

PRINCIPLES REGARDING THE COOPERATION OF NASA PERSONNEL WITH PROJECTS FUNDED BY THE EU'S FRAMEWORK PROGRAMS IN THE AREA OF SPACE RESEARCH

- 1) Both NASA and the EU have an interest in resolving the issue of the participation by NASA personnel in research projects funded under the Space Theme of the European Union's Framework Programs, beginning with the Seventh Framework Program.
- 2) Only NASA's Office of International and Interagency Relations (OIIR) has the capacity to negotiate and enter into internationally binding agreements on behalf of NASA, and only after proper coordination has taken place within NASA and, if applicable, within the U.S. Government's inter-agency community, in a process managed by the U.S. Department of State. Individual NASA researchers and NASA Centers do not have the capacity to bind the agency in international agreements.
- 3) NASA has the capacity to enter into agreements with non-U.S. entities either done under international law, or done under U.S. law. NASA has concluded agreements under international law with agency partners in Europe, such as the European Space Agency (ESA), the German Aerospace Center (DLR), the French National Center for Space Studies (CNES), the Italian Space Agency (ASI), etc.
- 4) When NASA enters into agreements with European entities that do not have the capacity to enter into a binding agreement on behalf of their government, those agreements are done under U.S. law.
- 5) In preparing an agreement that would allow NASA personnel to cooperate with projects funded by the EU's Framework Programs, in the area of space research, the following principles should be followed:
 - a) NASA's cooperation with EU funded projects will normally take the form of a contribution to a work package or task of a given project;
 - b) Cooperation should take place based on a "no-exchange of funds" basis;
 - c) NASA will not sign the grant or consortium agreements;
 - d) NASA will instead enter into a bilateral agreement with one of the consortium members, ideally an existing NASA partner in Europe, such as ESA, DLR, CNES, ASI, etc.;
 - e) If no existing NASA partner is participating in the consortium, NASA could enter into a bilateral agreement under international law with another entity in Europe, as long as that entity has the capacity to conclude a binding agreement on behalf of its government;

- f) In cases where there is no European partner that can conclude an agreement that is binding on its respective government, NASA would enter into a bilateral agreement with one of the consortium members; while the choice of the applicable law would in principle be for the partners to the agreement to determine, NASA informs prospective partners that it would only be able to enter into an agreement in those specific cases under U.S. law;
- g) In all cases, the consortium agreement would acknowledge NASA's contribution through the bilateral agreement that it enters into with one of the consortium partners;
- h) The Commission would be informed of the intention of the consortium to arrange for a contribution from NASA to certain work packages or tasks in the proposal and the Description of Work in Annex I to the Grant Agreement;
- i) The consortium member that concludes the agreement with NASA will remain responsible to the Commission for the implementation of the work package or tasks to which NASA contributes and for any technical audit on such work package or tasks that the Commission may want to perform; NASA will only be responsible to the consortium member that concludes the agreement for its contribution to the work package or tasks in question;
- j) The consortium will consult the Research Executive Agency of the Commission at an early stage of the preparation of a proposal and at any rate before concluding the agreement in order to ensure that the agreement is in line with the applicable rules of the Framework Program; the consortium member that intends to conclude the agreement with NASA should be identified no later than at the proposal stage;
- k) The terms of the bilateral agreement that NASA enters into with one of the consortium partners, and the reference to NASA's contribution in the consortium agreement, would enable NASA to fully share in and benefit from the results of the project; it would be the responsibility of the consortium member that concludes the agreement with NASA to ensure that the other consortium members agree with this;
- l) NASA would not be able to contribute to work packages or tasks that lead to confidential or proprietary results that would not be made available to the broader scientific community.