

A person wearing a white lab coat, a white hairnet, and a white face mask is shown from the chest up. They are wearing purple nitrile gloves. Their right hand is holding a small, irregular, brownish, porous object, possibly a fossil or a piece of rock. The background is a blurred laboratory setting.

**Making research
infrastructures accessible**
– a handbook

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Open SESAM(E)! 58

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Cover photo: Research conducted at Ancient DNA increases our understanding of past ecology and the evolution of life. The environment provides advanced analysis of ancient DNA to support research across a wide range of applications, for example for archaeologists and biologists.

Photographer: Mikael Wallerstedt

Graphic form: Matador Kommunikation.

Introduction

There is advanced research infrastructure that is strategically important for conducting excellent Swedish research and innovation located at higher education institutions and research institutes in Sweden. Some uncertainty exists as to how to interpret the regulations that in various ways govern the granting of access to these research infrastructures to actors who are external to the infrastructure's host organisation. How these matters are handled has become even more relevant for Swedish higher education institutions since the introduction of the *Fees for Research Infrastructure Ordinance (2022:1378)* in October 2022.

The primary purpose of this Handbook is to provide guidance for higher education institutions (HEIs) in making their research infrastructures accessible to external actors. The primary target group for this Handbook is staff at HEIs that provide research infrastructures. These include the directors (or equivalent) of the research infrastructures, finance officers, lawyers, management, and administrative support functions.

Much of this Handbook is also relevant to research institutes. Research institutes, and their staff, often have more experience in making their research infrastructures accessible for external use and thus already have established procedures equivalent to many of the recommendations given in this Handbook.

How the Handbook was produced and its uses

This Handbook was produced as part of the Swedish collaboration for access to laboratory infrastructure (the SESAM project)¹, funded by Vinnova. The project participants are Lund University, Stockholm University, Uppsala University and the research institute RISE. Additional HEIs and an external reference group have contributed to the Handbook's content². The Handbook is based on a survey and needs inventory that was carried out at the beginning of the project in which 42 research infrastructures participated via interview or survey responses.

1. <https://www.sesamprojektet.se/w/sesam/en/about-sesam>

2. Chalmers University of Technology, University of Gothenburg, University of Dalarna, University in Gävle, Karolinska Institutet, Royal Institute of Technology, Linköping University, Luleå University of Technology, Swedish University of Agriculture, Umeå University, AlfaLaval, Astra Zeneca, CR competence, Edwards science & technology, RISE, IVL Swedish Environmental Research Institute, SARomics biostructures and Swerim.

The project's starting point was to target research infrastructures relevant to or somewhat related to materials, engineering and life sciences. During the project, it became clear that the Handbook is in fact relevant to all research infrastructures that fall within the EU's definition of a research infrastructure³. The project's recommendations are also relevant for technology infrastructures included in the EU's definition of technology infrastructures,⁴ as well as testing and experimentation infrastructures⁵.

This Handbook is provided for information purposes only and is intended to clarify a selection of acts, regulations and ordinances and their potential consequences when making the various types of research infrastructures that exist at HEIs and research institutes accessible to external actors. When reading this Handbook, if you are unsure about how the rules should be applied, you should always refer directly to the rules, such as those referenced in this Handbook, or seek legal advice within your organisation. Legal assessments of how the rules are to be applied need to be based on the circumstances in each individual case, which is why the Handbook itself cannot replace legal advice. Any implementations of the Handbook in internal governing documents and management processes are dependent on subsequent decisions within each organisation.

3. Chapter 1 Article 2(91) of Commission Regulation No 651/2014.

4. European Commission, Directorate-General for Research and Innovation, *Technology infrastructures – Commission staff working document*, Publications Office, 2019, <https://data.europa.eu/doi/10.2777/83750>

5. Chapter 1, Article 2(98a) of Commission Regulation No 651/2014.

Important terms

This section brings together and clarifies some terms that are used in this Handbook.

Research infrastructure

The term ‘research infrastructure’ is used as a general term in this text and covers research infrastructures that come within the EU’s definition⁶. The project recommendations are also relevant for technology infrastructures that come within the EU’s definition of technology infrastructures⁷ and of testing and experimentation infrastructures⁸.

Higher education institutions

‘Higher education institutions’ or HEIs generally refers to organisations that provide higher education where central government is the accountable authority (also called public-sector HEIs). These can include both universities and university colleges⁹. The majority of these HEIs are regulated by the same acts and ordinances. However, a few HEIs are regulated by separate ordinances. From 2024, the Swedish Defence University and the Swedish University of Agricultural Sciences have been regulated in such separate ordinances¹⁰. There are also HEIs that are not state-owned, such as Chalmers University of Technology and the University of Jönköping, which are operated by foundations, and have their own separate agreements with central government. These HEIs often follow the same rules as the public-sector HEIs, partly because this may be a requirement in order to receive certain central government grants.

6. Chapter 1 Article 2(91) of Commission Regulation No 651/2014.

7. European Commission, Directorate-General for Research and Innovation, *Technology infrastructures – Commission staff working document*, Publications Office, 2019, <https://data.europa.eu/doi/10.2777/83750>

8. Chapter 1, Article 2(98a) of Commission Regulation No 651/2014.

9. Swedish Council for Higher Education (2023) *Svensk-engelsk ordbok för den högre utbildningen* <https://www.uhr.se/publikationer/svensk-engelsk-ordbok/larosate> [16 July 2024]).

10. <https://www.uka.se/swedish-higher-education-authority/for-students/laws-and-regulations>

Host organisation

‘Host organisation’ means the organisation responsible for the operation of the research infrastructure. In some cases, such as Max IV¹¹ and SciLifeLab¹², there is an organisation that is regulated separately by the Swedish Government. Some research infrastructures, including SciLifeLab, are also distributed, with several organisations hosting different parts.

External user

‘External user’ means a user who does not belong to the HEI or research institute hosting the research infrastructure.

Mediator

Mediators are actors who offer services related to the use of research infrastructures. A mediator may be a research institute or a private actor with specific skills that enable the mediator to act as a link between an external user and the research infrastructure. A mediator may have parallel roles in the research landscape.

11. *Förordning (1994:946) om den nationella forskningsanläggningen i elektronacceleratorlaboratoriet (MAX IV-laboratoriet) i Lund, Förordning (2013:118) om Nationellt centrum för livsvetenskaplig forskning.*

12. <https://www.scilifelab.se/wp-content/uploads/2024/04/General-Terms-and-Conditions-for-Funding.pdf>

Checklist for open research infrastructures

This checklist can be used as a starting point for granting access to a research infrastructure.

To-do list



☐ Check that the research infrastructure does not have any restrictions on who can use it.

Are there decisions, external terms and conditions or similar that regulate who may use the research infrastructure?

☐ Check any requirements imposed by the organisation or funding body regarding access to the research infrastructure.

External funding bodies may have different conditions regarding access to a research infrastructure. It is important to ensure that such conditions are not in conflict with the requirements and conditions imposed by your own organisation.

☐ Verify that the research infrastructure complies with the principles of access required.

From October 2022, HEIs must comply with special requirements regarding access in order to make use of the special authorisation provided for in the Fees Ordinance (SFS 2022:1378). For other organisations, it may be appropriate to check that such requirements are in place.

☐ Ensure that the services offered by the research infrastructure are communicated well.

Clear communication is crucial in reaching external users:

- } Is it clear how an external user can contact the research infrastructure?
- } Is it clear what the delivery may consist of, and what the time frames are for access and delivery?
- } Is the cost estimate clear? Is there a price list?
- } Is it clear what is required to be permitted to use the research infrastructure? For example, completion of training, availability of the research infrastructure's technicians, etc.
- } Is it clear what applies to external users regarding work environment, insurance and liability requirements.

□ **Make sure your organisation has procedures for charging external users fees.**

Fees for research infrastructure may need to be recorded and disclosed separately, especially for HEIs when utilising the new, special authorisation provided for in the Fees Ordinance (SFS 2022:1378) and for use within the framework of an ‘economic activity’.

□ **Verify that your organisation has procedures for dealing with secrecy and intellectual property rights (IPR) through non-disclosure agreements.**

For external users, secrecy throughout the process is often a prerequisite. This should be ensured by training the research infrastructure staff and by means of contracts or agreements with external users. These must be drawn up in accordance with the provisions in the Public Access to Information and Secrecy Act (SFS 2009:400).

□ **Ensure that there is a procedure for users who have roles inside and outside the host organisation.**

For example, when technical staff or directors have assignments that are outside their main employment, such as an external researcher position, or when a researcher also has their own company. It is important to clarify and distinguish between these roles when research infrastructure is used.



With the FemtoMAX beamline at MAX IV, researchers can study how materials are structured and how they change over extremely short timescales.

1 Management and governance of research infrastructures

This chapter covers the management and governance of research infrastructures. It also addresses the regulatory framework, the rules, that must be considered when granting external users access to research infrastructure, whether it is local, central, distributed, national or international. The focus lies on the perspectives of employment, the work environment, occupational health and safety, and insurance in relation to people who are:

- employed outside the HEI or organisation where the research infrastructure is located and who want access to the research infrastructure (external users); or
- employed within the HEI or organisation where the research infrastructure is located and who perform a service or equivalent on behalf of an external party (employees).

Relevant provisions may be found in work environment legislation, safety regulations and insurance requirements to ensure that employees and users alike can do their work and that their safety is assured when using the research infrastructure.

For matters related to cybersecurity, information security and export controls, we refer the reader in the first instance to the host organisation's own regulations, tools and support¹³.

1.1 Overall management and governance of the research infrastructure

The host organisation (or in some cases a consortium¹⁴) where the research infrastructure is located has overall responsibility for the activity in accordance with the applicable acts, ordinances, funding target agreements, and regulations as well as governing documents such as rules of procedure, policies, guidelines, procedures, checklists or equivalent documents that the government agency (for example, a public-sector university) or the organisation (for example, an endowed university college or research institute) draws up. The management team assigned responsibility for each research infrastructure must ensure that it is organised and operated in accordance with the applicable rules. A consortium may be comprised of multiple organisations, but usually one organisation hosts the research infrastructure, unless it is distributed across several organisations. Responsibility for parts of the research infrastructure may be delegated within the consortium. It is therefore important to be clear where the formal boundaries of responsibility lie.

Responsibility is delegated within each HEI according to its own order of delegation. There is often a lowest level where no further delegation is permitted. A research infrastructure is usually run by a director who is responsible for reporting to those who are organisationally responsible for the infrastructure, and to funding bodies where applicable. The director does not necessarily have the authority to sign contracts and might not be responsible for human resources (HR) matters. HR responsibility and the authority to sign contracts may be part of the responsibilities of the head of department, for example, if the research infrastructure is located at a department.

For most research infrastructures, especially those funded by the Swedish Research Council, there is a steering group or partners' council that has operational responsibility. The steering group often decides on strategic matters

13. Examples of these kinds of resources include:

<https://www.staff.lu.se/support-and-tools/security/information-security>;

<https://www.staff.lu.se/support-and-tools/security/export-control>

14. Council Regulation (EC) No 723/2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC).

related to the research infrastructure's activities, for example by establishing a budget and drawing up the operational plan, directors' report and a plan for winding up the infrastructure.

Recommendations



- The governance and management as well as the operation of a research infrastructure should be clearly documented and readily available to external users on the host organisation's website, for example.
- The host organisation should have procedures in place that set out the director's (or equivalent) involvement in, for example, HR matters, evaluations or other organisational matters related to the operation and continuing development of the research infrastructure.

1.2 Making research infrastructure accessible

The host organisation for the research infrastructure must always develop clear rules and guidelines covering how external users can get access to the research infrastructure. This may include the application process, the assessment of user proposals, and the allocation of resources. The scope of these rules will vary depending on the research infrastructure concerned (local, central, distributed, national, government-agency based, or owned by a company/undertaking operating under private law) and the user's needs for training or services, etc.

External users' access to a research infrastructure at an HEI is governed by the regulations or criteria that an HEI has established internally for the infrastructure's use. Examples of this can be found at [KTH](#), [Umeå University](#) and the [University of Gothenburg](#)¹⁵.

15. [KTH](#): General terms for use | KTH

[Umeå university](#): User fees and signing agreements

[University of Gothenburg](#):

<https://www.gu.se/sites/default/files/2025-02/Regler%20fo%CC%88r%20universitetsgemensamma%20forskningsinfrastrukturer.pdf>

Recommendations



In order to remove obstacles in the day-to-day operation of the research infrastructure, the host organisation should ensure that the regulatory framework that governs it is well developed and readily available. This may include internal governance and management, labour law (including employment and recruitment), skills development, and career paths. This area also includes delegated responsibility in the area of systematic work environment management such as risk assessments, measures and control, task allocation and responsibilities, the coordination of risks in the workplace, and collaboration in systematic work environment management.

Examples and more information

Many research infrastructures have rules and terms and conditions, including template contracts, available on their websites. See for example the websites of [MAX IV](#),¹⁶ [SciLife Lab](#)¹⁷ and [Myfab](#)¹⁸. In addition, there are various forms of contract between the HEI where the research infrastructure is located and an external party that govern the use of the service, for example through cooperation agreements, contract research, consortium agreements, or otherwise agreed access to the research infrastructure. Good examples of template contracts/agreements for these purposes can be found at [Lund University](#)¹⁹.

1.3 Human resources responsibility and roles

External users can be granted access to a research infrastructure in several ways. As a rule, employees of the external user carry out tasks at the research infrastructure within the context of their employment. The external organisation thus has the employer responsibility for them, unless otherwise stated in the contract and/or in an act or ordinance.

In many cases, external users need various forms of support and services to facilitate their use of the research infrastructure, including access to laboratory facilities or expertise. It is important to distinguish these services from, for example, contract research or other types of contracts (see Section 3.2). It is the

16. [User Policies – MAX IV](#)

17. [user_agreement.pdf](#)

18. [Services - Myfab](#)

19. [Agreements | Staff Pages](#)

host organisation of a research infrastructure that determines the terms and conditions for the services provided.

It is important to ensure that both the external user and the host organisation can fulfil their obligations under the applicable regulatory frameworks or contracts, including the processing of personal data, intellectual property rights, and maintaining secrecy. Matters related to employment, services and secrecy are regulated in the contracts/agreements, or terms and conditions governing the external user's access to the research infrastructure, which are discussed in Chapter 2.

Recommendations



When regulating access to research infrastructure and providing services to external users, it is important to consider the following points:

- Specify the types of services provided to external users by the research infrastructure and establish that these services are performed by employees within the context of their employment.
- Define who is considered an external user to avoid confusion in situations where an individual may have multiple roles, for example when a researcher is also involved in a company (undertaking).

1.4 The work environment and security

Systematic work environment management is carried out in accordance with the applicable acts and ordinances, as well as the rules and guidelines established by the host organisation for the research infrastructure. Making an inventory of risks involves identifying and documenting physical, organisational and social risks. This must be done regularly, and can also be done prior to the start of new projects or changes of various kinds coming into effect.

A continuous process of risk assessment can combine multiple aspects such as organisation, skills and experience, working methods, lone working, equipment and workplace design, as well as procedures and instructions such as those for managing chemicals and flammable materials.

These assessments may lead to measures being taken to address the challenges associated with permitting external actors to access the research infrastructure, for the work environment as well as for security.

Security measures are crucial to protecting both the external user and the research infrastructure. This may include providing access control systems to ensure that only authorised users have access to critical resources and equipment. In addition, safety training and compliance with safety protocols may be made mandatory for all users so as to minimise the risk of accidents or incidents.

Questions related to the work environment and who is responsible for the work environment, in particular in the case of distributed research infrastructures²⁰, must be regulated between the relevant parties before the external user is permitted to use the research infrastructure. For more information, see Section 3.1. The host organisation is responsible for coordinating systematic work environment management at shared workplaces in accordance with Sweden's Work Environment Act²¹, which means that they must ensure that all risk assessments and safety regulations are made available to both employees and external users at the research infrastructure.

It is important for external users of certain research infrastructures to complete training in areas such as safety²², chemicals management, cleanroom behaviour, and other practical matters, as well as administrative rules (booking, logging, risk management) before and during their stay at the research infrastructure. Training may also be required in the use of more advanced equipment. Generally, these requirements must be met in order for an external user to be granted independent access to the research infrastructure. Sometimes, access to these special environments may be reserved solely for employees at the research infrastructure.

A clear division of responsibilities and tasks between the immediate manager and a director or equivalent role responsible for the research infrastructure can facilitate its strategic development as well as its day-to-day operations.

20. Överenskommelse om samordning av arbetsmiljöarbetet vid Science for Life Laboratory, Solna.

21. Work Environment Act (1977:1160) Chapter 3, Sections 7d–f.

22. Safety – MAX IV.

Recommendations



- Plan, organise, implement and monitor the activity so that it is operating in accordance with the requirements set for the work and study environment in acts and ordinances, work environment/ occupational health and safety policy, contracts, governing documents, and decisions.
- Develop local written instructions and/or procedures for systematic work environment management and fire protection work for the research infrastructure, and for tasks that entail a serious risk to staff and/or students.
- Clarity on who is responsible for employees, for identifying any problems and for measures to rectify them, and in what way monitoring should be done, is vital. If necessary, this responsibility should be divided between the immediate manager and a director or other person responsible for the research infrastructure. The work environment responsibility, however, always remains with the employer as the legal person and cannot be delegated.

1.5 Risk management

A government agency's management is responsible for ensuring that there is a process in place for internal governance and control and that it functions satisfactorily²³. The risk analysis should reflect the regulatory framework governing public-sector HEIs and their mission. It should also highlight the opportunities and obstacles affecting the ability of the HEI to achieve its own goals and ambitions. Additional guidelines for internal governance and control are usually specified in the HEI's rules of procedure, order of delegation, and other established rules and guidelines.

The Swedish Legal, Financial and Administrative Services Agency provides methodological support for risk management at a government agency²⁴ on its website. This support has chapters which each present specific questions that can be used to carry out a comprehensive risk analysis. Using this support, the activity can take appropriate measures to limit risks and prevent damage or losses. This risk management forms the basis for the activity insurance (*verksamhetsförsäkring*) that the government agency has with the Legal, Financial and Administrative Services Agency.

23. https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2007603-om-intern-styrning-och_sfs-2007-603

24. <https://www.kammarkollegiet.se/vara-tjanster/forsakring-och-riskhantering/riskhanteringsstod/metodstod-for-riskhanteringsarbete>

Recommendations



In order to regulate the use of research infrastructures and ensure a safe work environment and safe use of the infrastructure, the aspects listed below should be included in regulations or other terms and conditions governing the infrastructure:

- All staff, students or external users involved in the use of the research infrastructure, when they are physically present there, must comply with the occupation health and safety, work environment and other rules and regulations applicable at the research infrastructure and under relevant Swedish law. In addition, they must comply with the technical standards issued by the host organisation.
- It may be necessary to specifically regulate in contract the shared responsibility for the work environment.
- Requirements and conditions such as training in the use of instruments, occupational health and safety, radiation protection, chemicals management, cleanroom behaviour, and other relevant areas should be established. This may include requirements for individuals to consent to general administrative regulations/ equivalent (booking/logging/risk management, etc.).
- Annual risk analyses should be carried out to identify risks and take appropriate measures to limit risks and prevent damage or losses.
- In the event of changes in the rules and terms and conditions for access to the research infrastructure, a study should be conducted to assess how this might affect the HEI's insurance with the Legal, Financial and Administrative Services Agency.

1.6 Insurance

By regulating insurance matters and limits on liability, host organisations and external users alike can ensure that they are protected and that any risks are adequately managed. This helps to ensure a safe and efficient use of the research infrastructure for both employees and external users.

The host organisation should clarify its limits on liabilities for damage/injuries that may arise during external users' use of the research infrastructure. It may also be necessary to include provisos concerning specific situations, for example if an experiment does not produce the expected results or if an infringement of intellectual property rights occurs. In addition, the host organisation may include a clause that releases it from liability for any interruptions in the availability of the research infrastructure (force majeure clause).

As part of the insurance procedures/process, the host organisation must ensure that the external user has taken note of the limits on liability that apply, and that the user is responsible for having adequate insurance to cover any risks and damage/injuries that may arise from the use of the research infrastructure, both on site and remotely.

For public-sector HEIs, it is the Legal, Financial and Administrative Services Agency that insures the activity, students, foreign visitors and government agency employees. An activity insurance policy (*verksamhetsförsäkring*) covers property, consequential damage and liability²⁵ with annual insurance terms and premiums. Each research infrastructure is recommended to contact the person who is responsible for activity insurance within their organisation to review the terms and conditions as well as any needs, and the terms and conditions, for additional cover (for property held abroad, for cash, valuables and financial assets, for artworks owned by the organisation, for museum objects housed within the government agency/organisation, property not owned by the government agency/organisation, and for artworks on loan). In addition to the regular activity insurance, there are also special insurance policies for forests, ships, aircraft owned or used by the government agency on behalf of central government, as well as consultant liability insurance if the government agency has taken on such an assignment.

For visitors and experiment and test subjects who participate in the HEI's activities, various insurance solutions are available through the Legal, Financial and Administrative Services Agency's insurance terms and conditions, including for foreign visitors (FUB) for whom a government agency has an insurance responsibility²⁶, visitors (with Swedish personal identity numbers) who participate in the activity or as experiment and test subjects (in particular personal injury protection)²⁷. Which insurance must be taken out to cover participants in research as experiment and test subjects needs to be investigated.

25. <https://www.kammarkollegiet.se/vara-tjanster/forsakring-och-riskhantering/forsakringar-for-verksamhet-luftfartyg-och-fartyg/verksamhetsforsakring>

26. <https://www.kammarkollegiet.se/engelska/start/all-services/insurance/insurance-for-students-and-foreign-visitors/insurance-for-foreign-visitors>

27. <https://www.kammarkollegiet.se/vara-tjanster/forsakring-och-riskhantering/forsakringar-for-personskador/sarskilt-personskadeskydd>

Recommendations



- Before an external user is granted access to a research infrastructure, the host organisation should require proof that the user has the necessary insurance to cover any damage/injuries or accidents that may occur. These insurance terms should include at least the following:
 1. Liability insurance covering any damage caused during the use of the research infrastructure.
 2. Property insurance covering any damage or loss of equipment if the external user brings their own equipment to the research infrastructure.
 3. Accident insurance covering any personal injury that may occur during the use of the research infrastructure.

It is also important to regulate other aspects of limits of liability, which may include:

- Liability for loss or damage caused by a material breach of any provision governing access to the research infrastructure and/or through gross negligence or an intentional act or omission.
- That this liability does not cover compensation for indirect losses or consequential damage including, but not limited to, loss resulting from punitive or liquidated damages, loss of profit, loss of income, loss of contract, loss resulting from an inability to use the results as intended, loss resulting from a fall in sales or stoppage in production, or any similar loss or damage. The entire liability for damages may be limited to a specific value of a project or to a specified amount.
- The external user is fully responsible for any injuries to their own employees.
- The external user is responsible for all costs associated with the transport of equipment, instruments, etc., from their facilities to the research infrastructure. Transport should be per DDP Incoterm²⁸ (with the relevant year indicated).
- Liability for damage caused by gross negligence or an intentional act, with the exception of limits of liability in specific situations and clarification that the external user is liable for damage/injuries and transport costs related to their own employees.

28. <https://www.incotermsexplained.com/the-incoterms-rules/the-eleven-rules-in-brief/delivered-duty-paid/>



The National Genomics Infrastructure (NGI) is a national research infrastructure for molecular biosciences that supports a wide range of research areas in the life sciences.

2 Offering, pricing and competition and the specific Ordinance on Fees

Charging fees for the external use of a research infrastructure can have different purposes. Some research infrastructures depend on income from users to co-finance the activity. In other cases, the dependence on income from users for financing is less, but you need to set a price to direct demand or to comply with rules in Swedish public law, policies, and in state aid and competition rules.

The purpose of this chapter is to assist and facilitate the pricing of services provided by research infrastructures. Sections 2.1–2.3 summarise the conditions and regulatory frameworks that must be addressed. Sections 2.4–2.5 discuss how these can be applied to matters related to pricing and what procedures can be introduced.

What is a reasonable price or the correct financial compensation is dependent on multiple factors such as whether or not the activity is financed by grants, fees or other income streams. Legislation and other rules governing state aid and competition apply jointly to both HEIs and research institutes that are at least in

part publicly funded or governed, and affect the pricing of services offered in a market.

The chapter ends with recommendations linked to the Ordinance on Fees for Research Infrastructures (SFS 2022:1378), applicable on research infrastructures provided by organisations where state government is the accountable authority²⁹.

This chapter is based in part on *Annex 2 – Offering, pricing and competition matters for laboratory infrastructures*, but has also been expanded in order to provide clarification on the issue of categories of assignments. The Annex specifies two categories. This chapter specifies three categories as there are categories of assignments that cannot be placed in either of the two main categories (for more information, see Section [2.5](#)).

2.1 Separation of activities

In the accounts, it is important to separate fees charged for services or assignments from activities linked to the organisation's own research or research collaborations. In practice, this is done through separate accounting. In the legislation, the terms “non-economic activity” and “economic activity”, or “fee-based activity” are used. It is up to each organisation to interpret and implement this categorisation, and they often use their own terminology. The main features of this categorisation lies in the fact that one category refers to activities financed by grants or direct government funding, and the second refers to activities operating in a commercial market.

A non-economic activity is an activity which does not involve offering products or services in a market and which is generally financed by grants or other forms of support and is generally operated on a non-profit basis. An economic activity means the sale of products and services to external users that can be found in both the business sector and the public sector. It is difficult to provide a general definition of when an activity should be categorised as one or the other. Each organisation needs to make this assessment based on its own circumstances in consultation with its finance officers and legal counsels.

Recommendations



All organisations that manage public grants in any form must be able to keep separate accounting for their activity as grant-financed and/or internal, as is the case with regular research, and as partly or entirely financed by external fees.

29. <https://svenskfattningssamling.se/doc/20221378.html>

2.2 State aid provided to the organisation itself

Put simply, state aid is financing from public funds that gives one or more undertakings an advantage over their other competitors³⁰. In Sweden's competition law, 'undertaking' is defined as a natural or legal person engaged in activities of an economic or commercial nature. To the extent that such activities involve the exercise of public authority, they do not fall within the scope of this definition³¹. In principle, state aid is prohibited with a few exceptions (for example *de minimis* aid³², and aid provided for in the General Block Exemption Regulation³³). Always remember that state aid can happen in two directions – aid to the host organisation, and/or indirect aid to external users. The latter case is dealt with in the next section.

The EU's state aid rules are found mainly in Articles 107–109 of the Treaty on the Functioning of the European Union (TEU)³⁴. The implementation of the state aid rules in Sweden is regulated, *inter alia*, in the Act on the Application of the European Union State Aid Rules (2013:388)³⁵.



Photo: Johan Walhgren

Myfab Uppsala is an interdisciplinary environment working within areas such as materials science, thin-film technology, sustainable energy production, electronics, microsystems, nanotechnology, and biotechnology.

30. <https://www.upphandlingsmyndheten.se>

31. Swedish Competition Act (2008:579), Chapter 1, Section 5.

32. The general *de minimis* Regulation: Commission Regulation (EU) 2023/2831.

33. Commission Regulation (EU) No 651/2014.

34. Consolidated Version of the Treaty on the European Union. Official Journal of the European Union, C 202, 7 June 2016, pp. 91–93.

35. Lag (2013:388) om tillämpning av Europeiska unionens statsstödsregler, Svensk författningssamling nr: 2013:388.

In principle, all types of organisations may be affected by the state aid rules, depending on the activities they pursue. The categorisation into economic activities (for example, contract research, see Section 3.2) and non-economic activities (for example, individual research or research collaboration at a research organisation, see Section 3.3) is a key measure for ensuring compliance with the rules.

The European Commission has stated that where a research infrastructure is used almost exclusively for a non-economic activity, its funding may fall outside state aid rules in its entirety, provided that the economic use remains purely ancillary³⁶.

A research infrastructure's activity may be deemed non-economic if the capacity allocated each year to such an economic activity does not exceed 20 per cent of the relevant entity's overall annual capacity.³⁷ This state aid rule does not specify the level at which the calculation to determine whether an economic activity is purely ancillary or not should be made. Nor what the relevant entity is, or whether the assessment is to be made on individual parts or the whole organisation. For most HEIs, it is rare for this limit to be exceeded, in part because accounting is done at the overall organisational level based on the HEI's organisation number. At this level, the proportion of economic activity is generally low. But also in part because it is rare that any individual research infrastructure at an HEI has higher than 20 per cent economic activity.

Recommendations



- In its financial statements, the host organisation must distinguish between the research infrastructure's economic and non-economic activities.
- Request specific support from your finance function about the accounting if income from fees for assignments from external users is approaching 20 per cent of the activity's sales/use.

36. Communication from the Commission – Framework for State aid for research and development and innovation (2022/C 414/01), point 21.

37. Communication from the Commission: Framework for State aid for research and development and innovation (2022/C 414/01), point 21.

2.3 Indirect state aid to external users

In addition to your own organisation being prohibited from receiving state aid, you must also ensure that the external user does not receive indirect state aid as a result of using the research infrastructure. Exemptions exist, for example, when state aid is approved under a block exemption.

In the rules pertaining to indirect state aid, the Commission distinguishes between two cases: *Research on behalf of undertakings* and *Collaboration with undertakings*. In the case of research on behalf of undertakings, the Commission writes that it does not normally count as state aid to the undertaking – as long as the research organisation or research infrastructure receives payment of an adequate remuneration for its services³⁸. This is especially true if the service is provided at a market price. Alternatively, in cases where there is no market price and the service is then provided at a price that:

- reflects the full costs of the service and generally includes a margin established by reference to those commonly applied by undertakings active in the sector of the service concerned; or
- is the result of arm's length negotiations where the research organisation negotiates in order to obtain the maximum economic benefit at the moment when the contract is concluded and covers at least the marginal costs of the service.

As regards collaboration with undertakings, the Commission writes that activities can under certain conditions be considered to be effective collaboration. Where collaboration projects are carried out jointly by undertakings and research organisations, the Commission considers that no indirect state aid is awarded to the participating undertakings if one of the following conditions is fulfilled³⁹:

- The participating undertakings bear the full cost of the project.
- The results of the collaboration which do not give rise to IPR may be widely disseminated. Any IPR resulting from the activities of research organisations or research infrastructures are fully allocated to those entities. See also section 3.5 about the teachers' exemption.

38. Communication from the Commission: Framework for State aid for research, development and innovation (2022/C 414/01), points 26–27.

39. Communication from the Commission: Framework for State aid for research, development and innovation (2022/C 414/01), points 28–29.

- Any IPR resulting from the project, as well as related access rights, are allocated to the different collaboration partners in a manner which adequately reflects their work packages, contributions and respective interests.
- The research organisation or research infrastructure receives compensation equivalent to the market price for the IPR which result from their activities and are assigned to the participating undertakings. The total value of any contribution – both financial and non-financial – of the participating undertakings to the costs of the research organisations or research infrastructures' activities that resulted in the IPR concerned, may be deducted from that compensation.

Recommendations



- Where research infrastructures do not conduct actual research, but only provide a technical service or product, the price should already be market-based. In such cases, external users are not deemed to be recipients of indirect state aid.
- Illegal indirect state aid only risks arising if the external user is also pursuing an economic activity. If this is not the case, it is not a matter of aid to an 'undertaking' and therefore does not constitute state aid.

2.4 Competition and the concept of a market

Sweden's competition law prohibits anti-competitive cooperation between undertakings and the abuse of a dominant position in the market by an undertaking⁴⁰. In addition, there are rules on anti-competitive sales activities by public entities.

Certain conduct by the State, a municipality or a region engaged in a sales activity may be prohibited through an injunction, if such conduct:⁴¹

- distorts or is likely to distort the conditions for effective competition in the market, or
- impedes or is likely to impede the occurrence or the development of such competition.

40. Konkurrensverket.se

41. Swedish Competition Act (2008:579), Chapter 3, Section 27.

Central government (the state) as a legal person includes public-sector HEIs. Thus, the rules apply to public-sector HEIs as well as to other legal persons including research institutes if the state, a municipality or a region directly or indirectly has a decisive influence over this legal person⁴².

Conduct that may be prohibited includes the following examples⁴³:

- setting prices that are too low, that is, predatory pricing.
- discriminating, that is, treating different undertakings in different ways without acceptable reasons
- denying undertakings access to strategic utility, such as certain research infrastructures
- mixing the exercise of public authority with business activity.

The term ‘market’ in competition law – The supervisory authority in Sweden, the Swedish Competition Authority, examines and determines what the relevant market is in the individual cases that are submitted to the Authority for its assessment.

The Commission provides guidance on how to apply the term ‘relevant market’ in the enforcement of competition law⁴⁴. The relevant market, within which the Commission assesses the dynamics of competition, usually has both a product dimension and a geographic dimension.

- The relevant product market comprises all those products regarded as interchangeable or substitutable to the product(s) of the undertaking(s) involved, based on the products’ characteristics, their prices and their intended use, taking into consideration the conditions of competition and the structure of supply and demand on the market.
- The relevant geographic market comprises the geographic area in which the undertaking(s) involved supply or demand relevant products, in which the conditions of competition are sufficiently homogeneous for the effects of the conduct or concentration under investigation to be able to be assessed, and which can be distinguished from other geographic areas, in particular because conditions of competition are appreciably different in those areas.

42. Swedish Competition Act (2008:579), Chapter 3, Section 28.

43. Konkurrensbegränsande offentlig säljverksamhet – Så fungerar reglerna i konkurrenslagen, INFORMATION FRÅN KONKURRENSVERKET page 9.

44. Communication from the Commission – Commission Notice on the definition of the relevant market for the purposes of Union competition law C/2023/6789.

Recommendations



- Competition law must be considered when setting prices for external users. There are also challenges in pricing that can arise within your own organisation or between collaborating HEIs. These are dealt with in the section entitled ‘Compensation for costs and overheads in non-economic activities’ in Annex 2.
- When setting prices, it is good idea to describe how the offer is defined and its associated market in relation to the service or product, and the market’s geographic demarcation. This can be used as a basis for argumentation related to compliance with competition law, and also as part of argumentation concerning to which category an assignment to the research infrastructure belongs (see Section [2.5](#)).



Photo: Johan Persson

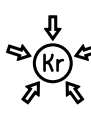
The LARM studio at the Humanities Laboratory at Lund University enables high-quality audio and video recordings of everything from music to conversations and debates.

2.5 Pricing in practice

The rules that a research infrastructure should apply in pricing vary between assignments. Each assignment needs to be assessed separately. In the practical work involved in pricing, it is suggested that the research infrastructures themselves should be responsible for grouping assignments into one of the following three categories:



Category 1: Applies to activities that entail a technical service or product, or contract research offered in a market.



Category 2: Activities and assignments financed by direct government funding or grants, such as publicly funded research projects or the direct government core funding.



Category 3: Anything that cannot unambiguously be included in Categories 1 or 2.

Proposed working method for pricing in each of the three categories:



Pricing – Category 1 – Technical service or product offered in a market

Three principles for pricing.

1. First of all, the primary option is to charge the market price. If the market price cannot be determined, at its lowest the price must be set so that the income fully funds the services plus a profit margin established with reference to the margins normally applied by undertakings operating in the sector concerned.
2. Competition in the market must not be distorted by predatory pricing, for example, by the abuse of a dominant position. Services must be provided at market price in the first instance.



3. HEIs must comply with the applicable regulations for charging fees and charge at a rate up to full cost recovery. Where research infrastructure is provided as a service, the market price must be applied where necessary to avoid distortion of competition – even if that price exceeds full cost recovery. Research institutes often charge a higher price than cost-based, in order to fulfil their assignments, which can include a profit margin target.

Determine a market price (if possible)

In order to determine a market price, a research infrastructure should regularly check whether there are competing services on the market. The market to be checked has both a product dimension and a geographic dimension.

1. Describe your product or service, including its delivery and terms. List the current external users and potential users of the research infrastructure.
2. Investigate the price and terms of equivalent, competing services. Your competition is made up of all other suppliers that the users referred to in point 1 could turn to as an alternative. Always include services available in Sweden. Services available in Europe are included if external users are able to access them there.
3. Assess the market price for your service. If there is a functioning market and price information can be obtained under point 2, the market price may be determined by averaging your competitors' prices. If competing services differ from your service, the initial assessment can be supplemented by an assessment of what this difference means for your price. In negotiations with an external user, if a higher price can be agreed than in point 2, this can constitute the market price. If there are no competing services, there is no market price.

Determine the cost of a technical product or service

In principle, the cost is estimated by identifying all resources connected to supplying the product or service, calculating the cost per resource and adding these costs together. An overall breakdown for calculating the cost follows below:

1. Staff expenses. Time employees spend on the delivery. Usually measured in number of working hours, which means that the payroll expense needs to be calculated per hour.



2. Disbursements/consumables. Materials purchased for the delivery and consumed, i.e., materials that are not deemed to have any residual economic value after the assignment.
3. Research infrastructure/equipment. Depreciation, cost of capital, reinvestment costs, maintenance and calibration costs, and retests. These need to be allocated per use of the research infrastructure or included in the indirect costs referred to in point 4.
4. Indirect costs. Resources that need to be utilised in the delivery, but that are shared with other assignments and activities such as facilities and the host organisation's central administration costs. These costs are allocated to cost units, and may be based on employees' productive time, total payroll or direct costs, for example.

The costing is drawn up in accordance with the established procedures of the host organisation, in consultation with the responsible finance officer. The costing should be similar to the costing drawn up for externally funded research projects. However, the estimated cost may differ for some points, for example in the case of investments linked to points 3 or 4.

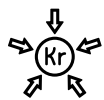
The cost calculated for Category 1 may not be financed at all from public funds, unless the grant was decided as approved state aid or EU aid. Even if a grant has been received or you have de facto used direct government funding for an investment, in such a case depreciation and the cost of capital must be considered, disregarding public grants. The cost must be equivalent to the cost that other market participants would have had at the time of making the infrastructure available if they had made the investment.

Determine the price

The price for the service is set on the basis of cost and market price using the principles above.

For HEIs, if the market price exceeds the cost, the price must be set at the market price. If the cost exceeds the market price, the price is set at the calculated cost. The Swedish National Financial Management Authority (ESV) recommends that fees are charged pursuant to the new ordinance (see Section [2.6](#)).

If it is not possible to determine a market price, see the [section on Category 3](#).



Pricing Category 2 – direct government funding or grant-financed projects

For projects that involve a research infrastructure within Category 2, the principle applies that compensation is paid for the costs incurred in performing the delivery.

Fully or partially externally-funded research projects – In these, one or more funding bodies indicate how the costs are to be calculated and determine what costs are compensated. Research infrastructures should contact the host organisation's finance function for information on the rules that apply to each funding body. Compensation is normally paid for direct costs, such as total payroll for employees in the project and expenses, and also for indirect costs.

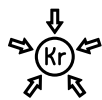
The compensation paid for indirect costs varies greatly between funding bodies. In some cases, compensation is paid according to the model developed by the Association of Swedish Higher Education Institutions (SUHF) in cooperation with certain funding bodies⁴⁵, or according to the model that Vinnova has developed⁴⁶. Some funding bodies compensate indirect costs on a flat-rate basis, for example as a percentage of direct costs. In practice, this may mean that not all costs are compensated.

Whether or not depreciation, investment and reinvestment costs can be included, and in what circumstances it is appropriate to include them in the calculation of the costs that forms the basis for the public grant, also depends on the conditions imposed by the funding body.

Collaboration without external funding body between non-economic activities of HEIs or research institutes – Projects involving a number of HEIs, research institutes or government agencies can be financed via the direct government core funding. There is then scope for the parties to influence how costs are calculated and compensated.

45. SUHF-modellen i verkligheten, Association of Swedish Higher Education Institutions, June 2011, ISBN 978-91-979437-0-3.

46. Anvisning till stödberättigande kostnader, Vinnova, januari 2023, Dnr: 2022-03530. An English translation can be found here: <https://www.vinnova.se/globalassets/huvudsajt/sok-finansiering/regler-och-villkor/dokument/engelska/instruction-to-eligible-costs-eng-2025.pdf>



Procedure for pricing

Consider in principle the same steps 1–4 as under the heading *Determine the cost of a technical product or service* for Category 1.

Compensation as direct or indirect costs

Access to and the use of research infrastructures in projects incurs both direct and indirect costs for the host organisation. Indirect costs are often not fully compensated in externally funded projects. It may therefore be reasonable to identify more costs as direct – where possible according to applicable accounting principles – by linking them to the use of the research infrastructure.

To identify costs as direct costs, the indirect costs associated with the research infrastructure need to be reported separately and allocated based on the use of the research infrastructure, such as the number of available hours or number of tests. The alternative – not reporting these costs separately – means that these costs are subsumed in a general overhead.

Recording indirect costs separately involves extra work. The rules on how this must be done for the cost to be compensated as a direct cost may vary between funding bodies. The EU rules state that the cost must be declared as a unit cost according to the organisation's usual cost accounting practices⁴⁷. This requires, for example, separate recording of indirect costs and logging of the use of the research infrastructure to be implemented uniformly across the organisation in the common accounting system. This means that separate recording can only be implemented in consultation with the finance function of the host organisation. Therefore, you need to:

- assess whether it is cost-effective to introduce separate recording of indirect costs linked to the research infrastructure, in order to get compensation for the use of the research infrastructure as a direct cost;
- bear in mind that the above assessment is especially relevant to the compensation of costs in EU projects, or for other funding bodies who compensate indirect costs on a flat-rate basis.

47. EU Grants: AGA — Annotated Grant Agreement: V2.0– 01.04.2025 Internally invoiced services D.2, paragraph 1. 2 page 110.



Pricing Category 3 – Other access to research infrastructure

Category 3 refers to access that cannot easily be placed in Category 1 or Category 2. This includes access to research infrastructure that has public funding but also has contracted participation (collaboration) from undertakings operating in a market. Pricing in Category 3 always requires the research infrastructure to consult internally before making pricing decisions.

Participation of undertakings in publicly funded research projects

Companies (undertakings) may be part of research projects with an HEI or research institute, and this often occurs in projects that are funded following calls for proposals from, for example, Vinnova. Such project grants often require co-financing from the participating parties, including companies. When a company (undertaking) is the co-financer in such a case, the funding body makes an assessment as to whether the undertaking complies with the rules for state aid, and sets out the grounds for this in the grant decision.

Provisions for the transfer or granting of results and IPR are set out in the EU rules on indirect State aid for cooperation with undertakings (see section 2.3 above). No indirect state aid is awarded to the undertakings if the project is carried out in the form of 'effective collaboration' and if one of the following conditions is met:

- a. The participating undertakings bear the full cost of the project.
- b. The results of the collaboration which do not give rise to IPR may be widely disseminated. Any IPR resulting from the activities of research organisations or research infrastructures are fully allocated to these entities.
- c. Any IPR resulting from the project, as well as related access rights, are allocated to the different collaboration partners in a manner which adequately reflects their work packages, contributions and respective interests.
- d. Research organisations or research infrastructures receive compensation corresponding to the market price of the intellectual property rights (IPR) resulting from their activities that are transferred to the participating legal persons. The total value of any contribution – both financial and non-financial – of the participants to the costs of the research organisations or research infrastructures' activities that resulted in the IPR concerned, may be deducted from that compensation.



Recommendations



- If point a is applicable, you can refer to the project falling within Category 1.
- If points b–d are applicable, it gets complex both legally and in terms of compensation. The research infrastructure should then consult the financial and legal expertise within the host organisation in order to apply provisions that comply with the EU framework for indirect state aid through the consortium agreement.
- When projects require a consortium agreement or similar, the host organisation must be prepared for a labour-intensive process. It is advisable to begin these discussions as early as possible, as many funding bodies set a definite deadline for when consortium agreements must be signed after funding has been granted.

Assignments on behalf of companies when there is no market price

When HEIs or research institutes carry out research or supply technical products or services on behalf of companies, the external user (the company/undertaking) must pay a certain price for the research/assignment. If there is a market price, this is set as described under “Pricing – [Category 1](#)”.

If it is not possible to determine a market price, the price is set to correspond to the cost. Alternatively arm’s length negotiations are conducted where the research infrastructure negotiates in order to obtain the maximum economic benefit and at least cover the marginal costs of the service⁴⁸.

Another scenario where there is no market is where the research organisation or research infrastructure provides a specific research service or carries out contract research for the first time on behalf of a given undertaking, on a trial basis during a clearly limited period of time. The Commission will normally consider the price charged to be a market price where that research service or contract research is unique and it can be shown that there is no market for it⁴⁹.

48. Communication from the Commission Framework on State aid for research, development and innovation (2022/C 414/01) p. 26

49. Communication from the Commission: Framework for State aid for research and development and innovation (2022/C414/01), Revision (43).



Principles and methods for calculating the cost have been discussed above, see [Category 1](#).

Marginal cost is the increase in cost that arises from producing one additional unit of a service or product. It is calculated as the change in total cost divided by the change in quantity produced⁵⁰. In some cases, producing an additional unit can be done partly using existing resources, such as equipment or facilities, with little or no extra cost to the host organization. The marginal cost could then be lower than the total cost per unit.



Recommendations



- The research infrastructure should consult with legal and financial expertise at the host organisation to determine whether the conditions exist to apply the marginal cost provision.
- Determination of marginal cost is done in a manner that is consistent for the host organisation, documented and supported by the financial system.

50. Eklund, Klas (2005). Our Economy (10th edition). Norstedts Akademiska Förlag, pp. 78–81. ISBN 91-7227-435-2.

2.6 The Ordinance on Fees for Research Infrastructures (2022:1378)

A government agency, such as a public-sector HEI, may charge fees for products and services that it provides if compatible with an act, ordinance or a separate decision by the Government. The Ordinance on Fees for Research Infrastructure (2022:1378)⁵¹ gives public-sector HEIs a specific authorisation to charge fees for granting external users access to research infrastructure. When applying the Ordinance, the definition of research infrastructure adopted by the EU applies⁵².

This Ordinance, which entered into force on 1 October 2022, provides public-sector HEIs with better conditions for making research infrastructures accessible to other parties, and enables their wider use, which is expected to contribute additional benefits to society.

Prior to this Ordinance coming into force, fees for access to research infrastructure were charged under the general authorisation in Section 4 of the Fees Ordinance⁵³. To be able to charge fees for products and services under the general authorisation, they must be of small size or a temporary nature. The general authorisation also limits what fees may be charged for⁵⁴. The new Ordinance on Fees for Research Infrastructures gives HEIs a specific authorisation to charge fees for providing research infrastructure at a rate up to

51. Section 3, Fees Ordinance (1992:191).

52. Article 2(91) of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty. The definition reads as follows:

'Research infrastructure' means facilities, resources and related services that are used by the scientific community to conduct research in their respective fields and covers scientific equipment or sets of instruments, knowledge-based resources such as collections, archives or structured scientific information, enabling information and communication technology-based infrastructures such as grid, computing, software and communication, or any other entity of a unique nature essential to conduct research. Such infrastructures may be 'single-sited' or 'distributed' (an organised network of resources) in accordance with Article 2(a) of Council Regulation (EC) No 723/2009 of 25 June 2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC) (40); The definition is seen as covering all aspects of making research infrastructure accessible to other parties, and includes the staff, skills and peripheral materials needed to use it.

53. Fees Ordinance (1992:191).

54. The general authorisation covers: 1. journals and other publications, 2. information and course material, 3. conferences and courses, 4. advice and other similar services, 5. premises, 6. equipment, 7. public procurement and resource coordination, 8. automatic data processing information in a format other than hard copy, 9. Information provided by telephone, 10. service exports.

full cost recovery. The fee may include the total costs incurred in the provision of a research infrastructure, including staff, skills and peripheral equipment. However, this does not apply to such research data that must be made available free of charge under the Public Sector Data Accessibility Act⁵⁵. The specific authorisation does not entail any obligation to charge fees, but simply provides an option and entitlement to do so.

This separate ordinance takes precedence over the general authorisation in Section 4 of the Fees Ordinance (1992:191). When an HEI intends to make a research infrastructure available and the requirements are met, fees should thus be charged with reference to the new Ordinance.

The legal basis for charging fees under the Ordinance on Fees for Research Infrastructures – Being able to charge fees for research infrastructure is predicated on the following:

1. the research infrastructure is wholly or partly under the control of the HEI;
2. the HEI has established and documented criteria for access to the research infrastructure; and
3. the research infrastructure is supplied within the framework of the HEI's tasks.

Putting this into practice – Because HEIs in Sweden have different structures and orders of delegation, how the Fees Ordinance is implemented may be somewhat different from HEI to HEI. However, in general:

- The HEI needs to establish whether Requirements 1 and 3 above are met.
- The HEI is responsible for establishing criteria for access to the research infrastructure – Requirement 2. The purpose of the criteria is to clarify for different categories of external user which research infrastructures are available, how external users can access them, and to ensure that the pricing is transparent.

Appropriate criteria to include and describe are:

1. Which research infrastructure is available to external users.
2. What is required to get access to the research infrastructure.
3. The amount of the fees or the principles for determining the amount of the fees for external use.
4. Principles for prioritising external use in the event of limited access.
5. How an external user should proceed to get access to research infrastructure.

55. Public Sector Data Accessibility Act (2022:818) Chapter 4, Section 3.

The size of the fees and the right to utilise the fees income – the Ordinance on Fees for Research Infrastructures also includes specific authorisations concerning the size of the fees that may be charged and the right to utilise the fees income. HEIs may decide on the size of the fees up to full cost recovery. Where necessary in order to avoid distorting competition in the market, the amount of the fees should be market-based. In addition, the HEIs may utilise the fees income up to full cost recovery. Income from fees that exceeds full cost recovery must be reported under an income heading.

Recommendations

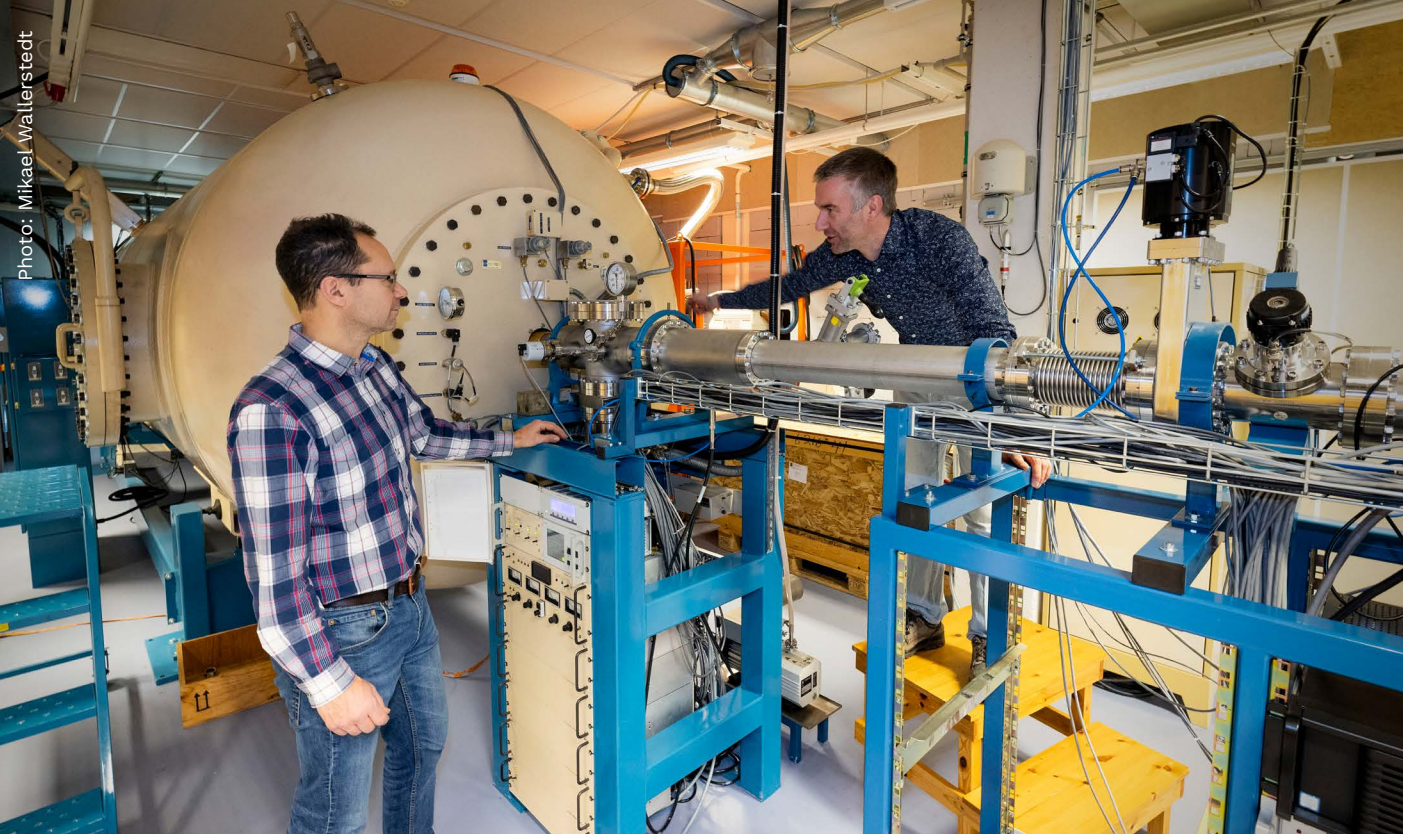


- The specific authorisation (SFS 2022:1378) takes precedence over the general authorisation⁵⁶.
- Ensure that the research infrastructure complies with Requirements 1) and 3) above, which should be established by the host organisation.
- Use the points in the proposed criteria for access 1–5 above to justify how well the research infrastructure meets Requirement 2) above.
- Ensure that an accounting procedure is in place to report the income received separately pursuant to the new Ordinance.
- It is appropriate for the host HEI to regularly evaluate the scale of the access provided, and the need to apply the specific authorisation.
- In accordance with the ESV report⁵⁷, in some cases, charging fees may be justified under the general authorisation when access to research infrastructure is provided to external users on an ad hoc basis. It is therefore important to justify the scale of access as before.

For more detailed information on the Fees Ordinance, see Annex 1 – Instruction and Guide to the Ordinance on Fees for Research Infrastructures.

56. Fees Ordinance (1992:191).

57. Rapport Uttag av avgifter för forskningsinfrastruktur, ESV 2020:13.



The Tandem Laboratory is a research infrastructure focused on mass spectrometry, ion beam material analysis, and ion beam modification.

3 Agreements and contracts, secrecy and intellectual property rights

This chapter is particularly relevant to research infrastructures hosted by public-sector HEIs. The text aims to facilitate the development of procedures linked to external access to the research infrastructure.

Access to research infrastructures is almost exclusively subject to some form of agreement or contract that regulates, for example, public access to informant and secrecy, intellectual property and intellectual property rights. There are mainly three forms of access to research infrastructures: Technical service or product; Contract research; Research collaboration.

A technical service or product refers to deliveries to an external user that do not entail the research infrastructure carrying out any research or development work. Such deliveries often require the research infrastructure to provide technical staff and skills to interpret and apply the results.

Contract research refers to an HEI carrying out research on behalf of a person, who may be a natural or legal person. A public-sector HEI may charge fees for contract research and require full cost recovery. Research results usually accrue to those who have commissioned the research, but there are exceptions.

Research collaboration means that an HEI conducts research in collaboration with one or more other parties, such as companies/undertakings, other HEIs and/or research institutes. Through collaboration, the parties contribute resources jointly in the form of, for example, financial resources, materials and expertise. How the results, and the intellectual property rights deriving thereof, are allocated should be regulated in a contract or agreement.

In order to determine which category a project belongs to, it is crucial to ask the question: “Are we conducting research or development as part of the access?” If this is not included, it is reasonable to provide only a technical service or product. This does not rule out the research being conducted as supplementary to the service or product.

3.1 Access to a technical service or product

A technical service or product differs from contract research or research collaboration in that the research infrastructure does not carry out any research or development work in connection with the access.

Granting external users access to research infrastructure often requires not only providing the equipment itself, but also the staff, skills and peripheral materials needed to use it. When assessing the suitability of supplying a technical service or product, the research infrastructure must take into consideration whether the external user intends to use the service for research, development or other appropriate purposes.

Many research infrastructures require at a minimum that a contract or agreement is entered into for the services. The design and content of these contracts/agreements may vary depending on the nature and organisation of the research infrastructure. It is easier if there is a basic template to start from that covers the services that the research infrastructure offers. If research is included, separate contracts for contract research or agreements for research collaboration can be used to cover specific provisions concerning how to deal with matters that require change or development in connection with the research (see Sections [3.2](#) and [3.3](#)).

Below are examples of what might be regulated in a contract or agreement for access to a technical service or product:

- General terms and conditions regarding access, liability, personal data protection, amendments, insurance, supervision of staff, safety regulations, health and safety in the work environment and a code of conduct.
- Definitions of terms.
- Fees and payment terms.
- Communication channels/contacts.
- Terms and conditions for technical assistance/operators.
- Terms and conditions for the handover and post-processing of results.
- Terms and conditions governing any generated IP.
- Scheduling and termination of assignments.
- Handling of secrecy and confidentiality.
- Terms and conditions governing breaches of contract.
- Terms and conditions covering property and materials, warranties and liability.
- Terms and conditions related to the employees affiliation.
- Force majeure clauses.
- Clauses concerning the applicable law and settlement of disputes.
- Terms governing any form of publication, including acknowledgements, etc., for published results.

It is also appropriate to have standard wordings for aspects of the agreement where supplementary terms may be applicable, or which are changed/replaced entirely if the service is also linked to a research assignment:

- IP rights, including who owns them, background information, and who owns the IP linked to the service performed or analytical methods and any development thereof.
- Commitments by the parties not to apply or interpret the contract in such a way as to constitute a breach by either party of EU state aid and competition law rules.

Variation in terminology – There is variation in the terminology used within different research infrastructures that may be due to traditions in different disciplines, for example. The most important thing is to be clear about what technical service or product is being offered.

Who should sign a contract or accept the terms? – Contracts and agreements are formally concluded by the host organisation of the research infrastructure and must be signed by a person who has been delegated this responsibility.

Recommendations



- Competition law and state aid rules must be complied with. See also Chapter 2.
- Establish a standard template for the contract or agreement. This should always be done in consultation with the organisation's lawyers and other responsible roles.
- It may be appropriate to ensure, through an order of delegation or similar, that the research infrastructure's director or equivalent has the right to accept an assignment as long as it does not entail the need for any major changes to the standard contract or agreement. If the director or equivalent cannot be delegated the right to accept assignments, it is advisable that the line between the person who is authorised to sign contracts and the director is as short as possible, and that these assignments can be handled routinely and efficiently.
- An external user may need to include research carried out by staff of the research infrastructure during the course of the assignment. If such a situation arises, there are other aspects that must be taken into account, which are discussed below in Section 3.2. When modifying standard terms and conditions outside the given frameworks, individuals at the next level above in the order of delegation should always be involved⁵⁸.

For more detailed information and references regarding granting access to a technical service or product, see [Annex 3 – Technical service or product](#).

3.2 Contract research

Contract research is research conducted on behalf of an external party. As mentioned above in Section 3.1, a research infrastructure at an HEI may provide a technical service or product. This may be provided with associated research assignments. This is either contract research or research collaboration (research collaboration is discussed below in Section 3.3).

58. In different organisations, these have different names including Director, Division Head, Head of Department, Dean, up to CEO or Vice-Chancellor depending on the scope of the special assignment and the order of delegation that must be followed.

When granting access via contract research, it is important to define which parts of the results accrue to the external user. Most HEIs and research institutes already have well-developed templates for contract research. You can also refer to the terms and conditions in standard contracts for access to technical products or services with added special terms⁵⁹

Such special terms that apply to contract research are usually the following:

- Description of the research to be conducted.
- Intellectual property rights (IPR), including who owns them, background information and who owns the IP associated with the assignment performed, i.e. the development of the service itself or the products or methods for the performance thereof. In some cases, participating staff may need to sign research approvals.
- Publication of research results and the research license.

Recommendations



- Competition law and state aid rules must be complied with (see Chapter 2).
- Use templates for contracts and agreements for contract research, if they exist.
- Include a description of how results that are not part of the assignment itself are handled – for example, methodology development and any services or products that are linked to the assignment.
- For contract research, as a general rule market pricing should be applied, provided that there is a market for the services and that a market price can be determined. For advice on pricing, see Chapter 2.

3.3 Research collaboration

The second variant of a technical service or product with associated research is when it is provided as part of a research collaboration. This means that research is conducted in collaboration with one or more companies/undertakings, HEIs and/or research institutes. The parties contribute resources jointly to the

59. The European Commission states that the contracting undertaking typically specifies the terms and conditions of the contract, owns the results of the research activities and carries the risk of failure. Communication from the Commission Framework for State aid for research and development and innovation 2022/C 414/01, point 26.

collaboration in the form of, for example, financial resources, materials and expertise⁶⁰. When a research infrastructure is involved in these collaborative projects, it is because there is a need in the research collaboration for services that can be delivered by a research infrastructure. Research collaborations are commonly funded in whole or in part by grants from central government funding bodies. There may be instances where it is difficult for research infrastructures to participate in a research collaboration, for example in EU projects where the project parties may not invoice each other. In such cases, it is important that the budget includes scope for the research infrastructure to receive sufficient compensation to recover its costs.

Research collaboration is usually co-financed by the participating parties who may have received grants from various government agencies, such as the Swedish Research Council. These grants often come with their own terms and conditions that must be observed.

In addition to the terms listed in Section 3.1 for the provision of technical services or products, it is common for research collaboration contracts and agreements to include the following:

- A description of the research to be conducted.
- Who owns the results and who has the right to publish them.
- IPR, including who owns them. Background information and who owns the IP associated with the assignment performed, i.e. the development of the service itself or the products or methods for the performance thereof. In some cases, participating staff may need to sign research approvals.
- Publication of research results and the research license.
- A description of the available resources and how the research has been financed.

60. The European Commission specifies that a project is considered to be carried out through effective collaboration where at least two independent parties pursue a common objective based on the division of labour and jointly define its scope, participate in its design, contribute to its implementation and share its financial, technological, scientific and other risks, as well as its results. One or several parties may bear the full costs of the project and thus relieve other parties of its financial risks. The terms and conditions of a collaboration project, in particular as regards contributions to its costs, the sharing of risks and results, the dissemination of results, access to and rules for allocation of IPR, must be concluded prior to the start of the project (this does not include definite agreements on the market value of resulting IPR and the value of contributions to the project). Communication from the Commission Framework for State aid for research and development and innovation 2022/C 414/01, point 28.

Recommendations



- Competition law and state aid rules must be complied with (see Chapter 2).
- Contracts and agreements should specify what happens to different types of results in terms of, for example, publication and how generated IP and IPR are distributed between the parties.
- The research part should be described as clearly and specifically as possible in order to minimise the risk that the work done goes beyond what is covered in the contract or agreement.
- Include a description of what happens to generated results that are not within the framework of the assignment itself, such as methodology development, and any services or products linked to the assignment.

3.4 Public Access to Information and Secrecy Act (OSL)

This section deals specifically with confidentiality agreements or confidentiality undertakings for public-sector HEIs. Confidentiality refers not only to non-disclosure of documents, but also the duty of confidentiality. For more information on questions concerning public access and secrecy, refer to [Annex 4 – A memorandum on public access to information and secrecy](#).

Government agencies cannot contract out of what is laid down in the Public Access to Information and Secrecy Act (referred to below as OSL, the Swedish acronym for this Act). Employees of government agencies are covered by a duty of confidentiality under the OSL without first needing to sign any special agreement to this effect.

In principle, there are no obstacles to applying confidentiality linked to the external use of a research infrastructure. It is important that everyone involved in the work understands when data is protected and when it is not, as well as how procedures for processing potentially classified (secret) information or documents work. It is also important to understand when something becomes an official document. Mixing private correspondence with information relating to an activity at a government agency generally leads to the entire correspondence being made public. An employee of a government agency cannot bypass the provisions in the OSL by using private e-mail, communication channels such as WhatsApp and Signal, or otherwise circumventing the agency's communication channels. If someone requests

information and initiates legal action, it is irrelevant how the information has been transmitted.

There are staff who are not included in the contracts. In general, information that is classified should not be shared with these staff unless there is a specific reason for doing so. The most common exceptions for such staff are:

Administrative staff – These staff are required to perform tasks related to the organisation's contractual agreements, including managing confidentiality. For example, it may involve preparing a matter for decision.

Management staff – Line managers or equivalent may have access to correspondence and information related to contracts, for example, when attesting the above decisions.

In general, the following applies:

The OSL contains provisions on confidentiality in contract activities for individuals concerning information that refers to testing, determinations of qualities or quantities, or valuation; scientific, technical, financial or statistical investigations or other assignments that the government agency performs on behalf of an individual. This confidentiality covers contract research carried out by a university or a university college on behalf of an individual. Confidentiality only applies if it must be assumed that the contract has been awarded on the condition that the information is not disclosed.

This condition is fulfilled if the client has requested that confidentiality shall apply. However, an explicit request for confidentiality by the client is not always necessary.

For confidentiality to apply however, the information must be of such a nature that the absence of confidentiality protection would be considered so significant for the client that they would have refrained from contracting with the university without such protection. Confidentiality enables HEIs to enter into contract research agreements with individual clients, meaning that the data in question may not be disclosed pursuant to the OSL.

There are confidentiality provisions that are sufficient to cover all the forms of interaction discussed in this chapter and in the chapter before it:

Supply of technical service or product. Confidentiality applies to information concerning the execution of a scientific or technical investigation commissioned by a government agency on behalf of the public, or to the results of such an investigation, if it can be assumed that the public would suffer damage if the information were disclosed.

Contract research. Confidentiality applies to information related to testing, determinations of qualities or quantities, or valuation; scientific, technical, economic or statistical investigation or other such assignment performed by the government agency on behalf of an individual, if it must be assumed that the contract has been awarded on the condition that the information is not disclosed.

Research collaboration. Confidentiality applies in the HEIs for information about an individual's business or operational circumstances, inventions or research results that have been submitted or come to light in the research conducted, pursuant to an agreement, in collaboration with an individual, if it must be assumed that the individual has participated in collaboration on the condition that the information is not disclosed.

The object of the confidentiality is information on the execution of a scientific or technical investigated commissioned by a government agency on behalf of the public as well as the results of such an investigation. Information on the execution of an investigation may refer to, for example, the technology or method used, which may also include information on the consumables used if this can be considered to disclose information about the methods used.

Since government agencies and HEIs cannot contract out of the OSL provisions, there must always be a valid justification supported by a confidentiality provision in the OSL. This is because confidentiality can always be reviewed in a court of law. In addition, in principle confidentiality is valid for a limited period; usually 10 years for HEIs.



Photo: Mikael Wallerstedt

CRISPR Functional Genomics at SciLifeLab specializes in CRISPR technology across a wide range of applications, offering for example gene editing and genomic screenings.

Information about an individual's (for example, an undertaking's) business or operational circumstances, inventions or research results is protected by a number of provisions on confidentiality in the OSL and in the Act on Trade Secrets (2018:558). In some instances, external users require that a non-disclosure agreement be drawn up at the initial meeting. However, such agreements can never go beyond what the OSL permits for HEIs.

Recommendations



- **Provide information early and transparently about how confidentiality is handled** – This includes having information that is easily accessible by external users. Initially, there should be a discussion about the need for confidentiality. It is important to point out that the need for confidentiality must be supported by the OSL for it to apply.
- **Management of confidentiality** – Before an official document is disclosed, the government agency must carry out a confidentiality assessment. Therefore, it may be important to include confidentiality markings so that they can be easily found and noted. In all correspondence such as e-mail or written documents, information should be included that clearly indicates:
 - } that the information is confidential.
 - } the OSL provisions on which the confidentiality marking is based. It may also be appropriate to refer to the registration number of contracts or equivalent if these describe more fully the OSL provisions on which the confidentiality markings are based.
 - } People involved in the assignment, along with their roles, can be included in a standard afterword, vignette, or similar. This is to ensure that it is easy to keep correspondence that is relevant to a task within the group.
- To be able to manage this process speedily, it is a good idea to prepare a contract template in consultation with experts, if available, and have this ready on hand to present to external users. Confidentiality and how it is managed should also always be included in access contracts, general terms and conditions, and other contracts and agreements relating to the provision of technical services or products, contract research, or research collaboration.
- Ensure that the person signing the confidentiality agreement has the authority to do so, if the assessment is made that an initial confidentiality agreement is needed. Since these agreements are sometimes needed in discussions with external users, it may be appropriate for the director of the research infrastructure to be

delegated the authority to sign agreements that are based on the host organisation's own templates. In some instances, it is important that the external user is offered an agreement that includes the signatures of everyone present at discussions.

- Inform external users about what is required for a government agency to sign a confidentiality undertaking, to present its own templates, and to communicate that it is likely to take much longer if the external user insists on using their templates, which must then be reviewed from scratch by the government agency's lawyers.
- If specific confidentiality requirements apply, sensitive data may be transmitted via a private actor or mediator.

3.5 Intangible assets (IP) and protection for these (IPR) in assignments linked to HEIs that have the teacher exemption

This section is primarily relevant for public-sector higher education institutions. The sale or licensing of IP can be part of the business model of an institute-based research infrastructure and assurance that the institute's assignment can be completed. They generally have detailed contracts covering such aspects.

Often, generated IP is not a central issue for offers of technical services or products, as research is not carried out as part of such access. IP may be relevant to contract research and research collaboration, in which case it is important to clarify whether or not the staff of the research infrastructure are covered by the teacher exemption. The application and interpretation of the teacher exemption varies at HEIs, as some questions are not clearly regulated in the law and have not been determined by precedent in a court.

Teacher exemption

The teacher exemption is set out in the Act (1949:345) on the Right to Employees' Inventions (below 'LAU', the Swedish acronym of this Act)⁶¹. Taking a broader view of the term, it includes more exemptions, namely exemptions in relation to intangible assets other than patentable inventions. According to LAU, employers have the right to retain exclusive rights to patentable inventions

61. https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/lag-1949345-om-ratten-till-arbetstagares_sfs-1949-345/

created by an employee as part of their work. The teacher exemption according to LAU is an exemption that gives teaching staff at Swedish HEIs personal rights to their (patentable) inventions. What staff and which types of intellectual property/rights are covered by the teacher exemption is interpreted differently by different HEIs and is usually regulated in the HEI's IP policy. Furthermore, the scope and applicability of the teacher exemption is likely to be dependent on other rules in the legal system, in particular labour law rules concerning the employer's responsibilities and rights in relation to their employees. Therefore, there is variation between HEIs in the scope of how the teacher exemption is applied. In most cases, teacher exemptions only apply to teaching or research staff, but technical and administrative staff (TA staff) may also be covered by the teacher exemption.

It is important that assignments from external users can be carried out without employees being able to individually invoke rights to the IP generated. Furthermore, employees often have several roles within the same organisation, since an employee can be a researcher in one role and technical/administrative staff in another.

Recommendations related to the teacher exemption



There is variation in how the teacher exemption is applied and interpreted, even between different HEIs. It is always up to each organisation to decide how these matters should be dealt with. It is therefore important that the employees covered by the teacher exemption do not have such a role in performing the provision of a technical service or product. Employees who are covered by the teacher exemption should have renounced the rights granted to them by the teacher exemption when working within a research infrastructure. This can be done in various ways, for example:

- If TA staff are not covered by the teacher exemption according to the host organisation's rules, you can distinguish between when the employee is covered by the teacher exemption by clearly inserting the different roles into the organisation's HR system and ensuring that it is clear which working hours are registered under which role.
- If TA staff are covered by the teacher exemption, you can follow the procedure above. In addition, the employee needs to renounce their rights to the teacher exemption, either by means of a written agreement or through a job description. Alternatively, you can ensure that work is always done under agreements that regulate what happens to inventions from employees who are covered by the teacher exemption.

If this is not regulated consistently, it can lead to additional work and confusion in relation to external users.

Managing IP matters – Contracts that concern IP and IPR and which deviate from the given templates must always be reviewed by the government agency's lawyers or staff designated as responsible for this. For directors or staff of a research infrastructure, confidentiality must be maintained around potential IP, and everyone involved must have an understanding of the patenting process, especially when new IP is generated.

Questions about IP and IPR are dealt with in more detail in [Annex 5 – Problems in the area of intellectual property and making research infrastructures accessible at Swedish HEIs.](#)



Photo: Charlotte Carlberg Bårg

The cleanroom laboratory at Lund Nano Lab is part of Myfab and provides equipment for fundamental research and development in materials science, nanotechnology, microelectronics, life sciences, and quantum technology.

Recommendations



- If the contract between the research infrastructure and the external user does not contain a detailed description of IPR, a discussion with the user should always be initiated before starting a project in order to determine whether the user intends to protect any inventions by means of patents or concealment.
- Users or external users should be informed that the confidentiality protection for information in official documents at HEIs is only valid for a maximum of ten years. If the user intends to keep the inventions or other information secret, it is particularly important to investigate whether confidentiality may apply and to reflect on the consequences and benefits for the organisation that manages the research infrastructure of participating in the project. To the extent possible, it should be clearly stated in the contract research or research collaboration agreement whether or not the results shall constitute trade secrets.

Annexes

Annex 1 – Instruction and Guide to the Fees for Research Infrastructure Ordinance

1. Fees for the use of research infrastructure and criteria for access to research infrastructure – A guide for public-sector HEIs

This Annex deals with questions related to the Fees for Research Infrastructure Ordinance (2022:1378), which entered into force on 1 October 2022. The Ordinance contains provisions on the charging of fees for the use of research infrastructure provided by higher education institutions where the accountable authority is central government (the state). The purpose of the guide is to provide public-sector higher education institutions with support in dealing with questions concerning the charging of research infrastructure fees and in their work to establish and document criteria for access to research infrastructure as regulated in the Fees for Research Infrastructure Ordinance.

[Fees for the use of research infrastructure and criteria for access to research infrastructure – A guide for public-sector HEIs](#)

2. Guidance concerning criteria for access to research infrastructure under the Fees for Research Infrastructure Ordinance (2022:1378)

This guide was developed from a user perspective and complements *Avgifter för forskningsinfrastruktur och kriterier för tillgänglighet till forskningsinfrastruktur – en vägledning för statliga universitet och högskolor* [User access fees and criteria for access to research infrastructure – A guide for public-sector higher education institutions] which elaborates on the Fees for Research Infrastructure Ordinance (2022:1378)]

[Guidance concerning criteria for access to research infrastructure under the Fees for Research Infrastructure Ordinance](#)

Annex 2 – Offerering, pricing and competition matters for lab infrastructures

This Annex aims to facilitate the pricing of services offered at research infrastructures. It summarises the conditions and regulatory framework that must be considered, and includes how this can be applied to questions related to pricing and procedures.

Read and download the document (in Swedish):

[Offerering, pricing and competition matters for lab infrastructures](#)

Annex 3 - Technical service or product

This Annex deals with questions concerning research infrastructures offered by public-sector HEIs that provide technical services or products to external users. The Annex aims to clarify what may be included when providing the service or product, and how this may differ from what constitutes contract research or research collaboration.

Read and download the document (in Swedish):

[Technical service or product](#)

Annex 4 – A memorandum on public access to information and secrecy

This Annex deals with questions related to public access to information and secrecy. It aims to generally clarify what applies regarding public access and secrecy with a focus on research activities, including research infrastructures, at public-sector HEIs.

Read and download the document (in Swedish):

[A memorandum on public access to information and secrecy](#)

Annex 5 – Problems in the area of intellectual property and making research infrastructures accessible at Swedish HEIs

This report was prepared by Stockholm University to help develop a usual practice with recommendations on how questions such as secrecy and questions related to intellectual property rights should be managed. The report is not part of the project but has been used as a basis for the parts dealing with IP and IPR.

Read and download the document (in Swedish):

[Problems in the area of intellectual property and making research infrastructures accessible at Swedish HEIs](#)

Open SESAM(E)!

Swedish higher education institutions (HEIs) and research institutes possess advanced research infrastructures that are essential for driving Swedish research and innovation forward. Many other actors in society also request to gain access to these unique resources – but that is easier said than done. There is uncertainty regarding the interpretation of the regulations that in various ways govern how research infrastructures may be used by external actors.

This handbook is primarily intended as guidance for higher education institutions on how to make their research infrastructures accessible to external actors, but it also contains relevant information for research institutes.

The handbook has been developed within the framework of the SESAM project (SvEnsk SAMverkan [Swedish collaboration] for access to laboratory infrastructure), a project funded by Vinnova. Lund University, Stockholm University, Uppsala University, and the research institute RISE have participated in the project. Additional HEIs and more than forty research infrastructures have also contributed to its content.

