



EUROPEAN COMMISSION
Directorate-General for Research & Innovation

Guidance

How to draw up your consortium agreement

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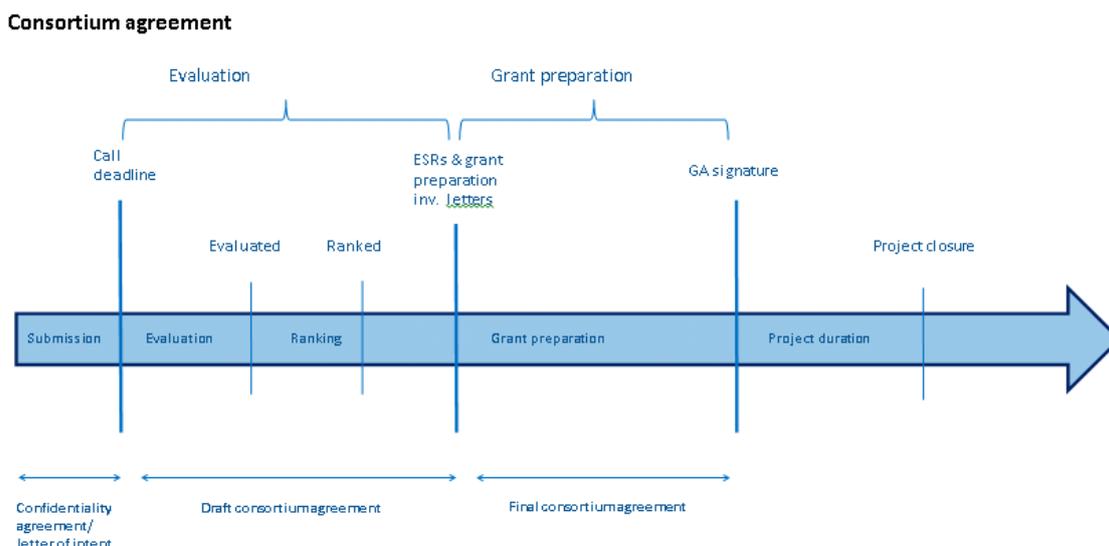
IMPORTANT NOTICE

This document aims to assist **applicants/beneficiaries** in **drawing up a consortium agreement** for Horizon 2020 projects (— mandatory for all multi-beneficiary projects, unless the call/work programme provides otherwise).

The consortium agreement should set the framework for a successful project implementation (i.e. settle all issues that might hamper the smooth and seamless cooperation of the different actors for the different parts of the project).

It should in principle be negotiated and concluded **before signing the grant agreement**.

Figure 1 — consortium agreement time-line diagram



The consortium agreement is a private agreement between the beneficiaries, to set out the rights and obligations amongst themselves. (⚠ It does NOT involve the European Commission/Agency.)

It should **complement** the grant agreement and must NOT contain any provision contrary to it.

You remain **fully responsible for your consortium agreement**. This document is necessarily general and may not address your specific needs. For complex consortia, you should seek professional legal advice if needed.

Other information

⚠ This document is limited to the consortium agreement for H2020 projects.

For a more general overview of how Horizon 2020 grants work, see *the Online Manual*. For detailed information, see *the H2020 AGA — Annotated Grant Agreement* on the Participant Portal.

A comprehensive list of Horizon 2020 reference documents (including legislation, work programme and templates) can be found in the '[Reference documents](#)' page of the Participant Portal.

Horizon 2020 terms are explained in the [Glossary](#) of the Participant Portal.

If you need help, you can also contact the [Research Enquiry Service](#) helpdesk.

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1. Proposal phase: Preparing the consortium

During the proposal phase, you will need to **commit yourselves to** a common **project** and draw up a joint **proposal**.

You will need to:

- **share important information** about the state of play of your research, your approach to the project, and the goals that your proposal is to meet
- negotiate your project's technical and commercial specifications
-  Avoid focusing too much on specific internal policies or strategies.
- share information about your operational capacity (to see how it complements others' capacity), pre-existing intellectual property ('background'), etc.
- submit information on your operational capacity to the Commission/Agency
- choose a **name for your project**
- **prepare the consortium agreement** (preferably by drafting an outline or draft consortium agreement)

1.1 Typical issues & how to address them

Typical issues arising at the proposal stage include the **commitment** to the project, the **confidentiality** of the information shared and the choice of a **name or acronym** for the project.

▪ Formalising the commitment

During the proposal phase (and before submitting the proposal), you should **formalise your negotiations** (through a '**letter of intent**' or as part of a '**confidentiality agreement**'; see *below*). This will give you some legal certainty. It will also facilitate cooperation and the exchange of information.

'Letters of intent' or 'memoranda of understanding' are agreements outlining the framework for negotiations between applicants, usually drawn up at the outset of negotiations on involvement in a project.

A letter of intent is not usually legally binding, but applicants could include some binding rules (*e.g. confidentiality obligations*). Even if non-binding, a letter of intent is more formal than a 'gentlemen's agreement', which is often unwritten. Signing a letter of intent is an official sign that the applicants have a shared interest in achieving a given result, and may make a successful outcome more likely.

The letter of intent (or confidentiality agreement) should set out:

- the shared intentions (i.e. taking part and the substance of the proposal)
- rules on communication, sharing information, confidentiality and reporting (unless included in a separate confidentiality agreement)
- the conditions of termination.

This gives the parties a framework for further negotiations. Moreover, it allows the coordinator to declare that all applicants have explicitly consented to:

- taking part and
 - the substance of the proposal.
- Sharing information — Confidentiality issues

Sharing information between applicants entails a risk of it being disclosed or used for the wrong purpose.

To avoid any such misuse, applicants should commit themselves (either in the letter of intent or in a separate confidentiality agreement) to honouring certain confidentiality obligations. They should accept restrictions on:

- using confidential information
- disclosing it.

'Confidentiality agreements' are agreements that set out the conditions under which applicants may disclose or use secret or confidential information (*e.g. the research idea for the project*).

The confidentiality agreement should typically set out:

- a definition of what constitutes confidential information
- the confidentiality obligations (including their scope and duration)
- penalties for breach of confidentiality obligations (if necessary)

Confidentiality obligations: scope. The confidentiality agreement should set out that it is permissible to pass on confidential information shared among applicants to a specified circle of persons/organisations, on a '**need to know**' basis and subject to certain **conditions**.

Applicants may, for instance, need to share confidential information with identified '**linked third parties**' that will participate in the project (i.e. non-consortium organisations with which they have links).

 Define the concept of 'linked third party' using the definitions in the Model Grant Agreement, to make it clear which organisations or individuals are subject to confidentiality obligations.

To avoid requiring the linked third parties to sign confidentiality obligations, you can guarantee that any confidentiality obligations to which you are subject also apply to your linked third parties (as defined in the confidentiality agreement).

When establishing confidentiality obligations, remember that the links between a linked third party and an applicant may be severed. (For instance, the entity could be sold or merged with another organisation. You could stipulate that in such cases the entity concerned must return any confidential information it has received.)

Similarly, applicants may need to disclose information to **employees** or **other staff**.

Although employees often have a duty of confidentiality to their employer under national labour law, they should be made aware of their specific obligations to keep this information confidential.

You should explicitly guarantee that employees or other staff with whom the information is shared will keep it confidential.

Employees' confidentiality obligations should preferably continue after they stop working for you, if national law allows this.

Confidentiality obligations: duration. The confidentiality agreement should set the time-limit of the confidentiality obligations (typically starting from either the date on which the agreement takes effect or the date on which the confidential information was given).

Penalties for breach of confidentiality. A breach of confidentiality may cause significant damage but the damage may be difficult to prove. To prevent this, you may wish to include a contractual penalty in the confidentiality obligations (if allowed under national law).

▪ **Project name — Trademark issues**

At the proposal stage, you and your fellow applicants must choose a name and acronym for your project.

It must not be one that can be confused with existing names.

Moreover, your choice may be limited by other rights (*e.g. trademarks and domain names*).

 Avoid choosing a project name or acronym that is identical or similar to another organisation's registered trademark or domain name, especially if it is active in the same area. This is especially important if you and your partner(s) plan to make commercial use of the name or acronym later on.

You can use certain tools to search for previously registered trademarks or domain names.

There are free search tools for **trademarks**, provided by the [EU Office for Harmonisation in the Internal Market \(OHMI\)](#) and by the [World Intellectual Property Organisation \(WIPO\)](#). You can also contact your national intellectual property office.

For **domain names**, you can check your suggested project name in the [WHOIS database](#).

▪ **Preparing the consortium agreement**

Draft consortium agreement. Even at the proposal stage you should at least draw up a draft consortium agreement. This enables you to discuss and agree on how to handle important (and often sensitive) matters. The draft can then be used as a starting point for further discussions if the proposal is accepted.

The draft agreement should give a first idea on:

- project implementation and division of tasks
- internal organisation and management of the consortium and user rights on the Participant Portal
- project budget and distribution of EU funding
- additional rules on rights and obligations related to background and results
- liability, indemnification and confidentiality arrangements between the beneficiaries
- boilerplate provisions: duration, termination, communication, applicable law, settlement of internal disputes etc.

2. Grant preparation phase: Drawing up the consortium agreement

Successful proposals will be invited to 'grant preparation'.

In this phase, any preliminary agreements you have made should be replaced by a consortium agreement that should be concluded before the grant agreement is signed.

2.1 Typical issues & how to address them

The consortium agreement allows you, as consortium members, to agree on any specific details not covered by the grant agreement, such as the organisation of work, intellectual property management, liability, and future exploitation and dissemination of results.

A consortium agreement is not a concept detailed further in law. Therefore, the agreement itself must spell out all the parties' rights and obligations.

In principle, the agreement may include any arrangements you wish to make, as long as they are not contrary to the grant agreement and the Horizon 2020 Rules for Participation Regulation No 1290/2013¹.

Model consortium agreements are available from different sources.

 Note that these have NOT been developed or endorsed by the Commission.

 For more information on model consortium agreements, see the [IPR Helpdesk](#).

Issues that typically arise include:

- **Preamble**

The preamble sets the scene and provides the context for the agreement.

¹ Regulation (EU) No 1290/2013 of the European Parliament and of the Council of 11 of December 2013 laying down the rules for the participation and dissemination in Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020) (OJ L 347, 20.12.2013, p.81).

It may refer to any agreements previously made by the parties, such as a letter of intent or confidentiality agreement, and may refer to the grant agreement and/or to the call for proposals.

▪ **Parties — Involvement of third parties**

The consortium agreement should give the official name for each member of the consortium ('parties to the agreement' — the corresponding term in the grant agreement is 'beneficiaries').

You might also like to add other interested parties to the consortium agreement, in addition to the beneficiaries (*e.g. linked third parties*), in particular if they will carry out tasks during the project.

▪ **Definitions**

Defining specific terms in a 'definitions' section helps to avoid misunderstandings about the extent of a particular right or obligation.

 Use the definitions of the H2020 Model Grant Agreements wherever possible. (No need to repeat them, a simple cross-reference is sufficient).

▪ **Internal organisation — Managing the consortium**

The bulk of the consortium agreement normally concerns 'governance'.

Since a consortium, by definition, involves several different parties, often from different Member States and with different languages and customs, the rules on efficiently managing and organising the consortium should be set out clearly. Proper management of the consortium is needed to achieve results and to efficiently disseminate and exploit these results.

Provisions on governance usually cover:

- set-up and ways of working of coordination and management bodies
- the powers and responsibilities of these bodies
- voting rules.

They may also say:

- how often meetings will be held
- how parties should communicate and correspond with each other and the management bodies
- how the project should be followed up and supervised
- what rules will apply if a partner wants to leave the consortium or if a new party wants to join when the project has already started.

The larger the consortium, the more detailed the management rules need to be.

Managing user rights on the Participant Portal. The consortium agreement should define the roles and Participant Portal user rights (for project information and project management tasks, *e.g. filling in forms*,

uploading documents, submitting information and signing documents).

The consortium can assign most of the required user rights to anyone it considers necessary, and revoke them if necessary.

The consortium agreement should include provisions on managing and maintaining user rights assigned to persons involved in the project, so that information isn't accessed inappropriately and all transactions are appropriately authorised. These provisions should cover what happens when persons leave or change role in the project or in the organisation, and what happens if applicants/beneficiaries end their involvement with the project.

 For more information on Participant Portal roles and user rights, see the [Online Manual](#).

▪ **Project implementation — Division of tasks**

The consortium agreement should cover matters such as:

- the tasks assigned to each party
- the project schedule
- how changes can be made to the project
- the conditions under which other persons/organisations (*e.g. linked third parties, seconded persons or subcontractors*) are brought in to the project.

▪ **Project budget — Contributions — Receipts**

The consortium agreement should address issues such as:

- distribution by the coordinator of the payments received by the Commission/Agency
- contributions
- receipts.

 Any specific arrangements must NOT conflict with the general rules set out in the grant agreement.

Contributions. The agreement should set out in detail the contributions made by each consortium member and whether these are made in cash or in kind.

Receipts. In the consortium agreement, you should also consider the potential implications of contributions and income received, since, when these qualify as receipts, they will be considered at project-level, ( and NOT at beneficiary-level, as it was under FP7). A beneficiary's income may mean the grant for the project is reduced because of the non-profit rule (*see Article 5.3.3 of the H2020 General MGA*). Therefore, if such receipts are expected, the consortium agreement should set out how this will be managed.

▪ **Intellectual property rights — Exploitation and dissemination of results**

The consortium agreement should set out flexible and efficient rules to encourage and support cooperation between the beneficiaries as regards intellectual property. They may include agreeing on:

- the background (*e.g. positive or negative list*)
- protection, dissemination and exploitation of results
- how joint ownership will be managed
- transfers of ownership provisions
- any additional rules on access rights
- how third party involvement will be managed.

 They must NOT conflict with the rules set out in the grant agreement.

Protection, dissemination and exploitation of results. The consortium agreement should set out rules how results will be identified, reported, protected, disseminated and exploited.

You should put in place a process to identify valuable results. The grant agreement requires a beneficiary to notify the other beneficiaries before disseminating results which allows you to review the content before it is disseminated and, if appropriate and justified, to seek protection for the results. ( Note that regimes for the protection of results may vary depending on where protection is sought.).

Parties may have different interests as regards the dissemination of results. Some parties may have an interest in publishing them (*e.g. in dissertations or scientific papers*); others may wish to keep them confidential (to gain or maintain a competitive advantage).

 The rules should ensure that decisions on disseminating the results take due account of the interests of all beneficiaries affected, while still allowing (at least part of) the results to be disseminated without unreasonable delay.

Joint ownership. If two or more beneficiaries jointly produce results in the project, and you can neither identify each beneficiary's contribution nor separate the results to protect them, the beneficiaries will jointly own the results (default regime under Article 26 of the H2020 General MGA). The grant agreement requires joint owners to agree (in writing) on the terms of their joint ownership. You could do this in the consortium agreement.

 If results are jointly created and you do NOT want the default joint ownership scheme, you can agree on a different ownership scheme (*e.g. making one party the owner of the results, and giving the others the right to access them*). This can only be done once the results have been generated.

Third party involvement. If you need help from other parties (including linked third parties) to carry out the project or to exploit its results, the consortium agreement should explicitly cover this, especially if they will play a significant role.

You may need to put in place additional rules (*e.g. additional confidentiality obligations or additional access rights*) and you must ensure that any agreements you make with these persons/organisations allow you to meet your obligations under the grant agreement and the consortium agreement.

▪ **Confidentiality obligations**

The consortium agreement should set out the conditions under which the parties may disclose or use secret or confidential information (*see above*). It should typically set out:

- a definition of what constitutes confidential information
- the confidentiality obligations (including their scope and duration)
- penalties for breach of confidentiality obligations (if necessary).

▪ **Liability, warranties & penalties — Financial responsibility for rejection of costs, reduction of the grant, recoveries and damages**

Liability. The consortium agreement should cover each party's liability for actions or omissions in the project (and possible guarantees, indemnities and penalties).

It should, in particular, cover:

- the procedure to be followed (*e.g. for serving the party with a warning, giving them the opportunity to object to the charge or to rectify the situation within a given period*)
- liability for damage caused and the related indemnification (and possible limitations of liability, including *force majeure*)
- possible penalties for non-compliance (stipulating clearly the terms of the penalties, *e.g. the amounts, the procedure for imposing a penalty and the interest due in cases of late payment*).

 Again, consortium members may have different interests. Some parties may be reluctant to participate in the project without a reasonable cap on liability (especially if they are not able to build up sufficient financial reserves to deal with cases where it must pay damages, which is normally the case particularly for small enterprises, start-ups and non-profit research institutions); others may be reluctant to participate if there is no liability.

When limiting liability in a consortium agreement you should check whether the applicable national law allows liability to be limited in the way envisaged. (In many countries, for instance, excluding liability for fraud or wilful misconduct is not allowed.)

You should also decide whether or not you will guarantee in the

consortium agreement that your background or results do not infringe third party rights. (Although there is always a certain degree of risk in making this kind of guarantee since it is almost impossible to check worldwide whether someone else's intellectual property rights may come into conflict.)

The arrangements in the consortium agreement could include a specific conflict resolution system for potential disputes.

Rejection of costs, reduction of the grant and recoveries. Although it does not happen very often, the Commission/Agency may reject the costs declared by the consortium or reduce the grant (normally after an audit). In this case, the grant agreement defines the way the financial responsibility is normally shared between the beneficiaries (*see Articles 42, 43 and 44 of the H2020 General MGA*).

 If you would like to share financial responsibility between members of the consortium differently, this should be done via the consortium agreement.

Damages. Under the grant agreement, each beneficiary is liable for the damages it causes to the Commission/Agency (*see Article 46 of the H2020 General MGA*).

 If you would like to share financial responsibility between members of the consortium differently, this should be done via the consortium agreement.

▪ **Boilerplate provisions**

'Boilerplate provisions' are standard contractual provisions included in agreements of all kinds. They set out the basic terms of an agreement, such as:

- its start and duration (i.e. entry into force and end (including early termination))
- methods for resolving disputes (in court, via arbitration or via mediation)
- the procedure for amendments (and the types of changes that require one)
- contact points for any correspondence
- the law applicable to the agreement.

Boilerplate provisions can also cover:

- waivers (which allow you to give up the right to sue the other parties for breach of a particular provision, without giving up any future claims under that provision)
- severability (which allows a court to remove a provision that isn't valid, while still keeping the rest of the agreement intact)
- assignments (which refers to your ability to sell or transfer your rights)

under the agreement to another party)

You may decide to prohibit any assignment of rights, or to allow rights only to be assigned to affiliated entities, etc.

- force majeure (which means that no party is responsible for failures or delays if these are caused by circumstances beyond its reasonable control). These usually include:
 - fire
 - floods
 - storm
 - earthquakes
 - war
 - terrorism
 - fuel shortages
 - transport embargoes.