

Negotiating a collaborative research contract: DO's and DON'Ts

The Knowledge Management Working Group is acknowledge for putting together this list of do's and don'ts.

	DO's		DON'Ts
Starters			
1.	<ul style="list-style-type: none"> 👉 Check the "Lambert Review" for a set of standard agreements/contracts. [http://www.innovation.gov.uk/lambertagreements/]. 👉 Read the EC Regulation No. 2321/2002. [http://europa.eu.int/comm/research/fp6/documents_en.html, click on rules for participation]. 👉 Read the EC-contract for the General Conditions. 👉 Do specify a time frame for draft consortium agreements (or contracts) to be discussed by all possible partners, to allow a speedy process. 	1.	<ul style="list-style-type: none"> 👎 Do not underestimate the effect of the General Conditions in the EC-contract of Cooperative Research and Network of Excellence on the possibilities of the consortium agreements. 👎 Do not allow possible partners to exceed the times given in the time frame
Personnel			
2.	<ul style="list-style-type: none"> 👉 Check if the personnel can, by contract, claim rights to the know-how generated in this project. 👉 Define in the consortium agreement, the conditions on which personnel can claim rights. 👉 Define all rights in agreement with the contracts of personnel and EC Regulations. 	2.	<ul style="list-style-type: none"> 👎 Do not set up agreements or contracts with partners or with personnel if these are in conflict with existing agreements or with possible future project agreements.
Ownership of the generated knowledge			
3.	<ul style="list-style-type: none"> 👉 Agree in the Consortium agreement the future ownership of the generated knowledge in as much detail as possible with the other contractors of the project. 👉 Ask permission from the other contractors and the Commission before transferring ownership of generated knowledge. 	3.	<ul style="list-style-type: none"> 👎 Do not forget to include the management of generated knowledge in the Consortium agreement. 👎 Do not forget that the Consortium agreement should be in accordance with the provisions of the EC Regulation No. 2321/2002.

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Protection of the generated knowledge			
4.	<ul style="list-style-type: none"> 👉 Specify the protection of the generated knowledge in the plan for its use and dissemination. 👉 Agree in the consortium agreement on a specific time span (e.g. 30 days) for objections to <ul style="list-style-type: none"> ☞ granting access to pre-existing know how ☞ dissemination of generated knowledge ☞ publication of generated knowledge. 👉 Protect the generated knowledge in a sensible way, fair to all involved. 👉 Inform the Commission if you are not interested in protecting the generated knowledge in a particular country. 👉 Specify in the Consortium agreement, what should happen to the rights of acquired knowledge, if a company changes its name or splits up. 	4.	<ul style="list-style-type: none"> 👎 Do not forget to include the management of generated knowledge in the Consortium agreement. 👎 Do not protect the newly generated knowledge without considering the legitimate interests of the concerned participants. 👎 Do not refuse to protect the generated knowledge in a particular country specifically decided by the Commission, unless this protection will damage your legitimate interests significantly.
Dissemination of generated knowledge			
5.	<ul style="list-style-type: none"> 👉 Agree with the other participants on the terms of use and dissemination of the generated knowledge. 👉 Include a specific time span for objections. 👉 Specify the management of knowledge dissemination in the Consortium agreement. 👉 Disseminate the acquired knowledge, unless it clearly infringes with its protection rights. 👉 Set out the terms of use of acquired knowledge in a detailed manner. 	5.	<ul style="list-style-type: none"> 👎 Do not object to the request of a contractor to transfer of ownership, unless it unfavourably affects your company access rights. 👎 Do not request the Commission for transfer of the rights, if the granting of such transfer is inconsistent with ethical or with commons principles that are accepted policies in EU. 👎 Do not disseminate information of knowledge if one or more contractors and/or the Commission has objected against it within the time span specified in the consortium agreement. <p>Do not use the acquired knowledge, relative to the project, if this has a known negative impact on the interests of the other contractors, now or in future.</p>
Publication			
6.	<ul style="list-style-type: none"> 👉 Include a well defined time period to object to each proposed publication in the Consortium agreement. 	6.	<ul style="list-style-type: none"> 👎 Do not object with the request of publication of results and data unless this will explicitly affect your rights.

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Access of third parties			
7.	<ul style="list-style-type: none"> ☞ Include the possibility to grant more favourable access rights to specific (specified) third parties, such as interested enterprises, in the Consortium agreement. ☞ Prepare a detailed plan to facilitate the dissemination of knowledge to contractors and third parties. 	7.	<ul style="list-style-type: none"> ☞ Do not provide favourable access rights to third parties (industries, research groups, or societies), if this contradicts the applicable competition rules. ☞ Do not provide favourable access rights if this contradicts the developments of the knowledge-based European economy. ☞ Do not provide favourable access rights if this contradicts existing ethical principles. ☞ Do not facilitate the dissemination of knowledge when it contradicts the contract or the Consortium agreement.
Pre-existing know how			
8.	<ul style="list-style-type: none"> ☞ Agree, in a written document, as a part of the consortium agreement, the exclusion of the use of the possible pre-existing know-how before the beginning of the project. ☞ Clarify in the agreement which describes the use of the pre-existing knowledge, which pre-existing know-how should be considered to facilitate the project. ☞ Specify in the agreement which are the pre-existing know-how giving on a royalty-free basis and which are not. ☞ Use fair and not discriminatory conditions to define the granting of access rights to pre-existing know-how. ☞ Understand that the list of pre-existing know-how can be increased by know-how generated by a contractor out side this consortium agreement. 	8.	<ul style="list-style-type: none"> ☞ Do not start the research activities before signing the agreement which describes the use of the pre-existing knowledge. ☞ Do not grant the access to pre-existing know-how if you are not free to grant them. ☞ Do not deny the access to your pre-existing know-how if this will impair the legitimate interests of a contractor or if this pre-existing know-how is needed to carry out the work defined in the project.