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1. Preliminary notes

The Information and Communication Technologies Policy Support Programme (ICT PSP), a sub-programme of the [Competitiveness and Innovation Framework Programme](#) (CIP), is a major funding scheme in the area of Information Society. ICT PSP aims to promote the development and implementation of ICT-based solutions and their use by citizens, governments and businesses, particularly SMEs.

The intellectual property (IP)-related rules of the ICT PSP grant agreement are briefly presented hereafter. Project proposers should always verify the relevant documentation and the grant agreement model for the call they deal with.

2. IP rules

2.1 Definitions

The ICT PSP grant agreement includes the following IP-related definitions:

- *Access rights*: licences and user rights to foreground.
- *Dissemination*: the disclosure of foreground by any appropriate means other than that resulting from the formalities for protecting it, including the publication of foreground in any medium.
- *Foreground*: the results, including information, generated in the course of the project, whether or not they can be protected. Such results include rights related to copyright, design rights, patent rights, plant variety rights, or similar forms of protection.

The ICT PSP grant agreement does not include a definition related to the knowledge held by the participants before the project starts and does not delimit the scope of use of the results allowed. However, participants in ICT PSP projects shall supplement the grant agreement with a consortium agreement (CA) to organise the governance and the work of their consortium, including, among other things, IP management. Therefore, the participants may clarify the abovementioned concepts in their CA, taking into account the specific characteristics of their project. To this end, it could be noted that:

- The project-related knowledge, including IP rights, held by the participants before their accession to the grant agreement is generally known as ‘background’.
- The concept of ‘use’ may well cover different activities, from internal research to commercial use. Participants should determine which definition better fits their needs.

2.2 Ownership of results and transfer of ownership

According to the ICT PSP grant agreement, each participant is the **owner** of the results (foreground) it generates during the project.

If several participants generate common foreground and their respective parts cannot be determined, they jointly own this foreground. Like under other EU funding schemes, arrangements on the allocation and management of the joint ownership need to be agreed upon by the joint owners, either directly in the CA or, preferably, in a specific **joint ownership** agreement.

Contrary to other EU funding programmes, there is no default regime that applies in the absence of a joint ownership agreement. It is therefore advisable that the participants come to an arrangement in due time so key legal issues do not remain in a vacuum (e.g. who is in charge of registration of IP rights? Can each co-owner unilaterally license the jointly owned results?).

As for the **transfer** of results, there is no provision explicitly addressing this issue, but there is room for several agreements among participants (e.g. they may switch from a joint ownership regime to a solely owned foreground regime). As there is no transfer-related procedure in the grant agreement, the participants may wish to regulate this issue in their CA, by setting up some steps (e.g. prior notification/right to object, etc.).

The participants, as legal entities, should pay attention to the rights that their **personnel** or subcontractors may retain over their works and, if necessary, take the appropriate measures so that these rights can be exercised in a manner compatible with the implementation of the project and the use of the results.

2.3 Protection of foreground and confidentiality

According to the ICT PSP grant agreement, when the foreground can be industrially or commercially applied, its owner shall protect it. This is done by means of [IP rights](#) and may imply that the participants themselves or third parties are subject to certain [confidentiality](#) obligations.

2.4 Access rights and accessibility

Access rights to foreground between participants shall be granted when needed for the execution of the project and/or the use of **foreground** (on a royalty-free basis unless the interested participants agree otherwise).

As mentioned above, there is no definition of **background** and no related access rights regime. The participants should therefore consider whether they may agree among themselves on the background to be included in the project (for instance, by listing the background available in their CA) and on related access rights conditions or leave it for the interested participants to discuss on a bilateral basis.

Either way, the participants should come to agreements that are compatible with their obligations on use and dissemination of the project results (see next section). In this regard, they should also take into consideration, where appropriate, the special **accessibility conditions** of the ICT PSP grant agreement (e.g. for interoperability needs).

Moreover, the participants shall inform the European Commission and the [European standardisation bodies](#) about foreground that may contribute to the preparation of standards.

2.5 Use and dissemination

The participants shall **use** the foreground, or ensure that it is used. As mentioned before, the participants may wish to detail the possible implications in relation to different manners of using the foreground at stake, (e.g. use for commercial applications, use for internal research) and define the related conditions.

The participants shall also **disseminate** the foreground as swiftly as possible. Dissemination activities shall be compatible with IP protection, confidentiality obligations and the legitimate interests of the owner(s) of the foreground. In this regard, the ICT PSP grant agreement contains a default procedure to facilitate coherent dissemination (establishing 45 days prior notice among participants of any dissemination activity).

2.6 Final remarks

With the abovementioned points in mind, it is important that project proposers be very clear about all the information, including IP rights, which they feel are necessary for the project and prepare the necessary arrangements accordingly. Moreover, they should also be clear on the expected results and necessary measures to guarantee their wide use and dissemination in light of the requirements of the call they apply to.

3. Useful links

[ICT Policy Support Programme](#)

[ICT PSP Model Grant Agreement](#)

[Checklist for a Consortium Agreement for ICT PSP projects](#)