

Cooperation with Third Country Participants in an EC funded FP7 multi-partner research project¹

- Practical Advice for Proposal Submission and Negotiation –

What are Third Country Participants in this context?

For the purpose of this document Third Country Participants are all those participants who are established in a non EU country, which is not associated to the Seventh Framework Programme of the European Community for Research, Technological Development and Demonstration Activities (FP7). For a complete list of associated countries see ftp://ftp.cordis.europa.eu/pub/fp7/docs/third_country_agreements_en.pdf.

Third countries consist of two groups:

- a) International Cooperation Partner Countries (ICPCs)²
- b) High-income countries

1) International Cooperation Partner Countries:

For a complete list of ICPCs please see <ftp://ftp.cordis.europa.eu/pub/fp7/docs/icpc-list.pdf>.

Legal entities from ICPCs may participate in FP7 activities (provided that the minimum conditions laid down in the FP7 'Rules for Participation' (RfP) have been met). They are eligible to receive EC funding. They may even be the coordinator of an indirect research action. However, given the role of the Coordinator as manager of the EC funds, and the added difficulties to recover the funding in case of dispute, court action or default from third countries not within the reach of Community law, the acceptance of an entity from a third country as Coordinator in an FP7 project should be very carefully assessed and justified during negotiations³.

Participants from ICPCs enjoy similar rights (e.g., funding, IPR) and are subject to the same obligations (e.g., financial and scientific reporting, audits, IPR) as the EU partners of the consortium. This should be taken into account by the coordinator already at the proposal stage. Participants from ICPCs, like any other participant, will have to sign the grant agreement and, if applicable, the consortium agreement. Their contribution should be described in the Proposal and the Description of Work. For certain questions special conditions for participants from ICPCs can be agreed upon in the grant agreement. For example, flat rate funding instead of actual cost can be chosen. For a list of all possible special conditions, including those for third country participants, which can be agreed between the Commission services and the participants, see ftp://ftp.cordis.europa.eu/pub/fp7/docs/fp7-ga-clauses-v3_en.pdf".

¹ In the COOPERATION and CAPACITIES Specific Programmes. For rules in the PEOPLE and IDEAS Programmes see CORDIS (http://cordis.europa.eu/fp7/home_en.html).

² List of ICPCs available on CORDIS at <ftp://ftp.cordis.europa.eu/pub/fp7/docs/icpc-list.pdf>

³ Unless specifically requested in the call for proposals (for example for some specific international cooperation activities of the Capacities Programme).

2) High-income countries:

High-income countries, for the purpose of this document, are all the countries not included in the ICPC list and not associated to FP7. These include in particular the United States of America, Canada, Japan, the Republic of Korea, Singapore, Australia and New Zealand. Taiwan, Hong Kong and Macao are also considered as high-income territories, as well as the Vatican, San Marino, Monaco and Andorra. Further clarification can be obtained from the Project Officer responsible for your topic.

- Legal entities from high-income countries may participate in indirect FP7 activities (provided that the minimum conditions laid down in the FP7 'Rules for Participation' (RfP) have been met). However, they are normally not eligible to receive an EC financial contribution to cover the costs related to their participation in the project. This means that participants from high-income countries will have to cover their participation costs from other sources (own resources, national funding agencies etc.). Legal entities from high-income countries may, exceptionally, be granted an EC financial contribution if certain conditions are met, notably if:
 - ü such funding is provided for in a bilateral scientific and technological agreement or any other arrangement between the Community and the country in which the legal entity is established; or
 - ü clear provisions foreseeing funding for entities established in third countries (other than ICPCs) are included in the work programme/call for proposals (for example, in the Health 2009 WP: *"in recognition of the opening of NIH programmes to European researchers, participants established in the US are also eligible to participate and to be funded in the context of the Health Theme calls described in this WP"*); or
 - ü in absence of the above specifications in the call/work programme, the participation of the entity is essential for carrying out the indirect action, i.e.: the participation of the organisation in question in the project is essential due to its unique experience/capacities in the field covered by the project (and lack of such experience/capacities among other partners) while carrying out the project tasks by this organisation is impossible without the EC funding, as there is no possibility of getting funds from alternative sources. This should remain an exception and must be duly justified by the proposers.⁴

The possibilities offered by the model GA should not be used to go against the funding limits set by the Rules of Participation; (e.g., setting aside by Coordinators of lump sums whose real aim is to fund third country participants or introducing them as "subcontractors" in order to reimburse their costs.

These requirements are summarised at http://cordis.europa.eu/fp7/public_en.html?Public=Outside+the+EU.

Apart from generally not being eligible for funding, participants from high-income countries enjoy similar participation rights (e.g. IPR) and are subject to similar obligations (e.g. scientific reporting, IPR) as the other partners of the consortium. This should be taken into

⁴ EC funding for participants from high-income countries will require a special approval by the Authorising Officer of the Commission.

account by the coordinator already at the proposal stage. Participants from high-income countries will have to sign the grant agreement and, if applicable, the consortium agreement, even if they do not receive any EC funding. For this reason, the attention of participants from high income countries should be drawn already at the proposal stage to these conditions and their administration or legal department should be made aware of them as well. During negotiations particular attention should be paid to the terms of the Annex II (General Conditions) of the model GA, which apply to them too (ftp://ftp.cordis.europa.eu/pub/fp7/docs/fp7-ga-annex2-v2_en.pdf).

For participants who do not receive EC funding a special clause can be added to the GA with the effect of excluding the financial and payment provisions of the Grant Agreement (e.g. no obligation to submit any certificate on financial statements, no financial audit or control). All other provisions (including on IPR) apply.

Similarly, their contribution must be described in the Proposal and the Description of Work as for any other participant.

Other special clauses specifically designed for participants from high-income countries which do not receive a financial contribution may be added to the grant agreement during the negotiation phase. Among them, Special clause 35 is an arbitration clause to be used at the request of entities not receiving a community financial contribution which are established in a third country (not associated to FP7) and which for reasons of domestic law cannot be subject to the jurisdiction of the European Courts of Justice. For a list of all possible special clauses, see ftp://ftp.cordis.europa.eu/pub/fp7/docs/fp7-ga-clauses-v3_en.pdf.

3) General advice relating to both ICPC and high-income country participants:

a. When are third country participants mandatory as consortium members?

It is specified in the relevant work programme and topic for your proposal if participation of entities from third countries is mandatory (eligibility criterion) or recommended (to be taken into account during proposal evaluation), and if so, to which country or region this obligation/recommendation refers. In general, participation (not funding) of entities from a third country is always possible even if it is not specifically mentioned in the work programme or topic.

b. Registration via the Unique Registration Facility (URF):

For any grant agreement all participants (i.e. the institution or company for which each of the researchers works) need to be registered via the Unique Registration Facility (http://cordis.europa.eu/fp7/pp_en.html), including the third country participants. Thus, each researcher should first check if their own institution is not already registered in the URF.

Registration and validation take some time. Thus, it is recommended to verify, already during proposal submission, which documents would be needed for a registration and to proceed to registration as soon as funding becomes likely, and at the latest immediately after the start of the grant negotiation phase.

c. Which legal status and financial capacity are required to participate?

As for all other participants, third country participants need to be natural or legal persons created under the national law of their place of establishment. They must possess the financial capacity to carry out the research tasks which they propose.

d. What are the consequences of withdrawal of a third country participant during the negotiations?

If a third country participant withdraws from the project during negotiations (e.g., because of non-acceptance of the General Conditions of the Grant Agreement), the respective tasks will normally need to be taken over by another (new or existing) participant. The Description of Work and the financial breakdown need to be adapted accordingly. Such a withdrawal usually leads to a significant delay of the negotiation process.

The third country participant can no longer participate in the project, will not be mentioned in the DoW and will have no rights in the project IP, even if that participant should carry out the same or similar research outside of the project.

In any case, the minimum conditions for third country participation in the project must be fulfilled.

e. Can the signature of the grant agreement be replaced by a consortium agreement?

No. A consortium agreement is an agreement between the project partners alone; it does not include the European Commission services and can thus not replace a grant agreement with the European Commission services.

f. What are the consequences of late document submission by third country participants?

The consequences will most likely be a significant delay in the grant negotiations since all participants need to be validated in the URF before a grant agreement can be finalised. Validation of third country participants can, under certain circumstances, take longer than validation of EU participants for a number of reasons, for example the legal documents in that country may differ from EU documents or may not be immediately available or may have to be translated.

g. Which are the languages that can be used by the third country participants in their documents?

The entire proposal needs to be submitted in a single language, i.e., one of the official EU languages. All third country contributions to this proposal need to be submitted in that same language.

Documents sent to the Unique Registration Facility (URF) need to be submitted in their original language. Should this not be an official EU language, an accompanying certified/legal translation of these documents into English is compulsory.

4) The case of overseas countries and territories (OCT)

Individuals from an OCT and, where, applicable, the relevant public and/or private bodies and institutions in an OCT, shall be eligible for FP7 in the same way as entities from the Member State to which the OCT is linked. Hence, legal entities established in any OCT enjoy the same status as legal entities established in a Member State and are eligible for funding under the Seventh Framework Programme.