



**COUNCIL OF
THE EUROPEAN UNION**

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PROPOSAL

from: European Commission
dated: 3 December 2012

No Cion doc.: COM(2012) 682 final

Subject: Proposal for a Council Regulation amending Regulation (EC) No 723/2009 concerning the Community legal framework for a European Research Infrastructures Consortium (ERIC)

Delegations will find attached a proposal from the Commission, submitted under a covering letter from Mr Jordi AYET PUIGARNAU, Director, to Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union.

Encl.: COM(2012) 682 final



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Proposal for a

COUNCIL REGULATION

**Amending Regulation (EC) No 723/2009 concerning the Community legal framework
for a European Research Infrastructures Consortium (ERIC)**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

The ERIC Regulation¹ was adopted by Council in 2009 to facilitate the establishment and operation of European research infrastructures on a non-economic basis. With the Regulation a new legal instrument was created at EU level for establishing European research infrastructures with a legal personality recognized in all Member States. Many of the projects included in the European Strategy Forum on Research Infrastructures (ESFRI) Roadmap, are planning to use the ERIC as the legal instrument to implement and operate the research infrastructure.

The ERIC Regulation provides in Article 9(1) for a distinction and a difference in treatment between Member States, associated countries, third countries other than associated countries and intergovernmental organisations. An ERIC needs at least three Member States as members (Article 9(2)) and Member States shall jointly hold the majority of the voting rights in the assembly of members (Article 9(3)). An ERIC however, may be hosted by a Member State or an associated country (Article 8(1)).

Associated countries and in particular Norway, have indicated strongly that they intend to contribute as host or member to a significant number of ERICs that are in preparation if they would have voting rights as do EU Member States in an ERIC, especially when they would be host of an ERIC and thus provide substantial contributions to its activities.

The objective of the proposed amendment of the ERIC Regulation is to avoid that associated countries would not be able to become host or member of an ERIC because in the current situation, their voting rights do not potentially reflect their financial support to ERIC projects.

- **General Context**

Until now no associated countries or third states other than associated countries have become member of an ERIC. In view of the Innovation Union commitment to complete or launch construction by 2015 of 60% of the priority infrastructures of pan-European interest in the ESFRI roadmap it is important that associated countries could also be fully involved in the establishment and operation of ERICs as a member or host and contribute to these infrastructures.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

The Commission Impact Assessment that was performed when the ERIC Regulation was proposed for adoption by Council will not be changed by the proposed limited technical amendments of the ERIC Regulation.

¹ Council Regulation (EC) No 723/2009 – Community Legal Framework for a European Research Infrastructure Consortium (ERIC)

3. LEGAL ELEMENTS OF THE PROPOSAL

The proposed amendment of the ERIC Regulation concerns solely Article 9 paragraphs 2 and 3 in which it is proposed that a minimum of one Member State together with at least two Member States or associated countries is necessary for establishing an ERIC. Furthermore it is proposed that Member States or associated countries shall hold jointly the majority of voting rights in the general assembly. No other changes are proposed.

4. BUDGETARY IMPLICATION

The proposed amendment of the ERIC Regulation has no budgetary implications for the Union or for the Member States.

Proposal for a

COUNCIL REGULATION

Amending Regulation (EC) No 723/2009 concerning the Community legal framework for a European Research Infrastructures Consortium (ERIC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 187 and 188 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legal act to the national Parliaments,

Having regard to the opinion of the European Parliament²,

Having regard to the opinion of the European Economic and Social Committee³,

Having regard to the opinion of the Committee of the Regions⁴,

Whereas:

- (1) Council Regulation (EC) No 723/2009 of 25 June 2009 on the Community Legal Framework for a European Research Infrastructure Consortium (ERIC)⁵ establishes a legal framework laying down the requirements and procedures for and the effect of setting-up a European Research Infrastructure Consortium.
- (2) The support and development of research infrastructures in Europe has been an ongoing objective of the Community, as last reflected in Decision No 1982/2006/EC of the European Parliament and of the Council of 18 December 2006 concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013)⁶ and in particular in Council Decision No 2006/974/EC of 19 December 2006 on the specific programme "Capacities"⁷.
- (3) The European Strategy Forum on Research Infrastructures (ESFRI) and the e-Infrastructure Reflection Group (e-IRG) have produced and updated the first ever European Roadmap for Research Infrastructures.

² OJ C , , p. .

³ OJ C , , p. .

⁴ OJ C , , p. .

⁵ OJ L 206, 8.8.2009, p.1

⁶ OJ L 412, 30.12.2006, p.1.

⁷ OJ L 54, 22.2.2007, p.101.

- (4) Since the entry into force of the Community legal framework for a European Research Infrastructure Consortium (ERIC) in 2009, two European research infrastructures have been awarded ERIC status.
- (5) Membership of an ERIC is open to Member States, associated countries, third countries other than associated countries and intergovernmental organisations.
- (6) Associated countries play an integral role in the preparation and the implementation of European research infrastructures and should be able to participate in ERIC's on the same footing as Member States, as they contribute to the scientific excellence of Union research and to the competitiveness of the Union's economy through their support.
- (7) In order to facilitate the participation of associated countries in ERIC's, Article 9(2) and (3) of Regulation (EC) No 723/2009 should be amended so that the contributions of the associated countries can be fully reflected in terms of membership and voting rights,

HAS ADOPTED THIS REGULATION:

Article 1

Article 9(2) and (3) of Regulation (EC) No 723/2009 are replaced by the following:

"2. An ERIC shall have one Member State and at least two other Member States or associated countries as members. Further Member States or associated countries may join as members at any time on fair and reasonable terms specified in the Statutes and as observers without voting rights on conditions specified in the Statutes. Third countries other than associated countries as well as intergovernmental organisations may also become members of an ERIC, subject to approval by the assembly of members, referred to in Article 12(a), in accordance with the conditions and procedure for changes in membership laid down in its Statutes.

3. Member States or associated countries shall hold jointly the majority of the voting rights in the assembly of members. For an ERIC hosted by a Member State, proposals for amending its Statutes shall require the agreement of the majority of the Member States that are member of the ERIC.

Article 2

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

*For the Council
The President*