



Procedure file

Basic information		
CNS - Consultation procedure Regulation	2008/0148(CNS)	Procedure completed
European Research Infrastructure Consortium ERIC: legal framework		
Amended by 2012/0321(NLE)		
Subject		
3.50.01 European research area and policy		
3.50.02.01 EC, EU framework programme		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	ITRE Industry, Research and Energy		24/09/2008
		PSE RIERA MADURELL Teresa	
Council of the European Union	Council configuration	Meeting	Date
	Environment	2953	25/06/2009
	Competitiveness (Internal Market, Industry, Research and Space)	2945	28/05/2009
	Competitiveness (Internal Market, Industry, Research and Space)	2929	05/03/2009
	Competitiveness (Internal Market, Industry, Research and Space)	2910	01/12/2008
European Commission	Commission DG	Commissioner	
	Research and Innovation	POTOČNIK Janez	

Key events			
25/07/2008	Legislative proposal published	COM(2008)0467	Summary
23/09/2008	Committee referral announced in Parliament		
01/12/2008	Debate in Council	2910	Summary
20/01/2009	Vote in committee		Summary
22/01/2009	Committee report tabled for plenary, 1st reading/single reading	A6-0007/2009	
18/02/2009	Debate in Parliament		
19/02/2009	Results of vote in Parliament		
	Decision by Parliament		Summary

19/02/2009		T6-0058/2009	
05/03/2009	Debate in Council	2929	Summary
25/06/2009	Act adopted by Council after consultation of Parliament		
25/06/2009	End of procedure in Parliament		
08/08/2009	Final act published in Official Journal		

Technical information

Procedure reference	2008/0148(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Regulation
	Amended by 2012/0321(NLE)
Legal basis	EC Treaty (after Amsterdam) EC 172-p2; EC Treaty (after Amsterdam) EC 171
Stage reached in procedure	Procedure completed
Committee dossier	ITRE/6/66013

Documentation gateway

Legislative proposal	COM(2008)0467	25/07/2008	EC	Summary
Document attached to the procedure	SEC(2008)2278	25/07/2008	EC	
Document attached to the procedure	SEC(2008)2279	25/07/2008	EC	
Committee draft report	PE414.035	04/11/2008	EP	
Amendments tabled in committee	PE415.357	06/01/2009	EP	
Economic and Social Committee: opinion, report	CES0040/2009	14/01/2009	ESC	
Committee report tabled for plenary, 1st reading/single reading	A6-0007/2009	22/01/2009	EP	
Text adopted by Parliament, 1st reading/single reading	T6-0058/2009	19/02/2009	EP	Summary
Commission response to text adopted in plenary	SP(2009)1487/2	18/03/2009	EC	
Follow-up document	COM(2014)0460	14/07/2014	EC	Summary
Follow-up document	COM(2018)0523	06/07/2018	EC	Summary
Follow-up document	COM(2023)0488	14/08/2023	EC	

Additional information

National parliaments	IPEX
European Commission	EUR-Lex

Final act

[Regulation 2009/723](#)

European Research Infrastructure Consortium ERIC: legal framework

PURPOSE: the establishment of 'European Research Infrastructures' (ERI).

PROPOSED ACT: Council Regulation.

BACKGROUND: since January 2000 the European Union has been pushing for the creation and development of a European Research Area (ERA) that consolidates and support the so-called 'fifth freedom', namely the free movement of knowledge across Europe. One of the key pillars supporting the ERA is the development of world class research infrastructures. Research infrastructures are large-scale projects typically environmental observatories, genomic data bases, imaging systems, clean rooms for nano-electronics, irradiation facilities for materials research and super-computers. Yet, although they play a key role in the construction of an efficient research and innovation environment, they are becoming increasingly complex and more expensive thus placing them beyond the reach of a single research group, region, nation or even continent. One of the major difficulties for setting up new European research infrastructures ' other than scarcity of resources and the complexity of technical and organisational issues, is the lack of an adequate legal framework that allows for the creation of appropriate partnership with partners from different countries.

CONTENT: the purpose of this proposal, therefore, is to facilitate the joint establishment of research infrastructures of European interest among several Member countries associated with the Community R&D Framework Programme. More specifically speaking, the Commission is proposing the creation of a framework Regulation that provides a common legal framework based on Article 171 of the EC Treaty.

In short, an ERI will be a legal entity with a legal personality and the right to be recognised as such in all of the EU Member States. It will be based on membership namely, the Member States, third countries and intergovernmental organisation. Their primary role will be the establishment and operation of research infrastructures. The Commission proposes that the structure of an ERI be flexible. Members will be allowed to define, in the Statutes, member rights and obligations and other internal arrangements. Members' liability on ERI debt will, in principle, be limited to their respective contributions albeit that some flexibility will be included in the statutes to modify any such arrangements. The applicable law will be Community law, the law of the State of the statutory seat or that of the State of operation regarding certain safety and technical matters. The Statutes and their implementing rules must comply with such applicable law.

ERI's will be international bodies or organisations in the sense of the Directive on value-added tax, on excise duties and on public procurement and as such it will be exempted from VAT and excise duties and its procurement procedures will fall outside of the EU's public procurement Directives.

European Research Infrastructure Consortium ERIC: legal framework

The Council held an exchange of views on a draft Regulation on a Community legal framework for a European Research Infrastructure (ERI). It decided to return to the draft during the next Presidency.

The exchange of views focused mainly on the legal status which ERIs should have and on the possibility of applying tax exemption schemes to them.

At its meeting on 30 May 2008, the Council referred to the need to develop research infrastructures at European level based, inter alia, on effective coordination and an appropriate legal framework.

Ministers also discussed the major research infrastructures and, more particularly, the implementation of the European Strategy Forum for Research Infrastructures (ESFRI) list, regarding which they acknowledged the added value contributed by the relevant Working Party.

European Research Infrastructure Consortium ERIC: legal framework

The Committee on Industry, Research and Energy adopted a report drafted by Teresa RIERA MADURELL (PES, ES) and made some amendments to the proposal for a Council regulation on the Community legal framework for a European Research Infrastructure (ERI).

The main amendments are as follows:

Objective: the committee restructured the text in order to make the meaning of the proposed Regulation clearer. It was concerned to avoid confusion between the actual infrastructure and the legal entity created by the proposal. Members also clarified that the objective of an ERI shall be to facilitate and promote research of pan-European interest, either in an existing European infrastructure or in a new infrastructure established jointly by several Member States.

Furthermore, a new clause states that ERIs shall pay special attention to patents and other valuable rights and interests arising from intellectual work which come about during their activities and shall inform the Commission of such intellectual property rights by means of an annual report.

General requirements: these now include unlocking research potential in all EU regions, and improving research methods; contributing to the training of young researchers; and enhancing the efficiency of interdisciplinary research as a result of the concentration of research projects within a given time-scale .

The research infrastructure to be set up as an ERI shall submit an impact assessment with its application.

The members of a research infrastructure to be set up as an ERI shall commit the necessary human and financial resources for its establishment and operation.

Decision on the application: the Commission must take into account the needs identified in the European Roadmap on Research Infrastructures (ESFRI). In cases of refusal, applicants shall have access to the evaluation report.

Status of an ERI: a new clause states that In the case of infrastructures with a different legal form, the original legal person shall cease to exist when entered into the Commission's records, and the ERI shall operate as its successor in title by legal succession. They noted that the reason for establishing the ERI as a legal form is to provide a regulatory framework for infrastructures currently operating with different organisational forms and those which will be established in the future. It would be worth regulating how the change of format takes place in order to avoid the future legal position regarding high-value equipment and previous long-term commitments becoming confused.

Name: an ERI shall have a name containing the words 'European Research Infrastructure' or the abbreviation 'ERI' and a reference to its research area.

Membership: third countries and international organisations may join as members. If Community funds are being used by an ERI, the international or intergovernmental ERI members shall maintain their ERI status only if they commit to sending their internal and external audits to the European Court of Auditors and to the Internal Auditor of the Commission. Should the Community become a member of an ERI either directly or through any intermediary, the Commission shall notify the two arms of the budgetary authority immediately.

Statutes: these must contain, inter alia, an investment policy; an anti-discrimination policy, taking particular account of gender equality and equal opportunities for the disabled; and an agreement on the individual authorised to deal with patents and other intellectual property rights and interests arising from intellectual work which come about during the activities of the ERI and the use to which the income deriving from such rights is put.

Community funding: should the Community at any time become a member of an ERI, that ERI shall be treated as a body having legal personality under Article 185 of the Financial Regulation. This also applies to an ERI which receives contributions (operative grants) under Article 185 of the Financial Regulation.

Report: the annual activity report must be submitted to Parliament and Council as well as any decision adopted regarding the circumstances referred to in the text where the ERI is in breach of the Regulation.

European Research Infrastructure Consortium ERIC: legal framework

The European Parliament adopted by 603 votes to 17 with 17 abstentions, a legislative resolution amending the proposal for a Council regulation on the Community legal framework for a European Research Infrastructure (ERI).

The amendments ? made in the framework of the consultation procedure - are as follows:

Research infrastructure of pan-European interest: Members clarified the meaning of this term in the text. A research structure of pan-European interest is a facility, including resources and related services, which can be used by the scientific community to conduct high level research in their respective fields. This definition covers major scientific equipment or sets of instruments; knowledge-based resources such as collections, archives or structured scientific information; enabling ICT-based infrastructures such as grid, computing, software and communications; any other entity of a unique nature essential to achieve excellence in research. Such research infrastructures may be single-sited or distributed (an organised network of resources).

Objective: the objective of an ERI shall be to facilitate and promote research of pan-European interest, either in an existing European infrastructure or in a new infrastructure established jointly by several Member States.

Furthermore, a new clause states that ERIs shall pay special attention to patents and other valuable rights and interests arising from intellectual work which come about during their activities and shall inform the Commission of such intellectual property rights by means of an annual report.

General requirements: these now include unlocking research potential in all EU regions, and improving research methods; contributing to the training of young researchers; and enhancing the efficiency of interdisciplinary research as a result of the concentration of research projects within a given time-scale .

The research infrastructure to be set up as an ERI shall submit an impact assessment with its application.

The members of a research infrastructure to be set up as an ERI shall commit the necessary human and financial resources for its establishment and operation.

Decision on the application: the Commission must take into account the needs identified in the European Roadmap on Research Infrastructures (ESFRI). In cases of refusal, applicants shall have access to the evaluation report.

Status of an ERI: a new clause states that in the case of infrastructures with a different legal form, the original legal person shall cease to exist when entered into the Commission's records, and the ERI shall operate as its successor in title by legal succession.

Name: an ERI shall have a name containing the words 'European Research Infrastructure' or the abbreviation 'ERI' and a reference to its research area.

Membership: third countries and international organisations may join as members. If Community funds are being used by an ERI, the international or intergovernmental ERI members shall maintain their ERI status only if they commit to sending their internal and external audits to the European Court of Auditors and to the Internal Auditor of the Commission. Should the Community become a member of an ERI either directly or through any intermediary, the Commission shall notify the two arms of the budgetary authority immediately.

Statutes: these must contain, inter alia, an investment policy; an anti-discrimination policy, taking particular account of gender equality and equal opportunities for the disabled; and an agreement on the individual authorised to deal with patents and other intellectual property rights and interests arising from intellectual work which come about during the activities of the ERI and the use to which the income deriving from such rights is put.

Community funding: should the Community at any time become a member of an ERI, that ERI shall be treated as a body having legal personality under Article 185 of the Financial Regulation. This also applies to an ERI which receives contributions (operative grants) under

Report: the annual activity report must be submitted to Parliament and Council as well as any decision adopted regarding the circumstances referred to in the text where the ERI is in breach of the Regulation

European Research Infrastructure Consortium ERIC: legal framework

The Council held an exchange of views on European research infrastructures on the basis of a questionnaire put forward by the Presidency in order to structure the debate.

The exchange of views provided with a valuable input to carry out further examination of the matter on which the Council will be invited to adopt conclusions at its forthcoming session on 28-29 May 2009.

Throughout the debate, delegations highlighted key features that pan-European research infrastructures could bring about, such as:

- the strengthening of links between universities, businesses and public administrations (the knowledge triangle), thus contributing to the competitiveness of Europe;
- the role that research infrastructures can play in contributing to the economic recovery in the context of the European recovery plan;
- the ways for achieving an optimal distribution of research infrastructures throughout the ERA, which would have to comply with criteria of scientific and technological excellence, as well as facilitate mobility of researchers across Europe and take advantage of the best cost-efficient modalities.

Before the debate, ministers took note of an update on the European Strategy Forum for Research Infrastructures (ESFRI) roadmap. This roadmap is a list of priority infrastructures identified by the Forum, notably on the basis of a consensus on the scientific needs in Europe in the various research sectors. The list is not binding to the member states or other parties to undertake the construction of such infrastructures. These require separate decisions by those countries committed to participate in the projects concerned.

European Research Infrastructure Consortium ERIC: legal framework

PURPOSE: to establish a legal framework for setting-up a European Research Infrastructure Consortium (?ERIC?) to facilitate the joint establishment and use of new research infrastructures at EU level. .

LEGISLATIVE ACT: Council Regulation (EC) No 723/2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC).

CONTENT: this Regulation establishes a legal framework laying down the requirements and procedures for and the effects of setting-up a European Research Infrastructure Consortium (?ERIC?). It comes about since the rules governing establishment, financing and operation of research structures were previously fragmented and regionalised. Accordingly, it has been necessary to establish a Community framework containing the procedures and conditions for the setting-up and operation of ERICS at Community level which are necessary for the efficient execution of the Community's RTD programmes. This new legal framework would complement other legal forms existing under national, international or Community law. In contrast to Joint Technology Initiatives (JTI) constituted as Joint Undertakings of which the Community is a member and to which it makes financial contributions, an ERIC should not be conceived as a Community body, but as a legal entity of which the Community is not necessarily a member and to which it does not make financial contributions. It will be for interested Member States, on their own or in conjunction with other qualified entities, to define their needs for the establishment of research infrastructures in this legal format, based on their research and technological development activities and on the requirements of the Community.

The following should be noted:

Tasks and other activities: the principal task of an ERIC will be to establish and operate a research infrastructure. An ERIC must pursue its principal task on a non-economic basis. However, it may carry out limited economic activities, provided that they are closely related to its principal task and that they do not jeopardise the achievement thereof. An ERIC shall record the costs and revenues of its economic activities separately and shall charge market prices for them, or, if these cannot be ascertained, full costs plus a reasonable margin.

Application for the setting-up of an ERIC: the entities applying for the setting-up of an ERIC must submit an application to the Commission. The application must follow the guidelines specified in the Regulation (e.g. the request to the Commission to set up the ERIC; the proposed Statutes of the ERIC; a technical and scientific description of the research infrastructure to be established and operated by the ERIC; a declaration by the host Member State recognising the ERIC as an international body. The Commission shall assess the application in line with the requirements laid down in this Regulation.

Status, seat and name: an ERIC will have legal personality as from the date on which the decision setting up the ERIC takes effect. It will have a statutory seat, which shall be located on the territory of a member which shall be a Member State or an associated country. An ERIC shall have a name containing the abbreviation ?ERIC?.

Membership: membership of an ERIC will be open to interested Member States with the possible participation of qualified associated countries in the Community framework programme for research, technological development and demonstration and third countries and specialised intergovernmental organisations. In addition to full membership, Member States should be able to become observers of an ERIC on the conditions specified in its Statutes.

The Regulation provides for the minimum contents of the Statutes of an ERIC as well as provisions on organisation, debts, and insolvency.

Report and Review: an ERIC shall produce an annual activity report, containing in particular the scientific, operational and financial aspects of its activities. Not later than 27 July 2014, the Commission shall forward to the European Parliament and the Council a report on its application and proposals for amendments, where appropriate.

ENTRY INTO FORCE: 28/08/2009.

European Research Infrastructure Consortium ERIC: legal framework

The Commission presents a report on the application of Council Regulation (on the Community legal framework for a European Research Infrastructure Consortium (ERIC)).

The Regulation was adopted in order to facilitate the establishment and the operation of large European research infrastructures among several Member States and associated countries by providing a new legal instrument, the European Research Infrastructure Consortium (ERIC). It was to respond to the European political ambition of creating the European Research Area.

Implementation of the Regulation: since the adoption of the ERIC Regulation, seven ERICs have been established:

- in March 2011, SHARE-ERIC (Survey of Health, Aging and Retirement in Europe) was established;
- in February 2012, CLARIN ERIC (Common Language Resources and Technology Infrastructure) was established;
- in November 2013, four ERICs were established; EATRIS ERIC ((European Advanced Translational Research Infrastructure in Medicine); ESS ERIC (European Social Survey); BBMRI-ERIC (Biobanking and Biomolecular Resources Research Infrastructure); ECRIN-ERIC (European Clinical Research Infrastructure Network);
- in May 2014, Euro-Argo ERIC was established.

All seven ERICs mentioned above were included in the Roadmaps agreed by the European Strategy Forum on Research Infrastructures (ESFRI). The Commission expects that around 15 ERICs will be established by the end of 2015.

Conclusions and next steps: with the successful establishment of seven ERICs by May 2014 and the perspective of having some 15 ERICs in place by the end of 2015, it can be concluded that the take-up of the legal framework is successful.

Five years after the adoption of the ERIC Regulation most Member States and some associated countries have taken measures necessary to be in the position to host or become member of an ERIC. This positive development can also be illustrated by the fact that approximately 20 out of the 48 projects included in the 2010 ESFRI Roadmap are using or planning to use the ERIC for establishing the research infrastructure.

Due to many commonalities in the provisions concerning accession, decision making and the handling of questions such as liability, the ERIC has facilitated greatly the opportunities for Member States, associated countries and third countries to consider cooperation or joining these European Research Infrastructures. The Commission services have facilitated the process of implementation of the ERIC Regulation.

The Commission considers that the procedure for application for an ERIC and ease of use is still to be further optimised. It can be expected that, if appropriate measures are taken within the Commission services, the Member States and associated countries, the ease of use will steadily improve because of the experience gained and that the process could be further streamlined and to speed up the creation of European research infrastructures. Therefore, the Commission does not propose any recommendation for amendments at this stage.

Several new subjects will have to be addressed by the members of the ERICs and by the Commission services. They relate to:

- the practices in the various Member States for example on how to register an ERIC under the national legal system through the Chamber of Commerce, or other registers which would enable an ERIC to open bank accounts and to apply for reimbursement for VAT and excise duties;
- the status of personnel that it employs needs to be clarified as it will impact on salary scales, income tax issues and personnel costs;
- the clarification of in-kind contributions to the ERIC by its members, in particular as to whether these contributions could benefit from the VAT and excise duty exemption and, if so, under which conditions;
- the question of economic-versus non-economic activities should be further clarified by the Commission services as there are increasing demands for innovative and socio-economic impacts of the activities of the research infrastructure justifying the investments to be made by the members;
- the way in which ERICs can develop spin-offs, technology transfers and receive revenues from services that are developed;
- exploring the possible ways of how ERICs could support other research infrastructures by providing services for the scientific communities throughout the Union because of the transparency that is being introduced as concerning the collection of data, access to data and instruments and maintenance of data and services for users;
- the need for Member States and associated countries when preparing for the implementation of new European research infrastructures to make an effort for achieving in the longer term a more balanced representation throughout the European Union;
- international cooperation and the efforts in the context of the Global Science Forum or other international for further exploring the possibilities of agreeing a regulatory framework for international research infrastructures.

European Research Infrastructure Consortium ERIC: legal framework

The Commission presents a second report on the application of Council Regulation (EC) No 723/2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC). To recall, the Regulation aimed to facilitate the establishment and the operation of large European research infrastructures among several Member States and associated countries by providing a new legal instrument, the European Research Infrastructure Consortium (ERIC). An ERIC is a legal entity with legal personality and full legal capacity recognised in all Member States.

Implementation: at the time of the first report (please see previous summary) 7 ERICs were established. Since then, twelve additional ERICs have been set up.

These are:

- CERICERIC (Central European Research Infrastructure Consortium) hosted by Italy;
- DARIAH-ERIC (Digital Research Infrastructure for the Arts and Humanities) hosted by France;
- JIV- ERIC (Joint Institute for Very Long Baseline Interferometry), hosted by the Netherlands;
- the European Spallation Source ERIC, hosted by Sweden;
- ICOS-ERIC (Integrated Carbon Observation System) hosted by Finland;
- EMSO-ERIC (European Multidisciplinary Seafloor and Water Column Observatory), hosted by Italy;

- LifeWatch ERIC (e-Science and Technology European Infrastructure for Biodiversity and Ecosystem Research) hosted by Spain;
- CESSDA ERIC (Consortium of European Social Science Data Archives) and ECCSEL ERIC (European Carbon Dioxide Capture and Storage Laboratory both hosted by Norway;
- INSTRUCT-ERIC (Integrated Structural Biology) hosted by the United Kingdom;
- EMBRC-ERIC (European Marine Biological Resource Centre) hosted by France, and
- EU-OPENSREEN ERIC (European Infrastructure of Open Screening Platforms for Chemical Biology) hosted by Germany.

All save for two are included in the European Strategy Forum on Research Infrastructures (ESFRI) Roadmap.

The Commission considers that, due to many commonalities in the provisions of the Statutes of the ERICs concerning accession, decision making and liability, the ERIC Regulation has greatly facilitated the opportunities for Member States, associated countries and third countries to consider joining these European Research Infrastructures. The procedure for application for the ERIC status and ease of use has improved but could be further optimised as Member States, the scientific community and the Commission services continue to go through a learning process.

The Commission identifies the following recurring issues and policy questions:

- how to register an ERIC in the national legal administrative systems, or in other registers which would enable an ERIC to be recognised by the Commission services as beneficiary or coordinator of grants and in Member States to open bank accounts and to apply for reimbursement for VAT and excise duties;
- since an ERIC is a public-public partnership, the status of personnel that it employs needs to be clarified in the national administrative systems as this will impact on salary scales, income tax issues and personnel costs for the ERIC ;
- possible VAT exemption for in-kind contributions to the ERIC as in many cases members of an ERIC prefer to partly contribute in-kind to the ERIC instead of providing cash-contributions. Guidelines adopted in 2014 provide that goods or services acquired by representing entities shall not benefit from VAT exemption but the issue requires further clarification and guidance;
- the question of economic-versus non-economic activities should be further clarified, especially with regard to possible funding from [European Regional Development Funds](#).

The Commission is promoting ERICs and other European Research Infrastructures in bilateral cooperation mechanisms such as the EU-Community of Latin American and Caribbean States (CELAC). It intends, where appropriate, to invite members of international fora to further explore the possibilities of creating a dedicated legal instrument for establishing such research consortia which could, as the ERIC did in the European Union, fill the gap between the treaty based organisations and national organisations.