

Legal and governance issues: ESRF and European XFEL as examples of single-site facilities

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Introduction to some scientific and technical basics of ...



... ESRF



... European XFEL



... of the ESRF:

- to construct, operate and develop a **synchrotron radiation source** and associated instruments
- to support the use of the Facility
- to implement programmes of scientific research using **SR**
- to carry out R&D work **in techniques using SR**

... of the European XFEL:

- to construct, operate and develop a **linear accelerator based Free-Electron Laser** and associated instruments (the “XFEL Facility”)
- to support the use of the Facility
- to implement programmes of scientific research using **the facility**
- to carry out R&D work **on the accelerator, the FEL process and experimental techniques**
- to **ensure technology transfer, general public outreach and knowledge transfer**

Legal Organisation of ESRF and XFEL

Preparatory phase covered by Memorandum of Understanding

for the ESRF:

- Only five countries participate:
FR, DE, IT, UK, ES (all of them become contracting parties)
- Duration of MoU phase was limited from the outset (two years)
- Fixed budget for MoU phase (contributions later on taken into account as part of construction costs)
- Objective: Decision on start of construction, otherwise abandonment of the project

for the European XFEL:

- Successively 14 countries join:
DE, FR, IT, UK, ES, RU, PL, SE, DK, CH, SK, HY, CN, GR
(of which CN and UK eventually did not sign the Convention)
- Duration of MoU phase without limit
- No fixed MoU budget, funds essentially advanced by DE, major part taken into account as part of construction cost

Legal Organisation of ESRF and XFEL

After expiry of MoU on ESRF:



Start of construction of ESRF in January 1988, based on "Protocol" of three pages, including signatures, signed on 22 December 1987

PROTOCOL

between

the Minister for Research and Higher Education of the French Republic

the Federal Minister for Research and Technology of the Federal Republic of Germany

the Minister for Scientific and Technological Research of the Italian Republic

the Minister of Education and Research of the Kingdom of Denmark
the Minister of Education of the Republic of Finland
the Minister of Cultural and Scientific Affairs of the Kingdom of Norway
the Minister of Education and Cultural Affairs of the Kingdom of Sweden

acting together as a single Party in which the individual States jointly accept the liabilities entered into by their adherence to this Protocol

the Minister of Education and Science of the Kingdom of Spain

the Director of the Swiss Federal Office for Education and Science

and the Secretary of State for Education and Science of the United Kingdom of Great Britain and Northern Ireland

- Having regard to the Memorandum of Understanding concerning the Preparatory Phase of the European Synchrotron Radiation Facility agreed in Brussels on 10 December 1985

- Noting that the objectives set out in Section 1 of that Memorandum have been fulfilled

1. Note with satisfaction the progress made in the design of the ESRF project.

2. Agree on the goal of finalizing before 31 December 1987 the draft Convention and Statutes, including the apportionment of the construction and operating costs among Members.

3. Agree to proceed with the next phase of the project, for which the required initial commitments are 200 million FF, of which 108 million FF may be spent in 1988.

4. Adopt the following arrangement, until the Convention and Statutes come into effect.

(a) Each Party will provide the following proportions of the 1988 budget :

- France	38 %
- Federal Republic of Germany	28 %
- Italy	15 %
- Nordic Countries	4 %
- Spain	4 %
- Swiss confederation	4 %
- United Kingdom	4 % *

(b) This protocol will come into effect when it has been signed by Parties contributing at least 93 % of the 1988 budget.
If the contributions committed by 31 December 1987 represent less than 100 % of the budget, the missing percentage will be frozen.
If contributions representing more than 100 % are committed, then the surplus will be applied to reduce equally the contributions of France and Germany.

5. Agree to nominate delegates to the ESRF Council.

6. Agree that the Council and the Director General should proceed with the next phase of the project on the basis of the draft Statutes.

Done at Paris on the 22 of December 1987

* The UK intends to participate at the level of at least 10 %. Its participation and its associated level of contribution, will however be included in continuing discussions between the UK and other participating countries, ranging widely across issues of mutual interest in the field of international scientific collaboration, particularly basic research. At the conclusion of these discussions it will be decided which contribution level for UK will be included in the Convention.

It is intended that these discussions will be concluded, regarding the ESRF, if possible by 31 January 1988 and not later than 19 February 1988. Until then in all respects the UK will be regarded as a full member of the ESRF.

For the Minister for Research and Higher Education of the French Republic

For the Federal Minister for Research and Technology of the Federal Republic of Germany

The Minister for Scientific and Technological Research of the Italian Republic

The Minister of Education and Science of the Kingdom of Spain

The Director of the Swiss Federal Office for Education and Science

For the Secretary of State for Education and Science of the United Kingdom of Great Britain and Northern Ireland.

For Wordsync :

The Minister of Education and Research of the Kingdom of Denmark

The Minister of Education of the Republic of Finland

The Minister of Cultural and Scientific Affairs of the Kingdom of Norway

The Minister of Education and Cultural Affairs of the Kingdom of Sweden

Legal Organisation of ESRF and XFEL here: ESRF, first level

Convention: Twelve Governments (Contracting Parties)

France

Germany

Italy

United Kingdom

Belgium

The Netherlands

*“... decided to **promote**
the construction and operation
of a European synchrotron
radiation facility
housing a high performance
source of X-rays
for the use of their
scientific communities.”*

Spain

Switzerland

Denmark

Finland

Norway

Sweden

signed Convention on **16 Dec 1988**

Legal Organisation of ESRF and XFEL here: ESRF, first level

Convention signed by 12 Governments (Contracting Parties)

France

Germany

Italy

United Kingdom

Belgium

The Netherlands

*“The construction and operation of the European synchrotron radiation facility shall be **entrusted to a Société Civile** ... which shall be **subject to French law**.*

The members of the Company shall be ... designated ... by each Contracting Party.”

Spain

Switzerland

Denmark

Finland

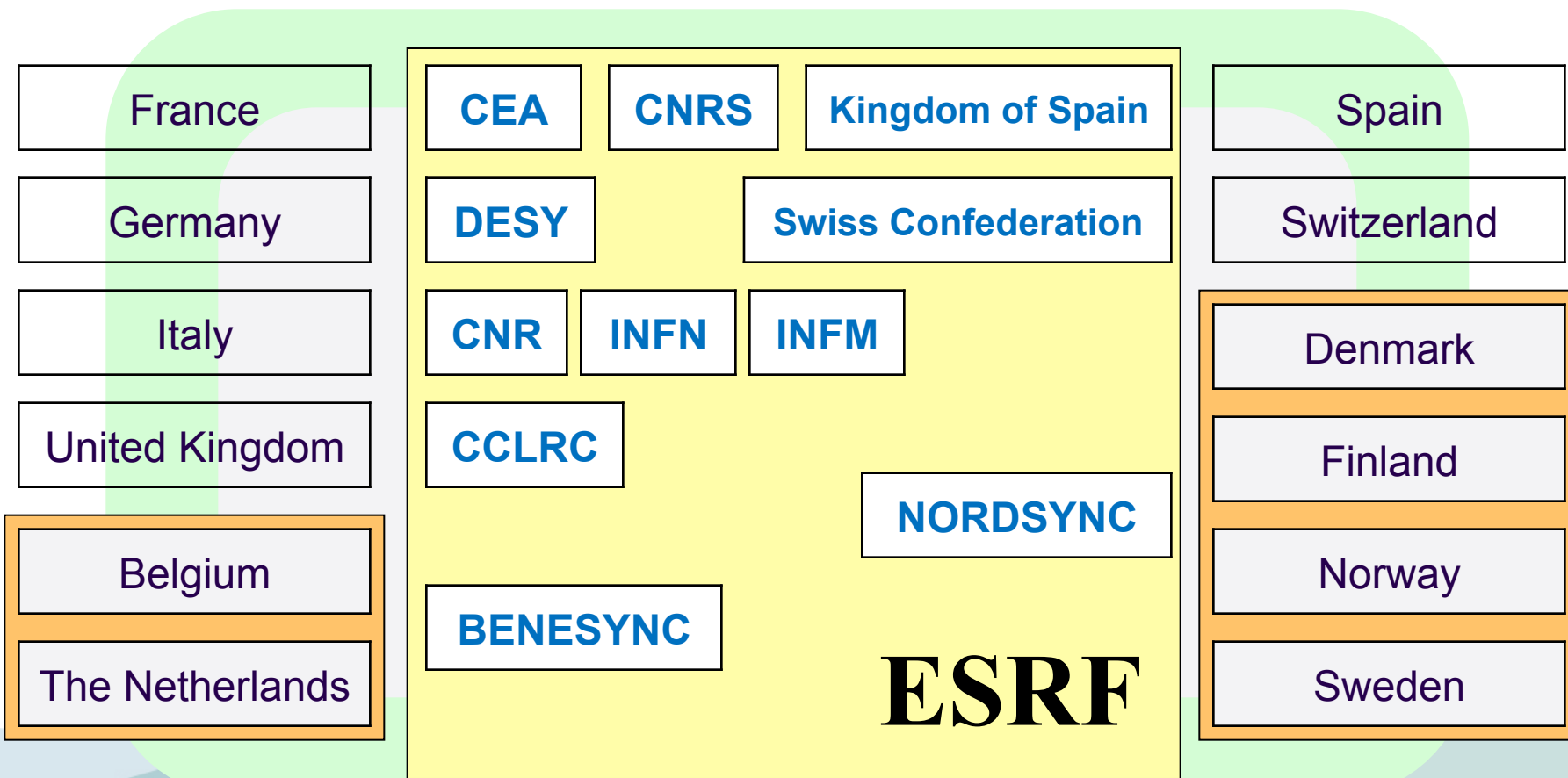
Norway

Sweden

Legal Organisation of ESRF and XFEL

here: ESRF, second level

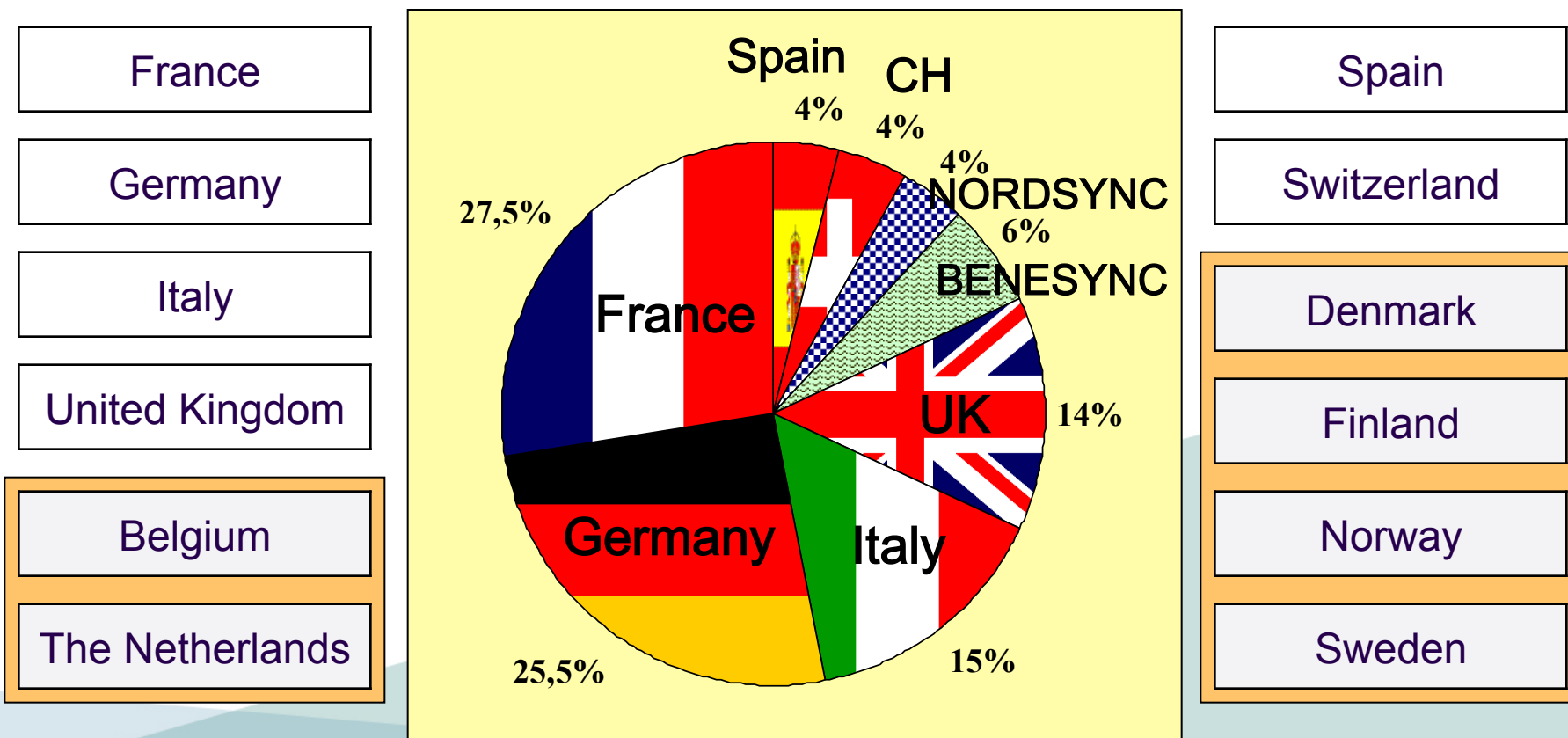
Contracting Parties designate **Members** (threshold: 4%)



Legal Organisation of ESRF and XFEL

here: ESRF, second level

Contracting Parties designate **Members** (threshold: 4%)



Shares = contributions to operating costs = voting rights

Legal Organisation of ESRF and XFEL



Why société civile?

- **Legal identity under national law** in order to avoid high cost of intergovernmental institute
- **Wide scope** for legal embodiment
- **Location besides ILL** (= société civile)
⇒ similar rules for personnel

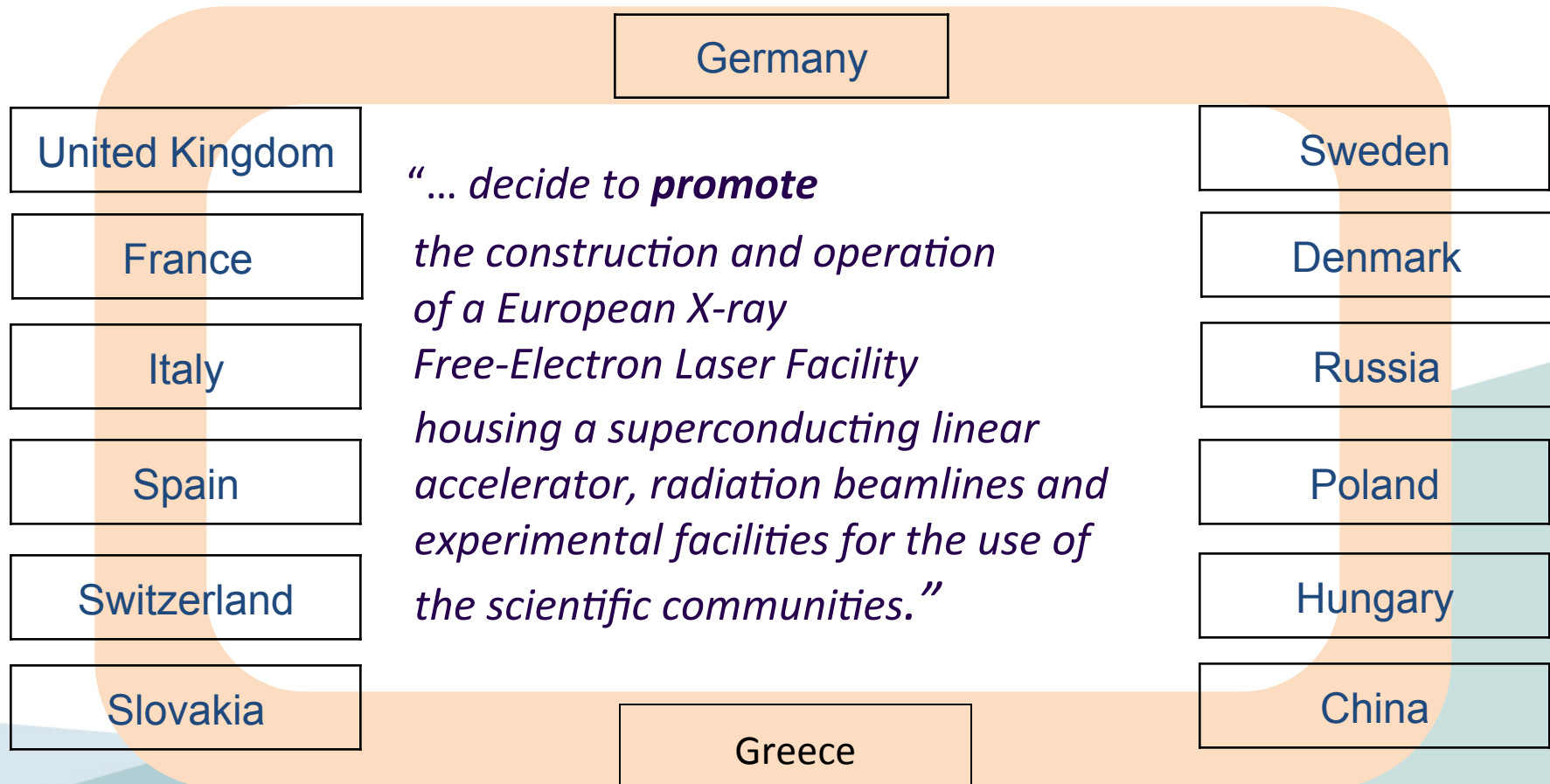
A very similar approach had been intended for the European XFEL Facility.

Legal Organisation of ESRF and XFEL

here: European XFEL, first level (planned)



Convention: Fourteen Governments (= Contracting Parties)

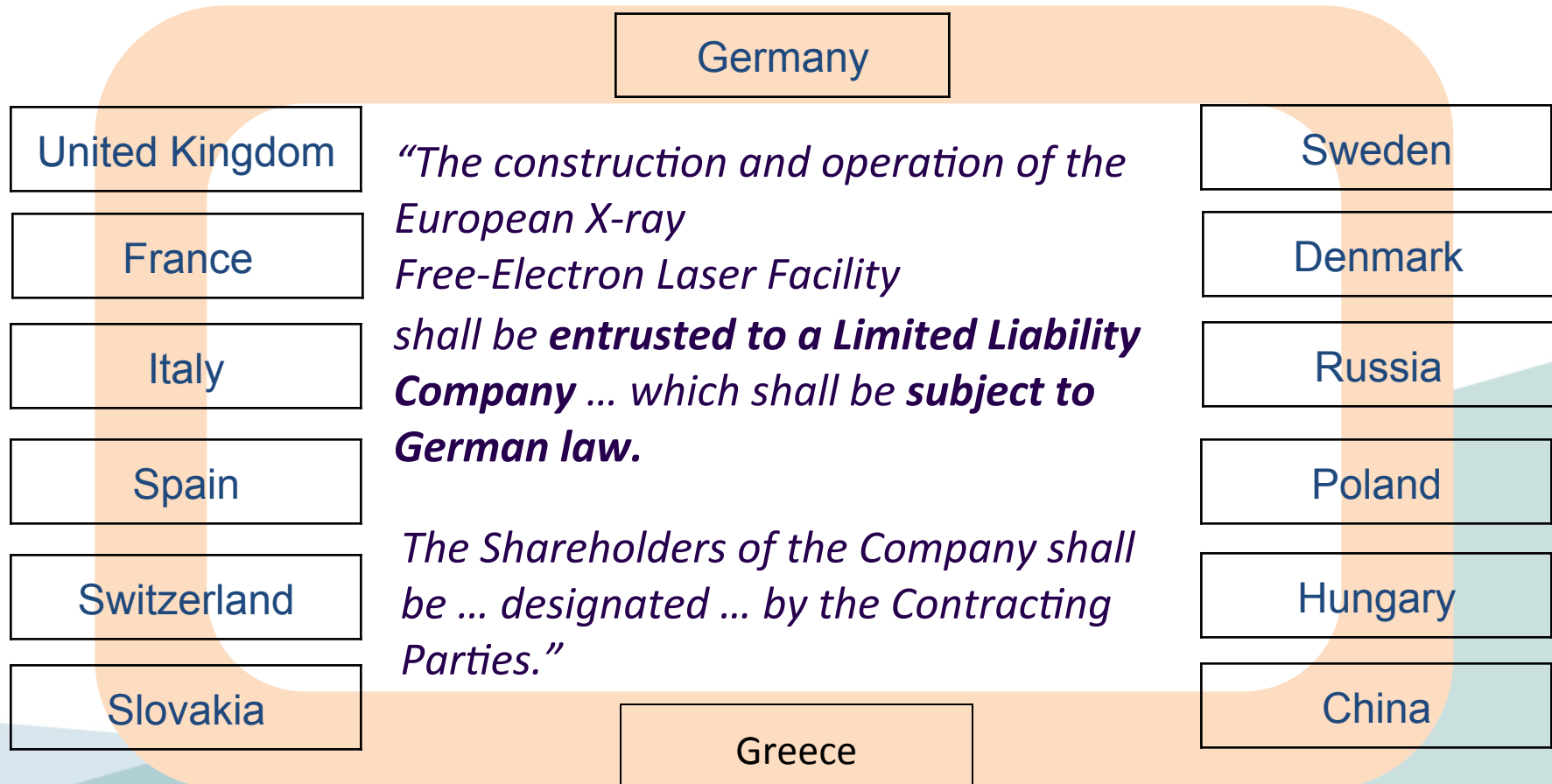


Legal Organisation of ESRF and XFEL

here: European XFEL, first level (planned)



Convention: Fourteen Governments (= Contracting Parties)

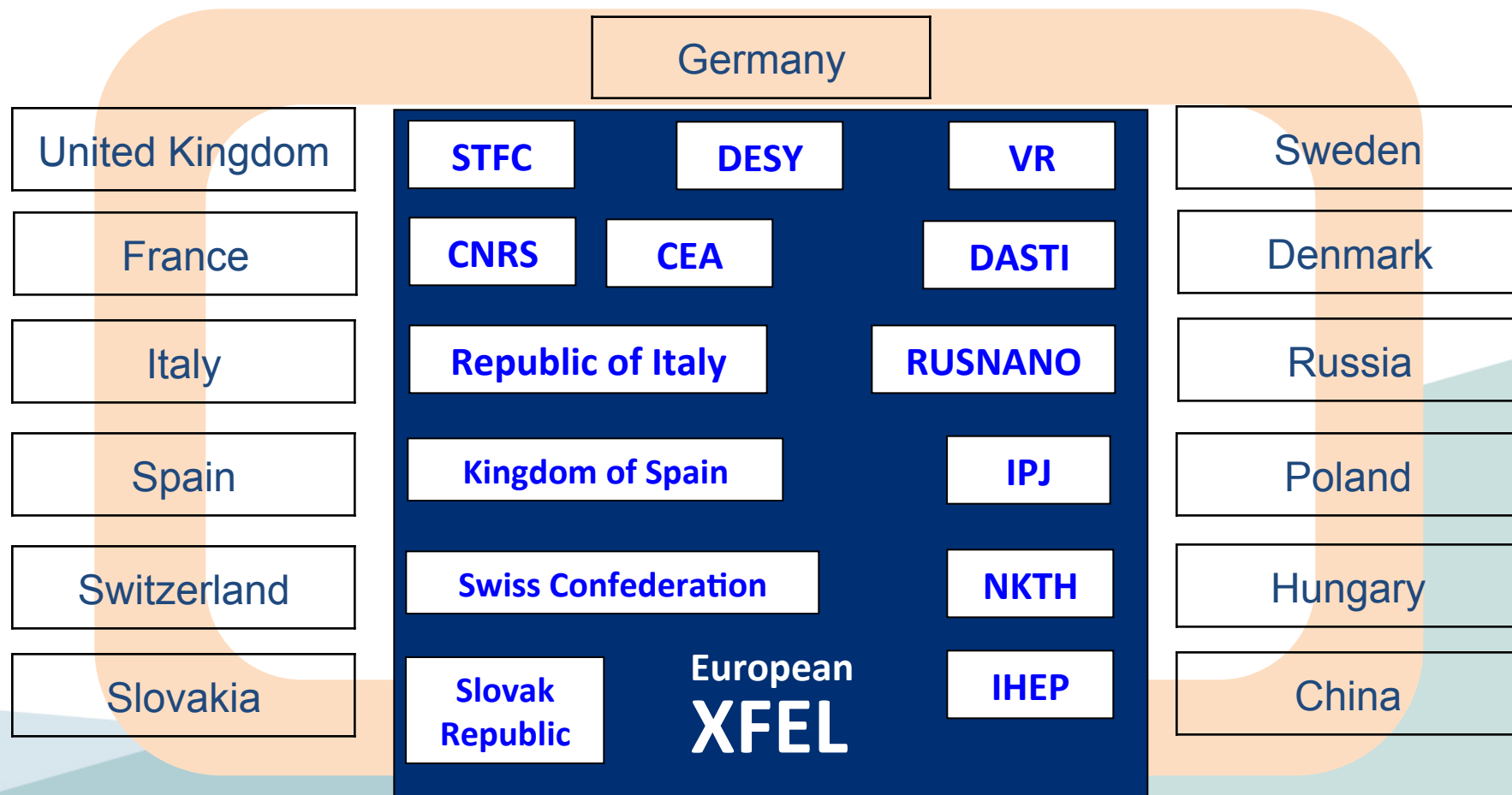


Legal Organisation of ESRF and XFEL

here: European XFEL, second level (planned)



Thirteen Governments designate Shareholders



The long and winding road

from the MoU to the Convention

Berlin, June 30, 2006: TDR completed, legal texts “quasi final”

Hamburg, Jun 05, 2007: Launch event

Hamburg, Sep 22, 2008: Founding documents completed

Berlin, Sep 23, 2009: Initialling of founding documents

Hamburg, Sep 28, 2009: Foundation of European XFEL GmbH

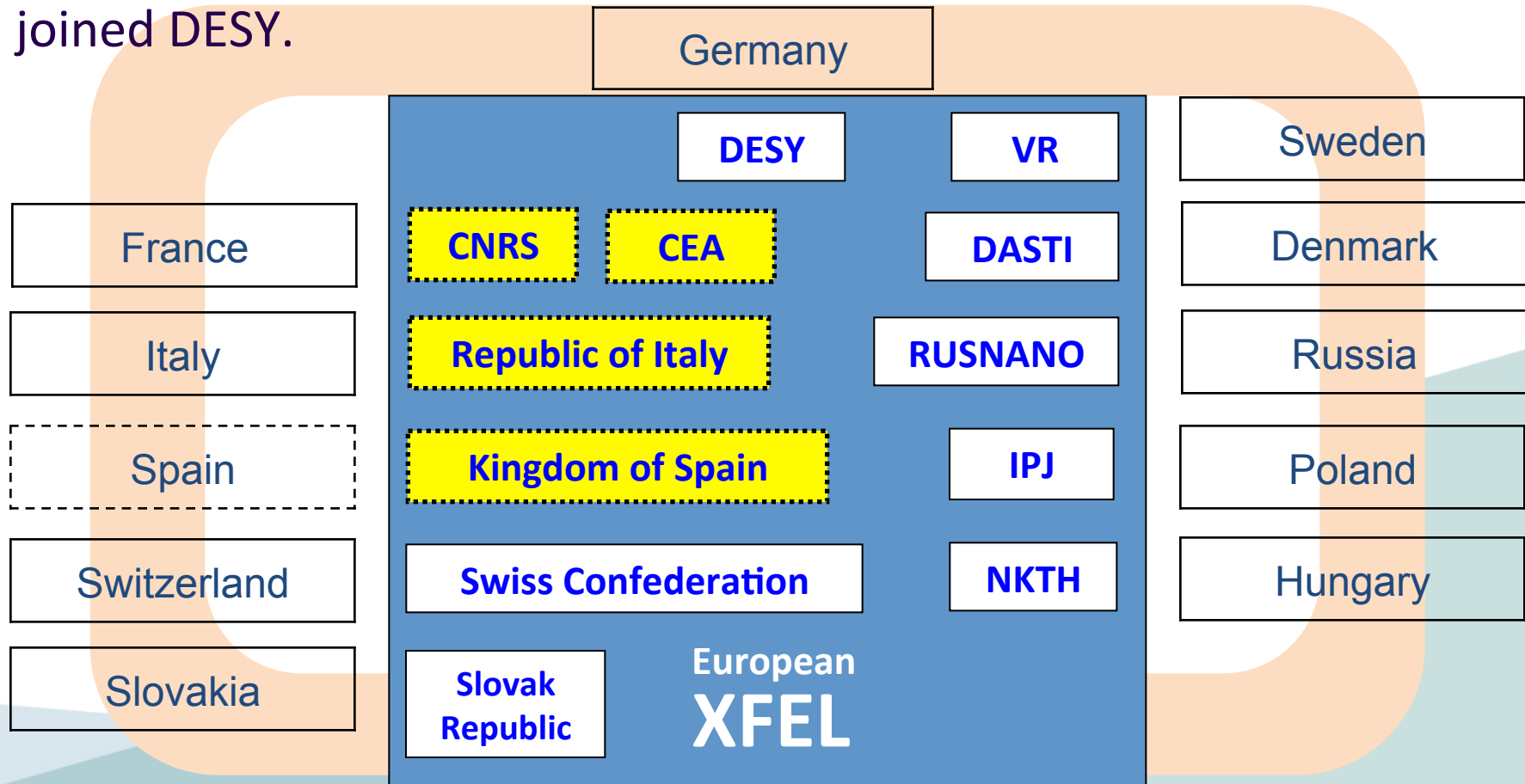
Hamburg, Nov 30, 2009: Signing of International Convention



Legal Organisation of ESRF and XFEL here: European XFEL



DESY alone founded the Company; so far 10 + 2 (FR, ES)
Governments signed the Convention; 5 + 2 (HU, PL) shareholders
joined DESY.



Legal Organisation of ESRF and XFEL



RAMIRI

Foundation of the European XFEL Company by DESY alone, joining of further shareholders in several steps (**threshold: 1%**)

Date	Contracting Party	Shareholders	Shares	In %
28 Sept. 09	Fed. Rep. of Germany	DESY	16 262	65.05
30 Nov. 09	Russian Federation	RUSNANO	6 561	26.24
	Kingdom of Sweden	Vetenskapsrådet	420	1.68
	Swiss Confederation	Swiss Confederation	394	1.58
	Kingdom of Denmark	DASTI	289	1.16
	Slovak Republic	Slovak Republic	250	1.00
10 May 10	Republic of Hungary	NKTH (→ NIH)	278	1.11
2 Sept. 10	Republic of Poland	IPJ (→ NCBJ)	546	2.18
Total			25 000	100.00

Legal Organisation of ESRF and XFEL



Why Limited Liability Company (*GmbH*)?

- **Again:** legal identity under **national law** in order to avoid high cost of intergovernmental institute
- Request for **limitation of liability** of the partners →
 - Limited Liability Company (**GmbH**): provides flexibility of legal embodiment, although more adapted to commercial companies, or
 - Public Limited Company (**Aktiengesellschaft**): regulations are more cumbersome
- **whereas**
 - Civil law partnership (**GbR**): too loose for long-term business, no restriction of liability
 - Foundation (**Stiftung**): not appropriate for international RI, legally rather independent from its founders

Thank you for your attention