

## Legal Review Working Group - questions for survey to ELIXIR Member States

### Background text and instructions

As part of the review of ELIXIR's legal model and as required under the EXCELERATE project, a survey of Member States' views will be carried out. The results of this survey will be shared with the legal firm appointed to carry out the review, the members of the [ELIXIR's Legal Review Working Group](#) (including the ELIXIR Hub members on the Working Group) and the ELIXIR Board, but will otherwise be confidential and never made public beyond those groups. When shared within these groups the responses will never indicate the individual that made the submission, but the country of submission will be known.

The results of the survey will be used to:

1. Help the appointed law firm
  - a) to evaluate ELIXIR's current legal framework considering
    - its characteristics and long term sufficiency for the infrastructure;
    - the characteristics of the European Research Infrastructure Consortium ("ERIC"), a legal framework based on a EU Regulation;
  - b) to highlight how the current legal model could be improved and whether improvements would only be possible by changing the legal model entirely;
  - c) if improvements to the current legal model or even a change of legal model are suggested, to understand the cost and efforts that are required to implement these improvements or change entirely.
2. Help the ELIXIR Hub to evaluate ELIXIR's governance and internal operation (e.g. operation of the ELIXIR Board) and assess whether improvements can be made without needing to change the current model. Section V contains questions relating to this aspect.

In the first instance, the survey should be completed by the Administrative Delegate of each ELIXIR Member and Observer State. The survey will take around 30 minutes to complete.

A pdf showing all sections and questions in one go is available [here](#).

When preparing responses, it may also be helpful to refer to the [FAQ on ELIXIR's legal model](#), which is available [here](#).

**The survey will close on Friday 29 June.**

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### General information

**Email address:**

**ELIXIR Member State:**

**Role in ELIXIR:**

## Questions

### I. Legal model - general

ELIXIR's legal framework is implemented through the **ELIXIR Consortium Agreement (ECA)**, which has been concluded among Member States (currently 20 countries) and the European Molecular Biology Laboratory (EMBL). The ECA covers ELIXIR's mission, membership, obligations of the Members and the ELIXIR Hub, the governance structure between the ELIXIR Hub and the ELIXIR Nodes and the internal governance structure of the ELIXIR Hub itself.

ELIXIR itself does not have a legal personality. Based on the ECA, the EMBL agrees to carry out activities on behalf of ELIXIR. EMBL (<http://www.embl.org>) is an international organisation conducting basic research in molecular biology with headquarters in Heidelberg. By using EMBL's legal personality ELIXIR takes advantage of EMBL's legal personality and its privileges and immunities. Legal transactions for ELIXIR are handled by EMBL, which also employs ELIXIR's staff subject to EMBL's Staff Rules and Regulations. EMBL provides, at full cost, ELIXIR offices, scientific facilities and services such as human resources structures, procurement and financial management, which ELIXIR funds through an overhead charge in accordance with EMBL's financial regulations. ELIXIR activities are carried out independently from EMBL, governed by the ELIXIR Board and based on separate accounts. ELIXIR Member States therefore only finance those activities that are related directly to ELIXIR. The current legal model has been in place for four years.

The **European Research Infrastructure Consortium (ERIC)** was introduced in 2010 through an EU Regulation (Council Regulation (EC) No 723/2009) to facilitate the establishment and operation of research infrastructures of European interest with the involvement of several European countries. The ERIC becomes a legal entity from the date the European Commission decision setting up the ERIC takes effect.

#### The ERIC legal framework provides:

- a European joint-venture (also allows for the possibility of participation of non-European countries)
- a legal capacity recognised in all EU Member States
- a faster process than creating an international organisation
- exemptions from VAT and excise duty.

The ERIC is able to employ staff based on national employment law. The employment contract specifies which national law is applicable.

An ERIC may adopt its own procurement procedures, which have to respect the principles of transparency, non-discrimination and competition. The members of an ERIC can be Member States, associated countries, third countries and intergovernmental organisations.

So far 17 research infrastructures (mainly current ESFRI and ESFRI landmark projects) have chosen the ERIC as a legal model. Further information, including a link to Practical Guidelines, issued by the European Commission can be found [here](#).

#### 1. Is the current legal model of the ELIXIR Consortium Agreement a suitable one for ELIXIR?

- Yes
- No
- Not sure
- Free text comments

**2. Is the European Research Infrastructure Consortium (ERIC) model a suitable one for ELIXIR?**

- Yes
- No
- Not sure
- Free text comments

**II. EMBL's role within ELIXIR**

Both the [High-level Assessment Expert Group \(AEG\) recommendations](#) of 2013 and the [ESFRI prioritisation recommendations](#) of 2014 encouraged ELIXIR to assess whether there was sufficient “clarity in the double role of EMBL as a partner and contractor”. This section looks in detail at those aspects.

EMBL is a Member in ELIXIR and as such participates in the decision-making processes of the ELIXIR Board, with one vote like all other Members of the ELIXIR Consortium. As per the ELIXIR Consortium Agreement, EMBL agrees to host the ELIXIR Hub, e.g. provides those services essential for the operation and management of the ELIXIR Hub (e.g. employing ELIXIR Staff and making available facilities, infrastructure and services, such as procurement and financial management) and which require a legal personality. These services are funded by the ELIXIR Budget via an administrative overhead. ELIXIR uses EMBL's legal personality, which allows it for example to enter into agreements with third parties.

As a consequence of using EMBL's legal personality, ELIXIR shares a PIC code for applications to EU Framework Programmes for research, and ELIXIR Hub staff are subject to the same rules and regulations as EMBL staff, including the rule to limit employment contracts to a maximum of nine years.

EMBL-EBI serves as a Node of ELIXIR. EMBL therefore also provides technical and scientific services to ELIXIR including taking part in Commissioned Services (Implementation studies) and is subject to the same rules governing the provision of services by all ELIXIR Nodes ie following a successful application and evaluation procedure.

**1) Is there sufficient clarity of the roles that EMBL plays as a host of the ELIXIR Hub and provider of administrative functions, and a provider of scientific services via ELIXIR-funded Commissioned Services?**

- Yes
- No
- Not sure
- Free text comments

**2) Does the use of EMBL's administrative processes bring value to ELIXIR?**

- Yes
- No
- Not sure
- Free text comments

**3) Does the use of current model of EMBL as a provider of scientific services bring value to ELIXIR's scientific operations?**

- Yes
- No
- Not sure
- Free text comments

**4) Has the multiple roles of EMBL biased the scientific and programming decisions and funding decisions?**

- Yes
- No
- Not sure
- Free text comments

**5) Are there specific issues in relation to the relationship between ELIXIR and EMBL that require further examination?**

- Yes
- No
- Not sure
- Free text comments

### **III. Content of the ELIXIR Consortium Agreement**

In this section we aim to identify possible improvements to the ECA. The ECA includes ELIXIR's mission and strategy, the organisation and obligations of the ELIXIR Consortium Partners. The ECA covers the following provisions:

- Objectives and tasks of the infrastructure
- Membership
- Obligations of the Members
- Governance structure (mission and powers of the governance bodies)
- Finance
- ELIXIR Nodes (e.g. selection and evaluation process of Nodes)
- Intellectual Property
- Liability
- Entry into force
- Duration and evaluation of the infrastructure, etc.

A copy of the ECA is available [here](#).

**1) Do you have concerns with the current voting rights within the ECA for certain themes and topics?**

- Yes
- No
- Not sure
- Free text comments

**2) Do you have concerns with the current eligibility criteria for Membership or Observership or any other related issues (including the Provisional Membership scheme)?**

- Yes

- No
- Not sure
- Free text comments

**3) Do you have concerns with the current model to calculate the contribution by each country?**

- Yes
- No
- Not sure
- Free text comments

**4) Do you have any other suggestions related to other chapters of the ECA?**

- Free text

**IV. Implementation of changes**

This section aims at understanding the possible effects of making changes to the current legal model, or in changing from the ECA to an ERIC.

Any changes to the ECA would require following the requirements as set forth in Art. 17 ECA, i.e. amendments need to be agreed on unanimously and in writing. Furthermore, every Member State would need to ensure that the amended ECA is effective in its country. Presumably in most countries, their internal laws would prescribe that the process of consent to amendments is the same as for initial signature. Ultimately, ELIXIR requires confirmation that countries are signing in the way prescribed by their internal laws, that is that they are competent and the signature is valid.

An ERIC enters into force following a successful application process with the European Commission and publication in the Official Journal. The ERIC application process includes several steps. First of all the applications need to comprise a set of documents, including draft statutes, a technical and scientific description and tax related statements by the Host Member State. The evaluation process officially takes between 3 to 9 months, however, can also sometimes take longer depending on every single case. Following publication of the Statutes in the Official Journal the ERIC enters into force and does not require formal ratification.

The content of the statutes need to comply with the requirements of the ERIC Regulation. The content of the ECA could therefore only be used to a certain extent. Many clauses would require re-drafting. Furthermore the ERIC Regulation requires the infrastructure to establish a minimum set of Policies, such as dissemination policy, procurement policy, scientific evaluation policy, etc. which partly do not exist yet for ELIXIR.

**1) How long did it take you to ratify the ECA (from when the decision was taken to join to the point at which the ECA was ratified)?**

- Free text answer

**2) Approximately how long would it take in your country to change from ECA to an ERIC?**

- Free text answer

**3) Approximately how long would it take in your country to amend the ECA?**

- Free text answer

**4) What risks would you foresee in continuing with the current legal model?**

- Free text answer

**5) What risks would you foresee in changing to an ERIC?**

- Free text answer

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**V. Governance and operations**

This section is aimed at seeing if any improvements can be made to the operations of ELIXIR even without needing to change the legal model. The following questions relate to how the governance functions of ELIXIR operate in practice and what improvements can be made.

**1) Overall do you consider that ELIXIR's governance and operations work effectively, especially in comparison with other infrastructures (for example, compared to other ESFRI RIs).**

- Yes
- No
- Not sure
- Free text comment

**2) Are there aspects of ELIXIR governance that work less effectively than you would wish?**

- Yes
- No
- Not sure
- Free text comment ('Please outline these aspects')

**3) Do you have suggestions for improvements to the operation of ELIXIR Board meetings (e.g. format of the meetings)**

- Free text answer

**4) Are you satisfied with the operations of ELIXIR's advisory bodies, i.e. the Scientific Advisory Board and the Head of Nodes Committee?**

- Yes
- No
- Not sure
- Free text comments

**END**

Thanks you for completing this survey. The results of Sections I to IV will be used by the appointed legal firm in their assessment and recommendations. Regular reports will be given by the Legal Review Working Group to the ELIXIR Board on this ongoing work. For any questions on the process please contact [andrew.smith@elixir-europe.org](mailto:andrew.smith@elixir-europe.org).