



PANLAB

Deliverable 2.1

Legal Framework

Editor:	Anastasius Gavras
Deliverable nature:	Report (R)
Dissemination level: (Confidentiality)	Public (PU)
Contractual delivery date:	31 August 2007
Actual delivery date:	Status on 24 October 2007
Suggested readers:	Panlab consortium
Version:	1.0 draft
Total number of pages:	26
Keywords:	Panlab organisation, Legal framework, Legal entity

Abstract

The objective of the Panlab project is to define a general framework for the interconnection of independent test-beds and laboratories and to facilitate the establishment of a Pan-European laboratory. The concept of such a Pan-European laboratory is based on the federation of distributed interconnected test laboratories and test-beds that provide required facilities for broad range of testing capabilities for technologies, product interoperability and telecommunications services.

This deliverable deals with issues related to Legal framework to be applied for future Pan-European Laboratory, as an organisation (Panlab organisation) which will establish a federation of test-beds in accordance with Panlab concept and provide various testing services to various customers. Thus, this deliverable gives definition of the future Panlab organisation and respective Panlab Office, and considers in details various options for Panlab legal establishment: profit/loss and non-profit legal entities, self-organising entity. Recommendation, defined in this document, is that future Panlab organisation should be established as a non-profit legal entity with a possibility for test-beds, which federate within Panlab organisation, to offer testing services on commercial basis.

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Impressum

[Full project title] Pan-European Laboratory for Next Generation Networks and Services

[Short project title] PANLAB

[Number and title of work-package] WP2: Definition

[Document title] Legal Framework

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[Estimation of PM spent on the Deliverable] 12

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Document History

Version	Date	Comment
0.1	8 Aug. 07	First draft version – options legal status of Panlab organisation.
0.2	18 Oct. 07	Full draft version (for 1.0 submission) – Conclusions, Executive summary, and Abstract added.
0.3	24 Oct. 07	Comments from Jean-Claude included. Final draft for editorial check.
0.4	30 Oct 07	Editorial check
1.0	Nov. 2007	Final version 1.0

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Definitions of terms

Term	Definition
Pan-European Laboratory	A concept of enabling Pan-European testing services for a demo/trial and evaluation of new technologies, system solutions and telecom service concepts.
PANLAB project	An FP6 Specific Support Action (SSA) that defines the PEL vision and roadmap and facilitates implementation of the PEL activities.
PANLAB organisation	Organisation applying concept of the Pan-European Laboratory.
PANLAB Office	Coordination and support entity of the PANLAB organisation.

Executive summary

The objective of the Panlab project is to define a general framework for the interconnection of independent test-beds and laboratories and to facilitate the establishment of a Pan-European laboratory. The concept of such a Pan-European laboratory is based on the federation of distributed interconnected test laboratories and test-beds that provide required facilities for broad range of testing capabilities for technologies, product interoperability and telecommunications services.

In Panlab WP1, the ICT "ecosystem" and its potential evolution were analysed and then a vision for the Pan-European Laboratory as well as a roadmap for its implementation (Roadmap for Panlab) have been developed, to define what could be this Laboratory in terms of organisation and functionalities, who will be the participants, and which mechanisms are required for effective operation.

Based on this vision, Panlab WP2 deals with definitions of main components of the future Pan-European Laboratory, such as:

- Legal framework,
- Technical infrastructure, and
- Operational aspects.

This deliverable deals with issues related to Legal framework to be applied for future Pan-European Laboratory, as an organisation (Panlab organisation) which will establish a federation of test-beds in accordance with Panlab concept and provide various testing services to various customers. Thus, this deliverable gives definition of the future Panlab organisation and respective Panlab Office, and considers in details various options for Panlab legal establishment: profit/loss and non-profit legal entities, self-organising entity. Recommendation, defined in this document, is that future Panlab organisation should be established as a non-profit legal entity with a possibility for test-beds, which federate within Panlab organisation, to offer testing services on commercial basis.

This version of the deliverable (version 1) closes with the recommendation for basic legal form for Panlab. Future deliverable versions will include the following:

- Version 2: Description of Panlab organisation (proposed governance and basic business rules) and list of required legal documents for establishment of such an organisation.
- Version 3: Draft of legal documents necessary for Panlab establishment.

The division of the deliverable in three versions is caused by project consortium decision for a higher involvement of legal departments from participating companies and organisations, in order to receive relevant professional feedback on both organisational principles for Panlab organisation and on necessary legal documents for its establishments.

1 Introduction

As is outlined in deliverable D1.2 “Vision for a Pan-European Laboratory” of the Panlab project, interconnecting different test-beds belonging to different administrative domains, which is a goal of the future Pan-European Laboratory, means granting some level of access to remote resources that are owned by different stakeholders. This has the consequence that a legal agreement must be in place that governs the rights and obligations of all stakeholders involved. Such a legal framework must include among others: handling of intellectual property rights (IPR) and definition of confidentiality and trust, process for resolution of conflicts and handling of misusing rights or neglecting obligations, etc.

Furthermore, and in order to pave the ground of establishing a long-term sustainable Pan-European Laboratory, the Panlab Vision provides establishment of a legal entity which will have to assume the management of the Pan-European association, effectively manage the different contracts between the stakeholders that engage in interconnecting their resources for the purpose of testing. Thus, the Pan-European Laboratory will be an organisation – in further text predicated as “Panlab organisation” – realising the federation of test-beds, coordinated and supported by a so-called Panlab Office.

Customers of the Pan-European Laboratory can access the test-beds by using services provided by the Panlab Office, which is a centralised or distributed entity ensuring interconnection of the test-beds in accordance with customers’ needs as well as rules and procedures of the Panlab organisation. Panlab Office is also foreseen be a coordination and support entity taking care about day-to-day activities of the Pan-European Laboratory organisation, such as operational and technical issues, marketing, etc.

In the roadmap for Pan-European Laboratory, described in Panlab deliverable D1.3, an incremental development of the future Panlab organisation is presented, which is divided in three phases:

- Phase I: Prototype Panlab operation (first two years – starting from now, it is period 2007 - 2008),
- Phase II: Initial operation (years three to five – e.g. 2009 - 2011), and
- Phase III: Full-scale operation (year six and afterwards).

During the first Panlab development phase, a legal framework and corresponding legal documents should be described and the Panlab organisation, including Panlab Office, are provided to be established. The legal framework, objective of this deliverable, should provide necessary legal basis for creation of the future Panlab organisation. In order to achieve this target, the following order of tasks to be carried out is found out:

1. Recommendation for legal forms of the Panlab organisation and Panlab Office,
2. Description of Panlab organisation and legal terms and procedures, and
3. Draft legal documents.

Panlab project consortium has recognised that it is necessary to define an appropriate legal form for the Panlab organisation, before starting activities on drafting or specifying specific legal documents and procedures. Therefore, this deliverable is dedicated to a discussion on variants of legal forms, which are possible to be applied to Panlab organisation, with a concluding recommendations as main outcome of this document.

Afterwards, it will be possible to describe organisational structure of the Panlab organisation, as already drafted in Panlab Vision, deliverable D1.2. Simultaneously, it will be necessary to follow up activities of the Panlab project in consideration of operational aspects of the future Pan-European Laboratory (this activity is carried out within project task 2.3 where the results will be presented in deliverable D2.3), in order to define appropriate legal procedures, adequate to recommended operational approach. For these reasons, descriptions of Panlab organisation and legal terms and procedures will be provided in next update of this deliverable in Annexes B and C, respectively.

With completed recommendation for Panlab legal status and corresponding legal descriptions, the legal framework for a future Pan-European Laboratory will be ready. However, to establish the Panlab organisation and to ensure its operation, it will be necessary that founders and core members of Panlab agree and sign various legal documents, as mentioned in deliverable D1.2 – Vision for Panlab. Therefore, the final legal agreement will be practically created by the Panlab founders and will be not

necessarily created by members of the project consortium. Thus, provision of drafts of such documents will depend on involvement of the project consortium members in creation of the Panlab organisation. Accordingly, content of draft documents to be included in an updated version of this deliverable is not yet fully specified (Annex D).

This document is organised as follows: In Chapter 2, basic Panlab structure is described, where a definition of the Panlab organisation, including explanation about its relations with Panlab Office, is given and a brief overview of possible legal structures for Panlab are presented. Panlab as a profit/loss legal entity is considered in Chapter 3. There, besides general characteristics of such legal form, some specific options are discussed; private and public-private ownership as well as Panlab owned by a European Economic Interest Grouping. Panlab as a non-profit organisation is considered in Chapter 4, and recommendations are given in Chapter 6. Various legal options for Panlab, considered in this document, are summarised in a table form in Annex A.

2 Basic Panlab Structure

2.1 Definition of Panlab Organisation

Motivation for creation of the Pan-European Laboratory for networks and services is to boost European testing, test-bed development and usability for the good of telecommunications market. As mentioned in Panlab project deliverable D1.2 (Vision for a Pan-European Laboratory), the Pan-European Laboratory is based on the concept of federation of distributed test laboratories and test-beds that are interconnected and provide access to required platforms, networks and services for broad interoperability testing. In this scope, the Pan-European Laboratory should be facilitated by future Panlab organisation.

Thus, the Panlab organisation will adopt a concept that is being introduced within Panlab project to enable the trial and evaluation of service concepts, technologies, system solutions and business models to the point, where the risks associated with launching them as commercial products will be minimised. Panlab will be not a static organisation, but rather dynamic and adaptive. It will be extended, adjusted and improved by any new available platform, service and system that can be offered by the connected laboratories or new laboratories joining the federation. Panlab is not restricted to the existing test activities, but seeks also insight to the future testing facilities presenting mechanisms for linking these together.

The operation and management of Panlab organisation will span over multiple networks and multiple administrative domains and is a challenging task requiring professional support from both industry and organisations with experience of operating large networks. However, as already defined in Panlab project deliverable 1.3 (Roadmap for Panlab), Panlab federation has to fulfil the following requirements:

- Openness at all levels, e.g. it must be open for any test-bed of the European (eventually wider) test-beds ecosystem,
- Excellence of its capabilities in terms of degree of innovation as well as technological and geographical diversity,
- Efficient management of federated test beds able to control complex testing processes, and
- Simple but explicit governance principles.

Three basic principles for organising the Pan-European Laboratory, mentioned in the project deliverable D1.2 are: single test-bed provider – customer relation, independent labs serving customers using individual multilateral agreements or one so-called primary contractor, and establishment of a corresponding Pan-European organisation. In order to meet requirements of the future Pan-European Laboratory, listed above, establishment of an organisation, such as Panlab organisation, where various relationships are specified in standard legal documents provided by the organisation, including contracts between member labs and customers as well as non members, is outlined as the most appropriate solution for organisation future Pan-European Laboratory.

2.2 Panlab Organisation and Panlab Office

As is defined in previous section, Pan-European Laboratory will be an organisation – e.g. Panlab organisation, realising the federation of test-beds. Independently on kind of the Panlab organisation and its legal definition, activities of Panlab will be coordinated and supported by a so-called Panlab Office. Thus, customers of the Pan-European Laboratory can access the test-beds by using services provided by the Panlab Office, which is a centralised or distributed entity ensuring interconnection of the test-beds in accordance with customers' needs as well as rules and procedures of the Pan-European Laboratory. As already discussed in Panlab project deliverable D1.2 (Vision for a Pan-European Laboratory), the Panlab Office will be coordination and support entity taking care about day-to-day activities of the Pan-European Laboratory – Panlab – organisation, which includes:

- Operation issues, such as coordinating tests/test projects, ensuring operational and administrative interfaces between customers and test-beds, appropriate customer and test-bed provider tools, etc.
- Technical and business development of the Pan-European Laboratory and
- Marketing and public relations.

Even Panlab organisation and Panlab Office could be established as two independent legal entities, there will be a clear hierarchy within Panlab organisational structure, providing that Panlab organisation clearly defines general directions and rules for the Pan-European Laboratory whereas Panlab Office will be responsible for efficient execution of the procedures in accordance with the defined rules. Accordingly, Panlab Office can be understood as an executive part of the Panlab organisation. Thus, theoretically in particular cases, it will be possible that tasks of the Panlab Office are performed directly by the Panlab organisation.

Possible legal structures to be applied to Panlab organisation, briefly considered in next section, are evaluated in next chapters. Note that legal structure for Panlab Office will not necessarily correspond to the legal status chosen of the Panlab organisation and can be totally different. However, depending on a chosen model for the organisation and, of course, depending also on decisions to be made by Panlab founders, it will be possible to define appropriate legal form for the Panlab Office, too.

2.3 Possible Legal Structures for Panlab

When considering options for legal structures to be applied to future Panlab organisation, there are the following three main options:

- Profit/Loss organisation,
- Non-profit organisation, and
- Self-organised entity.

Each of options listed above have, of course, a number of sub-variants to be considered as variations of the basic options. Even a combination of the basic options (e.g. as a partly profit/loss and partly non-profit organisation) could lead to an appropriate Panlab legal structure.

Whereas the profit/loss and non-profit organisational forms are well known and self-explanatory options very often present in working practice, Panlab as a self-organised federation of test-beds would represent one of very rare applied organisational structures. In the last case, no legal entity would be formed, however, operation in a limited scale have to be supported by an office which must be hosted by a legal entity.

No legal form in the Panlab context means that bilateral or multilateral agreements are concluded on a case by case basis. This is obviously not a satisfactory solution and heavily depends on the host of the office and the funds available to sustain operations. Furthermore, to avoid the construct of bilateral or multilateral agreements was one of the original motivations for the Panlab project.

Of course, low risk and low liability for founding companies and organisations in this case are of certain advantage. However, no commitment implies also no long term sustainability which would represent a high risk for the Panlab fundamental concept. Furthermore, having no legal status means that no commercial services could be offered and that function of the office had to be reduced to merely managing relationships in the case of multilateral agreements. There is no need for this function in bilateral agreements.

In accordance with previous discussion, it is concluded that self-organised entity does not represent an option for Panlab organisation. Therefore, only profit/loss and non-profit based organisational principles are considered as reasonable for Panlab concept and they are presented with more details in this document in Chapters 3 and 4, respectively.

3 Options for Panlab as a Profit/Loss Organisation

3.1 General Characteristics

In the case of Panlab organised as a profit/loss entity, it would be a typical company organised in accordance with European law or law of one of the member states with the aim to produce certain profit from its business activity, in this case provision of testing services within Panlab federation of test-beds and other experimental facilities. The following options for a profit/loss Panlab are considered in the following sections:

- Private ownership,
- Public-private partnership, and
- Organisation in accordance with European Economic Interest Grouping (EEIG) principles, as a special case.

Advantages of profit/loss organisations are their better efficiency, due to their primary commercial orientation and in particular cases easy organisation set-up and governance. On the other hand, excellence of Panlab capabilities and particularly openness of Panlab organisation at all levels, outlined as main principles adopted for future Pan-European Laboratory organisation in section 2.1, could be endangered in the case of such commercial oriented and probably privately owned Panlab organisation. Furthermore, a public role of the Pan-European Laboratory to ensure testing facilities to all potential users in Europe (including projects, universities, individuals, etc.), could be limited as well.

3.2 Private Ownership

In the case of organisation of Panlab within a private ownership model, there are basically the following three possibilities:

- Panlab (organisation and Office) to be included within an existing company,
- Creation of a new individual “Panlab” company by an existing company or organisation, and
- Creation of Panlab as a new company by group of private organisations.

In the first case, Panlab would be included within organisation of an existing company in accordance with its internal rules and legal definition. Accordingly, full liability would remain with the existing founding company or organisation. An advantage of such Panlab legal organisation would be minimal required setup time for Panlab organisation and start for offering of testing services. However, the risk for the founding company, which remains only within company, would be very high as well as for fundamental Panlab concept, concerning its main principles (see section 2.1).

Creation of a new company to host Panlab and its services, by an individual, a company, or as a spin-off organisation, has basically the same concerns as previous option for hosting Panlab by an existing company. Probably, setup time would take longer time, in order to start providing Panlab services.

In the third case, the founder of the company is a consortium of companies or/and organisations. It is created under the law of an EU member state and is owner by the consortium or its shareholders. The new company assumes full rights and liabilities reducing the liability even down to zero liability for the owners, depending on the consortium or shareholding agreement. However, some liabilities may remain with the founder companies / organisations. The risk for Panlab concept would be reduced by involvement of a number of organisations, but on the other hand reaching a consensus among potential consortium members or prospective shareholders could take longer time and, accordingly, longer setup time for Panlab organisation.

3.3 Public-private Partnership

Similar to creation of a new company to host Panlab by a group of private organisation (see above), Panlab organisation could be established as an association created by a number of private entities and a number of public bodies (e.g. EC, national public authorities, public research organisations, etc.). This option would probably lead to a (full or partly) membership based Panlab organisation, where all association members pay annual fees, in order to support operation of Panlab. In this case, the Panlab Office would be established as a separate entity in accordance with one of the models, presented in section 3.2, or by application of a similar option.

Advantage of such a public-private partnership is significantly lower liability risk for founder companies as well as for the Panlab concept and its sustainability. However, creation of such a public-private partnership seems to be complex and would probably take longer time, also prolonging establishment of Panlab organisation. This option is also related to non-profit principle discussed in Chapter 4.

3.4 European Economic Interest Grouping

Establishment of Panlab as a European Economic Interest Grouping (EEIG) is given by legal basis for the EEIG in the EC Regulation No. 2137/85, which has been published in the Official Journal of the European Communities L 199, 31st July, 1985. The EEIG as a legal instrument and its potentials are still largely unknown, even if the amount of established groupings is not negligible anymore. Below, some main characteristics of a such grouping are given.

Members of a grouping

A grouping must be formed by, at least, two members coming from two different European states, companies or legal bodies having a central administration in a member state, or natural persons. There is normally no limit to the amount of members. The main condition is only their activity within the EU. Their national provenance does not count; neither does the character of the members.

How to found an EEIG

A written contract is required by the EC regulation. This contract for setting up a grouping shall include at least:

- The name of the grouping preceded or followed either by the initials EEIG or the words European Economic Interest Grouping,
- The official address of the grouping,
- The object of the grouping,
- Information about each member (name, company name, legal form, permanent address, number and place of registration if any), and
- Duration of the grouping, except where it is indefinite.

The signatures of the persons founding an EEIG or the signatures of the managing director(s) have to be authenticated, before registration, by a notary. Formalities required for the formation are very easy - each one who can found an association can also start an EEIG. Names of the members, company name of the grouping, official address, foundation contract and the name(s) of the executive(s) have to be declared in the commercial register.

Object of the grouping

The object for which the grouping is formed represents an important element of the founding agreement. The object has to be declared with the register as a guarantee of publicity.

The purpose of the grouping shall be to facilitate or to develop the cooperation among the members; its activities constitute an ancillary nature to the activities run by the members and can not replace the members' own activities. However, in practice it complies fully if "the co-operation of the members" is mentioned. According the EC regulation the purpose of the grouping shall be "to improve and increase the results" of the members' activities.

What a grouping may not

Consequent with its object, a grouping may not:

- Be a member of another European Economic Interest Grouping,
- Employ more than 500 persons,
- Directly or indirectly hold shares in a member enterprise,
- Exercise a power of management or of control over its members' own activities, and
- Issue loans to members.

In the practice of business life and especially for the PEL these limits do not represent a problem.

Legal status

The grouping is endowed with legal status (except in some EU member states, e. g. Italy or Germany). The recognition of a legal status facilitates the attainment of the grouping's objects (development of the members' own activities). In all states, a grouping has the capacity, in its own name, to have obligations and rights of any kind. It can conclude a contract or accomplish any legal act; it can sue and be sued.

Registered capital

An EEIG can be formed with or without assets, cash or material contribution, or e. g. know how investment. Most of the groupings, at the time of founding, do not have any capital.

The members can decide freely to contribute or not to; a grouping represents from this point of view a much more convenient legal instrument than e. g. a private limited company.

Liability

The members of a grouping shall have unlimited joint liability for its debt, in the form of subsidiary liability. At first the EEIG will be responsible; if this is not possible it is the matter of the members. The regulation does not represent a prejudice for the members: EEIG usually exercise ancillary activities and the main business activities are still run and controlled by the members.

The European regulation guarantees considerable freedom for the grouping's members; they also can agree that some of them answer for different amounts. Furthermore, the expenses undertaken by the management can be limited until a decision of the members can be induced.

Taxation

An EEIG pays value added tax (V.A.T.) as every other company. It also has to pay employment taxes for their employees, if any. However, a grouping does not pay any company taxes, such as corporation tax or taxes on trade earnings. EEIG are taxed according to national laws, with the exception of company tax exemption. The purpose of the grouping is not to make profits for itself: according to the regulation profits resulting from the activities of a grouping shall be taxable only with its members. Profits shall be reinvested or divided up among the members according to the agreements of the members. Profits, however, can be turned in reserves as well.

The financing of a grouping depends on a members' decision when it has not been already ruled in the foundation contract. The distribution of profits and losses, the kind of operating expenditures of the grouping, advances and subsequent payments have to be clearly ruled in advance in the foundation agreement or, even better, through members' decisions for they can be changed easier than an agreement which would have to be submitted to the company register.

Finally, a grouping can own real estates, which are taxable for the EEIG.

Conclusion on EEIG

Some reasons to prefer an EEIG to more traditional legal instruments are the following:

1. It is a legal framework which aims to develop and facilitate the collaboration between entrepreneurs and can represent a profit centre for its members of its own,
2. It is a very flexible and a less bureaucratic legal instrument, whose rules can be decided by the members in observance of a few guidelines fixed in the European regulation,
3. A grouping can be founded with or without assets, investment or know-how transfer,

4. A grouping can be established by subjects with a different legal status: self-employed persons, private limited company, chambers of commerce etc.,
5. The members of a grouping go on carrying out their own activities autonomously. They maintain the activities they ran before and besides obtain new business opportunities,
6. A grouping can guarantee a high-level liability: members have unlimited and several liability for its debts,
7. Profits and losses resulting from its activities are taxable only in the hands of the members; profits must be divided up among the members, if not reinvested,
8. A grouping pays neither company taxes nor taxes on earnings,
9. A grouping can run its own business and can have a trade mark,
10. The official address of a grouping can be easily transferred within the Community. Other legal instruments require a previous winding up of the enterprise, which involves costs, activities and loss of corporate image,
11. Due to the European regulation no. 2137/85 constituting the legal basis of EEIG and being drafted in each European official language, entrepreneurs do not feel discriminated because of the use of a foreign language,
12. The members of a grouping are not required to show their previous knowledge in EU Single Market, the establishment of a grouping could be very useful for consortia which apply for EU programmes, and
13. Their members can improve their knowledge of the European Single Market, as entrepreneurs meet regularly and facilitate a process of globalisation

4 Panlab as a Non-profit Organisation

A non-profit organisation is an organisation whose primary objective is to support an issue or matter of private interest or public concern for non-commercial purposes, without concern for monetary profit. However, a non-profit organisation may accept, hold and disburse money and other things of value. It may also legally trade at a profit. The extent to which it can generate income may be constrained, or the use of those profits may be restricted and often have tax exempt status. This is one of the reasons that the establishment of a non-profit organisation is relatively strictly regulated across Europe.

Most countries have laws which regulate the establishment and management of non-profit organisations and which require compliance with corporate governance regimes. Larger organisations are required to publish their financial reports detailing their income and expenditure for the public. In many aspects they are similar to business entities though there are often significant differences. Both non-profit and for profit entities must have board members, steering committee members, or trustees who owe the organisation a fiduciary duty of loyalty and trust.

In the case of Panlab organisation, it would be established in accordance with the law of state in which the non-profit association is founded. All liabilities remain within the association and up to its funds. It is estimated that establishment of this kind of Panlab organisation would have a medium setup time, causing relatively low risk for both members of the association and future of the Panlab concept. Furthermore, this kind of Panlab organisation would be able to ensure full openness and excellence, as required by basic principals adopted for future Panlab organisation (see section 2.1).

In the context of Panlab, the most appropriate form of a non-profit organisation is a membership based association. The organisation may be controlled by its members who elect the Board of Directors or Board of Governors, as evaluated in Panlab project deliverable D1.2 (Vision for a Pan-European Laboratory). Thus, the Panlab non-profit organisation may have a delegate structure to allow for the representation of companies or organisations as members which would be able to select appropriate executive Panlab structure and set basic rules for operation of Panlab Office. The Office could be established either within the organisation, or as a separated legal entity controlled by the association.

5 Assets of Panlab Organisation

In all legal forms the next question that has to be answered is the question of what are the assets of the organisation. What does it own and based on this what services it can offer. In some legal forms some options below are not possible. In the context of an organisational entity the “assets” may coincide with the object of an entity, applicable to both the profit/loss and non-profit forms. With possible variations and some combinations, the possibilities are as follows:

- Organisational skills,
- Host for Web tools,
- Operate management tools, repositories, and
- Own testing facilities.

5.1 Organisational skills

In this case the organisational entity does not own assets related to the Panlab. It has know-how and skills related to managing multi stakeholder relationships. It is responsible for the management of these relationships and provides support and logistics for organisational tasks related to negotiations, meetings, events etc. It may operate a web presence and provide a first point of contact. It acts as a relay for requests, responses and mediates interests. It is a repository of templates and documents of common interest.

5.2 Host for Web tools

In addition to the organisational skills, in this case the organisational entity is operating the technical infrastructure for necessary tools for automated and value added mediation among partners and customers. This is for example the operation of a search engine of testing facilities and other assistance needed for the establishment of testing setups. It includes offering of collaboration tools during the setup and execution of tests, as well as consultancy in the setup phase of testing undertakings. An example of the latter is help and support (feasibility check) as to whether a certain testing infrastructure can be made available to a project by some offer within reasonable time and cost constraints.

5.3 Operate management tools, repositories

In addition to organisational skills and hosting of Web tools, in this case the organisational entity develops and operates tools that employ remote management access to available facilities in Europe for the purpose of configuration and provisioning of requested testing environments.

The vision is to be able to configure a required testing environment via a web tool, which employs advanced features on top of the searching and match-making capabilities described earlier, and thus is able to compose target testing environments and finally provision them.

It researches, develops and operates knowledge repositories for storing test cases, testing and measurement results for the purpose of longer term access, comparison and reproducibility of testing.

5.4 Own testing facilities

This case, even if it is an option, will not be described here. It involves issues of conflict of interest since the Panlab by definition should be independent and assure transparent and fair access to resources.

6 Conclusions and Recommendations

Various possibilities for legal organisation of future Pan-European Laboratory (Panlab organisation - federation) have been discussed; Panlab as a Profit/Loss organisation, Non-profit organisation, and Self-organised entity. Because bilateral or multilateral agreements have to be concluded on a case by case basis in a self-organised entity and a questionable long-term perspective of the Panlab concept in a such loose structure, which causes difficulties in provision of testing services on commercial basis, Panlab as a self-organised entity is outlined as not a suitable solution. Thus, several possibilities, including discussion on respective advantages and disadvantages of available solutions, to organise Panlab as a Profit/loss or Non-profit organisation have been considered. An overview of discussed possibilities is given in Annex A.

In order to analyse and compare various possibilities for legal Panlab establishment, the following criterions have been considered:

- Liability and risks for founders and/or owner of future Panlab organisation,
- Set-up time for future Panlab organisation and Panlab Office,
- Risks for fundamental Panlab concept in a long-term perspective, which includes:
 - Openness at all levels,
 - Excellence of its capabilities,
 - Efficient management of federated test beds, and
 - Simple but explicit governance principles;
- Possibilities for provision of testing services on commercial basis, and
- Opportunities to ensure additional financing for a long-term sustainable organisation, such as membership model and public funding.

Liability and risks are rather high in the case of the profit/loss concept applied by one company. At the same time, the set-up time for such type of organisation seems to be short. The liability and risks can be reduced by participation of multiple companies (shareholders) in creation of a profit/loss Panlab organisation. However, in this case the set-up time for Panlab organisation would increase because of the necessary agreement to be achieved among a number of shareholders. On the other hand, in a non-profit organisation, the liability and risks for founders can be significantly reduced where the set-up time remains in the same scale as it is estimated for the case of a shareholders consortium as Panlab owner. Also, the risk for fundamental Panlab concept is estimated to be the lowest in the case of a non-profit organisation. Furthermore, regarding possibilities for additional financing, a non-profit Panlab organisation seems to provide better opportunities.

Because of the reasons mentioned above, a non-profit based Panlab organisation seems to be the most suitable solution for legal organisation of future Pan-European Laboratory. However, in order to completely fulfil criterions on Panlab by provision of testing services on commercial basis, ensuring commercial involvement of test-beds (not Panlab organisation), the commercial service offer within Panlab should be ensured, too.

One of the variants for Panlab legal organisation, which also meets the most of the requirements would also be an organisation established as public-private partnership. However, in this case the set-up time seems to be longer, which could even represents a risk for fundamental Panlab concept, and motivation for such Panlab co-ownership for both private and private founder organisation is questionable.

Annex A Overview of possible Legal Forms for Panlab

A.1 Profit/Loss Organisation

A.1.1 Panlab organisation within an existing company (organisation)

Legal form	Profit/Loss
Applicable law	The law and form of the existing company or organisation
Founder	N/A
Owner	The existing company or organisation
Liability	Full liability is with the existing company organisation
Setup time	Minimal
Risk	High, both for the owner, as well as for the Panlab fundamental concept
Open issues	Are there any IPR issues involved? Does this company have to acquire licenses from the Panlab EU project and its partners?

A.1.2 Panlab organisation as a spin-off owned by a company

Legal form	Profit/Loss
Applicable law	Under the laws of an EU member state
Founder	An individual A company /organisation which holds ownership A spin-off by a company / organisation
Owner	The individual The existing company / organisation New ownership
Liability	Full liability is with the owner, whether new ownership of held by founder company / organisation
Setup time	Medium
Risk	High, both for the owner, as well as for the Panlab fundamental concept
Open issues	Are there any IPR issues involved? Does this company have to acquire licenses from the Panlab EU project and its partners?

A.1.3 Panlab organisation owned by shareholders

Legal form	Profit/Loss
Applicable law	Under the laws of an EU member state
Founder	A consortium of companies / organisations A shareholding agreement. Companies and organisations hold shares of the PEL
Owner	The consortium of company / organisation Shareholders. Companies and organisations hold shares of the PEL
Liability	Full liability is with the new company and is limited to its share capital. Depending on the consortium or shareholding agreement down to zero liability for the owners.
Setup time	Medium to long
Risk	Medium, since the construct of a consortium or shareholding agreement aim among others at minimising risks. High risk for long negotiation period to reach agreement.
Open issues	Reaching a consensus among potential consortium members or prospective shareholders.

A.1.4 Membership based Panlab organisation

Legal form	Profit/Loss
Applicable law	Under the laws of an EU member state
Founder	A membership based association of companies / organisations. The members pay annual fees to the association which are used to pay the operational expenses of the PEL. Public bodies can also join the association and support through the annual membership fee the PEL. Variation: Public bodies can establish a public-private-partnership (PPP) with the association and co-found the PEL
Owner	The association of companies / organisations and eventually public bodies
Setup time	Medium to long
Risk	Low for the founders/owners as they are exposed only up to the yearly membership fee. Variation: Medium for the public body co-owning the PEL, but also opportunity for a solid PPP model Variation: High risk for the fundamental concept of the Panlab, in case of PPP, since the PPP construct is complicated and public body commitment is time consuming to reach.
Open issues	What is the public interest in co-owning the PEL?

A.1.5 European Economic Interest Grouping for Panlab

Legal form	Profit/Loss
Applicable law	As an EEIG (European Economic Interest Grouping)
Founder	A group of companies / organisations. Some special conditions apply for the EEIG
Owner	The group of companies / organisations
Setup time	Long since special conditions apply for the EEIG and the founder companies / organisations may not have experience with setting up EEIGs
Risk	High risk during the setup phase Medium for the founders; depends on the agreement Rather low risk for the Panlab fundamental concept since the object of the new company would be tailored by its founders
Open issues	Different issues depending on the principal official address of the EEIG, but largely more flexible legal instrument. Most important issue is liability Can public bodies be members of the grouping?

A.2 Non-Profit Organisation

Legal form	Non-profit organisation
Applicable law	The law of the state in which the non-profit organisation is founded
Founder	Commonly a membership based association
Owner	The association
Liability	Liability is with the association and up to the funds of the association
Setup time	Medium
Risk	Low for the members of the association. Medium for the Panlab fundamental concept. The non-profit organisation has a different standing in the market than a P/L company when it comes to offering commercial services.
Open issues	What different options are available for the involvement of public bodies? Possibly there is a special case for a non-profit organisation which is supported by membership fees of the associations' members but also receives public funds in the form of grants or similar (partner in EC project)

A.3 Self-organised Entity

Legal form	<p>No legal entity is formed, however operation in a limited scale have to be supported by an office which must be hosted by a legal entity.</p> <p>No legal form in the PEL context means that bilateral or multilateral agreements are concluded on a case by case basis. This is obviously not a satisfactory solution and heavily depends on the host of the office and the funds available to sustain operations. To avoid the construct of bilateral or multilateral agreements was one of the original motivations for the Panlab project.</p>
Applicable law	N/A
Founder	Grouping of companies /organisations that enter ad hoc agreements, without a sustainable long term legal binding
Owner	N/A
Liability	N/A or at most within the liability constraints imposed by the host for the office
Setup time	Minimal
Risk	<p>Low risk, low values construct. No commitment implies also no long term sustainability</p> <p>High risk for the Panlab fundamental concept. Having no legal status means that the PEL cannot offer any commercial services. The function of the office has to be reduced to merely managing relationships in the case of multilateral agreements. There is no need for this function in bilateral agreements.</p>
Open issues	What is the model for financial compensation of the services offered by the host operating the office? Is it a service contract? And if yes with whom if there is no legal entity.

Annex B Description of Panlab Organisation

To be provided in version 2.0 of the Legal Framework (D2.1):

- Organisational structure,
- Executive structure,
- Membership/participation model, and
- Basic business model (optional).

Annex C Description of Legal Terms and Procedures, List of Legal Documents

To be provided in version 2.0 of the Legal Framework:

- Definition of terms,
- IPR issues,
- Confidentiality,
- Resolution of conflicts,
- Handling of situations where misusing of rights appears, and
- Termination of relationships.

Annex D Draft Legal Documents

To be provided in version 3.0 of the Legal Framework – not necessarily produced by members of Panlab project consortium and within Panlab project.