

IGLO ERA in Action Consortium Agreement Event, 10 March 2003

In March 2003, the Informal Group of Liaison Offices (IGLO) brought together the main parties involved in the development of consortium agreements for Framework Programme 6. The key aspects to be discussed included:

- Organisational structures and management
- Costs: allocation and distribution of budget
- IPR: protection, exploitation, and the management of access rights
- Consortium membership: possibilities for adaptation/change
- The duration of the consortium agreement.

The day was structured to allow each party to outline their model, followed by a round table discussion with practitioners from the various IGLO countries.

Presentation of the UNITE/EARTO model agreement: Bert Bohlander (Unite)

1. An outline of the FP6 consortium agreement models

For the new FP6-instruments - *Networks of Excellence* and *Integrated Projects* - the consortium agreement is mandatory. Several member states and/or organisations have developed consortium agreements, each with certain specificities.

For *Integrated Projects (IPs)* there are six consortium agreement models:

IPCA: developed jointly by industry and academia. This consortium agreement is more or less balanced between the interests of industry and academia, although it was impossible for industry and academia to agree on IPR issues.

EU_CA: Based on the IPCA, and developed by industry and academia through the EARTO/Unite consortium, this model includes IPR clauses relating to the model contract. Therefore the EU_CA covers practically all important issues such as common funds, new/leaving partners, the role of affiliates, further research, publication rights (also for degree students), confidentiality and good faith (Belgian law). Be aware that the EU_CA model has open options to be considered.

ANRT: developed by the Association Nationale pour la Recherche Technique in France (ANRT) with help from the UK, the Netherlands and Germany. Unite considers that the IPR clauses are not complete (for example regarding thesis publication rights).

FRO: developed by French public research organisations. One model for both IP and NoE.

Helmholtz: developed by Helmholtz Geschellschaft (Germany), less industry based. Has weighted votes, introduces idea of "field of research" in IPR.

CSIC: Spanish model, university based.

The difference between the IPCA model and the EU_CA model is very small, only the IPR clauses are different. The FRO and the Helmholtz models are the most academic oriented.

For *Networks of Excellence (NoE)* there are two consortium agreement models:

FRO : see above

UNECA: developed by EARMA, EARTO, ANRT and Unite, first draft is available.

2. Differing interests

Consortium agreements are mandatory for some project types: namely IPs and NoEs. Whilst the Commission has provided a checklist of key issues, the structure of the final consortium agreement should be specifically designed to suit both the consortium and their project. In particular, it should outline the key building blocks: management, IPR, finance and changes in the consortium. Since it is now possible for new partners to join or for partners to leave the consortium, there are new elements to financial management compared to FP5. However, a consortium agreement is a compromise, and so has balanced interests. This must be kept in mind.

For industrial participants, the issues of affiliates (research and sales takes place in sister companies) and confidentiality are of particular importance. Academia is generally more concerned by publications (researchers are assessed on their scientific output) and further research (for academia knowledge dissemination and third-party research is essential for keeping the lead).

3. Important basics:

- Make use of the existing models, use the best geared to your situation. Unite has been in nearly all the negotiations and will try to compare the different models in due time.
- When making changes in a consortium agreement use the “building blocks” method, so change parts without harming the unity of the agreement.
- Consortium agreements should be completed and agreed on as soon as possible.
- Be sure everything is covered so there can't be any surprises. Never sign an agreement with open options!
- Some keywords to keep in mind: fair, practical, short, complete, understandable, realistic, unambiguous.

Additional information is available at the websites of EARTO and UNITE. For help and discussions on consortium agreements, UNITE and EARTO offer a special e-mail list called the “Consortium forum”. To subscribe, see www.unite.be.

Presentation of the French Public Research Organisations model agreement for Integrated Projects, Networks of Excellence and Specific Targeted Research Projects: Claire Werlen (INRA)

This Consortium Agreement for IPs, STREPs and NoEs has been jointly prepared by a working group of 11 French Public Research Organisations.

The consortium agreement helps to precisely define those points which must be agreed by the consortium before the signature of the EC contract by the coordinator with the Commission. To ensure that IPR is properly protected, it is essential that negotiation of the consortium agreement is complete before the EC contract signature.

As with any model, the French agreement is indicative, a tool for negotiation, and should only be used as such. Provisions, in particular those on governance, should be reviewed, revised and adapted to fit the regulation and the needs of each consortium on a case by case basis.

First, a letter of intent should be signed by all the partners before any negotiation of the consortium agreement. This confidential agreement is a commitment to negotiate on the proposed consortium agreement and to provide any documents which are needed in a timely manner.

1. Organisational structure of the CA

The Governing Board is the Consortium's decision-making and arbitration body and shall decide on political and strategic orientation of the project, of the "Programme of Activities" and "Plan for Use and Dissemination".

A strong but flexible organisation is based on the following principles:

- equality between participants
- separation of the scientific project in sub-projects or tasks
- separation of the decision-making bodies from the operational bodies
- creation of advisory bodies, notably for NoEs. Advisory bodies consist of a Scientific Council and an Intellectual Property, Use and Dissemination Committee (IPUDC). It is also possible to include a Stakeholder Council.

2. Concerning Intellectual Property Rights (IPR)

The model contract allows for the exclusion from the project of pre-existing know-how. For NoEs, explicitly excluded pre-existing know-how is identified and listed. For IP, the pre-existing know-how necessary to the implementation of the project is identified and listed, others are considered as unnecessary and/or excluded.

{N.B. Subsequent discussions with the Commission and the IPR Helpdesk have suggested that the production of an inclusive list of IPR, and the exclusion of all other items will NOT hold under law since the Rules for Participation speak of excluding specific items of IPR}

The contractors agree that the Access Rights to the pre-existing know-how needed for carrying out their own work under the project shall be granted on a royalty free basis. They agree that the Access Rights to the Knowledge needed for carrying out their own work under the project shall be granted on a royalty-free basis, except for a new Contractor joining the project who shall have access to the knowledge obtained prior to its joining the Project at market conditions.

The contractors agree that the Access Rights to the pre-existing know-how needed for Use of a Contractor's own Knowledge shall be granted on fair and non-discriminatory conditions. They agree that the Access Rights to the Knowledge needed for Use of another Contractor's own Knowledge shall be granted at preferential or market conditions.

Presentation of the ANRT model agreement : Jean-Marc Lévy (ANRT)

ANRT (Association Nationale pour la Recherche Technique) is a private non-profit organisation set up to promote French participation in the Framework Programme. The approach to the consortium agreement is that it should be open and fair, and provide opportunities to spread information and outputs from the project. Whilst the consortium agreement is a consensus between all parties, there should be no pre-determined winners or losers. There will, however, be conflicts between parties from the beginning.

The IPR provisions of the consortium agreement should avoid situations where any party is provided with a free ride. By ensuring that all parties receive compensation – whether through licences, royalties, or receiving market value for their IP – no party should be in a position to exploit other partners, and there should be no surprises in the management and exploitation of the IP.

The goal of the management model should be to promote effective research. The management structure should not be so bureaucratic that it becomes impossible to work. Any hierarchy will be unfair by allowing some partners more say than others. However, to promote effective management, each partner should have some input into a co-operative, egalitarian management process – perhaps having subgroups with shared interests each represented by a partner in order that decision making is possible.

The possibility to adapt the consortium could mean that participants can withdraw from or join the consortium. The consortium agreement should ensure that parties withdrawing from the project cannot do so without incurring costs, and that the resources of remaining parties are protected.

It was also stressed that it is important to make a distinction between business and research with regard to future activities.

Presentation of the Spanish model agreement: Carmen Hormigo (CSIC)

This agreement is in its very early stages. It is expected that the model will be useable for all instruments.

As with the French Public Research Organisations model, this agreement begins with a collaboration agreement. However this agreement is more stringent than a Memorandum of Understanding or Letter of Intent. The collaboration agreement sets the path for the full consortium agreement.

With regard to changes to the consortium relating to changes in work plan OR resources OR partnerships, these items should be placed in an annex to the main conditions of the consortium agreement since it will be much simpler to revise this annex than revise the full consortium agreement.

With regard to the monitoring and evaluation of the progress of the project, perhaps it is more appropriate – in some cases – that this is carried out by industrial experts (perhaps external experts) than the scientific experts involved in the project.

Presentation of the German model agreement: Bert Bohlander (Unite)

This model is, again, very similar to the other models presented. However, with reference to the General Assembly, the Helmholtz model proposes a system of one man, one vote; perhaps to be weighted by project share. This sparked debate on the definition of project share. It could be related to Commission contribution, although this will not necessarily be representative of the task or the importance of the task/participant in the overall project. For example, a single social scientist could be providing all of the input to the project on the socio-economic impact of the project. The task is critical but need not be expensive. However, a partner involved in an engineering task where, perhaps, equipment is purchased could have a much larger budget and much smaller role.

The model also provides that 5% of the budget is set aside for unforeseen problems with the research/management/budgeting. However, it was felt that this may cause problems under some national laws. It was also debated whether this was practicable given that the 5% would have to be refunded to the Commission if not spent on project activities, thus decreasing the overall available budget by 5%.

With regard to IPR, the model differs in that it contains a clause to allow other participants to protect other parties knowledge if the producer doesn't do so itself.

Writing à la carte Consortium Agreements : Key issues of Round Table Discussion

The exchange of views concentrated on the following points:

The timing of the preparation of Consortium Agreements (CA):

Preparing the CA is both expensive and time consuming. For this reason, it is often difficult to convince researchers that they should start before they are certain that their project will be financed. What is the ideal timing for the CA in FP6?

- It was emphasized that scientists should be made aware of the possibility to use professionals for such tasks, whatever timing they choose. Researchers should not normally be preparing the CA themselves.
- It is certain that time will be very tight with regard to the preparation of CA, and that it might be difficult to convince the Commission of the sound management of the project at evaluation and, more importantly, at negotiation stage if no CA preparation has yet taken place. Having a CA at these stages is also a proof that the researchers have thought about more than only scientific quality.
- Having a CA at negotiation stage can also be a great advantage for the consortium if the Commission decides to change the consortium or the co-ordinator of the project.
- Researchers can be made aware of the importance of the CA at early stages but some see difficulties in terms of resources in doing pro-active work before co-ordinators approach them with concrete CA proposals since numerous CA models that exist.

The limited access rights granted by most CA models that were presented:

Most models (apart from ARNT) seem to have followed the Commission in granting only limited access rights in FP6. It was felt by certain that the rights granted now are too limited both from an academia and an industry point of view. Can't access rights be broadened to be more like FP5?

- For others this critic was not justified, especially coming from academia, as the FP6 system is perceived as more beneficial for academia than that of FP5.
- The UK is currently preparing models to expand the access rights for both industry and academia.

Possible difficulties in the negotiation phase of partners vis-à-vis the co-ordinator:

The negotiation process is getting more centralized around the co-ordinator and the Commission, and the influence (especially) smaller partners can have in defending their interests seems to diminish. The possible implications of the introduction of an electronic negotiation tool might also reinforce this trend. What can be done to ensure transparency in the negotiation process?

- This is a question of trust within the consortium, but one can always try to accompany the co-ordinator to the negotiation table.
- In the worst case, the partners can put pressure on the co-ordinator by refusing to sign their Form A to accede to the contract. The Commission could then withdraw the project.
- This is a legal solution but in reality it might be difficult. Partners have to be made aware of this.
- A Commission official attending the meeting confirmed that these concerns had been taken and would be addressed.

Common Funds:

Some of the models presented foresee the use of 'common funds' within the consortium. What should be the role of such funds?

- Apparently the idea seems to be that such a common fund should be available to finance "central" project tasks, not only serve as a money reserve for safety purposes. The problem of possibly not having spent that money at the end of the project is thus not necessarily going to arise.

Use of IPR boards to set project IPR policy:

Some consortia see merit in forming an IPR board to manage IPR issues. What is the general feeling about such structures?

- For many, such a board will be difficult to enforce if it has more than an advisory role. Industry would probably not agree to it. But an advisory IPR board would certainly be useful in the structure of projects.

Support for a unified university CA model:

Some delegates expressed regret that there is no single, unified model: not even just from the academia side. The essential points in a CA are usually quite easy to recognise: pre-existing know-how, freedom to exploit own results, conditions about handing over the rights, publication and confidentiality clauses. Having to check many different models for these few points, given the limited number of projects that will be funded in FP6 is not necessarily very balanced. However, given that the initial intention was to provide a unified agreement, and problems arose with regard to IPR (in particular), it will not be possible to try to integrate the various models into one retrospectively.

Action Plan

The role of IGLO, under the auspices of ERA in Action, will be to provide a platform for discussion as organisations begin to use the various consortium agreement models and as the models are adapted. IGLO should provide a forum for the experiences of the participants from member countries, and aim to identify models of best practice with regard to the preparation of consortium agreements.

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