

Factsheet N°13

Focus on

Intellectual Property Rights (IPR)

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I. Introduction

As a general principle and in line with the spirit of ERDF regulation (open and transparent communication of what EU funding supports), project's deliverables, outputs and results should be disseminated and made available to the general public free of charge.

However project partners may examine the possibility of protecting them (whereas results of the project shall be openly disseminated).

This protection can take different forms and it is up to the project partners to determine the most suitable protection. The 2 Seas Programme allows for protection of the Intellectual Property as long as all the rules and requirements stemming from the ERDF regulations and the applicable national rules are respected.

This factsheet aims at clarifying how this protection can be done in the framework of the 2 Seas Programme, but also what the consequences of this protection are in terms of communication, dissemination and respect of State Aid and revenue generation. Finally, it will provide some tips on how to integrate IPR management in the Application Form.

II. Agreement on IPR

Both Programme contractual documents (Subsidy Contract and Partnership Agreement) include an article on Intellectual Property Rights. These articles are indeed binding but remain generic.

In case a project decides to protect one or more deliverables and/or outputs produced during its implementation, an agreement **should be signed by all project partners** in addition to the official Programme contractual documents listed above. This specific agreement shall cover all necessary information about these IPR.

III. Definition

Intellectual property is a term referring to property resulting from creations of the human mind (the intellect). In a broad sense, it comprises inventions, designs, artistic and literary works, logos, valuable information/data, research results, methods of production, trade secrets, computer programs or websites, to name a few. Some types of intellectual property can be protected by Intellectual Property Rights.

Intellectual Property Rights are the rights that protect the creations of the human mind (intellectual property).

Intellectual property rights are customarily divided into two main areas:

- **Copyright (and rights related to copyright)** related to literary and artistic creations such as books, music, paintings or films, as well as technology-based works such as computer programs and electronic databases
- **Industrial property rights** related to a range of forms such as patents and utility models for inventions, trademarks, industrial designs or geographical indications.

It is also important to define some other key terms in the framework of the Interreg 2 Seas Programme 2014 - 2020:

- **Deliverable:** A side-product or service of the project that contributes to the development of a project's output.
- **Output:** What has actually been produced for the money given to the project. It can be captured by a programme output indicator, and directly contributes to the achievement of the project result and related specific result.
- **Result¹:** The immediate advantage of carrying out the project, it should indicate the change the project is aiming for.

Deliverables and outputs can be protected by IP rights.

It is important to note that also in the case deliverables and outputs are protected by IP rights, project partners shall widely communicate and disseminate the results generated by these deliverables and outputs. In other words, even in case of IP rights on deliverables and outputs resulting from the project, the project partnership should still communicate and disseminate on the effect or benefit derived from the project.

A. Protection of the Intellectual Property: How to protect the deliverables and outputs?

There are several types of possible IP rights, each with its own specific characteristics in terms of procedure, registration, fees, term of protection etc.

It is up to the projects to identify these characteristics and apply the most suitable procedure.

In case projects would need specific assistance with this identification, it is highly recommended to get in touch with the EU funded IPR Helpdesk: <https://www.iprhelpdesk.eu/>

B. Ownership of the Intellectual Property

a) Pre-existing intellectual and industrial property rights:

Each partner having pre-existing intellectual and industrial property rights will retain the full and total ownership of its own prior Intellectual Property Rights. However, where pre-existing intellectual and industrial property rights need to be shared to deliver the project, then project partners should grant each other a non-exclusive, royalty free licence for use during the duration of the project, and for the purpose of the project (details should be set out in a separate agreement).

b) Deliverables and outputs created by partners during the project:

All intellectual property, deliverables, outputs and results (whether tangible or intangible) that derive from the project will be the property of the Lead Partner and/or the Project Partners (details will be set out in a separate agreement).

This means that the Lead Partner and the Project Partners will be the joint owners of all project deliverables and outputs.

¹ **Note** that 'results' in the context of Interreg are not the same as 'results' in Horizon 2020. In Interreg 'results' refer to the change brought about by the project, which would rather be 'impact' in Horizon 2020.

To manage both pre-existing intellectual property rights brought into the project by project partners, as well as ownership of deliverables and outputs generated during the project in a clear and fair way, project partners are encouraged to enter into a separate agreement outlining project-specific IPR procedures during the initiation stage.

To maintain any protection for the Intellectual Property Rights on deliverables and outputs resulting from the project, project partners may decide to submit an IPR application.

To get some guidance on how to deal with IP rights in the case of a 2 Seas project, it is advised to read the factsheet "IP joint ownership" of the EU funded IPR helpdesk:

<https://www.iprhelpdesk.eu/sites/default/files/newsdocuments/Fact-Sheet-IP-Joint-Ownership.pdf>

IV. How to deal with IPR in the 2 Seas programme

A. Compliance with State Aid and revenue-generation rules

Project partners should be aware that in case they decide to protect their deliverables and outputs, this can potentially have an impact on 2 key aspects:

- **Compliance with State Aid rules:**

One of the aspects to be considered as to whether the partners comply with the State Aid rules is the non-selectivity and open & public dissemination free of charge of deliverables and outputs. If the IP is only disseminated to a limited set of target groups, this can influence the competition within the given market and therefore the project may not comply with State Aid rules.

In case the project decides to go for IP protection, obviously this aspect could be impacted and there may be consequences to be taken into account in terms of the project's State Aid relevance. Project partners shall therefore carefully consider this aspect during the preparation or the implementation of their project (see factsheet 11 for more information).

- **Compliance with rules on revenues:**

In case the IP protection (and the subsequent commercial exploitation) generates revenues, these will need to be taken into account and deducted in compliance with the Programme rules on revenues (see factsheet 10 for more information).

Whenever the project foresees IP protection, this decision needs to be communicated to the Programme (via the Joint Secretariat and/or the Territorial Facilitators). The latter will support the project in the identification of the necessary steps to be undertaken and ensuring compliance with the Programme rules on State Aid and revenues (but also on communication/dissemination).

B. Communication and dissemination requirements

As a general principle, projects shall communicate on and disseminate their:

- **Results.** In any case partners must widely communicate on and disseminate their achievements and the positive change they have brought about on the territories and for their target groups. Projects should spread the word about what they have changed in the area.
- **Deliverables/outputs** (concrete tangible/intangible products of the project). They should be disseminated and made available to the public free of charge UNLESS they are protected by IP rights or in the process of being protected. In this case, projects partners are free to decide to restrict their dissemination free of charge.

C. Programme tips

- Partnerships are encouraged to discuss IPR as early as possible during the development of their Application Form and include, where possible and relevant, information regarding how IP protection is foreseen to be managed when submitting an Application Form. This could take the form of a specific work package or activity within other work packages (e.g. dedicated activity under the Management Work Package).
- Where already possible, projects should already identify at development and submission stage which deliverables and outputs could be potentially protected. This information will allow projects and Programme bodies to plan as early as possible the need for a specific management of IPR during the implementation.
- Partnerships are encouraged to enter into a separate agreement during the initiation stage of the project in which they outline the way in which they will manage both pre-existing intellectual property rights brought into the project, as well as ownership and planned intellectual property rights for deliverables and outputs generated during the project. This agreement can be part of the Management work package with an annual review meeting in case changes need to be made.
- As the situation may change during the course of the project implementation, we recommend you to get in touch with the Joint Secretariat as soon as any change to what is foreseen in the Application Form with regards to IPR has been or may be made in order to define the most appropriate measure.

V. Eligibility of costs

All expenses related to the IP rights on deliverables and outputs derived from the project are **eligible** in the 2 Seas Programme provided that they are incurred during the project implementation. These costs shall fall under **Budget Line 4** (External expertise and services – see factsheet 8 for more information).