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# Legal Framework for European Research Infrastructures

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## Objectives

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

## Time table **Next steps**

- 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)
- First discussion on the Council at Ministries level December 2008

## Legal Basis EC Treaty:

- **Article 171**

The Community may set up joint undertakings or any other structure necessary for the efficient execution of Community research, technological development and demonstration programmes.

- **Article 172(1):** qualified majority, consultation procedure

- **Legal model** for European research infrastructures
- rules and **procedures** governing their establishment:
  - legal entities interested draw up the statutes for a concrete European research infrastructure and **submit** the project to the Commission
  - The **legislator confer 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

## Application for the setting-up of an ERI

- **Content** of the application:
  - request to the Commission 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
- The Commission **assess** the application; obtain the views of independent experts
- The result **communicated** to the applicants. if necessary, invited to complete or amend the application within a reasonable time.

## Nature of an ERI

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

## 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 **joint** as specify in statutes.

**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.

## 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)**;
- references to **rules implementing** the Statutes.

## 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 respecting the principles of transparency, non-discrimination and competition
  - decommissioning, if relevant

The Statutes shall be **publicly available** on the website of the ERI and at its statutory seat.

## 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

# VAT, excise duties and Public Procurement (1)

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

## **VAT, excise duties and Public Procurement** **(2)**

- The VAT question is the main object of discussion in the Council. The Commission is trying to convince the Council that this Regulation is the appropriate place to treat the question.
- Its treatment in the VAT directive is not appropriate as it is not a fiscal harmonisation, is uncertain (unanimity) and will cause important delays : difficult adoption + transposition.

## Reporting

- An ERI shall produce an **annual activity report** and transmit it to the Commission
- if indications that an ERI is acting in serious **breach** of this Regulation or the decisions adopted on its basis or other applicable law:
  - ✓ ERI provide **observations**
  - ✓ Commission may propose **remedial action**
  - ✓ If no remedial action is taken, the Commission may **repeal the decision** establishing the ERI

## Community funding

- in accordance with Title VI of Financial Regulation applicable to the general budget of the European Communities (**grants**)
- Funding from **Structural Funds** also possible
- The Article clarifying this point in the Commission proposal may dissapear but the principles will be applied.