

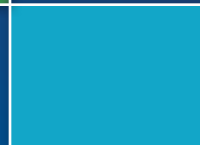
Transatlantic Cooperation in the European Seventh Framework Programme for Research & Development

A Guide for U.S. Users

A resource for researchers and institutions in the USA
to build transatlantic partnerships under the FP7 COOPERATION Programme



DELEGATION OF
THE EUROPEAN UNION
TO THE USA



DISCLAIMER

The information in this booklet is for INTRODUCTORY PURPOSES and GENERAL INFORMATION ONLY. FULL COMPLETE and UP-TO-DATE INFORMATION MUST BE SOUGHT ON THE RELEVANT FRAMEWORK PROGRAMME websites, notably:

<http://ec.europa.eu/research/fp7/>

http://cordis.europa.eu/fp7/home_en.html

Delegation of the European Union to the USA
Science, Technology and Education Section
Washington DC

<http://eurunion.org/policyareas/science.htm>

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This leaflet is a brief guide to American applicants to the Seventh Framework Programme for Research of the European Community (FP7). It outlines the stages and issues associated with the submission of an FP7 project proposal. An introduction to EU-U.S. research cooperation is given in Section I. Section II provides an explanation of the overall application process, while examples of current collaborations are contained in Section III. With the intent to help ensure the smooth negotiation of American participation in FP7 projects, Section IV clarifies a number of particular issues previously encountered by U.S. partners during the conclusion of contractual arrangements. A list of useful resources and informative web sites is given in Section V.

This brochure focusses on the FP7 Cooperation programme, there are many other opportunities within FP7 for transatlantic cooperation.

Introduction

EU & U.S. cooperation in science and technology

Science and technology are among the main pillars of a competitive and dynamic economy. They contribute extensively to economic growth and quality of life. The U.S. and the European Union have long acknowledged their importance and the value of strong cooperation in this field.

EU and U.S. research cooperation can help to develop the critical mass of expertise and capacities needed to address global challenges such as energy security, climate change, poverty and disease. Intensive collaboration offers great potential for success in the research areas of biological sciences, environment, energy and nanotechnologies, among others. Effective international cooperation can also help to develop research infrastructures that substantially support the advancement of knowledge and technology, and can play an outstanding role in building the interface between science and industry.

Cooperation in science and technology between both sides of the Atlantic has a long tradition and lies on strong foundations. The discovery of the structure of DNA by James Watson (American) and Francis Crick (British) is only one of the most famous examples of the benefits of such cooperative activities. Today EU-U.S. cooperation is well advanced and occurs at many levels. International initiatives such as International Thermonuclear Experimental Reactor (ITER) are important to this process, alongside European-level activities with U.S. partners within the EC Research Framework Programmes. National government agencies, commercial firms, academic institutions, professional societies, as well as individual scientists and students have seized opportunities to work together, jointly developing projects of mutual interest.



EC – U.S. Agreement for Scientific and Technological Cooperation

The significance of science & technology within the Transatlantic Agenda has been growing steadily over the years. To enhance collaboration in EC-U.S. research, the United States and the European Community signed in 1998 an “Agreement for Scientific and Technological Cooperation”. This agreement was renewed in 2004 and again in 2009, and has been expanded to include security and space research.

The EC-U.S. S&T cooperation agreement brings a pan-European dimension to transatlantic S&T cooperation. It complements the many bilateral arrangements between the government of the U.S. and individual EU Member States, and between their respective research organizations and scientists. Importantly, the agreement also provides a forum for dialogue between the U.S. and the European Community on common priorities and research topics, aiming to extend and strengthen cooperative activities between EU scientific institutions and a range of U.S. government departments and agencies. These include the Departments of Commerce, Agriculture, Energy and Transportation, the National Science Foundation (NSF), the Environmental Protection Agency (EPA), NASA, the National Institutes of Health (NIH) and many others.

The Seventh Framework Programme for Research (FP7) and its opportunities for researchers and enterprises in the United States

The Seventh Framework Programme for Research, Technological Development and Demonstration Activities (FP7) is the European Community's main instrument for funding R&D activities in Europe, reflecting all aspects of EU research policy. Running from 2007 to 2013, the program has a budget of 53.2 billion euros. The broad objectives of FP7 have been grouped into four Specific Programmes: Cooperation, People, Capacities and Ideas. These activities range from supporting collaborative research projects to the mobility of researchers and sustaining basic science. FP7 is a highly competitive program based on scientific excellence and cross-border cooperation, offering wide



partnership and funding opportunities for researchers and entities established both within and outside the EU. International cooperation plays a pivotal role under FP7 and is integrated throughout the whole program. This new emphasis on international cooperation is the result of new policy guidelines towards S&T international cooperation, recognising the high importance of supporting European scientific and economic development through strategic partnerships with key EU partners in selected fields. For this reason, all these programs are open to international participants.

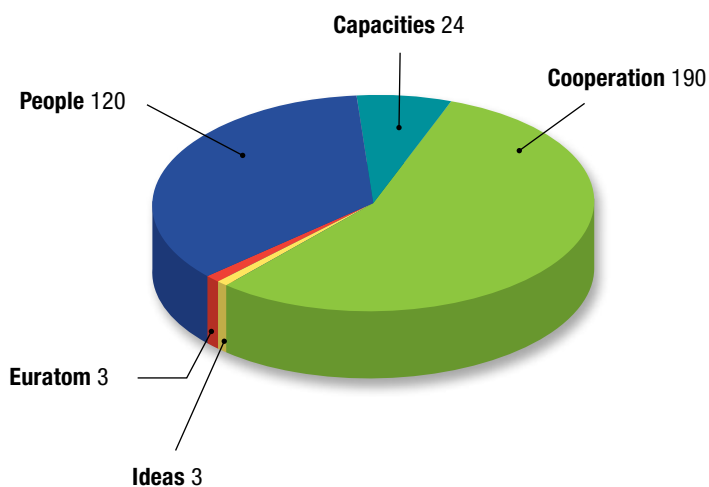
The **Cooperation Programme** enables research cooperation to develop between global research partners in collaboration with European researchers in ten key thematic areas: Health; Food, Agriculture and Fisheries, and Biotechnology; Information and Communication Technologies; Nanosciences, Nanotechnologies, Materials and new Production Technologies; Energy; Environment (including Climate Change); Transport (including Aeronautics); Socio-economic Sciences and the Humanities; Space; and Security.

International partners are also welcome in the activities covered by the **Capacities Programme**, which aims at supporting existing and new facilities of pan-European and international relevance. This is achieved by investing in research infrastructures, development of the research potential and promoting science in society as a whole. Furthermore, through a dedicated program, the Capacities Programme supports a range of activities designed to boost the participation of researchers and research institutions from around the world in FP7 collaborative research projects.

The **People Programme** provides support for the mobility and career development of researchers inside the European Union and internationally. It is implemented with a set of actions providing fellowships and other measures to help researchers build their skills and competences throughout their careers. The program includes many opportunities for American researchers who want to work in Europe and for U.S. research institutes that want to build close ties with their counterparts in Europe.

US Participation in FP7 Projects

340 total selected applications





Many other opportunities are also available under the **Ideas Programme**, which supports basic research exclusively on the basis of scientific excellence in any area of science and technology. Nationals of all countries of the world can compete for funding, as projects are implemented by individual teams of scientists of all nationalities working in institutions based in Europe.

Energy research activities are also carried out under the **EURATOM Programme**. This program covers fusion energy research, nuclear fission and radiation protection, and is also fully open to international cooperation.

U.S. participation in FP7 collaborative projects

Europe places great importance on effective S&T cooperation with U.S. entities. Transatlantic S&T collaboration is very well developed and U.S. participation represents 11% of the total non-European participation in FP7 so far. The success rate of U.S. research teams is high and is comparable, if not higher, than the success rate of European entities. Research areas in which transatlantic links are well established are health, nanotechnology and new materials, food and biotechnology, as well as in the fields of information communication technologies and environmental research.

The Rules for Participation of FP7¹

With key U.S. agencies the dialogue has moved even further, going beyond basic participation in the respective programs. The EU and the U.S. are advancing on other axes of collaboration, such as program-level cooperation, whereby administrators and researchers from both sides of the Atlantic align their solicitations for proposals to allow for U.S. and EU projects to work together towards common goals.

Furthermore, under the umbrella of the EC-U.S. S&T agreement, specific “implementing arrangements” can be signed between the European Commission and the U.S. funding agencies to organise collaboration in particular areas of research. As a result, since 2003, several implementing arrangements have been initiated, for instance in the field of environmental research with the National Science Foundation (NSF) and the Environmental Protection Agency (EPA). Other formal cooperation arrangements have been launched in metrology with the NIST (National Institute of Standards and Technology) and in materials science (including nanotechnology) with the NSF.

¹ The Rules of Participation of FP7 are set out in a Regulation of the European Parliament and of the Council (Regulation (EC) 1906/2006). For details see: http://ec.europa.eu/research/fp7/index_en.cfm?pg=documents#Rules

Preparing and Presenting an FP7 Project

Actions and timeframe

Every year and for each thematic topic of FP7, the European Commission publishes a Work Programme that includes all the foreseen solicitations (or “calls”) for project proposals for the year to come. Once a topic of interest has been identified, European partners should be found to build a consortium². The next step is the submission of the project proposal by the given deadline. The proposals received will be ranked through a peer review procedure, which involves an evaluation made by independent experts. If the project proposal is selected, the negotiation of the contract between the European Commission and the project coordinator (the so-called grant agreement) can start. The grant agreement needs to be signed by all the consortium participants and it will form the basis of their rights and obligations towards the Commission during the period of life of the project.

Call for proposals

The European Commission issues calls for proposals every year in accordance with the requirements laid down in the relevant annual Work Programmes. The Work Programmes are normally published annually and include all the relevant information on the topics covered and on the upcoming calls. Up-to-date information on the existing (or “open”) calls and other enquiries is provided by the Cordis website (http://cordis.europa.eu/home_en.html).



Consortium composition

Any company, university, research centre, organization or individual scientist³ that is legally established in any country may participate in a collaborative project. Participation of legal entities established in the United States is possible and welcome, provided that the minimum conditions⁴ are met, as well as any other additional conditions laid down in the relevant Specific Programmes or Work Programmes for the topic concerned.

Finding European partners

U.S. researchers and organizations wishing to participate in or lead a consortium can make use of the CORDIS Partners Service: <http://cordis.europa.eu/partners-service>. The lead partner (project coordinator) that submits the proposal on behalf of the consortium is not required to be from an EU country or a country associated to the Framework Programme.

Submitting a proposal*

Submitting a project proposal is easy and facilities are available to overcome any problems encountered. Project proposals under FP7 are prepared and submitted electronically via the Electronic Proposal Submission System (EPSS). It allows proposers to create and submit their project proposal completely on-line. The EPSS service is available via the Internet as a web-based application at: <https://www.epss-fp7.org/epss/welcome.jsp>.

A U.S. legal entity that wishes to be part of a project consortium and to submit a proposal to the European Commission needs only to register once via the Unique Registration Facility tool (URF), which can be accessed at: <http://ec.europa.eu/research/participants/urf>. After the registration it will receive a Participant Identification Code (PIC) which can be used every time it wants to submit a proposal under FP7. As a result, the American partner will not have to present its legal and financial information (and

² The European Commission provides a service to help find European partners. See <http://cordis.europa.eu/partners-service/>

³ An individual defined as a legal entity is any natural person, or any legal person created under the national law of its place of establishment, or under Community law or international law, which has legal personality and which may, acting under its own name, exercise rights and be subject to obligations.

⁴ (a) at least three legal entities must participate, each of which must be established in an EU Member State or associated country, and no two of which may be established in the same Member State or associated country; (b) all three legal entities must be independent of each other. Currently associated countries are: Albania, Bosnia and Herzegovina, Croatia, Iceland, Israel, Liechtenstein, the Former Yugoslav Republic of Macedonia, Montenegro, Norway, Turkey, Serbia and Switzerland. For details, see: ftp://ftp.cordis.europa.eu/pub/fp7/docs/third_country_agreements_en.pdf

* In the thematic area of nuclear fusion research, the specific funding schemes contain their own terms and procedures, which are accessible at: http://cordis.europa.eu/fp7/find-doc_en.html – Euratom Rules for Participation

supporting documents) each time it submits a proposal or negotiates a grant agreement. Furthermore, the URF and EPSS helpdesks are available for any enquiries.

Evaluation

The project proposals are considered to be eligible when they are received within the given deadline and fulfill all the formal requirements (i.e. satisfy the minimum requirements for the makeup of consortium, completeness of the proposal, etc.). In order to identify the proposals for which the quality is sufficiently high for possible funding, a peer-review evaluation is carried out by panels of independent experts nominated by the European Commission. Experts are required to have skills and knowledge as well as a high level of professional experience appropriate to the areas of activity in which they are asked to assist. They are contractually required to maintain the confidentiality of the proposals and proposers under review. The Commission has established a database of experts containing the details of suitable candidates. U.S. experts can also sign up and be selected to take part in the evaluation.

FP7 evaluation criteria are clearly set and identified by the rules governing the program. The Work Programmes might set down further criteria or thresholds but in general the following criteria apply: scientific or technological excellence, relevance to the objectives of these Specific Programmes, the potential impact through the development, dissemination and use of project results, the quality and efficiency of the implementation and management. Moreover, in the case of calls targeting specific countries or regions these criteria can be complemented by additional participation requirements due to the specific content of the call. For more information on the evaluation rules and procedures please visit the following link: ftp://ftp.cordis.europa.eu/pub/fp7/docs/fp7-evrules_en.pdf

Negotiations and the Grant Agreement

After the evaluation the proposals are ranked according to the results of the process. Funding decisions are made on the basis of this ranking. The coordinators of proposals that have not been rejected, and for which funding is available, are invited to begin negotiations with the European Commission on the content of the grant agreement. This is the contract regulating the rights and obligations between the consortium and the European Community for the implementation (e.g. the scope and the duration of the project, as well as the financing of the project). It is signed by all the participants and by the Commission representing the European Community. In FP7 all partners (known as “beneficiaries”) have to sign the grant agreement. This is also the case for beneficiaries who do not receive funding from the European Community and reside in a third country. However, in this case the obligations resulting from the grant agreement are much less demanding, for example regarding financial reporting.

The rights and obligations among the participants are regulated by the consortium agreement and the Commission is not a party to it. The consortium agreement is a very useful tool to clarify or regulate issues that are not covered by the grant agreement. The only requirement is that it must always be consistent with the content of the grant agreement. Furthermore, the Commission recently has developed a set of special clauses⁵ that can be added to the grant agreement and which were specifically designed to facilitate the participation in FP7 projects of legal entities that do not receive European Community financial contributions. In particular, concerning the financial obligations, a special clause can be added to the grant agreement with the effect of excluding the financial and payment provisions of the grant agreement. (An example is the removal of the obligation to submit certificates on financial statements, or financial audit or control.)

⁵ For a list of all possible special clauses, see ftp://ftp.cordis.europa.eu/pub/fp7/docs/fp7-ga-clauses-v4_en.pdf

Eligibility for funding

There are three different categories of countries whose researchers are generally eligible for a Community financial contribution while taking part in FP7 projects:

- **European Union Member States** — The 27 countries of the EU;
- **Associated Countries**⁶ — countries that have concluded science and technology cooperation agreements and that pay a yearly contribution to FP7;
- **International Cooperation Partner Countries (ICPC)**⁷ — countries that are not Member States or Associated Countries and which the European Commission classifies as low income, lower middle income or upper middle income countries.

American legal entities, in principle, are not eligible to receive European Community financial contributions, as the U.S. does not belong to one of these groups of countries. However, in some particular cases financial contributions may be granted to U.S. legal entities. This would be the case where such a provision is made in the relevant Work Programme, or if the financial contribution (not the participation!) is essential for carrying out the project, or if such funding is provided for in an agreement or other arrangement between the EC and the U.S. This is for instance the case of the FP7 Health Theme where American participants are eligible for funding in recognition of the opening and the possibility offered to EU researchers to receive funding from NIH programs.



In the case of the U.S. legal entities receiving European Community financial contributions, the rule that applies to all beneficiaries receiving funding is the shared repartition of costs. This means that the funding covers only a part of the eligible costs of the project. The level of funding depends mainly on the activity undertaken and on the type of participant: 50% of the total eligible costs for research and technological development activities (increased to 75% for secondary and higher education establishments, research organisations and non-profit public bodies), 50% for demonstration activities and 100% for other activities, including management and IP protection.

The definition of eligible costs has been simplified in FP7 and the three cost reporting models used in previous Framework Programmes have been abandoned. This means that participants can charge for all their actual eligible direct and indirect costs or — for indirect costs — they may opt for a flat rate. The grant agreement contains the conditions for a cost to be accepted as eligible. Generally, costs must be determined according to the usual accounting and management principles of the participants to achieve the project objectives based on principles of economy, efficiency and effectiveness. On the basis of the project's budget as initially agreed, the maximum amount of Community funding will have been set.

The Grant Agreement

The main concerns previously encountered in the development of the EU-U.S. science and technology cooperation relate to the standard provisions of Annex II of the FP7 model grant agreement and mainly concern some of the rules governing the Intellectual Property Rights (IPR) and to a lesser extent a number of liability issues.

Annex II of the grant agreement regulates in detail the rules regarding both the information and IP that the participants bring into the project (background) and the ones resulting from the project (foreground). These provisions apply generally to all participants in a project, even if they do not receive any European Community financial contributions. This fact has caused problems for some U.S. partners because they perceived some provisions as an obstacle to agreement, in some instances causing their withdrawal from

⁶ For a list of all associated countries, see: ftp://ftp.cordis.europa.eu/pub/fp7/docs/third_country_agreements_en.pdf. Under Euratom FP, only Switzerland is considered as an Associated Country.

⁷ For a complete list of ICPC please see: <ftp://ftp.cordis.europa.eu/pub/fp7/docs/icpc-list.pdf>

the negotiations. In a number of cases, these perceptions have been based on misunderstandings or a lack of clarity of the provisions of the grant agreement. Some of these provisions might appear strict, but most still leave to the participants a certain degree of flexibility to regulate their working relations in the way that suits their needs (for example in the consortium agreement).

For instance, this is the case for the rules governing the dissemination of the results and the time limits related to the consultation of the other partners. In this respect the grant agreement lays down certain time limits. However, it is clearly indicated in this provision that participants may agree on different time limits than those laid down in the grant agreement. Therefore, different rules governing the delay of dissemination could be agreed upon by all the participants and laid down in the consortium agreement.

The consortium agreement could be also used to clarify other issues of potential interest to U.S. partners. For example, this is the case regarding the right of a participant to object to the dissemination activities of another participant, if the former considers that its legitimate interests in relation to its foreground or background could suffer disproportionately great harm.

Another case that is perceived as a problem concerns the rule allowing the European Commission to protect the foreground in case of inactivity or unwillingness to protect it by the participant concerned. This provision is indeed rarely used. Normally, a participant will protect the results if it thinks that the results are commercially valuable. The participant is the best placed to make this judgement and it is unlikely that the Commission would come to a different conclusion. Moreover, the participant concerned can refuse this activity, if it demonstrates that its legitimate interests would suffer disproportionately great harm in case the Commission acts.

Furthermore, the Commission has developed certain special clauses that can be inserted into the FP7 grant agreement, for use by U.S. partners that do not receive European Community funding. These clauses enable derogations from some of the standard provisions of Annex II. This is the case of the provisions concerning transfers of ownership of foreground and exclusive

licensing of foreground and the right of the Commission to object to them. A special clause can be inserted in the grant agreement by which the Commission renounces from objecting to the intended transfer or licence under certain conditions. In the same way, another special clause has solved many issues related to the payment of liquidated damages or financial penalties. U.S. entities that do not receive financial contribution are not subject to the financial and payment provisions contained in Annex II. Therefore, these parts of Annex II are not applicable including the provisions on the payment of liquidated damages and financial penalties.

Dispute settlement

The grant agreement also includes provisions concerning the settlement of potential disputes that might arise from its interpretation, application or validity. The law that would be applied is European Community law and on a subsidiary basis Belgian law. No exceptions can be made to this rule.

Concerning the competent authorities to settle disputes, the grant agreement states that they should be the European courts (i.e. the European Court of First Instance and on appeal the European Court of Justice). This appears to be a problem for some American entities that cannot legally accept to be subject to a foreign jurisdiction. In order to solve this issue and to meet their needs, the Commission has adopted a new special clause that in such case offers the possibility to resort to arbitration in the case of a dispute.

Please refer to part IV of this document for a deeper examination of some of the technical issues related to the participation of American legal entities and the legal nature of the main challenges they have experienced.

Examples of FP7 Transatlantic Cooperation Projects

COOPERATION PROGRAMME:

HEALTH

ACRONYM: METAcancer

DURATION: 3 years

TITLE: "Identification and validation of new breast cancer biomarkers based on integrated metabolomics"

U.S. PARTNERS: University of California, Davis, United States.

EUROPEAN PARTNERS: Charite Universitaetsmedizin Berlin, Germany; University of Cambridge, United Kingdom; Technical Research Centre of Finland, Finland; CBC ForschungsGmbH, Germany; tp21 GmbH, Germany; Lower Silesian Oncology Centre, Poland; HighChem Ltd., Slovakia.

MAIN OBJECTIVE: Breast cancer is the most common cancer in women. The FP7 project METAcancer aims at characterizing the metabolism of malignant breast tumours in order to identify new biomarkers and targets for therapeutic interventions. This consortium consists of three universities, one research center and a number of molecular biologists. University of California, Davis participates in the consortium, which represents an excellent example of international coordination among clinicians, biochemists and bioinformaticians.

WEBSITE: <http://www.metacancer-fp7.eu/>



COOPERATION PROGRAMME:

FOOD, AGRICULTURE AND BIOTECHNOLOGY

ACRONYM: SYMBIOSIS-EU

DURATION: 4 years

TITLE: "Scientific synergism of nano-bio-cogni science for an integrated system to monitor meat quality and safety during production storage and distribution in EU"

THIRD COUNTRY PARTNERS: Colorado State University, United States; Institute of Environmental Science and Research, New Zealand.



EUROPEAN PARTNERS: Agricultural University Athens, Greece; Cranfield University, United Kingdom; University of Manchester, United Kingdom; Zenon S.A. Robotics and Informatics, Greece; National Agricultural Research Foundation,

Greece; Ecole Nationale d'ingenieurs des travaux agricoles de Clermont-Ferrand, France; Universita degli studi di Napoli Federico II, Italy; Stichting Dienst Landbouwkundig onderzoek, Netherlands; Technobiochip SCARL, Italy; Flex-packaging AL SPA, Italy.

MAIN OBJECTIVE: The Symbiosis-EU project will bring together 14 partners from 6 EU countries, plus one each from New Zealand and the United States to study meat safety & quality. The overall aim is to identify and quantitatively evaluate practical and easy to use chemical, biochemical and molecular indices and establish their applicability as quality monitors for inspection of meat safety and quality.

WEBSITE: <http://www.symbiosis-eu.net/>

with U.S. Participation

COOPERATION PROGRAMME:

INFORMATION AND COMMUNICATION TECHNOLOGIES

ACRONYM: CAPSIL

DURATION: 2 years

TITLE: “International support of a common awareness and knowledge platform for studying and enabling independent living”

THIRD-COUNTRY PARTNERS: Spaulding Rehabilitation Hospital, Harvard Medical School, United States; Oregon Health & Science University, United States; Waseda University, Japan.

EUROPEAN PARTNERS: University College Dublin, Ireland; Intel performance learning solutions limited, Ireland; Queens University, United Kingdom; Univerisita degli studi di Genova, Italy; Imperial College, United Kingdom.

MAIN OBJECTIVE: The aging of society is the single most important aspect of health care in the 21st century. Many intriguing ICT solutions are being developed within the EU, USA and Japan for helping older people to remain independent longer. The project partners want to develop a detailed road map for EU research to achieve effective and sustainable solutions to independent living. Aging research will be supported by proposing procedures to incorporate all of the diverse solutions into Wiki entries that describe interoperable ICT solutions to clinical requirements for independent living. These solutions can then be deployed throughout the EU, U.S. and Japan for verification and testing.

WEBSITE: <http://www.capsil.org/>

COOPERATION PROGRAMME:

ENVIRONMENT

ACRONYM: ACOBAR

DURATION: 4 years

TITLE: “Acoustic technology for observing the interior of the Arctic Ocean”

U.S. PARTNERS: Scripps Institution of Oceanography, University of California at San Diego, United States; Woods Hole Oceanographic Institution, United States.

EUROPEAN PARTNERS: Nansen Environmental and Remote Sensing Center, Norway; Alfred-Wegener-Institut fuer Polar- und Meeresforschung, Germany; Universite Pierre et Marie Curie – Paris 6, France; Optimare Sensorsysteme AG, Germany; ENISIETA, France; Aquatec Telemetry Limited, United Kingdom; ACSA, France.

MAIN OBJECTIVE: The project will develop an observing system for the interior of the Arctic Ocean based on underwater acoustic methods including tomography, data transmission and communication to/from underwater platforms, and navigation of gliders.

WEBSITE: <http://acobar.nersc.no/>



Examples of FP7 Transatlantic Cooperation Projects

COOPERATION PROGRAMME:

SPACE

ACRONYM: ProVisG

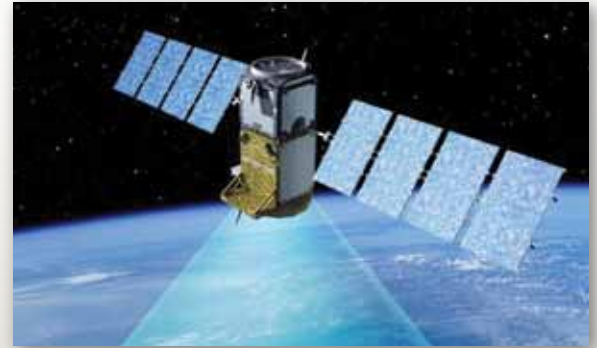
DURATION: 3 years

TITLE: "Planetary Robotics Vision Ground Processing"

U.S. PARTNERS: Ohio State University, United States; Jet Propulsion Laboratory, United States.

EUROPEAN PARTNERS: Joanneum Research Forschungsgesellschaft mbH, Austria; Deutsches Zentrum fuer Luft-und Raumfahrt e.V., Germany; SCISYS limited, United Kingdom; Technische Universitaet Berlin, Germany; CSEM, France.

MAIN OBJECTIVE: The project will build a framework for planetary robotic vision ground processing and develop the technology to better process and visualise existing and future data from



planetary missions to maximise value-added exploitation of the data for research, technology and education. In addition, the project aims to increase public awareness of such missions and the EC contribution to their scientific evaluation.

WEBSITE: <http://www.provisg.eu/>

COOPERATION PROGRAMME:

SOCIO-ECONOMIC SCIENCES AND HUMANITIES

ACRONYM: SELUSI

DURATION: 40 months

TITLE: Social Entrepreneurs as "Lead Users" for Service Innovation

U.S. PARTNER/INSTITUTION: The Global Institute, Washington DC, United States.

IN THE ADVISORY COMMITTEE: Social Enterprise Initiative, Harvard Business School and Kennedy, School of Government, Boston, United States.

EUROPEAN PARTNERS/INSTITUTION: The London School of Economics and Political Science, London, United Kingdom; Katholieke Universiteit Leuven, Leuven, Belgium; Stiftelsen Östekonomiska Institutet, Stockholm Institute of Transition Economics, Stockholm, Sweden; University of Navarra, IESE

Business School, Barcelona, Spain; The Hub Collective Ltd, London, United Kingdom; Nonprofit Enterprise and Self-Sustainability Team, Nesst Consulting, Budapest, Hungary; I-Propeller Cvba, Dilbeek, Belgium.

MAIN OBJECTIVE: The SELUSI project aims to analyse the role of "social entrepreneurship" in the service innovation processes of companies, and to formulate public policy initiatives in the following four domains: (i) emerging social entrepreneurship both at the EU and member state levels, (ii) service innovation and competitiveness particularly at the EU level, (iii) emerging social entrepreneurship and services innovation in European welfare states versus emerging market economies, and (iv) a "SELUSI"-Innovation Strategy at the global level.



with U.S. Participation

COOPERATION PROGRAMME:

SECURITY

ACRONYM: ESCoRTS

DURATION: 30 months

TITLE: “European network for the Security of Control and Real-Time Systems”

U.S. PARTNERS: OPUS Publishing, United States.

EUROPEAN PARTNERS: Comité Européen de Normalisation, Belgium; Joint Research Center, European Commission; ABB Switzerland Ltd, Switzerland; Areva, France; Siemens, Germany; Enginet, Italy; ENEL, Italy; Mediterranea Delle Acque, Italy; Transelectrica, Romania; UNINFO, Italy.

MAIN OBJECTIVE: ESCoRTS is a joint endeavour among EU process industries, utilities, leading manufacturers of control equipment and research institutes, under the lead of CEN. The project will foster progress towards cyber security of control and communication equipment in Europe. ESCoRTS will be inter-

sectoral, embracing the following industrial fields: power, gas, oil, chemicals and petrochemicals, pharmaceuticals and manufacturing. Key objectives of ESCoRTS include developing a common understanding of industrial requirements regarding the security of control systems and the related standardisation, accompanied by an awareness-raising program reaching all stakeholders.

WEBSITE: www.escortsproject.eu/



Legal Issues and Answers

Some potential U.S. partners within FP7 projects have pointed to issues that hinder or prevent the satisfactory conclusion of contract negotiations. In many cases these are perceived or actual problems that prevent U.S. entities from signing a FP7 grant agreement⁸.

The European Commission has undertaken some important steps to facilitate the U.S. participation in FP7 projects by adopting a series of special clauses which could be added to the grant agreement. The clauses were specifically designed to lighten the obligations resulting from the grant agreement, in particular where the U.S. participant does not receive any European Community (EC) financial contributions. These include the binding arbitration option, the waiver of European Commission objections to transfers/exclusive licences of foreground and the waiver of the financial obligations of the grant agreement.

The perceived problems can be divided into four main areas:

- (1) **Applicable law and jurisdiction**
- (2) **Financial provisions**
- (3) **IPR provisions**
- (4) **Administrative issues**



1. Applicable law and jurisdiction

Application of European Community (EC) law

Issue: Some U.S. entities, mainly public ones, consider that legal constraints prohibit them from accepting a foreign governing law as the law governing the grant agreement.

European Community position: The European Commission is not in a position to accept that the EC as grantor would be subject to a law different from Community law and — on a subsidiary basis—different from an EU Member State law. (Belgian law has been chosen in order to treat equally any FP7 grant agreement.) Therefore, for this issue, there are currently no alternatives to offer to U.S. participants.

Jurisdiction

Issue: Some U.S. public bodies or agencies cannot accept to be subject to a foreign jurisdiction. However, a number of these entities have indicated that they could accept binding arbitration (some with a special waiver from the U.S. Department of Justice).

European Community position: A special clause on arbitration has been adopted by the European Commission for those U.S. entities that can accept binding arbitration. The European Commission can accept binding arbitration in the cases where the other party receives no EC contribution and for legal reasons cannot accept to be subject to the jurisdiction of the European Court of Justice. (The EC cannot submit itself to a foreign jurisdiction nor accept non-binding arbitration regarding its FP7 projects.)

⁸ The model grant agreement for FP7 can be found at: http://cordis.europa.eu/fp7/calls-grant-agreement_en.html#standard_ga

2. Financial provisions

With regard to the financial provisions, U.S. entities that would be eligible to receive funding are not always familiar with the Rules for Participation of FP7⁹. In other cases, legal constraints are cited in particular regarding indemnification of the European Commission in case they cause damage or the possible payment of liquidated damages or financial penalties to the Commission in case they commit financial irregularities.

Exemption of contributions to the Guarantee Fund

For FP7 a Guarantee Fund is established in order to manage the risk associated with possible non-recovery of sums that might become owed to the EC during the course of the projects. The fund is the property of the partners (beneficiaries) and is established and operated by the European Commission on behalf of the beneficiaries.

The contribution to the fund is made on behalf of each beneficiary at the start of the project, taken from the advance payment made to each project at the start of its activities. This contribution cannot exceed 5% of the maximum EC financial contribution to each beneficiary and is reimbursed at the end of the project. Those partners that do not receive EC contributions do not contribute to the fund. The interest generated by the contributions will permit the Fund to intervene in cases where a participant does not reimburse its debts. At the final payment made after the end of the project, the amount contributed to the Fund is returned to the participants via the coordinator. If the interest generated by the contributions has been totally consumed at the time the contribution must be reimbursed, a deduction to the amount to be returned

may be made. That deduction will not exceed 1% of the European Community financial contribution and will not apply to amounts due to public bodies or legal entities whose participation in the grant agreement is guaranteed by an EU Member State or an associated country, and higher and secondary education establishments. The operation of the fund is described in detail in Annex II (“General Conditions”) of the FP7 model grant agreement¹⁰.

Issue 1: Some U.S. entities would like to be exempt from contributions to the Guarantee Fund.

European Community position: The Rules for Participation of FP7 set out in EC law the conditions for the participation of public and private undertakings, universities and research centers in the 7th Framework Programme. The Rules of Participation do not provide for the exemption of contributions to the Guarantee Fund, where they are normally paid.

Issue 2: Higher education establishments and public bodies benefit from an exemption from any deductions from their contributions to the Guarantee Fund at the end of the project. Some U.S. entities wish to have confirmation that they will be included in this exemption.

European Community position: US private and public universities will not be subject to any deductions in the reimbursement of their contributions to the Guarantee Fund. US government agencies that are public bodies as defined in the Rules for Participation will be also exempt from any deductions. Similarly, research institutes and other research organizations that are public bodies will be exempt from deductions.

⁹ The Rules of Participation of FP7 are set out in a Regulation of the European Parliament and of the Council (Regulation (EC) 1906/2006). For details see: http://ec.europa.eu/research/fp7/index_en.cfm?pg=documents#Rules

¹⁰ Annex II of the FP7 model grant agreement can be found at: ftp://ftp.cordis.europa.eu/pub/fp7/docs/fp7-ga-annex2-v3_en.pdf



Level of overheads

Issue: Some entities find the project overhead flat rates low compared to those they have negotiated with the U.S. Government.

European Community position: The overhead flat rates are fixed in the FP7 Rules for Participation. However, U.S. entities may choose to be reimbursed based on their actual overheads, if they consider the proposed flat rates too low.

Assessment of the final report

Issue: For some entities, the fact that the Commission only releases the last payment after approval of the final report is perceived as a risk that the Commission could censor the results.

European Community position: The Commission does not censor any results. However, the final report must be accepted by the Commission as a condition to make the final payment. The Commission will assess the report on the basis of the description of work contained in Annex I of the grant agreement, whose content was previously agreed during the initial negotiations.

Guarantee that the costs of the project will be paid as budgeted in Annex I

Issue: Some entities need to know in advance that their budgeted direct costs will be considered as eligible costs. They cannot risk that their costs will be deemed ineligible or that they will be forced to pay liquidated damages because of misunderstandings.

European Community position: The grant agreement provides for the payment of actual costs. The actual costs can only be verified once they are already incurred. However, the grant agreement contains the conditions for a cost to be accepted as eligible. Therefore, the participating legal entity knows in advance under what conditions direct costs are covered by the EC contribution. If they have any doubts on the interpretation of the model grant agreement clauses, a financial guide is available and there exists a legal helpdesk through which the Commission provides answers to participant's queries.

Liability issues

Issue 1 – Indemnification: Some entities claim that they cannot indemnify contractual partners as a matter of law.

European Community position: The Participant shall indemnify the Community only in the cases where they themselves have caused damages and the Community has to indemnify on their behalf. The Community cannot be expected to support the damage caused by a participant in the implementation of the grant agreement or by a product developed under a grant agreement.

Issue 2 – Liquidated damages and financial penalties: Some entities claim that they cannot pay liquidated damages or financial penalties as a matter of law.

European Community position: For the U.S. participants not receiving an EC financial contribution this is not an issue. Existing special clause 9 has been rephrased, clarifying that participants in EC funded projects which do not receive any EC financial contributions are not subject to the financial and payment provisions contained in the Annex II of the model grant agreement. Therefore, the part of the grant agreement dealing with liquidated damages is not applicable in the case where the U.S. legal entity does not receive EC financial contributions. Furthermore, no financial penalties are foreseen in this case. The only penalty that could be applied in these cases is the exclusion of the legal entity concerned from all EC grants for a maximum of two years starting from the date any infringement has been established.

For the case of the U.S. participants receiving an EC financial contribution the provision on liquidated damages and financial penalties applies to all the beneficiaries participating and receiving funding in the Framework Programme. The Commission applies the same treatment to all participants in this matter, including U.S. entities.

3. Intellectual Property Rights (IPR) issues

Protection of foreground (i.e. results of the project)

Issue: Some participants are reluctant to protect their results in all cases.

European Community position: First, the cost of the protection of intellectual property (IP) could be paid out of the EC grant as it is considered as an eligible cost. The reimbursement rate for costs relating to this activity is 100%. However, this must be indicated and clearly foreseen in the budget plan of the project proposal. Moreover, apart from the case where the results are not capable of industrial or commercial application, the legitimate interests of the participant can also be a reason not to seek protection. If a participant does not intend to protect his results this should be agreed upon among participants and discussed with the Commission before the start of the project.

Protection of foreground by the European Community

Issue 1: Some participants have concerns about the EC assuming the ownership and protecting the results in case of unwillingness to protect by the participant concerned. They object to the transfer of ownership to the EC or other participants.

European Community position: Normally, a participant will protect the results if it thinks that the results are commercially valuable. The participant is the best placed to make this judgement and it is unlikely that the EC would come to a different conclusion. Therefore the provision allowing the EC to protect the results in case the participant does not protect or transfer them is rarely used. Moreover, the participant concerned can forestall the action if it demonstrates that its legitimate interests would suffer disproportionately great harm if the EC chooses to act. However, in case the participant does not want to protect its results and the EC decides to do so, the latter will take over ownership and will protect it in its own name and not in the name of the participant.

Issue 2: Some legal entities are concerned by the fact that in case where they do not protect the foreground and the EC assumes the protection of the ownership, there is no time limit for the EC to act. This could therefore jeopardize publication of the results by the participant.

European Community position: It is true that the grant agreement does not indicate any limit to publication delay in the rare case the Commission intends to protect the project results. However, the Commission seeks to act within a reasonable time delay.

Dissemination of foreground (time-limits)

Issue: Some participants are concerned about the dissemination of their results, in particular regarding the time limits related to the consultation of the other participants.

European Community position: The grant agreement lays down certain time limits in this respect in Annex II. However, it is clearly indicated in this provision that participants may agree on different time limits than those laid down in the grant agreement. Therefore, different rules governing the delay of dissemination could be laid down in the consortium agreement.

Dissemination of foreground (reasons to object)

Issue: A participant may object to the dissemination activities of another participant if the former considers that its legitimate interests in relation to its foreground or background could suffer disproportionately great harm. Some U.S. entities consider that this provision is too vague.

European Community position: The participants could agree to interpret the text of the grant agreement and therefore to clarify the reasons to object in the consortium agreement



Exclusive licensing to third parties in third countries

Issue: Some participants have difficulties to accept the provisions concerning exclusive licensing. According to these provisions, in the case where a participant intends to grant an exclusive licence, the other participants must waive their access rights. In addition, the Commission may object to an intended exclusive licence to a third party established in a country not associated to FP7 (this includes the U.S.) for a limited number of reasons. A similar right to object can be found with regard to intended transfers of ownership of foreground to such third parties.

European Community position: With regard to the need of the waiver of other participants, it follows from the fact that a Community funded project is a unique collaborative project involving several participants working together. An exclusive licence would mean that no access could be given to other participants if they need it in order to carry out the project or use their own results. Therefore, it is possible that the project could not be completed or the results could not be used. To avoid such outcomes, the other participants must waive their access rights before any exclusive licences can be granted.

With regard to the right to object of the Community, two cases must be distinguished:

Where the participant does not receive Community financial contribution: In this case, a special clause (special clause #11 or #36) can — where appropriate — be inserted to confirm that the EC shall not object to the intended transfer of ownership of foreground or grant of an exclusive licence of foreground to a third party established in a third country not associated to FP7.

Where the participant receives an EC contribution: The right of the EC to object is the general rule. In the negotiation phase, the Commission will identify whether the results are likely to be sensitive, in which case a special clause will be inserted into the grant agreement requiring the notification of intended

transfers of ownership or grants of exclusive licences to the Commission. In any other case, participants are not obliged to notify the Commission.

Access Rights to foreground

Issue: Some participants consider as a problem the extensive rights of consortium members to obtain on demand information regarding the results of another participant. This includes the particular case where other entities may enter the consortium without the agreement of all members. Thus, they would be agreeing to share information with unknown future participants.

European Community position: The grant agreement requires the agreement of the Commission and of the consortium for the addition of new participants. Therefore, the participants can decide in their consortium agreement that such a decision should be taken by unanimity.

Access rights to foreground for use

Issue: The grant agreement provides access to background and foreground for use which includes commercial exploitation. Participants have access rights to foreground or background of another participant if this is needed to enable the requesting participant to use its own foreground. Regarding background, participants could exclude specific background from the obligation to give access, but this is not possible regarding foreground. This poses a problem for some participants who claim that they cannot commit in advance to grant such access rights even under the above mentioned limited conditions.

European Community position: This rule to give access to foreground follows from the fact that such projects funded by the Community are collaborative projects, meaning that each participant should be able to use the results of such a project financed by EC public funds. In certain cases, such use is only possible by using the foreground of another participant. This is an important principle laid down in the Rules for Participation.

Marie Curie international outgoing fellowships (People Programme)

Issue: In this type of fellowships, a European researcher is seconded to a host institution e.g. in the United States before returning to the European reintegration organisation. This host institution is not a beneficiary under the grant agreement and therefore does not have any rights to the results. However, the host institution might wish to assert certain rights to the results achieved during or for a period after the time of the secondment through a transfer of ownership.

European Community position: Transfers of ownership are considered on a case-by-case basis. It cannot be guaranteed that such transfers will be acceptable to the EC in all cases.

4. Administrative issues

Transfer of data and export control laws

Issue: Some participants are concerned that export control laws might not allow these participants to grant access to certain data and therefore that they might not be able to give the access required under the grant agreement.

European Community position: It is clear that export control laws must be respected in both the U.S. and Europe. This is explicitly foreseen in the grant agreement. The compliance with export control laws should be reviewed as much as possible in advance to ensure that the project can be completed. However, if during the course of the project it is discovered that export control laws make foreseen activities impossible, the project will have to be amended or terminated.



Differences between the grant agreement and consortium agreement

Issue: For some entities the differences between the consortium agreement and grant agreement are unclear.

European Community position: The grant agreement regulates the rights and obligations between the consortium and the EC for the implementation and financing of the project. It is signed between the participants and the Commission representing the EC. The consortium agreement on the other hand regulates the rights and obligation among the participants and the Commission is not a party to it. The consortium agreement can clarify or regulate issues that are not included in the grant agreement but it should be consistent with the content of the grant agreement.

High administrative burden and risk

Issue: Some entities see a high administrative burden and risk in connection with participating in FP7.

European Community position: The U.S. partners should decide whether they are willing to invest the time and effort required to learn the FP7 rules. However, the Commission would like to point out that guidance is offered to potential participants in the form of written guides and through the FP7 helpdesk. Please see the web links in part V.

Useful Links and Resources

Support Services

Research Enquiry Service (provided by the Europe Direct Contact Centre)

Ask your questions about any aspect of European research in general and the EU Research Framework Programmes in particular.

<http://ec.europa.eu/research/enquiries>



IPR Helpdesk (for intellectual property rights issues)¹¹

To assist potential and current contractors taking part in EC-funded research and development projects with IPR issues. The helpdesk offers two main services: an informative website open to all interested parties, and a free legal helpline aimed at participants in EC-funded research under the Framework Programmes.

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



Finance Helpdesk (for interpretation of financial issues)

The Finance Helpdesk assists potential and current beneficiaries taking part in European Framework Programmes. The Helpdesk offers two main services: a free informative website which explains the Financial Regulations in a clear and informative manner and a free Financial Helpline offering personal advice from auditors and accountants on personal and specific financial issues.

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



¹¹The IPR Helpdesk service is provided by a project consortium led by the University of Alicante in Spain and receives funding from the European Community.



Proposal planning and preparation

Open calls/solicitations:

<http://cordis.europa.eu/fp7/dc/index.cfm>

Rules of participation:

<http://cordis.europa.eu/documents/documentlibrary/90798681EN6.pdf#page=40>

Rules for submission of proposals, and the related evaluation, selection and award procedures:

ftp://ftp.cordis.europa.eu/pub/fp7/docs/fp7-evrules_en.pdf

The Unique Registration Facility (URF):

<http://ec.europa.eu/research/participants/urf>

Electronic Proposal Submission Service (EPSS) User Manual:

<http://cordis.europa.eu/documents/documentlibrary/91055671EN6.pdf>

CORDIS Partners Service:

<http://cordis.europa.eu/partners-service/>

Find an FP7 document:

http://cordis.europa.eu/fp7/find-doc_en.html

Negotiation

Guide for beneficiaries:

ftp://ftp.cordis.europa.eu/pub/fp7/docs/beneficiaries_en.pdf

Negotiation Guidance Notes:

ftp://ftp.cordis.europa.eu/pub/fp7/docs/negotiation_en.pdf

Guide to financial issues:

ftp://ftp.cordis.europa.eu/pub/fp7/docs/financialguide_en.pdf

Guide to intellectual property rules:

ftp://ftp.cordis.europa.eu/pub/fp7/docs/ipr_en.pdf

FP7 Model Grant Agreement:

ftp://ftp.cordis.europa.eu/pub/fp7/docs/fp7-core-ga_en.pdf

FP7 Model Grant Agreement – Annex II – General Conditions:

ftp://ftp.cordis.europa.eu/pub/fp7/docs/fp7-ga-annex2-v2_en.pdf

List of Special Clauses:

ftp://ftp.cordis.europa.eu/pub/fp7/docs/fp7-ga-clauses-v4_en.pdf

Checklist for Consortium Agreement:

ftp://ftp.cordis.europa.eu/pub/fp7/docs/checklist_en.pdf

Other links

Registration for FP7 experts database (Experts Management Module – EMM):

<https://cordis.europa.eu/emmf7>

