



Implementation of ELIXIR: Frequently Asked Questions on Legal and Governance Issues

This document lists important and frequently asked questions regarding legal and governance issues related to the implementation of ELIXIR.

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I. ELIXIR's legal framework

1) What does ELIXIR's structure and legal framework look like?

ELIXIR's structure is based on a hub and nodes model. The ELIXIR Hub provides an administrative governance structure, which carries out scientific, technical and administrative coordination tasks in addition to the delivery of core services. These tasks are decided by the ELIXIR Board and executed by the ELIXIR Director both of which are advised by advisory bodies.

The ELIXIR Nodes, national or international research institutes from ELIXIR Members that enter into a collaboration agreement with the ELIXIR Hub, play a leading role in the provision of technical services. The Head of Nodes support the ELIXIR Director in developing the ELIXIR Programme, scientific strategy and grant-funding opportunities.

The legal framework of ELIXIR is based on the ELIXIR Consortium Agreement (ECA), which has been concluded among the Member States and EMBL and officially entered into force on 12 January 2014 (thirty days after the ratification of the ECA by Estonia as the fifth country). The ECA covers ELIXIR's mission, membership, obligations of the Members and the ELIXIR Hub, the governance structure between the ELIXIR Hub and the ELIXIR Nodes and the internal governance structure of the ELIXIR Hub itself.

Based on the ECA, EMBL carries out activities on behalf of ELIXIR that require EMBL's legal personality. This allows ELIXIR to take advantage of EMBL's privileges and immunities. Legal transactions for ELIXIR are handled by EMBL, and ELIXIR Staff is formally employed by EMBL and subject to EMBL Staff Rules and Regulations. EMBL provides, at full cost, ELIXIR offices, scientific facilities and services such as human resources structures, procurement and financial management, which ELIXIR funds through an overhead charge in accordance with EMBL's financial regulations. ELIXIR activities are carried out independently from EMBL, governed by the ELIXIR Board and based on separate accounts. ELIXIR Member States therefore only finance those activities that are related to ELIXIR. ELIXIR must at all times maintain a positive cash balance.

II. Details of ELIXIR's legal framework

2) What are the contents of the ECA?

The ECA is concluded by the ELIXIR Members, i.e. States and EMBL, which form the ELIXIR Consortium. The ECA includes ELIXIR's mission and strategy, the organisation and obligations of the ELIXIR Consortium Partners. The ECA covers for example the following provisions:

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

- Entry into force
- Duration and evaluation of the infrastructure, etc.

3) What is EMBL's legal nature?

EMBL, the European Molecular Biology Laboratory, is an intergovernmental organisation based on the international treaty "Agreement Establishing the EMBL". It is funded by 20 Member States and one Associate Member State. EMBL's headquarters are in Heidelberg, Germany and one of the four outstations is the European Bioinformatics Institute (EMBL-EBI) in Hinxton, UK, which is also the location of the ELIXIR Hub. All five sites are under the same legal framework, which is based on the "Agreement Establishing EMBL". Due to its status as an intergovernmental organisation, EMBL profits from privileges such as tax exemptions. EMBL is allowed to establish its own labour law and also acts independent of national procurement law. Whenever the term "EMBL-EBI" is used, in the ECA or other ELIXIR documents, it indicates that only EMBL's outstation in the UK is involved.

4) What is EMBL's role within ELIXIR?

EMBL's role within ELIXIR is threefold. EMBL is a Member of the ELIXIR Consortium, it serves as the host of the ELIXIR Hub providing administrative services, and EMBL provides technical services to ELIXIR. In the activities carried out within ELIXIR, EMBL is bound by the provisions of the ECA and the decisions of the ELIXIR Board.

- a. As an ELIXIR Member, EMBL participates in the decision-making processes of the ELIXIR Board and has one vote like all other Members of the ELIXIR Consortium.
- b. As the host of the ELIXIR Hub, EMBL provides those services essential for the operation and management of the ELIXIR Hub and the accomplishment of ELIXIR's goals taking into account that the ELIXIR Consortium does not have its own legal personality. In the ECA, these activities are referred to as "Core Responsibilities" and they are funded by the ELIXIR Budget. These include employing ELIXIR Staff and making available facilities, infrastructure and services, such as procurement and financial management, to the ELIXIR Hub. In addition, EMBL, as part of and as mandated by the ELIXIR Consortium, enters into agreements with third parties or acts as party to legal disputes.
- c. EMBL also provides technical services to ELIXIR as approved by the ELIXIR Board. The provision of these technical services is subject to the same rules governing the provision of services by the ELIXIR Nodes in the ELIXIR Member States. The Core Responsibilities and technical services of EMBL to ELIXIR are defined in 'Work Programmes'. The 'Work Programmes' are distinct from the ELIXIR Programme. They describe the services EMBL provides to ELIXIR, both technical and administrative, whilst the ELIXIR Programme establishes ELIXIR's mission and strategy as a whole.

5) Is a later transition to a different legal model possible?

The Board may choose to examine the options for other legal models such as the European Research Infrastructure Consortium (ERIC). A transition to an ERIC – if wished for by the ELIXIR Member States – should be easily achievable because the ECA was drafted in a manner that also covers all those aspects that are considered key elements of ERIC statutes.

III. Requirements for membership

6) *What is the membership structure of ELIXIR?*

The Members of ELIXIR are sovereign states and EMBL.

The ECA states that Member States of the Council of Europe (<http://hub.coe.int/>) are eligible to join ELIXIR. Other states may be declared eligible by decision of the ELIXIR Board. Furthermore, EMBL and Intergovernmental Organisations established under international or EU law (such as ERICs) are allowed to become a member in ELIXIR.

Each Member may send up to three delegates to the ELIXIR Board. It is advised that delegations to the ELIXIR Board should consist at least of one administrative and one scientific representative appointed by the respective governments.

7) *Do EMBL Member States have to become members in ELIXIR?*

No. It is neither mandatory for EMBL Member States to become members of ELIXIR nor for ELIXIR Member States to become members of EMBL. The membership of both institutions is strictly separate.

8) *What is the difference between EMBL-EBI and ELIXIR?*

EMBL-EBI and ELIXIR are two separate entities, serving different well-defined purposes and offering different services.

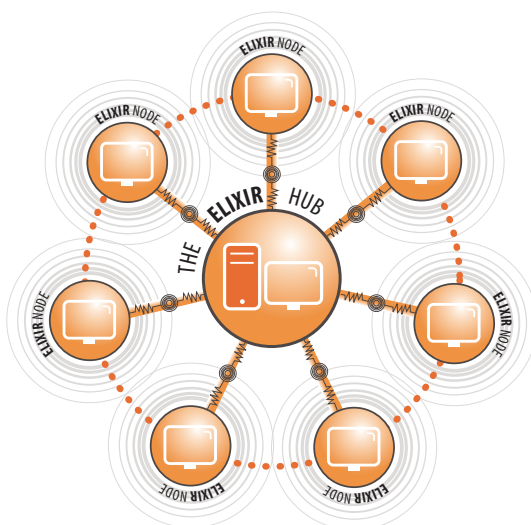
ELIXIR is a distributed research infrastructure, involving the coordinating ELIXIR Hub and the Nodes, which provides the vital services for biological information in Europe. It operates and manages an interlinked collection of biological data resources, tools and literature. ELIXIR is funded by the ELIXIR Member States. The ELIXIR Hub is located at EMBL-EBI.

EMBL-EBI is first and foremost a research institute operating as an outstation of EMBL. It conducts scientific research activities independent of ELIXIR and these activities are funded by the EMBL Member States. EMBL-EBI also provides bioinformatics services in the same manner as ELIXIR Nodes.

IV. Organisation

9) *What is the model?*

ELIXIR is a distributed research infrastructure. It is structured on the basis of a hub and nodes model.



The coordination of ELIXIR's mission and activities is executed by the ELIXIR Hub, located at the Wellcome Trust Genome Campus in Hinxton, UK. The ELIXIR Hub handles the organisational, technical and infrastructure interactions with the ELIXIR Nodes and other ESFRI BMS and e-infrastructures.

The ELIXIR Nodes, national or international research institutes, which enter into a collaboration agreement with the ELIXIR Hub, provide the delivery of technical services and interoperability. Each ELIXIR Node is hosted by an institute that has its own legal personality and provides a defined set of services on behalf of or for ELIXIR. These services and the terms and conditions of their delivery are specified in Collaboration Agreements entered into by the ELIXIR Hub and the ELIXIR Nodes. In some ELIXIR Member States, the ELIXIR Nodes will consist of the national bioinformatics research infrastructures that comprise various institutes, which have established an overarching legal structure.

10) What are the tasks of the ELIXIR Hub?

The ELIXIR Hub hosts the ELIXIR Director and the ELIXIR Staff. The ELIXIR Director is responsible for the day-to-day operational, financial and administrative management of ELIXIR in accordance with the decisions by the ELIXIR Board. ELIXIR Staff are responsible for managing the implementation of the ELIXIR Programme, servicing the various ELIXIR Boards and Committees, external relations and communications, grant-application functions. The ELIXIR Staff comprise legal and technical expertise, which is necessary for a large, distributed research infrastructure and the effective interfacing and coordination with other biological, health and e-infrastructures.

The ELIXIR Hub will help to ensure the provision of training. It will provide support for the coordination of suitable trainers in the ELIXIR Nodes and the ELIXIR Hub will also ensure the provision of an infrastructure for the management of training materials. These can then be used and reused by all of ELIXIR's trainers. The tasks of the ELIXIR Staff are established in greater detail in the ELIXIR Programme, which is approved by the ELIXIR Board.

The ELIXIR Hub will

- Manage and administer the ELIXIR Programme
- Provide services to support the Nodes and the user community as set forth in the ELIXIR

Programme

- Coordinate data delivery from the major European Data Centre for ELIXIR
- Coordinate services across the infrastructure (e.g. data delivery, technical and user training activities or others if required)
- Build bridges with other life science infrastructures and e-infrastructures
- Coordinate applications for pan-European funding to support ELIXIR

11) Who determines ELIXIR's strategy and policy in scientific and administrative matters?

The ELIXIR Board determines ELIXIR's overall strategy and policy in scientific, technical and administrative matters, in particular by making decisions that the ELIXIR Director will execute. The Board is composed of representatives from each of the ELIXIR Consortium Partners and should preferably include a scientific and an administrative delegate from each Partner. Each ELIXIR Member has one vote.

Whilst the ELIXIR Board is the highest decision-making body, it has appointed a Head of Nodes Committee, comprising the Head of Nodes appointed by each of the ELIXIR Nodes. This committee supports the ELIXIR Director in developing and implementing the scientific vision and Programme for ELIXIR.

12) How are decisions taken and executed?

The ELIXIR Board decides on issues that are of overall strategic importance to ELIXIR, such as the Financial Plan, the budget and the ELIXIR Programme. It establishes and monitors rules and procedures, including those for the evaluation and selection of ELIXIR Nodes. The ELIXIR Board is advised by an independent Scientific Advisory Board (SAB).

The ELIXIR Director is the executive body within ELIXIR's governance structure. He/she is appointed by the ELIXIR Board to manage and administer ELIXIR activities in accordance with the decisions of the ELIXIR Board. ELIXIR Staff assist the ELIXIR Director in his/her tasks.

13) What mechanisms are in place to secure scientific excellence? (The Scientific Advisory Board)

The Scientific Advisory Board (SAB) advises the ELIXIR Board and ELIXIR Director in scientific matters. The tasks of the SAB also include providing advice in the selection of ELIXIR Nodes, as well as scientific and technical evaluation of the ELIXIR Hub and Nodes. However, it is the ELIXIR Board which makes the final decision on approving ELIXIR Nodes and the services they provide. The SAB is one of the most important governance bodies since it ensures the infrastructure's scientific independence and excellence. The SAB members are appointed by the ELIXIR Board through the formal voting process.

14) How can national research and funding organisations participate in the decision-making / strategic process?

Each Member State and EMBL are invited to send two (maximum three) delegates to the ELIXIR Board. Member States are advised to appoint at least one delegate that represents the government/ministry/funding organisations and another delegate representing the scientific community. The delegation shall be authorised to make decisions on behalf of the Member

concerning all strategic issues discussed by the ELIXIR Board. The delegates are advised to have a continuous dialogue with their national scientific community as well as the national funding organisations in order to promote ELIXIR's mission.

V. Staff working at the ELIXIR Hub

15) Under which conditions are staff at the ELIXIR Hub employed?

The ELIXIR Director and the ELIXIR Staff are based at the ELIXIR Hub and are employed by EMBL. As an International Organisation, EMBL is exempted from certain national laws. EMBL relies on its own Staff Rules and Regulations, offering certain privileges and immunities to all EMBL staff, for example exemption from national income tax.

The ELIXIR Nodes will employ staff who are responsible for ELIXIR activities locally according to their own staff rules. For each Node the relevant national labour law applies.

16) What is the difference between staff working for ELIXIR and Staff working for EMBL?

There is no difference in a legal sense since EMBL and ELIXIR Staff will have the same employment contracts based on EMBL Staff Rules and Regulations. However, the ELIXIR Director is appointed and dismissed by the ELIXIR Board. ELIXIR Staff are accountable to the ELIXIR Director for the execution of all technical and administrative services. The ELIXIR Director and ELIXIR Staff will carry out tasks agreed by the ELIXIR Board and their salaries will be financed by ELIXIR's Member States.

VI. Liability

17) Who is liable for damages caused in relation to ELIXIR?

ELIXIR is not established as a separate legal entity but makes use of EMBL's legal persona. EMBL would thus become liable in the event of any liability arising in the context of ELIXIR activities. Therefore, the ELIXIR Member States have agreed to protect EMBL from and against any direct, indirect or consequential loss or similar damage to a third party as a result of the operation or management of the ELIXIR Hub or for services commissioned by the ELIXIR Hub. Accordingly, the financial consequences for damage caused by ELIXIR are shared by the ELIXIR Member States pro rata in accordance with their ordinary financial contributions.

EMBL remains liable for any damage caused by its own wilful act or gross negligence and carries the financial consequences of such acts.

Third party claims against an ELIXIR Node are dealt with separately by the respective ELIXIR Node itself. Liability claims are governed by the collaboration agreements between the ELIXIR Hub and ELIXIR Nodes.

VII. Nodes – general requirements

18) What are the criteria to become an ELIXIR Node and who decides about it?

The ELIXIR Board as the ultimate decision-making body within ELIXIR decides on the criteria to become an ELIXIR Node. Most likely an ELIXIR Node will be hosted by a national or international research organisation that applies (alone or in collaboration with others) to enter into a Collaboration Agreement with the ELIXIR Hub. Nodes provide services important on a European or global level with an added value for ELIXIR. If appropriate, ELIXIR Nodes may also take on coordinating activities in the context of specific ELIXIR services such as training. The final decision to accept a new ELIXIR Node will be taken by the ELIXIR Board as advised by the SAB.

19) What is the relationship between the ELIXIR Hub and an ELIXIR Node?

Once accepted as a Node, all rights and obligations will be agreed in a collaboration agreement between the ELIXIR Hub and the ELIXIR Node. Entering into the collaboration agreement, the ELIXIR Nodes remain part of their hosting entity and keep their legal personality. The collaboration agreements are service level agreements which specify which activities ELIXIR Nodes will carry out and which services they will provide to the ELIXIR Hub.

It is envisaged that ELIXIR Nodes will provide and/or coordinate some or all of the following services:

- Data resources
- Compute, network and storage resources
- Training
- Tools Infrastructure
- Other data resources for the life sciences

Furthermore the collaboration agreement will include provisions on reporting duties, quality assurance and scientific evaluation processes, provision of facilities and staff dedicated to the infrastructure's mission, and financial commitments.

VIII. Funding and financial issues

20) What is the financial contribution of an ELIXIR Member State?

The Member States provide financial contributions that form the sustainable source of funding of the ELIXIR Hub. Each State contributes annually an aggregate amount of funds to the capital expenditure and to the current operating expenses of the ELIXIR Hub. The Member State contributions are defined in accordance with a scale that is fixed every three years by the ELIXIR Board. The scale is based on the average Net National Income at factor cost (NNI) of each State for the three latest preceding calendar years in accordance with OECD statistics.

The ELIXIR budget is ring-fenced from other EMBL activities and the ELIXIR Director will report to the ELIXIR Board on the use of the budget. Funding for the ELIXIR Hub is used to finance the administrative and scientific staff, capital expenditure and to compensate for administrative services provided by EMBL for ELIXIR. As part of the Work Programme, the ELIXIR Board may also

decide to commission services to the EMBL-EBI in accordance with the same principles that apply to ELIXIR Nodes.

21) What are the financial contributions at national level?

The funding of ELIXIR Nodes is separate from the membership fee to ELIXIR. Each ELIXIR Node is required to secure appropriate and sustainable for its activities, either from national or international funding bodies. ELIXIR Nodes describe in their Node applications the level of funding they have received for the proposed ELIXIR activities. This forms part of the review by the ELIXIR Board.

The Nodes are mostly hosted by institutions that already receive funding from national funders in order to carry out their everyday business. Depending on the national system for research funding, financial contributions are either provided directly from the ministries or from executive institutions that are directly linked to the government. In several cases, national funders have provided additional, new funding to support their ELIXIR Node. Funding could also come from independent funding organisations that have no direct link to the government. However, it is not obligatory for an ELIXIR Member State to establish an ELIXIR Node.

22) Will there be any direct funding from the ELIXIR Budget allocated to the ELIXIR Nodes?

As part of the ELIXIR Programme, the ELIXIR Board may decide to commission certain technical services from the ELIXIR Nodes. These Commissioned Services include technical and administrative services that generally fall under the responsibility of the ELIXIR Hub and are funded by the ELIXIR Budget. ELIXIR Nodes that carry out Commissioned Services will receive funding for the delivery of Commissioned Services.

23) Will there be funding from the European Commission?

The European Commission recognises the importance of European research infrastructures as a prerequisite for scientific excellence and their value for international competition. To this effect, the Preparatory Phase of ELIXIR was supported through a grant from FP7. Along with all other Research Infrastructures, ELIXIR will be eligible to apply for any suitable topics in Horizon 2020 to carry out activities that deliver added-value activities at the European level. The coming together of leading institutes into one coordinated infrastructure is likely to make it easier for partners to develop consortia and better access any European funding available.