

CHARM-EU (CHALLENGE-DRIVEN, ACCESSIBLE, RESEARCH-BASED AND MOBILE EUROPEAN UNIVERSITY)

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LIST OF ABBREVIATIONS

CHARM-EU	Challenge-driven, Accessible, Research-Based and Mobile European University
DEI	Diversity, Equity and Inclusion Office
EEA	European Education Area
EEC	European Economic Community
EEIG	European Economic Interest Grouping
EGTC	European Grouping of Territorial Cooperation
EHEA	European Higher Education Area
EIT	European Institute of Innovation and Technology
ERA	European Research Area
EU	European Union
EUA	European Universities Association
EUI	European Universities Initiative
HEI	Higher Education Institution
JVAO	Joint Virtual Administration Office
KCT	Knowledge Creating Team
TFEU	Treaty of Functioning of European Union
TORCH	Transforming Open Responsible Research and Innovation through CHARM

EXECUTIVE SUMMARY: WHITE PAPER ON THE GOVERNANCE OF EUROPEAN UNIVERSITIES: THE CASE OF CHARM-EU

The objective of this White Paper is, on the one hand, the widest dissemination of the analyses, practices, proposals and challenges facing the governance of European Universities based on the activities and pilot tests carried out by CHARM-EU, largely reflected in the Handbook on CHARM-EU's innovative governance and management model and in the Terms of Reference of the governance model. On the other hand, and in a special way, it is also intended to disseminate the legal analysis of the implications, content and scope of a possible future model of separate legal entity for the European Universities and the Alliances derived from the European Universities Initiative.

From the initial roll-out of CHARM-EU activities, some critical issues were addressed, such as governance, autonomy, policy and strategy, legal frameworks, funding and resource management, staffing, quality, accreditation, marketing and recruitment, ensuring inclusiveness and accessibility, among others. Some of these issues highlighted significant obstacles within a CHARM-EU participating university, as well as problems arising from the differences between the different national legal systems within the countries of the CHARM-EU participating universities.

In this context, CHARM-EU has proposed governance and management mechanisms focused on innovative models to address and overcome these problems and barriers in the most effective way. Many of these elements have been translated into various results and deliverables over the past three years, the latest of which is this White Paper, which recapitulates CHARM-EU's approach to governance and management and the results of CHARM-EU's implementation of the governance pilot model or proof of concept.

To this end, an overview of the governance of European University Alliances is initially formulated, describing what European University Alliances are and the role the European Union expects from them, as well as the challenges and needs of their governance and management. In this context and recapitulating previous documents and deliverables derived from the CHARM-EU Alliance activities on governance and management, the different scenarios of possible separate legal entities and an overall assessment of their pros and cons are also addressed. It first discusses the general approach taken by CHARM-EU to governance and management and how the governance of CHARM-EU has been progressively organised on a practical basis since its launch in 2019. The Terms of Reference of the CHARM-EU governance model are then described both from the perspective of its basic structure and internal relations and interactions and by describing the composition, functioning and functions of the main bodies of the CHARM-EU governance model.



It also presents an analysis in legal terms of the main elements of what the option or model most cited by the European Commission as a possible future scenario of a separate legal entity for European University Alliances may imply: the European Grouping of Territorial Cooperation (EGTC), with references also to the European Economic Interest Grouping (EEIG), a previous and relatively similar model. To this end, a general approach is made and the main characteristics of this more possible model of legal entity are addressed, as well as the aspects related to the creation and operation of this model of separate legal entity for the European Universities. In particular, the possible legal basis for establishing such a legal entity under EU law and the possible legal instrument that would be necessary are discussed.

Finally, in this White Paper are discussed and presented the problems of adapting the current governance model adopted by CHARM-EU to what could be, eventually, a reconversion of the EGTCs to serve as a future separate legal entity for the European University Alliances. The White Paper discusses both the adaptation of the CHARM-EU governance model to this future separate legal entity and the main challenges to be faced in this adaptation.

In the proposal for the continuation of the CHARM-EU Alliance presented in March 2022, under the title CHARM-EU Expansion, Inter-institutional campus, Governance, Higher education, Transformation (CHARM-EIGHT ∞), the innovative governance and management model of the Alliance has been defined as an overall objective. In order to realise these objectives while considering the option of a possible future separate legal entity in strictly legal terms, it is recommended as a matter of priority that the CHARM-EU Strategic Board adopts a double decision, both strategic and preparatory, in the course of the year 2024. On the one hand, to consider the drafting of a possible EU regulation establishing the possibility of creating European University Grouping, on the basis and model of the EGTCs, as well as to make recommendations on other possible legal changes or modifications to the various calls at EU level to facilitate the activities of the European Universities. On the other hand, to adopt the decision to elaborate a draft convention and provisional statutes which, following the model of the content currently established for the EGTCs, would serve both to establish the foundations and basic consensus of what could be the future separate legal entity and to envisage and regulate the best possible legal solutions to the obstacles and problems identified for the development of the European Universities.

1. PREAMBLE.

This section is ordered, firstly, by addressing the rationale and the objectives of this *White Paper* (1.1). Secondly, it presents the structure with which the analysis has been systematised, as well as the methodology and sources of knowledge used (1.2).

1.1 Rationale and objectives of the White Paper.

The initial CHARM-EU (*Challenge-driven, Accessible, Research-Based and Mobile European University*) proposal already indicated that a new, innovative and more inclusive approach to inter-university governance and management would be needed within the framework of the European Universities Initiative (EUI). From the outset, the aim has been to seek and define the model that would best suit the mission and vision of CHARM-EU, considering among other options the possibility to develop a future separate and independent legal entity. To this end, the whole proposal was designed around the idea of including a governance and management model that has been tested during the initial three years of the Alliance before being extended for the future growth of CHARM-EU and for use by other European Universities.

Thus, from the initial roll-out of CHARM-EU activities, some critical aspects were addressed, such as governance, autonomy, policy and strategy, legal frameworks, funding and resource management, staffing, quality, accreditation, marketing and recruitment; ensuring inclusiveness and accessibility, among others. This is reflected in the *Handbook on CHARM-EU's innovative governance and management model*. It is generally considered that some of these problems and barriers may arise, on the one hand, from within a university participating in CHARM-EU; or, on the other hand, may arise due to differences between the different national legal systems within the countries of the universities participating in CHARM-EU. With this in mind, the first half of the project analysed different governance and management practices used in interinstitutional or multiinstitutional entities in the general framework of higher education institutions, as well as in other sectors that have faced similar barriers.

In this context, CHARM-EU has proposed governance and management mechanisms focused on innovative models of approach in order to address and overcome barriers in the most effective way when possible and to integrate smoothly with the Governance systems of the partner Universities. This process has been carried out through a series of stages. In summary, in the first stage, best practices were identified, both internal and external, and the different legal frameworks for higher education in Europe. In a second stage, based on the interaction with national agencies, national ministries, external actors and other European University Alliances, as well as with the European Commission, a governance and

management model was designed and partially implemented and tested throughout CHARM-EU's activities, as a pilot or proof of concept.

All these elements have been translated into various results and deliverables over the last three years, the latest of which is this *White Paper*, which recapitulates CHARM-EU's approach to governance and management and the results of the implementation of the pilot model or proof of concept of governance of CHARM-EU. Together with this summary recapitulation and state of the art, this *White Paper* presents a legal analysis of the option or model that, at the present time and in the view of the European Commission, is seen as the most suitable, possible or feasible for a future separate legal entity for European Universities. It also describes the main problems involved in the adaptation or transition to this possible new legal entity for the current CHARM-EU governance model and, by extension, the problems that could arise at the level of all European Universities.

In this sense, the aim of this *White Paper* is, on the one hand, the widest dissemination of the analyses, practices, proposals and challenges facing the governance of European Universities based on the activities and the pilot tests carried out by CHARM-EU, largely reflected in the *Handbook on CHARM-EU's innovative governance and management model*. On the other hand, and in a special way, it is intended to disseminate the legal analysis of the implications, content and scope of a possible future model of a separate legal entity for the Alliances derived from the EU.

With this approach, the specific addressees or targets of this *White Paper* are the main political actors, at national and European level, in particular the European Commission itself and the Member States, as well as all other European University Alliances; and, more generally, all stakeholders and social partners involved, directly or indirectly, with higher education, in a comprehensive approach of both European Education Area (EAA) and a European Research Area (ERA).

1.2 Structure and methodology of the White Paper.

After the preamble section, which presents the rationale and objectives, followed by the systematic structure and methodology of this *White Paper*, the document is organised into other five main sections.

The second section formulates an overview of the governance of European University Alliances, describing what European University Alliances are and the role the European Union (EU) expects from them, as well as the challenges and needs for the governance of European University Alliances. In this context, and recapitulating previous documents and deliverables derived from the CHARM-EU Alliance activities on governance and



management, the different scenarios of possible separate legal entities and an overall assessment of their pros and cons are also addressed.

The third section presents the general approach adopted by CHARM-EU in relation to governance and management. To this end, a first section presents the approach to governance adopted by CHARM-EU, while a second section presents how the governance of CHARM-EU has been progressively organised since its launch in 2019, i.e., in its first phase of implementation.

A fourth section contains, in a synthesised but sufficiently comprehensive explanation, the CHARM-EU's governance model. The main deliverables reflecting the scope and content of this model are the *Terms of Reference of the CHARM-EU governance model* and the *Handbook on CHARM-EU's innovative governance and management model*.

The fifth section presents an analysis in legal terms of the main elements of what the option or model most cited by the European Commission as a possible future scenario of a separate legal entity for European University Alliances may entail: the European Grouping of Territorial Cooperation (EGTC), with references also to the European Economic Interest Grouping (EEIG), a previous and relatively similar model. In the first part of this section, a general approach is made and the main characteristics of this most possible model of legal entity are discussed; and in the second part, the creation and functioning of this model of separate legal entity is analysed.

The sixth section discusses and presents the challenges of adapting the current governance model adopted by CHARM-EU to what could be, if appropriate, a reconversion of the EGTC to serve as a future separate legal entity for the European University Alliances.

Finally, a concluding section summarises the main issues and problems addressed throughout the *White Paper*, and offers some main recommendations on the future adaptation and transition to a separate legal entity. The *White Paper* is accompanied by four annexes reproducing previous CHARM-EU's documents and deliverables that are considered key: the Report "*First steps towards an innovative governance and management model for a new type of alliance concepts, challenges and lessons learned from the higher education sector and beyond*", of October 2020; the document "*Governance, Autonomy and Legal aspects. Towards a new model of governance: some updates*", of January 2021; the "*Handbook on CHARM-EU's innovative governance and management model*", of September 2022; and the "*CHARM-EU Governance Model. Terms of Reference*", drafted in September 2022 and approved by the Rectors Assembly 14th of December 2022.



In describing the systematic structure of the *White Paper*, its methodological approaches and the sources of knowledge used in its elaboration have already been highlighted. On the one hand, we have organised and summarised the reflections and all the actions carried out by CHARM-EU in relation to governance and management and, in particular, the implementation of the pilot test of the governance model adopted by this Alliance. Thus, the sources of knowledge used have been the various reports and deliverables produced by the CHARM-EU working group on governance and management, especially the *Terms of Reference* and the *Handbook on CHARM-EU's innovative governance and management model*.

On the other hand, a legal analysis - and, therefore, with the application of legal science methods - is carried out on the possible model of a future separate legal entity that could be applicable for the European Universities, as indicated by the European Commission. Thus, the main sources of knowledge are the normative texts and the practice of the EU on the creation and constitution of an EGTC and an EEIG.

The reasoning, concepts and definitions used in this *White Paper* are anchored and based on academic literature, although it is not an academic publication. As indicated, rather than contributing to the academic debate, the main objective of this *White Paper* is to provide, on the basis of the governance model tested by CHARM-EU, lessons learned and practical recommendations that will serve as a basis for articulating an innovative governance and management model adapted to the possible future separate legal entity that will eventually give legal coverage, at European level and under EU law, to European University Alliances.

2. THE EUROPEAN UNIVERSITIES GOVERNANCE: DEFINITION AND CONTEXT.

The analysis and presentation of the main issues in relation to the governance of European Universities is organised firstly looking at the origin and development of the EUI and the European University Alliances and the general governance issues involved (2.1). Secondly, the governance needs and challenges for the Alliances are analysed, as well as possible future scenarios, either on existing or new models (2.2).

2.1 Origin, development and governance problems of European Universities Initiative.

In 2017, French President Emmanuel Macron proposed in a speech at the Sorbonne the creation of European Universities to build strong networks, foster multilingualism,



pedagogical innovation and excellence in research¹. At the European Council's Gothenburg Summit in November 2017, EU Heads of State and Government discussed the future of education and culture as drivers of job creation, economic growth, social justice and the experience of European identity in all its diversity. At the summit, the European Commission also presented its vision for the European Education Area (EEA) in 2025. One of the aspects involved in this EEA was the “creation of a network of European university centres, so that world-class European universities can work together seamlessly across borders”².

As a follow-up to the Summit, the European Council called on Member States, the Council and the Commission to “strengthen strategic partnerships between higher education institutions across the EU and promote the establishment by 2024 of 20 "European Universities", which would be bottom-up networks of universities across the EU, enabling students to graduate by combining periods of study in several EU countries and contributing to the international competitiveness of European universities”³. For its part, the Council of the EU considered in 2018 that “European Universities have the potential to significantly enhance mobility and promote quality and excellence in education and research, by strengthening the link between teaching, research and innovation and knowledge transfer, by demonstrating the benefits of multilingual learning, by recognising qualifications and by developing joint education and research projects and programmes”⁴.

Building on this proposal of the European Council and the approach of the Council of the EU, the European Commission launched the European University Initiative (EUI)⁵. The initiative, co-funded by the Erasmus+ project, was designed to strengthen student and staff

¹ In the context of a pivotal and inspiring speech with a powerful Initiative for Europe, 26 September 2017, available at <https://www.elysee.fr/emmanuel-macron/2017/09/26/initiative-pour-l-europe-discours-d-emmanuel-macron-pour-une-europe-souveraine-unie-democratique>.

² *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Strengthening European Identity through Education and Culture. The European Commission's contribution to the Leaders' meeting in Gothenburg*, document COM(2017) 673 final, 14.11.2017, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017DC0673&from=FI>.

³ *Conclusions adopted by the European Council*, 14 December 2017, document EUCO 19/17, CO EUR 24, CONCL 7, available at <https://data.consilium.europa.eu/doc/document/ST-19-2017-INIT/en/pdf>.

⁴ *Outcome of the Council Meeting, Council meeting Education, Youth, Culture and Sport*, 22 and 23 May 2018, available at <https://www.consilium.europa.eu/media/35296/st09078-en18.pdf>.

⁵ Call EAC/A03/2018, published in OJEU C 384, 24.10.2018, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2018:384:FULL&from=ES>. The European Commission included, as a specific action of the Erasmus+ Programme, the one related to European Universities within the Key Action 2 (CA2): Cooperation for innovation and exchange of good practices.



mobility and to foster the quality, inclusion and competitiveness of European higher education. Developed together with Member States, higher education institutions and student organisations, the European Universities concept attracted in the first call, applications from partnerships involving more than 300 higher education institutions from the then 28 Member States and other Erasmus+ countries. In the first call, out of the 54 proposals, 17 Alliances were accepted, including CHARM-EU.

In 2020, a second call of the EUI was launched and there are now 41 Alliances involving 279 higher education institutions working to test different models of the European Universities concept and to examine their potential to transform higher education. The underlying concept is that these European Universities are transnational alliances that can become the universities of the future, promoting European values and identity, and revolutionising the quality and competitiveness of European higher education. In 2022, a new call has been launched to enable the Alliances to broaden and deepen their cooperation.

In September 2020, the European Commission indicated in a Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions⁶ that a joint transformation agenda for higher education would be launched by the end of 2021. Concrete initiatives on which this transformation agenda will be based include full implementation of the EUI and collaboration to optimise the vision of European Universities and address the specific obstacles identified; as well as consideration of the development of a European qualification capable of providing a framework to facilitate the delivery of joint degrees in university partnerships, such as the European Universities.

For the purposes relevant here, and particularly noteworthy, the Commission stated in its Communication that “In close cooperation with Member States and the higher education sector, the Commission will explore the necessity and feasibility of a legal statute for alliances of universities such as the European Universities. If justified, actions to facilitate such deeper and sustainable cooperation between education institutions from different Member States may follow from 2023 onwards. Possible action may include solutions for cross-border cooperation linked to financing, accreditation, quality assurance, student and employment relations, and infrastructure management. The possible use of existing

⁶ *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on achieving the European Education Area by 2025*, document COM(2020) 625 final, 30.9.2020, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0625&from=ES>.

national and European statutes, such as the European Groupings of Territorial Cooperation, will be scrutinised to see whether they could be fit for purpose with adjustments, or whether other solutions would be needed”⁷. It should be underlined that this was the first time that EGTCs were identified as a possible model or option for a future separate legal entity for European University Alliances.

The Conclusions of the Council of the EU on European universities of May 2021 reiterated support for this Initiative to achieve “the ambitious vision of an innovative, globally competitive and attractive EEA and ERA, in full synergy with the EHEA, by helping to boost the excellence dimension of higher education, research and innovation, while promoting gender equality, inclusiveness, and equity, allowing for seamless and ambitious transnational cooperation between higher education institutions in Europe, and inspiring the transformation of higher education”⁸.

Likewise, in the Conclusions of the Council of the EU of April 2022, without referring either to the feasibility of a possible separate legal entity, it was insisted that “the European Universities initiative should be further rolled out” and that “Where relevant and in close cooperation with national authorities, alliances of High Education Institutions (HEIs) and stakeholders, steps should be taken to overcome the obstacles to a deeper, long-term and flexible transnational cooperation and design institutionalized cooperation instruments, based on a preliminary thorough assessment of their necessity, benefits and feasibility. The aim is to give alliances, on a voluntary basis, the latitude to act together, make common strategic decisions, experiment joint recruitment, design joint curricula or pool resources and human, technical, data, education, research and innovation capacities”⁹.

Creating shared governance for European Universities necessarily requires looking at the European context. However, the EU contains a wide variety of rules, regulations and processes and higher education institutions have different governance structures and processes across Europe.

⁷ *Ibid.*, p. 21.

⁸ *Council conclusions on the European Universities initiative - Bridging higher education, research, innovation and society: Paving the way for a new dimension in European higher education*, 17-18 May 2021, Document 8658/21, par. 17, available at <https://www.consilium.europa.eu/media/49659/st08658-en21.pdf>.

⁹ *Council conclusions on a European strategy empowering higher education institutions for the future of Europe*, 4 and 5 April 2022, Document 7936/22, par. 42-44. 42-44, available at <https://data.consilium.europa.eu/doc/document/ST-7936-2022-INIT/en/pdf>.



The main issues identified for developing a new governance model for European Universities are based on three essential premises, which are at the heart of the problem:

1. The European Commission has not yet clearly defined the scope and expectation it intends to give to the creation of a strategic framework for ambitious and seamless transnational cooperation between higher education institutions in Europe. In particular, it remains to be seen and needs to be clarified to what extent the option of a European degree - which at the moment is totally undefined - or the possibility of creating a new legal entity - which, at the moment, is also undefined - will finally be accepted and under what conditions by the Member States, the Council and the European Parliament. The pilot calls launched by the European Commission in 2022 (Legal Entity and European Degree) will help to define these points in 2024.¹⁰
2. The European Universities currently selected or their future development must necessarily be based on the association of universities from different Member States of the EU, which implies the existence of different national systems and laws regulating the organisation and functioning of universities and the public higher education service as a whole.
3. The universities of the Member States of the EU which have been associated in the EUI and those which will be associated in the future developments of this Initiative have and will continue to have different cultures, traditions and operating mechanisms, specific to the traditions and cultures of each institution and university system in each Member State. This is also a common European heritage that must be protected.

In this sense, a true European University that emerges from the development of this Initiative should probably be a new entity that, at European level, can be eligible to participate in the Erasmus+ programme, can participate in calls for research, innovation and development in the framework of the Horizon Europe programme, have a common system of quality assurance and evaluation at European level, and also have a single funding model that also allows obtaining European funds. Something more ambitious and not shared by all the alliances would be the possibility to provide European university degrees, All these elements, which are real challenges for the current European University Alliances, have a

¹⁰ [Pilot institutionalised EU cooperation instruments to explore the feasibility for a possible European legal status for alliances of higher education institutions](#)

governance and management component on which several Alliances, such as CHARM-EU, have been working since 2019 in order to identify problems and find possible solutions.

2.2 Governance needs and challenges for European Universities Alliances

Governance of European Universities should be understood as the set of decision-making bodies, rules and procedures that serve for the development and management of any institution (in this case, an alliance of university institutions), including the strategic planning process, determining also the roles and responsibilities, both individual and collective, of the different bodies of the organisation (whether CHARM-EU or the future separate legal entity); and how all these bodies are integrated with the governing bodies, functions and procedures already established in each of the universities associated to the Alliance. In this sense, governance can be defined as “the way in which power and authority are exercised in organisations in the allocation and management of resources”¹¹; i.e., the governing and management of an organisation in a way that is autonomous and independent of political and economic power. It is therefore based on three main dimensions that answer the three central questions: who has a voice in decision-making? how are decisions made? who is accountable?

Management, on the other hand, refers to “the process of working with and through others to achieve the organisation's objectives in a changing environment”¹². In short, governance aims to determine the “what” (deciding what the organisation will achieve or implement), while management is more concerned with the “how” (the practices and processes through which decisions are implemented). In the same vein, finally, autonomy means the capacity of the institution or entity (whether CHARM-EU or the future separate legal entity) to act independently in relation to all kinds of external factors, in particular political and economic ones; in such a way that the entity or institution can self-organise and make its own decisions in terms of administration, finances, human resources and with regard to its governing bodies. In the framework of the European Universities, the aim must be to preserve the university institution - and its generation, transmission and transfer of knowledge - from external political and economic interference.

¹¹ Garry D. Carnegie (2009), "The ABC of University Governance", *Campus Review*, 19 (9): 8, quoted in *First steps towards an innovative governance and management model for a new type of alliance: Concepts, challenges and lessons learned from the higher education sector and beyond*, Annex A, *infra*.

¹² Robert Kreitner (1995), *Management*, 6th Edition, Houghton Mifflin Company, USA, p. 4, quoted in *First steps towards an innovative governance and management model for a new type of alliance: Concepts, challenges and lessons learned from the higher education sector and beyond*, Annex A *infra*.



In any case, both governance and management, and autonomy or independence can only be established and guaranteed by legal rules that ensure the proper functioning of the entity (whether CHARM-EU or the future separate legal entity) and all its organs, and that guarantee and give legal and, if necessary, judicial protection to independent decision-making. In the case of university institutions, these legal rules are to be found at three normative levels:

1. At the level of the self-regulatory capacity of the institutions themselves, which adopt their statutes and rules of operation and, where appropriate, agreements and partnership agreements with other entities, whether university or non-university;
2. At the level of the domestic law of the Member States, which establish the legal conditions for the autonomous functioning of university institutions and of the entities or alliances they may create, as well as of the university system as a whole and of the national higher education public service, guaranteeing their institutional autonomy; and,
3. At the level of EU law, which may provide for the creation of new legal entities by association or alliance between universities, establishing their fundamental characteristics and also guaranteeing their autonomy and the proper functioning of their own self-government.

In a related vein, a strategic alliance could be defined as a “voluntary agreement between companies [or other organisations] involving the exchange, pooling or joint development of products, technologies or services”¹³. In this sense, alliances therefore differ from mergers in that their founding organisations retain their independence. This means that the governance and management of a strategic alliance requires an additional and constant effort to balance the various interests and perceptions, which is even more difficult in the case of international alliances.

In higher education and research, there is a growing trend towards international partnerships, driven by both inter-organisational and international factors. Thus, international university partnerships take various forms, such as academic associations, academic consortium or institutional networks. Strategic alliances could be defined as a more developed and focused specific type of network, as they pursue a joint strategy and action to address challenges that one member or participant in the alliance cannot address

¹³ Ranjay Gulati (1998), "Alliances and networks", *Strategic Management Journal*, 19(4): 293, cited in *First steps towards an innovative governance and management model for a new type of alliance: Concepts, challenges and lessons learned from the higher education sector and beyond*, Annex A, *infra*.

on its own. Although the various strategic alliances in higher education vary in size, visibility and geographical spread, most cover a fairly similar range of activities: student exchange, exchange of academic and administrative staff, research and innovation cooperation, exchange of researchers, benchmarking, transnational education delivery, joint bids for international projects, joint curriculum development, joint or dual academic programmes, follow-up programmes, short course programmes, development projects in a third country, relations with the private sector, etc.

In this sense, strategic partnerships in the higher education sector face specific challenges. Most universities and other higher education institutions are characterised by a tradition of decentralisation and internal democracy, bring together strong (and often divergent) disciplinary cultures and identities, and a variety of internal and external stakeholders (students/lifelong learners, academic staff, technical support staff, public and private partner organisations...). Thus, the governance of a university strategic alliance entails some key challenges, such as the implementation of joint initiatives despite diverging national and international regulations, laws and internal organisations, processes and practices, the multicultural and multilingual environment, the mobilisation of stakeholders with different perceptions, financial sustainability and the design of agile and readable decision-making processes.

This raises important dilemmas to be faced and resolved between representative democracy and organisational effectiveness; between integrated and dual management structures; between internal and external influence in decision-making; and between centralisation and decentralisation in universities¹⁴. In order to find the right balance to respond to all these dilemmas, the different European University Alliances have adopted different governance models. Moreover, as different rules apply in different countries, the governance landscape of European Universities is very different, and in this sense, designing an effective governance and management model for a university alliance that brings together institutions with very different national regulations and internal practices is, certainly, a key challenge.

So, it has become evident that as they have tried to implement their ambitious plans, the 41 existing European Universities have encountered legal and administrative barriers, at

¹⁴ Ingvild M. Larsen, Peter Maassen, Bjørn Stensaker (2009), "Four basic dilemma in university governance reform", *Higher Education Management and Policy* 21 (3), cited in *First steps towards an innovative governance and management model for a new type of alliance: Concepts, challenges and lessons learned from the higher education sector and beyond*, Annex A, *infra*.

national and European level, that hinder cooperation across and beyond state borders. One of these barriers is certainly linked to the legal status of these Alliances. All of them have faced difficulties in sharing human, financial and digital resources, infrastructures and services, as well as in carrying out their joint educational and research activities. However, creating a new legal entity will require a significant time lag in regulatory terms, and many Alliances are likely to need short-term solutions in the meantime. These short-term solutions may also include the validation of some of the main features of the future legal entity that can be identified, using European Universities as test beds.

The main difficulties and obstacles in relation to the governance and legal aspects of the creation of a new independent legal entity that will have to be overcome and which have been identified are as follows:

1. The incorporation into EU law of a new separate legal entity, created through the association or alliance of universities
2. The incorporation into the national law of each Member State of the independent legal entities created through the association or alliance of universities, recognising them as having full legal capacity.
3. The alignment of the governance and governing bodies of the new separate legal entity with the governance, functioning and governing bodies of the partner universities.
4. The choice between taking advantage of the possible use of existing national and European statutes - with significant limitations in terms of the objectives pursued by some of the European University Alliances - or opting for a new legal instrument and a new type of legal entity adapted to the academic, scientific and research needs of European Universities.

As mentioned before, still to see if this can mean, a new separate legal entity, created through the association or alliance of universities, which can directly award European university degrees that are automatically recognised in the Member States as equivalent to national degrees, considering that Education is competency exclusively of the Member States.

As for the option of a new separate legal entity, and from a more political perspective, there is another set of issues that must necessarily be addressed and, where appropriate, also defined at EU level. The most relevant thing to point out is that any initiative for a new

separate legal entity to be launched must come from the universities themselves, and it must be very clear whether or not it implies overlapping or diluting existing university institutions - which have their own history, culture, traditions, reputation and brand in the European and international university context - in a new entity. This is, in short, the central question or tension in terms of defining the scope of the proposed ambition for the European Universities.

The initial approach, at present, is that, although a new legal entity with legal personality is created, each university should maintain its own personality and its own legal status in their domestic legal system, but consideration could also be given to merging different universities or creating clusters on a European scale, as has been done in recent years in different countries and, in particular, in the French universities. This would undoubtedly achieve greater scale and visibility and enhance the overall reputation of the whole, rationalising the system and reducing duplication. This is, however, an enormously complex and multifaceted process, even on a strictly national scale, although in some cases it has proved successful and, for example, has led to better and more advanced positions in international rankings¹⁵.

The scope of the ambition in terms of a separate legal entity is therefore the key issue and will depend on the perspective that the EU and its Member States will eventually determine. In a way, this international strategic institutional partnership is the key issue. Obviously, it is also key to consider that any initiative for a new separate legal entity should ensure that the heads of the different universities (rector, president, chancellor or provost), whatever their system of election or appointment, are also the heads of the new entity as they are the heads and legal representatives of their universities. In other words, all this must be approached from a twofold perspective, which also clearly defines the ambition: on the one hand, at the level of the EU and its Member States; and, on the other hand, in relation to the universities participating in the various alliances.

¹⁵ Thus, in the latest edition of the *Academic Ranking of World Universities*, better known as the Shanghai ranking, there is no EU university in the top fifteen and you have to go to the sixteenth position (16) to find the University of Paris-Saclay. In this regard, as of 1 January 2020, the Université Paris-Saclay replaces the Université Paris-XI-SUD [which in 2015 was in forty-first position (41st) in this same international ranking of universities] and the community of universities and institutions "Université Paris-Saclay", and integrates, as component institutions that retain their legal personality, the Paris Institute of Technology for Life, Food and Environmental Sciences (AgroParisTech), the CentraleSupélec, the Ecole normale supérieure Paris-Saclay and the Institut d'Optique Graduate School. It also integrates the Institut des hautes études scientifiques, a recognised non-profit research organisation, as well as the universities of Versailles-Saint-Quentin-en-Yvelines and Evry-Val-d'Essonne as partner universities.



3. GOVERNANCE AND MANAGEMENT AT CHARM-EU ALLIANCE.

The governance analysis articulated by CHARM-EU and which constitutes the Alliance's approach to possible solutions to the governance problems and needs of European Universities is organised by first addressing CHARM-EU's approach to governance (3.1). Secondly, it presents the main elements of CHARM-EU governance in its preliminary stage of implementation (3.2).

3.1 The approach of CHARM-EU on governance and management.

CHARM-EU is an initiative formed by five research-based universities (University of Barcelona, Trinity College Dublin, Utrecht University, Eötvös Loránd University Budapest and University of Montpellier) that was created to become a global example of good practice to enhance the quality, international competitiveness and attractiveness of the European higher education landscape. The diversity of education systems, but also the different geographical, regional, cultural, linguistic, economic and historical perspectives/challenges of the five CHARM-EU members contribute to consolidate the university of the future by revealing common goals on the way to a more sustainable and inclusive future.

CHARM-EU offers a learning experience that, with mobility and inclusiveness at its core, is based on the application of a transformative approach to programme and curriculum design that combines the best of different European traditions in the structuring of curricula through knowledge-creating teams, with a flexible and competency-oriented modulation structure. All of these elements have been realised in the *Master in Global Challenges for Sustainability*, which started its first edition in the academic year 2021-2022. CHARM-EU thus offers an innovative, challenge-driven, student-centred and self-directed teaching model, integrating research, teaching, innovation and enquiry within and across disciplines, open to everyone, which can become a valuable precedent for all universities in Europe. This model envisages a European higher education campus using the latest modern technologies in the service of accessibility and internationalisation.

In this context, CHARM-EU work package 2 (WP2), 'Designing future governance and management', outlined the framework and processes used to create an innovative future governance and management model that has been tested during the pilot phase and will be used to achieve CHARM-EU's mission and vision beyond the initial three years of the project. A governance model with innovative administrative structures has been developed based on CHARM-EU's core principles of inclusiveness, student-centredness, social responsibility, sustainability, innovation, transparency and transdisciplinary.



The key outcome of WP2 as a whole has been to establish an innovative model of governance and management relevant to the needs and objectives of a European University, but which can be adapted to the mission of CHARM-EU. To this end, within the framework of CHARM-EU the aim has been to assess what were the barriers to creating the university of the future, to look for other models for the best architecture of the European University, and then to propose solutions and different options to overcome these barriers and to use these options to further develop CHARM-EU and the European Universities.

The two initial phases of WP2's work consisted of the elaboration of a report on best practices of governance and management models, within and outside the higher education system, and the preparation of a draft handbook describing the proposed model. The initial activities and expected outcomes of WP2 focused on the best practice report, based on a comprehensive analysis of internal best practices and a benchmarking of external best practices in governance and management of partnerships with similar parameters and issues as CHARM-EU. In 2022 the *Handbook on CHARM-EU's innovative governance and management model* and the *CHARM-EU Governance Model Terms of Reference* have been completed.

In addition to the analysis of internal best practices, up to nine different models of independent legal entities were initially examined, identifying their constitution, legal nature, composition, purpose, financial and accountability system, controls, partner and entity liability, personnel rules, deposit of funds and investment of cash, financial statement presentation and certification of accounts, and even the tax regime for each of these models. The good practice document was finalised under the title "*First steps towards an innovative governance and management model for a new type of alliance: Concepts, challenges and lessons learned from the higher education sector and beyond*", of 26 October 2020¹⁶.

The aim of this report was to feed the preparation of the governance and management model of the European University Alliance CHARM-EU, providing innovative ideas and lessons learned on how other strategic alliances respond to the challenges of governance in a diverse and multicentric environment. All this with a focus on presenting possible future scenarios, whether existing or newly created. In this way, the report was on a par with work

¹⁶ The aforementioned Document WP2-DL-2.1, available at <https://www.charm-eu.eu/sites/default/files/2021-04/D2.1%20CHARM-EU%20governance%20report%20final.pdf>, and reproduced in Annex A.



carried out by other Alliances and analyses of governance models carried out, for example, by the European University Association (EUA)^{17,18}.

In the field of higher education, research and innovation, this benchmark focused in that report on three strategic partnerships: Eucor, U4Society Network and EIT Health. Beyond the higher education sector, the report also explored the rationale for some other strategic partnerships in the private sector. Finally, the report stressed that the creation of a legal entity could be an asset to support the long-term strategic development of a European University Alliance, but that the legal entity should not be an end in itself. It should be designed in such a way as to facilitate the coordination of joint projects, without hampering the autonomy of its member institutions or overshadowing their respective brands.

The benchmarking led to the identification of 6 key recommendations to inform the preparation of the future governance and management model of CHARM-EU:

1. Build on the existing governance of the alliance's member institutions.
2. Adopt a “living strategy” approach.
3. Exploit the complementarity of skills and knowledge of the partners.
4. Carefully balance inclusion and flexibility.
5. Focus on financial sustainability to ensure long-term success.
6. Facilitate networking between the communities of member institutions and support services.

At the beginning of CHARM-EU’s activities, the five rectors had the clear initial position that “we do not want a separate legal entity if it is not clearly necessary for our purpose”. However, as the work progressed and different governance models were explored, it became clear that in order to achieve the purposes (stable governance, sharing of staff, sharing of infrastructure, etc., and maybe granting degrees) a new legal entity would be

¹⁷ EUA (2021), *The governance models of the European University Alliances Evolving models of university governance I*, Thomas Estermann, Enora Bennetot Pruvot and Hristiyana Stoyanova, report available at <https://eua.eu/downloads/publications/eui%20governance%20paper%20new.pdf>.

¹⁸ EUA (2022), *The European Universities Initiative and system level reforms*, Anna-Lena Claeys-Kulik, Enora Bennetot Pruvot, Thomas Estermann and Thomas Jørgensen. report available at https://eua.eu/downloads/publications/briefing_eui%20impact%20on%20system%20level%20reforms.pdf



necessary. Thus, as a result of the CHARM-EU Rectors' Assembly on 10 June 2020, it was agreed, as a long-term vision, that “the best CHARM-EU governance option for the purpose that allows us to be challenge-driven, transdisciplinary and share resources in innovative ways, will be a different entity that can be one of the existing ones or a new one”. A vision that converged with the approach of the European Commission in its September 2020 Communication¹⁹.

In January 2021, a new internal working document recapitulated and ordered the activities carried out in the context of WP2 and advanced the main lines of the initial content on “Governance, autonomy and legal aspects” of the “Handbook on CHARM-EU’s innovative governance and management model”²⁰. The document outlined all the issues to be addressed and resolved in the short, medium and long term and was considered by the Rectors' Assembly in February 2021. The document, from a strictly legal point of view, also analysed the three strategic alliances on which the Good Practice Report focused (Eucor, U4Society Network and EIT Health) and underlined that, among other things, they differed in one central aspect in terms of their legal nature: one (Eucor) is constituted among its associate members with legal personality on the basis of the provisions of EU regulations on the creation of EGTC; another (the U4Society Network) is a simple partnership alliance without legal personality; and the third (the EIT Health and, more specifically, the European Institute of Innovation and Technology, EIT) was created directly on the basis of an EU regulation, thus configuring the EIT as a EU body with legal personality.

From these three different origins and legal natures, it was concluded that it seemed more appropriate to outline the following approach from the perspective of CHARM-EU and in relation to the future European Universities:

1. Firstly, it should be noted that it was a question of creating a new and separate legal entity and therefore the model of the U4Society Network, which is a simple associative alliance, like CHARM-EU itself or many other university consortium and associations of a European or international nature, would not be appropriate.
2. Secondly, that it seemed entirely appropriate for the legal entity to be covered by EU law (as both Eucor and the EIT do, in different ways), thus ensuring harmonisation

¹⁹ The aforementioned document COM(2020) 625 final, 30.9.2020, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0625&from=ES>.

²⁰ *Governance, Autonomy and Legal aspects. Towards a new model of governance: some updates*, Reproduced in Annex B.

and uniformity in relation to the rights and obligations of the new entities and their recognition in the different Member States.

3. Thirdly, it seemed more advisable that the new legal entity, instead of being created by the EU itself as an EU body (which would be a top down approach), should be created through the adoption of EU legislation allowing and protecting the creation of new legal entities from university alliances and partnerships (i.e., a bottom/up approach).

In this respect, the EGTC model, with its limitations, also seemed to be the most appropriate starting point. This was also recognised by the European Commission in its 2020 Communication on realising the EEA by 2025. It is a model that can certainly help to overcome many of the obstacles and problems identified. However, it is a model that is not sufficiently operational at its current stage either for awarding a European university degree, whatever that eventually means, or for direct participation in the Erasmus Charter, among other things. This is why the European Commission's Directorate-General for Education, Youth, Sport and Culture (DG EAC) proposed in 2021 to launch a study on the need and feasibility of a legal status for university partnerships such as European Universities.

3.2 The governance of CHARM-EU in its preliminary stage of implementation.

In this initial phase, the first edition of the *Master in Global Challenges for Sustainability* has been launched during the academic year 2021-2022 and the activities of the research project TORCH (*Transforming Open Responsible Research and Innovation through CHARM*) have started (Kick-off meeting February 2021). Since the launch of the CHARM-EU alliance in October 2019, the different working groups and organisational mechanisms necessary to enable its progress and implementation have been set up. Some of these processes and mechanisms have been affected and delayed by the Covid-19 pandemic. The CHARM-EU governance and coordination bodies and all these organisational structures have been progressively and practically set up. All of them also revolve around the Rectors Assembly, the highest political body of CHARM-EU and, from an operational and technical point of view, the Alliance Manager team and the main representatives of each of the five participating universities.

The transition from project governance to Alliance governance has gone through several stages in the first two years:

1. The first step was the creation of the Rectors' Assembly, the Project Management Team and the Work Packages. This is how the governance of the project was



organised, with work packages reporting to the Project Management Team and strategic decisions being taken by the Rectors Assembly.

2. The next step was the creation of the Master programme and the necessary structures to support it, such as the Joint Virtual Administrative Office (JVAO), the Admission Board and the Academic Council. These complementary bodies also reported to the Project Management Team and were subject to the strategic decisions of the Rectors Assembly.

3. The third step was the reflection on long-term objectives and the integration of the above elements into governance.

4. In the meantime while moving from “Project Management” to “Alliance Governance”, the figure of project manager was unfolded in Project Director (normally an academic dealing with partner decisions) and Project Manager (a professional leading with resourcing and decision implementation), and a new “board” emerged with balance among the partner institutions and making the decisions that were unplanned in the project. Managing the day-to-day of the Alliance.

5. The design of a new organisational structure was then addressed, defining the new bodies, their composition, decision-making and frequency of meetings, based on the findings of previous deliverables and more important, based on the experience of the “real” implementation.

6. Once the desired governance model has been designed and approved by all members, an implementation plan has been created to put it into action.

7. The final step is the implementation of the designed model and continuous evaluation to adapt and update it according to the needs of the partnership.

The developments of these almost three years of implementation of the CHARM-EU project have demonstrated the importance of the meetings of the five rectors or presidents of the five participating universities. In all cases, although with nuances, they constitute the most important management and governing body of each university, both in political terms and in terms of representation. The body that brings them together must have, at the same time, a formal but also an informal character, in the sense of favouring interaction and complicity among them, even while enjoying the crackling fire in the fireplace. Being the Rectors Assembly the highest governing body of CHARM-EU, its main function is to give the necessary impulse to its development and to define its general political orientations and priorities, agreeing on the basic lines of the different projects to be initiated within the framework of CHARM-EU.

The experience carried out has also shown the need to have an Executive Board that, under the maximum political direction of the Rectors Assembly, is responsible for the

management and daily operation of CHARM-EU. It is also intended to establish a mechanism that guarantees the participation and involvement of the different structures of each university and that facilitates the integration and interaction between the different academic leaders of the five participating universities.

Three Knowledge Creating Teams (KCTs) were also initially created, one for each CHARM-EU initial line of expertise. That is, Food, Water, and Life and Health. The KCTs have an expanded, fluid and variable composition, with voluntary membership of professors and researchers from the five universities. However, these three basic KCTs were defined, with a pre-defined composition, defined competencies and mechanisms for functioning and decision-making.

The organisational structure initially envisaged by CHARM-EU in 2020 is described in the following figure:

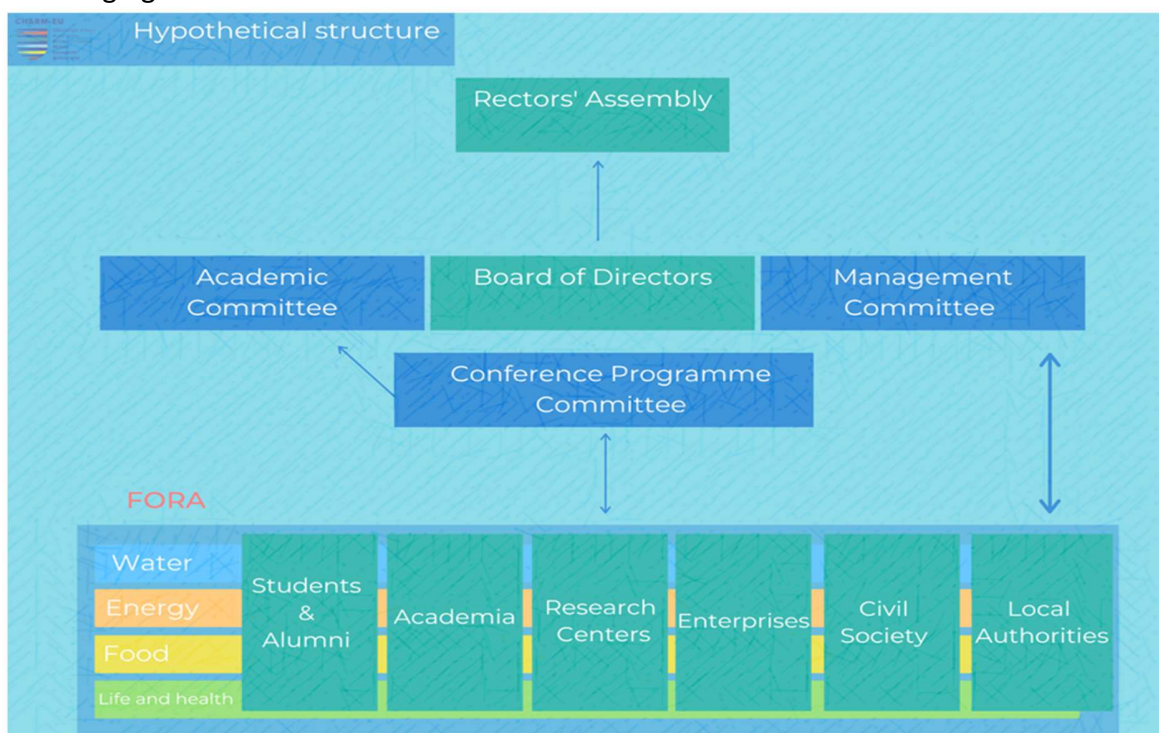


Figure 1 CHARM-EU governance structure and approach, December 2020

In addition to the Rectors Assembly, the Committee of Vice Rectors and the three Knowledge Creating Teams (Water, Food and Life&Health), the governance model

established for this initial phase of implementation of CHARM-EU and the start-up and development of the Master's programme has been based on the following bodies:

- The Academic Council.
- The Admission Board.
- The Appeals Board.
- The Staff and Student Council.

Thus, during the second part of the project, there was a mix of Project Management organisation and this new governance structure of CHARM-EU

For its part, CHARM-EU also started working on its research and innovation dimension through the TORCH project with the aim of developing a common research and innovation agenda for the Alliance partners, based on transdisciplinarity and interculturality as strategies to solve complex societal challenges. The initial organisational structure of TORCH has revolved around the following bodies:

- The Rectors Assembly
- The Vice-Rectors Committee.
- The Project Management Team.
- The Quality Committee.

The Academic Coordinator, the TORCH Project Coordinator, the Alliance Manager and his team in each of the five participating universities are fully active as single-person bodies throughout this initial phase of CHARM-EU implementation.

The core approach was that governance structures should allow for a mechanism of governance, decision-making and implementation that is agile, efficient, representative and inclusive, thus incorporating the values espoused by CHARM-EU. In this sense, they should favour both top/down and bottom/up approaches.

The composition, functioning and competences of each of these bodies have been established over the first two years of the Alliance on a practical basis. The Governance Task Force of WP2 has been following this development on a practical basis and at its face-to-face meeting on 8 November 2021, articulated the main elements of the CHARM-EU future

governance model, which were presented at the Montpellier meeting in March 2022²¹. The organisational structure adopted for the next phase and the continuity of the Alliance's academic and research activities is developed in detail in the following section, describing the composition, functioning and competences of each of the envisaged bodies, as well as their hierarchical and coordination relations in an organisational chart. In any case, as the European Commission develops the possible options for an eventual new legal entity for European Universities, this organisational structure may serve as a future model and will be adapted to the results of these legislative and regulatory developments.

Last but not least, the model accomplishes the requirement of smoothly integrate with the Governance of each partner. Every CHARM-EU member has two roles: one in the Alliance and one in the internal Governance and Management structure of their partner institutions as shown in Figure 2.

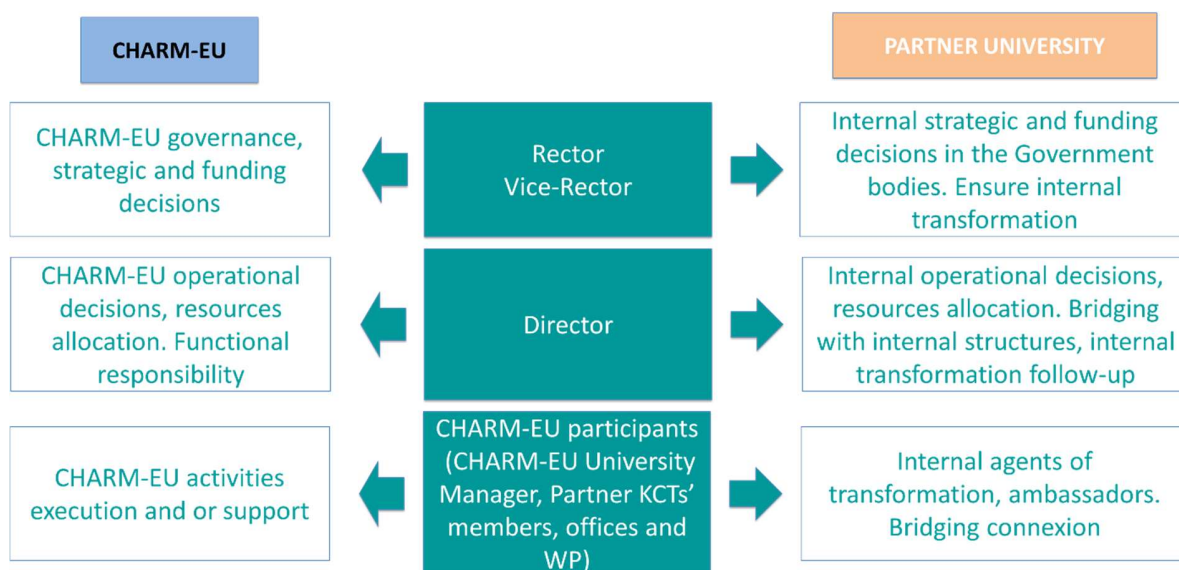


Figure 2. Integration of CHARM-EU Governance and Management and partner University Governance and Management, September 2022.

4. THE CHARM-EU GOVERNANCE MODEL.

²¹ See information on the call for this Forum available at <https://www.charm-eu.eu/charm-eu-governance-forum>.

The description of the CHARM-EU governance model is presented in two dimensions. On the one hand, the basic structure and internal relations and interactions (4.1) and, on the other hand, the composition and functions of the main bodies of the governance model (4.2).

4.1 Structure and internal relations and interactions.

The work carried out by the WP2 Working Group following and evolving the practical developments in terms of CHARM-EU governance structures culminated in the Forum on European University Governance, organised by CHARM-EU on 24-25 March 2022 in Montpellier and which, under the title *“Building the governance of the European University”*, completed the mandate of the CHARM-EU Governance Model²². In this sense, the governance of CHARM-EU was created around the project and it is considered that it should evolve to be organised around the Alliance. To respond to the needs of CHARM-EU, governance needs to be flexible, bottom-up and let innovators take the lead. It requires both a common structure and local structures in the member universities, all of which must be strongly connected and operational at the domestic level. All of this is reflected in the *Handbook on CHARM-EU’s innovative governance and management model* and in the *CHARM-EU Governance Model. Terms of Reference*.

The new governance model builds on the existing project governance and is adapted to the needs of the Alliance. The model created allows for innovation within the Alliance through Knowledge Creating Teams (KCT). The KCTs can make proposals and work closely with the operational boards of CHARM-EU. Thematic support offices with full or part-time staff located in the different universities allow for flexible adaptation to specific needs and ensure visible representation of the alliance in each member university.

²² Report. Forum on European University Governance, Montpellier, March 24th-25th 2022, available at <https://www.charm-eu.eu/sites/default/files/2022-06/Report%20CHARM-EU%20Governance%20Forum.pdf>.

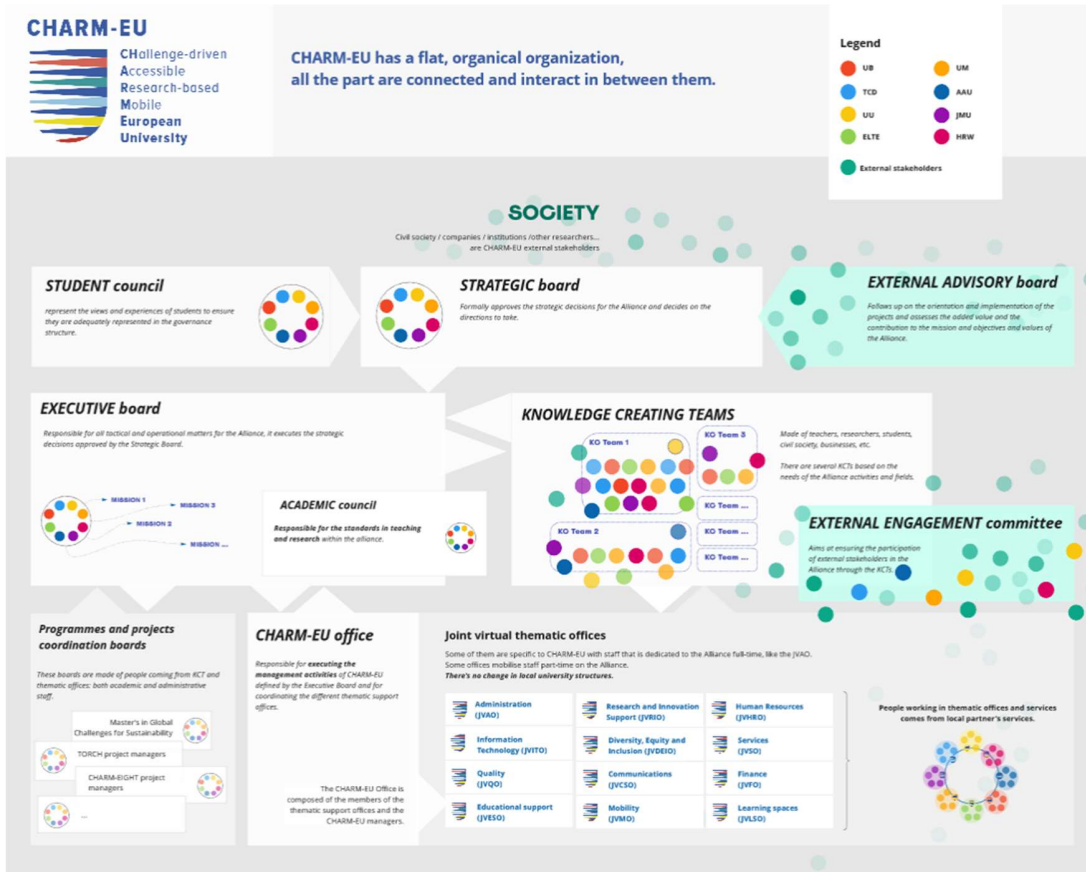


Figure 2 Structure of the CHARM-EU governance model, May 2022

The Strategic Board meets twice a year to discuss achievements, direction and agreed strategy. It approves strategic plans, annual work plans, programmes, projects and budgets. The Alliance Secretary General attends the Strategic Board meetings as secretary and distributes the information to the Executive Board and the Academic Council.

The Executive Board and the Academic Council are central operational bodies that create a link between the KCTs and the support offices (both local and shared), as well as the whole structure and the Strategic Board. They discuss how to implement strategies, analyse proposals coming from the KCTs and monitor the partnership, educational programmes and projects. The CHARM-EU director chairs these meetings and distributes information and tasks to be carried out to the relevant councils and units (e.g., project, thematic support office...).

The Alliance Secretary General is responsible for coordination, and communication within the Alliance.

The governance structure ensures inclusiveness with the creation of a Diversity, Equity and Inclusion Office (DEI) to raise awareness and include this dimension in all aspects of the Alliance. An external expert on inclusion will also participate in the External Advisory Council to ensure inclusiveness in strategic consultations.

In this vein, for example, on the one hand, if the Strategic Board decides to develop a new programme, the Alliance Secretary General will distribute the information to the Executive Board and Academic Council, which discuss it and formulate the needs for the relevant KCTs. The KCTs will work on a proposal to be presented to the Academic Council to be assess from the academic side. The Academic Council will bring its decision to the Executive Board that will analyse about resourcing and will approved. On the other hand, if the KCTs identify a need in civil society, they can present the idea to the Academic Council or the Executive Board. The Executive Board and/or Academic Council discuss the proposal and the Alliance Secretary General presents it to the Strategic Board for approval of the proposal and funding, if appropriate. If this is done, the Alliance Secretary General then circulates the Strategic Board's decision first to the Executive Board and to the Academic Council, and then to the KCTs and other interested bodies to start operational work.

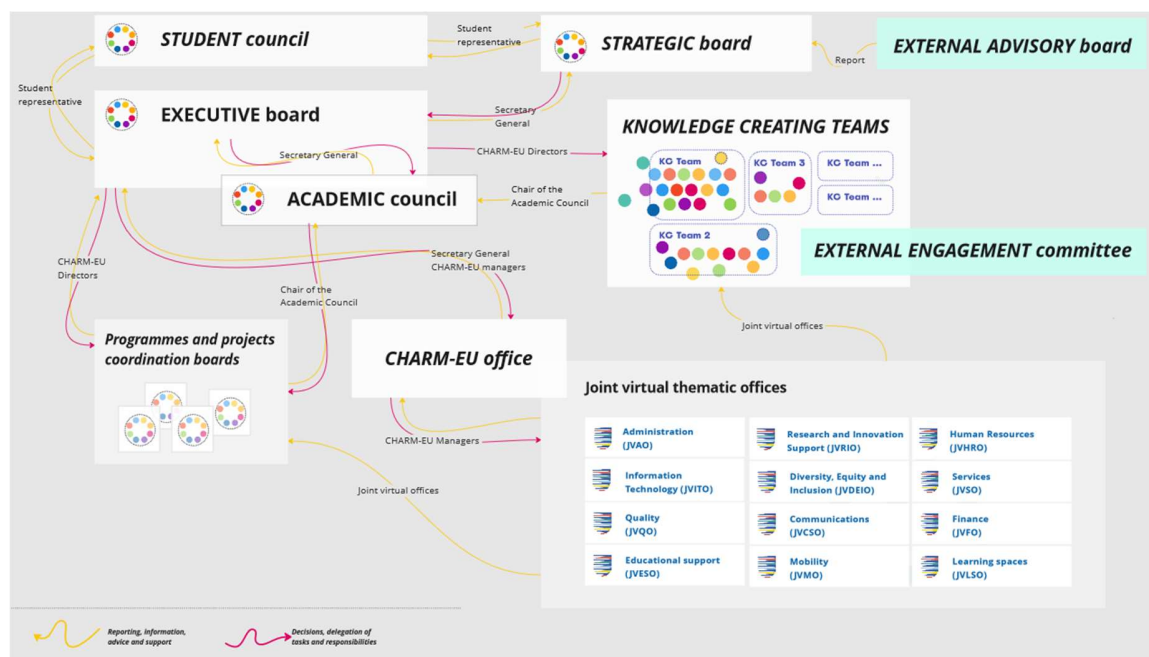


Figure 3 Information and decisions flow in CHARM-EU, May 2022

The steps to be followed for the implementation of this new model are as follows:

1. Detail the missions, functions, composition and chairpersonships, decision making and procedures of each board and staff member, as well as the terms of reference of the specific staff members of CHARM-EU.
2. Develop and validate the financing of this model.
3. Develop the local structures of CHARM-EU.
4. Constitution of the Boards and recruitment of the necessary staff.
5. Pilot testing of the processes of the structure.
6. Adjust as necessary according to the pilot test.
7. Consolidation of the new governance model (operational).

4.2 Main boards of the CHARM-EU governance model: composition and functions.

In this governance scheme, the main bodies of the CHARM-EU governance structure are the following: the Strategic Board, the Executive Board, the Academic Council, the Student Council, the External Advisory Council, the Knowledge Creating Teams (KCTs) and the External Engagement Committee. Their initial composition, functioning and functions are briefly described below.

Strategic Board

The main function of the Strategic Board is to formally approve the Alliance's strategic decisions and to decide on the directions to take. In this regard, its areas of decision-making are:

- General strategy
- Integration and inclusion of a new member
- Exclusion of an existing member
- New programmes and projects
- Finance and budgets
- Internal conflicts resolution (not resolved at the lower levels)

One of the rectors chairs the Strategic Board. The chairpersonship rotates every 6 months, following a certain order for the chairpersonships, so that the next in line is vice-chairperson. The order of the chairpersonships is established so that the chair of the Strategic Board does not change at the same time as the chair of the Executive Board, and they are not from the same university.



The Strategic Board is composed of ex-officio members who are the Rectors of the member universities and the Alliance Secretary General who acts as secretary general of the Strategic Board. The Vice-Rectors, and the chairperson of the Executive Board may also attend as invited members.

The ex-officio members of the Strategic Board take decisions by consensus and, if necessary, by qualified majority. They have the right of veto on key issues related to finance and budgets. In case of disagreement, there is a mediation procedure.

The Strategic Board meets twice a year.

The Executive Board

The Executive Board is responsible for all tactical and operational matters of the partnership, and implements the strategic decisions approved by the Strategic Board. It is responsible for the implementation of the different actions by the thematic support offices and for project management. The Executive Board receives the mandates of the Strategic Board and takes responsibility for the actions. Its areas of decision-making are:

- Design and execution of annual work plans and schedules, programmes and projects and make adjustments when needed.
- Execution of the CHARM-EU budget by each CHARM-EU Director in the member universities
- Follow-up of the results of the past period and deliver an overview of the execution plan and schedule for the upcoming period of six months
- Analysis of new projects and initiatives before submitting them for formal approval of the Strategic Board, unless they received mandates from the strategic board.
- Composing the agenda for the Strategic Board meeting in consultation with the Chair of the Strategic Board and the Alliance General Manager

One of the directors of CHARM-EU chairs the Executive Board. The chairpersonship rotates every 6 months following a set order for the chairpersons, so that the next in line is the vice-chair. The order of the chairpersonships is established so that the chair of the Strategic Board does not change at the same time as the chair of the Executive Board, and is not from the same university.

The Executive Board is composed of a CHARM-EU Directors and supported by the CHARM-EU Manager for each member institution, and the Alliance Secretary General. The Chair of the Executive Board is responsible for the organisation of the meetings (agenda, minutes,

scheduling, hosting) and will distribute the agenda of the meetings and invite students, KCT members, support staff or project representatives when necessary.

The CHARM-EU Directors divide the tasks between them (portfolio holders), which means that each of them is responsible for one of CHARM-EU's areas of activity, for preparing the planning, and is also responsible for implementation and monitoring and reporting to the Executive Board. Areas of responsibility that are to be shared in a balanced way can be: educational activities, research and innovation, other educational activities, students, KCTs, partnerships/external stakeholders, student relations, staff development, mobility, equity-diversity-inclusion, communication, IT, quality, or projects. The Executive Board may decide to rotate responsibilities.

Decisions in the Executive Board are taken by consensus. The Strategic Board is responsible to find an agreement when the Executive Board doesn't reach consensus.

The Executive Board meets twice a month.

The Academic Council

The Academic Council is responsible for ensuring standards of teaching and research within the Alliance. The Academic Council oversees educational and research activities and the development of other new activities that may be established. The Board is responsible for the educational management of CHARM-EU educational and research activities, including planning and scheduling. It liaises with the KCTs as appropriate.

The composition of the Academic Council shall seek, at the same time, a balance between the partner institutions as well as a diverse composition. The members of the Academic Council are proposed by the Executive Board and approved by the Strategic Board.

The Academic Council is composed of the following ex-officio members

- The CHARM-EU Academic Director (chair)
- The local Academic Directors, except the one represented by the Academic Director. One will be vice-chair.
- A student
- The head of the JVAO

The Academic Council shall be assisted by

- Mobility expert
- Inclusion expert

- Quality expert
- Evaluation expert
- Digitalisation expert (technology-enhanced teaching and learning)

These persons are not members of the Academic Council and have no voting rights.

The Academic Council will have clearly defined mandates from the Executive Board. In this regard the Academic decisions how to advise the Executive Board are the full responsibility of the Academic Council. The Academic Council may advise on decisions to be made by the Executive Board involving employment of personnel, investments, spending, external collaborations and, any budgeting affairs and related resourcing issues, need to be approved by the Executive Board.

The Academic Council is chaired by the CHARM-EU Academic Director. The chairpersonship will rotate each academic year and there will be a vice-chair, the next in rotation.

Decisions shall be taken by consensus of the members with voting rights. If there is no agreement, it shall be referred to the Executive Board.

The Academic Council meets at least once a month and, if necessary, more frequently.

Student Council

The Student Council's main objective is to represent the views and experiences of students to ensure they are adequately represented in the governance structure. They will discuss and provide feedback on decisions and activities of the alliance in order to inform the Executive Board on more daily matters (tactical and operational), and more specifically on questions related to student well-being and student life in general. They will prepare a report (report on activities, ideas, requests, proposals...) for every Strategic Board meeting. They report to the Executive Board every other month.

The Student Council consists of one student from each member university, elected by the student representatives of their home university and one student from each partner university participating in the CHARM-EU programmes and one alumni. Students are appointed for a maximum period of two academic years.

The Council elects its chairperson, who will represent the students in the Strategic Board. The chairperson rotates every 6-month period.

Decisions are taken by consensus and, where necessary, by qualified majority.



The Student Council meets once a month.

The External Advisory Council

The External Advisory Council monitors the orientation and implementation of projects and assesses the added value and contribution to the mission and objectives of the Alliance. Its members are external to CHARM-EU and meet once a year to advise the Strategic Board on its strategy.

The External Advisory Board is chaired by one of its members. Its chairpersonship shall rotate on an annual basis. The deputy chairperson may be the next in rotation.

The External Advisory Board brings together stakeholders from the partnership. All members are external to the Alliance:

- 1 student (from one of the European student associations)
- 1 member of the Bologna group/European higher education expert
- 1 member of a Quality Agency
- 1 member of the Ministries
- 2-3 companies/employers
- 1 NGO representative
- 1 inclusion expert
- The Chair of the Executive Board

Appointment procedure: Individuals are proposed by the Executive Board after consultation with the External Engagement Committee, if necessary, and approved by the Strategic Board.

The Alliance Secretary General assists the Chair of the Executive Board in providing the External Advisory Board:

- Periodical global updates on the alliance activity
- Agenda, minutes, and documentation for the meetings
- Transferring feedback of the External Advisory Council to the corresponding CHARM governance bodies
- Informs or shows the result or effect of the previous advise of the External Advisory Council



The External Advisory Board has no decision-making power, it only advises the Strategic Board and evaluates the results of the partnership.

The External Advisory Board meets one month before the annual report on the strategic planning.

Knowledge Creating Teams

There are several KCTs depending on the needs of the Alliance's activities and fields. The KCTs identify and alert on new challenges, new research and education topics and propose initiatives/activities to the Executive Board. They play a key role in the development and implementation of CHARM-EU activities, such as the creation of new educational programmes, common transdisciplinary research activities or new projects. The KCTs are the ones who develop and implement the activities, as they did with the Master of Global Challenges for Sustainability.

The KCTs are composed of

- Academics (including educationalists and researchers)
- Representatives from Business
- Representatives from Civil society
- Students

KCT members can propose new things by adding them to the agenda of a meeting or by contacting the Academic Council to schedule a possible meeting between the Academic Council and a KCT representative. The Academic Council, once analysed the relevance and alignment with the CHARM-EU Strategy will give green light for preparing the proposal. Once completed, the Academic Council will transfer the proposal to the Executive Board that will make decisions about the resources and the organization, and for formal approval, unless they are mandated.

External Engagement Committee

The External Engagement Committee is proposed by the KCTs, and informed by the Executive Board to the Strategic Board for approval. They reflect the engagement of the different types of stakeholders, they submit proposed strategies, they identify stakeholders and secure their commitment.



The External Engagement Committee is the body that helps to define and implement a crosscutting strategy for the engagement and participation of external stakeholders across the educational and research components of CHARM-EU. External stakeholders are organisations or institutions that are not eligible to become full partner in the CHARM-EU alliance. They may be extra-academic actors (civil society organisations, companies, (inter-)governmental agencies, grassroots organisations, NGOs, social movements, etc.), research institutes or higher education institutes outside Europe. The composition will emerge and be implemented following the execution of the CHARM EIGHT proposal for the next four years.

The Committee includes members of the CHARM-EU academic staff as well as experts related to curricula, teaching and learning strategies, research & innovation and communication and dissemination), representatives of JVAOs, as well as a student representative and alumni. Although members in the Committee are self-designated and participation is voluntary, the Committee will ensure its membership is balanced across institutions and gender.

This Committee aims at ensuring the participation of external stakeholders in the Alliance through the KCTs. This might evolve in the future connected to the work plan of CHARM-EIGHT.

The External Engagement Committee shall elect its own chairperson (rotating chairperson).

Decisions are taken by consensus and, if necessary, by qualified majority.

The CHARM-EU Office and Thematic Support Offices

The CHARM-EU Office aims to implement the management and support activities of CHARM-EU activities defined by the Executive Board and to coordinate the different thematic support offices.

The CHARM-EU Office is constituted by the CHARM-EU Manager of each member institution, and the heads of the support units.

In analogy to the Executive Board, Managers rotate as chair with the Alliance Secretary General as permanent co-chair reporting to the chair of the Executive Board. The chair rotates every 6 months, the same rotation as the Directors.

The Chair of the Office is responsible for the organisation of the meetings (agenda, minutes, scheduling, hosting) and will distribute the agenda of the meetings and invite relevant



partners from the different Joint Virtual Offices, students and support staff or project representatives when necessary.

The CHARM-EU Office is composed of full-time members and units and the members of the thematic support offices. CHARM-EU Managers will share the responsibilities of the office in a similar way to the directors of the Executive Board. Areas of responsibility may mirror those of the Executive Board.

The CHARM-EU Office makes the decisions concerning the management issue and the thematic support offices on a day-to-day basis.

The CHARM-EU Office holds regular meetings to ensure the day-to-day functioning of the Alliance. CHARM-EU Office meets monthly online. Thematic support offices exist to complement the operational work of the Alliance. Some of them are specific to CHARM-EU and have staff dedicated to the Alliance on a full-time basis, such as the JVAO. Some offices mobilise part-time staff for the Alliance.

5. THE KEY ELEMENTS OF THE MOST POSSIBLE OPTION OR MODEL FOR A SEPARATE LEGAL ENTITY.

The legal analysis of the more possible model or option to set up a separate legal entity for European Universities under EU law is developed by first formulating a general overview and analysis of the main features of this possible model and its adaptation (5.1). Secondly, the legal issues related to the creation and functioning of this possible model of a separate legal entity are studied and described (5.2).

5.1 General overview, main characteristics and adaptations of the most possible model.

As mentioned above, one of the first results of CHARM-EU WP2 was to carry out a comparative analysis of the different existing legal entities at EU level that could illustrate a future legal entity for European University Alliances. Among these models, the ones that seemed the most suggestive and also responded to quite similar characteristics are the European Economic Interest Groupings (EEIG) and the European Groupings of Territorial Cooperation (EGTC). The European Commission itself, as early as its 2020 Communication,



suggested the EGTC as a possible model for the future legal entity for alliances²³. However, on the one hand, the ambition of the European Commission and the long-term perspective it envisages for these European Universities is still not clearly defined; on the other hand, the model would need to be adapted to the needs of the European Universities and, moreover, it should be done with the necessary flexibility. In any case, the future creation of a hypothetical separate legal entity for European Universities could be a turning point in the definition of this future of strong networks of universities, pedagogically innovative and excellent in research.

In this regard, it should initially be noted that in 1985, with the aim of facilitating and promoting the economic activities of companies or other legal entities by pooling their resources, activities and competences in cross-border contexts, the legal concept of the EEIG was created as a new legal instrument at the level of the EU²⁴. The new legal entity responded to the approach of the then European Economic Community (EEC) of the creation of a common market under conditions analogous to a national market, thus harmoniously developing economic activities throughout the EEC, and their joint development and expansion in a context of cross-border cooperation²⁵.

This new legal framework, of an auxiliary nature, allowed the economic activity of those companies and legal entities that were grouped together through the new legal instrument to be facilitated or developed on an open and voluntary basis. In other words, in no case is the objective of the EEIGs to make economic profits and they cannot go to the capital market. The key facilitating element lies in the fact that the Grouping is given its own legal capacity and bodies legally distinct from its members to represent it vis-à-vis third parties. This recognises that the status and capacity of legal private companies continues to be governed by the domestic law of the Member States and that questions of insolvency and

²³ It did so in COM(2020) 625 final, 30.9.2020, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0625&from=ES>, and on a future legal status for partnerships it reiterated this in COM(2022) 16 final, 18.1.2022, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022DC0016&from=EN>.

²⁴ Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG) (OJEC No L 199, 31 July 1985, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31985R2137&from=EN>).

²⁵ From another perspective and with other approaches, the Council of Europe also promoted the institutionalisation of cross-border cooperation through the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, Madrid 21 of May of 1980 (ETS No. 106), available at <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=106>. With this Convention and its subsequent Protocols, the Euroregional Co-operation Groupings (ECGs) have been widely developed within the framework of the Council of Europe.



cessation of payments should continue to be governed by the domestic law of the Member State in which the Grouping has its registered office, as questions of labour law, competition law and intellectual property law.

The EEIGs did not prove to be very adequate, but made it possible, years later, to create a new, similar legal instrument, but with the perspective of providing joint services in contexts of cross-border, transnational or interregional cooperation. That is to say, rather than with a perspective of economic activities, with a perspective of provision of commons services; and rather than strictly in a framework of cross-border cooperation, with a perspective of transnational or interregional cooperation and not exclusively cross-border. These are the European Groupings of Territorial Cooperation (EGTC), which can be created on the basis of the provisions of Regulation 1082/2006, amended in 2013²⁶.

EGTCs allow regional and local authorities, but also national authorities in smaller or more centralised States, and public undertakings from different Member States, to set up such Groupings to provide common services. EGTCs can implement programmes co-financed by the EU or carry out any other cross-border, transnational or interregional cooperation project, with or without EU funding. In other words, they are configured as a legal instrument of cooperation, which complements its member entities, but neither replaces them nor can it absorb all the activity of its members.

In any case, the first point to be made, in legal terms, is that the possible creation of a new separate legal entity for European Universities on the basis of the EGTC model should find a legal basis in the founding treaties of the EU. In other words, the possible creation of a hypothetical *European University Cooperation Grouping* (or, perhaps better, *European University Grouping*) must be based on rules of primary EU law, which cannot be, strictly speaking, those relating to economic, social and territorial cohesion policies, used for the creation of the EGTCs. The EGTCs were created in response to the difficulties in implementing and managing territorial cooperation activities due to the existence of different national laws and procedures. This may certainly make them a similar model or

²⁶ Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC) (OJEU L210, 31 July 2006, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2006:210:FULL&from=EN>) and Regulation (EU) No 1302/2013 of the European Parliament and of the Council of 17 December 2013, amending Regulation (EC) No 1082/2006 on a European grouping of territorial cooperation (EGTC) as regards the clarification, simplification and improvement of the establishment and functioning of such groupings (OJEU L346, 20 December 2013, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1302&from=EN>).

option for the problems and barriers encountered with the European Universities, but the legal basis of a future separate entity cannot be sustained in territorial cooperation and cohesion, as is the case with the EGTCs.

In this sense, as the European Commission is proposing in order to facilitate the development and promotion of European Universities -facilitating and encouraging cooperation between European university institutions- and, consequently, of the EEA, the ERA and, synergistically, the EHEA, a legal basis should be identified in the founding Treaties. Unless there is a better legal criterion, this legal basis could be established on the basis of the provisions of Articles 165 and 179 of the Treaty on the Functioning of the EU (TFEU), concerning - on the basis of the provisions of Article 6 of the TFEU - the competences of the EU to support, coordinate and supplement in the fields of education and research and technological development. It should be noted, however, that these are neither exclusive competences nor shared competences and are only set out in the Treaties in terms of supporting, coordinating and complementary competences. This means that, as the necessary powers to establish a future separate legal entity for the European Universities are not foreseen in these Treaty provisions, should be invoked the open, flexible or unforeseen competence clause of Article 352 TFEU²⁷.

This clause allows that, although there is no express provision in the Treaties, such legal provisions as may be necessary may be adopted, provided that they serve to achieve the objectives of the EU, that action by the EU is necessary, that the necessary powers of action have not been established in the Treaties and that the principle of subsidiarity is respected. On the basis of what has been planned so far by the European Commission, it seems feasible to justify the use of Article 352 TFEU to determine, in combination with Articles 165 and 179 TFEU, the legal basis for the creation of an entity under EU law for the European Universities. In any case, one of the essential aspects of the application of this clause is that it requires the adoption by the Council by unanimity of all Member States, on a proposal from the Commission and after approval by the European Parliament, i.e., a special legislative procedure. Furthermore, the European Commission is obliged to draw the attention of national parliaments to the use of this legal basis.

The second initially relevant legal aspect to consider would be to identify the appropriate legal instrument of secondary EU law for the creation of this separate legal entity. Although the legal basis may be established, in part, on the basis of Article 352 TFEU, the perspective

²⁷ In the same way that the EEIG was created on the legal basis of the then Article 235 of the Treaty establishing the European Economic Community.



is not one of legal harmonisation between Member States, but goes further, aiming to establish a new entity under European law. In this sense, the precedents of both the EGTCs and the EEIGs are defined by EU regulations. This is why the relevant legal instrument would be a regulation of the Council and the European Parliament (Article 288 TFEU), a legal instrument of general application, binding in its entirety and directly applicable in all Member State. With the particularity that, on the basis of Article 352 TFEU, there would have to be unanimity in the Council of the EU and a special legislative procedure would have to be followed. In any case, as will be indicated below, although it is a regulation, this does not preclude each Member State from adopting, in due course, specific provisions of a procedural nature to authorise, in the domestic law of each Member State, this future legal entity, as is currently the case with the EGTC or the EEIG.

To the extent that it might be possible to create, on this model, with these legal bases and with this legal instrument, a new separate legal entity for the European Universities, the essential concept is that we would be dealing with entities covered by EU law, with their own legal personality, and in which various universities and other higher education institutions, i.e. a variety of entities under different domestic law could participate. In this respect, the central element would be that the European Universities would enjoy this separate legal personality, distinct from the legal personality of each of the universities or entities that would make up this hypothetical grouping, which would continue to maintain their existence and their own legal personality. Hence, the EGTC has been envisaged as a possible model for the European University Alliances, although, as the CHARM-EU rectors said, this new legal entity should only be approached to the extent necessary to be able to carry out the proposed activities. Certainly, however, the creation of a new legal entity could provide greater stability and legal certainty.

This also leads to the conclusion that the advisability of converting, in the future, an existing European Universities Alliance into this hypothetical new separate legal entity would depend on the objectives or activities pursued and on whether the creation of this separate legal entity would be necessary for their achievement. In this sense, there may be European University Alliances which, because of their stated objectives, do not require the creation of a separate legal entity and can carry out their objectives as a network, alliance, consortium or agreement between their constituent entities. In any case, the determining factor should therefore be the voluntary nature of participation and the creation of a future separate legal entity by some of the European University Alliances. This may raise the problem of the necessary distinction – and, thus, the correct identification of the corresponding different competences and legal positions - between those Alliances that become or transform into the new legal entity (i.e., those that would transition into the

European Universities Grouping) and those that decide to remain as Alliances on the currently existing legal basis.

On the other hand, what structurally defines EGTCs, unlike EEIGs, is, on the one hand, that they are composed of Member States, regional authorities, local authorities or other bodies governed by public law, or public undertakings. In addition, the regulation provides that the members of an EGTC must be located in at least two Member States. The first element leads to consider that public universities and higher education institutions are, in general, part of the public sector of EU Member States, which means that, even today, they could set up their own EGTC, as is the case of Eucor ²⁸. However, not all European universities have a legal status that would allow them to do so, so that, where appropriate, the composition of this future separate legal entity would have to be based in general terms on universities and other higher education institutions. Although, perhaps, the development of other initiatives, such as the review being carried out in the framework of the TORCH project on the research dimension of CHARM-EU Alliance, could lead to the idea that, depending on the specific objectives of each European University Alliance, research-only centres and institutions could also be part of the composition of the future legal entity.

A central problem here is the determination, at least from the point of view of the legal system of some Member States and, in due course, of the legal system of the EU, of whether privately owned universities and higher education institutions and private scientific and technological research centres and institutes could fit into this future legal entity. Insofar as the European University Initiative has not distinguished between public and private institutions, the first approach would be to make no distinction in the future separate legal entity either, i.e., without taking into account their specific legal status. However, it should be underlined that only public institutions or public companies participate in EGTCs, although Article 3 of Regulation 1082/2006 foresees that private entities that are considered contracting entities in a public procurement can be admitted as members of an EGTC. This legal difficulty in incorporating private universities and higher education institutions could be overcome if the design of the future separate legal entity for European Universities envisages something akin to a mixed model between EGTCs and EEIGs, i.e. the presence of both public bodies and private companies and entities.

²⁸ Analysed in depth in the report entitled “First steps towards an innovative governance and management model for a new type of alliance: Concepts, challenges and lessons learnt from the higher education sector and beyond”, cited above.

Moreover, as indicated above, the EGTCs require that the public bodies that are part of one of them be located in at least two Member States. This dynamic, which responds to the same objective of cross-border, transnational and/or interregional cooperation, is perfectly explicable, especially in the context of cross-border cooperation. However, in the context of European University Alliances and in view of the ultimate objective and the European Commission's wish to have more European Universities and to involve many more universities in the EUI, it should perhaps lead to a consideration in terms of setting a higher minimum number?, i.e., more Member States. It should be borne in mind, for example, that many calls for European projects, particularly research projects under the Horizon 2021-2027 programme, require the participation of entities and institutions in at least three Member States or a certain minimum number of Member States, and sometimes partners from a certain minimum number of third countries.

Finally, it should be noted that Regulation 1302/2013 amending the regulation of EGTCs, among other aspects, established a new article 3a allowing the participation in an EGTC of public bodies from third countries or from overseas countries or territories. Specifically, from 2013 onwards, an EGTC is allowed to consist of members located in the territory of at least two Member States and one or more third countries, which are neighbours of at least one of those Member States, including their outermost regions. In terms of European Universities, there is no doubt that this can be a positive dimension, both for reasons of geographical proximity, academic and scientific impact, as well as favouring academic partnership for the future accession of candidate countries. However, this is an aspect that has not yet been raised in the framework of the EUI, which is limited to universities in Member States. Thus, for example, only 4 of the 5 original Eucor members, together with four other universities from EU Member States, participate in the EPICUR Alliance, selected in the framework of the European University Initiative, and the University of Basel, a member of Eucor, does not participate in EPICUR because it is not eligible²⁹.

5.2 Creation and functioning of the most possible model.

²⁹ The cooperation that enabled the creation of Eucor started in 1989 and only after the 2013 amendment of the Regulation on the EGTCs did it become an EGTC, as this amendment made it possible, on the one hand, to define the objective of facilitating and promoting territorial cooperation between its members in order to strengthen the economic, social and territorial cohesion of the Union, including one or more of the forms of cross-border, transnational and interregional cooperation; and, on the other hand, to allow members of one or more neighbouring third countries, in this case a university institution from a non-EU Member State (the University of Basel, Switzerland), to join an EGTC.



The creation of an EGTC requires a double action at the level of Member States' national law and at the level of EU law. On the one hand, the Member States in which the infra-state, regional or local authorities that wish to set up an EGTC are located must authorise their participation in accordance with the provisions of their national law³⁰. It should be noted here that each national legal system can establish, within the framework of EU regulations, particular requirements or procedures, such as, for example, the intermediate authorisation of other types of regional authorities or decentralised powers that are competent in the matter. This means that, even if a future separate legal entity can be established by an EU regulation, to the extent that Member States will have to be involved, some internal regulatory development will also be necessary.

In other words, although it is an EU regulation, which, as already indicated, is binding in entirety, in the EGTC Regulation, which we use as a reference model, a certain margin of discretion was left to the Member States in procedural terms. Something similar should, where appropriate, operate in the future regulation establishing the future separate legal entity. This internal regulatory development may, at the very least, complicate and hinder over time the creation of the future separate legal entity for European Universities, depending on the agility of each Member State to adopt the relevant internal procedures and mechanisms, which may be complex, uncoordinated, and, perhaps, in some cases, even incompatible.

Authorised by the state authorities of the Member States where the various participating public bodies are located, EGTCs must be set up and will acquire their legal personality when they are registered and published in the *Official Journal of EU*, where their name, objectives, members and registered office will be published. This double process is necessary both for the creation of an EGTC and for the incorporation of new members, as authorisation must

³⁰ In Spain, the Royal Decree 37/2008, of 18 Janvier (BOE of 19 Janvier 2018); in Ireland, the Statutory Instrument S.I. No. 138 of 2010, European Grouping of Territorial Cooperation Regulations, of 8 March 2010 (Iris Oifigiúil, of 6th April, 2010). 138 of 2010, European Grouping of Territorial Cooperation Regulations, of 8 March 2010 (Iris Oifigiúil, of 6th April, 2010); in Hungary, the Government Decree No 485/2017 of 29 December 2017, Based on the authorisation granted under Section 20 of Act LXXV of 2014 on the European grouping of territorial cooperation; in Nederland, the Wet van 26 november 2009, houdende uitvoering van verordening (EG) nr. 1082/2006 van het Europees Parlement en de Raad van de Europese Unie van 5 juli 2006 betreffende een Europese groepering voor territoriale samenwerking (EGTS) (PbEUL210) (Uitvoeringswet EGTS-verordening), Quoted as National implementation act of the Netherlands 2009; and in France, the LOI n° 2008-352 du 16 avril 2008 visant à renforcer la coopération transfrontalière, transnationale et interrégionale par la mise en conformité du code général des collectivités territoriales avec le règlement communautaire relatif à un groupement européen de coopération territoriale (JORF n°0091 du 17 avril 2008).

be requested from the Member State where these new members are based and, subsequently, the incorporation of the EGTC must be published in the *Official Journal of EU*.

EGTCs thus acquire a legal personality, linked to the functions attributed to them and the common services they are to provide. This legal personality includes the broadest legal capacity to act in each of the Member States in which there are entities and bodies participating in the EGTC. The ultimate legal basis for the broad legal capacity of the EGTC, under the protection of EU law and the respective internal regulations of each Member State, is to be found, on the one hand, in the Convention, adopted unanimously by its members and the EGTC's true founding act, in which its members define its name, headquarters, objectives and activities. On the other hand, in the Statutes, which also define in detail its operating rules and decision-making mechanisms. These are the two fundamental legal instruments for the creation of an EGTC and, from the analyses carried out so far, it appears that these should also be the two instruments necessary for the creation of a hypothetical future separate legal entity for European Universities on the basis of the EGTC model.

In particular, articles 8 and 9 of Regulation 1082/2006 sets out the minimum content of the Convention and Statutes, notably on the operational arrangements of the EGTC bodies and their competences, as well as the number of members' representatives in the bodies concerned; the EGTC's decision-making procedures; the working language(s); the modalities of its functioning, in particular as regards staff management, recruitment procedures and the nature of staff contracts; the modalities of the financial contributions of the members; the accounting and budgetary rules applicable, including on financial matters, of each of the members of the EGTC with respect to the EGTC; the liability regime of the members, in accordance with Article 12 of the Regulation; the authorities responsible for the appointment of independent external auditors; and the procedures for amending the statutes. All these aspects are critical and, on the one hand, must be agreed unanimously by all members of the EGTC; and, on the other hand, must be capable of being operationalised in the domestic law of the State where the EGTC has its registered office and in the framework and under the protection of EU law.

In organisational terms, EGTCs will have at least the following bodies: on the one hand, an assembly, composed of representatives of all its members; and, on the other hand, a director, who represents the EGTC and acts on its behalf. It is possible that the respective statutes may provide for other bodies with clearly defined competences, but in any case,



the EGTC is liable for the acts of its bodies vis-à-vis third parties, even if these acts do not fall within the EGTC's functions³¹.

As regards financial and budgetary aspects, the EGTCs draw up their own budgets, which must be balanced, and are liable for all their debts. In the event of insufficiency or insolvency, the liability of the members will be unlimited, unless otherwise stated, and the regulations of the State in which it has its registered office will apply, and these State authorities will also be competent for the control of the management of public funds by the EGTC³². In relation to these aspects, it is worth making some considerations from the perspective of European universities. On the one hand, that, depending on their internal legal status, not all entities (universities or higher education institutions) forming part of a future separate legal entity will be able to assume unlimited liability and the EGTC regulation foresees that a Member State may prohibit the registration on its territory of an EGTC whose members have limited liability. On the other hand, that not all funds of the entities forming the future European University Alliances transformed into separate legal entities will be of public origin, although a large part of them may be.

Finally, it should be reiterated that, in any case, a registered office will always have to be established and, therefore, there will be a Member State in which this registered office of the future separate legal entity will be located and the internal rules of this Member State will apply to the interpretation and application of the convention and in terms of financial and accounting responsibility. All these aspects are, once again, matters that will have to be agreed unanimously by the universities that voluntarily constitute this hypothetical new separate legal entity and that will have to be taken into account in a special way in financial terms and in accordance with the law of the Member State of the registered office, even if they are constituted under EU law.

6. THE TRANSITION OF CHARM-EU GOVERNANCE MODEL TOWARDS A FUTURE SEPARATE LEGAL ENTITY.

The specific analysis of the CHARM-EU governance model in the context of the transition towards a future separate legal entity for European University Alliances is addressed by analysing, firstly, the adaptation of the CHARM-EU governance model to this possible future separate legal entity (6.1). Secondly, the main challenges and implications of this adaptation and transition of the CHARM-EU governance model are analysed (6.2).

³¹ Article 10 of Regulation 1082/2006.

³² Article 12 of Regulation 1082/2006.



6.1 The adaptation of the CHARM-EU governance model into a separate legal entity.

The general characteristics of the governance of CHARM-EU, as established and defined in *Handbook on CHARM-EU's innovative governance and management model* and in *CHARM-EU Governance Model. Terms of Reference*, do not present too many problems to fit and articulate, if necessary, in the framework of a legal entity with similar characteristics to an EGTC. On the one hand, insofar as an EGTC implies a Convention between the participating institutions and the adoption of Statutes, which have to be unanimously adopted by the participating institutions and validated by the Member States to which these institutions belong, it seems reasonable that this can be achieved on the basis of current interactions and developments. Perhaps one of the essential problems that may arise concerns the future decision on the headquarter, i.e., the registered office of the new entity, which involves the application, to a large extent, of the domestic law of the Member State of the headquarter.

On the other hand, in terms of the organs and governance structures of CHARM-EU as a hypothetical future legal entity similar to the EGTC, it can be concluded that there would not be too many problems to maintain, essentially, the existing structures. Obviously, everything would depend on whether the general EU rules, i.e., the regulation of the Council and the European Parliament, on the future legal entity would have similarities with the EGTCs, which establish in their regulations a minimum of two bodies and leave a wide margin of appreciation to each of them to define their other structures. Thus, the assembly, made up of representatives of all its members, could be equivalent, as a priority, to the Strategic Board, although it could also be represented by the Executive Board. The other body required by an EGTC, a director representing it and acting on its behalf, could be the equivalent of the Alliance Secretary General, which in the CHARM-EU governance model also acts as the Secretary General of the Strategic Board.

A different issue is the various aspects or problems related to the legal and administrative management that CHARM-EU will have to face when transformed into a new legal entity, as ways should be found to solve the legal problems that arise. Some of these problems have already been addressed in the initial development and implementation of CHARM-EU and have been included in the aforementioned *Handbook on CHARM-EU's innovative governance and management model*. First of all, we are referring, for example, to the capacity to recruit its own staff. If it comes from the participating university and higher education institutions, an agreement should be established between the institutions and the new legal entity specifying the conditions of this secondment and the rights and duties of the seconded staff. In the case of newly staff recruited directly, under the legal capacity of the new entity, such an inter-institutional agreement would not be necessary, but in any

case, the conditions of employment should be in accordance with the labour or administrative law of the Member State where the new entity has its registered office.

One of the more complex matters to explore will be the possibility to grant academic degrees. As far as the academic degrees that may be issued by the new legal entity are concerned, the necessary starting point would be that they should be covered by EU law, which would recognise these European degrees issued by a European University as valid in all Member States. In other words, they should be academic degrees which should be covered by EU law as higher education degrees and recognised by all EU Member States and not only by the Member States of the participating Universities. This would also imply that a European register of degrees and institutions for these new entities should be added to the registers of degrees and institutions of Member States or that these new entities and their degrees should be recognised in the corresponding registers of each Member State with a participating institution.

The possibility that the future separate legal entities of European Universities could issue university degrees with automatic validity in all Member States still appears, at this stage, as one of the key problems, which are still to be defined. The European Commission proposes for the time being only a joint European degree, to be delivered at national level, with the future possibility of developing European criteria for the award of the European degree label³³. This label may be, perhaps, the first step towards the approach of European university degrees to be considered as equivalent to national degrees, except for the most regulated degrees with more national characteristics.

Likewise, it should be defined which would be the quality assessment agency for these future hypothetical European university degrees that would verify compliance with academic quality standards. This verification should, where appropriate, be automatically recognised in the other Member States. An alternative, but much more complex procedure would be for the internal quality systems to be established by the new entity to be sufficiently recognised and certified by international evaluation agencies to be able to verify its own degrees.

In accordance with the general characteristics of the EGTCs, the Convention and the Statutes of the future legal entity should also provide for the financial liability of the new entity, which could probably be set in a limited way, i.e., only in relation to the property and assets that the participating institutions contribute to the new legal entity. But this would

³³ In its aforementioned document COM(2022) 16 final, p. 5.

have to be covered by EU law and therefore accepted at both EU and Member State level. This should also take into account that in budgetary, financial and accounting matters are applied the rules on auditing, financial control and financial liability of the Member State where the new legal entity has its registered office.

In any case, as has been indicated, one of the first and main issues will be to establish the seat or registered office of the new legal entity, beyond the virtual seat that, for example, CHARM-EU already has active. It will therefore be up to the host State of the seat to resolve, in application of its jurisdiction, the jurisdictional problems that may arise to resolve hypothetical future disputes that may arise within the framework of the new separate legal entity for European Universities, either between the member institutions of the entity, or between the new legal entity and third parties, whether they are staff of the entity, customers, users or contractors.

6.2 Main current challenges for the adaptation of the CHARM-EU governance model.

In relation to the model or option of the EGTC for the future separate legal entity and from a legal point of view, as indicated in the *Update* of January 2021³⁴, some relevant legal-political aspects have to be noted in particular, in accordance with EU law.

The main ones are as follows:

1. It is up to each EU Member State to authorise the participation of an entity established under national law (e.g., a university) in a future legal entity similar to an EGTC, in view of the proposed convention and statutes.
2. The convention establishing the new legal entity and its statutes should be adopted unanimously by the member institutions and entities and should specify the elements foreseen in EU legislation on the future entity in similar terms to the EGTCs.
3. In any case, any amendment to the convention and any substantial modification of the statutes, in addition to being adopted unanimously by all members of the new entity, should be approved by the respective Member States.
4. In each Member State, the new entity should have the most extensive legal capacity to act under the national law of that Member State for legal persons, and

³⁴ *Governance, Autonomy and Legal aspects. Towards a new model of governance: some updates*, reproduced in Annex B.

should be able to acquire or dispose of movable or immovable property, employ staff and be a party to legal proceedings.

5. In the case of matters not, or only partially, regulated by EU law relating to the new legal entity, the law of the Member State in which the new entity has its registered office should in any case apply.

6. The new legal entity should have at least the following governing bodies: an assembly, consisting of representatives of its members; a director, who will represent the entity and act on its behalf. The statutes may provide for other governing bodies with clearly defined competences.

7. Control and responsibility for the management of public funds received by the new entity shall be organised by the competent authorities of the Member State where the entity has its registered office. If they include actions co-financed by the EU, the relevant European legislation concerning the control of funds provided by the EU, including action by the European Public Prosecutor's Office, shall also apply.

As indicated above, a genuine European University should be a new entity which, at European level, be eligible to participate in the Erasmus+ programme, participate in calls for research, innovation and development in the framework of the Horizon Europe programme, have a common quality assurance and evaluation system at European level, and also have a single funding model which also makes it possible to obtain European funds. And to be explored, to offer European university degrees. Some of these aspects are critical and difficult to specify, but with regard to others (such as the Erasmus+ programmes or research calls) it seems feasible that the corresponding calls will allow the participation either directly of the current European University Alliances or of the future *European University Groupings*. Again, as mentioned above, a clear distinction should be made between those Alliances that decide to remain as alliances, networks or consortium and those Alliances that, in a determined and ambitious way, make the transition to the new legal entity.

In this sense, in general terms and beyond the characteristics that the future separate legal entity could have, the specific technical and regulatory barriers identified in the work of CHARM-EU WP2 lead to the following proposals to overcome them:

1. Stable funding streams and future financial expectations for European Universities should be ensured, both at the level of the EU and, through co-financing mechanisms, at Member State level, whether by state, regional or local authorities.
2. Legal procedures should be established to allow the recruitment by European Universities of academic or administrative support staff or, where appropriate, a



procedure to encourage the secondment to European Universities of academic and administrative staff from partner universities.

3. A quality assurance mechanism should be adopted at European level to facilitate the accreditation/assessment of European degrees and of the legal entities to be created, in accordance with internationally recognised quality assurance standards for higher education or, where appropriate, to facilitate the automatic recognition of the accreditation/assessment procedures of individual national quality assurance agencies. Maybe the European Approach can be the best tool.

4. European universities should be entitled to receive a valid Erasmus+ Charter and receive more financial resources from Europe and Member States to facilitate the objectives of mobility programmes, which should be of various types (short, medium and long) and of a compulsory nature in the framework of a European university degree.

5. European universities should be able to directly submit project proposals under Horizon Europe and other European research, innovation and development programmes.

6. And the most ambition one, legal changes should be made to EU and national law in the Member States if one of the possibilities is to enable European universities to directly deliver European university degrees (bachelor, master and doctoral degrees) that are automatically recognised in all Member States as equivalent to national degrees, that allow joint procedures such as, for example, admission criteria to university studies in transnational programmes should be harmonised, including harmonised criteria for the award of scholarships and other study aids, or grants.

The transition from what has been developed so far by CHARM-EU to a new separate legal entity required significant preparatory work to be carried out. It seems necessary, first of all, to carry out a simulation exercise of all the legal and administrative issues that the creation of the new legal entity could raise, and then to validate the possible legal solutions that CHARM-EU could propose. In this sense, perhaps the first step, even on the basis of the currently existing provisions in relation to EGTCs, would be for CHARM-EU to elaborate a draft convention and provisional statutes of what could be the future new legal entity, especially in line with the current provisions both in relation to EGTCs and, secondarily, to EEIGs.

In the proposal for the continuation of the CHARM-EU Alliance presented in February 2022, with the title CHARM-EU Expansion, Inter-institutional campus, Governance, Higher education, Transformation (CHARM-EIGHT[∞]), has been defined as general objective 1: "To implement the innovative governance and management model of the alliance", especially



taking into account the full integration of the three new members, Åbo Akademi University (AAU) in Finland and Julius-Maximilians University Würzburg (JMU) and Hochschule Ruhr West (HRW) in Germany.

In this sense the new WP1 has as its overall function to manage the organisational, technical, administrative and financial matters of the Alliance in a stronger, consolidated and extended cooperation between the partners. It includes specific objectives, tasks and deliverables as part of facilitating a smooth and efficient implementation of the work plan, including day-to-day administrative tasks, communication with all members, coordination of the different work packages and collaboration with other projects and organisations. One of the specific objectives of this WP1 is precisely to consolidate the existing boards and governance bodies and to implement the governance structure of the Alliance as defined in the governance and management model that has been tested and validated during the first development of CHARM-EU between 2019 and 2022, and reflected in the *Handbook on CHARM-EU's innovative governance and management model* and *CHARM-EU Governance Model. Terms of Reference*.

It is also intended, on the basis of the analysis and developments carried out by the European Commission, to analyse the feasibility of a future separate legal status for CHARM-EU. In order to realise these objectives in strictly legal terms, it is recommended as a matter of priority that the CHARM-EU Strategic Board adopts in the course of 2023 a double decision, both strategic and preparatory:

1. On the one hand, to consider the drafting of a possible European Union regulation establishing the possibility of creating *European University Grouping*, on the basis and model of the EGTCs, as well as to make recommendations on other possible legal changes or modifications in the various calls at European Union level to facilitate the activities of the European Universities and, in particular, the objectives set by CHARM-EU and its continuation CHARM-EIGHT[∞].
2. On the other hand, a decision should be taken to draw up a draft convention and provisional statutes which, following the model of the content currently established for the EGTCs, would serve both to establish the foundations and basic consensus of what could be the future separate legal entity and to envisage and regulate the best possible legal solutions to the obstacles and problems identified for the development of the European Universities from the point of view, at least, of CHARM-EU and its continuation CHARM-EIGHT[∞].

While this would obviously depend on the final approach of the EU and Member States to the future separate legal entity, it would allow testing, on a voluntary basis, the feasibility

and suitability for European Universities of existing European legal instruments such as the EGTC or, secondarily, the EEIG.

To this end, and as a first approximation, the Convention and the hypothetical Statutes of CHARM-EU -and its continuation in CHARM-EIGHT[∞]-, transformed into the future new separate legal entity under EU law, should include the following points:

1. Legal framework and applicable law.
2. Members.
3. Purpose and missions.
4. Powers.
5. Registered office or headquarters.
6. Duration.
7. Applicable law and jurisdiction for the settlement of disputes.
8. Languages and working languages.
9. Governing bodies.
10. Composition, functioning, decision-making procedures and detailed functions of each of the established governing, management and administrative bodies, including the presidency and the secretariat.
11. Appointment and functions of the Director.
12. Heritage.
13. Resources.
14. Budget.
15. Economic and financial control, approval of accounts and financial accountability.
16. The entity's staff: recruitment, functions and applicable legislation.
17. Amendment of the Statutes.
18. Withdrawal of members.
19. Dissolution.
20. Liquidation of assets and rights.

7. FINAL REMARKS

To summarise the content of this *White Paper*, it is worth noting, as a *first order of final remarks*, that from the outset CHARM-EU was an innovative and more inclusive approach to inter-university governance and management within the EUI. The implementation of the initiative addressed critical issues such as governance, autonomy, policy and strategy, legal frameworks, funding and resource management, staffing, quality, accreditation, marketing and recruitment, ensuring inclusiveness and accessibility, among others. This identified the

main problems and barriers that a European University might face in carrying out its mission, at least from CHARM-EU's perspective. These problems and barriers arise precisely, to a large extent, because of the differences between the different internal national legal systems of the countries of the universities participating in an Alliance such as CHARM-EU.

The main issues identified for developing a new governance model for European Universities are based on three essential premises, which are at the heart of the problem:

1. The European Commission has not yet clearly defined the scope and expectation it intends to give to the creation of a strategic framework for an ambitious and seamless transnational cooperation between higher education institutions in Europe. In particular, it remains to be seen and needs to be clarified to what extent the option of a European degree - which at the moment is totally undefined - or the possibility of creating a new legal entity - which, for the moment, is also undefined - will finally be accepted and under what conditions by the Member States, the Council and the European Parliament. The result of the pilots calls (Legal Entity and European Degree) will help to define these points.

2. The European Universities currently selected or their future developments must necessarily be based on the association of universities from different Member States of the European Union, which implies the existence of different national systems and laws regulating the organisation and functioning of universities and the public higher education service as a whole.

3. The universities of the Member States of the European Union which have joined the European University Initiative and those which will join in the future developments of this Initiative have and will continue to have different cultures, traditions and operating mechanisms, specific to the traditions and cultures of each institution and of the university system of each Member State. This is also a common European heritage that must be protected.

In this sense, a true European University that emerges from the development of this Initiative should probably be a new entity that, at European level, be eligible to participate in the Erasmus+ programme, can participate in calls for research, innovation and development in the framework of the Horizon Europe programme, have a common system of quality assurance and evaluation at European level and also have a single funding model that also allows obtaining European funds. And to be explored, to provide European university degrees. All these elements, real challenges for the current European University Alliances, have a governance and management component on which several Alliances, such as CHARM-EU, have been working since 2019 in order to identify problems and find possible solutions.

In any case, governance and management can only be established and guaranteed by legal rules that ensure the proper functioning of the entity (whether CHARM-EU or the future separate legal entity) and all its organs, and that guarantee and give legal and, if necessary, judicial protection to independent decision-making. In the case of university institutions, these legal rules are to be found at three normative levels:

1. At the level of the self-regulatory capacity of the institutions themselves, which adopt their statutes and rules of operation and, where appropriate, agreements and partnership agreements with other entities, whether university or non-university;
2. At the level of the domestic law of the Member States, which establish the legal conditions for the autonomous functioning of university institutions and of the entities or alliances they may create, as well as of the university system as a whole and of the national public service of higher education, guaranteeing their institutional autonomy; and
3. At the level of European Union law, which may provide for the creation of new legal entities by association or alliance between universities, establishing their fundamental characteristics and also guaranteeing their autonomy and the proper functioning of their own self-government.

Secondly, it should be noted that since the launch of the CHARM-EU alliance in October 2019, the different organisational mechanisms necessary to enable its progress and implementation have been set up. The governing and coordinating bodies of CHARM-EU and all these organisational structures have been created progressively and on a practical basis. All of them, moreover, revolve around the Rectors Assembly, the highest political body of CHARM-EU (renamed Strategic Board in the Governance Terms of Reference) and, from an operational and technical point of view, the Alliance Secretary General team and the heads of each of the five participating universities. The experience carried out has also shown the need to have an Executive Board that, under the maximum political direction of the Strategic Board (previous Rectors Assembly, is in charge of the daily management and operation of CHARM-EU. It was also intended to establish a mechanism to ensure the participation and involvement of the different structures of each university and to facilitate the integration and interaction between the different academic leaders of the five participating universities.

The new CHARM-EU governance model builds on the existing project governance and is adapted to the needs of the Alliance. In this governance scheme, the main bodies of the CHARM-EU governance structure are the following: the Strategic Board, the Executive Board, the Academic Council, the Student Council, the External Advisory Board, the Knowledge Creating Teams (KCTs) and the External Engagement Committee. In summary, the Strategic Council meets to discuss achievements, direction and agreed strategy and

approves strategic plans, annual work plans, programmes, projects and budgets. The Executive Council and the Academic Council are central operational bodies that create a link between the KCTs and the support offices (both local and shared), as well as the whole structure and the Strategic Council.

Thirdly, in relation to the possible creation of a separate legal entity for European Universities, it should be noted that the European Commission itself suggested as a possible model for the future legal entity for the Alliances that of the EGTCs. However, on the one hand, the ambition of the European Commission and the envisaged long-term perspective for these European Universities is still not clearly defined. On the other hand, an adaptation of the model to the needs of the European Universities would be necessary and should be done with the necessary flexibility. In any case, the future creation of a hypothetical *European University Grouping* could be a turning point in the definition of this future of strong networks of universities, pedagogically innovative and excellent in research.

The main difficulties and obstacles in relation to the governance and legal aspects of the creation of a new independent legal entity that will have to be overcome and which have been identified are the following:

1. The incorporation into EU law of a new separate legal entity, created through the association or alliance of universities, and decision on their capability to directly deliver European university degrees that are automatically recognised in the Member States as equivalent to national degrees.
2. The incorporation into the national law of each Member State of the separate legal entities created through the association or alliance of universities, recognising them as having full legal capacity.
3. The alignment of the governance and governing bodies of the new separate legal entity with the governance, functioning and governing bodies of the partner universities.
4. The choice between taking advantage of the possible use of existing national and European statutes, with significant limitations in terms of the objectives pursued by some of the European University Alliances, or opting for a new legal instrument and a new type of legal entity adapted to the academic, scientific and research needs of the European Universities.

As for the option of a new separate legal entity, and from a more political perspective, there is another set of issues that must necessarily be addressed and, where appropriate, also defined at EU level. The most relevant thing to point out is that any initiative for a new separate legal entity to be launched must come from the universities themselves, and it must be very clear whether or not it implies overlapping or diluting existing university

institutions - which have their own history, culture, traditions, reputation and brand in the European and international university context - in a new entity. It is the central question or tension, in short, of defining the scope of the proposed ambition for the European Universities. In other words, it is yet to be defined whether the ultimate aim is to create stronger and more consistent alliances or consortia between universities or to move towards the creation of new institutions by merging or grouping the previous ones.

In any case, in legal terms, the first thing to do would be to identify a legal basis in the founding Treaties of the European Union for the possible creation of a new separate legal entity for the European Universities on the model of the EGTCs. On the basis of what has been planned so far by the European Commission, it seems feasible to base the use of Article 352 TFEU to, in combination with Articles 165 and 179 TFEU, determine the legal basis for the creation of a legal entity under EU law for the European Universities. The second relevant legal aspect would be to identify the appropriate legal instrument of secondary EU law for the creation of this separate legal entity. The relevant legal instrument would be a regulation of the Council and the European Parliament, a legal instrument of general scope, binding in its entirety and directly applicable in each Member State. With the particularity that, on the basis of Article 352 TFEU, there would have to be unanimity in the Council of the European Union and a special legislative procedure would have to be followed.

The advisability of converting, in the future, an existing European University Alliance into this hypothetical new separate legal entity would depend on the objectives or activities pursued and on whether the creation of this separate legal entity would be necessary to achieve them. In other words, it would have to be voluntary on the part of the participating institutions. Moreover, the creation of a hypothetical *European University Grouping* would require a double action at the level of Member States' domestic law and at the level of European Union law, since it would have to be authorised and framed in both legal systems. In this respect, some relevant legal-political aspects should be underlined.

1. It is up to each EU Member State to authorise the participation of an entity established under national law (e.g., a university) in a future legal entity similar to an EGTC, in the light of the proposed convention and statutes.

2. The convention creating the new legal entity and its statutes should be adopted unanimously by the member entities and institutions and should specify the elements foreseen in EU law on the future entity in terms similar to EGTCs.

3. In any case, any modification of the convention and any substantial modification of the statutes, in addition to being adopted unanimously by all the members of the new entity, should be approved by the respective Member States.



4. In each Member State, the new entity should have the broadest legal capacity to act under the national law of that Member State for legal persons, and should be able to acquire or dispose of movable or immovable property, employ staff and be a party to legal proceedings.

5. In the case of matters not, or only partially, regulated by European law relating to the new legal entity, the law of the Member State in which the new entity has its registered office should in any case apply.

6. The new legal entity should have at least the following governing bodies: an assembly, consisting of representatives of its members; a director, who will represent the entity and act on its behalf. The statutes may provide for other governing bodies with clearly defined competences.

7. Control and responsibility for the management of public funds received by the new entity shall be organised by the competent authorities of the Member State where the entity has its registered office. If they include actions co-financed by the European Union, the relevant European legislation concerning the control of funds provided by the European Union, including action by the European Public Prosecutor's Office, shall also apply.

In order to make progress on this possibility, it is recommended as a matter of priority that the CHARM-EU Strategic Board adopts in the course of 2023 a double decision, both strategic and preparatory:

1. On the one hand, to raise the drafting of a possible draft EU regulation establishing the possibility of creating European University Grouping, on the basis and model of EGTCs, as well as to make recommendations on other possible legal changes or changes to the various calls at EU level to facilitate the activities of European Universities and, in particular the objectives set by CHARM-EU and its continuation CHARM-EIGHT[∞].

2. On the other hand, a decision should be taken to draw up a draft convention and provisional statutes which, following the model of the content currently established for the EGTCs, would serve both to establish the foundations and basic consensuses of what could be the future separate legal entity and to envisage and regulate the best possible legal solutions to the obstacles and problems identified for the development of the European Universities from the point of view, at least, of CHARM-EU and its continuation CHARM-EIGHT[∞].

Although it would obviously depend on the final approach of the European Union to the future separate legal entity, all this would allow testing the feasibility and suitability for European Universities of already existing European legal instruments, such as EGTCs.



ANNEXES

Annex A. First steps towards an innovative governance and management model for a new type of alliance: Concepts, challenges and lessons learned from the higher education sector and beyond, October 2020.

Annex B. Governance, Autonomy and Legal aspects. Towards a new model of governance: some updates, January 2021.

Annex C. Handbook on CHARM-EU's innovative governance and management model, September 2022.

Annex D. CHARM-EU Governance Model. Terms of reference, September 2022.