



Intellectual Property and Open Access in MSCA

NCP Academy training on Legal and Financial
Aspects of Marie Skłodowska-Curie Actions

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Jana Kratěnová

IP/IPR in MSCA

- Intellectual Property (**IP**)
 - **creations of the mind**, such as inventions; intangible outputs of intellectual activity ;
- Intellectual Property Rights (**IPR**)
 - **rights given to persons over creations of their mind** (e.g. invention – patent; research article – copyright; ...)

IPR management in H2020 MSC actions = dealing with “information, data, know-how and pertaining IPR” :

BROUGHT INTO THE ACTION

- any data, know-how or information — whatever its form or nature (tangible or intangible), including any rights such as intellectual property rights — that:
 - is held by the beneficiaries before they acceded to the Agreement, and
 - is needed to implement the action or exploit the results,
 - is identified and agreed upon in writing by beneficiaries.

CREATED IN THE ACTION

- any (tangible or intangible) output of the action such as data, knowledge or information — whatever its form or nature, whether it can be protected or not — that is generated in the action, as well as any rights attached to it, including intellectual property rights.

Background

Results

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Background

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Results

<http://www.leru.org/files/general/LERU%20template%20for%20MSCA%20ITN%20ETN.pdf>



e.g. within MSCA ITN LERU Draft **Consortium Agreement**

Attachment 1: Background included

According to the Grant Agreement (Article 24) Background is defined as “data, know-how or information (...) that is needed to implement the action or exploit the results”. Because of this need, Access Rights have to be granted in principle, but parties must identify and agree amongst them on the Background for the Project. This is the purpose of this attachment.

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.

PARTY 2

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

- any data, know-how or information — whatever its form or nature (tangible or intangible), including any rights such as intellectual property rights — that:
 - 1. Who owns R?**
 - 2. With whom B/R need to be shared?**
 - 3. What are MSCA MGA obligations related to R?**
- any (tangible or intangible) output of the action such as data, knowledge or information — whatever its form or nature (tangible or intangible), including any rights such as intellectual property rights — that:
 - is held by the beneficiaries
 - is needed to implement the action or exploit the results,
 - is identified and agreed upon in writing by beneficiaries.
- any (tangible or intangible) output of the action such as data, knowledge or information — whatever its form or nature (tangible or intangible), including any rights attached to it, including intellectual property rights.

Background

Results

Results

1. Who owns?

- *REA?*
- *Beneficiary?*
- *Researcher?*

- are owned by the **beneficiary** that generates them

- Challenges

- Partner organisation
- Researcher

**third parties
with rights on
results**

beneficiary **must ensure** that the third party complies with
the beneficiary's obligations under the GA

through *Partnership Agreement, Employment Contract/Contract with
the Researcher, other contracts, etc.*

- Results owned by **more beneficiaries** (e.g. ITN, RISE) – **joint ownership**
- *GA* - rules for licencing jointly owned results by joint owners applicable
 - until *Joint Ownership Agreement* is entered into
 - or
 - unless there are other provisions in *Consortium Agreement* (e.g. MSCA ITN LERU CA)

2. With whom to share?

- *Recruited researcher – use of Background (database) of University (beneficiary) – creates Results (new database)*
 - *Right to use B. database for free during recruitment?*
 - *Right to use B. database, which is needed for exploitation of R. database (usually after the action itself is over) for free?*

Background 2. With whom to share?

ACCESS RIGHTS TO BACKGROUND	With seconded staff members (RISE)/ recruited researchers (ITN, IF)		With other beneficiaries (ITN, RISE)	
	For project implementation purposes	For results' exploitation purposes	For project implementation purposes	For results' exploitation purposes
	Royalty-free	-	Royalty-free, unless ...	Royalty-free, or on fair and reasonable conditions

2. With whom to share?

ACCESS RIGHTS TO RESULTS	With seconded staff members (RISE)/ recruited researchers (ITN, IF)		With other beneficiaries (ITN, RISE)	
	For project implementation purposes	For results' exploitation purposes	For project implementation purposes	For results' exploitation purposes
	Royalty-free	-	Royalty-free	Royalty-free, or on fair and reasonable conditions

2. With whom to share?

With the EU institutions, bodies, offices or agencies and EU Member States

**ACCESS
RIGHTS
TO
RESULTS**

For developing, implementing or monitoring EU policies or programmes

Royalty-free

Such access rights are limited to non-commercial and non-competitive use.

3. MSCA MGA obligations related to Results

- Protect
- Exploit
- Disseminate
 - Incl. Open Access

3. MSCA MGA obligations related to Results

- **Protect**

- Examine possibility of protecting results and **adequately protect** if
 - Reasonable – commercial/industrial exploitation
 - Possible, justified
- Other beneficiaries **legitimate interests** (*RISE, ITN*)
- Agency right to **assume ownership to protect** results
- Applications for e.g. patent – **visibility of EU funding**:
"The project leading to this application has received funding from the European Union's Horizon 2020 research and innovation programme under the Marie Skłodowska-Curie grant agreement No [number]."

3. MSCA MGA obligations related to Results

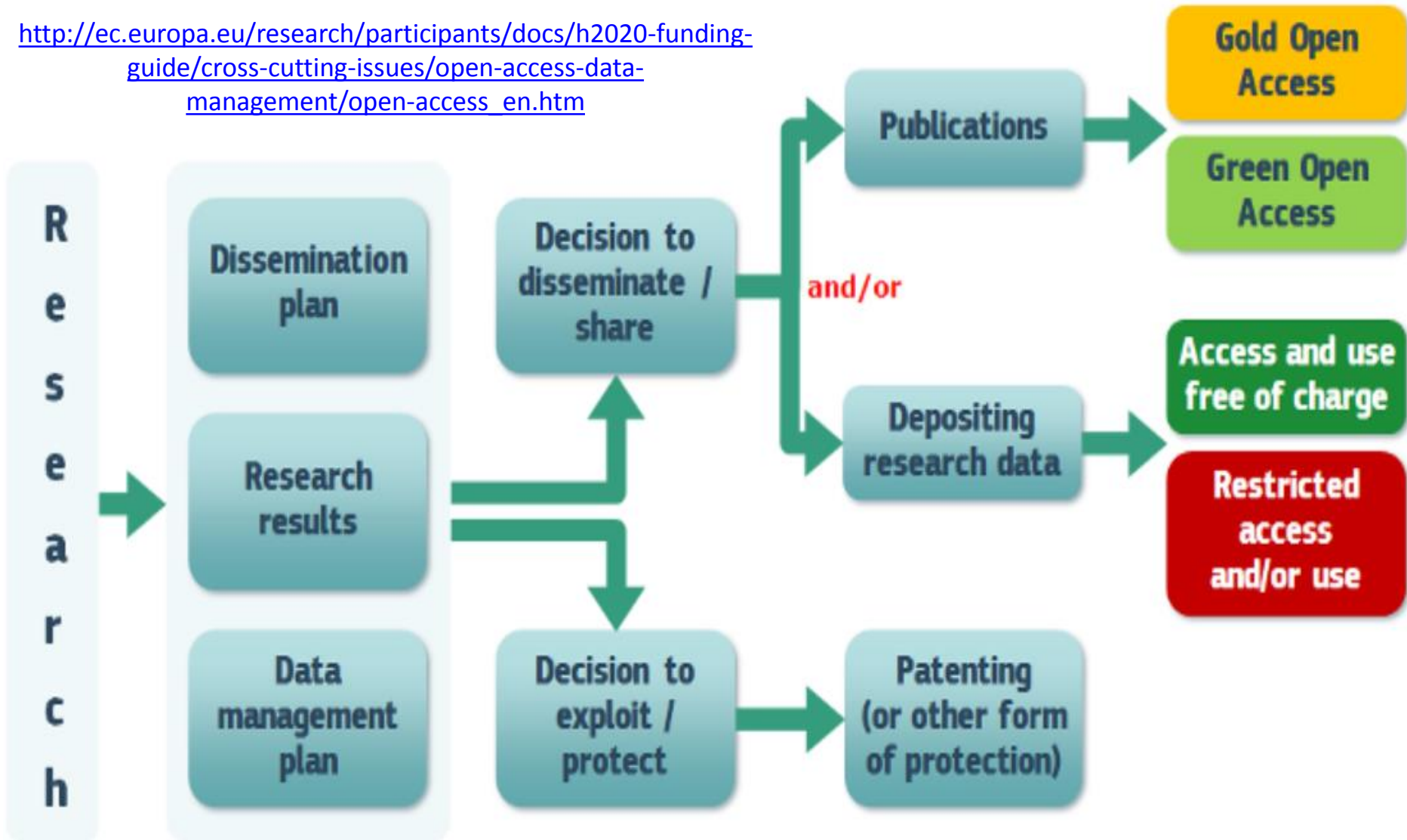
- Protect
- **Exploit**
 - Take measures
 - Up to 4 years
 - Directly/indirectly
 - Further research, product or process, services, standardisation

3. MSCA MGA obligations related to Results

- Protect
- Exploit
- Disseminate
 - Incl. Open Access
 - Making results public – various ways
 - As soon as possible, but...
 - Advance notice to other beneficiaries & possibility to raise objections against dissemination (*RISE, ITN*)
 - **Open Access**

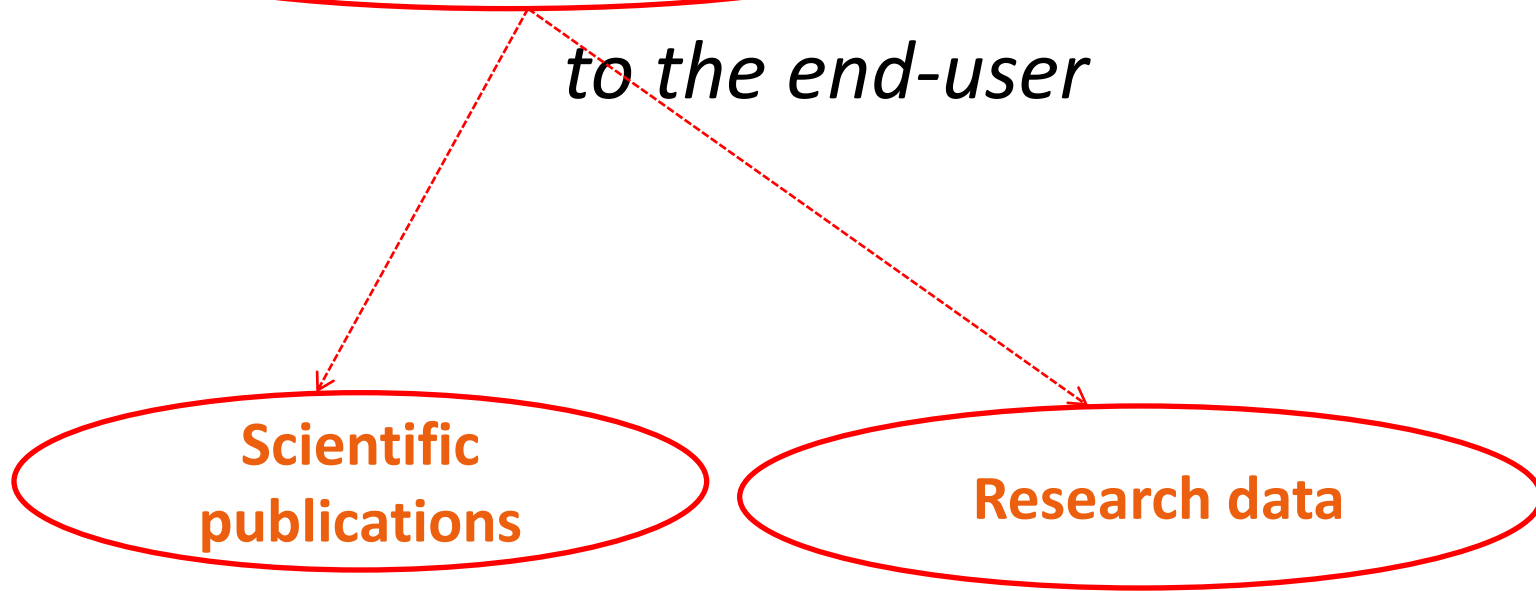
Dissemination – Open Access (OA)

http://ec.europa.eu/research/participants/docs/h2020-funding-guide/cross-cutting-issues/open-access-data-management/open-access_en.htm



Open Access in MSCA

*practice of providing on-line access
to **scientific information** that is free of charge
to the end-user*



OA to scientific publications

- **NO** obligation to publish on project results
- **IF** decision to publish – Open Access only

WHAT EXACTLY

- *all peer-reviewed scientific publications (research articles) relating to its results*

HOW

GOLD OA

OA publisher or “hybrid” journals

Immediate OA

GREEN OA (self-archiving)

Non-OA publisher

Delayed/immediate OA

Depositing

OA to scientific publications

HOW TO PROCEED

- Deposit publication (incl. underlying data, if possible) at the time of publication
- Provide OA
 - Green OA – up to 6/12 M from publication
 - Gold OA – immediately

FINANCES

- Gold OA – eligible costs, if ...
- (*FP7 post-grant OA pilot*)

OA to research data

- Information, in particular facts or numbers, collected to be examined and considered and as a basis for reasoning, discussion, or calculation;
- Examples of data - statistics, results of experiments, measurements, ...
- Digital form
 - **Underlying data**
 - **Other data**

Extended Open Research Data Pilot

OA to research data

- Must be provided **unless beneficiary decides to OPT – OUT** (anytime)
 - IP protection, personal data protection, security reasons, other legitimate interests, ...
- Data Management Plan
 - proposal stage VS project implementation

HOW TO PROCEED

- Deposit generated research data
- Provide OA

FINANCES

- Eligible costs, if...

Extended Open Research Data Pilot

Please answer YES/NO

	YES/NO
Background is usually agreed upon in Consortium Agreement; model consortium agreement for ITN was prepared by REA	
Recruited researcher (RR) may use a University background for action implementation purposes for free, unless agreed otherwise between University and RR in employment contract.	
Any peer-reviewed scientific research article, which results from MSCA action, must be published in so called OA journal, i.e. Gold OA route is the only possibility	
Any peer-reviewed scientific research article must be deposited, regardless of the chosen OA route (Green or Gold)	
As soon as GA is signed, it is not possible to opt-out from OA data pilot	
Proposals are penalised for opting - out	

Thank you for your attention!

kratenovaj@gmail.com