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C1.2.1

Report on possible legal Frameworks for EDIT

Taxonomy in Europe in the 21st century

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Dissemination Level		
PU	Public	
PP	Restricted to other programme participants (including the Commission Services)	
RE	Restricted to a group specified by the consortium (including the Commission Services)	
CO	Confidential, only for members of the consortium (including the Commission Services)	X



POSSIBLE LEGAL FRAMEWORKS FOR EDIT

Simon Tillier, 3 January 2008

Most Networks of Excellence complied themselves to establish a common legal status, but many failed. EDIT avoided this possible pitfall by stating that it will work and study the possibility for a legal status. This absence of obligation regarding the final outcome does not imply that a legal status would be useless after the end of the contract, depending on what the members of the consortium want to do together in the medium and long term.

In most cases, from the legal point of view the problem encountered by the NoEs is the incompatibility of the national legal status of public institutions with most international legal frameworks, especially when the entity which acts as a member of the new entity has no legal and financial autonomy (University Department or entity belonging to a national research council).

So far the possibilities are limited to multilateral agreements, EEIG (Economic European Interest Grouping), AISBL (Association internationale sans but lucratif), under Belgian law (and ASBL under French law), and FCS (Fondation de Coopération Scientifique), under French law. Furthermore a Working Group of the ESFRI (European Strategic Forum for Research Infrastructures) has proposed to establish a new EC regulation which would allow Pan-European Research Infrastructures under European law.

Multilateral agreement

This is simple and easily feasible, being a simple transposition of a consortium agreement. However it gives no legal personality to the consortium, which implies that when necessary one of the members acts for the whole consortium – not easy for anyone, especially when funds are implied in common actions and if the common entity wishes to employ staff. The GDRE / GDRI (European / International Research Consortium), under French law, represent a French legal form for such agreements.

EEIG (Economic European Interest Grouping)

This is a flexible structure under European law, but its application to research infrastructures is complex mainly because this status implies unlimited financial liability, which most if not all public research institutions cannot accept, and thus requires complex mechanisms to escape it at each member's level.

AISBL (Association Internationale Sans But Lucratif) and Association Loi de 1901

A Belgian AISBL requires a status approved by the Ministry of Justice and the King of Belgium (ca 6 months). It must have at least a president, a vice president, a treasurer and a secretary, plus a (flexible) list of members. It pays no taxes in Belgium, except for owning buildings and saved funds (0,2%). No capital is required.

This is the status adopted by the CETAF.

A French Association Sans But Lucratif (Loi de 1901) is similar to the Belgian AISBL but is still more flexible – a simple publication in the French “Journal Officiel” is sufficient.

The problem encountered for participation in such “associations” by public bodies in France, and probably in other EU countries, is that the management rules for governmental institutions forbid transferring public funds for public action to private bodies without control of the latter by the public accounting system (it is considered a priori as a mean to escape the constraining rules for management of public funds - which has been quite true before it was forbidden!).

FCS (Fondation de Coopération Scientifique)

The possibility for a FCS, a structure recently created under French law, has still to be explored regarding international consortia but may be advantageous:

- Status to be approved by the Ministry in charge of research under French law;
- No taxes;
- Limited liability ;
- Possibility to receive and manage both public and private funds;
- Adapted for research institutions ;
- Management rigorous but flexible.

Pan-European Research Infrastructure

The Working Group established by the ESFRI concluded that purely national legal bases as well as case by case international agreements are, in most cases, inadequate to comply with the needs of new Pan-European infrastructures. The solution would be an EC regulation providing a common legal framework for research infrastructures of pan-european interest.

The legal base for this regulation is provided by the Article 171 of the Treaty:

The Community may set up joint undertakings or any other structure necessary for the efficient execution of Community research, technological development and demonstration programmes.

The new regulation could be effective in 2009. It would allow the following characteristics:

- the entity would be governed by a contract of association;
- it should have a legal personality different from that of its members and based on Community Law;
- the structure shall be governed by the regulation and community law, the terms of its status and, on a subsidiary basis, by the law chosen by the members of the entity (normally the law of the place of establishment)

The minimum bodies requested would be a general assembly and a board of at least two persons.

Two options would be given to consortia:

1. Create an entity under national law and then apply for the status or
2. Be governed by the model set up in the framework regulation.