



Critical issues in preparing Grant and especially Consortium Agreements

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The process ahead of you: preparing your Grant Agreement

- Steps to the GA:
 - Finalization of DoA via Participant Portal Grant Management Services/SyGMA
 - Where applicable: validation & viability checks & mandatory LEAR nomination / extension of mandate for FP7 nominated LEARS
 - Submission of full set of Declarations of Honor
 - GA signature by coordinator & EC
 - Accession to the GA by all partners

- GA preparation: EC requests info & action
→ partners follow instructions

- GA preparation timeline: see invitation letter & Participant Portal Grant Management Services

The process ahead of you: negotiating your Consortium Agreement

■ Steps to the CA:

- Selection of model agreement & adaptation to specific project
- Circulation of draft version 1
- Collection of partner feedback
- Integration of feedback
- Collection of partner feedback, round 2
- (...)
- Collection of all signatures

■ CA workflow: Coordinator drives the process → partners follow instructions

■ CA nego timeline *in most cases*: signatures to be collected before GA can be issued

Organizing the work process

- People involved
- Defining tasks, workflows & allocation of responsibilities
- Organizing communication & documentation

People involved

- identify all people involved, collect full set of contact info
- minimum: scientific PI + person in legal department
- at each partner institution:
 - who is the scientist in charge? (optimally: 2)
 - who is the responsible person in legal department?
- collect & document availabilities of all people involved!
- mobile phone numbers... ?

Defining tasks, workflows & allocation of responsibilities

- “COO” prepares draft v1
- Think about order: industrial partners / academic partners?
- What has already been stated in IP section of your proposal?
- CA draft needs to be circulated, feedback collected & integrated. How? (Draft via email, or in repository?) To whom? (only 1 recipient per partner institution, or customized email list?)
- How to deal with late feedback?
- How to proceed with conflicting suggestions?
- Who makes decisions? Who prepares justifications?

Inform the consortium exactly of what is expected & when !

Organizing communication & documentation

- How are decisions communicated?
(To partners individually, regarding their particular suggestions and requests? To all?)
- How is the process documented? Track changes & comments? Is tracking de-activated for accepted issues after each round? Or retained throughout the entire process?
- Optionally, for issues of particular interest: TC/meeting with parties involved (keep minutes!)

Time planning

- Plan for at least 3 rounds of feedback
- Later rounds are not necessarily easier / quicker!
- Collect & plan around absences of key individuals
- Set clear deadlines for each step
- Immediately follow-up once a deadline has expired
- Pick up the phone once written communication is slowing down or getting too complicated

Critical Issues: Examples DESCA survey 2010

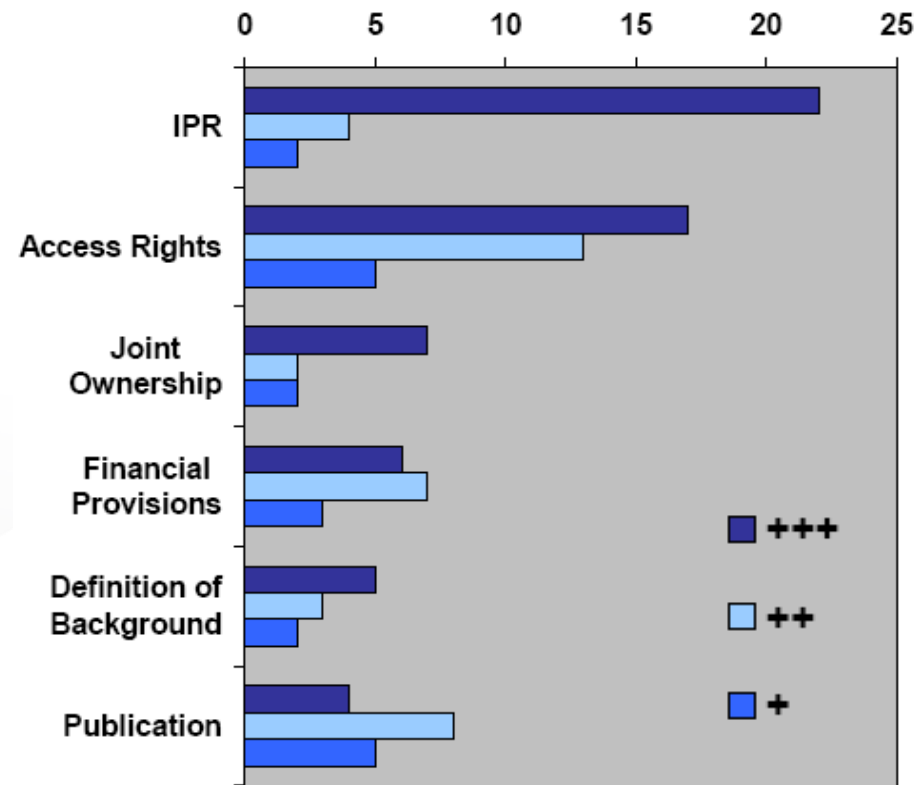
- After 3 years of practical FP7 nego experience, the DESCA group collected **feedback from FP7 stakeholders** on how the DESCA model works in practice and whether / where improvements are needed.
- **Consultation process:** extensive online questionnaire + Open DESCA meeting of stakeholders in Brussels.
- **Aim:** listen to real world experience, collect lessons learnt, prepare update

Critical Issues: Examples

DESCA survey

"What are usually the most problematic issues during the negotiation of the consortium agreement?"

Number of mentions per category



Critical Issues: Examples

Joint Ownership

8.1 Joint Ownership

OPTION 1:

Unless otherwise agreed:

- each of the joint owners shall be entitled to **use** their jointly owned Results **for non-commercial research activities** on a **royalty-free basis**, and **without requiring the prior consent** of the other joint owner(s), and
- each of the joint owners shall be entitled to otherwise **Exploit** the jointly owned Results and to **grant non-exclusive licenses** to third parties (without any right to sub-license), if the other joint owners are given:
 - at least **45 calendar days advance notice** &
 - **Fair and Reasonable compensation**.

OPTION 2:

In case of joint ownership, each of the joint owners shall be entitled to **Exploit** the joint Results as it sees fit, **and** to **grant non-exclusive licences**, **without obtaining any consent** from, **paying compensation** to, or otherwise accounting to any other joint owner, unless otherwise agreed between the joint owners.

The joint owners shall agree on all protection measures and the division of related cost in advance

Critical Issues: Examples

Joint Ownership

- Might create various legal complications
- Joint ownership issues should always be considered on a case-by-case basis
- There are no templates available for joint ownership agreements (might be available at you TTO/ legal department/ specialized lawyers)

(Raise awareness: Joint Ownership Agreements to be issued during project implementation whenever needed)

Critical Issues: Examples Financial Provisions

7.3.2 The payment schedule, which contains the transfer of pre-financing and interim payments to Parties, will be handled according to the following:

OPTION 1:

Funding of costs included in the Consortium Plan will be paid to Parties after receipt from the Funding Authority **in separate instalments as agreed below** (...).

Funding for costs accepted by the Funding Authority will be paid to the Party concerned.

OPTION 2:

Funding of costs included in the Consortium Plan will be paid to Parties after receipt from the EU-Commission **without undue delay** and in conformity with the provisions of Grant Agreement.

Costs accepted by the EU-Commission will be paid to the Party concerned.

Critical Issues: Examples Publications

- “prior notice of 45 days” often controversially discussed:
 - academics: shorten time schedule to speed up publication process;
 - industrial partners: extend time period to better safeguard IP protection

8.3.1 Dissemination of own Results

During the Project and for a period of 1 year after the end of the Project, the dissemination of own Results by one or several Parties including but not restricted to publications and presentations, shall be governed by the procedure of Article 29.1 of the Grant Agreement subject to the following provisions.

Prior notice of any planned publication shall be given to the other Parties **at least 45 calendar days** before the publication. Any objection to the planned publication shall be made in accordance with the Grant Agreement in writing to the Coordinator and to the Party or Parties proposing the dissemination within 30 calendar days after receipt of the notice. If no objection is made within the time limit stated above, the publication is permitted.

Obligation to disseminate Vs. Obligation to protect

Through your consortium agreement you can make sure you comply with the obligation to protect...

Sometime early disclosures (dissemination or communication of results) may undermine potential future exploitation activities.

THEN!

...comply with the obligation to disseminate

Summary Checklist

- ✓ The CA is made by and for the project participants: each partner should fully understand its terms and conditions

As a coordinator:

- ✓ Be informed of the entire process ahead of you
- ✓ Pay particular attention to less experienced SME partners
- ✓ If less experienced: read carefully through all guidance documents, seek legal advice, or have someone experienced help you
- ✓ Define tasks, workflows, people involved
- ✓ Clearly communicate tasks & timeline
- ✓ Review each draft version thoroughly
- ✓ **Start immediately!!**

Summary Checklist (II)

✓ Be aware and make use of support services. Remember in particular the Commission-supported initiatives:

- National Contact Points (NCPs):
http://ec.europa.eu/research/participants/portal/desktop/en/support/national_contact_points.html
- European IPR Helpdesk: www.iprhelpdesk.eu

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Critical issues in negotiating GA and CA



Thank you!

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