



EIT URBAN MOBILITY INTELLECTUAL PROPERTY

EIT Urban Mobility - Mobility for more liveable urban spaces

Approved by the Supervisory Board of the EIT KIC Urban Mobility, S.L. on 12 April 2021

EIT Urban Mobility

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European Union

Table of Contents

Preamble	3
1. Scope and Definitions	0
2. IP Governance and Management	0
3. Background - Ownership and Access	1
4. Results - Ownership and Protection	1
5. KIC LE - Ownership of and Access to Results	2
6. Other IP Provisions	3
7. Late entry/early exit of KIC Partners and IP Policy Amendments	4
8. Enforcement of the IP Policy, publication and amendments	5
Annex: Background included	6

Preamble

The main objective of this Intellectual Property Rights policy (hereinafter “IP Policy”) is to ensure that the intellectual property resulting from the activities performed within the framework of the EIT Urban Mobility (“the action”) is diligently used to satisfy the objectives of the EIT KIC Urban Mobility, S.L. (the “KIC LE”). 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 Urban Mobility Core, Project and Network Partners (all of them, the “Participants”). The IP policy thus applies for all partners participating in KAVA notwithstanding if they receive EIT funding or not.

The IP Policy is the framework for protection of Participants’ Background IPs well as the Foreground IP (the “Results”) and is balanced against the needs and objectives for EIT Urban Mobility 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 Urban Mobility’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 and the world.

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. *Standardised terms and conditions.* Results generated within each specific KIC project or activity (KAVA) 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 Urban Mobility.* 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.

1. Scope and Definitions

Applicable terms used in this IP Policy that start with a capital letter shall have the meaning defined in the PA and MGA, unless otherwise explicitly stated in this IP policy.

In the context of this IP policy, “IP” shall generally refer to intellectual property rights, including but not limited to patents, utility models, trademarks, copyrights, mask works of integrated circuit, design rights, confidential know-how as well as pending applications for the protection of intellectual property rights. “IP” shall also include Results which can be protected as software or computer programs as defined under Directive 2009/24/EC and corresponding national intellectual property legislation, even if this is not explicitly mentioned in the PA.

“KIC Partners” shall mean Core, Project and Network Partner members of the EIT Urban Mobility KIC participating in KAVA projects and activities.

“Participant” shall mean a KIC Partner (for the sake of clarity, KIC Partner includes the KIC LE) formally engaged within a specific KAVA in question.

2. IP Governance and Management

2.1 *General.* The main rules and principles regarding the rights and obligations on the Results and Background are defined in the PA and in the MGA and its Annex V.

2.2 *IP Management.* EIT Urban Mobility IP management and governance is based on a three-level approach enabling an appropriate balance between effective governance and flexibility. By order of legality these are:

- In the first level are the Horizon Europe Regulation and EIT regulatory IP rules as defined in the PA and MGA. For avoidance of doubt, in this context IP policy applies to individual KIC Projects and Activities, not to the entire portfolio of KICactions.
- In the second level is this IP Policy.
- At the third level, project or activity agreements for specific or additional terms and conditions could be made by the Participants for specific collaborative KAVA.
- For avoidance of doubt, it will be understood that this IP policy is only applicable to IP created by individuals actively working in the specific KAVA at hand, as verified by the timecards supporting the KAVA cost reports. Any IP rights relating to other projects run by the participants or to other complementary activities are not subject to this IP Policy.

- 2.3 *Templates, tools and processes.* KIC LE management will offer and sustain practical tools, model project/activity agreements, and processes for KIC Partners to manage IP-related issues, cf. 2.2 above.
- 2.4 *IP Ancillary Board.* In accordance with KIC LE bylaws (article 10-11), the Supervisory Board established an IP Ancillary Board (sometimes also referred to as “IP Board”) as an advisory body to assist the KIC LE management on IP policy issues and performing a consulting and liaison function for partners in issues with respect to IP matters. However, the Ancillary Board shall not have the powers to resolve potential IP conflicts, cf also Bylaws of the KIC LE.

3. Background - Ownership and Access

- 3.1 *Ownership of Background.* Ownership of Background remains with the contributing Participant (be it academic or non-academic).
- 3.2 Prior to starting a collaborative KAVA, each KIC Partner is responsible to identify and agree with other partners (in writing, usually as part of the project/activity agreement) on any relevant Background for the KIC activities (KIC added value activities and KIC complementary activities). Prior to sharing such information, Background Owners carry the obligation themselves to communicate effectively to other Participants, and if necessary, mark or list in documents, which information is confidential and any specific limitations and/or conditions for exploitation, such as the requirement to obtain a license from the Participant and/or third parties for such purposes, by preferably using the template included as Annex I of this IP Policy.

4. Results - Ownership and Protection

- 4.1 Results of the specific action (KAVA) are owned by the Participant/s that generate/s them.
- 4.2 *Sole ownership of Results.* A Participant that has sole ownership of a Result will be responsible for the capture and possible protection of its own Results, paying for the cost of preparing and filing a patent application or any other expenses regarding the protection of the Results, unless otherwise agreed by Participants regarding costs.

- 4.3 *Joint ownership of Results.* Two or more Participants own Results jointly, if they have jointly generated them and it is not possible to (i) establish the respective contribution of each Participant, or (ii) separate them for the purpose of applying for, obtaining or maintaining their protection. If it is possible to establish each Participant's contribution, Results shall be owned jointly in proportion to each Participant's intellectual contribution to such Results. Regarding protection of jointly owned Results, PA provisions leave ample flexibility for Participants to agree on the specific steps and sharing of obligations, costs, rights etc.
- 4.4 *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 KAVA activities 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.
- 4.5 *Exploitation of Results.* If despite the Parties' reasonable efforts, no exploitation of the Results takes place within four (4) years after the end of the project, the Participants shall use the Horizon Results Platform to find interested parties to exploit the results. If an interested party to exploit the Results is found through the Horizon Results Platform, the ownership relating to the respective Results shall be transferred or licensed from the party/parties owning the Results to the interested party. The party/parties transferring these Results shall receive a fair and reasonable compensation from the party to which the Results are transferred. The transfer or license of the Results is subject to a separate agreement between the respective parties.

5. KIC LE - Ownership of and Access to Results

- 5.1 KIC LE may be granted licenses to exploit commercially Results that are owned by a Participant according to 4.2 of the IP Policy. Such licenses are subject to separate agreements between KIC LE and the Participant in question. Any such license shall be granted by the Participant/s to KIC LE under fair and reasonable conditions unless the agreement is concluded and agreed by the Parties as a contribution to the KIC LE's financial sustainability.
- 5.2 In case that the KIC LE is a joint owner of a Result according to 4.3 of the 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.
- 5.3 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 KAVA-activity; or
- c. the Participant does not commercially exploit the Result within four (4) years after the end of the KAVA-activity;

and additionally the KIC LE establishes that the Result is of significant importance for 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 Urban Mobility 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.

- 5.4 Participants shall upon request grant the KIC LE a non-exclusive right to use Results for non-commercial teaching and supervision purposes. The KIC LE (represented by its respective thematic director) is in any such case responsible to gain assurance from the Participant/s in question that confidentiality is not being breached.

6. Other IP Provisions

- 6.1 The following supplementary principles contain provisions that are not defined in the PA, MGA but that should be observed for guidance by Participants and that may be applied in separate Consortium Agreements concerning individual KIC Projects, to the extent that the Participating KIC Partners agree on such provisions.
- 6.2 *Students may generate Results in connection with KIC activities.* As a base principle, the IP regulations and laws of the student's educational home (or host) institution apply. In addition to that, each Partner that involves students shall take reasonable care that IP and confidentiality aspects are respected.

7. Late entry/early exit of KIC Partners and IP Policy Amendments

- 7.1 *Management of late entry and early exit of KIC Partners.* Late entry parties to join the MGA will also and always be subject to this IPPolicy.
- 7.2 *New entrants.* New entrants to KIC activities will be expected to sign up as new parties to the relevant agreement(s) and Intellectual Property ownership and access rights, in relation to each relevant KIC activity, will be determined accordingly. Results developed by the other KIC activity's participants prior to the new entrant joining the activity shall be deemed to be the Background of such participating KIC Partners, for the purposes of the new entrant.
- 7.3 *Early exit - Leaving party (I).* Where a party leaves a KIC activity prior to the completion of the activity (an "early exit party"), the other KIC activity participants will retain access rights to its Background (to the extent this has been declared as being necessary for the KIC activity, and introduced by the exiting party) and Results of such early exit party for the purpose of fulfilling the KIC activity, in order to ensure that execution of the relevant KIC activity remains possible, to the extent set out under the Access rights principles in article 16 and Annex V of the MGA.
- 7.4 *Early exit - Leaving party (II).* Early exit parties will no longer have access to Background and Results of the remaining parties (except where otherwise agreed under separate licensing arrangements). In the case of jointly owned Intellectual Property in which one party is an early exit party, access to Background and Results will be addressed case-by-case respecting the Intellectual Property principles set out above.
- 7.5 *Early exit - Defaulting party.* A defaulting party. A party that has been designated as "defaulting party" in its tasks, shall not longer enjoy access rights to the Background and Results of the KAVA in question. The provisions of the two previous paragraphs (7.3 and 7.4) shall also apply unless the KIC LE or the EIT establish a differing specific restriction to this defaulting party.

8. Enforcement of the IP Policy, publication and amendments

- 8.1 *IP Policy entry into force.* This IP Policy enters into force retroactively on 1st January 2021, following the approval by the Supervisory Board, after having considered the comments and proposals made by the IP Ancillary Board.
- 8.2 *Publication.* The IP Policy shall be published in the KIC LE's website.
- 8.3 *IP Policy Amendment.* The IP Policy cannot be amended during the execution of a given business plan or during the execution of a multi-annual project. The IP Policy can only be amended by the Supervisory Board before the start of the execution of a business plan or a multi-annual project, provided that:
- (i) The Supervisory Board considered the comments and proposals of the IP Ancillary Board, and
 - (ii) The new IP Policy was made available to potential participants through the KIC LE's website at the time of the relevant call for proposals.

Annex: Background included

Background included follows the DESCA model. 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 (e.g. 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.

PARTY 2

[...]