



EUROPEAN  
COMMISSION

Community Research



## Checklist for a Coordination Agreement for Coordinated Calls (Option 2)

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### Note

There are two different types of coordinated calls: one where the result is a joint project, i.e. the third country participants sign the European Commission (EC) Grant Agreement (option 1) and the other where the result is tightly coordinated projects, i.e. the third country participants do not sign the EC Grant Agreement (option 2). This checklist only deals with option 2 as in option 1 all the participants will sign the grant agreement and will normally have to conclude a consortium agreement (for the FP7 consortium agreement checklist, see [http://cordis.europa.eu/fp7/find-doc\\_en.html](http://cordis.europa.eu/fp7/find-doc_en.html) )

### Disclaimer

This list is provided for information purposes only and its contents are not intended to replace consultation of any applicable legal sources or the necessary advice of a legal expert, where appropriate. Neither the Commission nor any person acting on its behalf can be held responsible for the use made of this checklist.



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# 1. INTRODUCTION

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This document provides non-binding guidance to participants in coordinated call projects regarding the issues they may wish to address in their Coordination Agreement (hereinafter "CooA")<sup>1</sup>.

A coordinated call is a Seventh Framework Programme (FP7) call that is closely coordinated with a similar call issued by a funding agency in a third country. Through the alignment of content, resources, timing, evaluation criteria and procedures, a coordinated call aims at generating joint or tightly coordinated projects, entailing a balanced partnership.

There are two different types of coordinated calls: one where the result is a joint project, i.e. the third country participants sign the European Commission (EC) Grant Agreement (option 1) and the other where the result is tightly coordinated projects, i.e. the third country participants do not sign the EC Grant Agreement (option 2). This checklist only deals with option 2 as in option 1 all the participants will sign the grant agreement and will normally have to conclude a consortium agreement (for the FP7 consortium agreement checklist, see [[http://cordis.europa.eu/fp7/find-doc\\_en.html](http://cordis.europa.eu/fp7/find-doc_en.html)]).

Under option 2, the participants of the European project sign a grant agreement with the EC and the participants of the third country project sign one with their funding agency. The technical annex would contain the research carried out under the European funded project including detailed explanations about the research to be carried out under its coordinated project in a way that it is clearly understood that it is a coordinated but legally separate. To ensure tight coordination, The participants of both projects will be required (see annexed special clause 34) to sign a CooA, linking the two projects and ensuring the necessary synergies under a single framework including appropriate arrangements regarding inter alia management, reporting and intellectual property rights (respecting the provisions of the FP7 rules for participation and, if applicable, the appropriate provisions of the S&T agreement concluded between the European Community and the third country).

The CooA is an agreement made in the framework of two selected coordinated call projects between their respective participants, to govern a number of issues that will or may arise during the project. The Community and the third country funding agency are not a party to any CooA and do not establish the terms and conditions of the CooA. The Commission has established and published these non-binding guidelines in the form of a checklist to highlight some of the main issues and the way they could be addressed by participants. It is clear that in a given project not all of the issues highlighted will have to be addressed and that there may be others which are not mentioned in these guidelines which may be relevant.

The provisions of a CooA should not affect the participants' obligations to the Community and the third country funding agency. Therefore, the CooA can contain contractual provisions complementing the contractual obligations to the EC and the third country funding agency where

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<sup>1</sup> This document does not replace the consortium agreement (CA) which is required for all projects financed under FP7 unless otherwise stipulated in the call for proposals.

required, but they should not contradict or negate those obligations. The CoOA should also be consistent with the Consortium agreement signed by the participants in the EC project.

A CoOA may take different legal forms; although a normal written agreement between the participants is likely to be by far the most common form chosen by the participants.

The Coordination Agreement should in principle be negotiated and signed before starting the project.

## **2. PARTIES**

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- identifies each party to the CoOA (i.e. participants to the EC and third country funded projects).

## **3. PREAMBLE**

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- summarises the context and the purpose of the CoOA (including the titles and acronyms of the two coordinated projects).

## **4. DEFINITIONS**

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- defines the important terms used throughout the CoOA (for the sake of clarity, it is advisable that those terms already defined in the EC and third country legal documents are not repeated but that a reference is made to the terms used in those documents if they are available in a mutually understandable language).

## **5. SUBJECT**

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- Describes the subject of the CoOA with reference to the two coordinated projects in question.

There are several possibilities: either a) to make a mere reference to both technical annexes of the two coordinated projects, b) to append a consolidated technical annex of the two coordinated projects or c) to repeat the main provisions of the technical annex(es) including:

- the preliminary technical specifications;
- the desired technical results;

- the work to be accomplished;
- the contribution of each party;
- the (maximum) effort expected.

## **6. TECHNICAL PROVISIONS**

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*This section can be used to defined the technical details necessary for the proper coordination of the projects*

### **6.1. Tasks of each party**

- gives a definition of the tasks that each party intends to carry out as precisely as possible (possibly referring to appended technical documents)
- outlines the relationship between the tasks of the parties and any inter-dependence.

### **6.2. Non-financial resources made available**

- gives a detailed overview of the non-financial resources, such as:
  - human resources (number of persons, key players or exhaustive list if possible, qualifications, secondment<sup>2</sup>, etc);
  - equipment and facilities (number, nature, place, etc);
  - background or other information (such as plans, manuals, calculations, prototypes and also intellectual property rights pertaining to such information);
  - contributions of sponsors or any other third party (such as subcontractors or affiliates).

### **6.3. Project schedule**

- sets out the production schedule for inter-related tasks and for planning purposes (i.e. when, where and how the resources will be made available).

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<sup>2</sup> Many agreements require the parties to second personnel to other organisations, frequently abroad. In this case, it may be useful to stipulate in the CoOA the main conditions of such secondment, which may entail an independent agreement separate from the main agreement. The following points might be taken up (the work needed to prepare the secondment, accommodation, interpreters, travel allowances, working hours, remuneration, overtime, travel expenses, holidays, medical Care and reimbursement of costs, other social security items (life insurance, pension funds, etc.), settlement of accounts and payment, working conditions, IPR regime, employer liability, insurance, applicable law and jurisdiction (e.g. arbitration).

It is recommended that in their own interests the parties should not establish irrevocable schedules unless they are absolutely sure that these can be met, and to include instead contingency plans for delays or missed deadlines. An irrevocably accepted production schedule could be considered to be a guaranteed commitment and may involve payment of indemnities if not met.

On the other hand minimum compliance with deadlines can be guaranteed by other methods, as discussed in the section on Managerial Provisions.

## **6.4. Changes**

- sets out provisions for dealing with changes to the project.

The Coordination Agreement may have to be adjusted or even discarded altogether as the work progresses, depending on the situation. To deal with highly volatile situations, it is advisable to provide a very flexible procedure for making changes to the initial specifications. This could go as far as including the termination of certain tasks, the withdrawal of certain parties, the inclusion of new partners etc. To avoid disputes, the conditions and procedure should be clearly indicated.

## **7. COORDINATION AND MANAGERIAL PROVISIONS**

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- describes the provisions dealing with the coordination and management of the two projects (e.g. management bodies and the decision making process).

### **7.1. Co-ordination and management**

- establishes a co-ordination structure (may be called steering committee, liaison committee, management committee, and can be broken down into different sub-groups such as financial, technical, legal, etc) with among others the following tasks:

- to define, divide and develop the tasks;
- to check the progress of the work;
- to co-ordinate the research teams;
- to co-ordinate the preparation of the reports (technical, financial, etc.);
- to advise and direct the partners on the developments necessary for the project;
- to permit formal exchanges of information between the partners.

The work of this steering committee is frequently translated into daily management and representation duties by a co-ordinator(s) selected from among the parties. Other committees can be created as necessary and should report to the steering or co-ordination committee. Provision should be made for their creation when necessary.

## **7.2. Powers and responsibilities**

- with regard to any body which is established or any person entrusted with certain tasks, the CooA should carefully define:

- the powers and responsibilities thereof;
- the operating procedures (preparation of agenda, meetings, decisions, chairmanship, minutes, votes, etc.);
- in the case of bodies, their organisation (composition, powers of each party), decision making method possible depending on nature of issue (unanimously, majority agreement, voting and veto rights etc.);

- to avoid cumbersome procedures the parties could foresee a simplified approval process depending on the nature of the decision envisaged.

## **7.3. Follow-up and Supervision**

- describes how the follow-up and supervision of the projects will take place.

Each consortium undertakes to follow the production schedule in the technical provisions of the two coordinated projects. In view of the evolving character of projects, these production timetables are generally subject to change. To limit the risk, it is desirable to provide for a strict and effective supervision system managed by the coordination structure (see point 7.1) including:

- frequent progress meetings (ranging from once a month to once per quarter);
- frequent technical and financial progress reports (actions completed and results obtained);
- optional extraordinary meetings as soon as agreed estimated deadlines have been overrun, including the right for the parties to review their position within the co-operative venture based on clearly stated reasons.

# **8. FINANCIAL PROVISIONS**

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*(beyond those already included in the EC grant agreement and its annexes)*

## **8.1. Financial plan**

To be defined by the parties if necessary.

## **8.2. Mutual payments**

- deals with mutual payments and common costs of more than one party (if applicable).

Under certain circumstances, two or more parties may incur common expenses (personnel, equipment, etc.). It is desirable to provide for the procedure governing the payment of this type of expense by each party in the CoOA and to clearly identify its reporting to the Commission, particularly as regards the following:

- reimbursable advance to a participant and method of reimbursement;
- joint account and conditions for paying in funds;
- terms of payment;
- currency;
- impact of exchange rates and bank transfer costs;
- payment of taxes;
- interest, if any;

- identifies management activity costs beyond those foreseen by the EC grant agreement, etc.

## **8.3. Costs to be claimed under the coordination activities**

- determines the costs which relate to the coordination of the projects, e.g. costs related to coordination meetings.

## **8.4. Changes**

- sets out provisions for dealing with changes to the financial aspects of the project.

# **9. PROVISIONS REGARDING INTELLECTUAL PROPERTY RIGHTS (IPR), DISSEMINATION AND USE**

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- describes additional provisions on IPR, use and dissemination.

The basic principle applied in drafting these provisions is to provide a flexible and efficient mechanism to support the co-operation between the projects. Depending in the nature of the cooperation between the projects, the following issues could be dealt with:

## **9.1. Ownership of foreground**

- deals with the ownership of IPR jointly developed in the projects.

In case of joint ownership, the joint owners are advised to establish an agreement regarding the allocation and terms of exercise of that joint ownership. Such an agreement may involve issues such as how to govern the difficulties in continuing with joint ownership depending on the circumstances. If joint ownership is maintained, it could be agreed:

- to have some form of territorial division, by virtue of which one party to the invention owns the invention only in some countries and the other parties are free to register it in other specified countries;
- to have some form of division of application markets, by virtue of which one party to the invention owns the discovery only in business sectors in which it is already active;
- to set up a regime for the protection (e.g. when and how to protect and who bears the costs for protection and possible enforcement);
- to set up a regime for use (including licensing) by the joint owners, within for example specified limits and possible profit sharing.

Joint ownership issues can be regulated once and for all in the Coordination Agreement, or in separate joint ownership agreements developed for each joint ownership situation (as a one-size-fits-all approach may not be appropriate in all projects).

## **9.2. Protection of IPR/Confidentiality**

- governs issues regarding the confidentiality and protection of IPR (for example, a confidential review/notification process to ensure that no confidential information is revealed before protection takes place by the owner thereof).

## **9.3. Dissemination**

Arrangement could be made regarding a common dissemination strategy including co-authoring of publications.

## **9.4. Access rights (licences and user rights)**

The Coordination Agreement should provide rules on access rights between the participants of the EC project and the participants of the third country project if this is needed for implementation purposes or for using the results generated in the respective projects. The terms and conditions should be clearly defined.

## 10. GENERAL PROVISIONS

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### 10.1. Entry into force

- determines the effective date of entry into force of the CoOA (consequences if not all parties accede to the EC grant agreement).

### 10.2. Duration / Termination

- deals with the duration of the CoOA and with the causes of early termination and addresses issues such as:

- the duration of the CoOA vs. duration of the EC grant agreement (e.g. 6 months longer, etc);
- the possibility of tacit renewal and extension;
- the automatic termination after full completion of the project;
- the termination prior to full completion or upon early termination of the EC grant agreement;
- the termination due to breach;
- the termination on the basis of special clause n° 34 (annex)
- the consequences of different reasons of termination (e.g. return of documents).

### 10.3. Amendments to the CoOA

- provides simple and clear conditions and procedures for the amendment or revision of the CoOA.

### 10.4. Confidentiality

- determines the confidentiality obligations and limits thereof, such as:

- what information is considered confidential (i.e. scope and exceptions<sup>3</sup>);
- what steps/procedures must be taken to mark and transfer confidential information;
- to whom the confidential information may be divulged and under which conditions;
- the period during which the confidentiality obligations must be respected (See also under the heading "Survival" below).

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<sup>3</sup> See also in this respect the last indent of Article II.9(2) of the EC Grant Agreement.

## **10.5. Treatment of classified data or information, treatment of dangerous materials**

- For security research projects, the parties need to define internal rules on how to handle, use and transfer classified data and information or dangerous materials. Any such treatment has to respect the relevant national, Community and International legal restrictions. The CoOA can also contain legal consequences for the case of non-performing / non-complying parties, in addition to the relevant contractual clauses of the EC grant agreement.

## **10.6. Breach / non-compliance and associated liability, indemnification or penalties**

- sets out what constitutes a breach of the obligations under the CoOA and its consequences, i.e.:

- what constitutes a breach and the procedure to be followed (including for example, a requirement to give notice identifying the breach and providing for the possibility of the defaulting party to rectify such a breach within a given period);
- liability (and possible limitations/force majeure) for damage caused and indemnification thereof;
- possible penalties or liquidated damages for non-compliance (the conditions under which they are due should be clearly stipulated (e.g. regarding amounts, the procedure, the interest in case of delay of payments, etc);

## **10.7. Survival**

- sets out which provisions survive the duration of the CoOA, such as those regarding:

- confidentiality and, if applicable, classification;
- applicable law and jurisdiction;
- access rights provisions;
- use of project Acronym (especially if this sign is protected as a trademark or a domain name for this sign has been registered).

## **10.8. Partial invalidity**

- deals with the consequences of invalidity of certain provisions of the CoOA.

## **10.9. Communication**

- sets out how notices and other communication under the CA must be made (the way this is done may differ according to the aim pursued).

## **10.10. Applicable law and jurisdiction**

- determines which law governs the CoOA and which forum must be used for conflict resolution.

The jurisdiction/forum chosen to settle disputes<sup>4</sup> can be a national court or an alternative dispute resolution mechanism such as arbitration. If arbitration is chosen, the CoOA will have to determine some or all characteristics of the procedure to be followed (e.g. relating to the arbitration site, the selection and number of arbitrators or the discovery and expertise process).

## **10.11. Number of copies, languages and signature process**

- sets out the number of copies of the CoOA and language(s) (if more than one language is used it is preferable to determine the language version which shall prevail in case of dispute);

- determines the signature process (separate signature page, counterparts, etc).

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<sup>4</sup> To avoid that conflicts escalate and reach the litigation phase, it is advisable to foresee a managerial procedure to detect and discuss potential problems at an early phase, with an escalation to a different level if the problem cannot be solved at the initial level.

ANNEX (Special clause n°34)

### **34. PROJECT INVOLVING COORDINATION WITH ANOTHER PROJECT FUNDED BY A THIRD COUNTRY AS A RESULT OF A COORDINATED CALL WITH THIS THIRD COUNTRY**

1. The *project* shall be coordinated with the *third country project* called [*insert the name of the third country project*], as described in Annex I ("*the third country project*").

#### *2. Coordination agreement*

The *beneficiaries* are deemed to have concluded a *coordination agreement* with the partners of the *third country project*, which must be consistent with the provisions of this *grant agreement* and the *consortium agreement*. The *coordination agreement* governs *inter alia*:

- i. the internal organisation between the projects including the decision making procedures;
- ii. rules on intellectual property rights (for example regarding protection, *dissemination*, *use* and *access rights*);
- iii. the settlement of internal disputes, including cases of abuse of power;
- iv. liability, indemnification and confidentiality arrangements between the partners.

#### **3. Termination**

In addition to the cases stipulated in Article II.38 the *Commission* may terminate the *grant agreement*::

- Where *the third country project* does not start at the latest on the date specified in Annex I. In this case, no costs incurred by the *consortium* under the *project* can be approved or accepted as eligible for reimbursement by the *Community*. Any *pre-financing* provided to the *consortium* and any interest generated by the *pre-financing* must be returned in full to the *Commission*.

- Where the corresponding *third country project* is terminated or becomes unable to meet its technical or economic commitments as defined in Annex I.  
In both cases, the procedure described in Article II.38 applies.