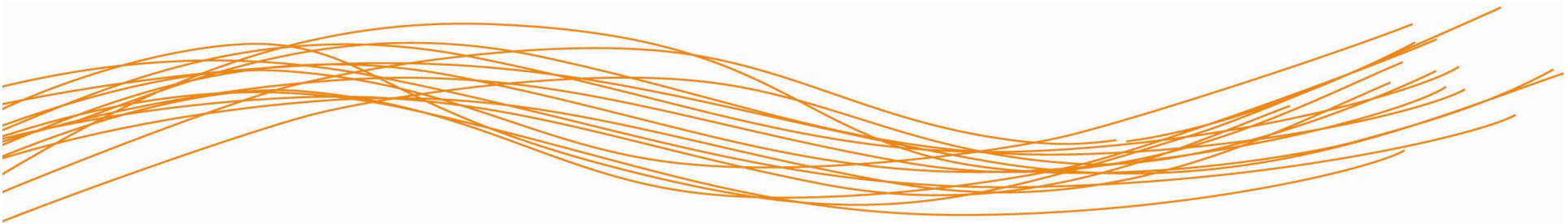


Legal Framework for European Research Infrastructures



**EUDET Annual Meeting
NIKHEF Amsterdam 7 October 2008**





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Context

- October 2006 Publication of ESFRI Roadmap
- 2007 Competitiveness and European Councils invited MS to participate actively in the *implementation* of ESFRI roadmap
- Stakeholders identified the main difficulties for setting up new European research infrastructures as:
 - complexity of technical and organisational issues
 - scarcity of resources
 - lack of an *adequate legal framework* allowing the creation of appropriate partnership with partners from different countries





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ESFRI Action

- Two workshops on the most appropriate legal instruments for pan-European infrastructures (March + December 2006)
- Report of the Working group on Feasibility study on the creation of a European legal instrument for Pan-European research infrastructures (July 2007)
- Conclusions

Work recognised the limitations of existing legal instruments and identified a need to develop a *new dedicated Community legal framework* for setting-up European research infrastructures involving several Member States.





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Proposed regulation for ERI

Objectives

provide a legal instrument adapted to European infrastructures, with the following features:

- a legal personality recognized in all Member States
- spirit of a truly European venture
- flexible enough to adapt to the requirements of specific infrastructures
- providing some of those privileges and exemptions allowed at a national level for intergovernmental organizations (e.g. VAT exemption).
- provide a faster and more cost efficient process than existing legal forms

Proposed choice: EC regulation based on Article 171 of the EC Treaty





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Main choices

- Focus on **basic research** -> mainly public actors -> public-public partnership
- **Avoid VAT-discussion** between and with MS -> VAT-exemption -> apply EC directives for international organizations
- Consequence:
membership limited to States and intergovernmental Organizations





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Council regulation for ERI

Procedure

- The founding members (MS, 3rd state, IO) would take the initiative and submit an application to the Commission,
- The Commission would assess the application, based on independent expertise,
- The Regulation would delegate the power to set up the individual ERIs to the Commission, subject to a Committee -> faster process than individual decisions by the Council





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Council regulation for ERI

Content of the Application

- official request by applicants to set up the ERI
- proposed Statutes of the ERI
- technical and scientific description of the research infrastructure to be established and operated by the ERI





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Framework regulation

Nature of an ERI

- Primary task: establish and operate a Research Infrastructure (RI)
- Four conditions to be fulfilled :
 - RI necessary for European research activities, including Community programmes
 - RI should be of added value in the development of ERA and significant improvement in relevant S&T fields at international level
 - the European research community should have effective access to the RI
 - The RI should contribute to the dissemination and optimization of the results of the activities





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Framework regulation

Membership

- Member States
- Third States
- Intergovernmental organisations

An ERI 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 public entities or private entities with a public-service mission, including regions





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Framework regulation

Internal Structure

- **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.





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Content of Statutes (1)

- 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)**



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Content of Statutes (2)

- **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





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Budgetary principles

an ERI should ensure :

- Sound financial management
- Transparency of budgets and accounts
- Yearly financial reports
- Filing, auditing and publication of accounts according to applicable law
- Appropriate insurance to cover risks, if needed





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Public Procurement and VAT

The ERI is:

- an **international body** within the meaning of Article 151(1)(b) of Directive 2006/112/EC, and
- an **international organisation** within the meaning of the second indent of Article 23(1) of Directive 92/12/EEC and of Article 15, point (c), of Directive 2004/18/EC

Community funding

- in accordance with Title VI of Financial Regulation applicable to the general budget of the European Communities (**grants**)
- Funding from **Structural Funds** possible





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Time table

Next steps

- 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)
- Discussions at the Research Group level (July-Sept-Oct)
- Continued information of stakeholders (autumn 2008)
- Foreseen position of the Council by December 2008
- Foreseen application of the regulation by mid-2009

Commission proposal available on :

http://ec.europa.eu/research/press/2008/pdf/com_2008_467_en.pdf

