
Copyrights and collaboration scenarios

**Report D4.3 of the
ICT Wielkopolska Project**

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1. Premises of the research into the tendency to cooperate

This Report was compiled on the basis of a research into the tendency to cooperate displayed by the companies belonging to the ICT Wielkopolska Cluster, as well as into the perception of collaboration

models regarding both typically business collaboration without the participation of research units and collaboration between the science and business sectors.

>From the point of view of the development of cluster collaboration between companies and sectors on advanced markets, as well as of the establishment of collaboration paths, of particular importance was also to conduct a research into the tendency to cooperate within a group. Indeed, it made it possible to emphasize the research's relation to practical applications, rather than solely provide a model-based representation of collaboration between the scientific and business sectors.

What always inspires great confidence on the part of commercial companies is the opportunity to be engaged in a business supply chain or/and consortiums geared towards the execution of big orders. Emphasis was placed on this form of mutual business collaboration within areas that are neutral in terms of companies' core businesses or supplementary to their major activities. Given this premise, the following elements were analysed:

- The tendency to *re-branding*,
- Willingness to confer part of a company's decision rights on a partner,
- Willingness to grant copyrights to other entities (in conformity with market regulations),
- Readiness to assume responsibility for preparing and fulfilling a given order – to be the leader of the partnership,
- A formula of the collaboration with research units.

The Wielkopolska ICT Cluster is, by definition, a cluster whose major driving force are research as well as research and development activities (Research Driven Cluster). The fundamental normative assumption is an accurate communication of possibilities of cooperation within local and regional groups of entrepreneurs, their aim being to solve particular problems. Central to this assumption is that within the process of launching collaboration the focus be shifted from research centres directly on the interested enterprises willing to commercialise scientific knowledge according to their own needs and interests.

In relation to these assumptions, a research was carried out into the attitude of the surveyed companies towards collaboration with the scientific circle (indispensable for determining commercialisation paths) in terms of:

Indicating the range of possibilities of cooperation with a research unit - given that the universal perception of collaboration with a research unit is regarded as extremely expensive and non-efficient in terms of market operation, it was necessary to indicate different alternative forms of collaboration,

Examining the preferred scenarios of bilateral collaboration and dividing copyrights (readiness to acknowledge that the party which is more engaged in a given project should have greater rights) - of particular importance is also provision of an accelerated path of the commercialisation of laboratory know-how and market practices,

Willingness to perform part of research and development activities and take the burden of carrying out part of a research and development project,

Preparation for collaboration on the international scale,

Analysis of the perception and engagement on the part of self-governing authorities as a guarantor of transparency and objectivism.

2. Collaboration models

The underlying idea behind working package 4.3 is determining commercialisation paths and the possible scenarios of the division of profits resulting from the creation of copyrights to a given solution. Project premises serving as a point of reference, the chosen models were the ones developed by the Lambert team operating in Great Britain.

The reason for the promotion of this kind of attitude – standard models of collaboration varying in terms of the work input and copyrights – was that entrepreneurs showed little interest in direct collaboration with research units. Very few of them were aware of that any collaboration with the scientific circle does not come down to solely commissioning universities with researches, but it can actually assume various forms – both the form of direct collaboration between an entrepreneur and a university (a research unit) and of multilateral collaboration within a group of institutions (a consortium).

That the collaboration models were based on copyrights is additionally reinforced by the fact directly related to an analysis of the competition map: the majority of the companies based in the region of Wielkopolska are software producers. Of particular significance is the issue of copyrights and their protection (software patented in Europe is not accepted).

In the case of direct collaboration between a commercial company and a research unit, 5 major models can be distinguished (own work on the basis of *Lambert Agreements Toolkit*)

Model 1: Copyrights are property of a research unit and the collaborating company is allowed to use them only within certain areas, with no possibility of further access to them,

Model 2: Copyrights are property of a research unit and the collaborating company is allowed to use them only within certain areas, but it can gain a licence authorising its further exploitation of these rights,

Model 3: Copyrights are property of a research unit and the collaborating company may obtain part of the rights owned by the research unit,

Model 4: Copyrights are property of a commercial company and a research unit may take advantage of the results of the findings for non-commercial purposes,

Model 5: Copyrights are property of a commercial company and a research unit is not allowed to publish the results of the findings without consent of the owner of the rights.

It is worth emphasizing that in the case of bilateral collaboration, the ownership of copyrights is optional. Each of these models includes the dominant party which, at the same time, plays the role of the initiator and coordinator of all undertaken activities. The greater the engagement in the process of creating copyrights, the higher the potential of their exploitation.

In the face of the increasing popularity of partnerships related to the use of resources provided by various funds based in Poland, as well the ever greater participation of Polish companies in international research groups, a collaboration model that grows in popularity is the one that entails launching joint projects by members of greater consortiums, with external sources of financing. When undertaking such enterprises, one needs to tackle the issue of establishing copyrights in a different way than in the case of bilateral agreements – depending on the chosen method of commercialisation, the following models can be distinguished (own work on the basis of *Lambert Agreements Toolkit*):

- Model A: Each of a consortium's members has copyrights to the effects they had produced and grants other members a non-exclusive licence for using them in the course of the realisation of the project as well as for the accomplishment of other aims,
- Model B: All parties of a consortium transfer their copyrights to one unit which is responsible for the exploitation of the results of the project findings, or grant it an exclusive licence for the exploitation of these rights,
- Model C: Each of the parties undertakes that they will only take advantage of the results related to their activity,

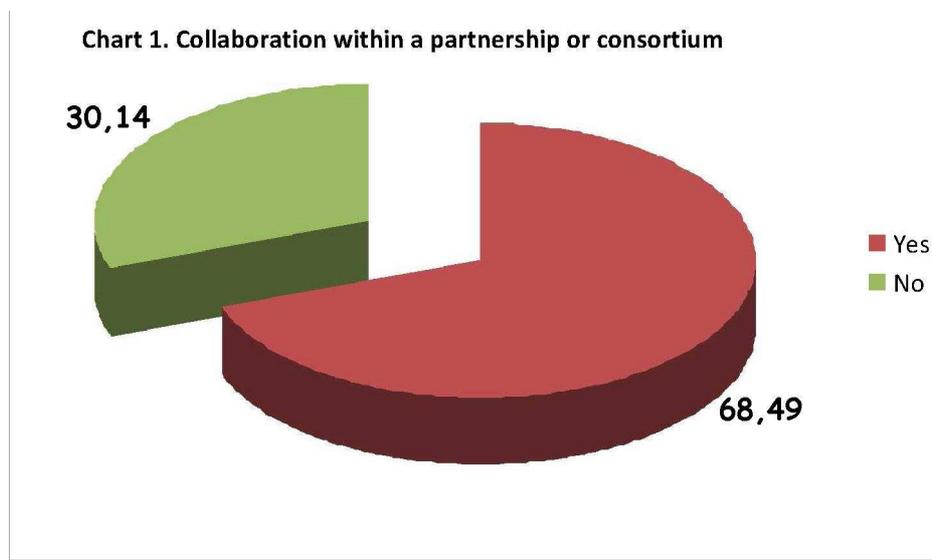
Model D: Each of a consortium's members has copyrights to the results they had produced and grants other members a non-exclusive licence, yet solely for the purposes of the project. Any other use of the rights requires separate arrangements and special negotiatio

It appears that models of multilateral collaboration are the optimal form of cooperation between companies brought together by a cluster and guarantee the establishment of efficient relationships between the scientific and business sectors. One can easily notice certain gradation of rights: from full openness in terms of the exploitation of the results of the findings to a complete limitation of the use of the rights owned by a consortium's other partners.

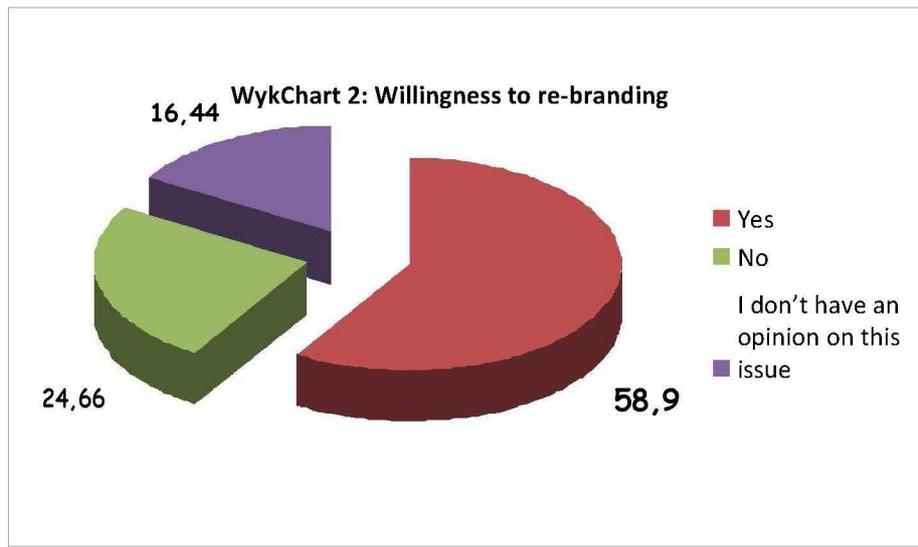
3. Analysis of the findings.

The research was carried out on the sample of 304 enterprises (23.4% correctly filled in the questionnaire). These are all entities that may be potentially interested in collaboration within the

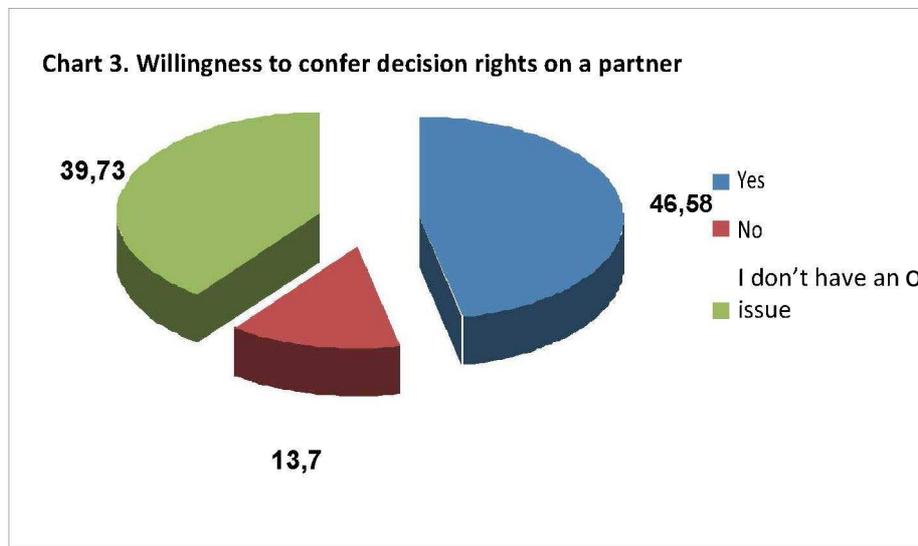
Wielkopolska ICT Cluster. The efficient operation of each of them, even if they are competitors, requires them to demonstrate openness to cooperate with external entities by means of maintaining bilateral relations or operating as part of the same consortium. One of the hypotheses formulated before the research was conducted was that of entrepreneurs' mistrust and lack of openness to work jointly as part of a group. During the research, this hypothesis proved to be false – nearly two thirds of the respondents claimed that they were willing to collaborate in the course of the realisation of a specific project, while one third of them were not willing to do that (see chart 1).



A considerable number of the entrepreneurs demonstrated such a great openness to cooperate that they were even ready to agree on that their products/services be marketed under a different brand name (the so-called re-branding) – as much as 58.9% of the surveyed. The number of those who strongly objected to this idea was much lower than in the case of collaboration (24.66%) – subcontracting under a different entity is a fair business bringing about far more notable effects than in the case of collaboration between project members. Special attention should be paid to the substantial percentage of the respondents who answered: “I don’t have an opinion on this issue”

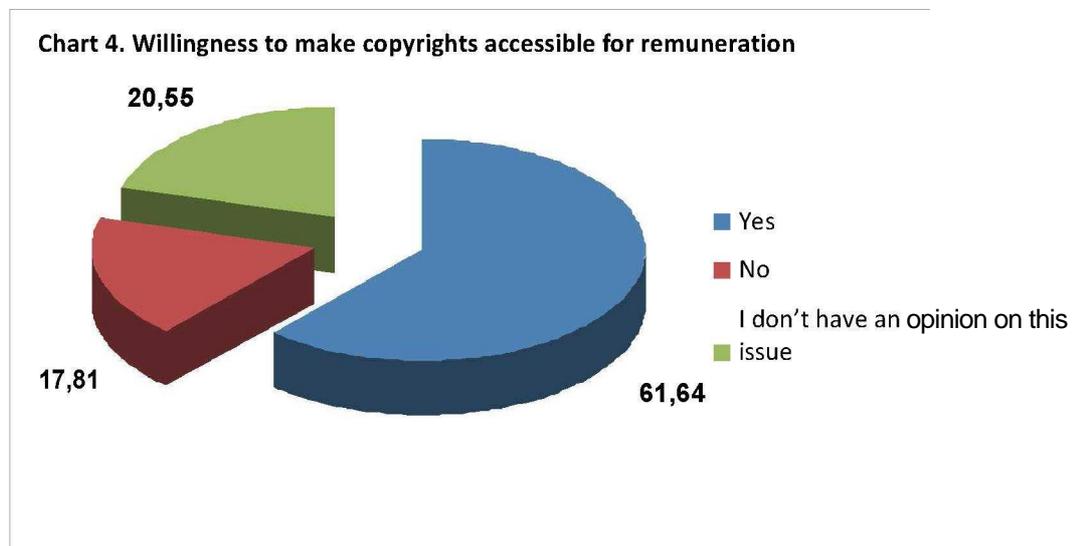


The surveyed were also asked about their willingness to confer their decision rights on other business entities. In this context, they were asked, in the form of an open-ended question, about the areas within which they would be prone to do that. The most frequent answers included: competences related to the management of a consortium, marketing, sales, and training – generally, all the competences resulting from a consortium agreement and, for instance, its leader's duties.



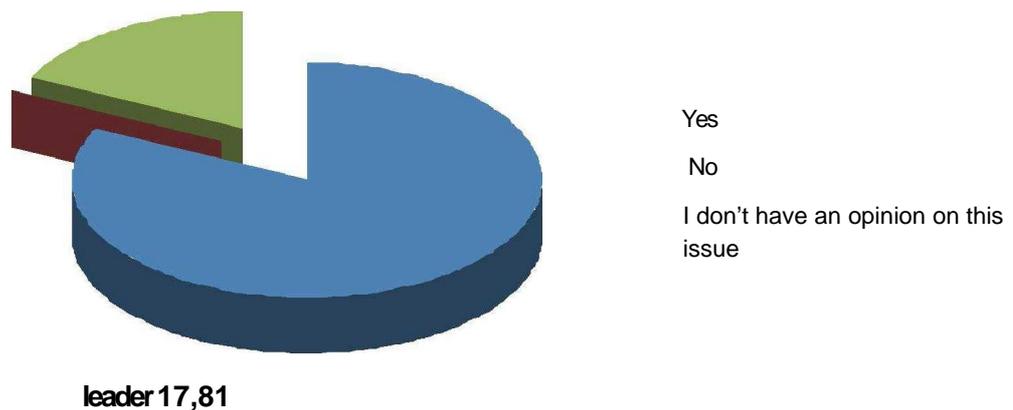
While analysing the results depicted in chart 3, it is worth noticing that a substantial percentage of the surveyed did not have an opinion on the issue, which is an evidence of that they made their declarations with some caution - in the case of qualitative questions, many respondents claimed that such arrangements were usually subject to painstaking analysis and negotiations.

The readiness of know-how and, in great part, software-producing companies is related to the use of copyrights in practice. Indeed, the awareness of owning them and of the opportunity to grant others a licence for them are of particular importance within this business circle. Ever more companies realise that these rights may also constitute a source of income - as much as 61.64% of the companies are willing to make their rights accessible to other entities for remuneration. Only 17.81% of them strongly opposed to this idea, while 20.55% of the respondents did not have an opinion on the issue (see chart 4).



In the context of collaboration within partnerships and consortiums, the surveyed were also asked about their willingness to assume the role of the leader of a joint enterprise. A great majority of them (82.19%) were ready to take up the challenge. It should also be emphasized that none of the respondents answered "No", while as little as 17.81% of them claimed that they did not have an opinion on that issue (see chart 5)

Chart 5. Willingness to be the



One of the questions was related to the issue of an acceptable formula of collaboration with research units. As much as 75.34% of the enterprises are willing to jointly work with a research unit on the development of new products and technologies. Not much less – 71.23% – of them see this collaboration from the angle of their own benefits as well as the solution of a company's specific problems. Interestingly enough, a substantial percentage of the surveyed (app. 50%) also think of taking part in research consortiums and becoming engaged in international collaboration (see chart 6).

Part of the conducted analysis of possibilities of collaboration between the scientific and business sectors was examination of limitations to this collaboration. Obviously enough, this was an analysis of the perception of the entrepreneurs. As depicted by graph 7, a huge majority of them (52.05%) pointed out to the lack of experience and good practices. According to a similar number of respondents (50.68%), there are no efficient means for conducting advanced research. Among the barriers they mentioned were particular enterprises' anxiety that their know-how will not be used in conformity with their business goals (38.36%) as well as communication difficulties (36.99%) attributed mainly to the varying aims of science and business.

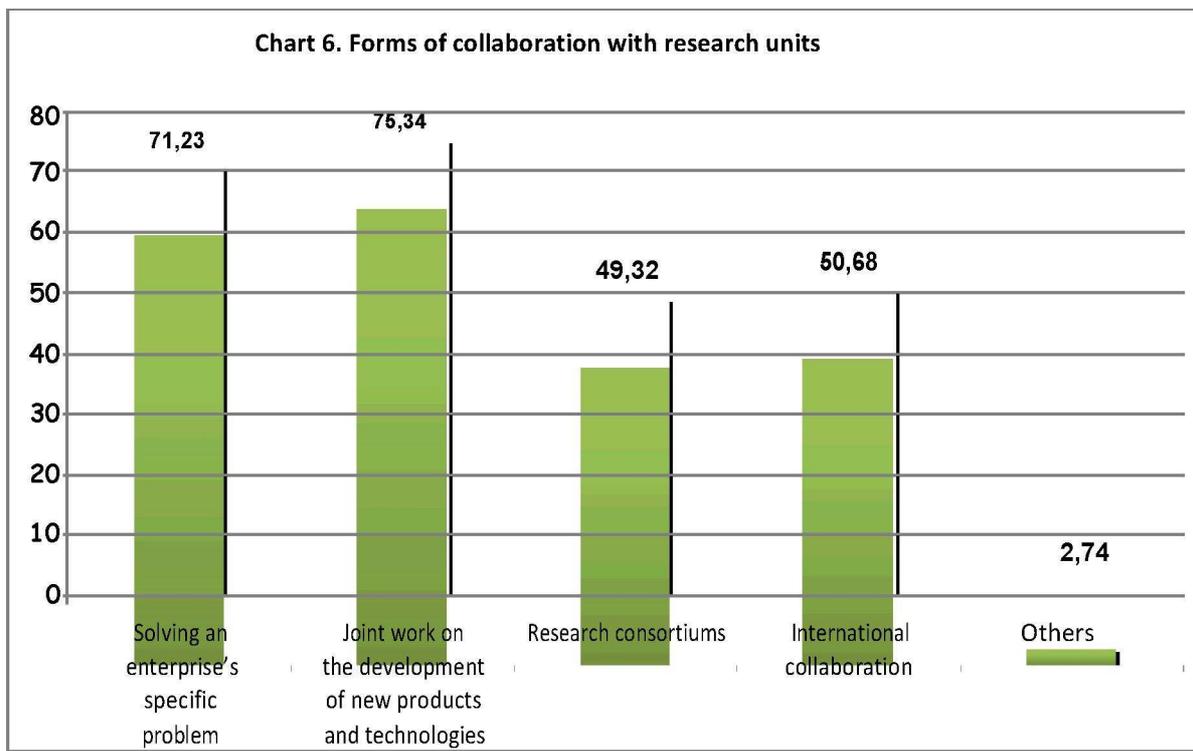


Chart 7. Barriers to collaboration between the scientific and business sectors

The previously described models of collaboration between representatives of the scientific and business sectors were also presented to the surveyed. The reason for that was, firstly, to demonstrate them several good practices based on the British model and secondly – to determine which of these models is optimal from the point of view of entrepreneurs.

As illustrated by chart 8, the majority of entrepreneurs point out to a clear division of competences of an enterprise and a commercial company: according to model 4, the only entity entitled to commercial applications is a commercial company, with a research unit being allowed to take advantage of the results of a given research for non-commercial purposes.

The entrepreneurs are also aware of the mechanism of the management of copyrights that directly results from the fact of being the leader of a given enterprise, this is to say when the role of the leader is assumed by an enterprise (model 5) and the subject of a research is a particular mechanism - in such cases, the results (particularly the ones that are not directly related to the research) may only be published with consent of the enterprise - and when the role of the leader is assumed by a research unit (model 3) and the collaborating company may obtain part of the rights owned by the former. These scenarios won the approval of approximately half of the respondents. Less acceptance was gained by the idea of limiting entrepreneurs' rights to particular exploitation areas (43.84% of the sun/eyed), although entrepreneurs claimed that they were ready to accept such a situation if the developed technology or product were of crucial importance to a given enterprise. The model with the lowest level of approval is model 1, according to which an enterprise has a severely limited right to the exploitation of the results, which - in the case of such a research - seems to be natural.

Chart 8. Acceptance of the models of copyrights between the scientific and business

sectors

model 5: Copyrights are property of a commercial company and a research unit is not allowed to publish the results of the findings without the consent of the owner of the rights

model 4: Copyrights are property of a commercial company and a research unit may take advantage of the results of the findings for non-commercial purposes

model 3: Copyrights are property of a research unit and the collaborating company may obtain part of the rights owned by the research unit

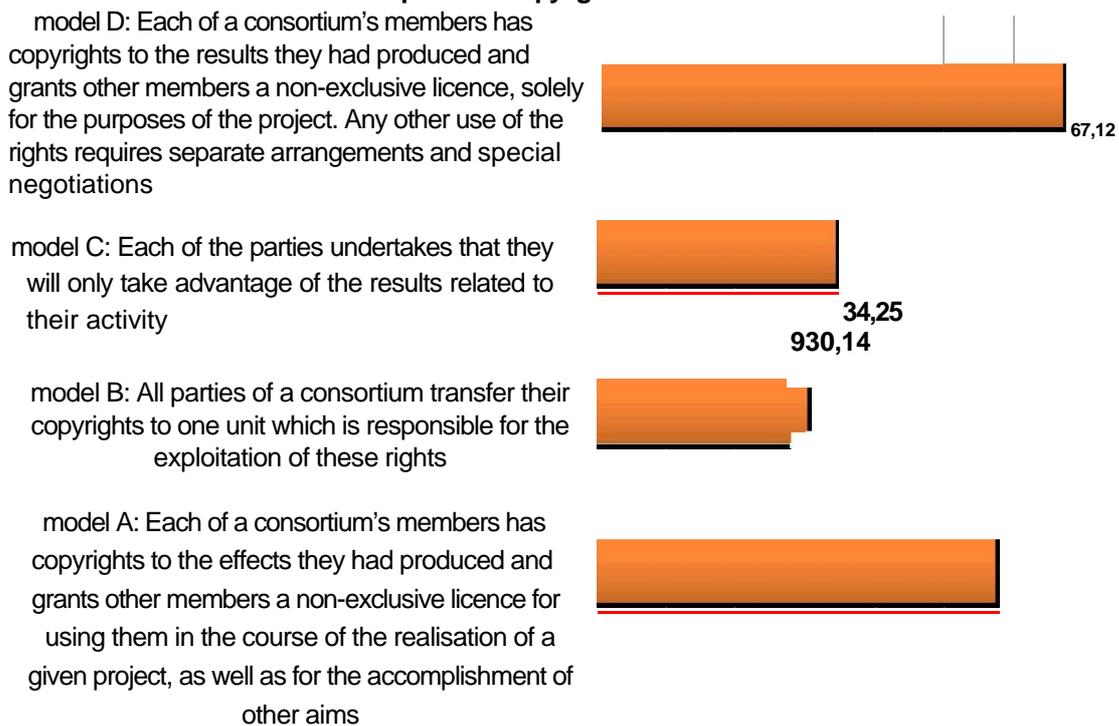
model 2: Copyrights are property of a research unit and the collaborating company is allowed to use them only ???within certain areas, but it can gain a licence authorising its further exploitation of these rights

model 1: Copyrights are property of a research unit and the collaborating company is allowed to use them only within certain areas, with no possibility of further access to them

The process of the management of copyrights slightly differs in the case of a consortium of several entities, both research units and entrepreneurs (see chart 9). The highest level of acceptance on the part of the entrepreneurs was enjoyed by models D and A. Model D is a fully open model – each member of a given consortium has copyrights to the results they had produced and grants other members a non-exclusive licence solely for the purposes of the project (67.12% of the respondents accept this model). Model A differs from model D in that the granted licence also encompasses goals that are not related to the projects. It should be highlighted that in the case of such models, it is hard to develop technologies that are of crucial importance from the point of view of a given company's interests.

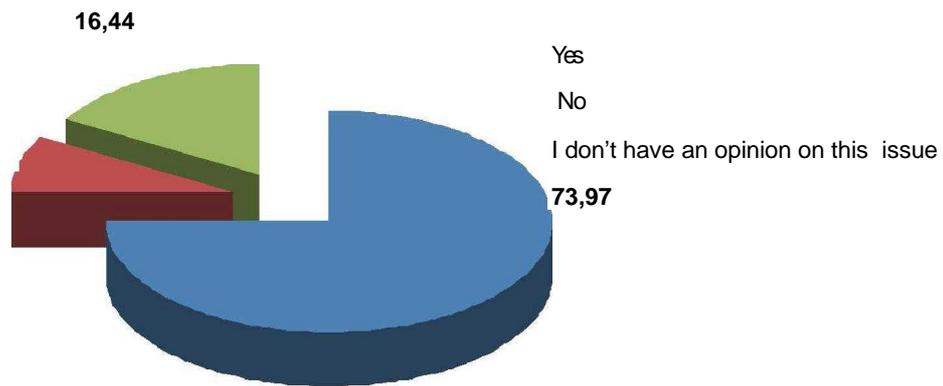
The sun/eyed entrepreneurs demonstrated a much lower interest in the issues of the division of copyrights related solely to the activity of a given enterprise (34.25%) and the possibility of conferring copyrights on just one entity responsible for the exploitation of the results (30.14%). It appears, though, that the reason for that is not that the entrepreneurs disapprove of these models, but rather the fact that they exercise certain caution while making more binding declarations (every questionnaire was devoted to a particular company).

Chart 9. Acceptance of copyrights models within a consortium

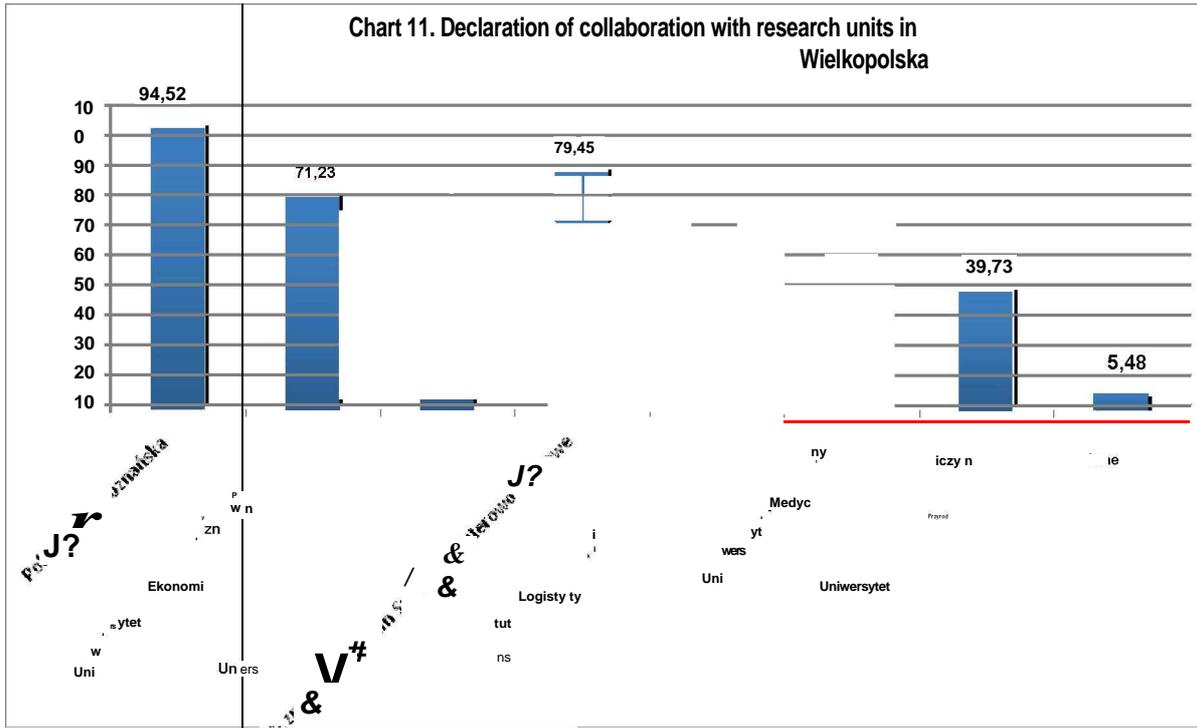


The presented collaboration models aroused considerable interest on the part of the entrepreneurs (see chart 10), which is illustrated by their will to get to know details concerning each of these models (73.97% of the respondents). As little as 8.22% of the surveyed were not interested in any detailed information, and just a small percentage of them did not have an opinion on the issue.

Chart 10. Will to get to know the models and possibilities of collaboration



The surveyed also specified their preferences regarding collaboration with particular research units operating in Wielkopolska (see chart 11. In terms of the ICT sector, the most desired research partner is Poznan University of Technology (chosen by as much as 94.52% of the respondents), the second place is taken by the Poznan Supercomputing and Networking Center (79.45% of the surveyed), while the third – by the Poznan University of Economics (71.23% of the respondents). The next places in these particular rankings are taken by Adam Mickiewicz University (65.75% of the surveyed) and the Institute of Logistics and Warehousing (56.16% of the respondents). A little less attractive as potential partners are Poznan University of Medical Sciences (38.36% of the surveyed) and the University of Life Sciences in Poznan (39.73% of the respondents).



While summarising the research, it should be clearly stated that the entrepreneurs operating in the ICT sector in Wielkopolska are interested in horizontal collaboration in the form of partnerships and consortiums. Although they often lack sufficient know-how and points of reference (good models), they had their preferences. A huge majority of them demonstrate the indispensable level of flexibility in terms of the exploitation of copyrights to jointly worked out solutions.

4. Conditions and scenarios of collaboration

In the case of each of the models, the process of setting collaboration conditions is dependent on a wide range of variables. Every bilateral agreement should cover, among others, the following issues:

1. Above all, one needs to precisely determine the scope of collaboration, this is to say – of the research – and specify whether they are carrying out an industrial research (applied) or research and development works. The more carefully the research and the expected results are specified, the easier it is to define market effects (possibilities of implementation and the expected benefits).
2. People responsible for a research – given a highly specialist character of the research, it is necessary that an agreement include the names of the people that will carry out or supervise

work. This applies to both parties, this is to say to an enterprise and a research unit.

3. Resources necessary for the realisation of a project - the section devoted to the scope of research should also include a schedule, along with a specification of indispensable resources, particularly human resources and competences. The most widely used tools used for this purpose are diagrams Gantt and PERT. A good idea is also to determine which resources will be provided by each of the parties. Both a list of resources and a detailed description of a given project may be included in an annex to an agreement.

In many cases, it is necessary to specify what the contributions of both parties to the project are, as well as what is the direct property (also in the context of copyrights) of an enterprise and a research unit. What is important in this respect are also commitments - the fact of owning copyrights may be related to specific commitments (for details see point 5)

3. Financing - as a general rule, the majority of financing is provided by an enterprise, but a research unit may also take part in covering part of expenses. It is always good to determine whether a sum devoted to financing is fixed, encompassing all project tasks, or related, for instance, to the purchase of specialist consultation time. Apart from that, one may also specify categories of costs that will possibly be incurred by a given unit, as well as the way of accounting for them: e.g. an invoice with an attached report on the carried out works. Forms of remuneration may include base payments and payments related to the implementation of the findings - e.g. a commission on sales.

It is definitely a good idea to clarify technical issues (the payment deadline, the frequency of invoicing, the relation between tranches and work stages etc). In many cases, what becomes a pretext for such collaboration is the usage of external sources of financing, this is to say of EU funds - then, one should consult the conditions of an adequate support programme.

5. Copyrights and licences - this is the core of collaboration between an enterprise and a research unit. The point of departure is determining who the owner of copyrights to the conducted research is and who had developed the concept of it. As a general rule, this is the party which had developed the concept that dictates the conditions of collaboration. The parties should, in advance, specify the way of utilising the results; that is to say, exploitation areas.

In Poland, software is considered as a piece of work and is subject to protection by force of law on the basis of the Copyrights and Neighbouring Rights Act, as amended, dated 4th February 1994. A given entity is entitled to protection regardless of whether or not they had complied with formalities, yet the aforementioned models precisely define to what extent copyrights can be used, for instance in terms of the following areas:

- a) recording and copying a given piece of work - producing copies of the piece of work with the use of a specified technique, including printing and graphic techniques, as well as magnetic and digital recording,
- b) the management of the original or its copies – marketing, lending or leasing the original or its copies,

- c) distributing the piece of work in a way other than specified in subsection b – exhibiting, showing, playing back, broadcasting and retransmitting it in public, as well making it available to the public in such a way that everybody has access to it at a time and place of their choice,

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- d) Entering the piece of work into computer memory,
 - e) Using it in the Internet as well as other computer and ICT networks,
 - f) Using it for any form of advertising,
 - g) Placing it on products and packaging,
 - h) Registering it as a trademark in the country of origin or abroad,
 - i) Using it freely and benefiting from promotion and advertising by both the ordering party and any entities that maintain a money, personal and economic relationship with it.

Apart from a barrier related to the exploitation area, other limiting factors may include a territory, duration time and the exclusivity enjoyed by a beneficiary.

The owner of copyrights (from the point of view of an enterprise, this applies more to a research unit than to the enterprise) grants the enterprise a licence for exploiting the copyrights. The most basic types of licence include, among others:

Full licence - authorising the licensee to use a given right to the same extent as its owner (or producer).

Exclusive licence - the entitled person is authorised to an exclusive use of a given right within a specified territory or exploitation area (examples of such areas are provided above).

Non-exclusive licence - a licence that does not put a limit on the possible number of licensees, allowing for competition between them.

6. Confidentiality and publishing rights

It often happens that confidentiality of information is crucially important and a loss of any data may cause huge losses on the part of an entrepreneur. In relation to that, apart from the commitment to maintain confidentiality, parties may additionally be obliged to pay contractual penalties and cover any losses resulting from the fact of having disclosed confidential information. The parties have the right to demand that the staff directly engaged in the realisation of the project make similar commitments.

Nevertheless, a research unit may also have the right to publish specific findings of a given research. If an entrepreneur expects full confidentiality, they should declare this right at the outset, although it may be limited and related, for instance, to confidentiality in terms of an enterprise's know-how.

7. Responsibility and dissolution of an agreement

At the stage of signing an agreement, it is always a good idea to discuss the issue of the sanctions that will be imposed if the parties fail to regulate all the copyrights related to the people hired for work on the project, as well as of the sanctions related to a violation of confidentiality and the aforementioned legal defects of the rights that are part of a given project. What needs to be clarified as well are the issues related to replacing the key contractors in case they withdraw from the agreement - if it entails highly specialist knowledge, an entrepreneur has also the right to claim damages.

In the case of consortium agreements, a detailed description of a project and its schedule should be supplemented with precise information regarding:

1. The number of pages is bigger than 2 – page numbers should be placed in an agreement's heading – certain institutions financing research also demand a specification of financially interconnected units.
2. Project management – it is a common practice that members of the Steering Committee include all members of a given consortium, decisions are made by a majority vote, and operational decisions are taken by the Coordinator or the Project Office. Additionally, it is the responsibility of the project Board of Advisers or Board of Mentors to guarantee that the project is developed in a proper way. Frequently, a division is made between administrative functions (the Project Office) and technological functions (Technical Board).

Competencies and frequency of meetings of these bodies should be precisely specified. It sometimes happens that financing institutions demand that an internal audit be carried out. A consortium agreement may also require that the names of the contractors be provided.

3. Financial contribution, external financing – the major motivating factor to become part of such a structure. A consortium agreement (usually part of an annex) includes a precise budget division and payment schedule, while in the case of international consortiums, it may be necessary to consult other legal systems (e.g. issues related to VAT). What should also be discussed are accounting documents indispensable for making settlements – in the case of EU projects, these are usually reports featuring certain indexes and/or accounting prints as well as verified copies of financial documents.
4. Regulations regarding copyrights have to respect the rules that have already been mentioned in the part devoted to bilateral agreements; a more precise definition is necessary in the case of rights brought in to a project and the usage of the knowledge produced as a result of a given project. Each party grants the others a specific licence (exclusive or non-exclusive) for rights brought in to a given project and rights established in the course of the realisation of the project. Rules may either apply to all project members to the same extent or be subject to negotiations and, as a consequence, be limited to particular areas.

5. Other elements related to the issue of confidentiality and publishing rights have to be in line with a given consortium's structure - if this is more of a research consortium consisting of several research units, publishing rights will definitely be one of the most crucial issues for its members. If an entrepreneur possesses knowledge that is of particular importance to them, then - depending on the decision of the Steering Committee - they may also retain it (however, one needs to be aware of that the ability to make decisions of an entity as part of such a group may be limited).

