Contractual Specificities of Complementary Grants

5G PPP Phase 2 Stakeholders' event

21 January 2016

Disclaimer: legally not binding

Outline

- DEFINITON

- MAIN PRINCIPLES

- OPTIONS & RELEVANT ARTICLES

- IPR Access rights / Right to object to IPR Transfers and Licensing

ICT Work Programme 2016-17 (1)

ICT-07-2017: 5G PPP
R&V

a.) RIA

all grants awarded in the topic are complementary to each other and to the grants of **ICT-08-2017 a) IA**

ICT-08-2017: 5G PPP
Convergent Technologies

a.) IA

all grants awarded in part a) of the topic complementary to each other and to the grants of **ICT-07-2017**

ICT-07-2017: 5G PPP

b.) CSA

5G PPP projects implemented as a programme via complementary grants.

Thus activities to ensure a sound programmatic view of the implemented 5G RIA and IA results. The proposed support actions shall liaise with the 5G RIA and IA actions to exploit synergies in the implementation of the activities

"DEFINITION"

'Complementary grants'

(Art 41.4 MGA-former Special Clause 41 in FP7)

are different EU grants 'linked' by the work programme/calls by identifying them as 'complementary actions'. (AGA)

MAIN PRINCIPLES

'Complementary grants' :

must be identified as such and 'linked' to each-other as 'complementary actions' by the work programme/calls.

the beneficiaries and those of the complementary grants must cooperate and provide access to their results (IPR).

*they must conclude a written '**collaboration agreement**'*

regarding the coordination of the complementary grants and the work of the action (see Article 41.4).

OPTIONS AND OTHER RELEVANT ARTICLES IN THE GRANT AGREEMENT (GA)

ART 2 — ACTION TO BE IMPLEMENTED *[— COMPLEMENTARY GRANT]*

The grant is awarded for the **action** entitled **[insert title of the action]** — **[insert acronym]** (‘**action**’), as described in Annex 1.

[OPTION for complementary grants if foreseen in the work programme: *The grant is a ‘**complementary grant**’ to [the grant agreement(s) under the call(s) for proposals [call identifier(s): H2020 — theme —]]*

[the following complementary grant agreement(s) No(s):

- [insert number] [insert acronym]

*- [insert number] [insert acronym]].**]***

Art 41.4 Relationship with complementary beneficiaries –

• to be included to coordinate the work under the GA and the complementary GA(s) (to be listed in Art 2)

• Beneficiaries and complementary beneficiaries must create and participate in common organisational structures (e.g. boards, advisory bodies, etc)

- to decide on collaboration and synchronisation of activities (e.g. management of outcomes, common approaches to standardisation, SME involvement, links with regulatory and policy activities, and commonly shared dissemination and awareness raising activities).

'Collaboration Agreement'

- *A **'collaboration agreement'** is purely internal between the consortium and the beneficiaries of a complementary grant, to coordinate their work under the different GAs and to ensure a smooth and successful project implementation.*
- ***EC is NOT a party and has NO responsibility** (nor for any adverse consequences) (AGA p. 261-262.)*
- Must be concluded in writing by beneficiaries with the complementary beneficiaries, covering for instance:
  - efficient decision making processes and
  - settlement of disputes.
- The collaboration agreement must NOT contain any provision contrary to the GA.

Other obligations for beneficiaries

- Beneficiaries must give access to their results to the complementary beneficiaries, (if needed) for the purposes of the complementary grant agreement(s) (see Article 31.6).

- Beneficiaries must share the technical reports (see Article 20.3 and 20.4).

- Confidentiality obligations in Art 36 apply (beneficiary/EC must keep confidential info for min. 4 years after project ends).

IPR
Art 31.6 - Access rights for third parties

Art 31.6 to be included in the GA to give additional access rights to beneficiaries of complementary grants:

*Beneficiaries must give (under conditions of **Art 31.2 and 31.3**) access to their results to complementary beneficiaries, (if needed) for the purposes of the complementary GAs.*

These access rights are limited to research work of the user under the grant. (AGA p.230)

Complementary beneficiaries enjoy same access rights to Results (not to Background) as consortium members

These conditions are:

General – requested in writing by complementary beneficiary
– regarding specific results (not in general)
– up to 1 year after project ends (unless agreed otherwise)
– may be refused/access right can be waived
– costs are eligible

Access to use – royalty-free
– needed to implement own action task

Access to exploit – under fair and reasonable conditions (new)
– needed for exploiting own results

Details to be agreed in collaboration agreement ("needed", "fair&reasonable", requesting mechanism, etc)

Art 30 — Transfer and licensing of results

Art 30.3 *EC's* right to object to transfers or licensing - *OPTION included in EU grants after pre-assessment:*

If this option is included in the GA, *EC may — **up to 4 years** after the start date (Art 3) — object to a **transfer of ownership** or **the exclusive licensing of results** to parties in third countries, under 2 cumulative conditions:*

EC may object to transfers or licensing if:

(a) it is to third party established in a third country (i.e. non-EU MS or H2020 associated)

and

*(b) EC considers that it is not in line with EU interests regarding competitiveness **or** inconsistent with ethical principles **or** security considerations. (2 cumulative conditions)*

Grounds for objection:

- Planned transfer/licence not in line with **EU competitiveness**

  Ex.: *if transfer/licence would create a major competitive disadvantage for EU companies or could make the results commercially unavailable on fair and reasonable conditions in EU*

- not consistent with **ethical principles**

  Ex.: *if transfer/license could cause the results to be used not in accordance with the fundamental ethical principles recognised at EU and international level*

- not consistent with **security considerations**

  Ex.: *if transfer/licence could make results considered significant from a security standpoint not readily available in EU, or if security-sensitive results could fall into the hands of third parties that are considered a security risk*

This right does NOT apply to results generated by beneficiaries not receiving EU funding *(Art.9)*. (AGA 224-225)

The process under Art 30.3

Beneficiary ***must formally notify*** *the EC* (via the electronic exchange system Art 52) *before the intended transfer or licensing* ***and****:*

- ***identify*** *the specific* ***results*** *concerned;*
- **describe** in detail the **new owner or licensee** and the planned or potential exploitation of the results, and
- *include a* ***reasoned impact assessment*** *on EU competitiveness and its consistency with ethical principles and security considerations.*

EC may request additional information*.*

To exercise the right to object

*EC must **formally notify** the beneficiary concerned **within 60 days** of receiving notification (or any additional information it has requested).*

***No transfer or licensing** may take place if:*

- EC decision is pending (within 60 days);
- EC objects;
- *until the conditions are met (if EC sets any)*.

Thank you for your attention!

Tamas Somlai

Legal Matters
DG CNECT Unit R5
Programme Operations - Project Management Team

Research and Innovation Actions (RIA)/Innovation Actions (IA)

European Commission

Excellence

Extent that proposed work corresponds to the topic description in the work programme

- Clarity and pertinence of the objectives
- Soundness of the concept, and credibility of the proposed methodology
- Extent that proposed work is beyond the state of the art, and demonstrates innovation potential (e.g. ground-breaking objectives, novel concepts and approaches, new products, services or business and organisational models)
- Appropriate consideration of interdisciplinary approaches and , where relevant, use of stakeholder knowledge.

Impact

- The expected impacts listed in the work programme under the relevant topic
- Any substantial impacts not mentioned in the WP, that would enhance innovation capacity; create new market opportunities, strengthen competitiveness and growth of companies, address issues related to climate change or the environment, or bring other important benefits for society
- Quality of proposed measures to exploit and disseminate project results (including IPR, manage data research where relevant);communicate the project activities to different target audiences (n/a SME Phase 1)

Implementation

- Quality and effectiveness of the work plan, including extent to which resources assigned in work packages are in line with objectives/deliverables
- Appropriateness of management structures and procedures, including risk and innovation management
- Complementarity of the participants which the consortium as a whole brings together expertise
- Appropriateness of allocation of tasks, ensuring that al participants have a valid role and adequate resources in the project to fulfill that role