

Implementation of the Community legal framework for a European Research Infrastructure Consortium (ERIC)

- PP workshop 30 October 2009



Status of the ERIC legal framework

- Adoption of proposal by Commission, 25 July 2008
- Adoption by Council, 25 June 2009
- Publication in Official Journal, 8 August 2009
- Entry into force, 28 August 2009
- First meeting of Management Committee 9 October 2009
- Practical Guide in preparation

ERIC : Main aims

An easy-to-use legal instrument providing:

- the spirit of a truly European venture
- a legal personality recognized in all MS
- flexibility to adapt to the specific requirements of each infrastructure
- some privileges / exemptions allowed at a national level for intergovernmental organisations
- a faster process than creating an international organisation

ERIC 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.

ERIC's Tasks & requirements

- Principal task: establish and operate a Research Infrastructure, on a non economic basis
- Five requirements to be met:
 - necessary for European research
 - added value in the development of ERA and significant improvement in relevant S&T fields
 - effective access to European researchers
 - Contributes to the mobility of knowledge and/or researchers with in the ERA
 - dissemination / optimization of the RTD results

Membership of an ERIC

- Member States
- Associated Countries
- Third States
- Intergovernmental organisations

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

It sets out its own procedures for accepting new members, but must provide fair conditions for other MS 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

Law applicable to the internal functioning of an ERIC

- **Community law**, in particular the ERIC Regulation
- the law of the State where the ERIC has its **statutory seat**
- **The ERIC's statutes**, adopted in conformity with the sources of law referred to above, and its **implementing rules**

Public Procurement and VAT

ERICs will not be bound by the procedures of the **Public Procurement Directive** but may set their own procurement rules based on transparency, non-discrimination and competition.

ERICs will be exempted from paying **VAT** and **excise duty**.

This is possible because ERICs will be considered as international bodies/ organisations for the purposes of the Directives on public procurement, VAT and excise duties.

Internal Structure of an ERIC

- **statutory seat** in a Member State or Associated Country; research 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.

Application process

- **Who can apply?**

States and intergovernmental organisations, including at least three Member States

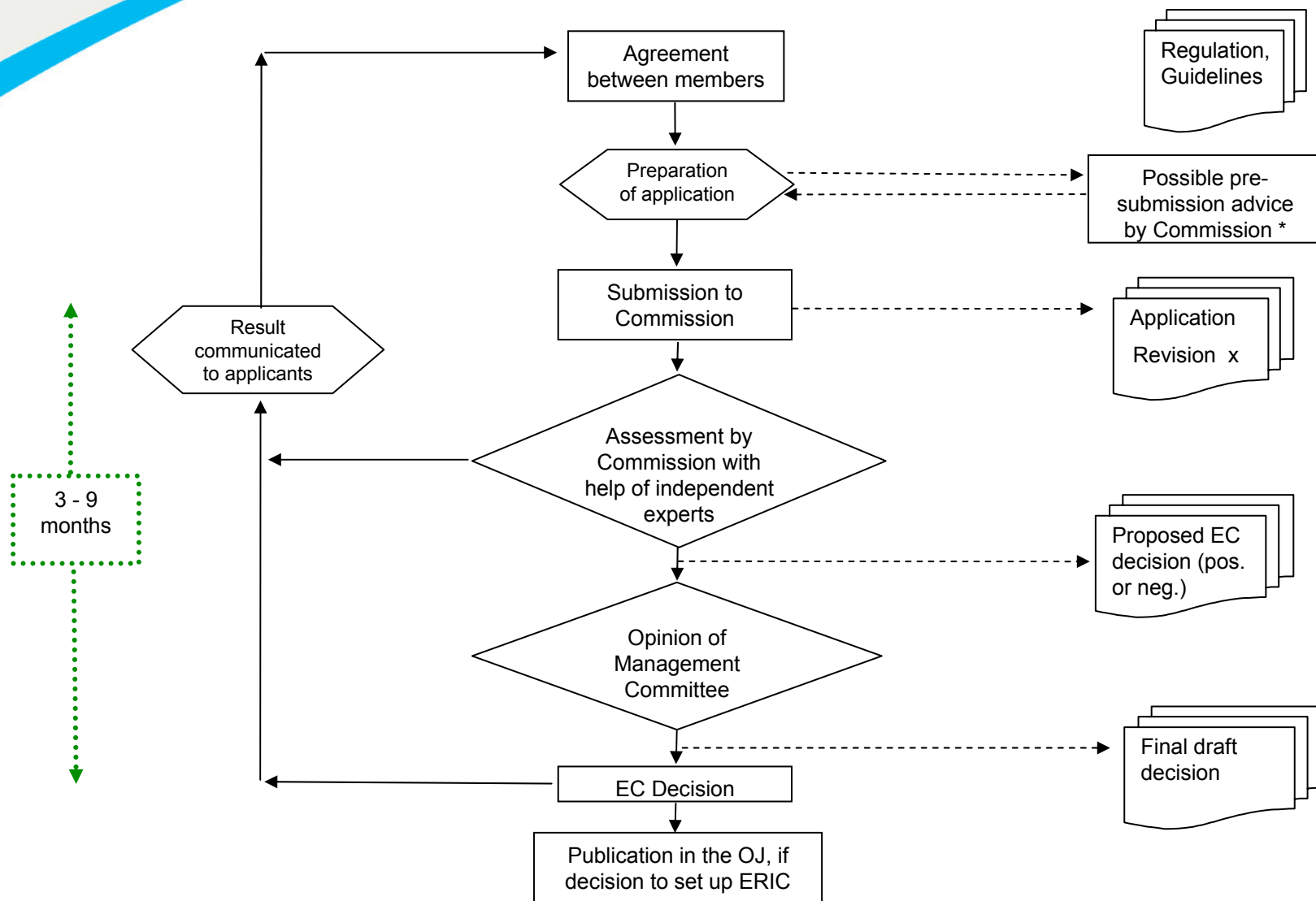
- **Submission of the application**

Electronically to: RTD-ERIC@ec.europa.eu by the Permanent Representation to the European Union of the country of the statutory seat of the ERIC

- **Language**

Applications may be submitted in any official language of the European Union.

Application and assessment process



Assessment process

A. Check of completeness of the application (Art. 5)

- Official request to set up the ERIC by its future members
- Proposed Statutes (all elements of Art. 10 included)
- Technical and scientific description of the research infrastructure
- Declaration by host MS recognizing the ERIC as international body in the sense of the VAT and excise duty directives
- Agreement on the limits and conditions of the tax exemptions
- Recognition of legal personality and privileges of the ERIC by non-EU members, if applicable

Assessment process

B. Verification of compliance of the application with the requirements of the ERIC Regulation

- on the basis of
 - ✓ the technical and scientific description of the research infrastructure and
 - ✓ the Statutes
- by the Commission, with the help of independent experts

Administrative issues

To be checked by the European Commission:

- Statutory seat: located in MS or AC (Art. 8.1);
- Name of the ERIC: contains "ERIC" (Art. 8.2)
- Membership:
 - only states and intergovernmental organisations (Art. 9.1)
 - fair terms for joining of new MS (Art. 9.2)
 - majority of voting rights held by MS (Art. 9.3)
- Bodies of the ERIC: assembly of members and director or board of directors (Art. 12)
- Liability regime: insurance in case of limited liability (Art. 14.3)

Technical & scientific issues

To be checked with the support of independent experts:

- Task and other activities: Principal task to establish and operate a research infrastructure (Art. 3.1); only limited economic activities (Art. 3.2, 3.3)
- relating to the research infrastructure (Art. 4):
 - important for European research
 - excellent in its field at international level
 - provides effective access for European researchers
 - contributes to the mobility of knowledge and/or researchers within the ERA
 - dissemination / optimisation of the RTD results

Selection of experts and their specific role

- Experts to be chosen within an official database
- ESFRI and the ERIC Committee invited to recommend experts
- 4-5 experts to be selected to assess an application
- Assessment of the ERIC characteristics, based on submitted documents

Consultation of the ERIC Committee

Formal opinion of the Committee

- The ERIC Committee will receive a request for a formal opinion on the decision of the Commission on the application
- It determines its opinion by qualified majority (i.e. same weighting of votes as in the Council)
- Regular meetings of the ERIC Committee will be organized to keep the Committee regularly informed (to take place, as far as possible, on the same day as the meetings of the Programme Committee for Research Infrastructures)

Next steps

- Finalization of the Practical Guide
- Further information:
http://ec.europa.eu/research/infrastructures/eric_en.html

Many thanks for your attention -
Questions welcome!