



FORESTERRA

Enhancing Forest RESEARCH in the MediTERRanean
through improved coordination and integration



Session 4: Transnational Joint Research Units. What for and how?

Andrée SONTOT
INRA – France

Deputy to the Head of International Relations



FORESTERRA

Enhancing Forest REsearch in the MediTERRanean
through improved coordination and integration



1. JTRU : clarifying the concept
2. The starting point : what's your project ?
Its needs and legal environment
3. The « what for » question
4. The « how » question

1. JTRU: clarifying the concept

JRU (EU FP 6) : Joint research unit means a partnership between legal entities and without legal entity of its own, with the following characteristics :

- Scientific and economic unity
- « permanent » character (i.e. not one-off or project specific)
- Recognized by a public authority.

Based on an agreement and has **no legal status** ; usually between entities of the same nationality but can be between entities with different nationality; public and/or private entities

1. JTRU: clarifying the concept (2)

Research infrastructure

- **EU definition:** « RI » refers to facilities, resources and related services used by the scientific community to conduct top level research in their respective fields, ranging from social sciences to astronomy, genomics to nanotechns. RI may be 'single-sited', 'distributed' or 'virtual'.
- **A process:** ESFRI (European Strategic Forum on RI)
- **A legal tool:** ERIC (European Research Infrastructure Consortium), Council Regulation (EC) N°723/2009 of 25 June 2009

1. JTRU: clarifying the concept (3)

From JRU to JTRU:

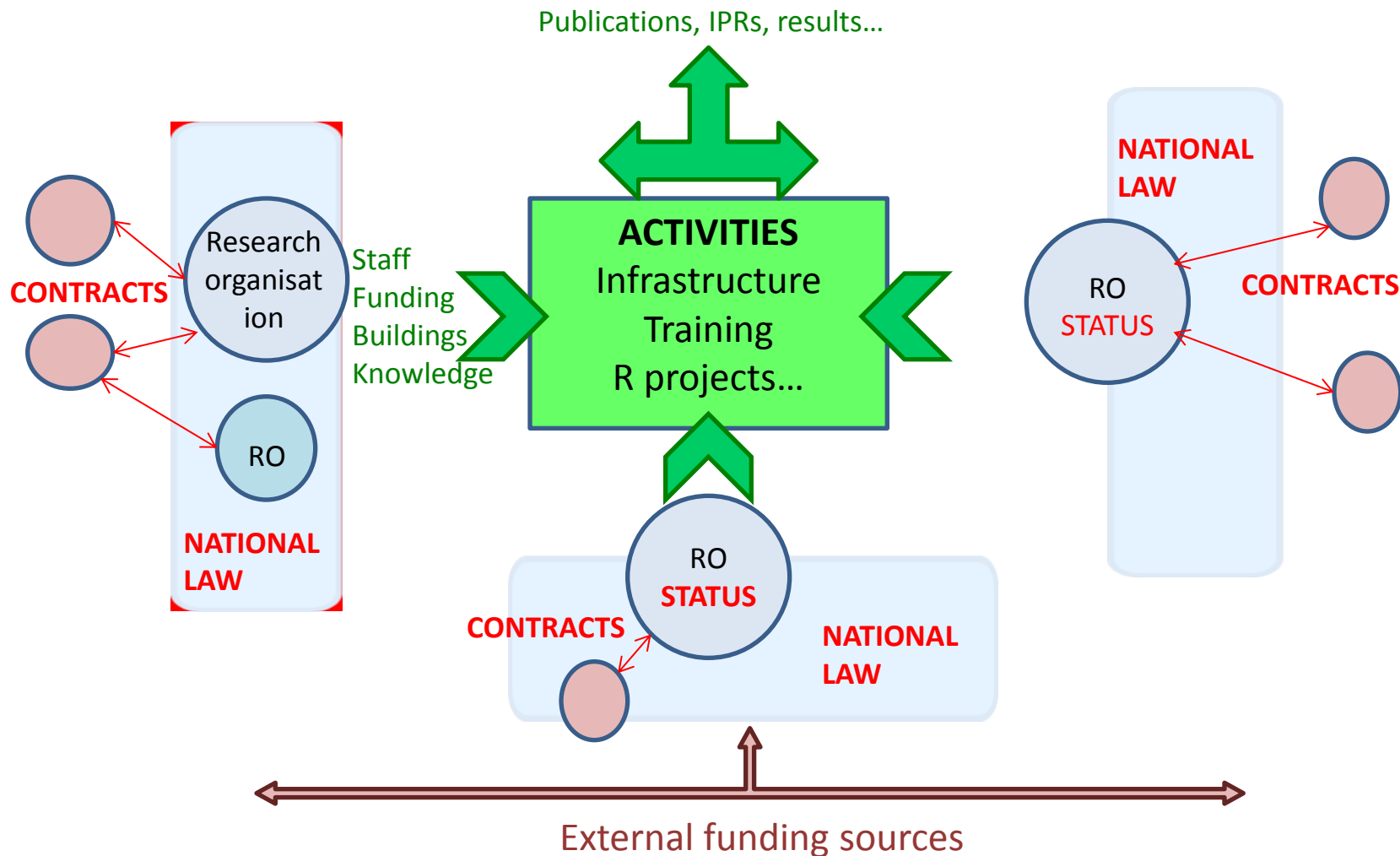
- Transnational: a partnership between legal entities *with different nationality* and without legal entity of its own.
- Contrary to RI, no common process or legal framework
- Contrary to the JRU, largely based on the French UMR example, few available examples

1. JTRU: clarifying the concept (4)

Lessons from experience (ESFRI, 2006) :

- **There is no « one-size-fits-all » solution** for the establishment (..). Very large facilities, distributed facilities, applied research facilities, basic research oriented facilities, may require different legal forms.
- **Form follows function!** The purpose/mission of the facility has to be defined before choosing the appropriate legal form.
- **Mixing of public/private partnership or mixing of European and non European partnership** may influence strongly the choice of the legal form

2. The starting point: what's your project ? (1)



2. The starting point: what's your project ? (2)

Constraints: 3 levels of law to consider

- National laws,
- Legal status,
- Contracts of participants

Freedom:

- Who's in ?
- What for ?
- With what means ?

3. The « what for ? » question (1)

The alternative: create a new legal entity / contractually link existing institutions

1. The legal entity option:

Best adapted to

- Long term / permanent
- Large or expensive infrastructure
(ESFRI: construction costs up to €1,5 billion, annual operating costs between €2M and €120M)
- Need to hire staff
- And/or national governments participation

3. The « what for ? » question (2)

1. The legal entity option:

Different legal forms possible

- Intergovernmental Organisation (ex EFI)
- European Economic Interest Grouping (EEIG)
(more adapted to technology than to basic or applied research)
- ERIC (long procedure, heavy investment, little experience back)
- Association Internationale sans but lucratif belge (AISBL) (only existing association form for Int. Research)
- National companies or foundations

3. The « what for ? » question (3)

2. The contractual option:

Best adapted to

- MT duration
- Sharing / reinforcing existing infrastructures
- Functioning mainly with existing staff

NB : not necessarily lighter or more flexible than the legal entity option

3. The « what for ? » question (4)

In any case: always several legal documents

- A basic (constitutive) legal document, containing :
the frame of the agreement; the scope and objective; the governance and management; the resources and commitments; general provisions; the options for internal regulation (monitoring, adjustments, ...)
- For a legal entity, the administrative constitutive act
- If needed (large consortia, calls for proposals...) rules of procedure
- Specific detailed agreements per scientific activity

4. The « how ? » question (1) Structure of a JTRU

Classic:

- An executive direction (1/2 co-Directors / Governing body with all members / steering committee of elected members)
- A consultative scientific body (mixed / + external; representative of members / intuitu personae)
- secretariat

TBD:

- Different constituencies corresponding to different nature of members (cf EFI governments / institutions)
- A stakeholder consultative group
- Different groups per nature of activity, technological domain, infrastructure uses

4. The « how ? » question (2) Staff of a JTRU

Classic:

- Each member retains all existing rights (authority) and obligations (salary, retirement...) towards its staff
- Each member ensures social / insurance coverage for its staff abroad

TBD:

- Need / modalities to hire new staff
- Cost sharing for travel, stay, bench costs

Consult your lawyers:

- Employment laws applying to different staff situations
- Modalities of LT stays abroad
- Staff participation to IPR on inventions
- Security, confidentiality
-

4. The « how ? » question (3) Financial resources

Classic:

- Members inform annually the JTRU of the resources it provides
- Annual reporting by JTRU Direction + possibility to audit
- Each member applies its own management rules to the resources it uses in support of the JTRU
- A procedure to apply to external calls and to manage them

TBD:

- How to participate to EU projects (each member becomes a contractor / only one signs, the others eligible as third parties)

Consult your lawyers:

- Extent of financial commitments
- Accounting obligations under national law
- Adequacy of different legal entities (association, foundation) for the management of resources

4. The « how ? » question (4) Knowledge management

Classic:

- Confidentiality
- Publications: principle of joint agreement before publication (express / silence); specific provisions for PhDs
- IPRs : on what is put in (each members retains ownership of its knowledge, bio material...); on what is produced (principle of shared IP, equally / according to contribution to the invention)

TBD:

- Commercial use of results (general mandate to (a) member(s) / external structure(s) OR TBD on a case by case basis)

Consult your lawyers:

- Maintenance of IPRs, counterfeight actions
- Exchange and utilisation of biological material
- Obligations from existing related contracts on related issues

4. The « how ? » question (5) General provisions

Classic:

- Duration of the agreement / of specific provisions
- Renewing, termination, withdrawal, extension... procedures
- Conflict resolution (amiable, arbitration, court) + applicable law(s)
- Liability (biological material)
- Reciprocal information on cooperation with third parties

TBD:

- Termination, esp. for legal entities and/or creation of infrastructure, hiring of staff

Consult your lawyers

Conclusion

No one-fits-all solution →

- Define what you want to do
- Identify what you might need to put in and get out of the JTRU

High legal

- Specificities for each member (national law, legal status, contractual practice and portfolio)
- Speciliazed competences (staff, finance, intellectual property rights....)

→ associate your lawyers ASAP



FORESTERRA

Enhancing FOrest RESearch in the MediTERRAnean
through improved coordination and integration



Thank you for your attention

andree.sontot@paris.inra.fr





FORESTERRA

Enhancing Forest RESearch in the MediTERRanean
through improved coordination and integration



Annexes

Excerpts from

<http://www.copori.eu/1384.phg>

ESFRI, Report of the Workshop on the Legal forms of research infrastructures of pan-European interests, 23 March 2006, Brussels



FORESTERRA

Enhancing FOrest RESearch in the MediTERRanean
through improved coordination and integration



1. What kind of collaboration shall be intended?

A **contractual form** only such as a simple collaboration contract or an agreement like a Memorandum of Understanding (MoU) is suitable:

- ...if short and medium term actions will be agreed on.
- ...for projects which are not fully mature.
- ...for an intermediary step.
- ...if representation and management of the funding is given by a partner in the framework of a consortium (mandate).
- ...if staff comes from the partners as in-kind contribution.
- ...in preparation of a legal entity to reach more maturity for the next step.
- ...to get a mandate.

A dedicated **legal entity** is more interesting if...

- ...sustainability is of high interest.
- ...a sustainable budget is very important.
- ...independent single site has to be established.
- ...there is a need to recruit staff and
- ...there is a need to operate an independent office.
- ...there is a need of strong identity.
- ...there is a need of stronger commitments.
- ...when the collaboration needs autonomy (legal capacity)

5. What are the most important aspects of international legal forms?

There are various international legal forms but only the international organization as an Intergovernmental Organization (IGO) has been used in the past for the operation of a research infrastructure. An IGO requires the approval of the States. Governments do not like the independency and nearly incompressible budgets of an IGO ensured by specific treaties.

International Organization

- Gives the Member States equal saying and participation rights in the decision-making process
- Sustainable legal and financial framework based on commitments by governments
- Independent functioning of the organization facilitated by its international status including privileges and immunities commonly granted to IGO
- Their establishment requires longtime of preparation
- Have a specific status concerning tax and procurement regulations
- Special status of the staff, e.g. salary is tax free, therefore staff is very costly

The establishment of EMBL as an international organization in the final legal form took in total 12 years

6. What are the most important aspects of European legal forms?

Beside ERIC there exist no other European legal forms which can be adapted to a RI. Therefore this chapter is restricted to ERIC. If you are interested in other European form, please see here.

ERIC

- High political acceptance and visibility
- Especially designed for pan-European research organizations
- Very favorable solutions for the issue of the European non-profit character of the organization can accommodate its distributed nature
- Tax exemption
- Very flexible internal structure which is also not based on national law
- Funding might be safer due to internationally binding contacts
- Financial support pro community easier
- Easier for entity to get national funding
- Short regulation
- Limited economic activities are allowed
- No national privileges
- MS are founding members of ERIC, the interest of MS might be contradictory to aim of national facility.
- ERIC is a new legal form, therefore little experience exists.

7. What are the most important aspects of the legal forms of national companies with limited liability?

National legal forms are well known by the hosting country and depend on their national laws. The legal regulations are less known by parties of other countries. Negotiations for agreements between countries on the basis of national law can take a long time, because countries may dislike one the one hand funding a legal entity that is controlled by national law of another country and the idea of long term financial commitments subjected to taxation and generating returns in other Countries. Overall one can say the national regulations concerning companies with limited liability do not differ much.

Gesellschaft mit beschränkter Haftung (GmbH) DE

- Foundation by several people possible
- Simple change of shareholders
- Limited liability on the capital fund, only assets can be held liable
- Very high acceptance
- Minimum capital fund of 25.000 €
- Application for tax exemption possible if no commercialize activities
- Risk of foundation (Full liability of shareholders before the entry in the register of companies)
- Time consuming formalities for foundation; notarization is required to register the company



FORESTERRA

Enhancing Forest REsearch in the MediTERRanean
through improved coordination and integration



Private Company Limited by Shares/by guaranty (Ltd) UK

- Easy to set up (fast and cheap)
- Clearly defined accounting rules and budget disciplines
- Easy admission of new members
- Easy transmission of company's share
- Liability on assets of the RI
- No notarization necessary
- Potential exposure to the UK company tax system
- Disclosure obligation and accountability in England
- Certain legal uncertainty in other countries?

Société Civile FR

- No legal minimum for required registered capital
- Very attractive taxation (no company tax, no corporate tax, no local authority rates)
- Governance organization is only described by Articles and not by the law
- No tax if commercial activity profit less than 10 %
- No joint and several liabilities of shareholders/partners
- Constitution of the general meeting of shareholders is imposed



FORESTERRA

Enhancing FOrest RESearch in the MediTERRanean
through improved coordination and integration



Sociedad Civil ES

- Tax benefits
- Access to advantages and subsidies
- Possibility to engage in economic activity with low company tax
- Easy, fast and cheap foundation
- No start capital
- Every shareholder is full liable with his private assets
- Every shareholder has to become insured as autonomous
- In General this legal form is excepted in awarding subventions
- In case of high profit, taxes are high

8. What are the most important aspects of the legal forms of national foundations?

Stichting NL

- Loos structure
- Easy registration
- No capital needed
- Little commercial activities are allowed which then requires tax payment

Fundación Spain ES

- Tax benefits
- Access to advantages and subsidies
- Possibility to engage in economic activity with low tax
- Minimum capital of 30.000 €
- Time consuming formalities for foundation; notarization is required to register the foundation

	Unlimited liability Company	Limited liability Company	Foundation
Advantages	<ul style="list-style-type: none"> • Clear management, governance and accountability • Clear accounting rules • Adapted to industrial use • Flexible policy staff (<i>limited by national labour rules</i>) • Avoid high cost intergovernmental institute 	<ul style="list-style-type: none"> • Clear management, governance and accountability • Clear accounting rules • Adapted to industrial use • Flexible policy staff (<i>limited by national labour rules</i>) • Avoid high cost intergovernmental institute • Can attract additional external investment/funding (in return for shares) • Limited liability 	<ul style="list-style-type: none"> • Clear management and governance • Clear accounting rules • Adapted to industrial use • Flexibility policy staff if allowed by national rules • Avoid high cost intergovernmental institute

	Unlimited liability Company	Limited liability Company	Foundation
Disadvantages	<ul style="list-style-type: none"> • Unlimited liability 	<ul style="list-style-type: none"> • Some organisations are not able to hold shares • Some national laws are more formal than others: Director General nationality, minority voting rights, salary scale, procurement rules • When shareholders are public organisations : less commercial freedom, uncertain accountabilities - state aid rules may apply 	<ul style="list-style-type: none"> • Some country laws other than The Netherlands or Germany are restrictive for foundations

9. What are the most important aspects of the legal forms of national associations?

Association FR

- Very flexible governance structure
- No capital required
- No tax if commercial activity profit less than 10 %

German Association DE

- Limited liability
- Relatively easy establishment
- Clear proprietary accrual between members and association,
- Flexible structure
- No capital required
- Limited economic acting is allowed
- Legal uncertainty because of reformation of German law



FORESTERRA

Enhancing FOrest RESearch in the MediTERRanean
through improved coordination and integration



Associations Internationales Sans But Lucratif (AISBL) BE

- The location in Belgium considering the neutrality of this country towards the partners of the RI
- Constitute a suitable transitional legal structure on the way to ERIC
- No initial capital needed
- Flexibility when defining the Articles of Association
- Limited liability
- Full legal personality
- Tax exemption
- fast creation/foundation process (about two months after submission to Belgian Ministry)
- International image and European character
- Flexible governance structure, reallocation of shares, non-profit status and benefits
- Personnel regulations that can be applied to all kinds of employees and allow for staff prerequisites
- Needs an statute in French language
- Head address must be in Belgium
- Not suitable for big investments