

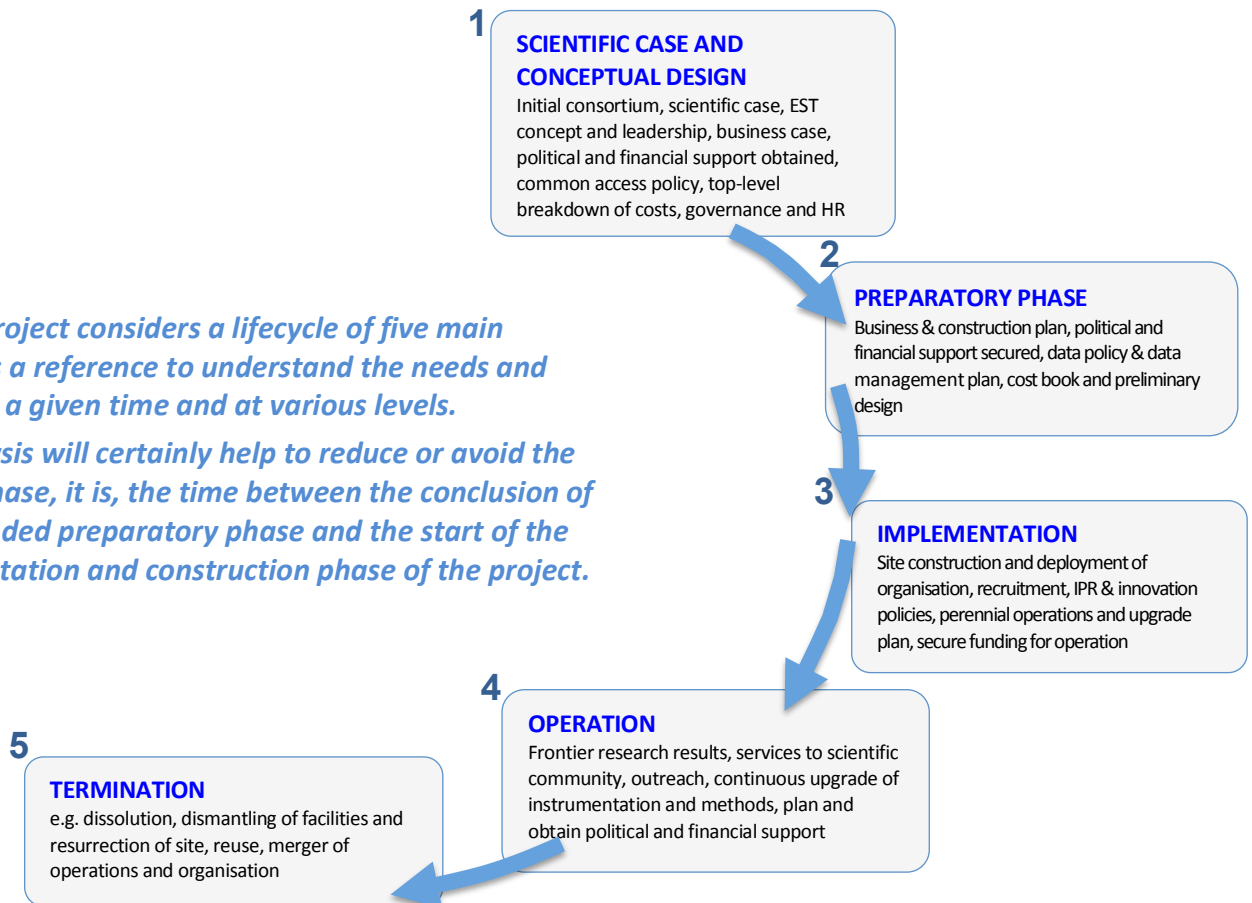


Legal entity, Governance bodies and operation Funding scheme for EST

Aware of the relevance of the Legal structure, Governance rules and Funding scheme in the establishment of a large research infrastructure, EAST Consortium has already studied all the alternative scenarios, based on the experience of existing ESFRI projects. The following conclusions are part of the analysis carried out under the framework of GREEST European project, and will be taken into account during the preparatory phase.

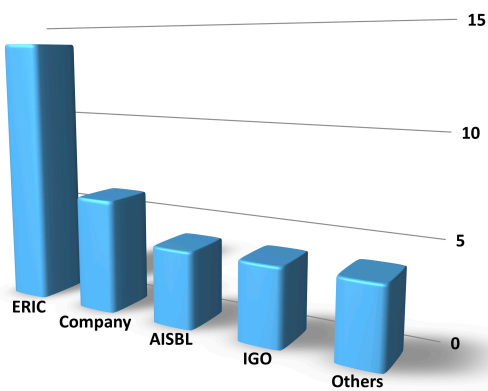
The EST Project considers a lifecycle of five main periods as a reference to understand the needs and targets at a given time and at various levels.

This analysis will certainly help to reduce or avoid the interim phase, it is, the time between the conclusion of the EC funded preparatory phase and the start of the implementation and construction phase of the project.





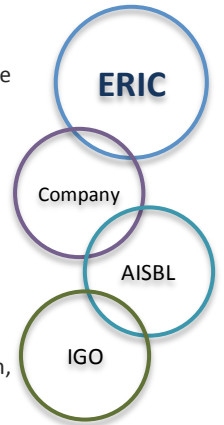
Legal Entity



The main legal entity chosen by the research infrastructures included in the ESFRI Roadmap 2016 are:

1. **European Research Infrastructure Consortium (ERIC),**
2. National legal company linked to International Cooperation Agreement,
3. International non-profit organisation (e.g. AISBL), or
4. Inter-Governmental Organization.

A total of 14 European research infrastructures (e.g. ARGO, ICOS, EATRIS, BBMRI, ECRIN, SHARE, EMSO, Lifewatch, etc.) have opted for an ERIC form, while other 10 proposals are under preparation or evaluation by the European Commission. All member states participating in EAST Consortium participates already in at least one ESFRI project.



The ERIC Regulation addressed one of the major difficulties that was identified for the establishment of new European RIs, i.e. the lack of an adequate legal framework agreed by all countries allowing the creation of appropriate partnership with partners from different countries.



An ERIC has legal personality based on European law (Article 171 of the EC Treaty):

- 1) The spirit of a truly European venture, also allowing the participation of associated countries, third countries other than associated countries and intergovernmental organizations,
- 2) **A legal personality and full legal capacity recognized in all EU Member States (MS),**
- 3) Flexibility to adapt to the specific requirements of each infrastructure, leaving the members to define in the statutes, case by case, membership rights and obligations, bodies of the ERIC and their competences,
- 4) Some privileges and exemptions allowed for intergovernmental organizations,
- 5) **A faster and more cost-efficient process** than creating an international organisation.

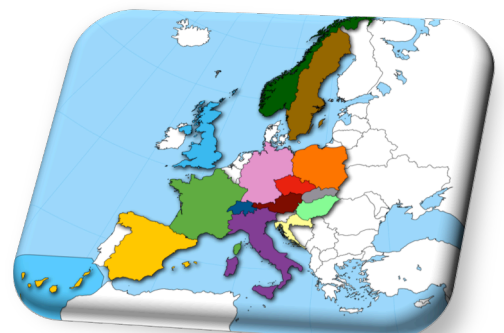
The application process takes place in two steps in order to ensure that a full signature procedure by all members is only needed once even if the assessment of the application leads to modification requests. Application can be sent at any time. The estimated duration of both steps 2 takes 9 months.

The ERIC Regulation is directly applicable in MSs and requires no transposition, facilitating the quicker establishment of European RIs by saving time in avoiding the repetition of negotiations.

PROs	CONS
Legal personality with full legal capacity recognised in all MS;	To benefit from the tax exemptions, it needs to be recognized by the country hosting its seat;
Flexibility to adapt to the specific requirements of each research infrastructure;	Speed of implementation of the tax privileges may depend on the location of the seat;
Greater political visibility as implementation of the legal form designed by EC, improved communication with key European policy and decision makers;	The application process may be long, since it needs negotiation and approval process on national level.
Represents a lighter process than creating an international organisation, clear submission procedure;	
Funding might be safer due to internationally binding contacts, fixed in the statutes;	
Own procurement rules and evaluation criteria;	
Ability to recruit its own personnel, etc.	

Membership Rules (Article 9):

- 1) At least one Member States and two other countries that are either MSs or Associate Countries (AC) must agree to establish and operate together a RI.
- 2) ACs, third countries other than ACs as well as specialised intergovernmental organisations may become members, or observers without voting rights, subject to conditions and modalities specified in the statutes.
- 3) MSs or ACs shall hold jointly the majority of the voting rights in the Assembly of Members (AM).
- 4) Any MS, AC or third country may be represented by one or more public entities, including regions or private entities with a public service mission.



Governance Rules

The minimum governing bodies required by the ERIC regulation are an **Assembly of Members (AM)** and a **Director or a Board of Directors (BD)**.

The AM which is the body having full decision-making powers while the Director or BD is the executive body and legal representative of the ERIC. Nevertheless, each ERIC is free to choose its own internal organisation as well as establish the advisory bodies set up in the statutes, such as scientific committee or an administrative and finance committee.

The following is just an example of those possible bodies that may provide non-binding strategic advice to the management of the EST organisation, where EST Council will play the role of the AM.

- **Administrative and Finance Committee:** The A&F will oversee all major administrative and financial functions of EST and will give advice and recommendations for decisions to the Council.
- **Scientific and Technology Committee:** The S&T independently will assess the scientific goals and the overall layout, and will advise on the scientific objectives, of the EST.

Financial Scheme

Being on the ESFRI roadmap implies so far to receive EC funding preparing the project implementation. Thus, the Preparatory Phase aims at bringing the project for the new RI identified in the ESFRI roadmap to the level of legal, financial, and, where applicable, technical maturity required for implementing it. The consortia should involve during this phase all the stakeholders necessary to move the project forward, to take the decisions, and to make the financial commitments necessary before construction can start.

For the EST to be feasible it is vital to have proper balance between in-kind and in-cash contributions. The latter will mostly come from:

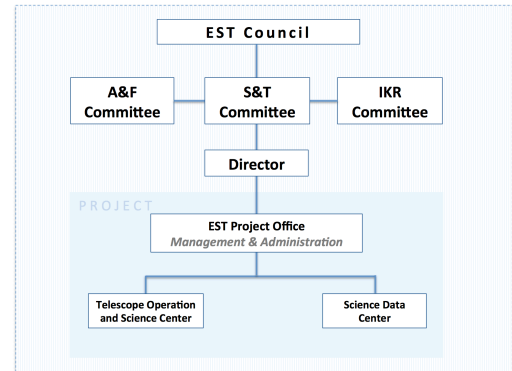


Lessons learnt from previous ESFRI projects:

- 1) Start as early as possible in the Preparatory Phase project.
- 2) Establish a risk management.
- 3) **Finish the Preparatory Phase with basic structures in place** (even in the form of a very light institutional framework) to represent the project and ensure continuity.
- 4) Establish a strong stakeholder of the hosting country.
- 5) Few key staff members dedicated full time to preserve and promote the European character of the project.
- 6) A template of **suitable legal structures** with pertinent questions to be addressed on the hosting of the legal entity.
- 7) Establish a **flexible European legal structure** as an intermediate approach which can be easily adjusted to RIs.

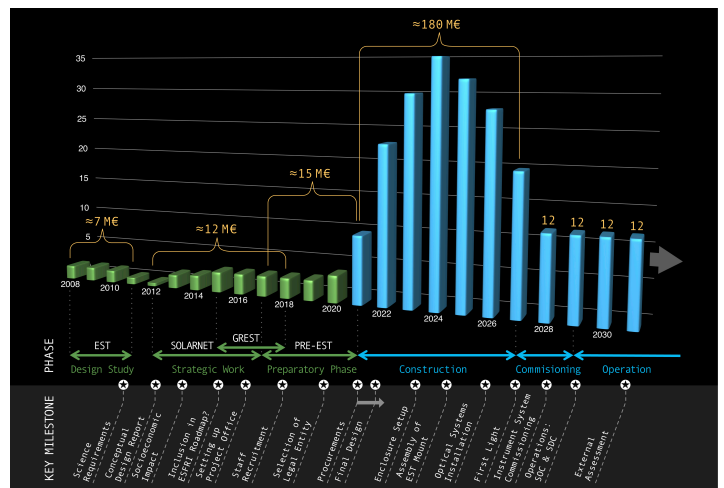
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Governance Structure



- **In-Kind Review Committee:** The IKR will oversee all in-kind contributions, including the corresponding implementation of rules and legal framework for the agreement, implementation and final accreditation.

Last, the **statutes** contain the essential provisions, which may be completed by detailed provisions included in the implementing rules or other internal documents adopted by the ERIC.



In-kind Contributions

An IKC consist either of the direct provision of a tangible asset to the infrastructure or of expenditure incurred directly by the contributor, which benefits the infrastructure and satisfies its objections. They include for example:

- Technical components for the facility (also personnel needed to perform the testing, installation and/or integration),
- R&D work (also personnel needed to perform the work),
- Personnel made available for specific tasks during the construction phase, or
- Other products and services relevant for the completion of the facility.