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Funding strategies for research infrastructures legal aspects - setting the scene

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Introduction

- Transnational approach is needed
- Among scientists from different countries agreements are easily reached
- Taxpayer's money however does not easily cross national borders
- Appropriate legal solutions may make things easier
- It all starts with a contract

Contracting parties and applicable law

- **Countries**
 - international public law
 - national ratification
 - in principle no single national legal system applicable
- **Private or semi-private bodies**
 - private international law
 - in principle choice of applicable national law
 - possibly validation by a notary

‘Single-sited’ or ‘distributed’ infrastructures – legal entities?

- Single-sited
 - Funding for investment and operation to be transferred by the partners to the seat of the infrastructure
 - Requires creation of legal entity with the corresponding capacity
- Distributed
 - No necessity to pool funds in a single site
 - Research tools can be established and operated as separate legal entities by each partner
 - No need to merge into a single new legal entity

Considerations when establishing a legal entity

- Legal personality
- Membership
- Management structure
- Budget for investment and operating costs
- Liability
- Social security
- Staff rules and salaries
- Procurement
- Winding up of operations
- Settlement of disputes
- etc.etc.

Legal forms of existing infrastructure entities (1)

- national level
 - French ‘Société civile’ for the European Synchrotron Radiation Facility (ESRF)
 - German ‘Gesellschaft mit beschränkter Haftung (GmbH)’ for X-ray Free-Electron-Laser-Facility(XFEL)
 - UK ‘Limited liability Company (Ltd)’ the Delivery of Advanced Network Technology in Europe (DANTE)
 - Dutch ‘Stichting’ (foundation) for the German-Dutch Wind Tunnels

Legal forms of existing infrastructure entities (2)

- International or EU law
 - International/intergovernmental organisations under international law for the ‘Big Four’ CERN,EMBL,ESO,ESA
 - Joint Undertaking under the Euratom Treaty for the Joint European Torus (JET), a research tool in the field of thermonuclear fusion
 - Joint Undertaking under the EC Treaty – Galileo, for a worldwide satellite radio navigation and positioning infrastructure
 - ‘European Economic Interest Grouping’ under the corresponding EC regulation for the EDCTP, a structure for the coordination and funding of national clinical trial activities in and in favour of developing countries

Limitations of existing legal forms - national law

- Similarity but no identity of legal instruments of EU member states
 - details matter
 - all partners must have the same knowledge
- Risk of less equitable geographical distribution of new infrastructures in view of legal differences
- The psychology factor – the transnational character is not visible

Limitations of existing legal forms – internat. law

- Long and complicated negotiations and ratification procedures
- Absence of a national legal reference system
- Only subjects of international public law (e.g. countries, the EU) negotiate and conclude such agreements
- Contracting parties are in practice obliged to cover all debts of the infrastructure

Limitations of existing legal forms - EU law

- Joint undertakings such as Galileo, JET
 - Ad-hoc case by case creations
 - Similar to international organisations as no full EU legal system exists
 - Unlimited liability
- The European Economic Interest Grouping (EEIG):
 - Unlimited liability
 - Legal personality not granted by all EU member countries
 - Economic orientation of the EEIG - not fully appropriate in the research field

Conclusions

- Plea for a legislative initiative of the European Commission concerning
Research Infrastructure entities of European public interest
- Provide a procedure and a legal framework for the creation of entities
 - involving public or private bodies from different member-states and possibly third countries
 - allowing the limitation of liability to and by a capital of the entity
 - providing for the referral to a chosen national legal system
 - granting legal personality

Thank you for your attention.