



EUROPEAN FILE

The European Economic Interest Grouping (EEIG)

A NEW INSTRUMENT FOR ECONOMIC COOPERATION
IN THE COMMUNITY

From 1 July 1989 a new instrument facilitating cross-frontier cooperation will be available to firms within the Community engaging in certain joint activities such as research and development, purchasing, production, sales, computerized data processing and the formation of multidisciplinary consortia to tender for public or private contracts.

Known as the European Economic Interest Grouping (EEIG), this new instrument was created on 25 July 1985 by Regulation No 2137/85 of the Council of Ministers of the European Community,¹ acting on the basis of a proposal from the European Commission.

The Commission's intention was to create a new entity, directly incorporated into Community law and aimed specifically at transnational cooperation.

The formula for the European Economic Interest Grouping answers the needs of companies anxious to collaborate on a transnational scale. Up to now their efforts were discouraged by the absence of a suitable legal instrument. The new instrument for cooperation, supplied in the form of the EEIG, should be employed in widely differing fields and help European firms to improve their competitiveness. It is therefore part of the construction of the large European market of 1992.

The legal and economic importance of this Community measure deserves to be underlined.

- For the first time in Europe a Community legal instrument will be available directly to companies which, in their efforts at cross-border cooperation in the traditional way, still find themselves up against national legal systems which are limited to the territory of single countries.
- EEIGs are intended to facilitate transnational cooperation. The aim and *raison d'être* of such groupings is to allow the partners to overlap some of their economic activities while developing new and complementary functions for which they find it advantageous to group together. When this type of cooperation is confined to companies located in a single Member State, it is clearly a matter for national legislation. The objective of the new instrument is to encourage cooperation among companies based in several Member States of the Community.
- Economic agents of any size or sphere of activity may consider establishing an EEIG. In particular, small and medium-sized enterprises, which are actively encouraged to develop cooperation with partners in other Member States, will

¹ *Official Journal of the European Communities*, No L 199, 31 July 1985, p. 1.

find the grouping has the advantages of a pre-established legal framework, highly flexible operational procedures and a structure which respects a balance between members.

The EEIG: an instrument for collaboration

The aim of a grouping is to facilitate or to develop the economic activities of its members and to improve or increase the results of those activities. The EEIG must therefore be related to the economic activity of its members. It can exist only in order to enable them to develop their own particular activities and to increase profits by combining activities, resources or services. Such a link between the grouping and its members is indispensable and is one of the essential conditions for the establishment of a grouping.

- Consequently, the EEIG must neither replace its members nor completely absorb their activities. It is an instrument for economic cooperation, not for integration. It cannot therefore be a company heading a group or a holding company with shares in the member companies. Its role is not to manage the activities of each of its members but to coordinate some of those activities, for the execution of which it has been made responsible.
- The purpose of the grouping is not to make profits for itself. This does not rule out profits *a priori*; provision is made in the regulation for the system of taxation to be applied. Companies creating an EEIG will, however, be motivated more by an interest in sharing costs and high risks, or the possibility of using less costly and more efficient joint services. To that extent, the achievement of profits by the grouping itself is viewed as secondary and ancillary.
- The origin and aim of all the activities of an EEIG must arise from the activities of its members, just as all its results will go back to them. It is in this sense that the term 'ancillary' is used to describe the activities of the EEIG in relation to those of its members. None the less, the term must not be interpreted too narrowly. In some cases, the EEIG may be the only way to carry out an operation of a certain scale. To take the example of a tender in the public works sector: by joining together in an EEIG, several contractors of complementary disciplines will be able to meet the conditions of the tender, which they might not have been able to fulfil individually. Subsequently, to carry out the contract, the EEIG can organize the distribution of tasks, and coordinate and monitor their execution. It will therefore act as a catalyst.

There are prohibitions and restrictions which result from the very function of collaboration and cooperation assigned to the EEIG by those who drafted the Community regulation, but otherwise the activity of the grouping can develop freely

in widely differing sectors. One of the prohibitions which must be mentioned is that the EEIG itself cannot employ more than 500 people. The workforces of the EEIG member companies are not included in this calculation.

The EEIG: a tool for a wide range of activities

- Natural persons, companies and all 'other legal bodies' governed by public or private law may be members of an EEIG. The use in the regulation of the very broad term 'legal entity' was intended to avoid any restrictive interpretation. The aim was to give all legal persons the opportunity to form an EEIG or to join one, irrespective of whether or not they were a company or whether they exercised an economic activity or one with an economic purpose.
- The regulation interprets very broadly the 'economic activity', which must, before the formation of an EEIG, be carried out by each of its members. On the one hand, this broad interpretation allows certain public bodies, or public or semi-public scientific organizations (foundations, universities, research institutes) to become members of a grouping. On the other hand, it authorizes the creation of EEIGs between persons exercising a liberal profession, if the codes of ethics of these professions allow it.
- Groupings may be created in any sector, be it agriculture, trade, industry, crafts, services or whatever. As a result, both large-scale firms and small and medium-sized companies will be able to participate in cross-border operations.

As the EEIG is designed to be an instrument of transnational and cross-border cooperation, there are certain provisions in the regulation which explicitly define this objective.

The EEIG: a legal format for transnational and European cooperation

While emphasizing the need for European enterprises to collaborate across the borders of Member States, the regulation lays down certain conditions regarding the official address of the grouping and where its members are based.

- The official address of the EEIG must be in a Community Member State. However, the official address for the grouping does not necessarily have to correspond to the place where its principal activity is carried out. This activity can be carried out in a Member State other than that of the official address, or even outside the Community. The EEIG can also have activities of equal importance in several Member States.
- The European cooperation aspect is also detailed in the regulation, which requires that the members of the EEIG carry out their activities in the Community prior to the creation of the grouping. Companies and 'other legal

entities' should be incorporated according to the legislation of a Member State and should have their statutory and real official address in the Community. Natural persons may be members of an EEIG if they work in the Community.

In addition, it is necessary that at least two members should have either their principal activity (natural persons) or their central administration (companies and 'other legal entities') in different Member States.

The regulation of 25 July 1985 sought to favour the contractual freedom of the members of the EEIG. They will be able, in large measure, to define freely their contractual relations as well as the internal organization of the grouping.

This flexibility is important for companies – and for small and medium-sized firms in particular. Similar flexibility exists as regards the financing of the EEIG.

The formalities involved in the formation of an EEIG are simple. They presuppose the conclusion of a contract and the registration of the grouping at the appropriate registry. It is this registration which determines the capacity of the EEIG to operate.

The EEIG: the regulation and the legal environment

EEIGs are governed by Community law, which defers frequently to the will of the parties involved, and also, in a certain measure, by national legislations.

- EEIGs are part of the Community legal order. Their constitution and legal existence will be effected under the conditions established by Community law, according to its procedures, and with the effects for which it provides.
- The essential aim of those who drafted the regulation was to give members the possibility to adapt the contract of the grouping to their own particular economic requirements.

Because of this, the regulation imposes only minimal obligations with regard to the organization and management of the grouping. It also allows different arrangements for financing. Apart from a few essential rules, it leaves a wide measure of contractual freedom to the parties. The regulation includes indispensable supplementary rules, to cover any default on the contract. As regards the taxation of an EEIG, the regulation applies the principle of fiscal transparency, according to which the profits of the grouping are taxed only in the hands of its members.

- Questions involving the contract of the grouping and its internal functioning, which are not covered either by the regulation or by the contract, will be decided by reference to the law of the Member State in which the EEIG has its official address.
- In areas not covered by the regulation and in regard to such legal aspects as those determined by the activity of the grouping (competition law etc.), the EEIG is

directly subject to the national legislation applicable to all those carrying out an economic activity. In other areas such as social legislation and labour law, the rule of law which locally regulates such relations is applicable.

The EEIG: organization and operation

The Community regulation contains provisions relating to the organization and operation of the EEIG. As regards its financing, however, it imposes no requirement that the grouping be formed with capital.

- The grouping must have at least two organs: the college of members and the manager or managers.
- The college of members is the sovereign organ. It may take any decision for the purpose of achieving the objectives of the grouping.

The conditions for the taking of decisions are, to a great extent, left to the contract. The regulation does not require any actual meeting of the members. It also makes no provision regarding the frequency of their consultations. All modern means of communication, such as telex, facsimile and the video-conference, may be used by a grouping of companies spread throughout the European Community.

Each member has the right to a vote. The contract may give more than one vote to certain members, but no one member may hold a majority of the votes.

Apart from situations where the regulation requires unanimity, the contract may prescribe the conditions for a quorum and for a majority, in accordance with which the decisions, or some of them, are to be taken.

Decisions which fundamentally affect the existence and operation of the EEIG must be taken unanimously.

- The management is the other obligatory organ of the EEIG. The members of the grouping are allowed wide scope to organize the management according to the needs of their cooperative activity. The contract of the grouping, or, failing that, a unanimous decision by the members, determines the conditions for the appointment and removal of the manager or managers and determines their powers.

In dealings with third parties, the manager or each of the managers binds the EEIG in an unlimited way, even when the activities in question do not fall within the objectives of the grouping. Any clauses in the contract which limit the powers of the management are valid only internally. The only limitation that may be applied to the powers of a manager is that of the 'double signature' whenever there are several managers. This clause must be published if it is to be cited in dealings with third parties.

- Depending on the type of cooperation envisaged, the contract of the grouping may establish other organs (for example, a monitoring body). The contract will lay down the powers of any such organ.
- The EEIG may be formed without capital; it is not even required to have any assets. Members have great flexibility regarding the method of financing the activities of the grouping. They may provide for contributions in cash, in kind or in skill. When funding in those ways is not envisaged, the EEIG's activities may be financed by regular contributions or by making funds available on current account, by the granting of loans or by any other form of participation in operational costs.
 - This flexibility in financial affairs is particularly interesting for companies, and especially for small and medium-sized ones, which are always restricted by the unavailability of funds when they have no large capital of their own. The partners can also step up their cooperation according to their means or the results of their joint activity.
 - By not having to be formed with capital, the EEIG is differentiated from a company, for which contributions in cash or in kind are always obligatory – with the risk that large sums of money can lie unused, perhaps for a considerable time. The wording of the EEIG enables provision to be made for intermediate stages, which enable funds to be used more effectively.

The EEIG: registration and legal capacity

The legal capacity of the EEIG (its ability to contract rights and obligations) derives from its enrolment at the appropriate registry, depending on its official address.

- The regulation gives full legal capacity to the grouping only from the date of its registration. It is therefore up to those establishing the grouping to request its enrolment at the appropriate registry of the Member State where it has its official address. The contract for the formation of a grouping must be filed with this request.

Certain information about the grouping must then be published in a journal carrying legal notices: name; official address; objects for which the grouping is formed; business name; legal form; permanent address or registered office; and, if any, the registration number of each of its members and the duration of the grouping, except where this is indefinite.

Because of the Community orientation of the EEIG, provision is made for supplementary publication in the *Official Journal of the European Communities*. This publication, however, is only for information purposes.

From its registration, the EEIG may operate on the conditions provided for in the contract and with the legal capacity recognized throughout the Community, wherever its official address.

- In all Member States an EEIG may have rights and obligations, place contracts or carry out other legal acts, institute legal proceedings, and have its own assets in accordance with the objectives determined by the members.

It may, for example:

- be responsible for the sale of certain products for its members;
 - in the field of new technologies, organize the pooling and joint exploitation of partial licences;
 - coordinate the production and delivery schedules of members;
 - develop their marketing;
 - bid for and be awarded public works and public supplies contracts;
 - carry out joint research work;
 - jointly supply services such as transport, purchasing and distribution.
- An EEIG may also operate outside the Community in the exploration, research and penetration of new markets, or facilitate access to them.

It may, for example:

- subcontract or conclude 'joint-venture' contracts with companies established outside the Community;
- acquire interests in companies or establish 'joint subsidiaries' with companies located outside the Community, within the limits specified by the regulation.

The EEIG: obligations of members

As a corollary to the full legal capacity assigned to the grouping, the regulation of 25 July 1985 imposes certain obligations on the members of the grouping.

- Because of its full legal capacity, the EEIG may in its own name contract undertakings with financial consequences. It is required to assume responsibility for those consequences with its own assets. However, in the event of default by the grouping, its members have unlimited joint and several liability for the grouping's debts to third parties.

This personal commitment of the members is the corollary to the contractual freedom which is the basis of the EEIG, and to the fact that members are not required to provide a mandatory capital representing the minimum guarantee offered to creditors. If no provision were made for this responsibility, third parties would not have the confidence to sign contracts with the EEIG and the legal capacity of the grouping would be a dead letter.

When the grouping does not fulfil its commitments within an appropriate period, creditors are given an opportunity to apply to its members. Where a financial debt is involved, the creditor may ask for payment from the member of his choice. When it is a matter of an obligation to provide services, the creditor should translate this obligation into money terms before applying to the member of his choice.

The principle of the unlimited joint and several liability of the members of the EEIG is a matter of public policy. If a contract for a grouping were to include a general clause exempting or limiting the liability of one or several members of the grouping, this clause, though valid between the members, would have no effect *vis-à-vis* third parties. This does not preclude the possibility that, in a particular contract concluded by the EEIG with a third party, the third party could either decline to proceed against a selected member or agree to proceed against him only for a limited amount. This is of particular interest to small and medium-sized enterprises as it will enable them to cooperate with larger companies.

- Protection of third parties is ensured by the obligation to publish the main documentation of the EEIG. This publication follows the rules laid down for companies by the Member States. It involves the filing of certain documents and particulars at the registry where the EEIG is registered and their publication in a journal which carries legal notices.

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A new legal formula, perhaps the first to be truly European and one which is also highly flexible, is therefore available to all economic agents interested in developing their activities on a Community scale, in cooperation with partners from other Member States. It will stimulate transnational economic cooperation, economic growth and the integration of the economies of Community member countries ■

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Office for Official Publications
of the European Communities
L - 2985 Luxembourg

ISSN 0379-3133

Catalogue number: CC-AD-89-006-EN-C

