

EIT CULTURE & CREATIVITY IP POLICY September 2024





EIT Culture & Creativity IP Policy

Record of Revisions

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1. Preamble

The main objective of the Intellectual Property Rights policy (“IP Policy”) is to ensure that the intellectual property resulting from the activities performed within the framework of the EIT Culture & Creativity is diligently used to satisfy the objectives of the EIT KIC Culture & Creativity. The IP Policy shall preserve full alignment with all overarching rules and provisions set out by the European Institute of Innovation & Technology (“EIT”) and the European Union (e.g. the Horizon Europe Rules of Participation and dissemination), whilst still satisfying the business interests and objectives of EIT Culture & Creativity Core, Project and Network Partners (all of them, the “Participants”). The IP policy thus applies for all partners participating in the open calls of the EIT Culture & Creativity notwithstanding if they receive EIT funding or not.

The IP Policy is the framework for protection of Participants’ Background IP well as the Foreground IP (the “Results”) and is balanced against the needs and objectives for EIT Culture & Creativity as a community and for the KIC LE as a for-profit company which is legally obliged to search for long-term financially self-sustainable business models. The IP Policy is based on the EU Horizon Europe Rules for Participation and complements the IP related regulations and provisions outlined in the EIT Partnership Agreement (“PA”) and the Model Grant Agreement (“MGA”). For avoidance of doubt, in this context IP policy applies to individual KIC Projects and Activities, not to the entire portfolio of KIC actions. The overall objective of EIT Culture & Creativity’s IP policy is to optimize due economic exploitation and valorisation of the generated Results, whether through IP-based commercialization, open source or other social innovations, or indeed any other commercial or non-commercial dissemination method for the wider benefit of European society.

This will be implemented through **three overall principles**:

1. **Open innovation, education and research.** The KIC LE will strive to create an open innovation environment in which pre-competitive ideas, knowledge and information are shared within the action in an open forum to meet the goal of creating economic value, jobs and sustainable European growth and competitiveness.
2. **Standardized terms and conditions.** Results generated within each specific KIC project or activity are regulated by the terms and conditions set forth in the EIT KIC Partnership Agreement (“PA”) and the Model Grant Agreement (“MGA”). This IP Policy complements the standard terms and conditions framework.
3. **Financial self-sustainability of EIT Culture & Creativity.** The KIC LE is expected and legally obliged to evolve towards financial self-sustainability and thus gradually reduce financial dependency from EIT funding. This necessitates already from its foundation the development of a financial strategy that mobilizes other revenues emanating from sources, such as intelligent usage of Intellectual Property Background and Results, venture capital investments, and the development of other proprietary as well as non-proprietary services and activities.



2. Scope and Definition

In the context of this policy, "IP" broadly encompasses intellectual property rights, such as patents, utility models, trademarks, copyrights, integrated circuit mask works, design rights, and confidential know-how. EIT Culture & Creativity extends this definition to the applications for the protection of intellectual property rights. Furthermore, "IP" includes results that may qualify for protection as software or computer programs under Directive 2009/24/EC and corresponding national intellectual property legislation, even if not expressly mentioned in the PA. The term "KIC Partners" refers to Core, Project, and Network Partner members of the EIT Culture & Creativity KIC involved in all open projects and activities of the KIC.

3. IP Governance and Management

General: The primary regulations governing rights and obligations related to Results and Background are outlined in the PA and the MGA, along with its Annex V.

IP Management: The management and governance of EIT Culture & Creativity's IP adheres to a three-tiered approach that seeks to strike a balance between effective oversight and flexibility. These levels, in order of legality, are as follows:

- At the first level are the Horizon Europe Regulation and EIT regulatory IP rules as specified in the PA and MGA. It is important to note that, in this context, the IP policy pertains specifically to individual KIC Projects and Activities and does not encompass the entire portfolio of KIC actions.
- The second level encompasses this IP Policy.
- The third level involves project or activity agreements, allowing for the establishment of specific terms and conditions by Participants.

The IP policy exclusively applies to intellectual property generated by individuals actively engaged in the specific calls and actions of EIT Culture & Creativity. Verification is based on results of the activities under the contract, agreements and by cost reports. Intellectual property rights associated with other projects conducted by the participants or other complementary activities are not subject to this IP Policy.



4. Background – Ownership and Access

Ownership of Background: The original owner of the Background retains ownership rights, whether it is a contributing Participant of academic or non-academic nature.

Responsibility: Before commencing collaboration with EIT Culture & Creativity, each KIC Partner bears the responsibility to identify and mutually agree, in written form as part of the project/activity agreement, on any pertinent Background related to KIC activities. Prior to sharing such information, the Owners of Background are obligated to effectively communicate with other Participants. If applicable, they must clearly mark or list, within documents, the confidential nature of the information and specify any limitations and/or conditions for exploitation. For example, this may include requirements for obtaining licenses from the Participant and/or third parties for particular purposes, preferably utilizing the template provided in **Annex I** of this IP Policy.

5. Results – Ownership and Protection

Results are owned by the EIT Culture & Creativity and/or the EIT Culture & Creativity Partner that generates them.

Any internal results created by EIT Culture & Creativity directly, and created without Partners' support, will be solely owned by EIT Culture & Creativity.

Exclusive Ownership of Results: EIT Culture & Creativity alone or any Participant of the EIT Culture & Creativity environment holding exclusive ownership of a result bears the responsibility for capturing and potentially protecting its own results. This includes covering the costs associated with preparing and filing a patent application or any other expenses related to the protection of the results, unless there is a mutual agreement among Participants concerning the distribution of costs.

Joint ownership of Results: If two or more EIT Culture & Creativity Partners generate the Results together, i.e. two or more EIT Culture & Creativity Partners contribute substantially to the Results and

- (i) their respective, individual contributions cannot be ascertained; or
- (ii) it is not possible to separate such joint Results for the purpose of applying for, obtaining or maintaining the legal protection of Results,

the Results will be jointly owned by the EIT Culture & Creativity Partners.



Assignment of Intellectual Property by third parties. A Participant that relies on collaboration with third parties (such as subgrantees, subcontractors, staff on service contracts and staff with locally agreed rights to IP) participating in EIT Culture & Creativity activities, calls and/or programmes, has the full responsibility to ensure that the Participant, as KIC partner, can fulfil its obligations towards other KIC partners in question according to the MGA and this policy.

Exploitation of results. In the event that, despite the reasonable efforts of the involved parties, no exploitation of the Results occurs within four (4) years following the conclusion of the project, the Participants are obligated to utilize the Horizon Results Platform. This platform serves as a means to identify potential parties interested in exploiting the results. Upon discovering an interested party through the Horizon Results Platform, the ownership of the relevant Results will undergo a transfer or licensing process. The current owners of the Results will either transfer or license the Results to the identified party. In return, the party transferring these Results is entitled to receive fair and reasonable compensation from the party acquiring them. The specifics of the transfer or licensing arrangement for the Results are subject to a separate agreement mutually agreed upon by the involved parties. All of these processes will be communicated timely to EIT Culture & Creativity Partners and achieved within the internal processes system.

Documentation and reporting may be used to verify whether and to what extent an EIT Culture & Creativity Partner has contributed to generating the results. Where necessary, a determination may be made by an impartial committee of EIT Culture & Creativity.

Communication of the possible IP. Any implications of possible IP by Partners and associates must be communicated in writing to EIT Culture & Creativity.

6. KIC LE – Ownership of Access to Results

KIC LE may be granted licenses to commercially exploit the results that are owned by a Participant according to '**Exclusive Ownership of Results**' of this IP Policy. Such licenses may be subject to separate agreements between KIC LE and the Participant in question. Any such license granted by the Participant(s) to the KIC LE will be made under fair and reasonable conditions unless the agreement is concluded and agreed as a contribution to the KIC LE's financial sustainability.

Where the KIC LE is a joint owner of a Result according to section '**Joint ownership of Results**' of this IP Policy, each of the joint owners may grant non-exclusive licenses to third parties to exploit jointly-owned results (without any right to sub-license), if the other joint owners are given:

- (a) at least 45 days advance notice; and



(b) fair and reasonable compensation.

Joint owners may agree in writing to apply another regime regarding license rights and obligations.

KIC LE has the right to request the transfer of a Result ownership from Participants (in full if the Participant is the sole owner, or the share of the Participant if the Participant is a joint owner) of a Result from the Participant when:

- (a) the Participant gives 45 days notice to abandon the Results; or
- (b) the Participant does not expect to exploit commercially the Result within four (4) years after the end of the EIT Culture & Creativity project/activity; or
- (c) the Participant does not commercially exploit the Result within four (4) years after the end of the EIT Culture & Creativity project/activity;

and additionally, the KIC LE establishes that the Result is of significant importance for the KIC LE's long-term financial sustainability, and/or the KIC LE establishes that the Result is required for the provision of certain services for the benefit of the wider EIT Culture & Creativity community (e.g. tools, databases, platforms).

The transfer of IP ownership to the KIC LE is subject to a separate agreement between the KIC LE and the Participant owning the Results and shall be executed under fair and reasonable conditions. Both parties may agree to conclude an agreement without fair and reasonable conditions if agreed as a contribution to the KIC LE's financial sustainability.

Participants shall, upon request, grant the KIC LE a non-exclusive right to use Results for non-commercial teaching and supervision purposes.

7. Other IP provisions

The subsequent supplementary principles encompass provisions not explicitly outlined in the PA or MGA. These principles serve as guidance for Participants and may be implemented in distinct Consortium Agreements specific to individual KIC Projects, contingent upon the consensus of Participating KIC Partners.

Students engaged in KIC activities may produce Results. As a fundamental principle, the intellectual property (IP) regulations and laws of the student's educational home (or host) institution are applicable. Additionally, each Partner involving students is required to exercise reasonable diligence in ensuring the adherence to IP and confidentiality considerations.



8. Enforcement of the IP Policy, publication and amendments

IP Policy entry into force. This IP Policy is in effect upon publication on the KIC LE's website and may be updated from time-to-time. Updates will be recorded by reference to the Issue and version number.

Publication. This IP Policy will be published on the KIC LE's website.



Annex I

Background included follows the [DESCA model](#) in relation to the HE. Parties must identify and agree amongst them on the Background for the activity.

PARTY 1

As to [NAME OF THE PARTY], it is agreed between the Parties that, to the best of their knowledge (please choose),

Option 1: The following Background is hereby identified and agreed upon for the [specific action]. Specific limitations and/or conditions, shall be as mentioned hereunder:

Describe Background (mark with * if strictly confidential, i.e. if a trade secret or yet to be filed patent application)	Specific limitations and/or conditions for implementation	Specific limitations and/or conditions for exploitation

Option 2: No data, know-how or information of [NAME OF THE PARTY] shall be needed by another Party for implementation of the [specific action] or Exploitation of that other Party's Results. This represents the status at the time of signature of this Agreement.