



The Roles of EuroGOOS: A proposal for discussion at the AGM

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1. Introduction

In order to assess whether establishing EuroGOOS as an EIG is the right step to take at this time, greater clarity on the role of EuroGOOS is needed. In particular, the growing number of actors on the stage of European operational oceanography (and related activities) makes it necessary to identify the distinctive contribution that EuroGOOS would make. Clarity about the role would also help members to commit to the proposed new arrangements with greater confidence and may help EuroGOOS to focus its activities better.

It simplifies the definition of the role if the purpose and the groups with which EuroGOOS interacts can be taken to be pre-defined. So these are discussed in sections 2 and 3 respectively. Section 4 suggests a set of roles for EuroGOOS.

2. The purpose of EuroGOOS

The EIG group proposed the following purpose for the new EuroGOOS:

- (i) To identify European priorities for operational oceanography;
- (ii) To ensure co-ordination of the European contribution to in situ marine observational systems (in collaboration with providers of climate services and the research community);
- (iii) To assist the development of common European standards for data sets, products and services for operational oceanography;
- (iv) To assist co-operation and coordination within operational oceanography at European and global scales;
- (v) To promote the value of operational oceanography and the development of underpinning science and technology.

We suggest that the following amended and re-ordered list be considered:

- (i) To ensure co-ordination of the European contribution to sustained in situ marine observational systems necessary to meet the requirements across a wide

- spectrum of the user community, including research, operational oceanography, and regular assessments of the state of our seas and oceans;
- (ii) To identify European priorities for operational oceanography;
 - (iii) To promote the value of operational oceanography and the development of underpinning science and technology;
 - (iv) To assist co-operation and coordination within operational oceanography at regional and global scales;
 - (v) To assist the development of commonly available, operational, observation and model-based, products and services.

3. Groupings of Players

1. The EuroGOOS members
2. The ROOSs
3. Key European organisations: EC, EEA, EMSA, EUMETSAT, ESA, EUMETNET
4. Global intergovernmental organisations that are responsible for the governance of GOOS (IOC) and its implementation (e.g. JCOMM), plus the GOOS Regional Alliances
5. Entities delivering internationally co-ordinated marine services (such as ECOMF)

It is assumed that the EuroGOOS members will liaise with their governments, other organisations within their own countries and the wider scientific oceanographic community.

4. Proposed Roles for EuroGOOS

As a starting point for discussion we suggest that the role of EuroGOOS is to act on behalf of and in the interests of all members:

- a) to assist coordination and cooperation amongst members; to facilitate the articulation of shared views on observation needs and on requirements for services; to represent and promote these views to the key European organisations active in the field and delivering services
- b) to facilitate forward thinking in the broad field of operational oceanography and the associated services; to help to initiate and achieve projects/approaches to improve coordination of marine observations and services
- c) to support the stronger coordination of European in situ marine observations through the encouragement of best practice and, where appropriate, common approaches between the [5] Regional Ocean Observing Systems around Europe
- d) to participate actively in GOOS, as a GOOS Regional Alliance, sharing views and expertise with other regional alliances and assisting coordination and cooperation between the Regional Alliances.

Members should take a broad view when participating in EuroGOOS ensuring that views of other organisations in their countries and active in the field of operational oceanography are taken into account.

One of the reasons why an EIG has been proposed as a suitable legal entity for EuroGOOS is that EUMETNET chose to take that option. One of the main roles of EUMETNET is to arrange contracts to provide services using resources gathered from its members. We have assumed above that EuroGOOS will not aim to do that.

EUROGOOS – EIG or Non-profit International Organisation?

Economic Interest Grouping (EIG):

1. The EIG is a form of association between legal bodies, firms or individuals from different countries who need to operate together across national frontiers. As a legal framework, an EIG is designed to develop and facilitate collaboration between organisations and to give member organisations greater power to negotiate contracts and represent the members as a whole. It carries out particular tasks for its member-owners and is quite separate from its owners' businesses.
2. A major advantage of the EIG is that the legal structure is known and accepted. It is also seen as politically and legally neutral. An EIG is a separate legal entity with legal personality. It can therefore own and dispose of money and assets and enter into contracts in its own right.
3. An EIG's activities must relate to the economic activity of its members but must be ancillary to them. An EIG cannot be formed with the object of making a profit, although it may do so as a consequence of its normal operations. The EIG will need to be registered in a particular country. It is proposed that EuroGOOS is registered in Belgium.
4. A major disadvantage of an EIG is that members have unlimited joint and several liability. This means that if a third party has a claim against the EIG and the EIG does not have the necessary funds or insurance to meet such a claim, the claimant will have the right to sue any one of the participating members or all of them (as he may choose). There is no limit to the financial liability of any of the members for the activities of the EIG, and also each member can individually be held liable for the full amount of any claim against the EIG, even if other members caused the liability. Often, the more wealthy members will be sued because they are more likely to have deeper pockets and be able to meet the claim, e.g. government owned members. Under Article 10 of the proposed EIG Agreement for EuroGOOS, any member that has paid out on a claim will have to demand or if necessary sue other members for their contributions. Often, insurance arrangements can mitigate the risks of such losses and provide protection regarding these issues.
5. Another major disadvantage of an EIG is that it is not exempt from VAT legislation or procurement rules. Although an EIG does not pay corporation tax, it will have to register in its own right for VAT if it makes taxable supplies in excess of the registration limits. This may be a disadvantage because if certain of the members do not themselves have to pay VAT because they are exempt, they may well consider it to be more prudent from a tax planning perspective not to pass funds through the EIG.
6. Former members of an EIG remain answerable for five years following their withdrawal for the debts and other liabilities arising out of the grouping's activities during the period they were members.

Non-profit International Organisation:

1. In an email of 20 May 2011, Peter Ehlers informed members of the EuroGOOS Board that using a Non-profit International Organisation could be considered as an alternative to the EIG.
2. Peter Ehlers explains that this legal structure is registered under Belgian law to pursue activities of a non-profit and international nature. Peter states that contrary to the EIG no member is personally liable with its own assets.
3. A non-profit organisation (*association sans but lucratif/vereniging zonder winstoogmerk*) (ASBL /VZW) consists of at least three people and pursues a non-profit making objective. Unlike a commercial company, the ASBL /VZW:
 - a. cannot aim to make a profit but can charge membership fees and organise activities in return for payment where these are compatible with its purpose;
 - b. cannot distribute profits to its members.
4. A non-profit organisation can acquire legal personality if it meets certain conditions:
 - a. The registered office must be in Belgium.
 - b. It must have at least three partners.
 - c. The articles of association must include certain information.
 - d. The articles of association, surnames, first names, professions and places of residence of the directors must be published in the appendices to the [Belgian Official Gazette](#). Failing this, the organisation will be considered as a de facto association.
5. Legal personality is acquired on the date when the articles of association and the deeds relating to the appointment of the directors are filed with the court registry. A period of time may elapse between the ASBL/VZW being established and its acquiring legal personality. Various actions can be performed during that time:
 - a. Purchasing equipment
 - b. Renting premises
 - c. Opening a bank account
 - d. Hiring staff.
6. The law permits these actions during the formation period, but the individuals who enter into these commitments are personally jointly and severally liable for them. However, this rule does not apply in the event that the ASBL/VZW:
 - a. acquires legal personality within two years of the commitment being incurred;
 - b. ratifies the commitment within six months of acquiring legal personality.
7. ASBLs/VZWs are also subject to VAT, although they are usually exempted. If a tax investigation reveals that an ASBL/VZW is engaging in profit-making operations or is in fact a commercial company posing as a non-profit organisation, it will be subject to corporation tax and will need to comply with

the relevant accounting rules. If its activities are indeed non-profit making, the ASBL/VZW is only subject to the income tax on legal entities.

8. In summary, the Non-profit International Organisation does benefit from limited liability and although it is subject to VAT, it is usually exempt. Therefore, the Non-profit International Organisation may well be preferable to the EIG which suffers from these two main disadvantages.
9. One concern arises in relation to the pan-European character of EuroGOOS. EuroGOOS may prefer to use a neutral and widely accepted legal structure such as the EIG to avoid the complexities of the specific national laws of Belgium and political differences, and also for European visibility. It will also not be possible to move the operational centre from Belgium in the future and retain the status of Non-Profit International Organisation because this structure is dependent on being situated in Belgium.
10. Information obtained from Business.Belgium.be (http://business.belgium.be/en/managing_your_business/setting_up_your_business/company_types/non_profit_organisation/)

General:

Irrespective of which legal structure is identified as most appropriate EuroGOOS, the member organisations must undertake their own research into their constitutional powers to enter into arrangements whereby they will become legal owners of a share of ownership in other legal entities.

It is stressed that each member organisation should seek its own independent legal, financial, accountancy and taxation advice in its respective country regarding the impact of the selected legal structure upon its arrangements.