

Legal Status

ECPGR-SC 13
December, 2012

Mandate

- IER and discussions in SC-12 in Bratislava in 2010 identified possible needs in ECPGR governance:
 - More defined structure
 - More defined status;
 - Separate identity;
 - Legal capacity to accept funds and run projects in its own right;
 - Separate legal personality
- **SC mandated the Exec Com to prepare an Options Paper including pros and cons of options for Legal Status.**

Work of the ExCo

The ECPGR Executive Committee, at its second meeting in Maccarese in October 2011 was presented with possible options for the future legal status and decided to further explore 3 options:

- Continue present status: no legal personality and operation entirely through host institution;
- Continue to be hosted by an organisation, but obtaining an own legal status;
- Set up as international organization with its own international legal personality

intl org status narrowed to simplified procedure.

Key Considerations

- **Decisions** on hosting institution and on legal status **are separate**;
- SC ought to decide if **ECPGR acquires legal status or not**, and if yes how:
 - If SC decides to continue **not having legal status** it can do so under a hosting arrangement with **Bioversity** or the **Trust**.
 - If SC decides to **acquire legal personality** it can do so under **national law** (charity or not for profit) or **international law** (Internatl Org.).

What is legal personality?

- Legal personality: capacity of a person or entity to hold rights and to take legal action under applicable law (national/international);
- Natural persons have legal personality (under national law) to function under national law: to contract, own a house and employ other persons....
- Associations or commercial Enterprises, or Internatl Orgs:
Acquire it , eg. by registering as a company or charitable corporation under national law, or as an international organization under international law;
ALT.- operate as part of another group with legal personality, and carry out its day-to-day functions drawing on the legal personality of the group: **current situation of ECPGR.**

Advantages	Disadvantages
<ul style="list-style-type: none"> • To be able to sign contracts (agreements, MOUs, personnel contracts, projects, etc.) in own name 	<ul style="list-style-type: none"> • It will take time and effort (cost) to set up the necessary legal structure
<ul style="list-style-type: none"> • To be able to open and operate its own bank account 	<ul style="list-style-type: none"> • It will also take time and effort (cost) to establish the basic rules (financial regulations, operating procedures etc) for its operations.
<ul style="list-style-type: none"> • To be able to submit project proposals, to participate as a formal partner in projects 	<ul style="list-style-type: none"> • There will also be a cost in ECPGR providing its own support services, e.g. human resources management, computer support, auditing controls, etc, although these can be subcontracted to a hosting institution, or to an outside entity.
<ul style="list-style-type: none"> • To obtain more visibility and an own identity. This would avoid confusion with the host; to represent ECPGR to donors and members, etc. 	<ul style="list-style-type: none"> • There is a risk that the flexibility of ECPGR as a set-up might decrease; it might become a 'heavy' organization; it might be too costly to afford.
<ul style="list-style-type: none"> • To increase the accountability of the 'system', i.e. vis-a-vis the member countries, the Secretariat and others 	

3 options

- Given advice received and bids offered, there are 3 options:

Option 1 – no legal status and be hosted by Internatl Org (to decide: Bioversity or the Trust)

Option 2 – legal status under national law (and hosted by: Bioversity or Trust)

Option 3 – legal status under international law (and hosted short or long term by: Bioversity or Trust)

Option 1

- Option 1. Maintaining the present situation (ECPGR has no legal personality, but operates drawing on the legal personality of an institution).

→ ECPGR could continue the present arrangement with Bioversity International or seek a new hosting arrangement with an existing institution at either the national or international level → → → → TENDER PROCESS

→ No offer for hosting ECPGR from a national institution (the bid for EURISCO did not entail acquiring a separate legal personality, ie. EURISCO is/will be part of ECPGR)

→ 2 offers from international institutions

No legal personality but being hosted by international institution

Advantages	disadvantages
<ul style="list-style-type: none"> • No real need to seek an independent international status, since ECPGR and its staff would automatically enjoy the status of the hosting org.; 	<ul style="list-style-type: none"> • being seen as subjecting ECPGR and its Secretariat to an element of possible control or influence by the hosting international organization
<ul style="list-style-type: none"> • It would align ECPGR with an international organization operating with a parallel and consistent mandate; 	
<ul style="list-style-type: none"> • It would allow the ECPGR and its staff to enjoy international privileges and immunities; 	
<ul style="list-style-type: none"> • It would present opportunities for efficiencies in the operation of both the ECPGR and the hosting org. ; 	
<ul style="list-style-type: none"> • It would allow the Secretariat to (continue to) operate as an honest broker and to maintain the necessary freedom of operation under the supervision of the Executive Committee 	

Option 2

- Option 2. Establishing the ECPGR as a legal entity under national law.

→ ECPGR would be established as a NGO or other not-for-profit corporation under national law.

Advantages	Disadvantages
<ul style="list-style-type: none"> to establish the legal structure is a quick and cheap process 	<ul style="list-style-type: none"> As an independent entity, there will be a cost of time and effort in establishing the basic rules and conditions for its operations.
<ul style="list-style-type: none"> will provide ECPGR with its own legal personality 	<ul style="list-style-type: none"> ECPGR to provide its own support services, e.g. human resources management, computer support, auditing controls, etc, although these can be subcontracted to a hosting institution, or to an outside entity.
<ul style="list-style-type: none"> as a national entity it'd be registered as a charitable or other not-for profit organization, it will be entitled to tax exemption on its income and assets. 	<ul style="list-style-type: none"> Any tax exemption and other privileges and immunities negotiated with the host country will be limited to that host country. Not difficult.
<ul style="list-style-type: none"> could try to negotiate a headquarters (HQ) agreement with host state for privileges and immunities, but this is not usual/easy if not an Intl Org. 	<ul style="list-style-type: none"> Tax exemption will not normally extend to taxes unless a separate HQ agreement with host state.
	<ul style="list-style-type: none"> The negotiation of a HQ agreement and entry into force: lengthy process 1-7 years depending on host country.

Option 3

- Option 3. Establishing the ECPGR as a legal entity under international law.
- Establishing a new international organization is a process that takes a considerable amount of time and effort.
- The normal process is to draw up a draft establishment agreement in consultation with relevant stakeholders, adopt the establishment agreement at a conference of plenipotentiaries representing the member countries of ECPGR and open the agreement for signature and ratification → up to 8 or 9 years; OR
- Shortened process: adoption of a simplified procedure of an establishment agreement that can be brought into force on signature alone (no delays of ratification), this is the case of the Trust (but HQ agreement could also took 8yrs to negotiate).

Advantages	Disadvantages
<ul style="list-style-type: none"> • It would provide ECPGR with the legal status of an international organization with its own legal personality under international law 	<ul style="list-style-type: none"> • The process of establishing ECPGR as an international organization would likely be very time-consuming and quite costly
<ul style="list-style-type: none"> • will provide ECPGR with its own legal personality 	<ul style="list-style-type: none"> • Unclear whether member countries would be prepared to go through the time and effort to establish ECPGR and an independent Intl Org.
<ul style="list-style-type: none"> • ECPGR could negotiate a HQ agreement with the host state providing for tax exemption for its income and assets and other privileges and immunities for itself and its staff, 	<ul style="list-style-type: none"> • Even if ECPGR is established as an Intl Org. under a simplified procedure, is still necessary to negotiate a HQ agreement with host government providing for privileges and immunities for the new organization and its staff: lengthy process.
	<ul style="list-style-type: none"> • cost of time and effort in establishing basic rules and conditions to operate.
	<ul style="list-style-type: none"> • There will also be a cost in ECPGR providing its own support services,, although can be subcontracted .

Summarising

- Decisions on hosting institution and on legal status are separate;
- SC ought to decide if ECPGR acquires legal status or not, and if yes how:
 - If SC decides to continue **not having** legal status it can do so under a hosting arrangement with **Bioversity** or the **Trust**.
 - If SC decides to acquire **legal personality** it can do so under **national law (charity or not for profit)** or **international law (Internatl Org.)**.

Summarising

- **Legal personality:**
 - independence of operation: contracts, visibility...
- But
 - administrative requirements: legal structure, operating rules and procedures,..
 - Financial requirements: costs of providing or subcontracting services (HR, IT, audits...)
 - RISK of costly and bureaucratic organisation
- Under intl law: establish Intl Org + need HQ agreement
- Under natl law: establish NGO/nfp + could negotiate HQ agreement but more difficult

Summarising

- **Current status:** no legal personality but hosted by Intl Org (Bioversity or Trust):
 - ECPGR and staff would enjoy status of the hosting Intl Org.
 - ECPGR aligned with “similar” Intl Org: synergies, ...
 - Sharing of services...
 - Secretariat would be free of admin/negotiations and can service ECPGR (under the supervision of the ExCo)

In conclusion

→ The option of choice will ultimately depend on the vision that the ECPGR SC has of the future role of the ECPGR and its Secretariat