

The logo for the Austrian Research Promotion Agency (FFG) is displayed in the upper right. It consists of the letters 'FFG' in a bold, grey, sans-serif font. To the left of the letters is a grey circle containing a cluster of red dots of varying sizes, with several red streaks extending from the circle towards the left side of the slide.

FFG

# **The Consortium Agreement and IPR issues in FP7**

**Martin Baumgartner  
FFG – Austrian Research Promotion Agency  
European and International Programmes**

RUSERA EXE Training course, Vienna 30. January 2008

- Introduction
- Important provisions of a Consortium Agreement (CA)
- IPR issues in FP7
- Model Consortium Agreements

# Introduction (1)



**Artikel 24 RfP and Annex II GA:** *„Save where otherwise provided in the call for proposals, all participants in an indirect action **shall conclude an agreement**, hereinafter ‘the consortium agreement’, to govern inter alia the following:*

- (a) the internal organisation of the consortium;*
- (b) the distribution of the EC financial contribution;*
- (c) rules on dissemination, use and access rights*
- (d) the settlement of internal disputes including cases of abuse of power;*
- (e) liability, indemnification and confidentiality arrangements between the participants.“*

## Introduction (2)



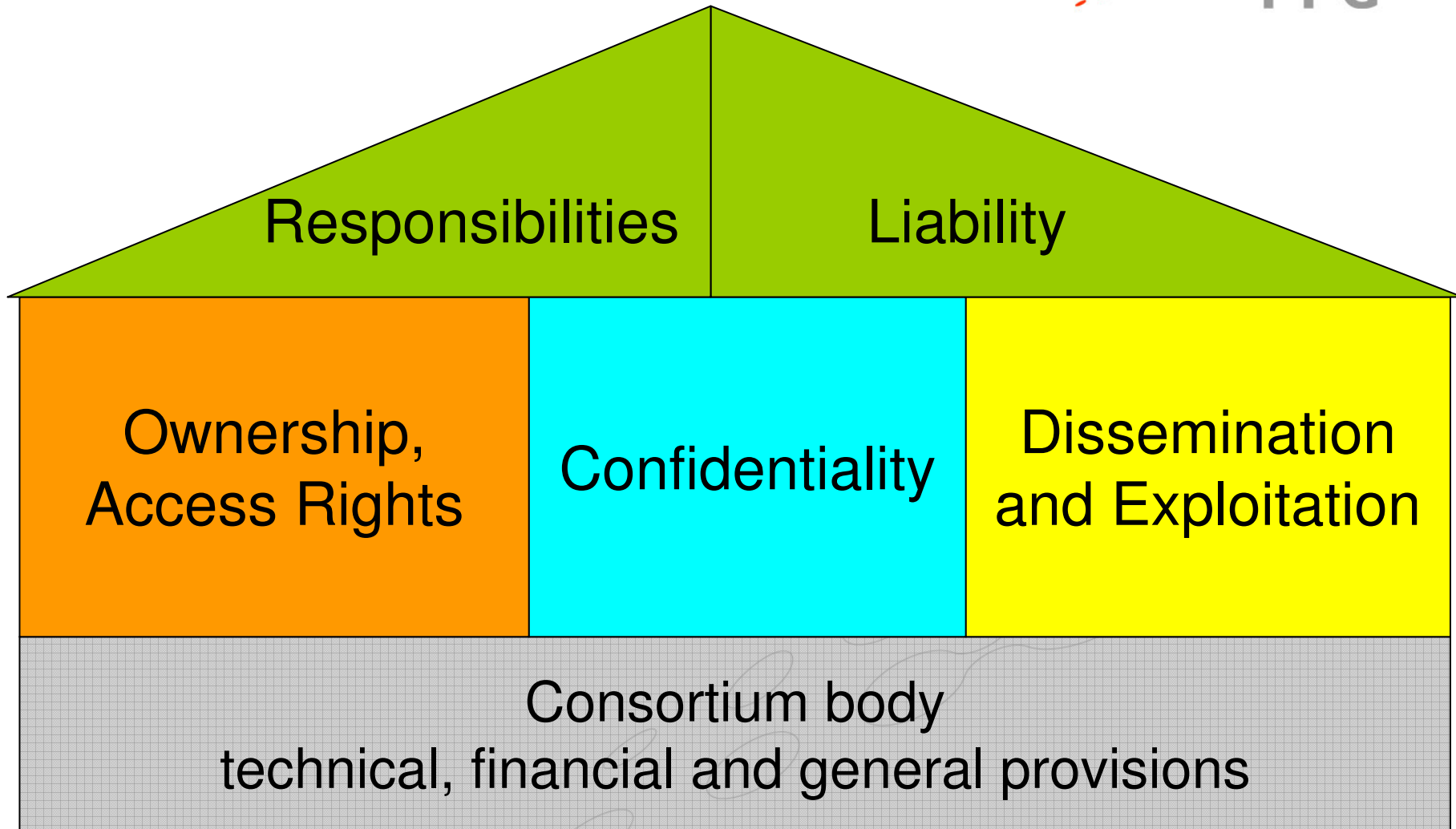
CA is a treaty between the project partners.

Commission is not a party of the CA.

CA should in principle be negotiated and signed before starting the project.

Provisions of a CA should not affect the beneficiaries' obligations to the EC and/or to each other arising from the RfP and the Grant Agreement.

# Important provisions of CA (1)



# Important provisions of CA (2)



FFG

Partners (recommended: beneficiaries of GA)

Preamble

Definitions (recommended: just additional definitions to GA)

Subject (describes the subject of the CA with reference to the GA where necessary)

Duration and coming into force of the CA

# Important provisions of CA (3)



FFG

## Management provisions:

Coordination and managementstructure

Functions and responsibilities of the management bodies (e.g. Kick-Off Meeting, Minutes of Meetings, Projectmonitoring)

Decision processes

## Technical provisions:

Responsibilities / contributions of the partners

Liability of the partners, Force Majeur

Timetable for the project-implementation

# Important provisions of CA (4)



FFG

## Financial management:

Financial plan (costs per partner, receipts, EC-contribution)

Payment modalities, controlling mechanism

Costs to be claimed under the management activity

## „Intellectual Property Rights“ provisions:

Ownership (joint ownership of generated knowledge)

Accessrights to background and foreground

Dissemination and Exploitation

# Important provisions of CA (5)



## General conditions:

End of the CA

Confidentiality obligations

Amendments to the CA (procedere)

Language / Applicable law and jurisdiction

Annexes

# IPR issues in FP7 (1)



Definitions (1):

Start of project



**„Background“**  
(FP6: „Pre-existing Know-how“)  
**excludes  
sideground**

**„Foreground“**  
(FP6: „Knowledge“)

# IPR issues in FP7 (2)



## Definitions (2):

- „Use“: means the direct or indirect utilisation of foreground in further research activities (other than those covered by the project), or for developing, creating and marketing a product or process, or for creating and providing a service.
- „Dissemination“: disclosure of foreground by any appropriate means (e.g. publication of foreground).
- „Access rights“: means licences and user rights to foreground or background.

## IPR issues in FP7 (3)



Ownership: (as in FP6) each beneficiary is owner of the foreground it generates.

Joint Ownership (generated jointly):  
where no joint ownership agreement =  
default regime (Annex II.26):

each of the joint owners shall be entitled to grant non-exclusive licences to third parties, without any right to sub-licence [at least 45 days prior notice to the other joint owner(s) and fair and reasonable compensation to the other joint owner(s)].

## IPR issues in FP7 (4)



Transfer of ownership:

No notification to the COM, only to the other beneficiaries.

Transfer to a third party (not in MS or AC) = COM may object to such transfer of ownership of foreground.

Protection:

where foreground is capable of industrial or commercial application, its owner shall provide for its adequate and effective protection.

# IPR issues in FP7 (5)



Dissemination (including publications):

Participants shall use the foreground as swiftly as possible (if not, the Commission might do it).

Consider protection of foreground (IPR) and confidentiality (use).

Notification of the other participants of all dissemination activities (objection in case legitimate interests are impaired).

There must be a plan for use and dissemination of foreground.

# IPR issues in FP7 (6)



Access Rights:

Access rights requests shall be made in writing.

**Compulsory** access rights on background and foreground are granted when **needed** by a beneficiary (for implementation or use purposes)

# IPR issues in FP7 (7)



	<b>Access rights to background</b>	<input type="radio"/> <b>Access rights to foreground</b>
For implementing the project	Yes, if a beneficiary needs them for carrying out his own work under the project	
	Royalty-free unless otherwise agreed <b>before acceding</b> to the GA	Royalty-free
For use purposes (exploitation + further research)	Yes, if a beneficiary needs them for using its own foreground	
	Either royalty-free, or on fair and reasonable conditions to be agreed	

# Models of Consortium Agreements



FFG

Currently 4 Models:

**DESCA Consortium Agreement Model**

<http://www.desca-fp7.eu/DESCA/Version1/Intro.htm>

**IP Model Consortium Agreement EICTA for FP7**

[http://www.eicta.org/index.php?id=32&id\\_article=163](http://www.eicta.org/index.php?id=32&id_article=163)

**EUCAR Model Consortium Agreement FP7**

[http://www.eucar.be/publications/2007\\_04\\_10\\_EUCAR\\_Model\\_Consortium\\_Agreement\\_FP7\\_48491L1.doc](http://www.eucar.be/publications/2007_04_10_EUCAR_Model_Consortium_Agreement_FP7_48491L1.doc)

**Model CA for the Aeronautics projects in FP7**

<http://www.aerosme.com/news/article.asp?article=250>

# Informations



Consortium Agreement:

[ftp://ftp.cordis.europa.eu/pub/fp7/docs/checklist\\_en.pdf](ftp://ftp.cordis.europa.eu/pub/fp7/docs/checklist_en.pdf)

IPR:

[ftp://ftp.cordis.europa.eu/pub/fp7/docs/ipr\\_en.pdf](ftp://ftp.cordis.europa.eu/pub/fp7/docs/ipr_en.pdf)

IPR Helpdesk:

<http://www.ipr-helpdesk.org>

Model Grant Agreement, Annex II:

[http://rp7.ffg.at/upload/medialibrary/fp7-ga-annex2\\_en.pdf](http://rp7.ffg.at/upload/medialibrary/fp7-ga-annex2_en.pdf)

The logo for FFG (Federal Research Fund for Advanced Research) is displayed in the upper right. It features a grey circle containing a cluster of red dots, with several red brushstrokes extending from the circle towards the left. To the right of the circle, the letters 'FFG' are written in a bold, grey, sans-serif font.

FFG

Mag. Martin Baumgartner

FFG / European and International Programmes

[martin.baumgartner@ffg.at](mailto:martin.baumgartner@ffg.at)