Experiences from the European Union: Managing Intellectual Property Under the Sixth Framework Programme

ALICIA BLAYA, *IPR-Helpdesk Project, Universidad de Alicante, Spain*

ABSTRACT

Health and agriculture are at the very core of the European Union's policies for socio-economic development. One of its most active efforts is the Framework Programmes for Research and Technological Development. With a specific focus on international cooperation, this is the European Union's main financial instrument to promote and strengthen research and technological cooperation within the European Union (E.U.). Through the E.U. Framework Programmes, actors from different countries and sectors (industry, research centers, small- and medium-sized enterprises, universities, and so on) work together to improve science and create a better standard of living.

Given the massive movement of scientists and experiences exchanged through these Programmes, it seems that the E.U. is on the right track. However, these Programmes can only be used to their fullest potential when participants understand and appropriately handle the intellectual property rules governing them.

1. INTRODUCTION

In the increasingly large group of countries that compose the European Union, there are not only large differences in the climate and natural resources, but also large contrasts in terms of cultural traditions and economic development. Together, these create the specific needs and challenges of E.U. citizens. As an example, in the summer of 2005, a good part of Spain and Portugal saw woods and mountains burn and not a drop of rain to interrupt a sustained period of drought and add to reservoirs, many of which were below 25% capacity. That same summer, Central and Eastern Europe experienced one of the worst floods in recent years.

The summer of 2006 was not better in terms of forest fires and climate conditions. Countries like France and Belgium experienced unusually high temperatures. In recent years, in southern Europe, global climate change has made obtaining (and adequately storing) drinkable water a key concern and a central focus of its research policies. The countries of the E.U. face many of the same environmental challenges as other countries of the world—plagues, ecological accidents and attacks, and natural disasters. This illustrates the problems E.U. member states encounter and the need to take a coordinated approach to managing natural resources and planning their use and exploitation.

E.U. countries have their own policies and initiatives for the optimal and responsible use of their natural resources. Many technological efforts focus on rural areas and businesses that could develop E.U. agriculture, fisheries, and food industries. Using new technologies in rural areas is one of the most common ways to help farmers and small enterprises compete with large corporations.

Apart from the Framework Programmes (hereafter FPs), which are the subject of this

Blaya A. 2007. Experiences from the European Union: Managing Intellectual Property Under the Sixth Framework Programme. In *Intellectual Property Management in Health and Agricultural Innovation: A Handbook of Best Practices* (eds. A Krattiger, RT Mahoney, L Nelsen, et al.). MIHR: Oxford, U.K., and PIPRA: Davis, U.S.A. Available online at www.ipHandbook.org.

© 2007. A Blaya. *Sharing the Art of IP Management:* Photocopying and distribution through the Internet for noncommercial purposes is permitted and encouraged.

chapter, there are other Community actions that benefit the E.U. and partner countries (like those actions promoted under the European Regional Development Fund [ERDF], aimed at regional development, or those projects funded under the MEDA Programme, the objective of which is to improve the socio-economic conditions of countries in the Mediterranean region).

2. THE FRAMEWORK PROGRAMMES AND TRANSNATIONAL COOPERATION

Created by the treaty that established the European Community (the European Community Treaty), the E.U. Framework Programmes for Research and Technological Development are a financial tool to support research and innovation. The multiannual Programmes commenced in 1984. Currently, the Sixth Framework Programme (FP6) is being implemented. FP6 started in 2002 and will run until the end of 2006. (FP7 will start in 2007 and end in 2013.)

While the general objective of the FPs is to boost research and innovation in the E.U., FP6 aims particularly at contributing to the creation of the European Research Area (ERA), which would be a single market for R&D. FP6 seeks to play a significant role in achieving the ambitious challenge of Lisbon 2000: for the European economy to become, by 2010, the world's most competitive and dynamic knowledge-based economy. To meet this objective, R&D in Europe needs to be overhauled. Europe has prominent scientists and researchers, but establishing stable, durable cooperation schemes and turning research into tangible and exploitable results must be an ongoing priority.

To foster European excellence in R&D and innovation, FP6 is based on scientific and technological cooperation at a transnational level. To achieve this cooperation, FP6 has a total budget of €17,883 million.[1] Of this amount, €12,438 million is devoted to the so-called "FP6 Thematic Priorities." The priorities represent seven areas in which research is considered a key need. They are, along with amounts budgeted to accomplish the goals:

1. Life sciences, genomics, and biotechnology for health (€2,514 million)
2. Information society technologies (IST) (€3,984 million)
3. Nanotechnologies and nanosciences, knowledge-based multifunctional materials, and new production processes and devices (€1,429 million)
4. Aeronautics and space (€1,182 million)
5. Food quality and safety (€753 million)
6. Sustainable development, global change, and ecosystems (€2,329 million)
7. Citizens and governance in a knowledge-based society (€247 million)

The FP6 budget acknowledges that small- and medium-sized enterprises (SMEs) are principal engines of the E.U. economy (accounting for approximately 99% of all businesses, giving jobs to almost 95 million people, and accounting for 66% of private employment).[2] In order to help SMEs innovate and develop, they are assigned at least 15% of the general amount budgeted for thematic priorities. In addition, SMEs have €473 million of the total FP6 budget for funding SME-specific actions.

Besides the thematic priorities, other activity areas (such as SME-specific actions, researchers' mobility and training, and international cooperation) share the remaining €5,445 million of the FP6 budget. Nuclear energy and training in this field has a special programme: FP6/EURATOM, with a budget of €1,230 million.

2.1 *Health and agriculture within the FP6 thematic priorities*

Of the total budget for the first thematic priority (life sciences, genomics, and biotechnology for health), €1,209 million is set aside for research on advanced genomics and its applications for health (first subpriority), and €1,305 million is assigned to combating major diseases (second subpriority). One of the main interests of E.U. society is the advancement of cancer research and treatment, and so from the budget of the first thematic priority, up to € 475 million goes exclusively to cancer-related research. Agriculture is covered by the fifth priority, food quality and safety. For the sixth priority (sustainable development, global change, and ecosystems), €890 million is planned for

research on sustainable energy systems (first subpriority). €670 million is devoted to sustainable surface transport (second subpriority) and €769 million is for research related to global change and ecosystems (third subpriority).

2.2 *Participation and funds*

Fundamental participants in projects funded under FP6 are legal entities (universities, research centers, enterprises, and sometimes individuals) from E.U. member states. Entities from the E.U.-associated candidate countries (Bulgaria, Romania, Turkey and Croatia[3]), and entities from other countries associated with the FP6 by means of particular agreements (Iceland, Israel, Liechtenstein, Norway, and Switzerland) participate in projects funded under FP6 on the same footing as entities from E.U. member states: They have the same funding options and, in addition, there is the possibility for a consortium made up exclusively of entities from those countries.

However, one of the features that make the FPs attractive to any research entity is the possibility of participation by entities from countries that are not associated with the FP6. Although there are different modalities for participation and funding, entities from these non-E.U. member countries can also participate via thematic priorities and through the International Cooperation (INCO) activity.

2.2.1 *Measures supporting the International Cooperation activity*

The E.U. is a world leader in development aid, and, under FP6, entities from non-E.U. member states can participate even if they are not specially linked with the Programme. The INCO activity, however, best reflects the Programme's international dimension.

INCO is an FP6 activity specifically aimed at cooperation with third countries, and in particular with INCO target countries: developing countries, Mediterranean partner countries, Russia and the other New Independent States (former members of the Soviet Union), and the western Balkan countries.[4] For this specific activity, FP6 reserves €346 million.

Up to €312 million is allocated to support the participation of entities from non-E.U. countries in thematic priorities and other activities, which provide a total of €658 million for the participation of non-E.U. member entities. In addition, resources from the general budget of €1,732 million for Marie Curie actions are available to fund research training and mobility in Europe for researchers coming from non-E.U. member countries.

2.2.2 *How it works*

FP6 funds research and related activities. Actions for funding are open to potential participants (usually, groups of entities, or consortia, coming from different countries) through *calls for proposals,* which establish the main requirements of an activity (for example, the minimum number of participants, origin, objectives of the activity, and deadlines for submitting the proposal). These calls are published on the Internet in the *Official Journal of the European Union* and on the CORDIS Web site[5] (a key service for anyone interested in E.U. R&D and innovation), amongst others. Consortia are generally made up of a minimum number of participants from different E.U. member states or associated states. Once the minimum number is reached, more participants from the same or other countries, even from non-E.U. countries, are welcomed, always taking into account the optimum magnitude of each project.

Generally, once a person or group is considering opting for a research project funded under any FP6 priority or subpriority, the person or group has to find enough partners to form a *project consortium*. Many entities know others in the field with which they would like to partner in research. If this is not the case, CORDIS and other sites provide a partners' search tool.

Deciding on the type of project is a next step. FP6 has a wide range of project types, including integrated projects (IP), networks of excellence (NoE), specific targeted research projects (STREP), specific targeted innovation projects (STIP), cooperative research projects (CRAFT), collective research projects (the last two, represent SME-specific actions), specific support actions

(SSA), which can be carried out by a single entity, and Marie Curie actions (fellowships).

Each project type has its own "personality" and focuses on specific aims. Proposers will need to choose the type that best fits their needs in terms of size (some projects, like integrated projects, are designed for large consortia; others are better managed by a small ones, like the specific targeted research projects), time (some projects can last longer than others; for example, SME-specific actions are relatively short, lasting about two years), and objectives (some projects, such as integrated projects, are focused on developing a specific product or technique through in-depth research; other projects, such as networks of excellence, aim to achieve long-lasting integration of research forces).

Taking all of the above into account, interested parties submit their proposals by a deadline established in the relevant call. These proposals are then evaluated by independent experts. Depending on the proposal's scientific interest, input in R&D, level of innovation, and potential for fulfilment of the aims of the call in question, the proposal may be selected for funding.

Addressing intellectual property (IP) rights issues is crucial for the success of any research project. A competitive proposal has to consider IP aspects carefully in order to convince evaluators that it deserves to be funded. Generally, applicants will be asked about their plans for using and disseminating the expected research results. The applicants need to know what they have, what the state of the art is in the field in question, whether or not there are patents that cover something (for example, a molecule) they may need during the course of their research, what IP they need to work with, what would make them ask for a license, how to share their IP resources for work purposes, what results may be expected, and how these results can be managed and exploited. Of course, the level of detail and scientific certainty of these plans would not usually be very high, but they should be as complete as could be reasonably expected at that stage.

In order to have a well-managed project (and to make the most of the results to be obtained), participants need to be familiar with the FP6 rules for participation and EC model contracts.[6] Furthermore, apart from the FP6-specific rules, participants should take into account other elements, such as other research concurrent with their FP6 project, some national laws (for example, regarding employees' creations or joint ownership), and competition rules, since they may affect the FP6 project.

It is worth mentioning that the IP related rules under FP7, even if maintaining features of FP6, will be likely to change somewhat to the benefit of the project participants, partly by giving them more autonomy. Entities interested in having their research activities funded under FP7 can start now to get familiar with the new rules. (Relevant documents on FP7 can be found, i.e., on the IPR-Helpdesk Web site.[7])

2.2.3 *Do not forget*

Taking part in an E.U.-funded project involves sharing, collaborating, exchanging know-how, and effort. Besides the rules, participants have to be aware of this basic requirement from the very beginning (even before the proposal is selected) to pave the way for their cooperation.

3. IP RIGHTS ISSUES IN AN FP6 PROJECT

Dealing with IP rights-related issues is essential for any research project, and this is even more true for a transnational project than for a project with a narrower focus. The diverse nature of the participating entities (enterprises, public/private research centers, universities, and so on) and their origin (different countries with different laws and cultures) are responsible for the richness of these projects but can be also an obstacle if consortia and resources are not managed adequately.

The relevance of IP related questions is reflected in the attention those questions receive under FP6. The E.U. Framework Programmes provide participants with a set of rules and guidelines that are very detailed in comparison with other funding programs. The rules are laid out in the contract that participants enter into with the European Community (EC)—the EC contract. The contract mirrors the rules for participation in the Framework Programme. Participants will find

in the contract the basic norms that are to govern their research project and also several obligations and rights to be exercised at the conclusion of the project (the exploitation-of-results phase).

The EC contract is a pre-established contract that cannot anticipate all the specificities of a single project and consortium. For this reason, participants sign a complementary contract (the consortium agreement) to which the European Community is not a party. Due to the importance of this agreement for implementing the project, it is compulsory under FP6, unless the relevant call specifies otherwise. (Indeed, signing this agreement is particularly obligatory in SME-specific actions, integrated projects, and networks of excellence, while it is usually optional, but highly recommended, in other actions.)

The IP rules concentrate on managing IP resources during the project, with a forward focus on the use of the results obtained from the project. These rules deal with four main aspects:

1. Ownership of the results obtained during the project
2. Protection of results (by means of IP rights)
3. Access rights (licensing)
4. Use and dissemination of results

There are ancillary issues (such as confidentiality, IP related costs, and so forth) that are also important for good IP management and are also considered in the rules.

3.1 *Basic terms*

To understand the IP related rules and their practice, it is necessary to explain some FP6 terminology:

- ***pre-existing know-how***. Even though the definition of *pre-existing know-how* given in the FP6 rules may seem complex, it is actually quite simple: any information and IP resources that participants have *before* entering the FP6 project or that they obtain in parallel to it (that is, any information participants acquire independently of their participation in the FP6 project). The definition applies to any information, not just technical *know-how*.
- ***knowledge***. In the context of FP6, *knowledge* means any results of the project and the related IP rights.
- ***access rights***. The frequently used term *access rights* refers to licenses or user rights to knowledge or pre-existing know-how.
- ***use***. The meaning of *use* is also very specific and distinct from its common meaning. In the terminology of FP6, *use* means: the commercial/industrial exploitation of results obtained or their application in further research activities, either by their owner or by an authorized third party.
- ***dissemination***. The concept of dissemination refers to another activity that FP6 project participants need to carry out: *disclosure* of the results of a project by any appropriate means. The rules specify, "*appropriate means other than publication resulting from the formalities for protecting knowledge.*" This wording helps to clarify that, for example, publication of the patent application by a patent office is not considered dissemination. Scientific publications, general information on Web sites, conferences, and the like are good examples of dissemination.

3.2 *Who owns the project results?*

One of the questions that arises within research collaboration activities is who owns the results. FP6 ownership provisions strive to be logical and lucid, which makes it easier for people who are unfamiliar with legal issues to understand them. The provisions also mirror the general principles of modern IP laws, which provide a fair degree of legal certainty.

The basic rule is that the results obtained in a project are owned by the participant who has carried out the work leading to those results. Importantly, the participant is the entity that enters into the EC contract—for example, a university—not the department or research group actually working on the project.

Where several participants work together toward the results of a project, and their respective portions of the work cannot be ascertained, the participants are considered joint owners and must agree on the allocation and terms of exercising ownership.

In SME-specific actions, the cooperative (CRAFT) and collective research projects, only the SMEs and the enterprise groupings, respectively, get (joint) ownership of the results (even if the results have been generated by other participants). This is because these actions are designed to benefit SMEs.

3.2.1 *Practical issues of joint ownership*

Joint ownership established by the EC contract is a guarantee for the working parties; they can agree to continue under a proper co-ownership regime (therefore establishing the rules to be followed) or agree on other options. The EC contract tries to avoid situations of conflict between weaker and stronger participants by guaranteeing that, where work is carried out in common, all parties must give their opinion before any decision is made.

Joint ownership, however, may arise from either common work or voluntary decision. Its regulation will generally be left at first to the agreement of the parties concerned. Any loophole in the regime will be closed by the applicable law, which changes from one country to another. Accordingly, and to avoid difficulties as much as possible, if the parties decide to continue with a co-ownership regime, they should seek the assistance of a professional in order to draft an adequate agreement that deals in detail with the most important aspects of the ownership regime.

3.2.2 *Taking personnel rights into account*

It goes without saying that the EC contract does not replace participants' national laws, rules, statutes, and so on. Of all these rules, perhaps the most relevant ones are those dealing with employees' and other personnel rights. Policies differ from country to country, so each participant has the responsibility to check its position toward its personnel. The participant and relevant personnel should sign appropriate agreements—and, if necessary, transfer ownership—in order to avoid future claims about the ownership of the results.

For the purpose of this rule, "personnel" may be:

- staff employed by the participants (employees)
- doctoral students
- personnel made available by a third party (invited professors or lecturers)
- subcontractors, and so on

Special care should be taken with those who are not regular employees. In many countries, the situation of employees regarding IP ownership is controlled under labor or IP laws. However, the situation is usually less clear when the work is carried out by scholars or when it is a commissioned work.

3.2.3 *Transfer of results*

Transfers of ownership (including transfer because of takeovers and mergers) are allowed but with some conditions (participants implement their projects thanks to E.U. funds).

The participant transferring ownership has to pass on to the assignee its obligations under the contract (including those related to compulsory licensing, use, and dissemination). Therefore, the assignee gets a "pack of rights and obligations" with regard to the EC and the participants in the project. The transferring party has to give prior notice about the transfer and the assignee to the European Commission (hereafter the Commission) and to the other participants. The Commission may particularly object when the assignee is an entity not established in a E.U. member state or associated state, if such a transfer is not in accordance with the interests of the E.U. economy or is inconsistent with ethical principles. The other participants may object if their licensing options could be affected.

3.3 *How to protect the results obtained*

Adequately protecting results with commercial or industrial application is one of the participants' obligations. After all, a new product, process, or technique can only be properly commercialized when it is adequately protected.

3.3.1 *Options for protecting results*

The participant who owns the results of a project is obliged to ensure their protection. However, the Commission may take over these duties should the owner fail. According to the FP6 rules, the owner should adequately and effectively protect

results, while having due regard for its own legitimate interests. This allows for flexibility and gives participants room for decision.

A decision-making process to consider the most appropriate way to protect the results of an FP6 project follows the same path that a university, laboratory, enterprise, or research center does to protect an invention or a piece of work. The decision to seek protection would take into account such factors as the nature of the results obtained (which would lead to the consideration of certain types of IP rights and the dismissal of others; see Figure 1), the level of novelty and inventiveness of the results, the likely market and possibilities for commercial expansion, financial resources, and so on.

The above should lead to the application of the most appropriate IP rights. It should also point to countries for which it would be advisable to seek protection for the results (remember that IP rights are territorial rights). For the best outcome, the participants should get the advice of an expert in the field.

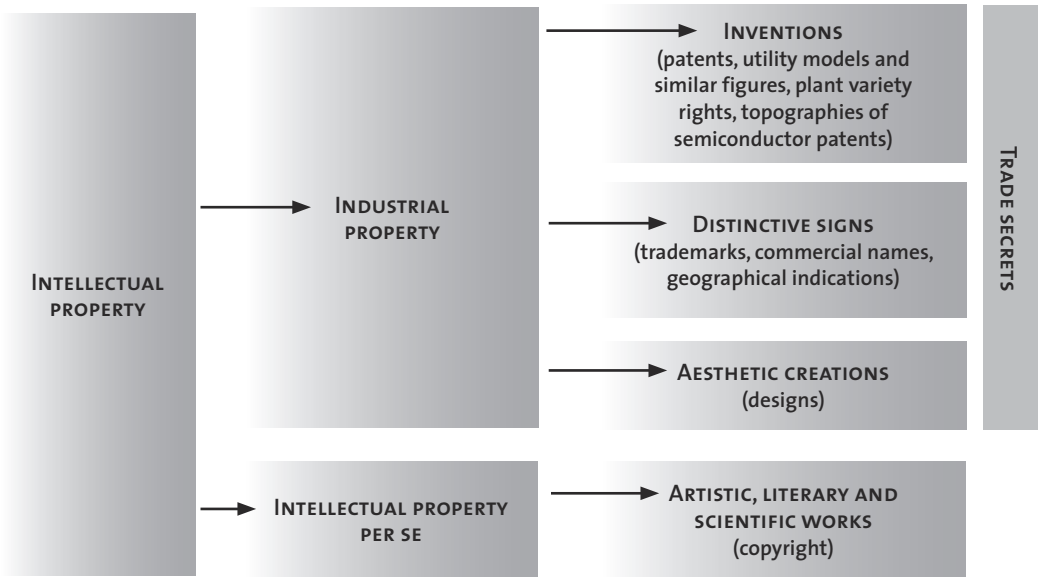
Finally, there is flexibility in the EC contract concerning the kinds of protection and exploitation that are appropriate. If the circumstances of the case warrant it, participants may, for example, decide to opt for trade secret protection rather than applying for a patent. Participants may choose other options in different situations, for example, follow a standardization process or distribute their software under open source licenses.

3.3.2 *Protection and publishing*

Protecting and publishing are two activities that should be carefully balanced under FP6. Academic participants in particular should be aware of the following:

- **Protection prevails over dissemination.** When results come up, before disclosing them to the general public or specialized public, participants need to appraise the commercial/industrial potential of the

Figure 1: Basic Types of IP



Note: Certain differences in classification exist because of differing national laws.

results. If they can be commercially/industrially applied, dissemination will need to be postponed until protection is ensured. For example, if the option of applying for a patent is being studied, a prior publication may preclude the novelty needed to obtain the patent. Therefore, publication should be postponed until the patent application is submitted to the patent office. Even though this principle may be difficult to follow for those working in academia, universities and research centers, they should not be deterred from participating in FP6. In the European Union (in contrast with the United States), there is no grace period allowing for publication without prejudicing novelty. Publishing in Europe has been considered the traditional activity of academia, but in the last two decades patenting in universities has become more commonplace. For these innovative universities, the waiting approach is already practiced, because protecting first; publishing after is the general principle they follow to turn their research results into profits.

- **Publications are conditioned**. The FP6 rules establish that publication is to be carried out by the owner of the results (or with the owner's consent). In SME-specific actions, the technological partners (RTD performers, in the FP6 terminology) can also publish the results they have generated (even if, as has already been mentioned, ownership vests in the SMEs or enterprise groupings). The Commission and other participants in the project must be notified in advance of any planned publication, and they can object if the planned publication affects the protection of their results.

3.4 *Sharing resources among participants*

3.4.1 *Granting access rights*

Whether generated by their own team or by other participants in the project, the result obtained benefits all participants; participants may need to be licensed or be granted user rights, or *access rights,* by one another. It is compulsory for participants to grant licenses to each other if either of the following conditions exist: It is necessary to carry out the project, or it is necessary for using one's own results.

In the first case, a participant needs information or IP resources from other participants in order to carry out its work in the project, and they shall be required to grant the requester access to the resource in question by means of a license or user right.

Example: The research project aims to develop a new product for the massive cleaning of contaminated water. One of the project participants is in charge of testing a pilot process in its laboratories but needs biomaterials (bacteria) from one of the research centers taking part in the project. In this situation, the latter shall grant access to the bacteria.

The access is granted at no cost if the requester needs results obtained in the project by another participant. Accessing pre-existing know-how is also free (unless partners agreed on a fee before the EC contract was signed).

In the second case, a participant needs information or IP resources from other participants so that it can use the results it has obtained in the project, and the latter shall be required to grant the requester access to the resource in question.

Example: One of the participants in a project has developed a robotic arm to help disabled people at home. However, to exploit the arm, the participant needs a chip owned by another participant. In this case, the latter shall give the other participant access to the chip.

Access is to be granted under fair and nondiscriminatory conditions if the pre-existing know-how of the other participant is requested. Access will be free of charge (unless an alternative is agreed upon before the EC contract is signed) to a participant's results.

3.4.2 *Other issues*

There are other factors which affect the sharing of resources and information:

- Compulsory licensing is activated by written request, and regarding pre-existing know-how, the required participant has to be free to grant access to it. This condition

may seem quite obvious, but the FP6 rules make a point of requiring this. It is common for research entities to enter into agreements (for example, MTAs or common licenses) with other entities (whether from research or industry) involving day-to-day research. It may happen that participants in an FP6 project have already concluded agreements on their pre-existing know-how that prevent them from granting the other project participants further access to it. In such cases, the participant concerned should inform the other participants of its limitations as soon as possible, in order to avoid false expectations or conflict.

- Participants may condition the grant of licenses on the conclusion of certain further agreements (for example, on confidentiality) that guarantee the proper use of the licensed resources.
- It is possible (and desirable) to grant more favorable or additional licenses. Licensing third parties (that is, licensing the results obtained outside the project partners' group) is also permitted and encouraged.
- As a general rule, sublicensing is not allowed unless expressly agreed upon by the participants concerned. Whatever commitments may be reached, participants' potential rights have to be preserved and rules of competition observed.

3.4.3 *Terms for request*

The Programme's rules include various other provisions related to the sharing of intellectual property among participants:

- Access rights for carrying out project work may be requested until the end of the project (even if the participant concerned leaves before the project is completed).
- Access rights for use can be requested up to two years after the end of a project or end of participation of the contractor (whichever is sooner) if the contractor leaves before the project is completed, unless the partners had previously agreed to extend the period.
- Duration of access rights has to be agreed upon by the parties involved and stated in the licensing agreement.

3.4.4 *Exclusion of pre-existing know-how*

Even though sharing and cooperating is the basis of FP projects, policy-makers are aware that participants' legitimate interests may sometimes be compromised by giving access to specific resources. FP6 offers participants the possibility of excluding certain pre-existing know-how from their obligation to grant access rights to the other participants.

This possibility only exists under two circumstances—before the EC contract is signed and before a new contractor joins the project—and the exception always has to be responsibly exercised. It requires *good faith negotiation* among all participants (some or all may oppose it if the project or their interests are significantly affected), and it can only apply to *specific or concrete pieces* of resources (massive or implicit exclusions are not allowed). Remember that the rule was designed to promote sharing, not excluding.

What if the cause of the exclusion is that an entity fears losing valuable information? In principle, this should not be a reason for excluding access to IP resources, because participants shall preserve the *confidentiality* of the sensitive information they share. It is advisable to sign confidentiality agreements from the moment valuable information is exchanged (if possible, before the project even starts). Once the project is under way, the EC contract requires participants to preserve the confidentiality of the information identified as such (diligence is required). The participant shall guarantee confidentiality for any third party to which sensitive project information is communicated.

3.4.5 *Licensing third parties*

The FP6 rules expressly admit the possibility of granting third parties licenses to project results. However, E.U.-oriented benefits also imply that the Commission can object when the planned license is not in accordance with the interests of the E.U. economy or is unethical. This measure is rarely taken (or needed) but in any case

participants have the obligation to inform the Commission in advance when a grant is planned and they think the above-mentioned risks may be present.

How can participants be sure that nothing contrary to the wellbeing of the E.U. economy or unethical is going on? Participants may have an idea about practices that are unethical (as this is a matter frequently in the news). Knowing (even roughly) when the interest of the E.U. economy would be affected would seem to be another story. Aware of this difficulty, the Commission published a note that provides examples of possible scenarios that might be risky. (A typical example of a situation that might affect the economic interests of the E.U. could be that of a planned exclusive license to a company established in a third country.)

In any case and to be on the safe side, it is advisable to inform the Commission whenever a minimum doubt arises. Informing the Commission does not necessarily mean that it will object. Experts will always evaluate the case in the light of its specific circumstances.

3.5 *After the results are in*

The E.U. funding should lead to the use and dissemination of the project's results. The Commission's supervisory role is obvious with regard to the participants' obligation to state their goals and intentions in the *plan for using and disseminating the knowledge*.

The first draft of this plan is to be included in the project proposal. This shows how important it is to have clear ideas on IP management and exploitation at the very beginning. Once the project is under way, a periodic report is required. The report must communicate the participants' intentions regarding the protection, use, and dissemination of the results generated under the project.

A final report (at the end of the project) creates post-contractual obligations for the participants and may be subject to a technological audit (up to five years after the end of the project). The final report must be approved by the Commission.

3.5.1 *Use of the results*

Participants shall use the results they own in accordance with their interests. This can be done through the exploitation of the results or by carrying out further research activities. Both types of activities can be carried out directly by the owner or by a third party that is authorized by the owner. This usually means licensing the results to other participants or third parties. Other options may exist, such as assignments or the creation of a new entity (for example, a spinout).

3.5.2 *Dissemination of the results*

The E.U. funding aims to provide for the dissemination of the results to a wider audience. This means disclosing the results obtained, an obligation when protection and use are not affected. Participants should disseminate the results within two years after the project ends. Should they fail to accomplish this, the Commission may take over these duties.

Results can reach the public through many different channels: Web sites, conferences or seminars, articles for specialized journals, and so on. When studying dissemination (whether by the participants themselves or by the Commission), it is necessary to consider the IP rights involved, promptness, confidentiality, and the participants' legitimate interests.

3.5.3 *Helpful sites*

There are many Web sites and services that help consortia to use and disseminate the results of their research by giving publicity or facilitating contacts (Web addresses for these sites can be found in the endnotes[8]). Among the most useful sites is CORDIS, which offers its Technology Marketplace. This feature records research results with commercial potential into a database arranged thematically using the fields: biology/medicine, energy, environment, IT-telecommunications, and industrial technologies. Other CORDIS services are the *RTD Results Supplement* (a supplement to the *CORDIS Focus* magazine) and *CORDIS Wire*.

Apart from these services, many technology platforms exist at the Community and national levels. The European Technology Platform for Sustainable Chemistry is an example of the former. The Gate2Growth Initiative is also a useful resource; a pan-European business platform for

business matching, knowledge sharing among technology investors or knowledge transfer offices, amongst other services. The Commission has published a catalogue to help innovators find local technology transfer institutions.[9]

3.6 *Financing post-research phases*

The projects work under a co-financing principle (something covered by the participants themselves, and main part of costs covered by E.U. funding). To be eligible, costs must fulfill the general requirements stated in the FP6 rules. Among these costs are included costs that are "*actual, economic, incurred within the duration of the project, and necessary*" for the project. If IP related costs comply with these general requirements, they can be funded. Eligible costs may be related to IP protection (patent searches, IP rights filing), the dissemination of results (seminars, publications, and so on), and activities promoting exploitation (for example, feasibility studies, take-up activities).

3.7 *Other IP related obligations*

Having a particular research initiative funded by the E.U. goes, to some extent, beyond the interests of the participating entities. Ancillary provisions try to ensure wide access to the results obtained. These obligations may last longer than the project itself and are always covered by confidentiality guarantees.

These complementary rules include communicating results data to the Commission for evaluation purposes or to standardization bodies (whenever participants have results that may constitute technical standards), giving information to the Commission about results that might be relevant with regard to public policy in member states or associates states, and providing the necessary publicity to the funded project.

4. CONCLUSION

Fostering E.U. research and development requires managing the IP resources of different projects. The entire process, from pure research to the exploitation of research results, has to be well planned.

The E.U. Framework Programmes are an ambitious tool for helping to implement this process. Mirroring modern IP laws, FP6 (and FP7) rules seek to facilitate IP management and increase legal certainty. They also try to balance public and private interests, but the success of these research actions cannot be left to the rules. The goals of the E.U. Framework Programmes can be met only if the participants involved are aware of these rules and do their best to implement them. An open sharing of information and experience will develop the essential trust, good relationships, proper planning, and solid cooperation needed to achieve the Programmes' goals. Indeed, success very much depends on the participants' commitment and effort. ■

ACKNOWLEDGMENTS

IPR-Helpdesk is a project of the European Commission and DG Enterprise and Industry. The project is financed under the Sixth E.U. Framework Programme for Research and Technological Development.

The opinions and views expressed in this chapter are those of the author.

ALICIA BLAYA, *IPR-Helpdesk Project, Universidad de Alicante, Edificio Germán Bernácer, Apartado de correos 99, E-03080 Alicante, Spain. alicia.blaya@ua.es*

1 Source for FP6 budget and relative breakdowns: Decision No 786/2004/EC of the European Parliament and of the Council of 21 April 2004. See also CORDIS, at cordis.europa.eu/fp6/budget.htm.

2 See online, Observatory of European SMEs, 2003/7.

3 Bulgaria and Romania should normally join the E.U. in January 2007.

4 For the full list of countries, go to cordis.europa.eu/inco/fp6/intro_en.html#eli.

5 cordis.europa.eu/.

6 Available on the IPR-Helpdesk Web site, www.ipr-helpdesk.org.

7 Ibid.

8 For additional information and further reading:

CORDIS innovation services: cordis.europa.eu/guidance/services1.htm and CORDIS Web site: cordis.europa.eu/ and CORDIS FP6 SME TechWeb: sme.cordis.lu/home/index.cfm.

DG Research (European Commission): ec.europa.eu/research/.

European Regional Development Fund (ERDF): ec.europa.eu/regional_policy/funds/prord/prord_en.htm.

Gate2Growth Initiative: www.gate2growth.com/.

INCO Portal (CORDIS): cordis.europa.eu/inco/home_en.html.

IPR-Helpdesk: www.ipr-helpdesk.org.

MEDA Programme: ec.europa.eu/comm/external_relations/euromed/meda.htm.

Technology Marketplace (CORDIS): cordis.europa.eu/marketplace/.

World Intellectual Property Organization (WIPO): www.wipo.int.

9 ec.europa.eu/enterprise/enterprise_policy/competitiveness/index_en.htm.