

# Options for a legal framework for research infrastructures



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***EXCHANGE OF EXPERIENCE***

***WORKSHOP***

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# Legal frameworks of ESFRI Landmarks/Projects

Legal framework	Number (distr.)	Research infrastructures
European Research Infrastructure Consortium 'ERIC'	24 (22)	ECCSEL, EMSO, EPOS, Euro-Argo, ICOS, LifeWatch, BBMRI, EATRIS, ECRIN, EMBRC, EU-OPENSOURCE, Euro-Bioimaging, INSTRUCT, <u>ELI</u> , <u>European Spallation Source</u> , CESSDA, CLARIN, DARIAH, ESS, SHARE <a href="#">Step2</a> : EU-SOLARIS, ACTRIS, AnaEE, MIRRI
Intergovernmental Organisation	6 (0)	<u>ELT (ESO)</u> , <u>ESRF EBS (ESRF)</u> , <u>European XFEL</u> , <u>HL-LHC (CERN)</u> , <u>ILL - SKAO</u>
ELIXIR Consortium agreement	1 (1)	ELIXIR - <a href="#">Member States + EMBL</a>
AISBL (BE)	6 (6)	PRACE, IAGOS, ERINHA, EMFL, <a href="#">(2021) EBRAINS</a> , OPERAS
EISCAT Scientific association (SE)	1 (0)	<u>EISCAT</u> - <a href="#">Also registered in Norway and Finland</a>
gGmbH (DE)	1 (0)	<u>CTA</u>
GmbH (DE)	2 (1)	INFRAFRONTIER, <u>FAIR</u>
GANIL Economic Interest Group. (FR)	1 (0)	<u>SPIRAL2</u>

# (Indicative) Pros & cons of most used legal frameworks

Legal framework	Pros (indicative – it depends on RI)	Cons (indicative - it depends on RI)
Intergovernmental organisation	<ul style="list-style-type: none"> <li>• <b>Flexibility</b> – can be tailor-made to fit RI</li> <li>• Experience for (very) large RIs</li> <li>• Sustainability, <b>commitments by governments</b></li> <li>• <b>Truly international</b> legal personality</li> <li>• Privileges and immunities</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Lengthy</b> preparation and ratification procedures</li> <li>• (Costly staff?)</li> <li>• (Membership – depending on RIs)</li> </ul>
ERIC	<ul style="list-style-type: none"> <li>• Designed for (pan-European) RI</li> <li>• Truly <b>European</b> venture</li> <li>• <b>Recognized in all EU Member States</b></li> <li>• <b>Flexibility</b> to adapt to specific RI</li> <li>• Privileges/exemptions ~equivalent IGO</li> <li>• In general, <b>faster</b> process than IGO</li> </ul>	<ul style="list-style-type: none"> <li>• Truly European venture: attractiveness for and recognition by third countries?</li> <li>• Still <b>‘new’ legal form</b> – recurrent issues (see ‘EGERIC’ report)</li> <li>• (Membership – depending on RIs)</li> </ul>
AISBL (BE)	<ul style="list-style-type: none"> <li>• Full legal personality</li> <li>• <b>Flexibility</b> (statutes, governance)</li> <li>• <b>Fast</b> foundation process</li> <li>• Tax exemption</li> </ul>	<ul style="list-style-type: none"> <li>• <b>National law</b></li> <li>• Not appropriate for large investments – <b>no governmental commitments</b></li> </ul>

Other forms: EEIG, GmbH, Foundations etc.

Preparatory Phase of ESFRI projects: detailed analysis of strengths & weaknesses of legal forms

# ERIC: membership

- **Countries**
- **Intergovernmental organisations**
- A country may be **represented** by one or more public entities or private entities with a public-service mission
- An ERIC must at all times have **at least one Member State and two other Member States or associated countries** as members.
- Other third countries can be members. The **majority of the voting rights** has to remain with Member States and associated countries.
- For an **ERIC hosted by a Member State**, proposals for amending its statutes shall require the agreement of the majority of the Member States that are members of that ERIC

# ERIC: applicable law and jurisdiction

- Internal functioning:
  1. **EU law** (in particular the ERIC Regulation)
  2. The law of the State where the ERIC has its **statutory seat**
  3. The **ERIC's statutes**, adopted in conformity with the sources of law referred to above, and its implementing rules
- **Court of Justice of the European Communities** (litigation among the members in relation to the ERIC, between the members and the ERIC and over any litigation to which the Community is a party)
- **Community legislation on jurisdiction** (disputes between ERIC and third parties)

# Third countries incl. associated countries\* in ERICs

Country	Host	Member	Observer	Total
Norway	2	13		15
United Kingdom	2	11	1	14
Israel		5		5
Iceland		4		4
Serbia		2	1	3
Bosnia and Herzegovina		1		1
Switzerland		1	8	9
North Macedonia		1		1
Turkey				1
South Africa			1	1
<b>Total</b>	<b>4</b>	<b>38</b>	<b>11</b>	<b>54</b>

\*Horizon 2020 association agreement and withdrawal agreement (UK)

# Implementation of the ERIC Regulation

- **Council Conclusions** of Nov. 2018 ‘ERIC **implementation report** by 2022’
- Assessment on the implementation of the ERIC Regulation by the Commission **Expert Group ‘EGERIC’** chaired by Carlo Rizzuto
- *EGERIC* findings: contribution to the report to the Council and basis for **consultation process** notably
  - [ERIC workshop](#) on 13, 14 September 2021
  - Presentation to the ERIC Committee on 19 October 2021
  - broader discussions on research infrastructures (ESFRI days, ERA Presidency Conference...)
  - Link to [EGERIC Report](#)



# Thank you!

## For more info:

- Commission's website on Research Infrastructures:  
[https://ec.europa.eu/info/research-and-innovation/strategy/strategy-2020-2024/our-digital-future/european-research-infrastructures\\_en](https://ec.europa.eu/info/research-and-innovation/strategy/strategy-2020-2024/our-digital-future/european-research-infrastructures_en)
- Horizon Europe:  
[https://ec.europa.eu/info/research-and-innovation/funding/funding-opportunities/funding-programmes-and-open-calls/horizon-europe\\_en](https://ec.europa.eu/info/research-and-innovation/funding/funding-opportunities/funding-programmes-and-open-calls/horizon-europe_en)
- European Strategy Forum on Research Infrastructures:  
[www.esfri.eu](http://www.esfri.eu)

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