

IPR provisions in EC Innovation and Research projects

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Pluriannual Framework Programmes:

CIP (2007-2013):	EUR	3.6 M
FP7 EC (2007-2013)		50.5 M
FP7 EURATOM (2007-2011)		2.7 M

REGULATION (EC) No 1906/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 18 December 2006

laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013)

Rules of participation Reg. 1906/2006

FP7 Grant Agreement - Annex II General Conditions

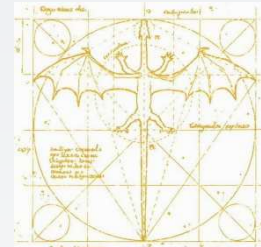
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(Model) Grant Agreement

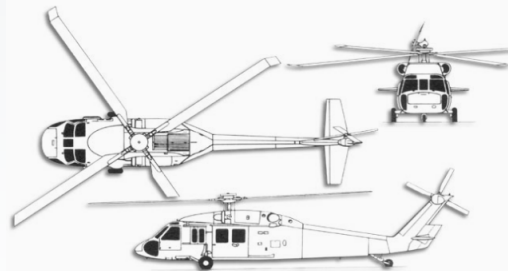
Why is IP management important in research projects?

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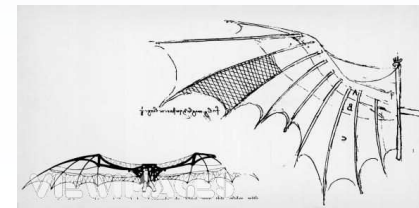
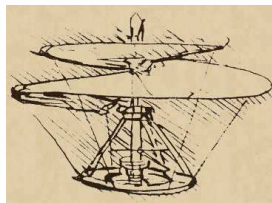
Under which conditions are they going to exchange their existing knowledge?



Who will be the owner of the new results?



Who (and how) will exploit the results?



FP7 project-related agreements

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- Core Grant Agreement
- Annex I (technical description)
- **Annex II (general conditions)**
(modified for ERC and Marie Curie)
- Annex III (specific conditions)
(conditions for certain projects (e.g. SME Actions, Infrastructures, Marie Curie))
- Special clauses



- Consortium Agreement
- Other specific agreements (joint ownership, confidentiality, MTAs...)



Grant Agreement – Annex II General conditions

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I. Ownership and transfer of results	II. Protection of results (IP rights)	III. Use and dissemination of results	IV. Licensing (access rights)	V. Other issues (e.g. confidentiality)
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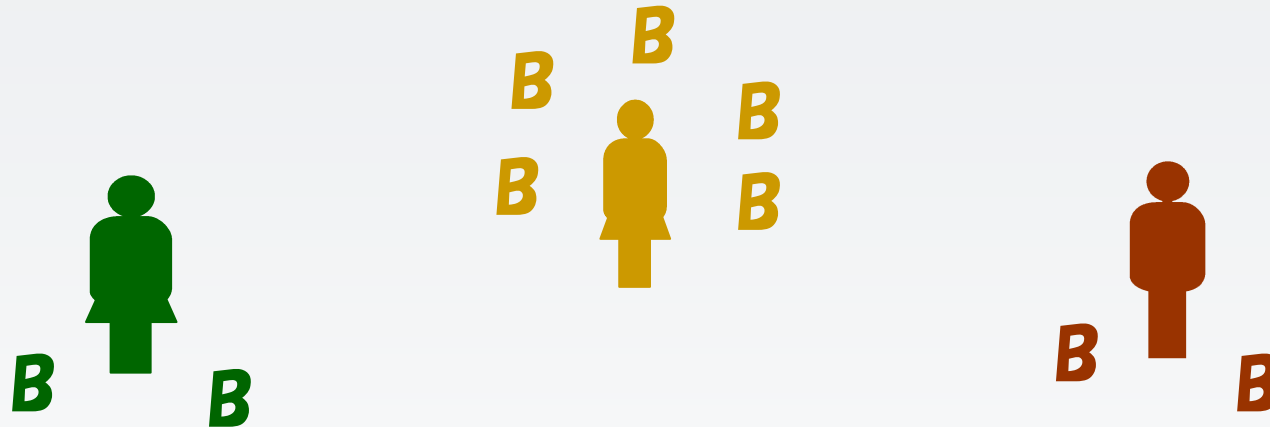
Preliminary basics: IP- related definitions in Annex II

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- **Background**: project-related information and IP rights (granted or applied) that participants hold before the signature of the grant agreement
- **Foreground**: results generated in the project and IP rights attached to these results
- **Dissemination**: making foreground available to the public
- **Use**: direct or indirect utilisation of foreground in further research or economic activities
- **Access rights**: licences and user rights to foreground or background

Preliminary basics: the background

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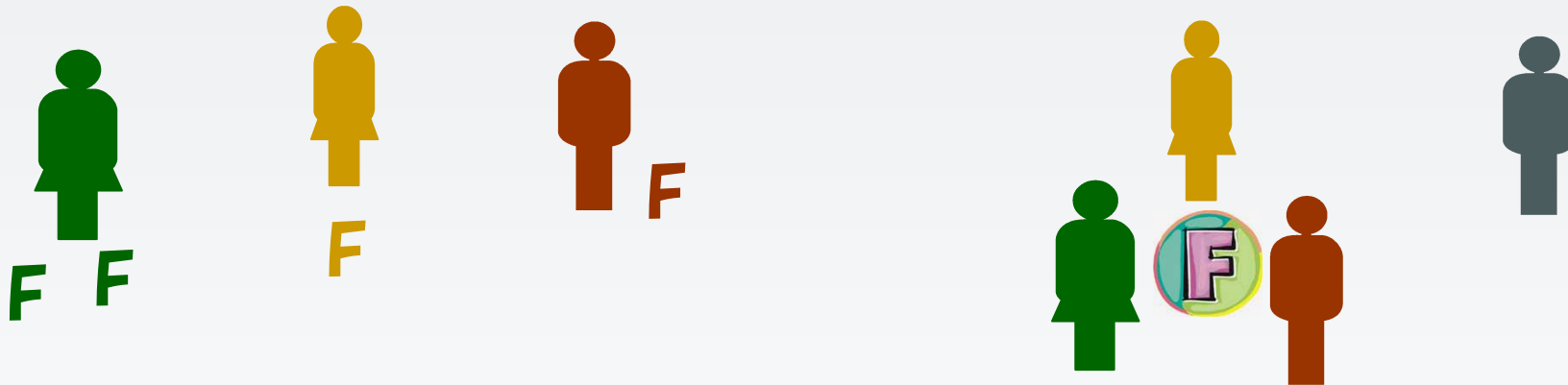


- Background refers to information/IP rights **necessary** for the project
- Background **remains the property of the participant** that brings it into the project
- Participants shall inform each other of any limitations to access background

- The consortium may **define the background available** to the project (positive list)
- The consortium may **exclude specific background** (negative list)

I.1 Ownership of foreground

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- Each participant is owner of the foreground it generates
- Participants may agree on a different ownership regime
- Employees' and other personnel rights to be taken into consideration

- When foreground generated by common efforts and not possible to ascertain individual contributions, participants shall have joint ownership
- Each joint owner may grant non-exclusive licences to third parties, subject to prior notice and fair and reasonable compensation to the other joint owners (default rule)

I.2 Transfer of foreground

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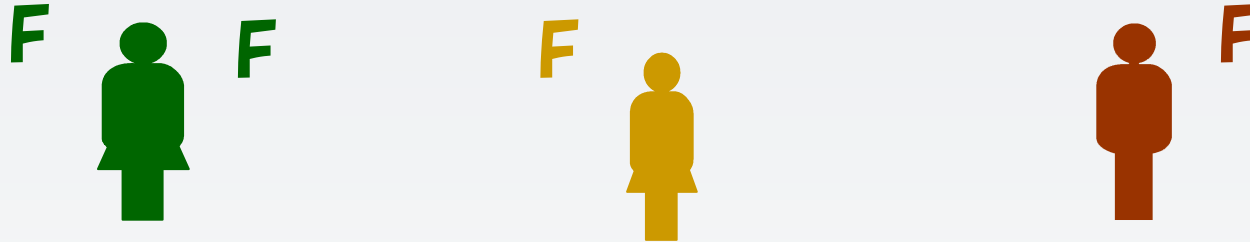
- The participant that transfers foreground shall pass on all its obligations
- The other participants shall be notified and may object if their access rights are not preserved
- No notification for transfers towards specifically identified third parties may be agreed



The European Commission may object to transfers towards third parties established in third countries to safeguard European interests

II.1 The protection of foreground

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- Each participant shall protect its own foreground if commercially or industrially applicable



When a participant is not interested in protecting its foreground it may transfer it to another entity that is willing to protect it



If nobody is interested in protecting the foreground, the European Commission shall be informed before any dissemination activity takes place

II.2 The protection of foreground

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IP	Industrial Property	Inventions	Patents	Trade Secrets
			Utility Models	
			Plant Varieties	
			Topographies of Semiconductors	
	Distinctive signs	Trade Marks	GIs	
		Trade Names		
	Aesthetic creations	Designs		
Intellectual Property	Literary, artistic and scientific creations	Copyright and neighbouring rights		

Note: Certain differences in classification may exist due to differing national laws

Intellectual Property (IP) rights

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patents and utility models



designs



trade secrets



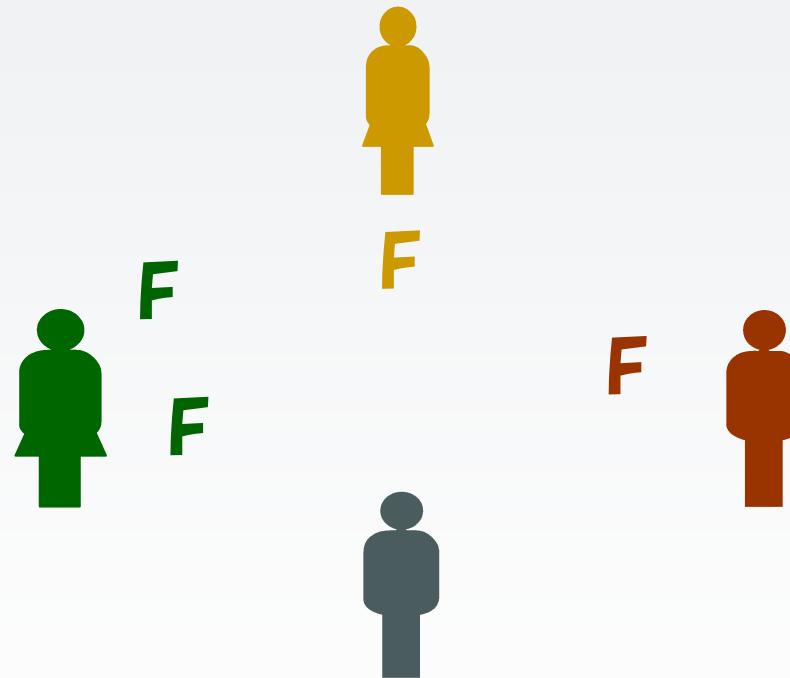
Copyright



trade marks

III.1 Use of foreground

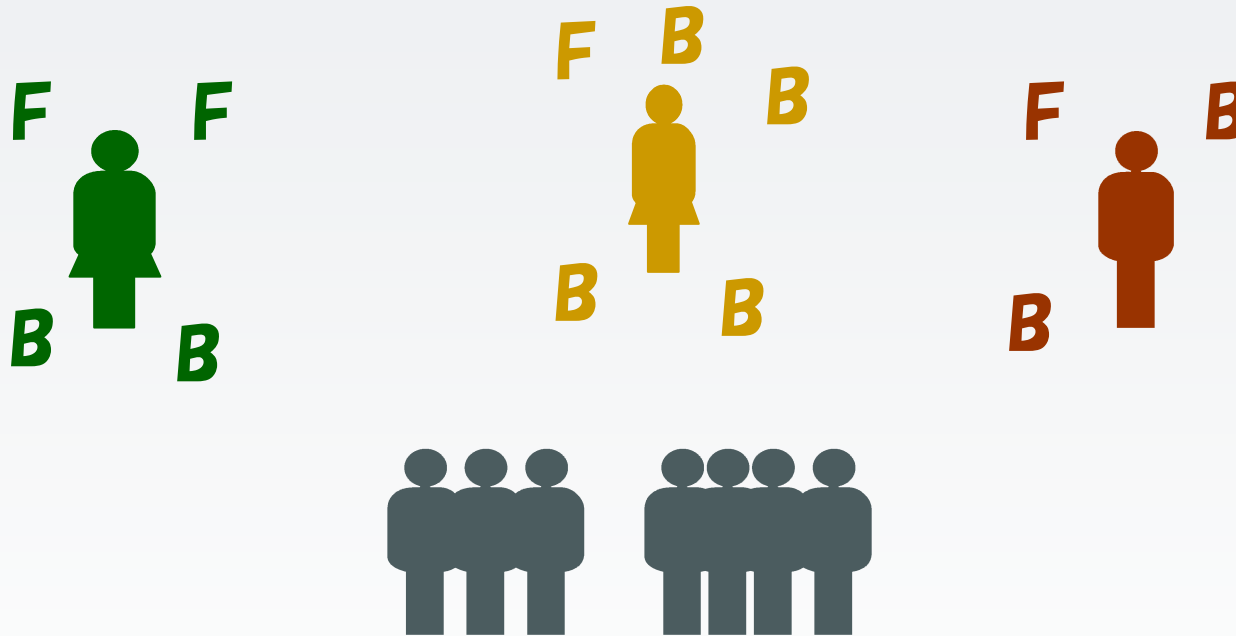
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- Participants shall use the foreground in further research or commercial activities
- Participants may use the foreground directly or indirectly
- Participants may use the foreground together or individually

III.2 Dissemination of foreground

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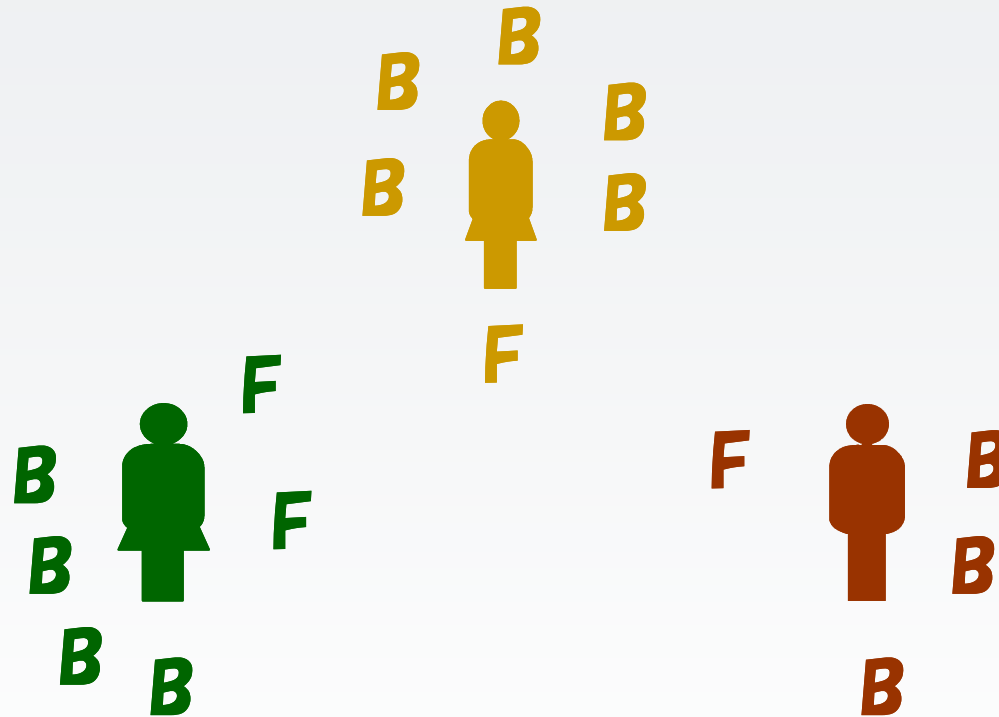
- Participants shall disseminate their foreground as swiftly as possible ...
...taking care of **protection and use** of foreground, as well as of the legitimate interests of the other participants
- Dissemination activities shall be notified in advance and may be objected



Always ensure visibility for the European Community funding

IV.1 Access rights

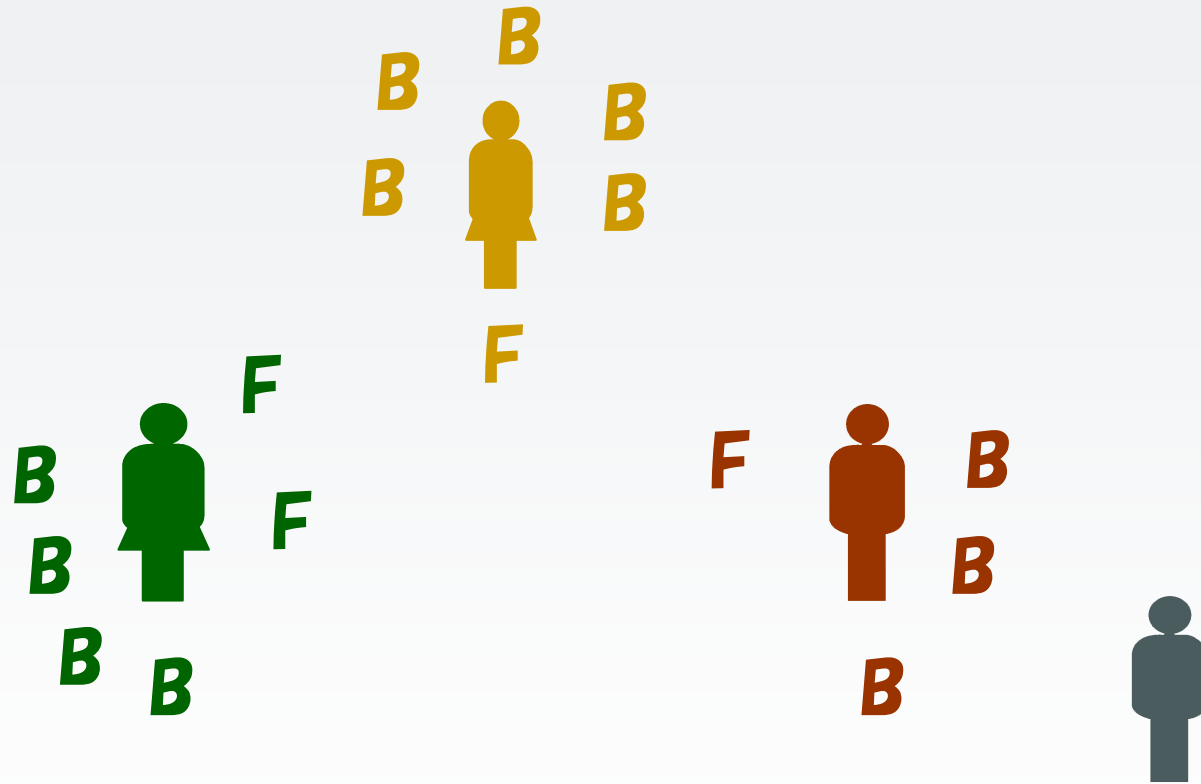
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- A participant **needs** another participant's background or foreground in order to carry out its project work
- A participant **needs** another participant's background or foreground in order to use its own foreground

IV.2 Access rights

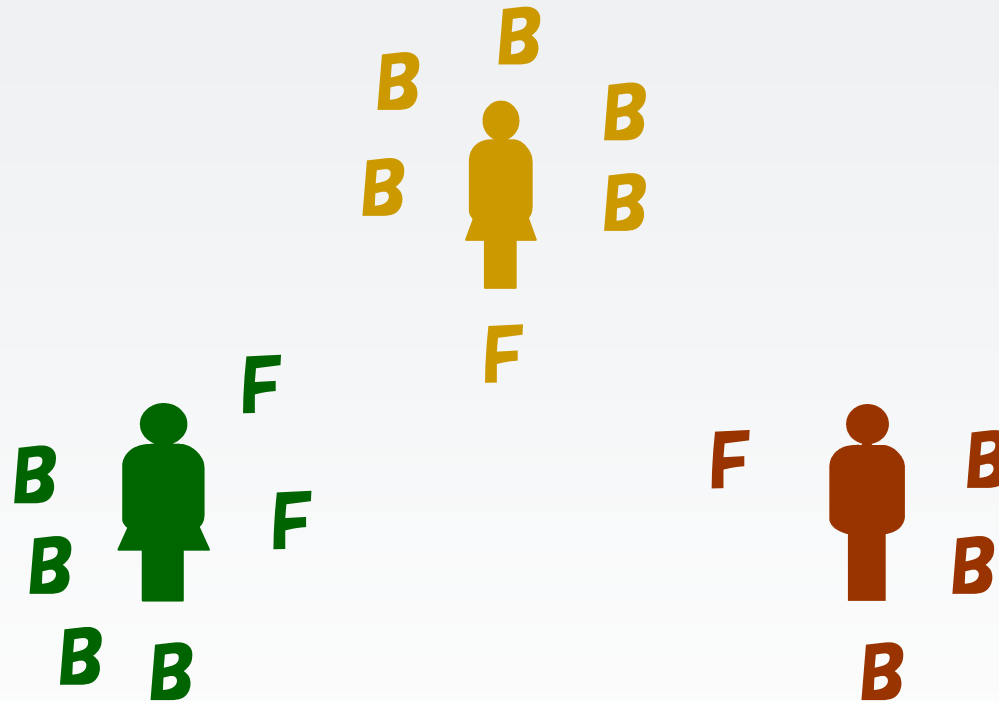
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- Access rights requests shall be made in writing
- Access rights for implementation: granted throughout the duration of the project
- Access rights for use may be requested up to **1 year** after the end of the project (unless participants agree on a *different* time-limit)
- Access rights do not confer the right to grant **sub-licences**, unless so agreed

IV.3 Access rights

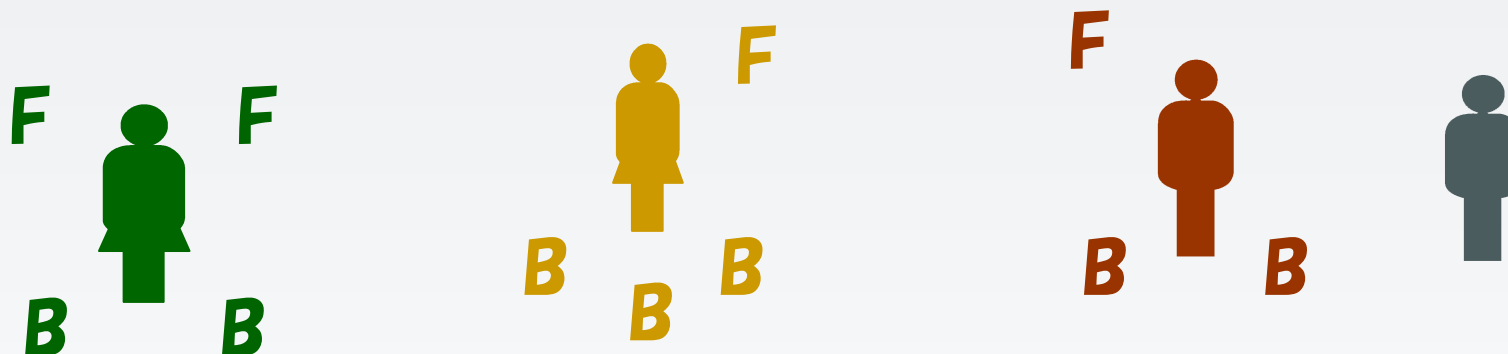
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- Access rights to background for project execution purposes are granted royalty-free, unless otherwise agreed *before* the grant agreement is signed
- Access rights to foreground for project execution purposes are royalty-free
- Access rights to foreground and background for use purposes are granted royalty-free or on fair and reasonable conditions

IV.4 Conditions for exclusive licences

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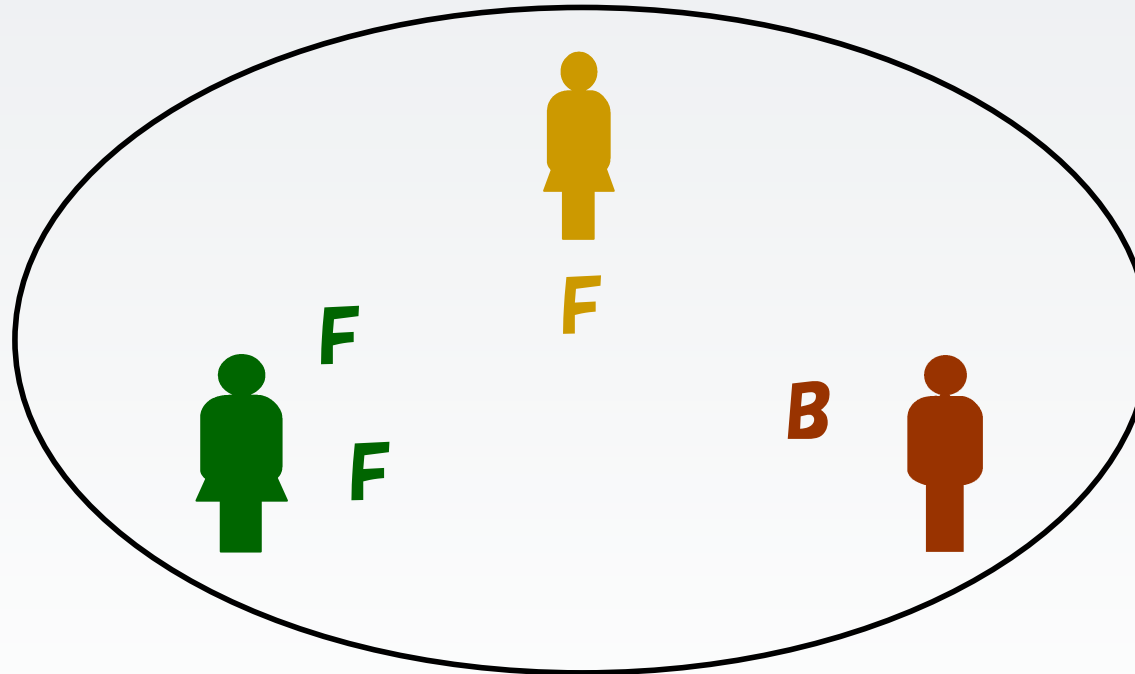
A participant can grant an exclusive licence to foreground or background but the other participants shall waive their access rights in writing



The European Commission may object to the exclusive licensing of *foreground* to third parties established in third countries to safeguard European interests

V. Confidentiality

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- A **general obligation of confidentiality** applies to all participants for information exchanged during the execution of the project and identified as “confidential”
- The confidentiality obligation persists up to 5 years after the project end
- It is crucial to preserve confidential data, **until protection and use activities** have been planned (and implemented)

FP7 project-related agreements

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Consortium Agreement

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- Consortium Agreement = contract **between participants**, Commission **NOT** a party



- **Compulsory** unless otherwise foreseen in call for proposals

- Clauses **cannot derogate** from **mandatory provisions** of GA foreseen in GA) ! legal review ...



- **Checklist** for a Consortium Agreement for FP7 projects

- Participants may use **models (non EC official doc.)** but need to adapt to their specific needs



Consortium Agreement

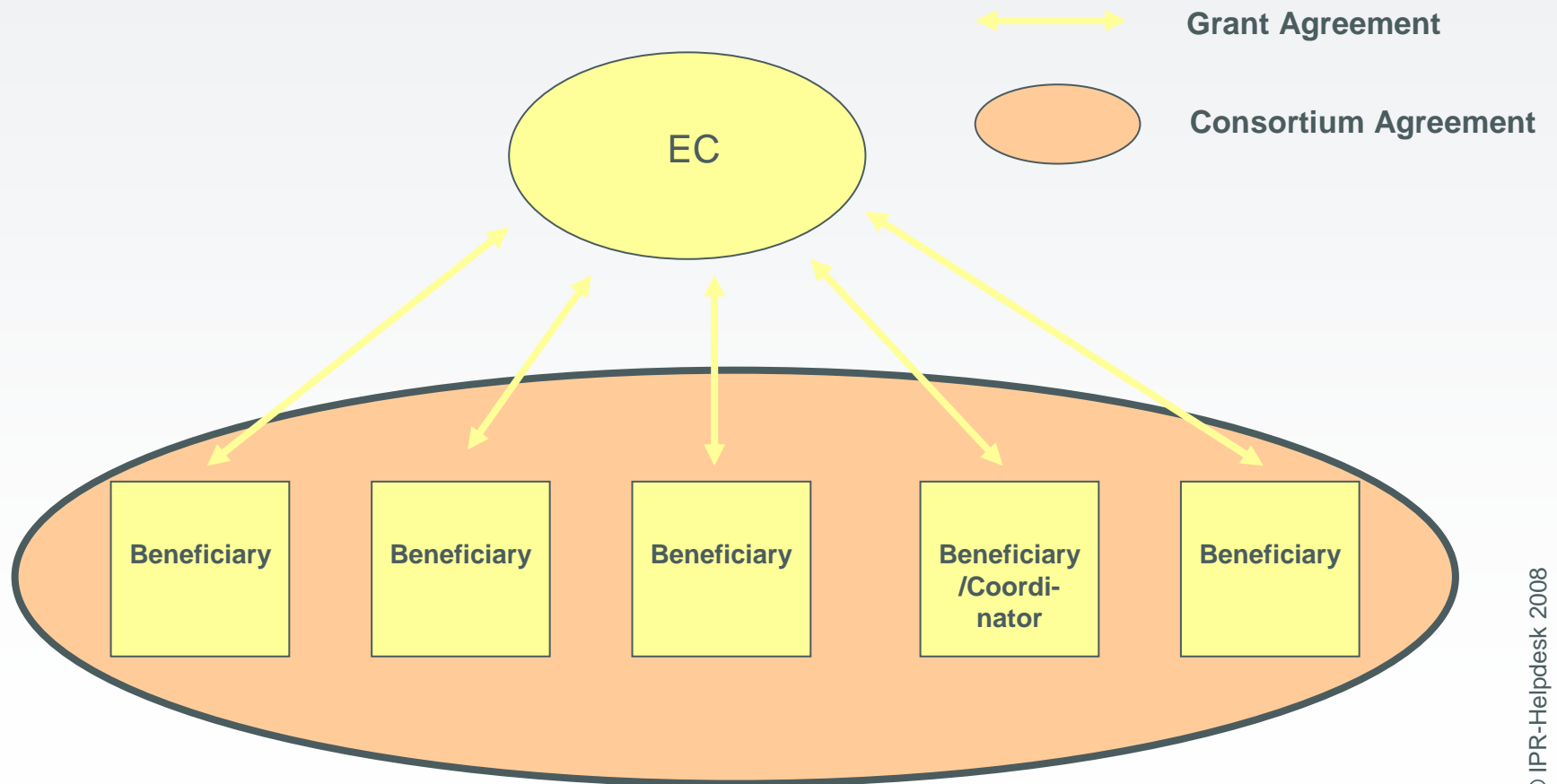
What is a **Consortium Agreement (CA)**?

An Agreement between the Partners in an EU-project.

- Normally proposed by the Coordinator
- All partners have to sign
- Commission is **NOT** a Party
 - ✓ Commission checklist is only advisory
 - ✓ Grant Agreement will always prevail
- To regulate Partners rights and responsibilities towards one another
- To provide a structure for management, decision making, conflict avoidance, conflict resolution and exit

Agreements

Understand the legal environment of your project



Consortium Agreement

Key issues for a Consortium Agreement:

Governance

- Project management
- Project strategy
- Financial management
- Decision-making processes
- Rights and obligations

Research

- Publication
- Confidentiality

IPR – Questions

- Complementary definitions
- Ownership
- Management
- Define Background brought into the project
- Define Background excluded from the project

Access rights

- For the project
- For Use
- To Foreground
- To Background

Consortium Agreement

Why have a Consortium Agreement?

- Because the Grant Agreement says you must
 - If not compulsory as foreseen in the call for proposals
- To fill in gaps and decide options in the Grant Agreement
- To avoid costly disputes and litigation
- To regulate partners rights and responsibilities towards one another
- To create confidence and certainty between the partners

Possible to give more favourable conditions to the Parties than stated in the Grant Agreement

Consortium Agreements

Examples of Consortium Agreements templates

- DESCA
- EICTA IPCA
- EARTO UNITE

Balanced according to different actors interests behind the templates. Must be evaluated before accepted and/or adjusted.

For more information

www.unite.be

www.earto.org/DESCA/descahome