

Provisional draft

European Community FP7 Participation Rules

(Commission proposal adopted 23.12.05)

NB: underlining = changes to FP6

NB: square brackets = changes from MS or EP

Minimum conditions for participation

(Art. 4-12)

General:

- 3 independent participants from 3 different Member States (MS) or Associated countries (Ac)
- Natural persons may participate
- JRC may participate and is deemed to be from a different MS or Ac (same principles for international European interest organisations and entities established under Community law)
- Additional conditions can be established by the work programme (WP) or specific programme (SP) (e.g. number or type of participant, place of establishment)
- Sole participants composed of members that meet the criteria above can participate

Minimum conditions for participation (Art. 4-12)

Specific:

- Frontier research actions (ERC): – at least 1 legal entity established in a MS or Ac
- Coordination and support actions and actions in favour of training and career development of researchers – minimum of 1 legal entity (except actions to coordinate)
- Collaborative projects addressing the participation of international cooperation partner countries (ICPC-INCO) – minimum is 4 participants of which 2 in different MS or Ac and 2 in different INCO countries [unless otherwise foreseen in work programme]
- Participation of international organisations and participants from third countries if in addition to minima

Submission and Evaluation

(Art 13-14)

Calls for proposals always except:

- Coordination and support actions where the beneficiary has been identified in the SP or in the WP where this is foreseen by the SP
- Coordination and support actions for the purchase of a good or service by the Community
- Coordination and support actions for the appointment of independent experts
- Other actions where provided by the Financial Regulation or its implementing rules (monopolies etc.)

Submission and Evaluation (Art 15 – 17)

Transparent, fair and impartial evaluation procedures with help of independent experts

- Evaluation criteria established in SP and WP [EP – Establish the criteria in the Rules. For Co-operation and Capacity programme: Relevance; Scientific and technical quality; Impact; Implementation]
- Irregularity and violation of fundamental ethical principles are grounds for exclusion from evaluation and selection
- Commission to adopt and publish rules on procedures for proposal submission, evaluation, selection and award
 - Including two-stage submission and two-step evaluation
 - [Including procedures for redress]
- Commission to adopt and publish rules to ensure consistent verification of the legal status and financial capacity of participants

Implementation and grant agreements (Art. 18-26)

Participants implement work jointly and severally towards the Community and carry out work of a defaulting partner unless the Commission relieves them of that obligation (\neq FP6 financial collective responsibility)

- Commission to assess risk of default and may establish a mechanism to cover financial loss [EP: Guarantee Fund]
- If implementation of the project is impossible or participants fail to implement it, the Commission shall ensure termination
- **Consortium agreements obligatory unless** exempted by call for proposals [Commission to publish guidelines]
- Coordinator acts as efficient interface between consortium and Commission (ensures accession, receives and distributes EC contribution, keeps financial records and ensures timely delivery of reports)
- Changes in consortium membership possible

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Grant agreement (ART 19-23)

Model grant agreement to be drawn up [in close cooperation with MS]:

- to establish rights and obligations of participants (including submission of reports, termination etc);
- identify whether and what part of EC financial contribution is based on reimbursement of eligible costs, lump sums or flat rates;
- Identify which changes in the consortium require prior publication of competitive call;
- shall reflect [general] principles of the European Charter for Researchers and the Code of Conduct for the Recruitment of Researchers
- specific provisions for certain types of actions (IPR particularly)
- grant agreement comes into force upon signature by coordinator and Commission and applies to each participant that accedes
- [future significant modifications to be reviewed with MS]

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Community financial contribution (Art. 29)

Eligibility for Funding :

1. Legal entities from MS and Ac or created under Community law (and JRC)
2. International European interest organisations
3. Legal entities established in international cooperation partner countries (ICPC-INCO)

and

International organisations, Legal entities established in third countries other than INCO, if provided for in SP or WP; or essential for carrying out action; or provision for funding is provided for in a bilateral agreement between Community and the third country

General principles Grant agreement (Art 30)

Forms of grants

- Reimbursement of eligible costs
- Flat rates: a percentage for indirect costs or scales of unit costs
- Lump sum amounts
- Combination of the above

Cost reporting models eliminated

- Participants charge direct (and indirect) costs
- For indirect costs flat rate is an option
- [For certain participants indirect costs can be calculated using a simplified method to be established in the grant agreement]

Co-financing, no profit

Reimbursement of eligible costs (Art 31)

- Most funding schemes particularly at beginning of FP7 will use reimbursement of eligible costs
- Eligible = actual; incurred during the project; determined according to usual accounting and management principles/practices; used solely to achieve project objectives; consistent with principles of economy, efficiency and effectiveness; recorded in accounts (or the accounts of third parties); exclusive of non-eligible costs
- Average personnel costs may be used if consistent with above and do not differ significantly from actual
- May be combined with lump sums and/or flat rates for certain items of a project
- Audit certificates continued but rationalised

Lump-sum and Flat rate financing

Use of lump-sum and flat rate financing schemes

- Greater use of lump sum or flat rate financing in future for certain actions whose characteristics and objectives permit (e.g. possibly some Coordination and Support actions, and some Marie Curie schemes)
- Lump sums are established by the Financial Regulation and implementing rules – per category/per beneficiary
- Otherwise lump sums can be identified in the basic act (NoE)
- Flat-rates for certain costs – such as indirect costs in actions reimbursing eligible costs
- Flat rates include scales of unit for other types of costs
- Flat rates and lump sums do not require justification of real costs or certification of same

Lump-sum financing

(Art 35)

Option: Special lump-sum for Networks of Excellence

- For Networks of Excellence, a special lump sum is proposed in the Rules [if this form of financing is indicated in the work programme]
- The lump sum would be € 23,500 per researcher per year (with update every two years)
- Payments based on assessment of progress in implementing the joint programme of activity (measured by indicators of integration)

Flat rate financing

Flat rates for project or for indirect costs

- Flat rates be used to establish scales of unit for personnel costs, equipment etc.
- Flat rates can be used for indirect costs (as a % of other costs e.g. all direct costs or some specific category)
- [Flat rates for indirect costs to be established on the basis of a close approximation of the real costs and to be set out in the grant agreement]
- Flat rates for indirect costs could vary from one type of funding scheme to another
- [EP: Flat Rate indirect cost for organisations that can not establish their indirect costs precisely fixed for 2007-09 to 60% and decreased rate of at least 40% from 2010 onwards]

Maximum funding rates (Art 33)

- Research and technological activities: – 50% of eligible costs except for:
 - Public bodies: – 75%
 - Secondary and higher education establishments: – 75%
 - Research organisations (non-profit): – 75%
 - SMEs: – 75%
- Demonstration activities: – 50% of eligible costs
- Other activities: – 100% including e.g. Management
 - Frontier research actions – 100%
 - Coordination and support actions – 100%
 - Training and career development of researchers actions – 100%

Receipts are taken into account to determine the final Community financial contribution

Guarantee mechanism

(Art 38)

Replaces financial collective responsibility:

- ✓ Participants implement the work jointly and severally towards the Community (FP4, FP5 approach) and carry out work of a defaulting partner unless the Commission relieves them of that obligation (not = FP6 financial collective responsibility)
- ✓ Commission to assess risk of default and may establish a mechanism to cover financial loss (i.e. to replace financial collective responsibility)
- ✓ Participants contribute a small % of their EC financial contribution to the fund to insure against losses of a defaulting partner
- ✓ Public bodies, secondary and higher education and entities guaranteed by MS or Ac would not contribute and neither would participants in certain types of funding schemes (training, frontier research, actions for benefit of specific groups except SMEs)
- ✓ [EP: All participants contribute 5% of the total EC contribution at the beginning of the action – repaid minus interest if successful completion and cost to justify payment. If unrecoverable default the private companies repay a max of 1% of their EC contribution]

Intellectual Property Provisions (Art 39-52)

- Pre-existing know-how (FP6) becomes **background** which is:
 - held by participants prior to their accession to the grant agreement (**no side ground**)
 - which is **needed** for carrying out the project or for using its results
 - **no need to exclude** from access
- Knowledge (FP6) becomes **foreground**

Intellectual Property Provisions (Art 39-52)

- **Ownership:** each participant owns the foreground it generates
- **Joint ownership (in absence of a specific agreement**
default joint ownership regime applies):
 - *any owner can grant non-exclusive licenses to third parties, subject to prior notification and fair and reasonable compensation to the other owner(s) with no right to sub-licence.*
- **Transfer of ownership of foreground**
prior notification only to the other participants who may waive their rights to be notified in advance regarding specific third parties
- requirement to notify Commission may be in grant agreement/ Commission may object to transfers or exclusive licenses to third parties established in non-associated countries if contrary to ethical or competitiveness principles

Intellectual Property Provisions (Art 39-52)

- **Protection, use, dissemination (publication)**
- Foreground capable of industrial or commercial application must be protected [legitimate interests of participant]
- Owner of foreground may transfer to another participant if it does not wish to protect or to the Commission
- Foreground must be used and disseminated
- Notice of dissemination (including publication) to be given to other participants (not Commission unless no protection)
- Publications and patent applications must indicate Community financial assistance involved

Intellectual Property Provisions (Art 39-52)

- **Access rights**
- Participants define the background they need and may exclude [limited and identified in grant agreement] but not necessarily prior to signature of EC grant agreement
- Requests for access rights within one year or other period to be agreed by participants
- Possible to grant exclusive licenses to background and foreground if other participants waive their rights
- Commission no longer informed of granting of access rights to third parties
- Special provisions for certain types of actions e.g. frontier research, research for the benefit of specific groups, security research

Access rights (FP7)

	Access rights to background	Access rights to foreground resulting from the project
For carrying out the project	Yes, if a participant needs them for carrying out its own work under the project	
	Royalty-free unless otherwise agreed before acceding to the grant agreement	Royalty-free
For use (exploitation + further research)	Yes, if a participant needs them for using its own foreground	
	Either fair and reasonable conditions or royalty free- to be agreed	

European Investment Bank (EIB) (Art 53)

Risk-sharing Finance Facility

- The Community may award a grant to the EIB to cover risk of loans [or guarantees] in support of research objectives set out under the 7th FP
- The EIB shall provide these loans [or guarantees] in a fair, transparent, impartial and equal way
- The Commission may object to the use of the RSFF for certain loans on terms defined in the grant agreement in accordance with the work programme