



ERA-IB Consortium Agreement Guideline with Principles of IPR

WHEREAS the Parties to 'the Consortium Agreement for ERA-Industrial Biotechnology' with EU-contract number 291814 (ERAC) ERA-IB (hereinafter: the Consortium Agreement) shall be aware that this Consortium Agreement with its annexes and including its definitions is legally binding and precedes later made agreements;

WHEREAS in the Consortium Agreement terms as 'Project', 'Parties' and 'Consortium Agreement' have already a specific meaning, by which these terms cannot be used in the context of research programs and/or projects financially supported and monitored by ERA-IB (hereinafter: ERA-IB-projects);

WHEREAS the Parties to the ERA-IB Consortium Agreement do not assume that the Project Work under the Consortium Agreement for ERA-IB will generate know how that is capable of industrial or commercial application, and the results of research carried out due to the Project, but not financed by the means of the Project Budget are not part of the intellectual property rights of the ERA-IB Consortium;

WHEREAS the availability of – by all the Parties to the Consortium Agreement approved - Principles of IPR (hereinafter: the IPR-Guideline) for use within the ERA-IB-projects is advisable in order to have a same starting point regarding intellectual property rights for all ERA-IB-projects, and to obtain a sufficiently balanced distribution of rights and duties for the ownership, use and exploitation of knowledge and results among those Parties who cooperate within a specific ERA-IB-project;

WHEREAS the nature of the Consortium Agreement leads to ERA-IB-projects of which the parts (Subprojects) will be subsidized by several (national) funding organizations (ERA-IB parties) and executed in several knowledge institutes and/or companies that may have different IPR-regimens;

The Parties to the Consortium Agreement approve the following Guideline:

1. Definitions

In addition to the definitions already given in the Consortium Agreement and its annexes, the following expressions shall have the meaning specified:

Background IP IP-rights relating to the subject matter of an ERA-IB-project and already existing before the start of the project;

Collaborators	the parties that are entitled to get the grant and that shall jointly execute the activities under a specific ERA-IB-project;
EB	the Executive Board of ERA-IB;
ERA-IB-CA	a consortium agreement concluded at the start of each ERA-IB-project between the Collaborators;
ERA-IB-project	any research program or project financially supported and monitored by ERA-IB;
Foreground IP	IP-rights generated in or arising out of an ERA-IB-project;
Patent	any and all patents and patent applications, including all related patents anywhere in the world or claiming priority there from;
Results	the results, conclusions and findings of an ERA-IB-project;
Subproject	Part of an ERA-IB-project, executed by one (or more) Collaborator(s), funded by one of the funding organizations.

2. Provisions

The provisions of the articles 3, 4 and 8 are binding, whereas the provisions of the articles 5, 6 and 7 shall be considered as supplementary guidelines which may be deviated from. If no deviations are to be agreed, these Articles 5, 6 and 7 should be applied as the default.

3. Ownership and protection of Results

The Results shall be the property of the Collaborator who has generated it. This party shall ensure that the ownership, title and all the intellectual property rights in any Results generated by its staff or its subcontractors are transferred or assigned to this party with law or under separate agreements on transfer. In the situation that a Collaborator works together with a research organisation that is not entitled to get the grant, but that is paid by the Collaborator, a participation in the property rights on the results generated by the research organisation and further mutual arrangements in this respect can then be formulated amongst the partners involved.

If a Result has been generated together (joint invention), the Collaborators have a joint ownership unless otherwise agreed. If possible, the shares of ownership should reflect the contribution to the Result. If the contribution to the Result cannot be ascertained or there is a disagreement about the shares of ownership of some Collaborators, these Collaborators have full right to the joint ownership of these shares. Joint owners shall agree separately on the management of the joint ownership.

The leaders of the Subprojects within the same ERA-IB-project inform each other about the IPR-regimen applicable on their Subprojects timely before the start of that project. In case the leader of a Subproject is of the opinion that the IPR-regimen applicable on (an) other Subproject(s) will be

harmful for the performance of the activities within his/her own Subproject, this project leader shall communicate this to the leader(s) of the concerned Subproject(s). The project leaders involved shall then gear the different IPR-regimens to one another and send the text of the adapted IPR-regimens to the project leaders not involved.

The owner(s) of the Results shall, where these Results are capable of industrial or commercial application, provide for its adequate and effective protection, in conformity with all relevant legal provisions. None of the other Collaborators shall interfere with obtaining this protection (e.g. postponing publishing). Where the Results are owned by more than one Collaborator, they shall agree in good faith on the modalities of the protection to the benefit of all owners.

4. The ERA-IB-CA

Each ERA-IB-CA shall contain the following IPR arrangements:

1. List of Background IP according to the provisions of section 5;
2. Ownership of the Results, where needed and in accordance to the provisions of section 6;
3. Utilization plan, particularly arranging the use of the Foreground IP in accordance to the provisions of section 7;
4. Information procedure(s) to inform each other timely on inventions, patent strategies, and use of Background- and Foreground IP beyond the ERA-IB-project;
5. Confidentiality and dissemination provisions supplementary to the articles 9 and 10 of the Consortium Agreement and section 7 of this Guideline.

Participation in an ERA-IB-project does not justify any claim for use of Background- or Foreground IP royalty-free beyond that project.

Compensation paid for intellectual property rights in the context of ERA-IB-projects shall be set in a transparent and objective way referring generally accepted market conditions. Any contribution of a Collaborator to a specific ERA-IB-project may be considered as a deduction to due compensation within that project.

5. Use of Background IP

Before the start of an ERA-IB-project the Collaborators will draw up a list of all their Background IP involved. This list shall also contain all relevant information about the ownership restrictions of this IP as well as the terms and conditions for use thereof during and after the ERA-IB-project. Use of Background IP belonging to other Collaborators cannot be claimed unless recorded in meant list.

Collaborators shall have a royalty-free non-exclusive access right to the use of Background IP included in the list of an ERA-IB-project where this Background IP is reasonably required to perform their own activities within that project.

Transfer of listed Background IP after approval of this list by the Collaborators involved cannot infringe their rights on that Background IP without their explicit written approval.

Where Background IP is desirable for own internal commercial use of a Collaborator, access to this IP on its written request shall not unreasonably be withheld or supplied under unfair terms.

6. Disclosure and use of Foreground IP

The owner(s) of Foreground IP shall disclose this IP as soon as possible to the ERA-IB Office that forwards the disclosed information to all other Collaborators.

The owner of disclosed Foreground IP shall grant non-transferable and non-exclusive, royalty-free access rights to this IP to any of the other Collaborators upon written request where such IP is reasonably required to undertake any activity under an ERA-IB-project.

Unless otherwise agreed, the public research organizations shall have a non-exclusive right to use the disclosed Foreground IP for further research and for educational purposes royalty-free.

Other Collaborators than public research organizations shall have the right to negotiate of the use of the Foreground IP beyond the ERA-IB-project for reasonable period of time (= right to primary negotiation).

Unless otherwise agreed, for jointly owned Foreground the default regime shall apply that:

- a. Each joint owner may grant non-exclusive licences to third parties;
- b. Prior notice should apply;
- c. When transferring Results to commercial use, a fair and reasonable compensation should be paid to all the other joint owners.

7. Confidentiality and dissemination

The Collaborators shall agree on confidentiality having due regard to each others trade secrets. Each Collaborator within an ERA-IB-project shall maintain adequate procedures to protect any confidential information of the other Collaborators which was made accessible to them.

Procedures and rules of dissemination shall be agreed before the start of each ERA-IB-project. All dissemination of Results shall be conducted in the manner that the objectives of the ERA-IB-project concerned will be obtained best.

8. Dispute resolution

Unless otherwise agreed, the Collaborators within an ERA-IB-project shall try to negotiate the solution whenever a conflict occurs

If the negotiation fails and the conflict regards Foreground or Background IP, required to undertake any activity under an ERA-IB2-project, the conflicting Collaborators shall submit the conflict to the EB, which board shall decide on the question within four weeks. This decision is binding for the Parties involved. In all other conflicts concerning IPR-related issues the conflict shall be solved by the Arbitrator and according to the rules and procedures by the International Chamber of Commerce.