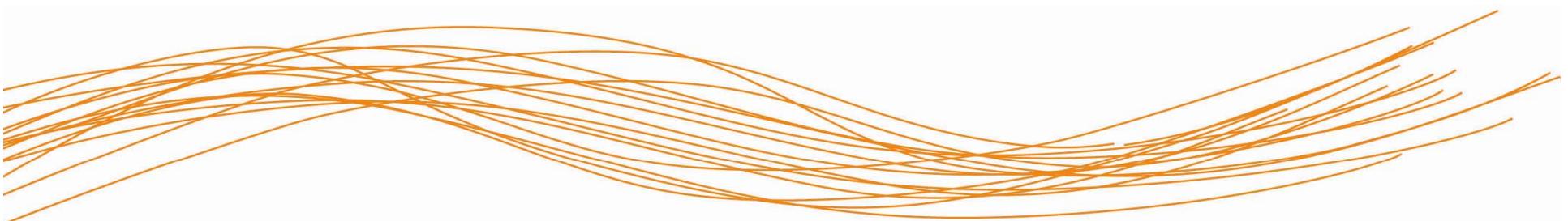


The 7th Framework Programme: Legal issues and agreements



**Delegation of the European Union
to the United States
Science, Technology and Education
Dr. Astrid-Christina Koch**



Government-University-Industry-Research Roundtable Workshop @ National Academies 27. July 2010 SEVENTH FRAMEWORK
PROGRAMME





Outline

- Transatlantic Cooperation
- 7th Framework Programme (FP7)
- FP7 Grant Agreement
- IPR



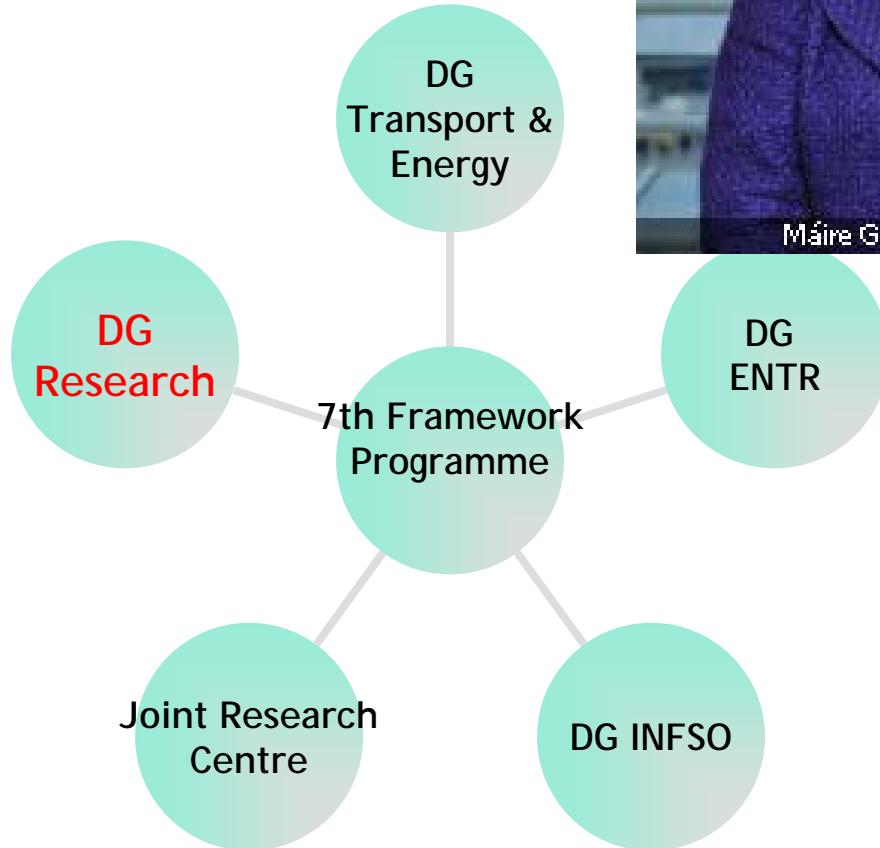
Why transatlantic cooperation ?

- To contribute to stability, prosperity and security in the world
- To advance science and technology
- To underpin EU external relations (Science Diplomacy)

Objectives

- Building lasting links and networks through researchers
- Addressing global challenges
- Developing common standards/market opportunities
- Solving common problems (e.g. climate change)
- S&T for Development

Responsibilities



Lisbon Treaty and the new Commission (2010-2014)

- Entry into force on 1 December 2009 of the Treaty on the Functioning of the EU (Lisbon Treaty) means:-
 - Scientific and technological advance is a specific objective of the EU
 - To be achieved by the development of a “European Research Area” (ERA)
 - New mandate for a European space policy & implementing program
- Mandate of new Commissioner for Research, Innovation and Science – Ms. Maire Geoghegan-Quinn:
 - Develop the European Research Area
 - Coordinate innovation activities
 - Improve EU / national-level coordination in R&D
 - Improve FP7 implementation
 - Prepare future EU R&D policies and launch FP8

EU-U.S. Science & Technology Agreement

- 1998 EU – U.S. Science and Technology Agreement was signed
- 2003 Renewal of S&T Agreement for five years
- 2009 Renewal of S&T Agreement
 - All Themes of FP7 to be included
- Joint Consultative Group (JCG) is responsible for deepening the intergovernmental cooperation through high-level meetings

The 7th EU Framework Programme (2007-2013)



Total 53 billion € for 7 years



The 7th Framework Programme: 2007 – 2013

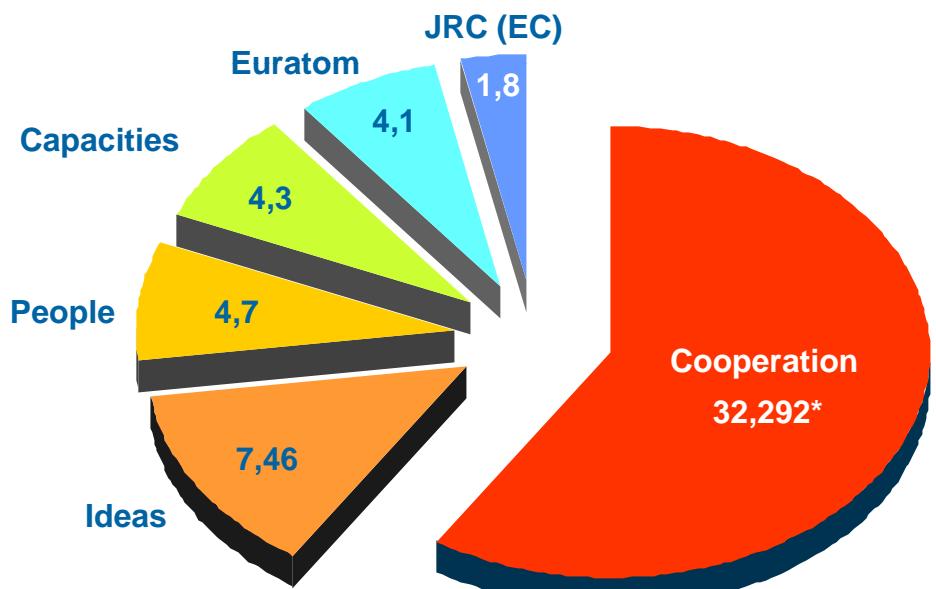
- Total FP7 budget: € 54,582 billion

Cooperation

**Ideas
(ERC)**

People

Capacities



FP7 - Cooperation

**bringing together our best talents
to tackle the following areas:**

- Health;
- Food, Agriculture and Biotechnology;
- Information and Communication Technologies;
- Nano-sciences, Nano-technologies, Materials and Production Technologies;
- Energy;
- Environment (including Climate Change);
- Transport (including Aeronautics);
- Socio-economic Sciences and Humanities;
- Space;
- Security.



International Cooperation in FP7

- **FP7 - open to international partners**
- Cooperation with industrialised countries:
 - focuses on areas of mutual interest and global challenges
 - is funded under particular circumstances (specific provision or “essential” to the work)
- Most US participants use own funding sources
- Funding could be made routinely available for US researchers countries on a reciprocal basis (e.g. FP7-NIH activities)



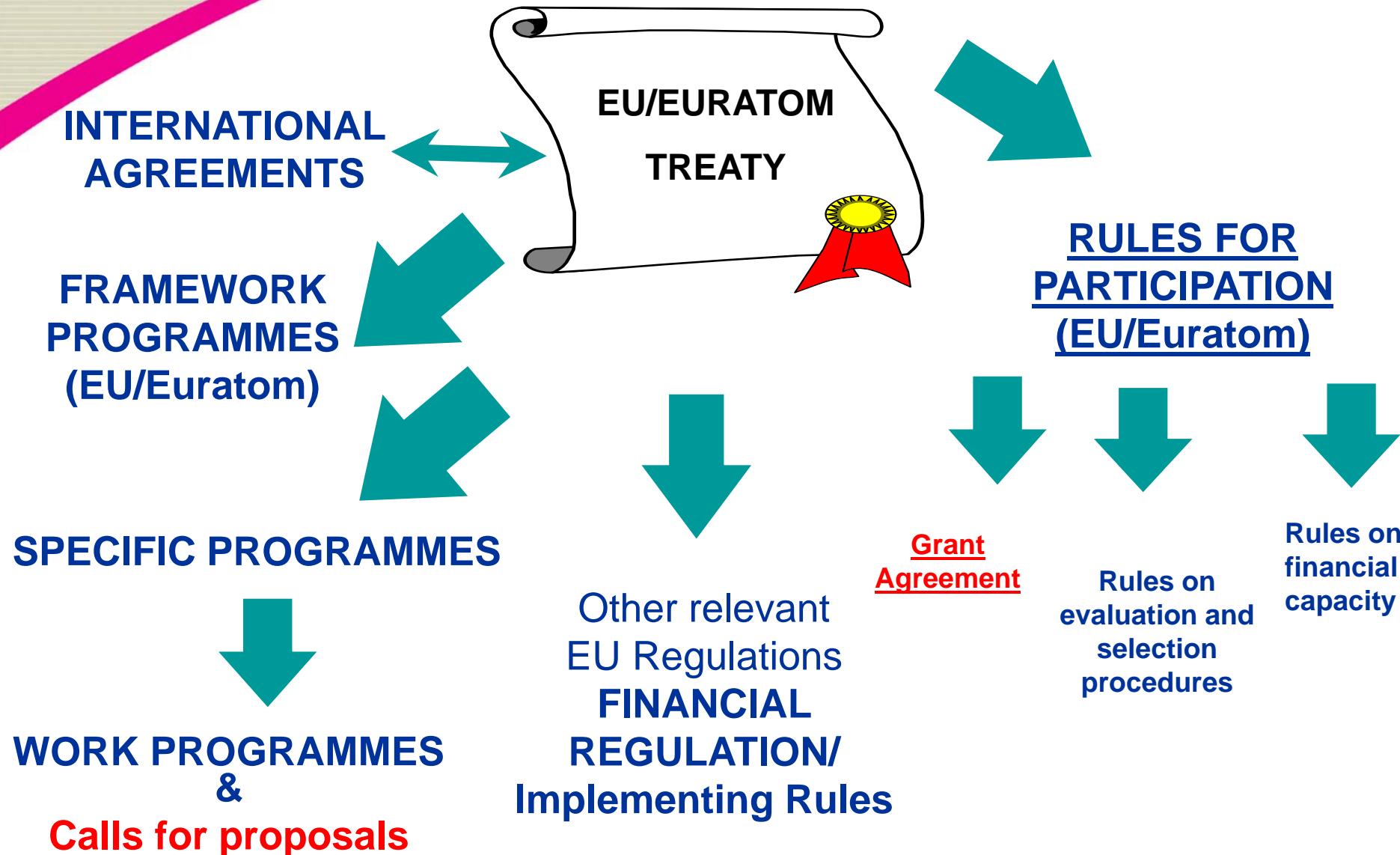
Types of Participants

- **EU Member States (27) and FP7 Associated States (12)**
- **International Cooperation Partner Countries (ICPC)** – 146 countries in three categories according to income per capita based on World Bank criteria
- **Countries with specific S&T Cooperation Agreements** - special provision in annual Work Programme (e.g. US, Canada)





Legal Framework



FP7 Grant Agreement Structure

- Components:
 - Core part: GA parameters,
 - Annex I: Technical Description of Work,
 - Annex II: General Conditions,
 - Annex III: Specific provisions for funding schemes
 - Annex IV, V, VI, VII: Forms A, B, C, D and E on accession of beneficiaries; financial statement, cost certificate and methodology certificate
- Consortium Agreement mandatory (except if excluded by Call)



FP7 Grant Agreement - Definitions

Beneficiary:

each legal entity acceding to the GA even if it is not receiving a financial contribution

Coordinator:

the beneficiary appointed by the other beneficiaries to coordinate the project and the contact with the Commission. Tasks:

- monitor the compliance with beneficiaries' obligations;
- receive and distribute Community financial contribution
- keep the records and financial accounts;
- inform the Commission of its distribution

Main principles in Grant Agreement

- As general rule, the Commission does **not** become owner of the IPR
- **Ownership:** each participant owns the foreground it generates
- to **facilitate the implementation** of the project and the use of its results
- to provide a **minimum self-sustainable framework** while **allowing participants flexibility** to determine additional rules specific for their cooperation





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Community research

FP7 Grant Agreement

SEVENTH FRAMEWORK PROGRAMME

GRANT AGREEMENT No _____

PROJECT TITLE [ACRONYM]

(indicate **FUNDING SCHEME**)

Parties

The [European Community] [European Atomic Energy Community] (the "Community"), represented by the Commission of the European Communities (the "Commission"), and (*name of the coordinator and legal form*) (national registration number if any),

Article 1 – Accession to the grant agreement of the other beneficiaries

Article 2 – Scope

Article 3 – Duration and start date of the project

Article 4 – Reporting periods and language of reports

Article 5 – Maximum EU financial contribution

Article 6 – Pre-financing

Article 7 – Special clauses

Article 8 – Communication

Article 9 – Applicable law and competent court

Article 10 – Application of the grant agreement provisions (hierarchy of the annexes)

Article 11 – Entry into force of the grant agreement



Key terms in the core Grant Agreement (GA)

Applicable law and jurisdiction

The execution of the project is governed by the *grant agreement*, Community acts related to FP7, the Financial Regulation and other Community law and, on a subsidiary basis, by the **law of the country of the seat of the authorising officer responsible under the internal rules on the execution of the general budget of the European Communities (mostly Belgium)**. The Commission can impose pecuniary obligations (recovery decisions) on the beneficiaries and it can enforce them.

The European Court of First Instance, or on appeal, the Court of Justice of the European Communities, have sole jurisdiction to hear any dispute between the Community and any beneficiary concerning the interpretation, application or validity of the GA and the validity of the Commission's recovery decision.

Special clauses

The Commission and the beneficiaries can agree on special clauses which deviate from the general terms which are stipulated in Annex II of the GA. The Commission has adopted a limited list of such special clauses which, if justified and agreed with the beneficiaries, can be inserted in the core GA.



Key terms in the core Grant Agreement

Special clauses of relevance for US beneficiaries

An arbitration clause for legal entities from third countries not receiving Community contribution, to be introduced as an option, if for reasons of their domestic law, these legal entities cannot subject themselves to the jurisdiction of the Court of Justice and the Court of First Instance, as stipulated in Article 9 of the GA

IPR special clause, will provide that in case of an intended transfer of ownership and/or an intended grant of an exclusive licence regarding foreground, the Commission shall not object in cases involving beneficiaries that do not receive a Community financial contribution as long as the intended transfer or grant concerns foreground generated by them.

Special clause exempting entities that do not receive a financial contribution from **reporting and auditing obligations**



FP7 Grant Agreement - Annex II General Conditions

Part A IMPLEMENTATION OF THE PROJECT

GENERAL PRINCIPLES.

Organisation of the consortium and role of coordinator

REPORTING AND PAYMENTS

IMPLEMENTATION

Subcontracting, Suspension of the project; Confidentiality etc

Part B FINANCIAL PROVISIONS .

GENERAL FINANCIAL PROVISIONS

Eligible costs; Identification of direct and indirect costs; Upper funding limits; Interest yielded by pre-financing provided by the Commission

GUARANTEE FUND AND RECOVERIES

CONTROLS AND SANCTIONS

Financial audits and controls; Technical audits and reviews; Liquidated damages; Financial penalties.

Part C INTELLECTUAL PROPERTY RIGHTS, USE AND DISSEMINATION

FOREGROUND . Ownership. Transfer ;Protection; Use; Dissemination

ACCESS RIGHTS; Background covered ; Access rights for implementation; Access rights for use

FINAL PROVISIONS

Requests for amendments and termination at the initiative of the consortium; Approval of amendments and termination requested by the consortium; Grant Agreement - Annex II; Termination of the grant agreement or of the participation of one or more beneficiaries at the Commission's initiative; Financial contribution after termination and other termination consequences; Force majeure; Liability



Subcontracting

- Any subcontract must be awarded to the bid offering **best value for money**, under conditions of transparency and equal treatment
- Responsibility of the participant who enters in subcontract remains.
- The participant must ensure that any intellectual property from the subcontracted work belongs to the participant



Third parties

Third parties carrying part of the work

- **Subcontracts:** tasks have to be indicated in Annex I
 - awarded according to best value for money
 - External support services may be used for assistance in minor tasks (not to be indicated in Annex I)
- **Third parties:** to be indicated in Annex I, Costs may be claimed by the beneficiary





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Sanctions

- Liquidated damages (if overstatement)
- Financial penalties (if false declarations)
Between 2% and 10% of the EU contribution



Special clauses

ARBITRATION CLAUSE

- to be used only at the request of entities not receiving a financial contribution of the European Union
- which are established in a third country not associated to FP7
- and which for reasons of domestic law cannot be subject to the jurisdiction of the court of first instance or the court of justice of the European Union.



Special clauses

PARTICIPANTS NOT RECEIVING CONTRIBUTION OF THE UNION

- Participants have to sign the grant agreement but:
 - financial and payment provisions contained in the grant agreement do not apply
 - in particular, they do not have to submit the financial statements and certificates on financial statements or on the methodology and are not subject to financial audits and controls



Grant agreement- Consortium Agreement

- Grant agreement:
 - Parties: the EU and the Consortium
- Consortium Agreement:
 - among participants, the EU is not a part
 - mandatory (except if excluded by Call)

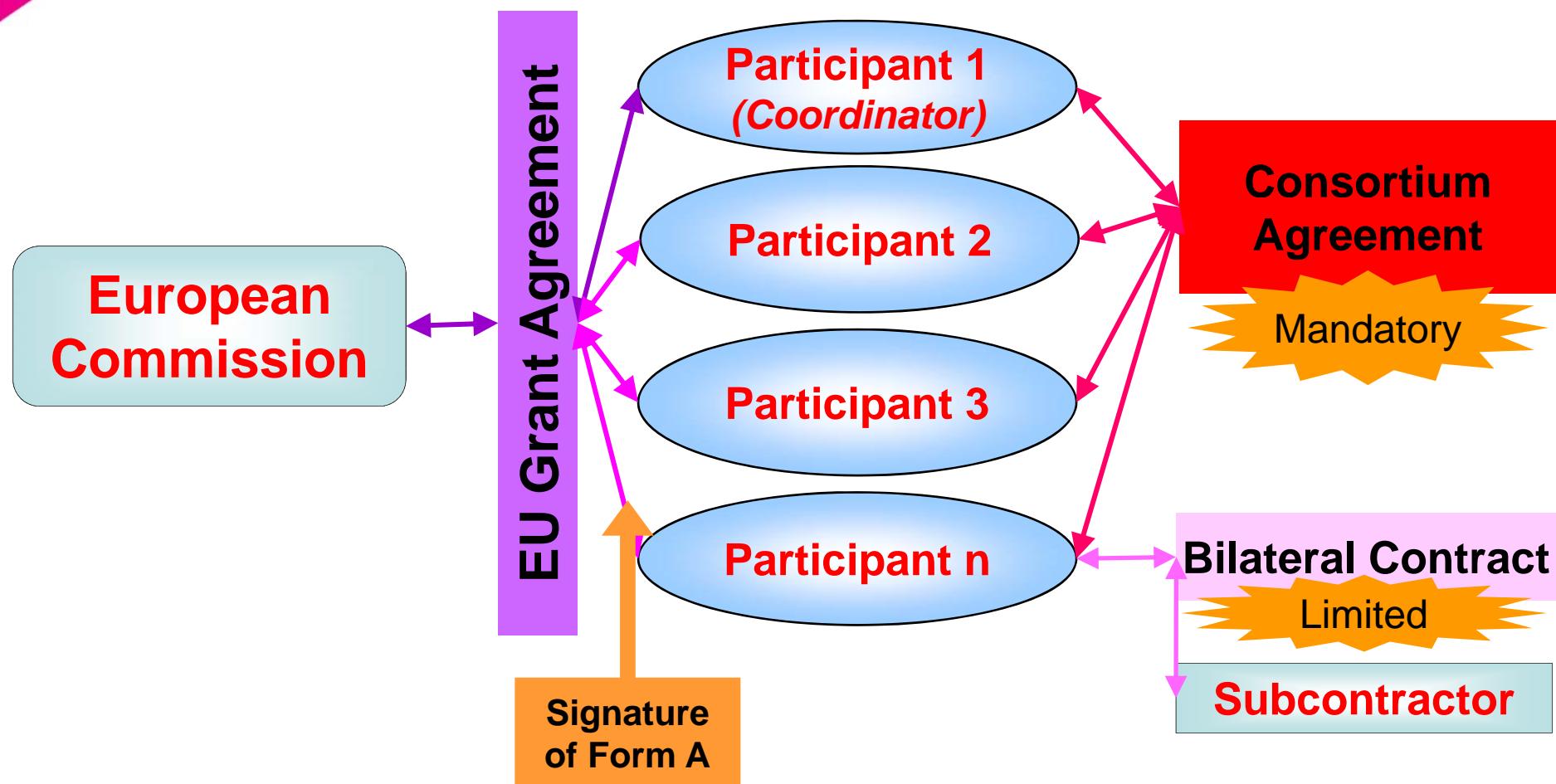




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Contractual relations



Basic IPR concepts

Foreground = all results of the project (incl. inventions, software, databases, cell lines; whether they can be protected or not) and attached rights

Background = information and attached rights which:

- is held by participants prior to their accession to the grant agreement (no sideground)
- is needed for carrying out the project or for using its results
- may be defined by the participants

Access Rights = licences and user rights

IPR ownership

Ownership: each participant owns the foreground it has generated

Joint ownership:

- when foreground is generated jointly and it is impossible to determine the respective share of the work,
- in actions for the benefit of specific groups (e.g. SMEs)
- when agreed by two or more participants



Access rights

Obligation to give access

- Each selected project is a **collaborative** effort
- Under certain conditions, a beneficiary in a project **must grant** access rights to its foreground or background if this is **needed** by the other beneficiaries for implementation of the project or to use their own foreground
- Beneficiaries **may define the background needed** in any manner, and may **agree to exclude** specific background from the obligation to give access
- However, **no exclusion possible regarding foreground**
 - access must always be granted if needed

Access rights

Exclusive licensing

- Exclusive licenses to background and foreground possible only if all other beneficiaries **waive** their access rights
- Request for access rights (use): within **one year** of termination (or **another period** to be agreed)

New (unknown) participants entering project?

- GA: agreement of project consortium is necessary before new beneficiaries can enter
- Conditions for allowing new partners in consortium are set out in Consortium agreement (**unanimity/prior consent** could be foreseen)

Protection

Obligation to protect

- Foreground capable of industrial or commercial application **must** be protected
- Protection must be adequate and effective
- For funded beneficiaries: eligibility of IPR related costs (e.g. protection, dissemination) = up to **100%**
- **Legitimate interests** can be an acceptable reason not to seek protection
- If no intention to protect any foreground at all this must be **agreed before the start of the project** within the project consortium and with the Commission

Dissemination

Prior consultation of the other beneficiaries

- A beneficiary may object if its legitimate interests regarding its foreground or background could suffer **disproportionately great harm** by the intended dissemination
- This provision could be clarified by the beneficiaries in the Consortium agreement by reaching a **common understanding** of this provision
- Time limits set out in the grant agreement for this consultation (45 days prior notice, 30 days to object) may be **changed** by the beneficiaries



Consortium Agreement

- The Consortium Agreement is important:
- Provides rules for the day-to-day facilitation of the project
- Participants may agree to additional or more favourable **access** rights than those provided for in the grant agreement (e.g. in the consortium agreement)
- Participants may agree on specific rules for dissemination of knowledge and IPR



WP 2011

- The 7th Framework programme is open to participants from outside Europe.
- Partners from the United States are welcome
- Mutual opening of the Health theme between the European commission and NIH based on funding reciprocity
- Annual call is published in July

How to participate and submit

- Projects have minimum EU partner rules
 - e.g. at least 3 independent partners from different EU Member States and Associated States
- Establish close link to a EU consortium wishing to submit a proposal



Further Information

- 7th Framework Program:
<http://ec.europa.eu/research/fp7/>
- FP7 research activities and projects:
<http://cordis.europa.eu/>
- Open calls for Proposals:
<http://cordis.europa.eu/fp7/dc/index.cfm>



Thank you for your attention

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