

## IP rules applicable to Ambient Assisted Living Joint Programme Projects

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### Introduction

The Ambient Assisted Living Joint Programme (AAL JP) is an “Article 185 initiative” that was initiated by some of its current member organizations. This is a demand-driven research and development funding programme for innovative ICT-based products, services and systems. Its main goal is to improve the quality of life, autonomy, participation in social life, skills and employability of older people.

Thus, the main activity under the AAL JP is the funding of R&D and Innovation projects in the AAL field that result from regularly published [calls](#) for proposals.

This funding activity is implemented by the AAL Association (an international non-for-profit association according to Belgium law) and its members that are national funding organisations in actual 20 European Union Member States<sup>1</sup> and 3 Associated States<sup>2</sup>.

Differently from FP7, the European Commission is not part of the implementation structures of AAL JP but only contribute with a substantial financial support that is granted on the basis of Article 185 of the European Union Treaty<sup>3</sup>.

1. Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovenia, Spain, Sweden and the United Kingdom.

2. Israel, Norway and Switzerland.

The rules of European Union's participation in the AAL JP were established in a decision of the European Parliament and of the Council<sup>4</sup> which is considered to be "the basic act" of the AAL JP.

It should be furthermore mentioned, that the AAL JP adopts and supports the intellectual property rights regime created for the needs of FP7 projects in the Rules for Participation for the Seventh Framework Programme (RfP)<sup>5</sup>. That means, in other words, that IPR rules set out in the RfP shall be applicable to AAL JP projects.

This document provides a practical overview of the Intellectual Property (IP) rules applicable in the AAL JP implemented by funding authorities of several EU Member States and some Associated Countries. It further explains where these rules may be found and the terminology commonly used. IPR issues can affect both the way a project is conducted, and any exploitation of final results.

## 1. General Agreement, EC Annual Financial Agreements & Bilateral Administrative Agreements

The **General Agreement** is a contract between the European Commission (which represents the European Union) and the AAL Association establishing the rights and obligations of the AAL Association with regard to the European Commission (e.g. amount and conditions of the financial contribution of the European Union to the AAL JP; Management of the financial contribution of the European Union to the AAL JP by the AAL Association, etc.)

Besides, every year, the European Commission and the AAL Association sign a bilateral **Annual Agreement** for the financial contribution to the implementation of the annual AAL JP Work Programme and administrative tasks of the AAL JP.

The **Administrative Agreements** are bilateral contracts between AAL Association and each corresponding National Funding Authorities establishing their mutual rights and obligations. They set out the detailed requirements applying to both parties in view of implementation of joint working programmes and calls for proposals. They also establish jointly annual budgets and budget controls, selection, implementation and administration of activities and projects, joint financing of selected projects and other activities, etc.

## 2. Grant Agreements & Consortium Agreements

Any project partner selected to participate in an AAL JP-funded project shall in all cases sign two agreements: a Grant Agreement (GA) and a Consortium Agreement (CA).

The **Grant Agreements** are bilateral contracts between the National Funding Authorities and corresponding project partners (each project partner signs a grant agreement with its own National Funding Authority) establishing the rights and obligations of the individual project partner with regard to its National Funding Authority. According to each National Regulation, this Grant Agreement can be replaced by an official offer, award, publication in the official journal, etc.

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3. Article 185 TFEU (ex Article 169 TEC) states that: "In implementing the multiannual framework programme, the Union may make provision, in agreement with the Member States concerned, for participation in research and development programmes undertaken by several Member States, including participation in the structures created for the execution of those programmes."

4. Decision No 742/2008/EC of the European Parliament and of the Council of 9 July 2008 on the Community's participation in a research and development programme undertaken by several Member States aimed at enhancing the quality of life of older people through the use of new information and communication technologies.

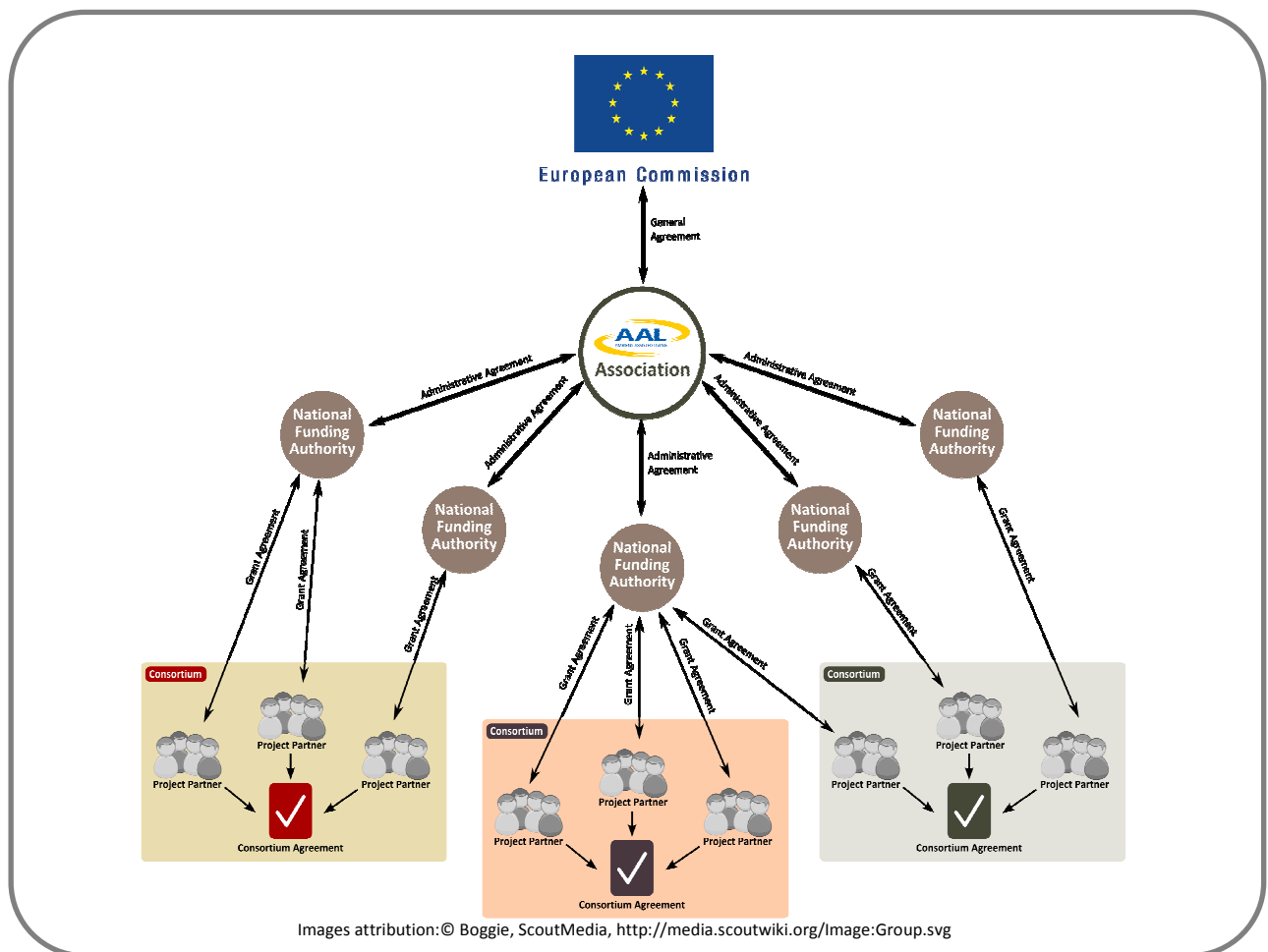
5. Regulation No. 1906/2006 of the European Parliament and of the Council of 18 December 2006 laying down the rules for the participation of undertakings, research centers and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013).

The **Consortium Agreement** is a contract, that project partners conclude amongst themselves in order to implement the project. In accordance with Article 6 of the Annex to General Agreement, a CA “...is mandatory and shall be signed by all the project partners before the start of the project”. The agreement allows the project partners to determine with detail the administrative and management provisions necessary to carry out their project. Within this agreement, parties also outline the rights and responsibilities of each member of the consortium.

The AAL Association leaves the drafting of the CA to project consortia. Consortium members decide on its content which cannot, however, conflict with:

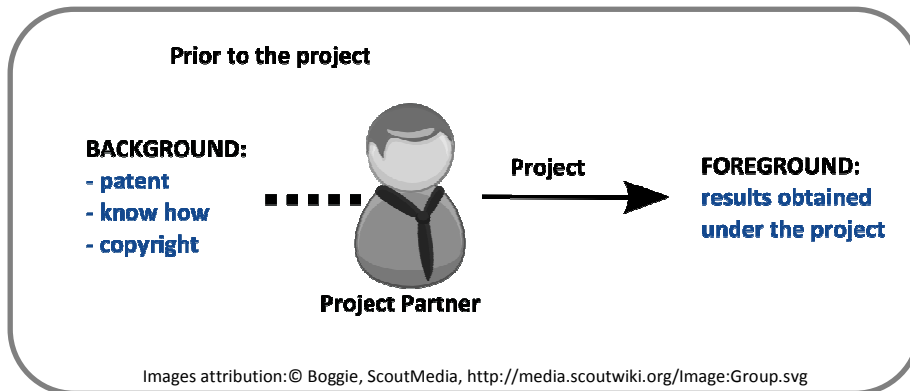
- the provisions of “the basic act” of the AAL JP,
- the related EU legislation,
- the General Agreement including its Annex “Detailed arrangements for the AAL Joint Programme”,
- the corresponding administrative agreements,
- the corresponding calls for proposals (CfPs),
- the corresponding national legislations,
- the remaining EU legislations and corresponding grant agreements which always prevail in case of doubt.

Furthermore, as mentioned before, the intellectual property rules applicable to projects launched under the AAL JP shall be based on RfP as a model. For this reason the CA shall be based on RfP as well and, in no case, contradict them.



### 3. Background & Foreground

The regime created in RfP distinguishes between information, knowledge and IPR which have been generated previously of the project (“background”) and those generated during the execution of the project (“foreground”). IPR provisions related to background and foreground should be detailed in the CA. Project Partners shall deal with these provisions at all stages of the project.



**Background** means the information and knowledge which is held by the project partners prior to their accession to the GA, as well as copyrights or other IPR pertaining to such information, including any applications which have been filed before their accession to the aforementioned agreement, and which is needed for carrying out the project or for using foreground.

**Foreground** means the – tangible and intangible – results, including for example information and knowledge, whether or not it can be protected, which is generated under the project. Such results include rights related to copyright, design rights, patent rights, plant variety rights, and similar forms of protection.

In order for the project partners to be able to achieve better cooperation and execution of the project, they shall (in many cases) exchange some background and foreground (in the form of patents, know how, etc.). It will imply a grant of access rights.

### 4. Access Rights

**Access rights** mean licenses and user rights granted to another project partner’s foreground or background. Thus, they allow project partners to benefit from each other’s resources, taking full advantage of the collaboration.

The provisions of RfP concerning access rights to foreground and background constitute the minimal rules that cannot be restricted or set aside. On its basis, access rights to another project partners’ foreground and/or background are only to be granted if the requesting project partner needs such access in order to carry out the project or to use its own foreground.

In all other situations, appropriate access rights may be freely negotiated and set in the CA, but there is no requirement to grant them. The CA, thus, may establish additional access rights, e.g. to sideground<sup>6</sup>, to all foreground<sup>7</sup> or access rights on more favourable conditions than foreseen in RfP.

For the purposes of transparency, it is extremely important that the project partners define (preferably in the CA) what IP is considered necessary with respect to the obligation to grant access rights. In this context, participants may decide to include or exclude some specific elements of their background to the project, in this way granting or limiting access rights to other participants.

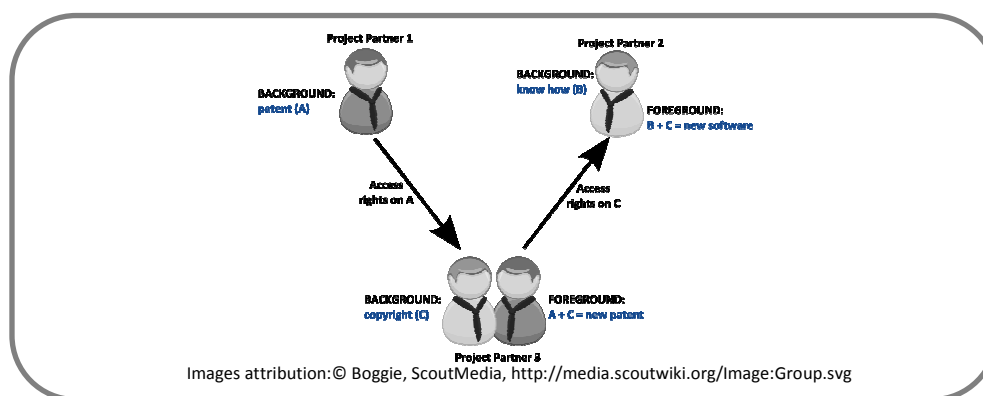
	Access to background	Access to foreground
Project implementation	Royalty-free, unless otherwise agreed before acceding to the Grant Agreement.	Royalty-free
Use of results (exploitation or further research)	Royalty-free, or on fair and reasonable conditions	Royalty-free, or on fair and reasonable conditions

The request for access rights may be made up to one year after either the end of the project, or the termination of the participation of the owner of the foreground or background concerned.

Let us take a look at a practical example:

As outlined in the graphic below, Project Partner 1 enters into the project owning a patent. During the execution thereof, he is required to grant access rights (a license, for example) on its patented procedure to Project Partner 3 who needs the given technology to carry out his part of the project. As a consequence, and thanks to those access rights granted, Project Partner 3 develops a new patentable invention (A+C = foreground).

On the other hand, Project Partner 2 requires access rights to Project Partner 3's background (C), in order to use his newly developed software (foreground).



6. In the terminology of the research projects, the word “sideground” is used to describe the results, including data, know-how and information, whether or not they can be protected, which are generated by a party 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.

7. Bear in mind, that under RfP access rights to another participant’s background or foreground shall only be granted if the requesting participant NEEDS that access in order to carry out the project (Article 49 RfP) or to use its own foreground (Article 50 RfP). In all other situations, appropriate access rights may be freely negotiated and set in your CA, but there is no requirement to grant them.

## 5. Foreground: Ownership, Protection, Use and Dissemination

### 5.1 Ownership

The foreground resulting from the project belongs to the Project Partner generating it.

When it has been developed jointly by several project partners, and it is not possible to distinguish their individual contributions, the foreground generated will be jointly owned, unless the project partners concerned agree on a different solution.

To better manage joint ownership, project partners shall agree on its terms and conditions, either by incorporating the necessary provisions in the CA or by signing a joint ownership agreement.

In the case where there are no provisions in the CA and no joint ownership agreement has been concluded, the default FP7 joint ownership regime will apply (meaning that each of the joint owners shall be entitled to grant non-exclusive licenses to third parties, after giving prior notice and fair and reasonable compensation to the other joint parties).

In order to be able to meet its legal obligations deriving from RfP and its contractual obligations resulting from the CA, project partners should reach an agreement with their employees and other personnel as soon as the latter may be entitled to claim rights to foreground (subcontractors, students, end-users actively involved in the project etc.). Such agreements may include a formal transfer of ownership or granting of appropriate access rights with a right to sublicense. This seems to be especially important in case of respective laws of those countries which have a specific type of “professor’s privilege” regime<sup>8</sup>.

**Transfers of ownership of foreground** are allowed, and yet the obligations regarding that foreground must be passed on to the transferee. In case the ownership is transferred, the assignor must conclude appropriate arrangements to ensure that its contractual obligations with respect to dissemination, use, and the granting of access rights are passed on to the new owner (as well as by the latter to any subsequent assignee).

Furthermore, prior notice about the intent of transfer must be given to the other project partners together with sufficient information concerning the new owner of the foreground to permit them to exercise their access rights.

Objections to the intended transfer may only be raised if such transfer would adversely affect objecting project partner’s access rights. If such an effect is demonstrated, the intended transfer will not take place until an arrangement has been reached (The mere fact that the foreground concerned would be transferred to a competitor is not in itself a valid reason for an objection).

### 5.2 Protection

Foreground which is capable of industrial or commercial application should be protected by its owner, having due regard to its legitimate interests and the legitimate interests of the other project partners.

Where a project partner which is not owner of the foreground invokes its legitimate interests, it must, in any given instance, show that it would suffer disproportionately great harm.

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8. The IP systems in the EU currently vary between Member States which maintain a system of professor’s privilege (inventor ownership) and those which maintain a system of institutional ownership. “Professor’s privilege” is the concept that the results of publicly-funded research created or developed by researchers, e.g. professors, are owned by that researcher and not by the academic institution where the research is carried out. Currently, professor’s privilege regime rules in Sweden and Italy (see P. van.Eecke, J. Kelly, P. Bolger, M. Truylens “Monitoring and analysis of technology transfer and intellectual property regimes and their use” p. 43-93).

### 5.3 Use

Project partners shall use the foreground which they own or ensure that it is used. This use of foreground can be direct (by the owner itself), or carried out by other project partners or third parties (through licensing, for example).

### 5.4 Dissemination

Where dissemination of foreground does not adversely affect its protection and use, there is an obligation to disseminate it as swiftly as possible, always in a way that is compatible with the protection of the IPR, confidentiality obligations and legitimate interests of the owners (any disclosure, prior to filing for protection, may invalidate a subsequent or potential valuable protection). Therefore, before any foreground is made available to the public, a decision on its possible protection should be made.

The other project partners should be previously informed and may object to the dissemination activity if their legitimate interests in relation to their foreground could suffer great harm.

The AAL Association shall take all appropriate measures to highlight the fact that AAL JP and the project funded there under have received funding from European Union.

### Useful Resources

For further information on the topic please also see:

- Decision No 742/2008/EC of the European Parliament and of the Council of 9 July 2008 on the Community's participation in a research and development programme undertaken by several Member States aimed at enhancing the quality of life of older people through the use of new information and communication technologies: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008D0742:EN:NOT>  
Call for Proposals 2011 AAL-2011-4 and Template for Part B for proposals submitted to the Call for Proposals AAL-2011-4: <http://www.aal-europe.eu/calls/call-4-2011>
- Rules for the Participation in FP7 projects: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:391:0001:0018:EN:PDF>
- AAL homepage: <http://www.aal-europe.eu/>
- Consortium Agreements models:
  - (i) Desca Model for FP7 projects: <http://www.desca-fp7.eu/>
  - (ii) IPCA Model: [http://www.digitaleurope.org/index.php?id=32&id\\_article=163](http://www.digitaleurope.org/index.php?id=32&id_article=163)
- Guide to IP Rules for FP7: [ftp://ftp.cordis.europa.eu/pub/fp7/docs/ipr\\_en.pdf](ftp://ftp.cordis.europa.eu/pub/fp7/docs/ipr_en.pdf)
- Checklist for a Consortium Agreement for FP7 projects: [ftp://ftp.cordis.europa.eu/pub/fp7/docs/checklist\\_en.pdf](ftp://ftp.cordis.europa.eu/pub/fp7/docs/checklist_en.pdf)

## GET IN TOUCH



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The European IPR Helpdesk aims at raising awareness of Intellectual Property (IP) and Intellectual Property Rights (IPR) by providing information, direct advice and training on IP and IPR matters to current and potential participants of EU funded projects focusing on RTD and CIP. In addition, the European IPR Helpdesk provides IP support to EU SMEs negotiating or concluding transnational partnership agreements, especially through the Enterprise Europe Network. All services provided are free of charge.

**Helpline:** The Helpline service answers your IP queries within three working days. Please contact us via registration on our website ([www.iprhelphdesk.eu](http://www.iprhelphdesk.eu)), phone or fax.

**Website:** On our website you can find extensive information and helpful documents on different aspects of IPR and IP management, especially with regard to specific IP questions in the context of EU funded programmes.

**Newsletter & Bulletin:** Keep track of the latest news on IP and read expert articles and case studies by subscribing to our email newsletter and Bulletin.

**Training:** We have designed a training catalogue consisting of nine different modules. If you are interested in planning a session with us, simply send us an email.

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