

# ECRI 2007<sup>★</sup>

  
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# Need for new legal formats: a new European model?

Mila Bas Sánchez, ECRI 2007, Hamburg, 05.06.2007

- **Context** : ESFRI roadmap for the construction of European large scale research infrastructures: 35 key projects for the coming few years
- **Prospective work done**:
  - 2 workshops : national legal bases, case by case international agreements and existing European instrument proven inadequate
  - working group for feasibility study on the creation of a European legal instrument for Pan-European research infrastructures

**Purpose:** to facilitate the constitution of legal entities for the construction and operation of research infrastructures of Pan-European interest and necessary for the conduct of Community research programs

**Possible Solution:** EC regulation providing a common legal frame, leaving flexibility to the individual consortia to set up the adequate rules for the specific infrastructure

## Framework regulation for Pan-European research infrastructures (Article 171 EC):

- **Legal model** for Pan-European research infrastructures
- rules and **procedures** governing their establishment:
  - legal entities interested draw up the statutes for a concrete Pan-European research infrastructure and **submit** the project to the Commission
  - The **legislator confer the status** of "Pan-European research infrastructure"; empowerment to the Commission could be foreseen

In order to offer the maximum amount of flexibility, **choice between the following two options:**

- Create an entity under national law and then apply for the status of "Pan-European research infrastructure" with a **legal personality base on national law**
- Be governed by the model set up in the framework regulation. The **legal personality is based on Community law** and therefore valid in every Member State

In both cases the legislator confers the status of "Pan-European research infrastructure"

- Community participation is not required
- The Pan-European research infrastructure not considered as a Community body as the Community is not a member and does not contribute financially to the structure as such

This does not prevent the structure from being the **beneficiary** of grants according to the procedures established in the legislation in force.

## Principal legal characteristics of the model set up in the framework regulation

- entity governed by a **contract of association**
- **legal personality based on Community law**; publication of the status in the official journal enough to oppose the entity to third parties registration in national registers not necessary
- **applicable law**:
  - the framework regulation and other Community law,
  - the terms of its by laws and,
  - on a subsidiary basis, the law chosen by the members of the Pan-European research infrastructure in the status

## Principal legal characteristics of the model set up in the framework regulation

### Membership

- any legal body governed by public, private or Community law as well as natural persons
- at least two entities which have their central administrations in different Member States
- possibility of participation of entities from third countries
- the majority of the members should be established in a Member State.

Principal legal characteristics of the model set up in the framework regulation

## Nominal capital/equity and limitation of the liability

Framework regulation provide **two options**:

A). A member can be **liable** for 'his part' of the grouping's debts = in proportion of the contributions to the Grouping. On a subsidiary basis. **Capital/equity not compulsory**

B) **Limitation of the liability** of the members in the statutes. In this case, the word "*limited*" should be added to the name. **Capital/equity compulsory**

## Special advantages such as tax advantages

- Not a proposal for harmonisation in this field
- Limited to the grant of very narrow advantages and *ad hoc* exceptions
- Political will of Member States needed; the procedure proposed where it is the legislator who confers the status of "Pan-European research infrastructure" could make it more feasible to award special advantages
- Specific advantages need to be studied

## Next steps

Commission starts working on the basis of the green paper

If **political will** of Members States the procedures can be done rapidly