

# Spielräume in der IMI IP Policy

*Die IMI IP Policy bietet relativ viel Freiraum in den Vertragsverhandlungen zum Project Agreement, was zur Folge hat, dass Teilnehmer in IMI Projekten gerade bei der Verhandlung dieser Freiräume besonders sorgfältig vorgehen müssen, um ihre Rechte gewahrt zu wissen.*

## III. Identification, ownership and transfer

### III.1. Background

1. Each Participant shall remain the exclusive owner of its Background.
2. The **Background to be included** in the Project shall be **identified in the Project Agreement**.  
The Participants shall **identify in the Project Agreement any legal restrictions** which exist relating to the use of such Background for Research Use or for completing the Project, and of which they are aware. The Executive Office shall be informed of any such restrictions prior to execution of the Grant Agreement and shall consider the impact of any such restrictions in achieving the Project objectives and the objectives of IMI as described in the Statutes.  
Participants shall be **entitled but not obliged** to introduce into the Project and to designate as Background data and information as well as know-how, copyrights or other intellectual property rights pertaining to such information and which is generated or held or acquired by a Participant **after the accession to the Grant Agreement**.

*Die Teilnehmer identifizieren im „Project Agreement“ den ins Projekt mitgebrachten Background. Jegliche rechtlichen Beschränkungen müssen auch aufgezeigt und dem Executive Office mitgeteilt werden. Die Teilnehmer sind auch berechtigt Background, der nach Unterfertigung des Grant Agreement entstanden ist, zu inkludieren.*

### III.2. Foreground

1. Ownership of the Foreground belongs in the first instance to the Participant(s) who generated it.  
**The Participants may agree on a different allocation of ownership in the Project Agreement.**  
If employees or any party working on behalf of a Participant are entitled to claim rights to Foreground, the Participant shall ensure that it is possible to exercise those rights in a manner compatible with its obligations under the Grant Agreement and Project Agreement.

*Die Teilnehmer können im „Project Agreement“ die Eigentümerschaft des Foreground bestimmen.*

2. Where several Participants have jointly carried out work generating Foreground and where no individual Participant can be identified as its owner, such Participants shall, **unless otherwise agreed in the Project Agreement**, have joint ownership of such Foreground.

In case of joint ownership, **unless otherwise agreed in the Project Agreement**, each joint owner shall have the right to use such jointly owned Foreground, including the right to grant nonexclusive licenses, with the following conditions:

- Prior notice must be given to the to any other joint owner(s);
- Fair and reasonable compensation must be provided to the other joint owner(s).

*Es ist möglich, im "Project Agreement" das Zustandekommen von Miteigentum genau zu definieren, und weiters, wie im Falle von Miteigentümerschaft vorgegangen wird.*

3. Each Participant shall remain free to license, assign or otherwise dispose of its ownership rights in Foreground:

- Either as **expressly permitted in the Grant Agreement and/or in the Project Agreement**;
- Or after obtaining the consent of all Participants, which may only be withheld where they can demonstrate that their rights would be adversely affected.

*Das Recht Miteigentum zu lizenzieren, abzutreten oder anders zu verwerten kann im Grant Agreement und/oder im Project Agreement ausdrücklich zugelassen werden.*

### **III.3. Sideground**

Ownership of the Sideground belongs in the first instance to the Participant(s) who generated it.

**The Participants may agree on a different allocation of ownership in the Project Agreement.**

*Auch hinsichtlich der Eigentümerschaft von Sideground (results, including data, know how and information, whether or not they can be protected, which are generated by a Participant under the Project but outside of the Project Objectives and which are not needed for undertaking and completing the Project or the Research Use of Foreground) kann im "Project Agreement" vom Prinzip, dass Sideground demjenigen gehört, der ihn generiert, abgegangen werden.*

## **IV. Access rights**

### **IV.1. Principles**

1. All requests for Access Rights shall be made in writing, **unless otherwise agreed in the Project Agreement**.

*Man kann im "Project Agreement" ein bestimmtes Verfahren festlegen, wie man das Ersuchen um Zugriff zu gestalten hat.*

2. The granting of Access Rights may be made conditional on the acceptance of specific conditions aimed at ensuring that these rights will be used only for the intended purpose and that appropriate confidentiality obligations are in place.
3. The termination of the participation of a Participant shall in no way affect the obligation of that Participant to grant Access Rights to the remaining Participants and Third Parties.
4. **Unless otherwise agreed by the owner of the Foreground or Background**, Access Rights shall confer no entitlement to grant sub-licences. However, any person to whom rights for completing the Project or for Research Use have been made available under this IP Policy may authorise another party to exercise those rights on its behalf providing that that person shall be liable for the acts of that party as if those acts have been performed by this person.

*Sofern sie möchten können die Eigentümer von Fore- und Background bestimmen, dass die Zugriffsrechte auf ihren Fore- und Background auch einen Anspruch auf das Einräumen von Lizenzen enthalten.*

#### **IV.3. Access Rights to the Participants and Affiliated Entities for Research Use**

1. **Foreground.** During and after completion of the Project, Participants and their Affiliated Entities shall enjoy Access Rights to the Foreground of the other Participants for Research Use.  
Such Access Rights shall be granted on a non-exclusive basis under Fair and reasonable terms or royalty-free, **as determined in the Project Agreement**.

*Die Zugriffsrechte zu Foreground von Teilnehmern und Affiliates für Research Use können entweder lizenzgebührenfrei oder zu fairen und vernünftigen Bedingungen gewährt werden – dies ist im “Project Agreement” zu bestimmen.*

2. **Background.** During and after completion of the Project, Participants and their Affiliated Entities shall enjoy Access Rights to the Background of the other Participants, but only to the extent reasonably required for and only for the purpose of the Research Use of Foreground.  
Such Access Rights shall be granted on a non-exclusive basis under Fair and reasonable terms or royalty-free, **as determined in the Project Agreement**.

*Die Zugriffsrechte zu Background von Teilnehmern und Affiliates für Research Use können entweder lizenzgebührenfrei oder zu fairen und vernünftigen Bedingungen gewährt werden – dies ist im “Project Agreement” zu bestimmen.*

#### **IV.4. Access Rights to Third Parties for Research Use**

1. **Foreground.** After the completion of the Project, Third Parties shall have the right to request and receive under licence Access Rights to the Foreground of the Participants for Research Use.  
Such Access Rights shall be granted on a non-exclusive basis under Fair and reasonable terms, **as determined in the Project Agreement**.

*Die Zugriffsrechte auf Foreground von Dritten nach Projektende für Research Use können zu den fairen und vernünftigen Bedingungen gewährt werden, die im "Project Agreement" bestimmt werden.*

2. **Background.** After the completion of the Project, Third Parties shall have the right to request and receive under licence Access Rights to the Background of the Participants, but only to the extent reasonably required for and only for the purpose of the Research Use of Foreground. Such Access Rights shall be granted on a non-exclusive basis under Fair and reasonable terms, **as determined in the Project Agreement.**

*Die Zugriffsrechte auf Background von Dritten nach Projektende für Research Use können zu den fairen und vernünftigen Bedingungen gewährt werden, die im "Project Agreement" bestimmt werden.*

3. **The terms for providing Access Rights under paragraphs 1 and 2 shall be included in the Project Agreement and referenced in the Grant Agreement.** The proposed terms for Third Party Research Use for Foreground and Background necessary for the Research Use of Foreground shall be reviewed as part of the evaluation of the Project proposal.

4. **Before execution of the Grant Agreement, a Participant may identify specific elements of the Background and provide a reasoned request to the Executive Office that such elements shall be wholly or partially excluded from the obligations referred to in this section.** The Executive Office shall only grant such request in exceptional circumstances and in making its decision shall consider the objectives of IMI as described in the Statutes. It may grant such request on such conditions as it may agree with the Participant. Any exceptions shall be included in the Grant Agreement and cannot be changed unless such change is permitted in the Grant Agreement.

*Vor Unterzeichnung des Grant Agreement kann ein Teilnehmer Teile seines Backgrounds ausschließen – er muss dies im Rahmen einer Anfrage beim Executive Office tun, das in außergewöhnlichen Fällen einen Ausschluss von Background genehmigt.*

#### **IV.5. Access Rights for Direct Exploitation**

1. Participants may use, exploit, sublicense or otherwise commercialise their Foreground, Background and Sideground as they see fit beyond the Research Use rights described in this Policy.
2. Where Direct Exploitation by a Participant or Third Party requires Foreground or Background necessary to use Foreground owned by another Participant, the **Access Rights will be negotiated between the parties** involved as they see fit. **Participants may agree on such Access Rights in the Project Agreement.**

*Die Teilnehmer können im "Project Agreement" Zugriffsrechte auf Fore- und Background für Direct Exploitation festlegen.*

## V. Confidential Information

1. The Participants covenant not to disclose and not to use the Confidential Information received from other Participants except as provided in and for the purposes of the Project Agreement and Grant Agreement.
2. **Unless otherwise agreed in the Project Agreement**, each Participant may disseminate (through journals, lectures, or otherwise) information relating to Foreground, provided that a copy of the proposed dissemination shall have been provided to the other Participants at least thirty (30) days prior to the submission of any written publication or any oral dissemination to allow the Participants to determine whether any invention or Confidential Information would be disclosed. The reviewing Participants shall have the right to (a) require a delay in publication or presentation in order to protect patentable information, (b) require modifications to the publication for patent reasons or (c) require that Confidential Information be maintained as a trade secret.

The delay required by the reviewing Participants in publication or presentation in order to protect patentable information shall not exceed three months, **unless agreed in the Project Agreement**.

*Die Teilnehmer können im "Project Agreement" festlegen, wie Informationen mit Bezug auf Foreground verbreitet werden sollen. Auch können sich die Teilnehmer im „Project Agreement“ auf eine längere oder kürzere Frist als drei Monate für einen Aufschub der Publikation patentierbarer Informationen einigen.*