

Work package 2

Deliverable: D2.1 Options for the legal form of the future programme's dedicated implementation structure

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Submission date: 10 December 2020

The main outcomes

Based on the previous experience and opinion of majority of the partner organisations, it is recommended to establish a dedicated implementation structure (DIS) of the future BANOS programme. A programme managed by a well-functioning and cost-efficient central DIS has a high potential to deliver to interests of all participating states. In addition to implementing the core actions of the programme (organising calls and managing projects), the DIS would enable carrying out a number of impact enabling activities which will play critical role in determining the level of scientific integration and the added value of the whole programme.

The most possible future scenario is implementing the future BANOS programme in association with pan-EU Blue Economy Partnership. Having its own central implementation structure as a legal entity will allow better representation of the common interests of the BANOS states in the governing structures of the BE Partnership. The BANOS DIS may become a full member of the BE Partnership and could function as one of its the regional operational implementation units.

The recommendation of this document is to establish a DIS with a non-profit legal form – the most viable alternative being an association under a national law.

The recommendation for the location of the DIS is left open, however the pros of staying in Finland – the host country of the current BONUS EEIG – are numerous. A possibility of co-location with existing relevant, international organizations e.g. HELCOM is explored.

To be cited as: Ulvila M., M. Sirendi, K.A. Koho, A. Andrusaitis (2020). Options for the legal form of the future programme's dedicated implementation structure. BANOS CSA/D2.1.

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This work has been carried out by the *Baltic and North Sea Coordination and Support Action (BANOS CSA)* project funded from the European Union's Horizon 2020 Research and Innovation Programme under grant agreement No. 817574.

Description of task: (i.e. as in the Description of Work)

An efficiently functioning dedicated implementation structure (DIS) is the key element of a successful programme. Although the current BONUS Art. 185 DIS – European Economic Interest Grouping (EEIG) – has been serving flawlessly for the Baltic Sea programme, there are other options of possible legal forms (e.g. association). In a broader context, and taking into account currently ongoing developments, both the evaluation of H2020 and the preparation of Horizon Europe provide elements with potentially suitable partnership instruments. Therefore, the first and foremost sub-task under this task is to analyse the options of the DIS legal form and agree on a final proposal among the participating NFIs. Once the legal form is decided, the steps to follow will include drawing (or updating, should EEIG be selected as the legal form) the DIS statutes and the liability agreement, as well as preparing a package of internal regulations, e.g. rules for handling the cases of conflict of interest and confidentiality rules.

The analysis will be used for proposing the establishment of a DIS optimally fit for the future programme. This task will mostly involve legal experts of the participants; several working meetings will be necessary for negotiating and agreeing upon DIS and drafting the respective legal documents. The work on this task will continue from M1 till M36. It is expected that the decision on DIS is adopted in M26; by M32 the draft package of the legal documentation is ready and by M36 the draft package of the necessary internal regulations is ready.

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1 Executive summary

Previous experience has shown that a transnational programme is more successful and impactful if the programme is managed by a well-functioning and cost-efficient central dedicated implementation structure (DIS). In addition to implementing the core actions of the programme, the DIS enables to advance a number of additional activities which in turn play a critical role in determining not only the level of scientific integration but also impact and added value of the whole programme.

One of the tasks of the future BANOS programme's management unit will be developing and maintaining cooperation links with other actors of the European Partnership for a climate neutral, sustainable and productive Blue Economy (the BE Partnership). Having its own central implementation structure as a legal entity may allow BANOS to become a full member of the BE Partnership. The BANOS DIS could then function as one of the regional operational implementation units serving the BE partnership.

The analysis presented in this report will be used for proposing the establishment of a DIS optimally fit for the future BANOS programme. The methodology proposed to use in the selection of the optimal DIS is a selection tree of three levels: 1) choosing between DIS or no-DIS; 2) selecting a location; 3) selecting an appropriate legal form. Pros and cons of each option are presented as well as aspects to be considered – such as liability question, operational environment for running a legal entity in a country or capital investment requirements of different legal forms - when choosing the legal form for the future programme. The strong recommendation of this document is to establish a DIS with a non-profit legal form – the most viable alternative being an association under a national law. The recommendation for the location of the DIS is left open, however the pros of staying in Finland – the host country of the current BONUS EEIG – are numerous.

In order to ensure adequate and competent management and operational resources for its activities, the funding for the programme's centralized management needs to be planned separately and on the multiannual basis. The funding can be arranged by collecting management compensations or membership fees from BANOS members. In addition, different kind of in-kind contributions by participating countries can be considered.

2 Introduction

2.1 The expected role of the joint management structure in implementing the BANOS programme

As demonstrated by BONUS Art 185, a transnational programme can be highly successful and impactful if the programme is managed by a well-functioning and cost-efficient central dedicated implementation structure (DIS). In addition to implementing the core actions to create new knowledge and innovation in marine and maritime sector in the BANOS region, the DIS is positioned to truly advance a number of additional activities which in turn play a critical role in determining not only the level of scientific integration but also impact and added value of the whole programme nationally, regionally and at European and wider international levels.

Such activities include:

- preparing implementation plans for decision by the BANOS programme's governing body
- arranging systematic updates of the BANOS SRIA
- facilitating thematic clustering and collaboration among the funded R&I projects
- implementing the programme level communications, dissemination, and stakeholder engagement strategy¹
- collecting impact indicators at programme level and arranging programme level impact assessment
- promoting and organizing mobility among the R&I project partners
- facilitating infrastructure sharing
- promoting open science² and open data³, research synthesis⁴ and enhancing ocean literacy
- enhancing human capacity building⁵ in the blue economy sector in line with the EU Blue Growth Strategy
- coordinating collaboration and aligning actions with appropriate 'sister' initiatives: e.g. European regional seas initiatives, joint programming initiatives as well as other relevant funding streams: e.g. EU's EMFF, LIFE, INTERREG etc.
- coordinating collaboration with initiatives and projects funded by European Framework Programme such as European Partnerships.
- arranging international R&I collaboration, e.g. with Russian Federation

In order to ensure adequate and competent management and operational resources for its activities, the funding for the programme's centralized management needs to be planned separately and on the multiannual basis. For instance, the funding can be arranged by collecting management compensations – certain percentage of the funding by participating funding institutions – or membership fees from BANOS members. In addition, BANOS members could invest to the programme management by in-kind contributions, such as providing office facilities or human resources.

Although the current BONUS Art. 185 DIS – European Economic Interest Grouping (EEIG) – has been serving flawlessly for the joint Baltic Sea Research and Development Programme, also other options of possible legal forms of a management structure implementing the future programme exist (e.g. association). Therefore, the first and foremost deliverable under the task *2.1 Agreeing on a dedicated implementation structure* is to analyse the options of the DIS legal form and agree on a final proposal among the participating national

¹ D3.5 Communications strategy (T3.5, M14)

² D4.5 Report proposing programme-level strategies supporting firm establishing of 'open science' (T4.4, M36)

³ D4.7 Report proposing new programme's data strategy and mechanisms for its implementation (T4.6, M25)

⁴ D4.3 Report proposing implementing a systematic approach to research synthesis and scalable knowledge transfer in the new programme

⁵ D4.4 Report proposing strategies in support of human capacity building and skill's development (T4.3, M31)

funding institutions (NFIs) involved in the BANOS CSA. Once the legal form is decided, the steps to follow will include drawing (or updating, should EEIG be selected as the legal form) the DIS statutes and the liability agreement⁶, as well as preparing a package of internal regulations⁷, e.g. rules for handling the cases of conflict of interest and confidentiality rules.

The analysis presented in this report will be used for proposing the establishment of a DIS optimally fit for the future programme. This task will acquire involving legal experts of the participants and several working meetings for negotiating and agreeing upon DIS and drafting the respective legal documents. The following updated working schedule of this task is to be completed by the end of BANOS CSA⁸:

- the decision on DIS is adopted (D2.1 *postponed to M26*);
- the draft package of the legal documentation is ready (D2.4 *postponed to M32*)
- the draft package of the necessary internal regulations is ready (D2.6 *postponed to M36*).

2.2 Position of future BANOS programme in European marine and maritime R&I cooperation framework

BANOS programme has a potential to be one of the key players in the European marine maritime R&I cooperation framework in the upcoming period that includes the launch of the next European research and innovation framework programme, the Horizon Europe (HE). Hence, one of the tasks of the future BANOS programme's management unit would be developing and maintaining cooperation links with other actors of this framework in order to avoid unnecessary duplication of effort and wherever possible achieve synergy through mutually informed and aligned strategies and actions. Figure 1 schematically presents the tentative links of BANOS programme within European marine and maritime R&I framework.

In 2020 the Commission launched consultations with the Member States on several possible candidates for the partnerships of Horizon Europe. Preparation of the proposals of partnerships that might be included in the work programmes of early years of HE has been initiated in collaboration with the Commission. BANOS CSA consortium has actively contributed to the development of the proposal of **European Partnership for a climate neutral, sustainable and productive Blue Economy (the BE Partnership)**, via consultation with JPI Oceans which was a leading entity in charge of the drafting the BE partnership proposal published in July 2020⁹. In addition, BANOS CSA is represented in the drafting team of BE Partnership SRIA due to be ready by end of January 2021.

⁶ BANOS CSA deliverable D2.4 Package of legal documentation (M32)

⁷ BANOS CSA deliverable D2.6 Package of internal regulations (M36)

⁸ Schedule is updated assuming cost-neutral extension of BANOS CSA to 36 months (till October 2021)

⁹ https://ec.europa.eu/info/files/climate-neutral-sustainable-and-productive-blue-economy_en

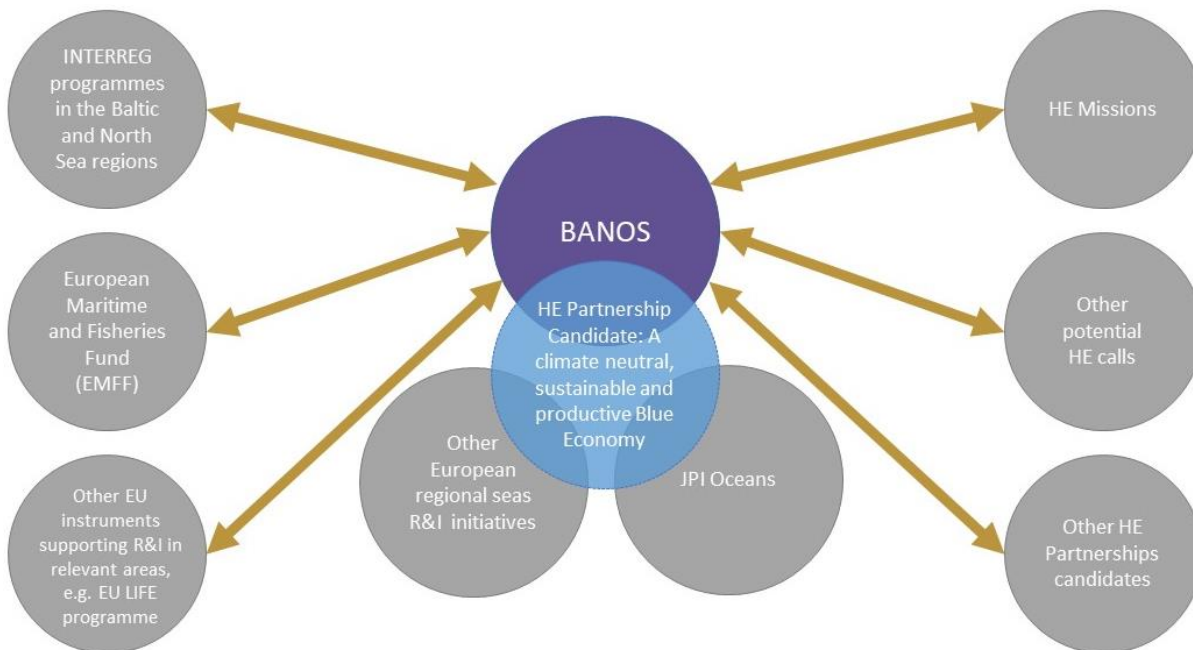


Figure 1. Links of the BANOS programme to other actors of the European marine and maritime R&I cooperation framework.

The implementation of BE partnership is proposed to be based on the common partnership strategic research and innovation agenda (Partnership SRIA) and annual work programmes jointly planned by all the partnership members in dialogue with the European Commission. It is planned that the BE Partnership will implement a governance model that combines a **strategic pillar** composed of pan-European, regional and national levels as well as advice from a diverse array of stakeholders and an **operational pillar** that combines the existing secretariat capacities of JPI Oceans and the regional sea basin initiatives and is supported by operational roles carried out by core and associated partners of the partnership.

Having its own legal entity may allow BANOS to become a full member of the BE Partnership along with entities like JPI Oceans. The BANOS DIS would then function as one of the regional operational implementation units serving the BE partnership. While the exact joint SRIA of the BE Partnership is still to be developed, joining forces with it would allow BANOS to implement through co-funded actions those BANOS SRIA themes that benefit from broader approach across the EU and beyond. This seems particularly valid for a number of R&I themes seeking technological solutions for developing Blue Economy. In addition, the own legal entity would provide BANOS with an opportunity to arrange complementary activities, for example, to cover any possible R&I themes that fall outside the scope of the BE Partnership.

It is envisaged that most of future cooperation with **Joint Programming Initiative Healthy and Productive Seas and Oceans** will be arranged through the BE Partnership of which JPI Oceans will become a central operational management unit. Nevertheless, as most of the BANOS states are also represented in the JPIO Management Board, further strategic alignment and joint activities independently of the BE partnership could be considered as well.

Supported and encouraged by the European Union, cross-border **cooperation in marine and maritime R&D in all regional sea basins surrounding Europe** has been rapidly evolving during the recent years. The Atlantic Ocean Research Alliance established in 2015 (AORA CSA, 2015-2020¹⁰) is being succeeded by All Atlantic

¹⁰ <https://www.atlanticresource.org/aora>

Cooperation for Ocean Research and Innovation (AANChOR CSA, 2018-2022¹¹). In Mediterranean, research and innovation for sustainable blue growth is supported by BLUEMED initiative (BLUEMED CSA, 2016-2021¹²) while in the Black Sea blue growth is supported by Black Sea CONNECT initiative (Black Sea CONNECT CSA, 2019-2022). Strengthening of cooperation among R&I initiatives in different European regional seas has been positively acknowledged by BANOS CSA from its inception. This cooperation will be mostly implemented through different instruments of the future BE Partnership, however joint activities beyond the Partnership are possible as well, e.g. (coupled) joint calls for comparative studies, joint dissemination and experience sharing activities etc.. Development of cooperation between BANOS and other regional seas' R&I initiatives is elaborated within a dedicated Task 4.8 of BANOS CSA.

HE Missions:

Although the implementation mechanisms of HE Missions is still to be consolidated, BANOS has a high affinity to Mission on Healthy Oceans, Seas, Coastal and Inland Waters. The strategic and specific objectives of BANOS as outlined in the pre-draft SRIA¹³ are well aligned with five overarching objectives of the mission for 2030¹⁴:

- Filling the knowledge and emotional gap
- Regenerating marine and water ecosystems
- Zero pollution
- Decarbonising our waters, ocean, and seas and waters
- Revamping governance

As such, future implementation of the BANOS SRIA can be considered to contribute towards the mission goals.

Joint calls within Horizon Europe: further potential contribution by BANOS to 6th cluster of global challenges and European industrial competitiveness "Food, Bioeconomy, Natural Resources, Agriculture and Environment" will be identified in more detail when the First Strategic Plan of Horizon Europe is adopted. The key research and innovation orientations proposed for the seas, oceans and inland waters¹⁵ already now suggest huge potential of synergies with the emerging BANOS Strategic Research and Innovation Agenda.

There is much of obvious complementarity between the BANOS SRIA and the objectives of the **European Maritime and Fisheries Fund (EMFF)**, the **INTERREG programmes** acting in the Baltic Sea and North Sea regions implemented by means of the European Regional Development Fund (ERDF), as well as the **LIFE programme** – the EU's funding instrument for the environment and climate action. BANOS CSA task 2.5 will further explore options for delivering enhanced mutual information and coordination for research programming. Practical implementation of the cooperation recommended by the CSA will be responsibility of the operational management structure of the future BANOS programme.

¹¹ <https://allatlanticocean.org/main>

¹² <http://www.bluedmed-initiative.eu/>

¹³ Preliminary draft text of the proposed new joint Baltic Sea and North Sea research and innovation programme SRIA as an input document to the SOW.

¹⁴ Mission Starfish <https://op.europa.eu/en/web/eu-law-and-publications/publication-detail/-/publication/672ddc53-fc85-11ea-b44f-01aa75ed71a1>

¹⁵ https://ec.europa.eu/info/sites/info/files/research_and_innovation/strategy_on_research_and_innovation/documents/ec_rtd_orientations-he-strategic-plan_122019.pdf

2.3 BONUS EEIG – the DIS of BONUS 185 programme

The Baltic Organisations' Network for Funding Science European Economic Interest Grouping (BONUS EEIG) was established on 19 April 2007 under EU Regulation 2137/85¹⁶ and the Finnish law (1299/1994). According to the statutes, the objective of BONUS EEIG is the implementation of a joint Baltic Sea Research and Development Programme (BONUS) of all members and associated members of the EEIG in a contract under article 185 (former article 169) TFEU. The registered office of the EEIG is in Helsinki, Finland.

The decision for choosing an EEIG as a legal form was based on the analysis and recommendations by an external legal expert Hans-Juergen Zahorka¹⁷. In this analysis several alternatives for BONUS DIS (international institution, association, foundation, company, European Company = Societas Europaea, EEIG) were compared. A recommendation to establish an EEIG was based on the following considerations:

- minimal EU regulation
- possibility of transferring the seat within the EU
- EU institutions bespoke creation for European structures only
- non-discriminatory towards its members, only one relevant (and compact) EU law
- straightforward creation without big formalities
- no assets required (i.e. no money bound) for its creation
- easy association leads to full cooperation with Third Country members
- no taxation issues

As stated in Zahorka's report, EEIG has proved to be a simple and easy legal structure for its purpose. The only major challenge – critical for many public organisations to join as a member to EEIG – is the Art 24.1. of Council Regulation (EEC) No 2137/85 stipulating that: "The members of a grouping shall have unlimited joint and several liability for its debts and other liabilities of whatever nature." Some member states have solved this problem by arranging their participation in EEIG through a "representative entity": Academy of Finland participates in BONUS EEIG through a separate legal entity, a co-operative and Germany's participation is arranged through Forschungszentrum Jülich Beteiligungsgesellschaft mbH.

Running an organisation like EEIG in Finland is reasonably easy. Even though the official languages in the country are Finnish and Swedish, English can be commonly used in communication with authorities, banks and service providers. The level of bureaucracy is quite low and there are lot of online/e-services in use which make the operations flexible and independent of time and place (Annex 1).

For tax purposes EEIGs are treated in Finland the same as general partnerships under Finnish law. This means that BONUS EEIG is not liable for corporate income tax in Finland – only if the profits were distributed to the EEIG members would the members be subject to income tax. As BONUS EEIG does not have any sales of goods or services, it is not subject to value-added tax (VAT). BONUS EEIG is responsible for withholding payroll tax from employees' salaries.

¹⁶ Council Regulation No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG); <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:31985R2137>

¹⁷ Zahorka, Hans-Juergen: On Decision Making for an Art 169 EC Treaty Dedicated Structure

3 Methodology

3.1 The selection tree

There are 13 countries involved in the BANOS CSA, of which 11 are EU member states. Legal forms and taxation in the EU member states are regulated by national legislation, and hence there would be quite a number of options for a legal entity if all legal form options and all countries were analysed. In order to simplify the analysis work, the following order of decisions is suggested (Fig. 2):

- 1) choosing between DIS or no-DIS
- 2) selecting a location
- 3) selecting an appropriate legal form

Each of these decision options is described in more detail in this chapter.

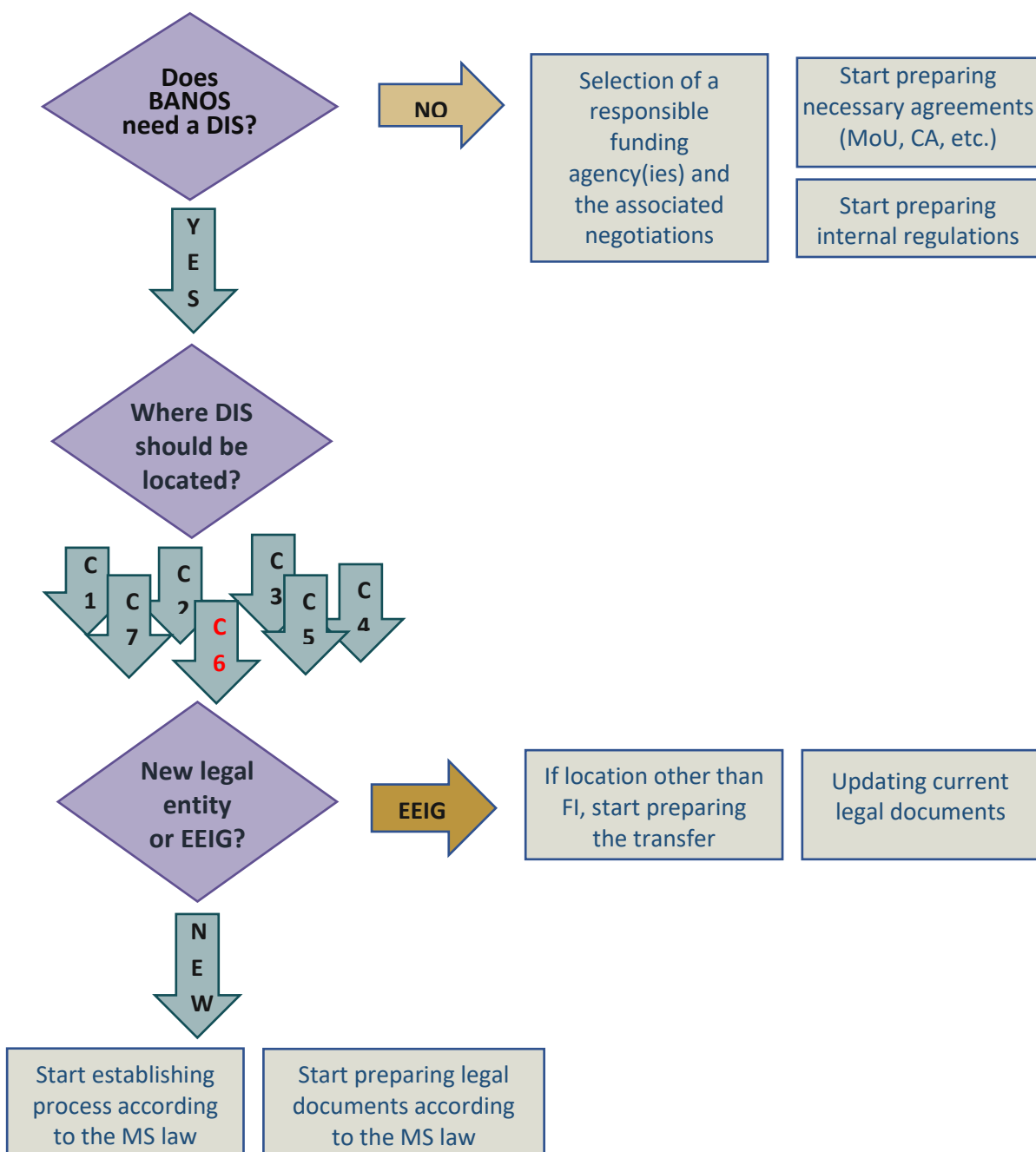


Figure 2. BANOS DIS decision tree

3.2 Steps towards agreement

In order to arrive to an agreement on the necessity of a DIS, its legal form and location among the participating organisations, the work is subdivided into several sessions of discussions with intermediate assessment of options and opportunities in the participating states.

Step 1: November 2019, BANOS CSA FPM2: Discussion on the dedicated implementation structure

- a. agreeing on the scope and framework of the task
- b. preferably narrowing down the options

Step 2: January – September 2020: More detailed analysis of the selected options. Production of a draft report (discussion paper) and a query form on the optimal solution of the DIS issue.

Step 3: September – October 2020: National consultation/commenting of the analysis/collecting input to the query (Summary presented in annex 4 and annex 5)

Step 4: November 2020, BANOS CSA SC4: Review and endorsement of D2.1. Approval of the recommended solution as suggested in D2.1

Step 5: December 2020: Submission of D2.1 including recommendations concerning the DIS to the Commission

Following the recommendations resulting of the work on this deliverable, further work towards operationalizing the management unit of the future BANOS programme will be continued in accordance with the indicative roadmap presented in the final chapter.

4 Analysis of possible options

4.1 A DIS or no-DIS

In principle, implementing a joint R&I programme would be possible without a having specific dedicated implementation structure. However, multiple issues have been identified with a no-DIS scenario (Table 1). Operating a programme without a DIS would mean the following:

- One of the national organisations jointly implementing BANOS is in charge of its central management.
 - This role could be either fixed for the whole programme duration or rotate amongst member organisations within certain intervals
 - The needed resources would be provided by management compensations paid by other member organisations and/or in a form of in-kind resources provided (e.g. seconded personnel)
- Light/loose partnership integration
 - Management structure and rules for cooperation are set in an agreement

Table 1. Pros and cons of no-DIS option are presented below. Respectively, the pros and cons of DIS are the opposite ones of non-DIS option.

Pros of 'no-DIS'	Cons of 'no-DIS'
- No bureaucratic procedures to establish and terminate	- No legal capacity > risk of complicated and restricted management activities

<ul style="list-style-type: none"> - Lower management costs 	<ul style="list-style-type: none"> - Without having a DIS as a legal entity, BANOS programme is unlikely to be able to participate as a full member and a direct beneficiary in the community funded activities (for example, the BE Partnership) - Less resources and interest on programme level activities (dissemination, clustering, stakeholder and policy activities) meaning lower impact - Weaker continuity/stability and visibility meaning lower impact - Might lead to unbalanced situation and ownership issue between members if only one national funding agency manages the programme - Weaker level of administrative integration might lead to weaker scientific integration which, in combination with less intensive programme-level coordination activities (see the list of DIS duties in 1.1) increase a risk of achieving significantly weaker impact.
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4.2 Location

The selection of location has implications for the most optimal legal form for running the DIS of the new programme. National legislations concerning employment, taxation and financial management might have influence, as well as the flexibility and efficiency of the public service and communication with authorities (language, online tools and services, administrative obligations, etc) (annex 1). Therefore, although presented in a sequence in the decision tree (Fig.2), the DIS location and its legal form must be considered together, or in a series of iterations gradually narrowing the number of options. Following aspects of any combination of a candidate state and a candidate legal form should be considered and assessed:

- Is the country in the programme’s geographical area or an EU member state?
- How easy is it to establish, operate and liquidate a legal entity in a country?
- What is the overall cost level of the country?
- How accessible the potential location of DIS is?
- How motivated the participating organization(s) of the respective country is(are) in hosting the DIS in their country?
- Other (e.g. currency, proximity to sea)

As currently the BONUS EEIG Secretariat’s office coordinating BANOS CSA resides in Helsinki, the first issue needed to be resolved is whether the future BANOS programme can be operated from Finland or needs to be relocated to another country.

Table 2. Pros and cons of the new legal entity to be established in Finland

Pros of staying in Finland	Cons of staying in Finland
<ul style="list-style-type: none"> - Faster and easier solution than relocating to another country - Economic solution 	<ul style="list-style-type: none"> - Distance from the North Sea countries and NS research community

<ul style="list-style-type: none"> > no costs of relocation > personnel costs around medium for the region - Existing knowledge and experience of the Secretariat staff, i.e. the 'institutional memory' will not be lost - Friendly business environment and advanced IT services available 	<ul style="list-style-type: none"> - Overall cost level in Finland is higher compared to some other BANOS CSA participating states¹⁸
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4.3 Legal form

4.3.1 EEIG or a new legal form

If BANOS programme is set up with its own dedicated implementation structure, then it should be decided whether it will be implemented by the existing European Economic Interest Grouping (EEIG) or by a new legal entity with a different legal form e.g. an association or a foundation.

(i) EEIG – European Economic Interest Grouping

If BANOS is decided to continue to operate within the existing BONUS EEIG the following changes would be necessary:

- Changing the name (BONUS Baltic Organisations' Network for Funding Science EEIG > 'BANOS EEIG')
- Amending current statutes, liability agreement and internal regulations
- Concluding accession agreements with new member organisations

The following change would be optional:

- the seat can be transferred from Finland to another country if decided unanimously by the Steering Committee of EEIG; transfer should be done according to the Article 14 of EU Regulation 2137/85.

Table 3. Pros and cons of EEIG as a legal entity

Pros of EEIG	Cons of EEIG
<ul style="list-style-type: none"> - Faster solution than setting up a new legal entity > requires amending current legal documentation only - Easy solution for those who are already members of the current EEIG - Economic solution > costs of amending legal documents reasonable; existing knowledge and experience of the Secretariat; remaining budget from BONUS available as starting capital; 	<ul style="list-style-type: none"> — Unlimited joint and several liability still might be an obstacle for some funding agencies to join¹⁹. — Organisations from non-EU countries cannot be members of EEIG > co-operation can be arranged by associate membership agreements

¹⁸ <https://www2.colliers.com/en-nl/research/enoccupiercostindex2019>

¹⁹ Art 24.1. of Council Regulation (EEC) No 2137/85 stipulating that: "The members of a grouping shall have unlimited joint and several liability for its debts and other liabilities of whatever nature." Some member states have solved this problem by arranging their participation in EEIG through a "representative entity"

(ii) Association under a national law

It is also possible to establish a new legal entity for implementing the BANOS programme. The legal form most commonly used for similar purpose is a (non-profit)/(international) association under a national law of any of the participating member states. As association law varies slightly from country to country²⁰, the detailed comparison of options should be limited to the most probable countries.

Table 4. The pros and cons of establishing an association as a legal entity. It should be kept in mind that the analysis here is based on the usual features of an association; hence some variations between countries might exist.

Pros of association	Cons of association
<ul style="list-style-type: none"> - Members of an association are not liable for its debts 	<ul style="list-style-type: none"> - Establishing a new legal entity takes time and resources. - Registered office should reside in the country it is established > less flexibility than with EEIG

(iii) Foundation under a national law

Foundations ('charitable trust', 'non-profit foundation', 'private foundation') as legal entities are diverse, and the regulations vary from country to country. In some countries – like in Finland – foundations are quite numerous and significant in funding research, culture and education.

As an example, the list below contains characteristics of foundations under the Finnish law:

- set up to manage property donated for a particular purpose which is determined when establishing the foundation
- must be for public benefit only
- need to be registered to be able to have the non-profit status and to get the tax benefits
- considered legal persons in Finland
- do not have owners, shareholders, or members
- a board of trustees ensuring appropriate operations
- basic capital min. 50.000 EUR

Table 5. The pros and cons of establishing a foundation as a legal entity

Pros of foundation	Cons of foundation
<ul style="list-style-type: none"> - No liability issues 	<ul style="list-style-type: none"> - Establishing a new legal entity takes time and resources - Cannot be moved to another country > less flexibility than with EEIG - EUR 50.000 is 'frozen' as basic capital

²⁰ For example, in Belgium there are two forms of association with a non-profit purpose: the non-profit association (ASBL) and the international non-profit association (AISBL). Finnish law recognises three types of associations: registered associations, unregistered associations and associations founded by statute for a special purpose. 'Non-profit associations' or 'international associations' as such do not exist in Finland.

4.3.2 Legal forms to be excluded

Due to the nature of the activity of the future programme, it is suggested to exclude following legal forms from further analysis:

- For-profit legal entities under a national law are excluded, since doing business or generating profit is not the purpose of the future programme. Quite often there's also stricter regulatory obligations for for-profit entities than for non-profit organisations.
- Legal entities requiring major capital investments are excluded.
- Intergovernmental organisation is excluded because the process for establishing one is slow and difficult (parliamentary negotiations, ratification process, etc.)

Also, the following supranational legal entities in the European Union are not thoroughly analysed, as those are both for-profit and require capital investments:

- European Company (Societas Europaea, SE)
 - Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) and the supplementary Directive 2001/86/EC on employee involvement in SEs Employee Involvement
 - SE's liability is limited to its assets. Shareholders' liability is restricted to the amount invested in the company.
 - SEs can also move their head office without having to first dissolve the company and then form it in another member state.
 - Min. share capital 120.000 EUR
- European Cooperative Society (Societas cooperative Europaea, SCE)
 - Council Regulation (EC) No 1435/2003[2] of 22 July 2003 on the Statute for a European Cooperative Society (SCE)
 - Article 1.3: "An SCE shall have as its principal object the satisfaction of its members' needs and/or the development of their economic and social activities, in particular through the conclusion of agreements with them to supply goods or services or to execute work of the kind that the SCE carries out or commissions."
 - Minimum of 5 legal persons governed by the law in at least two Member States
 - Min. share capital 30.000 EUR
 - Members' liability is limited to the amount subscribed in the SCE
 - The registered office of an SCE may be transferred to another Member State

5 Outcome of consultation among the participant organizations and recommendations

5.1 Do we need a dedicated implementation structure for BANOS?

All partners agreed that having a joint structure for the Baltic Sea and the North Sea is beneficial to make the joint northern European position more visible and impactful. The opinion of majority of the BANOS partners who responded to the query (query form: annex 3 and results: annex 4) is that in addition to centralized call management (launching, collecting proposals, evaluation, decision making), functions of the joint management structure would include an advanced set of joint activities as joint communication activities,

project clustering, organizing annual BANOS forums and stakeholder events, impact analysis etc. While majority agreed that such management structure should have independent legal status, one partner suggested a scheme where the core set of specific management services (e.g. legal representation, administration) is centralized in the management structure of the BE Partnership. These would be complemented by decentralized support and services that are organized closer to the service providers [i.e. at a regional sea basin scale]: such as data management, impact monitoring and analysis, capacity development, communication, etc. Advantages of a decentralized structure may include cost-effectiveness, and increased sense of ownership by partners and member states. Majority of partners were interested to support a legal structure for implementation of the BANOS Programme once there are clear and transparent calculation of membership fees.

5.2 Where the DIS should be located?

There were no objections about management structure being located in Helsinki (five 1st choices). Pandemic has taught us how to work to a great extent online and the physical location does not have such an underlined emphasis anymore. If physical meetings should be arranged, these could be held in central locations like it has been practiced in the BANOS CSA (Berlin, Copenhagen). Staying in Helsinki also prevents losing the institutional memory, which was emphasized by partners. No country was proposing to host the management structure in their country, on the contrary, multiple explicitly said that they are not able to host the new entity. Additional ideas were also presented by some partners: (1) no location in Brussels; (2) if relocating is needed, then Copenhagen could be considered as central location and near to the ICES as well as EU Environmental Agency. Two 1st choices were given to Estonia; (3) co-locating where the main stakeholders are located (HELCOM, OSPAR, ICES) is beneficial.

5.3 What would be the optimal legal form of the BANOS DIS?

Generally, it was agreed that an association could be the best form. Majority of partners were interested to support a legal structure for implementation of the BANOS programme once there are clear and transparent calculation of membership fees. However, not all organizations are able or willing to join immediately due to current situation and some need more time and information to make a final decision.

5.4 Recommendations

- 1) It is preferable that the future BANOS programme, even if associated with the pan-EU Blue Economy Partnership, maintains its dedicated implementation structure (DIS). An independent legal status of such structure is desirable.
- 2) It is recommended to consider maintaining the BANOS DIS in Helsinki (FI). This would allow utilizing maximum of staff experience by the current Secretariat of BONUS EEIG. If it is preferred to re-locate the DIS to another country, the second most supported choice would be Copenhagen (DK). In both cases it is suggested to consider potential benefits of co-location with larger international organisations with compatible agenda, e.g. HELCOM in Helsinki or ICES in Copenhagen.
- 3) The preferable legal form of the BANOS DIS would be an non-profit association under national law.
- 4) The following initial roadmap of furth work by the task leader is agreed by the partners:

- Elaborate on the specific role of the management structure and the tasks of the BANOS Secretariat and the tentative annual costs for running the office (Dec 2020)
- Study possibilities and conditions in the Finnish registry to transfer EEIG into an association, also the list of necessary documents (Dec 2020)
- Draft the necessary documents for registry (deliverable 2.4) (May 2021)
- Identify and draft the internal documents for joint structure (deliverable 2.6) (May 2021)
- Investigate preconditions and procedures of joining the eventual association by the BANOS CSA partners (May 2021)

Annexes:

Annex 1: Comparison of characteristics influencing establishing and functioning of DIS in different BANOS countries

Annex 2: Intercomparison of the three most probable DIS legal forms

Annex 3: Query form on BANOS DIS

Annex 4: Summary of the questionnaire results

Annex 5: Summary of the bilateral discussions

Annex 1: Comparison of characteristics influencing establishing and functioning of DIS in different BANOS countries

Country	EU Member State	EUR as currency	Salary level* 1= Low, 2=Medium, 3=High	Coast in both seas	Ease of doing business** (ranking: 1= easiest, 12=hardest)	Online services ** (ranking: 1= highest, 12=lowest)
Belgium	X	X	High		12	10
Denmark	X		High	X	1	9
Estonia	X	X	Low		4	5
Finland	X	X	Medium		5	2
Germany	X	X	Medium	X	7	7
Latvia	X	X	Low		6	12
Lithuania	X	X	Low		8	8
The Netherlands	X	X	High		10	4
Norway			High		no data	no data
Poland	X		Low		9	11
France	X	X	High		11	2
Sweden	X		High	X	3	6
UK			Medium		2	1

* Based on average labour and wages costs as reported by eurostats: https://ec.europa.eu/eurostat/statistics-explained/index.php/Wages_and_labour_costs High= EU average + 30% of average; Low = EU average - 30% of average

** Thijs, Hammerschmid, Palaric: A comparative overview of public administration characteristics and performance in EU28 (European Commission, November 2017) <https://op.europa.eu/en/publication-detail/-/publication/3e89d981-48fc-11e8-be1d-01aa75ed71a1/language-en>. The data presented here reorganized based on BANOS country rankings only.

Annex 2: Intercomparison of the three most probable DIS legal forms

Legal form	Resources and time needed for establishing	Membership of organisations of non-EU countries	Liability of members	Residence	Basic capital
EEIG	minimal	No	Unlimited joint and several liability for all debts and liabilities of all members	Can reside, and be relocated relatively easily, in any MS disregarding the state of registration	No
Association under national law	Certain time and resources are needed	Yes	Members are not liable for association's debts	Must reside in the state of registration	No
Foundation under national law	Certain time and resources are needed	Yes	There is no strict membership	Must reside in the state of registration	EUR 50 000

Annex 3: The query form on BANOS DIS

Options for the legal form of the future BANOS programme

Query to BANOS CSA consortium members

September - October 2020

Respondents name, organization, country:

Name, organization, country

The following query aims to get the views of the BANOS CSA members on dedicated implementation structure of the future Baltic and North Sea Research and Innovation Programme (BANOS). Before answering query please read the document ***Options for the legal form of the future programme*** where the different options are presented and analyzed.

1. How should the future BANOS Programme's management look like? One answer, please

- Central call management (launching, collecting proposals, evaluation, decision making) with minimal joint activities after funding decisions are made
- Central call management (launching, collecting proposals, evaluation, decision making) with limited joint activities after decisions are made (joint kick-off meeting, central monitoring of projects – deliverables, scientific/technological reports, collecting performance indicators)
- Central call management (launching, collecting proposals, evaluation, decision making) and advanced set of joint activities (as in the previous and additionally joint communication activities, project clustering, annual BANOS forums and stakeholder events, impact analysis)

2. In your opinion, is there a need for a central management structure with a legal entity to be established for BANOS?

- NO
- YES

3. What is your preference for the legal form of central management structure?

- No legal body needed
- EEIG
- Non-profit association
- Any other, please specify

4. In which of the participating countries the central management structure be located? Please rank three most preferred countries (1 means most preferred).

Number Belgium
Number Denmark
Number Estonia
Number Finland
Number France
Number Germany
Number Latvia
Number Lithuania
Number Norway
Number Poland
Number The Netherlands
Number UK

5. If the central management structure will be in your country, what kind of support your organization would provide?

- Offering office space/equipment/ IT systems
- Providing legal help (registering etc.)
- Providing administrative support (accountancy, legally required reporting, etc.)
- Providing personnel (supporting personnel working part time for DIS)
- Any other, please specify

6. Are the following options to cover maintaining of the central management feasible to your organization?

- Membership fee (also for not founding members which are participating in call(s))
- Invoices for services
- DIS invoices/costs paid by members
- In kind contributions by members

Annex 4: Summary of the questionnaire results

Summary of the questionnaire results

In total 10 query forms were filled in and returned to BONUS EEIG by Monday, 26 Oct 2020.

1. How should the future BANOS Programme’s management look like?

Central call management (launching, collecting proposals, evaluation, decision making) with			
Minimal joint activities after funding decisions are made	Limited joint activities* after funding decisions are made	Advanced joint activities** after funding decisions are made	Left blank/not indicated
-	2 (1)***	6	1

*joint kick-off meeting, central monitoring of projects – deliverables, scientific/technological reports, collecting performance indicators

**as in the previous and additionally joint communication activities, project clustering, annual BANOS forums and stakeholder events, impact analysis

***(in brackets) indicates a provisional answer depending on circumstances.

Comments and remarks to Q1

- All travel costs should be minimized.
- There is clear value to have a centralized management structure, but it is difficult to make official commitments currently as members states are committing funds to BE Partnership.
- The synergies between funding instruments to foster the BANOS SRIA may require intensive coordination between BANOS, a pan-European entity such as JPI Oceans, and the ‘sister’ regional arrangements in other sea basins around Europe. The centralized management tasks can consist of a core set of specific management services (e.g. legal representation, administrative centre), while these core centralized tasks can be complemented with decentralized support and services that are organized closer to the service providers: such as data management, impact monitoring and analysis, capacity development, communication,..). Advantages of a de-centralized structure may include cost-effectiveness, and increased sense of ownership by partners/MS.
- BONUS is an excellent example how scientific results can be incorporated into the management process and how impact could be produced and evaluated. Such a high quality has to be achieved also within the future EU partnership Blue Economy.

2. In your opinion, is there a need for a central management structure with a legal entity to be established for BANOS?

Yes	No	Not indicated
5 (2)	2	1

Comments and remarks to Q2

It would be appropriate for BANOS to have a proper/separate legal entity IF this is a sine qua non to allow participation as full member and beneficiary to EU programmes.

It's too early to declare and it depends on BE HEP

Whilst cost efficiencies could be made, these would be gradually lost and greater costs incurred over the lifetime of the next phase if there is not a central management structure organizing the various activities, outputs and outcomes to the diverse relevant stakeholders

Co-located (with own legal entity) with another organization, e.g. ICES or HELCOM with already existing entity could reduce the administrative costs and have other added value (e.g. exchange of information between the stakeholders and strengthen the position for the BANOS Secretariat within the BE Partnership)

3. What is your preference for the legal form of central management structure?

(note multiple choice possible)

No legal body needed	EEIG	Non-profit association	Other	Left blank/not indicated
1	2 (1)	4		3

Comments and remarks to Q3

- Due to existing commitment to other entities as well as high investment in BE Partnership, resources are not available and a pragmatic approach with preference for a 'light' legal structure is required, that has autonomy to act within a clearly defined mandate that can be revised on a regular basis, and flexibility to evolve within changing R&I landscape of EU and MS. In essence, the legal form (or not) should allow the consortium to be able to participate as a full member and direct beneficiary in the community funded activities such as the BE partnership.
- It is difficult to make official commitment currently as members states are committing funds to BE Partnership

4. In which of the participating countries the central management structure be located?

Finland was indicated as a preferred choice, having five 1st choices and one 2nd choice.

Finland was followed by Denmark four votes and Estonia with 2 votes.

5. If the central management structure will be in your country, what kind of support your organization would provide?

- Access to data sets, potential personnel but not full time, evaluating from experts for funding calls.
- Providing administrative support (accountancy, legally required reporting, etc.)
- Providing personnel (supporting personnel working part time for DIS), note the answer is provisional depending on BE Partnership implementation.
- All indicated options may be possible to some extent

- Space and staff time and technical support ad hoc

6. Are the following options to cover maintaining of the central management feasible to your organization?

(note multiple choice possible)

Membership fee	Invoices for services	DIS invoices/costs paid by members	In kind contribution by members	Left blank
7 (1)			4 (1)	1

Comments and remarks to Q6

- The answer is provisional and the final decision will depend on the implementation of BE Partnership and other associated decisions made concerning the future BANOS.

Annex 5: Summary of the bilateral discussion

Summary of the bilateral discussion with the BANOS CSA consortium members

Topic: Dedicated Implementation Structure (DIS) and its implementation

Discussions were held between 5 November – 16 November 2020

General

All partners without exception emphasized that in the current situation it is very difficult to make a final decision on how the BANOS Programme should function, including the BANOS SRIA implementation as well as its management structure. At the same time, the HEU Blue Economy partnership development is progressing very fast. Before the partners are able to make official commitments, the following points should be clarified:

- What is the content of the BE Partnership SRIA?
- What is the funding volume of BE Partnership?
- Which is the coordinating country of the BE Partnership and its management structure?

In general, for funding agencies it is currently difficult to make commitments to both BANOS as well as to the BE Partnership as resources are limited. For this reason, it would be critical to identify the difference in BANOS and BE SRIA and outline how the activities complement each other. There should be no overlap in activities.

Implementing the BANOS SRIA

All funding agencies except two have clearly indicated and prioritized participation in the BE Partnership. They also supported the approach that the BANOS SRIA should be implemented as much as possible within the BE Partnership SRIA. If BANOS SRIA includes critical topics/themes for North Sea or Baltic Sea that are not covered in BE SRIA, most of funders indicated that they are ready to invest to such complementing calls and activities. However, how such activities are managed should be discussed when the gaps have been identified.

Management structure for the BANOS Programme

All partners agreed that having a joint structure for the Baltic Sea and the North Sea is beneficial to make the joint northern European position more visible and impactful. However, opinions on how such a joint structure should be organized differed:

- The Baltic Sea/North Sea representative should be involved in the BE Partnership management. Yet the details on how this would be organized need to be discussed and agreed upon.
- There are experiences of managing joint activities by informal joint structure.
- There should be one structure for managing the BE - JPIO association, also because of financial reasons. To strengthen the regional seas aspect, there could be branches in different regional seas locations.
- There are regional offices for Mediterranean (BLUEMED) and Black Sea, which most probably will be maintained. Hence, there is a need for one also in the BANOS region.
- Based on the discussion it seems that majority of partners were interested to support a legal structure for implementation of the BANOS Programme once there are clear and transparent calculation of membership fees.

There were no objections about management structure being located in Helsinki. Pandemic has taught us how to work to a great extent online and the physical location does not have such a big meaning anymore. If physical meetings should be arranged, these could be held in central locations like it has been practiced in the BANOS CSA (Berlin, Copenhagen). Staying in Helsinki also prevents losing the institutional memory, which was emphasized by partners. No country was proposing to host the management structure in their country, on the contrary, multiple explicitly said that they are not able to host the new entity. Additional ideas were also presented by some partners: (1) no location in Brussels; (2) if relocating is needed, then Copenhagen could be considered as central location and near to the ICES as well as EU Environmental Agency; (3) co-locating where the main stakeholders are locating (HELCOM, OSPAR, ICES) is beneficial.

There was also range of opinions concerning the legal form of the dedicated implementation structure. Generally, it was agreed that an association could be the best form even if not all organizations are able or willing to join immediately due to current situation and some need more time and information to make a final decision.

Roadmap for future actions

- Elaborate on the specific role of the management structure and the tasks of the BANOS Secretariat and the tentative annual costs for running the office (Dec 2020)
- Study possibilities and conditions in the Finnish registry to transfer EEIG into an association, also the list of necessary documents (Dec 2020)
- Draft the necessary documents for registry (deliverable 2.4) (May 2021)
- Identify and draft the internal documents for joint structure (Deliverable 2.6) (May 2021)
- Investigate preconditions and procedures of joining the eventual association by the BANOS CSA partners (May 2021)