

# European Economic Interest Grouping (EEIG)

Council Regulation 2137/85/EEC

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Screening process

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# What does the EEIG Regulation offer?

- Introduces the first European legal form
- Provides a uniform legal framework largely independent from the various national legal systems of the EU
- Enables economic operators to co-operate on a transnational basis
- Offers flexibility to its members:
  - no start-up capital requirement
  - members are free to decide on the internal organisation of the grouping, e.g. how to share profits and losses of the EEIG and how to weight votes at the general meeting
  - possibility to transfer the official address of the EEIG from one Member State to another without having to dissolve the grouping



# Law applicable

- EEIGs are governed by the Regulation, national laws and the founding contract
- The Regulation is directly applicable in the Member States and governs:
  - the conditions on formation of the grouping
  - the principles of its internal organisation
  - the protection of third parties (liability and disclosure)
  - the rules on the transfer of the official address of the grouping
- For matters not covered by the Regulation the internal law of the Member State in which the grouping has its official address applies



# Choices left to national legislators

The following matters are left to the discretion of the Member States:

- Recognizing the legal personality of the EEIG
- Prohibition or restriction of the participation of certain categories of persons in an EEIG (e.g. BE: participation of public national credit institution subject to authorization of the competent minister)
- Restriction of the number of members of an EEIG (e.g. max 20 members in EL and IE)
- Allowing legal persons to be managers of groupings
- The automatic exclusion of a member in the event of bankruptcy
- Possibility to reject the transfer of the official address on the grounds of public interest (the option used by ES, IE, UK)
- Winding up or prohibition of an EEIG whose activity is in contravention of a Member State's public interest (the option used by DK, IE, LU, UK)



# Establishment of the EEIG

## Basic conditions and characteristics:

- EEIG may be founded by at least two economic operators (natural persons, companies or other legal entities linked to an EEA state are eligible)
- from at least two different Member States of the EEA
- the exercise, prior to membership in the EEIG, of an economic activity (broad notion: e.g. public bodies or associations can set up an EEIG if some of their activities can be considered as economic in nature; but e.g. associations with purely philanthropic object are excluded)
- The purpose of the EEIG is not to make profits for itself
- The activities of an EEIG have to be related and merely ancillary to the economic activities of its members of its members, i.e. the EEIG should merely enable the members to pool their activities (e.g. co-operation between undertakings active in the field of import/export, services, promotion, construction and building) and to further develop their economic activities.

# Establishment of the EEIG

## Formalities:

- conclusion of a contract:
  - minimum content of the formation contract defined in art. 5 of the Regulation (name, official address, duration, objects, details of each member of the grouping)
  - Other provisions of the formation contract can be freely determined by the members of the EEIG (e.g. the way of financing the grouping, the rules on sharing profits and losses among the members, the rules on dispute resolution between the members)
- registration of the grouping in a Member State where the official address of the EEIG is established (*effect*: the EEIG **acquires legal capacity**)
- Filing the grouping's contract (and any subsequent amendments) at the registry of a Member State where the EEIG has its official address
- Publication in the official gazette (*effect*: the existence of the EEIG can be relied upon against third parties)
- Notice of registration must be published in the EU Official Journal



# Internal organisation of the EEIG

A lot of flexibility left for the members of the grouping, however, the Regulation contains some mandatory rules:

- the mandatory organs of the grouping are:
  - the members acting collectively
  - the manager(s)
- The contract of formation may provide for other organs (e.g. supervisory board or technical committees)
- For some decisions, unanimity is required (e.g. alteration of the objects of the grouping, transfer of its official address to another Member State, admitting new members)
- Managers may perform any acts required or useful for the achievement of the grouping's objects; the EEIG is bound as regards third parties by any act carried out by the managers, when they are acting on behalf of the grouping
- A contract for the formation of a grouping may prescribe the number of votes allocated to each member, the way the meetings are convened, the quorum and majority conditions for taking the decisions (default rule: unanimity) etc.



# Liability of the members of EEIG

- The EEIG does not enjoy limited liability status
- The members of an EEIG are **jointly and severally liable without limitation** for the full amount of all debts and liabilities of an EEIG
- Members of the EEIG may not limit their liability towards third parties, however:
  - members may establish different distribution of risks among themselves
  - members may exclude or restrict, in a specific contract between the grouping and a third party, the liability of one or several members for a specific debt of the grouping





# Financing of the EEIG

- No requirement of a minimum capital (guarantee for creditors: unlimited joint and several liability of the members of the EEIG)
- Possible methods of financing the EEIG's activities:
  - Creation of capital (contributions in kind, in cash, provision of skills), but no possibility to invite investment from the public
  - Membership fees
  - Remuneration for the services rendered by the EEIG to its members or to third parties
  - Access to external financing (bank or other financial institution)



# Taxation

- National tax laws apply, in particular in respect of the apportionment of profits, tax procedures and any obligations imposed by national tax law
- The profits and losses resulting from the activities of an EEIG shall be taxable only in the hands of its members (Art. 40 of the EEIG Regulation: the principle of tax transparency):
  - the EEIG is treated **like a partnership** for taxation purposes: the profits and losses are divided between the members for each tax year and included in their taxable income (for corporate members: corporate tax; for individual members: income tax)
  - the EEIG itself is not taxable on any profits or losses
- For the propose of other taxes (VAT, property tax or capital duty) the EEIG is taxable as any other entity



# Transfer of the official address of the EEIG

- The Regulation allows for the transfer of the official address of the EEIG from one EU country to another, without having to wind up the grouping and re-establish it in the State in which it intends to have its new official address
- Transfer mechanism:
  - a transfer proposal drawn up, filed in the competent national registry and published in the national gazette
  - within 2 months after publication a unanimous transfer decision by the grouping's members
  - the grouping's registration at the registry of its new address/deregistration at the registry of its old address
  - publication of the new registration (*effect*: the new official address may be relied upon against third parties)



Thank you for your attention!

Questions?

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