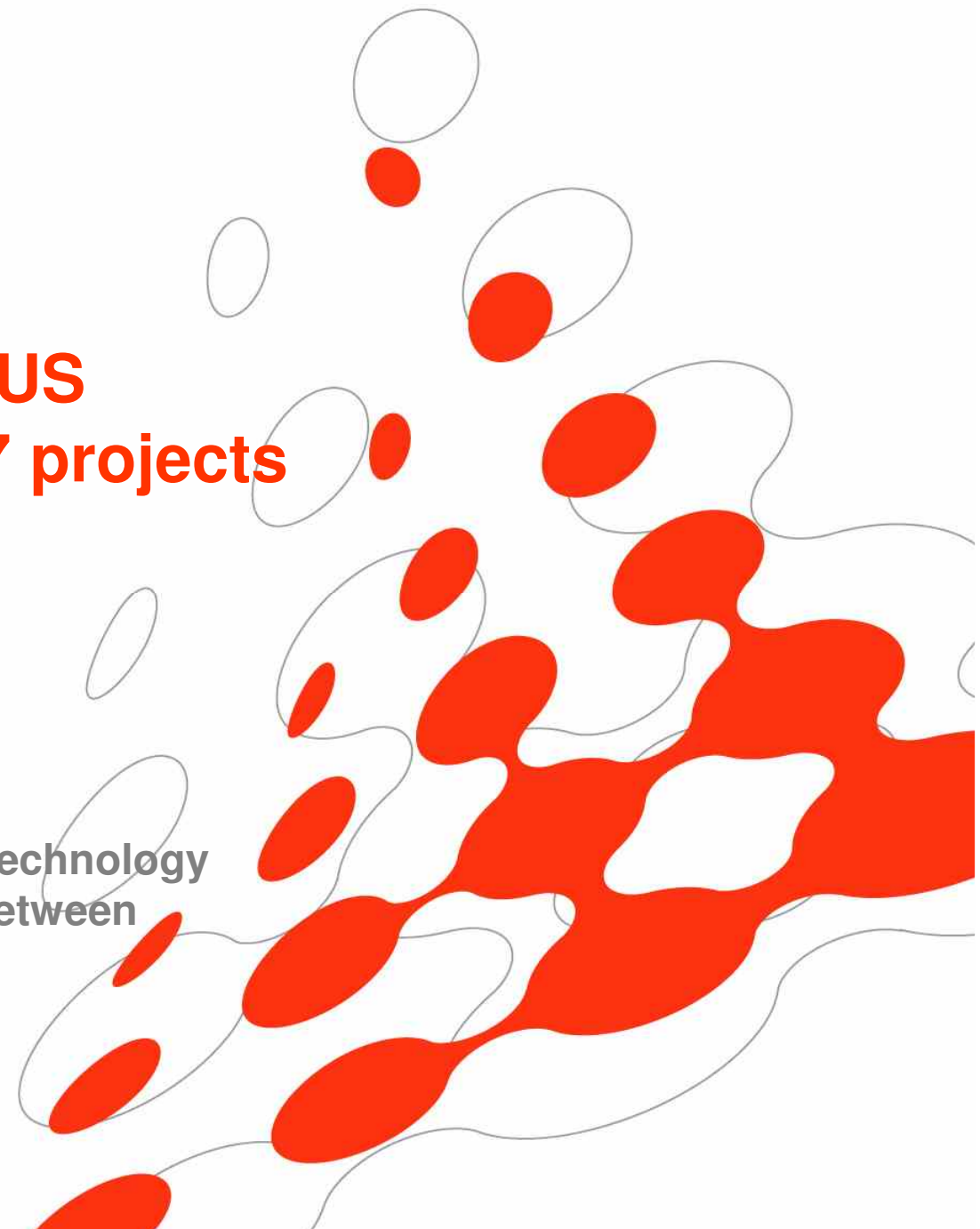




Legal obstacles to US participation in FP7 projects

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Ways of successful science, technology and innovation cooperation between Europe and the USA,
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Overview



1. Legal obstacles and possible solutions
2. Other legal issues
3. Relationships US-org. – FP7 Projects
4. Conclusions

Obstacles based on Grant agreement (GA)



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Article 9 GA - Applicable law and competent court

EU and Belgian law is applicable for FP7 projects

EU General Court/Court of Justice are the responsible courts to any dispute arising out of GA.

Problem

Many US Federal agencies and public research institutions are unable to accept EU/Belgium law and competent EU court

Obstacles based on Grant agreement (GA)



FFG

Solution

SC 35: Arbitration Clause (for third country entities not receiving EU-funding)

Arbitration committee instead of Court of Justice.

No solution regarding the **applicable law**

Obstacles based on Grant agreement (GA)



Article II.24, II.25 GA - Liquidated damages, Financial penalties

- Beneficiaries found to have overstated any amount and which have therefore received unjustified financial EU-contribution = liable to pay damages
- Financial penalties are possible in case of making false declarations or seriously failure to meet GA-obligations

Problem

US Federal agencies are unable to participate – US law does not permit Federal agencies to agree penalty provisions

Obstacles based on Grant agreement (GA)



Solution

SC 9: Beneficiaries with project costs but no EU-contribution
(for entities not receiving EU-funding)

=> no liquidated damages and no financial penalties – only in case of infringement possibility of exclusion from all EU grants (max. 2 years)

=> no financial reports, no audits

Obstacles based on Grant agreement (GA)



Article II.26 GA – Ownership of foreground

Foreground shall be the property of generating beneficiary;
default regime in case of joint ownership if no specific
agreement exists

Problem

Provisions might be problematic because of inconsistent with
law governing the disposition of inventions owned by US
government agencies

Obstacles based on Grant agreement (GA)



FFG

Solution

Specific agreement between joint owners

Obstacles based on Grant agreement (GA)



Article II.27.4 GA – Transfer of foreground-ownership to a third party established in a third country (not MS/AS)

EC may object such transfer if not in accordance with the interests of

- developing the EU-competitiveness
- inconsistent with ethical principles
- security considerations

Problem

US affiliates established in EU may not participate in FP7 projects because possibility of hamper transfer of results

Obstacles in detail (Grant agreement)



Solution

SC 11 or SC 36: EC shall not object to transfers of ownership of foreground / grants of an exclusive licence regarding foreground if

- Beneficiary do not receive a financial contribution
- intended transfer or grant concerns foreground generated by this beneficiary itself

Obstacles in detail (Grant agreement)



Article II.28 GA – Protection

Notification of European Commission 45 days in advance of dissemination of foreground that is capable of industrial or commercial application when owner does not plan to protect it.

Problem

European Commission may assume ownership of that foreground and adopt measures for its protection. It may prevent US partners from publishing activities or presenting papers at scientific conferences

Obstacles based on Grant agreement (GA)



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No Solution

Perhaps only few practical cases

Obstacles based on Grant agreement (GA)



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Article II.42.2 GA – Indemnification provision

Participants shall indemnify the EU in the case where they themselves have caused damages and the EU has to indemnify on their behalf.

Problem

Difficult - even impossible for many US organisations (especially Federal agencies / public educational institutions) to sign this provision; they are legally restricted from indemnification.

Obstacles based on Grant agreement (GA)



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No legal Solution

No such case yet occurred.

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IPR issues



Concerns regarding access rights to foreground/background generated by US partners (for use including commercial exploitation)

Exclusion of specific background in the consortium agreement possible – but not possible regarding foreground

Reason: each partner should be able to use project results – sometimes can be only be achieved by using partners foreground

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Relationship with FP7 projects



40 % of US project partners did not sign the GA
but: 88 % of them did retain a relationship with the project
collaborating in different ways:

- Acting as associates,
- Experts in meetings,
- Members in Advisory/Supervisory Committees,
- Signing bilateral cooperation agreements / MoU

e.g. NASA principles regarding cooperation with FP7 projects (Area Space Research)

Only NASA „Office of International and Interagency Relations“ has capacity to enter into internationally binding agreements.

NASA will not sign GA or CA => NASA cooperation will normally take only the form of a contribution to a work package or task.

NASA will only enter into **bilateral agreement** with one of the **consortium members** (will only be responsible to this consortium member).

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Conclusions



- ✓ Some legal impediments to be overcome by using FP7 special clauses => in most cases only applicable for US entities not receiving EU-funding
- ✓ Some legal obstacles caused in conflicting rules (EU law (RfP, GA) versus US law)
- ✓ CA only viewed critically where GA provide strict rules for partners
- ✓ Horizon 2020: should ease and open up cooperation (bearing in mind reciprocity)

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