

# The European Union's Seventh Framework Programme

## Overview of FP7 Financial and Legal Rules of Participation

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- **Financial issues**
  - FP7 budget
  - Funding schemes
  - Main activities and funding rates
  - Eligible and non-eligible costs
  - Preparing a budget
  - General administration issues
- **Legal issues**
  - General contractual aspects
  - IP issues

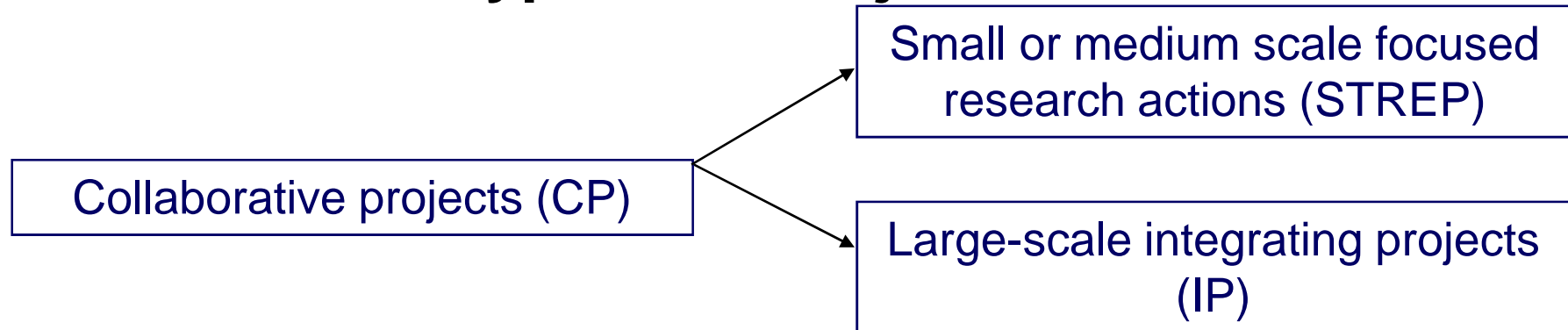
- FP7 is the world's largest civil R&D fund
- Budget of +€50 billion over 7 years (from 2007 – 2013)
- Approximately €7 billion funding per year
- Equivalent to 5% of the EU's public research budget
- 39 countries contribute funding to the program (27 + 12 as of Jan 2008)
- Funding of programme from countries is based on Gross Domestic Product (GDP)
- Funding from the programme to countries is independent of contribution – based on excellence (competitive)

# FP7 budget - split

<b>i. Cooperation – Collaborative research (top down)</b>	<b>€ 32 billion</b>
Health	Food, Agriculture and Biotechnology
Information and Communication Technologies (ICT)	Environment (including Climate change)
Nanosciences, Nanotechnologies, Materials and new Energy	Production Technologies
Socio-economic Sciences and the Humanities	Transport
	Security and Space Research
<b>II. Ideas – Frontier Research (bottom up)</b>	<b>€7.3 billion</b>
<b>III. People - Mobility (Marie Curie)</b>	<b>€4.7 billion</b>
<b>IV. Capacities</b>	<b>€ 4.2 billion</b>
Support of existing research infrastructure	New infrastructure
Research for and by SMEs	Regions of knowledge
Research Potential	Science in Society
Specific activities of International Co-operation	

# FP7 Funding schemes

## Types of “Projects” or “Instruments”



Support to research projects carried out by consortia with participants from different countries, aiming at developing new knowledge, new technology, products, demonstration activities or common resources for research. The size, scope and internal organisation of projects can vary from field to field and from topic to topic.

### Networks of Excellence (NoE)

Support to a Joint Programme of Activities implemented by a number of research organisations integrating their activities in a given field, carried out by research teams in the framework of longer term co-operation

### Coordination and Support actions (CSA)

Support to activities aimed at coordinating or supporting research activities and policies (networking, exchanges, trans-national access to research infrastructures, studies, conferences, etc)



## I. Small or medium-scale focused research actions (STREP)

- Well defined on single focused issue (“Project” approach)
- Mainly mono-disciplinary (single component)
- € 1-4 m (average €2 m)
- 5 -10 Partners
- 2-3 years

## II. Large-scale integrating projects (IP)

- Ambitious objective-driven research via “Program Approach”
- Generally multi-component and multidisciplinary (addressing multiple issues)
- € 4-25 m (average €10 m)
- 10-20 Partners
- 3-5 years



# FP7 Funding schemes

## Networks of Excellence (NoE)

- Support the long-term durable integration of research resources and capacities
  - Implemented through Joint Programme of Activities
  - Research organisations
  - 3-7 research organisations
- Experience: 6-12 partners
- 4-5 years duration
  - Funding
- EU contribution of €4-€10 m (average €5m)

# FP7 Funding schemes

## Coordination and Support Actions (CSA)

### I. Coordination Action (CA)

- Focused on coordination of research or creation of a network between other research actions for a specific purpose
- CAs have fixed overall work plan, partnership and deliverables
- Size of consortium appropriate to coordination activities

Minimum 3 independent legal entities from 3 different EU Countries

Experience: 3 - 26 partners

- 1-2 years duration
- Funding

Experience: EU contribution €0.5 - €2 m (average €1 m)

# FP7 Funding schemes

## Coordination and Support Actions (CSA)

### I. Support Action (SA)

- Designed to
  - underpin the implementation of the Program & complement the other FP7 funding schemes
  - help in preparations for future Community research and technological development policy activities and
  - stimulate, encourage and facilitate the participation of SMEs, civil society organisations, small research teams, newly developed and remote research centres, as well as setting up research clusters across Europe
  - Cover one off events or single purpose activities
- No minimum number of participants
  - Experience : 1 -15 partners
- 1-3 years duration
- Funding
  - **Experience: EU contribution €0.3 - €3 m (average €0.5m)**

# Maximum grant

- The maximum grant is based on an estimation of eligible costs prepared by the consortium partners
- You will get reimbursed for eligible costs BUT you must co-finance a portion of the costs
- The amount you must co-finance depends on the **type of organisation** to which you belong and **the activity** being funded
- What you actually spend is taken into account to determine the final financial contribution by the EC

# Types of organisations -1

- Research organisations, Universities
- High-tech Small and Medium Sized Enterprises (SMEs)
- SME Associations (Specific instruments)
- Public Administrations (ERA-NET)
- Individual researchers wishing to work in another country (Marie Curie)
- Institutions running a research facility of multi-national interest

# Types of organisation - 2

- **Public body:** legal entity established as such by national law, and international organisations
- **Research organisation:** legal entity established as a non profit organisation which carries out research or technological development as one of its main objectives
- **Secondary and higher education establishments** includes universities, schools for applied sciences and similar
- **SMEs:** small and medium-sized enterprises as defined in Europe:
  - fewer than 250 employees,
  - annual turnover not exceeding €50 million, and/or
  - annual balance-sheet total not exceeding €43 million

# Eligible for funding

## Eligibility for Funding:

- Legal entities from Member State and Associated Country or created under EU Community law (and the JRC)
- International European interest organisations
- Legal entities established in International Cooperation Partner Countries (ICPC-INCO)

and

- Legal entities established in 3rd countries other than ICPC-INCO, if provided for in SP or WP; or if essential for carrying out action; or if provision for funding is provided for in a bilateral agreement between Community and that country

# Main activities that can be charged

- Research and technological activities (RTD)
- Demonstration
- Coordination (only for CAs)
- Support (only for SAs)
- Other Activities

## *RTD activities:* funding rates

- Public bodies: up to 75%
- Secondary and higher education establishments: up to 75%
- Research organisations (non-profit): up to 75%
- SMEs: up to 75%
- Otherwise up to 50% of eligible costs

## *Other activities:* funding rates

- Demonstration activities: up to 50%
- Management: up to 100%
- Frontier research actions: up to 100%
- Coordination and support actions: up to 100%
- Training and career development of researchers: up to 100%

- ACTUAL, ECONOMIC, USED SOLELY TO ACHIEVE PROJECT OBJECTIVES
    - Must actually be incurred
    - Must be incurred during the project
    - Must be determined according to usual accounting and management principles/practices
    - Must be recorded in accounts
- **AUDIT TRAIL**

# Non-eligible costs

- Identifiable indirect taxes including VAT
- Duties
- Interest owed
- Provisions for possible future losses or charges
- Exchange losses, cost related to return on capital
- Costs declared or incurred, or reimbursed in respect of another project
- Debt and debt service charges
- Excessive or reckless expenditure

# Preparing a budget

- **Total project budget = Eligible direct costs**  
+  
Indirect costs
- Eligible direct costs
  - Personnel costs
  - Subcontracting costs
  - Other direct costs
    - capital equipment
    - travel and subsistence
    - Consumables
    - audit certificate
    - IP protection, etc

# Personnel costs

- WILL REQUIRE A TIMESHEET “SYSTEM”!
- Permanent and temporary employees at TOTAL COST OF EMPLOYMENT, not just salary; must be paid in accordance with the normal practices of the organisation
- Must work under sole technical supervision and responsibility of the organisation
- If you normally consider certain costs as overheads (e.g. HR support staff) then their costs cannot be included as direct costs
- Public officials paid directly from government are also eligible

# Employment and personnel issues

- Employment contract
- Time sheets
- Hourly cost and person months
- Maximum “productive” hours / year
- Employer costs
- Benefits as part of package
- Absences – vacation, family responsibility, sick, maternity / paternity leave etc.
- Replacement staff
- Overtime
- Benefits – staff bursaries, cellphone allowance etc.
- Short term service contracts
- Secondments – prior agreement & identified in Annex 1
  - NB to differentiate between making resources available and carrying out part of work (subcontracting)

# Subcontracting

- Beneficiaries shall implement the indirect action and shall have the necessary resources to that end
- Specialised jobs that it cannot carry out itself or because it is more efficient to use the services of a specialised organisation
- Agreement based on "business conditions"
- Works without the direct supervision of the beneficiary and is not hierarchically subordinate to the beneficiary
- Interest in the project is only the profit that the commercial transaction will bring
- No IPR rights on the foreground of the project
- Responsibility for the work subcontracted lies fully with the beneficiary
- **Subcontracting between beneficiaries in the same GA is not to be accepted**
- **Does not concern the research work itself**, but tasks or activities needed in order to carry out the research, auxiliary to the main objective of the project
- Work (the tasks) to be performed by a subcontractor **has to be identified in Annex I to the GA**
  - identity of the subcontractors does not need to be indicated
  - description of the tasks to be subcontracted should include a financial estimation of the cost
- Best value for money (best price-quality ratio), under conditions of transparency and equal treatment
- Framework contracts with a third party for routine or repetitive tasks – prior arrangement
- Minor tasks / services are not project tasks identified as such in the Annex I - needed for implementation of the project

## Can include

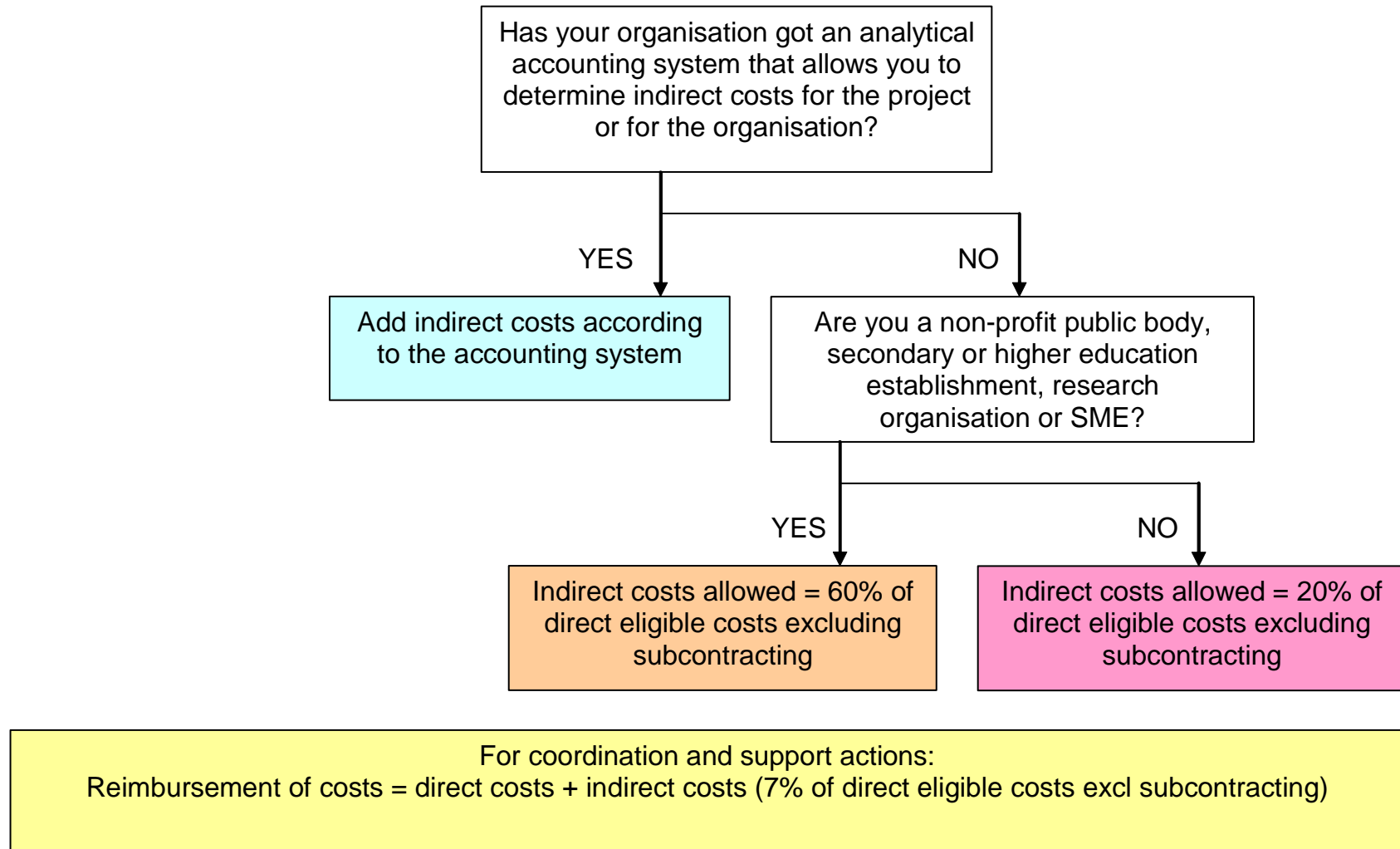
- Consortium management
  - Maintenance of consortium agreement
  - Legal, ethical, financial management
  - Certificates: costs incurred for the certificates on the financial statements and certificates on the methodology constitute eligible direct costs and are charged under management costs which are part of "Other activities".
  - Financial audits and technical reviews
  - Competitive calls (permitted & foreseen)
- Training activities, excluding trainees (permitted & foreseen)
- Networking & dissemination, including publication
- IPR protection

- Determined according to the information you have from your accounting system:
  - Actual indirect costs:
    - If your accounting system allows you to determine your actual indirect costs for the project
  - Simplified actual indirect costs:
    - If your accounting system allows you to determine your indirect costs for the organisation but not for the project
  - Flat rate:
    - If you can't determine your indirect costs from your accounting system then you can use 20% of direct costs less subcontracting costs OR
    - a **transitional flat rate** depending on the activity and type of organisation (see next slide)
- For Coordination and Support Actions, the maximum indirect costs allowed are 7% of direct costs less subcontracting costs

# Indirect costs - Transitional flat rate

- Eligible activities:
  - Research and technological development
  - Demonstration
- Eligible types of organisations:
  - Non-profit public bodies
  - Secondary and higher education establishments
  - Research organisations
  - SMEs
- Transitional flat rate applied:
  - 2007 – 2009: 60% of direct costs less subcontracting costs
  - 2010 – 2013: **60%** of direct costs less subcontracting costs

# Decision tree on indirect costs



- Financial contributions to the project
- In-kind contributions by third parties
- Income generated by the project

- Costs shall be reported in €
- Exchange rate applied either on the basis of:
  - the rate applicable on the first day of the month following the end of the reporting period
- OR
- on the date that the actual costs were incurred
- Based on European Central Bank rates  
<http://www.ecb.int/stats/eurofxref/>

# Certificate of Financial Statement (CFS)

- Completed by an external auditor selected by the beneficiary
- Contain a number of questions (controls) which the auditor is asked to answer (check) in verifying the beneficiary accounting and control system or document in relation of the execution of the project.
- CFS use a standard format which is annexed to the grant agreement (Annex VII). The use of this format is mandatory.
- CFS are only **required** with the cumulated Community financial **contribution** (not costs!) **requested exceeds €375,000**
  - if the amount requested by a beneficiary is inferior to 375,000 for the first period, CFS not required.
  - CFS must be submitted as soon as the cumulated requested funding for all former periods (not covered by any CFS) exceeds €375,000.
  - If the total funding received for a project by a beneficiary is below €375,000, a CFS is not required for the project.
- the WEB tool will indicate if a CFS is required for a particular period

# Eligible auditors

- Beneficiaries are free to choose an external auditor, but must be:
  - Independent
  - Qualified
- Public bodies, secondary and higher education establishments and research organisations may opt for a Competent Public Officer instead of an external auditor
- The submission of a certificate does not waive the right of the Commission to carry out its own audits

- One pre-financing (upfront) payment, typically 160% of average yearly budget
- Interim payments based on financial statements
- 10% of amount payable is retained until the project is signed off

- No collective financial responsibility
- 5% of total project budget set aside at start of project
- Reimbursement on project completion and finalisation with restraints

# Legal issues

# Contractual aspects

- Grant agreement
  - Signed between beneficiaries and EC
  - Establishes rights and responsibilities of the beneficiaries to each other and to the EC
  - Consists of core grant agreement and annexures including Annex 1 (Description of Work)
- Consortium agreement
  - Signed between beneficiaries
  - Implements the grant agreement, establishes provisions related to consortium management, distribution of the Community financial contribution and IP
  - Mandatory unless otherwise specified in Call for Proposals
- It is important to make sure that the grant agreement and the consortium agreement talk to each other, particularly in relation to IP sharing
- Note that there exists “*Technical collective responsibility*”

# Grant agreement

- Core grant agreement
- Annex I - Description of Work
- Annex II - General conditions
- Annex III - [Specific provisions related to [this funding scheme or activity]
- Annex IV - Form A – Accession of *beneficiaries* to the *grant agreement*
- Annex V - Form B – Request for accession of a new *beneficiary* to the *grant agreement*
- Annex VI - Form C – Financial statement per funding scheme as published in
- Annex VII - Form D – Terms of reference for the certificate on the financial statements and Form E - Terms of reference for the certificate on the methodology

# Consortium agreement

- A CA is **required for all projects** financed unless otherwise stipulated in the call for proposals
- EC is not a party to any CA and does not establish the terms and conditions of the CA
- Provisions of a CA should not affect the participants' obligations to the Community and/or to each other arising from the Rules for Participation and the Grant Agreement
- Checklist
- Model consortium agreements

# Contract negotiation

- Project passes hurdles and selected for negotiation!
- Letter of invitation to negotiations (includes evaluation summary report)
- Negotiation mandate given
  - Changes to be made based on ESR
  - Maximum EC contribution
  - Project duration
  - Deadlines (usually non-negotiable)
    - 1st draft Description of Work (modified proposal)
    - Grant Preparation Forms (GPFs)
    - Negotiation completion (Technical and Legal/Financial)
- Coordinator negotiates with EC, we negotiate with consortium

# Exchange of information

- Beneficiaries exchange information and know-how (software, patents, work methods, etc.) in order to
  - Benefit from each other's resources
  - Carry out tasks
  - Carry out exploitation efforts
- Each beneficiary has the right to request access rights to the other beneficiaries' background and foreground, as long as it needs them in order to carry out its work under the project or to use its own foreground:
  - “Background” is project-related information and IP rights beneficiaries hold before entering the project
  - “Foreground” is the information and IP rights that beneficiaries generate within the project, the results of the project

- Beneficiaries have the right to define the background that will be made available to the project
  - Have right to exclude specific background from their obligation to grant access rights
  - All agreements on the identification/exclusion of background are made in writing, usually in the consortium agreement

- Granting of access rights:
  - Exact rights to be transferred are defined
  - Purposes for which the access rights may be used
  - Confidentiality / Royalties
- Grant agreement establishes economic conditions for the granting of access rights
- Beneficiaries may further define it in their consortium agreement

Access rights	For project execution purposes	For use purposes
To background	Royalty-free unless otherwise agreed <u>before</u> signature of the grant agreement	Royalty-free or on fair and reasonable conditions
To foreground	Royalty-free	

# Ownership of foreground

- Each beneficiary is owner of the foreground it generates.
  - Contractual relationships with its personnel and third parties must guarantee its ownership of foreground
  - Must enable it to comply with its obligations under the grant agreement and the consortium agreement.
- If foreground is generated by common efforts and it is not possible to distinguish individual contributions
  - The contributors will have joint ownership of the foreground
  - A joint ownership agreement will be signed to define the shares and the management of the joint ownership
- If there is no such agreement, the default joint ownership allows:
  - Each joint owner to grant non-exclusive licences to third parties
  - Provided that it notifies the other joint owners and grants them fair and reasonable compensation

- Beneficiaries obligations regarding foreground are to
  - protect it if appropriate
  - use it in further research or commercial activities
  - disseminate it to the relevant public or the public in general
- Use of foreground:
  - Beneficiaries may use the foreground themselves or grant licences to third parties:
    - Access rights of the other beneficiaries must be maintained
    - An exclusive licence to background or foreground can only be given with written permission from the other beneficiaries
    - The EC may object to the granting of an exclusive licence to foreground in a third country for ethical principles or security considerations.

# Transfer of ownership

- If ownership is transferred the transfer must be under the same conditions as the original agreement
- The other beneficiaries must be informed of transfer plans and they can object if their access rights are not safeguarded
- The EC may oppose transfers to entities established in third countries if it considers that such transfers are contrary to the interests of the European economy, to ethical principles or security considerations



- <http://www.ipr-helpdesk.org>
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# THANK YOU!

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