

International mobility

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Abstract

The development of an internationalized scientific system is one of the conditions for building a knowledge society.

Because of their ability to assemble a critical mass of people, knowledge and investment, ERICs represent one of the most efficient tools to facilitate international cooperation in science.

The scope of the present document is to list the specific problems linked to the international mobility of the ERICs personnel as well as to make suggestions in the short / long term perspective.

According to the working plan defined in the Grant Agreement, at M15 and M30, two preliminary reports have been delivered.

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Narrative (technical) description

Support to the effective and efficient construction and operation of Research Infrastructures is a key priority in realising the European Research Area and in promoting open science and open innovation.

One of key resources to achieving this goal is represented by the capability of these organization to attract and retain the best human resources.

For that reason, one of the main ERA priorities is to enhance access to an open labour market for researchers, and that, by focusing on removing mobility barriers and obstacles, making research carriers more attractive and therefore attracting the most competent skills, improving the training and skills of researchers and the HR policies in general.

This was followed with an introduction of the HRS4R - the HR Strategy for Researchers, which aims at focusing on HR issues for researchers and granting the HRS4R label to organizations that are implementing the strategy.

In this framework, ERICs should be able to offer to the researchers the possibility to develop new skills and knowledge, through access to training and new skill sets, through exposure to different knowledge and research cultures; and through the combination of their own knowledge with different perspectives to build new insights.

For the purposes of the present document, the term of “international mobility” is defined as physical movement of an individual researcher from one country to another country (into or within the EU) either to a new employment position (i.e. involving a change of employer) or to alternative forms of collaborations (not involving a change in employer).

Starting from highlighting the ERICs context, the document is focused on detailing the main obstacles to the international mobility as well as on providing some possible solutions.

1. The ERICs context

1.1 ERICs structure

The examination of the aspects related to the international mobility within ERICs cannot disregard the structure of these organizations.

According to art.2 – Definitions of COUNCIL REGULATION (EC) No 723/2009 of 25 June 2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC) this type of organization may be single site or distributed.

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);

The first critical aspect that needs to be considered is related to the fact that the personnel hired in the distributed structures is subject to different national legal frames with reference to most of the aspects linked to their working life. (e.g. pension schemes, social security coverage, income taxation).

For individual employment contracts, an ERIC is governed by the same provisions as any other employer.

In particular, on the basis of the provisions stated in Art.15 letter b – Applicable law and jurisdiction of the COUNCIL REGULATION (EC) No 723/2009, the rules are the ones of the State where ERIC has its statutory seat.

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 15 focuses on the set up and internal functioning of an ERIC, which is governed by the ERIC Regulation, the law of the statutory seat and the statutes. The law of the statutory seat will notably be relevant for the requirements regarding preparation, filing, auditing and publication of accounts (Article 13(5)).

In most cases, distributed ERICs are composed by Partner Facilities (PFs) being existing Institutions (or parts of them), within which the rules can be very different also with reference to aspects that could be managed by these organizations (e.g. recruiting processes, training programmes, jobs and skills definitions, salaries and fringe benefit policies, performance evaluation system.)

This situation is also completely different compared to industry operating through branches in different countries. In these cases, even if the national legal frames play a significant role, the aspects that laws refer to the company level bargaining can be managed.

Takin into consideration the differences arising from their structure, ERICs should become attractive in term of conditions offered to their staff, developing at the same time the conditions to retain, commit and engage people.

At the same time, ERICs need to facilitate the international mobility of their personnel, as an important means to increase their professional development. One of the tools through which the international mobility issues can be properly addressed is represented by their provision in terms of in-kind contributions.

1.2 Types of international mobility within ERICs

In order to define the appropriate measures to strengthen the international mobility within ERICs, it's important to group the different mobility according to the following criteria:

- international mobility with (or without) a fixed duration;
- job migration or other form of mobility not involving a change of employer. (non-job mobility).

	permanent contract	fixed term contract
change of employer	direct placement	direct placement
no change of employer	IN KIND CONTRIBUTIONS through secondment or other forms of involvement in ERICs activities	IN KIND CONTRIBUTIONS through secondment or other forms of involvement in ERICs activities

In this context, it's also important to highlight that within ERICs the duration of the mobility could be linked to the duration of the organizations themselves.

COUNCIL REGULATION (EC) No 723/2009 of 25 June 2009
on the Community legal framework for a European Research Infrastructure Consortium
(ERIC)

Article 10 – Statutes

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

.....

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

A predefined duration of these organizations could represent a limitation to the international mobility with a consequent waste of human capital due to the lack of opportunities for permanent or long-term employment in these organizations.

Non-job mobility is very much bound up within the scientific environment in the public sector and in organizations funded by public contributions.

Within distributed research infrastructures these forms of international mobility can result in joint research initiatives agreed between the ERICs and the facilities that are part of them.

Participation of the researchers to these initiatives is driven by the need to acquire new skills or techniques as well as to access to specialised equipment.

The typical legal framework that rules these forms of international mobility is represented by:

- secondment initiatives;
- provision of personnel in-kind contributed without any secondment initiative.

Within distributed research infrastructures the added value of these forms of international mobility should be properly recognised by the Partner Facilities in term of career advancement.

1.3 The European Charter for Researchers

The European Charter for Researcher and the Code of Conduct for their Recruitment represent two key elements of the EU policy in term of career attractiveness.

ANNEX Section 1- The European Charter for Researchers

The European Charter for Researchers is a set of general principles and requirements which specifies the roles, responsibilities and entitlements of researchers as well as of employers and/or funders of researchers⁶. The aim of the Charter is to ensure that the nature of the relationship between researchers and employers or funders is conducive to successful performance in generating, transferring, sharing and disseminating knowledge and technological development, and to the career development of researchers. The Charter also recognizes the value of all forms of mobility as a means for enhancing the professional development of researchers.

Implementation of the Charter&Code by the research institutions is implemented via a step-wise procedure called the Human Resources Strategy for Researchers (HRS4R)

The European Charter for Researchers Commission Recommendation of 11 March 2005 acknowledges the value of mobility in all its facets as an important means of enhancing scientific knowledge and professional development at any stage of a researcher's career.

“Employers and/or funders must recognize the value of geographical, inter-sectoral, inter- and trans-disciplinary and virtual mobility as well as mobility between the public and private sector as an important means of enhancing scientific knowledge and professional development at any stage of a researcher's career. Consequently, they should build such options into the specific career development strategy and fully value and acknowledge any mobility experience within their career progression/appraisal system. This also requires that the necessary administrative instruments be put in place to allow the portability of both grants and social security provisions, in accordance with national legislation.”

Beyond the good intentions and the commitment that the institutions that have adopted the "Charter and code" put in facilitating the mobility of research workers, the obstacles remain very numerous and difficult to overcome, especially when they depend on the not complete integration and homogenization at a European level of labor and tax laws.

Any thought on the mobility of researchers (and all research employees) must take into-account the “Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services” which guarantees the protection of posted employees during their posting, and establishes mandatory provisions regarding working conditions and the protection of employees' safety and health.

The declared objective of the Directive is to stem the phenomenon of “wage and social dumping” in order to find a balance between the rules governing the wages and protection of workers throughout the Union (as well as in the EEA countries and Switzerland).

In addition to the Charter&Code, and the HR Excellence in Research and the Human Resources Strategy for Researchers, the following European initiatives contribute to the mobility of researchers:

- Scientific visa Package, adopted in 2005, enables a fast-track admission and residence of third country researchers.
- European Framework for Research Careers, developed in 2011, proposes 4 levels (first level, recognized, established and leading researcher) of employment across sectors and countries. It also promoted EURAXESS, a website where the vacancies and fellowships opportunities in Europa are listed. It also provides support services to researchers.
- RESAVER, managed by an international non-profit organization, created in 2014, establishes a pension fund for the individual employees of research organisations.

1.4 Obstacles to the international mobility and possible solutions

Issues that can be solved in short times

Significant difference in standards and cost of living: it is evident that these differences entail adjustments in the remuneration of personnel on the move. The parameters to be taken into consideration are the differences in living costs and the inconvenience associated with the new headquarters. It is a question of finding a system of economic compensation linked to mobility that must be clearly linked to the temporary mobility to a specific place of work, so that they can be reduced or eliminated in case of return to the place of origin, or reshaped in the case of sending to new destination

Accommodation: not differently from above, as regards the destination in an attractive location or not in terms of climate, standard of living, safety, ease of movement and finding suitable housing.

Work of the partner: it is clear the importance that the renunciation of the partner from a paid (and perhaps even appreciated) job has on the availability of the worker for mobility and that he must find an economic advantage or career prospects

Children's school: the possibility or not of guaranteeing children an adequate education and in continuity / perspective with the national one is equally important

Return to home country: it is a delicate phase of mobility, which must be planned and managed with the utmost attention. It should be taken into account both in career development and in the remuneration of the professional growth of the person concerned related to the experience gained on the move.

Language issues: the possibility to provide support to the personnel to get to the level of basic communication skills in English could bridge the gap.

These points can be dealt quickly because they do not involve decisions by the various Country and can be addressed by the ERICs by giving themselves a management and remuneration policy in a broad sense, setting parameters and criteria for each single point. In the light of the aforementioned Directive, short-term mobility solutions or a return policy that avoids the transfer of family members can be a solution.

These issues are "administrative" and not scientific, so common to all ERICs, this makes coordination between ERICs appropriate and relatively simple in order to provide policies that are as homogeneous as possible, not only those operating in the same countries, but also at European level.

For this purpose, a kind of "holding company" can be imagined with the task of elaborating and updating the HR policies that operate in the various ERICs. It is also possible to think of a regulation for HR with a general European and individual national sections for adaptations to specific tax and labor law regulations.

It is clear that having a basis that regulates the economic problems of HR, common and known to all concerned, would facilitate mobility, guaranteeing fair conditions without surprises. It is equally evident that the work of HR managers would be greatly simplified, not having to deal with situations from scratch every time.

A positive and automatic consequence of having established common, fair, accepted regulations in line with the social policies of the Union would be of having addressed many of the points taken into consideration for the recognition of the HRS4R Award, which is destined to become increasingly important. This recognition also seems to have relative importance for the ERICs which currently have a modest number of direct employees, in reality it can also be a stimulus to the institutions that make them up and an investment for the future, when direct employees should grow in number.

Issues whose solution requires longer times.

Taxation

There is no common European standard that unifies the tax treatment of people on the move within the Union, but bilateral agreements against double taxation. Each of the countries of the Union has entered into such an agreement with all the others. The generality of these agreements provides for the non-taxability of the income of people who remain in a country other than their usual one for less than 183 days. Beyond this time limit, the income produced in the country (wages, bonuses, etc.) will be taxable according to the internal rules of the country itself.

Social security

In the field of compulsory social security, we find the European regulations: n. 883/2004 on the coordination of social security systems (OJ L 166 of 30.4.2004, p. 1), and N. 000/2009 September 2009 (OJ L 284 of 30.10.2009, p. 1) which establishes the of application of the above.

Art. 11 of Regulation 883 states: "The person who carries out a subordinate activity in a Member State on behalf of an employer who habitually carries out his activities there and is seconded from it, to carry out work on his behalf, in another Member State remains subject to the legislation of the first Member State provided that the foreseeable duration of such work does not exceed twenty-four months and that it is not sent to replace another posted person "

Also in this case it will be necessary to deal with Directive 2018/957 which limits the posting period to only one year and which also reaffirms the system of aggregating insurance and contribution periods, thanks to which the insurance periods matured in the various States cumulate, if not

overlapping, in compliance with and within the limits of individual national laws, in order to allow the improvement of the requirements for the right to benefits

In the field of supplementary pension there is no regulation that unifies the systems, but the IORP (Institutions for Occupational Retirement Provision - Directive 41/2003, and the IORP2 Directive 2016/2341) allows for the establishment of a supplementary pension fund based on one of the countries of the Union and which can be fed with contributions from all EEA countries

On the initiative of the EC Research DG, a Consortium was created which recently created RESAVER IORP for all research workers and currently operating in Austria, Italy, the Netherlands and Hungary.

At the present time in the European Union it's objectively difficult to imagine different fiscal and social security systems, based on the specific mobility needs of the ERICs and large research infrastructure in general, because of the resistance of the member States.

Rules on visas and residence permits

Also in this case, beyond the principle of free movement within the Union for its citizens, there is no uniform regulation and this can create problems for the mobility of non-EU personnel.

The solution of these problems presents greater difficulties and longer times because any simplification and improvement require the political will of the individual Countries to create "ad hoc" and innovative rules, mainly about taxation.

In the social security field, the system of "totalization" which applies to compulsory contributions, could be improved, because the differences in the social security systems can lead to a lower pension for staff originating from countries with "strong" social security systems. to what he would have gained by remaining in his own country.

With regard to supplementary pensions, it will be necessary to adopt the systems envisaged by European regulations (IORP and PEPP), developing systems such as the aforementioned RESAVER.

To overcome the problems described above, it is necessary for ERICs to insist, in Brussels as in individual countries, on their transnational nature, which requires specific European regulation. As by their nature, the ERICs have been exempted from paying VAT, so we can think of specific rules

that guarantee staff to be able to move from one country to another without immediate and future economic concerns related to future pension treatment.

This will require the ERICs, as already mentioned, to act in solidarity and compactness to get the requests accepted, it will also require great attention to Human Resources issues and an effort to adopt regulations that are as uniform as possible. This will strengthen the concept of the uniqueness and peculiarity of the ERICs with respect to national realities.

A common regulation cannot be separated from union bargaining at European level, where there are examples of transnational framework agreements. The European confederations are very open to this type of agreement.

Even the possible objection that specific regulation for ERICs could be a dangerous precedent that could trigger similar requests from multinational companies, will be overcome by leveraging the non-economic nature (if not to an extremely limited extent) of ERICs.

1.5 A step towards the international mobility within ERICs

A smooth path aimed to facilitate the international mobility within ERICs, and more in general within large research infrastructures could be represented by the introduction of common guidelines to manage the human resources of these organizations.

These rules can be independently drawn up by the ERICs, granting of course their coordination at European level.

The guidelines should focus their attention to:

a) The personnel seconded to the ERICs from other institutions.

At this level the methodology for the calculation of the resources committed to the ERICs has to be defined (see D.1.8)

In addition to that, there are other aspects that should be carefully managed, for example how to define the job positions, the rules to handle the business travels, the part time contracts, how to implement the smart working measures.

A particular attention should be focused on the performance evaluation of the personnel seconded as well as to their career. The risk here is that the seconded personnel is “penalized” by their employer simply for the fact that this staff is working for another institution (the ERICs).

For the seconded personnel working in countries other than the one of the Entity they belong to, additional measures should be taken. For example, the introduction of some additional remunerations linked to the cost of living.

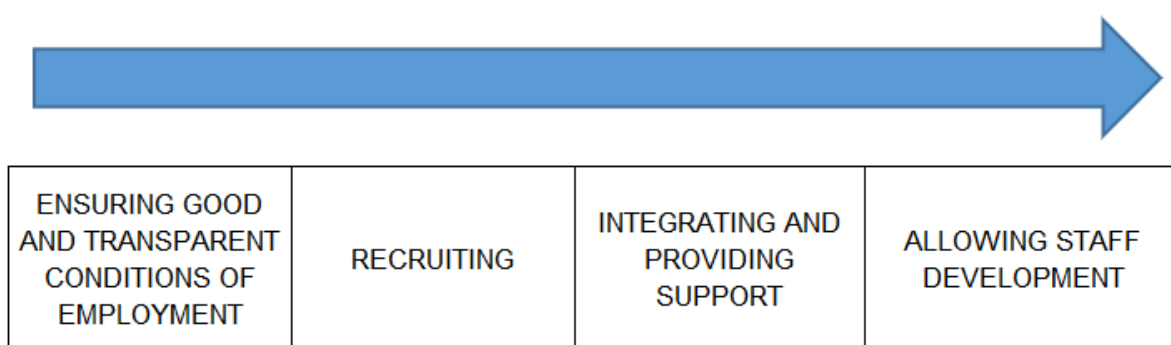
All the other aspects (e.g. working time) can be easily solved adopting the rules of the ERICs.

b) The personnel directly hired by the ERICs.

It’s easy to understand how common rules across Europe can facilitate the international mobility.

In this field it’s very important the definition of a system for classifying personnel (including PhD students and post-doctoral fellows), as well as the definition of transparent procedures of career progression and scientific/managerial/leadership training opportunities. (e.g. European project Rltrain)

Last but not least, a common remuneration system and fringe benefit policies, taking into-account the different living costs within EU.



1.6 A possible system for classifying personnel within ERICs

The proposed classification would describe the generality of the career for researchers, technicians and administrative staff working in ERICs in commonly understood terms and according to the EUROPEAN FRAMEWORK FOR RESEARCH CAREERS.

The top professional positions, whose functions impact on the strategies of the institution, are not the subject of this discussion.

Level A – Group Leader

Roles with formal responsibilities for people, budgets, safety with major operational responsibilities and general autonomy

Scientists

Leading researcher with such responsibilities, well known internationally; decent body of work.

Engineers/Administrative

Engineer or administrative with such responsibilities who lead substantial activity in their field

LEVEL B- Senior

Roles with high levels of knowledges and competencies with responsibility for people, resources, projects, safety.

Scientists

Established Researcher

“Section Leader”

Engineers/Administrative

Senior engineering

Senior Designer - mechanical / electrical engineering / control systems etc.



Grant Managers

Senior Executive Assistant

Entry point for experienced postdoctoral people i.e. ~3 years+ following PhD – equivalent to a university lecturer.

LEVEL C Scientist/engineer/administrative

Roles with good levels of knowledges and competencies with responsibility for people, resources, projects, safety with a small number of staff reports.

Scientists

Recognized Researcher

“Team Leader” (science)

Engineers/Administrative

Experienced engineer

“Team Leader” (engineer and administrative)

Executive Assistant

Entry point for post-graduates (PhD) with a higher level of expertise in a field and evidence of autonomy in a role.

LEVEL D – junior

Early careers roles

Scientists

Junior Researcher

Engineers/Administratives

Junior engineer



Junior administrative

Personal Assistants

Entry point for graduates whatever discipline (scientists, engineers, administrators)

References

- Council Regulation (EC) No. 723/2009 of 25 June 2009 Community legal framework for a European Commission European Research Area;
- ERIC Practical guidelines, Legal framework for a European Research Infrastructure Consortium, 2015 <https://ec.europa.eu/research/infrastructures/index.cfm?pg=eric-landscape>.
- European Charter & Code for Researchers: <https://euraxess.ec.europa.eu/jobs/charter>