



# **RAMIRI Final Workshop, 3 April 2013**

## **ERIC**

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# Outline

- **State of Play of the ERIC**
- **New developments around the ERIC Regulation**
- **Recurrent legal and policy questions**
- **Template and practical guidelines**
- **Some recommendations**

# ESFRI roadmap 2010

**10**+38 new - or major upgrade of - Research Infrastructures of pan-European interest  
(+ 3 additional projects from the CERN Council strategic roadmap for particle physics\*)

Social Sc. & Hum. ( 5 )	Life Sciences ( 13 )		Environmental Sciences ( 9 )		Energy ( 7 )	Material and Analytical Facilities ( 6 )	Physics and Astronomy ( 10 )		e-Infra-structures ( 1 )
<b>SHARE</b>	<b>BBMRI</b>	<b>ELIXIR</b>	<b>ICOS</b>	<b>EURO-ARGO</b>	<b>ECCSEL</b>	<b>EUROFEL</b>	<b>ELI</b>	<b>TIARA*</b>	<b>PRACE</b>
<b>E SS Survey</b>	<b>ECRIN</b>	<b>INFRA FRONTIER</b>	<b>LIFEWATCH</b>	<b>IAGOS</b>	<b>Windscanner</b>	<b>EMFL</b>	<b>KM3NeT</b>	<b>CTA</b>	
<b>CESSDA</b>	<b>INSTRUCT</b>	<b>EATRIS</b>	<b>EMSO</b>	<b>EPOS</b>	<b>EU-SOLARIS</b>	<b>European XFEL</b>	<b>E-ELT</b>	<b>SKA</b>	
<b>CLARIN</b>	<b>EU-OPENSREEN</b>	<b>EMBRC</b>	<b>SIAEOS</b>	<b>EISCAT_3 D</b>	<b>JHR</b>	<b>ESRF Upgrade</b>	<b>SPIRAL2</b>	<b>FAIR</b>	
<b>DARIAH</b>	<b>Euro BioImaging</b>	<b>ERINHA BSL4 Lab</b>		<b>COPAL</b>	<b>IFMIF</b>	<b>NEUTRON ESS</b>	<b>SLHC-PP*</b>	<b>ILC-HIGRADE*</b>	
	<b>ISBE</b>	<b>MIRRI</b>			<b>HiPER</b>	<b>ILL20/20 Upgrade</b>			
	<b>ANAE</b>				<b>MYRRHA</b>				

**ERIC established**

**ERIC in preparation**

**Research & Innovation**

**RI's in the implementation phase**

**Distributed research infrastructures**

**Single sited research infrastructures**

Application Step 1	Project	Host country	Members – (Observers)
<b>2011 July</b>	<b>ECRIN</b>	<b>FR</b>	<b>FR, DE, ES, IT</b>
<b>2011, July</b>	<b>EUROARGO</b>	<b>FR</b>	<b>FR, DE, BG, EL, IT, NL</b>
<b>2012, March</b>	<b>ESSurvey*</b>	<b>UK</b>	<b>UK, AT, BE, BG, CY, EE, FR, DE, IS, IL, LV, LT, NL, NO, PL, PT, SI, ES, SE (CH)</b>
<b>2012, July</b>	<b>BBMRI</b>	<b>AT</b>	<b>AT, BG, CZ, EE, FI, FR, EL, IT, LV, MT, NL, NO, ES, SE-(PL, CH)</b>
<b>2012, June</b>	<b>C-ERIC*</b>	<b>IT</b>	<b>IT, AT, CZ, HU, PL, RO, SI</b>
<b>2012, June</b>	<b>EATRIS*</b>	<b>NL</b>	<b>NL, DE, CZ, DK, FI, IT, NO, ES</b>
<b>2012 , October</b>	<b>DARIAH</b>	<b>FR</b>	<b>FR, AT, DE, DK, NL, SI</b>
<b>2012, June (pre-submission received)</b>	<b>Lifewatch</b>	<b>ES</b>	<b>Environmental Sciences</b>
<b>2013 (expected)</b>	<b>JIVE</b>	<b>NL</b>	<b>Physical Sciences and Engineering</b>
<b>2013 (expected)</b>	<b>EMSO</b>	<b>IT</b>	<b>Environmental Sciences</b>
<b>2013 (expected)</b>	<b>CESSDA</b>	<b>NO</b>	<b>Social Sciences and Humanities</b>
<b>2013 (expected)</b>	<b>ICOS</b>	<b>FI</b>	<b>Environmental Sciences</b>
<b>2013 (expected)</b>	<b>EU Openscreen</b>		<b>Biological and Medical Sciences</b>
<b>2014 (expected)</b>	<b>EMBRC</b>		<b>Biological and Medical Sciences</b>
<b>2015 (expected)</b>	<b>ELI</b>		<b>Physical Sciences and Engineering</b>



## **New Developments around the ERIC Regulation**

- **Commission proposal for Amendment of the Regulation COM(2012) 682 final, adopted by the Commission on 3 December 2012**
- **The ERIC Regulation, adopted in 2009, provides in Article 9 for a distinction and difference in treatment between MS, AC, third countries other than AC and intergovernmental organizations**
  - **An ERIC needs at least three MS (Article 9(2)) as members and MS must jointly hold at any time majority of votes in the General Assembly (Article 9(3))**
  - **An ERIC may be hosted by MS or AC (Article 8(1))**
- **Proposed change to Article 9 by which:**
  - **Requirement of three MS is being replaced by one MS with two other MS or AC for establishing or having an ERIC**
  - **Requirement of majority of MS for votes in the General Assembly replaced by majority of MS and/or AC in the General Assembly**
  - **For an ERIC hosted by MS, amendments of Statutes shall require agreement of majority of MS members of that ERIC**

# **Requirements for Associated Countries and Third States to become part as a member of an ERIC**

**Article 9(5) AC, third countries and intergovernmental organisations shall recognize that the ERIC shall have legal personality and capacity in accordance with Article 7 (1) and (2) and that shall be subject to rules determined in application of Article 15 (applicable law and jurisdiction) and provide a treatment of the ERIC equivalent from that as an international organisation for the purposes of the VAT and Procurement Directives**

**The Commission is preparing a template for the declaration of recognition which would satisfy the Regulation and which should offer a relative simple manner for AC, third countries and intergovernmental organisations to join an ERIC**

# **Recurrent Legal/Policy Questions**

- **Relation with national laws and regulations**
- **The ERIC is subject to national laws and regulations and has no legislative powers**
- **It can provide a forum for for example harmonising practices and procedures for treating data including data protection and develop standards for archiving and giving access but such harmonisation and standards should be within the regulatory provisions of the members of the ERIC; similarly for the employment conditions for staff of the ERIC**

# **Recurrent Legal/Policy Questions**

- **Governance-Voting rights- budget/contributions**
- **For governance make a distinction between governance and execution of the activities of the ERIC and avoid conflicts of interest**
- **Avoid that operational decisions can only be taken by unanimity but make a proper balance with the interest of the prospective members**
- **Voting rights should either be on an equal basis or reflect contributions/activities of the members**

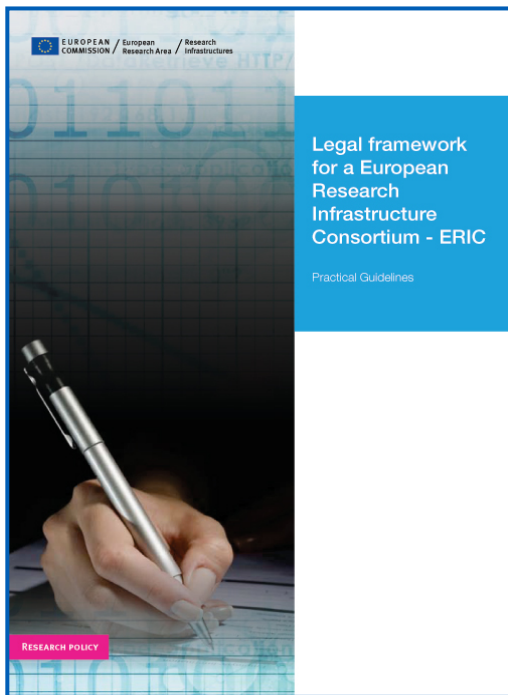


# **Recurrent Legal/Policy Questions**

- **Liability of the members, choice for**
  - **unlimited or**
  - **limited liability combined with insurance**
- **Liquidation of an ERIC**
  - **ERIC can only be terminated by a Decision of the European Commission, not by a national Court**
  - **Winding up of the ERIC should be foreseen in its Statutes**
- **VAT and legal character of ERIC**
  - **ERIC is treated as an international organisation for the purposes of the VAT Directives. It is not an international organization that would need ratification or signatures by the members**

# **Recurrent Legal/Policy Questions**

- **Applicable law and jurisdiction**
- **Community law for the setting up and internal functioning of the ERIC- Law of the State of the statutory seat for other matters and - by the Statutes and their implementing rules**
- **Jurisdiction ECJ for litigation amongst members in relation to ERIC, between members and the ERIC and any litigation for which Community is party**
- **Community legislation for deciding competence for dispute between ERIC and third Party of law of Host State**



- **The Commission is in the process of updating the guidelines in view of the experiences of the first ERIC applications**
- **The Commission also provided a first working version of the Templates for the ERIC Statutes**
- **More elaborated versions of these documents should be available as working versions by Summer 2013 at the same time when Council is planned to address the proposed amendment of the Regulation**

# Recommendations

- **Set clear objectives of the ERIC and what the ERIC should cover in particular when distributed**
- **Be realistic in the estimates in the required budget for the ERIC activities and set ceilings on maximum contributions for the first five/three years**
- **Make clear what the incentive is for investing in the infrastructure possibly by differentiating user fees for members/third parties**
- **Provide observers with incentives to become members**
- **Provide a forum for stakeholders as necessary for supporting the activities but do not confuse this with governance**

# Recommendations

- **Provide a « simple » governance structure that has clear lines of responsibility for governance by the members and for execution by the ERIC executive entity (Director or Board of Directors)**
- **Make the Statutes concise and refer for details to implementing rules even when some main principles should be established for the various policies of the ERIC (e.g. procurement-employment-data-IP)**
- **Achieve a good understanding of the basic common principles that should underly the RI to be established before drafting the Statutes**