

## Comparison between IPR provisions under FP6 and FP7 proposal

### Main changes

FP6 Rules	FP7 Proposal
<p><b>Pre-existing know-how</b></p> <p>Information and rights held prior to the conclusion of the contract</p> <p>Included side-ground (information and rights acquired in parallel with the contract)</p> <p>No specific reference to “needed”</p>	<p><b>Background</b> (Article 2.2)</p> <p>Information and rights held prior to accession to the grant agreement</p> <p><u>Excludes side-ground</u></p> <p><i>Side-ground created uncertainty as it was an unknown variable. In practice, it was rarely needed and was difficult to exclude in advance. During the consultation, participants generally agreed that it would be better to leave it to them to negotiate access to side-ground in the few cases where such access would be needed.</i></p> <p>Reference to “<u>needed</u>” for implementation or use</p> <p><i>As the FP6 definition did not explicitly include a limitation to information which was “needed”, some participants were concerned because they did not make the link with the access rights provisions, which contained that limitation (i.e. some feared that they needed to give access to all their pre-existing know-how and were therefore hesitant to participate or to make huge lists excluding all pre-existing know-how). To avoid such misunderstandings, an explicit limitation was included.</i></p>
<p><b>Knowledge</b></p> <p>Results of the action</p>	<p><b>Foreground</b> (Article 2.1)</p> <p>Change to “foreground” to achieve symmetry with “background” but no change in substance.</p> <p><i>Foreground is the natural corollary to background and this term is better understood in the research and IPR-communities than the term “knowledge”.</i></p>
<p><b>Ownership of knowledge</b></p> <p>Owned by the participant(s) carrying out work leading to that knowledge</p>	<p><b>Ownership of foreground</b> (Article 39)</p> <p>Slight change in wording but no change in substance</p>

<p><b>Joint ownership of knowledge</b></p> <p>Nothing specific foreseen if a joint ownership agreement was not reached (this permitted a joint owner to block licensing deals with third parties whilst not using the results themselves)</p>	<p><b>Joint ownership of foreground</b> (Article 40)</p> <p><u>Default regime if no joint ownership agreement is reached</u> (each of the joint owners may grant, after having given prior notice, non-exclusive licences to third parties (without right to sub-licence) and requires payment of a fair and reasonable compensation to the other joint owners)</p> <p><i>This default regime will only apply if the parties have not (yet) agreed to a joint ownership agreement and will make certain that the results can be fully used while ensuring that the other joint owners receive fair and reasonable compensation. The default regime may also serve as an incentive to reach an agreement on a joint ownership agreement.</i></p>
<p><b>Ownership of knowledge in cooperative (CRAFT) or collective research</b></p> <p>Knowledge is the joint property of the SMEs or the enterprise groupings, which shall agree on the allocation and terms of exercising the ownership of the knowledge in particular in the consortium agreement in accordance with rules and contract</p>	<p><b>Ownership of foreground by specific groups</b> (Article 41)</p> <p>Foreground shall be jointly owned by the participants which are members of the specific group benefiting from the action, unless otherwise agreed by those participants</p> <p><u>Where the owners of the foreground are not members of that group, they shall ensure that the group is provided with all the rights to foreground that are required for the use and dissemination of that foreground</u></p> <p><i>As it may be too burdensome for the members of the specific group to manage an IPR portfolio, they may agree to a different ownership. However, the new owner(s) must ensure that the members of the group can use and disseminate the foreground.</i></p>
<p><b>Transfer of ownership</b></p> <p>Prior notice to other participants needed as long as the participant was required to grant access rights</p>	<p><b>Transfer of ownership</b> (Articles 42-43)</p> <p><u>No prior notice</u> required if transfer to a specifically identified third party (with the prior agreement from all participants)</p> <p><i>To simplify transfers of ownership to a specifically identified party (for example to the mother company or an affiliate of a participant), the participants may agree that for such a transfer no prior notifications are necessary.</i></p>



	<p><i>This is a mechanism to create more visibility for the Community funding and to facilitate impact assessments that has little cost for participants</i></p>
<p><b>Publications</b></p> <p>Prior written notice needed to be given to the Commission and the participants. If requested, a copy needed to be made available. Thereafter, the Commission and the other participants could object if the protection of their knowledge could be adversely affected.</p>	<p><b>Dissemination (including publications)</b> (Article 46)</p> <p>Prior notice of any dissemination activity must be <u>given only to the participants</u> (unless foreground is not protected nor transferred). Any of the <u>participants may object</u> if it considers that its legitimate interests in relation to its foreground could suffer disproportionately great harm.</p> <p><i>The obligation to notify the Commission was removed as the other participants are much better placed to deal with such dissemination intentions.</i></p>
<p><b>Access Rights</b></p> <p>Specific pre-existing know-how could be excluded from the obligation to grant access rights by means of a written agreement <u>prior to signature of contract or before a new participant joined</u>. The participants could withhold their agreement to exclusion if they could demonstrate that the implementation of the action or their legitimate interests would be significantly impaired.</p> <p>Exclusive licences to knowledge and pre-existing know-how in principle not possible so long as the participant was required to grant access rights (it was unclear whether exclusive licences could be provided if other participants waived their access rights as this was not explicitly indicated in the EC contract, thus raising the possibility of contradiction between the consortium agreement and contract)</p>	<p><b>Access Rights</b> (Articles 48-52)</p> <p>Background may be <u>freely defined</u> by written agreement by the participants</p> <ul style="list-style-type: none"> <li>- <u>No time limit for exclusion</u> of specific background</li> <li>- It is clearer that <u>only “needed” background is to be excluded</u> – by definition if not needed not necessary to exclude therefore no need for long lists of exclusions.</li> </ul> <p><i>Changes ensure maximum flexibility for the participants in organising their cooperation. The removal of the time limit permits adjustments which may be necessary during the course of the action.</i></p> <p>Exclusive licences possible if all participants waive their access rights (<u>explicit</u>)</p> <p><i>Exclusive licence can be granted if all access rights are waived, which increases the freedom of the participant concerned, the value of its IPR and the likelihood that the results will be exploited.</i></p>

<p>Commission could object to the grant of access rights to a third party on competitiveness or ethical grounds</p>	<p>Commission can object to the grant of an exclusive licence to legal entity established in a <u>third, not-associated country</u> on competitiveness or ethical grounds – <u>grant will not take place until the Commission is satisfied</u></p> <p><i>The greater freedom to grant non-exclusive licences to third parties in MS/Associated countries encourages greater use and dissemination of results. More stringent provisions in the grant agreement remain possible in certain projects (e.g. sensitive projects from an ethical viewpoint/security research etc.) (see below) and this wording clarifies the effect Commission objection would have on the proposed agreement.</i></p>
<p><b>Access Rights for execution</b></p> <p>Access rights to knowledge royalty-free</p> <p>Access rights to pre-existing know-how royalty-free, unless otherwise agreed before signature of the contract</p> <p><b>Access Rights for use</b></p> <p>Access rights for use to knowledge royalty-free, unless otherwise agreed before signature of the contract</p> <p>Access rights for use to pre-existing know-how shall be granted under fair and non-discriminatory conditions</p>	<p><b>Access Rights for implementation</b> (Article 50)</p> <p>Access rights to foreground royalty-free (same)</p> <p>Access rights to background royalty-free, unless otherwise agreed before accession to the grant agreement (same)</p> <p><b>Access Rights for use</b> (Article 51)</p> <p>Access rights for use to foreground either under <u>fair and reasonable conditions, or royalty-free – no time limit for agreement on terms</u></p> <p><i>As some participants (e.g. universities) may not have the possibility to exploit their results commercially, the possibility for royalty bearing access was put on equal footing with royalty-free access and greater flexibility for negotiating terms and conditions was included.</i></p> <p>Access rights for use to background either under fair and reasonable conditions, <u>or royalty free</u></p> <p><i>Royalty-free was added to clarify explicitly that if participants wish, royalty-free access is also allowed.</i></p>

<p>Access rights for use may be requested until two years after the end of the indirect action or after the termination of the participation of a participant, whichever falls earlier, unless there is a provision for a longer period</p>	<p>Access rights for use may be requested up to <u>one year after the end</u> of the indirect action or the termination of the participation of the owner of the foreground or background, <u>unless the participants agree otherwise</u></p> <p><i>Since the two year time limit in FP6 was considered too long by most FP6 participants, a default time limit of one year is proposed - with the flexibility for the participants to choose a different (longer or shorter) limit.</i></p>
	<p><b>Access rights for “frontier” research (Article 52)</b></p> <p><u>Access rights for implementation and use shall be royalty-free</u> to other participants</p> <p><i>As “frontier” research actions tend to cover more basic or fundamental research and the Community financial contribution may reach a 100% of the total eligible costs, access right, to other participants in the same frontier research project must be royalty-free.</i></p>
<p><b>Access rights for the benefit of specific groups</b> (NB: <i>this was only in the model contract and NOT in the Rules per se</i>)</p> <p>RTD performers shall grant access rights to the other contractors to pre-existing know how necessary for the execution of the project, on a royalty-free basis.</p> <p>RTD Performers shall grant access rights to pre-existing know-how for use under fair and non-discriminatory conditions to be agreed.</p>	<p><b>Access rights for the benefit of specific groups</b> (Articles 50-52)</p> <p>RTD Performers shall grant access rights to background for implementation royalty-free</p> <p>RTD Performers shall grant access rights to <u>background for use royalty-free</u></p> <p><i>RTD performers normally receive 100% of their eligible costs from the EC financial contribution, whereas the members of the specific group are required to use the results, therefore it is justified that they should provide royalty-free access to their background to the other participants.</i></p> <p>If all the owners agree, <u>access rights to foreground shall be granted to the RTD Performer, on fair and reasonable conditions to be agreed, for the purposes of pursuing further research activities</u></p> <p><i>This allows the RTD performers to use the results in further research which was requested by them.</i></p>

	<p>When the specific group benefiting from the action is represented by a legal entity that participates in the action in their place, that <u>legal entity may grant a sub-licence</u>, in respect to any access rights granted to it, to those members which are established in a Member State or an Associated country</p> <p><i>In some cases the members of the specific group benefiting from the action are not participants so, the entity representing them must be able to grant a sub-licence to its members so that they can use the results. Normally, access rights do not confer entitlement to grant sub-licences.</i></p>
<p><b>Additional provisions</b></p> <p>Additional provisions re access rights, use and dissemination may be established in the consortium agreement</p>	<p><b>Additional provisions</b> (Article 20)</p> <p>Additional provisions re access rights, use and dissemination may be established in <u>grant agreements and further provisions may be established in the consortium agreement</u></p> <p><i>Depending on the nature of the project, it may be appropriate to foresee additional requirements regarding access rights, use or dissemination.</i></p>
	<p><b>Specific provisions</b> (Article 22)</p> <p>The grant agreement may lay down specific provisions:</p> <ul style="list-style-type: none"> <li>- in indirect actions to support existing research infrastructures and, where applicable, new <u>research infrastructures</u>: re <u>confidentiality, publicity, access rights and commitments that might affect users</u></li> <li>- in indirect actions to support training and career development of researchers: re confidentiality, access rights and commitments relating to the benefiting researchers</li> <li>- in indirect actions in the field of <u>security and space research</u>: re confidentiality, classification of information, access rights, transfer of ownership of foreground and the use thereof</li> </ul>

- in indirect actions addressing security issues, other than those referred to in the preceding paragraph: re confidentiality, classification of information, access rights, transfer of ownership of foreground and the use thereof

*Particular types of research actions may warrant specific provisions in the grant agreement.*



**FP6**

	<b>Access rights to pre-existing know-how</b>	<b>Access rights to knowledge resulting from the project</b>
<b>For carrying out the project</b>	Yes, if a participant needs them for carrying out his own work under the project	
	Royalty-free unless otherwise agreed before signing the contract	Royalty-free
<b>For use purposes (exploitation + further research)</b>	Yes, if a participant needs them for using his own knowledge	
	On non-discriminatory conditions to be agreed	Royalty-free unless otherwise agreed before signing the contract

**FP7**

	<b>Access rights to background</b>	<b>Access rights to foreground resulting from the project</b>
<b>For carrying out the project</b>	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
<b>For use (exploitation + further research)</b>	Yes, if a participant needs them for using its own foreground	
	<b>Either fair and reasonable conditions or royalty free-to be agreed</b>	