

Overview & Tutorial of the Consortium Agreements for the CRPs of ERA-PG



Overview of the Consortium Agreements for the CRPs of ERA-PG

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Venice – 11th October 2006



Process

- February: consultation on the timeline and milestones of the WP
- 8th March: 1st draft of "Neutral Consortium Agreement"
- 29th March: 4th meeting IPR Workgroup at Brussels
- 4th May: final draft of the Neutral Consortium Agreement
- 18th May: 1st draft of Consortium Agreement with options
- 21th June: 5th meeting IPR Workgroup at Paris
- 11th August: splitting of the Consortium Agreement with options into two separate versions for Sub Call A and Sub Call B
- 8th September: 6th meeting IPR Workgroup Oslo
- 5th October: final draft of the Consortium Agreements with options for Sub Call A & Sub Call B



Who participated

For Austria:

George Buchtela - AWS

For Belgium:

Kathleen d'Hondt – EWI
Philippe Jacobs – VIB

For Denmark:

Per Kolbeck-Nielsen – DASTI
Verena Simpson (until may 2006) - Legal Advisor

For Finland:

Meri Vannas - AKA

For France:

Pierre Chilès - Génoplante/INRA
Edwige Pilard - Génoplante
Bernard Teyssendier de la Serve - INRA

For Germany:

Wilfried Kraus - Legal Advisor
Stephan Micha - PI
Frank Wolter – GABI
Hans Zago - Legal Advisor

For Netherlands:

Gionata Leone - CBSG

For Norway:

Mariken Vinje - RCN

For Portugal:

Ligia Gata - INPI
Catarina Resende - FCT

For Spain:

Luis Guasch-Pereira - CSIC
Juan Martinez-Armesto - CSIC

For United Kingdom:

Jan Chojceki - PBI
Sophie Laurie - BBSRC



Sources

- European consortium agreements
- IPR rules (FP6 & ERA-PG)
- National research contracts
- Practice of the research agencies & universities
- Rules of the national networks



Structure of the CAs

- Based on the IPR Conditions (Workpackage 2.3)
- 11 articles
- 21 pages (35 with IPR Conditions, annexes and signature pages)
- Two versions: Sub Call A & B
- Options: Leading Party, Massively Produced Data or Resource, access rights policy, joint valorisation, signature procedure



Consortium Management (article 4)

- Collaborative Board:
 - x representative(s) per Participant
 - One Chairman
- Meet every x months
- Rules for taking decisions/advices on urgent matters by written consents
- Competences of the Collaborative Board explained
- Quorum for decisions left open
- Decision procedure:
 - Minutes of meeting: propositions for patenting of Knowledge
 - Progression reports: technical progress, costs statement, update of the plan of dissemination
 - Final report: include classification of results and dissemination
 - => Minutes & reports communicated to the administration staff of the Participants, which have one month to object to the propositions contained in them.
- Information to ERA-PG: abstract of the reports



Publication (article 6)

- Sub Call A:
 - Submitted to the Collaborative Board
 - Clause for using a secure web site for publication
 - One month for review
 - Possibility to appoint an internal expert
- Sub Call B:
 - Validation by the Collaborative Board
 - Validation by the internal relevant committee of GABI, MEC and GENOPLANTE
 - One month for review



PEKH & Transfer of Material (article 7)

- Positive list of Pre-existing Know-how, with the limitation (for exploitation, research...)
- Prior to any transfer of Material, a MTA has to be signed (a model in annexed)
- Material = PEKH and Knowledge (not owned or co-owned by the receiving Participant)



Ownership & Protection of Knowledge (article 8)

- Rules for co-ownership: co-ownership agreement to be signed within one year following the discovery of the Knowledge
- Rules for protection of Knowledge: Patent or confidential Know-how
- Specific rules for Sub Call B (network rules)



Access rights (article 9)

- Sub Call A
 - For research purposes:
 - By default: if needed to use its own Knowledge
 - In option: open system => access of all Knowledge for all Participants
 - For commercialisation:
 - By default: if needed to use its own Knowledge
 - In option: joint valorisation => Leading Party take in charge the valorisation of Knowledge
 - Possibility to have a Participant having an exclusivity of exploitation of Knowledge
- Sub Call B
 - For research purposes:
 - Royalty free access right for internal non commercial research and plant selection to all Knowledge for the Beneficiaries (=Participants + Members of the national networks)
 - access rights for selection of local varieties for Academic Research organisations of developing countries in partnership with a Participant
 - For commercialisation
 - Generic CRP: access of all Knowledge on non-exclusive basis for the Beneficiaries
 - Applied CRP: co-exclusivity of access right on Knowledge needed to use its own knowledge; then open to Beneficiaries



Dissemination (article 10)

- Plan for using and disseminating the Knowledge revised every 12 months
- Dissemination after two years after the end of the CRP
- Dissemination under condition of the need to safeguard IPR, legitimate interests, etc...
- Optional rules of Massively Produced Data and Resources (MPDR)
 - Concerns annotations of cDNA, QTL Maps, DNA banks, DNA databases...
 - To avoid duplication of research effort, these MPDR are proposed to be disseminated within 6 months (from their availability)
 - A small percentage can be kept in reason of its high competitive potential
 - Is a key element for the participation in international consortiums



Tutorial for the Consortium Agreements of ERA-PG

Formation session on the Consortium Agreements
Berlin – ECT/CCT
30 November 2006



Important notice

- This presentation is provided "as is" and is provided for a better understanding of the spirit of the model of consortium agreement for ERA-PG
- It shall not replace the consortium agreement or serve as an interpretation tool of the model of consortium agreement for ERA-PG
- It has to be noticed that some legal points have been purposely simplified in this presentation in order to make them clearer to a non-jurist audience; the clauses may differ and/or provide precision in their application



What we are going to see

1. Introduction - Structure
2. Performance of the research
 - A. Collaborative Board
 - B. Confidentiality
 - C. Publication
3. PEKH & Material
 - A. Pre-existing Know-how
 - B. Material transfer
4. Management of Intellectual Property
 - A. Ownership and Protection
 - B. Access Rights
 - C. Dissemination
5. Miscellaneous



1 - Introduction



Structure of the contract

1. The main contract
 - 22 pages
 - Options to choose
 - Prevails over the annexes 1 & 2
2. Annex 1 – IPR Conditions
 - Cannot be changed
 - Contains the spirit and general policy of IPR rights
 - Exception to its rules can be specified in the main contract
3. Annex 2 – Collaborative Research Project
 - Scientific Annex
 - Must only contain the scientific program, not more
 - The CA (main contract) and the Annex 1 prevail over it
4. Annex 3 – List of Pre-existing Know-how
5. Annex 4 – Model of Material Transfer Agreement
6. Annex 5 – Utilisation Agencies (if needed)
7. Annex 6 – List of Affiliates (if needed)



2 – Performance of the research



A – The Collaborative Board (1/2)

- Composition
 - One member for representing each Participant (normally the researcher)
 - Assistant members possible
 - Chair nominated at first meeting
- Meetings
 - Every 12 months (can be changed)
 - Written consents possible (including electronic means, annexed to minutes of next meeting)
 - Aim: unanimous decision (voting procedure to be defined)

Raise awareness on
Project Management



A – The Collaborative Board 2/2

- Role
 - General supervision of the CRP
 - Production of reports
 - Advisory competences (e.g. extension/redirection of the research, update of the PEKH annex, proposition for patenting, etc.)
- Approval of decisions
 - Communication to the administration of each Collaborative Board's member
 - Enforcement: if no response is given within one month from their submission's date
 - If there is comments, the decisions cannot be postponed more than 3 months from the date of first submission of the document
- Information to ERA-PG: the abstracts from the progression and final reports are communicated to ERA-PG



B - Confidentiality

- What is confidential: any document, information, PEKH, etc... which is clearly marked as "confidential"
- If disclosed orally as being confidential, have to be confirmed in physical form as confidential within 30 days
- Obligation of confidentiality have to be imposed to employees and any person who need to access to the confidential information
- Duration: during the lifespan of the project and x years after it => duration have to be agreed by the Participants (usually 5 or 10 years)



C - Publication

- Procedure for publication:
 1. Submission to the Collaborative Board: full text
One month to approve or not (if no response = yes)
 2. Objection, a request for modification/postponing
Cannot be postponed more than x months
 3. Mention: "Results have been achieved within the framework of the 1st call ERA-NET Plant Genomics, with funding from..."
- Exceptions
 - Activity/financial reports are always allowed
 - Submission of a thesis – confidentiality can be requested
- The publication have to be communicated once published to the Collaborative Board, the Utilisation Agencies (if applicable) & the secretariat of ERA-PG



3 –Material



A – Pre-existing Know-how (1/2)

- What is a Pre-existing Know-how?
 - Something (material, patent, knowledge) not freely accessible, not published, not in the public domain, not coming from the performance of the present research
 - Something needed to perform the research, proprietary of one participant who make it available to the other needing participant(s) only for performing its (their) part of the research
 - **Example:** a biological material, a know-how, a patent
 - **Is not a PEKH:** a published result + when the authorisation of its proprietor is no more needed ("FTO")
- The ownership of the PEKH remains to the Participant who brought it! Only access rights are granted.



A – Pre-existing Know-how (2/2)

- List PEKH (Annex 3):
 - Which is **needed** to perform the research
 - **Specify:**
 - (co-)ownership, right of use from a third party ...
 - limitation on the PEKH (freedom-to-operate)

Annex has to be complete by the time of signature of the CA. Any update will need acknowledgment of all Participants



B – Material Transfer (Annex 4)

- Name sending / receiving party
- Agreed modalities of exchange (CA)
- Conditions
 - Defined purposes and rights: CRP, research, commercialisation
 - No transfer to third parties
 - Limit to authorised personnel
 - No acquisition of proprietary rights
 - No warranties
- Description of Material, technical info, use, price



4 - Management of Intellectual Property



A – Ownership and Protection

- **Ownership** rules:
 - Each Participant owns the results it produces
 - In case of several participants involved in generating a result: co-ownership agreement to be agreed within one year following its generation



A – Ownership and Protection

Protection

	1 Participant (single ownership)	2 or more Participants (co-ownership)
Activity	1. Protect knowledge 2. Inform others Participants	1. Define leading party (or participant in charge) 2. Define shares 3. Protect knowledge 4. Share activities and costs
No protection wanted	Offer to other Participants to take over	Offer shares to other Participants to take over

Exception possible: **No Patent / No Publication**

- Confidential Know-how file
- Specification of conditions to be agreed
 - Unanimous consent

B – Access Rights (1/2)

Three kind of access rights: for execution of the CRP, for research and for commercialisation

- For **execution of the CRP**: free and unlimited access to knowledge & PEKH
- For **research** (in-house research outside the execution of the CRP):
 - By default, only access right to knowledge and PEKH needed to use its own knowledge is granted (until 2 years after end of CRP)
 - In option: "open access right policy" by which all the knowledge is available for research purpose to all Participants free of charge
- For **commercialisation**:
 - By default, only access right to knowledge & PEKH needed to use its knowledge is allowed (until 2 years after end of CRP)
 - In option, the Leading Party can be in charge of the valorisation of the results – in that case a valorisation contract has to be negotiated
- Option: access rights for Affiliates – to be added if needed



B – Access Rights (2/2)

- Pricing of the access rights:
 - For the execution of the CRP:
 - Knowledge: royalty free
 - PEKH: royalty free unless otherwise agreed in the Consortium Agreement
 - For other research or commercialisation:
 - Knowledge: royalty free for academic research purposes; otherwise fair & non discriminatory conditions unless otherwise agreed in the Consortium Agreement
 - PEKH: Fair & non discriminatory conditions



C – Dissemination

- Plan for disseminating the knowledge (updated every year)
 - Two years after the end of the research, the results have to be disseminated – if not the Partner of ERA-PG (i.e. a funding agency) concerned can disseminate
- Option: Massively Produced Data & Resources
 - Concerns resources such as sequencing, annotations, transcriptome, etc. ... which dissemination should be done quicker (a definition is given)
 - In that case, 6 months after being made available to the Consortium, they can be disseminated
 - Why: to shorten the time of availability of material which interest is to be available now and not in 2 years or more and which is useless to keep secret
 - Important option for international collaboration and to avoid duplication of research efforts



5 – Miscellaneous



A – Governing law & disputes resolution

- The applicable law is the one of the defendant
- Possibility to agree on other applicable law, if defendants from more than one country
- Possibility to submit dispute to mediation and/or arbitration (caution if allowed for public bodies)
- In any case, the Collaborative Board, and the Member of ERA-PG funding the CRP have to be previously contacted in order to solve the conflict



B – Withdrawal/Exclusion

- If a Participant wishes to terminate its participation, he has to give a 3 months prior notice to the other Participants
- It will lose Access rights to Knowledge and PEKH produced/identified after its withdrawal
- It will have 6 months to exercise its Access rights to PEKH and Knowledge existing at the time of its withdrawal needed for the use of its Knowledge
- A Participant may be excluded in case of substantial breach of its obligations
- Effects: same as withdrawal + damages



C – Signature

- The legal entities sign the CA (not the researcher)
- The signature can be organised either by signing the same page or by signing a signature page (centralised procedure): two options have to be chosen

