

# FOR THE EGI POLICY BOARD

Meeting xxx xxx 2009

## **Draft convention and statutes**

### **Version number 0.7**

#### **Summary**

These documents have been prepared primarily by the EGI-DS and the Local Host Taskforce for Organisation. Other conventions and statutes of European organisations have been consulted. This work is still in progress.

#### **Action**

*The PB is invited to discuss these documents and highlight any concerns*

## Document Keywords and Abstract

<b>Keywords:</b>	EGI, EGI.org, Grid, Research Infrastructure
<b>Abstract:</b>	<p>EGI_DS is a design study which purpose is ultimately to establish a working Pan-European Grid infrastructure.</p> <p>To manage, maintain and further develop this Grid Infrastructure a legal entity is required. This document describes the structure of the cooperation between the participating National Grid Initiatives (NGIs), which by themselves are legal entities, and the statutes of the legal entity.</p>

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## 1 List of Acronyms and Abbreviations

EGEE	Enabling Grids for E-sciencE
EGI	European Grid Initiative
EGI_DS	European Grid Initiative Design Study
EIROFORUM	Collaboration between European intergovernmental scientific research organisations that are responsible for infrastructures and laboratories
EMBL	European Molecular Biology Laboratory
ERI	European Research Infrastructure
ESFRI	European Strategy Forum on Research Infrastructures
ESRF	European Synchrotron Radiation Facility
F4E	Fusion for Energy
ILL	Institute Laue-Langevin
NGI	National Grid Initiative
PB	Policy Board
TERENA	Trans-European Research and Education Networking Association
SURF	Dutch collaborative organisation for higher education institutions and research institutes aimed at breakthrough innovations in ICT



## 2 Document Summary

### 1 Introduction

EGI has the overall objective to prepare the creation of a persistent pan-European grid infrastructure including services. This work is approaching completion of its first phase, which is to be concluded with the establishment of a standing organization, a legal entity and an operating grid infrastructure consisting of the participating national grids and beyond. Meanwhile an uninterrupted transition from the EGEE project and operating grid to EGI is a condition sine qua none for the participating NGIs.

The basis of the structure and near future developments of the Pan-European grid are described in the EGI\_DS project deliverable D5.4, also known as the EGI Blueprint.

### 2 The context of this document

General Disclaimer: The content of this deliverable is in progress and should not be considered as final or binding for any party. It is based on the current situation of the EGI\_DS project, the status of the EGEE-grid and the standing points of the EGI\_DS defined by the EGI Policy Board (PB).

The draft contract documents detailed in this deliverable are preliminary for a number of reasons:

- Final agreement has yet to be reached between the EGI PB members and the members of the future council of the legal entity on various crucial issues such as funding and voting rights. Decisions on these issues will be reached at a series of PB meetings in 2009.
- The legal form of the entity has informally been decided in common agreement with the EGI\_DS representatives and the local host (NGI-NL) to be a Foundation under Dutch law. This informal agreement is based on the EGI PB decision that the form of the legal entity would be selected once the site selection was agreed upon by the PB, which was reached during the PB meeting on March 2, 2009 in Catania (Italy) taking into consideration the various possible national legal forms of the hosting country.
- The legal form can be transferred to the future ERI when established, upon decision by the Foundation Council (Council of NGIs).

The draft legal documents currently consist of the convention between the signing NGIs, the statutes and the regulations. The use of a convention, between the NGIs rather than between national governments, in addition to the statutes of the legal entity is normal practice for existing RIs. The convention will be the contract between the NGIs to ensure long term funding; the statutes will be the contract agreed between the members of the RI and will cover governance, funding, etc. The structure spanning the two documents may change, following further discussion and legal advice.

The convention will be signed by a representative from each of the participating NGIs, defined as national legal entities holding financial means and mandate, and describes the relation and duties of the participating parties towards the EGI Grid RI. The convention should be as general as possible to ensure a long lifetime for the document and should

contain elements such as details over the organisation the agreement applies to (name, seat, purpose, etc.), resolution of disputes and general agreements on contributions and usage.

The statutes describe the internal organisation and functioning of the EGI RI including the composition of the council and committees, and the legal provisions required by the legal form chosen. They will as well be signed on behalf of each participating NGI, by the very members of the board (also called Council), according to the Dutch law for Foundations.

The statutes are complemented by the regulations regarding all issues that need further description for operational purposes.

## **2.1 The legal form**

The selected legal form is that of a Foundation operating under Dutch Law. This reflects the result of the site selection procedure initiated by the EGI Policy Board, which resulted in the selection of the NL-NGI proposal for hosting EGI in the Science Park Amsterdam. From analysis of the Dutch legal entities it was concluded that a Foundation would best fit the purposes of EGI and allow for a smooth transition to an ERI if so wanted or required later on by the Foundation Council. Under Dutch law any Foundation has to have at least a board, a name and a purpose (charter) and if applicable a description of the major entities operating under the board. Any complexities arising from the agreements between the parties (NGIs) will arise from the nature of EGI or the way it is decided that the organisation will function, but not as a result of the choice of a foundation as vehicle for creating the legal entity.

## **2.2 Refining and approving the EGI contract documents**

The legal documents in this deliverable will be discussed and very probably modified after the EGI Policy Board meeting on xxx xxx, 2009. Discussions will then continue on a number of important issues not yet defined in this draft but the goal set for these documents is to have them in place to be signed in the first half of 2009 (i.e. before 1<sup>st</sup> of July 2009). Topics to be dealt with yet encompass the following:

- (Exact) name of the organisation;
- Staff rules;
- Funding and contributions;
- Special clauses concerning taxes (if applicable);
- Conditions under which provision of services from NGIs to EGI may be accepted by EGI;
- Specific schedule for the transition from EGEE and other grid projects to EGI;
- Compensation in event of breach of contract;
- Description of governance bodies;
- Budget / Resources;
- Distribution of rights between members (voting rights);
- IPR;
- Admission of new members / Withdrawal / Winding up;
- Obligations of members;
- Procurement policy;
- Entry in force / Duration.

As indicated in various disclaimers, the agreement between the parties will only be definitive once the final legal documents are signed.

## 2.3 The basis of the legal documents

The draft statutes and convention have been drawn up after considering various sources:

- EGI\_DS project DoW <sup>1</sup>
- EGI Blueprint <sup>2</sup>
- EGI\_DS deliverable 5.2 – Draft convention (statutes) of the EGI organisation <sup>3</sup>
- EGEE project information <sup>4</sup>
- Proposal for a Council Regulation on the Community legal framework for a European Research Infrastructure (ERI)
- EGI PB meeting notes
- Legal documents of existing Research infrastructures such as EMBL, F4E, ESRF ILL, TERENA and the SURF Foundation have also been used as a global guide
- Designs for other RI legal documents

## 2.4 The basis of the legal documents

The legal form chosen is a Foundation under Dutch Law. The top level management layer of the Foundation is the Council. However, the statutes will also lay down the primary responsibilities for the daily activities of the Executive Committee and the Director. The Council will meet at least twice per year and if deemed necessary will also have extraordinary meetings upon invitation by the Executive Committee. The Council decides on global policy and strategy and shall not concern itself with details of operations and day-to-day decisions. The agenda for the Council meetings is drawn up by the Executive Committee, in collegial agreement with the Council chairman.

The Director will represent the Foundation in all public matters and will be granted discretionary rights.

Basically the Council convenes at least twice per year and the Executive Committee once every fourteen days or every month, yet to be decided. Typically the Executive Committee will have between three and seven members, including its chairman.

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<sup>1</sup> [http://web.eu-egi.eu/fileadmin/public/documents/EGI\\_DS\\_DoW\\_v1.12.pdf](http://web.eu-egi.eu/fileadmin/public/documents/EGI_DS_DoW_v1.12.pdf)

<sup>2</sup> [http://web.eu-egi.eu/fileadmin/public/EGI\\_DS\\_D5\\_4\\_V300b.pdf](http://web.eu-egi.eu/fileadmin/public/EGI_DS_D5_4_V300b.pdf)

<sup>3</sup> [http://web.eu-egi.eu/fileadmin/public/Deliverables/EGI\\_DS\\_D5.2v10\\_final.pdf](http://web.eu-egi.eu/fileadmin/public/Deliverables/EGI_DS_D5.2v10_final.pdf)

<sup>4</sup> <http://www.eu-egee.org/>

### **3 Draft Convention between the NGIs**

Disclaimer:

This text is an initial effort. In the current form, it is provided to elicit further comments by the participants.

## **CONVENTION between the participating National Grid Initiatives**

### **To be established at**

<date>

In Amsterdam, The Netherlands

The undersigned NGIs are further referred to as the "Parties"

#### **RECITALS**

In order to ensure the timely start of the Grid Infrastructure, the undersigning NGIs, mentioned in Appendix A, have agreed to take responsibility for the establishment, development, proper operation and basic funding of a Pan-European Grid Infrastructure, to the best of their ability. The Grid European Research Infrastructure is based on the interconnection of each national, regional or local grid residing under the responsibility of the participating National Grid Initiatives.

The operational aspects and near future developments of the Grid Infrastructure are described in the EGI Blueprint. The EGI Blueprint, version xxx is part of this CONVENTION.

#### **ARTICLE 1**

- (1) The undersigning parties agree to seek and undertake the creation and operation of a Pan-European persistent Grid Infrastructure and service and agree to take all reasonable efforts to realise that goal.
- (2) This effort, which is the subject of the present Convention, shall be entrusted to a Foundation under Dutch law, which Council members shall be appointed by and fully represent their respective participating NGIs.
- (3) The Foundation will act as a European legal entity. As soon as a European Research Infrastructure (ERI) defined as a European legal entity will come into existence, the

member NGIs will seriously consider the advantages or disadvantages of a transfer from the present legal structure to the new ERI structure and decide on the transition on the basis of an analysis of the transfer.

- (4) The Foundation, whose Statutes have been agreed upon by the signing NGIs and will be legally passed by the Dutch Notariat under Dutch law,
1. shall be named <Grid European Research Infrastructure> and abbreviated as <grid-eri.eu> and/or GERI;
  2. shall have its seat in Amsterdam, The Netherlands;
  3. shall be not-for-profit;
  4. shall ensure the long-term sustainability of the European grid infrastructure and coordinate the integration and interaction between NGIs;
  5. shall provide an operational Pan-European Grid Infrastructure to the best of its ability to the scientific and industrial communities in Europe;
  6. shall take the necessary steps to ensure that only activities for peaceful ends will be undertaken;
  7. shall have English as its official and working language.

Furthermore:

8. any disputes arising between the parties shall be settled by Dutch court under Dutch law if no amicable settlement can be reached;
9. amendment of the Statutes of the Foundation requires a two-third majority of all members of the Council of the Foundation having voting rights.
10. This Convention will remain in effect mutatis mutandis also in case the Council chooses to have the Foundation resolved into a ERI legal entity.

## **ARTICLE 2**

- (1) The Parties shall guarantee the availability of the funding, agreed by the Council, from the NGI they represent to financially contribute to the Foundation budget according to the list of contributions or the contribution model agreed by the Council.
- (2) The NGIs annual contributions will be defined according to the TERENA keys, unless otherwise decided by the Council. The contributions for the first year of functioning are defined in the EGI\_DS Blueprint. [here the repartition key should only be defined, e.g.



on basis of GDP. Each NGI should be able to contribute additional money, beyond its "statutory" contribution, in exchange of services that interest only a limited number of NGIs; the principle of ABB (activity-based budgeting) is important to be postulated – EC comments]

- (3) The purpose of these annual grants/contributions shall be to cover all running costs of the Foundation and its activities, and eventually to constitute reserves, for salaries and future operations and investments.
- (4) The main activities of the Grid Infrastructure are the following:
  1. operate the European level of the production Grid Infrastructure for a wide range of scientific disciplines linking the NGIs. The national and regional level of operation is ensured by the NGIs;
  2. provide grid services and support at the pan-European level, complementing and coordinating national services;
  3. coordinate middleware development and standardization to enhance the infrastructure by soliciting targeted developments from leading EU and National Grid middleware development projects;
  4. coordinate and implement a security policy;
  5. liaise with other e-Infrastructure projects and standardization bodies in Europe and elsewhere;
  6. support the NGIs in matters of training, dissemination and outreach.
- (5) The annual budget for a certain year shall be determined the previous year by the Executive Committee of the Foundation, who will also make a forecast for the subsequent two years, and shall be approved by the Council of the Foundation within the framework of a medium-term financial plan drawn up by the Council of the Foundation.
- (6) Decisions on the financial medium-term framework, and the basis of the individual contributions shall be taken by two-third majority of the Council.
- (7) If the individual contribution of each party changes by more than fifty percent of its previous value, the party concerned has the right to opt out without penalties. The formal process and remaining bilateral responsibilities are described in the Statutes.<yet to be implemented in the Statutes>
- (8) The NGIs agree to swiftly accept and implement the Council decisions on matters regarding technology, overall design concepts, standardisation, points of view to be exchanged with grid-organisations operating at world-level, such as OGF, budgetary

decisions, under the conditions set forth for budgetary decisions, and other material decisions and do so at their own expense. [this is an important article that should be put in as concrete terms as possible]. – EC comment

- (9) The NGIs will grant the Foundation the right to write and issue the necessary funding proposals directly oriented to the European grid, its operations, functioning, promotion of its usage, interoperability with other grids inside and outside Europe and its middleware, and other similar subjects, which are directed at the European Framework Programs.
- (10) The Member NGIs agree not to harm the Foundation or its goals. In particular the NGIs shall not issue funding proposals at the expense of the European Framework Programs if the Foundation directs a proposal to the same call, unless a written consent is given by the Foundation first.
- (11) The Foundation will aim to maximise the formal participation of European NGIs in the Foundation.
- (12) The Foundation will not be held accountable for activities or reaching goals set forth, for which the funding is not provided by either the participating NGIs or through external funds.

### **ARTICLE 3**

- (1) This Convention shall be open to accession by NGIs of all EU states and states associated to the Framework Programme, that did not become full members at the date of establishment of the Foundation. The Council shall not raise any objections regarding NGIs from EU member states and states associated to the Framework Programme, provided the new party agrees with and signs the Convention and adheres to the Statutes of the Foundation. For other countries accession will be subject to decision of the Council.
- (2) NGIs of EU member states and states associated to the Framework Programme have the right to request associate status and can after accession confirmation by the Council participate in the Council meetings, but will have no voting rights. The associate status of NGIs of EU member states and states associated to the Framework Programme is only valid for a transition period of two years at the end of which they will have to be confirmed as full members by the Council. The request can only be refused on the basis of serious objections (either technical or political), to be brought forward to the requesting party.

- (3) NGIs of European countries that are neither EU member states nor associate to the Framework Programme may request associate status and after acceptance be allowed participation to the Council meetings for agenda items that are not declared closed or confidential, unless the Council decides otherwise. Decisions on such requests for associate status by NGIs from such states will be taken by simple majority. The decisions to decline such requests will be well motivated and made known to the applicant. A transition period of two years without voting rights will apply, after which a definite decision by the Council will be required on accession as full member.
- (4) NGIs that, at the date of signing this document by the first five parties, are already members of the EGI PB, and who appear in the EGI PB member list in Appendix B, will have the same rights as NGIs of EU Member states for the purpose of this document.
- (5) Selection of the Chairman and vice Chairman of the first Council of the Foundation, and the first Treasurer of the Foundation will be as follows:
  - a. The first Council of the Foundation will be chaired by <the elected chairman of the EGI PB>, provided his NGI signs the Convention.
  - b. The vice chairman of the first Council of the Foundation will be <the coordinator of the EGI\_DS project>, provided his NGI signs the Convention.
  - c. The first Treasurer will be <to be decided>.

#### **ARTICLE 4**

- (1) The Convention shall remain in force for ten years, but no longer than the period the Foundation will exist. Thereafter, it shall be tacitly extended for consecutive periods of five years, unless decided differently by the Council of the Foundation by qualified majority (2/3).
- (2) The conditions for access by major European research institutes, other research infrastructures and private organizations including industrial users to the European Grid Infrastructure are defined in the Statutes of the Foundation.
- (3) Changes in this Convention can be made by the Council of the Foundation by a two-third majority of the NGI members, and can be proposed upon request of at least five NGI members or the Council of the Foundation.

#### **ARTICLE 5**

- (1) Arrangements for usage of the European Grid Infrastructure by international organisations or research groups in countries or groups of countries not acceding to

this Convention, or establishments or organisations thereof, are the responsibility of the Foundation through specific agreements subject to approval by the Council by simple majority.

- (2) The conditions for access to the European Grid Infrastructure by organizations, not being a member-NGI, including private organizations and industrial users, are defined in the Statutes.

#### **ARTICLE 6**

- (1) The Statutes of the Foundation shall contain articles concerning the resolution of disputes between the parties.
- (2) The Statutes shall describe procedures for settlement of disputes in such a way that primarily settlement can be reached among the parties without appeal to the court.
- (3) If a dispute cannot be settled through the Foundation's internal procedures, Dutch Law will apply.
- (4) Each party to the dispute shall bear its own costs and, as the case may be, a proportional part – depending on the number of participants to the dispute – of the costs of the arbitral proceedings.
- (5) The language for all out-of-court arbitrations shall be English.

### 3 Draft Statutes

Disclaimer:

This text is an initial effort to formulate the statutes for the legal entity, focussing on the Foundation under Dutch Law form. In the current form, it is provided to elicit further comments by the participants.

#### **Informative background about the Legal form of a Foundation under Dutch Law**

The most important criteria provided for in the Dutch Civil Code with respect to a Foundation are:

- A Foundation must have a specific objective, a board, a chairman, a source of funds and usually a description of how to resolve the Foundation; and usually next to a chairman, a vice-chair and a treasurer are mentioned in the Statutes.
- The objective may include or entail the conduct of a business or pursuing profit;
- A Foundation has no members, but the board of the Foundation has members. 'membership' of the Foundation can be arranged through seat allocation to the supervisory board (or Council) of the Foundation.
- There is no direct liability for the participants and only limited liability for the Foundation itself, once it is officially registered..
- the objectives of a Foundation may not be or include contributions to its founders or to those of them who are part of its bodies (e.g. trustees). Contributions to third parties are allowed if in accordance with the social or charity purposes of the Foundation.
- The city of the formal seat of a Foundation must be in The Netherlands.

A notaries' deed is required for the first establishment of a Foundation as well as for any changes of the deed. The deed of incorporation and its Charter must be registered in the Foundations Register ("Stichtingenregister") of the Chamber of Commerce on whose district the registered office of the Foundation is situated.

As long as the Foundation is not registered officially in the Foundations Register each individual Council member is personally responsible. After registration the responsibilities are according to the description passed by the Council to the Foundations Register. Any changes in statutes or in the board or in mandates to represent the Foundation must also be reported to the Chamber of Commerce and will be public through the Chamber of Commerce. These updates, however, are only administrative and are easy to report.

The Foundation is by itself a legal entity and carries its responsibilities and can exercise its rights. The Council members as such are not responsible (after registration) for the debts of the Foundation, unless such debts are the result of gross misconduct or severe mismanagement. Council members and founders of the Foundation are not (paid) employees and are not covered by social security insurances. The Foundation, however, can act as employer and appoint employees for which all employment Dutch laws and social security rules apply.

A Foundation is terminated (ceases to exist) if according to the statutes this is required, or in case of bankruptcy or if so decided by a court of law. Also the Council

can decide to have its Foundation terminated, but the terms for such a decision are usually described in the statutes.

The statutes need to be in Dutch. A certified translation can be provided.

For the purpose of the discussion the statutes will be conceived in English. A Dutch translation will be kept in the background because that has to be the basis of the establishment of the Foundation under Dutch law.

## STATUTES

of the Foundation known as

<grid-eri.eu>

### 1 PREAMBLE

Recognising the need for European competitiveness in science, research and business;

Fulfilling all necessary activities that follow from the conviction that e-Infrastructures are an essential element and prerequisite for conducting research;

Preparing the necessary activities to support the European ambition to excel in science and research through the realisation and provision of a European Grid Infrastructure as part of the pan-European e-Infrastructure;

Willing to acquire and provide the necessary means thereto;

Acknowledging the vast efforts exercised in projects preceding the Foundations' installation, that led to a Pan-European Grid in advanced state of development, largely funded by the EC through the Sixth and Seventh Framework Programs, among which notably EGEE (I, II and III) and other grid projects;

The undersigned Parties have jointly decided to establish an organisation responsible for a fully operational and where applicable fully interoperable Grid Infrastructure and grid services in the broadest sense.

To be revised in accordance with the list of founding members.

To be revised in accordance with the final decision of where the agreement on the initial period should be, and whether the convention will be signed before or after the statutes.

### 2 CHAPTER 0 – DEFINITIONS

Foundation: The Foundation named <Grid European Research Infrastructure> and abbreviated as <grid-eri.eu> and/or GERI which is established through these statutes.

Council: the board of the Foundation.

NGI: National Grid Initiative. Legal national entity formally representing a national grid-infrastructure or organisation. Each country can only have one NGI at a time.

Convention: the Agreement between NGIs to create and maintain the Grid European Research Infrastructure.

Founding NGIs: the first group of minimally five NGIs that have signed the Convention and take the action of erecting the Foundation.

Member: natural person and board member appointed by an NGI which has signed the Convention and has been granted access through the Council decision of participating in the Council.

### **3 CHAPTER I – GENERAL PROVISIONS**

#### **ARTICLE 1 Name and Seat**

- (1) The Foundation shall be named Grid European Research Infrastructure and abbreviated as <grid-eri.eu> and/or GERI.
- (2) The Foundation shall have its seat in Amsterdam.

#### **ARTICLE 2 Purpose and objectives**

- (1) The objectives of the Foundation are:
  - to realise a fully operational Pan-European Grid Infrastructure;
  - to render this Grid Infrastructure compatible and inter-operable with other e-Infrastructures;
  - to enable access to the Grid Infrastructure to qualified European and international scientific communities, both academic and industrial, through procedures that are or will be common to grids;
  - The Foundation shall take all necessary steps to pursue only peaceful aims.

#### **ARTICLE 3 Character of the Organization**

- (1) The Foundation shall be not-for-profit and shall pursue its objectives/purposes on a non-commercial basis. However, the Foundation may carry out limited commercial activities closely related to its objectives/purposes provided that they do not jeopardize the achievements of its objectives;
- (2) The Foundation may keep financial reserves:
  - To guarantee and safeguard the income of the employees against fluctuations in liquidity;
  - To guarantee timely payments due in case of fluctuations in liquidity;
  - For social obligations for employees, such as pensions;



- For matching grants if so required.
- (3) Any excess reserves, either resulting from under spending or from profitable activities shall be spend on research activities directly related to the goals of the Foundation or incidentally for educational purposes of the personnel so as to increase their ability to improve the services or the knowledge on the field of grids and e-Infrastructures and their use.

#### **ARTICLE 4 Membership**

- (1) The NGIs that fulfil the criteria below and have adhered to the statutes can become full members of the Foundation:
- a. have the legal capacity to sign these statutes, either directly or through a legal entity representing it;
  - b. have a mandate to represent its national grid community in all matters within the scope of this Foundation;
  - c. be the only organisation having the mandate described in (b) for its country;
  - d. pay its contribution to the Foundation;
  - e. nominate a representative duly authorised to deliberate, negotiate and decide on all matters falling within the mandate of the Council of the Foundation,
  - f. ensure that:
    1. the National Grid Infrastructure is permanently operated and maintained according to a common technical standard agreed upon;
    2. user communities can be registered and supported,
    3. resource owners/providers are registered and supported;
    4. standards and other decisions taken by the Foundation are implemented;
    5. the Foundation policies are implemented.
- (2) NGIs of EU member states and states associated to the Framework Programme have the right to request associate status and can after accession confirmation by the Council participate in the Council meetings, but will have no voting rights. The associate status of NGIs of EU member states and states associated to the Framework Programme is only valid for a transition period of two years at the end of which they will have to be confirmed as full members by the Council. The request can only be refused on the basis of serious objections (either technical or political), to be brought forward to the requesting party.

- (3) NGIs of European countries that are neither EU member states nor associate to the Framework Programme may request associate status and after acceptance be allowed participation to the Council meetings for agenda items that are not declared closed or confidential, unless the Council decides otherwise. Decisions on such requests for associate status by NGIs from such states will be taken by simple majority. The decisions to decline such requests will be well motivated and made known to the applicant. A transition period of two years without voting rights will apply, after which confirmation by the Council as full member will be necessary.
- (4) Major European research institutes represented in the EIROFORUM, ESFRI projects and other type of organisations approved by the Council can also request associate status. Approval by the Council will be by simple majority. The voting rights of these associate members will also be decided by the Council.
- (5) The Council will have the possibility to grant Observer membership status to formal groups of users, international organisations or other entities. To this end the Council will add rules to its regulations and/or *ad hoc* define the relation between the Foundation and the Observer. Minimally the Council defines the common interest of the Foundation and the Observer and the Observers rights in the Council.
- (6) National Grid Initiatives, which are not yet members of the Foundation and that fulfil the criteria for membership may apply for membership by submitting a motivated request in writing to the Director. After having received the request and any additional information the Director may consider relevant for the application, the Director shall submit the request to the Council for approval at the first next Council's meeting.. Approval by the Council of the request for membership is defined in (2) and (3).

## **4 CHAPTER 2 – GOVERNANCE**

### **ARTICLE 5 Bodies of the Foundation**

- (1) The bodies of the Foundation are
  1. Council
  2. Executive Committee
  3. Director
  4. Office
  5. User Forum Steering Committee

6. Committees as defined by the Council.
- (2) The Executive Committee will decide on all matters that cannot be resolved through these Statutes and are not described in the Regulations.

## **ARTICLE 6 Council**

- (1) The Council shall be the top level management layer of the Foundation.
- (2) Full members of the Council are appointed by their NGI for a period of three years, after which a renewal of mandate has to be issued by the respective NGI. The reappointment of the Member or replacement Member by the respective NGI does not require approval by the Council.
- (3) The User Forum Steering Committee can appoint two members to the Council. One is the chairman of the User Forum Steering Committee and another one shall be appointed by the User Forum Steering Committee. If the number of NGIs grows beyond 20, the User Forum Steering Committee is allowed to appoint a third member to the Council. The User Forum Steering Committee members will individually have voting rights on all matters, except on the yearly budget. The reappointment of the Members or replacement Members by the User Forum Steering Committee does not require approval by the Council.
- (4) The appointment of any representatives of associate members or observers or other Council-defined groups allowed access to the Council's meetings will require a qualified decision of the Council.
- (5) A Member is considered to be present if present in person or if he uses a life direct electronic connection with the other physically meeting members.
- (6) The Council shall have no less than five (5) full members.
- (7) Any changes in full member and/or associate members need to be communicated to the Director at least one month before the effective date.
- (8) The Council can decide to dismiss a Member if:
  - the Member no longer represents the NGI by which he was appointed;
  - the Member is prosecuted for or is being or has been involved in illegal actions.
- (9) The Council represents collectively the Foundation legally and beyond.
- (10) Members of the Council will not individually represent the Foundation.

- (11) The chairman of the Council may legally represent the Foundation together with the chairman of the Executive Committee or the Director.
- (12) The Council can take legal and binding decisions if at least [50%] of the Members are present.
- (13) The Council can also take decisions outside the scope of a Councils' meeting, provided that all Members have been enabled to give their opinion or vote on an issue. The details of this process need to be described in the Regulations before this method is made use of.
- (14) The Council shall elect a Chair and a Co-Chair among the Members for a period not exceeding two years. Chair and co-chair can be re-elected repetitively.
- (15) The Council shall meet twice a year and occasionally more often if deemed necessary. The meetings of the Council are not public. Unless the Council decides otherwise, the Chairmen of Committees appointed by the Council will attend the meetings of the Council concerning the goal of the Committee.
- (16) The Council may invite an observer on behalf of the European Commission to take part in all discussions.
- (17) In no case will the collective voting rights of the NGI-members in the Council be less than 51% of the number of the full members in the Council.
- (18) Decisions by the Council are made by simple majority (>50% of present members) or by qualified majority (2/3 of present members) to be decided by the Council for cases not described in the Statutes, but a first attempt will always be made to reach unanimity during the same meeting. Voting rights are on the basis of one member one vote.
- (19) Decisions on the mid-term budget (three years ahead) or changes in the rules for contribution are made unanimously. If no unanimity can be reached the Council will reconvene within one month for an extraordinary meeting, where a two-third majority will be sufficient. However, if the consequence for an NGI(s) would be a more than 50% raise in its individual contribution, that NGI has the right to withdraw from the Council. All standing obligations will still have to be met by the withdrawing partner.
- (20) Decisions on the yearly budget shall be taken by simple majority if the budget deviates no more than 10% from the already agreed mid-term budget. Changes larger than that will be considered a change in the mid-term budget and decided upon accordingly.
- (21) Expenditures by the members of the Council to fulfil their duties shall be reimbursed by the organisations they are representing.

**ARTICLE 7 Duties of the Council**

- (1) The Council must confirm the long term strategy of the Foundation regarding policy in technical and administrative matters.
- (2) The Council decides on the documents and proposals prepared by the Executive Committee or the Director.
- (3) The Council will establish the Regulations for the Foundation, to be prepared by the Director and discussed with the Executive Committee. Such Regulations will encompass the mode of operation of the Council, the structural bodies of the Foundation, the Office and the Director, and all rules concerning conflict of interests and objections from users/customers against decisions by the Foundation members and a procedure for handling complaints.
- (4) The Council will appoint and dismiss committees for temporary or permanent tasks, upon request or on proposal of the Executive Committee.
- (5) The Council confirms the tasks and mandate of the Executive Committee in as far as these are not determined through these statutes.
- (6) The Council may issue instructions and may delegate authority to the Director and/or the Executive Committee.

**ARTICLE 8 Voting procedure of the Council**

- (1) For all decisions a first attempt will be made to reach consensus. If such consensus is not within reach, the Council shall vote;
- (2) For decisions on agenda matters not involving persons or personal matters the Council may vote by raising hands;
- (3) For decisions on agenda matters that involve persons or personal matters, the Council votes secretly.
- (4) Upon request of a single member, voting shall be secret.
- (5) Voting on financial matters shall not be secret.

**ARTICLE 9 Executive Committee**

- (1) The Foundation will have an Executive Committee. The Executive Committee will have three members if the Council has less than ten members. The Executive will have five to seven members if the Council has ten members or more.

- (2) The Council elects and appoints the Executive Committee Members. Elected members of the Executive Committee can be but need not be Members of the Council.
- (3) Duration of membership of the Executive Committee and process for selection or renewal are described in the Regulations.
- (4) The Director will act as the secretary of the Executive Committee and will take part in the Executive Committee's deliberations and meetings, except when the Committee addresses the Director's functioning or any other issues where the personal involvement of the Director is to be discussed.
- (5) The Executive Committee represents the Foundation legally and beyond by proxy of the Council.
- (6) The Executive Committee votes on matters within its mandate by simple majority in case a unanimous decision cannot be reached.
- (7) The chairman of the Executive Council is elected by and appointed by the Council, but need not be a member of the Council.

#### **ARTICLE 10 Duties of the Executive Committee**

- (1) The Executive Committee calls the meetings of the Council and prepares the agenda.
- (2) The Executive Committee is responsible for the fulfilment of the objectives of the Foundation and for its operation.
- (3) The Executive Committee monitors the activities and the overall well functioning of the Director and the Office.
- (4) The Executive Committee may request advice and input from all Committees established by the Council of the Foundation.
- (5) The Executive Committee will have a rules for employment document established and put in place.
- (6) The Executive Committee is responsible for the staff policy.
- (7) The Executive Committee shall engage and decide on the collaborations to be set up with the ecosystem within which the Foundation is supposed to work.
- (8) The Agenda of the Executive Committee is established by the Director in close cooperation with the Chairman of the Executive Committee.

#### **ARTICLE 11 Committees**

- (1) The Council may install Committees to cover the various aspects of the field of operation of the Foundation.
- (2) Permanent Committees shall be described in the Regulations. *Ad hoc* Committees will be established as needed.
- (3) The User Forum Steering Group, as being considered an essential element to maintain the quality of the European grid service, is established through these Statutes.
- (4) Each Committee will have Terms of Reference, the minimal requirements of which are described in the Regulations.

## **ARTICLE 12 User Forum Steering Committee**

- (1) The Council shall in its Founding Meeting select a chairman and at least two members for the User Forum Steering Committee. The Council will do so unanimously. The first chairman and members of the User Forum Steering Committee will be selected from nominations from the first NGIs that are members of the first Council. The chairman and members of the User Forum Steering Committee shall not be already members of the Council on behalf of an NGI.
- (2) The User Forum Steering Committee shall within the next half year following its appointment write a document with its own duties and the Action Plan under which it shall operate.
- (3) The Action Plan of the User Forum Steering Committee shall encompass at least the following elements:
  - The procedure for selecting/electing members;
  - The procedure for electing the chairman;
  - The methodology of its meetings;
  - The procedure for applying/changing the Action Plan.
- (4) The User Forum Steering Committee shall evaluate all usage aspects of the Foundation at European level, from the perspective of a critical user or customer, including quality of service, helpdesk, changes in usage, expected growth or diminished use, new or emerging user groups.
- (5) The User Forum Steering Committee shall report quarterly to the Executive Committee and the Council. The Report shall cover at least the topics mentioned under (4).

- (6) The User Forum Steering Committee shall give solicited or unsolicited advice to the Executive Committee, the Director and the Council.
- (7) The meetings of the User Forum Steering Committee shall be organised by the Office.
- (8) The Chairman of the User Forum Steering Committee shall be an *ex officio* member of the Council of the Foundation.

## **5 CHAPTER III – MANAGEMENT AND REPRESENTATION OF THE FOUNDATION**

### **ARTICLE 13 Director**

- (1) The Foundation shall be managed and represented in all relations with third parties by the Director and the Director shall represent the Foundation legally and beyond, within its mandate given by the Council.
- (2) The Director shall be the leading actor of the Foundation and shall function as its icon.
- (3) The Director shall be appointed by the Council for a period of 5 years. After an evaluation of his/her performance, the Council may extend his/her appointment once for up to 4 more years.
- (4) The Directors' contracts of employment shall be drawn up, amended and terminated by the Council, according to and within the Dutch Law.
- (5) The Director shall on the basis of a mandate by the Council and mandates by the Executive Committee act in a manner consistent with these Statutes and according to the decisions of the Council and/or Executive Committee, and shall be responsible to the Council for the execution of his/her duties.
- (6) Any authorisation to the Office or other persons outside of the Foundation to act on behalf of the Foundation shall be granted and withdrawn by the Director.
- (7) The initial mandates of the Director include but are not limited to:
  - a. Draw up the annual work plan, work programmes, annual budgets, staff establishment plan and staff policy plan;
  - b. Implement the annual work plans and the budget, maintain the inventory and draw up the annual activity report and the annual accounts;
  - c. Prepare internal Regulations and directives for approval by the Council;



- d. Within the delegation given by the Council, define the internal organisation structure of the Foundation;
  - e. Draw up the annual activity report and any other reports requested by the Council and committees;
  - f. Draw up a rules for employment document;
  - g. Ensure the application of appropriate and transparent financial management and internal controls and audits;
  - h. Draw up rules on intellectual property rights, industrial policy, and on dissemination of information;
  - i. Assist the Council and the Executive Committee.
- (8) The Director shall submit to the members of the Executive Committee and the Council
- (1) the accounts for the preceding financial year;
  - (2) the scientific programme and the budget estimates for the coming financial year;
  - (3) the multi-annual programme and budget estimates and their up-to-date versions.

#### **ARTICLE 14 Office and Personnel**

- (1) The Foundation will have an Office.
- (2) The Office will be led by the Director.
- (3) The Office will assist the Director to serve the Council, the Executive Committee, the Committees and the Director in order to fulfil their tasks.
- (4) The staff is appointed by the Executive Committee upon proposal of the Director.

#### **ARTICLE 15 Auditing Report**

- (1) At the end of the financial year the accounts shall be audited by an authorised external Auditor. The Auditor shall draw up an auditors' report and submit it to the Council.

- (2) At the request of at least five Members of the Council, issued during a meeting of the Council, additional auditing may be requested during one financial year.

## **6 CHAPTER IV – RIGHTS AND RESPONSIBILITIES OF THE MEMBERS of the Council**

### **ARTICLE 16 General rights**

The Members of the Council have the right to request and receive all information about the Foundation, its activities, plans and other material that the Council Members consider necessary to fulfil their tasks,

### **ARTICLE 17 Funding contributions**

The Members of the Council that represent an NGI will undertake all reasonable actions to guarantee its NGI yearly financial contribution to be fully paid timely. The first list of contributions from the founding NGIs is appended to these Statutes and are due within two months after these Statutes come into effect..

### **ARTICLE 18 Liability of the Members**

<To be drawn up by legal experts>

## **7 CHAPTER V – FINAL PROVISIONS**

### **ARTICLE 19 Amendments to the statutes**

The Statutes may be amended by the Council, if the Council deems it necessary..

### **ARTICLE 20 Regulations**

- (1) For operational purposes regarding all issues that require further description, the Council shall draw up Regulations. These Regulations will encompass at least the issues mentioned in the Convention and the Statutes that are referred to the Regulations.
- (2) Changes and amendments to the Regulations will require the Councils approval.
- (3) The first version of the Regulations are an Appendix to these Statutes and are considered to be in place when the Statutes come into effect.
- (4) The Regulations shall not contravene the Dutch Law, the Statutes, the Convention or European laws.

**ARTICLE 21 Applicable law and jurisdiction**

- (1) These Statutes shall be construed according to the Dutch Law.
- (2) The Council Members shall as far as possible try to settle by amicable means any dispute which may arise from the interpretation or application of these Statutes.
- (3) Should no amicable settlement be reached, the Council Members will undertake an arbitration procedure. Ultimately the Dutch Legal system will resolve any unsolvable disputes.

**ARTICLE 22 Winding-up and insolvency**

- (1) The Foundation shall be established for an indefinite period.
- (2) The Council may decide by two-third majority to resolve the Foundation.
- (3) In case the European Research Infrastructures (ERI) will be established as an eligible legal form, the Council will consider the transition to that legal form. If the considerations will lead to a formal transition such transition will be established through minimal change from the actual Statutes (only what is necessary to make the transition possible will be changed). The personnel rights will be fully guaranteed through any such transition, in as far as it is legally possible.
- (4) In case the Foundation is resolved but not transformed into an ERI or into any other legal follow-up structure, the assets owned by the Foundation, including the technical and Office equipment, rights and real estate will be sold at best price, unless the Council decides differently. All revenues resulting are divided among the participating NGIs according to their contributions key and after payment of all debts.

**ARTICLE 23 Financial Year**

- (1) The financial year shall begin on the 1<sup>st</sup> of January and end on the 31<sup>st</sup> of December of each year.
- (2) The first financial year shall begin on the date of the signature of the present Statutes and shall end on the 31<sup>st</sup> of December 2009.

## **4 Annex Regulations of the Grid European Research Infrastructure**

### **4.1 Regulations to the Foundation <grid-eri.eu>**

The Regulations are confirmed by the Council at the date of the establishment of the Foundation, d.d. ....

#### **ARTICLE 1 General**

1.1. The Foundation is the Foundation <grid-eri.eu>, established under Dutch Law on ... in Amsterdam;

1.2. These Regulations are drawn up pursuant to Article 20 of the Statutes of <grid-eri.eu>.

1.3. These Regulations add to the rights and obligations of members and add to the rules in the grid-eri.eu Statutes which define how grid-eri.eu operates.

1.3. These Regulations can only be amended by a resolution of the Council with two third majority of votes.

1.4. In the event of conflict of rules, the Dutch Law and the Statutes of grid-eri.eu shall take precedent over these Regulations.

1.5. The Regulations replace all previous documents of grid-eri.eu containing previous regulations.

#### **ARTICLE 2 Specific objectives of <grid-eri.eu>**

2.1. Besides the general purpose of <grid-eri.eu> stated in the Statutes, <grid-eri.eu> also has the following objectives:

- to operate the grid as the seamless integration of national grids and beyond;
- to develop and design instruments to facilitate grid operations from a user-centric point of view;
- to run a service and help desk operation across the grid as a whole;
- to design and offer grid services;
- to further design and roll out novel grid services.
- to promote the use of grids as a means of conducting research;

- to operate the European level of the production Grid Infrastructure for a wide range of scientific disciplines linking National Grid Initiatives. The national and regional level of operation is ensured by the NGIs.
- to provide grid services and support at the pan-European level, complementing and coordinating national services;
- to coordinate middleware development and standardization to enhance the infrastructure by soliciting targeted developments from leading EU and National Grid middleware development projects;
- to coordinate and implement a security policy;
- to liaise with other e-Infrastructure projects and standardization bodies in Europe and elsewhere;
- to support the NGIs in matters of training, dissemination and outreach.
- to actively maintain contacts with users and organise user groups and communities;
- to engage in industrial research on grids and to actively maintain contacts with industry for mutual benefit.

2.2. Some of the previous objectives may be updated and/or adapted in the course of operation of grid-eri.eu.

### **ARTICLE 3 Council**

#### **ARTICLE 3.1 Empowerment of the Council**

- (1) The Council acts upon request of the Executive Committee.
- (2) In establishing the long term policy plan, mid-term policy plans and annual budget and action plans, the Council ensures proper involvement of the User Forum Steering Committee and of the structural Committees.
- (3) The Council may decide that the allocation of funds can be left to the Executive Committee, Director, Committees established by or on behalf of the Council and other appointed officials.
- (4) The Council delegates the setting of rules for handling any access or application procedures to the Executive Committee.
- (5) The Council shall decide on the following items:
  1. projects in which the Foundation participates;
  2. changes in activities;

3. admission of new full members, associated members and observers to the Council and exclusions;
4. Regulations;
5. financial rules;
6. amendment of the Statutes;
7. election of the Chairman and Vice-Chairman of the Council;
8. appointment and dismissal of the Director;
9. appointment of the chairs of committees and the terms of reference of each committee or formal body;
10. strategic orientations and medium term scientific programme;
11. annual work plan;
12. annual budget and medium term financial estimates and annual activity report;
13. contributions to the budget and its terms of payment;
14. annual activity report and closure of the annual accounts and the discharge of the Director in this respect;
15. the policy for provision of services to industrial users;
16. execution of the staff policy plan;
17. adoption of rules on industrial policy, intellectual property rights and the dissemination of the information;
18. delegation of authority to the Director and to the Executive Committee for any matter not foreseen in the Statutes;
19. agreements for collaboration with establishments or organizations of third countries or with international organizations;
20. loans, unless they have been approved in the annual work plan and budget;
21. purchase, sale or mortgage of immovable property as well as all other immovable property rights, unless they have been approved in the annual work plan and budget;
22. assuming guarantees or securities and obtaining interests in other organizations;

23. general rules governing personnel administration and general insurance arrangements;
  24. legal acts and measures for which the Council/Executive Committee has reserved the right of prior consent, unless they have been approved in the annual work plan and budget;
  25. orders and contracts exceeding a level fixed by the Council/Executive Committee;
  26. acquisition or assignment of patents and granting of licences, unless they have been approved in the annual work plan, budget and Foundation policy regarding information and industrial property;
  27. arbitration agreements and settlements exceeding an amount fixed by the Council/Executive Committee, unless they have been approved in the annual work plan and budget;
  28. internal regulations and directives, as it deems necessary for the functioning of the Foundation;
  29. all items necessary to fulfil the purpose of the Foundation.
- (6) The tasks mentioned under Article 3.1(5). cannot be transferred or delegated to any other body of the Foundation.

**ARTICLE 3.2 Meetings of the Council**

- (1) The Council meets twice a year or so much more often as called by the Executive Committee.
- (2) The Council meets upon request of the Executive Committee or upon request of at least five members of the Council.
- (3) The Council can only make binding decisions if at least 50% of the members is present (the quorum).
- (4) If the quorum is not reached a next meeting is planned, to take place within a month. Binding decisions can be made at that meeting irrespective of the number of participants.
- (5) If, in case of a voting by simple majority, the number of votes is equal, the voting will be redone in the next meeting, unless the chairman considers

postponing the decision not in the interest of the Foundation. In that case the chairman's vote decides.

- (6) If, in case of a voting by two-third majority, the number of votes equals 2/3 exactly or lies in between 0,6 and 0,7 otherwise, the voting will be redone at the next meeting, unless the chairman, explaining for the notes the urgency of the decision, considers postponing the decision not in the interest of the Foundation. In that case the chairman's vote decides.
- (7) The Members of the Council have the right to be accompanied to the Council meetings by non-voting co-delegates and/or advisors to a maximum of two.

### **ARTICLE 3.3** The secretary to the Council

- (1) In addition to the tasks of the Director that follow from these Regulations and the Statutes, the Director acts as the secretary to the Council.
- (2) The Director can bring a secretary to the Council for taking the notes.
- (3) The Director is responsible for the convocations of the Council meetings and for executing the decisions of the Council, unless the Council decides to have certain decisions executed by other parties.
- (4) The agenda together with the accompanying documents shall be send by or on behalf of the Director to the Members of the Council at least ten working days before the meeting.
- (5) If, however, the agenda or (part of) the documents are not send at least ten working days before the meeting, this will form no reason on its own to not address the underlying issues at the meeting.
- (6) The Director is responsible for writing the notes of and action points from the meeting within ten working days after the meeting.
- (7) The Director is present at the Council meetings with an advisory voice, unless the agenda point concerns his position or functioning.

### **ARTICLE 3.4** Presence of the Executive Committee and other Committees

- (1) The chairman of the Executive Committee is allowed presence to the Council meetings at all times. The Chairman of the Executive Committee has an advisory voice but no voting rights, unless the Chairman is also himself a Council member.
- (2) The chairman of the User Forum Steering Committee is always allowed access to the Council meetings and has voting rights according to the Statutes.
- (3) The chairmen of the permanent Committees are allowed access to the Council meetings when and where their topic of existence is on the agenda.

## **ARTICLE 4 The Executive Committee**



**ARTICLE 4.1** Tasks, empowerment and meetings of the Executive Committee

- (1) The Executive Committee meets as a rule every month (fourteen days?).
- (2) The Executive Committee meetings are scheduled by the Executive Committee or upon request of the Director.
- (3) The Executive Committee draws up the long term policy plan, mid-term policy plans and annual budget and action plans, together with the Director, the User Forum Steering Committee and the Committees, or has these written under its leadership.
- (4) The Executive Committee may decide that the allocation of funds can be left to the Executive Committee, Director, Committees established by or on behalf of the Executive Committee and other appointed officials, unless these transfers of responsibilities are in individual cases explicitly not granted by the Council.
- (5) The Executive Committee sets the rules for employment, information provisioning, the administrative organisation, including the financial administration, for confirmation by the Council.
- (6) In all cases where no ruling is provided in the Statutes or in these Regulations the Executive Committee decides.

**ARTICLE 5 Committees**

**ARTICLE 5.2** Committees, instalment and tasks

- (1) The Council and the Executive Committee may install semi-permanent and *ad hoc* committees.
- (2) A decision to install a Committee encompasses its task, its composition and its duration.

**ARTICLE 5.2** Committees with granted decision rights

- (1) Committees may be granted the right to make decisions, provided they adhere to all rules of reporting, complaints and objections, financial rulings and budget control.
- (2) In case a Committee has been granted the right to make decisions, the body that installed the Committee, rules in its installation decision on the way the Committee will operate and report, the way the Committee is supervised, the way the Committee accounts for its actions and decisions, all in accordance with the tasks and rights granted.

**ARTICLE 6 Annual budget and account closing and reporting**

**ARTICLE 6.1** Annual budget

- (1) Each year for the half-year Council meeting, the Executive Committee and the Director present the proposed yearly budget.

- (2) The total budget includes the budgets of the User Forum Steering Committee and the Committees.

**ARTICLE 8.1 Annual account closing**

- (1) The Director produces the annual account closing documents.
- (2) The annual account is reviewed by an independent external accountant. The external accountant is explicitly invited to give advice on the account for further improvement.
- (3) The outcome is discussed in the Executive Committee, which upon acceptance passes it to the Council.
- (4) The Council votes on the annual account and after acceptance discharges the Director.

**ARTICLE 6.3 Reporting**

- (1) All semi-permanent Committees contribute to the annual public report.
- (2) The Director is responsible for making up and issuing the annual public report, its overall contents and structure.
- (3) The annual public report is approved by the Executive Committee.

**ARTICLE 7 Publicity of the meetings**

- (1) The meetings of the Council and of the Executive Committee are not public, unless incidentally decided differently.
- (2) The agenda points of the meetings are public.
- (3) The notes of the meetings are not public.
- (4) An excerpt of the notes may be made public, except for names of persons or decisions in the context of procurements or negative decisions on research proposals and other matters that require confidentiality.

**ARTICLE 8 Conflict of Interests**

**ARTICLE 8.1 The Council, Executive Council, Committees**

- (1) The members of the Council represent their NGL and commercial partner-members will represent their company. The NGLs shall not personally serve commercial interests. The Council members will explicitly sign a document promising this.
- (2) The members of the Executive Committee are to serve only the purpose of the Foundation. The members of the Executive Committee shall sign a document confirming their independence or mention all interests that may influence their decisions.
- (3) The members of all Committees shall sign a document confirming their interests and confirming their unbiased position in the matters of the Committee's concern.

**ARTICLE 9 Appeal and objections**

- appeal against decisions concerning personnel;
- appeal against decisions for access to the grid or its resources
- appeal against decisions that involve (peer) review.