

A graphic consisting of several dark blue circles connected by thin, curved lines, forming a network-like structure.

CLARIN

Analysis and Proposal(s) for Governance

D8S-1.2

2010

Editors: Bente Maegaard, Steven Krauwer, Hanne Fersøe, and Lina Henriksen



Common Language Resources and Technology Infrastructure

The ultimate objective of CLARIN is to create a European federation of existing digital repositories that include language-based data, to provide uniform access to the data, wherever it is, and to provide existing language and speech technology tools as web services to retrieve, manipulate, enhance, explore and exploit the data. The primary target audience is researchers in the humanities and social sciences and the aim is to cover all languages relevant for the user community. The objective of the current CLARIN Preparatory Phase Project (2008-2010) is to lay the technical, linguistic and organisational foundations, to provide and validate specifications for all aspects of the infrastructure (including standards, usage, IPR) and to secure sustainable support from the funding bodies in the (now 23) participating countries for the subsequent construction and exploitation phases beyond 2010.



Analysis and Proposal(s) for Governance

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Responsible: Bente Maegaard

Contributors: Steven Krauwer, Hanne Fersøe, Lina Henriksen



Contributing Partners: UCPH, UU.

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Scope of the Document

This report, *Analysis and Proposal(s) for Governance*, is a deliverable in work package 8, which aims to prepare the organizational foundations for the construction and exploitation phase of CLARIN.

The main objective of work package 8 is the preparation of a ready-to-sign agreement between the participating countries whereby they commit themselves to the joint construction and exploitation of the CLARIN Infrastructure.

In this document we analyse one by one the articles that make up the Council Regulation (EC) No 723/2009 of 25 June 2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC), referred to as the ERIC Regulation. It is the assumption that the ERIC Regulation is suitable for CLARIN and that it will be selected as the preferred legal form.

In the analysis we identify issues where decisions need to be made by the CLARIN research infrastructure partners and their national representatives in order for them to be able to base the future construction and exploitation phases of CLARIN on this legal form. Following the analysis we discuss each of the identified issues and, where possible, we propose a decision or alternatives.

CLARIN References

CLARIN D8S-1.1 *Requirements and Best Practice Overview for Governance*

CLARIN D8S-3.1 *Requirements and Best Practice for Transnational Coordination and Collaboration with Third Parties*

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1. Background and purpose

In October 2006 ESFRI released the first European Roadmap for Research Infrastructures. CLARIN is one of these infrastructures and subsequently CLARIN has received funding for the preparatory phase. Along with the technical tasks, one of the main tasks for the preparatory phase is to prepare for the construction and operation/exploitation phases. A crucial part of this preparation is the creation of an agreement between all the participating countries. This agreement is called the **CLARIN Construction and Exploitation Agreement**.

Such an agreement will cover governance and management issues, financial issues, and transnational collaboration issues.

The purpose of this report is to analyse CLARIN's requirements for governance and management structures, to investigate the requirements to these structures laid down in the newly adopted council regulation for a European Research Infrastructure Consortium (ERIC) which provides a community legal framework for the establishment of an ERIC and to make proposals for the most important features of a governance and management structure for CLARIN as a European research infrastructure. The purpose of this report is thus to provide the basis for the agreement to be discussed with the funding agencies of partner countries and of future partner countries.

2. Paraphrase and Analysis of the ERIC Regulation

2.1 Process to set up an ERIC

An ERIC shall be set up by a Commission decision following an application submitted by those who want to become founding members of the ERIC, the applicants. The application must be accompanied by the statutes agreed between the founding members, and the proposed ERIC must comply with the Regulation.

For CLARIN this means that it must be clarified precisely who the founding members will be, and they must agree that they want to use the legal form offered through the ERIC Regulation. CLARIN will have to determine the appropriate time for an application to be submitted.

In the following sections we analyse the articles of the ERIC Regulation and discuss, where necessary, what the content of each specific article means for CLARIN. Whenever issues are identified that need a closer examination or discussion they are referred to section 3 of this report. The issues identified are marked by a frame in the rest of this section.

2.2. The articles of the ERIC regulation and their consequences for CLARIN

Some of the articles of the ERIC Regulation are very straightforward and do not imply any consequences and do not raise issues for discussion regarding governance and management structures for the construction and exploitation phases of CLARIN. Other articles do in fact raise such issues, which CLARIN must understand and decide upon before an application to set up an ERIC can be submitted. In any case it is necessary to fully understand all the articles in order to be able to decide where the issues are.

Article 1: Subject-matter

This article is straightforwardly saying what the ERIC Regulation does – it establishes a European legal framework, i.e. it gives requirements and procedures, for setting up an ERIC.

For CLARIN this means that a European Legal Framework aimed at the same types of activities that CLARIN is aiming at, has been created and made available by the Commission, and that it may now be used by consortia who aim at creating a European research infrastructure.

There seem to be no issues for CLARIN in this article, except of course that the CLARIN consortium must decide whether they want to go ahead and use the ERIC legal framework.

Article 2: Definitions

In this article, the terms ‘research infrastructure’, ‘third country’, and ‘associated country’ are defined for the purpose of the ERIC Regulation.

Of special interest for CLARIN is the fact that the definition of ‘research infrastructure’ allows an infrastructure to be ‘single-sited’ or ‘distributed’, the latter meaning an organised network of resources or service providers.

There are no issues for CLARIN to discuss and decide in this article.

Article 3: Task and other activities

In this article it is specified that the principal task of an ERIC is to establish and operate a research infrastructure, that it shall do so on a non-economic basis, but that it may carry out limited economic activities that are closely related to and do not jeopardize the principal task, and that the costs and revenues of such economic activities shall be recorded separately.

Non-economic basis means essentially the same as non-profit, i.e. an ERIC is basically a publicly funded non-profit entity. If economic activities are carried out, the ERIC must charge market prices for them, so that it does not make itself guilty of unfair competition with established, commercial, market driven providers of same or similar activities. For the same reason the costs and revenues of such economic activities must be recorded separately in order to ensure full transparency. If market prices cannot be ascertained the ERIC must charge full costs plus a reasonable margin.

This is probably already an established and well known rule for the universities and other non-profit organisations which today are involved in CLARIN, so the ERIC regulation does not imply a shift in the way these are used to operating.

Several issues for CLARIN however relate to the operation of economic activities. It must be decided whether CLARIN should carry out economic activities and if so to what extent these activities must sustain CLARIN financially. It must also be discussed what types of economic activities CLARIN should engage in, short-term as well as long-term.

Article 4: Requirements relating to infrastructure

This article specifies five requirements to an infrastructure in order for it to qualify to become an ERIC:

- (a) it is necessary for the carrying out of European research programmes and projects, including for the efficient execution of Community research, technological development and demonstration programmes;
- (b) it represents an added value in the strengthening and structuring of the European Research Area (ERA) and a significant improvement in the relevant scientific and technological fields at international level;

- (c) effective access, in accordance with the rules established in its Statutes, is granted to the European research community, composed of researchers from Member States and from associated countries;
- (d) it contributes to the mobility of knowledge and/or researchers within the ERA and increases the use of intellectual potential throughout Europe; and
- (e) it contributes to the dissemination and optimisation of the results of activities in Community research, technological development and demonstration.

None of these requirements are in any way controversial or contradictory to CLARIN's vision, but they must be addressed in the application to become an ERIC (see Article 5).

The issue for CLARIN is to decide how all aspects revolving around access is wielded appropriately and effectively and how this is included in the statutes.

Article 5: Application for the setting-up of an ERIC

This article specifies the requirements for setting up an ERIC: The applicants must submit an application to the Commission, who will assess it and communicate its decision to the applicants. The application must contain a request to the Commission to set up an ERIC, and it must contain a technical and scientific description, which in particular addresses the requirements set out in Article 4. It must also contain the statutes proposed by the applicants and which comply with the requirements to such statutes as specified in Article 10. It is also a requirement that the host Member State provides a declaration that they recognize the ERIC as an international body in the sense that the ERIC will be detached from the host Member State. This means it will have exemption from tax and fee rules (particularly VAT rules) of that country and will have the right to purchase goods on terms similar to e.g. those used by embassies; in short such that the ERIC can operate at as low costs as possible. There must also be an agreement between all the members of the ERIC which lays down the limits and conditions of these exemptions.

None of these requirements seem out of scope for CLARIN. The VAT exemption is obviously an advantage.

The issue following from this article concerns identification of the host country.

Article 6: Decision on the application

This article specifies the technical details of how the Commission either adopts a decision to set up an ERIC or rejects the application. This article refers to Article 5 which says that the Commission will assess the ERIC application, and to Article 20 which says that the Commission shall be assisted by an advisory committee. Furthermore there is reference to Article 10: Statutes.

These requirements all concern the formal decision process in the Commission.

There are no issues for CLARIN.

Article 7: Status of an ERIC

This article defines the legal status of an ERIC as that of a legal personality, which is the same as being a legal entity. A company or a corporation for instance also has legal personality. It means that it is legally responsible for its decisions and actions, and that it can enter into legal proceedings. The

article also requires the Member States to give to the ERIC the most extensive legal capacity provided for in the law of that Member State to legal entities. Legal capacity means empowerment to act and be responsible for its acts. Finally Article 7 defines an ERIC as an international organisation in the meaning that an agreement made by an ERIC has the same status as an agreement made by other international organisations. It means that international private law does not apply.

None of these requirements are in any way controversial or difficult for CLARIN to meet.

Article 8: Seat and Name

This article specifies that an ERIC shall have a statutory seat, and that the seat must be in a Member State or in an associated country, and that the seat must be in a partner country of the ERIC consortium. The function of having a statutory seat is that the laws of that country shall govern the setting up and internal functioning of an ERIC in the case of matters not regulated by Community law, see Article 15. This again means that the statutes of the ERIC shall not be in conflict with the laws of that country. It is furthermore a requirement that the name of the ERIC shall contain the words “European Research Infrastructure Consortium” or the abbreviation “ERIC”.

For CLARIN this means that a decision on statutory seat must be made before or at least in parallel with the creation of the statutes.

Article 9: Requirements for membership

This article specifies the Community requirements to the membership. Membership shall be open to Member States, to associated countries, to third countries other than associated countries, and to intergovernmental organisations. An ERIC must have a minimum of three Member States as members to start with. Further Member States may join later, including as observers without voting rights, and the method and the terms should be specified in the statutes. Other eligible member candidates may also join later, although not as observers, and like for Member States the conditions shall be laid down in the statutes. An assembly of members is required (article 12), and the Member States must have the majority of the voting rights in this assembly. Any member may be represented by an entity of their own choosing. Other categories of members than Member States are not parties in the adoption of the ERIC Regulation, and therefore such members must provide the same declaration as is required by the host Member State in Article 5, they must recognise Article 7, i.e. that the ERIC is an international organisation with legal personality and capacity, and Article 15, which lays down the rules for applicable law and jurisdiction.

This article presents a rather comprehensive issue for CLARIN, for although article 9 is fairly detailed w.r.t. the legal framework for membership, all the operational and financial issues to be stated in the statutes remain open, and these must be discussed and solved.

Article 10: Statutes

In this article the requirements to the statutes of an ERIC are specified. The list of requirements is relatively detailed and straightforward and will not be repeated here. The base line is that the statutes must comply with specific articles of the ERIC Regulation, and that a minimum set of subjects is required to be covered.

Many aspects must be considered when creating the statutes and it is clear that the final formulation of the statutes will ultimately require consultation with legal advisors to make sure that the statutes comply with all ERIC requirements.

Article 11: Amendments of the statutes

This article states the rules for amendments of the statutes and the technical details of how the statutes can be amended. Basically, some of the matters can only be amended by request to the Commission followed by their subsequent approval, while other matters can be amended by the relevant governing body or bodies of the ERIC as stated in the statutes. In any case the Commission must be heard and may raise an objection if they find that the amendment is not in compliance with the ERIC Regulation.

The article does not seem to present issues for CLARIN; it must be understood and the statutes must be drafted with adherence to these rules.

Article 12: Organisation of the ERIC

This article specifies the minimum requirements to the number and nature of governing bodies a ERIC must have and their respective competencies.

For CLARIN these requirements are not difficult to meet, but they are not sufficient to ensure an adequately operational, flexible and governable organisation.

It is therefore an issue for CLARIN to construct a proper governance structure suited for the purpose.

Article 13: Budgetary principles, accounts and audit

This article lays down the minimum requirements to the day-to-day financial operation of the ERIC. There must be a budget for each financial year, revenue and expenditure must balance in the budget, the public funding must be used according to sound financial management, the implementation and presentation of budgets and accounts must follow the principle of transparency, the accounts must be presented together with a annual report of the financial year, and these things must all happen according to the applicable law, see article 15.

These requirements are all quite straightforward and should not present any issues. It is important, though, for CLARIN to decide upon the statutory seat, because applicable law for these matters is the law of the country of the statutory seat.

Article 14: Liability and insurance

An ERIC is liable for its debts; a member's liability is as a minimum limited to its contribution provided to the ERIC, but members may agree in the statutes on a fixed amount above their contributions, or on unlimited liability. If the members decide on limited liability the ERIC shall take insurance. The Commission shall not be liable for any debt of the ERIC. These requirements are simple and straightforward.

The issue for CLARIN is to assess whether liability should be limited or unlimited, and in case of limited liability to agree on the level of liability that the members are willing to accept. It should also be investigated what the sources of potential financial risks are and to what extent insurance can be used to cover them.

Article 15: Applicable law and jurisdiction

The applicable law is first Community law, secondly the law of the state where the ERIC has its statutory seat in the case of matters not regulated by Community law, and thirdly the statutes. The rules on jurisdiction concern which types of litigation and disputes are referred to the Court of Justice of the European Communities, and which legislation on jurisdiction applies to other cases.

These rules are not to be determined in more detail in e.g. the statutes, so in that sense they are straightforward, but again the issue of statutory seat can be raised, because the law of the state of the statutory seat may come into use.

Article 16: Winding-up and insolvency

This article describes that the statutes must determine the procedure to be applied after the assembly of members has decided to wind up the ERIC. There are certain steps that must be followed both by the ERIC and by the Commission, also in the case of insolvency.

The article does not seem to present issues for CLARIN; it must be understood and the statutes must be drafted with adherence to these rules.

Article 17: Reporting and control

The article defines the minimum set of reporting duties required by the Commission from the ERIC, and it determines the controls and control procedures to be undertaken by the Commission, including a proposal for remedial action.

This article in itself does not seem to present issues for CLARIN.

Article 18: Appropriate provisions

Sets rules for the Member States w.r.t. the Regulation.

Article 19: Report and review

Sets rules for the Commission's procedures w.r.t. its reporting to the Parliament.

Article 20: Committee procedure

Sets rules for setting up a management committee to assist the Commission.

Article 21: Entry into force

Determines the date where the ERIC Regulation enters into force.

3. Issues in the ERIC Regulation

For several if not all of the issues listed below it will be necessary to take up discussions with e.g. the ministries of the founding members in order to hear their political evaluation of what is viable and what is not.

3.1 Formal decision to apply for an ERIC

With reference to Article 1: A formal decision about using the ERIC as legal form for the CLARIN construction and exploitation phases must be made. From this decision, assuming that the ERIC is decided upon, and assuming that we want a seamless transition from the preparatory phase to the construction phase, it follows that an application to become an ERIC must be made at least 6 and preferably 9 months before it should enter into force, i.e. at the latest June 2010.

As only a consortium of governments can apply for an ERIC all decisions about this can only be taken at the ministry level. In this report we propose that CLARIN now starts approaching the ministries to investigate their willingness to opt for an ERIC as the governance model for CLARIN. If the answer is positive we will try to agree with them on further steps to be taken, and on how the

current consortium and its bodies (especially the Strategic Coordination Board) could assist the ministries in working out the details for an ERIC proposal (as is our task according to the DoW). We will then get back to the consortium with concrete proposals.

If the answer is negative we will ask them for recommendations for alternative solutions and report back to the current consortium, with proposals for further steps.

Consequently, CLARIN will prepare an invitation to join CLARIN ERIC (provided that ERIC is selected as the legal form) as part of the initial coalition. The invitation will be sent out to all CLARIN partner countries, and to the countries which have applied for partner status, in November 2009, and during winter 2009 or spring 2010 one or more meetings will be convened for the parties interested in joining the initial coalition as well as a meeting for the Strategic Coordination Board.

3.2 Membership

3.2.1. Who are the members

According to the ERIC regulation, members have to be either countries or intergovernmental institutions. CLARIN will need at least 3 Member States in the initial coalition, but of course it does not make sense to start implementing a research infrastructure to support the ERA etc., with only 3 countries, so it is important to establish a larger initial coalition, i.e. the founders, as soon as possible. CLARIN will approach all countries to check their interest in becoming founders of the CLARIN consortium, cf. the process described in 3.1 above.

The issue for CLARIN is that in addition to those countries that are prepared to become members, there will be countries that are not prepared to become a member at this point, but that host **institutions** that want to be part of and contribute to the CLARIN research infrastructure. E.g. this could be institutions which are currently partners in the CLARIN consortium, but whose country is not (yet) prepared to join CLARIN for the construction and exploitation phases. Provisions need to be made for this type of institutions, but it seems that they cannot be members with all the rights of membership. However, in accordance with article (c) under 2.2 Requirements above, **access** to the data and tools has to be provided to all European researchers, under conditions specified in the statutes, and it will also be possible to make agreements with such institutions about their contribution. This is handled in section 3.4 below.

The ERIC regulation specifies that “in addition to full membership, Member States should be able to become observers of an ERIC on the conditions specified in its statutes.” This will be an interesting opportunity for countries which have an interest in the CLARIN ERIC, but are not yet able to join.

3.2.2 Privileges and obligations of members

The members in the CLARIN ERIC will enjoy a number of rights and obligations. Below we list some of the most important ones.

Privileges

- To use the CLARIN-ERIC branding
- To attend and vote at the General Assembly and thereby influence the policy
- To participate in the development of strategies and policies
- To participate in the selection of relevant standards and best practice recommendations

- To grant access to the CLARIN-ERIC infrastructure and all its services to the users defined for that country
- To cooperate closely with other countries in making resources, tools and services available to the researchers of the respective countries.

Obligations

- To appoint a national coordinator for day-to-day operational matters
- To make its full financial contribution to the CLARIN-ERIC operation in a timely way, cf. sect. 3.11 Funding models
- To provide the specific service(s) and access described in the membership agreement
- To provide an agreed upon user authentication and authorization system
- To promote adoption of relevant standards in national resource creation projects
- To provide the necessary band width and technical infrastructure to make access possible
- To promote uptake of CLARIN services among researchers in their country, and gather user feedback and requirements
- To support CLARIN centres in their country by facilitating their integration into national and other relevant infrastructures

Each member country must specify e.g. what type of centre or centres it offers, what the specific services are (e. g. metadata harvesting, etc.), how the access is granted to which different types of users (research only, research and ..., open). The access descriptions must comply with the access policy which will be a part of the statutes.

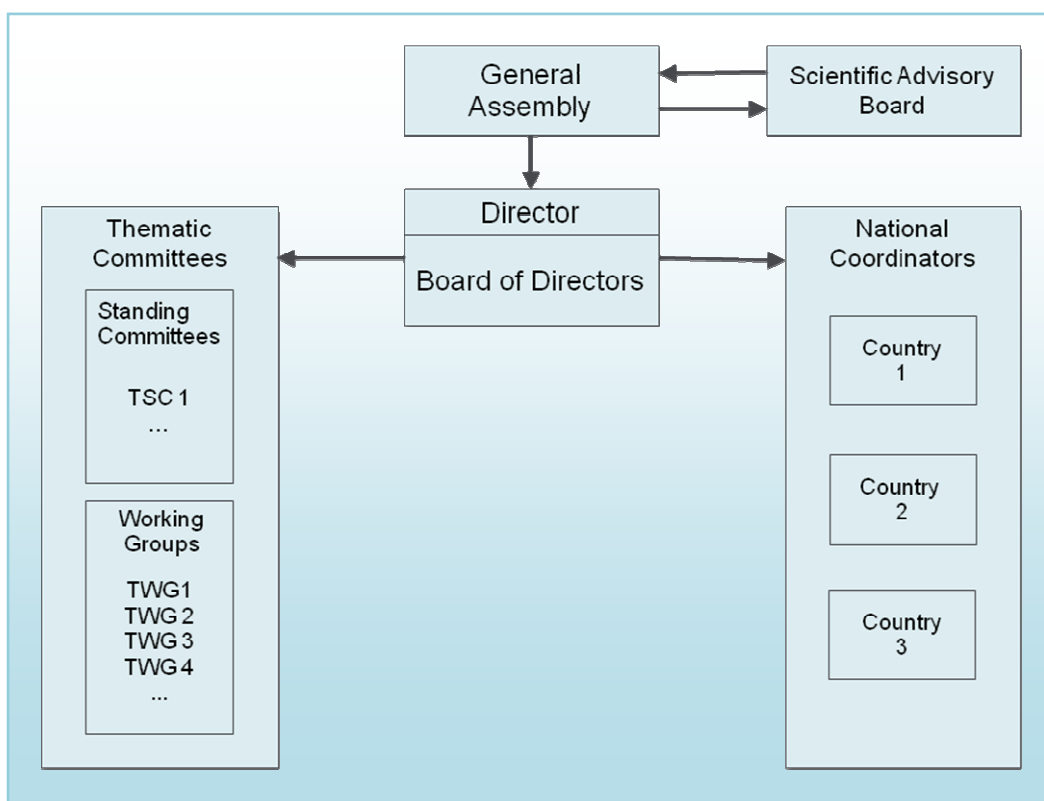
3.3. Organisation of the ERIC

With reference to Article 12: There are really only two requirements to the organisation of an ERIC, and for CLARIN these requirements are simple and uncomplicated to meet (General Assembly and Director or Board of Directors). The General Assembly has the decision-making power, including adoption of the budget, and the Director or Board of Directors, appointed by the General Assembly, is the executive body and legal representative of the ERIC. Exactly how the Director represents the ERIC needs to be specified in the statutes.

With respect to organisation, the issue is that more bodies are needed in order to ensure an adequately operational, flexible and governable organisation. In our vision the CLARIN infrastructure will be entirely built on existing centres in the participating countries, each providing specific agreed upon services to the infrastructure, which can be already existing services or extensions or enhancements of existing services specifically for CLARIN. In particular, it is important for the director to have direct collaboration with a board of national ‘executives’, who can ensure that decisions taken will actually be carried out.

For this, we propose that each member country appoints a National Coordinator (cf. sect. 3.2), and we propose the creation of a body of National Coordinators which meets annually. In order to support the Director, the General Assembly appoints a Board of Directors.

Apart from these bodies, who together ensure the efficient running of the ERIC, there will be a Scientific Advisory Board, appointed by the General Assembly and consisting of high level researchers not involved in CLARIN. Additionally, in order to provide a forum for technical discussions Thematic Committees may be created and dissolved by the Board of Directors. These will fall into two groups, the permanent or standing committees and committees of type working groups. There can be as many Thematic Working Groups as necessary, whereas we foresee only very few Thematic Standing Committees. One important standing committee which can already now be foreseen is the Standing committee for Centres with the task of organising the collaboration between the national centres, making plans for the development of centres and services etc, and of reporting to the Board of Directors. The current CLARIN consortium has already established a network of centres and the CLARIN ERIC may build on that.



General Assembly of Members (GA)

- Consists of representatives of Members.
- Appoints Director and Board of Directors. Appoints Scientific Advisory Board.
- Decides on strategies, work programme, budget and approves annual reports and accounts.

Member

- Appoints National Coordinator

Scientific Advisory Board

- Consists of high-level researchers independent of CLARIN (with no conflict of interest). In particular the CLARIN user community should be represented here.
- Provides input to the ERIC GA through advice on visions, work plans etc.

National Coordinators' Forum

- Consists of all national coordinators
- Meets once a year, to discuss work programme and other issues
- National coordinators are responsible for their country executing tasks according to the work programme and budget decided by the GA

Director

- Main legal representative of CLARIN.

Board of Directors

Consists of high-level staff appointed by the GA. The collective expertise of the Board has to cover management, finance, technical infrastructure, language resources and tools, user needs. The national coordinators may suggest candidates for the Board of Directors.

- Is, together with the Director, the main executive committee

Standing Committee for CLARIN centres

- Consists of centre directors (or representatives designated by the directors)
- Is created by the Board of Directors

Thematic Working Groups

- Consist of representatives of consortium members and contributors
- Are created and shut down by the Board of Directors

3.4 Basic principles

The ERIC regulation states a number of so-called basic principles that need to be taken into account in the statutes. For the sake of completeness we treat all of them below, even if we believe that some of them do not present any issues at all.

3.4.1 Access policies for users

CLARIN ERIC wants to make its resources and services as widely available as possible, provided two conditions are fulfilled. First of all access can only be provided in accordance with the rights given by the copyright-owner, secondly access has to be paid. CLARIN grants a limited access to the general public, and for all other users a subscription has to be paid, cf. sect. 3.11 Funding models.

Access policies also relate to the privileges and obligations for members, sect. 3.2.2.

As CLARIN may find itself in a situation where institutions from non-member countries want to contribute to and profit from CLARIN, a section on such institutions has been inserted here as well, as these are not members and cannot be treated in sect. 3.2.

The access rights may be divided into three groups:

- Access for researchers, from member countries or not,
- Access for other specific types of users against a fee, e.g. schools and industry
- Access for the general public.

3.4.1.1 Access for researchers

Access to the CLARIN ERIC data, tools and services is open to all staff in research institutions (universities, research centres, museums, research libraries etc.) in CLARIN member countries, cf.

3.2.2. It is a prerequisite that the research institutions are part of an authentication and authorisation system.

Research institutions in non-member countries, including non-European countries, may pay a subscription fee, which will give access for all their staff. It is a prerequisite that the research institutions are part of an authentication and authorisation system. It has to be investigated how this can be implemented e.g. for non-European countries. It is important that the fees are set in a way that favours full membership (cf. 3.11).

Institutions from countries which are not members may still want to **contribute** to CLARIN. Such institutions may enter an agreement with CLARIN. The agreement may specify a certain service/contribution which the institution will make, and specify access rights, subscription fee etc. in the light of this contribution.

Researchers who are not employed in a research institution may also wish to have access to CLARIN data and services. The CLARIN policy is that such requests should be met, but as authentication and authorisation are always necessary, the solution needs to be found.

3.4.1.2 Access for other specific types of users against a fee, e.g. schools, industry

It is CLARIN ERIC policy to provide access for other users, e.g. schools, but CLARIN is a research infrastructure, and this use of the infrastructure must never jeopardize the main purpose. The fee necessary may be paid by a school or by a ministry of education for all schools in a country, or by a municipality for all schools in their region. As access needs to be controlled, and as schools may not have a relevant authentication and authorisation system, this may require another access mechanism. This will be investigated. It will also be investigated if and how access can be granted to industrial users.

3.4.1.3 Access for the general public

The general public will have access to a limited part of the CLARIN infrastructure. E.g. metadata will be accessible for all. Access to some open source resources may also be granted, whereas e.g. the possibility to use the services and to store intermediate data will not be granted.

3.4.2 Scientific evaluation policy

The scientific evaluation policy is used to ensure that the research infrastructure is providing its services to the best possible research. In the case of CLARIN there will normally be no reason to have to choose some research projects and reject others, as there will be sufficient capacity, and the main goal is to support as much research as possible.

When needed, the scientific evaluation policy will be based on peer reviews by independent experts, and the policy will be decided by the GA, with advice from the Scientific Advisory Board. The peers will be selected by the Board of Directors in accordance with the policy.

3.4.3 Dissemination policy

The CLARIN ERIC will do its best to promote the infrastructure, to encourage researchers to embark on new and innovative projects, etc. The dissemination policy will describe the various target groups, and CLARIN will use several channels to reach the target audiences: web portal, newsletter, workshops, presence in conferences, articles in magazines and daily newspapers etc.

3.4.4 Intellectual property rights policy

Intellectual property rights created by the CLARIN ERIC shall belong to the CLARIN ERIC and shall be managed by the Board of Directors. CLARIN favours an Open Source and sharing policy. Most of the IPR to be managed by CLARIN has to do with third party IPR and is managed by the CLARIN Content Providers, and the access to these resources is managed by the Service Providers.

3.4.5 Employment policy, including equal rights

Very few employees will be employed directly by CLARIN, as most staff will be employed at national institutions. CLARIN will employ the best candidate, regardless of nationality, religion, gender, etc.

3.4.6 Procurement policy

CLARIN will respect the principles of transparency, non-discrimination and competition.

3.4.7 Decommissioning, if relevant

Decommissioning is not particularly relevant for CLARIN. Dissolving the ERIC is not different from dissolving any other existing legal entity. The only issue may have to do with IPR so that it is clear what happens to any copyrights that the ERIC may hold or any copyright licences in which the ERIC is a party (if any).

3.4.8 Data policy

CLARIN has a strong commitment to open access, and all data, tools and other resources produced by CLARIN will in principle be freely usable for the research community. In cases where CLARIN provides access to data and tools owned by others CLARIN do its utmost to ensure that the rights and interests of the owners are protected.

3.5 Seat

The Netherlands have declared their willingness to host CLARIN, and this will probably not be an issue for the founders, but it is of course an issue that has to be discussed.

CLARIN is a distributed and a ‘soft’ research infrastructure, and this means that CLARIN does not really need to have a permanent physical seat. The director and his small team can be seated anywhere and not necessarily always in the same place. It might be an advantage in order to attract the best candidates for director, that there is no obligation to move to a specific place.

Some other research infrastructures count on deciding on the location of the statutory seat every 5 years, but it might be more appropriate for CLARIN to take the decision on the seat up whenever a new director is employed.

However, as the seat is mentioned in the statutes, it would require a change of statutes to change the seat, and although this is of course possible, it might be more convenient to keep the seat in the same place. CLARIN should probably investigate if the advantage of having the secretariat together with the Director and not always in the same place can be combined with having a fixed statutory seat.

3.6 Non-economic basis – what does this mean for CLARIN?

The regulation requires that the principal task of an ERIC is carried out on a non-economic basis. The underlying assumption is that the principal task is not carried out with a view to profit and could not be provided by the market.

An ERIC is allowed to carry out limited economic activities, and the Commission will generally assume that a share of economic activities below 25% of total activities is limited. Economic activities must always be secondary, must not prevail over the execution of the main task, and flow of funds from the non-economic activity into the economic activity (called cross-subsidisation) is not allowed.

In principle, the CLARIN-ERIC should not need to carry out economic activities, but this depends upon the level of funding and the desired level of activity. Charging of access fees is not considered an economic activity under the condition that the access and related research support do not correspond to what the market could provide.

Different types of economic activities could well be foreseen in the operational phase, particularly types of activities which promote innovation and knowledge and technology transfer such as courses, training events, workshops, conferences and the like, while purely commercial activities such as selling resources or serving as a channel for product sales seem less likely to be in the interest of CLARIN.

From this follows that CLARIN-ERIC in a general way should allow economic activities in their statutes and require more specifics to be defined before embarking on concrete initiatives.

3.7 Liability

An ERIC is liable, i.e. responsible, for its debts, and the statutes we must state whether we opt for limited or unlimited liability.

Unlimited liability is probably not attractive. The operations should never bring the RI into a situation where it accumulates debts of any significant size, and the RI should not need to finance its operations through loans and other financial transactions.

It is normally foreseen that an ERIC chooses limited liability and that it is limited to the respective contributions of the countries, and this seems acceptable. Limited liability requires insurance.

3.8 Working language(s)

The working language of the CLARIN infrastructure is English.

3.9 Applicable law and jurisdiction

There are three (or four) levels of laws:

- Community law, i.e. the ERIC Regulation

- Law of the State where the ERIC has its statutory seat in the case of matters not, or only partly, regulated by the ERIC Regulation. Such matters will particularly concern preparation, filing, auditing and publication of accounts.
- The Statutes and their implementing rules
- And probably a fourth one: national law of the country that operates e.g. a centre or a university (depending on the outcome of Commission deliberations)

3.10 Reporting and control

An ERIC shall produce an annual activity report, containing in particular the scientific, operational and financial aspects of its activities. It shall be approved by the Assembly of members and transmitted to the Commission and relevant public authorities within six months from the end of the corresponding financial year. This report shall be made publicly available.

This report is used by the Commission to follow the development of the ERIC and to check that the ERIC still lives up to the requirements set out when it was first accepted.

3.11 Funding models

We anticipate the following types and sources of funding to be made available for the construction or operation of the infrastructure:

- in cash
 - national contributions from ERIC partners (expected)
 - subscription fees from institutional users (optional, should not be a financial advantage compared to membership)
 - usage fees from institutional or individual users (optional)
 - EC contributions (not expected before FP8)

and

- in kind
 - contributions from institutions that are part of the infrastructure (expected)
 - contributions from institutions not represented in the ERIC (expected)
 - contributions in kind from other parties, e.g. e-infrastructures (expected)

To what extent users (internal or external to the HSS research community in ERIC partner countries) will be charged for access to or services from CLARIN will depend on the business model adopted. According to current thinking usage should be free for members of the target community in ERIC member countries. During the construction period, when services will be limited and experimental no user fees should be applicable.

The ERIC will be responsible for the deployment of the resources listed above. For contributions in cash the two extreme options are

- the common pot model: all financial contributions are collected in one common pot, which will be managed by the ERIC, or
- all financial contributions are managed (and spent) within each ERIC member country (but their deployment is coordinated by the ERIC)

As cross-border funding tends to be problematic and as each country will under all circumstances be responsible for the execution of its tasks within the country we envisage at this moment a model whereby cross-border funding is kept to a minimum, and will be restricted to

- (a) a contribution from each ERIC member to the central operations (mostly coordination, management, external relations, dissemination, training, IPR, standards)
- (b) co-funding between countries in cases where tasks are shared (e.g. joint operation of a single data center for two or more countries)

For the contribution to the central operations we propose

- (a) that the host country covers a fixed percentage (e.g. 25%) of the cost of the central operations
- (b) that the ERIC members jointly contribute the other 75% on the basis of the usual EU principles for sharing costs between countries

We have learned from the EC that there is no intention to contribute to the construction of infrastructures, but according to current thinking FP8 may include possibilities for the EC to contribute up to 20% of the operational costs of RIs. This would of course change the financial picture with respect to the contributions to central and local operations.

3.12 Summary of advantages and disadvantages of choosing the ERIC legal form for CLARIN

The ERIC legal form is created by the Commission, adopted by the Member States, and presented to the RI communities as a legal form created specifically to solve their problems. The basic problem that needs to be solved for CLARIN is the future funding. It is assumed throughout the application and the description of work for the current CLARIN preparatory phase that countries will provide the funding for the phases following the preparatory phase, and that countries (through their ministries) will participate in the discussion of the future funding model. Since the countries know that funding is expected from them, and since they have adopted the ERIC, they now have a common framework for operation when they grant national funding to research infrastructures.

Below we provide a short summary of the advantages and disadvantages of the ERIC legal form for CLARIN which this analysis has brought up.

Advantages:

- ERICs are important components of the ERA (European Research Area), receive the European Research Infrastructure 'label'
- Possible financial support from the EC
- By participating governments express their commitment to the research infrastructure
- The ERIC works with countries instead of institutions (much smaller number)
- A full framework is provided, with guidelines etc,
- VAT exemption
- Possibly a community of ESFRI project that will all do the same, sharing knowledge and experience.

Disadvantages

- Problems with integration of institutions from countries which do not participate as partners in the consortium
- Fixed system with strict rules, reporting and control. May not provide all the flexibility wanted.

- Having governments as members instead of researchers or research managers may introduce more overhead.

4. Other possible structures for CLARIN

If CLARIN does not adopt the ERIC regulation, there are of course other possibilities. According to the Commission study in 2008 none of these are particularly well suited for research infrastructures, and they will e.g. normally not give rise to VAT exemption.

Alternatives discussed and rejected by the EC in the ERIC background documentation and in the previous CLARIN report on governance, CLARIN D8S-1.1 *Requirements and Best Practice Overview for Governance*:

- Under international law:
 - Organisations based on international treaties
EC: too heavy, more for large infrastructures with large investments and non-European partners; special status of personnel, tax exemptions
 - European Economic Interest Grouping (EEIG)
EC: purpose is to facilitate economic activities; unlimited liability not suited for public bodies; no participation by third countries
 - Societas Europaea (SE)
EC: intended for public limited-liability companies that already exist
 - European grouping of territorial cooperation (EGTC)
EC: objective is to facilitate and promote cross-border, transnational and/or interregional cooperation between its members with the exclusive aim of strengthening economic and social cohesion; limited possibilities for third country participation
- Under national law:
 - Companies
EC: public partners from other states reluctant to be under foreign legislation
 - Foundations
EC: flexible, and successful examples exist, but otherwise same problems as with companies
 - AISBL (international non-profit organisation under the Belgian Law)
EC: same problems as for other entities under national law

Other options (not discussed by the EC)

- Associations:
 - operate under national law, problems same as signalled by EC
 - unrealistic that national governments will make long term financial commitments to an association of e.g. European universities
 - unrealistic that such an association would ever qualify for EC funding, except in the context of an ad hoc consortium consisting of all (or a subset of) association members, which would cause governance problems in the relation between association and consortium
- Networks: informal networks would never qualify for any external funding required for sustainability, so EU Thematic Networks or Networks of Excellence would be the only option to get funding

Common Language Resources and Technology Infrastructure

- would operate under law of coordinating partner
- unrealistic that national governments would provide sustainable funding in addition to and going beyond EC funding
- have strictly limited duration and would therefore not offer any solution for the lack of sustainability of resources and tools resulting from limited duration projects –which is precisely one of the main problems we want to address.

Consequently, we do not see obvious candidates as alternatives to the ERIC.