

Intellectual Property Rights (IPR) Conditions ERA-CAPS 2016

Article 1 Definitions

For the purposes of these IPR Conditions, the following definitions shall apply – being stated that they will be used with the first letter capitalised, and that they can be used indifferently in singular or plural as the case may be:

| | |
|------------------------------------|--|
| Access Rights | Means rights to use Results or Background under the terms and conditions laid down in accordance with these IPR Conditions. |
| Affiliated Entity | Unless otherwise agreed in the Consortium Agreement, means any legal entity that is under the direct or indirect control of a Participant, or under the same direct or indirect control as the Participant, or is directly or indirectly controlling a Participant. For purposes of this definition, the term “control” shall mean that an entity owns more than fifty per cent (50%) of whose voting stock or participating profit interest of the controlled entity, or otherwise, has the actual ability to direct and control the management or administration of the controlled entity. |
| Background | Means any data, know-how and/or information whatever their form or nature as well as any rights such as Intellectual Property Rights which are (i) held or controlled by Participants and (ii) identified by the Participants in accordance with article 8.1 and (iii) are not a Result. |
| Consortium Agreement | Means the contract signed between the Participants relating to the management of the Project and describing precisely their rights and obligations. The Consortium Agreement is in accordance with the IPR Conditions. |
| Dissemination | Means the public disclosure of the results by any appropriate means (other than resulting from protecting or exploiting the Results), including publication in any medium. |
| ERA-CAPS | ERA-NET for Coordinating Action in Plant Science. |
| Funding Body | Means a national funding agency, body or authority involved in ERA-CAPS and funding one or several Participants involved in a Project selected in the framework of the Joint Call. |
| Intellectual Property Rights (IPR) | Includes but is not limited to patents, trademarks, trade names, domain names, design rights, copyright, rights in databases, know-how, plant breeders rights, in each case whether registered or unregistered and including applications for the grant of any such rights, and all rights having equivalent or similar effect anywhere in the world. |
| IPR Conditions | Means the rules described under the present document. |
| Joint Call | Means the calls for proposals launched in 2012, 2014 and 2016 by Funding Bodies involved in ERA-CAPS. |
| Legal Entity | Means undertakings, research centres and universities, encompassing any natural person, or any legal person created under national law, Union law or international law, which has legal personality and which |

may, acting in its own name, exercise rights and be subject to obligations.

| | |
|---|---|
| Legitimate Interest | Means a Participant's interest of any kind, such as a commercial interest, which may be claimed in the cases provided for in these IPR Conditions. To this end the Participant making the claim must prove that failure to take account of this interest would result in its suffering disproportionately great harm. |
| Participant | Means any Legal Entity carrying out a Project and having rights and obligations with regard to one or several Funding Body(ies) under the terms of these IPR Conditions. |
| Project | Means a scientific project selected in the framework of the Joint Call. |
| Results | Means any data, knowledge, information, software, physical, biological or genetic material, whatever their form or nature, whether or not they can be protected, which are generated in the Project as well as any attached rights, including intellectual property rights. |
| Restriction on the Freedom to Operate (RFO) | Any prior undertaking or restriction declared by the holder of a Background that could limit or prevent the access rights on this Background. |

Article 2 Scope of the IPR Conditions

These IPR Conditions establish rules for the Dissemination and use of Results from Projects carried out under the 2012, 2014 and 2016 Calls of ERA-CAPS.

These rules shall:

- a) promote the protection of intellectual property and the use and Dissemination of Results;
- b) ensure that Participants have mutual access to Background and to Results arising from the Project in which they participate to the extent necessary to conduct their research work or to use their Results; and
- c) guarantee the protection of the Participants' intellectual assets.

Article 3 Ownership of Results

3.1. General principle

A Result shall be owned by the Participant generating this Result.

If a Result has been generated by several Participants and if either (i) their respective share of the work in obtaining the Result cannot be ascertained or (ii) this work is not separable in several Results owned by only one Participant or (iii) the concerned Participants agree to protect their work under one Result, then this Result will be owned in coownership.

The Consortium Agreement can lay down other modalities of ownership when it is needed.

3.2. Management of the coownership on a Result

Where Results are in coownership of several Participants, the Participants involved must establish a separate written joint ownership agreement regarding the allocation and terms of exercise of that joint ownership and in accordance with the conditions agreed in the Consortium Agreement.

Nevertheless, one year after the production of the Results, if the coowners have not managed to enter into a coownership agreement, then each joint owner shall be entitled to grant non-exclusive licences to third parties to exploit the jointly owned results, without any right to sub-licence, subject to the following conditions:

- (a) prior notice, as defined in the Consortium Agreement, shall be given to the other joint owners;
- (b) fair and reasonable compensation shall be provided to the other joint owners.

If employees or any party working for a Participant are entitled to claim rights to the Result, the Participant concerned shall ensure that it is possible to exercise these rights in a manner compatible with its obligations under the Consortium Agreement and these IPR Conditions.

Article 4 Dissemination of Results

4.1. General rules

Subject to any restriction due to the protection of intellectual property, security rules or Legitimate Interests, each Participant shall, through appropriate means, promptly disseminate its Results.

Prior notice of any Dissemination shall be given to the other Participants. Following notification, a Participant may object if it can demonstrate that its Legitimate Interests in relation to its Results or Background would suffer significant harm by the intended Dissemination. In such cases, the Dissemination may not take place unless reasonable and appropriate steps are taken to safeguard these Legitimate Interests. The Consortium Agreement must lay down precise modalities, notice and deadlines of the Dissemination review procedure, especially regarding scientific publications.

Regarding Dissemination activities being performed through publications in scientific journals, the authorisation to publish will include the authorisation to give access to the Results (including biological or genetic material) identified as necessary to do the publication. This authorisation could eventually be submitted to anonymization, encryption or deletion of some of the Results. Nevertheless, the Participants shall endeavour to strike a balance between the quality of the publication and restrictions on access to Results.

All patent applications, standards, publications or any other Dissemination, also in electronic form, relating to Results shall include a statement that they arise from a research project selected within the framework of ERA-CAPS together with the name of the Funding Bodies financing the Project. The logo of ERA-CAPS and of the Funding Bodies concerned may be used for this purpose.

4.2. Open access and open data

Open access of the publications in scientific journals shall be promoted. The modalities of open access can be achieved either through a publication in a scientific journal being in open access or with an agreement of the subscription-based journal. In that last case (i) a reasonable time-limit in which only the subscribers of the scientific journal will have access to it may be applied if the open access is accepted free of charge; and (ii) the concerned article will have to be accessible without restriction either directly on the journal's website or on a public archive.

With regard to Dissemination of Results being raw data, the Consortium Agreement shall lay down the conditions under which open access to such Results shall be provided – such conditions having to match the needs and specificities of the Project. Nevertheless, the Participants shall endeavour to strike a balance between open access of raw data for international projects and restrictions on access to these Results.

Article 5 Protection of Results

Where a Result is capable of commercial or industrial application, the Participant(s) owning this Result shall examine the possibility for protection and, if possible and justified given the circumstances, shall adequately protect it for an appropriate period of time and with an appropriate territorial coverage, having due regard to its/their Legitimate Interests and the Legitimate Interests of the other Participants of the Project.

Where a Participant intends to abandon the protection of a Result or not to seek extension of such protection, it shall inform (i) firstly the other co-owning Participant(s) if any, and thereafter (ii) the other Participants of the Project – which may then continue or extend the protection of the Result. The Participant may refuse consent only if it demonstrates that its Legitimate Interests would suffer significant harm. The Consortium Agreement – and the joint ownership agreement in the case of a co-owned Result – shall lay down the consequences in term of ownership, Access Rights, royalties and time-limits in this respect.

Article 6 Exploitation of Results

Each Participant shall use its best efforts to exploit its Results in further research or commercially, or to have them exploited by another legal entity for these purposes, in particular through transfer and licensing of Results in accordance with article 7 and with the conditions laid down in the Consortium Agreement.

Article 7 Transfer and licensing of Results

7.1. Transfer of Results

Where a Participant transfers ownership of Results, it shall also transfers together its obligations under the Consortium Agreement regarding those Results to the transferee, including the obligation to pass them on in any subsequent transfer.

Without prejudice to confidentiality obligations arising from laws or regulations in the case of mergers and acquisitions, where other Participants have Access Rights to the Results to be transferred, the Participant who intends to transfer the Results shall give prior notice to those other Participants, together with sufficient information concerning the intended new owner of

the Results to permit the other Participants to analyse the effect of the intended transfer on the possible exercise of their Access Rights.

Following notification, a Participant may object to the transfer of ownership if it demonstrates that the intended transfer would adversely affect the exercise of its Access Rights. In such case, the transfer may not take place until agreement has been reached between the Participants concerned. The Consortium Agreement may lay down time-limits.

The Participants may stipulate in the Consortium Agreement that they waive their right to prior notice and of objection in the case of transfers of ownership from one Participant to a third party namely identified, such as a Participant's intellectual property management company or agent for that purpose.

7.2. Licensing of Results

Participants may grant licences to their Results or otherwise give the right to exploit them to any legal entity, including on an exclusive basis, provided that it is in accordance with the terms of the Consortium Agreement, the IPR Conditions and of the coownership agreement, if any.

Article 8 Access Rights to Background and Results

8.1. Identification of the Background

The Participants shall identify the Background it is needed to perform the Project. The Background must be listed, updated and agreed in accordance with the terms of the Consortium Agreement, and included in one of its annexes.

The following principles will be applied:

- All the Background of each Participant needed to perform the Project will be listed, any element not listed will not be considered as being a Background;
- The Participants will have to precisely and positively list their Background to be included so that all the elements listed in their Background are identifiable;
- The Participants will have to precisely identify if any of their Background has a Restriction on the Freedom to Operate. All RFO will have to be specified in the Background list. If no RFO is specified to a Background in the Background list, it will be conclusively deemed that no Restriction on the Freedom to Operate exists on this Background;
- A Participant may explicitly exclude Background from the obligation to grant Access Rights by means of a written agreement between the Participants before a new Participant joins the Project. The other Participants may only withhold their agreement if they demonstrate that the execution of the Project or their Legitimate Interests will be significantly impaired thereby.

8.2. Access Rights principles

Any request to exercise Access Rights or any waiving of Access Rights shall be made in writing.

Unless otherwise agreed in the Consortium Agreement, all Access Rights shall be granted on a non-exclusive basis and any right to sublicenses is explicitly excluded.

The termination of the participation in a Project of a Participant shall not affect its obligation to grant access under the terms and conditions established in the Consortium Agreement.

All requests for Access Rights must be made up to one year after the end of the Project. However, the Participants may agree on longer time-limits.

8.3. Access Rights for implementation

The Participants of a Project shall be granted a non-exclusive royalty-free Access Rights to the Results of the other Participants if needed to perform their part of the work under the Project.

The Participants of a Project shall be granted Access Rights to the Background of the other Participants if needed to perform their part of the work in the Project but subject always to any Restrictions on the Freedom to Operate. Such Access Rights shall be granted on a non-exclusive royalty-free basis, unless otherwise agreed by the Participants in the Consortium Agreement.

8.4. Access Rights for research and plant selection

The Participants of a Project shall be granted a non-exclusive royalty-free Access Rights to the Results for internal research including plant selection.

If Background of a Participant is needed to use the Results for on of the above-mentioned purposes, Access Rights to this Background may be provided under fair and reasonable conditions, and subject to any Restriction on the Freedom to Operate of the owning Participant(s). Nevertheless the Participants may opt in the Consortium Agreement for a royalty-free Access Right to Background when they deem it relevant.

The Consortium Agreement shall further describe the material organisation of Access Rights for research and plant selection and the consequences in term of publication, ownership and Access Rights on results obtained from the use of such Results and Background.

8.5. Access Rights for exploitation

The Participants of a Project shall be granted royalty-bearing Access Rights, on fair and reasonable conditions, to the Results of the other Participants, if such access is needed to exploit their Results.

If a Background is needed to use a Result for the above-mentioned purpose, a royalty-bearing Access Right to this Background will be given, on fair and reasonable conditions, and subject to any Restriction on the Freedom to Operate.

An Affiliated Entity shall, unless otherwise provided for in the Consortium Agreement, also have Access Rights to Results or Background under the same conditions if such access is needed to exploit the Results generated by the Participant to which it is affiliated.

8.6. Access Rights between Projects

No Access Rights to Results or Background of one Project is by default authorised for the purpose of the performance of another Project.

Nevertheless, when relevant, the Participants of a Project will strive to make available their Results to the other Projects and to any other project launched within the framework of a subsequent ERA-CAPS call or within any other closely related initiative such as Plant-KBBE or FP7/Horizon 2020 calls.

For that purpose, but without any obligation to do so, the concerned Participants will negotiate in good faith with the concerned parties so as to agree on adequate terms of Access Rights, notably regarding ownership, publication and licensing of the results arising from the use of their Results.

Article 9 Incompatible or restrictive commitments

Participants shall make no commitments incompatible with the obligations provided for in their national funding rules.