# Presentation of
# RAMIRI Handbook Chapter 3:
# Legal and Governance Issues

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# Legal and Governance Issues

# Legal and Governance Issues
## 3.1. Introduction

Importance of legal framework = institutional arrangement ensuring correct and lasting relationship

- between all stakeholders (shareholders, funders, managers, users, third parties, …)

- not only during construction and operation

- but also for the
  - winding-up phase or the
  - transformation after the useful lifetime of the RI

# Legal and Governance Issues
## 3.2. Governance – Management interplay

To be distinguished:

- Governance (develops strategy, defines rules, commits resources, evaluates the outcome)
- Management (executes, responsible for obtaining results)

Distinction more pronounced than in academia

- Large amount of investments and resources
- Service to external users

Management (Board) reports to, and prepares decisions of, governing body (Assembly, Council)

# Legal and Governance Issues
## 3.2. Governance – Management interplay

Success of operation measured not by net income but by knowledge production

- Governing body does not necessarily comprise the corresponding specialists
- Assessment underpinned by Scientific and Technical Advisory Committees

Importance of good relationship between governing body and Management, and of understanding of roles

- Checks and balances, mutual trust required
- Risks: tension, bureaucracy, micromanagement

# Legal and Governance Issues
## 3.3. Negotiating and developing the governance and scope

- Objective: lasting and stable formal agreement (i.e. to endure changes in people, governments and institutional perspectives)

- Negotiation by people from various cultures and different professional backgrounds

- "Northern" approach  -  "Southern" approach

- Type of Governing body, Voting rights

- Balance of powers (national authorities, governing body, executive management)

# Legal and Governance Issues
## 3.3. Negotiating and developing the governance and scope

- Scope of committees (advising, supervising, both?)

- Host country
  - Choice (scientific, political, financial?)
  - Consequences (e.g. for personnel rules)

- Full lifetime to be considered ?

# Legal and Governance Issues
## 3.4. The basic elements of a legal structure

- Vision required as to functions, mission, scope of RI before discussion of legal statute and governance

- RI to be run as part of larger organism, or independently?

- Legal statute must include statements on
  – Framework of agreement (e.g. in foreword, preamble)
  – Scope
  – Governance  and Management (plus expert advice)
  – Resources (financial, in-kind, human) and commitments
  – Monitoring, adjustments (if necessary), winding-up

# Legal and Governance Issues
## 3.5. The choice between alternative legal structures

- National organisation (with international members, based on an arrangement between different countries)
  - Foundations (or similar non-profit legal forms)
    However, legally rather independent from founders.
  - Companies (to be adapted to the non-profit needs) but better integration into general legal framework (Société civile, Ltd., GmbH), not possible in all European countries
  - Handling of VAT to be observed

- International Organisations ruled by an international treaty
  - Successful examples: CERN, ESO, ESA, EMBL
  - Difficult to replicate nowadays

# Legal and Governance Issues
## 3.6. The European Research Infrastructure Consortium (ERIC)

Need and ambition for new RIs from ESFRI Roadmap triggered search for appropriate legal framework with the following features

- provide a legal personality which is recognised in all Member States

- reflect the spirit of a truly European venture

- be flexible to adapt to the requirements of the different specific infrastructures

- be easy to use and speed the process of setting up the infrastructures

- provide some of those privileges and exemptions which are allowed at a national level for non-profit research

- allow the attraction and flexible management of human resources.

# **Legal and Governance Issues**
## **3.6. The European Research Infrastructure Consortium (ERIC)**

- EC Council Regulation on ERIC was published on 25 June 2009

- Procedure and useful steps in "Practical Guidelines"

- ERIC can be proposed by EU Member states; Associated countries and International Organisations can participate

- ERIC fulfils most of the criteria above; however, human resources are subject to legislation of host state.

- EC regulations applicable immediately in all EU member states (differently from EC directives)

- ERIC is a specific legal form but nevertheless flexible to accommodate various kinds of mission, activities, funding, …

# Legal and Governance Issues
## 3.6. The European Research Infrastructure Consortium (ERIC)

An ERIC must respect the following conditions:

- be set-up by **at least three Member States** (MS), its statutory seat must be in a MS. It is open to the participation of Associate and third Countries

- carry out **European research activities**

- represent **added value** in the scientific and technological fields at the European and international level

- be **accessible** to researchers from MS and countries associated to the Community Research and Development Framework Programme

- promote the **mobility** of researchers and the exchange of knowledge within the European Research Area (ERA)

- participate in the **dissemination and optimisation** of the results of research activities.

# Legal and Governance Issues
## 3.7. Commonalities and differences between single-site and distributed RIs

- Experience so far mostly with large single-site RIs

- In future, rather "distributed" RIs (DRIs) expected, partly resulting from former networks.

- Starting on "green field" vs. emergence from integration or upgrade of existing "partner facilities"

- Larger geographical area or impact of DRIs

- Legal integration to what extent? Single governance? Ownership?

- Statutory seat of DRI: central facility? *primus inter pares*?

# Legal and Governance Issues

## 3.7. Commonalities and differences between single-site and distributed RIs

- Other distinction (valid for both) with impact on legal issues:
  - Virtual access and/or content (e.g. high performance computing, data banks)
  - Mainly physical access and hardware content (e.g. EMBL or EMBRC)

- In principle, aspects of governance vs management, negotiating, legal structures, etc. similar for both

# Legal and Governance Issues
## 3.8. Definition and role of partners, regional partners, and regional RIs

Not yet developed

# **Legal and Governance Issues**

## My conclusion:

- There is no universal scheme that fits for all cases

- Adjustment to mission, scope and kind of partnership are always necessary

- Various hints on the Dos and Don'ts are available
in the literature, and now also in the current version of the RAMIRI Handbook

- May be even more valuable is the exchange of personal experience, e.g. within the RAMIRI network

- This may help to come up in some years with an even more comprehensive version of the Handbook.