

Euro-BioImaging Preparatory Phase II Project

D2.4 Report on the involvement options of members

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Abstract

This report provides for an overview of the most relevant points regarding the involvement options of members, i.e.:

- Membership and observership according to the ERIC Regulation and the current draft statutes for EuBI ERIC;
- Timeline of the process of setting up the EuBI ERIC.

Considering the already existing draft of EuBI ERIC Statutes (to be delivered as Deliverable 2. 1), as well as the ERIC Regulation the report outlines in particular who is able to join the future EuBI ERIC as well as the procedural requirements to do so. Finally, it also provides for a timeline of the establishment of the ERIC and different modi of membership involvement.

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Report on the involvement options for members

I. Introduction

EuBI (**The European Research Infrastructure for Imaging Technologies in Biological and Biomedical Sciences or shortly Euro-BioImaging**) is one of the research infrastructure projects on the ESFRI Roadmap. As such the European Commission supported and supports its setting up phase through the so called “Preparatory Phase” and currently through the “Preparatory Phase II” (hereinafter “PPII”). EuBI’s mission will be to build a distributed imaging infrastructure across Europe that will provide open physical user access, service and training to wide-ranging advanced technologies in biological and biomedical imaging for life scientists.

EuBI will be implemented under the ERIC (European Research Infrastructure Consortium) legal framework, which is based on an EU Regulation established in 2010¹. According to the Regulation, an ERIC is a legal entity with legal personality and full legal capacity recognised in all Member States. It requires membership of at least three states: one EU Member State and two other countries that are either EU Member States or associated countries. ERICs - pending recognition of their host Member State(s) - benefit from some privileges comparable to those normally granted to intergovernmental organizations, including benefits like VAT and excise duty exemptions regarding purchases or adoption of its own procurement procedures. The underlying international agreement (ERIC Statutes) does not require national ratification. Up to now, 12 ERICs were established.²

This report provides for a summary of the most relevant points regarding the involvement options of members in the future EuBI ERIC, i.e.:

- Membership and observership according to the ERIC Regulation and the current draft statutes;

¹ Council Regulation (EC) No 723/2009 of 25 June 2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC), OJ L 206, 8.8.2009, p. 1, as amended on 2. December 2013.

² https://ec.europa.eu/research/infrastructures/index_en.cfm?pg=eric.

- Timeline of the process of setting up the EuBI ERIC.

This report also takes into consideration the already existing draft of EuBI ERIC Statutes (to be delivered as Deliverable 2. 1), which still require final approval by the EuBI Interim Board (expected in January 2017).

II. Membership and observership in the EuBI-ERIC

1) Introduction

The ERIC Regulation provides that EU Member States³, associated countries⁴, third countries other than associated countries⁵ and intergovernmental organisations can become members of the EuBI-ERIC, or observers without voting rights. This provision is reflected under Art. 5.1 of the draft EuBI ERIC Statutes.

Countries and intergovernmental organisations wishing to accede to the EuBI-ERIC can do so either as a member or as an observer.

2) How to join EuBI-ERIC as a member

a) The founding members

In order to become a founding member, interested countries and intergovernmental organisations need to prepare and agree on those documents that are mandatory to submit an ERIC-application:

- EuBI ERIC Statutes,
- Technical and scientific description,

³ EU Member States are Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK.

⁴ Associated countries are Albania, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Iceland, Israel, Liechtenstein, Montenegro, Norway, Serbia, Switzerland, Turkey and Faroe Island.

⁵ Third countries are countries outside the EU.

- Declaration by the host Member State recognising the ERIC as an international body/organisation in the sense of the VAT and excise duty directives as of its setting up ('Host Member State Declaration'),
- Recognition of legal personality and privileges of the EuBI ERIC by founding members which are associated countries or third countries (Annex 5 to the Practical Guidelines) or international organisations (Annex 6 to the Practical Guidelines), if applicable.

The formal application process is described in more detail below under chapter III. 2 b).

PPII allows interested countries to work on the application documents, which required and require national decisions that had been prepared carefully since 2014 (see below chapter IV), which is why Euro-BioImaging is now already at a very advanced stage. The EuBI Interim Board, which currently consists of 16 member countries and EMBL⁶, most importantly needed to identify one country that offers to host the statutory seat (Art. 2.2 draft EuBI ERIC Statutes) where at least some of the activities are carried out. In October 2015, the Interim Board approved the so called "EuBI Hub proposal", with Finland as statutory seat of the ERIC, Italy as site for medical imaging coordination, and EMBL (i.e. through its Heidelberg headquarters) as EuBI Hub Host for coordinating open user access to and training in biological imaging technologies, as well as image data repositories and tools.

Furthermore, the EuBI Interim Board currently finalises the statutes for the EuBI ERIC. Previously it had also identified the 1st generation of 29 Node Candidates.

b) Members joining after setting up of the ERIC

aa) Introduction

Following entering into force and in accordance with Article 5.2.2 of the draft EuBI ERIC Statutes, countries and intergovernmental organisations can join the EuBI ERIC after setting up the EuBI ERIC at any time with a formal written request signed by the competent authority of the prospect member and submitted to the Chair of the EuBI Board. The request shall describe how the applicants will contribute to the activities of the EuBI ERIC and how they will fulfil their obligations

⁶ IB Members in December 2016: Austria, Belgium, Bulgaria, Czechia, Finland, France, Hungary, Norway, Israel, Italy, Poland, Portugal, Slovakia, Spain, The Netherlands, United Kingdom, and EMBL.

referred to in Chapter 3 of the draft EuBI ERIC Statutes (e.g: financial contributions to the EuBI ERIC, abiding by and participating in the governance arrangements of the EuBI ERIC). The request shall contain also a declaration of adherence to the EuBI ERIC Statutes, Rules of Procedure of the EuBI Board, internal policies and the decisions of the EuBI ERIC's governance bodies.

The current members and observers in the Interim Board are composed of EU Member States, associated countries and EMBL, an intergovernmental organization. We are not aware of a single one of them not being able to join an ERIC.

bb) EU Member States

The following EU Member States, which joined other ERICs as member or observer, were members of the Interim Board during Preparatory Phase II and raised an interest in joining EuBI ERIC as members:

- **Austria**
- **Belgium**
- **Bulgaria**
- **Czechia**
- **Finland**
- **France**
- **Hungary**
- **Italy**
- **Poland**
- **Portugal**
- **Slovakia**
- **Spain**
- **the Netherlands**
- **the UK**

The observer country of the EuBI Interim Board, **Sweden** also joined other ERICs and could become a member in a future EuBI-ERIC. In addition, the German Research Foundation attends the EuBI Interim Board as an observer.

cc) Associated countries

For the **associated countries** within the Economic European Area (EEA) Norway, Iceland and Lichtenstein the ERIC Regulation already applies by virtue of Protocol 31 of the EEA Agreement. Norway, which is currently a member in the Interim Board, would fall under this regime.

Other associated countries can join EuBI ERIC through an instrument of international law to fulfil the requirements for membership. That applies for example for Israel, currently chairing the Interim Board. Since Israel so far joined SHARE-ERIC, it seems that internally the procedures are in place to join other ERICs such as EuBI ERIC.

Switzerland used to be involved in Euro-BioImaging in the very beginning of the first Preparatory Phase but then postponed a decision regarding its involvement. However, Switzerland is currently unable to join ERICs in principle (its recent membership in ESS-ERIC is considered as an exception) but just as an observer. Switzerland's recent withdrawal from the EEA application seems to suggest that membership will remain difficult in the future.

The ERIC Regulation is directly applicable only in the EU Member States, but not in associated countries. Therefore, the associated countries which intend to be founding members of the EuBI ERIC need to submit a formal recognition of legal personality and capacity of EuBI ERIC in their legal order (Annex 5 to ERIC Practical Guidelines).

dd) Third countries

Third countries outside Europe interested in joining forces with EuBI ERIC in the future might be South Africa, Argentina, Australia, Japan, India and the United States of America.

Third countries may accede to the EuBI ERIC as well, if they present a formal request to the Chair of the EuBI Board and the EuBI Board approves this application. However, the third countries shall submit the same formal declaration as the associated countries above in relation to the recognition of the legal personality and capacity of the EuBI ERIC on their legal order (Annex 5 to ERIC Practical Guidelines).

ee) Intergovernmental Organisations

Under the ERIC legislation, intergovernmental organisations may become members. For instance, the **Dutch Language Union** as an intergovernmental organisation is one of the founding members of the CLARIN-ERIC.

EMBL as an intergovernmental organisation has a strong interest in joining EuBI. In fact the current Hub Proposal foresees that EMBL will become one of the three hub hosting partners next to Finland, which provides for the statutory seat and Italy, which will host the Medical Imaging Hub – EMBL (i.e. through its headquarters in Heidelberg) will host the Biological Imaging Hub. As founding member of the EuBI ERIC and member of the current Interim Board, the **EMBL** plans to sign the ERIC statutes together with Finland and Italy as well as the other founding members.

Since EMBL plans to be one of the founding members of the EuBI ERIC, EMBL as an intergovernmental organisation needs to submit a similar declaration as the associated countries and third countries above (Annex 6 to ERIC Practical Guidelines; see also below chapter III. 3)).

c) Special focus: VAT and excise duty exemptions

Finland as the **host country** of the statutory seat needs to prepare a Host Member State Declaration recognising the EuBI ERIC as an international body and international organisation within the meaning of the directives on VAT and excise duties, which will allow the ERIC to benefit both from VAT and excise duty exemptions on its purchases in all EU Member States, under certain limits and conditions. The exemptions provided for under both directives will be applicable in all EU Member States once the ERIC is set up. Subject to the limits and conditions laid down in the agreement, the exemptions apply to goods or services purchased by an ERIC, regardless of whether these are local purchases or intra-EU purchases, and to goods imported from third countries.

The exemptions have no effect as regards goods or services procured from and taxable in the territory of **third countries, associated countries and of international organisations**. These will

only be exempted from taxes and excise duties in the territory of these entities, if the entities have granted exemptions to a specific ERIC bilaterally. Since Art. 17 of the draft statutes provides that VAT and excise duty exemption shall apply to all purchases by the ERIC, all third countries, associated countries and international organisations that would like to become either founding or future members of the ERIC need to agree to a VAT and excise duties exemptions in the above sense. A third country or associated country will therefore only be able to become a member if it provides a recognition of providing equivalent treatment of the EuBI ERIC as an international organisation with respect to relief from VAT and excise duties (Annex 5 to the Practical Guidelines). The same applies to international organisations, so that they have to submit the same recognition (Annex 6 to the Practical Guidelines). The recognition shall be submitted by the entities in time for submission of the application to the EC, when they wish to be founding members. However, if these entities apply for membership after setting up the EuBI ERIC, they need to submit this declaration in time for application for the membership.

3) How to join as an Observer

Observer status is seen as a first step to joining EuBI ERIC for those entities, who are not yet in the position to join EuBI ERIC as a member, and who may apply for an observership. According to the current draft statutes, countries and intergovernmental organisations can join the EuBI ERIC by formal request signed by the competent authority of the prospect observer and submitted to the Chair of the EuBI Board.

Observers participate in the deliberations of the EuBI ERIC but due to their reduced contributions have no voting rights. Observer status is granted for a maximum period of three years. After the three years, the observer may apply for an extension of the observership pursuant to Art. 7.2 draft EuBI ERIC Statutes in accordance with the limits determined in the draft Rules of Procedure of the EuBI Board. Observers are required to pay 30% of the contribution, which they would have to pay if they were a EuBI member. They have the right to participate, without voting rights, in the EuBI Board and their research communities are allowed to participate in certain well defined activities.

III. Timeline of the process of setting up the EuBI ERIC

1) Pre-submission advice by the European Commission (the current phase of the EuBI project)

The members and observers of the EuBI Interim Board need to prepare and agree on the EuBI ERIC Statutes and the technical and scientific description, which are the essential content of the application for setting up the EuBI-ERIC (see above under chapter II. 2 a)).

The draft EuBI ERIC Statutes, the technical and scientific description of the Euro-BioImaging infrastructure and the VAT are foreseen to be finalized in the next EuBI Interim Board meeting on 19th January 2017.

Following the Interim Board's approval, through its permanent representation in Brussels, the required application documents will be forwarded to the European Commission.

2) Submission of the application to the European Commission

a) Assessment process

The purpose of this phase of the process is to ensure the application's compliance with the requirements of the ERIC Regulation. The 4-5 independent experts of the EU Commission, who were involved in preparing the ESFRI roadmap, will assess the three documents. Regarding the assessment process, there is no time limit.

b) Sending the signed formal request

According to the result of the assessment process, the EuBI Interim Board will revise the three documents. After the required changes are adopted, the applicants, at least one EU Member State and two other countries that are either EU Member States or associated countries, will submit the formal request (Annex 3 to the ERIC Practical Guidelines) signed by the future members of the EuBI-ERIC to the European Commission.

Moreover, the Statutory Seat, Finland, shall submit a declaration recognising the ERIC as an international organisation in the sense of the VAT and excise duty directives.

3) Implementation

The ERIC Regulation is directly applicable in the EU Member States and requires no further ratification. However, if international organisations, associated countries or third countries intend to be founding member of the EuBI ERIC, they need to submit a formal declaration recognising the EuBI ERIC as an international organisation in the sense of the VAT and excise duties and the exemption of the procurement directive providing detailed information on how they have ensured that the ERIC will have legal personality in their legal system and is granted the same exemptions as in the EU Member States. Since the EMBL plans to be one of the founding member of the EuBI ERIC, the EMBL as an intergovernmental organisation needs to submit this declaration (Annex 6 to ERIC Practical Guidelines). The same applies to associated countries (e.g.: Israel, Norway), when they wish to become founding members of the EuBI ERIC as well (Annex 5 to ERIC Practical Guidelines).

Before the European Commission prepares its decision based on the content of the application, they will ask the opinion of the ERIC Committee which consists of all EU Member States.

4) Commission decision

The formal decision of the European Commission, rejection or setting up the EuBI-ERIC, **will be published in the *Official Journal of the European Union***. In the case of a favorable decision of the European Commission, the EuBI-ERIC has legal personality, and the EuBI-ERIC Statutes enter into force, so they create a legally binding obligation for the members. The entities who signed the application will be founding members of the EuBI-ERIC automatically.

The first EuBI Board meeting shall be held **as soon as possible in accordance with Art. 20. 7 draft EuBI ERIC Statutes** after setting up the EuBI-ERIC.

Further members and observers can join the EuBI-ERIC at any time upon the decision of the EuBI Board.