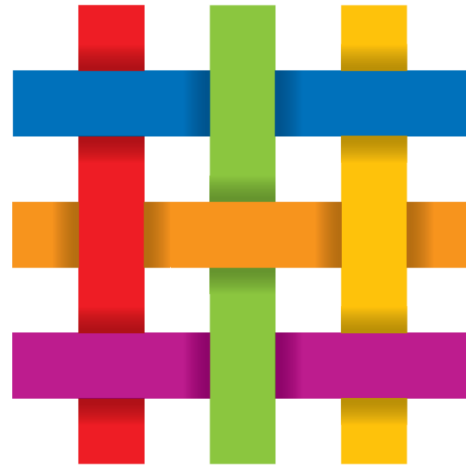


DESCA for Horizon Europe



DESCA
MODEL CONSORTIUM
A G R E E M E N T

What is DESCA?


DESCA = Development of a Simplified Consortium Agreement

- **Origin in FP7** → DESCA as a model CA jointly developed by several organisations that formerly had their own models
- Entirely self-financed by the organisations involved
→ **An independent initiative**
- DESCA 2020 is the **most frequently used** model consortium agreement for Horizon 2020 projects

Who is behind DESCA?

Core Group



 **Consultation Group:** about 80 experts from industry, research organisations and universities

DESCA: A few basic principles

- **Simplified:** Reduced to the necessary minimum, limit „legalese“
- **Balanced:** Respects the interests of research and industry, big and small partners
- **Single:** One core text where possible
- **Modular:** Options where necessary
- **Didactic:** Explanatory texts to illustrate and explain clauses and options, examples for different project types

DESCA update for Horizon Europe – Approach

- Keep current text **as stable as possible**
- **MUST:** Implement changes necessary because of Horizon Europe rules
- **CAN:** Implement changes that stem from experience of working with DESCA 2020 or other developments
- **Core Group** does its work in **sub-groups** on four topics
- **Consultation Group** invited to give input on all topics

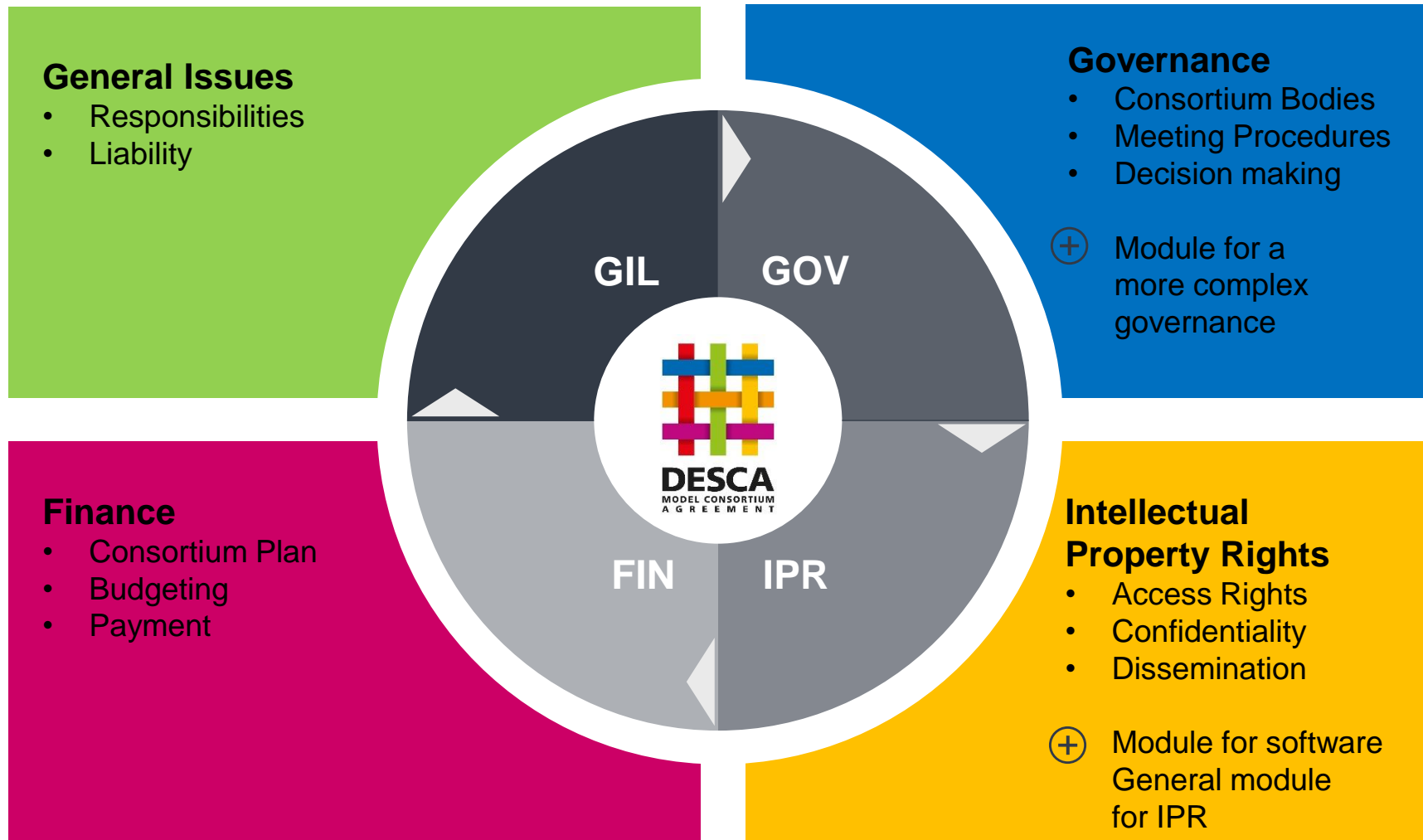
DESCA update - Some statistics

- **First round** of comments, 2020 („CAN“): feedback received from around 30 consultation group members, 248 pages of consolidated comments
- **Second round** of comments, 2021 („MUST“): feedback received from 36 consultation group members, 172 pages of consolidated comments

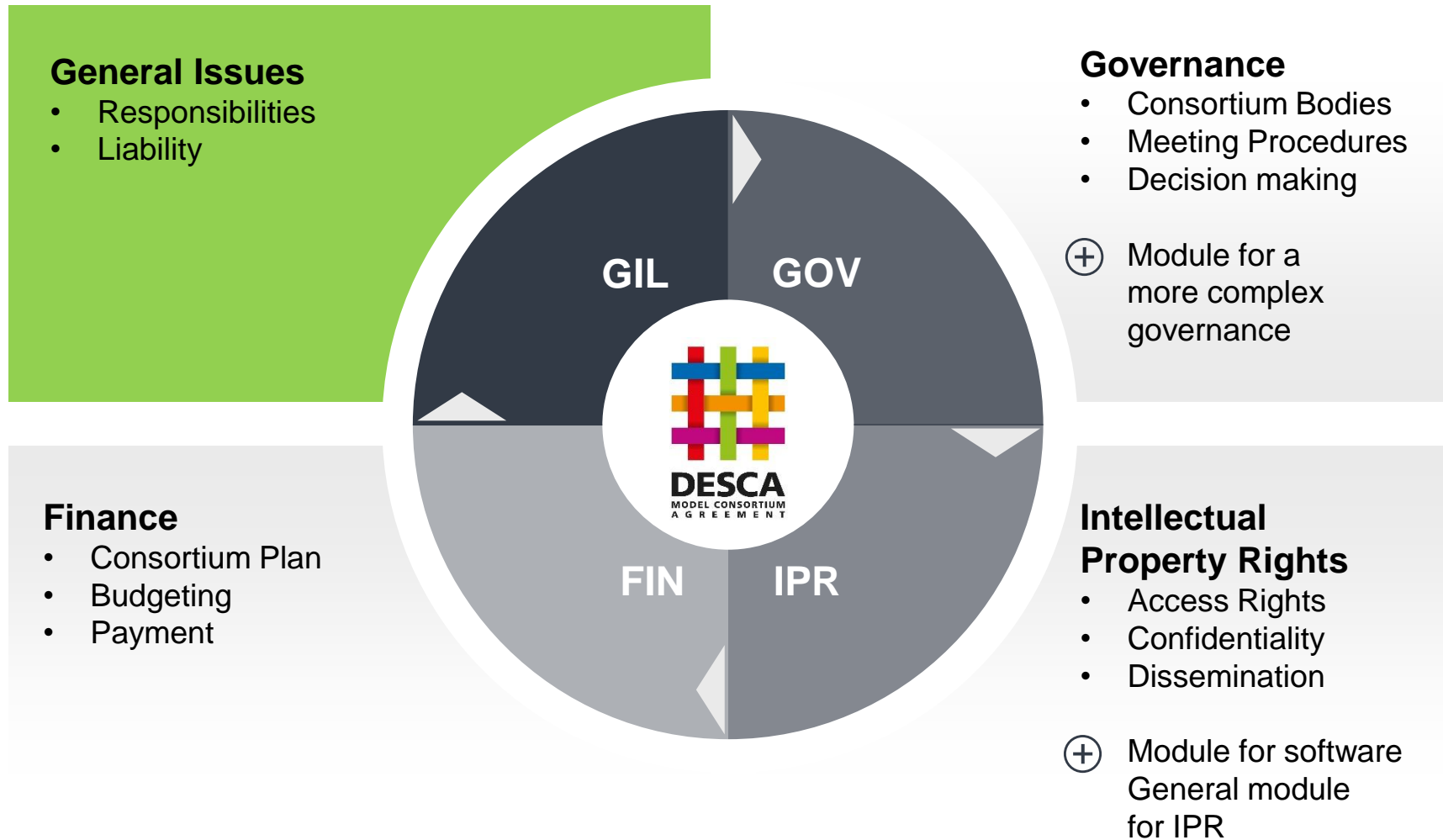
THANK YOU !

**Many thanks to the DESCA Consultation group
for its essential contribution!**

DESCA update – Core group subgroups



DESCA update - General Issues and Liability (GIL)



Updated terminology

- Terminology aligned with new terminology of Horizon Europe
- “Affiliated Entities“ are the former “ Linked Third Parties“ (see MGA Article 2 Definitions)
- “Entities under the same control“: defined in MGA Annex 5 (p. 101)
- “Participants“: defined in MGA Article 2 Definitions
- “Other Participants” see MGA Article 9

Section 4: Responsibilities of Parties

- **4.4 Specific responsibilities regarding data protection**
 - New section added
 - Represents a minimum statement regarding GDPR
 - When necessary, a separate agreement concerning data processing, data sharing and/or joint controlling should be made

Section 5: Liability towards each other

- **5.2 Limitation of contractual liability**
 - Wording and structure adjusted
 - Options for different interests are provided as before; to be modified by each Consortium for each project
- **New Option 5.5: Export control**
 - An option for a new Section 5.5 has been added for consideration to be used for projects in which import or export control is relevant

Section 11: Miscellaneous

- **11.3 Formal and written notices**
 - Distinction between formal and written notices has been clarified
- **11.8 Settlement of disputes**
 - Court litigation added as a new option
- **Optional 11.9 regarding anti-corruption**
 - Optional text regarding anti-corruption added to the elucidation

DESCA update – Governance (GOV)

General Issues

- Responsibilities
- Liability

Governance

- Consortium Bodies
- Meeting Procedures
- Decision making

- ⊕ Module for a more complex governance

Finance

- Consortium Plan
- Budgeting
- Payment

Intellectual Property Rights

- Access Rights
- Confidentiality
- Dissemination

- ⊕ Module for software
General module for IPR



Less complexity of structure, more details on decisions without a meeting

Minor changes in DESCAs Horizon Europe as regards governance issues:

- Overall aim to make the text more user-friendly
- Less complex governance structure now set as default option
- More details on process for decisions without a meeting, requirement of explicit approval of 51 % of the parties (rather than the 2/3 majority of all parties required before) in order to have a more workable process

Member <-> Party

- **Use of the terms “Member” vs. “Party”:**
 - Approach: simplify wording, ensure consistency
 - Member: the person representing a Party in the General Assembly/Executive Board
 - Party: the legal entity participating in the project
 - As regards exercise of rights, focus on level of “Party”, not “Member”

- **E.g.: 6.3.4.1**

A Party Member which can show that its own work, time for performance, costs, liabilities, intellectual property rights or other legitimate interests would be severely affected by a decision of the General Assembly may exercise a veto with respect to the corresponding decision or relevant part of the decision

Option for easier signature of NDA with external experts

- **Optional 6.5 External Expert Advisory Board:**
 - New option, following Consultation Group suggestions: Explicit mandate for Coordinator to sign non-disclosure-agreement with the members of the External Expert Advisory Board on behalf of the consortium, NDA to be inserted as Annex

DESCA update – Finance (FIN)

General Issues

- Responsibilities
- Liability

Governance

- Consortium Bodies
- Meeting Procedures
- Decision making

- ⊕ Module for a more complex governance

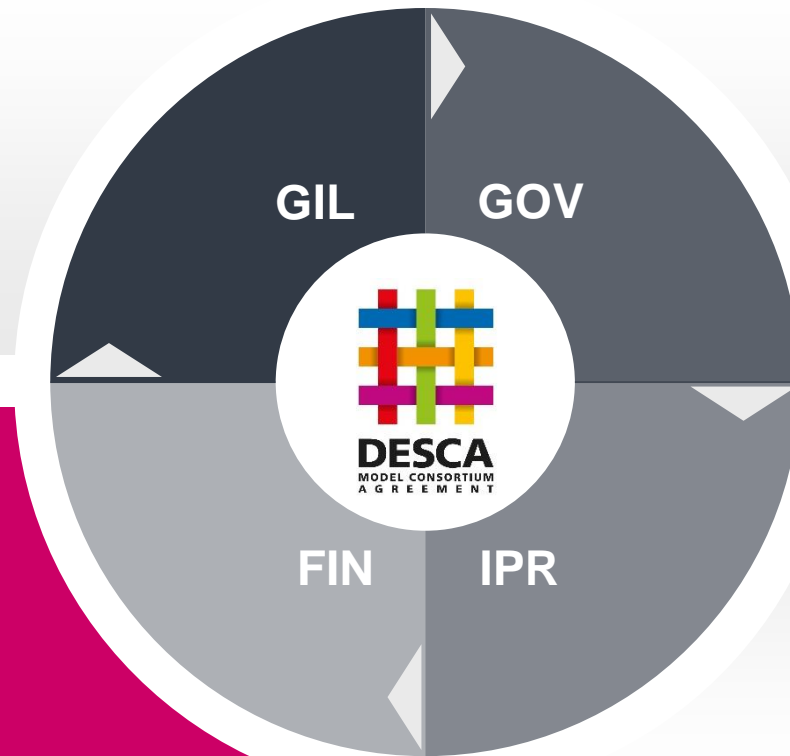
Finance

- Consortium Plan
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- Payment

Intellectual Property Rights

- Access Rights
- Confidentiality
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- ⊕ Module for software
General module for IPR



Section 7

New excess payment clause 7.1.4

Reason:

- For cases of overpayment in which the Mutual Insurance Mechanism does not intervene because the money is not due to the Granting Authority
- From the Commission's point of view, the distribution of funding among partners is an internal matter to be solved within the Consortium

New clause:

- Explicit contractual obligation to pay back money to the coordinator in case of overpayment
- Procedure to deal with cases of overpayment in which the Party is reluctant to pay back – The General Assembly decides on “Defaulting Party” status
- Aim: Fair distribution of financial risks, to bridge the budget gap until a refund takes place

Section 7

Further new elements

- **7.1.6 Termination of participation**

- A Defaulting Party should bear costs occurring to the other Parties who perform the leaving Party's tasks. The General Assembly should decide on a procedure regarding any additional costs not covered by the Defaulting Party or the Mutual Insurance Mechanism

- **7.2.2 Payments**

- The Coordinator is entitled to recover any payments paid to a Defaulting party except the costs already claimed by the Defaulting Party and accepted by the Granting Authority

Section 7

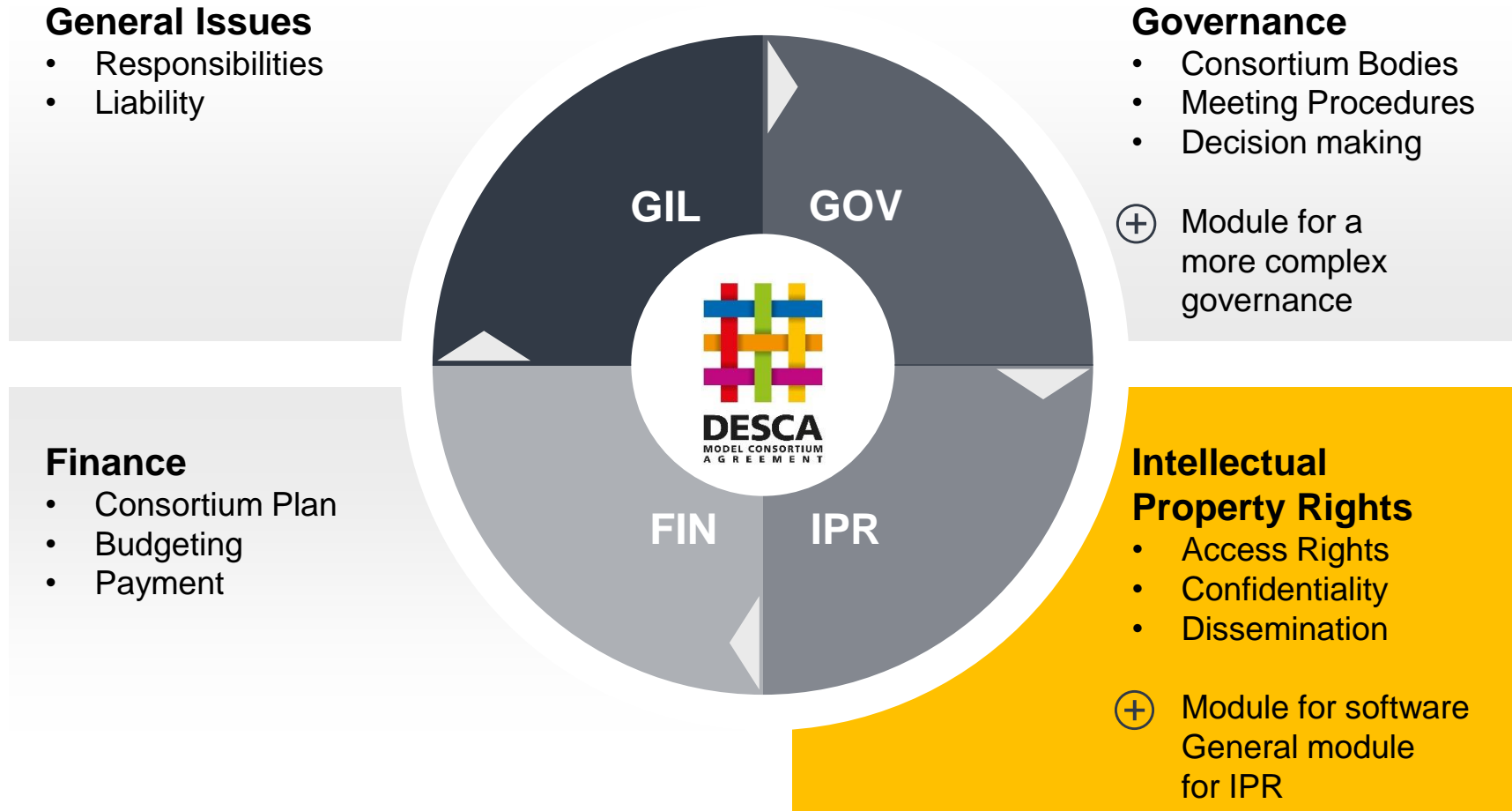
Guiding elucidations

- All Parties should provide their bank account data at signature of the CA and update it in case of changes (Section 7.1.1)
- The Consortium should decide how to deal with negative interest (Section 7.1.3)
- The Coordinator has to demonstrate that the payments were made in accordance with the Consortium Plan. It is good practice to reimburse amounts that will probably not be spent before the end of the project to allow for a timely redistribution and use of the budget (Section 7.1.4)
- Article 22.2 MGA covers the external liability of beneficiaries towards the Granting Authority in case of recoveries by the Granting Authority - not the internal liability among Parties within a Consortium (Section 7.1.6)
- The Coordinator has no obligation to advance any payments from his own resources (Section 7.2.2)

Lump sums

- The Commission will introduce further lump sum calls in 2022 and considers much wider use of lump sums for the Horizon Europe work programme 2023-2024
- So far, neither the Commission nor we have the possibility to assess the whole lifecycle and especially the final reporting of the lump sum pilot projects
- The DESCA Core Group will build on the experience made with the first lump sum grants and plans to introduce lump sum options once there is sufficient experience with the implementation of lump sums

DESCA update - Intellectual Property Rights (IPR)

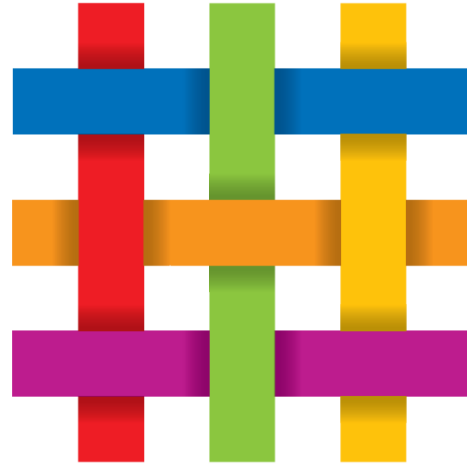


Section 8: Results

- **8.2 Joint ownership**
 - Addition of *teaching activities* for the use of jointly owned Results
 - Elucidations address *non-commercial research* and aspects to be taken into account if the consortium wishes to define it
- **8.3.1 Transfer of own Results**
 - Now including jointly owned Results for clarification
- **8.4.2 Dissemination of own (including jointly owned) Results**
 - Addition of a new objection ground about Confidential Information in 8.4.2.2
 - Elucidations address the possibility of making a distinction between different forms of dissemination with different timeframes

Section 9: Access Rights

- **9.4.1 Access Rights for Exploitation**
 - *Teaching purpose* added in Access Rights to Results for internal research in 9.4.1
 - Clarification on Access Rights to Background in the elucidations (9.4.2), to the effect that exploitation can be any activity outside of Implementation of the Action, including research on behalf of a third party, linked to the EC Model Grant Agreement
- **9.5 Access Rights for Entities under the same control and related Attachment 4**
 - Terminology clarification in the elucidations regarding entities under the same control
- **Module IPR SC on Software**
 - Insertion of an option for cases in which software is introduced under controlled license terms



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