

Information for applicants

for project funding drawing up
consortium agreements on collaborative projects

Details of cooperation are laid down by the Partners of the joint project in a written cooperation agreement, for which no model contract is given. However, the cooperation agreement should contain regulations with a balanced distribution of rights and duties for the use and exploitation of knowledge and results among the Partners. The special achievements involved in an invention have to be recognized. Inventions must therefore be treated differently from any other results obtained in the project

a) Collaboration Agreement

The Partners in a collaborative project should enter into a collaboration agreement as soon as they receive information on the volume of funding in the project, and in all cases prior to the start of the project. The details of collaboration are laid down in this agreement.

The collaboration agreement must be demonstrated by providing at least the following information about the project:

- Partners in the project
- expenditure/ costs and funding
- project period
- work plan
- list of existing IPR's (intellectual property rights), utilization plan, terms of ownership and use of IPR generating from the project
- project management (if possible, coordination by a Partner with experience as a grant recipient)
- confidentiality, dissemination of know-how
- publication screening.

The Partners should be aware that the collaboration agreement is legally binding. Any later agreement (e.g. Consortium Agreement) must be in line with the collaboration agreement or must fully replace it.

b) Inventions in General

Before agreeing on the ownership of inventions, the Partners should inform themselves about the legal premises for gaining an effective position to grant any right on inventions made by their staff to their Partners. The Partners must exercise reasonable effort to bring themselves in the position to grant such rights.

The Partners should agree on procedures to inform each other timely on inventions and patent strategy. Methods to coordinate Intellectual Property Rights (IPR) activities should be described (e.g. establishment of an IPR steering committee could be considered).

If a Partner waives IPR relevant to the project the interest of the other Partners should be considered.

The Partners may additionally agree that inventions arising from the collaborative project in a major extent must first be offered for reasonable limited period of time to the other Partners for use (right to primary negotiation)

c) Ownership of Inventions

Fair rules on ownership and use should be applied. These should reflect the following principles:

- (1) If an invention arises in a collaborative project, it should be the property of that Partner who created it, which means, whose staff has provided that special achievement. That Partner shall forthwith initiate the necessary steps for patent protection.
- (2) If staff members of several Partners are involved in an invention (joint invention), joint ownership should apply. The shares of ownership should reflect the contribution to the inventive achievement. The Partners involved should agree in good faith on the modalities of patent protection to the benefit of all owners.
- (3) In lieu of joint ownership it is possible to exchange rights as well as an additional remuneration or grant options for the use of rights to results on generally accepted market conditions.
- (4) In assessing the compensation for use, the holders of rights should take those contributions by the Partners into consideration which are to be regarded as a necessary, but not sufficient prerequisite for the invention. Such contributions should be adequately taken into consideration in the assessment of licence fees, for instance, by a significant deduction in comparison to those not involved, which in particularly justified cases may even lead to an extensive renunciation of licence fees.

This is analogously applicable to joint inventions.

- (5) Project Partners that are not involved in the inventive achievement should be able to acquire licences for use outside the project. A participation in the project as such does not justify any claim for use free of charge beyond the project. Licensing by the holders of rights should take place on generally accepted market conditions to be agreed upon prior to an intended use.
- (6) The Partners should be aware that – despite of all these regulations - some points cannot be regulated in the collaboration agreement (e.g. whose staff has provided the special achievement, what contributions are adequately). Therefore they should agree on arbitration proceedings aimed at an amicable settlement in the event of disputes about patent issues.
- (7) In the case of collaborative R&D projects, in which a public or scientific institution or public supported body is also involved in addition to a company, economically imbalanced contributions must be carefully evaluated with a view to No. 2.4 of the Community frame of the European Commission for R&D aids granted by states; the result of such evaluation has to be documented.

d) Confidentiality, Know-How

The Partners must agree on confidentiality and the dissemination of know-how. Especially it is important to agree on how to make knowledge accessible to each other in a manner that project objectives can be obtained best. Procedures and rules of disseminating know-how should be agreed to before the start of the project. The Partners should respect each others secrets in commerce and should maintain adequate procedures to protect any confidential information of the Partners which was made accessible to them.

e) Applicable Law, Jurisdiction

If Partners from different countries are involved in the collaboration, the Partners should agree upon which law should be applicable and where jurisdiction should be.