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How to prepare a consortium agreement - focus on specific item -

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1) How to prepare a consortium agreement

- A consortium agreement is required for all Horizon Europe collaborative projects. There is no institutional template for this document, but consortia of actors make them available.
- The consortium agreement is a mandatory document for Horizon Europe collaborative research projects. Beneficiaries negotiate it to specify their rights and obligations. The European Commission is not a party to this agreement, but requires its signature in the grant agreement. It must specify, in particular,
 - the conditions of governance of the project,
 - the distribution of funding between the participants,
 - the rules on intellectual property, confidentiality, liability and conflict management between the partners.



The European Commission does not propose a model, the partners being free to choose the provisions that best correspond to the project's balance. Some actors propose models. This is the case of DESCAs, a non-sectoral, public-private model drawn up by a committee comprising: ANRT (National Association for Research and Technology), EARTO, KoWi, LERU, VTT, ZENIT, Fraunhofer, Helmholtz.

A principal objective of DESCAs (**Development of a Simplified Consortium Agreement**) is to provide a Model Consortium Agreement which seeks to balance as fairly as possible the interests of all partners in an EU framework programme project. In order to achieve this objective, the DESCAs Core Group has worked closely with more than 80 contract experts from many other organisations - representing large and small firms, universities, and research organisations.

DESCAs is a model which needs to be adapted to the circumstances of the individual project



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How to use the DESCAs Model

The DESCAs Model and the different Options and Modules

DESCAs aims to provide, as far as possible, a single text which balances the interests of all types of project participants. However, DESCAs recognises that different projects will have different objectives and that the interests of the partners may also differ. To accommodate such differences, the DESCAs Model Consortium Agreement offers:

- ❖ alternative modules for small and medium projects and large projects
- ❖ an optional module for projects with a strong software focus
- ❖ options in the IPR section and finance section.

It is recommended that you process as follows:

- ❖ Download and read carefully the DESCAs version (with elucidation notes)
- ❖ Decide whether you have a Small or Medium Project or a Large Project, and try to align as much as possible the management part of the project proposal with one of the DESCAs options



1) What model ?

The DESCA Small and Medium Project module will normally be fit for purpose for projects with a modest number of work packages, and provides for a General Assembly of all project participants.

Some projects are more complicated and require an intermediary governance structure. The DESCA **Large Projects module** allows for a General Assembly and also an Executive Board.

2) The IPR section

The **IPR section** offers various possibilities. Two options are provided for the clause on conditions for **Access Rights to Foreground for Use**:

Option 1 provides for fair and reasonable conditions

Option 2 provides for royalty-free access



3) The FINANCIAL SECTION

In the **Finance Section** two options are provided regarding the transfer of EC contribution:

Option 1 provides for a **security mechanism**

Option 2 provides for a **forwarding of all Community funds**

If your project has a strong **software focus**, you may add the module for Software which provides more detailed provisions on sub-licensing rights, open source code, etc.

To conclude

DESCA aims to be user friendly. To this end, the standard DESCA text has been drafted for "mainstream" projects and does not attempt to take account of all the potential alternatives for a given situation.

Once that you have selected the DESCA scenario which best corresponds to your type of project, you will need to **fine-tune the text** to the specific needs of your project and consortium. Fine-tuning requires careful consideration of critical issues and of internal policies. Please bear in mind that DESCA is only a model – please adapt it to the needs of your project!



Argumentative reading of the DESCAs model



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2) The Nagoya protocol and the MTA

What is and what says the Nagoya Protocol ?

The Full name is : ***The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity***

We also speak about : **ABS = Access and Benefit Sharing to Genetic Resources.**

It is an international agreement which aims at sharing the benefits arising from the utilization of genetic resources in a fair and equitable way. It entered into force on 12 October 2014, 90 days after the date of deposit of the fiftieth instrument of ratification.

It provides a transparent legal framework for the effective implementation of one of the three objectives of the CBD: the fair and equitable sharing of benefits arising out of the utilization of genetic resources.



Why is the Nagoya Protocol important?

The Nagoya Protocol will create greater legal certainty and transparency for both providers and users of genetic resources by: Establishing more predictable conditions for access to genetic resources.

It will help to ensure benefit-sharing when genetic resources leave the country providing the genetic resources and by helping benefit-sharing, the Nagoya Protocol creates incentives to conserve and sustainably use genetic resources, and therefore enhances the contribution of biodiversity to development and human well-being.



Adopted in 2010, the Nagoya Protocol entered into force on 12 October 2014.

This protocol establishes an international legal framework based on three components:

- access to genetic resources and associated traditional knowledge for use: **states may decide to make such access subject to their prior informed consent or that of the traditional communities concerned;**
- benefit-sharing: this must be fair and equitable and is subject to mutually agreed terms between the user and the provider country or traditional community concerned
- compliance: **States Parties must adopt measures** to ensure that access to genetic resources and associated traditional knowledge used under their jurisdiction is consistent with the domestic access and benefit-sharing regulations of the provider countries



What does the Nagoya Protocol cover?

The Nagoya Protocol applies to genetic resources that are covered by the CBD, and to the benefits arising from their utilization. The Nagoya Protocol also covers traditional knowledge (TK) associated with genetic resources that are covered by the CBD and the benefits arising from its utilization.

Contact in Serbia

National Website

National CHM

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Translation into European law

Regulation (EU) No 511/2014 of the European Parliament and of the Council of 16 April 2014 on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union

Presentation of the REGULATION

This Regulation establishes rules governing compliance with access and benefit-sharing for genetic resources and traditional knowledge associated with genetic resources in accordance with the provisions of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (the 'Nagoya Protocol').



MTA : Material Transfert Agreement

The Nagoya Protocol and its transcription into European law amounts to using a contract between the donor and the recipient called the MTA

The Annex 2 of the MTA aims at fulfilling the obligation made by Article 4.3 of the EU Regulation 511/2014 to communicate, in case of transfer of a genetic resource, a number of documents and information to the recipient. If you do not have certain information or documents, indicate "Unknown / Not available" so that the partner knows and accepts the missing information in full knowledge of the facts, before discovering later that you cannot provide him with the information he needs to apply for authorisations.



A couple of things to know about the MTA

Purpose : to protect the transmission of biological, genetic, plant or animal material and the information associated with it to prevent the recipient of the material from appropriating, disseminating or exploiting it without the consent of the provider of the material.

Exclusions: Software, database => a licence is required.

It is not a simple secrecy agreement which is intended to protect only the transfer of information.

In the MTA, there is also a transfer of material which entails **additional obligations** for the recipient of the material (e.g. obligation not to patent the material as such) or specific provisions for the material (e.g. prohibition to reproduce the material, obligation to destroy the material at the end of the contract), obligations which are not contained in a confidentiality agreement stricto sensu.

It is not a research contract. The supplier has no rights to the results. It is not a licence agreement. The supplier has no right to exploit the results.

Presentation of Auto-Evaluation document



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3) Non-Disclosure Agreement

Short Presentation of the template



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