



**FUSION
FOR
ENERGY**



**Contract
Negotiations,
Intellectual Property
and Dispute
Resolution**

**A perspective from
Fusion for Energy**

Alicante 11th March 11

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A) Background

B) Contract Negotiation

C) Intellectual Property

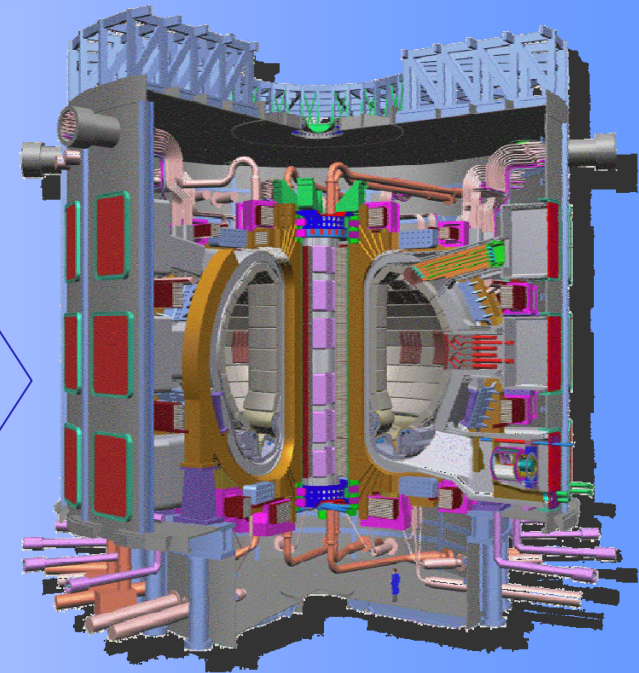
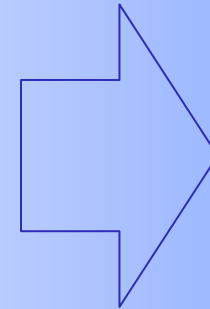
D) Dispute Resolution

E) Conclusion

A) BACKGROUND



ITER Project



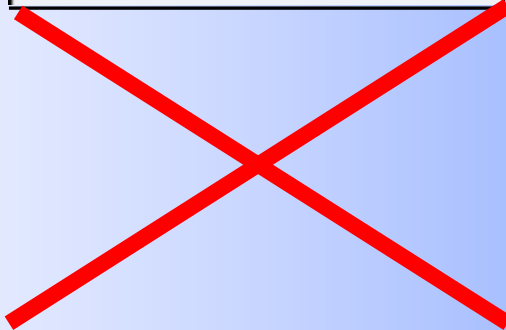
→ Fusion for Energy

Similarities with ESA, Galileo, CERN and other international research projects.

F4E's Challenges:

- Tight schedule for the delivery of in-kind contribution
- Value for money
- Specialized field - technological monopolies
- Improve EU's industry competitiveness
- Cost contention

Conclusion: The goal of our organization is to provide the EU's contribution to a high-tech world wide project through, in particular, "in-kind" contributions procured upon the EU industry. This Public/private partnership can only work if the interests of all actors are balanced and their respective positions understood.



B) CONTRACT NEGOTIATION



- The actors: “Institutional” stakeholders are sometimes not inclined to appreciate the subtleties of contract negotiation.

Negotiators may not have lot of margin of manouvre –Delays



- The purpose: Market driven companies can adapt their objectives to the evolution of the market. Public research institutions are usually more focused on their specific objectives.



- Lack of flexibility to face changes.
- Private partners may loose interests at medium/long term



- Predictability – Private partners can be confident on the commitment of the research organization
- Research organizations sometimes have among its objectives fostering innovation and thus can be more generous as regards the share of benefits.

- The tools: Research organizations usually rely on a number of standard model contracts. Public founded organizations are subject to procurement rules



- Lack of flexibility.
- Cumbersome procedures



- Predictability and well established rules. Scope of negotiations is clear from the outset
- Fair treatment among competitors.

Conclusion: Negotiations with Research organizations may not be as flexible as between private players, but the scope of such negotiations is usually more solid.

C) DISPUTE RESOLUTION



- 🗨️ The “standardization” of clauses in the model contracts should in principle result in more stable clauses and lesser disputes.
- 🗨️ The nature of research organizations (with links with the public sector) results in very little flexibility as regards the selection of applicable law and/or jurisdiction.
- 🗨️ Alternative dispute resolution schemes are not used extensively
- 👍 However, while public research organizations may be stricter at the time of negotiating, they may also be less aggressive when facing disputes.

Conclusion: Traditional approach to dispute resolution based on well established clauses for interpretation, applicable law and jurisdiction. Little use of other more nimble forms of resolution (mediation/arbitration).

Exceptions: Fusion for Energy intends to integrate WIPO expedited alternative dispute resolution clauses to solve disputes on Intellectual Property issues soon.

D) INTELLECTUAL PROPERTY



- A different approach to IP:
 - Companies → Mostly focused on applied research
 - Research organizations → Combination of fundamental & applied research

The case of F4E: Moving from fundamental to applied research

- A different approach to the protection of IP
 - Applied research → Trade secrets and, depending on the field, patents.
 - Fundamental research → Dissemination of information (some patents)

The EU approach: foster patents to catch up with US - Japan

- A different approach to the ownership of IP
 - Companies → Interest in keeping ownership to block access to competitors.
 - Research organizations → interest in keeping ownership to guarantee technology transfer and, where necessary, to avoid monopolies.

Fusion for Energy: The ESA model. Giving up ownership in exchange of patents

The case of grants

B) CONCLUSION



Contract Negotiations, Intellectual Property and Dispute Resolution Dealing with a public research organization such as F4E - Conclusion



Thanks