

Comparison of FP7 consortium agreement models

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Please note that readers should be aware of the [FP7 intellectual property \(IP\)](#) rules and topics related to [consortium agreements](#) in order to fully understand the issues at stake.

Introduction

With the beginning of the Seventh Framework Programme (FP7), two consortium agreement models made their appearance, namely DESCA and IPCA. This document presents and compares them. Other models are likely to appear, and all models are usually updated several times. Therefore, readers should check the information provided hereafter against updated versions.

In the following paragraphs, we will look into the clauses related to Intellectual Property (IP). The information below is complemented by a [table](#) that highlights the differences between the two models¹. Both may prove useful for a consortium depending on its needs.

[DESCA](#) (*Development of a Simplified Consortium Agreement*) is the fruit of collaboration between several organisations mainly from the research sector. DESCA is drafted in a simplified and comprehensive way, including explanations. Users without any legal background may therefore find it easier to use. DESCA proposes alternative options for several key clauses. Generally speaking, option 1 is closer to the provisions of [Annex II of the EC Grant Agreement](#) (hereafter “Annex II”) while option 2 gives DESCA a more business-oriented approach, as will be shown hereunder. Also, DESCA proposes two alternatives for the internal organisation of the consortium (consortium bodies and decision making) to fit small and large projects. There is also a special module with detailed provisions on software.

[IPCA](#) (Integrated Projects Consortium Agreement) was published by the European Information & Communications Technology Industry Association (EICTA). This model is meant to suit the needs of the industry and contains several clauses regarding the commercial exploitation of the results. It also contains detailed provisions on software, as well as alternatives (option 1 and 2) in several key clauses.

Broadly speaking, DESCA seems more adequate for universities and research centres but can also be used in business-oriented projects (likely to choose option 2). IPCA could be more suitable to projects and partners with a strong focus on commercial exploitation.

Mixing clauses from the two models is not recommended (not even mixing options of the same model) as it will probably lead to internal inconsistencies. However, this does not mean that participants are required to use the models as they are. On the contrary, it is very important to read and fully understand a model before using it and make modifications, if necessary, to cover specific needs.

1. Management of background

IPCA marks an important difference here, since it defines **sideground** and provides for access rights to it under the same conditions as background. Sideground is the information and IP rights that participants acquire *in parallel* to the work of the project and is distinguished from background, which covers only the information that participants hold *before* entering the project.

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With regard to the definition of **background available to the project**, DESCA proposes an option that enables participants to delimitate background by designating a specific department or research team to work on the project, a possibility that may prove useful to universities or research organisations.

2. Management of foreground

As compared with DESCA, which requires participants to waive their objection right for **transfers of foreground towards third parties** specifically identified in an annex², IPCA facilitates transfers of foreground to a broader scope of transferees, including affiliates.

The Annex II default regime on **joint ownership** is applicable under the option 1 of DESCA. IPCA excludes the default regime in all cases and eases individual exploitation, providing for a “perpetual and irrevocable” right, “without territorial or other restriction”, to use and license the common foreground.

3. Access rights

A first difference between the two models is that in DESCA all **access rights requests** shall be made in writing, while IPCA considers some access rights to be “deemed granted”, within the limits of what is necessary for the execution of the project or use of foreground.

Both models provide for royalty-free access rights for *execution* purposes. Regarding *use* purposes, IPCA provides for broader access rights (also in combination with the provisions related to affiliates and sideground). Research centres or universities that are not capable of commercially exploiting the foreground directly or indirectly may find option 1 of the DESCA clauses more appropriate for the protection of their interests.

4. Affiliated companies

One of the main differences between the two models is the **definition of affiliates**. DESCA does not define the term so the definition given by article II.1 of [Annex II](#) is applicable. IPCA provides a more detailed definition that will normally result in additional entities qualifying as affiliates³.

Similarly, IPCA recognises broader **access rights for affiliates** under more favourable economic terms, compared to DESCA. The latter provides alternative options, one following the Annex II regime and the second providing for additional access rights, more similar to IPCA.

Furthermore, upon cessation of the affiliate status, DESCA provides for the termination of any access rights granted to it, while IPCA provides for the continuation of some access rights, under certain conditions.

To summarise, the IPCA model provisions enable an easier and more extended granting of access rights to affiliated entities compared to DESCA.

5. Confidentiality and publications

DESCA provides that **confidential information** shall be marked as such, while IPCA proposes an option where all information exchanged between the participants is considered confidential.

Regarding **publications**, DESCA follows the provisions of the Annex II and also requires participants to cooperate in the timely submission and publication of academic works. IPCA also requires participants to inform the Commission of any publication plans.

6. Special clauses specific to software

IPCA establishes several conditions on the utilisation of **Open Source Software (OSS)**, which shall be approved unanimously by the partners. The approval is given by written agreement, regarding specific software and purpose. Over and beyond such agreements partners are required

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to provide access rights on terms other than the OSS-type licences. DESCA's conditions are easier to comply with, since it simply requires approval from the general assembly (not necessarily unanimously).

[T1]Link al doc CA for FP7 participants

[T2]Link to the table...

1. There is always more to say, therefore readers are reminded that they may send their draft consortium agreements to our [Helpline service](#) for further comments on IP clauses.
2. Please note that the Annex II provides for the possibility of waiving the right to be notified in advance, not to object (cf. Art. II.27.2 in fine).
3. Partners should be cautious with entities that are not established in a Member or Associated State and which may qualify as affiliates under the consortium agreement. The interests of the European economy, as well as the legitimate interests of the other partners, shall always be considered.

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