



European Marine Biological Resource Centre (EMBRC) Memorandum of Understanding

December 2013

Deliverable 5.5

The EMBRC Preparatory-phase



D5.5 – EMBRC Memorandum of Understanding

Q1 – Is the present report addressing the objectives described in the DoW?

According to the objectives described in the DoW, the report presents the EMBRC Memorandum of Understanding - the legal framework during the implementation phase.

Q2 – Are there any deviations to the DoW? If so, why?

There are no changes or deviations to report for this deliverable.

TABLE OF CONTENT

Executive Summary	2
<i>I. Memorandum of Understanding</i>	<i>3</i>
1. Purpose and Nature of the MoU.....	5
2. Implementation of a Legal Structure.....	5
3. EMBRC Implementation governance structure.....	6
4. Contributions.....	6
5. Entry into Effect, Duration and Termination	6
6. Amendment, Assignment, and Annexes.....	7
7. Language	7
8. Settlement of Disputes.....	7
Annex 1: Technical and scientific description of EMBRC	9
<i>II. Status of the negotiations among the non-signatories EMBRC partners</i>	<i>11</i>
Annex 1: Signed EMBRC MoU between five countries	15

Executive Summary

The Legal Work Package No.5 (WP5) have prepared the EMBRC Memorandum of Understanding, a non-legally binding agreement between the countries who intend to coordinate their activities and work together towards the construction and operation of EMBRC. With the MoU, the signatories materialize the intent to work together during the implementation phase and define a clear line of action from now on without, necessarily, forming a legally binding constraints.

WP5 wanted to present a very lean, simple and flexible document; presenting only basic features of this kind of agreements for adapting the MoU to the requirements and circumstances of the participating members. The level of details of the MoU is quite low in order to allow the signatories to determine by themselves the rules that we want to follow for its operation.

A Memorandum of Understanding (MoU) will set the legal framework during the implementation phase. The signatories of the MoU (countries or intergovernmental organizations) will undertake the responsibility to support the activities of EMBRC-ERIC until the decision by the Commission to set up EMBRC-ERIC takes effect.

I. Memorandum of Understanding

European Marine Biological Resource Centre (EMBRC)

Memorandum of Understanding

for preparing the establishment of a legal structure to operate the European research infrastructure EMBRC

- 1. Purpose and Nature of the MoU**
- 2. Implementation of the legal structure**
- 3. EMBRC Implementation governance structure**
- 4. Contributions**
- 5. Entry into Effect, Duration and Termination**
- 6. Amendment, Assignment, and Annexes**
- 7. Language**
- 8. Settlement of Disputes**

ANNEXES:

Annex 1: Technical and scientific description of EMBRC

The Governments of (to be filled in by each country):

- (1) THE FRENCH REPUBLIC (ppPARTNER)
- (2) THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND (ppPARTNER)
- (3) THE PORTUGUESE REPUBLIC (ppPARTNER)
- (4) THE ITALIAN REPUBLIC (ppPARTNER)
- (5) THE HELLENIC REPUBLIC OF GREECE (ppPARTNER)
- (6) THE KINGDOM OF BELGIUM (*associate partner*)
- (7) THE KINGDOM OF SWEDEN (ppPARTNER)
- (8) THE KINGDOM OF NORWAY (ppPARTNER)
- (9) THE STATE OF ISRAEL (*associate partner*)
- (10) THE KINGDOM OF DENMARK (*associate partner*)
- (11) THE FEDERAL REPUBLIC OF GERMANY (ppPARTNER)
- (12) THE REPUBLIC OF FINLAND (*associate partner*)
- (13) THE REPUBLIC OF LITHUANIA (*associate partner*)
- (14) THE KINGDOM OF THE NETHERLANDS (*associate partner*)
- (15) THE KINGDOM OF SPAIN (*associate partner*)

And the EUROPEAN MOLECULAR BIOLOGY LABORATORY (EMBL) (ppPARTNER)

Hereinafter referred to as 'Signatories';

Considering the following as being established:

- Marine biodiversity is a major resource for scientific research, for our food supply and for industrial applications, and therefore, constitutes a research target for an increasingly diverse Research, Technological Development and Innovation (RTDI) community.
- Marine biological stations and research institutes provide this growing RTDI community with facilities to access and research marine biodiversity.
- In order to keep pace with rapid technological advances, particularly with respect to 'omics' methodologies, acoustic, optic, tracking, and monitoring techniques, and to provide internationally competitive large-scale facilities, a group of leading marine stations across Europe suggests to establish a **European Marine Biological Resource Centre** (EMBRC) as a European Research Infrastructure Consortium (ERIC).
- This European-level distributed Research Infrastructure (RI) has been selected for entering the second ESFRI roadmap in 2008;

- The EMBRC-Preparatory Phase project is funded by FP7 for the period Feb 1st, 2011 – Jan 31st, 2014. The Preparatory Phase addresses the legal, governance, financial and technical aspects of the construction of EMBRC and sets the basis for the creation of the legal entity that will be in charge of operating the RI.
- Following a comparative study of different legal options, the partners in the preparatory phase project, have decided an ERIC legal status is the most suitable legal form to operate the infrastructure and to opt for a “subsidiarity model” whereby a central European-level hub (hereinafter “central hub”) will coordinate the access, services and activities provided by local nodes (hereinafter “EMBRC nodes”) belonging to national operators (universities, research organizations). EMBRC-ERIC will be run by the EU Member States, associated countries, third countries and intergovernmental organizations comprised in the Governing Body, and managed by an independent director, assisted by a secretariat.
- EMBRC intends to provide access to a comprehensive range of marine ecosystems and organism of the coastal seas of Europe; become the major European provider of marine biological research infrastructure and related services such as: education and training, knowledge transfer, standardization of data collection and analysis, and will foster mobility of researchers between member states and a constructive collaboration between academia and industry.
- EMBRC will contribute to sustainable economic growth and employment. Access to EMBRC will be provided at full economic cost - based on scientific merit for academic users and feasibility for industrial users.

The Signatories have agreed as follows:

1. Purpose and Nature of the MoU

- (1) The purpose of this Memorandum of Understanding (hereinafter referred to as “MoU”) is to state the intent of the Signatories to take steps towards the construction and operation of EMBRC.
- (2) Nothing in this MoU is deemed to constitute an agency or any kind of formal grouping or entity between the Signatories.
- (3) Nothing in this MoU is deemed to constitute a legally binding obligation under international public law.
- (4) The Signatories agree not to withhold information that is relevant for the implementation of this MoU.

2. Implementation of a Legal Structure

- (1) The Signatories agree to make their best effort to undertake the necessary steps required to establish EMBRC as an ERIC legal entity (hereinafter EMBRC-ERIC), as described in the Council Regulation (EC) N° 723/2009 of 25 June 2009.
- (2) The Signatories agree to negotiate, in good faith, the Statutes of the EMBRC-ERIC.
- (3) The host country of the EMBRC-ERIC agrees to lead the application to the European Commission for the setting up and registration of the EMBRC-ERIC.

3. EMBRC Implementation governance structure

A governance structure is established to support the project through the implementation phase. One of its tasks will be to negotiate the ERIC statutes.

The governance structure is composed of:

- The EMBRC Implementation Board, consisting of 2 representatives appointed by each Signatory of the present MoU, one for administration and one for science. Countries that are not signatories to this MoU but that nonetheless have a clear intention of becoming Signatories to this MoU may appoint 2 representatives to attend meetings of the EMBRC Implementation Board as observers, but these observers will not be entitled to vote on any decisions taken during such meetings until such time as they become Signatories of this MoU.

Advised by :

- An International Advisory Board, composed of (10) independent members, elected by the EMBRC Implementation Board via an anonymous vote from a list of renowned experts.

Relevant chaired meetings will be arranged as required to cover the ongoing business arising from the EMBRC Implementation Board activity and its support activities in order to achieve the goal of the setting-up of EMBRC-ERIC. The EMBRC Implementation Board shall adopt the Rules of Procedures, for managing its meetings, quorum, voting rights and tasks.

Representatives of EMBRC FP7 preparatory phase project Partners (“ppEMBRC General Assembly”) and Steering Committee (“ppEMBRC Steering Committee”), may be invited to assist EMBRC Implementation Board when appropriate.

Technical advisors from the Signatories and the pp Project may be appointed by the EMBRC Implementation Board if considered appropriate as technical advisors.

The EMBRC Implementation governance structure is coordinated by the host country

4. Contributions

Each Signatory declares to evaluate the possibility to:

- financially contribute to the annual running costs of the EMBRC-ERIC (“EMBRC core”); and
- financially support their respective EMBRC Nodes for their participation and contribution to EMBRC-ERIC.

5. Entry into Effect, Duration and Termination

(1) This MoU comes into effect between the Signatories as of the date of the third signature. It comes into effect for each additional Signatory after the said date as of the date of signature by the said additional Signatory.

(2) It remains effective either:

- Until the final acceptance by the European Commission of the ERIC application ; or
- The Signatories to this MoU decide to not further pursue the establishment of EMBRC as an ERIC by which decision this MoU would lose its purpose

Whichever dates come first.

(3) Signatories may decide to terminate this MoU earlier than that declared in the two optional criteria specified in (2) above. In such a case, the Signatories deciding on the termination shall inform the other Signatories in writing, subject to a three months prior notification. The remaining Signatories may decide that the MoU shall remain effective between them (provided that 3 Member States Signatories remain) for the initial duration as specified in the paragraph 5(2).

(4) As this MoU is non-binding, should one, several or all Signatories terminate their commitment to it, those terminating would not be liable to the others for any monetary or other losses that may result.

6. Amendment, Assignment, and Annexes

(1) Any modification of this MoU requires the written and signed consent of all the Signatories hereto to become effective.

(2) No rights or obligations of any of the Parties arising from this MoU may be assigned or transferred in whole or in part to any third party without the other Signatories' prior written approval.

(3) Annexes to this MoU form an integral part thereof.

7. Language

This MoU is drawn up in English, the language which governs all documents, notices, meetings and processes relative hereto.

8. Settlement of Disputes

Any dispute that might arise concerning this MoU shall be settled amicably. If no amicable solution is deemed possible, the Signatories shall agree to the termination of this MoU.

In witness whereof, the undersigned representatives, having been duly authorised thereto, have signed the present Memorandum of Understanding in three (3) identical original copies, and shall be deposited with the competent authority of the government of the host country, which shall transmit a certified copy to all and acceding Signatories, and subsequently notify them of any amendments.

Signatory:

Name of the person authorised to sign:

Position:

Place and Date:

Signature:

Stamp or seal of the Signatory (if applicable):

Annex 1: Technical and scientific description of EMBRC

Our seas and oceans control the Earth's climate and provide a rich and largely unexplored reservoir of biodiversity with great potential to contribute to food and energy security, human health and industrial production. Acquiring sufficient understanding of marine ecosystems to allow the sustainable exploitation of marine biological resources will require a step change in scientific endeavour. In order to secure Europe's global competitiveness and address Europe's grand challenges related to energy, food, job security, human health, climate change and on-going environmental degradation, it is now necessary to mobilise and link the currently fragmented infrastructure and human resources in Europe. To help meet these challenges, the European Marine Biological Resource Centre (EMBRC) was established to provide a strategic delivery mechanism for the provision of large scale and high quality marine science in Europe. EMBRC will become the major provider of marine biological research infrastructure and related services in Europe and provide a single access point to a comprehensive range of European marine coastal ecosystems and biological resources.

EMBRC is currently in the preparatory phase with the implementation phase launching in February 2014. EMBRC operation is planned from 2016 as a European Research Infrastructure Consortium (ERIC). EMBRC-ERIC will have a European-level centralised management (central hub) and a distributed operation with state-of-the-art facilities and services provided at EMBRC nodes located at leading marine stations and research centres across Europe. The central organisation will allow the strategic provision of marine research infrastructure through a single access portal. EMBRC-ERIC will be governed through statutes and service-level agreements with the national operators of the marine stations and research centres.

With a dedicated promotion and marketing strategy, EMBRC will attract users from across the life sciences including biological disciplines, environmental and conservation sciences, biotechnology and biomedicine as well as from industry and the technology sector. By bringing users from these various communities together, EMBRC will enhance interdisciplinary bridges and facilitate novel, innovative collaborations between public and private sectors. EMBRC will work towards interoperability of protocols, continuous updating of methodologies, technological synergy and complementarity of platforms, common training and shared planning of future large-scale investments in buildings, capital equipment, and human resources. Joint development activities will continuously improve the existing services as well as enable the development of new services adjusted to the scientific and biotechnological research priorities of academic, governmental and industrial users and in response to emerging societal challenges. EMBRC will provide the environment, facilities and expertise for the education and training of students and professionals in the life sciences. In particular, EMBRC will be central in the development of blue biotechnologies providing new opportunities for bioprospecting, bioremediation, sustainable aquaculture and fisheries using gene, protein and other molecular-based techniques. A socio-economic impact study carried out during the preparatory phase calculated an Economic Net Present Value (ENPV) for EMBRC of over M€300 during its lifetime, demonstrating a clear societal benefit and contribution to several dimensions of regional, national and European development.

Funding of EMBRC will come from multiple funding streams including membership fees, national and European public sources and gradually increasing income from service delivery and access fees during the operational phase. EMBRC access fees will be based on full economic cost for users from

the public sector and commercial rates for users from the private sector. The EMBRC central hub, responsible for the strategic leadership, management and administration of the Research Infrastructure, will be financed via annual subscription fees from the EMBRC member states. In the implementation phase, costs are primarily related to staff costs of the central hub and estimated at M€1.1 for 2014-2016. Value-added service activities are expected to increase in the operational phase and funding of EMBRC-ERIC during the first three years of operation is estimated at M€19.4. The national operators will themselves be responsible for maintenance and development of their infrastructure under EMBRC-ERIC access through national budgets. In return, EMBRC-ERIC is expected to significantly increase the visibility and attractiveness of the national infrastructures where the nodes are located and bring new users, which will open up opportunities for fruitful collaborations. EMBRC-ERIC will have a positive impact on the regional development in all member states and will enhance the strategic relevance and leverage of the national infrastructures/nodes in the regional, national and European context.

II. Status of the negotiations among the non-signatories EMBRC partners

The EMBRC Memorandum of Understanding has been signed by France, Portugal, Greece, Israel, Italy, the Netherlands and Belgium, so far.

The WP5 acknowledges receipt of the original three (3) signed pages from France, Portugal, Greece and The Netherlands. WP5 acknowledges receipt of the scanned copy of the signature page of Israel Ministry of Science, Technology & Space only.

On January 28, 2014, EMBRC WP5 legal officer sent follow up reminders to Israel, Italian and Belgian representatives; after they have not send the original signed copies yet.

Status of the negotiation

Country	National Authority	Contact person	Actions	Status
Sweden	The Swedish Research Council (VR)	Juni Palmgren, head of infrastructure unit (RFI)	Application to the Swedish Research Council for a Swedish Marine Research Infrastructure (SMRI) consortium including membership of EMBRC was unaccepted.	Sweden will not be signing the Mour before the end of 2014. UGOT will submit a proposal for EMBRC membership to RFI/VR this March and the outcome of that (due in Nov 2014) will decide whether Sweden will join or not. Until then GU would very much like to join as observer in the upcoming EMBRC implementation phase.
United Kingdom	Department of Business Innovation and Skills (BIS)	tbc	ppEMBRC partners are working hard in getting support from BIS to sign a non-binding Memorandum of Understanding to work towards	ppEMBRC UK partners should be organized nationally before they can give an answer on their status in EMBRC. However the UK

			establishing EMBRC as an ERIC.	EMBRC partners would like to know, firstly, the budget for the next phase and subscription fee for the next phase
Germany	German Federal Ministry of Education and Research (BMBF)		Application for an "omic"-researchlab with capacity for EMBRC-user access programme expected end of 2013. Due to the priority of investment, EMBRC german partners are still developing plans.	Negotiation about funding will go hand-in-hand with application to sign the MoU. Decision expected Dec 2014. EMBRC German partners are in the process to organize the national structure before signing EMBRC MoU. Decision on the infrastructures at the end of march.
Finland	Academy of Finland		Discussion with the ministry of education for the signing of EMBRC MoU The proposed Finnish EMBRC node is now part of the Finnish roadmap of research infrastructures, as part of the FINMARI consortium.	Good advantage in approaching the government, but no formal commitment yet.

Norway	The Research Council of Norway (RCN)	Mr. Odd Ivar Eriksen, special adviser (in RCN, Division of Science, Dept. of Research Infrastructures)	<p>Six (possibly seven) institutions across Norway have expressed their will</p> <ul style="list-style-type: none"> - on institution level - to participate in the EMBRC Norway node and have indicated to what extent their resources will/may be made available in EMBRC. <p>The tentative plan is to see the Norwegian node established during 2014, allowing for a dialogue between the node and the RCN in 2015 about entering the EMBRC-ERIC, and aiming at giving the recommendation to the government by the end of 2015 or early 2016.</p>	<p>RCN will by all probability, and as soon as the national node is established, give a recommendation to the Norwegian government to accept and sign the EMBRC-ERIC consortium agreement documents (MoU and statutes).</p> <p>Norway had a special challenge as non eu-member. Some progress, no formal commitment yet, but they are making improvements. National ESFRIs have very active participation. EMBRC national node, as soon as it is established, could become member of EMBRC</p>
Denmark	Danish Ministry of Research		The Danish EMBRC membership has not been included in the national strategy yet.	There is no official authorities that are ready to discuss the MoU
Spain	Ministry of Economy and Competitiveness			Three institutes are joining efforts as ESFRI partners. An inter-institutional agreement is being negotiated at the

				moment by the three institutions, but they have the full support of the regional government. They can probably give an answer about the EMBRC membership in February and March
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Annex 1: Signed EMBRC MoU between five countries

Deliverable D5.4
EMBRC Memorandum of Understanding V3



European Marine Biological Resource Centre (EMBRC)

Memorandum of Understanding

for preparing the establishment of a legal structure to operate the European
research infrastructure EMBRC

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