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on the European Economic
Interest Grouping (EEIG)**

(adopted by the Council on 25 July 1985)

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Introduction

As 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, for example, research and development, purchasing, production and selling, operation of specialized services, quality control of substances, computerized data processing and the formation of multidisciplinary consortia in the construction industry to tender for public or private contracts.

This new instrument was created as a result of the adoption, on 25 July 1985, by the Council of Ministers of the European Community of Regulation (EEC) No 2137/85, the text of which is reproduced below. The instrument, known as the 'European Economic Interest Grouping (EEIG)', is a new entity and is directly incorporated into Community law, thus filling a gap both in the national laws of the Member States and in Community law itself.

This qualitative leap, unprecedented in the field of company law, seemed to be the only way of removing the barriers still standing in the way of cross-frontier cooperation, mainly because this depends on national legal systems, which have territorial limitations.

All the existing possibilities of inter-company cooperation (establishment of joint subsidiaries, inter-company cooperation contracts, joint ventures etc.) are governed by a specified national legal system and involve certain constraints (formation of a company) or the absence of a suitable legal framework (conclusion of a contract without creating a separate entity). Moreover, the choice of legal system depends on the economic or legal centre of interests of one of the partners, which automatically places the other partner involved on unfamiliar ground which he views with caution.

The EEIG lays down rules, applicable to all members, on the structure and method of operation, thus providing companies, particularly small and medium-sized companies, with a framework which is more capable of responding to their needs and their potential. The EEIG will enable them to group part of their economic activity, while still retaining their economic and legal independence within a structure enjoying full legal capacity.

The aim of the EEIG as defined in the Regulation is 'to facilitate or develop the economic activities of its members and to improve or increase the results of those activities; its purpose is not to make profits for itself. Its activity shall be related to the economic activities of its members and must not be more than ancillary to those activities.' (Article 3(1)).

On the basis of this very broad definition, therefore, no sector of activity is automatically excluded, the only condition being that the grouping's activity must relate to the economic activity of its members and cannot replace it. The grouping also enjoys neutrality in respect of its profits, both for commercial and for tax purposes, in so far as its profits or losses are taxable only in the hands of its members.

The possibility of forming an EEIG is wide open to natural persons, companies or firms and other legal bodies from Community Member States. These bodies (that is to say, entities, which, in legal terms, are independent of their members without necessarily being companies or legal persons) may include, for example, certain public bodies or public or semi-public scientific organizations. Natural persons who are members of the EEIG must carry on an industrial, commercial, craft or agricultural activity or provide other services in the Community. The last category includes professional people.

The official address of the EEIG must be situated in the Community. The Regulation gives the members a fairly wide scope in respect of the criteria for fixing the official address. It enables the official address to be transferred from one Member State to another, and even to be transferred within the same State, when the latter has several legal systems, without affecting the legal capacity of the grouping.

The formalities involved in the formation of a grouping are very simple. A contract is concluded and filed at the appropriate registry in the Member State in which the grouping has its official address. Registration confers full legal capacity on the EEIG throughout the Community and even outside it.

The Regulation gives the members of the EEIG a large amount of freedom in organiz-

ing their internal relations and in the choice of the grouping's methods of operation. It leaves such matters chiefly to the free choice of the parties. While it does lay down some mandatory and suppletive measures, this is to protect third parties and, to a certain extent, the members themselves. The latter must assess beforehand the extent of their personal commitment. Nevertheless, the principle remains freedom, and there are none of the restrictions imposed on some types of companies.

The EEIG must have at least two organs: the members acting collectively and the manager or managers. The members of a grouping, acting as a body, may take any decision for the purpose of achieving the objects of the EEIG. The grouping is managed by one or more managers who have extensive powers for representing the grouping in dealings with third parties. The latter are protected by means of widespread publicity at the time of the grouping's formation, during its existence, and when it is wound up, and also by the unlimited joint and several liability of the members for debts of all kind incurred by the grouping.

This personal commitment of the members is the counterpart to 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.

One of the features of the EEIG is that it does not necessarily have to be formed with capital. Members are free to choose ways of financing the grouping. All types of contribution are possible: in cash, in kind or in skill (know-how, commercial or professional

knowledge, etc.). Members can also decide not to contribute in this way if they consider that the EEIG can operate through the payment of regular contributions or by making funds available on current account.

This flexibility in financial matters is important for companies and for small and medium-sized businesses in particular, which will thus be able to increase cooperation depending on the opportunities or the results of joint action. Consequently, the EEIG is a completely flexible instrument of cooperation.

The Regulation came into force in August 1985. However, it will not be possible to form the first EEIGs until 1 July 1989, in order to give Member States time to make their legislation compatible with the requirements of the Regulation. In particular, the Member States must set up national procedures for registering EEIGs and publicizing the important steps in their lives.

The date of 1 July 1989 is nevertheless an important one for companies. As from this date, EEIGs can be set up in the Member States, which will allow their registration. These EEIGs will then be able to carry out their activities within, and outside, the Community, with no territorial restrictions. European firms can thus begin already to familiarize themselves with this new instrument and start the search for potential partners.

Additional information may be obtained from: The Commission of the European Communities, Directorate-General XV: Financial Institutions and Company Law, 200 rue de la Loi, 1049 Brussels, Belgium.

Text of Council Regulation
(EEC) No 2137/85

Council Regulation (EEC) No 2137/85

of 25 July 1985
on the European Economic
Interest Grouping (EEIG)

THE COUNCIL OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission,¹

Having regard to the opinion of the European Parliament,²

Having regard to the opinion of the Economic and Social Committee,³

Whereas a harmonious development of economic activities and a continuous and balanced expansion throughout the Community depend on the establishment and smooth functioning of a common market offering conditions analogous to those of a national market; whereas to bring about this single market and to increase its unity a legal framework which facilitates the adaptation of their activities to the economic conditions of the Community should be created for natural persons, companies, firms and other legal bodies in particular; whereas to that end it is necessary that those natural persons, companies, firms and other legal bodies should be able to cooperate effectively across frontiers;

Whereas cooperation of this nature can encounter legal, fiscal or psychological difficulties; whereas the creation of an appropriate Community legal instrument in the form of a European Economic Interest Grouping would contribute to the achievement of the abovementioned objectives and therefore proves necessary;

Whereas the Treaty does not provide the necessary powers for the creation of such a legal instrument;

Whereas a grouping's ability to adapt to economic conditions must be guaranteed by the considerable freedom for its members in their contractual relations and the internal organization of the grouping;

Whereas a grouping differs from a firm or company principally in its purpose, which is only to facilitate or develop the economic activities of its members to enable them to improve their own results, whereas, by reason of that ancillary nature, a grouping's activities must be related to the economic activities of its members but not replace them so that, to that extent, for example, a grouping may not itself, with regard to third parties, practise a profession, the concept of economic activities being interpreted in the widest sense;

Whereas access to grouping form must be made as widely available as possible to natural persons, companies, firms and other legal bodies, in keeping with the aims of this Regulation; whereas this Regulation shall not, however, prejudice the application at national level of legal rules and/or ethical codes concerning the conditions for the pursuit of business and professional activities;

Whereas this Regulation does not itself confer on any person the right to participate in a grouping, even where the conditions it lays down are fulfilled;

Whereas the power provided by this Regulation to prohibit or restrict participation in a grouping on grounds of public interest is without prejudice to the laws of Member States which govern the pursuit of activities and which may provide further prohibitions or restrictions or otherwise control or supervise participation in a grouping by any natural person, company, firm or other legal body or any class of them;

Whereas, to enable a grouping to achieve its purpose, it should be endowed with legal capacity and provision should be made for it to be represented *vis-à-vis* third parties by an organ legally separate from its membership;

Whereas the protection of third parties requires widespread publicity; whereas the members of a grouping have unlimited joint and several liability for the grouping's debts and other liabilities, including those relating

¹ OJ C 14, 15.2.1974, p. 30 and OJ C 103, 28.4.1978, p. 4.

² OJ C 163, 11.7.1977, p. 17.

³ OJ C 108, 15.5.1975, p. 46.

to tax or social security, without, however, that principle's affecting the freedom to exclude or restrict the liability of one or more of its members in respect of a particular debt or other liability by means of a specific contract between the grouping and a third party;

Whereas matters relating to the status or capacity of natural persons and to the capacity of legal persons are governed by national law;

Whereas the grounds for winding up which are peculiar to the grouping should be specific while referring to national law for its liquidation and the conclusion thereof;

Whereas groupings are subject to national laws relating to insolvency and cessation of payments; whereas such laws may provide other grounds for the winding up of groupings;

Whereas this Regulation provides that the profits or losses resulting from the activities of a grouping shall be taxable only in the hands of its members; whereas it is understood that otherwise national tax laws apply, particularly as regards the apportionment of profits, tax procedures and any obligations imposed by national tax law;

Whereas in matters not covered by this Regulation the laws of the Member States and Community law are applicable, for example with regard to:

- (a) social and labour laws,
- (b) competition law,
- (c) intellectual property law;

Whereas the activities of groupings are subject to the provisions of Member States' laws on the pursuit and supervision of activities; whereas in the event of abuse or circumvention of the laws of a Member State by a grouping or its members that Member State may impose appropriate sanctions;

Whereas the Member States are free to apply or to adopt any laws, regulations or administrative measures which do not conflict with the scope or objectives of this Regulation;

Whereas this Regulation must enter into force immediately in its entirety; whereas the implementation of some provisions

must nevertheless be deferred in order to allow the Member States first to set up the necessary machinery for the registration of groupings in their territories and the disclosure of certain matters relating to groupings; whereas, with effect from the date of implementation of this Regulation, groupings set up may operate without territorial restrictions,

HAS ADOPTED THIS REGULATION:

Article 1

1. European Economic Interest Groupings shall be formed upon the terms, in the manner and with the effects laid down in this Regulation.

Accordingly, parties intending to form a grouping must conclude a contract and have the registration provided for in Article 6 carried out.

2. A grouping so formed shall, from the date of its registration as provided for in Article 6, have the capacity, in its own name, to have rights and obligations of all kinds, to make contracts or accomplish other legal acts, and to sue and be sued.

3. The Member States shall determine whether or not groupings registered at their registries, pursuant to Article 6, have legal personality.

Article 2

1. Subject to the provisions of this Regulation, the law applicable, on the one hand, to the contract for the formation of a grouping, except as regards matters relating to the status or capacity of natural persons and to the capacity of legal persons and, on the other hand, to the internal organization of a grouping shall be the internal law of the State in which the official address is situated, as laid down in the contract for the formation of the grouping.

2. Where a State comprises several territorial units, each of which has its own rules of law applicable to the matters referred to in paragraph 1, each territorial unit shall

be considered as a State for the purposes of identifying the law applicable under this Article.

Article 3

1. The purpose of a grouping shall be to facilitate or develop the economic activities of its members and to improve or increase the results of those activities; its purpose is not to make profits for itself.

Its activity shall be related to the economic activities of its members and must not be more than ancillary to those activities.

2. Consequently, a grouping may not:

- (a) exercise, directly or indirectly, a power of management or supervision over its members' own activities or over the activities of another undertaking, in particular in the fields of personnel, finance and investment;
- (b) directly or indirectly, on any basis whatsoever, hold shares of any kind in a member undertaking; the holding of shares in another undertaking shall be possible only in so far as it is necessary for the achievement of the grouping's objects and if it is done on its members' behalf;
- (c) employ more than 500 persons;
- (d) be used by a company to make a loan to a director of a company, or any person connected with him, when the making of such loans is restricted or controlled under the Member States' laws governing companies. Nor must a grouping be used for the transfer of any property between a company and a director, or any person connected with him, except to the extent allowed by the Member States' laws governing companies. For the purposes of this provision the making of a loan includes entering into any transaction or arrangement of similar effect, and property includes moveable and immoveable property;
- (e) be a member of another European Economic Interest Grouping.

Article 4

1. Only the following may be members of a grouping:

(a) companies or firms within the meaning of the second paragraph of Article 58 of the Treaty and other legal bodies governed by public or private law, which have been formed in accordance with the law of a Member State and which have their registered or statutory office and central administration in the Community; where, under the law of a Member State, a company, firm or other legal body is not obliged to have a registered or statutory office, it shall be sufficient for such a company, firm or other legal body to have its central administration in the Community;

(b) natural persons who carry on any industrial, commercial, craft or agricultural activity or who provide professional or other services in the Community.

2. A grouping must comprise at least:

(a) two companies, firms or other legal bodies, within the meaning of paragraph 1, which have their central administrations in different Member States, or

(b) two natural persons, within the meaning of paragraph 1, who carry on their principal activities in different Member States, or

(c) a company, firm or other legal body within the meaning of paragraph 1 and a natural person, of which the first has its central administration in one Member State and the second carries on his principal activity in another Member State.

3. A Member State may provide that groupings registered at its registries in accordance with Article 6 may have no more than 20 members. For this purpose, that Member State may provide that, in accordance with its laws, each member of a legal body formed under its laws, other than a registered company, shall be treated as a separate member of a grouping.

4. Any Member State may, on grounds of that State's public interest, prohibit or restrict participation in groupings by certain classes of natural persons, companies, firms, or other legal bodies.

Article 5

A contract for the formation of a grouping shall include at least:

- (a) the name of the grouping preceded or followed either by the words 'European Economic Interest Grouping', or by the initials 'EEIG', unless those words or initials already form part of the name;
- (b) the official address of the grouping;
- (c) the objects for which the grouping is formed;
- (d) the name, business name, legal form, permanent address or registered office, and the number and place of registration, if any, of each member of the grouping;
- (e) the duration of the grouping, except where this is indefinite.

Article 6

A grouping shall be registered in the State in which it has its official address, at the registry designated pursuant to Article 39(1).

Article 7

A contract for the formation of a grouping shall be filed at the registry referred to in Article 6.

The following documents and particulars must also be filed at that registry:

- (a) any amendment to the contract for the formation of a grouping, including any change in the composition of a grouping;
- (b) notice of the setting up or closure of any establishment of the grouping;
- (c) any judicial decision establishing or declaring the nullity of a grouping, in accordance with Article 15;
- (d) notice of the appointment of the manager or managers of a grouping, their names and any other identification particulars required by the law of the Member State in which the register is kept, notification that they may act alone or must act jointly, and the termination of any manager's appointment;
- (e) notice of a member's assignment of his

participation in a grouping or a proportion thereof, in accordance with Article 22(1);

(f) any decision by members ordering or establishing the winding up of a grouping, in accordance with Article 31, or any judicial decision ordering such winding up, in accordance with Articles 31 or 32;

(g) notice of the appointment of the liquidator or liquidators of a grouping, as referred to in Article 35, their names and any other identification particulars required by the law of the Member State in which the register is kept, and the termination of any liquidator's appointment;

(h) notice of the conclusion of a grouping's liquidation, as referred to in Article 35(2);

(i) any proposal to transfer the official address, as referred to in Article 14(1);

(j) any clause exempting a new member from the payment of debts and other liabilities which originated prior to his admission, in accordance with Article 26(2).

Article 8

The following must be published, as laid down in Article 39, in the gazette referred to in paragraph 1 of that Article:

(a) the particulars which must be included in the contract for the formation of a grouping pursuant to Article 5, and any amendments thereto;

(b) the number, date and place of registration as well as notice of the termination of that registration;

(c) the documents and particulars referred to in Article 7(b) to (j).

The particulars referred to in (a) and (b) must be published in full. The documents and particulars referred to in (c) may be published either in full or in extract form or by means of a reference to their filing at the registry, in accordance with the national legislation applicable.

Article 9

1. The documents and particulars which must be published pursuant to this Regulation may be relied on by a grouping as against third parties under the conditions

laid down by the national law applicable pursuant to Article 3(5) and (7) of Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community.¹

2. If activities have been carried on on behalf of a grouping before its registration in accordance with Article 6 and if the grouping does not, after its registration, assume the obligations arising out of such activities, the natural persons, companies, firms or other legal bodies which carried on those activities shall bear unlimited joint and several liability for them.

Article 10

Any grouping establishment situated in a Member State other than that in which the official address is situated shall be registered in that State. For the purpose of such registration, a grouping shall file, at the appropriate registry in that Member State, copies of the documents which must be filed at the registry of the Member State in which the official address is situated, together, if necessary, with a translation which conforms with the practice of the registry where the establishment is registered.

Article 11

Notice that a grouping has been formed or that the liquidation of a grouping has been concluded stating the number, date and place of registration and the date, place and title of publication, shall be given in the *Official Journal of the European Communities* after it has been published in the gazette referred to in Article 39(1).

Article 12

The official address referred to in the contract for the formation of a grouping must be situated in the Community.

¹ OJ L 65, 14.3.1968, p. 8.

The official address must be fixed either:
(a) where the grouping has its central administration, or
(b) where one of the members of the grouping has its central administration or, in the case of a natural person, his principal activity, provided that the grouping carries on an activity there.

Article 13

The official address of a grouping may be transferred within the Community.

When such a transfer does not result in a change in the law applicable pursuant to Article 2, the decision to transfer shall be taken in accordance with the conditions laid down in the contract for the formation of the grouping.

Article 14

1. When the transfer of the official address results in a change in the law applicable pursuant to Article 2, a transfer proposal must be drawn up, filed and published in accordance with the conditions laid down in Articles 7 and 8.

No decision to transfer may be taken for two months after publication of the proposal. Any such decision must be taken by the members of the grouping unanimously. The transfer shall take effect on the date on which the grouping is registered, in accordance with Article 6, at the registry for the new official address. That registration may not be effected until evidence has been produced that the proposal to transfer the official address has been published.

2. The termination of a grouping's registration at the registry for its old official address may not be effected until evidence has been produced that the grouping has been registered at the registry for its new official address.

3. Upon publication of a grouping's new registration the new official address may be relied on as against third parties in accordance with the conditions referred to in Article 9(1); however, as long as the termination of the grouping's registration at the registry

for the old official address has not been published, third parties may continue to rely on the old official address unless the grouping proves that such third parties were aware of the new official address.

4. The laws of a Member State may provide that, as regards groupings registered under Article 6 in that Member State, the transfer of an official address which would result in a change of the law applicable shall not take effect if, within the two-month period referred to in paragraph 1, a competent authority in that Member State opposes it. Such opposition may be based only on grounds of public interest. Review by a judicial authority must be possible.

Article 15

1. Where the law applicable to a grouping by virtue of Article 2 provides for the nullity of that grouping, such nullity must be established or declared by judicial decision. However, the court to which the matter is referred must, where it is possible for the affairs of the grouping to be put in order, allow time to permit that to be done.

2. The nullity of a grouping shall entail its liquidation in accordance with the conditions laid down in Article 35.

3. A decision establishing or declaring the nullity of a grouping may be relied on as against third parties in accordance with the conditions laid down in Article 9(1).

Such a decision shall not of itself affect the validity of liabilities, owed by or to a grouping, which originated before it could be relied on as against third parties in accordance with the conditions laid down in the previous subparagraph.

Article 16

1. The organs of a grouping shall be the members acting collectively and the manager or managers.

A contract for the formation of a grouping may provide for other organs; if it does it shall determine their powers.

2. The members of a grouping, acting as a

body, may take any decision for the purpose of achieving the objects of the grouping.

Article 17

1. Each member shall have one vote. The contract for the formation of a grouping may, however, give more than one vote to certain members, provided that no one member holds a majority of the votes.

2. A unanimous decision by the members shall be required to:

- (a) alter the objects of a grouping;
- (b) alter the number of votes allotted to each member;
- (c) alter the conditions for the taking of decisions;
- (d) extend the duration of a grouping beyond any period fixed in the contract for the formation of the grouping;
- (e) alter the contribution by every member or by some members to the grouping's financing;
- (f) alter any other obligation of a member, unless otherwise provided by the contract for the formation of the grouping;
- (g) make any alteration to the contract for the formation of the grouping not covered by this paragraph, unless otherwise provided by that contract.

3. Except where this Regulation provides that decisions must be taken unanimously, the contract for the formation of a grouping may prescribe the conditions for a quorum and for a majority, in accordance with which the decisions, or some of them, shall be taken. Unless otherwise provided for by the contract, decisions shall be taken unanimously.

4. On the initiative of a manager or at the request of a member, the manager or managers must arrange for the members to be consulted so that the latter can take a decision.

Article 18

Each member shall be entitled to obtain information from the manager or managers concerning the grouping's business and to

inspect the grouping's books and business records.

Article 19

1. A grouping shall be managed by one or more natural persons appointed in the contract for the formation of the grouping or by decision of the members.

No person may be a manager of a grouping if:

- (a) by virtue of the law applicable to him, or
- (b) by virtue of the internal law of the State in which the grouping has its official address, or
- (c) following a judicial or administrative decision made or recognized in a Member State

he may not belong to the administrative or management body of a company, may not manage an undertaking or may not act as manager of a European Economic Interest Grouping.

2. A Member State may, in the case of groupings registered at their registries pursuant to Article 6, provide that legal persons may be managers on condition that such legal persons designate one or more natural persons, whose particulars shall be the subject of the filing provisions of Article 7(d) to represent them.

If a Member State exercises this option, it must provide that the representative or representatives shall be liable as if they were themselves managers of the groupings concerned.

The restrictions imposed in paragraph 1 shall also apply to those representatives.

3. The contract for the formation of a grouping or, failing that, a unanimous decision by the members shall determine the conditions for the appointment and removal of the manager or managers and shall lay down their powers.

Article 20

1. Only the manager or, where there are two or more, each of the managers shall

represent a grouping in respect of dealings with third parties.

Each of the managers shall bind the grouping as regards third parties when he acts on behalf of the grouping, even where his acts do not fall within the objects of the grouping, unless the grouping proves that the third party knew or could not, under the circumstances, have been unaware that the act fell outside the objects of the grouping; publication of the particulars referred to in Article 5(c) shall not of itself be proof thereof.

No limitation on the powers of the manager or managers, whether deriving from the contract for the formation of the grouping or from a decision by the members, may be relied on as against third parties even if it is published.

2. The contract for the formation of the grouping may provide that the grouping shall be validly bound only by two or more managers acting jointly. Such a clause may be relied on as against third parties in accordance with the conditions referred to in Article 9(1) only if it is published in accordance with Article 8.

Article 21

1. The profits resulting from a grouping's activities shall be deemed to be the profits of the members and shall be apportioned among them in the proportions laid down in the contract for the formation of the grouping or, in the absence of any such provision, in equal shares.

2. The members of a grouping shall contribute to the payment of the amount by which expenditure exceeds income in the proportions laid down in the contract for the formation of the grouping or, in the absence of any such provision, in equal shares.

Article 22

1. Any member of a grouping may assign his participation in the grouping, or a proportion thereof, either to another member or to a third party; the assignment shall not take effect without the unanimous authorization of the other members.

2. A member of a grouping may use his participation in the grouping as security only after the other members have given their unanimous authorization, unless otherwise laid down in the contract for the formation of the grouping. The holder of the security may not at any time become a member of the grouping by virtue of that security.

Article 23

No grouping may invite investment by the public.

Article 24

1. The members of a grouping shall have unlimited joint and several liability for its debts and other liabilities of whatever nature. National law shall determine the consequences of such liability.

2. Creditors may not proceed against a member for payment in respect of debts and other liabilities, in accordance with the conditions laid down in paragraph 1, before the liquidation of a grouping is concluded, unless they have first requested the grouping to pay and payment has not been made within an appropriate period.

Article 25

Letters, order forms and similar documents must indicate legibly:

(a) the name of the grouping preceded or followed either by the words 'European Economic Interest Grouping' or by the initials 'EEIG', unless those words or initials already occur in the name;

(b) the location of the registry referred to in Article 6, in which the grouping is registered, together with the number of the grouping's entry at the registry;

(c) the grouping's official address;

(d) where applicable, that the managers must act jointly;

(e) where applicable, that the grouping is in liquidation, pursuant to Articles 15, 31, 32 or 36.

Every establishment of a grouping, when registered in accordance with Article 10, must give the above particulars, together with those relating to its own registration, on the documents referred to in the first paragraph of this Article uttered by it.

Article 26

1. A decision to admit new members shall be taken unanimously by the members of the grouping.

2. Every new member shall be liable, in accordance with the conditions laid down in Article 24, for the grouping's debts and other liabilities, including those arising out of the grouping's activities before his admission.

He may, however, be exempted by a clause in the contract for the formation of the grouping or in the instrument of admission from the payment of debts and other liabilities which originated before his admission. Such a clause may be relied on as against third parties, under the conditions referred to in Article 9(1), only if it is published in accordance with Article 8.

Article 27

1. A member of a grouping may withdraw in accordance with the conditions laid down in the contract for the formation of a grouping or, in the absence of such conditions, with the unanimous agreement of the other members.

Any members of a grouping may, in addition, withdraw on just and proper grounds.

2. Any member of a grouping may be expelled for the reasons listed in the contract for the formation of the grouping and, in any case, if he seriously fails in his obligations or if he causes or threatens to cause serious disruption in the operation of the grouping.

Such expulsion may occur only by the decision of a court to which joint application has been made by a majority of the other members, unless otherwise provided by the contract for the formation of a grouping.

Article 28

1. A member of a grouping shall cease to belong to it on death or when he no longer complies with the conditions laid down in Article 4(1).

In addition, a Member State may provide, for the purposes of its liquidation, winding up, insolvency or cessation of payments laws, that a member shall cease to be a member of any grouping at the moment determined by those laws.

2. In the event of the death of a natural person who is a member of a grouping, no person may become a member in his place except under the conditions laid down in the contract for the formation of the grouping or, failing that, with the unanimous agreement of the remaining members.

Article 29

As soon as a member ceases to belong to a grouping, the manager or managers must inform the other members of that fact; they must also take the steps required as listed in Articles 7 and 8. In addition, any person concerned may take those steps.

Article 30

Except where the contract for the formation of a grouping provides otherwise and without prejudice to the rights acquired by a person under Articles 22(1) or 28(2), a grouping shall continue to exist for the remaining members after a member has ceased to belong to it, in accordance with the conditions laid down in the contract for the formation of the grouping or determined by unanimous decision of the members in question.

Article 31

1. A grouping may be wound up by a decision of its members ordering its winding up. Such a decision shall be taken unanimously, unless otherwise laid down in the contract for the formation of the grouping.

2. A grouping must be wound up by a decision of its members:

(a) noting the expiry of the period fixed in the contract for the formation of the grouping or the existence of any other cause for winding up provided for in the contract, or
(b) noting the accomplishment of the grouping's purpose or the impossibility of pursuing it further.

Where, three months after one of the situations referred to in the first subparagraph has occurred, a members' decision establishing the winding up of the grouping has not been taken, any member may petition the court to order winding up.

3. A grouping must also be wound up by a decision of its members or of the remaining members when the conditions laid down in Article 4(2) are no longer fulfilled.

4. After a grouping has been wound up by decision of its members, the manager or managers must take the steps required as listed in Articles 7 and 8. In addition, any person concerned may take those steps.

Article 32

1. On application by any person concerned or by a competent authority, in the event of the infringement of Articles 3, 12 or 31(3), the court must order a grouping to be wound up, unless its affairs can be and are put in order before the court has delivered a substantive ruling.

2. On application by a member, the court may order a grouping to be wound up on just and proper grounds.

3. A Member State may provide that the court may, on application by a competent authority, order the winding up of a grouping which has its official address in the State to which that authority belongs, wherever the grouping acts in contravention of that State's public interest, if the law of that State provides for such a possibility in respect of registered companies or other legal bodies subject to it.

Article 33

When a member ceases to belong to a grouping for any reason other than the as-

signment of his rights in accordance with the conditions laid down in Article 22(1), the value of his rights and obligations shall be determined taking into account the assets and liabilities of the grouping as they stand when he ceases to belong to it.

The value of the rights and obligations of a departing member may not be fixed in advance.

Article 34

Without prejudice to Article 37(1), any member who ceases to belong to a grouping shall remain answerable, in accordance with the conditions laid down in Article 24, for the debts and other liabilities arising out of the grouping's activities before he ceased to be a member.

Article 35

1. The winding up of a grouping shall entail its liquidation.
2. The liquidation of a grouping and the conclusion of its liquidation shall be governed by national law.
3. A grouping shall retain its capacity, within the meaning of Article 1(2), until its liquidation is concluded.
4. The liquidator or liquidators shall take the steps required as listed in Articles 7 and 8.

Article 36

Groupings shall be subject to national laws governing insolvency and cessation of payments. The commencement of proceedings against a grouping on grounds of its insolvency or cessation of payments shall not by itself cause the commencement of such proceedings against its members.

Article 37

1. A period of limitation of five years after the publication, pursuant to Article 8, of notice of a member's ceasing to belong to a grouping shall be substituted for any longer

period which may be laid down by the relevant national law for actions against that member in connection with debts and other liabilities arising out of the grouping's activities before he ceased to be a member.

2. A period of limitation of five years after the publication, pursuant to Article 8, of notice of the conclusion of the liquidation of a grouping shall be substituted for any longer period which may be laid down by the relevant national law for actions against a member of the grouping in connection with debts and other liabilities arising out of the grouping's activities.

Article 38

Where a grouping carries on any activity in a Member State in contravention of that State's public interest, a competent authority of that State may prohibit that activity. Review of that competent authority's decision by a judicial authority shall be possible.

Article 39

1. The Member States shall designate the registry or registries responsible for effecting the registration referred to in Articles 6 and 10 and shall lay down the rules governing registration. They shall prescribe the conditions under which the documents referred to in Articles 7 and 10 shall be filed. They shall ensure that the documents and particulars referred to in Article 8 are published in the appropriate official gazette of the Member State in which the grouping has its official address, and may prescribe the manner of publication of the documents and particulars referred to in Article 8(c).

The Member States shall also ensure that anyone may, at the appropriate registry pursuant to Article 6 or, where appropriate, Article 10, inspect the documents referred to in Article 7 and obtain, even by post, full or partial copies thereof.

The Member States may provide for the payment of fees in connection with the operations referred to in the preceding subparagraphs; those fees may not, however, exceed the administrative cost thereof.

2. The Member States shall ensure that the information to be published in the *Official Journal of the European Communities* pursuant to Article 11 is forwarded to the Office for Official Publications of the European Communities within one month of its publication in the official gazette referred to in paragraph 1.

3. The Member States shall provide for appropriate penalties in the event of failure to comply with the provisions of Articles 7, 8 and 10 on disclosure and in the event of failure to comply with Article 25.

Article 40

The profits or losses resulting from the activities of a grouping shall be taxable only in the hands of its members.

Article 41

1. The Member States shall take the measures required by virtue of Article 39 before 1 July 1989. They shall immediately communicate them to the Commission.

2. For information purposes, the Member States shall inform the Commission of the classes of natural persons, companies, firms and other legal bodies which they prohibit from participating in groupings pursuant to Article 4(4). The Commission shall inform the other Member States.

Article 42

1. Upon the adoption of this Regulation, a Contact Committee shall be set up under the auspices of the Commission. Its function shall be:

(a) to facilitate, without prejudice to Articles 169 and 170 of the Treaty, application

of this Regulation through regular consultation dealing in particular with practical problems arising in connection with its application;

(b) to advise the Commission, if necessary, on additions or amendments to this Regulation.

2. The Contact Committee shall be composed of representatives of the Member States and representatives of the Commission. The chairman shall be a representative of the Commission. The Commission shall provide the secretariat.

3. The Contract Committee shall be convened by its chairman either on his own initiative or at the request of one of its members.

Article 43

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities*.

It shall apply from 1 July 1989, with the exception of Articles 39, 41 and 42 which shall apply as from the entry into force of the Regulation.

This Regulation¹ shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 25 July 1985.

For the Council
The President
J. POOS

¹ The text of the Regulation was published in OJ L 199, 31.7.1985.

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