

EGI_DS

PRELIMINARY WORK

WP4 DESIGN STUDY OF THE EGI LEGAL AND ORGANISATIONAL OPTIONS

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Abstract: This document presents the preliminary work achieved by WP4 for the definition of EGI's legal structure. This preliminary work consisted in the acknowledgement of EGI's specific characteristics and the definition of important decision criteria for the creation of a legal structure. Both sets were then used to assess the relevance of various existing types of legal structures that are used through Europe for the purpose of Research Infrastructures.



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1. INTRODUCTION

1.1. PURPOSE

WP4 is responsible, within the EGI_DS consortium, to define a legal structure for EGI. In this deliverable, we report on the work done up to November 2007 in Task 4.1. This preparatory phase was devoted:

- To understand the nature of EGI and in which aspects it is similar to typical research infrastructures (RIs) for which a lot of experience already exists
- To better apprehend the environment of the entities that will constitute EGI, i.e. mainly the National Grid Initiatives (NGIs)
- To define important structural elements to be settled in the creation process of any organisation in general, and for EGI in particular
- To analyse various types of legal structures used for existing Research Infrastructures

It is important to remind the reader that the goal of this document is therefore not to predefine the final shape of the EGI organisation but simply to collect documents and ideas that will be instrumental during the decision process that will occur at a later stage. Although many choices could appear rather obvious, all potential solutions are still open. This document will only list in some cases logical incompatibilities between a given choice and a specific solution.

The reason for this “present neutrality” is that most of the decisions will be based on the technical work defining the functional requirements (mandate) of the organisation which is proceeding in parallel. In order to converge rapidly in the future, the list of the key decisions that will shape the organisation has to be transmitted to the group working on the functional requirements. It should be relatively straightforward to take all the key decisions listed below once these requirements are known. We do not expect major difficulties in selecting an appropriate legal structure once the mandate of EGI is clearly defined and all structural elements have been decided.

1.2. DOCUMENT ORGANISATION

The document observes the following methodology:

- Section 1 contains important EGI specifics with respect to other research infrastructures that one should keep in mind, and a list of key decisions to be made.
- Section 2 summarizes various types of structures used so far for European research infrastructures and assesses their interest to EGI according to the listed elements.

1.3. APPLICATION AREA

This document is a public deliverable intended to inform all the EGI related stakeholders, as well as readers not directly related with EGI (e.g. from other geographical areas) and the general public. Some knowledge and background is however required for readers to have a good understanding of the document.

1.4. REFERENCES

Table 1: Table of references

R 1	« Report of the Workshop on the legal forms of research infrastructure of pan-European interest », European strategic Forum on Research Infrastructures, 23/03/2006, ftp://ftp.cordis.europa.eu/pub/esfri/docs/march-2006_en.pdf
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1.5. DOCUMENT AMENDMENT PROCEDURE

Amendments, comments and suggestions should be sent to the authors.

1.6. TERMINOLOGY

This subsection provides the definitions of terms, acronyms, and abbreviations required to properly interpret this document.

Glossary

DANTE	Delivery of Advanced Network Technology to Europe
DNW	German-Dutch Wind Tunnels
ECRI	European Conference on Research Infrastructures
EDCTP	Europe Developing Countries Clinical Trials Partnership
EEIG	European Economic Interest Grouping
EGEE	Enabling Grids for E-science
EGI	European Grid Initiative
EGO	European Gravitational Observatory
ESFRI	European Strategic Forum on Research Infrastructures
ESO	European Organisation for Astronomical Research in the Southern Hemisphere
GBIF	Global Biodiversity Information Facility
GDE	Global Design Effort for the International Linear Collider
ILOAT	International Labour Organization Administrative Tribunal
MoU	Memorandum of Understanding
NGI	National Grid Initiative
NREN	National Research and Education Network
RI	Research Infrastructure

2. EXECUTIVE SUMMARY

The goal of this document is to present a preliminary analysis to prepare the determination of EGI's legal structure. First we define the elements that are significant for such a decision: on the one hand the specific characteristics of EGI, on the other hand elements of a legal structure that have to be taken into account.

EGI is very different from other Research Infrastructures which mostly build and own large equipment. In this case the budget is mainly invested in the infrastructure and its location partly defines its legal structure. Whereas the resources and middleware forming the Grid are owned locally and the role of EGI will be to coordinate its operation and offer services to the local communities. As such EGI's budget will be mostly invested in human resources who will be partly distributed throughout Europe, and the location of its central office is not predefined. These are EGI's specific characteristics.

The choice of a legal structure must be based on the resolution of various criteria. In this study we explain the relevance of these criteria for EGI and in general for choosing an appropriate legal structure. Follows a list of the criteria and the corresponding questions we answer in this study:

1. **Activities/Objectives** – What will EGI do? What kinds of activities can be undertaken under this model?
2. **Constituency** – Who are EGI founding members? Who may create an organisation under this model?
3. **Governance** – How will EGI be organised? Does the model impose governance rules?
4. **Financial and Tax Issues** – profit/non-profit, share capital, tax issues
5. **Human Resources** – Will EGI require to hire its own staff? Is it possible under this model to hire staff?
6. **Liability** – limited/unlimited
7. **Mode of creation** – requirements imposed by the model for its creation and timely assumptions
8. **Autonomy** – Does EGI require financial autonomy? Legal entity issue.
9. **Location** – Where will EGI central office be localised? Is it possible under the model to have a distributed location?
10. **Duration** - Does the model impose limitation on the duration?
11. **International Privileges** – Does EGI require specific privileges? Does the model entail such privileges?

We followed this set of criteria throughout the analysis of existing types of legal structures that were already used for the purpose of Research Infrastructures in Europe. The analysis is divided between organisations based on national, community and international law and summarized into comparison tables in Annex 2.

Organisations based on community law have the advantages of giving an undisputable European dimension, but they also imply many limitations and requirements that have to be taken into account closely. Organisations based on international law would be appropriate and bring some privileges, nevertheless they mostly require intergovernmental agreements which take a lot of time and wouldn't fit EGI's creation schedule. Organisations based on national law are easier and quicker to create, but then the local legal framework has to be taken into account.



From this study as well as from interfaces with the other WorkPackages, we could conclude that some criteria are more relevant than others, and start trimming among the legal structures to keep those that would be most appropriate. At best the chosen legal structure should allow for:

- “open” membership (to which any kind of entity from any European country could join)
- coordination, operation and development activities
- own budget
- possibility to recruit own personnel
- autonomy
- creation completed by January 2010

The follow up of this study will be more interfaces with WP3 in order to narrow again specifications for EGI's legal structure and be able to propose a short list of options.

3. SPECIFIC EGI CHARACTERISTICS

The full definition of the legal framework of a research infrastructure is a complex topic, with many possible solutions. However, the choice of a solution can severely impact on the performance of the research infrastructure and has in so far an indirect influence on its scientific output and it is therefore important to take into account the specific characteristics of such a research infrastructure.

EGI will be responsible -in a way still to be defined- for the provision of a distributed computing infrastructure which differs in many ways from other research infrastructures such as for example a large accelerator or a telescope. These RIs deal with a physical tool normally located at a single site which systematically defines also the shape of the organisation. This physical tool constitutes then also the key asset of the RI. For instance, the European Synchrotron Radiation Facility ESRF is defined by an electron ring located in Grenoble, where the ESRF organisation is also located. EGI on the other hand is based on a distributed infrastructure consisting of IT resources and grid middleware located all over Europe. The EGI organisation can in principle therefore be based anywhere and may even (under circumstances to be discussed later) be distributed. EGI will very likely not own major IT resources and will mainly deal with immaterial (virtual) objects such as grid middleware operations, middleware development and maintenance, training, etc... Almost all of the EGI budget will be invested in manpower, in contrast to many RIs which devote a large fraction of their budget to material investment. The table below summarizes key differences:

	Typical RI	EGI
Tool	Physical	Immaterial
Location of RI	In a given site	Distributed or centralised
Equipment ownership	Yes	No
Manpower budget in relation to total budget	~50%	Could be as large as 100%
Organisation site	On the equipment site	May be anywhere/ single or distributed

It is also helpful to realize that EGI is not the first RI of its type. Analogies exist with for instance with GBIF, the Global Biodiversity Facility, an organisation also dealing with virtual objects around the world. But, EGI distinguishes itself from these structures by the huge amount of resources it is dealing with: the total investment in computing resources to be integrated within EGI will likely surpass 400 M€ by the time of EGI's creation, which, even if EGI does not own these resources, will probably impact its legal framework.

Another specific characteristic of EGI lies in its constituency. EGI members will mainly be between 30 and 50 European National Grid Initiatives (NGIs) which have many different legal structures and organisational forms. The status of many NGIs may also be evolving during or just after the creation of EGI. The list of EGI members is likely to grow significantly in the first EGI years when more and more NGIs will join. It is also possible that bodies other than NGIs will be involved (in what form ever) in EGI, such as international organisations.

The EGI legal structure will have to respect this. In order to better apprehend the situation and to avoid potential problems, we have created a preliminary questionnaire¹ for NGIs, focusing on organisational

¹ See Annex 1

facts, so as to make sure that NGIs can always act as EGI's owners regardless of their internal structure. This work will be completed in close collaboration with WP2, who has already compiled information on NGIs.

This questionnaire also represents a preliminary work for D4.3, which will define Guidelines for NGIs. Indeed these guidelines cannot be issued without a clear knowledge of the NGIs and their structure and organisation.

3.1. EGI FRAMEWORK PROFILE

The most appropriate legal structure for a given organisation can only be decided once its profile has been precisely defined. The profile represents a small set of key organisational decisions which will shape the EGI final legal structure.

It is therefore proposed to proceed in the following steps:

- a) Study in detail the functional requirements (mandate) of the organisation. This is done in the work packages WP2 and WP3 of EGI_Design Study.
- b) In parallel, list the structural elements to be decided which will define the organisation profile.
- c) Using the functional requirements defined in step a), make all the choices outlined in step b) and thus define the EGI framework profile.
- d) Select the most appropriate legal structures matching the profile. This will be done in the Deliverable 4.2.
- e) Elaborate all details in that framework. This will be done by the work package WP5 of the EGI design Study

A small number of iterations between steps c) and d) may be needed to reach a fully satisfactory solution.

3.2. STRUCTURAL ELEMENTS

Some elements have to be taken into account for the creation of any kind of structure. These elements -listed below- shall be explained within this part so that everyone can evaluate their significance for the legal structure of the future EGI.

- 1. Activities/Objectives**
- 2. Constituency**
- 3. Governance**
- 4. Financial and Tax Issues**
- 5. Human Resources**
- 6. Liability**
- 7. Mode of Creation**
- 8. Autonomy**
- 9. Location**
- 10. Duration**
- 11. International Privileges**

3.2.1. Activities/Objectives

The EGI activity type must be clearly defined before choosing any type of legal structure. As a matter of fact, some structures do not allow for the realisation of some activities. For example, if EGI were to concentrate on coordination activities, there would be no automatic need for it to be an independent legal entity. On the other hand, if EGI were to manage infrastructure and equipment, it would need the legal and budgetary autonomy guaranteed by a legal entity.

Therefore, WP4 will follow closely the advancement of WP3 on the functionality definition of EGI in order to include their conclusions in our next deliverable.

The statutes of the organisation will also have to define the relationship to EGI users (scientific/industrial community). The most important is actually to know if EGI will have commercial activities, i.e. if it sells services or gives access to the grid infrastructure on purely commercial (i.e. profit-oriented) grounds. This point should be clarified by the inputs from WP2 and WP3.

3.2.2. Constituency

The constituency represents the contracting parties who create an organisation and are called "Members". There can be different levels of membership that imply different rights and obligations.

There may also be other public or private organisations which in many various ways can cooperate with the organisation (suppliers, users, honorary partners...) but do not sign the statutes of the organisation: they are EGI "Partners".

Rights and obligations of members and partners will be written down in the statutes.

EGI members will be organisations of many different kinds. It is important to know the status of these entities in order to define the most suitable legal structure to choose for EGI because in some countries some public organisations may not participate in particular profit ventures. It depends on the type of structure whether profits are distributed among the members or whether they have to be reinvested in the following year's budget. This could make a big difference if EGI were to apply for tax exempt status because tax authorities would be more eager to give tax exemptions to structures that reinvest their profits.

Most models based on community law limit membership to organisations from EU countries and associated states (both referred as EU members thereafter). Therefore it would also be important to discuss whether EGI will have or wishes to have members/partners that are not EU members in order to ensure that their potential participation would actually be possible.

3.2.3. Governance/Management

The type of legal structure may influence the management of EGI because some structures impose organisational features. The EGI membership should be clear on how it wants to organise, how members should be represented, what are their rights, should their rights be proportional to their participation? These questions will have to be answered some time during the project.

We will have also to make sure that all NGIs can be represented through a person who has the right to speak on behalf of the NGI.

3.2.4. Financial and tax issues

Equally it is important to determine the economic environment of the future EGI: if it should be based on share capital; how should partners contribute to its capital (form, procedure); if it should have its own budget; what its status regarding taxes should be; if it will make profit; how it will transfer money to its members... etc Most of these issues will be defined in the statutes of the organisation. However it is important to already have an overview of what is planned in order not to choose a type of legal structure that wouldn't comply with EGI's needs.

All countries have different tax laws and it would be important to see which one is the most favourable for the contractual relationships that the future EGI will have with its various partners. These specific characteristics need to be taken into account.

Moreover, EGI should be able to receive funds from third parties, especially from public institutions, ministries, the EC, private foundations... etc, and this without having to go through lengthy procedures. That's why all kinds of subsidies should be thought of in preparing the statutes.

Formal procedures should also be prepared for NGI contributions so as to avoid recurrent problems and delays.

3.2.5. Human Resources

It is significant for the choice of the legal structure to know if EGI should have the possibility to recruit its own personnel or if its personnel should be lent temporarily for example by its members. As a matter of fact, only structures with a legal entity can recruit their own personnel. On the contrary, structures like those based on a MoU (without legal entity) cannot recruit personnel. In this case, staff has to be temporarily lent by the member organisations, which can limit the organisation's autonomy because it may depend on the good will of the members.

Processes and rules for staff exchanges should also be thought of.

3.2.6. Liability

This criterion is significant in so far that some legal structures impose that the contracting parties are held responsible (liable) for the organisation's debts if the organisation doesn't have the financial capacity to pay.

There are 3 different kinds of liability:

- unlimited several liability : any single member can be asked to refund the debts
- unlimited joint liability : each member is liable up to their share of the capital
- limited liability : members are liable up to the amount of their contribution

Limited liability is more protective of the members' interests and unlimited liability has the sole advantage that it makes it easier to obtain credit from banks as long as some members provided guarantee.

Furthermore, organisations (i.e.NGIs) based on some specific structures cannot be members of unlimited liability ventures. So if the future members of EGI belong to this category, it would be better for EGI to adopt a system of limited liability and/or to prepare dealing with different member statuses.

3.2.7. Mode of Creation

The creation of a large structure with members from many countries like EGI can be lengthy.

The EGEE III project finishes in the first quarter 2010 and it is the aim of EGI to be then ready to take over EGEE's functions and replace it. Therefore, it is important for the EGI_DS Project to choose a structure that implies easiness and fastness of creation in order to reach this goal; or to prepare some transitional solution.

Some legal structures require a very formal and thus lengthy establishment procedure (sometimes an intergovernmental agreement). This, as well as the probable long internal procedures within NGIs for the integration of EGI, should be taken into account in the EGI timeline.

3.2.8. Autonomy

Autonomy means independence of the organisation's legal structure from its individual members.

Autonomy implies that the structure can act in its own legal capacity to employ personnel or purchase or sell goods and services for example.

If a large degree of autonomy is thought to be advantageous for EGI in order to be able to decide quickly and efficiently on a number of matters, this could imply for example that EGI should rather be based on an independent legal entity than on a simple consortium agreement. Indeed the legal entity allows having its own budget and personnel, which could avoid long procedures between the parties for budget attribution etc.

3.2.9. Location

The question of location is always sensitive for organisations with members from many countries. The location influences the statutes of the models which are based on national law, as this law will apply to EGI for all financial and labour matters. But even for intergovernmental organisations location is a politically sensitive issue.

Moreover the sheer nature of the Grid adds another challenge. Should EGI have a single or distributed location, should it have its own facility or share one of its members'? These questions have to be answered before deciding on the appropriate legal structure.

If EGI were to have a distributed location, clear rules would have to be defined as regards management of each site, as well as for the relationship between the central site and the distributed sites (who decides for what, who does what... etc).

3.2.10. Duration

The duration of an organisation is sometimes written its statutes and the law can define a maximum duration.

The question here is: Has EGI a limited duration or not? Should it go through a renewal process every n years?

3.2.11. International Privileges

A decision should be made whether special privileges pursuant to international public law are needed for EGI, such as international status of the site or personnel, tax exemption, special procedures for bids to facilitate its functioning. The need for such privileges or exemptions will require an agreement at state level.

The choices for some of the structural elements are obvious but some are more difficult and will require the full functionality definition of EGI to be satisfactorily answered.

The definition of these key elements is a necessary preliminary work for the main task of WP4: an option analysis of legal and organisational structures. In the next part those points



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are taken as a basis for a thorough analysis of legal structures that were already used by international research infrastructures in Europe in order to assess their relevance for EGI.

4. COMPARATIVE STUDY

The major part of this preparatory phase was the study of a report made within the frame of the European Strategic Forum on Research Infrastructures (*ESFRI*) on the legal forms of research infrastructures of pan-European interest². This report helped to define criteria and also gave a great range of types of legal structures that can be adopted for the purpose of a research infrastructure.

After selecting those types of legal structures that would be relevant for EGI, a more thorough analysis of each type was made, following the afore-mentioned criteria, in order to correctly understand their characteristics. Also some existing types of structures were added that weren't in the ESFRI Report but that were thought to be relevant for the project.

In addition to the following synthesis, summarizing tables are in Annex 2 (p. 32).

The study follows the distinction made by the ESFRI Report between organisations created under national, community or international law.

Based on the work of ESFRI, an analysis of the given examples of Research Infrastructures to determine if they would be adequate to the EGI project was performed.

4.1. ORGANISATIONS BASED ON NATIONAL LAW

4.1.1. Société Civile

The **Société Civile** is a model under French law of a **non-profit making company** that was chosen for the ESRF *European Synchrotron Radiation Facility*.

This model has been successful for ESRF as well as for other projects in Europe.

² « Report of the Workshop on the legal forms of research infrastructure of pan-European interest », European Strategic Forum on Research Infrastructure, 23/03/2006, ftp://ftp.cordis.europa.eu/pub/esfri/docs/march-2006_en.pdf



1. Objectives/Activities

The Société Civile allows for operational as well as coordination activities and infrastructure management.

The objectives of the ESRF are defined as follows:

- To construct, operate and develop a synchrotron radiation source and associated instruments
- To support the use of the facility
- To implement programmes of scientific research using synchrotron radiation
- To carry out R&D work in techniques using synchrotron radiation

ESRF sells access to its facility only for proprietary research (fees of ~ 4 k€ per 8-hour shift of radiation) with full analytical service offered.

2. Constituency

All kinds of entity from any country can be member of a Société Civile.

The constituency of ESRF is mixed between private and public entities, and two levels of membership are written down in the statutes: members and associated members with whom bilateral agreements were made regarding the use of the facility. These associated members do not have the same rights and duties as members.

3. Governance

The management of the organisation is defined in the statutes, which allows for great flexibility and an adapted organisation.

ESRF chose a clear management and governance with a council representing all contracting parties through 8 delegations, supported by an administrative Committee and an Advisory Science Committee, and a General Director.

4. Financial and Tax Issues

The creation of a Société Civile does not prescribe any minimum amount for the share capital. The contributions of the contracting members come in kind, cash and staff. The contribution shares and procedures are fixed in the statutes but the budget is decided on a yearly basis. A Société Civile can receive loans and subsidies.

ESRF does not pay VAT on non French contributions and has the right to recover the VAT paid to its suppliers. However, this privilege is due to the intergovernmental agreement underlying the creation of ESRF, because normally the Société Civile is taxed according to French law. Business activities cannot represent more than 10% of its activities, and if the Société Civile makes profits, it'll have to pay taxes on them.

5. Human Resources

Being a legal entity, the Société Civile allows for own personnel recruitment.

The ESRF has permanent staff as well as temporary (fixed term contract for up to 18 months). To attract staff from over Europe ESRF grants an expatriation allowance which represents 10% of an average salary.

6. Liability

Limited liability. Members are liable up to the amount of their contribution.

7. Mode of creation



The creation of a Société Civile is easy, only the national registration procedure has to be followed. However it might be difficult for some organisations with specific structures to join or to adapt to an organisation created under a specific national law.

The ESRF was created upon two collaboration levels: governments signed an agreement to create this structure and then designated the organisations that were to become the contracting parties. Although the creation of ESRF was based on an intergovernmental agreement, this step is not necessary for the creation of a Société Civile.

8. Autonomy

Being a legal entity, the Société Civile has a large autonomy.

9. Location

If it is specified in the statutes, the Société Civile can have distributed sites in addition to its headquarters.

ESFR is located in Grenoble, France.

10. Duration

The duration is limited by law to 99 years.

11. International Privileges

In accordance with the intergovernmental agreement underlying its creation, ESRF benefits from some tax exemptions and expatriation allowance.

Conclusion:

This type of legal structure allows for a large flexibility for membership issues, as well as autonomy regarding budget and staff recruitment. It is adapted to public and private needs and to the management of a facility.

For some organisations with specific structures, it might be problematic to join an organisation where liability is proportional to the share of the members' contribution to the capital. EGI could sign specific contracts with these "associated" members, so that they can participate in EGI, but without having the same duties and rights as members.

4.1.2. Private company limited by shares

Another research infrastructure has chosen the form of a **private company limited by shares** using the UK law. This model is equivalent to the precedent except that this time liability is limited to the partners' contribution to the capital.

The DANTE *Delivery of Advanced Network Technology to Europe* organisation used this model and added to it a status of not-for-profit organisation to fit its purposes.

1. Objectives/Activities

A Company Limited by Shares allows for all kinds of activities.

The objectives of DANTE are to plan, build and operate pan-European research networks and to pursue common research in the area of data networks.

2. Constituency

All kinds of entities from any country can be members of a Company Limited by Shares.

However it is possible to limit the membership in the statutes, like DANTE which allows only NRENs (National Research and Education Network) to be members.

3. Governance

The Company Limited by Shares doesn't impose any kind of organisation; members are free to define it in the statutes.

The DANTE statutes define the role of the "Shareholder Assembly", the "Board of Directors" and to only a minor degree the two "General Managers".

4. Financial and Tax Issues

Members of a Company Limited by Shares build a share capital (no minimum prescribed) for which contribution shares and rules are written in the statutes. Then the budget is adapted yearly to the needs. The Company can receive loans and subsidies.

The budget of DANTE has two main income lines: NREN service charges and EU project subsidy. On the expenditure side the budget is always adapted to the actual needs. DANTE pays VAT according to the usual VAT rules and applies every year for tax exempt status to the UK financial authorities.

5. Human Resources

Being a legal entity, the Company Limited by Shares allows for own personnel recruitment.

DANTE employs permanent and temporary staff.

6. Liability

Limited liability. If the organisation had a debt but didn't have enough liquidity to repay it, the parties would be responsible for debts according to their share capital contribution that is: the creditor could ask each member to pay for the debts proportionally to their share of the capital.

7. Mode of creation



The creation of a Company Limited by Shares is easy, only the national procedure has to be followed. However it might be difficult for some entities to join this kind of structure (with share capital); for example some countries forbid public organisations to hold shares.

That's partly why DANTE prepares a change of its legal status into a **company limited by guarantee**³, which would allow for more NRENs to join.

This type of structure is quite similar to the company limited by shares since it is a legal entity with (single-member) liability limited to the guarantee determined by its members. However there is no obligation for the founding members to constitute a capital for the creation of the company. The capital can thus be constituted progressively thanks to donations, subscriptions... etc

The main difference between a company limited by shares and a company limited by guarantee is that a company limited by shares can raise external finance whereas a company limited by guarantee has to rely on funding raised through subscriptions paid by its members or funding provided by its members. The members of a company limited by guarantee do not own the company but are the decision makers for the company. This means that the profits of a company limited by guarantee cannot be distributed to the members through dividends and that they do not have any claim on the company's assets.

8. Autonomy

Being a legal entity, the Company Limited by Shares has a large autonomy.

9. Location

DANTE has its headquarters in Cambridge, UK. However a distributed location is also possible within this type of structure.

10. Duration

Duration is unlimited.

Conclusion:

This type of structure would fit the objectives of EGI and it adds the advantage of limited liability which is indeed better to protect the members' interests.

However it might be difficult for some partners to become shareholders. Maybe the solution of a company limited by guarantee would help circumvent this difficulty and be more adapted.

³ See Annex 3 for a more complete comparison.

4.1.3. Consortium with legal entity

The Consortium is a private company under Italian law. It is the model used by the European Gravitational Observatory EGO.

1. Objectives/Activities

The Italian Consortium with legal entity allows for all kinds of activities.

EGO is based on the partnership between CNRS and INFN. There was first a project to construct a 3x3 km Virgo Gravitational waves Antenna that has been devised in the 80's and then in December 2000 CNRS and INFN created a consortium for the organisation that had to take care of the completion, commissioning, operation and upgrades of VIRGO.

2. Constituency

All kinds of entities from any country can be members of an Italian Consortium with legal entity.

EGO is a non-profit making Research Consortium created on the basis of Italian law, to 50% shared between CNRS and INFN.

3. Governance

The Italian Consortium with legal entity doesn't impose any kind of organisation, members are free to define it in the statutes.

The management of EGO is directed by a Council supported by a Scientific & technical advisory committee and a General Director.

4. Financial and Tax Issues

The budget of the Italian Consortium is guaranteed by the contributions from contracting members in cash, kind and/or staff. It can receive loans and subsidies.

5. Human Resources

Being a legal entity, the Italian Consortium with legal entity allows for own personnel recruitment.

All EGO staffs are employed temporarily, for a max of 5 years for researchers, and no longer than the limited duration of the consortium (10 years) for all other agents.

6. Liability

Limited liability. I.

7. Mode of Creation

The creation of an Italian Consortium with legal entity is easy, only the national procedure has to be followed. However it might be difficult for some structures to join or to adapt to the national law.

8. Autonomy

Being a legal entity, the Italian Consortium with legal entity has a large autonomy.



9. Location

An Italian Consortium with legal entity can have both single and distributed site.

10. Duration

Duration limited to 10 years, possible tacit renewal every 5 years. .

Conclusion:

The main advantages of this structure are its flexibility and effectiveness, and the security given by the limited liability.

One disadvantage is that contracts for researchers are fixed to 5 years.

4.1.4. Association

The Association is a legal entity which exists under various forms in many countries in Europe.

We chose to present the French model:

In France, the objective of an association is for two or more persons or legal entities to permanently put together their knowledge and/or activities but not in the aim of sharing benefits (which doesn't prevent it from having a commercial activity, in which case profits will be subject to taxes and have to be reinvested in the next year's budget). The creation is easy and quick, and the organisation of the structure is freely determined in the statutes.

1. Objectives/Activities

The only restriction given to the activities of an association is that they cannot be meant for sharing profit. However, commercial activities are allowed insofar that it doesn't represent too great a share of the activities and that all profits are reinvested in the next year's budget.

2. Constituency

All kinds of entities from any country can be members of an Association.

The statutes can create different member statuses: founding members, donating members and benefactor member.

3. Governance

Members of an association are free to define all organisational rules they like in the statutes. The one and only mandatory point is to have a General Assembly representing all members.

4. Financial and Tax Issues

An association doesn't require any share capital. The budget is guaranteed by the members' contributions which rules are defined in the statutes. It can receive loans and subsidies.

5. Human Resources

Being a legal entity, the association can recruit its own personnel.

6. Liability

Members are not held liable, only the association's assets can be taken to pay debts.

7. Mode of Creation

The creation of an Association is easy, only the national registration procedure has to be followed.

8. Autonomy

Being a legal entity, an association has a large autonomy.

9. Location

An association can have both a single and a distributed site.



10. Duration

Members can determine the duration of their association to a limited or unlimited time.

Conclusion:

The advantages of the association are that the constitution of a capital is not necessary, that it is easy to create and it can be shaped in a very flexible way to fit the needs of the owners.

The CNRS takes part in many such ventures like ECRIN as founding member, the ANRT (*Association Nationale pour la Recherche Technique*) or the Association pour la Recherche sur le Cancer ARC where it is represented within the directing boards.

When an association is to be dismantled, all resources must be given over to a non-profit organisation with similar objectives unless it is foreseen in the statutes that the partners can get their contributions back.

4.1.5. Foundation

A foundation is a private legal entity, usually operating on a non-profit basis. A foundation is often used to achieve some kind of charitable purpose or social activity. It is unique in that it has no members or shareholders and is created solely to realise certain defined objects such as to manage educational facilities or support and manage research programmes.

Foundations exist in many countries in Europe, we chose to analyse the German type, since it is the structure chosen by DNW the German-Dutch Wind Tunnels.

1. Objectives/Activities

There are no restrictions on the kind of activities that a foundation can undertake.

The Foundation German-Dutch Wind Tunnels (DNW) was established for the benefit of national and European aerospace research and development programs.

2. Constituency

All kinds of entities from any country can be members of a Foundation.

DNW was created by the Deutsches Zentrum für Luft- und Raumfahrt (DLR) and the Nationaal Lucht-en Ruimtevaartlaboratorium (NLR.).

3. Governance

Members of a foundation are free to define all organisational rules they like in the statutes.

The DNW governance is composed of a Director Board between rerepresenting founders and other members.

4. Financial and Tax Issues

A foundation doesn't require any share capital. The budget is guaranteed by the members' contributions which rules are defined in the statutes. It can receive loans and subsidies. It is supposed to pay VAT according to the national rules.

DNW receives its resources mainly from founding institutions, direct grants and user fees.

5. Human Resources

Being a legal entity, the Foundation can recruit its own personnel.

6. Liability

Limited liability. Each participant is fully liable for their own activities within the foundation.

7. Mode of Creation

The creation of a foundation doesn't require any formal government level agreement.

DNW was created by an agreement between national laboratories. These agreements were, however, preceded by an exchange of letters by the two responsible ministers of the respective countries

8. Autonomy

Being a legal entity, the Foundation has a large autonomy.

9. Location

A Foundation can have both single and distributed site.

DNW headquarter is located in the Netherlands. DNW operates wind tunnels both in Germany and in the Netherlands.

10. Duration

unlimited

Conclusion:

This type of structure is interesting because it's adapted to academic and industrial uses.

In the Netherlands this type of structure is commonly used for research organisations. It allows for a great flexibility regarding governance and doesn't require any intergovernmental agreement.

Some national laws can be restrictive for foundations, for example in France foundations can only be created if they undertake certain activities.

Conclusion:

Organisations based on national law are mostly easy to create, but it is very important to take into account the legal framework to which the organisation will have to apply, especially financial and labour rules. Nevertheless, it is important for an organisation to be able to refer to a given legal framework and it avoids going through the long process of creating a specific legal framework.

4.2. ORGANISATIONS BASED ON COMMUNITY LAW

There exist under community law a few types of legal structures that could be adopted by EGI.

4.2.1. EEIG European Economic Interest Grouping

The **EEIG European Economic Interest Grouping (Article 169)** is a legal entity created by the EU and intended to make it easier for companies in different countries to make business together.

It is the structure used by EDCTP (European and Developing Countries Clinical Trials Partnership) and the European branch of W3C (World Wide Web Consortium) which we shall describe more completely later. W3C is organised by three legal entities in the USA, France and Japan through a joint sponsorship agreement which is renewed on a regular basis (usually three yearly). W3C in Europe is operated by ERCIM, which is established as an EEIG in France.

1. Objectives/Activities

The EEIG allows for operational and coordination activities as well as infrastructure management.

The main objectives of EDCTP are to develop new intervention methods and capacity building in the field of HIV/AIDS, malaria and tuberculosis.

2. Constituency

The members are organisations from EU member and associated States only.

3. Governance

Some organisational rules have to be followed: the EEIG has to have an Executive Body as well as an Assembly where many decisions require unanimity.

4. Financial and Tax Issues

There is no obligation to constitute a capital but the budget is guaranteed by the contributions from contracting members in cash, kind and/or staff. It can receive loans and subsidies.

5. Human Resources

Permanent and temporary staff can be recruited according to the national labour rules of the country where it is established (for EDCTP: Netherlands).

An EEIG cannot have more than 500 employees.

6. Liability

Unlimited several liability.

7. Mode of Creation

The creation has to follow a very specific process. Each country has its rules concerning the registration. Some countries implement limitations (for example on the number or type of members).

There is some paperwork involved in establishing and extending the EEIG, but it is not overwhelming.

8. Autonomy

Being a legal entity, the EEIG with legal entity has a large autonomy.

9. Location

The EEIG members have to choose the country where they will have their seat. The seat will define the labour and financial rules the EEIG will apply to.

An EEIG can have both single and distributed site.

10. Duration

Duration is unlimited.

Conclusion:

The advantages of an EEIG are that:

- It has a legal personality as a joint venture of organisations based in the EU;
- Employees of the members of the EEIG can be directly employed on contracts to the EEIG without subcontract, or additional taxation as though they were directly employees of the EEIG itself;
- The EEIG can bid for EU contracts as a single entity where the conditions require members in several countries if the EEIG members are based in enough countries because the EEIG is already a consortium and does not have to be part of a larger one;
- By being established as a European entity it is considered positively by other EU institutions.

The disadvantages of an EEIG are that:

- There is unlimited liability for the debts of the EEIG to the members, although the proportion of the liability can be distributed between the members by an agreement, and insurance cover can be acquired for employee and visitor liabilities in order to manage this risk;
- The number of direct employees is limited to 500;
- Member organisations are limited to registration in the EU member states and cannot come from countries outside the EU;
- The EEIG cannot undertake the direct activity of its members, and must undertake a complementary one – for example ERCIM undertakes the management of EU project and W3C standardisation activities which are complementary to the direct research activities of its members;
- The EEIG cannot carry over more than 5% of its turnover from one financial year to another, so must return any greater profit to its members which restrict the financial flexibility of the organisation.

4.2.2. Joint Undertaking

The **Joint Undertaking (Article 171)**, used for example by the GALILEO project, is another example of structure with European dimension.

1. Objectives/Activities

The Joint Undertaking allows for operational and coordination activities as well as infrastructure management.

2. Constituency

GALILEO is a project of the European Commission and the European Space Agency.

The characteristic of the joint undertaking is indeed that the EU should be included as prime mover in the creation of a structure. Moreover, like the EEIG, the membership is limited to organisations from EU-countries and associated States.

3. Governance

The Joint Undertaking doesn't impose any kind of organisational structure, members are free to define it in the statutes.

4. Financial and Tax Issues

The Joint Undertaking has no share capital but its budget is guaranteed by the contributions from contracting members in cash, kind and/or staff.

5. Human Resources

Being a legal entity, the Joint Undertaking allows for own personnel recruitment.

6. Liability

Liability is unlimited for all members for any debts the organisation might contract.

7. Mode of Creation

The creation of such a legal structure can be very lengthy (Council decision based on proposal from European Commission) as it includes the EU as prime mover.

8. Autonomy

Being a legal entity, the Joint Undertaking has a large autonomy.

9. Location

Single or distributed.

10. Duration

Unlimited

Conclusion:

The fact that organisations from non-EU and associated countries cannot join the venture should be taken into account.

The participation of the EC must be accepted in principle by the EGI members. The problem is that the participation of the EU implies a rather heavy creation procedure, which is a problem since the EGI agenda is tight.

Nevertheless, for structures whose creation might be lengthy, the solution would be to adopt a transitional structure that would take less time to create but would still allow EGI to operate fully as a successor of EGEE (see 2.4).

Conclusion

Adopting a type of legal structure based on community law has the great advantage of giving to the organisation an undisputable European dimension. But this kind of decision requires taking good account of everything that comes with it.

Besides, the EC is currently working on how to facilitate the constitution of research infrastructures of pan-European interest, as discussed during the European Conference on Research Infrastructures⁴ (ECRI) which took place in June 2007. The status of "Pan-European Research Infrastructure" can take two forms: either an organisation based on national law applies for this label or the organisation is created as a new European legal entity which should be defined in the coming years. This entity would be a contract of association between a minimum of two entities, organisations from third countries would be allowed to join, the participation of the EC would not be required, various options are proposed regarding the limitation of liability, and there might be some tax advantages.

The European Commission has created an inter-service group which has already started consultations at various levels. They plan to complete, during 2008, a Proposal for a Regulation on a dedicated legal framework for the construction and operation of new pan-European research infrastructures.

Here is the corresponding text of the Commission Work Programme for 2008, COM (2007) 640 final:

The purpose of the legislation should be to facilitate the formation of European consortia for the construction and operation of research facilities of Pan-European interest and necessary for the efficient execution of Community research programmes. Complementing national or inter-governmental schemes, the EC regulation would provide a common and easy-to-use legal framework, leaving a large degree of flexibility to the individual consortia to set up the adequate rules for the specific infrastructure at European level. The framework regulation is based on Article 171 EC: it will set out the main characteristics of the Pan-European research infrastructures, as well as the rules and procedures governing their establishment, necessary for the efficient execution of Community programmes.

The framework regulation would allow current issues related to Community research such as liability, taxation and staffing issues, to be dealt with, and it would also highlight the catalysing role of the European Commission in the setting-up of new legal entities at European level.

This Regulation will be based on art. 171 of the EC Treaty and will have a legislative status. That implies a co-decision procedure involving the EU Parliament and Council, which normally

⁴ <http://www.ecri2007.de/>



needs 2 iterations. Even if there is a political will by the Member States, this process is pretty heavy and may take at least one year.

In conclusion, this new legal framework may be interesting for EGI but not in the time-frame targeted by the project. In order not to rule out this option, there may be a transitional solution, as described in 2.4.

4.3. ORGANISATIONS BASED ON INTERNATIONAL LAW

4.3.1. Intergovernmental Organisation

An **Intergovernmental Organisation**, which is the legal structure which was chosen for the European Organisation for Astronomical Research in the Southern Hemisphere (ESO), could also be a solution for EGI.

ESO is a legal entity under international law. Its legal capacity is recognized in its member states and its host states, Germany and Chile.

1. Objectives/Activities

An organisation based on an Intergovernmental Agreement can undertake coordination as well as operational activities and infrastructure management.

The mission of ESO is to promote and organize cooperation in astronomical research. Its mission is non for profit, fundamental research.

2. Constituency

Only states and intergovernmental organisations can enter into an intergovernmental agreement founding an intergovernmental organisation.

Since its creation on 5 October 1962 by five European States eight other states have joined ESO . Today ESO has thirteen member states

3. Governance

As an intergovernmental organisation ESO can define the rules necessary for its functioning independently from national laws.

ESO governing bodies are the Council, the Finance Committee, the Scientific Technical Committee, the Observing Programs Committee and the Users Committee which are composed of representatives of the ESO member states. The executive powers are entrusted to a Director General nominated by the ESO Council.

4. Financial and Tax Issues

An organisation based on an Intergovernmental Agreement cannot have a share capital. The budget is guaranteed by the contributions from the member states.

5. Human Resources

ESO has temporary and permanent staff.

ESO's relationship with its staff is governed by its own rules adopted by the ESO Council. According to the jurisprudence of the ILOAT employment conditions (salary + other benefits) of the staff should be such that they allow the Organisation to recruit/retain staff of the highest competence in all member states. Disputes between ESO and its staff are submitted to the ILOAT.

Pensions of retired ESO staff are guaranteed by the CERN pension fund of which ESO is a member since July 1968.

6. Liability

There is no specific limitation of liability due to ESO's intergovernmental status except for the privileges and immunities granted to the Organisation.

ESO's specific liabilities are defined and limited by the conventions with its host states or member states, its staff rules, contracts or any other type of agreements entered into by the Organisation.

7. Mode of Creation

Requires long and heavy negotiations.

ESO is based on an international treaty i.e. its founding convention was signed by Belgium, France, Germany, Netherlands, Sweden.

8. Autonomy

An intergovernmental organisation is a legal autonomous entity.

9. Location

An organisation based on an intergovernmental agreement can have both single and distributed site.

ESO has its seat in Garching (Germany) and several telescopes at various sites in the Chilean mountains.

10. Duration

Unlimited.

11. International Privileges

By virtue of its founding convention and host state agreements ESO and its staff are granted the privileges and immunities normally granted to intergovernmental organisations in accordance with international law: exemption from duties and taxes (in particular import and export duties, VAT and national income tax for staff), immunity of jurisdiction and execution.

The ESO host states have a duty to facilitate the access to the work sites (visas, permits) of staff/users and ESO staff enjoy immunity of jurisdiction in the exercise of their functions (or even full diplomatic immunity for senior staff) to guarantee their independence.

Conclusion:

As they are based on international treaties the creation of intergovernmental organisations is a heavy and lengthy process. European states are very reluctant to create intergovernmental organisations because of the privileges and immunities which are normally granted to such organisations (and which limit their own sovereignty) and because the European Union legislation has greatly facilitated cooperation within Europe and has made such privileges and immunities less necessary.

The creation of an intergovernmental organisation supposes membership at state level (=not at NGI level).

Among the advantages enjoyed by an intergovernmental organisation are its immunity from national



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jurisdiction and from procedural constraints. Only an international Organisation can guarantee a truly international identity independent from the identity of the individual member states. An intergovernmental organisation will guarantee equal treatment of all member states.

An intergovernmental organisation allows for optimal conditions for exchange of personnel, goods and services.

4.3.2. Memorandum of Understanding with international organisation status

The Global Biodiversity Information Facility (GBIF) chose the solution of a **Memorandum of Understanding (MoU)**. The organisation is based on a simple MoU, but has a permanent Secretariat hosted in Denmark who granted some privileges and immunity to the Secretariat and its staff.

1. Objectives

An organisation based on an MoU can undertake any kind of activity.

Under an MoU all activities are carried out by the signatories directly.

The objectives of GBIF are to make the world's biodiversity data freely and universally available via the internet.

2. Type of partnership

All kinds of entities from any country can sign a Memorandum of Understanding.

GBIF is an organisation under a MoU between national institutions, the European Commission and international organisations.

3. Governance

Governance can be freely defined.

The supreme authority for the management of GBIF is the Governing Board, supported by an Executive Committee and an Executive Secretary.

4. Financial and Tax Issues

An organisation based on a MoU cannot manage its own budget which is managed by one member on behalf of the others. Moreover the budget is not guaranteed since it depends on what the members are ready to commit to. Then the contribution amounts and processes can be either defined in the MoU or in separate bi- or multilateral agreements. One should be careful of the non-binding clause that is often to be found in MoUs and which means that the contractors are not bound to respect the contract.

5. Human Resources

The personnel is employed by the Secretariat on renewable fixed-term contracts and has international status and associated privileges granted by Denmark.

All staffs are on the Secretariat's charge.

6. Liability

The MoU doesn't bind its members but each participant is fully liable with regard to third parties for its own activities under the MoU .

7. Mode of Creation

The MoU was signed by the participants without any specific procedure. The Secretariat was agreed at a later stage by the participants.

8. Autonomy

The MoU as such does not create a legal entity. However the Secretariat is a legal autonomous entity under Danish law.

9. Location

An organisation based on an MoU can have both a single and a distributed site arrangement.

The GBIF Secretariat is located in Copenhagen but the activities are distributed over the participants' sites.

10. Duration

The duration as well as the renewal process are defined in the contract.

GBIF limited its duration to 5 years, renewed by amendment.

11. International Privileges

The staff of the GBIF Secretariat benefits from privileges and immunity normally granted to international civil servants.

The GBIF Secretariat benefits from tax exemption for salaries and VAT in the execution of its mission.

Conclusion:

The MoU does not need a specific procedure for its signature. However, the fact that it is concluded for a limited duration only and not binding is a drawback.

Moreover, the budget depends on the partners' good will and is therefore not assured.

It is not clear whether other countries than Denmark would be willing to host a permanent structure under a MoU like the GBIF Secretariat and grant to it privileges and immunity.

Conclusion :

International organisations can have very interesting privileges as regards staff status and taxes. They also can define their own reference rules.

The greatest disadvantage is that the creation can take a lot of time. A solution to circumvent this problem could be to conclude a transitional agreement, for example a MoU that wouldn't create a legal entity because it would let more time to create a more perennial organisation.

4.4. A TRANSITIONAL SOLUTION: MOU OR AGREEMENT WITHOUT LEGAL ENTITY

The EGI agenda is very tight. As a matter of fact, it could be difficult for some partners to join the chosen structure and their internal procedures might hinder the process; besides most registration procedures are lengthy. This fact shouldn't imply a too fast decision. A solution could be to adopt a Memorandum of Understanding, like the one used by GDE, as an intermediary phase.

1. Objectives

Global effort to provide a framework to internationalize the technical design of the International Linear Collider.

2. Type of partnership

The MoU was signed between institutional members from 3 areas (Asia, Europe, North America).

3. Financial and Tax Issues

An organisation based on a MoU cannot manage its own budget which is managed by one member on behalf of the others. Moreover the budget is not guaranteed since it depends on what the members are ready to commit to. Then the contribution amounts and processes can be either defined in the MoU or in separate bi- or multilateral agreements. One should be careful of the non-binding clause that is often to be found in MoUs and which means that the contractors are not bound to respect the contract.

The GDE budget is defined in the MoU: it is decided each year by the "Funding Agencies for the Large Collider" (FALC). For Europe, the payment of all European contributions will be made by CERN on behalf of the European countries.

4. Governance

The management structure adopted by GDE is directed by a General Director and 3 regional Directors for each area, and an Executive Committee.

5. Human Resources

Since the MoU doesn't create a legal entity, the organisation wouldn't be able to recruit its own personnel.

GDE's staff is lent temporarily by its members.

6. Liability

The MoU is non binding between its members. Each member is liable for its activities with regard to third parties.

7. Mode of Creation

A MoU is a simple contract to be signed by the members.

8. Autonomy

An MoU does not create a legal entity independent from its members.



9. Location

An organisation based on a MoU can have both single and distributed site.

GDE is hosted by the Fermilab Laboratories in the USA.

10. Duration

The duration as well as the renewal process are defined in the contract.

Conclusion:

This type of structure presents the advantage that it is very flexible for newcomers to join as contracting party, since the signing process is very simple to organise.

Moreover, the creation of an autonomous legal entity mostly implicates a little loss of power for the members. In the case of a MoU, members remain in charge.

Nevertheless the impossibility to recruit own staff, the limited duration as well as the autonomy lessened by the transfer of the budget management are still drawbacks.

5. CONCLUSION

This study allowed us to define necessary criteria for the creation of a collaborative undertaking. Key questions have indeed to be asked before choosing EGI's legal structure in order to apprehend the collaboration's environment:

- Objectives/Activities
- Constituency
- Governance
- Financial and Tax Issues
- Human Resources
- Liability
- Mode of Creation
- Autonomy
- Location
- Duration
- International Privileges

Some structural elements could already be defined.

These criteria have indeed been discussed within WP4 and the consortium, and some conclusions were reached as to some aspects of the future EGI. At best the chosen legal structure should allow for:

- "open" membership (to which any kind of entity could join)
- coordination and operation activities
- own budget
- possibility to recruit own personnel
- autonomy
- avoiding difficulties with VAT

These first conclusions allow us to better apprehend the specific characteristics and needs of EGI.

The question of the membership is so important that it appeared necessary to investigate all NGIs in order to understand how they are organised and especially how they are structured on their home territory.

The questionnaire presented within this study, which is still a draft, should allow for this analysis. Indeed the questionnaire should be completed with other questions from the other WPs, so as to avoid sending too many questionnaires to the NGIs. There shall be one single questionnaire for all WPs, and as soon as it is ready it will be available for NGIs to fill in on the EGI Knowledge Database.



Moreover, identifying those criteria permitted to study the different existing legal structures with a clear methodology. Based on the work of the European Strategy Forum on Research Infrastructures, we could study how research infrastructures are organised, and the various constraints and level of flexibility they offer – according to our criteria.

The next steps will be to take all the 11 key decisions listed in section 2, based on the functionality definition and to derive from these choices the legal structure(s) that fits them best.

6. ANNEXES

6.1. ANNEX 1 - QUESTIONNAIRE

QUESTIONNAIRE

In order for us to define guidelines for NGIs as well as the right legal structure for EGI, we need to acknowledge the way the different existing NGI or NGI-like structures in Europe organise.

If you represent an NGI, please fill in the first part of the questionnaire.

The second part addresses grid structures in countries where no real national organisation exists.

Contact:

Name :

Function :

Organisation :

Contact (address, phone and/or mail):

1_You represent an NGI

1. Organisation

In what kind of structure is your NGI organised?

- | | |
|--|---|
| <input type="checkbox"/> with a legal entity ? | <input type="checkbox"/> without a legal entity |
| <input type="checkbox"/> Research organisation | <input type="checkbox"/> Contract between different members |
| <input type="checkbox"/> Profit organisation | <input type="checkbox"/> Private or public laboratory |
| <input type="checkbox"/> Non-profit organisation | <input type="checkbox"/> Individual legal representative |
| <input type="checkbox"/> Private company | <input type="checkbox"/> Other, please specify: |
| <input type="checkbox"/> Other, please specify: | |

If you have any comments about the NGI structure, please specify?

Can your NGI engage its own legal and financial responsibility? Y N

Or is it dependent on another organisation? If so, please specify. Y N

2. Historic

How was your NGI created?

Has there been any difficulty along its creation? What kind of difficulties?

3. Network/Partnerships

Has your NGI received any mandate from other grid structures or stakeholders to represent them at national and/or international level?

Please specify who and how, upon what kind of agreement.

Do these national partnerships represent the whole range of grid-related activity in your country?

4. Personnel

Does your NGI have its own personnel? Y N

If so, is it temporary or permanent ?

Or is your personnel lent by another organisation? Y N

5. Budget

Does your NGI have its own budget? Y N

Please explain the type of financing you receive (project, regular fix financing, from who...)

2_No NGI in your country

(no answer required if no changes since EGEE NA5)

1. How far advanced are grids in your country? How and by who are they organised?

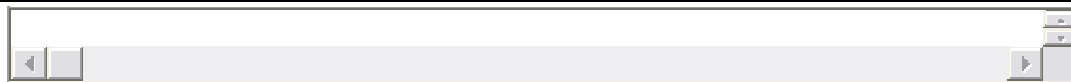
2. What are the functions of your organisation with respect to grids in your country?

3. Do you know of any plan to create an NGI in your country? Y N

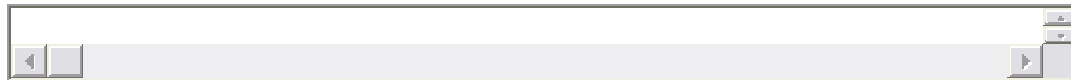
If yes, do you know what kind of structure is envisaged?

Is there an already know agenda for this creation? Y N

If yes, please specify :



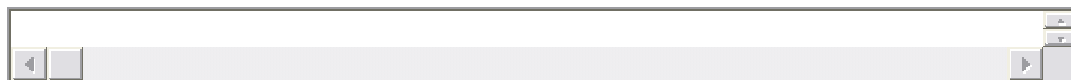
Do you think there might be any difficulty by the creation of an NGI in your country?



3_Participation to the EGI structure

1. Personnel

Would it be possible for your organisation to lend or transfer personnel to EGI? Y N



2. Financial issues

Is it possible for your organisation to transfer money? Y N

Are there any specific internal procedures to allow the transfers? Y N

What is the status of your organisation regarding Value Added Taxes?



6.2. ANNEX 2 – COMPARISON TABLES

- the first tables analyse different examples of Research Infrastructures (p. 23-29)
- the second table analyses the types of legal structures (p. 30-31)

Non-profit organisation under national law			
Criteria	ESRF	DANTE	EGO (European gravitational observatory)
Partnership	Two levels: - agreement between governments of european and non european countries - agreement between members of the société civile (statutes): governmental agencies, 2	15 european NRENs (National Research and Education Networks composed of Institutional members, universities, research labs from public and private sector)	2 Members (CNRS-INFN)
Objectives	To design, construct, operate, and develop for the use of the scientific communities, a synchrotron radiation source and associated instruments	To plan, build and operate pan-European research networks and to pursue common research in the area of data networks	To promote the gravitational research in europe
Type of Users	Scientific communities of the contracting Parties (of which nevertheless about 20% appear to be in contact with, or to receive support from industry)	Academic users , very limited private	Academic users
Legal issues	Société civile (non-trading company) Articles 1845 à 1870 du Code civil France France yes Liability for debts in proportion to shares Grenoble, France	Shareholder Company UK UK Yes Limited by shares Cambridge, UK	Italian Private Company article 2602 -2612 Codice civile Italian Italy yes Limited liability (liability for the dismantling) Italy
Distributed or single sited Duration	Single sited 99 years	Single sited (UK), staff may work from other places unlimited	Distributed facility with its headquarters in Italy 10 years (possibility renewed by the a next MoU)
Management	Define in the statutes: Council representing each contracting party director general	Defined in the statutes: Shareholder Assembly, Board of Directors and two General Managers	Define in the consortium: Council, director

Non-profit organisation under national law				
Criteria	ESRF (European Synchrotron Radiation Facility)	DANTE (Delivery of Advanced Network Technology to Europe)	DNW (German Dutch Wind Tunnels)	EGO (European gravitational observatory)
Financial issues				
Share Capital	No minimum is required cash, kind or staff contributions	yes	no	no
Budget	Resources from contracting parties in kind, cash, staff: Budget 2005: 20,7% investments, 56,3 % staff salaries, 23% recurrent Loans possible	Resources from contracting parties in kind, cash, staff + EU project subsidy Budget 2005: 25% invested, 60% operational cost, 15% salaries (budget yearly adapted to needs) Loans possible Possible	Resources from founding institutions, direct grants, user fees	Resources from contracting parties in kind, cash, staff
EU fund	Possible	Possible	Possible	Possible
Accounting control	General accounting, cost controlling multi-year plan	General accounting, cost controlling-multi-year plan		General accounting, cost controlling-multi-year plan
Taxes	Profit taxes (if any) VAT and other taxes according to national rules (No VAT on non french members ' contributions)	VAT applies yearly for tax exempt status to the UK financial authorities	VAT according to host country rules	Italian rules taxes
Human resources	Permanent staff/ temporary staff Staff status under private law (depends on general national labour rules)	Permanent staff/ temporary staff (depends on general national labour rules)	Permanent and temporary contracts – seconded personnel	Administrative and Scientist staff: fixed-term contract
Industrial cooperation/ business activity	Commercial activity limited to 10%: 2-3% of the scheduled beam time	Limited	70% industry users. Organisation driven by research customer demand, no difference made between industrial and academic	no
Access policy	Access according to scientific excellence (peer review) for scientists from contracting parties or associate countries Free for non-proprietary research Access fees for proprietary research		Custom-fit access rules Possible user fees	Access to contracting parties

Non-profit organisation under national law				
Criteria	ESRF (European Synchrotron Radiation Facility)	DANTE (Delivery of Advanced Network Technology to Europe)	DNW (German Dutch Wind Tunnels)	EGO (European gravitational observatory)
Advantages	Large flexibility for newcomers to join Public/private sector Clear management and commitments Autonomy Possibility to recruit personnel Adapted to public and private needs No minimum share capital Adapted to manage facility Part of the legal framework of the country where the RI is established	Clear management and commitments Autonomy Possibility to recruit personnel Accademic users Limited liability for Shareholders Adapted to manage facility (Infrastructures) Part of the legal framework of the country where the RI is established	Clear management and commitments Autonomy Possibility to recruit personnel Adapted to industrial use Adapted to manage facility Part of the legal framework of the country where the RI is established	large flexibility for newcomers to join Clear management and commitments Autonomy possibility to recruit personnel Accademic users Limited liability Adapted to manage facility Part of the legal framework of the country where the RI is established
Desadvantages	Liability for debts in proportion to shares	Some organisations are not able to hold shares DANTE will probably be re-structured into a company limited by guarantee	Some country laws other than the Netherlands or Germany are restrictive for foundations	Adapted for private sector ?

	Organisation under community law	
Criteria	EDCTP _EEIG art.169 of the EU Treaty (Clinical Trials Partnership)	GALILEO Joint undertaking
Partnership	Countries from european community	European commission European space agency
Objectives	Development of new intervention methods and capacity building in the field of HIV/AIDS, malaria and tuberculosis	Supervise in the development and validation phase of the programme and prepare the following phases
Type of Users	Academic users (90%)	Academic and private
Legal issues Type of structure Law apply Host country Legal entity Liability of members Location Distributed or single sited Duration	European economic interest grouping (EEIG)- Council Regulation (EEC) No 2137/85 of 25 July 1985 (art.169 of EU Treaty) Community law/ dutch law The Netherlands yes Unlimited Liability of all members for organisation debts Principal location (NL) second smaller branch (South africa) Single sited Defined in the statutes (it could be unlimited)	Sui generis (Art.171 of the EU Treaty) Community law Belgium yes Unlimited Liability of all members for organisation debts Belgium Single sited unlimited
Management	Executive body for the Assembly Assembly Partnership board	Executive director Executive committee Administrative board

	Organisation under community law	
Criteria	EDCTP _ EEIG art.169 of the EU Treaty (Clinical research infrastructure network)	GALILEO Joint undertaking Art.171 of the EU Treaty
Financial issues		
Share Capital	Optional	no
Budget	Defined in the statutes- (in kind and cash) Loans possible	Cash
EU fund	Possible	yes (European Commission: main player)
Accounting control	General accounting, cost controlling- multi-year plan	General accounting, cost controlling-multi-year plan
Taxes	Profit taxes (if any) VAT and other costs not covered by european community grant	
Human ressources	Permanent staff/ temporary staff (national labour rules)	Permanent staff/ temporary staff
Industrial cooperation/ business activity	yes- adapted for industrial use	yes- adapted for industrial use
Access policy	Fit access rules -User fees possible Proprietary of IP arising from joint initiatives	European Community
Advantages	Autonomy Public and private sector can join EEIG Adapted for industrial use Organisation with european dimension Clear management and commitments Possibility to recruit personnel Art.169 requires the pre-existence of national programmes	Autonomy Adapted for industrial use Organisation with european dimension Clear management and commitments Adequate for a large scale project Possibility to recruit personnel
Desadvantages	Impossibility for non EU countries to join Unlimited liability for EEIG debts difficulty to reconcile community law with national law	This model could be used when EU is the main player Creation: Council decision based on proposal from European Commission (long and heavy negociation)

	International organisation		
Criteria	ESO (European southern observatory)	GBIF(Global diversity information facility)	GDE (Global design effort) for ILC
Partnership	Convention between governments for the establishment of an European organization for astronomical research in the southern hemisphere	non-binding memorandum of understanding (MoU) between countries, the European Commission and international organisations	Institutional members from 3 areas (Asia, Europe, North america)
Objectives	To build, to equip, to operate an astronomical observatory	To make the world'biodiversity data freely and universally available via the internet	Provide a framework to internationalize the technical design of the International Linear Collider
Type of Users	Scientific communities	Scientific communities, biodiversity managers, policy makers, general public with an interest for biodiversity	academic users
Legal issues			
Type of structure	International organisation	Open-ended international co-ordinating body No-binding MoU	Non-binding Mou
Law apply	Own rules	Own rules	International law
Host country	Germany	Denmark	—
Legal entity	yes	yes	No
Liability of members	Specified in the convention	no	—
Location	Germany	Denmark	—
Distributed or single sited	Distributed facility with its headquarters in germany	distributed site	—
Duration	Unlimited	5 years (possibly renewed with another MoU)	3 years after the signature but it can be renewed
Management	Defined in the convention : Council representing each contracting party and a director	Governing board (supreme authority) Executive committee Executive secretary	Defined in the MoU- payment of the european contributions will be made by CERN on behalf of the european countries

	International organisation		
Criteria	ESO (European southern observatory)	GBIF(Global diversity information facility)	GDE (Global design effort) for ILC
Financial issues			
Share Capital	no	no	no
Budget	Contributions from member states	Budget based on voluntary contributions (cash, kind, staff) no loans	In kind, cash, staff The commun fund is managed by Fermilab. The payment of the european contributions will be made by CERN on behalf of the european countries
EU fund	–	–	–
Accounting control	internal and external control	internal and external control	internal and external control
Taxes	Own rules for taxes	Own rules for taxes: full exemption of taxes in the host country Tax exemption on salaries	
Human resources	Permanent staff/ temporary staff (own rules defined in the convention)	All staff on renewable fixed-term contracts Employees have diplomatic status and associated privileges	temporary staff _ Organisations place their staff at GDE's disposal Few staff could be under public law
Industrial cooperation/ business activity	Limited	no	?
Access policy	Access to contracting parties	Free worldwide access to data provided by participant members. Users must respect conditions for data use set by the providers IP rules stipulated in data-provider and data- user agreements	Access to contracting parties

	International organisation		
Criteria	ESO (European southern observatory)	GBIF(Global diversity information facility)	GDE (Global design effort) for ILC
Advantages	<p>autonomy</p> <p>defines own rules for taxes , salaries...</p> <p>possibility to recruit personnel</p> <p>Accademic users</p> <p>Limited liability</p>	<p>autonomy</p> <p>defines own rules for taxes , salaries...</p> <p>Non-binding MoU (ease to join the MoU)</p> <p>Limited liability</p> <p>This organisation doesn't require intergovernmental treaty or Independence from interference of the host country on financial and political matters</p>	<p>Ease for an organisation to join this agreement (moU)</p> <p>large flexibility for newcomers to join as contracting party</p> <p>Academic users</p> <p>Limited liability</p>
Desadvantages	<p>Governmental agreement long and heavy negotiation</p> <p>Absence of legal reference system</p>	<p>Organisation under Danish law (location in Denmark)</p> <p>Limited duration (5 years, renewed by another MoU) : critical phase by the renewal</p> <p>Budget not assured</p> <p>Absence of legal reference system</p>	<p>No possibility to recruit its own staff</p> <p>Less autonomy</p> <p>Budget managed by one partner on behalf of the others</p> <p>Absence of legal reference system</p>

What 's the best structure for EGI		Organisation under national law					Organisation under community law		Organisation under international law		
Criteria		Société civile	Foundation	Association	Not for profit organisation	Italian consortium	EEIG (art169)	Joint undertakings	Governmental Agreement	Memorandum of Understanding (DK)	Memorandum of Understanding
Objectives (WP2-WP3)	Operational organisation	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
	Coordination activity	maybe not adapted (need structure more flexible)	yes	yes	yes	yes	maybe not adapted (needs more flexible structure)	not adapted (needs more flexible structure)	maybe not adapted (need structure more flexible)	yes	yes very adapted
	Manage Infrastructure	yes, very adapted	yes	yes	yes	yes	yes	yes	yes	yes	No_ each members manage its own facility
Users	Academic users	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
	Industrial cooperation (technology transfer, business)	yes adapted	yes	yes	very limited	limited	yes very adapted	yes	limited	limited	no
Level of the agreement	Governmental level agreement	not necessary	not necessary	not necessary	not necessary	not necessary	not necessary	yes	yes	not necessary	not necessary
	Agreement between members	yes	yes	yes	yes	yes	yes	-	-	yes	yes
Type of partnerships	Public, private, european or non european countries	Public, private, large number of countries (also non-EU)	Public, private, large number of countries (also non-EU)	all	Public, private, large number of countries (also non-EU) can be limited by membership policy	Public, private, large number of countries (also non-EU)	only for organisations established in EU member states and associated states	only for organisations established in EU member states and associated states	Large number of countries (also non-EU)	Public, private, large number of countries (also non-EU)	Public, private, large number of countries (also non-EU)
Location (WP2-WP3)	One site	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
	Distributed site	possible (with clear rules defined in the statutes)	possible	possible (with clear rules defined in the statutes)	possible (with clear rules defined in the statutes)	possible (with clear rules defined in the statutes)	possible (with clear rules defined in the statutes)	possible (with clear rules defined in the statutes)	possible (with clear rules defined in the statutes)	possible (with clear rules defined in the statutes)	possible (with clear rules defined in the statutes)
Duration	unlimited duration	no	yes	yes	yes	no	yes	yes	yes	no	no
	limited duration	99 years	yes, it's possible to limit the duration	yes, it's possible to limit the duration	no	10 years renewable by 5 years period	no	no	no	duration fixed in the statutes	duration fixed in the statutes
Liability	unlimited liability	no	no	no	no	no	Unlimited Liability of all members for organisation debts	Unlimited Liability of all members for organisation debts	no	no	no
	limited liability	Liability for debts in proportion to shares	yes	yes	yes, limited by shares	yes (liability for the dismantling)	no	no	no	yes	yes

What 's the best structure for EGI		Organisation under national law					Organisation under community law		Organisation under international law		
Criteria		Société civile	Foundation	Association	Not for profit organisation	Italian consortium	EEIG	Joint undertakings	Governmental Agreement	Memorandum of Understanding (DK)	Memorandum of Understanding
Managerial issues		Fixed in the statutes	Fixed in the statutes	Fixed in the statutes	Fixed in the statutes	Fixed in the statutes	Fixed in the statutes but few constraints: Executive body Assembly many decisions required unanimity	Fixed in the statutes	Fixed in the statutes	Fixed in the statutes	Fixed in the statutes
Financial issues	Share capital	no minimum required	no	no	yes	no share capital	optional	no	no	no	no
	Own budget	yes shares defined in the statutes, budget decided by a committee	yes	yes	Yes, shares defined in the statutes, budget decided by a committee	yes shares defined in the statutes, budget decided by a committee	yes shares defined in the statutes, budget decided by a committee	yes shares defined in the statutes, budget decided by a committee	yes shares defined in the statutes, budget decided by a committee	yes but budget not assured (based on voluntary contributions)	No Fermilab (US) manages for all members and CERN manages for european countries
	EU funds (PCRD...)	yes	yes	yes	yes	yes	yes	-	yes	yes	yes (the MoU could be define as a JRU)
	Taxes	Tax under national law (profit taxes)	Tax under national law	VAT	VAT	Tax under national law	Tax under national law where the EEIG is established	-	Tax under national law where ESO is established	Tax exemption	no
Human resources	permanent staff	yes	yes	yes	yes	no	yes	yes	yes	yes	no
	temporary staff	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes (staff put on disposal by member organisations)
Legal entity		yes	yes	yes	yes	yes	yes	yes	yes	yes	no
Autonomy	large autonomy	yes	yes	yes	yes	yes	yes	yes	yes	yes	no
	limited autonomy	no	no	no	no	no	no	no	no	no	yes
Flexibility to join the organisation		individuals and legal entities can join the structure But difficulties for some structures to join a company with Liability for debts in proportion to shares	yes	yes very easy	yes but difficulties for some NRENs to join a company limited by shares and/or to adapt to national law	yes But difficulties for members to adapt to the national law	Impossibility for non-EU countries/ associated member states to join unlimited liability	No	Governmental agreement	yes (non binding MoU) You don't need an intergovernmental treaty/convention as for very large international organisation (CERN-ITER)	yes
Negotiation	heavy/easy negotiation/registration process	easy	easy	easy	easy	Constraints for members to join a legal entity + Need to respect some national procedure (registration)	heavy	heavy and long negotiation (Council decision on proposal from european commission)	heavy	easy	easy

6.3. ANNEX 3 – ANALYSIS OF UK LEGAL STRUCTURES

EGI – PAN-EUROPEAN RESEARCH INFRASTRUCTURES - ANALYSIS OF POSSIBLE UK BASED VEHICLES FOR JOINT VENTURES

Criterion	Model 1 Company limited by Shares	Model 2 Company Limited by Guarantee
Separate legal entity	Yes – can sue and be sued, hold assets and contracts.	Yes – can sue and be sued, hold assets and contracts.
Legal compliance	<ul style="list-style-type: none"> • Most formal relationship • Memorandum • Articles of Association • Shareholders Agreement • Secondment of staff • Lease of premises • Hire and use of equipment contracts with CCLRC, and other shareholders to provide services to company • Annual audited accounts • Annual return • Details of directors and shareholders/members • Share issues and charges • Increased overheads and potential loss of confidentiality through public access. • Time to set up • Needs separate legal representation. • Costs of liquidation once company has served its purpose. • VAT registration. 	<ul style="list-style-type: none"> • Most formal relationship • Memorandum • Articles of Association • members Agreement • Secondment of staff • Lease of premises • Hire and use of equipment contracts with CCLRC, and other members to provide services to company • Annual audited accounts • Annual return • Details of directors and members • Increased overheads and potential loss of confidentiality through public access. • Time to set up • Needs separate legal representation. • Costs of liquidation once company has served its purpose. • VAT registration. • The members of the company do not own the company but are the decision makers for the company. This means that the profits of the company cannot be distributed to the members through dividends and that they do not have any claim upon the assets of the company.
FLEXIBILITY - PROJECTS	Intensive negotiation for follow on projects.	Intensive negotiation for follow on projects.
FLEXIBILITY - PARTICIPATION	Survives change of share ownership (but usually new shareholders are admitted only by agreement)	<ul style="list-style-type: none"> • Survives change of /membership (but usually new members are admitted only by agreement). • The rights of the members can differ one from another by creating different classes of member. • Changes of membership are easy to accommodate in that a member may retire or, if permitted by the articles and members' agreement, be removed and



		new ones can be added without having to transfer shares. The proportions in which members agree to contribute can also be changed by agreement without transfer of shares or great formality
STATUS		
ACCOUNTS	Need accounts for the company and those accounts may need to be consolidated.	Need accounts for the company and those accounts may need to be consolidated.
PRECEDENTS	Clear	Clear
CONTRACTUAL	Need for contract to govern relations between parties (Shareholders Agreement)	Need for contract to govern relations between parties (Members Agreement)
RISKS	Apportioned by contract	Apportioned by contract
LIABILITIES	Apportioned by contract. Guarantees probably required.	<ul style="list-style-type: none"> • Apportioned by contract. • Guarantees probably required. • Liability takes the form of a guarantee from its members to pay a nominal sum in the event of the company being wound up while they are a member or within one year of their ceasing to be a member. The amount of money that is guaranteed can be as little as £1 and will be stated within the constitution of the company (the Memorandum & Articles of Association).
SUITABILITY	Suitable for longer-term, larger projects	Suitable for longer-term, larger projects
FINANCE	<ul style="list-style-type: none"> • Can create floating charges as security for external finance, grant charges over future assets such as receivables, finance without recourse to shareholders. • In theory can raise outside investment if there is a market for those shares. 	<ul style="list-style-type: none"> • There is no requirement for any of the members to introduce capital into the company, they simply provide the guarantee to contribute on winding-up. Any working capital would however have to be provided from the members (e.g. by way of loan) or from external sources. There is no possibility of equity shareholding in such a company, which could be a potential deterrent to commercial investors. • Floating charges as security for external finance, grant charges over future assets such as receivables, finance without recourse to members.. Difficult to raise outside investment.
COSTS	Need to fund the admin of the company and professional advisers to company	Need to fund the admin of the company and professional advisers to company
CAPITAL	Share and loan	

LOANS	Yes – can raise.	Difficult to raise outside finance.
SHARES	Yes	None if limited by guarantee
ASSETS	Useful if the parties want to pool assets	Useful if the parties want to pool assets
TAX	Company taxed on its profits Will need mechanism to transfer profits to shareholders to avoid paying tax.	Company taxed on its profits
BUSINESS		
Separate business entity	Yes	Yes
Assets	Hold in own name – staff and assets	Hold in own name – staff and assets
MANAGEMENT OF PORTFOLIO OF PROJECTS	Strong internal management – e.g. employees and infrastructure – but only if employees seconded and contracts impose the structure	Strong internal management – e.g. employees and infrastructure – but only if employees seconded and contracts impose the structure
Management of parties involvement in projects	<ul style="list-style-type: none"> • Act as subcontractors to vehicle. • Potential deadlock with 50-50 ownership.? • Shareholders agreement needs to be strong and provide sufficient control for parties 	<ul style="list-style-type: none"> • Act as subcontractors to vehicle. • Potential deadlock with 50-50 ownership. • Members agreement needs to be strong and provide sufficient control for parties
CUSTOMER MANAGEMENT	Single interface	Single interface
PROS	<ul style="list-style-type: none"> • Has a strong and potentially independent structure and identity for dealings with third parties and for creating a clear internal management structure. • Limited liability – the liabilities as shareholders is limited to any unpaid sums in respect of their share capital. • Financing – a company can own and hold assets in its own name and the structure offers more financing possibilities. • A company can give floating charges as security for external finance (under English law), can create charges over future assets such as receivables and enable finance to be raised on a shareholder non-recourse basis. • Continuity/transfer of interests – interests can be sold and new members introduced without 	<ul style="list-style-type: none"> • Has a strong and potentially independent structure and identity for dealings with third parties and for creating a clear internal management structure. • Limited liability – the liabilities as members is limited to their contribution. • Financing – a company can own and hold assets in its own name and the structure offers more financing possibilities. • A company can give floating charges as security for external finance (under English law), can create charges over future assets such as receivables and enable finance to be raised on a member non-recourse basis. • Continuity/transfer of interests – interests can be sold and new members introduced without affecting the direct legal ownership of the underlying assets. • Clear accounting structure for internal accounting and reporting purposes • Established laws - a recognised entity

	<p>affecting the direct legal ownership of the underlying assets.</p> <ul style="list-style-type: none"> • Flexibility of share rights e.g. under English law, preference shares can be issued that allow investors to obtain a priority return on the nominal value of their shares without having any voting rights over the management of the company. Shareholders can also be given the right to convert their preference shares into equity shares if certain circumstances occur. • Clear accounting structure for internal accounting and reporting purposes • Established laws - a recognised entity with an established body of corporate laws and judicial precedents.. 	<p>with an established body of corporate laws and judicial precedents..</p>
CONS	<ul style="list-style-type: none"> • Compliance requirements - will be regulated by laws of the jurisdiction of its incorporation and will need more formal administration. • Publicity – various forms and returns will need to be filed publicly. In the UK, this means an annual return, details of directors details of shares, audited ounts and other returns must be filed with Companies House. This can result in increased administration costs and some less of confidentiality. • Less flexibility in a company’s management structure.and less ability to change. • A party may prefer to retain the more direct management control of its own staff and assets. • Formality – a company involves more formality in incorporating with a need for articles of association, by-laws etc). • Complexity on winding-up of the venture – as a separate legal entity, a company involves greater complexity if and when a party wants toterminate or the venture is wound up, and its assets realised or distributed. 	<ul style="list-style-type: none"> • Compliance requirements - will be regulated by laws of the jurisdiction of its incorporation and will need more formal administration. • Publicity – various forms and returns will need to be filed publicly. In the UK, this means an annual return, details of directors audited accounts and other returns must be filed with Companies House. This can result in increased administration costs and some less of confidentiality. • Less flexibility in a company’s management structure.and less ability to change. • A party may prefer to retain the more direct management control of its own staff and assets. • Formality – a company involves more formality in incorporating with a need for articles of association, by-laws etc). • Hard to raise outside finance • Complexity on winding-up of the venture – as a separate legal entity, a company involves greater complexity if and when a party wants toterminate or the venture is wound up, and its assets realised or distributed.

Notes

Need a Board to govern interactions with customer – and oversee all projects – regardless of the vehicle.



PRELIMINARY WORK
**WP4 Design Study of the EGI legal and
organisational options**

Doc. Identifier:

FINAL-D4-1v01

*Date:***27/02/2008**
