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# **ERIC une nouvelle forme légale pour les Infrastructures de recherche européennes**

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# Definition of Research Infrastructures

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Facilities, resources, and related services used by the scientific community for

- Conducting leading-edge research,
- Knowledge transmission, knowledge exchanges and knowledge preservation.



They include

- Major scientific equipment,
- Scientific collections, archives and structured information,
- ICT-based infrastructures,
- Entities of a unique nature, used for research

Europe has a long-standing tradition of excellence in research infrastructures



- Abbey-libraries: Research, Knowledge & Technology Transfer centres - EU's cultural roots
- More recently: CERN, EMBL, ESO, ESRF, ILL, and several open Europe-based facilities
- Their success is due to uniqueness and quality, attracting world level scholars and researchers

# Towards a coherent policy for Research Infrastructures: ESFRI

A European Strategy Forum on Research Infrastructures (launched in April 2002)

Brings together representatives of the 27 Member States, Associated States, and one representative of the European Commission (EC)

To discuss the long term vision at European level and to support the development of a European RI policy

- A **Roadmap Report** with 44 projects
- Worth ~20 B€ investments over the next ~10 years

"A combination of resources from national budgets, Community programmes, EIB instruments and Structural Funds should lead to the development of excellent research infrastructures throughout Europe"

*Competitiveness (Internal Market, Industry and Research) Council, 5-6 March 2009*

Importance of developing national roadmaps for research infrastructures

# Towards a Community legal framework

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## Facts and Challenges:

- October 2006 Publication of ESFRI Roadmap
- 2007 European Councils invited MS to participate actively in the *implementation* of ESFRI roadmap
- Two stakeholders workshops on the most appropriate legal instruments identified the lack of an *adequate legal framework* allowing the creation of appropriate partnerships with partners from different countries
- Report of a Working group on Feasibility study on the creation of a European legal instrument for European Research Infrastructures (July 2007)

# Towards a Community legal framework

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## Facts and Challenges:

- Some pro & cons of existing legal forms:

EEIG:            **pro:** European form

**contra:** unlimited joint and several liability

Société civile, GmbH, etc.:

**pro:** Flexibility

**contra:** national law applicable

Intergovernmental Organization:

**pro:** Flexibility

**contra:** lengthy ratification procedures

To provide an easy-to-use legal instrument adapted to European infrastructures, an ERI should:

- ...have a legal personality recognized in all MS
- ...have a spirit of a truly European venture
- ...be flexible enough to adapt to the requirements of specific infrastructures
- ...provide some of those privileges and exemptions allowed at a national level for intergovernmental organizations (e.g. VAT exemption).

The regulation should provide a faster and more cost efficient process than existing legal forms

- Some choices, with obvious limitations, were made:
  - Focus on **basic research** -> mainly public actors -> public-public partnership
  - **Avoid VAT-discussion** between MS  
-> VAT-exemption -> aim for status of international organization -> membership limited to States and Intergovernmental Organizations
  - **Community body status to be avoided**

## ***Article 171***

The Community may set up joint undertakings or any other structure necessary for the efficient execution of Community research, technological development and demonstration programmes.

***Article 172(1)***: qualified majority, consultation procedure

- **Legal model** for European research infrastructures
- rules and **procedures** governing their establishment:
  - legal entities interested draw up the statutes for a concrete European research infrastructure and **submit** the project to the Commission
  - The **legislator confers the status** of “European research infrastructure”; empowerment to the Commission is foreseen (commitology procedure)
  - **Legal personality of Community law** as from the date the decision setting up the ERI takes effect

# European Research Infrastructure Consortium

## Tasks and requirements of an ERIC

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Principal task: establish and operate a Research Infrastructure, to be pursued on a **non economic basis**

Five requirements to be met by the RI:

- necessary for **European research programmes and projects**
- **added value** in the development of ERA and significant improvement in relevant S&T fields at international level
- Grants **effective access** to the European research community
- Contributes to the **mobility of knowledge and/or researchers** with in the ERA
- contributes to the **dissemination** and **optimization** of the results of the activities

# Membership of an ERIC

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- Member States
- Third States
- Intergovernmental organisations

An ERIC must at all times have at least **three** Member States as members.

Further Member States may **join** at any time as specified in statutes.

**Member States shall jointly hold the majority** of the voting rights in the assembly of members.

A State may be **represented** by one or more public entities or private entities with a public-service mission

# Application for the setting-up of an ERIC

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**Content** of the application:

- Official request to set up the ERIC
- proposed Statutes of the ERIC
- technical and scientific description of the research infrastructure to be established and operated by the ERIC
- Declaration by host MS recognising the ERIC as int'l body (VAT and excise duties)
- Agreement between members on limits and conditions of the exemptions

The Commission will assess the application, will obtain the views of independent experts

The result is communicated to the applicants who shall be, if necessary, invited to complete or amend the application

Comitology: the Commission will be assisted by a Management Committee

# Internal Structure of an ERIC

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- **statutory seat** in Member State or Associated Country; locations anywhere
- mandatory **bodies** (members' assembly, director/board of directors)
- members' **liability**
  - ✓ limited to committed contribution, no capital requirement.
  - ✓ may specify in the Statutes a fixed liability above their respective contributions or unlimited liability.

# Content of Statutes (1)

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- list of **members** and entities representing them, their rights and obligations
- conditions and procedure for **membership changes**
- **tasks** and **activities**
- statutory **seat**
- **name**
- **bodies**: competencies, decisions
- **duration**
- procedure for the **winding-up**
- identification of the **working language(s)**
- references to **rules implementing** the Statutes.

- **basic principles** covering:
  - access policy for users
  - data policy
  - scientific evaluation policy
  - intellectual property rights policy
  - dissemination policy
  - employment policy
  - procurement policy
  - decommissioning, if relevant

The Statutes shall be **publicly available** on the website of the ERIC and at its statutory seat.

# Hierarchy of applicable law

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- **Community law**, in particular this Regulation
- the law of the State, where the ERIC has its **statutory seat**
- the law of the States in which the ERIC **operates** as regards public and occupational health and safety, environmental protection, treatment of hazardous substances and delivery of permits required for such operation
- **Statutes**, adopted in conformity with sources of law referred to above, and by its **implementing rules** complying with its Statutes

# Budgetary principles

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- Sound financial management
- Principle of transparency
- Yearly financial report
- Filing, auditing and publication of accounts according to applicable law

## Staff policy principles

- To be identified in the Statutes
- Normally following the hierarchy of laws

The ERIC is (declaration of host state):

- an **international body** within the meaning of Articles 143(g) and 151(1)(b) of Directive 2006/112/EC, and
- an **international organisation** within the meaning of Article 12(b) of Directive 2008/118/EC

*Limits and conditions in an agreement between ERIC members*

## Public procurement

The ERIC is (regulation):

an **international organisation** within the meaning of Article 15, point (c), of Directive 2004/18/EC

- An ERIC shall produce an **annual activity report**
- if indications that an ERIC is acting in serious **breach** of this Regulation or the decisions adopted on its basis or other applicable law:
  - ✓ EC will request **explanations** from ERIC and/or its members
  - ✓ Commission may propose **remedial action**
  - ✓ If no remedial action is taken, the Commission may **repeal the decision** establishing the ERIC (subject to Comitology)

Analysis and elaboration of Regulation (Nov 07 – July 08)  
Adoption of proposal by Commission (July 2008)  
Submission to the Council and the EP (End July 2008)  
No agreement on taxation on Council 2 December 2008  
Vote of EP (Consultation Procedure) February 2009  
Lunch debate on Council 6 March 2009  
Guidelines from the VAT Committee on 22 April 2009  
Political agreement on Council 29 May 2009  
Formal adoption by Council 25 June 2009  
publication in OJ 8 August 2009  
Entry into force 20 days after publication  
1st meeting of ERIC Management Committee on 9 October 2009  
Publication of Guidelines by the European Commission fall 2009

*Official Journal of the European Union L206/1 EN 8.8.2009*