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Commission Recommendation

on the management of intellectual property
in knowledge transfer activities and Code of Practice
for universities and other public research organisations

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EUROPEAN COMMISSION

Commission Recommendation

**on the management of intellectual property
in knowledge transfer activities and Code of Practice
for universities and other public research organisations**



Foreword



Günter Verheugen

Tomorrow's economic growth and social welfare in the EU depends on today's research and innovation capabilities.

European universities and public research organisations are the world's largest producers of scientific output, but Europe does not yet lead the world in the exploitation of knowledge. We need to change this in order to reach the ambitious goals set in the Lisbon Partnership for Growth and Jobs and to establish the European Union as the "the most dynamic and competitive knowledge-based economy in the world".



Janez Potočnik

Moreover the EU is still lagging behind in its spending for research and other regions are rapidly catching up. Therefore we need to improve the framework conditions for further investment in research, the precondition for innovation of products, services and technologies that improve our living conditions.

The effective management of intellectual property (IP) generated through publicly funded research is essential to an effective exploitation of the research results. Making use throughout Europe of a coherent set of guidelines such as those contained in this Recommendation and Code of Practice can improve IP management between researchers and the private sector (including SMEs); reduce discrepancies between different national regulatory frameworks, policies and practices; and enhance the dissemination of knowledge throughout Europe.

Together, we call on all the parties concerned – national authorities, public research organisations, industry and researchers – to take up the guidance provided in this publication. In doing so you will help to enhance Europe's ability to transform scientific discoveries into successful innovations for the benefit of our economy and the quality of life of our citizens.

A handwritten signature in blue ink that reads "Günter Verheugen".

Commissioner for Enterprise and Industry
Günter Verheugen

A handwritten signature in blue ink that reads "Janez Potočnik".

Commissioner for Science and Research
Janez Potočnik

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1. Introduction

Knowledge – the triangle of education, research and innovation – has been recognised as one of the priority areas of the renewed Lisbon Strategy. Effective knowledge transfer is crucial for turning scientific research into innovations that improve the quality of life and enhance industrial competitiveness.

Public research organisations (PROs), including universities, need to more actively engage in the exploitation of publicly-funded research results, for instance through academia-industry collaborations, licensing and spin-offs. Professional management of intellectual property¹ (IP) plays a crucial role in the success of these knowledge transfer activities and in building an effective European Research Area (ERA).

A number of initiatives have been taken by Member States in recent years to facilitate knowledge transfer between PROs and the private sector at a national level, but there is a need to address the trans-national dimensions of knowledge transfer and in particular to alleviate problems caused by discrepancies between national systems. More effective management of knowledge transfer activities will also help safeguard Europe's competitive advantage at an international level in terms of innovative capacity, and will ensure equitable and fair access to the IP generated for the mutual benefit of all partners involved.

As well as the exploitation of research results, dissemination should continue to be promoted as broadly as possible, including through policies on open access publication². These policies should take into account reasonable delays to enable protection of IP where appropriate.

Active engagement of PROs in IP management and knowledge transfer need not conflict with their education and research missions. A proactive IP policy may generate additional revenues for the university, but this definitely is not the sole objective. It can support their mission of generating socio-economic benefits for society, and can become a key element to attract students, scientists and further research funding, in particular from the private sector and at international level.

The purpose of this Recommendation is to offer a coherent framework for the management of IP in agreements between PROs and the private sector, in order to promote knowledge transfer between the public and private sectors, at a national, European and international level. To that end, this document contains:

- a set of key policy recommendations to Member States and Associated States which public authorities should rely on when introducing or adapting national guidelines or other measures;

¹ In this context IP refers to knowledge in the broadest sense, encompassing any R&D results such as inventions, software, databases, micro-organisms, etc., whether or not they are protected by legal instruments such as patents

² For example, free access to publications via the Internet, whilst respecting relevant IPRs

- a “Code of Practice” containing more operational guidance for PROs, aiming to enhance the way they manage IP, thereby to promote knowledge transfer between the public and private sectors; and
- an annex containing good practice examples of policy measures already taken by public authorities in several Member States, and which could help others implement the Recommendation.

This Recommendation forms part of the Commission’s ongoing support for knowledge transfer activities, which also include policy coordination and mutual learning (via the Open Method of Coordination), and supporting knowledge transfer activities (e.g. via the Structural Funds and the Enterprise Europe Network, or within actions such as the Framework Programme for Research & Development)³. The Commission also supports the efforts being undertaken by the Responsible Partnering initiative⁴ and other organisations to improve knowledge transfer.

A monitoring process will be set up to follow up and promote the implementation of the Recommendation and the exchange of good practices, including regular reporting from the Member States regarding measures they have introduced and the impact that these have had on knowledge transfer activities. Other sources of input will also include annual surveys conducted by associations and national administrations.

³ More detailed information on Commission support initiatives is provided in section 3 of the 2007 Communication on knowledge transfer – COM(2007)182 final

⁴ www.responsible-partnering.org

2. Commission Recommendation on the management of intellectual property in knowledge transfer activities and Code of Practice for universities and other public research organisations

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 165 thereof,

Whereas:

1. When re-launching the Lisbon Strategy in 2005, the Heads of State or Government stressed the key role that better links between public research organisations, including universities, and industry can play in facilitating the circulation and use of ideas in a dynamic knowledge society and in enhancing competitiveness and welfare.
2. An effort should be made to better convert knowledge into socio-economic benefits. Therefore, public research organisations need to disseminate and to more effectively exploit publicly-funded research results with a view to translating them into new products and services. Means to realise this include in particular academia-industry collaborations – collaborative or contract research conducted or funded jointly with the private sector –, licensing and the creation of spin-offs.
3. Effectively exploiting publicly-funded research results depends on the proper
4. The active engagement of public research organisations in intellectual property management and knowledge transfer is essential for generating socio-economic benefits, and for attracting students, scientists and further research funding.
5. Member States have in recent years taken initiatives to facilitate knowledge transfer at national level, but significant discrepancies between national regulatory frameworks, policies and practices, as well as varying standards in the management of intellectual property within public research organisations, prevent or hamper trans-national knowledge transfer across Europe and the realisation of the European Research Area.
6. Following the 2007 Commission Communication⁵, setting out approaches

⁵ COM(2007) 182 final

for a common European framework for knowledge transfer, the European Council therefore invited the Commission, in June 2007, to develop guidance on the management of intellectual property by public research organisations in the form of a Recommendation to Member States.

7. This Recommendation seeks to provide Member States and their regions with policy guidelines for the development or updating of national guidelines and frameworks, and public research organisations with a Code of Practice, in order to improve the way public research organisations manage intellectual property and knowledge transfer.
8. Collaboration in the field of research and development as well as knowledge transfer activities between the Community and third countries should be based on clear and uniform recommendations and practices that ensure equitable and fair access to intellectual property generated through international research collaborations, to the mutual benefit of all partners involved. The attached Code of Practice should be used as a reference in that context.
9. A number of good practices have been identified that should help Member States to implement this Recommendation. It is for each Member State to choose the procedures and practices best designed to ensure that the principles of this Recommendation are followed, having regard to what would be most effective in the context of that Member State, since practices that are effective in one Member State may not be as effective in another. Existing guidance provided at Community and OECD level should also be taken into account.

10. The Commission and the Member States should monitor the implementation of this Recommendation and its impact, and foster the exchange of good practices regarding knowledge transfer.

Hereby Recommends that Member States Should:

1. Ensure that all public research organisations define knowledge transfer as a strategic mission;
2. Encourage public research organisations to establish and publicise policies and procedures for the management of intellectual property in line with the Code of Practice set out in Annex I;
3. Support the development of knowledge transfer capacity and skills in public research organisations, as well as measures to raise the awareness and skills of students – in particular in the area of science and technology – regarding intellectual property, knowledge transfer and entrepreneurship;
4. Promote the broad dissemination of knowledge created with public funds, by taking steps to encourage open access to research results, while enabling, where appropriate, the related intellectual property to be protected;
5. Cooperate and take steps to improve the coherence of their respective ownership regimes as regards intellectual property rights in such a way as to facilitate crossborder collaborations and knowledge transfer in the field of research and development;

6. Use the principles outlined in this Recommendation as a basis for introducing or adapting national guidelines and legislation concerning the management of intellectual property and knowledge transfer by public research organisations, as well as for concluding agreements concerning research cooperation with third countries, or for any other measures to promote knowledge transfer, or when creating new related policies or funding schemes, while observing State aid rules;
7. Take steps to ensure the widest possible implementation of the Code of Practice, whether directly or through the rules laid down by national and regional research funding bodies;
8. Ensure equitable and fair treatment of participants from Member States and third countries in international research projects regarding the ownership of and access to intellectual property rights, to the mutual benefit of all partners involved;
9. Designate a national contact point, the tasks of which should include the coordination of measures regarding knowledge transfer between public research organisations and the private sector, including tackling transnational issues, in liaison with similar contact points in other Member States;
10. Examine and make use of the best practices set out in Annex II, taking into account the national context;
11. Inform the Commission by 15 July 2010 and every two years thereafter of measures taken on the basis of this Recommendation, as well as their impact.

Done at Brussels, 10/04/2008

For the Commission

Günter Verheugen
Member of the Commission

Janez Potočnik
Member of the Commission

ANNEX I

Code of Practice for universities and other public research organisations concerning the management of intellectual property in knowledge transfer activities

This Code of Practice consists of three main sets of principles.

The **principles for an internal intellectual property** (hereinafter “IP”) **policy** constitute the basic set of principles which public research organisations should implement in order to effectively manage the intellectual property resulting from their – own or collaborative – activities in the field of research and development.

The **principles for a knowledge transfer** (hereinafter “KT”) **policy** complement those relating to IP policy by focusing more specifically on the active transfer and exploitation of such intellectual property, regardless of whether or not it is protected by IP rights.

The **principles for collaborative and contract research** are meant to concern all kinds of research activities conducted or funded jointly by a public research organisation and the private sector, including in particular collaborative research (where all parties carry out R&D tasks) and contract research (where R&D is contracted out to a public research organisation by a private company).

1. PRINCIPLES FOR AN INTERNAL INTELLECTUAL PROPERTY POLICY

1. **Develop an IP policy** as part of the long-term strategy and mission of the public research organisation, and publicise it

internally and externally, while establishing a single responsible contact point.

2. That policy should provide **clear rules for staff and students** regarding in particular the disclosure of new ideas with potential commercial interest, the ownership of research results, record keeping, the management of conflicts of interest and engagement with third parties.
3. Promote the **identification, exploitation** and, where appropriate, **protection** of intellectual property, in line with the strategy and mission of the public research organisation and with a view to maximising socio-economic benefits. To this end, different strategies may be adopted – possibly differentiated in the respective scientific/technical areas –, for instance the “public domain” approach or the “open innovation” approach.
4. Provide appropriate **incentives** to ensure that all relevant staff play an active role in the implementation of the IP policy. Such incentives should not only be of a financial nature but should also promote career progression, by considering intellectual property and knowledge transfer aspects in appraisal procedures, in addition to academic criteria.
5. Consider the creation of coherent **portfolios** of intellectual property by the public research organisation – e.g. in specific technological areas – and, where appropriate, the setting-up of patent/IP **pools** including intellectual property of other public research organisations. This could ease exploitation, through critical mass and reduced transaction costs for third parties.

6. Raise **awareness** and basic skills regarding intellectual property and knowledge transfer through **training** actions for students as well as research staff, and ensure that the staff responsible for the management of IP/KT have the required skills and receive adequate training.
7. Develop and publicise a **publication/dissemination** policy promoting the broad dissemination of research and development results (e.g. through open access publication), while accepting possible delay where the protection of intellectual property is envisaged, although this should be kept to a minimum.
8. In order to promote the use of publicly-funded research results and maximise their socio-economic impact, consider all types of possible **exploitation mechanisms** (such as licensing or spin-off creation) and all possible **exploitation partners** (such as spin-offs or existing companies, other public research organisations, investors, or innovation support services or agencies), and select the most appropriate ones.
9. While proactive IP/KT policy may generate additional revenues for the public research organisation, this should not be considered the prime objective.
10. Ensure that the public research organisation has access to or possesses **professional knowledge transfer** services including legal, financial, commercial as well as intellectual property protection and enforcement advisors, in addition to staff with technical background.
11. Develop and publicise a **licensing policy**, in order to harmonise practices within the public research organisation and ensure fairness in all deals. In particular, transfers of ownership of intellectual property owned by the public research organisation and the granting of exclusive licences⁶ should be carefully assessed, especially with respect to non-European third parties. Licences for exploitation purposes should involve adequate compensation, financial or otherwise.
12. Develop and publicise a **policy for the creation of spin-offs**, allowing and encouraging the public research organisation's staff to engage in the creation of spinoffs where appropriate, and clarifying long-term relations between spin-offs and the public research organisation.
13. Establish clear principles regarding the **sharing of financial returns** from knowledge transfer revenues between the public research organisation, the department and the inventors.

2. PRINCIPLES FOR A KNOWLEDGE TRANSFER POLICY

⁶ With regard to R&D results having several possible application fields, exclusive licences granted without any limitation to a specific field of use should be avoided. Moreover, as a rule, the PRO should reserve adequate rights to facilitate dissemination and further research.

14. **Monitor** intellectual property protection and knowledge transfer activities and related achievements, and publicise these regularly. The research results of the public research organisation, any related expertise and intellectual property rights should be made more **visible** to the private sector, in order to promote their exploitation.

3. PRINCIPLES REGARDING COLLABORATIVE AND CONTRACT RESEARCH⁷

15. The rules governing collaborative and contract research activities should be **compatible with the mission** of each party. They should take into account the level of private funding and be in accordance with the objectives of the research activities, in particular to maximise the commercial and socio-economic impact of the research, to support the public research organisation's objective to attract private research funding, to maintain an intellectual property position that allows further academic and collaborative research, and avoid impeding the dissemination of the R&D results.

16. IP-related issues should be **clarified at management level and as early as possible** in the research project, ideally before it starts. IP-related issues include allocation of the ownership of intellectual property which is generated in the framework of the project

(hereinafter "foreground"), identification of the intellectual property which is possessed by the parties before starting the project (hereinafter "background") and which is necessary for project execution or exploitation purposes, access rights⁷ to foreground and background for these purposes, and the sharing of revenues.

17. In a collaborative research project, **ownership** of the foreground should stay with the party that has generated it, but can be allocated to the different parties on the basis of a contractual agreement concluded in advance, adequately reflecting the parties' respective interests, tasks and financial or other contributions to the project. In the case of contract research the foreground generated by the public research organisation is owned by the private-sector party. The ownership of background should not be affected by the project.

18. **Access rights**⁸ should be clarified by the parties as early as possible in the research project, ideally before it starts. Where necessary for the purpose of conducting the research project, or for the exploitation of foreground of a party, access rights to other parties' foreground and background should be available, under conditions which should adequately reflect the parties' respective interests, tasks, and financial and other contributions to the project.

⁷ When a PRO engages in contract or collaborative research with an industrial partner, the Commission will automatically (i.e. without any notification requirement) consider that no indirect State aid is granted to the industrial partner through the PRO if the conditions set out in the Community Framework for State Aid for R&D&I (OJ No C323 of 30.12.2006 – in particular points 3.2.1 and 3.2.2 thereof) are fulfilled.

⁸ Access rights refer to rights granted by the parties to each other, as opposed to licences to third parties. They should determine which parties can use which pieces of foreground/background, for research purposes and/or for exploitation purposes, and on what conditions.

ANNEX II

Identified practices of public authorities that facilitate the management of intellectual property in knowledge transfer activities by universities and other public research organisations

Knowledge Transfer as a strategic mission of public research organisations

1. Knowledge transfer between universities and industry is made a permanent political and operational priority for all public research funding bodies within a Member State, at both national and regional level.
2. The subject clearly falls within the responsibility of a ministry, which is charged with coordinating knowledge transfer promotion initiatives with other ministries.
3. Each ministry and regional government body that carries out knowledge transfer activities designates an official responsible for monitoring their impact. They meet regularly in order to exchange information and discuss ways to improve knowledge transfer.

Policies for managing Intellectual Property

4. The proper management of intellectual property resulting from public funding is promoted, requiring that it be carried out according to established principles taking into account the legitimate interests of industry (e.g. temporary confidentiality constraints).

5. Research policy promotes reliance on the private sector to help identify technological needs and to foster private investment in research and encourage the exploitation of publicly-funded research results.

Knowledge transfer capacities and skills

6. Sufficient resources and incentives are available to public research organisations and their staff to engage in knowledge transfer activities.
7. Measures are taken to ensure the availability and facilitate the recruitment of trained staff (such as technology transfer officers) by public research organisations.
8. A set of model contracts is made available, as well as a decision-making tool helping the most appropriate model contract to be selected, depending on a number of parameters.
9. Before establishing new mechanisms to promote knowledge transfer (such as mobility or funding schemes), relevant stakeholder groups, including SMEs and large industry as well as public research organisations, are consulted.
10. The pooling of resources between public research organisations at local or regional level is promoted where these do not have the critical mass of research spending to justify having their own knowledge transfer office or intellectual property manager.

11. Programmes supporting research spin-offs are launched, incorporating entrepreneurship training and featuring strong interaction of public research organisations with local incubators, financiers, business support agencies, etc.

12. Government funding is made available to support knowledge transfer and business engagement at public research organisations, including through hiring experts.

Coherence in trans-national cooperation

13. In order to promote transnational knowledge transfer and facilitate cooperation with parties from other countries, the owner of intellectual property from publicly-funded research is defined by clear rules and this information, together with any funding conditions which may affect the transfer of knowledge, is made easily available. Institutional ownership – as opposed to the “professor’s privilege” regime – is considered the default legal regime for intellectual property ownership at public research organisations in most EU Member States.

14. When signing international research cooperation agreements, the terms and conditions relating to projects funded under both countries’ schemes provide all participants with similar rights, especially as regards access to intellectual property rights and related use restrictions.

Dissemination of knowledge

15. Open access is implemented by public research funding bodies with regard to peer-reviewed scientific publications resulting from publicly-funded research.

16. Open access to research data is promoted, in line with the OECD Principles and Guidelines for Access to Research Data from Public Funding, taking into account restrictions linked to commercial exploitation.

17. Archival facilities for research results (such as internet-based repositories) are developed with public funding in connection with open access policies.

Monitoring implementation

18. The necessary mechanisms are put in place to monitor and review progress made by national public research organisations in knowledge transfer activities, e.g. through annual reports of the individual public research organisations. This information, together with best practices, is also made available to other Member States.

3. Council Resolution of 30 May 2008 on the management of intellectual property in knowledge transfer activities and on a Code of Practice for universities and other public research organisations - "IP Charter Initiative"

THE COUNCIL OF THE EUROPEAN UNION

RECOGNISES the importance of effective management and protection of intellectual property, the promotion of knowledge transfer across Europe and the efficient dissemination of scientific and technological innovations in the European Research Area in order to maximise the socio-economic impact of public research efforts,

RECALLS the work undertaken in the context of the "Intellectual Property Charter" Initiative of the 2007 German Presidency endorsed by the European Council in June 2007⁹, the Commission's Communication entitled "Improving knowledge transfer between research institutions and industry across Europe" of 4 April 2007¹⁰, its own conclusions on "Knowledge transfer and the use of intellectual property in the European Research Area" of 25 June 2007¹¹, and the European Council conclusions of March 2008¹²; RECALLS the work of CREST in the context of the Open Method of Coordination (OMC);

WELCOMES AND SUPPORTS the Commission's Recommendation on the management of intellectual property in knowledge transfer activities and Code of Practice for universities and other public research organisations, included in the Annex to this Resolution, as one of the policy initiatives taken by the Commission to follow up

its Green Paper entitled "The European Research Area: New Perspectives"¹³,

INVITES Member States to actively support the Recommendation, and to promote the effective take-up of the Code of Practice by universities and other public research organisations, while fully respecting their autonomy in dealing with IPR;

CALLS UPON all universities and other public research organisation to pay due regard to the content of the Commission's Code of Practice and to implement it according to their specific circumstances, including appropriate flexibility for contract research¹⁴;

INVITES the Commission to apply the principles laid down in the Recommendation of the Code of Practice in relevant EU policies and instruments;

INVITES Member States and the Commission to establish, in partnership, light and effective governance arrangements, including the monitoring and evaluation of the take up and impact of the Recommendation and Code of Practice, on the basis of indicators, the exchange of best practices with active involvement of stakeholders, which could lead to the definition of further guidelines on specific issues of common interest where justified;

RECOMMENDS to the Heads of State and Government to endorse this Resolution at their next summit meeting.

⁹ Doc. 11177/1/07 REV 1 CONCL 2.

¹⁰ Doc.8323/07 EDUC 67 RECH 100 COMPET 93.

¹¹ Doc. 10150/07 EDUC 115 RECH 169 COMPET 180.

¹² Doc. 7652/08 CONCL 1.

¹³ Doc. 8322/07 RECH 99 + ADD 1

¹⁴ Collaborative and contract research in this document are to be understood in the sense of the Community framework for State Aid for R&D and Innovation (O.J. No. C 323 of 30.12.2006), in particular points 3.2.1. and 3.2.2. thereof.

4. Guidance for the implementation of the Code of Practice

This part will provide you with some guidance for the implementation of the Code of Practice. More extensive guidance on most of its principles can be found in the Staff Working Paper of the Commission Communication “Improving knowledge transfer between research institutions and industry across Europe: embracing open innovation”¹⁵ (2007), as well as in guidelines or other documents developed by stakeholders and national administrations.

It is important to note that both the Recommendation and the Code of Practice contain voluntary guidelines. This means that they define “default” principles which are valid in most cases, but which stakeholders are free to depart from (enjoying full contractual freedom) if they consider that this is justified. The principles can and should be adapted case-by-case to meet the needs of the missions of the public research organisation or university (referred to hereafter as PROs) and the private sector party, subject to compliance with any relevant legislation (such as the Community Framework for State Aid for Research and Development and Innovation¹⁶).

The Code of Practice contains three different parts:

1. Principles for an internal intellectual property policy
2. Principles for a knowledge transfer policy
3. Principles for collaborative and contract research

1. Principles for an internal intellectual property policy

First of all, it should be realised that in this context “intellectual property” (IP) is to be taken in the broadest sense, as encompassing any kind of new knowledge resulting from R&D activities (including inventions, software, databases, etc.), whether or not it is protected by formal IP rights such as patents.

Effective management of intellectual property requires the establishment of internal policies to ensure an adequate handling of the results of research. Internal policies should cover questions such as:

- How can intellectual property be identified at an early stage? When and how should the IP be exploited and/or protected and/or disseminated?
- Who is the owner of new knowledge in different situations? (including in respect of non-employees such as Ph.D. or other students, or regarding software, publications, ...)
- How can I raise awareness among staff and students regarding IP issues in line with the publication/dissemination policy of the PRO?
- What incentives can be provided to ensure the implementation of IP policy?

The aim of the policy should be to provide answers to these (and other) questions, and

¹⁵ Communication on Knowledge Transfer: http://ec.europa.eu/invest-in-research/pdf/sec2007449_en.pdf

¹⁶ Community Framework for State Aid for Research and Development and Innovation: http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c_323/c_32320061230en00010026.pdf

define a long-term strategy and mission for the PRO. It is important that these policies are published and made available and visible for all staff, students and partners.

Examples of national codes of practices and codes of conduct for universities and other PROs can be found in the attached list of links in Section 4.

2. Principles for a knowledge-transfer policy

When setting up IP management principles, different exploitation mechanisms should be taken into account. Even though generating revenues should not be considered as a prime objective, licensing and the creation of spin-offs can create financial returns. Therefore, clear rules and measures need to be set on e.g. the distribution of the financial returns (which could partly be given to inventors as an incentive) to the extent that this issue is not otherwise covered by national legislation. For example, a spin-off can further develop and commercialize IPR. Also, the licensing policy needs to address important issues, such as adequate compensation when granting licenses, and aspects specific to cooperations with third countries.

It is essential to have access to professional knowledge transfer staff and/or external services for sound advice on legal, financial, commercial or IP protection issues. In certain cases, the knowledge transfer offices also provide services,

for example, for negotiating licence or other agreements with the private sector. In some countries such services are already pooled and can be used by different PROs. Further examples of good practice can be found in the attached list of links in Section 4.

3. Principles for collaborative and contract research

Distinctions should be made between collaborative and contract research. The Code of Practice refers to these concepts in the same sense as the Community Framework on State Aid for Research and Development and Innovation¹⁷.

- “Contract research” (cf. § 3.2.1 of the Framework on State Aid¹⁸) means research contracted out to a public research organisation (“agent”) by a private-sector entity (“principal”), and whose costs are fully paid by the latter and where the principal carries the risk of failure. In this case the terms and conditions are usually specified by the principal.
- “Collaborative research” (cf. § 3.2.2 of the Framework) is when at least two partners participate in the design of the project, contribute to its implementation, and share the risk and the output of the project. In particular, should there be any financial contribution from the public research organisation, this would be considered as a collaborative research situation and not as “contract research” in the context of the Code of Practice.

¹⁷ which is specifically referred to in footnote 7 in the Code of Practice

¹⁸ where (a) research is carried out on behalf and for the private-sector entity according to that party's specifications ; (b) all costs for the rendered service are borne by the party requesting the service; See §3.2.1 Community framework for State aid for research and development and innovation
http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c_323/c_32320061230en00010026.pdf

Before the project starts it is essential to clarify and define (in line with each party's mission), and to state in the contractual agreement, IP related issues such as:

- Ownership of results generated in the project ("Foreground")
- Identification of IP owned before the start of the project ("Background")
- Access rights to Foreground and Background needed during and/or after the project or to further research
- Access rights to or the exclusion of "Side ground"¹⁹
- Protection of Foreground

These should comply with national or European legislations, such as the Community Framework for State Aid for Research and Development and Innovation²⁰.

In several Member State different model contracts are available. Some links can be found in the attached list of links in Section 4.

Ownership in "contract research" usually differs from the one in "collaborative research".

- In collaborative research, ownership of the Foreground will usually be allocated to the party who generated them.
- In contract research, the most typical situation is that all the costs are paid by the private sector party which then owns the Foreground.

Nevertheless, the parties are free²¹ to negotiate different agreements, concerning ownership of (and/or possibly user rights to) the Foreground, as the principles in the Code of Practice only provide a starting point for negotiations²². This should preferably be clarified in the contractual agreement signed before the start of the project.

¹⁹ knowledge developed outside the scope of the defined project

²⁰ http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c_323/c_32320061230en00010026.pdf

²¹ Again, subject to compliance with any relevant legislation (such as the Community Framework for State Aid for Research and Development and Innovation)

²² For instance, regarding "contract research", some of the Foreground can be kept by the PRO, if agreed and negotiated so with the private sector party, while respecting the relevant legislation (such as the Community Framework for State Aid for Research and Development and Innovation)

4. Useful links

In this section some links can be found to national and European initiatives as an example.

- **Code of Practice / Management of IP:**
 - Responsible Partnering Organisation: <http://www.responsible-partnering.org/>
 - Danish Rectors Conference/Confederation of Danish Industries guide to research cooperation: <http://www.eirma.org/documents/Denmark/2005-DKCodex.pdf>
 - UK Guide to IP management for research organisations: <http://www.ipo.gov.uk/managingipguide.pdf>
- **Technology Transfer Organizations / Associations / Pools:**
 - ProTon Europe: <http://www.protoneurope.org/>
 - Technologie Allianz: <http://www.technologieallianz.de/>
 - German Patent Exploitation Agency for Universities: http://www.ipal.de/en/about_ipal/
 - ASTP: <http://www.astp.net/>
 - EARTO: <http://www.earto.eu/>
 - EIRMA: http://www.eirma.org/f3/cms_index.php
- **Patent Offices:**
 - European Patent office: <http://www.epo.org/>
 - World Intellectual Property Organisation: http://www.wipo.int/portal/en/resources_students.html
 - Innovaccess (information on European national patent offices): <http://www.innovaccess.eu/index.jsp>
- **Model Contracts:**
 - UK Lambert Agreements: <http://www.innovation.gov.uk/lambertagreements/>
 - German Model Agreement: <http://www.bmwi.de/BMWi/Navigation/Service/publikationen,did=217918.html>
- **European Documents / Decision Guide / Toolkit / IP Management:**
 - Commission Recommendation on the management of intellectual property in knowledge transfer activities and Code of Practice for universities including public research organizations: http://ec.europa.eu/invest-in-research/pdf/ip_recommendation_en.pdf
 - Council Resolution on the management of intellectual property in knowledge transfer activities and Code of Practice for universities including public research organizations – “IP Charter Initiative” http://ec.europa.eu/invest-in-research/pdf/download_en/st10323_en08.pdf
 - CREST cross-border collaboration decision guide: http://ec.europa.eu/invest-in-research/policy/crest_cross_en.htm
 - Management of IP in PROs: <http://ec.europa.eu/research/era/pdf/iprmanagementguidelines-report.pdf>
 - Commission Communication on improving knowledge transfer: http://ec.europa.eu/invest-in-research/pdf/com2007182_en.pdf



European Commission

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Comments by stakeholders on the Recommendation

"Europe's Universities are engaged increasingly in knowledge transfer activities with business partners through developing strategic priorities and diversifying their funding streams. The EC recommendation highlights good practices and provides a valuable framework for their wider application."

Georg Winckler, President, European University Association (EUA)

"EARTO welcomes the Commission's Recommendation and the Code of Practice: professional IP management and exploitation in our universities and public research organisations have much to contribute to a more innovative Europe."

Christopher Hull, Secretary-General, European Association of Research and Trade Organisations (EARTO)

"Europe's success in the knowledge economy depends upon effective, professional relationships and trust between companies and universities. The Recommendation and Code of Practice are models of clarity towards that goal."

Andrew Dearing, Secretary-General, European Industrial Research Management Association (EIRMA)

"The Commission recommendations and Code of Practice represent an essential framework to assist PROs in developing more effective knowledge transfer and creating the strategic industrial partnerships necessary to drive Europe's knowledge economy."

Pat Frain, Chair, Public Research Organisations Transfer Office Net-work (ProTon Europe)

"An effective management of Intellectual Property Rights is beneficial to innovation and entrepreneurship. For this reason, as business representatives, we definitely support the Commission's initiative to facilitate the management of IPR in knowledge transfer activities."

Arnaldo Abruzzini, Secretary-General, Association of European Chambers of Commerce and Industry (Eurochambres)

"The European Patent Office welcomes this Recommendation and highlights the support given to its implementation by the European Patent Network (Network formed by the EPO and the National Patent Offices of its Member States) through its wide IP expertise and its innovation related services."

Gerard Giroud, Principal Director, European Patent Office (EPO)

"Universities and other PROs generate major IPRs and wealth. These balanced, instructive Recommendations and Code of Practice provide an invaluable, practical guide to IP management and knowledge transfer in this sector."

Julian Crump, Secretary-General, Fédération Internationale des Conseils en Propriété Industrielle (FICPI)