

- 1. Introduction.....	1
- a. Responsibility and liability toward the Commission.....	1
- b. Responsibility and liability between project participants.....	1
- c. Responsibility and liability toward third parties.....	2

Last updated: November 2007

### **1. Introduction**

The main responsibility participants in FP7 projects have toward the Commission is to carry out the project work in accordance with the work plan detailed in Annex I and the rules established in the grant agreement. In order to ensure good performance, participants use the consortium agreement to further define their technical responsibilities and an effective collaboration within the consortium.

A bad performance from one or more participants can damage the Commission or the rest of the consortium. The legal obligation to pay compensation for damage caused is called liability. Liability can exist at two levels, toward the Commission or toward the other participants. Furthermore, there may also be liabilities for damage caused to third parties.

In the following paragraphs, we shall examine how the grant agreement and the consortium agreement deal with the issues of responsibility and liability.

#### **a. Responsibility and liability toward the Commission**

Participants are jointly and severally responsible toward the Commission for carrying out the project in accordance with the grant agreement (cf. article II.2.4.b of [Annex II](#)). This responsibility is also known as technical responsibility.

“Jointly and severally” responsible means that if one participant does not perform its tasks, the other participants have to figure out how to complete the project as agreed with the Commission in Annex I (take over that participant’s work tasks, find alternative means for achieving the desired results, etc.). This is why we often talk about the “collective technical responsibility” of the consortium.

The non-performance of the project by a defaulting participant may lead to financial liability toward the Commission. For instance, a participant that received financing for work that it did not execute may be required to reimburse the money to the Commission. Annex II clearly establishes that “each beneficiary shall be limited to its own debt” (cf. article II.20.1 of Annex II). However, a common guarantee fund is used to ensure that the Commission recovers the money from participants when necessary<sup>1</sup>.

#### **b. Responsibility and liability between project participants**

Consortia generally define, in their consortium agreement, the details of their technical responsibility. For instance, both the [DESCA](#) and [IPCA](#)<sup>2</sup> models contain a clause requiring participants to employ reasonable efforts and duly execute their tasks (cf. sections 4.1 and 3.4.1 respectively).

When a participant does not perform its part of the work, or when its performance is insufficient, it may be held responsible for any damage this causes to the consortium. The liability toward the other participants is generally limited in consortium agreements. DESCA limits this liability to once or twice (choice to be made) the participant’s share of the total costs of the project (cf. section 5.2). IPCA, on the other hand, limits this liability to twice the participant’s share with a ceiling of 500,000 euros (cf. section 5.2.3.1). However, IPCA doubles this limit for participants that breach their obligation of confidentiality or the obligations applicable when transferring foreground to third parties (cf. section 5.2.3.2). This reflects the importance of a responsible management of intellectual property for the consortium.

## Responsibility and liability in FP7

In addition to the limitations to contractual liability, consortia normally include in their agreement cases where responsibility is excluded and thus there is no liability (cf. DESCA section 5.2 and IPCA section 5.2.2). However, there are also cases of unlimited liability, i.e. the limitations of liability and exclusions of responsibility do not apply (cf. DESCA section 5.2 and IPCA section 5.2.5).

It is interesting to note here that IPCA also rules out the application of limits and exclusions for the cases where a participant uses intellectual property rights of the other participants beyond the scope of the access rights granted (section 5.2.4).

Participants also generally establish that they cannot be held responsible for non-compliance with their obligations due to *force majeure*, although they have an obligation to inform the rest of the consortium of such occurrences (cf. DESCA section 5.4 and IPCA section 5.3).

Finally, in most cases, project participants do not wish to offer any warranties with respect to the information, materials, know-how, etc. they provide. In other words, a participant that receives information from another participant is solely responsible for the use it makes of it. This generally means that if the use results in infringement of third party intellectual property rights, the participant that provided the information cannot be held responsible. Both DESCA and IPCA include such clauses (sections 5.1 and 5.1.1 respectively).

### c. Responsibility and liability toward third parties

Participants cannot limit their responsibility toward third parties in their consortium agreement (they may do so only when signing agreements with specific third parties). However, they generally establish that each participant is solely responsible for any damages caused to third parties. In other words, the consortium is not held responsible (cf. DESCA section 5.3 and IPCA section 5.1.2).

In addition to this, the Commission's liability toward third parties for actions or omissions by the participants is expressly excluded by article II.42 of Annex II. Again, each participant is solely responsible for ensuring that its actions related to the project do not infringe third party rights.

The case of subcontracting is generally dealt with independently. Subcontractors are third parties, but they do carry out tasks related to the project work. The DESCA model establishes that a participant that involves subcontractors or other third parties (such as affiliates) in the execution of the project is solely responsible for carrying out its part of the project and for the third parties' compliance with the provisions of the grant agreement and the consortium agreement (cf. section 4.3). IPCA includes a similar provision (section 5.1.3) but also extends the limitations and exclusions of responsibility to any affiliate of a participant acting as subcontractor (section 5.2).

As a general conclusive comment, please note that the law applicable to the consortium agreement will generally define concepts such as good faith, gross negligence, etc., as well as the rules on the basis of which the consortium agreement shall be interpreted and implemented. Therefore, in order to correctly interpret a consortium agreement, one should always take into account the applicable law. Both DESCA and IPCA opt for Belgian/Luxembourg law.

1. The Guarantee Fund replaced the collective financial responsibility mechanism applicable under FP6. For further information, see section 2 of the FP7 [Financial guidelines](#), "Guarantee Fund and recoveries".
2. For further information regarding the two models, please consult [our document](#) on this issue.

## Responsibility and liability in FP7

[www.ipr-helpdesk.org](http://www.ipr-helpdesk.org)  
[ipr-helpdesk@ua.es](mailto:ipr-helpdesk@ua.es)

The [IPR-Helpdesk](#) project is coordinated by the University of Alicante, which is supported by the Intellectual Property Law Institute of Jagiellonian University in Cracow and European Research and Project Office GmbH in Saarbrücken.

**Project Management Office**  
IPR-Helpdesk  
Edificio Germán Bernácer  
Universidad de Alicante  
P.O. Box 99  
03080 Alicante  
España

e-mail: [ipr-helpdesk@ua.es](mailto:ipr-helpdesk@ua.es)  
Tel.: +34 965 90 97 18  
Fax: +34 965 90 97 15

**Representative Office**  
IPR-Helpdesk  
98, Rue du Trône  
B-1050 Brussels

e-mail: [ipr-helpdesk@ua.es](mailto:ipr-helpdesk@ua.es)  
Tel.: +32 (0) 2 213 41 63  
Fax: +32 (0) 2 213 41 69