

Gegenüberstellung FP7 IPR Rules – IMI IP Policy

Vorrangige Problemstellungen:

- **Definition „verbundener Unternehmen“ (Affiliates):** Dieser Begriff ist wesentlich weiter gezogen als in FP7, da die verbundenen Unternehmen in IMI nicht nur Tochter- und Schwesterunternehmen, sondern auch Mutterunternehmen einschließen. Auch sind die verbundenen Unternehmen nicht auf Mitgliedsstaaten der EU und assoziierte Länder beschränkt, sondern umfassen verbundene Unternehmen in aller Welt.
- **Definition von „Research Use“:** In der IMI IP Policy wurde der Terminus „Use“ (FP7) in zwei Arten der Nutzung aufgespalten – „Direct Exploitation“ (Entwicklung für die Vermarktung bzw. Vermarktung von Foreground) und „Research Use“ (Nutzung von Fore- und Background für andere Zwecke als den Abschluss des Projektes oder „Direct Exploitation“). „Research Use“ geht somit über akademische Forschung hinaus und beinhaltet die Anwendung von Foreground als Instrument für Forschung und klinische Untersuchungen für die Entdeckung, Entwicklung oder Vermarktung pharmazeutischer Produkte durch gewinnorientierte Institutionen und Organisationen.
- **Access Rights (Zugriffsrechte)** von Partnern und „Third Parties“ auf generiertes Projekt-Know-How (Foreground) bzw. ins Projekt eingebrachtes Know-How (Background): Die Zugriffsrechte (Abschnitt IV IMI IP Policy) sind in IMI weiter als in FP7. IMI gewährt Zugang zu Back- und Foreground für Partner und Affiliates unter fairen und vernünftigen Bedingungen oder auch unentgeltlich (für „Research Use“). Access Rights zu Back- und Foreground für „Research Use“ können nach Abschluss des Projektes auch Dritten (Third Parties; Organisationen, die keine Partner im Projekt sind) unter fairen und vernünftigen Bedingungen gewährt werden. Nur unter besonderen Bedingungen kann vor Beginn des Projektes bestimmter Background vom Zugriff ausgeschlossen werden. Zugriffsrechte für „Direct Exploitation“ sind im Project Agreement auszuverhandeln. Im Gegensatz zu FP7 ist in der IMI IP Policy keine zeitliche Begrenzung der Zugriffsrechte vorgesehen.

FP7	IMI
<i>Definitionen</i>	
II.1.1. " <i>access rights</i> " means licences and user rights to <i>foreground</i> or <i>background</i>	II.1. "Access Rights" shall mean the rights to use
II.1.2. " <i>affiliated entity</i> " means any legal entity that is under the direct or indirect control of a <i>beneficiary</i> , or under the same direct or indirect control as the <i>beneficiary</i> , control taking any of the following forms: (a) the direct or indirect holding of more than 50% of the nominal value of the issued share capital in the legal entity concerned, or of a majority of the voting rights of the shareholders or associates of that entity; (b) the direct or indirect holding, in fact or in law, of decision-making powers in the legal entity concerned.	II.2. "Affiliated Entity" means any legal entity that is under the direct or indirect control of a Participant, under the same direct or indirect control as a Participant, or is directly or indirectly controlling a Participant , control taking any of the following forms: (a) the direct or indirect holding of more than 50% of the nominal value of the issued share capital in the legal entity concerned, or of a majority of the voting rights of the shareholders or associates of that entity; (b) the direct or indirect holding, in fact or in law, of decision-making powers in the legal entity concerned
<p>Eine "Affiliated Entity" beschreibt ein mit einem anderen Unternehmen verbundenes Unternehmen. Hierbei ist zu bemerken, dass diese Definition in FP7 nicht so weit gezogen ist wie in der IMI IP Policy, da hier auch Mutterunternehmen (Upstream-Unternehmen) als „affiliated entities“ gelten. FP7 sieht bloß Tochter- und Schwesterunternehmen als „affiliated entities“ an.</p> <p>Bei einem Transfer von Rechten definiert FP7, dass dieser nur an „affiliated entities“ in Mitgliedsstaaten der EU oder assoziierten Ländern erfolgen darf. Die IMI IP Policy beschränkt hier nicht – ein Transfer ist an alle „affiliated entities“ (Up- und Downstreamunternehmen), auch an jene, die in anderen Ländern situiert sind (außerhalb von Mitgliedsstaaten der EU bzw. assoziierten Ländern), möglich.</p>	
II.1.4. " <i>background</i> " means information which is held by <i>beneficiaries</i> prior to their accession to this agreement, as well as copyrights or other intellectual property rights pertaining to such information, the application for which has been filed before their accession to this agreement, and which is needed for carrying out the <i>project</i> or for using <i>foreground</i>	II.3. "Background" shall mean data, know how and information which is held by a Participant prior to the accession to the Grant Agreement, as well as copyrights or other intellectual and industrial property rights pertaining to such information, and which is necessary for carrying out the project and identified in the Project Agreement
II.1.5. " <i>dissemination</i> " means the disclosure of <i>foreground</i> by any appropriate means other than that resulting from the formalities for protecting it, and including the publication of <i>foreground</i> in any medium	II.6. "Dissemination" shall mean disclosure by any appropriate means other than that resulting from the formalities for protection, and including the publication in any medium.
II.1.6. " <i>fair and reasonable conditions</i> " means appropriate conditions including possible financial terms taking into account the specific circumstances of the request for access, for example the actual or potential value of the <i>foreground</i> or <i>background</i> to which access is requested and/or the scope, duration or other characteristics of the use envisaged	II.8. "Fair and reasonable terms" shall mean appropriate conditions including financial terms (where appropriate) taking into account the actual or potential value of the Foreground or Background to which access is requested and other characteristics of the Research Use envisaged

<p>II.1.7. "<i>foreground</i>" means the results, including information, whether or not they can be protected, which are generated under the <i>project</i>. Such results include rights related to copyright; design rights; patent rights; plant variety rights; or similar forms of protection;</p>	<p>II.9. "Foreground" shall mean the results, including data, know how and information, whether or not they can be protected, which are generated under the project and excluding Sideground. Such results include rights related to copyright; design rights; patent rights; or similar forms of protection.</p>
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<p>II.1.8. "<i>use</i>" means the direct or indirect utilisation of <i>foreground</i> in further research activities other than those covered by the <i>project</i>, or for developing, creating and marketing a product or process, or for creating and providing a service;</p>	<p>II. 15 "Research Use" shall mean use of Foreground or Background necessary to use Foreground for all purposes other than for completing the project or for Direct Exploitation (An example of Research Use will be the application of Foreground as a tool for research and clinical research in the discovery, development or commercialisation of pharmaceutical products by for-profit institutions and organisations)</p> <p>II. 5. "Direct Exploitation" shall mean to develop for commercialization or to commercialize Foreground itself.</p>
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Die IMI IP Policy macht bei der Verwendung (use) eine in FP7 nicht vorhandene Unterscheidung: es wird zwischen der Verwendung um weiter zu forschen (Research Use) und der Vermarktung von Foreground bzw. der Vorbereitung der Vermarktung (Direct Exploitation) unterschieden.

„Research Use“ ist weiter zu verstehen als der Terminus „use“ aus FP7 – es beinhaltet die Nutzung von Back- und Foreground, um Foreground zu anderen Zwecken als die Fertigstellung des Projektes und „Direct Exploitation“ zu verwenden. Es geht daher weiter als die akademische Forschung und beinhaltet die Anwendung von Foreground auf die Entdeckung, Entwicklung und Vermarktung pharmazeutischer Produkte für gewinnorientierte Organisationen.

<p><u>Sideground in FP6:</u> “<i>Pre-existing know-how</i>” includes the information, and the rights attached thereto, necessary to carry out the project, which is held by a contractor before the project starts (also referred to as "<i>background</i>") and the <u>information and IPR acquired in parallel with the project, that means outside the project</u> (also referred to as "<i>sideground</i>").</p>	<p>II.16 "Sideground" shall mean the 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.</p>
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„Sideground“ hat in der IMI IP Policy nicht dieselbe Bedeutung wie in FP6 („außerhalb des Projekts“), sondern ist definiert als jene Resultate, die zwar im Projekt, aber nicht innerhalb der Projektziele erreicht werden.

Background	
	<p>III.1.1 Each Participant shall remain the exclusive owner of its Background.</p> <p>III.1.2 The background to be included in the Project shall be identified in the Project Agreement. The Participants shall identify in the Project Agreement</p>

	<p>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 of IMI as describes in the Statutes. Participants <u>shall be entitled but not obliged</u> 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 aquired by a Participant after the accession to the Grant Agreement.</p> <p>III.1.3 Each Participant shall remain free to license, assign or otherwise dispose of its ownership rights in Background, subject to any rights and obligations of the Grant Agreement and the Project Agreement. Where a Participant transfers ownership of Background, it shall pass on its obligations regarding that Background, as defined in the Grant Agreement and Project Agreement, to the assignee including the obligation to pass those obligations on to any subsequent assignee. Notwithstanding the above, the Participant may – without the permission of the other Participants, but provided that other Participants are informed and that the assignee agrees in writing to be bound by the Grant Agreement, the Project Agreement and this Policy – assign its Background to (i) its Affiliated Entity; or (ii) any purchaser of all or substantially of its assets; or (iii) any successor entity resulting from the merger or consolidation of such party with or into such entities.</p>
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Um jegliche Zweifel auszuräumen, beschreibt die IMI IP Policy im Gegensatz zu FP7, wo dies nicht ausdrücklich gesagt wird, dass die Teilnahme an IMI die Eigentümerschaft an Background, der ins Projekt eingebracht wird, nicht verändert. In der IMI IP Policy besteht ein hohes Maß an Kontrolle von Beschränkungen, die den Zugang oder die Nutzung des Background beeinträchtigen könnten. Sofern „legal restrictions“ bestehen, müssen diese dem Executive Office noch vor Unterzeichnung des Grant Agreement angezeigt werden. Zudem haben Partner in IMI das Recht (nicht die Verpflichtung) Background, Copyrights und IPRs auch nach Unterzeichnung des Grant Agreements in das Projekt einzubringen. Die IMI IP Policy behandelt im Gegensatz zu FP7 auch den Transfer von Background und stellt klar, dass die Teilnehmer keine Autorisierung der anderen benötigt, um diesen zu transferieren. (Die Partner müssen jedoch informiert werden, und das Unternehmen, an welches der Background transferiert wurde, muss sich dem Grant Agreement unterwerfen.)

<i>Foreground</i>	
<p>II.26.1. <i>Foreground</i> shall be the property of the <i>beneficiary</i> carrying out the work generating that <i>foreground</i>.</p>	<p>III.2.1. 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.</p>
<p>Im Rahmen der IMI IP Policy ist ausdrücklich die Möglichkeit vorgesehen, den Eigentümer</p>	

des Foreground, der im Projekt hergestellt wird, vertraglich zu bestimmen. In FP7 ist automatisch jener der Eigentümer, der den Foreground generiert. Ein etwaiger Transfer der Eigentümerschaft ist in FP7 möglich – dann ist II.27 des Annex II anzuwenden (siehe unten). Etwaige Verhandlungen über einen Transfer sollten auf jeden Fall mit der gebührenden Aufmerksamkeit auf die Konditionen durchgeführt werden.

II.26.3. If employees or other personnel working for a *beneficiary* are entitled to claim rights to *foreground*, the *beneficiary* shall ensure that it is possible to exercise those rights in a manner compatible with its obligations under this *grant agreement*.

II.2.1. 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.

II.26.2. Where several *beneficiaries* have jointly carried out work generating *foreground* and where their respective share of the work cannot be ascertained, they shall have joint ownership of such *foreground*. They shall establish an agreement regarding the allocation and terms of exercising that joint ownership. However, where no joint ownership agreement has yet been concluded, each of the joint owners shall be entitled to grant non-exclusive licences to third parties, without any right to sub-licence, subject to the following conditions:
a) **at least 45 days prior notice** must be given to the other joint owner(s); and
b) fair and reasonable compensation must be provided to the other joint owner(s).

III.2.2. 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).

Sofern bei Gemeinschaftseigentum Lizenzen vergeben werden sollen, ist in FP7 eine genaue Zeitspanne definiert, wie lange vor dem Transfer die Miteigentümer verständigt werden müssen (45 Tage). In der IMI IP Policy ist nur definiert, dass eine Vergabe den Miteigentümern angezeigt werden muss, jedoch nicht genau wann diese Verständigung erfolgen muss.

II.27. Transfer

II.27.1. Where a *beneficiary* transfers ownership of *foreground*, it shall pass on its obligations regarding that *foreground* to the assignee including the obligation to pass those obligations on to any subsequent assignee.

II.27.2. Subject to its obligations concerning confidentiality such as in the framework of a merger or an acquisition of an important part of its assets, where a *beneficiary* is required to pass on its obligations to provide *access rights*, it shall give **at least 45 days prior notice** to the other *beneficiaries* of the envisaged transfer, together with sufficient information concerning the envisaged new owner of the *foreground* to permit the other

III.2.3. 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.

Where a Participant transfers ownership of Foreground, it shall pass on its obligations regarding that Foreground, as defined in the Grant and Project Agreements, to the assignee including the obligation to pass those obligations on to any subsequent assignee.

<p>beneficiaries to exercise their <i>access rights</i>. However, the <i>beneficiaries</i> may, by written agreement, agree on a different time-limit or waive their right to prior notice in the case of transfers of ownership from one <i>beneficiary</i> to a specifically identified third party.</p> <p>II.27.3. Following notification in accordance with paragraph 2, any other <i>beneficiary</i> may object within 30 days of the notification or within a different time-limit agreed in writing, to any envisaged transfer of ownership on the grounds that it would adversely affect its <i>access rights</i>. Where any of the other <i>beneficiaries</i> demonstrate that their <i>access rights</i> would be adversely affected, the intended transfer shall not take place until agreement has been reached between the <i>beneficiaries</i> concerned.</p> <p>II.27.4. Where a <i>beneficiary</i> intends to transfer ownership of <i>foreground</i> to a third party established in a <i>third country</i> not associated to the Seventh Framework Programme, the <i>Commission</i> may object to such transfer of ownership of <i>foreground</i>, if it considers that this is not in accordance with the interests of developing the competitiveness of the European economy or is inconsistent with ethical principles or security considerations. In such cases, the transfer of ownership shall not take place unless the <i>Commission</i> is satisfied that appropriate safeguards will be put in place and has authorised the transfer in writing.</p>	<p>Notwithstanding the above, a Participant may - without the permission of the other Participants but provided that other Participants are <u>informed</u> and that the assignee agrees in writing to be bound by the Grant Agreement, the Project Agreement and this Policy - assign its Foreground to (i) its Affiliated Entity; or (ii) any purchaser of all or substantially all of its assets; or (iii) any successor entity resulting from the merger or consolidation of such party with or into such entities;</p>
<p>Sofern ein Partner in FP7 seine Rechte und Pflichten abtritt (zB. seinen Foreground und damit auch die Zugangsrechte zu Foreground für die anderen Partner), muss dies den Partnern mind. 45 Tage vor dem Übergang angezeigt werden. Diese haben dann 30 Tage Zeit um darauf zu reagieren – sofern einer der Partner seine Zugangsrechte als beschränkt erachtet, kann der Transfer ausgesetzt und darüber verhandelt werden.</p> <p>Wenn in FP7 ein Partner seine Eigentumsrechte an seinem Foreground an einen Dritten aus einem Nicht-Mitgliedsstaat der EU oder nicht-assoziierten Land vergeben will, ist geregelt, dass die Kommission ein Einspruchsrecht besitzt, sofern sie der Meinung ist, dass die Weitergabe der Eigentumsrechte nicht im Einklang mit den europäischen Wirtschaftsinteressen, ethischen Prinzipien oder sicherheitsbezogenen Überlegungen steht. Die IMI IP Policy regelt, dass jeder Teilnehmer über seine Eigentumsrechte an seinem Foreground frei verfügen kann. Jeder darf – ohne Zustimmung der anderen Partner, jedoch mit der Auflage, sie zu informieren – seinen Foreground an seine „affiliated entities“ (die gemäß der Definition auch Upstream-Unternehmen ohne Einschränkung auf die EU oder assoziierte Länder sein können) weitergeben.</p>	
<p>II.32.7. Exclusive licences for specific <i>foreground</i> or <i>background</i> may be granted subject to written confirmation by all the other <i>beneficiaries</i> that they waive their <i>access rights</i> thereto.</p>	

<p>II.32.8. However, where a <i>beneficiary</i> intends to grant an exclusive licence to <i>foreground</i> to a third party established in a <i>third country</i> not associated to the Seventh Framework Programme, <u>the Commission may object to the granting of such an exclusive licence</u>, if it considers that this is not in accordance with the interests of developing the competitiveness of the European economy or is inconsistent with ethical principles or security considerations. In such cases, the exclusive licence shall not take place unless the <i>Commission</i> is satisfied that appropriate safeguards will be put in place and has authorised the grant in writing.</p>	
<p>Die Vergabe von Exklusivlizenzen ist in der IMI IP Policy nicht ausdrücklich vorgesehen. Wenn in FP7 eine Exklusivlizenz an einen Dritten aus einem Nicht-Mitgliedsstaat der EU oder nicht-assoziierten Land vergeben werden soll, regelt FP7, dass die Kommission ein Einspruchsrecht besitzt, sofern sie der Meinung ist, dass die Vergabe der Exklusivlizenz nicht im Einklang mit den europäischen Wirtschaftsinteressen, ethischen Prinzipien oder sicherheitsbezogenen Überlegungen steht.</p>	

<i>Zugangsrechte (Access Rights)</i>	
<p>II.32.1. All requests for <i>access rights</i> shall be made in writing.</p> <p>II.32.2. The granting of <i>access rights</i> 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.</p> <p>II.32.4. The termination of the participation of a <i>beneficiary</i> shall in no way affect the obligation of that <i>beneficiary</i> to grant <i>access rights</i> to the remaining <i>beneficiaries</i>.</p> <p>II.34.4. A request for <i>access rights</i> under paragraphs 1, 2 or 3 may be made up to one year after either of the following events: a) the end of the <i>project</i>; or b) termination of participation by the owner of the <i>background</i> or <i>foreground</i> concerned. However, the <i>beneficiaries</i> concerned may agree on a different time-limit (This can be a longer or a shorter time-limit)</p>	<p>IV.1.1. All requests for Access Rights shall be made in writing, unless otherwise agreed in the Project Agreement.</p> <p>IV.1.2. 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.</p> <p>IV.1.3. 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.</p>
<p>Bei Beendigung der Teilnahme eines Partners im Projekt kann in FP7 bis zu einem Jahr danach Zugang zu dessen Back- und Foreground gefordert werden (von den anderen Partnern). In der IMI IP Policy ist dies derart definiert, dass von dem beendigten Teilnehmer Zugang zu seinem Back- und Foreground ohne zeitliche Einschränkung gefordert werden kann. Zugang können nicht nur die verbleibenden Teilnehmer sondern auch Dritte fordern.</p>	

<p>II.32.5. Unless otherwise agreed by the owner of the <i>foreground</i> or <i>background</i>,</p>	<p>IV.1.4. Unless otherwise agreed by the owner of the Foreground or Background,</p>
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<p><i>access rights</i> shall confer no entitlement to grant sub-licences.</p>	<p>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.</p>
<p>Die IMI IP Policy besagt bezüglich der Vergabe von Sub-Lizenzen, dass dies jenen, die die Zugangsrechte haben, zum Zweck der Vervollständigung des Projekts möglich ist. Sie können somit Dritten ihre Zugangsrechte weitergeben, damit diese das Projekt abschließen. Die Bestimmung in FP7 ist enger gezogen und sieht diese Möglichkeit nicht vor – es gibt keine Sub-Lizenzen.</p>	

<p>II.33. Access rights for implementation</p> <p>II.33.1. <i>Access rights to foreground</i> shall be granted to the other <i>beneficiaries</i>, if it is needed to enable those <i>beneficiaries</i> to carry out their own work under the <i>project</i>. Such <i>access rights</i> shall be granted on a royalty-free basis.</p> <p>II.33.2. <i>Access rights to background</i> shall be granted to the other <i>beneficiaries</i>, if it is needed to enable those <i>beneficiaries</i> to carry out their own work under the project provided that the <i>beneficiary</i> concerned is entitled to grant them. Such <i>access rights</i> shall be granted on a royalty-free basis, unless otherwise agreed by all <i>beneficiaries</i> before their accession to this agreement.</p>	<p>IV.2. Access Rights to the Participants for completing the Project</p> <p>IV.2.1. Foreground. During the Project, Participants shall enjoy Access Rights to the Foreground of the other Participants solely for the purpose and to the extent necessary for undertaking and completing the Project. Such Access Rights shall be granted on a royalty-free basis.</p> <p>IV.2.2. Background. During the Project, The Participants shall, unless prevented or restricted from doing so by obligations to others which exist at the date of accession to the Project Agreement, as identified in III.1(2), enjoy Access Rights to the Background of the other Participants solely for the purpose and to the extent necessary for undertaking and completing the Project. Such Access Rights shall be granted on a royalty-free basis.</p>
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<p>II.34. Access rights for use</p> <p>II.34.1. <i>Beneficiaries</i> shall enjoy <i>access rights to foreground</i>, if it is needed to use their own <i>foreground</i>. Subject to agreement, such <i>access rights</i> shall be granted either under <i>fair and reasonable conditions</i> or be royalty-free.</p> <p>II.34.2. <i>Beneficiaries</i> shall enjoy <i>access rights to background</i>, if it is needed to use their own <i>foreground</i> provided that the <i>beneficiary</i> concerned is entitled to grant them. Subject to agreement, such <i>access rights</i> shall be granted either under <i>fair and reasonable conditions</i> or be royalty-free.</p> <p>II.34.3. An affiliated entity established in a</p>	<p>IV.3. Access Rights to the Participants and Affiliated Entities for Research Use</p> <p>IV.3.1. 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.</p> <p>IV.3.2. Background. <u>During and after</u></p>
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<p>Member State or Associated country shall also enjoy <i>access rights</i>, referred to in paragraphs 1 and 2, to <i>foreground</i> or <i>background</i> under the same conditions as the <i>beneficiary</i> to which it is affiliated, unless otherwise provided for in the <i>consortium agreement</i>. As the <i>access rights</i> referred to in paragraphs 1 and 2 require that access is needed to use own <i>foreground</i>, this paragraph only applies to the extent that ownership of <i>foreground</i> was transferred to an affiliate entity established in a Member State or <i>Associated country</i>. The <i>beneficiaries</i> may provide for arrangements regarding <i>access rights</i> for affiliated entities in their <i>consortium agreement</i>, including regarding any notification requirements.</p>	<p><u>completion of the Project</u>, 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.</p>
<p>Die Zugangsrechte für die Partner sind in FP7 enger gesteckt als in der IMI IP Policy, da die Definition von „Research Use“ (alles, was nicht direkte Verwertung/Vorbereitung der Verwertung ist) wesentlich weiter ist als die von „use“.</p> <p>In FP7 haben die „affiliated entities“ dann Zugang zu Fore- und Background, wenn sie sich in einem Mitgliedsstaat der EU bzw. in einem assoziierten Land befinden. In der IMI IP Policy haben die „affiliated entities“ ohne Einschränkung darauf, ob sie in der EU oder in assoziierten Ländern ansässig sind, Zugangsrechte. (Da die Definition der „affiliated entities“ auch weiter gezogen ist, haben auch Mutterunternehmen/Upstream-Unternehmen Zugang)</p>	

	<p>IV.4. Access Rights to <u>Third Parties</u> for Research Use</p> <p>IV.4.1. 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.</p> <p>IV.4.2. 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.</p> <p>IV.4.3. 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.</p> <p>IV.4.4. Before execution of the Grant Agreement, a</p>
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	<p>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.</p> <p>IV.5. Access Rights for Direct Exploitation</p> <p>IV.5.1. 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.</p> <p>IV.5.2. 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.</p>
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Die IMI IP Policy definiert Zugangsrechte für Dritte zu Back- und Foreground nach Abschluss des Projekts. Teile des Backgrounds können im Grant Agreement davon ausgenommen werden, sofern gute Gründe dafür vorliegen. Diese müssen dem IMI Executive Office kundgetan werden. Das Executive Office soll jedoch nur in Ausnahmefällen eine solche Anfrage berücksichtigen. Zugangsrechte Dritter sollten somit schon vor Unterzeichnung des Grant Agreement sorgfältig überlegt und auch dementsprechend verhandelt werden.

Sofern Partner und auch Dritte für die Verwertung ihres Foreground den Fore- oder Background eines anderen Partners benötigen, kann dies (sorgfältig) ausverhandelt werden. Da eine so weitläufige Verwertung in FP7 nicht vorgesehen ist, wurde dies auch nicht geregelt – FP7 sieht solche Zugangsrechte für Dritte nicht vor.

	<i>Sideground</i>
	<p>III.3. 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.</p>

Sideground, also das Wissen, das zwar im Projekt, jedoch außerhalb der Projektziele entsteht, gehört in erster Linie demjenigen, der dieses Wissen generiert hat. Vertraglich kann aber auch ein anderer Eigentümer festgelegt werden.

<i>Confidentiality und Dissemination of Foreground</i>	
	<p>V. Confidential Information</p> <p>V.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.</p>

<p>II.30. Dissemination</p> <p>II.30.1. Each <i>beneficiary</i> shall ensure that the <i>foreground</i> of which it has ownership is disseminated as swiftly as possible. If it fails to do so, the Commission may disseminate that <i>foreground</i>.</p> <p>II.30.2. <i>Dissemination</i> activities shall be compatible with the protection of intellectual property rights, confidentiality obligations and the legitimate interests of the owner(s) of the <i>foreground</i>. (...)</p> <p>II.30.3. At least 45 days prior notice of any dissemination activity shall be given to the other <i>beneficiaries</i> concerned, including sufficient information concerning the planned <i>dissemination</i> activity and the data envisaged to be disseminated. Following notification, any of those <i>beneficiaries</i> may object within 30 days of the notification to the envisaged <i>dissemination</i> activity if it considers that its legitimate interests in relation to its <i>foreground</i> or <i>background</i> could suffer disproportionately great harm. In such cases, the <i>dissemination</i> activity may not take place unless appropriate steps are taken to safeguard these legitimate interests.</p>	<p>V.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.</p> <p>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.</p> <p>VI. Dissemination of Foreground</p> <p>VI.1. The Participants undertake to disseminate the Foreground (as described in the Project Objective) as soon as reasonably practicable but not later than one (1) year after the termination or expiry of the Project.</p> <p>VI.2. The Project Agreement shall include a description of the material which must be disseminated in accordance with the IP Policy and referenced in the Grant Agreement.</p> <p>VI.3. If the Participants do not disseminate within such time periods without good reason, the Executive Office has the right to disseminate such results in a manner consistent with the Grant Agreement.</p>
<p>Der Schutz von Foreground ist in der IMI IP Policy auf folgende Weise geregelt: Partner, die mit der Verbreitung nicht einverstanden sind, können eine spätere bzw. modifizierte Verbreitung vorschlagen, bis hin zur Einrichtung eines Geschäftsgeheimnisses. Der Schutz des Foreground soll innerhalb einer vernünftigen Zeitspanne erfolgen (höchstens 3 Monate sofern im Project Agreement nicht anders vereinbart). Sofern die Partner eines FP7-Projektes es verabsäumen, ihren Foreground so schnell wie möglich zu verbreiten, kann die Kommission eingreifen und ihn selbst verbreiten. Jegliche Verbreitung muss in FP7 zumindest 45 Tage vorher angezeigt werden. Wenn ein Partner nicht einverstanden ist (bzw. die Verbreitung seine Interessen beeinträchtigt), hat er die Möglichkeit, dies innerhalb von 30 Tagen kund zu tun. In der IMI IP Policy ist bezüglich der Verbreitung von Foreground vorgesehen, dass er innerhalb von einem Jahr nach Beendigung des Projekts veröffentlicht wird. Sofern dies</p>	

nicht passiert, kann das Executive Office ihn an Stelle der Partner verbreiten.