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1. Introduction

This document presents the basic principles surrounding *access rights* in the context of the Seventh Framework Programme of the European Community (hereinafter FP7). These principles are embodied in the FP7 [rules for participation](#) and the [general conditions of the model grant agreement](#) (hereinafter the grant agreement) which provide, among others, for cases and conditions under which participants in an FP7 project have the obligation to grant access rights to each other.

2. What are access rights?

Research projects involve the sharing of knowledge. Participants in a project generally do not start from scratch. They arrive at the project with their own knowledge, data, know-how or other assets that are protected or not by intellectual property (IP) rights (the so-called *background*¹). Some elements of this background may have to be shared with other participants in order to carry out the project. Reciprocally, participants are in contact with information held by other participants. In addition, the project itself will generate new knowledge (the so-called *foreground*²) which, in some cases, might be exploitable only with the background of certain participants or with the foreground that will be the property of certain participants.

This 'cross fertilisation' process is a fundamental element of FP7 projects for the benefit of both the participants and the European economy and society. However, access to the background and foreground of each participant might imply legal issues, in particular from the point of view of IP rights. Obligatory access rights in defined cases are an answer to this potential legal barrier in view of permitting a smooth functioning of the research projects. In other words, access rights are the licences or authorisation (rights) that permit to use the information owned by a participant of the project.

3. The granting conditions

- Procedural conditions: Access rights are not presumed granted by accession to the grant agreement. They must be requested in writing. This allows the participants to negotiate some of the granting conditions and even exclude access to specific background³. Should there be any previous agreements or commitments with third parties that hinder access to certain background, participants are responsible for informing each other as soon as possible⁴.
- Timing conditions: Termination of the participation in a project does not affect the obligation of the leaving participant to grant access rights to the remaining participants for the implementation of the project until its end⁵. Access rights can be requested for up to one year after the end of the project or the termination of participation of the right holder of the background or foreground at stake⁶. However, the participants may agree to longer or shorter time limits.
- Substantial conditions: Access rights can be requested only for the background/foreground that is necessary to carry out the project or to use the results of the project. This means that not all of a participant's background/foreground is made available to the other participants. On the contrary, they should negotiate/discuss access to background/foreground within the

limits of what is needed to carry out the project. Therefore, access might be refused if a participant considers that an identified part of its background/foreground is not needed and the participant requesting access will be called upon to prove the contrary.

As a general principle, the grant of access rights does not imply that participants have the right to grant sublicenses⁷.

- Economic conditions: The participants may define the economic conditions (royalties) under which they grant access rights in the consortium agreement. However, the granting of mandatory access rights defined in the grant agreement is submitted to minimum conditions:
 - 1a) Access rights to background for executing the project shall be granted royalty free unless otherwise agreed before the signature of the grant agreement;
 - 1b) Access rights to foreground for executing the project shall be granted royalty free;
 - 2) Access rights to background and to foreground for exploiting the results of the project shall be granted under fair and reasonable conditions or be royalty free.

4. Additional remarks

It is worth mentioning that, in addition to the mandatory provisions on access rights, the participants may negotiate and define how they want to further regulate access rights among themselves or in relation to non-participants (third parties) in the consortium agreement. Furthermore, it should be noted that additional access rights may be freely negotiated and granted between participants.

In that respect, it should also be noted that a participant may grant an exclusive right to its background or foreground to third parties, provided that the rest of the participants renounce in writing to their access rights to the resource in question⁸.

5. Further information

[The IPR Regime under FP7: Overview and Comparison with FP6 \(IPR Helpdesk\)](#)
[European Commission Guide to IP Rules for FP7 Projects \(28/06/2007\)](#)

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1. See article II.1.4 of the Annex II to the grant agreement.
 2. See article II.1.7 of the Annex II.
 3. Article II.31 of the Annex II allows the participants to define the background needed for the project. This permits them to work out mutual agreed terms to find a balance between what information they agree to, or they can, supply to the project and to ensure that the information that is really necessary to implement the project or to use some of its results is available.
 4. See Article II.32.3 of the Annex II.
 5. See Article II.32.4 of the Annex II.
 6. See Article II.34.4 of the Annex II.
 7. See article II.32.5 of the Annex II.
 8. See article II.32.7 of the Annex II.



Access Rights in FP7

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