

## Legal mechanism, including draft Merger Treaty

This document provides information on the legal mechanism and process to be used for the purpose of merging the International Council for Science (ICSU) and the International Social Science Council (ISSC) under the French Law on associations. It details implications for the nature and timing of decisions to be made by the members of both Councils.

### 1. The merger mechanism: merger-absorption

Both ISSC and ICSU are non-governmental associations under the 1901 French Law on associations. This Law provides two possible mechanisms to accomplish a merger, namely:

- The dissolution of the two entities and creation of a new one (merger-creation); or
- The dissolution of one entity and its absorption into the other (merger-absorption).

Regardless of which mechanism is used, the consequences of a merger for membership status, for staff contracts and for the organisational assets and liabilities are the same for a new organisation. Both options will automatically result in the following:

- Membership of the new Council for all existing ICSU and ISSC members;
- The transfer of all permanent members of staff to the Headquarters of the new Council; and
- The transfer to the new Council of all existing assets and liabilities of the absorbee.

Following extensive discussions by the Transition Task Force (TTF) on the pros and cons of the two merger mechanisms, and based on legal advice secured separately by both ICSU and ISSC, the two Executive bodies have agreed that the absorption of the legal entity “ISSC” by the legal entity “ICSU” offers the most efficient route to achieving a merger. It will significantly reduce the administrative burden and costs of the process and avoid the need to renegotiate the recently secured agreement of the French Ministry of Higher Education and Research for ICSU to occupy the premises at *5 rue Auguste Vacquerie* at no cost until 31 December 2024<sup>1</sup>.

It is important to stress that the choice for a merger-absorption mechanism and, by implication, the absorption of the legal entity “ISSC” by the legal entity “ICSU”, should be regarded purely in legal and technical terms. The Executives have agreed that it does not alter the political nature of the process, which is for ISSC and ICSU to jointly create a new Council, with a new strategy, new statutes and rules of procedures and a new name based on the discussions and agreements to be reached by members during the Joint Meeting of ICSU and ISSC on 25-26 October 2017 in Taipei (‘October 2017 Joint Meeting’).

### 2. The merger-absorption process

There are two phases to accomplishing the merger via a merger-absorption mechanism. Both entail decision making by the members of ICSU and ISSC.

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<sup>1</sup> ISSC staff will join ICSU staff at these premises as agreed by the Executive bodies of both organisation.

## 2.1 Phase One: Merger agreement

On 26 October 2017, ICSU and ISSC members will be asked to *vote in favour or against a merger* of the two Councils. This merger agreement is necessary for purposes of initiating the legal implementation process of the merger as explained in point 2.2 below.

It is important to note that the vote in favour or against a merger will be made on the basis of members' discussions about the merger documents submitted for the October 2017 Joint Meeting and agreements on the various proposals made, including that of a new strategy (doc. JM/5), dues structure (doc. JM/6), statutes and rules of procedure (doc. JM/7a and JM/7b).

If necessary, agreement on specific proposals (e.g., concerning membership categories, voting arrangements or the name of a new Council) will be reached via formal and separate voting procedures.

Should the October 2017 Joint Meeting vote be in favour of a merger, ISSC and ICSU members will be asked there to take four further decisions, as follows:

### a). *Merger Treaty*

Members will be asked to mandate the ISSC and ICSU Presidents – Alberto Martinelli and Gordon McBean – to finalise a formal Merger Treaty and initiate the legal process of implementing the agreed merger via a merger-absorption mechanism.

A Merger Treaty represents a formal agreement between ICSU and ISSC. The document will include essential information about:

- the merging entities, including a statement of their purpose and objectives;
- the date on which the merger will take effect;
- the legal mechanism of the merger;
- the transfer of assets and liabilities;
- the final set of Statutes and Rules of Procedure of the new Council (reflecting agreements reached during the Taipei meeting); and
- the numbers of staff and their rights regarding employment benefits.

A generic draft Merger Treaty is added to this document as Annex.

### b). *Date of Merger*

For purposes of finalising the abovementioned Merger Treaty, members will be asked to agree on the date on which the merger should take effect. This decision should be taken during the October 2017 Joint Meeting.

In line with the legal process requirements and deadlines presented in point 2.2 below, the Executives recommend that the date on which the merger would come into force should coincide with the date of the new Council's founding General Assembly, to be held either in France or in Japan before the end of October 2018 (see point 2.1. (c) below).

If members agree to this recommendation, the 2018 Founding General Assembly will mark the formal – and legal – launch of the new Council. This will coincide with the election of the Council's first Governing Board.

c). *Date and Place of 2018 founding General Assembly*

Based on a consideration of proposals submitted by Japan and France (doc. JM/12), the date and place of the Founding General Assembly in 2018 will also be decided by members during the October 2017 Joint Meeting.

d). *Election process for establishing a new Governing Board*

With regard to the election of the new Council's Governing Board during its founding General Assembly in 2018, members will be asked to agree that this process should be conducted in accordance with the new Statutes and Rules of Procedure that will be discussed and agreed during the October 2017 Joint Meeting.

## 2.2 Phase Two: Legal implementation of the merger agreement

The merger implementation phase includes three related decisions, which are required to realise the October 2017 Joint Meeting merger agreement and to make the merger legally binding. The three decisions to be taken by ICSU and/or ISSC members are outlined below. They will entail electronic voting (with the qualified majorities specified in the current ISSC Constitution and ICSU Statutes<sup>2</sup>). For reasons described below, the earliest date on which such voting could take place is 26 April 2018 and the Executives propose that this should indeed be the date to aim for.

The three decisions are:

a). *For both ISSC and ICSU: Formal approval of the Merger Treaty*

According to French Law, the Merger Treaty must be approved by the General Assemblies of ICSU and ISSC before it is signed by the Councils' respective Presidents.

French law stipulates that the Treaty be:

- distributed to members and available on the organisations' websites at least one month before the vote (i.e., on 26 March 2018); and
- published (in both English and French) in a French official gazette at least one month before the vote (i.e., on 26 March 2018).

The Merger Treaty will be submitted, in French and English, to members at least three months before the vote (i.e., on 26 January 2018).

b). *For ISSC: Dissolution of ISSC*

Given the choice of a merger-absorption mechanism (see point 1 above), the merger process requires ISSC members to formally agree to the dissolution of the organisation. Article 24 of the ISSC Constitution stipulates that members should be given six months' notice of an Extraordinary General Assembly specifically convened to dissolve the organisation. Such an Assembly can be held electronically. Given that the agreement to merge will be taken on 26 October 2017, the earliest date for requesting ISSC members' agreement to formally dissolve the ISSC would be 26 April 2018. The actual dissolution of the organisation and its absorption into ICSU would only take effect on the date of merger as specified in the Merger Treaty (see point 2.1. (b) above).

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<sup>2</sup> ICSU: Quorum of 50% of the voting members in each membership category, with a two-third majority of members taking part in the vote  
ISSC: a majority of two-thirds of members present and voting, per membership category.

c). *For ICSU: Legal Change of Name and Statutes and Rules of Procedure*

In line with agreements made during the October 2017 meeting, implementation of the merger will require ICSU members to formally agree to change the name, as well as the Statutes and Rules of Procedure of the organisation. According to the existing ICSU Statutes and Rules of Procedure, members must be given six months' notice of a General Assembly meeting during which this decision will be made. Such an Assembly would be held electronically on 26 April 2018. The General Assembly will adopt a Resolution to confirm that the new agreed Statutes and Rules of Procedures will only take effect on the date of the merger as specified in the Merger Treaty.

### 3. Summary

Based on the processes and recommendations presented in points 1 and 2 above, and on the assumption that an agreement to merge is reached during the October 2017 Joint Meeting, the table below summarises the nature of the decisions to be taken by ICSU and ISSC members for purposes of achieving a merger of the two Councils. It indicates the actions that need to be taken by the ISSC and ICSU Executives to enable those decisions to be made, and specifies the associated timing of both actions and decisions. As stated above, all decisions will be taken according to ISSC and ICSU Statutes and Rules of Procedures regarding voting requirements.

<b>Phase One: Merger Agreement</b>		
<b>Action by Executives</b>	<b>Decision by General Assemblies of ISSC and ICSU</b>	<b>Date</b>
ICSU and ISSC Executives: Facilitate discussion and agreement by members on the merger proposals as presented in the documentation submitted for the October 2017 Joint Meeting	N/A	25-26 October 2017
	<i>Decision 1: ICSU and ISSC members Agree to merge; and Mandate the Presidents to finalise the Merger Treaty and initiate the legal process of implementing the agreed merger via a merger-absorption mechanism</i>	26 October 2017
	<i>Decision 2: ICSU and ISSC members Agree on the date on which the merger should take effect (to be included in the Merger Treaty)</i>	26 October 2017
	<i>Decision 3: ICSU and ISSC members Agree on the date and place of the founding General Assembly to be held in 2018.</i>	26 October 2017
	<i>Decision 4: ICSU and ISSC members Agree that the election of the new Council's first Governing Board should be conducted in accordance with new Statutes and Rules of Procedure as agreed during the October 2017 Joint Meeting</i>	26 October 2017

<b>Phase Two: Legal Implementation Process of the Merger</b>		
<b><i>Action by Executives</i></b>	<b><i>Decision by General Assemblies of ISSC and ICSU</i></b>	<b><i>Date</i></b>
ICSU and ISSC Executives: Announce the date and place of the founding General Assembly of the proposed new Council		By close of business on 26 October 2017
ISSC Executive: Give notice to ISSC members of an electronic ISSC (Ex.) General Assembly to be held on 26 April 2018		By close of business on 26 October 2017
ICSU Executive: Give notice to ICSU members of an electronic ICSU (Ex.) General Assembly to be held on 26 April 2018		By close of business on 26 October 2017
ICSU and ISSC Executives: Submit the Merger Treaty to members and publish it on the ICSU and ISSC websites (Note: the Treaty will include Statutes and Rules of Procedures revised on the basis of agreements reached during the October 2017 Joint Meeting)		26 January 2018
ICSU and ISSC Executives: Publish the Merger Treaty in a French official gazette		26 March 2018
	<i>Decision 5: ISSC members Formally agree to dissolve the ISSC</i>	26 April 2018
	<i>Decision 6: ICSU and ISSC members Approve the Merger Treaty</i>	26 April 2018
	<i>Decision 7: ICSU members Formally agree to change the name, Statutes and Rules of Procedure of ICSU</i>	26 April 2018
ICSU and ISSC Presidents: Sign the approved Merger Treaty		27 April 2018

As a result of these decisions the merger will be concluded and the new Council formed, if so decided by the October 2017 Joint Meeting, at the founding General Assembly of the new Council in 2018.

# ANNEX: Generic Draft Merger Treaty

Between the following contractual parties:

[...], hereafter referred to as "PARTY A", on the one side,

and

[...], hereinafter referred to as "PARTY B", on the other side,

it was declared and agreed as follows, with a view to realizing the merger of the two associations by way of absorption of the association PARTY A by the association PARTY B, to form an organisation named [C].

## SECTION 1 - CHARACTERISTICS OF ASSOCIATIONS - GROUNDS of MERGER – DATE OF MERGER

### *A. Characteristics of Associations*

PARTY A is [...]

PARTY B is [...].

### *B. Grounds and purposes of the merger*

[Grounds for Merger]

### *C. Effective Date of the Merger*

The merger will take effect on [DATE MERGER].

### *D. Accounts used*

In order to establish the terms of the transaction, it is decided to determine the accounts closed on [DATE MERGER]. PARTY A will transmit to PARTY B all the elements composing its assets in the state in which the said assets will be on [DATE MERGER].

## SECTION 2 - DESIGNATION OF ASSETS AND LIABILITIES – STAFF – CONDITIONS OF CONTRIBUTION

### *A. Designation and valuation of assets and liabilities for transmission*

PARTY A brings all the elements which constitute its own property, including but not limited to assets, liabilities, rights and values, without exceptions or reserves, to PARTY B.

The assets and liabilities transmitted by PARTY A will be retained for their net book value at [DATE MERGER].

A list of the assets and liabilities that are transferred is included as Appendix [5].

### *B. Staff*

PARTY B will take over all the staff of PARTY A registered in the register of the latter on [DATE MERGER].

The list of staff of PARTY A is given in Appendix 3 with details of their benefits.

These employees are taken over by PARTY B and they retain their social benefits in respect of [...]. The contracts awarded by PARTY A as such are taken over by PARTY B.

### *C. Conditions of Contribution*

#### *a. Property - enjoyment*

PARTY B shall enjoy the goods and rights provided by PARTY A from the date of the finalization of the merger. The contribution of goods and rights will be made without charge.

#### *b. Terms and responsibility*

##### *i. As for PARTY B:*

The present contributions are made under ordinary and legal charges and conditions in such matters, and in particular under the following ones, which the Representative of PARTY B, in his capacity, obliges the latter to perform and execute, namely:

[PARTY B shall take the goods and rights with all their tangible and intangible elements in the condition in which these will be at [DATE MERGER]]

##### *ii. As for PARTY A:*

The present contributions are made under ordinary and de jure guarantees and conditions, and in addition to those which appear in this agreement.

[as representative of PARTY A is qualified to and will provide PARTY B with all the information the latter may need, with all signatures necessary to ensure that the transmission of rights and assets takes place and the full effect of these agreements will be assured;]

## **SECTION 3 - DISSOLUTION OF PARTY A - DELEGATION OF POWERS – MEMBERS OF ORGANISATION C**

### *A. Dissolution of PARTY A*

As a result of the universal transfer of PARTY A's assets and liabilities to PARTY B, PARTY A will be dissolved without liquidation on the day of the finalization of the merger and with effect from [DATE MERGER].

### *B. Delegation of powers to agents*

All the powers are vested in [Representative] of PARTY A and [Representative] of PARTY B, acting as such, who may act jointly or separately, in order to pursue the finalization of operations by themselves or by an agent designated by them.

### C. Members of ORGANISATION C

Members of PARTY A automatically become members of PARTY B (organisation C) on [DATE MERGER] unless they resign.

## **SECTION 4 - DECLARATIONS ON BEHALF OF PARTY A AND PARTY B - REALIZATION OF THE MERGER**

### *A. Declarations on behalf of PARTY A*

The [Representative] of PARTY A, on behalf of PARTY A, declares that it has proposed to the members of PARTY A to approve this Merger Treaty and that the members have done so.

### *B. Declarations on behalf of PARTY B*

The [Representative] of PARTY B, on behalf of PARTY B, declares that it has proposed to the members of PARTY B to approve this Merger Treaty and that the members have done so.

### *C. Realization of the Merger*

The present merger proposal and the dissolution without liquidation of PARTY A will become final as of [DATE MERGER]

## **SECTION 5 - PUBLISHING FORMALITIES**

### *A. Publishing Formality*

The proposed merger will be published by each participating association in a newspaper of the 'Prefecture' entitled to receive legal announcements at the expense of the participating associations. The dissolution without liquidation following the merger by absorption of the association PARTY A will also be the subject of a declaration and a publication in such newspaper.

## **SECTION 6 - ANNEXES TO THE DRAFT MERGER**

Appendix n ° 1: [Statutes and Rules of Procedure of the new organisation C]

Appendix n ° 2: [Accounts of PARTY A as at [DATE MERGER]]

Appendix n ° 3: [List of staff of PARTY A as of [DATE MERGER] and details of their social benefits]

Appendix n ° 4: [Contracts and commitments contracted by PARTY A on DATE MERGER]

Appendix n ° 5: [Statement of the assets of PARTY A]