

FP7 - Intellectual Property-related issues at the proposal stage

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Intellectual property (IP) management becomes important for a research project funded under the Seventh Framework Programme (FP7) from the very beginning of the negotiations related to the submission of the proposal and the building of the consortium.

Indeed, the participant that drafts the proposal (usually the coordinator) has to describe the consortium's plans for the management of IP. At the same time, it needs to ensure good communication with the other participants when exchanging information regarding the technical part of the proposal. IP issues are also discussed between participants, both during the negotiations and the drafting of the consortium agreement.

1. Drafting the proposal

One of the main criteria applied for the evaluation and selection of most project proposals is the one related to IP management. A good strategy for the protection, use and dissemination of the project results can maximise their impact, and participants should be able to show the Commission that they have clear plans for the outcome of the project.

It is clear that during the proposal stage there are no concrete results and this influences the detail of the plans for IP management. Nevertheless, participants may demonstrate that they are aware of and ready to deal with IP issues. One or more elements, such as the ones listed below, could add to a proposal and contribute to its success:

- The expected outcome of the project goes beyond the state of the art. Participants should carry out searches in patent documents and scientific literature to ensure that they are not going to duplicate research efforts and that their project may indeed yield innovative results. Proving that the research work to be carried out by the project goes beyond the state of the art effectively contributes to the scientific merit of a proposal.
- Confidentiality. Participants should demonstrate that they properly address the issue of confidentiality of information brought into or resulting from the project. Any confidentiality agreements signed during negotiations, any confidentiality clauses in the consortium agreement and any other measures taken to protect confidential information (e.g. contractual agreements with employees and third parties) can be mentioned.
- Joint ownership. If the nature of the project (mainly SME actions), the nature of the research work (work in close cooperation between participants) or even the will of the participants are likely to lead to a joint ownership situation, participants should mention that they are willing to reach an agreement for the effective management of the jointly owned results. If they have already agreed on the main features of their agreement (ownership shares, exploitation, licensing to third parties, etc.) they may also provide an overview of their plans.
- Protection of the results. Participants may show that they are aware of the adequate IP rights to serve the protection and exploitation of the expected results, and, in addition, that they would consider the application of the most adequate policy, making use of internal or external resources.
- Use of the results. Participants should refer to their plans for the use of the project results. They may indicate whether they plan to use the results directly or license them to third parties, create and sell products and/or services, etc. They can also mention the sectors they consider relevant.
- Dissemination activities. Participants may identify the target public to which they shall disseminate their results and show how their dissemination plans (websites, workshops, publications, etc.) will ensure maximum impact.

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- Third party rights. If participants are aware of technologies, work methods or other information held by third parties that could be useful or necessary to their work, they may mention that they already have a strategy for obtaining any necessary licences.

2. Contractual agreements between participants

It is always advisable to sign a confidentiality agreement before entering project negotiations, especially when participants exchange valuable information that a participant acting in bad faith could misappropriate or unduly disclose to third parties due to lack of diligence. Confidentiality agreements identify the classified information to be communicated and the purpose of communication, i.e. the setting up of the project and the drafting of the proposal. They generally establish restrictions and limits regarding the use of confidential information by the receiving parties and may also include penalty clauses for defaulting parties¹.

At times, confidentiality obligations are included in a separate agreement that establishes the frame of the negotiations, known as a Memorandum of Understanding or Letter of Intent². In these agreements, participants tackle issues such as meetings for proposal preparation, good faith during negotiations, legal and other costs, etc. It is normally signed at the very beginning of the negotiations.

The consortium agreement is negotiated at a later stage, but it is generally advisable to start as soon as possible³. Sometimes the coordinator annexes a first draft of the consortium agreement to the Memorandum of Understanding, to serve as a basis for negotiation. Typically, the most important IP issues at the early stages are the identification and exclusion of background (i.e. the information and IP rights that each participant is expected to bring into or wishes to exclude from the project) and the economic conditions for the granting of access rights. In other cases, participants have already made decisions about who will own the results of the project and who is going to be entrusted with their exploitation and negotiate the conditions under which this shall be done and possibly on the sharing of benefits arising from commercial exploitation.

1. Please see the IPR-Helpdesk [document on confidentiality agreements](#) and the [model confidentiality agreement](#).
2. You may consult the model [Memorandum of Understanding](#) or [Letter of Intent](#) available on the IPR-Helpdesk web site. Although specific to FP6, they may easily be adapted and used by FP7 consortia.
3. In any case, well before the signature of the grant agreement in projects where the consortium agreement is compulsory.

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