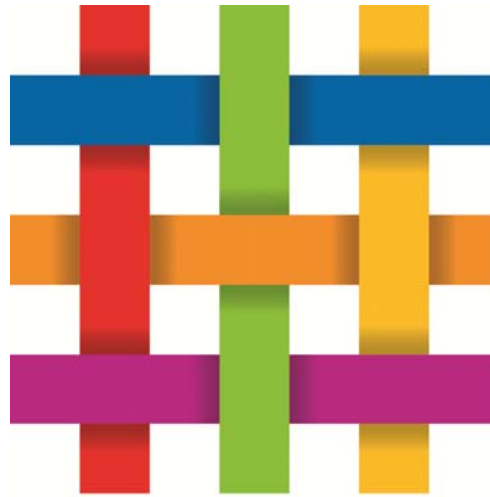


WELCOME TO THE DESCA 2020 LAUNCH!



DESCA
Horizon 2020 Model
Consortium Agreement
www.DESCA-2020.eu

Brussels, March 24th, 2014

Agenda



- 15:00 Welcome**
- Rainer Steffens, Director, Representation of the State of North Rhine- Westphalia to the European Union
 - DESCA Core Group, short summary of DESCA 2020 work
- 15:30 Presentation of main features of DESCA 2020 and Q&A**
- General Issues, Liability and Procurement
 - Governance
 - Finance
 - Intellectual Property rights
- 17:00 Reception opening by DESCA, followed by key note speakers**
- Muriel Attané, EARTO
 - Kurt Deketelaere, LERU
- 18:30 End of event**

What is DESCA?



DEvelopment of a SImplified COnsortium Agreement

- Entirely self-financed by the organisations involved
- Independent initiative

DESCA – the Core Group



ANRT, EARTO, Eurochambres, LERU, VTT, KoWi, ZENIT,
co-ordinators: Fraunhofer, Helmholtz Association



DESCA – the Consultation group



ca. 160 Experts from all over Europe & beyond (Israel, USA..)

Contributions in the H2020 update from:

Aalto University, AIT, BAK AK Recht, CEA, CERN, Chalmers University of Technology, CNRS, Copenhagen University, CSIC, DLR, Digital Europe, EADS, ETHZ, Edinburgh University, Harvard University, IFPEN, IMEC, Imperial College London, INRA, INRIA, Myer Morron, NTNU, Karolinska institutet, Luleå University of Technology, Linköping University, Lund University, Milano University/APRE, Stockholm University, Stuart Campbell, Technology Centre ASCR CZ, Thales, TNO, TU Eindhoven, TuTech, Umeå University, Unitecra (Universities of Basel, Bern and Zürich), University of Gothenburg, University of Utrecht, Volkswagen, Wageningen UR, Weizmann Institute of Science, WIPO

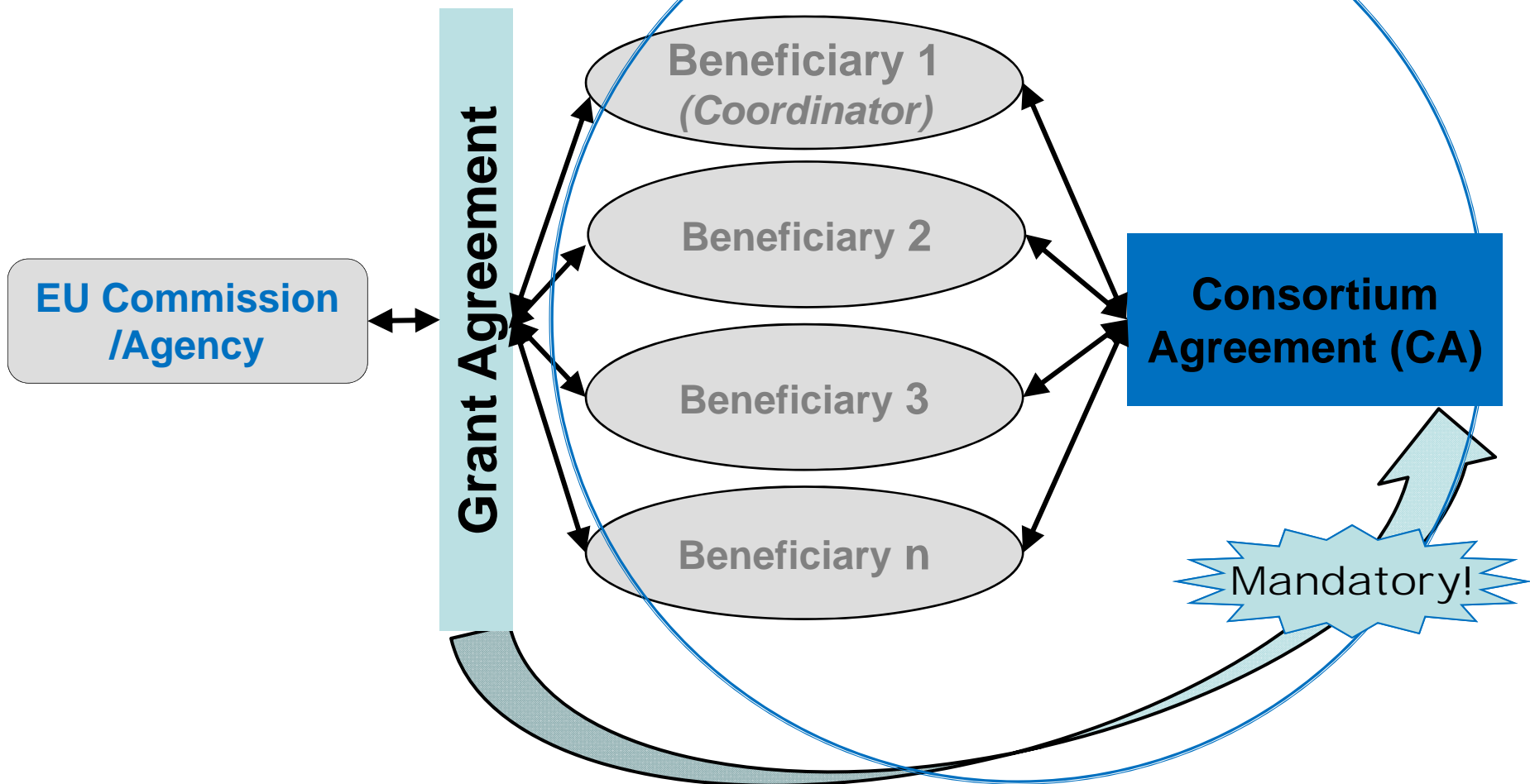
DESCA – the Consultation group



A first impression of the organisations endorsing
DESCA and which have sent us their logo
for the website:



The Consortium Agreement – one of the 2 main contracts in a H2020 project



DESCA's Origins



FP 6: Many CA models:

- ANRT
- EARTO-UNITE
- EICTA
- EU-CAR
- French Research Organisations
- German CA-Team
- IMG4

FP 6 -> FP7

- DESCA initiative by some of the FP 6 CA models
- Aim: create one single model for FP7

FP7:

- DESCA not the only model, but the most widely used
- 2 updates to keep track of changes to the Model Contract and experiences of stakeholders
- 1 mid term review in 2010

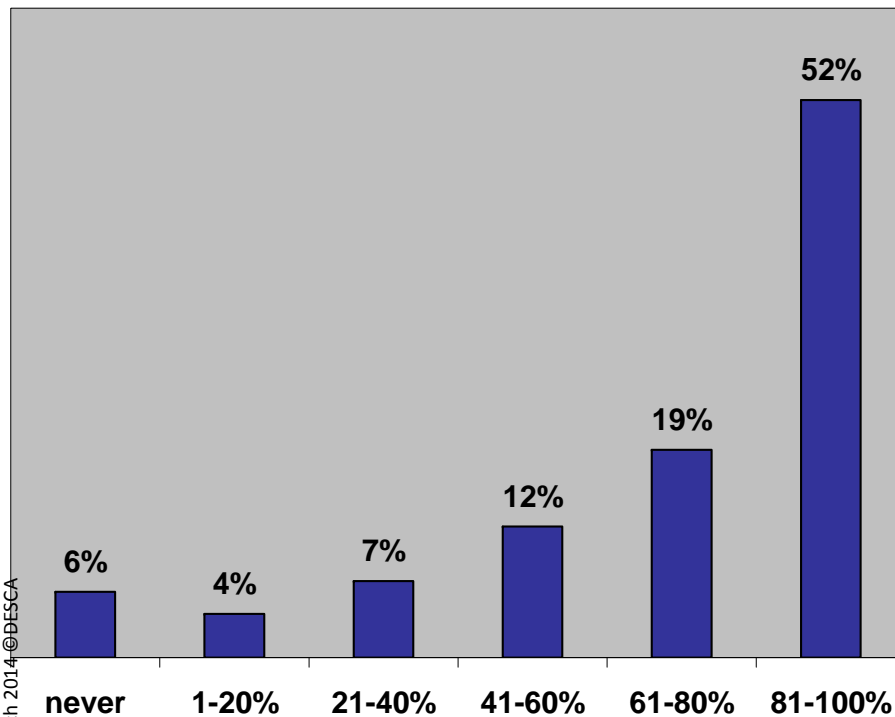
Midterm review in 2010

Use and benefits of the DESCA model



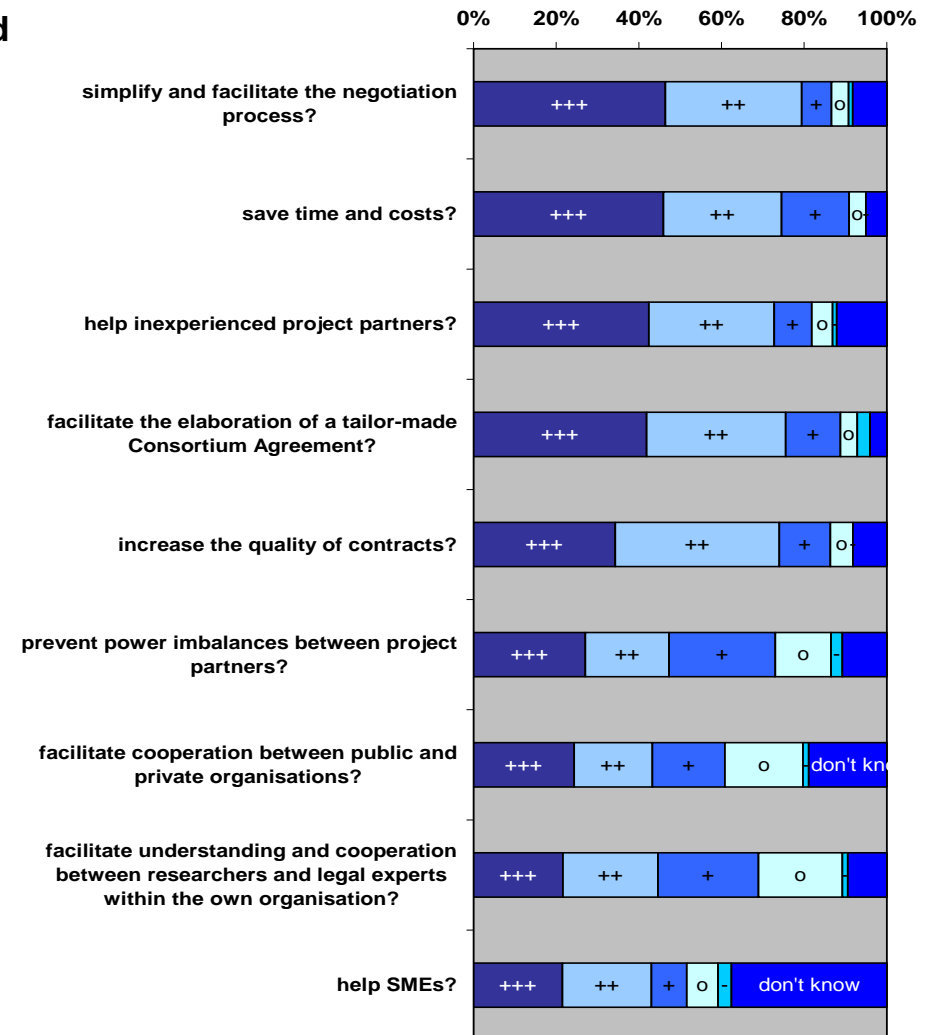
"Did the DESCA model when used ..."

"In how many of the collaborative projects you participated in did you use the DESCA model?"
Give an approximate percentage.



DESCA 2020 Launch March 2014 ©DESCA

See www.desca-2020.eu for full report



H2020 DESCA revamp – consultation process



- large consent of stakeholders that value of DESCA is that it is known – so **only change where necessary**
- many very interesting suggestions and ideas – but not so many areas where there was a clear consensus by the consultation group on a better solution
- First drafts by subgroups of core group, consensus in core group, consolidate text, ask consultation group for comments, discuss all modification suggestions first in subgroups of the core group, then core group, consolidate new text, give result to Consultation group for comments, ...

150 Pages of comments



Article	Suggested wording modification	Reasons	Suggested by
General Comments	DESCA is a very valuable template and has greatly improved the CA negotiation process in FP7, but it is very often used to justify itself – as in “this is what it says in DESCA therefore it must be right” – which isn’t a good way to finalise an agreement. Can we make it very clear that this is not obligatory language, but rather suggested language. Is there a danger in making the language too “reader-friendly” – this is a legally binding contract.		Edinburgh
	the issues discussed at Sections 5.2, 7.1.4 and 8.1 are the provisions which usually cause problems. Although stakeholders wish as little change as possible, that should not deter change where it will improve/lead to quicker CA conclusion.		Edinburgh
	this CA has ‘Sections’, but throughout refers to [its own] Articles.		Edinburgh
	Article 8.1 + Article 8.2.4 + Article 8.3.1.1 respectively: ‘...at least 45 calendar days...’; ‘...the full 45 calendar days...’ ‘... at least 45 calendar days before the publication...within 30 calendar days after...’ As other parts of the DESCA clearly differentiate between “calendar” and “working” days, it is necessary to make these insertions for consistency purposes.		Luleå Tekniska Universitet
Definition	No introduction of sideground in the definition and for access rights	CNRS is not in favour of definition and access rights on sideground. If access right is needed, it could be negotitate between parties but there should not be imposed access rights on sideground.	CNRS
	In response to some suggestions, we would like to reiterate our opposition to the introduction of sideground in the definition and for access rights	We agree with CNRS’ comments on this issue.	CEA
PREAMBLE	Delete “adopted on....” and replace with reference to the actual GA.	Ref to the Grant Agreement as being adopted.... is not appropriate. The CA will be based on the specific GA particular to the Project, not to the MGA. (In fact even less so in H2020 than in FP7.)	Edinburgh

DESCA revamp - Facts & Figures



- DESCA provided analysis and expert input to the H2020 rules of participation – thank you for the excellent cooperation with some MEPs!
- numerous core group meetings since March 2012 and incountable telcos and webmeetings,
- 2 workshops with consultation group
- 1 meeting with other CA model groupings
- 2 rounds of comments producing 150 pages of assembled comments
- 1044 DESCA-Emails in Annika's and Kathrin's inbox just in 2014
- 112 Registrations for today

DESCA 2020

the concept remains the same



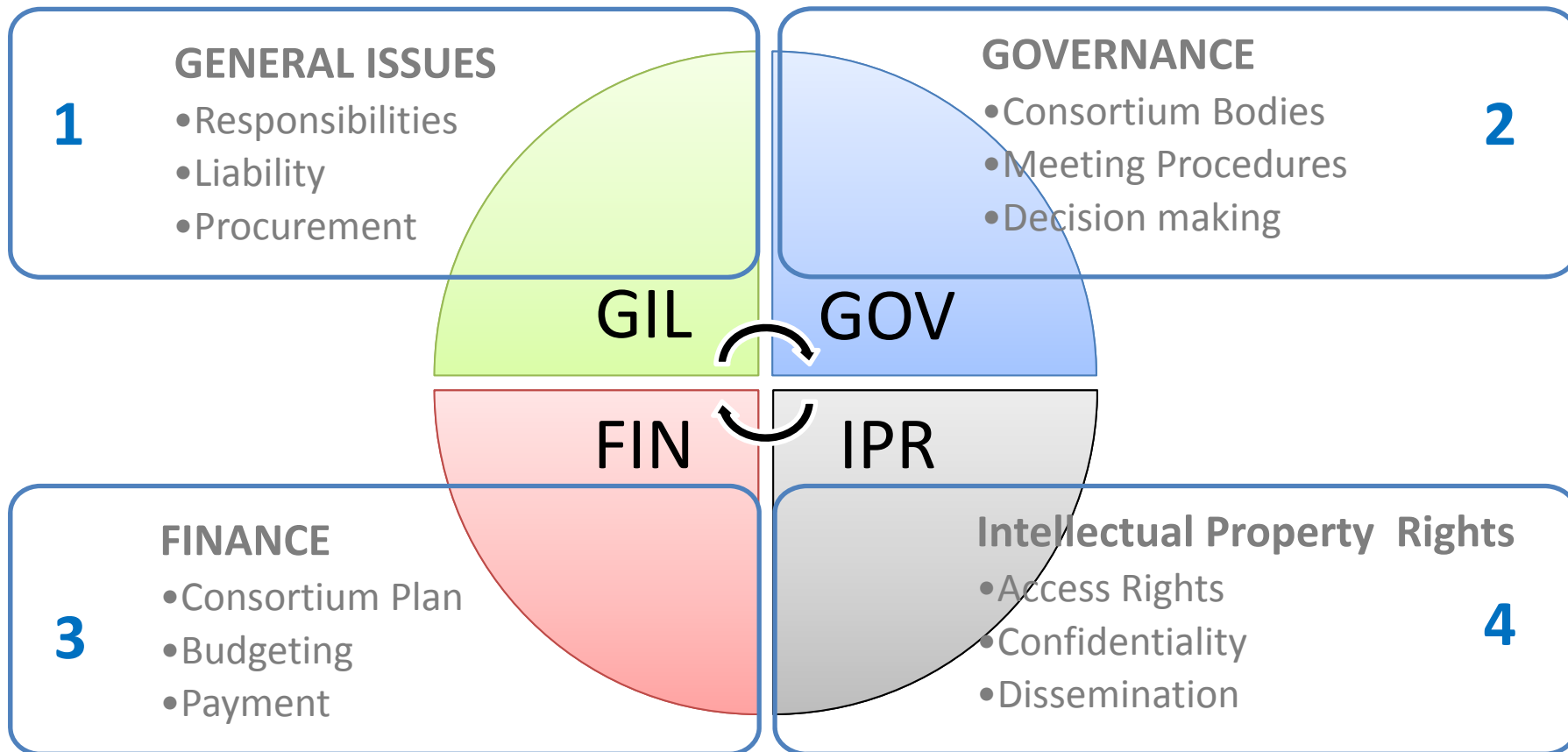
- Simplified: Reduced to the necessary minimum, limit „legalese“
- Balanced: Respects the interest of research and industry, big and small - www.responsible-partnering.org
- Single: One balanced core text where possible
- Modular: Options where necessary
 - alternative modules for large and small projects
 - optional module for projects with a software focus
 - optional clauses in the IPR section
- Transparent: Explanatory texts to illustrate and explain clauses and options, examples for different project types
- *Continuously adapted and further developed*

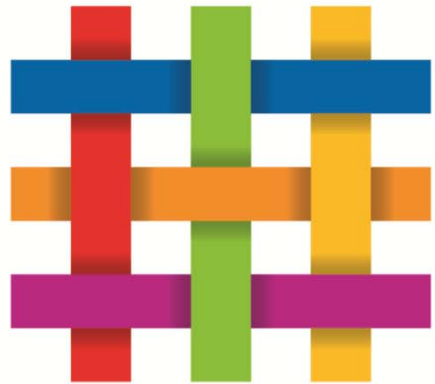
DESCA 2020 – what is new?



- Terminology & logic adapted to H2020
- References to new H2020 concepts as PCP/PPI
- Other aspects of H2020 will be revised for first update once practical experiences are sufficient; no need for changes to the CA seen at the moment as regards e.g. participant portal or Open Access
- The website: www.desca-2020.eu – have a look!
New download system allowing better link with users (providing email address for word version)

And now for the details..



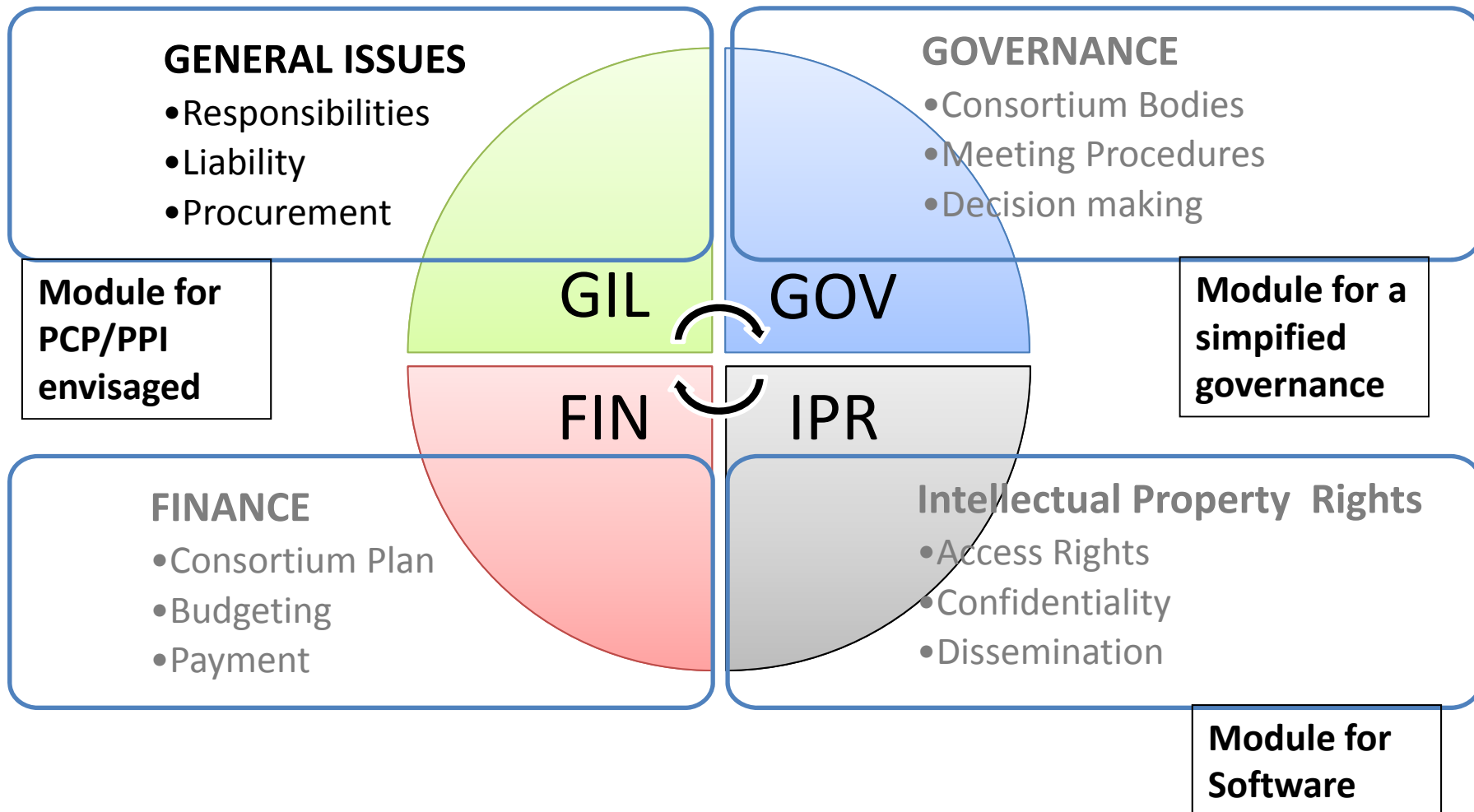


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GENERAL ISSUES, LIABILITY AND PROCUREMENT

General Structure



Definitions



- Most of the definitions already in the Rules for Participation or in the Multi-Beneficiary Grant Agreement and Annexes
- Additional DESCA Definitions:
 - Consortium Plan
 - ~~Consortium Budget~~
 - Defaulting Party
 - Needed
 - Software
 - **NEW: Funding Authority:** EU or EURATOM or one of the agencies managing the large parts of the framework programme (REA, ERCEA, INEA, EASME)
- **MGA: Actions - Project**

Effective Date and Entry into Force



- Each Party commits to the Consortium Agreement when signing the document on its own behalf.
- The Consortium Agreement shall have effects however just from the Effective date, which will be identified in the DESCA.
- The effective date is normally the date when the project really starts. According the Grant Agreement the starting date is the first day of the month following the date the Grant Agreement has been signed.

→If this is not possible, the effective date can be retroactive and it may vary from the entry into force of the Grant Agreement.

Advisable to sign the Consortium Agreement before the Grant Agreement.

Duration and Termination



- Termination either :
 1. after completion of the Project
 2. after terminated prematurely by a Consortium decision, or
 3. due to the Grant Agreement.
- Possibility to terminate either the whole Project or the participation of one or more of the Parties.
- The initiative for the termination may come from the Funding Authority (in case of non-compliance) or from the Consortium.
- In case of termination, surviving clauses are in DESCA included in the respective clauses. (Liability, Access Rights, Confidentiality, Applicable law etc.)
- Termination shall not affect previous obligations of the leaving Party,

Responsibilities



- Responsibilities of the Parties have been identified in a variety of documents, including:
 - In the Grant Agreement, especially Article 41.
- Therefore in Section 4 of the Consortium Agreement only the very general responsibilities (e.g. cooperation, notification and information) of the Parties have been stated.
- Party that involves third parties in the Project remains solely responsible for carrying out its relevant part of the Project.

Liability



- Parties' liability towards each other in the DESCA has basically remained unchanged thus supporting stability and consistency.
- Limitation of contractual Liability – whether the Liability for breaches of confidentiality should be unlimited or not?
 - No Party shall be responsible to any other Party for any indirect or consequential loss provided that such damage was not caused by wilful act **or by a breach of confidentiality.**
 - ➔ • **NEW exception: breach of confidentiality as OPTION, highlighted in grey, thus can be included in the text or not.**

Note also that towards the Funding Authority, the beneficiaries are jointly and severally liable for the **technical implementation** of the project (Art. 41.1 of the Grant Agreement).

Confidentiality



- NEW: confidentiality period changed from 5 years to 4 years (to be in line with MGA)
- NEW: The parties shall be responsible for the fulfilment of confidentiality obligations also on the part of their third parties involved in the project (FP7 only employees).
- Deleted the possibility to disclose confidential information to the European Commission, since this is an issue of the MGA.

Attachments



- **Attachment 1** (Background included): New content
 - no more attachment for Background excluded
- **Attachment 2** (Accession document)
- **Attachment 3** (List of third parties for simplified transfer according to Section 8.2.2)
- **Attachment 4** (Identified Affiliated Entities according to Section 9.5)

Miscellaneous



Mandatory statutory law

- The legislation of a Party may state certain statutory restrictions for the Parties, and naturally these restrictions should be respected by all Parties.
-> nothing in the CA shall be deemed to require a Party to breach any mandatory statutory laws.

Applicable law

- DESCA has been drafted based on Belgian law.

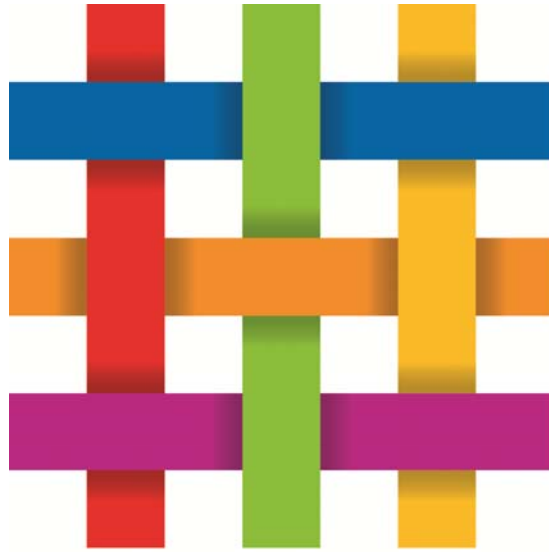
Settlement of disputes

- Mediation/arbitration .
- The choice of national court should be considered carefully.
- Several options for mediation/arbitration clauses: WIPO, ICC, bMediation, CEPANI etc.

Signature Procedures



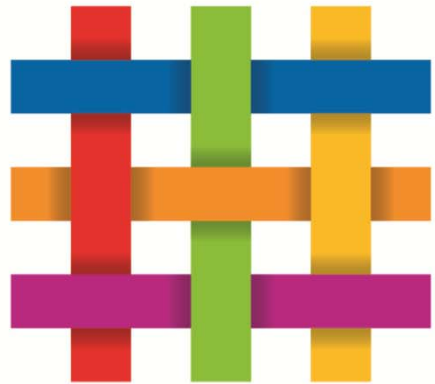
- DESCA is not implemented into ECAS system (eSignature)
- Several ways for the signature process of the consortium agreement:
 - Too impractical for all Parties to sign the same document at the same time.
 - The procedure proposed in DESCA where **Each Party signs a separate signature page** is widely used:
 - Each Party signs a separate signature page as many times as there are Parties. The Coordinator gathers all originals and then delivers the whole package to the Parties.



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GOVERNANCE

DESCA Governance Structure

Section 6



Module [Gov **LP**]

For **Large Projects**

- ✓ Large projects tend to need a more complex governance structure
- ✓ The DESCA Large Project module allows for a General Assembly of all project participants plus additional governing bodies (executive board)

Module [Gov **SP**]

For **Small Projects**

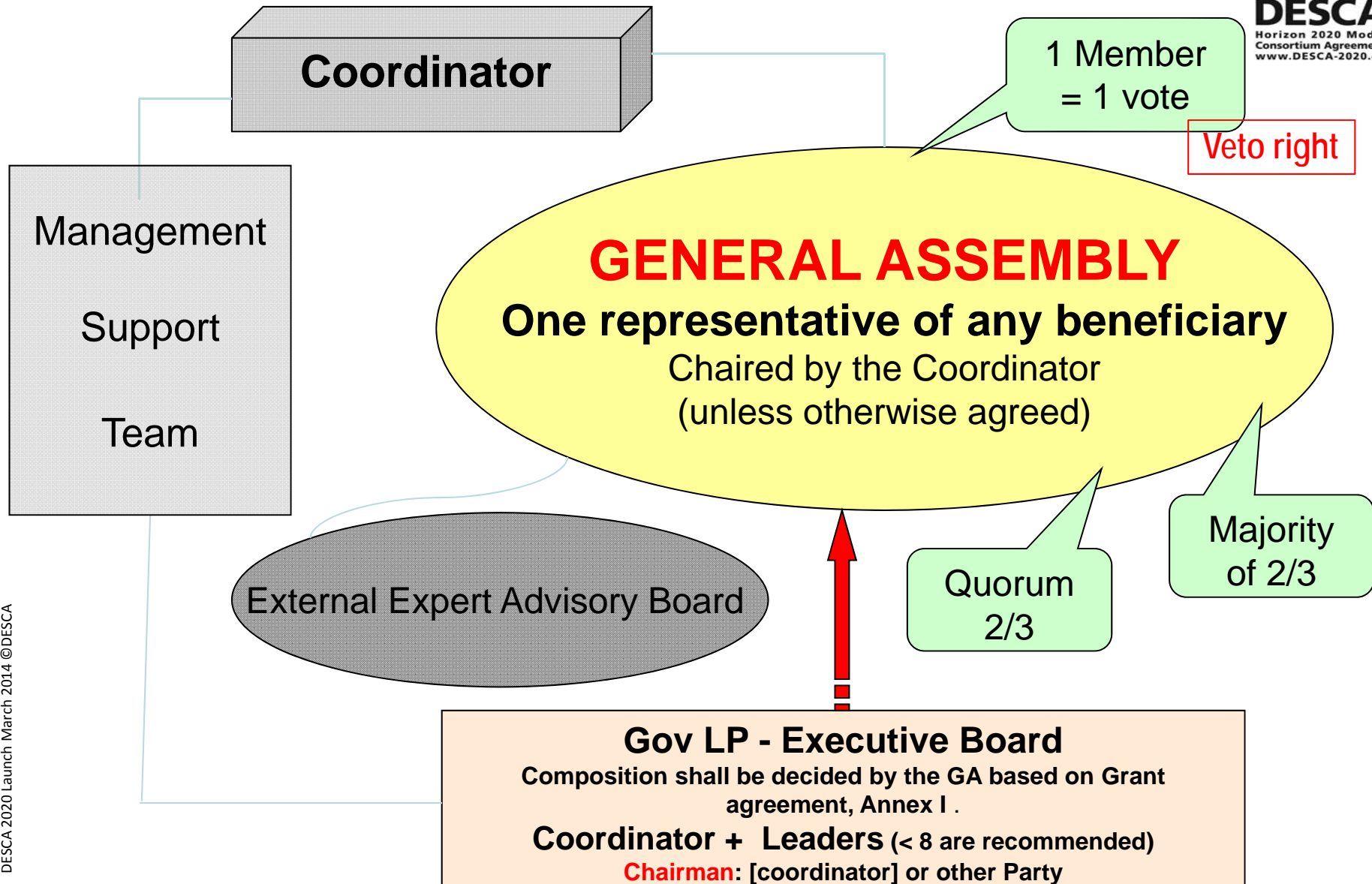
- ✓ Simple governance structure
- ✓ The DESCA Small Project module provides only for a General Assembly of all project participants

Other bodies, optional



- **Management Support Team**
 - Proposed by the Coordinator
 - Appointed by the General Assembly
 - Provide assistance to the Coordinator and for executing the decisions of the General Assembly
 - Responsible for the day to day management of the project
- **External Expert Advisory Board**
 - Assist and facilitate the decisions made by the General Assembly

Governance



Voting rules and quorum



- Quorum: 2/3
 - To decide validly, 2/3 of the members of the Consortium Body shall be present or represented
- Vote: 1 member = 1 vote
 - Any member of a Consortium Body shall have 1 vote
- Decision: majority of 2/3
 - Decision shall be taken by a majority of 2/3 of the votes
- A defaulting Party member shall not vote
- Veto right (a party who can show that its own work, time for performance, costs, liabilities, intellectual property rights, or other legitimate interest would be severely affected by a decision of a Consortium Body)

Modification in the core text



- New decision that has to be taken by the General Assembly
 - Identification of a breach by a Party of its obligations under the Consortium Agreement or the Grant Agreement
 - The identification of the breach is a first step
 - Second step : declaring a Party as a Defaulting Party

Clarifications / Elucidations



- New item to the original agenda
 - If a new topic comes up that may ultimately require a decision, the good practice is to organise a new meeting or a written procedure for decision on the topic, rather than deciding on it during the meeting.
- Defaulting party
 - The **alleged** Defaulting Party may vote but may not exercise its veto right
 - A Party which the General Assembly has declared to be a Defaulting Party may not exercise any vote or participate in any further Consortium Body decision-making following the declaration of default.

Clarifications / Elucidations

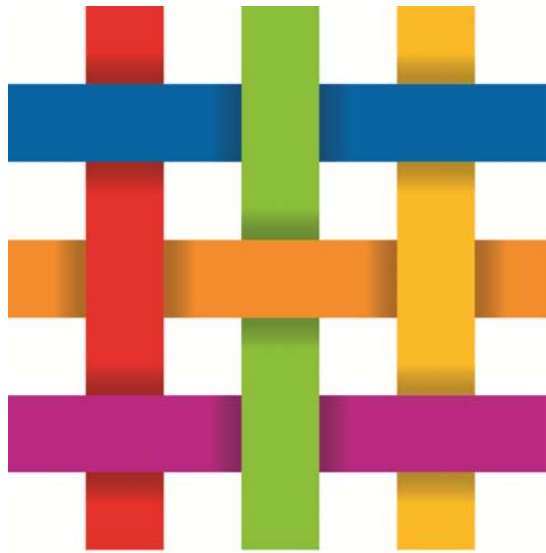


- Member taking part to a meeting
 - The Party must ensure internally that the person acting at a meeting has the necessary authority or has obtained a mandate from the competent officer/s for the decisions to be taken. As the agenda is circulated before the meeting, with decision items marked, any necessary internal authorisation can be obtained in advance
 - However if the person who attends the meeting is not authorised by his or her institution or company to make a proposed decision on behalf of that institution or company, the Member will ensure that he or she refers such decision to the authorised representative for his or her institution or company

Clarifications / Elucidations



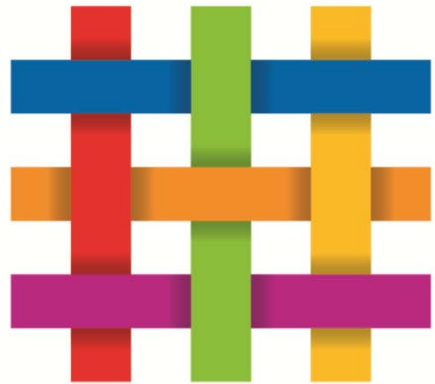
- Coordinator tasks / obligations
 - Amended regarding specific requested documents (obligations from the Grant Agreement: for example ethics or security issues)
 - The coordinator may delegate or subcontract part of the coordination tasks in accordance with provisions of the Grant Agreement



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FINANCES

Financial provisions






- Only few changes
- Most provisions stay valid also in H2020
- Main changes concern
 - Adaptation to H2020 funding model
 - Practicalities of project management

General principles



- Distribution of the EU contribution (& Def.)
 - Consortium Plan & ~~Consortium Budget~~
- Responsibility for justification of costs
- Funding Principles
 - Reference to unit costs
- Financial Consequences of a party leaving the consortium
 - Additional costs

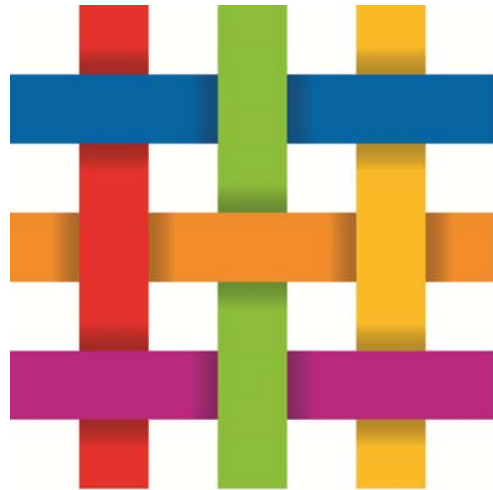
Budgeting

- Completely revised and shortened
 - Application of own accounting principles 
 - Costs eligible for 100% reimbursement 
 - Costs for coordination  research

Payments



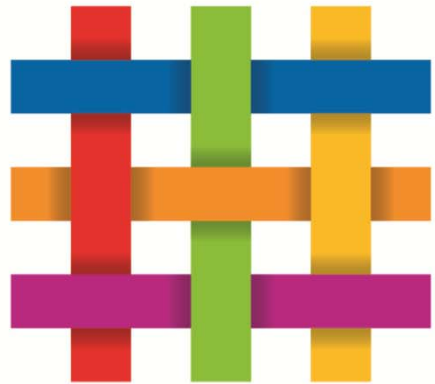
- Coordinator's tasks: Distribution of payments
 - Reference to final payment and contribution to guarantee fund
- Payment schedule
 - 2 Options
 - Option 1 updated now including a table for a payment schedule



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IPR

Structure of DESCA FP7 IPR section



FP7 Model GA Annex II

Part C INTELLECTUAL PROPERTY RIGHTS, USE AND DISSEMINATION

SECTION 1 – FOREGROUND

- II.26. Ownership
- II.27. Transfer
- II.28. Protection
- II.29. *Use*
- II.30. *Dissemination*

SECTION 2 – ACCESS RIGHTS

- II.31. *Background covered*
- II.32. Principles.....
- II.33. *Access rights for implementation*
- II.34. *Access rights for use*

FP7 DESCA

SECTION 8 - FOREGROUND

- 8.1 Joint ownership
- 8.2 Transfer of Foreground
- 8.3 Dissemination

SECTION 9 – ACCESS RIGHTS

- 9.1 Background covered
- 9.2 Principles
- 9.3 Access Rights for implementation
- 9.4 Access Rights for Use
- Etc.

Structure of DESCA 2020 IPR section



H2020 Model GA Section 3

Rights and obligations related to Background and Results

Art. 26 - 31 – RESULTS

- 26.1 Joint ownership
- 30 Transfer of ownership , granting licenses
- 29 Dissemination

Art. 24, 25 and 31 – ACCESS RIGHTS

- 24 Agreement on Background
- 25 Access Rights to Background
 - 25.2 For project implementation
 - 25.3 For exploitation of Results
- 31 Access Rights to Results
 - 31.2 For project implementation
 - 31.3 For exploitation of Results
- 25.4 and 31.4 Access Rights for Affiliates

DESCA 2020

SECTION 8 - RESULTS

- 8.1 Joint ownership
- 8.2 Transfer of Results
- 8.3 Dissemination

SECTION 9 – ACCESS RIGHTS

- 9.1 Background included
- 9.2 Principles
- 9.3 Access Rights for implementation
- 9.4 Access Rights for Exploitation
- 9.5 Access Rights for Affiliated Entities

Structure of DESCA 2020 IPR section



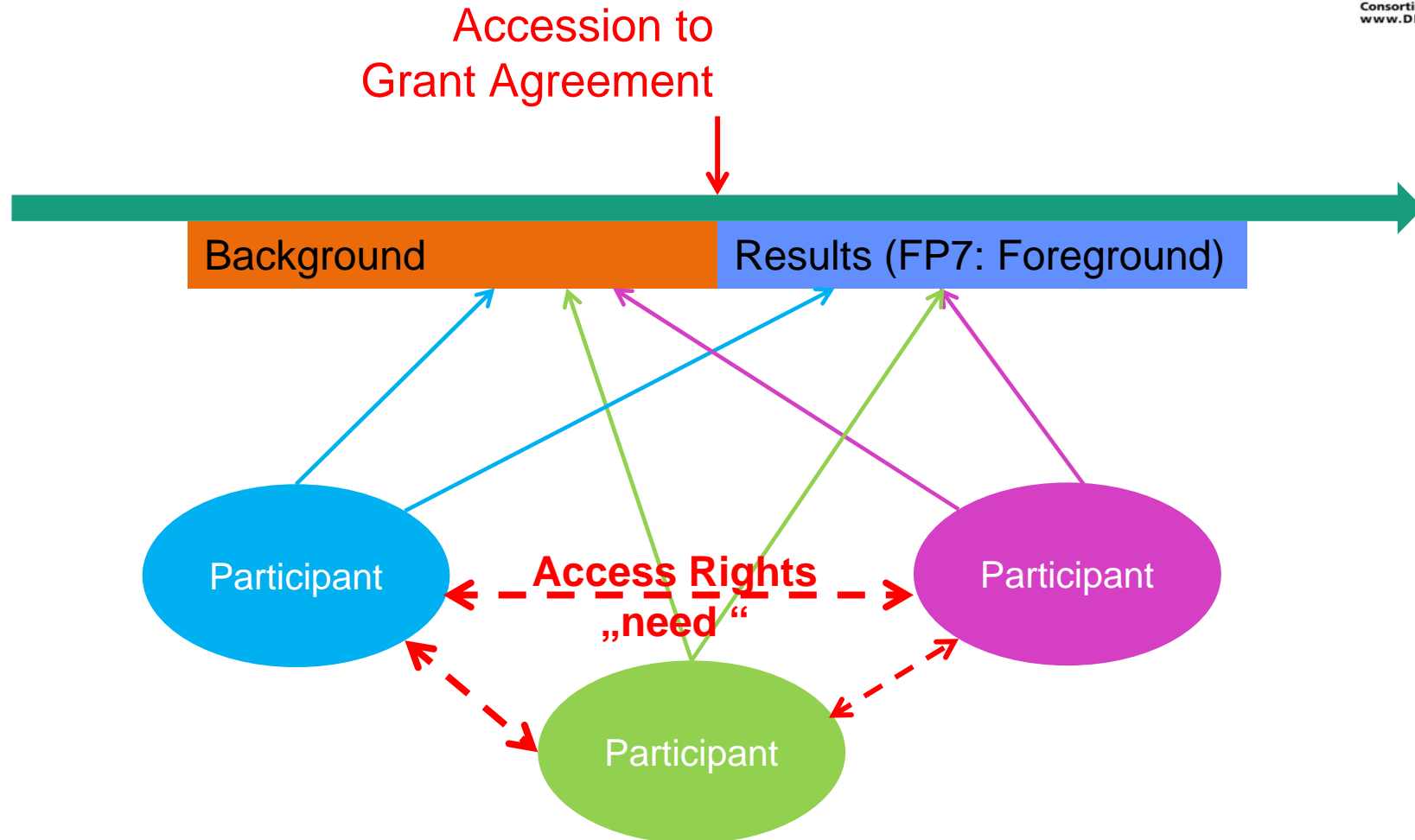
9.6 Additional Access Rights

9.7 Access Rights for Parties entering or leaving the Consortium

9.8 Specific Provisions for Access Rights to Software

Section 10: Non-disclosure of information

H2020 basic IPR regime



Joint Ownership



Option 1 modified, based on input from the consultation group:

DESCA version 3.0	DESCA2020 version 1.0
<p>Where no joint ownership agreement has yet been concluded:</p> <ul style="list-style-type: none">- each of the joint owners shall be entitled to <u>Use</u> their jointly owned Foreground on a royalty-free basis, and without requiring the prior consent of the other joint owner(s), and- each of the joint owners shall be entitled to grant <u>non-exclusive licenses to third parties</u>, without any right to sub-license, subject to the following conditions: at least 45 days prior notice must be given to the other joint owner(s); and Fair and Reasonable compensation must be provided to the other joint owner(s)	<p>Unless otherwise agreed:</p> <ul style="list-style-type: none">- each of the joint owners shall be entitled to use their jointly owned Results for <u>non-commercial research</u> activities on a royalty-free basis, and without requiring the prior consent of the other joint owner(s), and- each of the joint owners shall be entitled to <u>otherwise Exploit</u> the jointly owned Results and to grant non-exclusive licenses to third parties (without any right to sub-license), if the other joint owners are given:<ul style="list-style-type: none">(a) at least 45 calendar days advance notice; and(b) Fair and Reasonable compensation.

Joint Ownership



Option 2 remains:

“In case of joint ownership, each of the joint owners shall be entitled to Exploit the joint Results as it sees fit, and to grant non-exclusive licences, without obtaining any consent from, paying compensation to, or otherwise accounting to any other joint owner, unless otherwise agreed between the joint owners.

The joint owners shall agree on all protection measures and the division of related cost in advance.”

Dissemination



8.3.1.: Added 1-year time limit (one year after the end of the Project) for notice obligation.

8.3.2. Old version sometimes created confusion

DESCA version 3.0	DESCA2020 version 1.0
<p><u>8.3.2 Publication of another Party's Foreground or Background</u></p> <p>For the avoidance of doubt, a Party shall not publish Foreground or Background of another Party, even if such Foreground or Background is amalgamated with the Party's Foreground, without the other Party's prior written approval. For the avoidance of doubt, the mere absence of an objection according to 8.3.1 is not considered as an approval.</p>	<p><u>8.3.2 Dissemination of another Party's unpublished Results or Background</u></p> <p>A Party shall not include in any dissemination activity another Party's Results or Background without obtaining the owning Party's prior written approval, unless they are already published.</p>

Exclusive licenses



If parties want to include language covering a procedure to obtain waivers in relation to potential exclusive licensing.

DESCA 2020 version 1.0

8.4. Exclusive licenses

Where a Party wishes to grant an exclusive licence to its Results and seeks the written waiver of the other Parties pursuant to Grant Agreement Article 30.2, the other Parties shall respond to the requesting Party within 45 calendar days of the request. Any Party's failure to respond (whether in the negative or the positive) to the request within such 45 calendar days shall be deemed to constitute written approval of the waiver by the non-responding Party,

Grant Agreement Access Rights



	Access rights to background	Access rights to results of the project
For carrying out the project	if a participant needs them for carrying out its own tasks in the project	
	Royalty-free unless otherwise agreed before accession to the grant agreement	Royalty-free
For exploitation	if a participant needs them for exploiting its own results	
	Fair and reasonable conditions	

DESCA Access Rights



	Access rights to background	Access rights to results of the project
For carrying out the project	if a participant needs them for carrying out its own tasks in the project	
	Royalty-free unless otherwise agreed in Attachment 1 (Background included)	Royalty-free
For exploitation	if a participant needs them for exploiting its own results	
	Fair and reasonable conditions	<u>Option 1</u> : Fair and reasonable conditions; internal research royalty-free <u>Option 2</u> : Royalty-free

Background



Model Grant Agreement requires the consortium to *identify and agree on the Background for the action.*

DESCA version 3.0.	DESCA 2020 version 1.0
<p>Principles Option 1:</p> <ul style="list-style-type: none">- Attachment 1: Background included.- Party may add, but only withdraw with approval of GA.- Anything not mentioned shall be excluded.- Furthermore, in attachment 2, specific Background may be excluded.- Party may withdraw, but only add with approval of GA. <p>Principles Option 2:</p> <ul style="list-style-type: none">- Attachment 2: Background excluded.- Anything not mentioned	<p>9.1.1 In Attachment 1, the Parties have <u>identified and agreed on the Background</u> for the Project and have also, where relevant, informed each other that Access to specific Background is subject to legal restrictions or limits.</p> <p><u>Anything not identified in Attachment 1 shall not be the object of Access Right obligations regarding Background.</u></p> <p>9.1.2 Any Party can propose to the General Assembly to modify its Background in Attachment 1.</p>

Attachment 1



PARTY 1

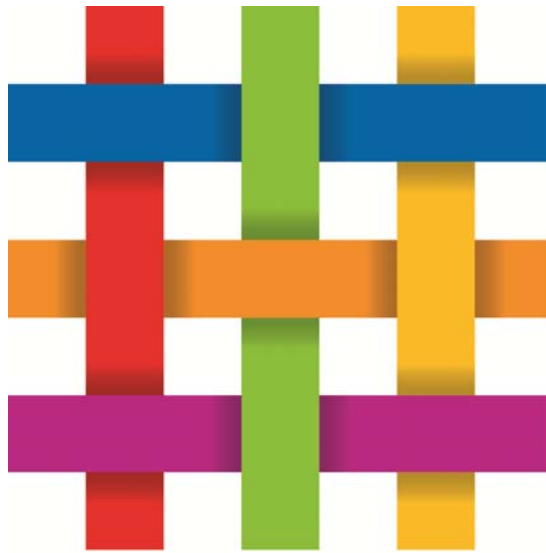
As to [NAME OF THE PARTY], it is agreed between the parties that, to the best of their knowledge (*please choose*),

Option 1: The following background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

Describe Background	Specific limitations and/or conditions for implementation (Article 25.2 Grant Agreement)	Specific limitations and/or conditions for exploitation (Article 25.3 Grant Agreement)
...
..

Option 2: No data, know-how or information of [NAME OF THE PARTY] shall be Needed by another Party for implementation of the Project (Article 25.2 Grant Agreement) or exploitation of that other Party's Results (Article 25.3 Grant Agreement).

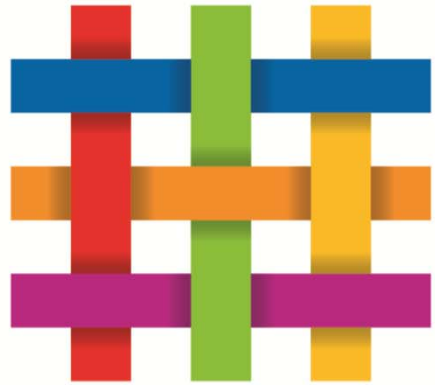
This represents the status at the time of signature of this Consortium Agreement



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