

- 1. Introduction.....	1
- 2. The main content of joint ownership agreements.....	1
- 3. The FP7 default regime.....	2

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### **1. Introduction**

In the area of research and development activities, the term “joint ownership” usually refers to a legal situation where two or more entities own the same research results. Joint ownership situations may arise either because the entities involved in a specific project so desire or because legislative provisions provide for the joint ownership of the results in certain circumstances<sup>1</sup>.

The rules of the Seventh Framework Programme (FP7) provide for the joint ownership of the results in two cases:

- when participants generate foreground by common efforts and it is not possible to ascertain their individual contributions<sup>2</sup>;
- in actions benefiting small and medium-sized enterprises, where the specific beneficiaries jointly own the foreground generated by the project unless otherwise agreed.

There are no specific rules on how to determine whether individual contributions are distinguishable or not or to qualify and quantify such contributions. Arrangements are usually made between the parties. The practice of keeping laboratory notebooks<sup>3</sup> for the research carried out may prove very helpful when evaluating individual contributions and establishing shares of joint ownership.

Participants are free to decide to jointly own the results or to discontinue the joint ownership and assign all the property rights to one of them (usually in exchange for a licence). In any case, they shall reach an agreement to regulate the terms of exercising the joint ownership. Joint ownership agreements are negotiated separately from the consortium agreement and cover a series of issues, the most important of which are outlined in the following section.

A novelty in FP7 is the introduction of a default regime that applies in cases where participants do not have an agreement. The last section deals with the default regime, as well as the provisions of several consortium agreement models on the issue.

### **2. The main content of joint ownership agreements**

Broadly speaking, the basic content of a joint ownership agreement includes:

- Parties and object: Identifying the participants - joint owners - as well as the object of the joint ownership, i.e. the foreground in question.
- Shares: Assigning shares of the joint ownership. The shares can be equally split among all joint owners or proportionate to their contributions.
- Management: Determining the participant/s who will be responsible for filing and/or maintaining intellectual property (IP) rights protecting the results. Even if decisions are taken together and protection is obtained in the name of all joint owners, one of them is usually designated to handle all administrative issues related to the protection. Protection costs are normally covered by all joint owners, unless otherwise agreed.
- Defence of the rights: Establishing the obligation of the joint owners to report any IP rights infringements and designating someone responsible for taking action against infringers.
- Research: Determining whether and under what conditions each joint owner is allowed to apply the common foreground in research work carried out with third parties. For instance, joint owners could be required to inform each other of such plans and sign confidentiality agreements with the third parties.
- Individual exploitation: Determining whether and under what conditions each joint owner is allowed to exploit the common foreground individually in its own commercial activities.

- Licensing: Determining whether and under what conditions each joint owner may license the common foreground individually. This possibility may be totally restricted (i.e. licensing upon agreement of all joint owners) or subject to certain conditions.
- Transfer of shares: Determining whether and under what conditions a joint owner may transfer its share to third parties. The rest of the joint owners could reserve the right to be informed of any such plans and/or be given a first refusal right.
- Additional clauses: As with any other international contract, joint ownership agreements should contain provisions related to the law applicable to the agreement and competent jurisdiction to solve conflicts. Participants may, however, wish to opt for [alternative dispute resolution systems](#).

### 3. The FP7 default regime

In FP7, if the participants – joint owners – fail to reach or do not have an agreement regarding the allocation and exercise of the joint ownership, the following regime applies: each of the joint owners is free to grant non-exclusive licences to third parties, provided that it notifies the other joint owners at least 45 days in advance and that it gives them fair and reasonable compensation<sup>4</sup> (which would normally include royalties, although not necessarily).

The default regime seems to protect the interests of entities that are incapable of carrying out individual exploitation efforts, since they will get some compensation for exploitation efforts carried out by other joint owners or negotiate a common exploitation strategy. Even so, it may be necessary to sign a joint ownership agreement in order to regulate the rest of the issues related to joint ownership management.

The participants may also exclude the application of the default regime and negotiate a different one. The [IPCA](#) consortium agreement model does exactly this: it excludes the application of the default regime and expressly states that each joint owner is free to grant licences to third parties (possibly with the right to grant sublicences) without any notification or compensation obligation. Moreover, IPCA proposes two alternative options where the joint owner does not contribute to the cost of protection of the common foreground.

The [EUCAR](#) model states that the shares of the joint owners shall be “equal” and “undivided” and also differs from the FP7 default regime. Like IPCA, it provides that each joint owner is free to grant licences, including the right to grant non-exclusive sublicences, without any compensation (however, notification would still be necessary).

The same approach (no notification, no compensation) is adopted by the second option of the [DESCA](#) consortium agreement model; yet, it opens the possibility for participants to decide otherwise. Option 1 of the same clause fully adopts the FP7 default regime.

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1. For further information on the issue of joint ownership of intellectual property rights and specifications on the national legislation of several European countries you may consult the [IPR-Helpdesk document related to this issue](#).
  2. See article II.26.2 of the [Annex II](#) to the grant agreement.
  3. For additional information on laboratory notebooks please consult our [document on the issue](#).
  4. See article II.26.2 of the Annex II.

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