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WP1 – Management & Quality

Task 1.2 – Innovation Management and Product Conceptualization

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The SECENE consortium consists of the following partners.

No.	Name	Short Name	Country
1	VISIONWARE - SISTEMAS DE INFORMAÇÃO, SA	VISIONWARE	Pt
2	JCP-CONNECT SAS	JCP-C	FR
3	ALMAVIVA - THE ITALIAN INNOVATION COMPANY SPA	ALMAVIVA	IT
4	COMMISSARIAT A L ENERGIE ATOMIQUE ET AUX ENERGIES ALTERNATIVES	CEA	fr
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² **Dissemination levels. PU:** Public, fully open, e.g. web; **CO:** Confidential, restricted under conditions set out in Model Grant Agreement; **CI:** Classified, information as referred to in Commission Decision 2001/844/EC.

Acronyms and Abbreviations

Acronym/Abbreviation	Description
SCENE	Smart City on the Edge Network Enhancements
PM	Person Month
PMC	Project Management Committee

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1. Executive Summary

This document defines guidelines concerning the management of foreground and IPR for the SCENE project. The document also establishes a set of consecutive and periodical “Conceptualization milestones” where set of technological and marketing questions will be properly assessed and answered and where commercialization strategy will be periodically reviewed view and will answer the following questions: Does the concept (still) have potential to provide benefits to the end-user? Have competitive alternatives been identified? Is scale-up feasible? Do regulations/standards promote/threaten further development?

The goal of this deliverable written at an early stage of the project is to set the common rules that will govern the exploitation and commercialization of SCENE results, including the management of IPR and the relative competitiveness of the end results. To this end a set of mechanisms are put in place, of which the Innovation and Commercialization Board is one of the most relevant – ensuring that throughout the project a strong link in maintained, between concept, product and user needs & goals.

2. Introduction

The main purpose of this section is to provide to the consortium of the project the guidelines to potential pitfalls and issues relating to IPR that may encounter during the lifetime of the SCENE project.

This document should be considered in conjunction with the **Consortium Agreement (CA)** and the **Grant Agreement (GA)** signed by each Beneficiary. As stated in the Consortium Agreement, and to the extent that any provision of this deliverable that conflicts with the provisions of the Grant Agreement, the terms and conditions of the Grant Agreement shall prevail. Moreover, if any provision of this deliverable conflicts with the provisions of the Consortium Agreement, the terms and conditions of the Consortium Agreement shall prevail.

As defined in various parts in the DoA, the management of IPR issues, knowledge management and management of innovation related activities, including exploitation of results and business creation, is handled by the Technical Committee (TC).

The Beneficiaries commit themselves to communicating any IPR issues that may arise during the lifetime of the project.

Before detailing IPR issues in the coming chapters, the table below summarises the general preliminary questions that should be considered to manage IPR issues in H2020 projects:

<p>“Background” is information and Knowledge held by the participants prior to their accession to the Grant Agreement.</p>	<p>Who is the owner?</p> <p>What is the protection used or planned to be used for this knowledge? <i>(Patent, other IPR protection? Etc.)</i></p>	<p>What Access Rights for the Beneficiaries?</p> <ul style="list-style-type: none"> - What are the formal conditions? <i>(Written/oral request? Prior notification? Without consent/notification to the beneficiaries?)</i> - What are the financial conditions? <i>(Royalty-free? Fair and reasonable conditions?)</i>
<p>“Foreground” means the results including information, materials and knowledge in the project.</p>		

Table 1: General preliminary questions to manage IPR issues

3. Definitions

Please note all definitions are listed either in the Annex II – General Conditions to the GA – or in the CA.

For the purpose of this guide, some essential definitions are recalled or complemented below:

3.1 “Access Rights”

Means licenses and user rights to Foreground or Background.

3.2 “Background”

Is information and knowledge (including inventions, databases, etc.) held by the Beneficiaries prior to their accession to the Grant Agreement, as well as any intellectual property rights which are needed for carrying out the project or for using Foreground. Regarding intellectual property rights for which an application must be filed, only those intellectual property rights for which the application was filed before the accession of the Beneficiary to the Grant Agreement are included.

3.3 “Confidential Information”

Means all information of whatever nature or form disclosed by a Party (*the "Disclosing Party"*) to any other Party (*the "Receiving Party"*) in connection with the Project after the Effective Date, and which:

- If disclosed in tangible form, was marked as confidential at the time of such disclosure; or
- If disclosed orally, was identified as confidential at the time of such disclosure and confirmed as confidential in writing within 30 days after disclosure;

Such information may be disclosed or made available orally, in written (*including but not limited to, fax, e-mail, text message*) or machine readable format or other tangible including but not limited (*to raw materials, components, models, prototypes or any tool or equipment whatsoever*).

3.4 A “Consortium”

Is the term used to describe all of the Beneficiaries acting in the same project and thus means, in this case, the collaborative research grouping in relation to the SCENE Project.

3.5 The “Coordinator” (*VisionWare*)

Has a very specific role amongst the Beneficiaries in a given project. It has to “monitor that the action is implemented properly (see Article 7);” (Article 41.2 (b) of GA), which includes the Beneficiary’s obligations regarding IPR, dissemination and use issues.

3.6 “Foreground”

Means the results, including information, materials and knowledge, generated under the project, whether or not they can be protected. It includes intellectual property rights (*IPRs such as rights resulting from copyright protection, related rights, design rights, patent rights, plant variety rights, rights of creators of topographies of semiconductor products*), similar forms of protections (*e.g. sui generis right for databases*) and unprotected know-how (*e.g. confidential material*).

Thus, Foreground includes the tangible (*e.g. prototypes, source code and processed earth observation images*) and intangible (*IPR*) results of the project. Results generated outside a project (*i.e. before, after or in parallel with a project*) do not constitute Foreground.

3.7 A “Beneficiary(ies)”

Is a member of the SCENE project consortium and identified as a Party (according to the CA definition) in the SCENE Consortium Agreement.

3.8 “Use”

Means the direct or indirect utilization of Foreground in further research activities other than those covered by the project, or for developing, creating and marketing a product or process, or for creating and providing a service. Direct utilization is done by the Beneficiary owning the Foreground (*e.g. through further research or commercial or industrial exploitation in its own activities*) while indirect utilization is done by other parties (*e.g. through licensing*).

4. Foreground

4.1 General principles

The Foreground resulting from the project is owned by the participant generating it. When foreground is generated jointly (*i.e. where the separate parts of some result cannot be attributed to different participants*), it will be jointly owned, unless the participants concerned agree on a different solution (*see "Joint ownership" below*). In the latter, each Beneficiary is responsible for his / her part.

In order to be able to prove ownership (*as well as the date of generation*) of Foreground, each Beneficiary has to maintain documents showing the development of the generation of knowledge or results, e.g. laboratory notebooks, in accordance with proper standards. This may help avoid or resolve disputes between Beneficiaries about the origin of certain results and any attached IPR.

In addition, Beneficiaries must ensure that, where necessary, they reach an agreement with employees and other personnel if the latter are entitled to claim rights to Foreground including personnel of third parties (*such as subcontractors, students, etc.*), in order for Beneficiary to be able to meet its contractual obligations. Such agreements may for instance involve a formal transfer of ownership, or at least the granting of appropriate Access Rights (*a right to sub-license*).

For academic institutions, this is especially relevant regarding "non-employees" such students (*both undergraduate and postgraduate, e.g. PhD students*), and researchers in those countries having a specific type of "professor's privilege" regime (*according to which researchers concerned may have some personal rights to the results of university research*).

At this time of the project proposal, with close references to the Section 3 (Articles 23-28) of Multi-beneficiary General Model Grant Agreement of H2020, general rules have been discussed and agreed between project partners. Firstly JCP-C, ALM, VIS and CEA have defined precisely the SCENE architecture breakdown and ownership of each module, which simplifies the management of IP and licensing schemes:

- MoBcache is the ownership or JCP-C, particular license agreements are discussed between JCP-C and CEA/ALMAVIAVVISIONWARE for the security modules/communication/application software that would be installed;

- Service Platform is the ownership of Al maviva, particular license agreements are discussed between ALMAVIVA and JCP/CEA/VISIONWARE for security or Cache Controller/communication/application software that would be installed;
- Dashboard is the ownership of ALMAVIVA, particular license agreements are discussed between ALMAVIVA and JCP/CEA/VISIONWARE for security or application/Communication module that would be installed.
- Sensors for each use case, the communication “applet” running in the gateway and the specific backend user interface are owned by the partners responsible for their development.

4.2 Joint Ownership

As a general rule, joint owners must agree among themselves on the allocation and the terms of exercising the ownership of the foreground. In the absence of such an agreement (*or pending its conclusion*), a default joint ownership regime applies.

Considering the above, if during the course of the project, Foreground is generated by two or more Beneficiaries (*or their Affiliates or other persons working on their behalf*) contributing a specific work, and if the contributions form an indivisible part thereof, such that under applicable law it is not possible to separate them for the purpose of applying for, obtaining and/or maintaining and/or owning the relevant patent protection or any other IPR protecting or available to protect such Foreground, the Beneficiaries have agreed in the Consortium Agreement, that all patents and other registered IPRs issued thereon, and any other IPRs protecting such Foreground, shall be jointly owned by the Beneficiaries (*the “Joint Foreground”*).

Whether or not a patent relating to foreground is jointly owned depends on the exact scope of work performed by each of the joint owners and the claims (*of the patent application(s) as well as, where different in scope, that of the patent(s) granted*).

In the SCENE project, the Beneficiaries have agreed that each of them, in case of joint ownership of Foreground, shall have the irrevocable right, without territorial or other restriction, to Use the joint Foreground and to grant non-exclusive licenses (*with the right to grant sub-licenses and for the sub-license to grant further sub-licenses*) to third parties under the jointly owned Foreground and under any IPRs protecting such Foreground, without obtaining any consent from or paying compensation to any other Contributor.

So, according to that regime, each of the joint owners is entitled to grant non-exclusive licenses to third parties, without requesting the authorization of the other joint owner(s).

However, the SCENE Consortium Agreement (CA) mentioned that at least 45 days prior notice must be given to the other joint owners before granting any licenses.

Within a reasonable period following creation of any joint Foreground (*the soonest being the best*), the Beneficiaries shall enter into good faith discussions in order to agree on an appropriate course of action for filing applications for patent protection or other IPR protection, including the decision as to which beneficiary is to be entrusted with the preparation, filing and prosecution of such applications and in which countries or territories such applications are to be filed. The filing of any applications for patents or other IPRs on joint Foreground shall require mutual agreement between the Beneficiaries. All external costs related to applications for patent protection or other protection resulting from such applications and the fees for maintaining such protection shall be shared equally between the Beneficiaries.

If and when a Beneficiary decides not to contribute, or not to continue its contribution, as the case may be, to the costs of application for or maintenance of patent or other IPR protection for the Joint Foreground, for one or more countries or territories, it shall be entitled not to contribute, or to discontinue its contribution, provided however that: it shall promptly notify the other Beneficiary(ies) in writing of its decision; it shall forthwith relinquish all its title to an interest in such jointly owned patents, patent applications or other registered IPRs protecting such Joint Foreground.

Each joint owner of patents or patent applications or other IPRs protecting such Joint Foreground shall have the right to bring an action for infringement of any such jointly owned IPRs only with the consent of the other owner(s).

Such consent may only be withheld by another joint owner who demonstrates that the proposed infringement action would be prejudicial to its commercial interests.

The appreciation of the prejudice will be made on a case by case basis, according to the method of "body of evidences".

4.3 Transfer of ownership

Transfers of ownership of Foreground are allowed, though the obligations regarding that Foreground must be passed on to the transferee. In principle, as long as the Beneficiary concerned is required to grant Access Rights, notification must be given to the other Beneficiaries, during which time they have the right to object. In very limited cases the EC must also be informed.

4.3.1 Information to – and objections by – other Beneficiaries

There is a requirement to give prior notice to the other Beneficiaries in SCENE project (*as long as the Beneficiary concerned is required to grant access rights*), with a time limit of 45 days. Moreover, the rights of the other Beneficiaries are even better protected than before as this prior notification should contain "sufficient information about the new owner of the foreground to permit them [i.e. the other Beneficiaries] to exercise their access rights".

Objections by another Beneficiary may only be raised – within 30 days if such a transfer would adversely affect its access rights. If this adverse effect is demonstrated, the intended transfer cannot take place until an agreement has been reached. The mere fact that the foreground concerned would be transferred to a competitor of a Beneficiary is not in itself a valid reason for an objection.

4.3.2 Regular transfers to a specific third party

A simplification introduced in H2020 is that, subject to prior agreement by all Beneficiaries in SCENE, one of them (*beneficiary X*) can be authorised to transfer the ownership of any foreground it generates to a specifically identified third party (*for instance its mother company or an affiliate*). Once such a global authorization has been provided, Beneficiary X no longer has to give prior notice to the other Beneficiaries of each individual transfer and therefore the latter will no longer have the possibility to object. This should address concerns expressed for example by large industrial groups where it is sometimes clear from the beginning that all foreground generated will be transferred to another entity of the group, without being detrimental to other categories of Beneficiaries (*as they need to provide their agreement*).

Nevertheless, before agreeing to such an exemption, the other Beneficiaries should carefully consider the situation, and in particular the identity of the third party concerned to determine if their access rights could be properly exercised in case a transfer takes place. In security research projects, the transfer to third parties should only be decided on a case-by-case basis and should be handled with greatest caution.

4.3.3 Other transfers

Transfer of ownership of foreground can take place explicitly ("*intended*" transfer) but may also arise in the context of a take-over, the merger of two companies or similar cases. IPR-related obligations under the GA will also have to be passed on and respected in those cases, and the same provisions of the GA apply. However, in this case, the limitation "subject to its obligations concerning confidentiality" clarifies that legal confidentiality constraints (*relating e.g. to mergers and acquisitions – "M&As"*) prevail, and may for instance justify that the other Beneficiaries are only informed ex-post, instead of being notified ex-ante, in order to comply in particular with legislation relating to M&As.

4.3.4 Information to – and objections by – the Commission

Although Foreground may be transferred by a Beneficiary to any legal entity (*Article 42.1 RfP*), the Commission may object to intended transfers to "non-European" other parties (*more accurately, to parties established in a third country not associated to the Seventh Framework Programme*), if it considers that it is detrimental to European competitiveness or inconsistent with ethical principles or security considerations.

Beneficiaries which have been notified of an intended transfer by another Beneficiary of ownership of Foreground to a third party established in a third country not associated to the H2020 programme should inform the Commission of the intended transfer if they have serious concerns about it.

This will entitle the Commission to use its right to object.

The SCENE Grant Agreement foresees that the transfer of ownership shall not take place unless the Commission is satisfied that appropriate safeguards will be put in place and has authorised the transfer in writing.

5. Protection of Foreground

Any valuable Foreground should be protected. Protection is not mandatory in all cases, though the decision not to protect Foreground should preferably be made in consultation with the other Beneficiaries, which may wish to take ownership. If valuable Foreground is left unprotected, the Commission may take ownership.

Where foreground is capable of industrial or commercial application (*even if it requires further research and development, and/or private investment*), it should be protected in an adequate and effective manner in conformity with the relevant legal provisions, having due regard to the legitimate interests of all Beneficiaries, particularly the commercial interests of the other Beneficiaries. Beneficiaries should, individually and preferably collectively, reflect on the best strategy to protect in view of the use of the foreground both in further research and in the development of commercial products, processes or services.

To this end, SCENE project, IPR sessions are planned at the end of each Plenary meeting in order to assess the current valuable Foreground and think at the most relevant protection way.

Moreover, a database template is available on the collaborative tool of the project to be filled in by the Beneficiaries when valuable Foreground is generated and a protection foreseen (*whatever this protection could be*).

The reference to industrial or commercial applicability and to the legitimate interest of the Beneficiaries means that intellectual property protection is not mandatory in all cases. Apart from a lack of industrial or commercial applicability (*e.g. certain fundamental research results*), there are also situations where journal publication or other means of putting Foreground in the public domain constitute appropriate alternatives, taking into account the specificity of the project, the nature of the results concerned and the legitimate interests of the Beneficiaries. For example, the free and open source software approach is perfectly valid in certain cases.

In other cases, it might prove advisable to keep the invention confidential and to postpone the filing of a patent (*or other IPR*) application (*and consequently any dissemination*), for instance, to allow further development of the invention while avoiding the negative consequences associated with premature filing (*earlier priority and filing dates, early publication, possible rejection due to lack of support / industrial applicability, etc.*).

Although a Beneficiary does not have to formally consult the other Beneficiaries before deciding to protect or not to protect a specific piece of Foreground it owns, they should preferably be informed, so that they be in a position to express (*and substantiate*) possible legitimate interests.

They should also preferably be informed after protective measures have been taken.

The H2020 IPR provisions now state explicitly that, where a Beneficiary does not intend to protect its Foreground, it may first offer to transfer it to another Beneficiary or even to certain third parties, which may consider it worthwhile protecting this piece of foreground, rather than leaving it unprotected and available for use by competitors.

5.1 Protection by the Commission

If valuable Foreground has not been protected, the Commission must be informed (*at the latest 45 days prior to any dissemination activity*) and may protect it on behalf of the European Union, with the agreement of the Beneficiary(ies) concerned. More specifically, in such a case, protection measures could be taken by the Joint Research Centre, which manages the IPR portfolio of the European Union.

This principle – including the obligation to inform the Commission – may be applied also by Beneficiaries when some Foreground was protected by a Beneficiary but the owner considers abandoning the protection (*e.g. by not paying the official prosecution or renewal fees for a patent application*), and when protection was applied for in a first country ("*priority application*"), but the owner does not consider extending the protection to foreign countries before the end of the priority period.

In these cases (*intention not to protect, or to abandon protection of Foreground*), the Commission should be informed well in advance of any applicable official deadline (such as *those associated to the payment of renewal fees or with the end of the priority period; preferably with at least 2 months prior notice*), so as to be able to take appropriate measures.

5.2 Specific issues relating to patent applications

When a patent application is filed in, it is important that the true inventor(s) be identified, not only for fairness reasons, but also for legal reasons. In the USA, in particular, errors (*fraud*) in the designation of inventors can, under certain circumstances, lead to the invalidation of the patent. Accordingly, systematically

designating a head of department as one of the inventors (*a common practice in some universities*) should be avoided if this does not correspond to the facts.

Patent applications concerning Foreground also need to contain the following specific sentence (*or a translation thereof*) in the description referring to H2020 funding:

“The work leading to this invention has received funding from the European Union's H2020 programme under grant agreement n° 831138”

It should also be noted that the legislation of certain countries (*e.g. Germany, France*) states that employed inventors are entitled to a specific remuneration in respect of new patent applications filed on behalf of their employer.

6. Use of Foreground

The Beneficiaries should use the Foreground which they own or ensure that it is used.

It is clear that commercial use must only be undertaken if it makes sense from an economic point of view. When ownership of Foreground is transferred, one of the obligations to be passed on is the obligation to use the Foreground concerned.

7. Dissemination of Foreground

Dissemination can be seen as the means (i.e. press releases, conferences, scientific publications, exhibitions, workshops, newsletters, websites, etc.) through which research results are presented to the public.

It is important to notice that official publications in the course of a protection right application (e.g. the compulsory publication of a patent application after its filing) are not considered dissemination. The target of the dissemination may be the general public or a specific group of professionals in a determined sector. An overview on the most successful means of dissemination, as well as useful suggestions on how to arrange an effective communication strategy, can be found at the European Commission "Guide to successful communications" web page:

[\(\[http://ec.europa.eu/research/science-society/science-communication/index_en.htm\]\(http://ec.europa.eu/research/science-society/science-communication/index_en.htm\)\)](http://ec.europa.eu/research/science-society/science-communication/index_en.htm)

7.1 Confidentiality and protection

Where dissemination of Foreground does not adversely affect its protection and Use, there is an obligation to disseminate it swiftly. However, no dissemination of Foreground may take place before a decision is made regarding its possible protection. Indeed, any disclosure, even to a single person who is not bound by secrecy or confidentiality obligations (typically someone from a different organisation outside the consortium), prior to filing for protection, can be considered as constituting a disclosure detrimental to patentability, be it by written (including by e-mail) or oral (e.g. at conferences, or even to a single person).

Evidently, no dissemination at all may take place if it is intended to protect the Foreground as a trade secret (i.e. confidential know-how).

Confidentiality obligations are also detailed in the SCENE CA. Any data which is to remain secret should be clearly labelled as confidential and appropriate measures should then be taken by the other Beneficiaries and the Commission to maintain confidentiality, even after the end of the project.

As a reminder, the Consortium Agreement foresees that several provisions including confidentiality clauses shall survive the expiration or termination of the SCENE CA to

the extent needed to enable the Beneficiaries to pursue the remedies and benefits provided for in the CA.

7.2 Reporting

Any dissemination activity shall be reported in the D7.3 including sufficient details/references to enable the Commission to trace the activity.

All publications also need to contain the following specific sentence (or a translation thereof) referring to H2020 funding:

“The work leading to this results has received funding from the European Union's H2020 programme under grant agreement n° 831138”.

With regard to scientific publications relating to Foreground published before or after the final report, such details/references and an abstract of the publication must be provided to the Commission at the latest within two months following publication.

Furthermore, an electronic copy of the published version or the final manuscript accepted for publication shall also be provided to the Commission for publication purposes at the same time if this does not infringe any rights of third parties.

To this end, the SCENE Beneficiaries are expected to fill in a list of publications available on the collaborative tool and to indicate the status of the publication (“proposed”, “submitted” or “accepted”).

Moreover, each Beneficiary has to upload the accepted publication (Released version) in a dedicated folder and to mention it in his internal monthly report to inform the Coordinator that the publication is available to be sent to the Commission.

8. Access Rights

8.1 General principles

It should be noted that under the GA, access to another Beneficiary's Foreground or Background is only to be granted if the requesting Beneficiary needs that access in order to carry out the project or to use its own Foreground.

Assessing whether or not access rights are needed must take place on a case-by-case basis, with all due care and in good faith. While no universal rules can be drawn up, the following situations are examples where Access Rights would appear to be needed:

- Without the Access Rights concerned, some of the R&D tasks assigned to a Beneficiary under the project would be impossible to be carried out, or significantly delayed, or require significant additional financial or human resources;
- Without the Access Rights concerned, the use of a given element of Foreground by its owner would be technically or legally impossible or would require very significant additional R&D work outside the frame of the project (*in order to develop an alternative solution equivalent to that Foreground or Background of another Beneficiary to which access is refused*).

In any case, the SCENE CA provides that the requesting Beneficiary must show in written that the Access Rights are needed.

The granting of Access Rights may be refused by the owner of the Foreground or Background concerned, if it considers that such Access Rights are not needed by the other Beneficiary requesting them. In such a case, this other Beneficiary will have to better substantiate its request and negotiate (*in good faith*) with the owner, or to withdraw its request. In case of continued disagreement, the issue will have to be solved through the applicable conflict resolution mechanisms. SCENE Deliverable D1.1 describes the general mechanism of conflict resolution in section 2.1.5.

A Beneficiary can request access to another participant's Background or Foreground if it needs it for carrying out its own work under the project, as defined in the description of work in Annex I (*the "technical annex"*) to the GA.

These Access Rights may be requested until the end of the project, even from a Beneficiary who left the project before its end.

Access Rights for Use purposes (*i.e. in further research or for exploitation*) may also be requested by a Beneficiary only if it needs them for using its own Foreground resulting from the project.

8.1.1 Access Rights to Foreground needed for the execution of the project or for the Use of another Beneficiary's Foreground

In case of Foreground needed for the execution of the project or for the Use of another Beneficiary's Foreground, the requested Beneficiary must make a written request to the Beneficiary who owns the requested Foreground.

In case of Joint Foreground, as explicitly mentioned in the SCENE CA, each joint owner has the possibility to use it without the prior consent of the other joint owners but must give a 45 days prior notice before granting the licences.

8.1.2 Access Rights to Background needed for the execution of the project

The Beneficiaries agree in the Consortium Agreement on the interpretation of the "need to" requirement in defining accurately which Background is needed.

To this end, the Beneficiaries have inserted in the SCENE CA a list of Background that is excluded from obligations to grant Access Rights in annex 3.

This list can be amended during the project life according to the same rule as for all amendments which could be made to the CA, as mentioned previously in this document.

As provided in the SCENE CA, Access Rights to Background not listed in the corresponding Annex shall be deemed granted to the Beneficiaries.

However, as mentioned previously as a general principle, the Beneficiaries have decided that the request must be made in written and shows that the Access Rights are needed.

So, the fact that the Background requested is not in the list in the corresponding annex of the CA will only be used as an indication.

8.1.3 Access Rights to Background needed for the Use of another Beneficiary's Foreground

In that case, the SCENE CA provides that the requesting Beneficiary has to provide the reasons of his request in written.

Moreover, a signed agreement has to be made between the granting and the requesting beneficiaries.

8.2 Do Access Rights give the right to sub-license?

In principle, the granting of Access Rights does not include the right to sublicense (*not even to parent/affiliate companies of consortium members*), unless the owner of the Foreground or Background at stake consented hereto but Beneficiaries are free to grant permission to sublicense.

In the SCENE CA, the Beneficiaries have agreed on this principle and the CA mentions that Access Rights exclude the right to sublicense, unless expressly stated otherwise in particular between the requesting and the granting Beneficiaries (for instance in the software provisions of the CA).

The only exception to this rule is when Access Rights are granted in the case of joint ownership. In that case, as mentioned previously in section 2.2; the joint owners have the irrevocable right, without territorial or other restriction, to use the joint Foreground and to grant non-exclusive licences with the right to grant sub-licences and for the sub-license to grant further sub-licences to third parties under the jointly owned Foreground and under any IPRs protecting such Foreground.

8.3 Can exclusive Access Rights be given to another Beneficiary or third party?

A significant change has been introduced in H2020, namely the possibility, if all Beneficiaries agree thereto, for them to waive their [right to request] Access Rights, in order to allow the owner of the Foreground or Background concerned to grant an exclusive licence to an external party).

In the SCENE project, the Beneficiaries have expressly excluded the possibility to grant exclusive licenses.

8.4 Special Access Rights to software

As for most of H2020 ICT Projects, and due to the specific area of those projects, the SCENE CA foresee special provisions related to software and especially regarding the specific cases of use of source code and introduction of open source software.

The main points which are provided are:

The impossibility to oblige a Beneficiary to grant Access Rights to source code of software:

Unless otherwise agreed in written by the Beneficiaries in a separate agreement, or
According to the conditions provided by the CA

The general assembly's unanimous approval is needed for any intended introduction of open source software (*in accordance with the conditions defined in the CA – in particular definition of Controlled Licence terms*) in the project.

Moreover, except in case of such above mentioned approval has been given, no Access Rights to any Background or Foreground shall include the right to sublicense that Background or Foreground upon open source licence terms, unless otherwise agreed in written between the Beneficiaries.

8.5 Financial conditions for Access Rights

Access Right Type Purpose	Access Rights to Background	Access Rights to Foreground
<i>Needed for the execution of the project (or internal research activities)</i>	Royalty-free	
Needed for the use of another beneficiary's Foreground	Fair and reasonable conditions	Royalty Free

Table 2: Financial conditions for Access Rights in the SCENE project

According to the Consortium Agreement, the Beneficiaries have agreed that:

- Access rights to Foreground, Background needed for the execution of the project shall be granted on a royalty-free basis.
- Access rights to Foreground needed for Use of its own Foreground including for third-party research shall be granted on a royalty-free basis to and by all Parties.
- Access rights for internal research activities shall be deemed granted on a royalty-free basis.
- Access rights to Background needed for the Use of the own Foreground shall be granted on fair and reasonable conditions.

Fair and reasonable conditions means appropriate conditions including possible financial terms (*market conditions or other*) taking into account the specific circumstances of the request for access, for example the actual or potential value of the foreground or background concerned and/or the scope, duration or other characteristics of the use envisaged.

In case financial terms are involved, it may not be always possible to determine, at the moment of agreeing to these terms, what fair and reasonable financial conditions are, as the potential value of the Foreground or Background, and the use thereof, may not be clear. Beneficiaries could in such cases opt for an open system which allows them to take into account unexpected developments, for example by adjusting royalty percentages in case certain milestones are reached. After all, it is normally unrealistic to expect a high immediate return if the technology in question remains unproven.

8.6 Access Rights for affiliates

H2020 provides certain Access Rights to affiliated entities established in a Member State or associated country – see Annex 1.

In addition, Affiliates of a Party shall enjoy Access Rights under the provisions of the CA agreed by all Parties. These provisions are mentioned in the SCENE CA.

9. Eligibility of IPR costs

IPR protection, dissemination and management activities are an instance of the "other activities" of a H2020 project.

Accordingly, the European Union financial contribution may reach a maximum of 100% of the total costs (*direct + indirect*) of these activities subject to the eligibility criteria being fulfilled. In particular, they must have been used "for the sole purpose of achieving the objectives of the indirect action and its expected results, in a manner consistent with the principles of economy, efficiency and effectiveness".

10. Patent Search usefulness

10.1 Usefulness regarding the State of the Art

Beneficiaries may have performed a patent search in order to ascertain the "current state of the "art" before submitting a proposal as the State of the Art is a key criterion during the evaluation process. *(A variety of databases are available to perform this patent search: cf. below in "Useful links").*

10.2 Usefulness to take third parties rights into account

When a Beneficiary is considering exploiting its Foreground, an infringement clearance search should be considered as a means of reducing the risks of being sued by an external party.

Where a Beneficiary considers exploiting a given technique for commercial or industrial purposes, care should be taken not to infringe existing third parties' rights.

Patent searches *(as opposed to literature searches)* do not only provide considerable technical information, but also make it possible to identify third parties' patents which are in force *(as well as patent applications which are pending)* and which may possibly prevent or limit the exploitation of the intended results of the project.

Therefore, during a project, it could be recommended to conduct or have conducted an "infringement clearance search" *(also known as a "freedom of use" search or risk assessment)* so as to identify potentially relevant patents and published patent applications which may cover one or the other aspect of the *(intended)* project results.

11. Use of the EU emblem

The EU emblem may be used only with the prior agreement of the Commission. As the European emblem is protected under article 6 of the Paris Convention, Beneficiaries are formally prohibited to register the European emblem, or any sign identical or similar to the European emblem, as a trademark. When Beneficiaries are allowed to use the European emblem, they should do so in its entire and original form, and always separately from their own logo or trademark. Once the contractual relationship between a Beneficiary and the European Commission has expired, the Beneficiary should cease to use the European emblem, and withdraw its representation from any new documentation.

12. Innovation management

12.1 Introduction

The project will follow the Innovation radar methodology to manage and assess innovation, according to [5] and [6]. The consortium will use the 6 conceptualisation milestones defined in [7] to assess the different indicators of innovation and market potential. The main one will be the innovation potential across the its 3 main indicators (Innovation readiness, innovation management and market potential). Innovation capacity will be also considered but more on a qualitative way, mostly by evaluating competition and market feedback. The paragraph below summarises the deadlines and actions a priori defined by the project. This action plan is flexible and can be changed / updated during the project.

12.2 Deadlines and actions definitions

The project has defined 6 conceptualisation milestones at which a series of technical and marketing questions will be answered and assessed between the different stakeholders of the projects:

- The Technical committee
- The Customer advisory board
- The Innovation and Commercialisation Board (ICB)

The milestones are detailed below:

Milestone N°.	Milestone Name	Related WP(s)	Estimated Date	Deliverables	Means of verification
MS1	1 st Conceptualization milestone	WP2	M4	D2.1, D2.2, D5.1	Full architecture and modules specification is ready
MS2	2 nd Conceptualization milestone	WP3	M9	D4.1 (PoC)	First intelligent gateway hardware ready, with provisional cost matching cost objective
MS3	3 rd Conceptualization milestone	WP3, 4, 5	M12	D4.1, D3.1, D5.2, D7.1	All solutions are ready for a first integration, having been tested in stand-alone configuration. Network layer is operational with 500 Intelligent Gateways; standard IoT interfaces are operational
MS4	4 th Conceptualization milestone	WP3,4, 5	M17	D2.3, D2.4, D3.2 (initial), D4.2 (initial)	All components ready for integration and validation phase; in parallel, WP3, 4 and WP5 work continue to fix last issues.
MS5	5 th Conceptualization milestone	WP6	M20	D6.1	Full system tested and qualified
MS6	6 th Conceptualization milestone	WP6	M22	D6.2, D6.3, D6.4, D7.2, D7.4	First pilot installed.

Each Milestone will be set on a practical way, either in a plenary meeting, webinars and/or face to face meetings with customers. The 3 following indicators will be assessed following the Innovation Radar principle:

Innovation readiness: technical maturity of the innovation and time to potential commercialisation

Innovation management: status of related ownership and IPR issues, market feedback, relations with potential investors, engaging potential end-users in the project

Market Potential: It related to the prospective market conditions, chance of successful commercialisation, identifies the potential barriers (IPR, regulation, and others) to commercialisation.

The table below summarises the objectives of each milestones, and the main criteria/actions a priori selected to assess these milestones:

Milestone	Innovation Readiness	Innovation Management	Market Potential	Meeting Format	Meeting main Objective & actions
MS1	Technical maturity	IPR issues	First customers feedbacks	Internal meeting	Assessment vs. Competitive architecture; position against standards
MS2	Technical maturity, time to commercialisation	IPR issues	Competitive positioning		Revisit price and functionalities requirements
MS3	Technical maturity, time to commercialisation			Meeting with Advisory Board	Market assessment, performance assessment
MS4	All aspects	All aspects	All aspects	Internal meeting	Assess all innovations aspects
MS5	All aspects	All aspects	All aspects	Meeting with customer	Update assessment

				rs and CAB	
MS6	All aspects	All aspects	All aspects	Meeting with customers and EAB	Update assessment

13. Useful links

Below are some useful references all could refer to for further information.

- H2020 Helpdesk: <http://ec.europa.eu/research/enquiries>.

Additional information and assistance with respect to IPR-related issues may be obtained from different sources, including:

- The IPR HELPDESK : (<https://iprhelpdesk.eu/>).
- The EUROPEAN PATENT OFFICE, (see their e-learning modules): (<http://www.epo.org/about-us.html>).
- The National Patent Offices: (<http://www.epo.org/topics/ip-webguide.html>) this site serves as a guide through the jungle of sites offering information or services related to IP on the Web.
- The World Intellectual Property Organization (WIPO), whose website also contains specific information for SMEs; it should also be noted that WIPO runs a mediation and arbitration facility: (<http://www.wipo.int/portal/index.html.en>).
- European database for patent Search: (<http://ep.espacenet.com>).

14. Conclusion

As a short conclusion, one could say that SCENE project defines and covers well the IPR issues and provide good guidelines for the smooth running of the project.

All areas are covered or duplicated in a tangible manner between the different project EC documentation

15. References

[1] - Project Contract GA 831138

[2] - SCENE DOA

[3] - SCENE Consortium Agreement (CA).

[4] - D1.1: « Project, Quality and Management Report »

[5] - https://ec.europa.eu/jrc/sites/jrcsh/files/booklet-a4_innovation_radar.pdf

[6] "The 'Innovation Radar': A New Policy Tool to Support Innovation Management", P. Desruelle, D. Nepelski, 45th ResearchConference on Communication, Information and Internet Policy, September 08-09, 2017

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