination (e.g. to ensure that co-authorship is dealt with appropriately).

Example: the Dissemination clause may include the following.

"Each Party will ensure that the Results which it owns are disseminated as swiftly as possible.

Dissemination activities shall be compatible with intellectual property rights, confidentiality, and the legitimate interests of the owner of the Results.

The dissemination of scientific publications shall be made in accordance with the principle of Open Access, as set out in Article 18 of Regulation (EU) No 1291/2013.

At least <NUMBER> days prior notice of any dissemination activity shall be given to the other Parties concerned, including sufficient information concerning the planned dissemination activity and the data envisaged to be disseminated.

Following notification, any of those Parties may object within <NUMBER> days of the notification to the envisaged dissemination activity if it considers that its legitimate interests in relation to its Results or Background could suffer disproportionately great harm.

The objection should include reasonable proof that the Party's interests in relation to its Results or Background could suffer disproportionately great harm and a precise request for necessary modifications. In such cases, the dissemination activity may not take place unless appropriate steps are taken to safeguard these legitimate interests. However, if no justified objection is made within the time limit stated above, it will be understood that the publication is allowed.

Parties may agree in writing on different time limits from those set out above.

In case of objection, the Parties involved should make their best endeavours to discuss how to overcome the matters raised in the objection on a timely basis.

If a dispute regarding a dissemination activity cannot be settled amicably within <NUMBER> days following the first submission of the proposed dissemination activity, <THE ULTIMATE DECISION-MAKING BODY OF THE CONSORTIUM> shall decide how to resolve the conflict.

No Party shall disseminate the Results of another Party, even if such Results are linked to its own Results, unless the other Party previously approves of such an activity in writing."

ARTICLE 6 - CONFIDENTIALITY

- › Define which information disclosed during the Eurostars project has to be considered as confidential.
- › Set up procedures surrounding the identification of information as “confidential”, and surrounding the disclosure of such information.
- › Specify which acts constitute unauthorised disclosure and which ones do not.
- › Address confidentiality during the project, but also beyond: do not forget to indicate how long confidentiality obligations will apply (e.g. “The confidentiality obligations described in this section will apply during the life of the project, and for five years following the end of the project”).

ARTICLE 7 - PUBLICATIONS

- › Define to which extent publications of the project results are allowed and under which conditions.

ARTICLE 8 - LIABILITY

- › Indicate to what extent a party causing damages or injury to another party or to goods or persons will be held liable.
- › Define possible actions and financial penalties in case of damage or injury, including in case of withdrawal, fault or dismissal from the consortium?
- › Define actions, solutions, penalties in case of bankruptcy.
- › Provide for actions and remedies in case of force majeure.

ARTICLE 9 - FINAL CLAUSES

9.1 ENTRY INTO FORCE

- › Define when the consortium agreement comes into force and ends. Indicate whether part or all of its provisions are concerned.

9.2 TERMINATION

- › Determine the termination clauses and the consequences of the withdrawal of one or more parties, particularly in terms of communication, ownership and exploitation of the project's results.

9.3 ANNEXES

- › List the annexes, e.g. work plan

9.4 AMENDMENT

- › Provide for a flexible procedure where amendments to the consortium agreement would be required.

9.5 LANGUAGE

- › Define the language in which the consortium agreement is drafted, as well as worked in.

9.6 GOVERNING LAW AND COMPETENT COURT

- › Provide for a governing law of the consortium agreement
- › Decide and organize which the dispute resolution methods in case of internal conflict: competent court or alternative dispute resolution systems, like mediation, conciliation or arbitration.