

LEGAL STRUCTURE OF THE NETWORK



INTRODUCTION

1.

The RECOMFOR project emerged from the satisfactory results of the COMINTER project, which was completed in September 2007 and which made it possible to create, with professional organisations, a common profile for the occupation of export assistant and a certification profile.

Based on the 'Lifelong Learning Programme' (Decision No. 1720/2006/EC of the European Parliament and of the Council of 15 November 2006) and the sectoral LEONARDO sub-programme for apprenticeships and vocational training, the RECOMFOR project aims to:

- promote, with complete confidence, exchanges between the European partners involved in trade training,
- develop European mobility in training programmes and work placements by harmonising training practices and moving from a bilateral rationale to a multilateral one,
- introducing certificate courses with common European references and based on quality criteria.

Achieving these objectives involves creating a permanent and open network to:

- ensure the continued existence of the network beyond the two years given by the LEONARDO project,
- eventually open the network up to new partners from other European countries (EU countries and others),
- ensure continuous coordination between network members,
- develop a network to ensure the quality of exchanges.

2.

The network should initially comprise 22 founding partners from 10 European countries (EU countries and others) and from the public (national and regional vocational training institutions, etc.) and private sectors (professional organisations representative of the trade sector, companies, etc.).

Four member categories may join the network:

- competent bodies, in order to allow the recognition and transfer of learning after mobility,
- training centres,
- companies responsible for providing work placements,
- professional organisations representative of the trade sector, in order to ensure adaptation to employment.

3.

Regarding the issue of the network's legal structure, the results of the consultation of the various participants reveal their preference for:

- a cooperation structure that is simple to create and operate,
- a flexible structure that is able to adapt over time to changes in the objectives assigned to the network and to an increase in the number of its participants,
- a low-cost structure,
- a structure that has an autonomous legal personality and capacity.

4.

With these conditions, the purpose of this document is to:

- identify and describe the various possible legal structures (I),
- select the optimum legal structure and describe its implementation (II).

I. IDENTIFICATION AND DESCRIPTION OF THE VARIOUS POSSIBLE LEGAL STRUCTURES

Given the purpose of the RECOMFOR network, several legal structures are possible.

A comparative legal analysis, however, reveals that the following should be ruled out:

- commercial structures (companies, European Economic Interest Grouping (EEIG), Groupement d'intérêt économique [GEI; Economic Interest Group]), unsuited to the non-profit purpose of the network,
- French public structures (GIP; groupement d'intérêt public), unsuited to the requirement for flexibility in the organisation's creation and operation and to its multinational nature.
- foundations, unsuited to the members' financial constraints,
- simple cooperation agreement, unsuitable due to the lack of autonomous legal personality.

Conversely, it transpires that association status meets most of the members' objectives in terms of creation, organisation, operation and funding.

Moreover, it has a flexible legal form that is familiar to all the member states and which has the advantage of being able to easily change over time.

The comparative analysis of the various possible legal structures can be summarised as follows:

Nature	Prevailing law	Purpose as prescribed under law	Advantages	Disadvantages	Examples
<i>Cooperation tools specific to French national law</i>					
Groupement d'intérêt public (GIP; public - private sector grouping)	Act No. 82-610 of 15 July 1982 (Article CGCT) Article L. 719-11 of the Code de l'éducation (French code of education): GIP in scientific, technical, professional, educational and cultural fields	Legal entity governed by French law Enables its members to take the action required by an interregional, cross-border cooperation project or programme	<ul style="list-style-type: none"> • A structure dedicated to delivering cross-border cooperation programmes • Possible for public-law and private-law legal entities to join 	<ul style="list-style-type: none"> • Unless there are explicit statutory provisions to the contrary and/or approval by the French Conseil d'Etat, only legal entities governed by French law may contribute • French state-controlled • Complex creation process: approval by decree • Limited duration • Not very compatible with an increase in the number of network members <p>Complex and unsuitable solution for the European partners</p>	<ul style="list-style-type: none"> • GIP – Centre de ressources pédagogiques et de développement de la qualité de la formation en Région Nord Pas de Calais (Centre for teacher resources and training quality development in Nord Pas de Calais) • Collège européen de technologie (European Collect of Technology) • EduFrance-CampusFrance: agency for promoting French training courses abroad and educational and scientific exchanges

Groupement d'intérêt économique (GIE; French economic interest group)	Articles L. 251-1 et seq. of the French Code de commerce	Legal entity governed by French law Allows its members to pool certain activities to facilitate and develop their activity and to improve and increase the performance of this activity while retaining their individuality	<ul style="list-style-type: none"> • A structure halfway between a company and an association 	<ul style="list-style-type: none"> • Excludes purely administrative activities: pursues an economic objective. Its purpose must be connected with the economic activity of one of its members A GIE must have an economic activity connected with the production and distribution of goods and services • Financial risk as members have joint and several liability <p>Solution unsuitable, particularly for the public partners</p>	
<i>Cooperation tools specific to European Community law</i>					
European Economic Interest Grouping (EEIG) (Groupement européen d'intérêt économique ; GEIE)	European Community Regulation No. 2137/85/CEE of the Council of 25 July 1985	Facilitate and develop the economic activity of its members	<ul style="list-style-type: none"> • Legal entity governed by European Community law • Membership by any natural person or legal entity • Legal personality • Easy to set up without capital 	<ul style="list-style-type: none"> • Excludes purely administrative activities: pursues an economic objective • Financial risk as members have joint and several liability <p>Solution unsuitable,</p>	<ul style="list-style-type: none"> • GEIE Sud Mont-Blanc • GEIE Eurocités basque • GEIE Euro 6

				particularly for the public partners	
<i>Cooperation tools common to each state</i>					
Foundation	National law of choice	Act by which one or more natural persons or legal entities decide to permanently set aside goods, rights or resources for carrying out a non-profit activity of public interest	<ul style="list-style-type: none"> • Legal personality 	<ul style="list-style-type: none"> • Complicated creation procedure • Considerable and enduring patrimony 	<ul style="list-style-type: none"> • Fondation Robert Schuman (French foundation) • Fondation Jean Monnet (Swiss foundation)
Cooperation agreement	National contract law selected in the agreement	Agreement concluded between several partners with one holding a management mandate	<ul style="list-style-type: none"> • Freedom of contract • Flexible operation, organisation and funding 	<ul style="list-style-type: none"> • No legal personality <p>Solution unsuitable for a long-standing project</p>	<ul style="list-style-type: none"> • Projet Leonardo Europlastic
Association	Law of the location of the association's head office	Agreement concluded between several partners in order to pursue a non-profit objective	<p><u>Depending on the prevailing law:</u></p> <ul style="list-style-type: none"> • Any public-law or private-law legal entity may become a member • Nationality irrelevant • Number of members irrelevant • Easy to set up • Easy to manage • Legal personality • Of fixed or open duration 	<ul style="list-style-type: none"> • Purpose and objectives limited by its statutes 	

II. PREFERRED ORGANISATIONAL STRUCTURE: ASSOCIATION

1. Nationality and prevailing law

As there is no European association status, only **a national association** can be created.

Two principles guide the creation of such an association, namely:

- **the prevailing law is that of the location of the association's head office,**
- **the legal capacity of members to join the association is assessed according to each national law.**

Determining the legislation best suited to the RECOMFOR network project therefore involves a comparative analysis of association law through the legal framework of each state.

Broadly speaking, it should be noted that there is some heterogeneity between the European legal frameworks. These differences can be set out in several points:

- the requirement or otherwise to declare the association,
- the requirement to have a management supervisory body,
- the beneficial nature of the tax arrangement,
- the level of control and the state/association ratio,
- the extent of the legal capacity.

In broad outline, four association models exist in Europe and reflect the national legal systems: the Rhineland model (Germany, Austria, Belgium, the Netherlands, Switzerland), the Anglo-Saxon model (Great Britain, Ireland), the Mediterranean model (Greece, Spain, Italy, Portugal), and the French model.

In this context, two frameworks come out as more particularly meeting the expectations of the network's members, namely:

- the Belgian legal framework provided for in the Act of 27 June 1921 and amended by the Act of 2 May 2002 *concerning non-profit associations, international non-profit associations and foundations.*

A particular feature of the Belgian framework is that it makes provision for a special status for international associations: Association internationale sans but lucratif (AISBL; international non-profit association).

Because there are European Community institutions in Brussels and certain associations wish to have representation there, many transnational associations have adopted AISBL status.

Examples of Belgian associations

- **EVTA (European Vocational Training Association)**

It has 18 members from 14 European countries and from public and semi-public bodies responsible for vocational training. It manages nearly 2000 regional and local training centres. Its head office and secretariat are in Brussels.

- **Fondation des Régions européennes pour la recherche en éducation et en formation (Foundation of the European regions for education and training research)**

Its aim is to develop education research.
Its head office is in Brussels and its secretariat in Paris.

- **EAEA (European Association for Education of Adults)**

It aims to bring together and represent European organisations directly involved in adult education.
Its head office and secretariat are in Brussels.

- **European Civil Society Platform on Lifelong Learning (EUCIS LLL Platform)**

Its aim is to be a forum for exchange and to promote the widespread appropriation of the concept of lifelong learning.
Its head office is in Brussels and its secretariat in Paris.

- and the French legal framework provided for in the Act of 1st July 1901 relating to the contract of association and its implementing decree of 16 August 1901.

The French framework is a form of synthesis of the European association models.

Its principal asset lies in the freedom and flexibility with which it can be implemented. In fact, the regulation imposes little formality and allows members to freely decide on the association's operation.

Examples of French associations

- **Association européenne pour l'éducation technologique (European Society for Technology Education)**

It acts to promote technology education.
Its head office and secretariat are in Paris.

- **AEDE (Association européenne des enseignants; European Association of Teachers)**

It acts to promote European citizenship and is organised into national branches (AEDE6-France, AEDE Germany)
Its head office and secretariat are in Paris.

These two frameworks can be compared as follows:

Comparative table of the Belgian and French association frameworks

	Association internationale sans but lucratif (Belgium)	Association (France)
<i>Reference laws</i>		
	Act of 2 May 2002 concerning non-profit associations, international non-profit associations and foundations	Act of 1 st July 1901 relating to the contract of association Implementing Decree of 16 August 1901
<i>Conditions of creation</i>		
Purpose	Non-profit purpose of international usefulness or non-profit philanthropic, religious, scientific, artistic or educational purpose No industrial or commercial operations, no material gain for members	Purpose other than to share profits
Member status	Natural person or legal entity	Natural person or legal entity
Member nationality	Open to nationals and foreigners Legal capacity of foreigners assessed according to national laws	Open to nationals and foreigners Legal capacity of foreigners assessed according to national laws
Number of members	Free	Free
Head office	Belgium	France
Duration	Unlimited	Unlimited
Prevailing law	Belgian law	French law
<i>Set up</i>		
Statutes	Required Established by notarial act or private agreement.	Required Established by private agreement (notarial act necessary in the event of the transfer of goods or property)

Content of the statutes	<p>Required information:</p> <ul style="list-style-type: none"> - activities of the AISBL - international purpose of the AISBL - conditions of admission and withdrawal of members - rights and duties of members - remit, method of convening and decision-making method of the governing and management body. - conditions for amending the statutes, winding up and liquidating the association and disposal of assets 	No particular instruction
Set up	<p>Submission of the statutes to the Belgian Minister of Justice for application for legal personality and for approval</p> <p>Legal personality acquired as of the date of the Royal Decree granting recognition</p>	Declaration at the <i>préfecture</i> of the <i>département</i> or <i>sous-préfecture</i> of the district in which the association has its head office
Record	<p>A record is kept at the registry of the commercial court and contains:</p> <ul style="list-style-type: none"> - the statutes and their amendments - the acts relating to the appointment and end of duties of the directors - decisions related to winding-up - annual accounts 	<p>Contents of the declaration:</p> <ul style="list-style-type: none"> - name and purpose of the association - head office of the establishments - names, occupations, residence and nationality of the directors - statutes
Publication	<p>In the Moniteur Belge (State Official Journal):</p> <ul style="list-style-type: none"> - the statutes, - acts relating to the appointment and end of duties of the directors, - acts relating to winding-up. 	Publication in the Journal officiel (State Official Journal)
Registration fees	To be determined by the king	<p>No registration fees (except in the event of property transfers)</p> <p>Cost of publication (currently €40)</p>
Subsequent formalities	<p>Yearly: annual accounts</p> <p>Any amendment to the statutes must be submitted</p>	Any amendment to the statutes must be recorded in a special register of the General Assembly and be declared

		at the <i>préfecture</i> within three months.
<i>Governance</i>		
Mode of operating	The following is required: - a governing body - a management body (to be defined in the statutes and the rules of procedure)	Free (to be defined in the statutes and the rules of procedure) <i>(see classic and simplified diagrams below)</i>
<i>Funding and accounting</i>		
Financing	<ul style="list-style-type: none"> • Annual subscriptions • Public subsidies (state, public authorities, European Union) • Contributions-in-kind (human and technical resources, goods) • Donations and legacies 	<ul style="list-style-type: none"> • Annual subscriptions • Public subsidies (state, public authorities, European Union) • Contributions-in-kind (human and technical resources, goods) • Donations and legacies
Accounting	(dependent on the size of the AISBL): Simplified accounting for, at the very least, cash and account transactions	No particular instruction (but accounting requirements may always be provided for in the statutes) Required, particularly if the amount of the donations or public subsidies (excluding European subsidies) exceed €153,000/yr (publishing of the annual accounts and auditor's report)
<i>Transformation – Winding-up</i>		
Transformation Winding-up	- Provided for by the statutes Internal decision with the same quorum required as for changes to the association's objectives	Provided for by the statutes Failing that, by decision of the Extraordinary General Assembly
<i>Tax arrangement</i>		
Corporate taxes (corporate income tax, business tax)	Exempt (except for gainful activity)	Exempt (except for gainful activity)
VAT	Exempt (except for gainful activity)	Exempt (except for gainful activity)

2. Governance

a) Member categories

Whatever the prevailing law, the member categories are freely defined in the statutes. These categories most often entail a subscription scale.

Broadly speaking, it should be remembered that any natural person or legal entity, governed by public or private law and of any nationality, may join an association.

Each member's ability to join the association is assessed according to national laws. Each member of the network should therefore personally ensure their ability to join and, where necessary, carry out the necessary formalities (decision by deliberative bodies, administrative authorisation, etc.).

In this case, two member categories may be set up:

- paying active members: companies, schools, etc.
- non-paying active members: institutions

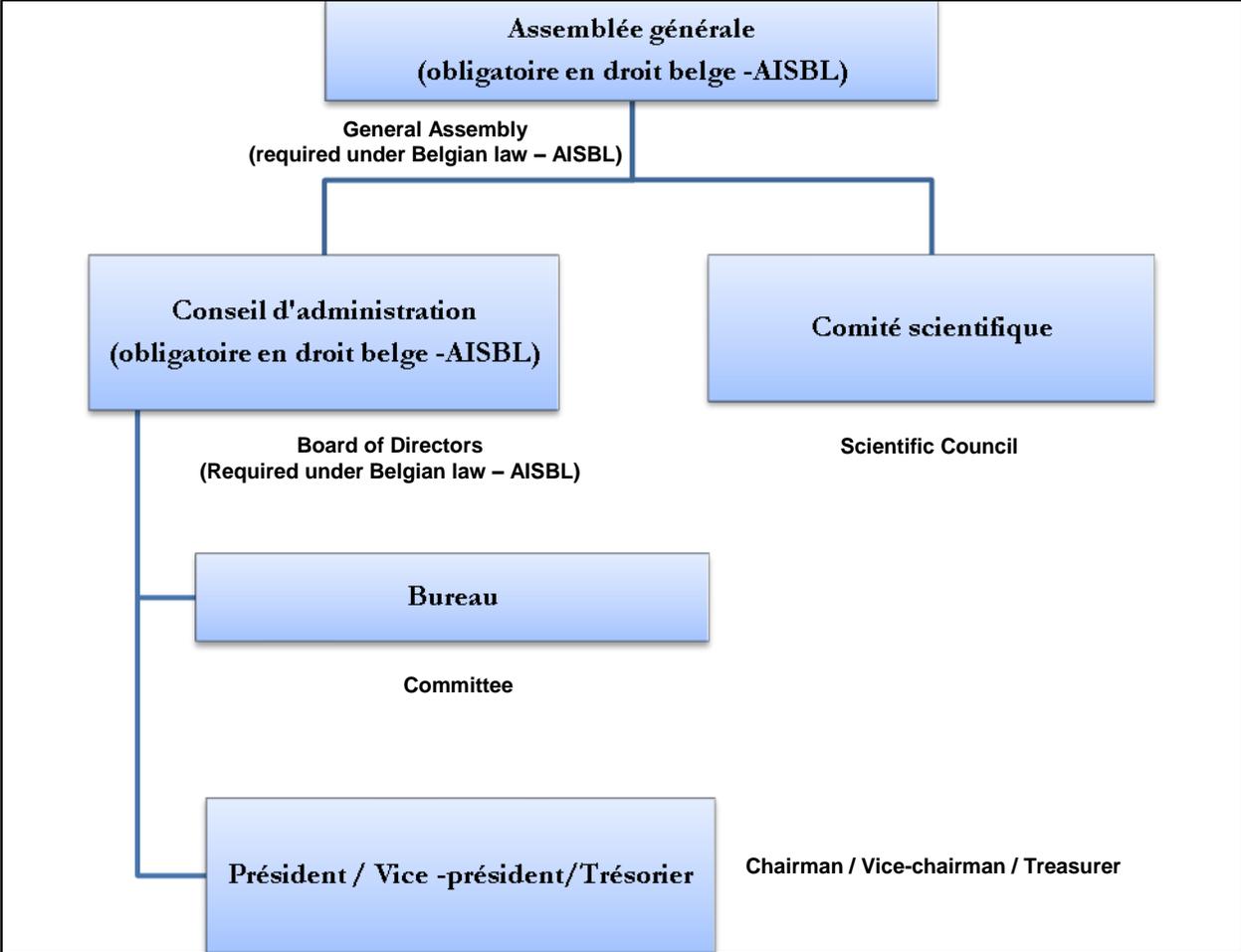
b) Bodies of the association

Under French law, the governing bodies and rules of governance within the association are to be freely determined by the members and are detailed in the statutes and the rules of procedure.

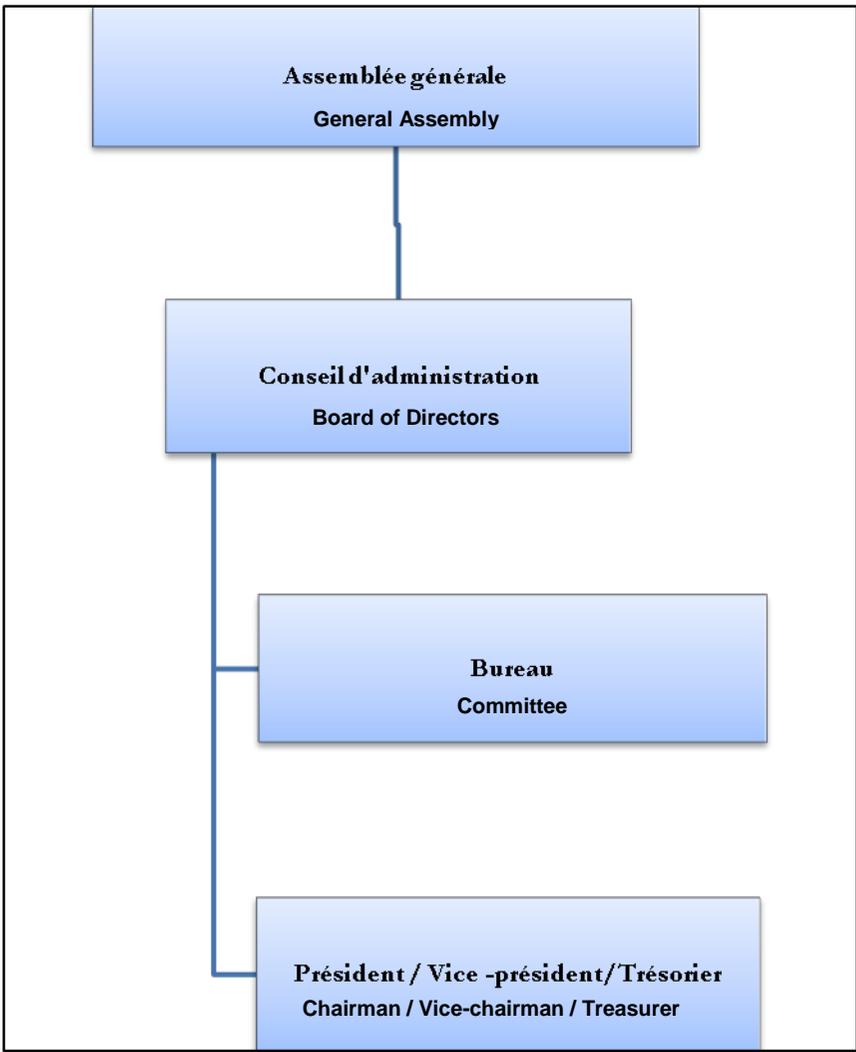
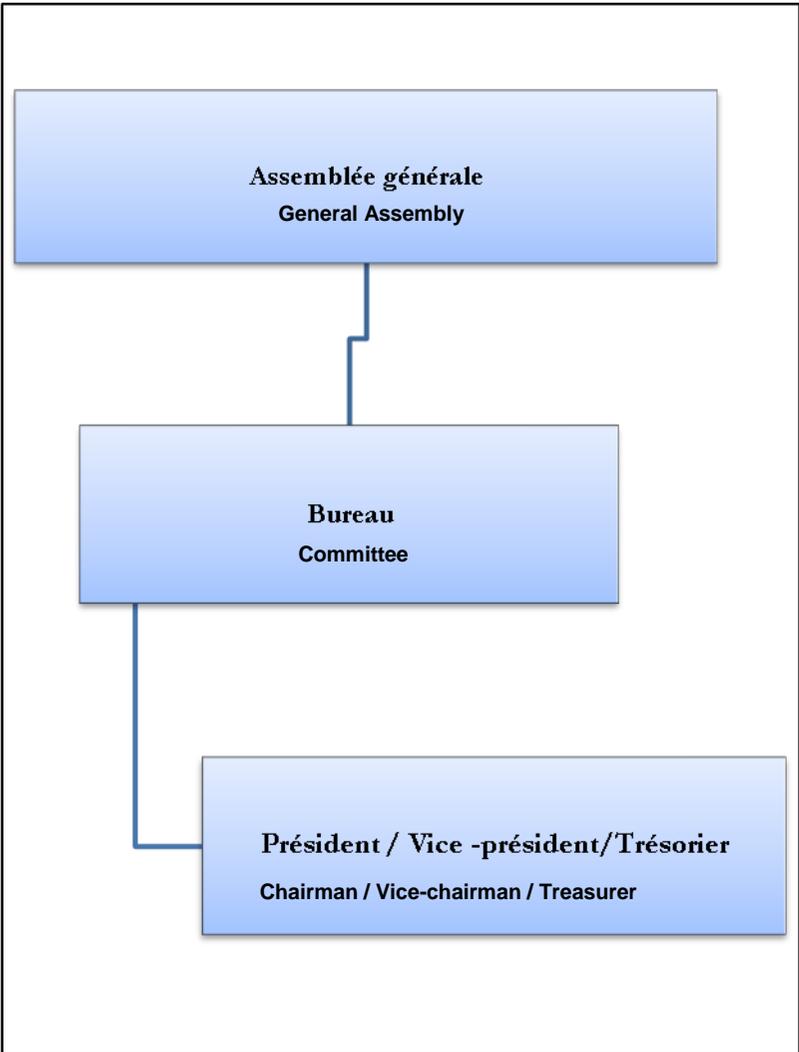
The Belgian regulation concerning AISBLs simply requires that the association has a management body (General Assembly) and a governing body (Board of Directors).

Thus, several structures can be implemented, namely:

Classic organisational structure for a Loi 1901 / AISBL Association



Simplified organisational structure possible (French Association Loi 1901)



Bodies	Composition	Remit
<i>Belgian AISBL</i>		
General Assembly (required under the Belgian law on AISBLs)	Free Example: All those from one of the four categories (public partner, training centre, company and professional organisation) may be a member of the association and attend the GA (one member = one vote)	<ul style="list-style-type: none"> • establishes the annual accounts and the budget for the following fiscal year (<i>authority required</i>) • approves the association's objectives prepared by the Board of Directors • elects members of the Board of Directors by electoral committees <p>Meets once to twice a year (free)</p>
Board of Directors (required under the Belgian law on AISBLs)	Free Example: 12 (more or less) directors representing the four categories equally (3 representatives per category)	<ul style="list-style-type: none"> • approves the annual accounts and the budget for the following fiscal year (<i>authority required</i>) • draws up and implements the association's objectives approved by the General Assembly • accepts new members • appoints the chairman • authorises the chairman for the day-to-day management • appoints the members of the scientific council <p>Meets once a month (free)</p>
<i>French Association loi 1901 (example)</i>		
General Assembly	Free Example: All those from one of the four categories (public partner, training centre, company and professional organisation) may be a member of the association and attend the GA (one member = one vote)	<ul style="list-style-type: none"> • approves the association's objectives prepared by the Board of Directors • approves the budget • elects members of the Board of Directors by electoral committees <p>Meets once to twice a year (free)</p>

Board of Directors	Free Example: 12 (more or less) directors representing the four categories equally (3 representatives per category)	<ul style="list-style-type: none"> • draws up and implements the association's objectives approved by the General Assembly • accepts new members • prepares the budget • appoints the chairman • authorises the chairman for the day-to-day management • appoints the members of the scientific council Meets once a month (free)
Committee	Free From the Board of Directors Composed of a selected chairman, one or more vice chairmen, a secretary and a treasurer. Appointed either by the General Assembly or the Board of Directors	<ul style="list-style-type: none"> • Responsible for the day-to-day management of the association • Collects subscriptions, recovers revenues and expenditures, keeps the accounts
Scientific Council	Free open to members and non-members of the association (experts)	<ul style="list-style-type: none"> • evaluates the programmes put in place by the network • gives an opinion on new members • Proactive Meets quarterly (free)

3. Funding

Whatever the law chosen, associations may use a variety of funding sources and resources:

- annual subscriptions from active and associate members
- public subsidies (European Union, state, regional and local authorities)
- contributions-in-kind (human and technical resources)
- all other resources permitted by law

In particular, once they have legal personality, declared associations can easily receive public subsidies (European Union, state, regional and local authorities, etc.).

It is then subject to the controls specific to associations receiving subsidies and often provided for in subsidy agreements.

In summary, the result of this comparison shows that:

- **the two association models reviewed (French model and Belgian model) have the same managerial and operational flexibility,**
- **the French association can, however, seem less restricting with regard to the creation process. The procedures and formalities for creating an AISBL seem more complex (need for a royal decree granting recognition, information required in the statutes, publications, etc.),**
- **conversely, and beyond the purely legal aspect, the AISBL has the advantage of making it possible to have representation in Brussels and a certain visibility among the European Community institutions.**

4. The association's development

Broadly speaking, it should be remembered that the selected organisation can always change according to the objectives that the members may, in the future, assign to the network and to changes in the network's geographic scope.

At this stage, it is only possible to create a national association with legal personality in just the country of its head office.

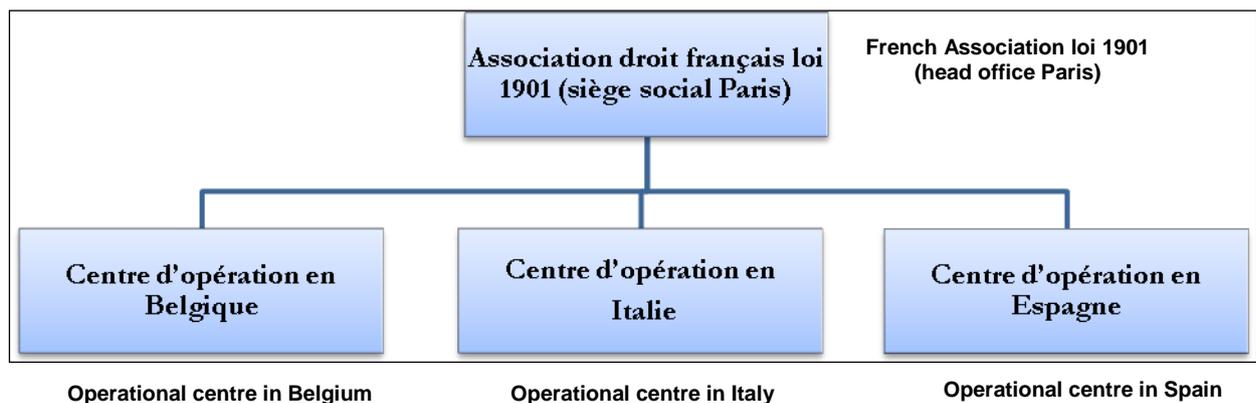
If, eventually, the association would like to have representation in other member states of the network or among the European Community institutions in Brussels, the association will be able to open one or more operational centres similar to branches.

These operational centres will then be regarded as foreign associations. They must respect the minimum formalities of each state which are less complex than the creation procedures.

For example, these formalities take the form of:

- in France: a declaration at the Préfecture,
- in Belgium: the submission of a record at the registry of the commercial court at the location of the operational centre (statutes of the original association, address of the operational centre, acts relating to appointments).

For example, the organisational structure may be presented as follows:



5. Towards a European Association

Currently, a European association structure must be ruled out as the draft community regulation has reached a stalemate.

First discussed in 1984, the draft was officially launched in 1991 with the *Proposal of the European Parliament and Council for a Regulation on the Statute for a European Association* (1991/0386/COD) followed, in 1993, by the presentation by the European Commission of the *Amended Proposal of the Council for a Regulation on the Statute for a European Association* (COM(93) 252 final, JO C 236, 31 August 1993).

Since 1999 and its review by the European Parliament, the draft proposal has been put on hold in the Council because of the political and legal reticence of some member states.

In 2005, as no progress had been made, the European Commission made a harsh decision and placed the proposal for the regulation on a list of 68 draft proposals it deemed impossible to see through.

Despite attempts by some member states (France, Great Britain) and institutions (European Economic and Social Committee, Conseil économique et social français (French Economic and Social Council), etc.), the draft has not, to date, been officially relaunched within the European Community institutions, it being stressed that any relaunch requires a prior 'impact study'.

At this stage, therefore, the RECOMFOR network cannot take the legal structure of a European association.

Nevertheless, the possibility, depending on the various political and legal barriers being lifted, of the RECOMFOR network eventually taking the structure of a European association should not be ruled out.

It seems that, on just the basis of the *Draft Regulation on the Statute for a European Association* drawn up in 1993, the RECOMFOR network would fulfil the criteria for creating a European association.

According to Article 1 of the draft regulation:

"The European association is a grouping of natural persons and or legal entities whose members pay subscriptions and permanently pool their knowledge or activities for a non-profit purpose of public interest and in order to promote sectoral, professional or other interests in the most diverse number of fields possible.

Subject to the national application of the legal and administrative rules relating to the exercise of an activity or profession, the European association freely defines the activities required to realise its objectives insofar as they are compatible with the objectives of the European Community and public interest. It pursues them in accordance with the principles connected with a grouping of persons and objective management.

The product of any economic activity exercised by a European association is allocated purely for the purpose of realising its objective, the sharing of profits between members being excluded."

The features of a European association as set out in the draft regulation of 1993 are:

- its non-profit purpose,
- its international and/or cross-border objective (Article 3). Whether they are made up of legal entities and/or natural persons, these must be from at least two member states of the European Union,
- a legal personality recognised in each of the member states (Article 2),
- it being subject first and foremost to European Community law (Article 7),
- a principle of non-discrimination (Article 8). Each member state must treat a European association as a national association,
- the requirement to have comprehensive statutes (Article 3): corporate name, purpose, address, rules of procedure, etc,

- the requirement to register: publication in the OJEU and registration in each member state following national procedure.

The draft regulation provides for three creation processes (Article 3):

- either through a 'winding-up-creation' procedure: winding-up the old association and creating the European association,
- a merger procedure between at least two associations present in at least two member states,
- or by a simple transformation into a European association on condition, however, that the initial association, which has its statutory head office and its central administration in the European Community "*has had an establishment in a member state other than that of its central administration for at least two years*".

In this case, the RECOMFOR network meets the principal criteria for creating a European Association as set out in the draft Community Regulation of 1993, in particular its non-profit and cross-border purpose.

Depending on the mode of organisation chosen for the network and naturally subject to the regulatory provisions adopted by the Community institutions, a European association will be possible through, in particular, a winding up-creation procedure.

In support of the above, it appears that:

- given the flexibility objectives desired by the members of the network, the association emerges as the best suited organisational solution,
- for want of a European association status, two national association models are likely to be used, namely:
 - on the one hand, the Belgian legal framework provided for in the Act of 27 June 1921 and amended by Act of 2 May 2002 concerning non-profit associations, international non-profit associations and foundations (AISBL),
 - and on the other hand, the French legal framework provided for in the Act of 1st July 1901 relating to the contract of association and its implementing decree of 16 August 1901.
- the comparative analysis of these two frameworks reveals that:
 - these two association models both have the same managerial and operational flexibility,
 - the French association may nevertheless seem less restricting with regard to the creation process. The procedures and formalities for creating an AISBL seem more complex (need for a royal decree granting recognition, information required in the statutes, publications, etc.),
 - conversely, and beyond the purely legal aspect, the AISBL has the advantage of making it possible to have representation in Brussels and a certain visibility among the Community institutions.