



# Status of the legal Framework for European Research Infrastructures (ERI)



European Commission,  
DG RTD B.3 Research Infrastructures





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# Legal Framework for European Research Infrastructures

- Objectives of the legal framework
- Main features of the ERI Regulation
- State of Play



# Objectives of the legal framework

## Background:

- 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)



# Objectives of the ERI Regulation

To provide an easy-to-use legal instrument adapted to European infrastructures.

The legal instrument 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).



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# Nature of an ERI

- Primary task: establish and operate a Research Infrastructure
- Tasks to be pursued on a **non economic basis** – but **limited economic activities possible**
- Four **conditions** fulfilled by the Research Infrastructure:
  - necessary for European research activities, including **Community programs**
  - **open** to the European research community
  - **added value** in the development of the European Research Area and significant improvement in relevant S&T fields at international level
  - contribute to the **dissemination** and **optimization** of the results of the activities



# Definition of Research Infrastructures

- **Facilities, resources, and related services** used by the scientific community for
  - Conducting leading-edge research
  - Knowledge transmission, knowledge exchanges and knowledge preservation
- **Includes**
  - Major scientific equipment
  - Scientific collections, archives and structured information
  - ICT-based infrastructures
  - Entities of a unique nature, used for research



# Membership

- Member States
- Third States
- Intergovernmental organisations

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

The ERI decides on procedures for accepting new members. It has to provide fair conditions for other EU Member States to **join**.

**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





# 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.



# Applicable law to the internal functioning of an ERI:

- **Community law**, in particular this Regulation
- the law of the State, where the ERI has its **statutory seat**
- **Statutes**, adopted in conformity with sources of law referred to above, and by its **implementing rules** complying with its Statutes



# How to establish an European research infrastructure:

- Potential members **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



# Public Procurement and VAT:

According to the Commission proposal the ERI shall be considered as :

- an **international body** within the meaning of Article 151(1)(b) of Directive 2006/112/EC, and
  - as 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
- > exemption from VAT, excise duties and public procurement rules
- The VAT question is the main object of discussion in the Council.



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# State of Play I

- Analysis of possible options (Nov 2007 – Feb 2008)
- Sounding Board (Jan – May 2008)
- Consultation of stakeholders (March – July 2008)
- Elaboration of draft Regulation (May – July 2008)
- Adoption of proposal by Commission (July 2008)
- Submission to the Council and the European Parliament (End July 2008)
- Discussions at the Research Group level of the Council (July-Sept-Oct 2008)



# State of Play II

- Opinion Committee of Regions November 2008
- First discussion on the Council at Minister level December 2008
- Opinion European Economic and Social Committee (EESC), January 2009
- At request of Presidency EC non-paper on VAT January 2009
- Opinion European Parliament February 2009
- Council discussion March 2009: VAT Committee to be consulted
- extraordinary session of VAT Committee April 2009
- Competitiveness Council 29 May 2009



# Exchange of experience on legal issues between infrastructure projects

Aim: facilitate exchange between preparatory phase projects and design studies examining legal issues

- Internet forum for discussions, exchange of papers/questionnaires/slides on possible legal forms, results of the legal work packages etc.
- Workshop Brussels February 2009 for exchange of experience between preparatory phase projects: several issues of common interest identified, for which small working groups have formed. They will report at
- Next workshop on 30 October 2009.



# For further information

- **ESFRI on CORDIS**

→ <http://cordis.europa.eu/esfri/>

- **FP7 and Capacities Specific Programme**

→ <http://cordis.europa.eu/fp7/>

→ <http://cordis.europa.eu/fp7/capacities/>

- **Research Infrastructures in Europa**

→ <http://ec.europa.eu/research/infrastructures>

- **Access to the discussion forum for ESFRI projects:** send email to [adriana.tumeo@ec.europa.eu](mailto:adriana.tumeo@ec.europa.eu) or

[isabelle.rogier@ec.europa.eu](mailto:isabelle.rogier@ec.europa.eu)



**Thank you for your kind attention!**