



EGI-InSPIRE

ALIGNMENT OF EGI.EU WITH THE ERIC ORGANISATIONAL MODEL

EU MILESTONE: MS212

Document identifier:	EGI-MS212-244-V6.docx
Date:	24/01/2011
Activity:	NA2
Lead Partner:	CNRS
Document Status:	FINAL
Dissemination Level:	PUBLIC
Document Link:	https://documents.egi.eu/document/244

Abstract

This milestone describes the ERIC legal framework and how it may impact the EGI.eu organisation. The potential advantages, disadvantages and unresolved issues that need to be considered before any decision is made about adopting this framework are described. A number of open questions are identified to stimulate focused discussion within the EGI Council.

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II. DELIVERY SLIP

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From	Guy Wormser (CNRS), Damir Marinovic (EGI.eu), Sergio Andreozzi (EGI.eu)	NA2.3	08/12/2010
Reviewed by	Moderator: Steven Newhouse Reviewers: Michal Turala, Per Öster, Ludek Matyska	EGI.eu	2/1/2011
Approved by	AMB & PMB		24/1/2011

III. DOCUMENT LOG

Issue	Date	Comment	Author/Partner
1	29/11/2010	First draft	Guy Wormser (CNRS)
2	03/12/2010	Second draft (merge with EGI.eu notes)	Damir Marinovic (EGI.eu)
3	08/12/2010	Third draft (internal review)	Sergio Andreozzi (EGI.eu)
4	10/12/2010	Fourth draft (internal review with integrated Steven Newhouse’s comments)	Damir Marinovic (EGI.eu)
5	04/01/2010	Fifth draft (final version with integrated comments from reviewers)	Damir Marinovic (EGI.eu)

IV. APPLICATION AREA

This document is a formal deliverable for the European Commission, applicable to all members of the EGI-InSPIRE project, beneficiaries and Joint Research Unit members, as well as its collaborating projects.

V. DOCUMENT AMENDMENT PROCEDURE

Amendments, comments and suggestions should be sent to the authors. The procedures documented in the EGI-InSPIRE “Document Management Procedure” will be followed:

<https://wiki.egi.eu/wiki/Procedures>



VI. TERMINOLOGY

A complete project glossary is provided at the following page: <http://www.egi.eu/about/glossary/>.



VII. PROJECT SUMMARY

To support science and innovation, a lasting operational model for e-Science is needed – both for coordinating the infrastructure and for delivering integrated services that cross national borders. The EGI-InSPIRE project will support the transition from a project-based system to a sustainable pan-European e-Infrastructure, by supporting ‘grids’ of high-performance computing (HPC) and high-throughput computing (HTC) resources. EGI-InSPIRE will also be ideally placed to integrate new Distributed Computing Infrastructures (DCIs) such as clouds, supercomputing networks and desktop grids, to benefit user communities within the European Research Area.

EGI-InSPIRE will collect user requirements and provide support for the current and potential new user communities, for example within the ESFRI projects. Additional support will also be given to the current heavy users of the infrastructure, such as high energy physics, computational chemistry and life sciences, as they move their critical services and tools from a centralised support model to one driven by their own individual communities.

The objectives of the project are:

1. The continued operation and expansion of today’s production infrastructure by transitioning to a governance model and operational infrastructure that can be increasingly sustained outside of specific project funding.
2. The continued support of researchers within Europe and their international collaborators that are using the current production infrastructure.
3. The support for current heavy users of the infrastructure in earth science, astronomy and astrophysics, fusion, computational chemistry and materials science technology, life sciences and high energy physics as they move to sustainable support models for their own communities.
4. Interfaces that expand access to new user communities including new potential heavy users of the infrastructure from the ESFRI projects.
5. Mechanisms to integrate existing infrastructure providers in Europe and around the world into the production infrastructure, so as to provide transparent access to all authorised users.
6. Establish processes and procedures to allow the integration of new DCI technologies (e.g. clouds, volunteer desktop grids) and heterogeneous resources (e.g. HTC and HPC) into a seamless production infrastructure as they mature and demonstrate value to the EGI community.

The EGI community is a federation of independent national and community resource providers, whose resources support specific research communities and international collaborators both within Europe and worldwide. EGI.eu, coordinator of EGI-InSPIRE, brings together partner institutions established within the community to provide a set of essential human and technical services that enable secure integrated access to distributed resources on behalf of the community.

The production infrastructure supports Virtual Research Communities (VRCs) – structured international user communities – that are grouped into specific research domains. VRCs are formally represented within EGI at both a technical and strategic level.



VIII. EXECUTIVE SUMMARY

EGI.eu has been successfully created as a foundation based on Dutch law on 8th February 2010 as a consequence of Amsterdam (The Netherlands) being chosen to host EGI.eu. Recently, the European Union launched a major initiative to create a universal framework for all large research infrastructures in Europe, called European Research Infrastructure Consortium (ERIC). An ERIC is a legal entity based on Article 171 of the EC Treaty which is designed to facilitate the joint establishment and operation of research facilities of European interest among European Member countries. Adopting the ERIC regulation will contribute to the further development of European research infrastructures. It is therefore important for EGI, given its major role as a European E-infrastructure, to investigate whether it would benefit from the ERIC framework.

This milestone explains in some details what an ERIC is and what are the conditions needed to become one, what the potential advantages and disadvantages for EGI.eu to become an ERIC could be and identifies a number of open questions to stimulate discussion within the EGI Council.

EGI is a research infrastructure coordinated by EGI.eu on behalf of the EGI community with a clear possibility to become an ERIC organisation. The main advantages are:

- Greater political visibility and membership in any ERIC 'club'
- Improved communication with key European policy and decision makers
- Increased prospect on achieving sustainability and financial stability

The most sensitive issues that have been identified are:

- Potential limitations on the governance and organisation structure of EGI.eu and the controls imposed on it by the European Commission as an ERIC
- Potential difficulties in delegating the responsibility from Member states to NGIs
- Potentially complex and lengthy negotiations needed to get the EU and non-EU member states to agree with an ERIC proposal for EGI.eu

In order to clarify some of the identified issues and open questions, the proposed next steps are:

- Establishing communications with the DG Research ERIC team
- Defining the set of questions that would structure Council discussion on this matter
- Establishing an EGI Council ERIC working group to progress these issues



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1 INTRODUCTION

EGI.eu coordinates resource providers across the Europe on behalf of its stakeholders – NGIs and EIROs. In order to maintain Europe's leading position in providing a first class distributed computing infrastructure for the scientific and research community, it is essential that the appropriate legal framework that facilitates the sustainability of EGI.eu is identified. During the EU-funded EGI Design Study project, the characteristics of the new organisation were analysed together with criteria to be considered for the selection of its legal framework [R3, R4]. At the end of the bidding process, EGI.eu headquarters was placed in Amsterdam and the organisation's statutes were signed 8th February 2010.

EGI.eu's legal status is as a foundation under Dutch law (a Stichting, typically used for non-profit and research-oriented organisations). The current EGI.eu legal status has been demonstrated to be adequate for bootstrapping EGI into a sustainable and permanent organisation. Nevertheless, new organisational forms may need to be considered in order to evolve the legal structure in the medium or long term. The goal of this document is to analyse the potential benefits and issues in adopting the European Research Infrastructure Consortium (ERIC) legal framework for EGI. The ERIC is a new legal entity designed by the Council of the European Union to facilitate the joint establishment and operation of research facilities of European interest.

In order to evaluate the ERIC legal framework, the following methodology is adopted: 1) to evaluate the EGI.eu eligibility for the ERIC framework by using the indicators and requirements already identified in the EGI Design Study project [R3, R4]; 2) to compare the current EGI.eu legal framework with the ERIC.

The final goal of this document is to inform the EGI community and mainly the EGI Council about the new opportunity highlighting the nature, the benefits, the potential issues and the open questions relating to the ERIC framework. This document also investigates the aspects that need to be considered during the application process. As a follow-up to this document a dedicated workshop is proposed where the EGI Council will explore the issues about converting EGI.eu to an ERIC. According to the final decision, future plans will be formalised with the EGI-InSPIRE Deliverable D2.11 "EGI.eu transition plan to ERIC" in PM17 (October 2011).

The document begins with the introduction and background on the EGI.eu governance structure. The next section deals with the providing the information about ERIC and its purpose. Following this, an assessment of the suitability of the ERIC in the EGI.eu context is done by considering the legal requirements. In the next section, financial, political and practical aspects of EGI.eu's potential integration to ERIC framework are analysed. Section 6 considers the transition towards an ERIC structure by summarising the issues identified in previous sections and proposing series of steps that need to be taken in order to clarify full impact of the identified issues. Furthermore, it defines a set of questions for discussion by the EGI Council. Finally, the last section contains the concluding remarks.



2 EGI.EU GOVERNANCE

The EGI Design Study project analysed suitable legal frameworks for EGI.eu in two relevant documents [R3, R4]. The first step used by these reports was to identify the important characteristics that would be needed in EGI.eu's legal structure. These were then used to analyse the existing types of legal structures used for Research organisations [R3] in Europe. The second step was to apply the selection criteria to the possible legal structures and to short-list the options suitable for EGI.eu [R4]. In addition, an open call for the location of the EGI.eu headquarters took place. The requirements used in selecting a suitable legal entity for EGI.eu were:

1. autonomous legal entity
2. an open legal structure allowing both public and private organisations to be members
3. an open legal structure which allows membership of entities established in non-EU member States
4. a not-for-profit nature of organisation
5. limited liability of its members
6. fast creation or accession
7. to be located in an EU member State

The short-listed options for such a legal framework were: French Société Civile, the English Company Limited by Guarantee, the Dutch Stichting (Foundation) and the not fully developed European Commission's concept of European Research Infrastructure (ERI) later to be known as ERIC. As already stated, the final choice was to adopt the Dutch Stichting (Foundation) and this legal option fulfils all the legal requirements identified by the EGI Design Study project.

EGI.eu is a private legal entity operating on a non-profit basis. The budget is provided by the financial contributions paid by the Participants and Associated Participants and contributions from the European Commission towards contracted project activities. Its liability is limited since each of the Participants is fully liable only for their own activities within the foundation. Being a legal entity, the Stichting can recruit its own personnel. The creation of the EGI.eu did not require any formal government level agreement and it was created in relatively fast and straightforward manner.

The objective of the foundation is to create and maintain a pan-European grid infrastructure in collaboration with NGIs in order to guarantee its long-term availability for performing research and innovation activities [R5]. In order to realise this objective, EGI.eu is coordinating grid activities between European NGIs, coordinating and participating in grid projects, encouraging proposals for grid projects, supporting and facilitating initiatives in the field of grids and cooperating with other organisation and projects with the similar objective.

The foundation has the full autonomy and flexibility when it comes to the governance of the organisation. Furthermore, members of EGI.eu are free to define all the organisational rules in the statutes. The EGI Council is the primary decision making and supervisory authority that takes care of strategic decisions and the general direction to be undertaken by the organisation. Its terms of reference and statutes are publicly available [R5]. It consists of one representative from each Participant and Associated Participant. The EGI Council and EGI.eu Executive Board are chaired by



the same chairperson elected by the EGI Council. The Council meets at least twice a year to approve the budget for the next year and the accounts and auditor's report from the previous year. The EGI Council voting power is distributed according to the member's financial contributions and the decisions are normally adopted by an ordinary majority, unless specified in the statutes that a qualified majority vote (two-thirds of votes) is needed.

The EGI.eu Executive Board represents the foundation through its seven members (six elected representatives and the Council chair) and are appointed by and responsible to the Council. It has full autonomy in defining its own procedures and decision-making processes (contained within its Terms of Reference [R5]) and consequently approved by the Council. The Executive Board is responsible for the management of the organisation especially with budget adoption, the adoption and amendment of policies and activity plans, the employment of the personnel and the accountants, the application for bankruptcy and for a moratorium on payments of the foundation etc. The EGI.eu Director is responsible to the EGI.eu Executive Board and takes care of the day-to-day coordination and management of the EGI.eu activities, its personnel and duties [R5].

As EGI.eu was to act as the coordinator for the EGI-InSPIRE project it was essential that it be formed and staffed before the completion of project negotiations and formal start of the project on 1st May 2010.¹ However, due to these time constraints discussions on a number of issues were curtailed and the move towards an ERIC presents an opportunity to continue discussions. For example, the size of the Executive Board, the fact that Executive Board members are elected *ad personam* and not as representatives of their institution, the voting and fee scheme, etc. These and other issues would be reopened in the move to an ERIC and would naturally require further discussion in order for the community to reach a consensus position.

¹ For the definitions of the EGI, EGI-InSPIRE and EGI.eu please refer to https://wiki.egi.eu/wiki/PDT:Policy_Glossary

3 EUROPEAN RESEARCH INFRASTRUCTURE CONSORTIUM (ERIC)

Joint research infrastructures in Europe can now benefit from a legal framework adopted by the Council of the European Union by means of the regulation no. 723/2009 titled “Community legal framework for a European Research Infrastructure Consortium (ERIC)” [ERIC2009]. By adopting the ERIC legal framework, the EC recognises the importance of Research Infrastructures as the drivers of innovation and knowledge within EU and offers a new framework to pursue for the most dynamic knowledge-based economy in the world.

An ERIC is a legal personality based on EU law (Article 171 of the EC Treaty), which is reserved for the purpose of establishing and operating a research infrastructure. The ERIC, which represents a legal entity recognised in all EU Member States, is an easy-to-use legal tool providing: 1) flexibility to adapt to the specific requirements of each infrastructure; 2) some privileges typically available to intergovernmental organisations, such as VAT and custom duties exemption as well as for the possibility of adopting its own procurement procedures; 3) a faster and more cost-efficient process than creating an international organisation.

3.1 Frequently Asked Questions (FAQ)

Who can be a member of an ERIC?

The following entities may become members of an ERIC:

- Member States of the European Community;
- associated countries;
- third countries other than associated countries;
- inter-governmental organisations.

What can an ERIC establish and operate?

A research infrastructure composed by facilities, resources and related services that are used by the scientific community to conduct top-level research in their respective fields, and that may include:

- 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;
- any other entity of a unique nature essential to achieve excellence in research.

Such infrastructures may be 'single-sited' or 'distributed' to form an organised network of resources.

How can an ERIC be setup?

The main steps are:

1. at least three EC Member States, together with possible third countries and intergovernmental organisations, agree to establish and operate together a research infrastructure;
2. the members agree on statutes ruling governance, IPR policy, financing, etc.

3. the member define the seat of the ERIC, which has to be in an EU-Member State or in a country associated to the EU Framework programmes;
4. the members submit the file to the Commission, which, with the aid of independent experts, examines whether the conditions of the ERIC Regulation are fulfilled;
5. after that, a committee composed of representatives of the EU Member States gives an opinion on the application by qualified majority, following which the Commission decides on the application;
6. any decision setting up an ERIC is finally published in the Official Journal of the European Union.

It is anticipated that, once the consensus of setting an ERIC has been reached, it may take a few months to prepare the proposal and about nine months to obtain the EC approval.

What should the ERIC proposal contain?

The proposal should contain:

- The request by the Governments to the EC;
- The Statutes of the ERIC;
- The technical and scientific description of the research infrastructure to be established and operated by the ERIC;
- The declaration by the host Member State recognizing the ERIC as an international body/organisation in the sense of the VAT and excise duty directives as of its setting up;
- The agreement between the members of the ERIC on the limits and conditions of the tax exemptions mentioned above;
- The recognition of the legal personality and the privileges of the ERIC by associated countries or third countries, if applicable.

How is the ERIC organised?

The Statutes should describe the ERIC internal organisation which should include at a minimum:

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

It is stipulated that EU Member States (at least three EU Member States must be members) shall jointly hold the majority of the voting rights in the assembly of members. 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.

4 ASSESSING SUITABILITY FOR EGI.EU

Research infrastructures must meet certain requirements to be established by an ERIC. In assessing EGI.eu's alignment with the ERIC requirements (as defined in Article 4 of the Council Regulation) a number of issues have been identified. These are recorded below along with an assessment as to EGI.eu's alignment with these requirements.

Table 1 – Assessing ERIC requirements for the EGI infrastructure

	ERIC Requirements relating to infrastructure	EGI
(a)	<i>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</i>	Comply
(b)	<i>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</i>	Comply
(c)	<i>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</i>	EGI.eu will have to establish and implement an open access policy to comply with this requirement
(d)	<i>it contributes to the mobility of knowledge and/or researchers within the ERA and increases the use of intellectual potential throughout Europe</i>	Comply
(e)	<i>it contributes to the dissemination and optimisation of the results of activities in Community research, technological development and demonstration [R1]</i>	Comply

Issue 1: EGI.eu will have to define an open access policy.

In order to setup an ERIC organisation, EGI.eu would need to submit an application to the European Commission. Such an application requires a number of pre-conditions that are evaluated in Table 2.

Table 2 – Content of an ERIC application

	Content of the application	Considerations
1	<i>The proposed statutes of the ERIC²</i>	Certain issues are identified ³
2	<i>The technical and scientific description of the research infrastructure to be established and operated by the ERIC⁴</i>	No particular issues foreseen
3	<i>The 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 up⁵</i>	In order to get the declaration, effective communication and lobbying with the host government will be needed and the need for VAT and excise duty exemption will have to be assessed.
4	<i>The agreement between the members of the ERIC on the limits and conditions of the tax exemptions mentioned above⁶</i>	Potentially a lengthy and complex negotiation process between states
5	<i>The recognition of the legal personality and the privileges of the ERIC by associated countries or third countries, if applicable⁷</i>	It would require negotiations with non-EU members that could be lengthy and complex

Issue 2: EGI.eu will have to define an IPR policy relating to the use of the resources supported by the ERIC.

² The statutes contain the main provisions governing the ERIC, notably the rights and obligations of the members. These statutes must include, in particular, the obligations of the members to make financial contributions for a sustainable operation of the ERIC for a minimum duration appropriate for the purposes of the ERIC concerned. Once the ERIC has legal personality and the statutes are in force, they create a binding obligation for the members.[R2]

³ Issues are IPR policy related (addressed in Issue 1)

⁴ The information should be structured to describe the foreseen principal tasks as well as any economic activities (if applicable) and address the five specific requirements set out in Article 4 of the ERIC Regulation (as in Table 1). In the case of a distributed infrastructure involving other legal entities besides the ERIC in its operation, the description should also explain the boundaries and the planned agreements between the ERIC and those other legal entities [R2].

⁵ This should be a formal declaration (no specific format is foreseen) by the competent national authorities of the host Member State, i.e. the state in which the statutory seat of the ERIC is located, as specified in Article 5(1)(d) of the ERIC Regulation. This formal recognition has to be worded so as to enter into force immediately once the ERIC is formally set up. If the host state is an associated country, it will need, as part of the recognition of the privileges of the ERIC, to provide a declaration ensuring equivalent exemptions (Article 9(6)). The agreement between the members of the ERIC on the limits and conditions of the tax exemptions mentioned above.[R2].

⁶ The limits and conditions of the exemptions may both specify the implementation of the exemptions (e.g. the recording and recovery of the tax paid) and define their exact scope, typically requiring that purchases are made for official use only and possibly excluding purchases of certain types of goods or services or minor purchases or not allowing exemption from certain taxes. This agreement can take the form of a separate document (no specific format is foreseen) or can be part of the statutes [R2].

⁷ This will only be necessary if one or more members are not EU Member States. These members have to provide details on how they have ensured that the ERIC will have legal personality in their legal system and is granted the same exemptions as in the EU Member States. No specific format is foreseen [R2].

In order to better evaluate the suitability of ERIC for EGI.eu, an assessment is made based on the list of minimum legal and organisational requirements identified by the EGI Design Study project. These requirements are listed in the Section Background on the EGI Governance.

4.1.1 Autonomous legal entity

It is of great importance to have a legal framework that allows EGI.eu to have a full legal capacity and independence in choosing a suitable governance model. Therefore, it is important to investigate what are the imposed governance constraints by ERIC in order to understand how this will affect the organisational and managerial structure.

An ERIC is a legal entity with legal personality and full legal capacity recognised in all EU Member States. Its basic internal structure is very flexible, leaving the members to define in the statutes, case by case, membership rights and obligations, the bodies of the ERIC and their competences. [R2]

In general, it is claimed that the ERIC legal framework does not impose organisational and governance rules. However, looking in greater detail into the Council of the European Union regulation, it can be seen that any change to key elements of the statutes must pass through the same procedure as the initial set up of the ERIC itself. Such key elements are clearly identified and are:

- the tasks and activities of the ERIC;
- the statutory seat in compliance with Article 8(1);
- the name of the ERIC in compliance with Article 8(2);
- the duration, and the procedure for the winding up in compliance with Article 16;
- the liability regime, in compliance with Article 14(2);
- the basic principles covering: the access policy for users, the scientific evaluation policy, the dissemination policy, the intellectual property rights policy, the employment policy, including equal opportunities, the procurement policy respecting the principles of transparency, non-discrimination and competition.

Any changes to the above elements would require the European Commission's approval reducing the flexibility and independence currently provided by the Stichting model.

Issue 3: The legal framework requires that for any major change of an ERIC's statutes explicit approval is needed from the European Commission

The minimal organisational requirements that are described in Article 12 prescribe that: *"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"* [R1].

In general, the current EGI.eu organisational model reflects and complies with these requirements. However, it should be noted that the executive body of an ERIC is “a director or board of directors” suggesting that it is either a director (in our case equivalent to EGI.eu Director) or board of directors. For example, one option would be to keep the present EGI.eu Director and to replace the present EGI.eu Executive Board by a bureau (i.e. an elected subset of the Council in charge of dealing with daily matters) of the EGI Council. In order to better understand the rationale behind this statement the ERIC team will need to be consulted.

Issue 4: EGI.eu’s organisational and governance model will have to be refined to comply with the ERIC requirements.

The statutes prescribe that the budget is the responsibility of the ERIC members and it will contain the binding agreements between members to provide their contributions to a balanced budget.

In order to comply with the reporting and control by the EC, EGI.eu will have to produce an annual activity report:

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. [R1]

4.1.2 Open to public and private entities for membership

This requirement is one of the most important requirements for EGI.eu since NGIs and EIROs must be eligible for membership since they represent the main stakeholders. However, according to the ERIC regulation, only Member States, associated countries⁸, third countries⁹ and intergovernmental organisations can become members in an ERIC framework. Nevertheless, there is possibility for a state to delegate representation to one or more public or private entities e.g. research organisations or research councils.

“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. (Article 9.4)

The terms of such representation depend on the specific mandate a member wishes to give to one or several such entities and should be clearly communicated to the other members of the ERIC, especially as regards eventual voting rights. [R2]

⁸ ‘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. [R1]

⁹ ‘Third country’ means a State that is not a Member State of the European Union. [R1]



Only EU member states, associated countries, third countries and intergovernmental organisations can be members of an ERIC. Therefore if NGIs are not able to be members of an EGI.eu ERIC directly, they may be able to represent their country within the organisation. The present NGIs will each need to be reconfirmed as the officially appointed representative of their government, as was the case when EGI.eu was established.

Issue 5: NGIs will need to be appointed or reappointed as their official government representatives within the ERIC.

In addition, it needs to be confirmed that the EIROs currently or potentially involved in EGI.eu are eligible to members of an ERIC.

Issue 6: Check whether the EIROs involved in EGI.eu comply with the ERIC definition of intergovernmental organisation

It should be also considered that NGIs have different alignment and relationship with their responsible ministry which can lead to different dynamics and issues during the process of agreeing on the mandate.

Once the EGI Council starts discussing the transformation from EGI.eu to EGI ERIC, then the NGIs must make sure that they start communicating these potential organisational changes to their ministerial representatives as a change in their (the NGI's) individual mandate may be necessary. Therefore, one of the important consequences of the new ERIC membership arrangement is a far closer relationship between the national representative in EGI ERIC (currently the NGI within EGI) and their government. This closer relationship (and potentially tighter control from their government) requires that the representative be a public or private entity with a clear public service mission. It is desirable that the organisations currently involved in EGI.eu remain involved in EGI.eu ERIC, although some of the potential members could have relevant local issues.

Issue 7: What is the impact of having some of the current EGI.eu participant and associate participants not able to renegotiate and reinforce their mandate with their national states?

The “observer status” that is foreseen in ERIC legal framework will have to be clarified regarding the position of other non-governmental or inter-governmental entities wishing to participate in the EGI ERIC.

To conclude, the ERIC legal framework is a very different than the Dutch Stichting in terms of membership possibilities. Careful consideration is required by the EGI community within the EGI Council to make sure the implications of these changes are fully understood.



4.1.3 Open to non-EU member States for membership

Within the ERIC framework, there are two categories for non-EU member states: associated countries and third countries. All the current EGI.eu non-EU participants and associate participants fall into one of these two categories.

However, in order to ensure prevailing EU dimension of the ERIC organisation, in Article 9.3 it is stated that *“EU Member States shall hold jointly the majority of the voting rights in the assembly of members”* [R1]. This requirement does not represent obstacle for EGI.eu since it is foreseeable that member states will always have the majority.

4.1.4 Not-for-profit status

The ERIC framework allows EGI.eu to continue carrying out all the activities that are currently performed. Concerning the nature of activity in Article 3.1 it is stated: *“An ERIC shall pursue its principal tasks on a non-economic basis. However, it may carry out limited economic activities closely related to its task, provided that they are closely related to its principal task and that they do not jeopardize the achievement thereof”* [R1].

It is clear that infrastructure should stay non-profit oriented likewise in the current foundation framework. Nevertheless, potential implications related to future business model should be investigated.

4.1.5 Limited liability

The Article 14.2 states that: *“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”* [R1].

Thus, the requirement of the limited liability is acceptable even though *“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”* [R2].

4.1.6 Fast to create

The creation of a large structure with members (more than 30 of them for EGI.eu) from many countries can be quite lengthy. The ERIC legal framework requires a very formal, hence, lengthy establishment procedure. This, as well as the probable long internal process of reaching an agreement on specific mandate given by states to the NGIs, should be taken into account in calculating the timeline for establishing EGI.eu as an ERIC (see also Section 4).

Although the time for processing an ERIC application is structured and relatively short, considerable time will be needed to prepare the application. Specifically, it requires appropriate communication and lobbying with the potential member states in order to come up with the agreements needed for the content of the application. The EGI Council will have an important role in trying to streamline this process. Thus, the formal application for setting-up an ERIC is just the final step of a long negotiation process not only between EGI.eu and potential members, but also between the potential ERIC



members in order to agree to continue to operate a European research infrastructure together under this evolved legal structure. After the formal submission of the application to the European Commission, the Commission will need 3 to 9 months to make the final decision. It will therefore take at least 1.5 to 2.5 years to become an ERIC organisation.

Issue 8: Complex and lengthy negotiation and agreement process with EU and non-EU member states in order to collect all requested documents and agreements needed for the application to the European Commission

4.1.7 Located in a EU member State

Article 8.1 states that: *“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”* [R1]. Therefore, EGI.eu complies with this requirement.

5 COMMENTARY

The previous comments and considerations relating to the benefits and issues brought by EGI.eu's possible transition to ERIC are summarised in this section.

5.1 Financial Aspects

There are four main possible financial benefits:

1. exemption from VAT
2. exemption from excise duties
3. adoption of its own procurement procedures respecting the principles of transparency, non-discrimination and competition (not necessary following national law)¹⁰
4. qualification for funding in accordance with Title VI of the Financial Regulation of the European Communities and under the Cohesion Policy

Given its current mode of operation, it is not clear that the first three main benefits are relevant for EGI.eu. As a Dutch foundation, EGI.eu already has certain tax exemption and benefits. So there is a need to compare tax benefits of both legal options in EGI.eu's case. Furthermore, EGI.eu itself does not own any of the resources contributed to EGI, hence, it does not purchase large quantities of equipment. In this case, the VAT and excise duties exemption and independent procurement procedures are not of the greatest relevance unless members will be willing to purchase infrastructure components through EGI. The possibility of using EGI.eu as a channel for purchasing equipment for NGIs infrastructure will have to be investigated – considering the tax and ownership implications locally in the host country and in the purchasing NGI's home country. These financial benefits area are more suitable for organisations that purchase large quantities of goods and services for use in a few locations, such as CERN. An ERIC may wish to establish its own procurement procedures to support these activities.

Issue 9: Can EGI.eu be used as a tax exempt channel for the NGI's equipment purchases?

Therefore, it seems that the financial benefits of ERIC are not enough relevant for EGI.eu unless the procurement activity is expected to become prominent in the future.

The qualification for funding can have a bigger financial impact since it can open doors to cohesion policy funds. In addition, having member states as official EGI members will make them more committed to the long-term financial stability of the organisation. On the other hand, this implication

¹⁰ 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 (VAT) and excise duties. It also qualifies as international organisation for the purpose of the directive on public procurement. 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 procurement procedures respecting the principles of transparency, non-discrimination and competition but not subject to the directive on public procurement as implemented in national law [R1].



could make some of the states reluctant in participating to the EGI as ERIC and burdening themselves with new financial obligations.

5.2 Political aspects

Having a status as a recognised organisation with pan-European remit could lead to a better image and reputation for the EGI community. Having the “ERIC stamp” would confirm EGI.eu’s visibility and excellence as a world-class e-infrastructure for the European Research Area. It will also allow EGI.eu to join a new exclusive club of ERIC organisations similar to EUROHORCS or EIFORA thereby improving its political visibility and better communication with key European decisions and policy makers. The closer links between the representatives in the ERIC and their national government may lead to a greater politicisation than there is currently.

Having a firm commitment from the member states as primary stakeholders within the ERIC will improve EGI.eu’s sustainability and long-term financial stability. Dealing with ERIC will require the governments to give a clearer and definitive answer for the EGI sustainability. If EGI community manage to get the positive answers from their governments, it would be great victory for the EGI community that will build strong foundation for the EGI long term sustainability. Nonetheless, during the current times of economic uncertainty governments may be reluctant in signing the ERIC agreement.

With regards to the third countries (for EGI.eu they are Russia, Belarus, Armenia, Georgia and Moldova) the following aspect should also be considered: *“Since EU law is not applicable in third countries, provisions have to be made by third countries wanting to be a member of an ERIC in order to ensure that the ERIC will have legal personality and capacity in their legal order, that it will be governed by EU law and that it will be exempted from VAT, excise duties and public procurement rules in their country to the same extent as in the EU Member States”* [R2]. Since the EGI.eu is a pan-European organisation adding members among non-EU countries will cause an extra overhead in the process of reaching an agreement with their state administration relating to the legal and fiscal conditions involved in accepting the ERIC framework. One of the options that need to be clarified is whether the ERIC legal framework opens the possibility for having states with the status of associate members.

Adopting the ERIC framework will mean more control and integration with the member states and by the European Commission, especially in regard to EGI.eu’s governance and organisational models. Thus, EGI.eu and the NGIs will lose some of their autonomy and become more dependent and integrated with these external entities. This dependency is not accidentally conveyed in mandatory requirement that obliges the organisation to have a name containing the abbreviation “ERIC”.

5.3 Practical aspects

The higher visibility and higher profile of the ERIC framework will allow EGI.eu to continue to recruit the best possible experts. Furthermore, the possibility of adopting agile purchasing and recruitment procedures may turn out to be extremely useful in the long term to boost EGI’s attractiveness and to facilitate EGI’s operational aspects. One of the big advantages of joining the ERIC would give better guaranties to the personnel since in the current situation all the EGI.eu personnel have time limited



contracts. So going for ERIC would have exactly the opposite effect and ensure personnel long term position and engagement in EGI affairs.

However, the termination of all Foundation-based personnel contracts followed by their rehiring as ERIC employees will be a sensitive issue. A dedicated working group needs to be established to prevent any negative consequences for the current EGI.eu personnel and for existing EGI.eu activities.

Other issues, such as the proper transfer of funds between the two structures, the formal appointment of staff in the EGI.eu ERIC management structure, which should be as identical as possible to EGI.eu's at to avoid any disruption, will need to be considered.

Issue 10: Potential difficulties with rehiring the personnel and transfer of funds

6 TRANSITION TOWARDS AN ERIC

6.1 Applying for ERIC

The nine issues that have been identified in transitioning towards an ERIC are:

1. EGI.eu will have to define an open access policy
2. EGI.eu will have to define an IPR policy relating to the use of the resources supported by the ERIC.
3. The legal framework requires that for any major change of an ERIC's statutes, explicit approval is needed from the European Commission
4. The EGI.eu organisational and governance model will have to be refined to comply with the ERIC requirements
5. NGIs will need to be appointed or reappointed as their official government representatives within the ERIC
6. Check whether the EIROs involved in EGI.eu comply with the ERIC definition of intergovernmental organisation
7. What is the impact of having some of the current EGI.eu participants and associate participants not able to renegotiate and reinforce their mandate with their national states?
8. Complex and lengthy negotiation and agreement process with EU and non-EU member states in order to collect all requested documents and agreements needed for the application to the European Commission
9. Can EGI.eu be used as a tax exemption channel for the NGI's equipment purchases?
10. Potential difficulties with rehiring the personnel and transfer of funds

When applying for ERIC the following key areas need to be described in application:

- *Principal task 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 (Article 9.2)*
- *Majority of voting rights held by Member States (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) [R2]*

Annex A contains some of initial responses relating to an EGI.eu application.

6.2 Next Steps

At the time of writing (December 2010) with many open questions and unresolved issues, it is very hard to predict a precise schedule towards the EGI ERIC. Following this milestone, a deliverable D2.11 'EGI.eu's transition plan to an ERIC' will deal with the schedule in more detail in a year's time.

A process needs to be established that will lead to the clarification of some of the issues and to have productive discussions within EGI Council meetings. The clarifications and informed discussion will eventually lead to an informed decision being made by the EGI Council.

Therefore, three steps are being proposed:

- Establishing communication with the DG for Research ERIC team.
- Defining the set of questions that would structure EGI Council discussion on this matter
- Establishing an EGI ERIC working group

First, in order to better assess the overall benefits and issues for ERIC, a number of questions need to be passed onto the designated ERIC team within the Directorate General for Research. These questions relate to the:

- VAT and excise duties exemption: Does it apply only to EGI.eu or the organisation could purchase equipment on behalf of NGIs?
- Can EIROs be considered intergovernmental organisations according to the EU law as referred in the ERIC legal framework?
- Can an ERIC organisation have both a primary director and a body of directors, or does one option exclude the other? (Article 12, "director or body of directors")
- Does the ERIC legal framework open the possibility for having states and other entities with status of associate members and/or observers?

Following this, there are set of the questions that need to be discussed by the EGI Council in order to make a decision about joining the ERIC legal framework:

- Are the governance and organisational limitations imposed by the ERIC framework acceptable for the EGI community? (to be considered also limitations in the changes of key elements of the statutes which require European Commission approval)
- Do all the NGIs have the capacity and ability to clearly and effectively communicate with their respective Ministries the importance of joining the ERIC framework? Are they able to obtain commitment to both enter the ERIC organisation as member and to delegate to them the representation?
- How much does each NGI foresees that the influence from the national government will affect its activity when losing the status of primary member and becoming a member state representative?
- Is the complexity and longitude of the accession process acceptable for the EGI Council since in the best scenario it will take one and half years?
- EGI.eu is obliged to formulate the access policy for users and the intellectual property rights policy. Is the complexity and potential issues triggered by adopting these policies acceptable for the EGI Council to approve them?



- If the VAT and excise duties exemption are not applicable in the EGI.eu case for centralised procurement, are the other benefits “good enough” for the EGI.eu to transform to an ERIC?
- How can EGI.eu long-term sustainability be addressed by accessing ERIC?

Finally, an ERIC working group should be established that will focus each NGI’s attention on the various points and ultimately suggest the steps that they should take in order to investigate the possibility with their national governments. In addition, the working group will be able to properly assess the willingness of NGIs to move towards ERIC and it would represent great opportunity to thoroughly discuss some of the issues related to the specific position of every NGI.

7 CONCLUSION

This document provides a description of the current EGI.eu governance and legal framework, introduces the ERIC legal framework and analyses its suitability for EGI.eu. It is evident that EGI.eu has or could produce policies to align itself with all of the requirements imposed by the ERIC legal framework, including providing “effective access” and establishing IP rights. It would require a re-examination of EGI.eu’s governance model such as the relationship the EGI.eu Executive Board has with the EGI Council. It also appears that EGI is an eligible e-infrastructure, and that following lobbying by the NGIs with their governments to confirm their support, a suitably prepared ERIC proposal for EGI.eu should receive a positive response from the European Commission. However, there are number of serious issues that need to be considered by the EGI community.

“The ERIC framework has been developed primarily for new research infrastructures but it can also be used for existing infrastructures if these, exceptionally, consider it to be useful to change their legal status and to become an ERIC. It should be noted that the ERIC is a legal tool which is appropriate only for high-profile research infrastructures with a European dimension. Therefore, only a limited number of ERICs are expected to be set up in the coming years” [R2].

Thus, the EGI Council should properly evaluate the advantages and disadvantages to the long-term sustainability of the European Grid Infrastructure if EGI.eu changes its legal status from a Dutch Stichting to an ERIC.

Making EGI.eu an ERIC will transform it into a truly international organisation with recognised importance by the EC and EU member states as a research infrastructure. As such it will have a much greater political visibility within Europe and around the world enabling it to collaborate with other ERICs in Europe and with equivalent organisations around the world. Furthermore, it will also improve its sustainability and long-term financial stability since the primary stakeholders will be member states with a legally binding commitment.

However, the transition to an ERIC will require in the best case scenario one and half years. Substantial lobbying would be needed prior to the start of this timetable at a national and European level. One of the issues that would need to be considered by the EGI Community before starting this process is the greater politicisation and increased visibility of an organisation where the primary focus is the operation and evolution of scientific and research e-infrastructure. From the financial viewpoint, the tax benefits while appearing at a first glance to be attractive, do not appear to provide a benefit unless there is a plan to centralise equipment procurement for the infrastructure (if this is possible). The current EGI.eu status also brings tax benefits which should be compared to those offered by the ERIC model.

It is important to notice that some of the identified issues such as open access and IPR policy must be dealt with within EGI community regardless of whether the ERIC will be considered or not. Thus, these issues will have to be addressed in any case not only if the EGI Council decides to accept the ERIC model. However, it is clear that an infrastructure cannot join ERIC legal instrument if these issues are not addressed.



To conclude, it seems that the journey towards an EGI.eu ERIC could present quite a challenge for EGI.eu and the NGIs. Furthermore, becoming an ERIC would imply significant modifications to the whole EGI organisational and governance structure, EGI and NGIs autonomy, international status, financial stability, sustainability etc. However, becoming an ERIC does provide some obvious benefits to the EGI community and the European research and scientific communities it supports.

8 REFERENCES

R 1	Community Legal Framework for a European Research Infrastructure Consortium (ERIC); Council Regulation http://ec.europa.eu/research/infrastructures/index_en.cfm?pg=eric
R 2	ERIC Practical Guidelines for applicants http://ec.europa.eu/research/infrastructures/index_en.cfm?pg=eric
R 3	Preliminary work - Design Study of the EGI Legal and Organisational Options – EGI_DS Deliverable D4.1 http://web.eu-egi.eu/documents/public
R 4	Options Analysis - Design Study of the EGI Legal and Organisational Options – EGI_DS Deliverable D4.2 http://web.eu-egi.eu/documents/public
R 5	EGI.eu Foundation Statutes https://documents.egi.eu/document/18

9 ANNEX A: RESPONSES TO THE ERIC QUESTIONS

Indicative responses to the questions posed within the ERIC submission are provided below:

- a) **Tasks and activities of the ERIC:** the task of EGI.eu ERIC would be to operate the European Grid and coordinate Grid activities in Europe. It will need to be decided if the procurement of computing hardware will be included in the activities. Up to now, it has not been the case but some countries may find it advantageous to benefit from VAT exemptions linked to an ERIC status. However, it will be investigated to see if EGI.eu can be used as a tax exempt channel for the NGI's equipment purchases.
- b) **EGI.eu ERIC statutory seat will be in a host city**
- c) **Name is EGI.eu ERIC**
- d) **Duration and winding up:** one can foresee an initial period of ten years that can be extended by agreement of the parties
- e) **Liability regime:** the liability regime of an ERIC is different from the present one in EGI.eu Foundation. The ERIC liability scheme is more conventional in the sense that the liable entities are the members and not physical persons. An insurance scheme is foreseen to limit the liability of each member to its contribution.
 - The EGI.eu ERIC shall be liable for its debts.
 - The financial liability of the Parties, or their representing Entities, for the debts of EGI.eu ERIC shall be limited to their respective contributions.
 - In consideration of this limitation of the financial liability, EGI.eu ERIC shall take appropriate insurance to cover the risks specific to the carrying out of all its activities.
- f) **Basic principles covering access policy, IP rights:** preparation of these points in the ERIC application will be a good occasion to clarify all the issues which are already mentioned in the EGI.eu statutes. In particular, the question of data access policy and user access policy are quite important for an ERIC structure. These issues are contingent to the overall economic return of the EGI.eu enterprise, its self-sustainability, etc. A dedicated working group should be set up to study in depth these delicate issues.
- g) **Rights and obligations of the members, including the obligation to make contributions to a balanced budget and voting rights:** because of the flexibility of the ERIC structure, it will be easy to reuse all aspects of the present arrangements that are found satisfactory, such as EGI Council by-laws and voting rights scheme. The ERIC requirement that EU members detain the majority of the votes will be obviously fulfilled in EGI. The "observer" or "associate" status is not predefined in an ERIC, and it will be investigated with ERIC team.