



Legal & financial aspects of FP7:

Myths and realities

Ponta Delgada, 22/09/2010

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European Commission

DG Research – « Health »



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Myths and realities...

- 1 – **the consortium:** autonomy
- 2 – **the coordinator:** a humble servant
- 3 – **consultants:** each his own
- 4 – **costs:** I did it My Way!!!



FP7 Rules for Participation and Grant agreement

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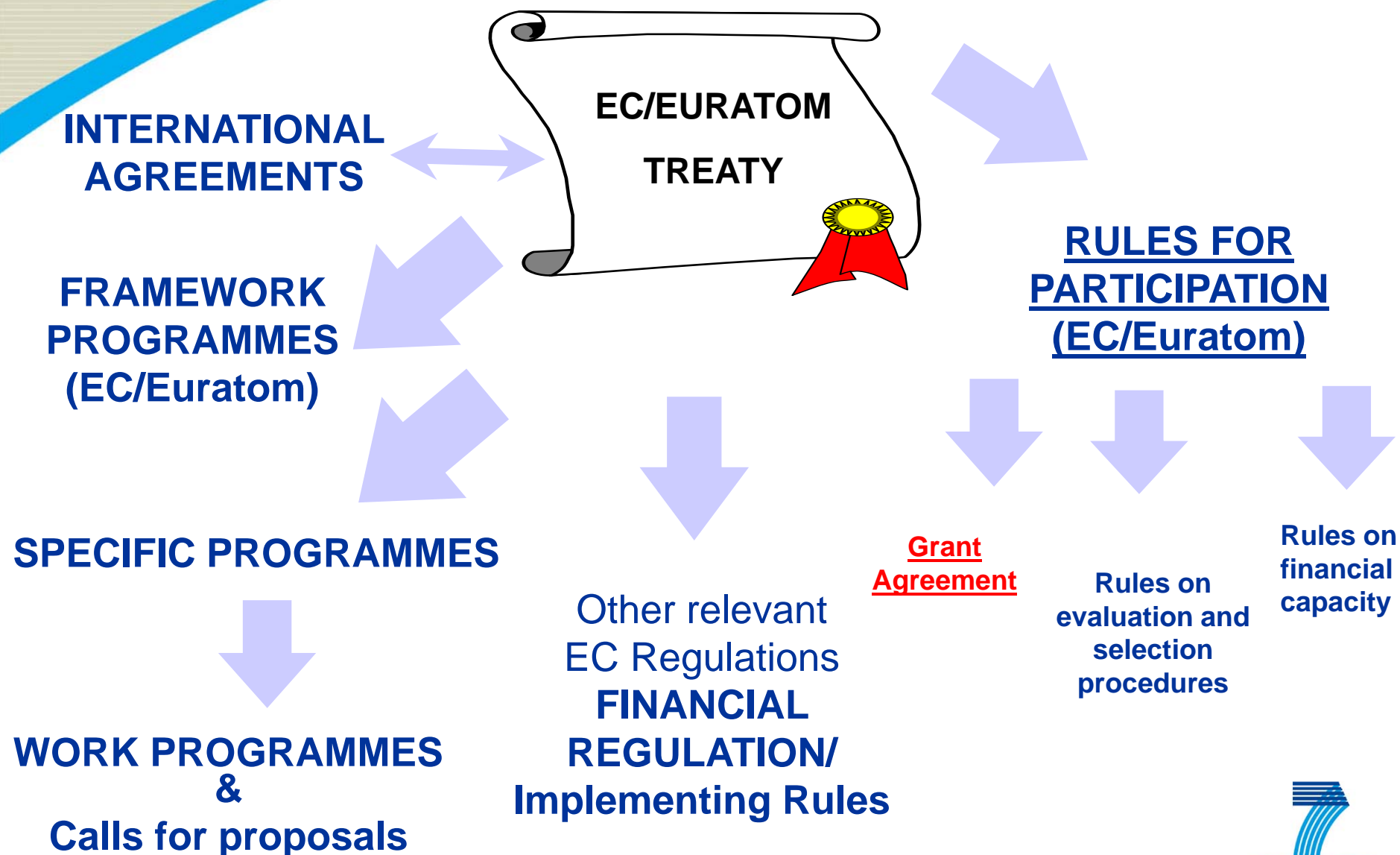
DG Resarch – « Health »



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Legal Framework



Legal & Financial issues September 2009

Not legally binding





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Who can participate?

- Any undertaking, university or research centre or other legal entity, whether established in a:
 - Member State (MS), or
 - Associated country (Ac)* , or
 - candidate country, or
- International organisations and participants from third countries can participate only if in addition to the minima

** Iceland, Liechtenstein, Norway, Croatia, Serbia, Turkey, FYROM, Switzerland, Israel, Albania*



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Conditions for participation

- **Minimum number**, as a general rule at least 3 independent participants from 3 different Member States (MS) or Associated countries (Ac)
 - Joint Research Centre (JRC) - is deemed to be established in another MS or Ac
- **Additional conditions** can be established by the work programme or specific programme (number or type of participant, place of establishment)
- **Specific conditions** apply for:
 - **Frontier research actions** (in SP “Ideas”), 1 legal entity established in a MS or Ac
 - **For specific cooperation actions dedicated to International Cooperation Partner Countries (ICPC)** – minimum is 4 participants, 2 of which from MS or Ac and another 2 from ICPC countries unless otherwise foreseen in work programme



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Eligibility for funding

- Legal entities from **MS and Ac** or **created under Community law** (and JRC)
- **International European interest organisations**
- Legal entities established in **international cooperation partner countries** (ICPC), and
- **International organisations** and legal entities from **third countries other than Ac or ICPC** may receive funding only if:
 - provided for in SP or WP; or
 - the EC financial contribution is essential for carrying out the action; or
 - provision for funding is provided for in a bilateral agreement between Community and the third country



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General principles

Forms of grants

- **Reimbursement of eligible costs is the preferred method**, particularly at the beginning of FP7
- Flat rates, including scales of unit costs
- Flat rates for subsistence & accommodation costs in travel within the project (for 2010 WP)
- Lump sum amounts, in particular as option for participants from ICPC
- Combination possible (will be used for ERANET-PLUS)

Principles of co-financing and no profit



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Terminology

Sources: FR/IR & FP7/RfP

- “Contract” becomes “Grant Agreement”
- “Contractor” becomes “Beneficiary”
- “Audit certificate” becomes “Certificate on Financial Statement”



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Grant agreements & current status

- General model grant agreement
- Specific model grant agreement for ERC actions
- Specific model grant agreement for Marie-Curie actions

Adopted in April 2007



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Similarities with FP6 contract

- Structure:
 - Core part: GA parameters,
 - Annex I: DoW,
 - Annex II: General Conditions,
 - Annex III: Specific provisions for funding schemes
 - Annex IV, V & VI: Forms A,B & C
 - Annex VII: Form D terms of reference for the certificate of costs and Form E certificate on the methodology (**NEW**)
- Consortium Agreement mandatory (except if excluded by Call)



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FP6 contract-FP7 GA differences & improvements

- **Financial provisions**

1. Upper funding limits
2. Eligible costs
3. Direct costs
4. Indirect costs
5. Payment modalities
6. Certificates
7. Third parties
8. Receipts

- **Other provisions**

- Reporting
- Sanctions

- **Guarantee Fund**



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1.Upper funding limits (1)

Reimbursement according to the type of organisation, of action and/or activity

- **Research and technological development *activities*:** up to **50%** of eligible costs.
However, it can be up to **75%** for:
 - *Non profit* public bodies, secondary and higher education establishments and research organisations, SMEs, and
 - Security related research (in certain cases)
- **Demonstration *activities*:** up to **50%**
- **Other *activities*** including management: up to **100%**
- **Frontier research actions:** up to **100 %**
- **Coordination and support actions:** up to 100%
- **Training and career development of researchers actions:** up to 100%



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1.Upper funding limits (2)

Maximum reimbursement rates	Research and technological development activities (*)	Demonstration activities	Management of the consortium activities	Other activities
Network of excellence	50% 75% (**)		100%	100%
Collaborative project (****)	50% 75% (**)	50%	100%	100%
Coordination and support action			100% (***)	100% (***)

(*) Research and technological development includes scientific coordination.

(**) For *beneficiaries* that are non profit public bodies, secondary and higher education establishments, research organisations and SMEs

(***)The reimbursement of indirect eligible costs, in the case of coordination and support actions, may reach a maximum 7% of the direct eligible costs, excluding the direct eligible costs for subcontracting and the costs of reimbursement of resources made available by third parties which are not used on the premises of the beneficiary.

(****) Including research for the benefit of specific groups (in particular SMEs).



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2. Eligible Costs (1)

– Eligible

- actual*
- during duration of project
- in accordance with its usual accounting and management principles
- recorded in the accounts of beneficiary
- used for the sole purpose of achieving the objectives of the project

– **Non-eligible** (identifiable indirect taxes including VAT...)



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2. Eligible Costs (2)

*Average personnel costs accepted if :

- Consistent with the management principles and accounting practices
AND
- they do not significantly differ from actual personnel costs = if identified according to a methodology approved by the Commission (**NEW**)



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3. Direct Costs

- No cost models (NEW)
- All beneficiaries report **all** their real direct costs
- Those in AC in FP6 can claim their permanent personnel costs.



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4. Indirect Costs (1)

- For all:
 - either actual overhead or **simplified method***
 - flat rate of **20%** of direct costs minus subcontracting and 3rd parties not used on the premises of the beneficiary.
- For Non-profit Public Bodies, Secondary and Higher Education establishments, Research Organisations and SMEs **unable to identify real indirect costs**, may apply for a flat rate of **60%*** for **funding schemes with RTD**.
- For CSA limit of **7%** of direct costs

***transitional: now 60% maintained for the rest of the FP**



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How to calculate overheads costs when participation in a Coordination and Support Action?

This 7% is not a flat rate; it is a maximum reimbursement rate.

- Beneficiaries which identify **actual indirect costs** will still have to declare their indirect costs, and their auditor will have to certify them in the Certificate of Financial Statements in the cases foreseen in the GA. However, they will be reimbursed a maximum of 7%.
- Those using the **flat rates (20%)** will also be reimbursed a maximum of 7%, but indirect costs will not need certification due to the use of the flat rate.



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4. Indirect Costs (2)

*simplified method

- A participant may use a **simplified method** to calculate its indirect costs at the level of the legal entity
 - if this is in accordance with its usual management and accounting principles
 - If no analytical accounting system
 - Based on actual costs of the last closed accounting year

Why this new approach?

to introduce a way to facilitate the transition from the Additional Cost model (abolished) towards the declaration of actual indirect costs



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		Real Indirect Costs		Flat Rate	
		Normal	Simplified	20%	60% *
Do I have an analytical accounting system allowing to determine with certitude the indirect cost related to research activities ?	YES	✓		✓	
IF THE ANSWER IS NO , THEN:					
Do I have an accounting system allowing to identify all my indirect costs and a reliable cost driver to allocate them?	YES		✓	✓	✓
	NO			✓	✓

* Only applicable to Non-profit public bodies, Secondary and higher education establishments, Research organisations and SMEs



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Example

Collaborative project submitted by a university,
using the 60% flat rate for indirect costs

Project Direct Costs

100,000 RTD Costs
50,000 Demonstration
10,000 Management

Indirect Costs (60%)

60,000
30,000
6,000



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60% flat rate – example

Total Project Costs (Direct + Indirect costs)

RTD 160,000

Demonstration 80,000

Management 16,000

=>

Reimbursement i.e. EC contribution

RTD $160,000 * 75\% = 120,000$

Demonstration $80,000 * 50\% = 40,000$

Management $16,000 * 100\% = 16,000$

Total EC Contribution = 176,000



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5. Payment modalities

- One **pre-financing** (upon entry into force) for the whole duration
- **Interim payments** based on financial statements (EC contribution = amounts justified & accepted * funding rate)
- Retention (10%)
- **Final payment**



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5. Payment modalities (2)

EXAMPLE: Project duration 3 years, EC funding 3 Mio€

- **Pre-financing** (average EU funding 1M/year, usually 160%) = 1.6 Mio€
- **1st Interim payment** 1Mio€ accepted, payment 1Mio€
- **2nd Interim payment** 1Mio€ accepted, payment 0,1Mio€ (retention 10%!)
- **Final payment** 0,3Mio€ (retention 10%)



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6. Certification (1)

2 types of certificates:

- certificate on financial statements (CFS) (Form D)- expenditure verification
- certificate on the methodology (Form E) - system verification
 - Personnel & Overheads

N.B.: The submission of a certificate does not waive the right of the Commission to carry out its own audits (Article II.22 of the FP7 model grant agreement).

Report of factual findings



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6. Certification (2)

Certificate on financial statements (CFS)

Mandatory for a **beneficiary** when its requested funding for the **project** equal or more than **375,000€**

–exception for project of 2 years or less, no intermediate CFS submitted only at the end



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6. Certificate on the methodology (CoM) (3): **scope**

- Aims at certifying the methodology of calculating (average) **personnel costs** and **overheads**
- On a voluntary basis
- Particularly aimed at legal entities with multiple participation, criteria (at least 8 participations in FP6 > 375K €)
- EC makes final decision on acceptability
- Once accepted, it is valid for all subsequent financial statements submitted by the beneficiary (valid throughout FP7)



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6. CoM (4): Consequences

- Waives the obligation of certificates for interim payments (only if certificate on methodology on both personnel and indirect costs)
- Simplified certificate for final payments



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6.CoM (5): Advantages

- Use of **average costs** for direct personnel costs allowed
- No recalculation of individual actual costs for personnel in the certificate on the financial statements for the final payment or during **ex-post audit**
- **Waiving of interim CFS** (only if certificate on methodology on both personnel and indirect costs)
- Early assessment of **compliance to contractual provisions** to calculate personnel and indirect costs. Early detection and corrections of possible errors
- **Reduced costs** for the whole certification system
- EC & Beneficiaries gain significantly in terms of **assurance on legality and regularity**
- **Simplification** of administrative burden both for beneficiaries and EC operational services (less number of certificates to provide/process)



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6. Average Personnel Costs (6) (no waiver)

- Mandatory for everyone who wishes to use average personnel costs in their claims (even if requested amount < € 375.000)
- EC makes final decision on acceptability of the part related to personnel of the CoM (Form E)
 - certificate on the methodology (Form E) - system verification for
 - Personnel & Overheads ('Waiver')
 - for Average Personnel Costs ('No Waiver')
- Not necessary if a Certification of Methodology for Personnel & Overheads on the same system exists
- Does not allow intermediate CFS to be waived
- Enables EC to assess '**significant deviation**' of the system as required by the Rules for Participation



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6. Certification (7)

- Auditors will provide information according to a specific format specified via agreed terms of reference (ToR)
- ToR are annexed to the grant agreement (Annex VII- Forms D & e)
- ToR are derived from common practice in audits and corresponds to international audit standards



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6. Certification (8)

Who can provide these certificates :

- Qualified auditors (according to Directive 2006/43/CE repealing 8th Council Directive)
- Independent

Public bodies, secondary and higher education establishments and research organisations may opt for a competent public officer



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6. Certification (9)

Summary:

- EC contribution $< 375.000\text{€}$ No certificate (not even at the end)
- EC contribution $\geq 375.000\text{€}$ Certificate has to be submitted:
 - CFS every time $\geq 375.000\text{€}$
 - If certificate on methodology: no interim CFS but at the end



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6. Certification

Example :

–Year 1 EC contribution= 185.000€

No CFS because $< 375.000€$

–Year 2 EC contribution=

200.000€

CFS has to be submitted (since
 $185.000€ + 200.000€ > 375.000€$)

–Year 3 EC contribution= 250.000

No CFS because $< 375.000€$



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6. Certification

Example if certificate on methodology :

–Year 1 EC contribution= 185.000€

No CFS because $< 375.000€$

–Year 2 EC contribution=

200.000€ ($185.000€ + 200.000€ > 375.000€$)

no intermediate CFS since certificate on methodology

–Year 3 EC contribution= 250.000€

CFS for the whole duration



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7. Third parties

Third parties carrying part of the work

- **Subcontracts:** tasks have to be indicated in Annex I
 - awarded according to best value for money
 - External support services may be used for assistance in minor tasks (not to be indicated in Annex I)
- **Specific cases:** EEIG, JRU, affiliates and groupings carrying out part of the work (**special clause**) tasks to be indicated in Annex I

Third parties making available resources

“Third parties”: to be indicated in Annex I,

- Costs may be claimed by the beneficiary
- Resources “free of charge” may be considered as receipts



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8. Receipts

2 kinds of receipts must be taken into consideration to avoid any profit:

- Transfers from third parties to the beneficiary (if specifically attributed to the project and not reimbursed):
 - Financial transfers
 - Contributions in kind
- Income generated by the project



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8. Receipts

At final payment the EC contribution will take into account any receipts of the project

For each beneficiary:

the eligible costs \geq EC contribution + the receipts for the project



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Reporting (1)

- **Periodic reports** to be submitted by coordinator **60 days** after end of period:
 - overview of progress of the work, including a publishable summary report,
 - use of the resources and
 - Financial Statement (Form C)
- **Final reports** to be submitted by coordinator **60 days** after end of project:
 - publishable summary report, conclusions and socioeconomic impact,
 - covering wider societal implications and a plan on use and dissemination of foreground.



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Reporting (2)

- Commission has **105 days** to evaluate and execute the corresponding payment:
 - No tacit approval of reports
 - Automatic payment of interests (**NEW**)
- After reception Commission may:
 - Approve
 - Suspend the time-limit requesting revision/completion
 - Reject them giving justification, possible termination
 - Suspend the payment



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Sanctions

- Recovery procedures
- Liquidated damages (if overstatement)
- Financial penalties (if false declarations)

Between 2% and 10% of the EC contribution



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Guarantee Fund (1)

- No financial collective responsibility
- Instead: establishment of a **participant's Guarantee Fund** to cover risks
- However, there is “technical responsibility” to carry out the project jointly and severally *vis-à-vis* the Commission.
- Amount of 5% of EC contribution



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Guarantee Fund (2)

- The Fund **belongs to all beneficiaries** of grant agreements under the FP7
- All beneficiaries contribute to the Fund to **insure against financial losses** of the project
- The contribution equals **5%** of the EC financial contribution foreseen for each participant
- **Financial interest** generated by the Fund will serve to cover financial risk
- In principle the amount contributed to the Fund will be **reimbursed at the end of the action**



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5. Payment modalities (2)

EXAMPLE: Project duration 3 years, EC funding 3 Mio€

- **Pre-financing** = 1.6 Mio€ of which 0,15Mio€ to the Fund
- **1st Interim payment** 1Mio€ accepted, payment 1Mio€
- **2nd Interim payment** 1Mio€ accepted, payment 0,1Mio€ (retention 10%!)
- **Final payment** 0,3Mio€ (retention 10%)+0,15 Mio€ of the Fund



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Guarantee Fund (3)

Ongoing grant agreement:

- a beneficiary does **not reimburse** to the coordinator any amount requested by the Commission
- the remaining beneficiaries agree to **continue** with the implementation of the GA
- the Commission orders the Fund to **transfer** an equivalent amount directly **from the Fund** to the coordinator
- Amounts transferred from the Fund shall substitute the Community financial contribution not reimbursed by the beneficiary



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Guarantee Fund (4)

Recoveries after termination or completion of the GA:

- The Commission **requests** the beneficiary concerned to reimburse the amount due (recovery order)
- If payment not made by the due date, sums may be recovered by **offsetting** them against any sums the Community owes to the beneficiary concerned
- Where offsetting is not possible, the Commission **recovers from the Fund** the amounts due



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Guarantee Fund (5)

Recoveries to the benefit of the Fund:

- Where amounts have been
 - transferred from the Fund to an ongoing project or
 - recovered from the Fund by the Communitythe beneficiary owing them shall **reimburse the Fund**
- The Commission shall issue a **recovery order** against this beneficiary **to the benefit of the Fund**



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Guarantee Fund (6)

Consequences:

- Verification of financial viability only for
 - Coordinators
 - beneficiaries requesting more than 500.000€
- No bank/financial guarantee may be requested



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FP7 Legal basis (Council, Parliament)

- FP7 EC (1982/2006/EC) and
FP7 Euratom (2006/870/Euratom)
18.12.2006
- Rules for participation EC
(1906/2006/EC) and Euratom
(1908/2006/Euratom) – 18/19.12.2006
- 5 + 2 Specific Programmes –
19.12.2006



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FP7 legal documents for implementation adopted by Commission

- Rules for submission and evaluation of proposals (C/2007/1390) – 30.3.07; ERC version (C/2007/2286) – 6.6.07
- Model grant agreements - April 07
- Rules on verification of existence, legal status, financial and operational capacity (C/2007/2466) – 13.6.07
- Decision on ICPC lump sums (C/2007/2287) 4.6.07
- Decisions on establishment of the guarantee funds (C/2007/3571-2) – 30.7.07
- Decision on implementation modalities of the guarantee fund -C(2009)6296 12.8.09



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Questions

- **FP7 Helpdesk →**

<http://ec.europa.eu/research/enquiries>

- Internal questions: HoU UAF to dedicated mailbox:

RTD LEGAL QUESTIONS



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Thank you for your attention