

Consortium Agreements for Participants under FP7

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1. Introduction

Participants in projects funded under the Seventh Framework Programme (FP7) usually conclude an agreement among themselves to regulate internal issues related to work organisation, intellectual property (IP), liability and other matters of their interest.

Experience shows that this instrument is often not used to the full extent due to insufficient knowledge about its nature and purpose, among other things. This document provides an explanation about consortium agreement basics to help participants understand its role.

2. What is a consortium agreement?

A consortium agreement (hereafter CA) is an internal, private agreement concluded by the participants in a project funded under the EC Seventh Framework Programme (FP7). Therefore, it is different from the grant agreement participants conclude with the European Community to carry out the project.

The conclusion of a CA is compulsory unless the relevant call for proposals states otherwise.

3. Why another agreement if participants already have a grant agreement?

The EC grant agreement (hereafter ECGA) is a standard contract to a large extent (only the technical annex – Annex I – is negotiated and if special clauses are to be negotiated with the Commission, those also come from a list of standard clauses). This means that the ECGA cannot provide for the particularities of every single project and consortium.

In addition, the ECGA leaves room for internal negotiation and agreement upon many topics, such as the organisation of the project management and specification of several questions and procedures related to IP. A good CA will cover all the major management and IP issues, taking into account the specificities of the project and participants in question. Copies or reproductions of the ECGA will be of little use.

The CA is thus envisaged as the instrument used by the different consortia to develop and supplement aspects that are particular to each project and that are not fully covered in the ECGA.

4. When should the consortium agreement be signed?

Under FP7, as with FP6, if the conclusion of the CA is compulsory, it has to be signed before the ECGA is signed. If the conclusion of the CA is not mandatory, the participants decide. In any case, the sooner the better.

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5. Is there any consortium agreement model?

There is no official CA model drafted by the Commission, although it provides a [checklist](#) of topics which may be included in the CA. Nevertheless, various organisations have worked on CA models, which are available for reference.¹

6. Clauses that may be included in the consortium agreement

Despite the fact that models may be used, a CA is an instrument made by and for the consortium partners. Its content will be decided upon by the partners with the only limit of respecting the ECGA. Having said that, and taking into account the Commission checklist, the following clauses could be included in a CA:

a. Preliminary clauses

Preamble:

The preamble provides information about the context of the project (the legal texts that frame the project and the title of the project can be mentioned), and determines the purpose of the CA (participants state why they want/should conclude the agreement).

Parties/Partners:

Identification of each party to the CA (the CA will have effect solely for the identified parties that sign it).

Definitions:

Reference can be made to the definitions provided by the ECGA, while additional definitions (e.g. what is understood by “necessary”) might be added if parties consider it advisable.

Nature of the CA:

This provision indicates the nature of the collaboration that links the different parties.

b. Central clauses

Management organisation put into place by the CA:

This section should reflect how cooperation is planned (bodies of the consortium, decision-making procedures, financial issues, etc.)

IP-related provisions:

Ownership:

- Background

Background is the project-related information and IP rights held by participants prior to the signature of the ECGA. The background that is brought into the project will always remain the property of the partner in question (unless a transfer is decided upon).

Participants might want to stipulate in the CA that they want to exclude background (listed in an Annex). Under FP7, there is considerable room for this option. Participants may also want to establish a register of background or a protocol to regulate its use; provisions on the ownership of improvements and/or refinements to background; and possible royalties where the ECGA so admits.

- Foreground

Foreground means the project results and any IP rights that can be attached to them.

The foreground is owned by the participant that carried out the work from which it resulted. In a case where several partners carry out the work together and their respective shares cannot be ascertained, they shall have joint ownership of such foreground. There is a default rule on joint ownership, which can be expressly derogated by a provision in the CA.

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The CA can be an adequate instrument for dealing with ownership issues, even though with regard to the joint ownership of research results (which might also be transferred to a legal entity entrusted with the implementation of the project and/or the use of foreground) a separate agreement can also be used.

Access rights:

Access rights are licences and user rights to background and/or foreground. The parties can, in their CA, clarify, complete and implement the provisions contained in the rules for participation and the ECGA. Additional access rights can be granted and participants can also agree on more favourable conditions for the granting of access rights.

Given that FP7 projects are based on the collaboration between participants, matters related to access rights are highly important and should be duly addressed in the CA.

Protection:

The participants are obliged to provide for the adequate and effective protection of foreground that is capable of industrial or commercial application. The CA might provide intentions for this (e.g. how the consortium will identify foreground capable of protection, a clause allowing the other partners to take the necessary steps for protection if necessary, etc.). In any case, the details of the protection sought or obtained are to be stated in the plan for use and dissemination of foreground, which is not replaced by the CA provisions.

Use of foreground:

Participants are required to use the results they own or ensure that they be used either in further research activities or for (economic) exploitation in accordance with their interests. The CA should contain any provision that may clear the way for the future use of the results. As with protection, the details in this are to be provided in the plan for the use and dissemination of foreground.

Dissemination of foreground:

Participants shall ensure that the foreground is disseminated as soon as possible.

The CA can foresee the conditions for such dissemination, having due regard for all interests involved (partners' interests, swift diffusion, IP rights, confidentiality).

Regarding publications and the right to object, the CA can be a good instrument for internally regulating how to proceed in the case of publications that may be prejudicial: procedure, votes, timing, how to recognise a negative publication in practice, etc.

Once more, partners' intentions/actions as far as dissemination is concerned should be stated in the plan for use and dissemination of foreground.

c. Final clauses

Confidentiality:

This concerns the confidentiality of the information exchanged between participants. The clause should generally be very precise regarding the information that must not be revealed; stipulating which type of documents should be stamped and treated as "confidential" and the eventual exceptions from this rule.

Responsibilities and sanctions

This section concerns the procedures for solving disagreements within the consortium, sanctions for the non-fulfilment of obligations, the reasons for cancellation of the agreement in the most severe cases, etc.

Force majeure:

The parties can indicate the exterior, unforeseeable and insurmountable circumstances which, should they occur, would eliminate the participants' responsibility for bad or non-performance

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and possibly cause the CA to be suspended. Establishing a procedure for notification and giving evidence of such events is also advisable.

Assignment:

This plans ahead for any eventual substitution of partners and consequently the transfer of rights and obligations from the withdrawing party to the assigned one. The transfer shall be effectuated in accordance with the rules for participation and the ECGA.

Term and termination:

This indicates the duration of the CA's effects, which must be at least equal to the duration of the ECGA.

Applicable law:

The parties define the national law that will govern the CA. They can, in principle, choose whatever law they prefer but it is quite common to opt for Belgian or Luxembourg law in order to be consistent with the ECGA.

Settlement of disputes:

The parties to the CA shall decide and organise which dispute resolution methods they are to resort to in case of internal conflict. This may include a jurisdiction agreement (competent court) or alternative dispute resolution systems, like mediation, conciliation or arbitration.

Language:

This defines the language in which the CA will be drafted, as well as worked in, and of its authoritative version.

Entire CA, amendments:

This, above all, involves planning a relatively flexible procedure for modifying the CA (with a view to unknown factors, changing the work schedule, etc.). Sometimes the previous approval of the modification by the Commission is necessary, which should also be taken into account for establishing the procedure.

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1. For a comparison on the DESCA and IPCA models, please see [our document on the matter](#) and related [table](#).
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