



European  
Commission

# ERIC

## Practical guidelines

*Legal framework for a  
European Research  
Infrastructure Consortium*

*Research and  
Innovation*

**EUROPEAN COMMISSION**

Directorate-General for Research and Innovation

Directorate B — Innovation Union and European Research Area

Unit B4 — Research Infrastructures

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European Commission

# ERIC Practical guidelines

Legal framework for  
a European Research Infrastructure Consortium

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This Guide is aimed at assisting potential applicants. It is provided for information purposes only and its contents are not intended to replace consultation of any applicable legal sources or the necessary advice of a legal expert, where appropriate. Neither the Commission nor any person acting on its behalf can be held responsible for the use made of these guidance notes.

March 2015

Directorate-General for Research and Innovation  
Research Infrastructures

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Luxembourg: Publications Office of the European Union, 2015

ISBN 978-92-79-37861-4

doi:10.2777/72348

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*Printed in France*

PRINTED ON ELEMENTAL CHLORINE-FREE BLEACHED PAPER (ECF)

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# Introduction

Council Regulation (EC) No 723/2009 on the Community legal framework for a European Research Infrastructure Consortium was adopted in order to facilitate the establishment and the operation of large European research infrastructures among several Member States and associated countries by providing a new legal instrument, the European Research Infrastructure Consortium (ERIC).

The ERIC legal framework may be used for new or existing, single-sited or distributed research infrastructures.

An ERIC is a legal entity set up by a decision of the European Commission. It has legal personality and full legal capacity recognised in all EU Member States. The basic internal structure of an ERIC is flexible and defined in the statutes by its members. The liability of the ERIC's members can be limited to their respective contributions.

An ERIC is recognised, by the country hosting its seat, as an international body or organisation for the purposes of the directives on value added tax <sup>(1)</sup> (VAT) and excise duties <sup>(2)</sup>. It also qualifies as an international organisation for the purpose of the directive on public procurement <sup>(3)</sup>. An ERIC may therefore, under certain limits and conditions, benefit from exemptions from VAT and excise duties on its purchases in all EU Member States and it may adopt its own procurement rules.

The ERIC regulation was amended in December 2013 to allow better reflection of the contributions of associated countries in the ERIC in terms of voting rights.

By the end of 2014, 10 ERICs were established.

These guidelines provide, in section 1, essential elements on the definition of an ERIC, in section 2 practical information on how to prepare and submit an application for an ERIC and in section 3 explanations on the organisation and implementation of an ERIC. Commentaries included in these guidelines are provided for information purposes only and are not intended to replace consultation of applicable legal sources, including EU and national legislation, or the necessary advice of a legal expert.

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<sup>(1)</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, OJ L 347, 11.12.2006, p. 1.

<sup>(2)</sup> Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/112/EEC, OJ L 9, 14.1.2009, p. 12.

<sup>(3)</sup> Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, OJ L 134, 30.4.2004, p. 114 and Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, OJ L 94, 28.3.2014, p. 65.

# What is an ERIC?

## A legal entity created under Union law

An ERIC is a legal entity. It has legal personality as from the date on which the Commission decision setting up the ERIC takes effect.

Its legal personality and extensive legal capacity are recognised in all Member States without requiring transposition into national law or any national legal instrument.

An ERIC must be recognised by its host country as an international body or organisation for the purpose of the directives on value added tax or excise duties (see 2.2.(4)).

The statutory seat of an ERIC must be located on the territory of a Member State or of an associated country member of the ERIC.

An ERIC may conclude agreements with other legal entities.

## Objectives

The principal task of an ERIC is to establish and operate a research infrastructure <sup>(4)</sup> on a non-economic basis.

An ERIC can be used for establishing new research infrastructures or for operating existing research infrastructures which consider it useful to change their legal structure to become an ERIC. Research infrastructures may be single-sited or distributed.

The research infrastructure must meet the requirements set out in the ERIC regulation (Article 4 of the regulation):

- (a) it is necessary for the carrying out of European research programmes and projects, including for the efficient execution of Community research, technological development and demonstration programmes;
- (b) it represents an added value in the strengthening and structuring of the European Research Area (ERA) and a significant improvement in the relevant scientific and technological fields at international level;
- (c) effective access, in accordance with the rules established in its statutes, is granted to the European research community, composed of researchers from Member States and from associated countries;
- (d) it contributes to the mobility of knowledge and/or researchers within the ERA and increases the use of intellectual potential throughout Europe; and

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<sup>(4)</sup> 'Research infrastructure' means facilities, resources and related services that are used by the scientific community to conduct top-level research in their respective fields and covers major scientific equipment or sets of instruments; knowledge-based resources such as collections, archives or structures for scientific information; enabling Information and Communications Technology-based infrastructures such as Grid, computing, software and communication, or any other entity of a unique nature essential to achieve excellence in research. (Article 2(a) of the ERIC regulation).

(e) it contributes to the dissemination and optimisation of the results of activities in Community research, technological development and demonstration.

## Seat and name

The statutory seat of an ERIC must be located on the territory of a member: either a Member State or an associated country, where at least some of its activities are carried out.

The name of an ERIC must contain the abbreviation 'ERIC' as a separate term.

## Duration

An ERIC may be created for an indefinite or for a limited period of time. If it is created for a limited period of time, the statutes may provide for the modalities of its renewal, e.g. decision of the assembly of members with a specific majority, assessment prior to the renewal.

## Members and observers

An ERIC must have at least one Member State and two other countries that are either Member States or associated countries as members.

Member States, associated countries, third countries other than associated countries and intergovernmental organisations may become members of an ERIC, or observers without voting rights, subject to conditions and modalities specified in the statutes.

Member States, associated countries and third countries other than associated countries, which are members or observers of an ERIC, may be represented by public entities, including regions or private entities with a public service mission, to exercise specified rights or fulfil specified obligations on their behalf (see 3.1. Representing entities).

## Liability

An ERIC is liable for its debts.

As regards liability of the members, the default regime laid down in the ERIC regulation is liability limited to each member's contribution provided to the ERIC <sup>(5)</sup>. The statutes may specify this provision or provide for another solution such as fixed liability above the contribution provided to the ERIC.

If the statutes provide for limited liability of the members, the ERIC must take appropriate insurance to cover the risks relevant to its activity.

## Applicable law and jurisdiction

The establishment and internal functioning of an ERIC are governed by the ERIC regulation, by the law of the state where the ERIC has its statutory seat in the case of matters not, or only partly, regulated by the ERIC regulation, and by its statutes and their implementing rules.

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<sup>(5)</sup> Article 14.

As regards procurement, being considered an international organisation within the meaning of the directive on public procurement (Directive 2004/18/EC and Directive 2014/24/EC), an ERIC may adopt its own procurement rules (see 3.2. Policies).

The Court of Justice of the European Union has jurisdiction over litigation among the members in relation to the ERIC, between the members and the ERIC and over any litigation to which the Union is a party. Union legislation on jurisdiction applies to disputes between an ERIC and third parties; in cases not covered by Union legislation, the law of the state where the ERIC has its statutory seat determines the competent jurisdiction <sup>(6)</sup>.

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<sup>(6)</sup> Article 15.

# How to create an ERIC?

## 2.1. Procedure

Submission takes place in two steps in order to ensure that a full signature procedure by all members is only needed once even if the assessment of the application leads to modification requests.

### Pre-submission advice

The future members of an ERIC should prepare and agree on the documents required for the application (see list of documents under 2.2.). National procedures set up to ensure the agreement and commitment of each member may vary from country to country. Stakeholders of future ERICs are encouraged to work well in advance and involve their national authorities when designing the ERIC and preparing the required documents.

Potential applicants are also invited to contact the Commission at [RTD-ERIC@ec.europa.eu](mailto:RTD-ERIC@ec.europa.eu) for pre-submission advice.

### Step 1: Verification of compliance with the requirements laid down in the ERIC regulation

The application must be submitted electronically at the following e-mail address: [RTD-ERIC@ec.europa.eu](mailto:RTD-ERIC@ec.europa.eu).

It must be sent by the potential host state's permanent representation or mission to the European Union on behalf of the future members of the ERIC. The application must contain the documents listed below (see 2.2.), finalised and agreed by the applicants. At this stage, a signature from the members is not required; however, the declaration by the host state recognising the future ERIC as an international body and international organisation within the meaning of the directives on VAT and excise duties is necessary.

The Commission must assess the application in line with the requirements laid down in the regulation, as specified in the checklist included in Annex 4.

During the assessment, the Commission obtains the views of four to five independent experts, in particular in the field of the intended activities of the ERIC.

The Commission informs the applicants of the results of the assessment by sending comments and suggesting modifications to the draft scientific and technical description and to the statutes. The Commission invites the applicants to submit the formal request signed by all future members of the ERIC taking into account the comments and suggestions made.

### Step 2: Formal request to the Commission to set up the ERIC

The applicants submit their signed request to set up the ERIC accompanied by the final version of all the documents of the application (see 2.2.). The request must be signed by all applicants.

The application is submitted electronically and in paper form at the following address:

The Director-General  
European Commission  
Directorate-General for Research and Innovation  
1049 Brussels  
BELGIUM  
[RTD-ERIC@ec.europa.eu](mailto:RTD-ERIC@ec.europa.eu)

On the basis of this request, the Commission seeks the opinion of the ERIC Committee <sup>(7)</sup> and prepares its decision.

The decision setting up an ERIC is notified to the applicants and published in the *Official Journal of the European Union*.

## Duration of the procedure

The estimated duration is:

- Step 1: 3 months starting from the submission of the application;
- Step 2: 6 months starting from the submission of the formal request to the Commission. This duration includes the translation of the decision in all official languages of the European Union.

In order to keep the application process as short as possible, while ensuring that all steps of the process are respected, the European Commission will try its best to assist potential applicants at all stages of the preparation of an ERIC.

## 2.2. Application

### Content of the application

1. A request to the Commission to set up the ERIC.

The request follows the wording suggested in Annex 3 or contains a wording to a similar effect.

2. The proposed statutes of the ERIC containing at least the items listed in Article 10 of the ERIC regulation (see Annex 4).

The statutes contain the provisions governing the ERIC, notably its tasks and activities, the rights and obligations of its members, the bodies of the ERIC, the principles covering the different policies. The obligations of the members include the obligation to make contributions to a balanced budget. A template for the statutes is provided in Annex 2, to be adapted for each specific case.

3. The technical and scientific description of the research infrastructure to be established and operated by the ERIC.

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<sup>(7)</sup> The comitology rules are laid out in Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers, OJ L 55, 28.2.2011, p. 13.

The ERIC Committee is composed of representatives of all Member States of the European Union and of associated countries.

The information should be structured to describe the principal tasks of the ERIC including, if applicable, any intended economic activities. It should address the specific requirements set out in Article 4 of the ERIC regulation, i.e. the research infrastructure must: be necessary for the carrying out of European research programmes; represent an added value in the implementation of the European Research Area (ERA) and an improvement at international level; grant effective access to the European research community; contribute to the mobility of knowledge and/or researchers within the ERA; contribute to the dissemination and optimisation of the results of the activities.

The technical and scientific description should include key performance indicators of the ERIC's activities against which progress of the ERIC can be benchmarked. It should also include an adequate risk assessment in order to ensure a smooth implementation.

In the case of a distributed infrastructure involving national legal entities in the operation of the research infrastructure, the technical and scientific description should explain the boundaries and the planned arrangements between the ERIC and those legal entities.

4. The declaration by the host state recognising the ERIC as an international body and international organisation within the meaning of the directives on VAT and excise duties.

The formal declaration by the competent authority of the state where the statutory seat of the ERIC is located must enter into force as from the date on which the decision setting up the ERIC takes effect.

If the host state is an associated country, this declaration may be included in the declaration for the recognition of legal personality and capacity of an ERIC (see point 5 below).

The limits and conditions of the exemptions must be agreed between the members. The agreement may take the form of a separate document or may be included in the provisions of the statutes. It specifies the implementation of the exemptions, such as the recording and recovery of the tax paid, defines their exact scope, requiring in particular that purchases are made for the official use of the ERIC and for its non-economic activities or excluding purchases of certain types of goods or services, and sets their limits, excluding minor purchases (see 3.2. Tax exemptions).

5. If one or more members are associated countries, third countries or intergovernmental organisations: a declaration, by each of those members, recognising the legal personality and capacity of the ERIC, agreeing that it will be subject to rules and jurisdiction as defined in the ERIC regulation and providing equivalent treatment as an international body or international organisation with respect to VAT and excise duties exemption and to procurement rules.

A template for this declaration is provided in Annex 5 (associated countries and third countries other than associated countries) and Annex 6 (intergovernmental organisations).

## **Membership of the ERIC**

The following entities may become members of an ERIC: Member States, associated countries, third countries other than associated countries and intergovernmental organisations.

The membership of an ERIC must include one Member State and two other countries that are either Member States or associated countries.

Since the research infrastructure operated by an ERIC must represent an added value in the strengthening and structuring of the ERA, it is recommended, during the preparation of the application, to involve all relevant countries which might become founding members.

The founding members must sign the request referred to in point 1 above as well as, for associated countries, third countries and intergovernmental organisations, the declaration referred to in point 5.

Further members may join the ERIC after its establishment, in accordance with the procedure and conditions provided for in the statutes.

## **Commitments from the members**

The proposed statutes must include the commitment of the members to make contributions to the ERIC. The contributions should be commensurate with the tasks and objectives described in the statutes and ensure a sustainable operation of the ERIC. The statutes should include a provisional budget with the corresponding commitments from the members for the first 3–5 years.

Part of the commitments may be in kind. However, there must be sufficient financial contributions to ensure that the ERIC meet the objectives laid down in the statutes and that the infrastructure fulfils the requirements set out in the ERIC regulation.

In order to foster sustainability of the ERIC, the statutes must provide for a minimum duration for membership. During this period, no member may withdraw unless the membership has been entered into for a specified shorter period, under the conditions provided for in the statutes.

# Organisation and implementation

## 3.1. Organisation

### Representing entities

In practice, expertise on research matters and resources to carry out the activities of the ERIC may be in legal entities separate from the state which is member of the ERIC. The ERIC regulation <sup>(8)</sup> allows the representation of the states by one or more legal entities as regards the exercise of specified rights and the discharge of specified obligations as a member of the ERIC. Those legal entities may be public entities, including regions, or private entities with a public service mission.

Entities with a public service mission: if an entity established under private law is owned by a public sector body or the state, it can be deemed to have a public service mission. If it is not owned by a public sector body, it must be explicitly granted such a mission through a decision by a public sector body. For example, higher education establishments that deliver diplomas recognised by a public authority according to criteria established by the state or perform research with public funding and in accordance with objectives agreed by the state would meet this criterion.

The state which is member or observer of the ERIC appoints and gives a specific mandate to the representing entity according to its own rules. The terms of the representation, including the terms for exercising voting rights, and any change in the designation of the representing entity or in the rights and obligation delegated to it should be communicated to the ERIC.

### Voting rights

Member States and associated countries must hold jointly the majority of the voting rights in the assembly of members, which is the decision-making body of an ERIC where all members are represented <sup>(9)</sup>.

This requirement must be met at all times during the lifetime of an ERIC. If, due to modifications in the membership of an ERIC, Member States and associated countries do not hold jointly the majority of the voting rights anymore, modifications in the share of voting rights need to be made to ensure that the ERIC complies with this requirement.

The requirement refers to the general distribution of the votes in the assembly of members. A meeting where, due to absences, Member States and associated countries do not hold jointly the majority of the voting rights would not be irregular as long as the conditions provided for by the statutes, such as the quorum, are met.

The statutes provide for the distribution of voting rights, e.g. each member has one vote or the voting rights are determined in proportion to the respective contributions or any other mechanism which the members consider fair and efficient.

<sup>(8)</sup> Article 9(4).

<sup>(9)</sup> Article 9(3).

## Governance

The minimum governing bodies required by the ERIC regulation are an assembly of members and a director or a board of directors.

The assembly of members is the body having full decision-making powers. It adopts in particular the annual budget, the annual work plan and the implementing rules which complement the statutes.

The director or the board of directors is appointed by the assembly of members. The director or board of directors is the executive body and legal representative of the ERIC.

Each ERIC is free to choose its own internal organisation, e.g. the executive body may be a director, assisted by a committee, or it may be a board of directors collectively accountable to the assembly of members. In the latter case, decisions or contracts will need to be signed by all directors.

Several advisory bodies may be set up in the statutes such as a scientific board, an administrative and finance committee or an ethics committee to support the assembly of members. During the lifetime of an ERIC, the assembly of members may create other advisory bodies as deemed appropriate. For ERICs operating distributed infrastructures, the director may be supported by a committee consisting of representatives of the national facilities and by other advisory bodies.

The statutes provide for the basic rules, in particular on quorum or majority rules for the decisions of the assembly of members. Further rules may be adopted by the assembly of members in the implementing rules.

When designing the governance structure and procedures, the members should clearly define the tasks and responsibilities of each body and take into account the need for efficient implementation.

## Legal representation

According to the ERIC regulation, the legal representative of the ERIC is the director or the board of directors.

The members agree in the statutes on the rules on legal representation of an ERIC. Legal representation should be simple in order not to confuse third parties as to the validity of an ERIC's representation. It should also enable the ERIC to exercise its rights, such as signing the contracts necessary for carrying out its activities, in an efficient manner.

## 3.2. Implementation

### Task and activities

According to the ERIC regulation, the principal task of an ERIC is to establish and operate a research infrastructure. The content of activities may differ depending on the type of research infrastructure, which may be single-sited or distributed. Distributed infrastructures range between infrastructures having facilities located in different sites, operated by a single legal entity, and infrastructures set up as a central hub coordinating the operation of distributed facilities which might retain their legal personality.

An ERIC should have a clear mission and responsibility for the operation of the infrastructure, including, e.g.:

- defining the overall strategy;
- providing and supporting effective access to the infrastructure;

- defining common standards and improving interoperability;
- providing or supporting training and facilitating mobility of researchers;
- supporting technology transfer activities.

Provisions of the statutes and agreements between the ERIC and legal entities operating national facilities should allow for a clear identification of the activities and resources which are under the ERIC's responsibility and those which are under other legal entities' responsibility.

According to the ERIC regulation, an ERIC must carry out its principal task on a non-economic basis. However, it may carry out limited economic activities, provided they are closely related to its principal task and do not jeopardise its achievement <sup>(10)</sup>.

### 1. Economic and non-economic activities

In interpreting the notion of 'non-economic', the Commission relies on the definition of 'economic activities' as developed on the basis of the case-law of the Court of Justice of the European Union in competition matters.

An economic activity consists of offering goods and/or services on a given market <sup>(11)</sup>. The fact that an activity is carried out by a non-profit operator is not enough to avoid classification as an economic activity. Conversely, the fact that a fee might be charged does not in itself render the activity 'economic' if the access and related services do not correspond to what the market can provide. Whether a market exists for a certain service depends on the organisation of the activity by the Member State concerned and can therefore differ from one Member State to another. It may also change over time due to policy decisions on the way in which the activity is organised or as a result of market developments.

### 2. Limited economic activities <sup>(12)</sup>

The economic activities of an ERIC must remain secondary and not prevail over the execution of its main task. Quantifiable elements may be used to assess the importance of each activity, such as the respective costs and income, use of human resources or the share of access to the facility for economic and non-economic purposes.

If an economic activity becomes successful enough to be no longer considered as secondary, an ERIC may consider creating a spin-off company for example.

### 3. Recording of the costs and revenues of economic activities

According to the ERIC regulation, an ERIC must record the costs and revenues of its economic activities separately and charge market prices for them. If such prices cannot be ascertained, it must charge full costs plus a reasonable margin. This margin may be the margin established by reference to margins commonly applied by undertakings for the same activity.

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<sup>(10)</sup> Article 3(2).

<sup>(11)</sup> Case 118/85 *Commission v Italy* [1987] ECR 2599, paragraph 7; Case C-35/96 *Commission v Italy* [1998] ECR I-3851, paragraph 36; and *Pavlov*.

<sup>(12)</sup> This paragraph corresponds to the requirements of the ERIC regulation. For questions concerning state aid, the provisions of the Framework for state aid for research and development and innovation apply (Communication from the Commission — Framework for state aid for research and development and innovation, OJ C 198, 27 June 2014, p. 1).

## Policies

The statutes must contain the basic principles covering a series of policies:

- access policy for users;
- scientific evaluation policy;
- dissemination policy;
- intellectual property rights policy;
- employment policy, including equal opportunities;
- procurement policy;
- data policy.

The statutes contain the essential provisions which may be completed by detailed provisions included in the implementing rules or other internal documents adopted by the ERIC.

As regards scientific evaluation, the statutes must provide for a scientific evaluation of the ERIC activities. This evaluation may be included in the tasks of the scientific board or may be carried out by other external experts. The statutes may also provide for scientific evaluation prior to access to the ERIC facilities, under e.g. 'Access policy for users'.

As regards procurement policy, the ERIC regulation states that an ERIC is an international organisation within the meaning of the public procurement directive <sup>(13)</sup>. Therefore, an ERIC may choose to apply the rules of the directive on public procurement as implemented in national law. But it may also choose to adopt its own procurement policy respecting the principles of transparency, non-discrimination and competition. The procurement rules provided for in the statutes may be completed by the implementing rules or other internal documents. It is recommended that the specific procurement rules of an ERIC be made publicly available.

## Budgetary principles

The budget is the responsibility of the members of an ERIC. The regulation lays down the essential principles <sup>(14)</sup>:

- all items of revenue and expenditure must be included in estimates to be drawn up for each financial year and must be shown in the budget;
- revenue and expenditure shown in the budget must be in balance;
- principle of sound financial management for the use of the appropriations;
- principle of transparency for establishing and implementing the budget and for presenting the accounts.

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<sup>(13)</sup> Point (c) of Article 15 of Directive 2004/18/EC, repealed by Directive 2014/24/EU of 26 February 2014 with effect from 18 April 2016. International organisations such as ERICs are now mentioned in Article 9(2) of Directive 2014/24/EU of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, OJ L 94, 28.3.2014, p. 65.

<sup>(14)</sup> Article 13.

The accounts of an ERIC must be accompanied by a report on budgetary and financial management of the year.

The law of the host state applies to preparation, filing, auditing and publication of accounts.

## In-kind contributions

The statutes may provide for contributions to be made in cash or in kind. Contributions in-kind may be provided to the central facility or, for distributed infrastructures, to the national node. If in-kind contributions are accepted, the ERIC members must ensure that a cash contribution is available in order to cover at least the costs of the central facility (see 2.2. Commitments from the members).

The statutes should lay down the procedure for the assembly of members to decide on in-kind contributions and to include them in the ERIC budget. They should also define the procedure for assessing the value of in-kind contributions.

## Tax exemptions

To be set up, an ERIC must be recognised by the host Member State, as of its establishment, as an international body within the meaning of Directive 2006/112/EC <sup>(15)</sup> and as an international organisation within the meaning of the directive on excise duty <sup>(16)</sup>. Associated countries, third countries other than associated countries or intergovernmental organisations must give the same recognition to the ERIC of which they are or intend to become members (see 2.2.). An associated country, whether hosting an ERIC or not, and any other third country which is a member must therefore provide for tax exemption.

According to both directives, exemptions may thus apply to goods or services acquired by the ERIC or its members for the official use of an ERIC subject to the limits and conditions set out. Definition of the scope, limits and conditions of the exemption may be part of the statutes or may be contained in a separate agreement among the members or with the host state. Including them in the statutes provides for more transparency since the statutes are publicly and easily available.

According to the usual limits and conditions, exemption is limited to goods and services which are for the exclusive and official use of the ERIC, are wholly paid and procured by the ERIC and exceed a certain value which is indicated in the statutes or in the agreement. It only applies to non-economic activities.

Subject to limits and conditions laid down in the statutes or in another agreement, exemptions apply to goods or services regardless of whether these are local purchases or purchases made within the European Union and to goods imported from third countries.

The exemption has no effect as regards goods or services procured from and taxable in third countries. Exemption from tax in third countries only applies if that country has specifically granted exemptions to an ERIC, in particular because it intends to become a member of the ERIC.

Methods of exemption and procedure to follow depend on where the goods and services are procured from and taxable.

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<sup>(15)</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, OJ L 347, 11.12.2006, p. 1.

<sup>(16)</sup> Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/112/EEC, OJ L 9, 14.1.2009, p. 12.

## Liability and insurance

According to the ERIC regulation, an ERIC is liable for its debts<sup>(17)</sup>. It has no immunity from seizure of its assets in case of forced recovery of debts or from insolvency proceedings. Proceedings are in general governed by the law of the statutory seat.

The ERIC regulation states that the financial liability of the members for the debts of the ERIC is limited to their respective contributions provided to the ERIC. This includes financial and in-kind contributions which are paid, provided or promised in a legally binding way.

The statutes may also provide for liability which exceeds the contributions provided by each member or for unlimited liability.

If the financial liability of its members is not unlimited, an ERIC must take appropriate insurance to cover the risks of the activities which are under its responsibility.

## Reporting and control

— Activity report: According to the ERIC regulation, an ERIC must produce an annual activity report, containing in particular the scientific, operational and financial aspects of its activities<sup>(18)</sup>.

The annual activity report is adopted by the assembly of members and transmitted to the Commission and relevant public authorities within 6 months from the relevant corresponding financial year. The scientific advisory board should be involved in the preparation of the scientific part of the report or should be consulted before its adoption. The financial part should include information on budgetary and financial management of the financial year; it should also include information on the financial or in-kind contributions provided to the ERIC.

— Control and information of third parties

An ERIC or the Member States concerned must inform the Commission of any circumstances which threaten to seriously jeopardise the achievement of the tasks of the ERIC or to hinder the ERIC from fulfilling the requirements laid down in the ERIC regulation.

In the event that an ERIC is unable to pay its debts, it must immediately notify the Commission. The Commission publishes an appropriate notice in the *Official Journal of the European Union*.

If the Commission obtains indications that an ERIC is acting in serious breach of the ERIC regulation or other applicable rule, it will request explanations from the ERIC and/or its members. If the Commission concludes, after having given the ERIC and/or its members reasonable time to produce their observations, that the ERIC is acting in serious breach of the ERIC regulation or other applicable rule, it may propose remedial action. If no remedial action is taken, the Commission may repeal the decision establishing the ERIC, which will trigger its winding up.

## Winding up

Termination of an ERIC occurs if the decision establishing this ERIC is repealed as explained above. If the statutes provide for a limited duration, the ERIC is wound up at the end of this period unless its members decide to extend it according to the provisions of the statutes.

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<sup>(17)</sup> Article 14.

<sup>(18)</sup> Article 17.

In compliance with the statutes, the assembly of members may also decide to terminate an ERIC. The statutes must include the procedure to be applied in the case of winding up, e.g. possibility for the assembly of members to transfer the ERIC activities to another legal entity, appointment of liquidators, rules to apportion assets.

The assembly of members must, without undue delay and in any event within 10 days of adopting the decision to wind up an ERIC, notify the Commission. The assembly of members must also notify the Commission without undue delay and in any event within 10 days after the closure of the winding-up procedure. After each notification, the Commission publishes an appropriate notice in the *Official Journal of the European Union*.

An ERIC officially ceases to exist on the day of publication in the *Official Journal of the European Union* of the notice on the closure of the winding up procedure.

## Participation in Horizon 2020

### — Participation of an ERIC as a sole beneficiary

As stated in Article 9(3)(d) of the Horizon 2020 Rules for Participation <sup>(19)</sup>, by way of derogation, the minimum condition shall be the participation of one legal entity established in a Member State or associated country in justified cases provided for in the work programme or work plan. Therefore, an ERIC may be eligible as a sole beneficiary if this possibility is provided for in the work programme <sup>(20)</sup>.

### — Participation of an ERIC with other beneficiaries

When an ERIC is one of the participants, in order to fulfil the condition related to the three legal entities being established in different Member States or associated countries, the ERIC is deemed to be established in a Member State or associated country which is different from the Member State or associated country where the other participants are established <sup>(21)</sup>.

### — Participation of ERIC/ERIC members

The ERIC will be considered as the participant and the contributing ERIC members will be identified in the grant agreement as linked third parties. Being the beneficiary, the ERIC will be responsible for the third parties obligations.

As provided for under Article 22 of the Horizon 2020 Rules for Participation, the Commission may request joint and several liability with the third parties. However, in the case of an ERIC, liability is already defined in the statutes. This does not preclude the ERIC and the members involved from agreeing on specific liability arrangements for the participation in the action if they so wish.

## Amendments to the statutes

The assembly of members may adopt proposals for amendments to the statutes. For an ERIC hosted by a Member State, proposals for amending its statutes require the agreement of the majority of the Member States that are members of that ERIC.

<sup>(19)</sup> Regulation (EU) No 1290/2013 of the European Parliament and of the Council of 11 December 2013 laying down the rules for participation and dissemination in Horizon 2020, OJ L 347, 20.12.2013, p. 81.

<sup>(20)</sup> E.g. calls INFRADEV-2 and INFRADEV-3 in Horizon 2020 Work Programme 2014–15 (4. European research infrastructures including e-Infrastructures).

<sup>(21)</sup> Article 9.2 of the Rules for Participation.

Proposals adopted by the assembly of members are submitted by the ERIC to the Commission: the ERIC must send the text of the proposed amendment and the amended consolidated version of the statutes. The proposals are subject to a procedure which ensures that they comply with the ERIC regulation.

— Amendments concerning essential provisions of the statutes

According to the ERIC regulation, any amendment concerning essential elements of the statutes <sup>(22)</sup> is submitted by the ERIC to the Commission for approval. The Commission follows the same procedure as for the creation of the ERIC: the Commission assesses the proposed amendment in line with the requirements of the ERIC regulation, obtains the opinion from the ERIC Committee and prepares the decision amending the decision setting up the ERIC.

The amendment takes effect on the date on which the Commission decision enters into force.

— Amendments concerning other provisions of the statutes

Proposals for amendments concerning other elements of the statutes are submitted by the ERIC to the Commission. Within 60 days from the submission, the Commission may raise an objection to the proposed amendment, giving reasons why the amendment does not comply with the requirements of the ERIC regulation.

The proposed amendment takes effect:

- on expiry of the 60-day period for objecting; or
- when the commission has waived the period for objecting; or
- when the Commission has lifted its objections.

Irrespective of the type of procedure followed, after an amendment has entered into force, the ERIC must make a consolidated version of the statutes available on its website.

Amendments to annexes to the statutes follow the same procedure as amendments to the statutes. However, in order to avoid unnecessary procedure when the modifications only consist in updating the annexes, such as updating the list of members, it is recommended to provide in the statutes that those elements of the annex can be updated by the ERIC, e.g. by the director.

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<sup>(22)</sup> i.e. (b) the tasks and activities of the ERIC;

(c) the statutory seat in compliance with Article 8(1);

(d) the name of the ERIC in compliance with Article 8(2);

(e) the duration, and the procedure for the winding up in compliance with Article 16;

(f) the liability regime, in compliance with Article 14(2);

(g) the basic principles covering:

(i) the access policy for users;

(ii) the scientific evaluation policy;

(iii) the dissemination policy;

(iv) the intellectual property rights policy;

(v) the employment policy, including equal opportunities;

(vi) the procurement policy respecting the principles of transparency, non-discrimination and competition;

(Article 10 referred to in Article 11.1).

# ANNEXES

## Annex 1: Consolidated Regulation

**Council Regulation (EC) No 723/2009 of 25 June 2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC) (OJ L 206, 8.8.2009, p. 1) amended by Council Regulation (EU) No 1261/2013 of 2 December 2013 amending Regulation (EC) No 723/2009 concerning the Community legal framework for a European Research Infrastructures Consortium (ERIC) (OJ L 326, 6.12.2013, p. 1)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 171 and the first paragraph of Article 172, thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament <sup>(1)</sup>,

Having regard to the opinion of the European Economic and Social Committee <sup>(2)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(3)</sup>,

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<sup>(1)</sup> Opinion of 19.12.2009 (not yet published in the Official Journal).

<sup>(2)</sup> Opinion of 14.1.2009 (not yet published in the Official Journal).

<sup>(3)</sup> OJ C 76, 31.3.2009, p. 6.

Whereas:

1. Pursuant to Article 171 of the Treaty the Community may set up joint undertakings or any other structure necessary for the efficient execution of Community research, technological development and demonstration programmes.
2. The support and development of research infrastructures in Europe has been an ongoing objective of the Community, as last reflected in Decision 1982/2006/EC of the European Parliament and of the Council of 18 December 2006 concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007 to 2013) <sup>(4)</sup> and in particular in Council Decision 2006/974/EC of 19 December 2006 on the specific programme 'Capacities' <sup>(5)</sup>.
3. While traditional support for the use and development of European research infrastructures has essentially taken the form of grants in favour of established research infrastructures in the Member States, the need for additional efforts has become apparent in recent years in order to stimulate the development of new structures by creating an appropriate legal framework which should facilitate their establishment and operation at the level of the Community.
4. This need has been expressed on numerous occasions both at political level by the Member States and the Community institutions, and by the various actors within the European research community such as undertakings, research centres and universities and, in particular, the European Strategy Forum on Research Infrastructures (ESFRI).
5. While the central role of world-class scientific research infrastructures for the attainment of the Community's RTD objectives set out in Article 163 of the Treaty has thus long been recognised under Community RTD Framework Programmes, the rules governing establishment, financing and operation of these structures are still fragmented and regionalised. Considering that European research infrastructures are in competition with those of the Community's global partners which are and will be strongly investing in modern large-scale research infrastructures, and that these infrastructures are becoming increasingly complex and expensive, often placing them beyond the reach of a single Member State or even continent, it is now necessary to exploit and develop the full potential of Article 171 of the Treaty by establishing a framework containing the procedures and conditions for the setting-up and operation of European Research Infrastructures at Community level which are necessary for the efficient execution of the Community's RTD programmes. This new legal framework would complement other legal forms existing under national, international or Community law.
6. In contrast to Joint Technology Initiatives (JTI) constituted as Joint Undertakings of which the Community is a member and to which it makes financial contributions, a European Research Infrastructure Consortium (hereinafter referred to as 'ERIC') should not be conceived as a Community body within the meaning of Article 185 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities <sup>(6)</sup> (the Financial Regulation), but as a legal entity of which the Community is not necessarily a member and to which it does not make financial contributions within the meaning of Article 108(2)(f), of the Financial Regulation.
7. Given the close cooperation between Member States and the Community in programming and implementing their respective research activities in a complementary manner, as set out in Articles 164 and 165 of the Treaty, it should be for interested Member States, on their own or in

<sup>(4)</sup> OJ L 412, 30.12.2006, p. 1.

<sup>(5)</sup> OJ L 54, 22.2.2007, p. 101.

<sup>(6)</sup> OJ L 248, 16.9.2002, p. 1.

conjunction with other qualified entities, to define their needs for the establishment of research infrastructures in this legal format, based on their research and technological development activities and on the requirements of the Community. For the same reasons, membership of an ERIC should be open to interested Member States with the possible participation of qualified associated countries in the Community framework programme for research, technological development and demonstration (hereinafter referred to as ‘associated states’) and third countries and specialised intergovernmental organisations. In addition to full membership, Member States should be able to become observers of an ERIC on the conditions specified in its Statutes.

8. An ERIC set up under this Regulation should have as its principal task the establishment and operation of a research infrastructure on a non-economic basis and should devote most of its resources to this principal task. In order to promote innovation and knowledge and technology transfer, the ERIC should be allowed to carry out some limited economic activities if they are closely related to its principal task and they do not jeopardise its achievement. The establishment of research infrastructures as ERICs does not exclude that research infrastructures of pan-European interest that have another legal form can equally be recognised as contributing to the progress of European research, including to the implementation of the roadmap developed by ESFRI. The Commission should ensure that ESFRI members and other interested parties are informed about these alternative legal forms.
9. Research infrastructures should help to safeguard the scientific excellence of Community research and the competitiveness of the Community’s economy, as based on medium-term to long-term forecasts, through the efficient support of European research activities. To achieve this they should be effectively open to the European research community at large in accordance with the rules established in their Statutes and should have the aim of enhancing European scientific capabilities beyond the current state of the art and should thereby contribute to the development of the European Research Area.
10. In order to permit an efficient procedure for the setting-up of an ERIC, it is necessary for the entities willing to set up an ERIC to submit an application to the Commission which should assess, with the help of independent experts, which may include ESFRI, whether the proposed research infrastructure is in conformity with this Regulation. Such an application should contain a declaration of the host Member State recognising the ERIC as an international body or organisation for the purpose of the application of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax <sup>(7)</sup> and Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products <sup>(8)</sup>, as of its setting up. The ERIC should also benefit from certain exemptions as an international organisation for the purpose of applying Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts <sup>(9)</sup>, in conformity with State aid rules.
11. For reasons of transparency, the decision setting-up an ERIC should be published in the *Official Journal of the European Union*. For the same reasons, the essential elements of its Statutes should be annexed to such decisions.
12. In order to carry out its tasks in the most efficient way, an ERIC should have legal personality and the most extensive legal capacity as from the day on which the decision setting it up takes effect. It should have a statutory seat, in order to determine the applicable law, within the territory of a member of that ERIC which is a Member State or an associated country.

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<sup>(7)</sup> OJ L 347, 11.12.2006, p. 1.

<sup>(8)</sup> OJ L 76, 23.3.1992, p. 1.

<sup>(9)</sup> OJ L 134, 30.04.2004, p. 114.

13. Membership of an ERIC should comprise at least three Member States and may include qualified associated countries and third countries other than associated countries as well as specialised intergovernmental organisations.
14. In line with the Community dimension of this Regulation, Member States should jointly hold the majority of votes in the assembly of members of an ERIC.
15. For the implementation of this framework, more detailed provisions should be laid down in Statutes, on the basis of which the Commission should examine the compliance of an application with the framework established in this Regulation.
16. It is necessary to ensure that, on the one hand, an ERIC has the necessary flexibility to amend its Statutes and, on the other hand, that the Community which sets up the ERIC retains control over certain essential elements. If an amendment concerns an essential element of the Statutes annexed to the decision setting up the ERIC, such amendment should be approved, prior to taking effect, by a Commission decision taken following the same procedure as that for setting up the ERIC. Any other amendment should be notified to the Commission, which should have an opportunity to object if it considers the amendment contrary to this Regulation.
17. It is necessary for an ERIC to equip itself with its own bodies for the effective management of its activities. The Statutes should determine the manner in which those bodies legally represent the ERIC.
18. It is necessary for an ERIC to carry out its activities according to sound budgetary principles for the exercise of its financial responsibility.
19. An ERIC could qualify for funding in accordance with Title VI of the Financial Regulation. Funding under the Cohesion Policy could also be possible, in conformity with the relevant Community legislation.
20. In order to carry out its tasks in the most efficient way and as a logical consequence of its legal personality, an ERIC should be liable for its debts. In order to allow the members to find appropriate solutions regarding their liability, the option should be given to provide in the Statutes for different liability regimes going above the liability limited to the contributions of the members.
21. Since an ERIC is established under Community law, it should be governed by Community law, in addition to the law of the State where it has its statutory seat. However, the ERIC could have a place of operation in another State. The law of that latter State should apply in respect of specific matters defined by the Statutes of the ERIC. Furthermore, an ERIC should be governed by implementing rules complying with the Statutes.
22. Member States are free to apply or to adopt any laws, regulations or administrative measures which do not conflict with the scope or objectives of this Regulation.
23. In order to ensure sufficient control of compliance with this Regulation, an ERIC should transmit to the Commission and relevant public authorities its annual report and any information about circumstances threatening to seriously jeopardise the achievement of its tasks. If the Commission obtains indications, through the annual report or otherwise, that the ERIC acts in serious breach of this Regulation or other applicable law, it should request explanations and/or actions from the ERIC and/or its members. In extreme cases and if no remedial action is taken, the Commission could repeal the decision setting up the ERIC; thus triggering the winding-up of the ERIC.
24. Since the objective of this Regulation; i.e. the establishment of a framework for European Research Infrastructures between Member States, cannot be sufficiently achieved by the Member States in the framework of their national constitutional systems, by reason of the trans-national nature of the problem, and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In

accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

25. Since this Regulation is primarily established for the efficient execution of Community research, technological development and demonstration programmes, and since the measures necessary for its implementation are essentially management measures, they should therefore be adopted by the management procedure provided for in Article 4 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred to the Commission <sup>(10)</sup>.

## HAS ADOPTED THIS REGULATION:

### *Article 1*

#### **Subject-matter**

This Regulation establishes a legal framework laying down the requirements and procedures for and the effects of setting-up a European Research Infrastructure Consortium (hereinafter referred to as an 'ERIC').

### *Article 2*

#### **Definitions**

For the purpose of this Regulation, the following definitions shall apply:

- (a) 'research infrastructure' means facilities, resources and related services that are used by the scientific community to conduct top-level research in their respective fields and covers major scientific equipment or sets of instruments; knowledge-based resources such as collections, archives or structures for scientific information; enabling Information and Communications Technology-based infrastructures such as Grid, computing, software and communication, or any other entity of a unique nature essential to achieve excellence in research. Such infrastructures may be 'single-sited' or 'distributed' (an organised network of resources);
- (b) 'third country' means a State that is not a Member State of the European Union;
- (c) 'associated country' means a third country which is party to an international agreement with the Community, under the terms or on the basis of which it makes a financial contribution to all or part of the Community research, technological development and demonstration programmes.

### *Article 3*

#### **Task and other activities**

1. The principal task of an ERIC shall be to establish and operate a research infrastructure.
2. An ERIC shall pursue its principal task on a non-economic basis. However, it may carry out limited economic activities, provided that they are closely related to its principal task and that they do not jeopardise the achievement thereof.
3. An ERIC shall record the costs and revenues of its economic activities separately and shall charge market prices for them, or, if these cannot be ascertained, full costs plus a reasonable margin.

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<sup>(10)</sup> OJ L 184, 17.7.1999, p. 23.

## *Article 4*

### **Requirements relating to infrastructure**

- (a) it is necessary for the carrying-out of European research programmes and projects, including for the efficient execution of Community research, technological development and demonstration programmes;
- (b) it represents an added value in the strengthening and structuring of the European Research Area (ERA) and a significant improvement in the relevant scientific and technological fields at international level;
- (c) effective access, in accordance with the rules established in its Statutes, is granted to the European research community, composed of researchers from Member States and from associated countries;
- (d) it contributes to the mobility of knowledge and/or researchers within the ERA and increases the use of intellectual potential throughout Europe; and
- (e) it contributes to the dissemination and optimisation of the results of activities in Community research, technological development and demonstration.

## *Article 5*

### **Application for the setting-up of an ERIC**

1. The entities applying for the setting-up of an ERIC (hereinafter referred to as applicants) shall submit an application to the Commission. The application shall be submitted in writing in one of the official languages of the institutions of the Union and shall contain the following:
  - (a) a request to the Commission to set up the ERIC;
  - (b) the proposed Statutes of the ERIC referred to in Article 10;
  - (c) a technical and scientific description of the research infrastructure to be established and operated by the ERIC, addressing in particular the requirements set out in Article 4;
  - (d) a declaration by the host Member State recognising the ERIC as an international body in the sense of Articles 143(g) and 151(1)(b) of Directive 2006/112/EC and as international organisation in the sense of the second indent of Article 23(1) of Directive 92/12/EEC, as of its setting up. The limits and conditions of the exemptions provided for in these provisions shall be laid down in an agreement between the members of the ERIC.
2. The Commission shall assess the application in line with the requirements laid down in this Regulation. During the assessment it shall obtain the views of independent experts in particular in the field of the intended activities of the ERIC. The result of such assessment shall be communicated to the applicants who shall, if necessary, be invited to complete or amend the application.

## *Article 6*

### **Decision on the application**

1. The Commission shall, taking into account the results of the assessment referred to in Article 5(2) and in accordance with the procedure referred to in Article 20:
  - (a) adopt a decision setting up the ERIC after it has satisfied itself that the requirements laid down in this Regulation are met; or

- (b) reject the application if it concludes that the requirements laid down in this Regulation are not met, including in the absence of the declaration referred to in Article 5(1)(d).
2. The decision on the application shall be notified to the applicants. In the case of a rejection, the decision shall be explained in clear and precise terms to the applicants.

The decision setting up the ERIC shall also be published in the L series of the *Official Journal of the European Union*.

3. The essential elements of the Statutes as set out in Article 10 points (b) to (f) and in points (i) to (vi) of point (g) contained in the application shall be annexed to the decision setting up the ERIC.

## *Article 7*

### **Status of an ERIC**

1. An ERIC shall have legal personality as from the date on which the decision setting up the ERIC takes effect.
2. An ERIC shall have in each Member State the most extensive legal capacity accorded to legal entities under the law of that Member State. It may, in particular, acquire, own and dispose of movable, immovable and intellectual property, conclude contracts and be a party to legal proceedings.
3. An ERIC is an international organisation within the meaning of Article 15(c) of Directive 2004/18/EC.

## *Article 8*

### **Seat and name**

1. An ERIC shall have a statutory seat, which shall be located on the territory of a member which shall be a Member State or an associated country.
2. An ERIC shall have a name containing the abbreviation 'ERIC'.

## *Article 9*

### **Requirements for membership**

1. The following entities may become members of an ERIC:
  - (a) Member States;
  - (b) associated countries;
  - (c) third countries other than associated countries;
  - (d) intergovernmental organisations.
2. The membership of an ERIC must include a Member State and two other countries that are either Member States or associated countries. Further Member States or associated countries may join as members at any time on fair and reasonable terms specified in the Statutes and as observers without voting rights on conditions specified in those Statutes. Third countries other than associated countries as well as intergovernmental organisations may also become members of an ERIC, subject to approval by the assembly of members referred to in Article 12(a), in accordance with the conditions and procedure for changes in membership laid down in its Statutes.

3. Member States or associated countries shall hold jointly the majority of the voting rights in the assembly of members. For an ERIC hosted by a Member State, proposals for amending its Statutes shall require the agreement of the majority of the Member States that are members of that ERIC.
4. Any Member State, associated country or third country may be represented by one or more public entities, including regions or private entities with a public service mission, as regards the exercise of specified rights and the discharge of specified obligations as a member of the ERIC.
5. Associated countries, third countries and intergovernmental organisations applying for the setting-up of or for membership in an ERIC shall recognise that that ERIC shall have legal personality and capacity in accordance with Article 7(1) and (2) and that it shall be subject to rules determined in application of Article 15.
6. Associated and third countries applying for the setting-up of or for membership in an ERIC shall accord to the ERIC treatment equivalent to that following from Articles 5(1)(d) and 7(3).

## *Article 10*

### **Statutes**

The Statutes of an ERIC shall contain at least the following:

- (a) a list of members, observers and, where applicable, of entities representing members and the conditions of and the procedure for changes in membership and representation in compliance with Article 9;
- (b) the tasks and activities of the ERIC;
- (c) the statutory seat in compliance with Article 8(1);
- (d) the name of the ERIC in compliance with Article 8(2);
- (e) the duration, and the procedure for the winding-up in compliance with Article 16;
- (f) the liability regime, in compliance with Article 14(2);
- (g) the basic principles covering:
  - (i) the access policy for users;
  - (ii) the scientific evaluation policy;
  - (iii) the dissemination policy;
  - (iv) the intellectual property rights policy;
  - (v) the employment policy, including equal opportunities;
  - (vi) the procurement policy respecting the principles of transparency, non-discrimination and competition;
  - (vii) a decommissioning, if relevant;
  - (viii) the data policy;
- (h) the rights and obligations of the members, including the obligation to make contributions to a balanced budget and voting rights;
- (i) the bodies of the ERIC, their roles and responsibilities and the manner in which they are constituted and in which they decide, including upon the amendment of the Statutes, in compliance with Articles 11 and 12;

- (j) the identification of the working language(s);
- (k) references to rules implementing the Statutes.

The Statutes shall be publicly available on the website of the ERIC and at its statutory seat

## *Article 11*

### **Amendments of the Statutes**

1. Any amendment of the Statutes concerning the matters referred to in points (b) to (f) or in Article 10(g)(i) to (vi) shall be submitted to the Commission by the ERIC for approval. Such amendment shall not take effect before the decision granting approval has come into force. The Commission shall apply Articles 5(2) and 6, *mutatis mutandis*.
2. Any amendment of the Statutes other than that referred to in paragraph 1 shall be submitted to the Commission by the ERIC within 10 days after its adoption.
3. The Commission may raise an objection to such amendment within 60 days from the submission giving reasons why the amendment does not meet the requirements of this Regulation.
4. The amendment shall not take effect before the period for objecting has expired or has been waived by the Commission or before an objection raised has been lifted.
5. The application for the amendment shall contain the following:
  - (a) the text of the amendment proposed or, where appropriate, as adopted, including the date on which it enters into force;
  - (b) the amended consolidated version of the Statutes.

## *Article 12*

### **Organisation of the ERIC**

The Statutes shall provide for at least the following bodies having the following competencies:

- (a) an assembly of members as the body having full decision-making powers, including the adoption of the budget;
- (b) a director or a board of directors, appointed by the assembly of members, as the executive body and legal representative of the ERIC.

The Statutes shall specify the manner in which the members of the board of directors legally represent the ERIC

## *Article 13*

### **Budgetary principles, accounts and audit**

1. All items of revenue and expenditure of an ERIC shall be included in estimates to be drawn up for each financial year and shall be shown in the budget. The revenue and expenditure shown in the budget shall be in balance.
2. The members of an ERIC shall ensure that the appropriations are used in accordance with the principles of sound financial management.

3. The budget shall be established and implemented and the accounts presented in compliance with the principle of transparency.
4. The accounts of an ERIC shall be accompanied by a report on budgetary and financial management of the financial year.
5. An ERIC shall be subject to the requirements of the applicable law as regards preparation, filing, auditing and publication of accounts.

## *Article 14*

### **Liability and insurance**

1. An ERIC shall be liable for its debts.
2. The financial liability of the members for the debts of the ERIC shall be limited to their respective contributions provided to the ERIC. The members may specify in the Statutes that they will assume a fixed liability above their respective contributions or unlimited liability.
3. If the financial liability of the members is not unlimited, the ERIC shall take appropriate insurance to cover the risks specific to the construction and operation of the infrastructure.
4. The Community shall not be liable for any debt of the ERIC.

## *Article 15*

### **Applicable law and jurisdiction**

1. The setting-up and internal functioning of an ERIC shall be governed:
  - (a) by Community law, in particular this Regulation, and the decisions referred to in Articles 6(1) (a) and 11(1);
  - (b) by the law of the State where the ERIC has its statutory seat in the case of matters not, or only partly, regulated by acts referred to in point (a);
  - (c) by the Statutes and their implementing rules.
2. The Court of Justice of the European Communities shall have jurisdiction over litigation among the members in relation to the ERIC, between the members and the ERIC and over any litigation to which the Community is a party.
3. Community legislation on jurisdiction shall apply to disputes between an ERIC and third parties. In cases not covered by Community legislation, the law of the State where the ERIC has its statutory seat shall determine the competent jurisdiction for the resolution of such disputes.

## *Article 16*

### **Winding-up and insolvency**

1. The Statutes shall determine the procedure to be applied in the case of winding-up of the ERIC following a decision of the assembly of members. Winding-up may include the transfer of activities to another legal entity.
2. Without undue delay after the adoption of the decision by the assembly of members to wind up, and in any event within 10 days after such adoption, the ERIC shall notify the Commission thereof. The Commission shall publish an appropriate notice in the C series of the *Official Journal of the European Union*.

3. Without undue delay after the closure of the winding-up procedure, and in any event within 10 days after such closure, the ERIC shall notify the Commission thereof. The Commission shall publish an appropriate notice in the C series of the *Official Journal of the European Union*. The ERIC shall cease to exist on the day of publication of the notice.
4. At any time, in the event that the ERIC is unable to pay its debts, it shall immediately notify the Commission thereof. The Commission shall publish an appropriate notice in the C series of the *Official Journal of the European Union*.

## *Article 17*

### **Reporting and control**

1. An ERIC shall produce an annual activity report, containing in particular the scientific, operational and financial aspects of its activities referred to in Article 3. It shall be approved by the assembly of members and transmitted to the Commission and relevant public authorities within six months from the end of the corresponding financial year. This report shall be made publicly available.
2. An ERIC and the Member States concerned shall inform the Commission of any circumstances which threaten to seriously jeopardise the achievement of the task of the ERIC or to hinder the ERIC from fulfilling the requirements laid down in this Regulation.
3. Where the Commission obtains indications that an ERIC is acting in serious breach of this Regulation, the decisions adopted on the basis thereof or other applicable law, it shall request explanations from the ERIC and/or its members.
4. If the Commission concludes, after having given the ERIC and/or its members a reasonable time to provide their observations, that the ERIC is acting in serious breach of this Regulation, the decisions adopted on the basis thereof or other applicable law, it may propose remedial action to the ERIC and its members.
5. If no remedial action is taken, the Commission may repeal the decision establishing the ERIC in accordance with the procedure referred to in Article 20. Such decision shall be notified to the ERIC and be published in the L series of the *Official Journal of the European Union*. This shall trigger the winding-up of the ERIC.

## *Article 18*

### **Appropriate provisions**

Member States shall take such measures as are appropriate to ensure the effective application of this Regulation.

## *Article 19*

### **Report and Review**

Not later than 27 July 2014, the Commission shall forward to the European Parliament and the Council a report on its application and proposals for amendments, where appropriate.

## *Article 20*

### **Committee procedure**

1. The Commission shall be assisted by a management committee.
2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at two months.

## *Article 21*

### **Entry into force**

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

# Annex 2: Template for the statutes of an ERIC

## Statutes of {name} ERIC

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- Article 3 — Task and activities

#### CHAPTER 2 — MEMBERSHIP

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#### ANNEX II — BUDGET — CONTRIBUTIONS

# CHAPTER 1

## GENERAL PROVISIONS

### Article 1

#### Definitions

*{An article on definitions may be included to define the terms that have a specific meaning used in the Statutes, such as the main elements of the research infrastructure.}*

*For the purposes of these Statutes, the following definitions shall apply:*

*(1) ‘...’ means ...;*

*(2) ‘...’ means ....*

### Article 2

#### Name, seat, location and working language

1. “*{name of the Research Infrastructure}* is set up as a European Research Infrastructure Consortium (ERIC) under Regulation (EC) No 723/2009 named ‘*{...}* ERIC’.
2. *{name of the Research Infrastructure}* shall be a *{distributed-single site}* research infrastructure located in *{name}* ERIC member countries, as well as in other countries where *{name}* ERIC has concluded agreements in accordance with Article *{reference to applicable Article in Statutes}*.
3. *{name}* ERIC shall have its statutory seat in *{city, country}*.
4. The working language of *{name}* ERIC shall be English.

### Article 3

#### Task and activities

1. The principal task of *{name}* ERIC shall be to establish and operate the *{name of the Research Infrastructure}* + *{description of the goal of {name} ERIC in a few lines}*.
2. For the purposes of paragraph 1 *{name}* ERIC shall carry out the following activities: *{list of main activities, the last one being: “any other related action necessary to achieve its aim”}*.
3. *{name}* ERIC shall pursue its principal task on a non-economic basis. *{name}* ERIC may carry out limited economic activities provided that they are closely related to its principal task and that they do not jeopardise the achievement thereof.

# CHAPTER 2

## MEMBERSHIP

### *Article 4*

#### **Membership and representing entity**

1. The following entities may become members of *{name}* ERIC or may become observers of *{name}* ERIC without voting rights:
  - (a) Member States of the Union;
  - (b) associated countries;
  - (c) third countries other than associated countries;
  - (d) intergovernmental organisations.
2. Conditions for becoming a member or an observer are set out in Article(s) xx.
3. Membership of *{name}* ERIC must include at least a Member State and two other countries that are either Member States or associated countries.
4. Member States or associated countries shall hold jointly the majority of the voting rights in the *{assembly of members}*. The *{assembly of members}* shall determine any modification of voting rights that are necessary to ensure that *{name}* ERIC complies at all times with that requirement.
5. Any member or observer referred to in paragraph 1(a) to (c) may be represented by one public entity or one private entity with a public service mission, of its own choosing and appointed in accordance with its own rules and procedures. Each member or observer shall inform the *{assembly of members}* of any change of its representing entity, of the specific rights and obligations which have been delegated to it or of any other relevant change.
6. The members and observers of *{name}* ERIC and their representing entities are listed in Annex I. Annex I shall be kept up to date by {...}.

### *Article 5*

#### **Conditions for becoming a member or an observer**

1. Entities referred to in Article 4(1) willing to become members of *{name}* ERIC shall submit a written application to {e.g. the Chair of the assembly of members} That application shall describe how the entity will contribute to *{name}* ERIC objectives and activities described in Article xx and how it will fulfil obligations referred to in Article xx.

The admission of the entities as new members shall be subject to the approval by the *{assembly of members}*.

*{other specific conditions may be added}*

2. Entities referred to in Article 4(1) who are willing to contribute to *{name}* ERIC, but are not yet in a position to join as members, may apply for observer status.

Applicants shall submit a written application to the {*Chair*} of the {*assembly of members*}. That application shall describe how the applicant will contribute to {*name*} ERIC objectives and activities described in Article xx and how it will fulfil obligations referred to in Article xx.

Applicants shall be admitted as observers for a {*xxx year period*} maximum. {Observers may reapply once for extension of observer status}. {In exceptional cases} the {*assembly of members*} may accept further extension of observer status}.

The admission or re-admission of observers shall be subject to the approval by the {*assembly of members*}.

## Article 6

### Withdrawal of a member or an observer/Termination of membership or observer status

1. {Within the first xxx years of the establishment of {*name*} ERIC no member may withdraw unless the membership has been entered into for a specified shorter period}.
2. {After the first xxx years of the establishment of {*name*} ERIC a member may withdraw at the end of a financial year, following a request submitted xxx months prior to the withdrawal}.
3. Observers may withdraw at the end of a financial year, following a request submitted xx months prior to the withdrawal.
4. Members and observers shall fulfil financial and other obligations before their withdrawal can become effective.
5. The {*assembly of members*} may terminate membership or observer status if the following conditions are met:
  - (a) the member or observer is in serious breach of one or more of its obligations under these statutes;
  - (b) the member or observer has failed to rectify such breach within xx months after it has received notice of the breach in writing.
6. The member or observer referred to in paragraph 5 shall have the right to explain its position to the {*assembly of members*} before the {assembly of members} makes any decision on the issue.

## CHAPTER 3

### RIGHTS AND OBLIGATIONS OF THE MEMBERS AND OBSERVERS

#### Article 7

##### Members

1. Rights of members shall include: {list of activities to which members are entitled to, e.g. right of its research community to have access to ...}
2. Each member shall {list of obligations, e.g.:
  - (a) provide the annual contribution in accordance with Article xx;
  - (b) appoint a representing entity in accordance with Article xx;
  - (c) promote adoption of relevant standards;

- (d) provide the necessary technical infrastructure to make access possible;
- (e) promote uptake of services among researchers in the member country, and gather user feedback and requirements;
- (f) support centres in the member country by facilitating integration into national and other relevant infrastructures}.

## *Article 8*

### **Observers**

1. Rights of observers shall include: {list of activities to which members are entitled to, e.g.:
  - (a) the right to attend the {*assembly of members*} without a vote;
  - (b) the right for its research community to participate in {*name*} ERIC events, such as workshops, conferences, training courses (or: in activities identified by the {*assembly of members*});
  - (c) the right for its research community to have access to support from {*name*} ERIC in developing relevant systems, processes and services.}
2. Each observer shall: {list of obligations, e.g.:
  - (a) appoint a representing entity in accordance with Article xx;
  - (b) provide the annual contribution in accordance with Article xx}.

## *{Article 9*

### **{Contributions}**

{There may be a specific article on contributions or: reference may be made to the specific Annex on contributions including the methods for calculating the contributions.}

{Optional: Members who have joined {*name*} ERIC reserving the right to withdraw before the end of the first xx years of the establishment of {*name*} ERIC shall pay a higher annual contribution.}

# CHAPTER 4

## **GOVERNANCE**

### *Article 10*

#### **{*Assembly of members*}**

1. The {*assembly of members*} shall be the governing body of {*name*} ERIC and shall be composed of representatives of the members and observers of {*name*} ERIC.
2. Each member shall nominate {one-two} official representatives. {Additionally each member may bring experts}. {Each delegation may consist of up to xx persons, but shall carry one single vote}.
3. Each member shall have {one indivisible vote} {other option for voting rights}.

4. The *{assembly of members}* shall meet at least once a year, and shall be responsible for the overall direction and supervision of *{name}* ERIC. The *{assembly of members}* shall:

{list of the decisions that have to be taken to operate *{name}* ERIC, e.g.: appoint the Director, appoint the members of advisory bodies, adopt the annual budget, approve the admission of new members/observers, adopt the implementing rules, adopt decisions on contributions, create advisory bodies if deemed necessary, etc. Last item: “and decide on any other matters that are necessary to fulfil the task of *{name}* ERIC}.

5. The meetings of the *{assembly of members}* shall be convened by the *{Chair}*. A meeting of the *{assembly of members}* may be requested by at least {percentage of contributions/number of members or a combination} of the members.
6. The *{assembly of members}* shall elect a *{Chair/Vice-chair}* by {xxx majority} of the votes. The *{Chair/Vice-chair}* shall be elected for a {xxx year term}, {renewable once/twice/non-renewable}. The *{Vice-chair}* shall substitute the *{Chair}* in his/her absence and in case of conflict of interest.
7. A quorum of {...} of members shall be required for having a valid *{assembly of members}* meeting. If the quorum is not met, a second meeting shall be convened {as soon as possible/within xxx calendar days} following a new invitation, with the same agenda. In the second meeting, the quorum shall be considered met if {...} of members are present.
8. The following decisions shall require {specific majority rule} of the votes cast {of the members present}:
  - (a) proposal for amendments to the statutes of *{name}* ERIC;
  - (b) termination of *{name}* ERIC;
  - (c) termination of membership or observer status;
  - (d) suspension or dismissal of the { Director- Board of Directors};
  - (e) {decisions related to the amount or calculation of contributions};
  - (f) {other decisions}.
9. The following decisions shall require {other specific majority rule} of the votes cast {of the Members present}:
  - (a)
  - (b) ...
10. {The following} {Other} decisions shall be passed by simple majority of the votes cast {of the Members present}:
  - (a)
  - (b) ...
11. [to be added where an ERIC is hosted by a Member State].Proposals for amending these Statutes shall require the agreement of the majority of the Member States that are members of *{name}* ERIC.]

## Article 11

### {Advisory Body}

1. The {Advisory Body} shall {description of its tasks}.

2. The {Advisory Body} shall consist of {description of its members}. The number of members of the {Advisory Body} shall be decided by the {assembly of members}. This number shall not be less than {xxx} and not more than {xxx}.
3. The members of the {Advisory Body} shall be appointed by the {assembly of members} for a term of {xxx} years. The {assembly of members} may reappoint them once for the same duration.
4. The Chair of the Advisory Board shall be {appointed by xxx} {elected among its members}. The Rules of Procedure of the Advisory Board shall be adopted by the {assembly of members}.

*[Example of advisory bodies: scientific advisory board, ethics advisory board.]*

## *Article 12*

### **{Director or Board of Directors}**

1. The assembly of members shall appoint the {Director/Board of Directors} of {name} ERIC in accordance with a procedure adopted by the assembly of members. The term for the {Director/Board of Directors} shall be {xxx} years, {renewable-non-renewable}.
2. The {Director/the Board of Directors} shall be {jointly} the legal representative of {name} ERIC.
3. The {Director/Board of Directors} shall carry out the day-to-day management of {name} ERIC. The {Director/Board of Directors} shall be responsible for the implementation of the decisions by the assembly of members.

## *Article 13*

### **{Committee assisting the Director in the implementation of his/her tasks}**

1. The {Committee} shall assist the Director in the implementation of his/her tasks.
2. The {Committee} shall consist of {description of its members} appointed by {...}.

## *Article 14*

### **{Committee representing the different entities involved in the activities at national level}**

1. The {Committee} representing the different entities involved in the activities at national level shall consist of {...} appointed by {...}.
2. The Committee shall have the task of {e.g.: ensuring consistency, coherence and stability of infrastructure services, coordinating the procedures, tools and practices, making proposals to {...} to improve the quality and efficiency of the services, etc.}

## CHAPTER 5

### REPORTING TO THE COMMISSION

#### *Article 15*

##### **Reporting to the Commission**

1. *{name}* ERIC shall produce an annual activity report, containing in particular the scientific, operational and financial aspects of its activities. The report shall be approved by the *{assembly of members}* and transmitted to the Commission and relevant public authorities within six months from the end of the corresponding financial year. This report shall be made publicly available.
2. *{name}* ERIC shall inform the Commission of any circumstances which threaten to seriously jeopardise the achievement of *{name}* ERIC tasks or hinder *{name}* ERIC from fulfilling requirements laid down in Regulation (EC) No 723/2009.

## CHAPTER 6

### FINANCE, LIABILITY

#### *Article 16*

##### **Resources**

The resources of *{name}* ERIC shall consist of the following:

- (a) financial contributions of members and observers;
- (b) *{host contributions}*;
- (c) *{other resources within limits and under terms approved by the {assembly of members}}*.

#### *Article 17*

##### **Budgetary principles, accounts and audit**

1. The financial year of *{name}* ERIC shall begin on 1 January and end on 31 December of each year.
2. The accounts of *{name}* ERIC shall be accompanied by a report on budgetary and financial management of the financial year.
3. *{name}* ERIC shall be subject to the requirements of the law of the country where it has its statutory seat as regards preparation, filing, auditing and publication of accounts.

#### *Article 18 <sup>(1)</sup>*

##### **Tax {and excise duty} exemptions**

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<sup>(1)</sup> The provisions of this Article are subject to ongoing discussions with Commission Services.

## Article 19

### Liability and insurance

1. *{name}* ERIC shall be liable for its debts.
2. The members are not jointly liable for the debts of *{name}* ERIC. {The members' financial liability for the debts of *{name}* ERIC shall be limited to their respective {annual} contribution as specified in Article xx.}
3. *{name}* ERIC shall take appropriate insurance to cover the risks specific to the construction and operation of the {name of the research infrastructure}.

## CHAPTER 7

### POLICIES

## Article 20

### Access Policy for users

1. *{name}* ERIC shall provide access to...
2. Access shall be based on: {criteria, procedure, modalities}.
3. Procedures and evaluation criteria shall be made publicly available on *{name}* ERIC website.

## Article 21

### Scientific Evaluation Policy

The activities of *{name}* ERIC shall be evaluated annually by {...}

## Article 22

### Dissemination Policy

1. *{name}* ERIC shall be a facilitator of research and shall as a general rule encourage as free access as possible to research data.
2. *{name}* ERIC shall request researchers to make their research results publicly available and to make results available through *{name}* ERIC.
3. *{name}* ERIC shall use several channels to reach the target audiences, including web portal, newsletter, workshops, presence in conferences, articles in magazines and daily newspapers.}

## Article 23

### Intellectual Property Rights Policy

{Subject to the term of any contract between *{name}* ERIC and the users, intellectual property rights created, obtained or developed by users shall be owned by those users.

Or: *{name}* ERIC may own intellectual property rights..}

## Article 24

### Employment Policy

1. {name} ERIC employment policy shall be governed by the laws of the country in which staff is employed.
2. The selection procedures for {name} ERIC staff positions shall be transparent, non-discriminatory and respect equal opportunities. Recruitment and employment shall not be discriminatory.

## Article 25

### Procurement policy

1. {name} ERIC shall apply the European Union procurement rules/the procurement rules of the State where {name} ERIC has its statutory seat

Or:

1. {name} ERIC shall treat procurement candidates and tenderers equally and without discrimination, regardless whether or not they are based within the European Union. {name} ERIC procurement policy shall respect the principles of transparency, non-discrimination and competition. Detailed rules on procurement procedures and criteria shall be set out in the implementing rules.
2. Procurement by members and observers concerning {name} ERIC activities shall be done in such a way that due consideration is given to {name} ERIC needs, technical requirements and specifications issued by the relevant bodies.}

## Article 26

### Data Policy

1. Generally Open Source and Open Access principles shall be favoured.
2. {name} ERIC shall provide guidance (including via website) to users to ensure that research undertaken using material made accessible through {name} ERIC shall be undertaken within a framework that recognizes the rights of data owners and privacy of individuals.
3. {name} ERIC shall ensure that users agree to the terms and conditions governing access and that suitable security arrangements are in place regarding internal storage and handling.
4. {name} ERIC shall define arrangements for investigating allegations of security breaches and confidentiality disclosures regarding research data.}

## CHAPTER 8

### PROVISIONS ON DURATION, WINDING UP, DISPUTES AND SETTING-UP

#### *Article 27*

##### **Duration**

{*name*} ERIC shall exist for an indefinite period of time {or: shall be established for an initial period of xxx years. That period shall be automatically extended for successive xxx-year period} or {shall be established for an initial period of xxx years. That period shall be extended by a decision of the {*assembly of members*}}.

#### *Article 28*

##### **Winding up**

1. The winding up of {*name*} ERIC shall be decided by the {assembly of members} in accordance with Article xx.
2. Without undue delay and in any event within ten days after adoption of the decision to wind up {*name*} ERIC, {*name*} ERIC shall notify the European Commission about the decision.
3. Assets remaining after payment of {*name*} ERIC debts shall be apportioned among the members in proportion to their accumulated annual contribution to {*name*} ERIC as specified in Article xx.
4. Without undue delay and in any event within ten days of the closure of the winding up procedure, {*name*} ERIC shall notify the Commission thereof.
5. {*name*} ERIC shall cease to exist on the day on which the European Commission publishes the appropriate notice in the Official Journal of the European Union.

#### *Article 29*

##### **Applicable law**

The internal functioning of {*name*} ERIC shall be governed:

- (a) by Union law, in particular Regulation (EC) No 723/2009 and the decisions referred to in Articles 6(1)(a) and 11(1) of the Regulation;
- (b) by the law of the state where {*name*} ERIC has its statutory seat in the case of matters not, or only partly, regulated by acts referred to in point (a);
- (c) by these statutes and their implementing rules.

#### *Article 30*

##### **Disputes**

1. The Court of Justice of the European Union shall have jurisdiction over litigation among the members in relation to {*name*} ERIC, between members and {*name*} ERIC and over any litigation to which the Union is a party.

2. Union legislation on jurisdiction shall apply to disputes between {name} ERIC and third parties. In cases not covered by Union legislation, the law of the State where {name} ERIC has its statutory seat shall determine the competent jurisdiction for the resolution of such disputes.

### *Article 31*

#### **Statutes updates and availability**

The Statutes shall be kept up to date and publicly available on {name} ERIC website and at the statutory seat.

### *{Article 32*

#### **Setting-up provisions**

1. A first meeting of the General Assembly shall be called by the State where {name} ERIC has its statutory seat as soon as possible after the Commission decision setting up {name} ERIC takes effect.
2. Before the first meeting is held and no later than forty-five calendar days after the Commission decision setting up {name} ERIC takes effect, the relevant State shall notify the founding Members and Observers of any specific urgent legal action that needs to be taken on behalf of {name} ERIC. Unless a founding member objects within five working days after being notified, the legal action shall be carried out by a person duly authorised by the relevant State.}

## **ANNEX I — List of members, observers and their representing entities**

### **Members**

Country or Intergovernmental organisation	Representing entity

### **Observers**

Country or Intergovernmental organisation	Representing entity

## **ANNEX II — BUDGET-CONTRIBUTIONS**

*(Including indicative budget for the first three to five years)*

# Annex 3: Model request for setting up an ERIC

## Request for the setting-up of the [full name of the proposed ERIC] as a European Research Infrastructure Consortium (ERIC)

All members of the future ERIC having agreed to the documents listed below,

*[ name of Country 1 ]*

*[ name of Country 2 ]*

*etc.*

hereby request the European Commission to set-up the *[ full name of the proposed ERIC ]* as an ERIC with the statutes attached hereto.

For the Government of *[ name of host State ]*

*(Signature)*

For the Government of *[ name of Country 2 ]*

*(Signature)*

For the Government of *[ name of Country 3 ]*

*etc.*

### Annexes:

- Statutes
- Technical and Scientific Description
- Declaration by the host Member State recognising the ERIC as an international body/organisation in the sense of the VAT and excise duty directives as of its setting-up
- Agreement between the members of the ERIC on the limits and conditions of the tax exemptions mentioned above [if not included in the statutes]
- Recognition of legal personality and privileges of the ERIC by members which are associated countries or third countries [if applicable].

# Annex 4: Compliance checklist

## Completeness of the application

- a request to the Commission to set up the ERIC (Article 5(1)(a))
- a technical and scientific description (Article 5(1)(c))
- a declaration by the host Member State recognising the future ERIC as an international body in the sense of Articles 143(1)(g) and 151(1)(b) of Directive 2006/112/EC and as international organisation in the sense of Article 12(1)(b) of Directive 2008/118/EC, as of its setting up (Article 5(1)(d))
- the limits and conditions of the resulting VAT and excise duty exemptions — either contained in the statutes or as a separate agreement between the members (Article 5(1)(d))
- proposed statutes (Article 5(1)(b)) containing all elements listed in Article 10.

## Tasks and activities of the ERIC, name and seat, membership, organisation, liability

- Principal tasks to establish and operate a research infrastructure (Article 3.1)
- Only limited economic activities (Article 3.2, 3.3)
- Requirements relating to the research infrastructure (Article 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

contributes to dissemination/optimisation of the RTD results.

- Statutory seat located in Member State or associated country (Article 8.1);
- Name of the ERIC contains 'ERIC' (Article 8.2)
- Only states and intergovernmental organisations as members (Article 9.1)
- Fair terms for joining of new Member States and associated countries (Article 9.2)
- Majority of voting rights held by Member States and associated countries (Article 9.3)
- Bodies of the ERIC: assembly of members; director or board of directors (Article 12)
- Liability regime: insurance foreseen in case of limited liability (Article 14.3).

## Annex 5: Template for the recognition of legal personality and capacity of an ERIC and for providing equivalent treatment of an ERIC as an international body or international organisation with respect to relief from VAT and excise duties, and exemption of the procurement directive by associated countries and third countries other than associated countries applying for setting up or for membership in a European Research Infrastructure Consortium (ERIC)

1. **State** [name] represented by [name of authorised authority] in view of its application for [membership] [hosting] of [name of the ERIC] declares that:
  - (a) [name of the ERIC] shall have legal personality and capacity under the laws and regulations of State [name] in accordance with Article 7(1) and (2) of Council Regulation (EC) No 723/2009 of 25 June 2009 on the Community Legal Framework for a European Research Infrastructure Consortium (ERIC) <sup>(1)</sup>;
  - (b) its participation in [name of the ERIC] shall be subject to rules determined in application of Article 15 of the ERIC Regulation.
2. State [name] shall accord to [name of the ERIC] treatment equivalent to that following:
  - (a) Article 5(1)(d) of Regulation (EC) No 723/2009 subject to the limits and conditions laid down in an agreement between the members of [name of the ERIC]; and
  - (b) Article 7(3) of Regulation (EC) No 723/2009.
3. This Declaration shall bind [name of the state] as long as [name of the state] remains host and/or member or observer of [ERIC].

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<sup>(1)</sup> OJ L 206, 8.8.2009, p. 1.

## Annex 6: Template for the recognition of legal personality and capacity of an ERIC and for providing equivalent treatment of an ERIC as an international body or international organisation with respect to relief from VAT and excise duties, and exemption of the procurement directive by intergovernmental organisations applying for setting up or for membership in a European Research Infrastructure Consortium (ERIC)

1. **Intergovernmental organisation** [name] represented by [name of authorised representative] in view of its application for [membership] of [name of the ERIC] declares that:
  - (a) [name of the ERIC] shall have legal personality and capacity under the laws and regulations of State [name] in accordance with Article 7(1) and (2) of Council Regulation (EC) No 723/2009 of 25 June 2009 on the Community Legal Framework for a European Research Infrastructure Consortium (ERIC) <sup>(1)</sup>;
  - (b) its participation in [name of the ERIC] shall be subject to rules determined in application of Article 15 of the ERIC Regulation.
2. Intergovernmental organisation [name] shall accord to [name of the ERIC] treatment equivalent to that following:
  - (a) Article 5(1)(d) of Regulation (EC) No 723/2009 subject to the limits and conditions laid down in an agreement between the members of [name of the ERIC]; and
  - (b) Article 7(3) of Regulation (EC) No 723/2009.
3. This Declaration shall bind [name of the state] as long as [name of the state] remains host and/or member or observer of [ERIC].

### Where to find relevant information

The ERIC webpage is regularly updated: [http://ec.europa.eu/research/infrastructures/index\\_en.cfm?pg=eric](http://ec.europa.eu/research/infrastructures/index_en.cfm?pg=eric)

Templates can be downloaded from: [http://ec.europa.eu/research/infrastructures/index\\_en.cfm?pg=eric5](http://ec.europa.eu/research/infrastructures/index_en.cfm?pg=eric5)

You may send your enquiries to: [RTD-ERIC@ec.europa.eu](mailto:RTD-ERIC@ec.europa.eu)

<sup>(1)</sup> OJ L 206, 8.8.2009, p. 1.

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The European Research Infrastructure Consortium (ERIC) is a legal instrument that has been set up in order to facilitate the establishment and the operation of large European research infrastructures among several Member States and associated countries.

These practical guidelines are aimed at assisting potential applicants for the ERIC legal framework. They are provided for information purposes.

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