



IP Management in Horizon 2020 Focus on MSCA



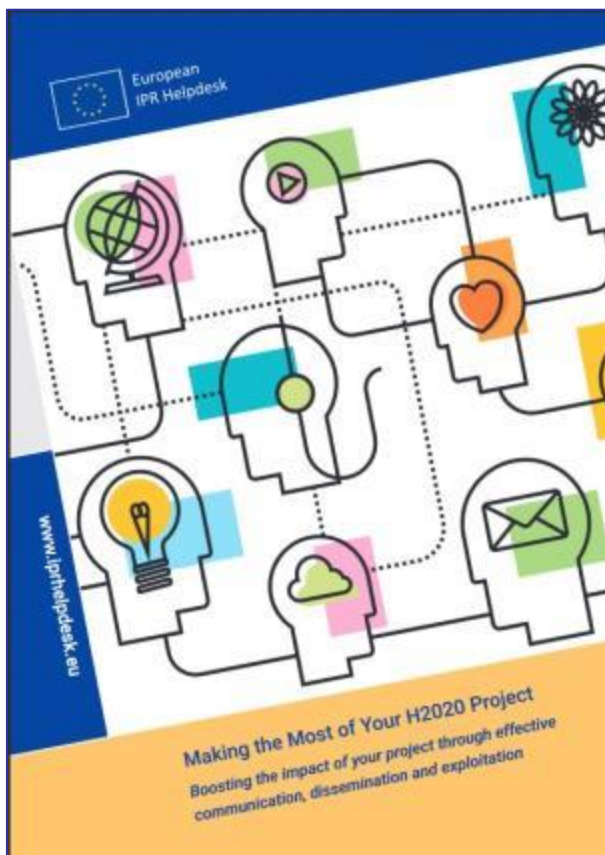
European IPR Helpdesk
Michele Dubbini
Training and Communication
Eurice GmbH

Webinar
23-05-2018





Supporting material



New Brochure and Thematic Special: Making the Most of Your Horizon 2020 Project



Webinar planning 2018

März						
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- 23 May 2018

IP Management in H2020 with a special focus on Marie Skłodowska Curie Actions

- 28 May 2018

Webinar Series "IP as a business asset".
Session 3: The 10 Pitfalls of Accounting for IP

- 29 May 2018

Effective IP & Outreach Strategies Help
Increase the Impact of Research and
Innovation

- 13 June 2018

Basic IP toolkit for SMEs – hacks and
common pitfalls

- 04 July 2018

Impact and Innovation in H2020

- 18 July 2018

Maximise the Impact of Horizon 2020
project results



Webinar planning 2018

September							
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- 12 Sept 2018

Introduction to IP

- 26 September 2018

IP Commercialisation

- 17 October 2018

IP Management in H2020

- 31 October 2018

Technology Transfer

07 November 2018

Geographical Indications

- 14 November 2018

Freedom to Operate in Horizon 2020

- 21 November 2018

IP Management in H2020

- 12 December 2018

Impact and Innovation in H2020

- 19 December 2018

Maximize the impact of H2020 project results



IPforBusiness - IP Training Roadshow for Innovation Support

The European IPR Helpdesk and the [European Patent Academy](#), are organising the **European-wide IPforBusiness - IP Training Roadshow for Innovation Support**, consisting of 12 IP training events in 12 different European countries.

Long story short:

- Being an SME, why should you bother with IP/IP management ? – **Why does IP matter?**
- Understanding IP strategy and IP management as a business asset for SMEs (with a clear focus on specific needs and challenges for SMEs) – **What needs to be done?**
- Concrete case studies demonstrating successful IP management implementation activities in specific technology/business sectors as well as in different environments (Start-up vs. medium-sized company) – **How can SME's implement an IP strategy?**



When? 2017 & 2018

- 25 September 2017 | DUBLIN, Ireland
- 12 October 2017 | TALLINN, Estonia
- 05 December 2017 | LILLE, France
- 25 January | VILNIUS, Lithuania
- 26 February | RIGA, Latvia
- 14 March | ROME, Italy
- 31 May | BERLIN, Germany
- 08 June | PRAGUE, Czech Republic
- 09 Oct | PORTO, Portugal
- xx SOPHIA, Bulgaria
- Train-the-Trainer events
 - Vienna
 - Amsterdam



Roadmap

IP Management in H2020/ MSCA

- *Knowing the rules*
- *Anticipating risks*
- *Avoiding problems*
- *Further assistance: EU IPR Helpdesk services*





HORIZON 2020

**The EU Framework Programme for Research and Innovation
(2014-2020)**



HORIZON 2020



Key success factors for „bridging“ academic/non-academic sector

Mutual Trust

Managerial
Capacities

Governance
Structures

Clear and
transparent
contracts

Active
involvement
of all parties

Agreements
on IPR

Win-Win-
Situation



MSCA – IP relevant characteristics

- Intersectoral exchange – academic/non-academic (i.e. SMEs) – Different IP policies/interests; Publication vs. Exploitation
- International dimension EU-MS/AC vs. Third Countries – Different IP laws/regulations
- Joint research and innovation activities between the participants- Exchange and sharing of knowledge (IP); joint protection and exploitation of results
- Secondments of research and innovation staff (exchanges) focusing on the exploitation of complementary competences of the participants – Granting access to background/results for/by “Visitors”



STOP

Rules and Agreements



IP rules are part of different type of agreements to be used within MSCA instruments

Grant Agreement

- to be signed with EC/REA

Consortium Agreement

- to be signed among beneficiaries
- **mandatory**



Partnership Agreement

- to be signed with partner organisations

Researcher Agreement

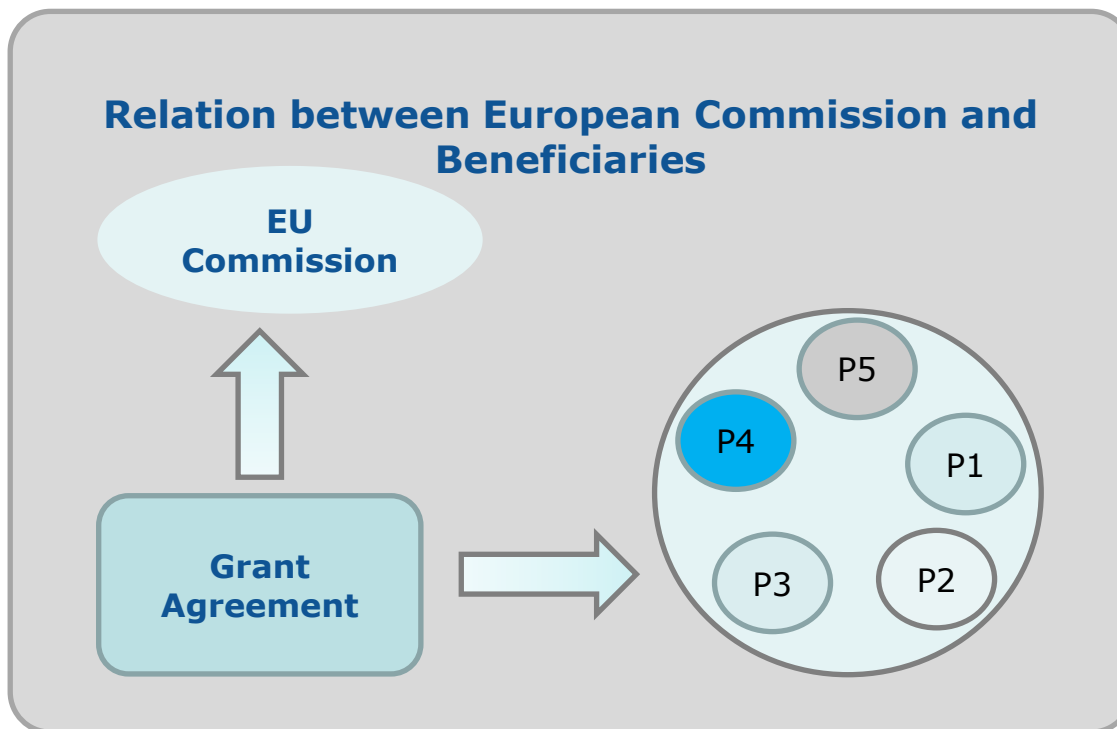
- to be signed between fellow and host institution (on individual basis but model contracts are available); ask your NCP

Additional Agreements

- i.e. Confidentiality Agreement to be signed between secondees and host institution (if not already specified in the PA or RA)



Grant Agreement (I)



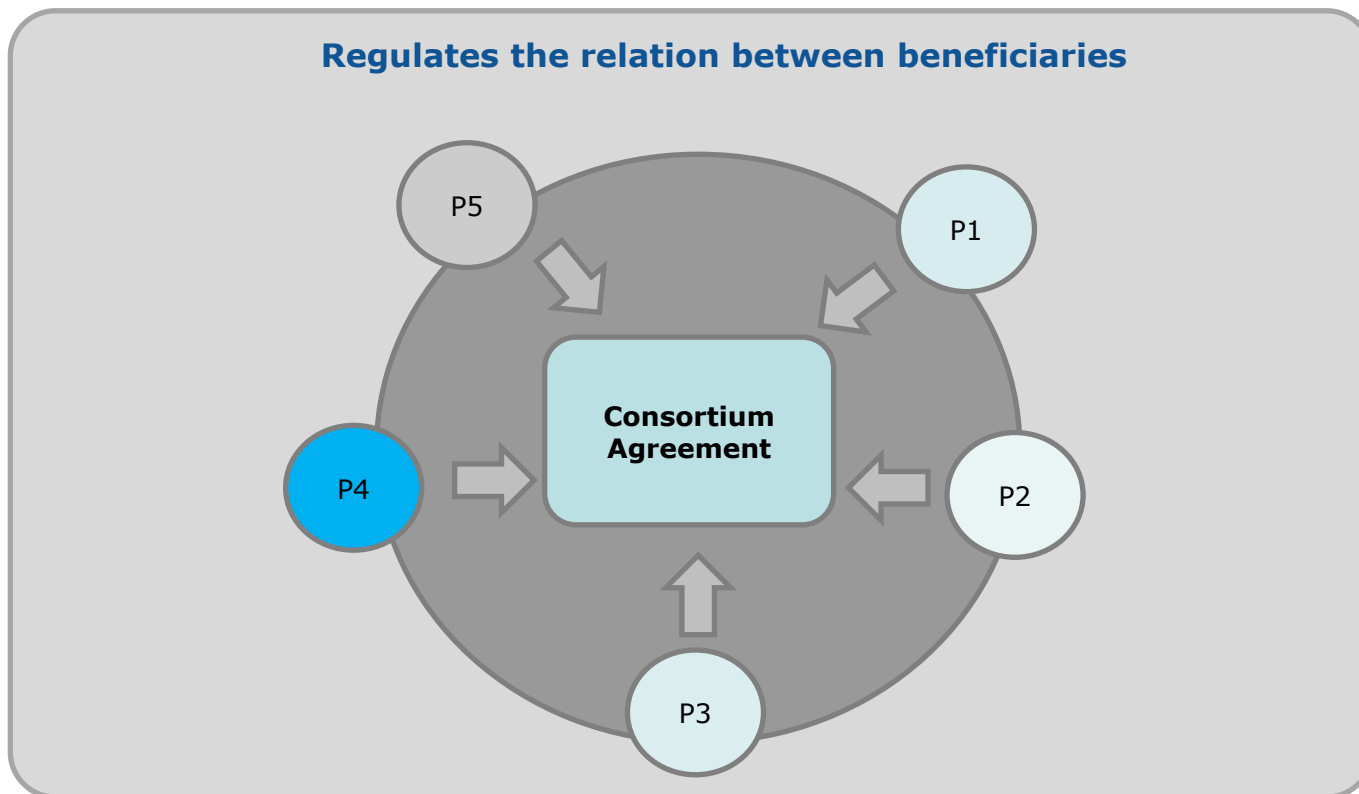


The Grant Agreement/MSCA model templates

- Templates:
 - *Model Grant Agreement for MARIE SKŁODOWSKA-CURIE INNOVATIVE TRAINING NETWORKS*
 - *Model Grant Agreement for MARIE SKŁODOWSKA-CURIE INDIVIDUAL FELLOWSHIP*
 - *Model Grant Agreement for MARIE SKŁODOWSKA-CURIE COFUND*
 - MODEL GRANT AGREEMENT FOR MARIE SKŁODOWSKA-CURIE RESEARCH AND INNOVATION STAFF EXCHANGE (MSC-RISE — MULTI)



Consortium Agreement (CA)





Consortium Agreement (II)

- A legal document that regulates the internal work of the Consortium
- Mandatory;
- Legal basics: Grant agreement (+ Annexes)/ RfP
- Implements the provisions of the Grant Agreement/programme rules
- May in no way contradict the prerequisites laid out in the EU Agreement/programme rules; the latter always take precedence!
- The CA should be worked out during the "*time to grant*" at the latest ; be prepared!
- Consortia are responsible for set up the governing rules; the Commission has no binding model, but... see participant portal
- DESCA (Development of a Simplified Consortium Agreement) model;
Different options/modules, i.e. related to software development
MCARD - ICT industry; EUCAR – Automotive industry; IMG4 - Aeronautics

<http://www.desca-2020.eu/>





Partnership Agreement

A MSCA partnership is composed of two types of participants:

Beneficiaries (= legal entities established in MS/AC) - signatories to the Grant Agreement

Partner Organisations (=legal entities established in TC) - not signatories to the Grant Agreement (consent expressed by Letter of Commitment); i.e. hosting a secondee for a limited period of time

Management and IP issues within the MSCA partnership are preferably be dealt by means of a **Partnership Agreement (not required but recommended)**



Partnership Agreement

- The Partnership Agreement regulates the relationship among the parties signatories to the Grant Agreement (beneficiaries) and partner organisations.
- Partnership agreements must be compliant with the obligations laid down in the Grant Agreement; it usually extends rules & obligations of the GA/CA to the partner organisations.
- As no models currently exist, in this case participants are highly encouraged to seek for information and assistance from our helpline.



Researcher Agreement

- The Researcher Agreement establishes the relationship between the host organisation and the research fellow;
- The beneficiaries must — on a royalty-free basis — give access to the recruited researchers to background necessary for their research training activities under the action;
- Further issues: Confidentiality Arrangements; Ownership, Protection and Exploitation of Results; Publication Rights (PhD thesis);
- Model Employment Contracts for MC fellows in Germany (Networks, Individual):
www.kowi.de

Questions/looking for templates??: ask your NCP/EU IPR Helpdesk !!



STOP

Specific Vocabulary



- Background
- Results
- Exploitation
- Dissemination
- Access rights





Definitions (I)

Background

Tangible or intangible input (data, knowhow, information) which is held by the project partners prior to their accession to the agreement. Includes IP as copyright, patents/ patent applications (filed prior to access to agreement).

Examples: *prototypes; cell lines; database rights, licences with the right to sublicense*

Project partners **must identify their background in writing**

Results

All results which are generated under the project – whether or not protectable. Such results may include copyrights, design or patent rights, trademarks or others, and belong to the partners who have generated them.





Definitions (II)

Access rights

User rights (incl. licenses) to results or background of project partners.

Exploitation

Utilisation (direct/indirect) of results in research activities, which are **not** part of the project, as well as utilisation for further development, creation and marketing of a product or process.

Dissemination

Means through which research results are presented to the public. Official publications (e.g. patent applications) are not considered as dissemination.





Ownership of Results

- **In Horizon 2020, generally the grant agreement establishes that the results of the project belong to the participant generating them.**
- It is advisable to take appropriate measures to properly manage ownership issues, such as keeping laboratory books or other kinds of documentary evidence (e.g. a properly completed Invention Disclosure Form)
- Given the collaborative nature of most projects, some results can be jointly developed by several participants. Hence, situations of joint ownership might arise.
 - > **Joint Ownership Agreements** (i.e. defining specific conditions for granting licenses or issues related to costs of protection and sharing of potential revenues); Default rule in Consortium Agreement ..



Access Rights (II)

Granting of Access Rights

	Access to background	Access to results
Project implementation	Royalty-free	Royalty-free
Use of results	Royalty-free, or on fair and reasonable conditions	Royalty-free, or on fair and reasonable conditions



General obligation to protect

Each beneficiary must examine the possibility of protecting its results and must adequately protect them — for an appropriate period and with appropriate territorial coverage — if:

- (a) the results can reasonably be expected to be commercially or industrially exploited and
- (b) protecting them is possible, reasonable and justified (given the circumstances).

When deciding on protection, the beneficiary must consider its own interests and the interests (especially commercial) of the other beneficiaries.



Protection by subject matters

Subject Matter	Patent	Utility Model	Industrial Design	Copyright	Trade Mark	Confidential Information
Invention (e.g. device, process, method ^[1])	X	X				X
Software	X ^[2]	X		X		X
Scientific article				X		
Design of a product			X	X	X	
Name of a technology/product					X	
Know How	X	X				X
Website			X	X	X	

^[1] Except methods excluded from patentability by virtue of Articles 52(2)(c) and (3) and 53(c) EPC.

^[2] Software patentability is still a debated issue given its exclusion as subject matter as by Article 52(2)(c) and (3) EPC.



Obligations to disseminate

Project partners are obliged to disseminate the results swiftly (i.e. to scientific community/broader public) by any appropriate means other than that resulting from the formalities for protecting it or **exploiting the results**, and including the publication of results in any medium.

But:

- no dissemination of results may take place before decision is made regarding their possible protection, and*
- all patent applications, publications or any other dissemination (also in electronic form) shall include a statement that the action received financial support from the Union – The same applies to results incorporated in standardisation activities.*





Dissemination checklist

- Take a decision about the protection of foreground and all required steps
- Inform the other consortium partners in writing 45 days before the planned dissemination activities and include enough information to allow them to analyse whether their interests are affected or not. Note that this time limit can be changed (for more or less days) in the CA. Wait 30 days for any objection to the dissemination (unless otherwise agreed in the CA).
- Beware not to infringe third parties' intellectual property rights
- Open access as a general principle of scientific dissemination
- List the dissemination activities in the Exploitation and Dissemination Plan



General obligation to exploit

Each beneficiary must — **up to four years after the project completion** take measures aiming to ensure '**exploitation**' of its results (either directly or indirectly, in particular through transfer or licensing by:

- (a) **using them in further research activities (outside the action);**
- (b) developing, creating or marketing a product or process;
- (c) creating and providing a service, or
- (d) using them in standardisation activities.



Obligation to disseminate Vs. Obligation to protect

Make sure you comply with
the obligation to protect...

**Sometime early disclosures
(dissemination or
communication of results)
may undermine potential
future exploitation
activities.**

THEN!

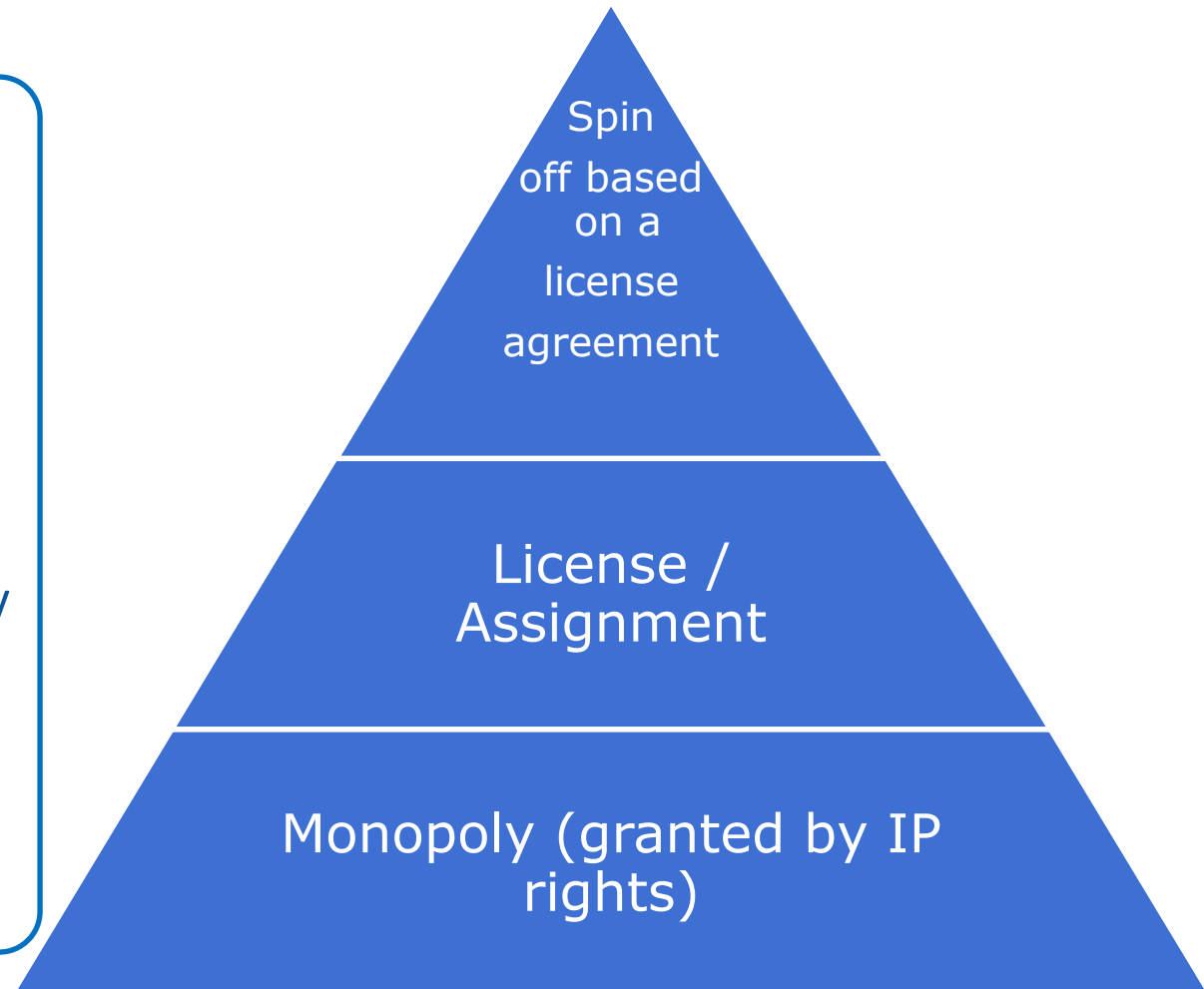
...comply with the
obligation to
disseminate



Exploitation Models

- Some exploitation ways are viable only if Project results have been duly protected before
- A license is useless with out the monopoly granted by IP rights

Be aware!





SMEs Problems:

- Passive right:



Patent=Freedom to operate

- This exposes them to potential infringement risks, almost always without even knowing about it.



STOP

*EU IPR Helpdesk: Further assistance for
MSCA*



Helpline

- **Understandable** for non-legal experts and **business oriented**
- Topics in H2020 (non-exhaustive):
 - Revision of MoU and non-disclosure agreements
 - Analysis of plans on exploitation and IP within proposal
 - Questions on commercial exploitation of IP
 - Revision of consortium agreement
 - Questions of IP rules in projects
 - Questions on interpretation of IP clauses in the grant agreement and other agreements...



Sample questions sent to Helpline

- Questions sent by **beneficiaries** of MSCA actions (formerly Marie Curie):
 - ☐ Who owns the results generated during the secondment period?
 - ☐ Our associated partner (a University located in the US) is requesting to be assigned all patent rights generated during the researcher's secondment period. What can we do?
 - ☐ Is the IP policy of our associated partner compatible with our obligations under the Grant Agreement?
 - ☐ Can we reach an agreement transferring part of the results to our associated partner if this partner is located outside the EU?
- Questions sent by **partner organisations**:
 - ☐ We have been contacted to become involved in an MSCA action as a partner organisation. Will we have any rights over the results?
- Questions sent by **researchers**:
 - ☐ As a researcher, how can I be sure to have rights to exploit the results of my research at the end of the fellowship?



Transferable skills training in MSCA

- IP & Innovation related training activities dedicated to the needs of Young Researchers could/should be included in your capacity building programme
- Contact us for any further assistance in setting-up IP & Innovation related training and capacity building programmes/activities
- 2017/2018: > 5,500 researchers, SMEs, research managers participating in our on-site/on-line training modules
- Access to a network of high-level experts (i.e. EPO, Patent attorneys, License managers)





Related training modules

Exploitation of research results -
strategies and case studies

Impact and Innovation in H2020

Licensing and Technology Transfer

IP Management

Introduction to IP

IP for Business Development

IP in Biotech/Health



Thank you.

We look forward to getting in touch with you!

For further questions and general IP advice, please contact our Helpline team:

service@iprhelppdesk.eu

Phone +352 25 22 33-333 (Helpline)

Fax + 352 25 22 33-334 (Helpline)

www.iprhelppdesk.eu

For questions related to our training activities, please send us an email at:

training@iprhelppdesk.eu





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