

Commission of the European Communities

**The EEIG:
an instrument for transnational cooperation**

A practical handbook for SMEs

2nd edition

Enterprise Policy

The EEIG: an instrument for transnational cooperation

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FOREWORD

The EEIG constitutes an important element of European cooperation, notably for SMEs wishing to participate in Community-wide projects: internationalisation of SMEs' activities represents a key factor in the growth of their competitiveness. In promoting the Europeanisation of enterprises, the EEIG can facilitate their job creation potential within the European Union.

The flexible and simple structure of the EEIG is particularly well suited to the cooperative needs of SMEs. Since the application of the Regulation on the EEIG in 1989, more than 800 EEIGs, bringing together more than 3000 partners, have been incorporated in EEA countries. Among these EEIGs, 68% are either exclusively or mainly composed of SMEs.

A wider use of this cooperation model needs to be accompanied by a practical information service. This is why the Commission has set up a network, called "REGIE" (*Réseau européen des GEIE*), whose task is to find, update and disseminate adequate data on existing EEIGs as well as technical advice on this cooperation model. The main objective of this network is to establish a fruitful dialogue between actual and potential users of the EEIG.

I hope this publication will be of practical use for economic operators and especially SMEs in making best use of the EEIG.

Christos Papoutsis
Member of the Commission

CHAPTER I

WHY SET UP AN EEIG?

This publication is aimed at two groups of people: entrepreneurs who would like to cooperate internationally and all those from whom they are likely to obtain advice: lawyers, accountants, notaries, consultants, etc.

These two groups obviously have different roles: entrepreneurs will always have to weigh up the economic advisability of entering into a contractual cooperation relationship and, ultimately, whether this relationship will be good or bad “business” for their enterprises. Most entrepreneurs, especially the managers of small and medium-sized enterprises (SMEs), will choose the legal instrument best corresponding to the economic operation that they wish to undertake only after seeking the advice of a consultant, accountant, lawyer or notary.

The first part of this guide (Chapter I) is written with entrepreneurs themselves in mind, and sets out a range of practical examples of actual cooperation using the EEIG framework. The second part of the guide is written with enterprise consultants in mind and details all the information that they will need to be able to discuss the content of the contract of cooperation (see Chapter II) with entrepreneurs and their partners.

The example of an EEIG contract of formation given in Chapter II, section 4, sets out various drafting options and should be read together with the questionnaire which is intended to help entrepreneurs to choose between these options. This questionnaire, and the many explanations that accompany it, should help entrepreneurs better to understand the significance of each clause or article of the contract so that they are fully aware of the economic implications for their enterprise when they sign an EEIG contract of formation. Entrepreneurs would therefore be well advised to read Chapter II as well.

The ultimate aim of this guide will be have been achieved if reading it has made it possible for entrepreneurs and their consultants to match the legal form of the EEIG contract to the requirements of the economic operation that they wish to undertake. This task is greatly helped by the fact that the legal structure of the EEIG can be adapted to very different types of cooperation.

1. NATIONAL ALTERNATIVES: WHY CHOOSE THE EEIG?

Entrepreneurs who would like to place economic cooperation with their trading partners on a more formal footing can choose between a range of legal forms set out in different national laws, including companies, whose structure is stable and in principle permanent, and groupings of enterprises, which do not generally have an internal organisation or their own capital and

are normally dissolved once the economic operation for which they have been set up has been concluded (participation in a call for tenders, for example).

While the **function** of an EEIG may be the same as that of a temporary grouping of enterprises and an EEIG may, for instance, be set up to manage the work of a construction site (see Chapter V), it nevertheless has **organisational** characteristics that enable it to take on other **functions** more typical of permanent forms of cooperation (for instance the creation of an international product marketing network) which align it more with company structures than with purely contractual forms of cooperation.

EEIGs can therefore be compared with partnerships since, for instance, the members of an EEIG have unlimited joint and several liability for its debts. Other features of the EEIG are, however, specific to more structured forms of company: it can, for instance, act in its own name through managers who may or may not be members, in accordance with the rules that generally apply to capital companies.

The advantages of EEIGs in comparison with the legal forms possible under different national laws will be explained in detail in the following sections.

2. FIVE GOOD REASONS FOR CHOOSING THE EEIG

2.1 Transnationality: a Community vocation

- The first legal form under European “business law”

In comparison with other forms of cooperation possible under national law the first advantage of the EEIG lies in the transnational nature of the grouping which therefore has a uniform legal framework that is largely independent of the various national legal systems of the European Union.

The legal neutrality of the EEIG means that its members are on an equal footing; this is very important in overcoming the fear of some members that others will be in a more favourable position because they are working in a more familiar legal environment.

- European members

The composition of an EEIG also reflects this concern for transnationality: it has to be formed by at least two partners from two different Member States of the European Economic Area¹.

2.2 A genuine instrument of synergy

EEIGs may be set up by companies or firms of any size, ranging from SMEs to multinationals, and by other legal bodies governed by public or private law: local authorities, chambers of

¹ Pursuant to Article 77 of and Annex XXII to the Agreement on the EEA. The EEA is made up of the Member States of the European Union, Liechtenstein, Norway and Iceland.

commerce, research centres, universities, etc., provided that their activities or one of these activities can be considered to be of an economic nature, even if minimal or indirect².

EEIGs may also be set up by natural persons carrying on an industrial, commercial, craft or agricultural activity or providing professional or other services.

Giving access to such a wide range of economic operators means that it is possible to draw on the technical, commercial and financial skills of each member to put together highly complementary packages. Excellent examples of skills complementing one another can be seen from the success of some EEIGs set up by public authorities and private local enterprises.

2.3 Flexibility: freedom and adaptability

The considerable freedom to organise their contractual relationships and the grouping's internal operation that EEIG members have under the Regulation ensures that groupings can flexibly adapt to economic circumstances.

This flexibility is evident both from the point of view of the formation of the EEIG and its duration and from the point of view of its financing and operating methods.

The formalities for the formation of an EEIG are very simple and merely involve drawing up a written contract (which does not have to be signed before a notary) and registration at the appropriate registry of the State in which the EEIG has its official address. EEIGs may also be set up for limited or unlimited periods.

The flexible way in which EEIGs can be financed is also very attractive for enterprises. No start-up capital is required for its formation and all forms of contributions are possible: contributions in cash, in kind or even in skill (technological know-how, patents, commercial or professional relations, etc.) The EEIG may even, in some cases, be financed either by the payment of regular contributions or by current account transfers.

The contractual autonomy of EEIG members is also reflected by the fact that the official address of the EEIG can be transferred from one Member State to another, without having to dissolve the grouping or pay any charges that this might entail. It is not possible, at present, to transfer the official address of any national legal form governed by company law.

The Regulation also leaves the organisation of the relations between the members of an EEIG largely to their own discretion: members are therefore free to decide to what extent they will share in the profits and losses of the EEIG and how voting is to be weighted at the general meeting.

2.4 Stability: legal capacity and reliability

² See the first recital of Regulation 2137/85 which describes the grouping as a legal framework facilitating the development of economic activities. See also Article 3 of the Regulation which defines the aim of the grouping as follows: "...to facilitate or develop the economic activities of its members...".

While flexibility is a fundamental feature of the EEIG, a number of features also provide it with stability.

One of the main features of the stability of EEIGs is that they have full and autonomous legal capacity which differentiates them from purely contractual cooperation techniques. In addition, EEIGs have their own organisation (the members acting collectively and the manager(s)).

The stability of the EEIG means that it has powers of negotiation and representation of its members that are much greater than those that each member would have on a purely contractual basis. This is an important feature, for instance, from the point of view of participation by the EEIG in public contracts or programmes financed by public funds, as it offers advantages both for the members of the EEIG, who will be able to present a united front in their negotiations with contractors, and for the awarding authorities who will need to negotiate with only one person³.

Lastly, third parties entering into business relations with the grouping are fully and effectively protected: the Regulation sets out the principle of the unlimited joint and several liability of the members of an EEIG for its debts.

The EEIG may enter in its own name into undertakings having financial implications. It will obviously be liable for these from its own assets. However, if payment has not been made in a sufficient period by the grouping itself, the members of the grouping have unlimited joint and several liability for all the grouping's debts.

2.5 Ancillary nature: the autonomy of members

The main difference between a grouping and a company lies in its purpose, i.e. to facilitate or develop the economic activities of its members so that they can improve their own results, whereas the purpose of a company is to make profits for itself.

Because it is ancillary, the activity of the grouping must be related to the economic activities of its members and must not replace them. EEIG members consequently retain, throughout their cooperation, a certain degree of legal and economic autonomy.

3. EXAMPLES OF COOPERATION

A very wide range of activities has been carried out within the framework of the EEIG, which operates effectively in a very wide range of sectors. The statistics⁴ show that SMEs are the largest users of this type of cooperation, although participation by major enterprises and public or semi-public bodies should not be disregarded (see Table 1).

³ See Annex B: Communication from the Commission of 9 September 1997 on the participation of European Economic Interest Groupings (EEIGs) in public contracts and programmes financed by public funds, OJ C 285, of 20.9.97, page 17.

⁴ See the REGIE database, Chapter XI.

3.1 EEIGs formed solely by SMEs

Craft sector:

- Various craft businesses in Ireland and Northern Ireland have formed an EEIG to promote and sell handicraft products from their region.

Trade and Distribution:

- Several retailers of paper products have formed an EEIG for purchasing purposes and in order to develop a joint marketing strategy.
- SMEs from six Member States have formed an EEIG for joint purchasing and the mail-order distribution of books and artistic objects.
- A grouping of SMEs in the children's toys sector, called LUX-TOYS, has also been formed for the purpose of joint purchasing of toys and games.

Construction sector:

- A group of small and medium-sized consulting engineers in the construction sector have set up an EEIG to pool resources such as know-how, marketing, etc., in the face of increasing competition from large engineering firms.

Transport:

- Various medium-sized carriers specialising in the transport of liquids have formed a grouping for the coordination of joint transport and mutual assistance provided by their international service network.

Manufacturing:

- An EEIG composed of medium-sized car parts manufacturers in Europe succeeded in remaining one step ahead of the competition through technical and economic cooperation in a declining car market.
- Several SMEs producing varnishes, paints and inks have set up an EEIG in order to form a united front in negotiations of raw material procurement conditions.

Consultancy

- A vast number of small and medium-sized law firms has grouped together in an EEIG to pool their expertise and provide mutual assistance for the benefit of their international clients. They organise conferences, carry out joint lobbying and share an international database.

Financial services

- Five SMEs working in the area of risk capital have formed an EEIG to establish a network of local financial agencies in southern Europe in order to put together co-financing packages for transnational projects and to improve their information and commercial and industrial partner searching services.

3.2 EEIGs formed largely by SMEs

Transport:

- A grouping of European transport and removal companies, mostly SMEs, coordinates and facilitates international transport and removals.

R&D

- Thirteen enterprises, mostly SMEs working in the field of bio-fuels, have formed an EEIG to develop joint research and development activities.

Agriculture

- French, Italian and German enterprises, mostly SMEs, have formed an EEIG to create a castor oil plant production sector in Europe.
- SMEs from four different Member States have formed an EEIG, in partnership with two research centres, in the area of sorghum processing for paper production.
- Ten enterprises, mostly SMEs active in the area of silkworm breeding, have formed the EEIG “EUROSILK” in order to establish a European network in the sector. They have worked on major projects to establish silkworm breeding in developing countries such as Colombia.

3.3 EEIGs working for SMEs

- French, German and Belgian SME stock markets have linked up in an EEIG to form a European network of stock markets aimed at promoting synergy by harmonising rules and regulations, integrating commercial and technical activity and carrying out common marketing.
- An EEIG brings together several European regional authorities, experts and universities in a forum which is aimed at stimulating teleworking and generating new kinds of small businesses.
- More than eleven Arbitration Chambers from four different countries are working together to enhance arbitration for SMEs in cross-border disputes.

3.4 EEIGs with mixed participation

Service sector:

Figures from the REGIE⁵ database show that the number of EEIGs in the service sector is remarkably high (see Table 2). The liberal professions in particular have already made extensive use of the EEIG framework. Many professional groupings have been formed between lawyers, architects, consultants or engineers in order to pool their resources.

Consultancy

- The services provided by the numerous consultancy EEIGs range from environmental audits to accounting, strategic and financial management or public relations.

⁵ See Chapter XI.

- Several EEIGs formed by architects and engineers enable them to exchange and pool professional know-how in order to carry out cross-border contracts and to promote their members' activities at European level.

Financial services

It seems that the EEIG also provides an exemplary framework for cross-border cooperation in financial services:

- Cooperation schemes between savings banks from nearly all the EU Member States have teamed up in an EEIG to provide their clients with a uniform package of cross-border services.
- European credit institutions have used an EEIG jointly to finance infrastructure projects.
- Several European financial institutions have set up an EEIG to join forces in investing in projects in developing countries.
- Several insurance companies specialising in the construction sector have created an EEIG in order to offer transnational insurance advice and assistance to their contractors.

Trade and Distribution:

- French and Belgian traders in heating and refrigeration materials have established an EEIG to carry out joint research into new products and improve their purchasing policy by establishing a common purchasing and supply infrastructure.
- Several EEIGs are working in the area of pharmaceutical distribution.

Tourism sector:

- A chain of hotels is using the EEIG formula to promote their hotels throughout Europe.

Agriculture

- A number of associations of fruit juice manufacturers have created a framework to harmonise and implement quality control of fruit juices and nectars on the EU market.
- Several French, Spanish and Portuguese banana producers have linked up to represent their interests with the European institutions.

Aquaculture

- By creating an EEIG, Belgian, French, Spanish and British maritime organisations have joined forces to ensure security at sea and to intensify the prevention of sea water pollution.

Technology:

- Various research institutions, engineering and consultancy firms as well as professional associations use an EEIG for collecting and disseminating scientific, economic and general information on environmental issues by means of an interactive CD-ROM.
- Several companies in the software industry have joined forces in an EEIG to develop a standard programming language.

Culture and education

- More than 480 000 authors, musicians and artists oversee the protection of copyright by using an EEIG to defend their interests at international level.
- Educational institutions grouped in an EEIG have set up a mobility scheme for students and teachers throughout Europe.

- An EEIG enables coordination of a project offering a multimedia information system describing the European cultural heritage.

(Semi) public sector

- Chambers of Commerce are cooperating in an EEIG to enhance cross-border trade and to implement common economic development measures in a specific region.
- Five neighbouring regions in Belgium, the United Kingdom and France have achieved considerable progress in areas such as strategic planning, transport, economic development, tourism, training and the protection of the environment.

European Radios are tuned to the “EEIG Station”

AER - EEIG

Approximately 5000 radio stations, mostly SMEs, from the majority of the EU Member States are represented in an EEIG. The Grouping is composed of national private radio associations and aims to promote private radio broadcasters' interests in Europe and to offer technical assistance to its members.

Their common objective is to develop and improve the most suitable framework for radio activity and to monitor EU action in the field of the media, telecommunications and private radio broadcasting.

The EEIG also intends to promote the diffusion and use of new technologies in radio broadcasting (including the DAB - Digital Audio Broadcasting - system).

CHAPTER II

A CONTRACT FOR “MADE-TO-MEASURE” COOPERATION

1. DRAFTING OF THE CONTRACT

In order to form an EEIG, the future members of the grouping have to draft a contract of formation. Members have considerable discretion over the way in which its main elements are formulated.

1.1 Form

The EEIG contract must be in writing so that the formalities of registration at the appropriate registry in the State in which the EEIG is to have its official address can be satisfied. The contract does not have to be brought before a notary. A private deed is sufficient.

1.2 Content

The content of the contract may be kept to the strict minimum set out in Article 5 of the Regulation⁶, i.e.:

- 1) the name of the grouping,
- 2) the official address of the grouping,
- 3) the object of the grouping,
- 4) details of each member of the grouping,
- 5) the duration of the grouping, if this duration is limited.

None of this information is prejudicial to members' rights.

It is advisable, however, for the contract to be as detailed as possible, since members will then have more of a personal commitment.

Further clauses that are frequently included in the contracts of formation of EEIGs and which can be freely determined by the members, generally cover:

- 1) the way in which the grouping is to be financed: members can finance the grouping in a whole range of ways, as there is no need for start-up capital (see Chapter VIII),
- 2) the way in which members are to share in the grouping's profits and losses,
- 3) the conditions under which the composition of the grouping can be modified (admission, resignation, withdrawal, expulsion),
- 4) the methods by which the general meeting of members is to be consulted and to make decisions,
- 5) the methods by which managers are to be appointed and dismissed and to exercise their managerial powers,

⁶ See Annex A.

6) the rules by which disputes between members are to be resolved.

Members fairly often draw up a detailed internal regulation, along the lines of a professional "code of conduct", which is a document separate from the contract of formation and has the advantage over this contract that it can be amended in full by the type of majority (simple or qualified) chosen by the members. In contrast, some clauses of the contract of formation can be amended only by unanimous agreement. The internal regulation applies to both the members and the managers and may include agreements on the internal distribution of liability for undertakings arising from the grouping's activity.

1.3 Language

The language in which the contract is drafted should normally be the language (or one of the languages) used by the registry competent for the official address of the EEIG. The registry may, if this conforms with its current practice, allow the contract to be registered in a language other than its own language, provided that it is accompanied by a translation.

This does not prevent the members of an EEIG from using a language other than the language in which the contract has been drafted as their working language. A Belgian EEIG, for instance, opted to draft its operational procedures manual in English, as this was the grouping's only working language.

1.4 Examples of contracts

A number of managers of SMEs have said that they would like to be able to obtain "model contracts" enabling them more readily to draft the grouping's contract.

It should be borne in mind that the Regulation itself lays down the provisions that must be included in the contract, and sets out a number of rules that will apply only if certain clauses are omitted. The EEIG is, moreover, by its nature a flexible instrument and the way in which the contract is drafted will depend to a large extent on the objectives pursued by the partners. Contracts of forty pages as well as contracts of only two or three pages, accompanied by very detailed manuals of internal procedures, have been drafted in practice. Lastly, some clauses may depend on the legislation of the State in which the grouping is registered.

For these reasons, the contract set out in section 4 of this chapter should not be considered as a model contract. It is no more than an example that will have to be supplemented by those drafting the contract to take account of the choices that they make between, on the one hand, certain drafting options and, on the other hand, the national provisions in force in the State in which the grouping has its official address.

2. DISCLOSURE

The Regulation lays down rules on the disclosure of EEIGs to ensure that third parties are fully protected. Two types of formality have to be satisfied: registration of the grouping and filing of the contract followed by publication formalities.

2.1 Registration and filing

Once the contract has been drawn up, it must registered at the designated registry of the State in which the grouping has its official address (a list of these national registries is given in Annex D).

Effect of registration: registration (which forms the EEIG) marks the creation of the grouping which acquires full legal capacity from that time onwards.

The grouping's contract and any subsequent amendments of this contract, including assignments of a member's participation or a proportion thereof, the setting up or closure of any establishment of the grouping and details of managers together with any limits on their joint signing powers and, where applicable, notice of the termination of their appointment, must also be filed at the same registry⁷.

It should also be borne in mind that anyone may inspect, at the relevant registry, the contract as well any documents filed concerning any European grouping and may obtain, where necessary by post, full or partial copies by paying a fee that may not, however, exceed the administrative cost of providing such copies⁸.

2.2 Publication

When the registration formalities of the grouping have been completed, a number of publication formalities also have to be accomplished.

2.2.1 *Publication in the national gazette*

Publication must first take place in the "appropriate" official gazette of the State in which the EEIG has its official address (a list of these official gazettes is given in Annex E). Some information, such as the name, object, official address, particulars of members, duration of the grouping and number, date and place of registration⁹, must be published in full; other information, listed in Article 8 of the Regulation such as, for instance, a proposal to transfer the official address, may be published in the form of an extract.

Effect of publication in the national gazette: this publication means that the existence of the EEIG can be relied upon as against third parties under the conditions laid down for companies by each national law pursuant to the first Directive on company law¹⁰.

2.2.2 *Publication in the Official Journal of the European Communities*

⁷ The following must also be filed: judicial decisions establishing or declaring the nullity or winding up of a grouping, decisions by members to wind up the grouping, appointments of liquidators and any termination of such appointments, conclusions of the liquidation of a grouping, proposals to transfer the official address and clauses exempting new members from the payment of debts which originated prior to their admission.

⁸ See Article 39.1 of Regulation 2137/85.

⁹ And its cancellation.

¹⁰ Directive 68/151/EEC of 9 March 1968. OJ L 65 of 14.3.1968, p. 9.

Due to the Community dimension of the EEIG, notice of registration and, where appropriate, of the conclusion of liquidation must also be published in the Official Journal of the European Communities, S series.

Effect of publication in the OJ: this publication has no legal effect and is simply intended to inform the public of the creation or liquidation of a grouping. This publication (see the example below) gives details of the registry at which the grouping has been registered and it is from this registry that any additional information on the grouping can be obtained.

2.2.3 *How to go about obtaining publication in the Official Journal of the European Communities*

For publication in the Official Journal of the European Communities, the national authorities of some countries, in particular Belgium, forward an extract of the publication of the formation of the grouping in the national gazette to the Office for Official Publications of the European Communities. In other countries, for instance Italy, this formality must be carried out by the founders of newly formed EEIGs. In such cases, the founders of the EEIG should send the publication extract, by post or fax, to the following address:

Office for Official Publications of the European Communities
 "Public Contracts" Unit
 2, rue Mercier
 L-2985 Luxembourg
 Fax: +352 2929 42670

This publication is entirely free of charge.

3. THE LAW APPLICABLE TO THE GROUPING

All EEIGs are subject primarily to Regulation (EEC) 2137/85¹¹. This Regulation provides a very uniform legal framework for EEIGs. The Regulation has precedence over national law¹² and establishes a set of standard rules on the formation and operation of EEIGs which are directly applicable in all Member States.

What fields are covered by the Regulation?

In general, the binding provisions of the Regulation concern the conditions under which EEIGs are formed, the principles of their internal organisation (see the provisions on the organs of the grouping) and the protection of third parties (see the provisions on liability and disclosure) and members (see the provisions on members' prerogatives).

What fields are covered by national law?

EEIGs are governed by the various national laws as well as by the Regulation and the will of the parties.

¹¹ See Annex A.

¹² As set out in Article 189(2) of the Treaty of Rome, according to which: "A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States."

Subject to the provisions of the Regulation, which always take precedence, the internal law of the State in which the EEIG has its official address governs, on the one hand, the grouping's contract and, on the other hand, the grouping's internal operation.

Designation of the legislation applicable to the grouping's contract and its internal operation¹³ differs from one Member State to another. In some cases it is the law generally applicable to all legal persons (Netherlands). In other cases, it is the law applicable to a body with legal similarities to the EEIG such as the Groupement d'Intérêt Economique (GIE - Economic Interest Groupement) under French, Belgian, Luxembourg and Spanish law, the Groupement Complémentaire d'Entreprises (ACE - Complementary Grouping of Enterprises) under Portuguese law or the Offene Handelsgesellschaft (OHG - General Partnership) under German and Austrian law.

National law also governs the consequences of the unlimited joint and several liability of members (Article 24.1), the causes of liquidation of the grouping and methods of liquidation (Article 35), the bankruptcy of an EEIG, the taxation law applicable to members provided that fiscal transparency is respected (Article 40), and lastly insolvency and cessation of payments (recital 13).

Moreover, in areas not covered by the Regulation which relate essentially to the grouping's economic activity, the latter is subject like any other enterprise to the specific provisions of national law and Community law that are applicable: this concerns for instance social security law, labour law, competition law and intellectual property law (recital 15 of the Regulation).

3.1 Choices left to national legislators

The Regulation leaves some choices to the discretion of national legislators.

The following choices have been made:

1. Recognising the legal personality of the EEIG (Article 1.3).

An EEIG has full and independent legal capacity (Article 1.2), which distinguishes it from purely contractual forms of cooperation. This means that from the date of its registration in the State in which it has its official address, an EEIG has the capacity, in its own name and in all the Member States, to have rights and obligations of all kinds, to make contracts, to accomplish other legal acts, to sue and be sued and to have its own assets and liabilities.

The Regulation does not endow the EEIG with "legal personality" because of the differences between current legislation on the tax consequences linked to the granting of such personality. In Germany and Italy, for instance, fiscal transparency, which is essential for an EEIG, is accepted only in the cases of bodies that do not have legal personality. This means that these two Member States are the only ones that have not attributed legal personality to groupings. This choice is, however, of very limited scope and does not affect an EEIG's full autonomy of action in these two countries.

¹³ Pursuant to Article 2.1 of the Regulation.

2. The prohibition or restriction of the participation of certain categories of person in an EEIG (Article 4.4).

This option has been taken up by Belgium, for instance, which makes participation by public national credit institutions subject to the authorisation of the competent minister.

3. Restriction of the number of members of an EEIG.

There can be no more than twenty members in Ireland and Greece.

4. The possibility, under certain conditions, that legal persons can be managers of groupings (Article 19.2)

This possibility is expressly permitted in Spain, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal and the United Kingdom.

5. The automatic and compulsory exclusion of a member in the event of bankruptcy (Article 28.1).

This provision is expressly laid down in Germany, Belgium, Denmark, Spain, Ireland, Italy, Luxembourg, Portugal and the United Kingdom¹⁴.

6. Rejection of the transfer of the official address on the grounds of public interest.

This possibility has been taken up by Spain, the United Kingdom and Ireland.

7. The winding up or prohibition of an EEIG whose activity is in contravention of a Member State's public interest (Articles 32.3 and 38).

This provision has been laid down in Denmark, the United Kingdom, Ireland and Luxembourg.

¹⁴ Irrespective of this case of compulsory automatic exclusion, it should be borne in mind that, in the other Member States, the members of an EEIG are always free to include, in the EEIG's contract of formation, a clause which makes provision for such exclusion in the event of a member's bankruptcy.

European Elevators work together

European Elevator Association - EEA - EEIG

Every single day elevators and escalators transport hundreds of millions of Europeans in a fully automated way. User safety and comfort are just as essential as in any other transport system.

In order to improve servicing methods across Europe, several elevator companies across Europe created an EEIG on 19 October 1990. The EEA EEIG now has 90 members, mostly SMEs specialising in the production, service, maintenance and modernisation of elevators. Members come from 17 different countries and employ 70 000 employees.

The grouping's general object is to promote the quality of equipment and services related to elevators, freight lifts, escalators, moving walkways and associated systems manufactured, installed or maintained in the EU and to serve the public interest by providing for the safe and uninterrupted use of such equipment.

4. EXAMPLE OF A CONTRACT OF FORMATION AND PRACTICAL GUIDE TO DRAFTING

An example of a contract of formation of an EEIG (column 1) together with a practical questionnaire (column 2) which is intended to help the person drafting the contract to complete the empty spaces of the first column is given below.

When drafting the contract, the questions (underlined) and practical suggestions (in italics) in the second column indicate what information should be inserted in the empty spaces of the first column. In order to draft the first article, for instance, the question: What is the name of the grouping? needs to be answered. The answers given in the left-hand column are: "The name of the grouping is (...) EEIG" or "The grouping has the name (...) European Economic Interest Grouping". One of the empty spaces of the first column can then be filled in.

Some parts of the contract must not be changed and must be included as such: these parts do not therefore include any empty spaces (for instance Article 16: "The members acting collectively shall include all members of the grouping. They may take all decisions to achieve the grouping's object").

NOTE: The content of this contract reflects the obligations set out in Regulation (EEC) 2137/85. It does not take account of all the legal provisions resulting from the application of national regulations. It does, however, indicate those points at which national law could have some impact.

Column 1: the contract

Column 2: the questionnaire

<p>CONTRACT OF FORMATION OF AN EUROPEAN ECONOMIC INTEREST GROUPING -EEIG</p> <p>Between the undersigned</p> <p>1) Mr/Mrs..., born at..., resident at..., profession...</p> <p><i>and/or</i></p> <p>2) The company... governed by ...law, having its registered office at..., registered at the registry... under number ..., represented <i>either</i></p> <p>- under the terms of a private power of attorney annexed hereto</p> <p><i>or</i></p> <p>-in accordance with its articles of association</p> <p><i>or</i></p>	<p><u><i>Who are the founding members of the grouping?</i></u></p> <p><i>Insert all the details needed to identify members and their representatives.</i></p> <p><i>Note: Ireland and Greece limit the number of members of an EEIG to a maximum of twenty (Chapter II, section 3.1).</i></p> <p><i>Note: The members of an EEIG must come from at least two different States of the EEA.</i></p>
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<p>... by Mr/Mrs...</p> <p><i>and/or</i></p> <p>3) The establishment governed by public ...law, ... represented -under the terms of a private power of attorney annexed hereto <i>or</i> -in accordance with its articles of association <i>or</i> -... by Mr/Mrs... <i>and/or</i> 4)...</p>	<p><i>Note: establishments governed by public law may be full members of an EEIG. However, an EEIG cannot be a member of another EEIG (see Article 3.2.e of the Regulation).</i></p>
<p>there is formed a European Economic Interest Grouping - EEIG, governed by Regulation (EEC) 2137/85 and by the law/the decree....</p>	<p><i>Insert the reference of the national law regulating the EEIG (see Annex C) of the State in which it has its official address.</i></p>
<p style="text-align: center;">Article 1: Name</p> <p>The grouping shall have the name: <i>either</i>EEIG <i>or</i>European Economic Interest Grouping</p>	<p><u>What is the name of the grouping?</u> <i>The name of any EEIG must be preceded or followed either by the acronym "EEIG", or by the words "European Economic Interest Grouping" unless these words or this acronym are already part of the name.</i></p>
<p style="text-align: center;">Article 2: Object</p> <p>The object of the EEIG shall be: <i>either</i> - to produce <i>and/or</i> -to provide <i>and/or</i> - to promote <i>and/or</i> - to distribute <i>and/or</i> - to coordinate -...</p>	<p><u>What is the object of the grouping?</u> <i>EEIGs can have a very wide range of objects, provided that these are ancillary to the activities of their members and entail a minimum of economic activity. It is important, for the founders of an EEIG, precisely to define the object of their cooperation so that the content of their undertakings can be determined in advance.</i></p>

<p><i>possibly</i> Within the framework of this object, cooperation between members shall relate in particular to: </p>	<p><u>Which specific activities will the grouping carry out to achieve its objectives?</u> <i>Once the object of the grouping has been specified, it is possible to list the activities that it may carry out.</i></p>
<p>Article 3: Official address The official address of the EEIG shall be: ...</p>	<p><u>In which signatory State to the Agreement on the European Economic Area (EEA) will the grouping have its official address? What will its address be?</u> <i>Note: the grouping's official address may be the place where one of its members has his central administration or carries on his principal activity.</i> <i>Note: the national law applicable to the EEIG is that of the State in which it has its official address.</i></p>
<p>Article 4: Duration The duration of the grouping shall be indefinite <i>or</i> The duration of the grouping shall be ... years from the date of its registration at the registry ...</p>	<p><u>Will the grouping be set up for a fixed period?</u> <i>If so, specify its duration.</i> <i>Insert the reference of the national registry (see annex D).</i> <i>If no duration is specified, the grouping will automatically be considered to be established indefinitely.</i></p>

FINANCING

<p>Article 5: Capital <i>either</i> The grouping shall be formed without start-up capital <i>possibly</i> Where appropriate, the members acting collectively may decide <i>either</i> -unanimously <i>or</i> -by a majority of... to endow the grouping with a capital. At that</p>	<p><u>Will the grouping have a capital?</u> <i>If not, possibly specify the conditions under which it can subsequently be endowed with a capital.</i> <u>Under what conditions can the members decide to endow the grouping with a capital and establish each member's contribution thereto?</u></p>
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<p>time, they shall specify the amount of the capital, the value of each share and shall establish each member's contribution thereto</p> <p><i>or</i></p> <p>The capital of the grouping shall be the sum of divided into equal shares of</p> <p>These shares shall be allocated to the members of the grouping</p> <p><i>either</i></p> <ul style="list-style-type: none"> -in proportion to their contributions <p><i>or</i></p> <ul style="list-style-type: none"> -in equal shares <p><i>or</i></p> <ul style="list-style-type: none"> -X shares for member A -Y shares for member B -... 	<p><u>What is the amount of the grouping's start-up capital? What is the amount of each share?</u></p> <p><u>How are shares to be allocated to members?</u></p>
<p style="text-align: center;">Article 6: Contributions</p> <p>1) Contributions in cash</p> <p><i>either</i></p> <ul style="list-style-type: none"> -Mr/Mrs... shall contribute the sum of ... to the grouping <p><i>and/or</i></p> <ul style="list-style-type: none"> -The company shall contribute the sum of ... to the grouping <p><i>and/or</i></p> <ul style="list-style-type: none"> -The public establishment shall contribute the sum of ... to the grouping <p>2) Contributions in kind/skill</p> <p><i>either</i></p> <ul style="list-style-type: none"> -Mr/Mrs... shall provide the grouping with the property listed hereafter... <p><i>and/or</i></p> <ul style="list-style-type: none"> -The company... shall provide the grouping with the property listed hereafter... <p><i>and/or</i></p> <ul style="list-style-type: none"> -The establishment ... governed by public law shall provide the grouping with the property listed hereafter... 	<p><u>Will the members make contributions?</u> <i>If so, specify the amount and the nature of these contributions.</i></p> <p><u>Which member(s) will make contributions in cash and for what amount?</u></p> <p><u>Which member(s) will make contributions in kind/skill? What will these be?</u> <i>Describe any contributions in kind (for instance, making premises available free of charge) or in skill (for instance, the right to exploit a patent free of charge).</i></p>
<p style="text-align: center;">Article 7: Financing</p> <p>The grouping shall be financed</p> <p><i>either</i></p>	<p><u>How will the grouping be financed?</u></p>

<p>- by subscriptions or other contributions from members, under the conditions laid down by the members acting collectively. <i>and/or</i></p> <p>- by payments for services rendered to the members of the grouping or to third parties. The amount and conditions of such payments shall be established by the manager(s). <i>and/or</i></p> <p>- where appropriate, new members may be charged an admission fee, under the conditions laid down by the members acting collectively</p> <p>- ...</p>	<p><i>Note: it is not compulsory for the EEIG to have a capital (see Chapter VIII, section 1). If the contract contains no provisions on this matter, the members will all have to contribute to the financing of the EEIG's activities in equal shares (see Chapter IV).</i></p>
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MEMBERS

<p>Article 8: Admission of new members</p> <p>The admission of new members shall be subject to a unanimous decision by the members acting collectively.</p> <p><i>possibly</i> Natural or legal persons, companies or other legal bodies governed by public or private law, formed in accordance with the legislation of a State belonging to the EEA and satisfying the following conditions:... may apply to join the grouping.</p> <p><i>possibly</i> New members shall not have unlimited joint and several liability, in respect of third parties, for the payment of debts of the grouping that originated prior to their admission.</p> <p><i>possibly</i> The admission of a new member may be subject to the payment of an admission fee established by decision of the members acting collectively at the time of admission.</p> <p><i>possibly</i> A new member may join the grouping only at the beginning of the financial year.</p>	<p><u>Under what conditions can new members be admitted?</u></p> <p><u>Will new members be exonerated from debts that originated prior to their admission to the grouping?</u> <i>The members are free to insert a clause of this type.</i> Attention: <i>This clause may be relied upon as against third parties only if it has been published beforehand.</i></p> <p><u>Will the admission of new members be subject to the payment of an admission fee?</u></p> <p><i>In this way the grouping's accounting can be simplified. The members should nevertheless</i></p>
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<p><i>possibly</i> The EEIG may enter into cooperation relationships with other persons resident or having their central administration outside a Member State of the EEA. Such persons shall not be considered as members but may acquire the status of "associate". The methods and content of cooperation relationships with such persons shall be laid down by the members acting collectively <i>either</i> -unanimously <i>or</i> -by a majority of ... <i>or</i> -by a simple majority of members</p>	<p><i>be aware of the fact that this limits their flexibility somewhat as regards the admission of new members.</i> <i>See Chapter III, section 3.1.2</i></p> <p><u>Will there be associates?</u> <i>See Chapter III, section 2.1</i></p> <p><u>What form will their participation in the grouping take?</u></p>
<p>Article 9: Probationary members</p> <p>Acquisition of the status of full member shall be subject to a probationary period of a duration of ... months. During this period, the candidate shall have the status of "probationary member".</p> <p>A decision to admit probationary members shall be taken by the members acting collectively <i>either</i> unanimously <i>or</i> by a majority of ... <i>or</i> by a simple majority of members.</p> <p>During such probationary period, the probationary member shall not have the rights and obligations of full members.</p>	<p><i>It is not compulsory for the contract to contain a clause of this type. However, a probationary period gives the candidate and the members of the grouping time to assess one another and make a considered decision as to the advisability of membership (see Chapter III, section 3)</i></p> <p><u>Will the acquisition of the status of full member be subject to a probationary period?</u></p> <p><u>By what methods are probationary members to be admitted?</u></p> <p><u>What rights and obligations will probationary members have during this probationary period?</u></p>

<p>-in cases in which the members have refused to authorise the assignment of a member's participation <i>or</i> -without the agreement of the other members being required.</p> <p>Any member of the grouping may, in addition, withdraw on just and proper grounds.</p> <p><i>Possibly</i> Such withdrawal shall take effect after notice has been served on the managers <i>either</i> - at least ... months beforehand by registered letter with advice of receipt. <i>or</i> - at least ... months prior to the end of the financial year by registered letter with advice of receipt.</p>	<p><i>Assignment of a member's participation to a third party is subject to unanimous authorisation (see Article 12). If such authorisation is refused, the contract may make provision for the possibility of withdrawal.</i></p> <p><u>Will it be compulsory for advance notice of withdrawal to be given?</u></p> <p><i>This final clause is a way of simplifying the grouping's accounting. Members should nevertheless be aware that this to some extent limits the flexibility of a member who wishes to leave the grouping. See Chapter III, section 3.1.2</i></p>
<p>Article 11: Expulsion of a member</p> <p>Any member of the grouping may be expelled if he seriously fails in his obligations or he causes or threatens to cause serious disruption in the operation of the grouping. <i>possibly</i> Any member may also be expelled from the grouping on one of the grounds listed below: -... -... -...</p> <p>A decision to exclude a member shall be taken <i>either</i> -by the members acting collectively by a majority of <i>or</i> unanimously <i>or</i> -by the managers</p>	<p><u>On what grounds can a member be expelled?</u></p> <p><i>Note: in some Member States, a member who becomes insolvent is automatically expelled in the event of his bankruptcy (see Chapter II, section 3.1).</i></p> <p><u>By whom and by what methods will a decision to expel a member be taken?</u></p>

<p>by a majority of <i>or</i> unanimously</p>	
<p>Article 12: Assignment of participation</p> <p>Any participation in the grouping, or a proportion thereof, may be assigned either to another member or to a third party. Such assignment shall not take effect without the unanimous authorisation of the other members.</p> <p><i>Possibly</i> Such assignment shall take effect only at the end of the financial year.</p>	<p><i>This is a mandatory rule of the Regulation (Article 22). If a member ceases to belong to the grouping as a result of the sale of his participation, the third-party purchaser can become a member of the grouping only with the express agreement of all the remaining members.</i></p> <p><i>This is a way of simplifying the grouping's accounting. Members should nevertheless be aware that this to some extent limits the flexibility of a member who wishes to leave the grouping. See Chapter III, section 3.1.2</i></p> <p><i>Note: if authorisation to assign the participation is refused, the member can still withdraw, provided that he satisfies the conditions set out in Article 10.</i></p>
<p>Article 13: Succession in the event of death</p> <p>In the event of the death of a natural person who is a member of the grouping, authorisation to admit his successor to the grouping shall be given <i>either</i> by the remaining members - unanimously <i>or</i> - by a majority of <i>or</i> by the managers -unanimously <i>or</i> -by a majority of...</p>	<p><u>Under what conditions can the successor of a deceased member become a member of the EEIG?</u></p> <p><i>Note: if authorisation to succeed to the participation is refused, the value of this participation will be paid to the heirs of the deceased member under the conditions set out in Article 14 below.</i></p>
<p>Article 14: Rights and obligations of a member who withdraws</p> <p>When a member shall cease to belong to the grouping for any reason other than the</p>	<p><i>If a member ceases to belong to the grouping as a result of withdrawal, expulsion or death, his participation will be paid to him or to his heirs, except where the latter so desire <u>and are authorised</u> to succeed to the participation</i></p>

<p>assignment of his rights in accordance with the conditions laid down in Article 12, 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.</p>	<p><i>(see Article 33 of the Regulation).</i></p> <p><i>Note: a member who ceases to belong to an EEIG continues to be answerable for debts arising out of the grouping's activities before he ceased to be a member for five years after his departure.</i></p>
<p style="text-align: center;">Article 15: Liability</p> <p>The members shall have unlimited joint and several liability for its debts and liabilities of whatever nature.</p> <p><i>Possibly</i> In the internal regulation, the consequences of such liability shall be distributed: <i>either</i> -in equal shares <i>or</i> -in the same proportion as participation in the grouping's profits <i>or</i> -...</p>	<p><i>It is not possible to derogate from the provisions governing the EEIG's external liability: any member may be required to pay a debt of the grouping in full to a third party when the grouping has failed to honour its obligations.</i></p> <p><i>The members of the EEIG are free, however, to establish methods for the internal distribution of the risks arising from their participation in the grouping (see Chapter IV, section 3).</i></p> <p><u>How will liability for the grouping's debts be distributed internally?</u></p> <p><i>Note: members are free to 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.</i></p>

ORGANS

<p style="text-align: center;">Article 16: The members acting collectively</p> <p>The members acting collectively shall include all the members of the grouping. They may take all decisions to achieve the grouping's objects.</p> <p>The members shall meet or be consulted at the initiative either of a member or a manager.</p> <p>This consultation shall take the form of: <i>either</i> -a physical meeting <i>and/or</i> -a telephone meeting</p>	<p><u>What form will this consultation take?</u> <i>Any form of consultation is possible.</i></p>
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<p><i>and/or</i> -a teleconference <i>and/or...</i></p> <p><i>possibly</i> An annual general meeting shall in any case be held in order to adopt the following decisions: <i>either</i> -approval of the annual accounts <i>and/or</i> ...</p> <p>In the event of consultation of the members, the manager/chairman of the management board, shall convene the members by: - written letter, <i>and/or</i> telex <i>and/or</i> fax <i>and/or</i> ..., ... working days prior to the date of such meeting.</p> <p>-...</p> <p><i>possibly</i> Notice of the meeting shall contain the agenda of the meeting.</p> <p>The members can/cannot be represented by a proxy.</p> <p>Every member shall have <i>either</i> -one vote <i>or</i> -a number of votes equal to the number of shares that they possess -...</p> <p>A unanimous decision by the members shall be required to: a) alter the objects of the 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 the grouping e) alter the contribution by every member or by some members to the grouping's financing</p>	<p><u>Will there be an annual general meeting?</u> <u>What decisions will be adopted at this meeting?</u> The members are entitled to make provision for an annual general meeting to be held at least once a year for the adoption of those decisions most important for the life of the grouping.</p> <p><u>By what methods will meetings of members be convened?</u> <i>Meetings can be convened in a range of ways: the choice is entirely at the discretion of members.</i></p> <p><u>Will the notice of the meeting contain the meeting's agenda?</u></p> <p><u>Can the members be represented by a proxy?</u> <i>The choice is free.</i></p> <p><u>How many votes will each member have?</u> <i>The choice is entirely at the discretion of the members, provided that one member does not hold a majority of the votes (see Article 17 (1) of the Regulation).</i></p> <p><i>Decisions a) to h) require unanimous agreement, according to a rule imposed directly by the Regulation. It is not therefore absolutely necessary to list them in the contract. Including them, however, helps the signatories to the contract to understand the mechanism by which the EEIG operates and clearly specifies to what they are committing themselves.</i> <i>Note: decision d) refers solely to the case of an EEIG set up for a specific period.</i></p>
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<p>f) transfer the official address of the grouping to another Member State of the EEA</p> <p>g) admit new members</p> <p>h) assign their participation or a proportion thereof either to another member or to a third party</p> <p>i)...</p> <p>All other decisions shall be taken under the following quorum and majority conditions:</p> <p>The meeting may deliberate validly only <i>either</i></p> <p>-if at least half of the members, representing at least half of the votes, is present or represented.</p> <p><i>or</i></p> <p>-if...</p> <p>Decisions shall be taken <i>either</i></p> <p>-by a majority of three quarters of the votes of members present or represented</p> <p><i>or</i></p> <p>-by a simple majority of the votes of members present or represented</p> <p><i>or</i></p> <p>-...</p>	<p><i>Members are free to add other decisions that require unanimous agreement. However, unanimity is a very constraining rule which may lead in certain cases to an impasse.</i></p> <p><u>What conditions of quorum and majority will be required for other decisions?</u></p> <p><u>How many members, representing how many votes, are needed for the meeting validly to deliberate?</u></p> <p><u>By what majority of votes of the members present or represented will decisions be taken?</u></p>
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MANAGERS

<p>Article 17: Managers</p> <p>The grouping shall be managed by a manager/management board made up of ... members</p> <p>The managers shall be appointed by the members acting collectively <i>either</i></p> <p>unanimously</p> <p><i>or</i></p> <p>by a majority of...</p> <p>They shall be appointed for a period of ... years; such appointment may be revoked</p>	<p><u>How many managers will there be?</u> <i>Specify whether legal persons can be managers.</i> <i>Note: some Member States make express provision for this option (see Chapter II, section 3.1)</i></p> <p><u>Under what conditions can be managers be appointed and removed?</u></p>
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<p><i>either</i> - without prior notice <i>or</i> -... under the same conditions as their appointment. <i>or</i> -...</p>	
<p>Article 18: Powers of managers</p> <p>The manager(s) may perform any act required or useful for the achievement of the objects of the grouping, excepting those set aside by law or this contract for the members acting collectively. <i>possibly</i> In particular, the manager may: ... <i>possibly</i> The grouping shall be validly bound in respect of third parties only by the joint signature of at least ... managers.</p>	<p><i>Note: Every manager represents the grouping in respect of third parties.</i></p> <p><i>It is always possible to limit the powers of managers internally: i.e. it will not be possible to rely on this limitation as against third parties, but the manager will be liable as regards the grouping (see Chapter VII, section 1.2.2).</i></p> <p><u>Will the managers have to act jointly?</u> <i>The only way in which the external powers of representation of managers can be limited is to require that they perform and therefore jointly sign all or some deeds (which then have to be listed in the contract, see Chapter VII, section 1.2.3)</i> <i>Note: This clause can be relied upon as against third parties only if it has been published beforehand.</i></p>

FINANCIAL YEAR - PROFITS AND LOSSES - AUDIT

<p>Article 19: Financial year</p> <p>The financial year shall start on ... and shall end on <i>possibly</i> Exceptionally, the first financial year shall start on ... and shall end on ...</p>	<p><u>When does the financial year start? When does it end?</u> <i>The financial year normally starts on 1 January and ends on 31 December of each year.</i> <i>Particular provisions may be adopted for the first financial year.</i></p>
<p>Article 20: Annual accounts</p> <p>At the end of each financial year, annual accounts shall be drawn up by the manager(s) who shall submit them to the members for approval within months of</p>	<p><u>Will annual accounts be drawn up?</u></p>

<p>the end of the financial year.</p> <p><i>possibly</i> The annual accounts shall be published.</p>	<p><u>Will these annual accounts be published?</u></p> <p><i>Under some national laws, in contrast to Regulation 2137/85, it is compulsory for EEIGs to draw up annual accounts. In other cases, members can decide not to draw them up or not to publish them. The voluntary preparation and publication of annual accounts may, however, be advantageous if the EEIG wishes to take part in public calls for tender or contract loans (see the Communication from the Commission, OJ C285 of 20 September 1997, p 17, reproduced in Annex B).</i></p>
<p>Article 21: Profits and losses</p> <p>If the accounts show a profit, the members acting collectively may decide to allocate a certain proportion of these profits to a reserve fund, or to apportion them among the members</p> <p><i>either</i> -in equal shares <i>or</i> -pro rata to the number of their shares <i>or</i> -in the following manner ...</p> <p>In the event of a loss, the manager(s) may require the members of the grouping to contribute to the loss incurred</p> <p><i>either</i> -in the same proportion <i>or</i> -in the following manner...</p>	<p><i>In most cases, Articles 5, 6, 7 (capital, contributions, financing), Article 15 (liability) and this article will reflect one another.</i></p> <p><u>How will the profits of the grouping be distributed among members?</u></p> <p><u>How will the losses of the grouping be distributed among members?</u> <i>If the contract makes no provision, the profits and losses will be apportioned among the members in equal shares.</i></p>
<p>Article 22: Audit</p> <p>Auditing of the financial position, annual accounts and management shall be the task of</p> <p><i>either</i> - a supervisory board</p>	<p><u>Will the grouping have a supervisory organ? If so, what form will it take?</u></p> <p><i>The Regulation does not make it compulsory for the grouping to have a supervisory organ.</i></p>

<p><i>or</i> -... appointed by the members acting collectively in accordance with the following methods and conditions: ...</p>	<p><i>It is always possible, however, to make provision for one.</i></p>
<p>Article 23: Winding up</p> <p>The members acting collectively may decide to wind up the grouping early <i>either</i> -unanimously <i>or</i> -... <i>or</i> <i>possibly</i> The grouping shall/shall not exist after one of its members has ceased to belong to it.</p>	<p><u>Under what conditions can it be decided to wind up the grouping?</u></p> <p><i>Members are free to choose how this decision is to be made.</i></p> <p><u>Will the grouping continue to exist after one of its members has ceased to belong to it?</u> <i>If the contract makes no provision, the grouping continues to exist, unless the grouping has only one member or several members who are all nationals of the same Member State.</i></p>
<p>Article 24: Liquidation</p> <p>When the grouping reaches its term or if it is wound up early, the grouping shall be liquidated <i>either</i> -by the manager(s) <i>and/or</i> -by one or more liquidators, if so decided by the members acting collectively. Any assets or liabilities remaining after payment of the grouping's debts and liabilities shall be apportioned among the members <i>either</i> -in equal shares <i>or</i> -pro rata to the number of their shares <i>or</i> -...</p>	<p><u>Who will be responsible for the liquidation of the grouping?</u></p> <p><u>How will any remaining assets or liabilities be apportioned?</u></p> <p><i>If the contract makes no provision, apportionment will be in equal shares. In most cases, Articles 5, 6, 7 (capital, contributions, financing), Article 15 (internal distribution of liability) and this Article will reflect one another.</i></p>

OTHER

<p>Article 25: Disputes between members</p> <p>Any dispute which may arise in respect of the validity, interpretation or performance of this contract, either between the members and/or the manager(s) and/or the grouping, or between the members themselves, and which shall not compulsorily be submitted to the competence of the judicial authority, shall be submitted to (a board of) arbitrator(s)/ conciliator(s)/ mediator(s) appointed by the following methods....</p>	<p><u>Can disputes arising in respect of the validity, interpretation or performance of the contract either between the members and/or the manager(s) and/or the grouping, or between the members themselves, which it is not compulsory to submit to the competence of the judicial authority, be submitted to arbitration/conciliation/mediation?</u> <u>If so, by what methods?</u></p> <p><i>This provision is not compulsory. In order to settle any disputes arising between members, these members are free to resort to extrajudicial procedures for settling disputes (arbitration, mediation, conciliation). These solutions may avoid long judicial procedures which could bring the grouping's activities to a standstill, bearing in mind the close links between these activities and the mutual trust of its members.</i></p>
<p>Article 26: Internal regulation</p> <p>The rights and obligations of members shall be specified in the/an internal regulation annexed to this contract.</p> <p>The members may amend this regulation by a decision taken <i>either</i> -unanimously <i>or</i> -by a majority of...</p>	<p><i>An internal regulation is not compulsory: such a regulation can, however, be drawn up at the time of drafting of the contract or subsequently, in order to specify members' rights and obligations in detail.</i></p>
<p>Article 27: Languages</p> <p>The present contract language being drafted in the,, languages, the ... version shall be valid in the event of disputes as to its interpretation. <i>and/or</i> It has been decided to use the Language for any official dealings or communications between members.</p>	<p><u>In which language(s) is the contract drawn up? Which language will be valid in the event of disputes as to its interpretation?</u></p> <p><u>Which language will be used for dealings between members?</u></p> <p><i>This provision is not compulsory, but often appears in EEIG contracts.</i></p>

Done at ..., on ...

(followed by the signatures of the founding members possibly authenticated by a notary)

EEIGs can also play their part in social and welfare activities

- *Choroi Association - EEIG*

Foundations, cooperatives and limited partnerships operating in six EU Member States have set up an EEIG in the area of music therapy for underprivileged children. The object of this EEIG is jointly to pursue training, research and marketing activities.

- *Identität - EEIG*

Several social agencies have established, within the framework of an EEIG, an international mutual support and information network for the long-term unemployed.

CHAPTER III

THE MEMBERS OF AN EEIG: EUROPEAN COOPERATION

1. WHO CAN BECOME A MEMBER OF AN EEIG?

All EEIGs are set up for the purposes of cross-border or even Europe-wide cooperation. One of the conditions that must be satisfied when setting up an EEIG is therefore that at least two economic operators from two different Member States of the EEA¹⁵ must participate in it. The second condition is that they must be carrying on an economic activity.

1.1 Attachment to an EEA State

Any person in law, for instance a natural person, a legal person or a company, may participate in an EEIG as soon as they are attached to an EEA State. This attachment is independent of nationality; in the case of natural persons, it is linked to the place at which they carry on an independent economic activity, and in the case of legal persons, companies and other legal bodies, it is linked to the presence of their central administration and their statutory or registered office in the EEA¹⁶.

1.2 Exercise of an economic activity

The second condition for participation in an EEIG is the exercise, prior to membership of the EEIG, of an economic activity¹⁷, a notion that has to be interpreted in a very wide sense. Consequently, public bodies or associations can set up an EEIG if some of their activities can be considered as economic in nature.

1.3 Companies and other bodies governed by public and private law

Companies can be members of an EEIG as well as other bodies governed by public or private law established in accordance with the legislation of a Member State. Companies eligible for participation are defined by reference to Article 58 (2) of the Treaty of Rome, i.e. “companies or firms constituted under civil or commercial law” as well as “other legal persons constituted under public or private law, save for those which are non-profit-making”¹⁸. Capital companies,

¹⁵ The EEA includes the Member States of the European Union, Iceland, Norway and Liechtenstein.

¹⁶ In cases where, under the law of a Member State, a legal body is not obliged to have a statutory or registered office, it is sufficient for this legal body to have its central administration in the EEA.

¹⁷ See the first recital of Regulation 2137/85 which describes the grouping as a legal framework facilitating the development of economic activities. See also Article 3 of the Regulation which defines the aim of the grouping as follows: “...to facilitate or develop the economic activity of its members...”

¹⁸ The concept of “profit-making” is interpreted more broadly in the Treaty than in some national laws. The concept is described in the Convention on the Mutual Recognition of Companies and Legal Persons signed in Brussels on 29 February 1968 as an “economic activity normally carried on in return for payment”.

partnerships, mutual societies and cooperatives are therefore covered by this definition and can therefore be members of an EEIG.

The very broad-ranging formulation “other legal bodies constituted under public or private law” can be interpreted to mean that various types of institution can become members of a grouping. These include, for instance, universities, scientific research centres, local authorities and chambers of commerce.

1.4 Natural persons

Natural persons carrying an economic activity of an industrial, commercial, craft or agricultural type or providing professional or other services may also be members of an EEIG. All the professions from craft workers to lawyers and traders to self-employed farmers are therefore covered. Employees are excluded as independence is one of the requirements for participation in an EEIG.

1.5 Size and number of members

The size of members does not matter: sole traders, craft enterprises, SMEs and even multinationals can therefore be members. The statistics available from the REGIE database¹⁹ show, however, that 68% of existing EEIGs have been set up exclusively or largely by SMEs.

Regulation 2137/85 specifies that EEIGs must have at least two members but does not impose a maximum limit. National legislators are free to decide, however, whether or not to set a ceiling of twenty members. This option has been taken up by Ireland and Greece (see above, Chapter II, section 3.1). The statistics available from the REGIE database²⁰ show, however, that existing EEIGs have an average of four members.

1.6 Examples

The following few examples illustrate the many possibilities offered by the EEIG:

- an EEIG, called “EEIG - Firestop - Europe”, set up by a foundation established by local authorities in the region of Tuscany in Italy and Italian, Spanish, French and Greek SMEs working in the area of environmental defence. The grouping’s object is to develop training and research in the area of forest fire prevention.
- an EEIG, called “EDAPI”, set up by companies and non-profit-making associations working in the field of publications about beekeeping. The aim of the grouping is to exchange articles and publications and to exhibit these on a common stand at international exhibitions.
- a grouping, called “Ulixes European Trade and Research EEIG”, has been set up by training agencies, chambers of commerce and higher education institutions from seven different EU Member States, in order to establish a cooperation network in the area of training and research and development.

¹⁹ See Chapter XI and Table 1.

²⁰ See Chapter XI.

2. WHO CANNOT BECOME A MEMBER OF AN EEIG?

2.1 Third countries

The condition of attachment to a Member State of the European Union or EEA has to be satisfied to participate in a grouping as a full member. EEIGs can, however, forge cooperation links with persons who do not satisfy this condition. In such cases, these persons will not be considered as members but may have “associate” status (see Chapter II, section 4, example of a contract of formation, Article 8).

The form and substance of cooperation links with these associate members are defined in the contract or by the members (see Chapter II, section 4, example of a contract of formation, Article 8).

There is nothing to stop, for instance, a Swiss enterprise from becoming an associate member of an EEIG, paying a certain proportion of the latter’s expenses, receiving a certain proportion of its revenue and taking on some of the EEIG’s financial obligations. This will not change the grouping’s external liability for its obligations: the grouping’s creditors may demand payment of the EEIG’s debts solely from the grouping’s full members, although the latter can proceed against the other members and, if the contract so provides, against associates, to enforce their share of liability as specified in the contract or in a separate agreement (see Chapter IV below).

It should also be stressed that an associate member is not entitled to vote when the members are acting collectively, as this prerogative is reserved exclusively for the grouping’s full members.

Another way in which cooperation links can be forged with economic operators who do not satisfy the criteria required to become members of an EEIG is to appoint them as managers of groupings. This function can in fact be carried out by economic operators who are not attached to a Member State of the EEA (see Chapter VII below).

2.2 Other cases

Persons who do not satisfy the second requirement, i.e. who are not carrying on an economic activity, cannot become members of an EEIG. Associations having an exclusively philanthropic object are for instance excluded.

The Regulation also prohibits an EEIG from participating in another EEIG²¹.

Lastly, the Regulation empowers national legislators to exclude or restrict the participation of some categories of persons in an EEIG (see Chapter II, section 3.1).

3. THE KEY ROLE PLAYED BY EEIG MEMBERS

²¹ See Article 28 of Regulation 2137/85.

The members of an EEIG play a key role in the grouping, not only when it is being set up, but also throughout its life. From this point of view EEIGs are very similar to partnerships in which the personal qualities of the partners tend to take precedence, thereby differentiating them from companies with share capital whose members tend to be viewed more in terms of the share of the capital that they have subscribed.

EEIG members tend in practice to fall into three groups:

1. “*Image buyers*”. These are operators who become members of an EEIG in order to acquire an international image. They do not enter into the spirit of the grouping and, sooner or later, drop out of the grouping.
2. “*Immediate result claimers*”. These are members who hope to obtain an immediate financial gain. They tend also to drop out of the grouping very readily. The benefits of participation in a grouping often become evident, however, only in the long term.
3. “*Constructive and cooperative members*”. Only this type of member will make optimum use of its participation in the EEIG. These are people who understand that the success of an EEIG depends on every member’s commitment to a joint effort of cooperation.

In order to ensure the success of the partnership, it may be advisable to test whether economic operators who wish to become members of an EEIG actually want to cooperate. Precautions can be taken in this respect by giving potential members “probationary” status for a reasonable period of time, thereby allowing for a period of trial and mutual evaluation before these members acquire full member status (see Chapter II, section 4, example of a contract of formation, Article 9).

3.1 Admission, assignment of participation, use of participation as security, succession, withdrawal, expulsion

The provisions governing the admission and withdrawal of members of the grouping highlight the importance of the personal element in participation in an EEIG.

The admission of any new member, and the assignment of a member’s participation in the grouping, or a proportion of this participation, require the unanimous authorisation of the members, and the contract cannot provide otherwise²². If, therefore, a member sells his participation to a third party, but has not been authorised to do so, this third party acquires the right to become a member of the EEIG in question after only if this is unanimously authorised by the other members.

Unanimous authorisation is again the rule, although the contract may provide otherwise in this case, for the use of a participation in the grouping as a security²³, for succession to a participation²⁴ in the event of the death of a member who is a natural person and for the withdrawal²⁵ of a member in the absence of just and proper grounds. It should be borne in

²² See Article 7 of Regulation 2137/85.

²³ See Article 22 of Regulation 2137/85.

²⁴ See Article 28 of Regulation 2137/85.

²⁵ See Article 27 of Regulation 2137/85.

mind that any member may withdraw on just and proper grounds, without the other members being able to oppose this withdrawal.

Lastly, the rules on the expulsion²⁶ of a member show that mutual trust plays an important part in the operation of an EEIG. In cases in which this trust is lacking and providing that the contract does not provide otherwise, the rule is that a simple majority of members may request the courts to expel a member who seriously fails in his obligations or causes or threatens to cause serious disruption in the operation of the grouping. EEIGs should try to avoid any dispute, since such disputes compromise the spirit of professional cooperation that is absolutely necessary within a grouping.

The transnational dimension of an EEIG, in which participants' different cultures could lead to distrust or misunderstandings, makes it necessary for the grouping's partners to know each other well. Placing their activities on an international footing through an EEIG means therefore that members need to make an additional effort to find out about and understand one another.

It should lastly be borne in mind that according to Article 33 of Regulation 2137/85, when a member ceases to belong to a grouping for any reason other than the assignment of his participation to another member or to a third party, the value of his rights and obligations are determined taking into account the assets and liabilities of the grouping as they stand when he ceases to belong to it. This Article therefore applies to the withdrawal, expulsion and death of members.

3.1.1 *Transmission of the EEIG from one generation to another*

EEIG members can prepare to pass on their participation in three ways:

a) Assignment of participation to a third party (*inter vivos*).

A member may assign his participation to a third party who acquires the status of member in his place. This assignment requires the unanimous authorisation of the other members (see Article 12 of the example of a contract, Chapter II, section 4).

b) Succession in the event of death (*mortis causa*).

If a member dies, his heirs may, if they wish, succeed to his EEIG membership under the conditions set out in the contract. Unanimous authorisation is not necessarily required in this case (see Article 13 of the example of a contract, Chapter II, section 4).

c) Withdrawal from the grouping with reimbursement of the member's share.

If assignment to a third party (as under a) has not been authorised, a member still has the option of withdrawal under the conditions set out in the contract. In this case, he receives reimbursement for his share (see Articles 10 and 14 of the example of a contract, Chapter II, section 4). Similarly, in cases where the heirs of a deceased member do not wish to or are not authorised to succeed to his EEIG membership (as under b), the deceased member's share is reimbursed to them.

²⁶ See Article 27.2 of Regulation 2137/85.

3.1.2 Consequences of changes in the composition of the grouping

Frequent changes in the composition of an EEIG may entail long-winded procedures, as Article 7 of the Regulation states that any amendment of the grouping's contract, including any change to its composition, must be filed at the competent national registry. It is therefore recommended that SMEs wishing to form an EEIG take the following precautions:

1. Making provision for "probationary members" (see Chapter II, section 4, Article 9);
2. Making provision in the contract for a clause under which a member can join the grouping only at the beginning of the financial year. Changes therefore take place at the same time as the annual accounts are drawn up (see Chapter II, section 4, example of a contract of formation, Articles 8-11).

3.2 Disputes between members, managers and the grouping

In order to settle disputes between them, members are free to resort to extrajudicial methods of settling disputes (arbitration, mediation, conciliation). These solutions may prevent long judicial procedures which could bring the grouping's activity to a standstill. When the contract is being drafted, a clause expressly providing for recourse, in the event of a dispute, to an arbitration body or to a mediation or conciliation institution, can therefore be included.

3.3 The individual rights of members

The fundamental role played by the members of an EEIG is also reflected by the large number of individual rights that they are given in return for their commitment to an enlarged market.

In the first instance, the members are the sovereign organ of the grouping and are responsible for taking "any decision for the purpose of achieving the objects of the grouping"²⁷. The methods by which decisions are taken are designed to safeguard the individual rights of members: the most important decisions for the life of the grouping consequently require unanimous agreement. No member can, moreover, hold a majority of the votes²⁸.

Members also have considerable powers of supervision over the activities of administrators responsible for the day-to-day management of the EEIG. Any member is entitled to obtain information from the managers concerning the grouping's business and to inspect the grouping's books and business records²⁹. Lastly, any member may request that the members are consulted so that they can take a decision³⁰.

4. SEEKING PARTNERS: A KEY STEP IN PLACING THE STRATEGIES OF SMEs ON AN INTERNATIONAL FOOTING

²⁷ See Article 16.2 of Regulation 2137/85.

²⁸ See Article 17.1 of Regulation 2137/85.

²⁹ See Article 18 of Regulation 2137/85.

³⁰ See Article 17.4 of Regulation 2137/85.

The members of an EEIG have often worked with one another before setting up the grouping. This has generally taken the form of informal cooperation such as exchanges of services or regular professional dealings that the partners have then decided to place on an official footing by setting up an EEIG. The EEIG is therefore often seen as way of formalising and consolidating existing relationships.

However, Commission departments are often contacted by SMEs interested in establishing an EEIG and looking for potential partners. In addition to the information and assistance that the “REGIE”³¹ network can offer, it is worth mentioning other Community instruments that can help to find partners for international cooperation.

The *Business Cooperation Centre (BCC)*, established in over 60 countries, promotes non-confidential contacts between enterprises. The simple way in which it operates (forwarding of offers to contact points in the desired regions or countries) means that the BCC can handle over 7500 cooperation profiles every year.

The *Business Cooperation Network (BC-Net)*, is a computerised system of confidential search notices based on a network of close on 400 “enterprise advisers” in the European Union and some non-EU countries.

Lastly, under the *Europartenariat* programme, trade fairs are organised twice a year in a region of the Union receiving Structural Funds and, under the *Interprise* scheme, the Commission awards funds to initiatives that bring together at least three regions of the European Union in order to promote partnerships between enterprises.

More detailed information on these programmes can be obtained from:

European Commission
 Directorate General XXIII/B/2
 Rue de la Loi 200
 B-1049 Bruxelles
 fax: +32 2 295 1740
 or

from one of the 221 Euro-Info-Centres throughout the European Union.

³¹ See Chapter XI.

A “juicy” grouping

EQCS - EEIG

In March 1994 the European fruit juice industry founded a European Quality Control System for juices and nectars from fruits and vegetables.

By setting up an EEIG, this sector of the European food industry committed itself voluntarily to the implementation of a common concept for quality assurance in Europe.

The grouping’s aim is to guarantee that consumers receive juices and nectars of a quality that meets their expectations. Its objective is to facilitate free and fair competition in cross-border trade without detriment to juice quality, to harmonise all control systems and to promote the use of agreed voluntary standards.

CHAPTER IV

THE EEIG AND LIABILITY: A SOLID AND RELIABLE INSTRUMENT

The EEIG is a legal body which is separate from its members and which is able to have rights and obligations of all kinds, make contracts and to sue and be sued. The EEIG is liable to pay any debts into which it has entered from its own assets.

While the grouping has principal liability for its debts, since it is the only person liable for them, these debts are nevertheless guaranteed in an unlimited joint and several way by all the members of the grouping. This is the meaning of Article 24 of the Regulation establishing the EEIG, which states that “The members of a grouping shall have unlimited joint and several liability for its debts”.

1. EXTENT OF LIABILITY

The acquisition of this “Community passport” makes all the members of an EEIG European and allows them, and in particular SMEs, to place their strategies on an international footing. In return, members are required to make a serious commitment.

Members are liable for the grouping’s debts of all kinds, including tax and social security debts.

Former members of an EEIG continue to be liable for five years after they have ceased to belong to the grouping for debts arising out of the activities of the grouping prior to their departure.

2. APPLICATION MECHANISMS

According to the Regulation, “creditors may not proceed against a member for payment in respect of debts and other liabilities (....) unless they have first requested the grouping to pay and payment has not been made within an appropriate period”³².

Creditors of the grouping therefore have to proceed against the grouping for payment of any debts for which the EEIG is liable.

It is only when the grouping fails to pay within an appropriate period that its creditors may request full payment of the debt from one of its members. The member who has paid the debt may then proceed against the EEIG for full reimbursement.

³² See Article 24.2 of Regulation 2137/85/EEC.

In addition, this member may seek to obtain reimbursement from the other members who are liable to the extent laid down in the contract or, if no provision has been made in the contract, in equal shares.

3. CAN THE LIABILITY OF MEMBERS BE LIMITED?

Members have a great deal of freedom in designing the terms of their cooperation. They may use this freedom, on the one hand, to set up the grouping with or without capital and, on the other hand, to safeguard themselves against the risks arising from their membership of such a grouping. It is possible to limit members' liability and to take some precautions.

The Regulation itself substantially tempers the rule of unlimited joint and several liability.

In the first instance, it is possible to exclude or restrict, in a specific contract between the grouping and a third party, the liability of one or several members of the EEIG for a specific debt³³.

This option allows enterprises of very different size and financial capacity to cooperate: smaller enterprises can therefore be exempted from undertakings that their size or high level of professional specialisation would make it impossible for them to sustain. It also means that universities, research centres or other public bodies - again for specific operations - do not have to commit all of their assets. The agreement of the third party is obviously required before this option can be used.

Secondly, the members of the grouping are free to organise their liability internally and make provision for different shares in cases in which the grouping's liability is called into question. A clause in the grouping's contract could thus make provision for each member to share to a different extent in liability for the grouping's debts.

As a result of the serious consequences that the application of the principle of joint and several liability may have for members, the provisions governing this matter should be very precisely drafted.

Obviously, the internal arrangements relating to members' respective shares in an EEIG's debt cannot be relied upon as against third parties: the latter will always have the option, after having tried in vain to obtain payment from the EEIG itself, to proceed against the member of the grouping of their choice in order to claim full payment of this debt (see Chapter II, point 4, example of a contract of formation of an EEIG, Article 15). The internal validity of the agreement to limit liability will, however, allow the member who has had to pay the debt to proceed against the other members, who will be liable to pay their share of the debt as laid down in the contract or, if no provision has been made in the contract, in equal shares.

In addition, Article 26.2 of the Regulation makes it possible, under certain conditions, to exempt a new member from the payment of debts originating prior to his admission into the EEIG.

³³ See the tenth recital of the Regulation.

Lastly, it should be borne in mind that proceedings against an EEIG because of its insolvency or cessation of payments do not automatically entail such proceedings against each of its members.

4. PRECAUTIONS TO BE TAKEN

In addition to the various ways in which members' liability can be limited, members can take a number of precautions to contain the risks arising from their participation in an EEIG.

- Economic operators can participate in an EEIG via a legal structure, for instance a limited company endowed with an adequate capital. Their liability is then limited to the capital of this company. A university can, for instance, manage all of its economic activities through a limited company. If the limited company becomes a member of an EEIG, liability for the EEIG's debts will then be limited to the capital of the company which is a member of the European grouping.
- Endowing the EEIG with sufficient resources of its own, for instance by constituting a capital, provides an interface between the EEIG's creditors and members.
- It is vital for the founders of an EEIG precisely to define the objective of their cooperation in order to determine in advance the content of their undertakings.
- The choice of the manager(s) of the EEIG and the definition of their powers is of particular importance. The activities of the manager (or of each manager) bind the EEIG in an unlimited way, even when these activities do not fall within the objectives of the EEIG (see Chapter VII on the organs of the EEIG). Members may take the precaution of including a clause in the contract stating that managers cannot act solely under their own signature and must jointly sign all or some instruments (see Chapter II, section 4, example of a contract, Article 18; see also Chapter VII, section 1.2.3).

5. THE ADVANTAGES OF UNLIMITED JOINT AND SEVERAL LIABILITY

The system of unlimited joint and several liability of the members of the grouping provides a basic guarantee for the EEIG's trading partners, as it enables them more readily to enter into business relationships with a grouping benefiting from the financial standing of one or more of its members.

While this system of liability might at first glance be seen as a constraint, it should be noted that the limitation of liability which is a feature of many legal bodies covered by national laws, is also accompanied by fairly heavy requirements, such as the obligation to lodge often substantial bank guarantees at the request of creditors.

5.1 The particular case of access to credit

Access to credit is of vital importance for most economic operators and may prove difficult, especially for SMEs which are sometimes seen as high-risk borrowers by credit institutions. The grouping together of several enterprises within an EEIG may therefore be advantageous.

The fact that the members of a European grouping have such strong links from the point of view of liability, strengthens the grouping's negotiating powers and is a way of increasing its borrowing potential, while in general decreasing the cost of this borrowing.

Obviously, EEIGs, in the same way as all other persons requesting loans, must be able to prove their creditworthiness. Banks should in particular be able to carry out an overall assessment of the solvency of groupings on the basis of the financial status of their members. This assessment will be facilitated if the EEIG is endowed with a capital and annual accounts are drawn up, even if only on a voluntary basis³⁴.

If the EEIG does not have its own capital, there is little doubt that the financial viability of the members established in the State in which the bank is situated will be a decisive factor in obtaining a loan. For creditors, the fact that a debtor is established in the same country is a key factor as long and costly procedures to recover sums due from abroad can be avoided.

In the case of an EEIG, the principle of the unlimited joint and several liability of members means that banks can, after having tried in vain to obtain payment from the EEIG itself, proceed against any member of the grouping in order to obtain payment of the debt, and that member can then proceed against one or more of the grouping's other members.

³⁴ See Annex B: Communication from the Commission on the participation of European Economic Interest Groupings (EEIGs) in public contracts and programmes financed by public funds", OJ C 285 of 20 September 1997, p 17.

High-voltage cooperation

EURELECTRIC - EEIG

The European electricity industry has a long tradition of international cooperation. Since 1991, this cooperation has taken the form of an EEIG.

European electricity enterprises grouped together in an EEIG to promote the harmonious development of the European electricity market and to seek common positions so that the sector can speak with a single voice to the European institutions.

The grouping has adopted a code of conduct on environmental matters, has drawn up a guide for the efficient use of electricity and has put together a collection of statistics and future prospects for electricity in the various European countries.

CHAPTER V

PARTICIPATION BY EEIGs IN PUBLIC CALLS FOR TENDER

The EEIG can provide European enterprises with an excellent framework for participation in public calls for tender, whether these are in the context of national public contracts or support programmes financed from Community funds.

The increasingly international nature of the market and of public contracts means that there is a growing need to provide enterprises, and in particular SMEs, with legal instruments via which they can set up partnerships with enterprises from other countries. In addition, the Commission often makes participation in its programmes, such as its research and development programmes, subject to the condition that projects come from enterprises from several European States.

The growing need for enterprises to find partners, if they wish to take part in these projects, also helps them to consolidate their technical and operational capacities.

The EEIG, which provides an attractive legal framework for European cooperation, is therefore a very suitable form for enterprises wishing to take part in Community-wide projects.

1. WHAT ROLE CAN EEIGs PLAY IN PUBLIC CALLS FOR TENDER?

The EEIG can play a variety of roles in participation in public calls for tender: it can be used simply to coordinate and organise the activities of its members, but can also enter in its own name into the contracts forming part of these projects and perform these contracts: the EEIG has the legal capacity needed to perform the works or provide the services or supplies which may be covered by these contracts. As no sector of activity is excluded, the EEIG is able to satisfy any requirement which may be imposed upon any tenderer or participant.

2. THE SPECIFIC RULES RELATING TO THE FINANCIAL, ECONOMIC AND TECHNICAL CAPACITY OF EEIGS

Community Directives on public contracts, which also apply to certain contracts concluded within the framework of projects and programmes financed from Community funds, make provision for the participation of “groupings”, and therefore EEIGs, in these contracts.

Once a call for tender has been launched, the awarding bodies have to assess the financial and technical capacities of candidates in order to make their choice. The capacity of an EEIG, in terms of its capital, turnover or even professional experience and technical ability, obviously

has to be subject to consolidated assessment of the EEIG as well as its members so that the actual capacities of the EEIG can be assessed³⁵.

The same principle applies by analogy to all cases in which assessment of the capacity of the EEIG is required for participation in support programmes.

3. SPECIFIC FEATURES REQUIRED FOR PARTICIPATION IN CERTAIN COMMUNITY OR NATIONAL PROGRAMMES

The EEIG has certain specific features which make it possible for it automatically to satisfy the conditions which may be imposed by certain support programmes. These include its transnational nature, the presence of several independent operators and the fact that the grouping creates synergy.

3.1 Transnational nature

Many programmes require projects to be submitted by several partners belonging to different Member States. As the EEIG has to be set up by at least two partners belonging to two different Member States³⁶, it is inherently transnational and the EEIG can therefore be considered as a “consortium”. This is why EEIGs are always entitled to tender on their own within the framework of Community programmes, including those which require the participation of legal bodies from several Member States.

3.2 The presence of several independent operators

The fact that the members of an EEIG retain full independence is often overlooked. There may then be a risk that EEIGs are excluded from programmes requiring at least two independent legal bodies jointly to present a project.

An EEIG must be composed of at least two members who retain full economic and legal independence throughout their cooperation. This is inherent to this form of cooperation, i.e. it cannot be used as an instrument of concentration³⁷. An EEIG may therefore tender on its own, even under those programmes which require several independent partners. In such cases, the members of an EEIG cannot be required to submit individual proposals in parallel with that submitted by the grouping itself.

3.3 Creating synergy

In some cases, the selection of proposals for certain programmes takes account of the actual capacity of the proposed action to create synergy between various groups of participants.

³⁵ This is a general principle of public contracts, sustained by the Court of Justice, which has stated that “not only a natural or legal person who will himself carry out the works but also a person who ... will have recourse to technicians or outside technical divisions, or even a group of undertakings, whatever its legal form, may seek to be awarded public works contracts.” See Judgment of the Court of 14 April 1994, *Ballast Nedam Groep NV v Belgische Staat*, Case C-389/92, ECR 1994-I, point 13, p.1306.

³⁶ See Article 4 (2) of Regulation 2137/85.

³⁷ See Articles 3 and 4 of Regulation 2137/85.

Such programmes may therefore call for the participation of newly formed cooperative structures: the EEIG may be an ideal framework for placing this cooperation on a formal footing³⁸.

4. THE PARTICULAR CASE OF PARTICIPATION BY EEIGs IN RESEARCH & DEVELOPMENT PROGRAMMES

Participation in “indirect” research and development actions (i.e. actions carried out not by the Joint Research Centre but by third parties) takes place principally via calls for proposals. This part of the guide is intended to clarify how EEIGs can take part in these procedures.

4.1 Can an EEIG be set up to carry out research activities?

The EEIG is a structure that is often used for participation in R&D programmes. A substantial proportion of research activities (especially the pre-competitive research activities covered by Community R&D programmes) has an economic aim; consequently, there is nothing to stop EEIGs from being set up for the purposes of research work.

4.2 Can an EEIG submit proposals under Community R&D programmes?

- **Legal capacity of the EEIG**

EEIGs have the full legal capacity required to be able to submit proposals under R&D programmes.

- **Status of EEIG members**

Any natural or legal person working in the area of R&D can participate in Community R&D programmes, provided that they have legal personality or at least the ability to hold rights and obligations of all kinds in their own name, to make contracts and to sue and be sued. All the categories of persons covered by decisions relating to Community R&D programmes may group together in an EEIG and submit proposals for R&D programmes.

- **Composition of the EEIG**

Indirect R&D actions generally have to be carried out by at least two independent legal bodies established in two different Member States. An EEIG satisfies this minimum condition and may therefore tender on its own as regards calls for proposals launched within the framework of these programmes. Participation conditions concerning the number of participants in indirect R&D actions have however been laid down within the framework of the methods of application of the rules on participation and dissemination. Reference should therefore be made to these methods for further details.

- **EEIGs and non-EU bodies**

Nationals of non-EU countries, in particular European non-EU countries (Switzerland, the Countries of Central and Eastern Europe, the New Independent States, etc.) can generally participate in Community R&D programmes. In contrast to bodies from the three EFTA countries which are members of the EEA and which are fully associated with these R&D programmes and can, on the basis of Article 77 and Annex XXII of the Agreement on the

³⁸ This chapter summarises the content of the Communication from the Commission on the participation of European Economic Interest Groupings (EEIGs) in public contracts and programmes financed by public funds, OJ C 285, of 20 September 1997. See Annex B.

EEA, be full members of EEIGs, bodies from other non-EU countries cannot be full members of an EEIG. There is nothing, however, to stop a proposal from being submitted jointly by partners in the Union who have set up an EEIG and by partners from non-EU countries who could possibly have associate member status (see Chapter II, section 4, example of a contract of formation, Article 8; see also Chapter III, section 3.1).

4.3 What are the advantages of setting up an EEIG in the research field?

At present cooperation tends to take a contractual form in the research field. While EEIGs have a great deal of flexibility from the point of view of their organisation and operation, they also have a legal stability which makes them more comparable to the high-level and organised forms of cooperation offered by actual companies (See Chapter I, sections 2.3 and 2.4).

From the point of view of the negotiation of international research contracts, this means that an EEIG is in a much stronger position than a consortium set up simply by contractual methods. In addition, the EEIG's representatives speak with one voice on behalf of all the members of the grouping and prevent the members from acting in a disjointed way.

From an organisational point of view, the establishment of an EEIG is simpler because it requires only one legal document (the grouping contract) while the creation of a "consortium" generally requires a series of bilateral and multilateral agreements binding the members of the consortium.

The establishment of an EEIG therefore strengthens cohesion between its members and consequently allows for the optimum performance of a research project.

4.4 What objectives can be met by setting up an EEIG in the research field?

Setting up an EEIG can meet three main objectives:

a) Creation of a coordination structure

The EEIG can be set up as a legal structure to coordinate members' research activities.

b) Creation of a management structure

The purpose of an EEIG may also be to manage large-scale scientific infrastructure, a network of researchers or a database.

c) Creation of a joint research centre

Lastly, an EEIG can be set up to provide a joint research centre which has its own personnel (recruited by the EEIG or seconded by members) in order to carry out a specific research project, which is not then carried out solely at members' research centres.

5. EEIGs AND REGIONAL COOPERATION

The EEIG offers a legal framework that is ideal for inter-regional cooperation projects and for participation in this respect in Community regional policy measures. One of the advantages that an EEIG has over other forms of cooperation is that it can be used to set up a

public/private partnership, i.e. to bring together the political, economic and social actors of regional development, including local authorities (regions, municipalities, etc.), chambers of commerce and development agencies. EEIGs can be used to put together pilot projects of a limited duration and can also enable cooperation to be placed on a permanent footing, guaranteeing stable organisation and operational flexibility. The following few examples show EEIG's potential from the point of view of regional cooperation.

5.1 Examples

- EEIG Euroregion

An EEIG has been set up in Brussels by five local authorities - the Brussels region, Kent, Nord-Pas de Calais, Flanders and Wallonia - and is intended to improve cooperation in the areas of economic development, research and development, technology transfers, the environment and tourism.

The EEIG is organised as five working groups, each of which is chaired by a different region. These groups specialise in the following fields: economic development strategy, town and country planning and urban policy, the environment, personnel exchanges and communications.

The EEIG Euroregion numbers among its successes the adoption of an environmental charter signed by regional politicians, the production of a computerised database on new materials and their applications, the creation of a travelling exhibition on the theme of the environment, etc.

- EEIG Sud-Mont Blanc

An Italian ski lift company and a French municipality have set up an EEIG operating in the Alps whose purpose is jointly to manage a cross-border ski area. The EEIG's activities include the provision of common services (such as a ski lift pass valid in both zones, maintenance of connecting pistes, joint management of signposting, etc.), a joint environmental policy and a joint promotion strategy (production of a joint tourist map and video presentation cassette).

- EEIG Eurodéveloppement

This is an EEIG in Brussels whose members include regional financial companies from several Member States as well as local public authorities. In most cases, these companies have a minority private sector holding (banks, employers' associations).

Eurodéveloppement's objectives are to promote enterprise creation, to create a network of exchanges and cooperation between enterprises and regions and to offer common services (in particular financial services such as the financing of joint projects).

CHAPTER VI

THE EEIG's ADDRESS: A EUROPEAN PASSPORT

Under Article 12 of the Regulation, “the official address ... must be situated in the Community”. The European nature of the EEIG is therefore also reflected by the fact that its address must be within the European Economic Area (EEA). Article 12 should be read in conjunction with Article 77 and Annex XXII of the Agreement on the European Economic Area which incorporates the EEIG Regulation into the law of Norway, Iceland and Liechtenstein.

1. WHERE CAN AN EEIG BE ESTABLISHED?

The official address must be fixed either where the grouping has its central administration, or where one of the members of the grouping has its central administration or, in the case of a natural person, his principal activity. In this latter case, the official address must be fixed at a place where the EEIG carries on a genuine activity.

Using the premises of one of its member enterprises as the EEIG's official address generally allows for substantial savings and is a feature that is particularly appreciated by SMEs especially as the address of the EEIG does not necessarily have to be at the place where they carry on their principal activity. This principal activity may be located in another Member State of the EEA or even outside the EEA.

The address of the grouping must be given in the contract and shown on letters, order forms and similar documents issued by the grouping.

2. CAN AN EEIG'S ADDRESS BE TRANSFERRED?

One of the most important prerogatives of the EEIG lies in the fact that a grouping that has fixed its official address in one State of the EEA can transfer this address elsewhere. The address can be transferred not only within the same State, but also from one State to another, without having to wind up the grouping or re-establish it in the State in which it has its new official address.

The European nature of the grouping gives the EEIG's mobility a unique characteristic: the EEIG is the first body in Europe that can transfer its address from one State to another without having to be wound up and re-established, enabling economic operators to make substantial savings and to avoid complex procedures.

This possibility has already been used by several EEIGs that are currently in operation.

2.1 Transfer mechanism

When the address is transferred within the same Member State and does not result in a change in the law applicable, the decision to transfer is taken in accordance with the conditions set out in the grouping's contract.

However, any transfer of the address that leads to a change in the law applicable must take place in accordance with a procedure laid down by the Regulation.

It should be noted that this procedure must be applied not only when the address of an EEIG is transferred from one Member State to another, but also when it is transferred between territorial units of the same Member State when these are governed by different laws (for instance a transfer from Wales to Scotland).

The procedure is as follows:

1. A transfer proposal must be drawn up, filed at the competent national registry and then published in the designated national gazette.
2. Two months after publication, the members of the grouping may unanimously adopt the transfer decision. This decision takes effect on the date on which the grouping is registered at the registry for its new official address. This registration may not be effected until evidence has been produced that the proposal to transfer the official address has been published.
3. The grouping's registration at the registry for its old address can be terminated once it has been registered at the registry for its new address.
4. Publication of the new registration means that the new official address may be relied upon as against third parties. 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.

3. FREEDOM OF ESTABLISHMENT AND PROVISION OF SERVICES

It should lastly be noted that the EEIG enjoys freedom to provide services and freedom of establishment since, under the terms of Article 58 of the Treaty, it is comparable in this respect with a company.

The EEIG may have a direct presence in a number of Member States and establish secondary establishments in these States. The creation of an establishment in a State other than that of its official address must be registered in that State³⁹. However, an EEIG, which by definition works closely with its members and, in practice, often uses their production resources, may make use for some of its activities of the establishments of its members in different States. This

³⁹ See Article 10 of Regulation 2137/85.

means that it does not itself necessarily have to register these as secondary establishments in these States.

**Tourism with more of a European flavour
thanks to the EEIG**

Eurovillage - EEIG

Ten European family and community tourism operators, enterprises working in the social economy, associations and cooperatives have set up an EEIG to develop an international chain of holiday villages.

The plan is jointly to organise services and leisure activities to bring European cultures together, help people to find out about new cultures, promote exchanges and help to achieve a Europe of young people and families. The group's objective is to promote European ideas and culture from a social point of view, through a network of holiday villages located in different countries.

CHAPTER VII

THE INTERNAL ORGANISATION OF THE EEIG

Freedom is the key word as regards a grouping's internal organisation. Some mandatory rules set out in the Regulation nevertheless ensure that groupings have a minimum level of organisation, providing it with operational independence as well as a certain internal discipline.

It is from the point of view of its internal organisation that the EEIG is closest to a company, as it must compulsorily contain at least two organs: the members acting collectively and the manager or managers.

The members may, however, establish other organs such as supervisory boards or technical committees.

1. COMPULSORY ORGANS

1.1 The members acting collectively

The members acting collectively, including all the members of an EEIG, are the sovereign organ of an EEIG. As Article 16 of the Regulation states, "the members of the grouping, acting as a body, may take any decisions for the purpose of achieving the objects of the grouping". This provision shows the important role played by the members of a grouping, which is similar in this respect to a partnership.

1.1.1 *The powers of the members acting collectively*

In general, the members acting collectively are the organ that takes decisions about the broad lines of the EEIG's activities which are then implemented by the management organ.

1.1.2 *Consultation of the members acting collectively*

Members are entirely free to choose how grouping members are to be consulted and may include precise provisions in the grouping's contract in order to adapt methods of consultation to their particular requirements.

Who can request a meeting of the members?

The members meet or are consulted at the initiative of either a member or a manager.

How is the meeting convened?

No particular method is laid down and meetings can be convened in a variety of ways, for instance by a written letter, fax or telex, which may contain, if the members so wish, the meeting's agenda.

What form does consultation take?

Consultation does not have to take any particular form. Members may meet in person or hold telephone meetings or teleconferences, etc. This option is of particular importance for members residing far away from the place at which the members have decided to meet, since they can then take part in the meeting from a distance.

Can members be represented?

Unless the contract provides otherwise, the members are free to delegate their voting rights to a proxy, for instance another member of the grouping.

How many votes does each member have?

Members are free to specify how many votes are to be allotted to each member in the contract, the only limit being that no member may hold a majority of the votes. The effect of this would be to deprive the EEIG of the equilibrium that is one of its basic features. This quest for equilibrium can also be seen from the fact that the rule of equality of prevails unless the contract provides otherwise.

Under what quorum and majority conditions are decisions taken?

Unless the contract provides otherwise, all decisions of the members must be adopted unanimously. The rule of unanimity is, however, very restrictive and may lead to an impasse. It is therefore advised not to abuse this rule and to keep it for those decisions most important for the grouping's life, such as decisions relating to the admission of new members to the grouping⁴⁰, that in any case require a unanimous decision under the terms of the Regulation.

What decisions must be adopted unanimously?⁴¹

On the basis of the Regulation, a unanimous decision by the members is required to:

- a) alter the object 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 laid down in the contract;
- e) alter the contribution by every member or by some members to the financing of the grouping;
- f) transfer the official address of the grouping, when this transfer entails a change in the law applicable to the grouping;
- g) admit new members,
- h) authorise a member to assign his participation, or a proportion thereof, either to another member or to a third party.

⁴⁰ See above, Chapter III, section 3.1.

⁴¹ See Chapter II, section 4, example of a contract of formation, Article 16.

1.1.3 *Annual general meeting*

The members can decide to hold at least one general meeting every year for the adoption of those decisions most important for the life of the grouping. This option is frequently taken up in practice and provides an opportunity for the managers to submit the annual accounts, if the grouping has made provision for such accounts to be drawn up, for approval by the members acting collectively.

1.2 **Managers**

The management body is the EEIG's operational body and is responsible for administering it in accordance with the guidelines laid down by the members acting collectively.

1.2.1 *Composition of the management organ*

The grouping may be administered by one or more managers, appointed in the grouping's contract or by the members acting collectively.

Who may occupy the position of manager?

The members of the grouping have a great deal of leeway in choosing managers. They may be chosen from among the members, but may also be third parties, even from States which do not belong to the European Union or the EEA.

The Regulation also accepts that legal persons can be managers, on condition that these legal persons designate one or more natural persons to represent them. This option has been expressly accepted in Spain, Italy, France, Greece, Ireland, Luxembourg, the Netherlands, Portugal and the United Kingdom.

Who may not occupy the position of manager?

Persons who, by virtue of the law applicable to them, by virtue of the internal law of the State in which the grouping has its official address or even by virtue of a judicial or administrative decision made or recognised in a Member State, may not:

- a) belong to the administrative or management body of a company,
- b) manage an undertaking,
- c) act as manager of an EEIG.

1.2.2 *Managers' powers*

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.

Managers may therefore, for instance, validly sign contracts in the name of the grouping without the agreement or signature of the members being necessary⁴².

⁴² See Annex B: Communication from the Commission on the participation of European Economic Interest Groupings (EEIGs) in public contracts and programmes financed by public funds, OJ C 285 of 20 September 1997.

a) Acts falling within the objects of the grouping

The members acting collectively or the EEIG contract may limit the powers of managers to carry out all acts falling within the objects of the grouping. However, these limitations cannot be relied upon as against third parties: the EEIG is bound as regards third parties by any act carried out on behalf of the grouping that contravenes these limitations. The manager who has carried out this act is, however, liable in respect of the grouping.

This liability arises from the violation of the contractual relationship between the grouping and the manager and must be separated from the liability for the debts of the grouping incumbent on the members of the grouping. The consequences of the liability of managers are determined by the law of the State in which the EEIG has its official address.

b) Acts not falling within the objects of the grouping

The EEIG is bound by acts carried out by managers on its behalf even when these do not fall within the objects of the grouping. In this case, however, if the grouping can prove that the third party knew or could not have been unaware that the act fell outside the objects of the grouping, it is not bound by this act. This is particularly difficult to prove in practice.

Example: a manager disposes of goods belonging to the EEIG in order to obtain personal advantages.

The EEIG must prove:

1. that the manager had carried out the act not to achieve the objects of the EEIG, but to serve a personal interest or, in any case, an interest other than the interest of the EEIG;
2. that the person receiving the goods (i.e. the third party)
 - either*
 - was aware that the act was unconnected with the achievement of the objects of the EEIG,
 - or*
 - could not reasonably have been unaware of it.

Managers who carry out an act falling outside the objects of the grouping are always liable as regards the EEIG. The consequences of this liability are governed by the legislation of the State in which the EEIG has its official address.

1.2.3 Limitations of managers' powers

The only limitation of managers' powers that can always be relied upon as against third parties consists in the requirement that managers carry out and therefore jointly sign all acts or a proportion of such acts as listed in the contract. The grouping's contract may provide that the grouping is bound only by two or more managers acting jointly (see Chapter II, section 4, example of a contract of formation, Article 18).

This clause can be relied upon as against third parties only if it is filed at the registry at which the EEIG's contract is registered (*Registro mercantil* in Spain, *Companies Registration Office*

in Ireland, etc.⁴³) and if it is published in the designated gazette of the Member State in which the EEIG has its official address (the *Bundesanzeiger* in Germany, the *Gazzetta Ufficiale della Repubblica Italiana* in Italy, etc.⁴⁴).

1.3 Removal of managers

Managers can be removed by unanimous decision of the members, unless the contract provides otherwise.

2. OPTIONAL ORGANS

Bearing in mind that simplicity is one of the most appreciated features of the EEIG, groups do not in general want to make the structure of the EEIG unwieldy by setting up other management organs. In some cases, however, supervisory boards with monitoring functions have been set up and provision has been made for the post of chairman of the EEIG. The post of chairman can be relied upon as against third parties only if the contract states that it coincides with the post of manager under the terms of the Regulation.

It is also fairly common for EEIGs to set up technical committees (for instance quality control, marketing and documentation, public relations, etc.). These technical committees may also take the form of informal working parties within the EEIG.

3. STAFF

The EEIG may employ its own staff or use staff seconded by its members. EEIGs often use this second option. According to the REGIE database sample⁴⁵, 61.8% of EEIGs do not have their own staff, 26.3% employ between one and three employees, 5.9% employ between four and ten employees and only 6% employ more than ten employees. In the case of seconded staff, 40.1% of EEIGs have no seconded staff, 30.9% of EEIGs employ between one and three, 13.8% employ between four and ten and 15.5% employ over ten seconded employees (see Tables 6 and 7).

The Regulation lays down a limit on the number of staff that can be directly employed by an EEIG: under Article 3.2.c, a European grouping cannot employ more than five hundred employees. No account is taken of employees seconded by member enterprises in calculating this figure.

All aspects of social protection, such as labour law, applicable to the grouping's staff and their social security status are in principle governed by the law of the State in which the employee works for the grouping⁴⁶.

⁴³ A list of these registries is given in Annex D.

⁴⁴ A list of these gazettes is given in Annex E.

⁴⁵ See Chapter XI.

⁴⁶ See Regulation 1408/71 on the unity and exclusivity of the legislation applicable and exceptions thereto. As regards arrangements for seconded employees, see Directive 96/71/EC of the European Parliament and

**An EEIG for Energy efficiency and
Environmental protection**

LIOR - EEIG

An EEIG has been set up by a group of 10 SMEs, a university research group, and associations from six different European Member States. All have in common an active involvement in contributing towards energy efficiency or environmental protection.

Their common objective, within the framework of the EEIG, is to collect, select, process, disseminate and promote scientific and general information concerning environmental development, energy saving technologies, renewable energy sources, in a user friendly way, making particular use of multimedia systems.

CHAPTER VIII

FINANCING THE EEIG

1. START-UP CAPITAL

There are no specific rules in the EEIG Regulation which stipulate the requirement of a minimum capital or determine a maximum capital. This financial flexibility is important for enterprises, and for SMEs in particular. It facilitates the formation of a cooperation framework, especially when the envisaged activities of the grouping do not require substantial capital at all.

Due to the fact that, according to Article 24-1 of the Regulation, the members have unlimited joint and several liability for the debts and other liabilities of the EEIG, the grouping can rely to a certain extent on the creditworthiness of its members and can function without capital. However, if the grouping needs more substantial credit or if its members prefer to establish a buffer between the EEIG's debts and their own liability, it is advisable to establish a fixed capital⁴⁷.

2. METHODS OF FINANCING OPERATING COSTS

The members are free to regulate in the contract the way in which they contribute. Contributions can be made in kind, in cash and by provision of skills (e.g. the supply of patents or licenses and the provision of secretarial staff, offices or know-how). Loans obtained by banks or other private financial institutions can also be used to finance the grouping. Article 23 of the Regulation, however, prohibits the grouping from inviting investment by the public.

EEIGs which completed the REGIE⁴⁸ questionnaire have provided a broad overview of the way in which their cooperation is financed. According to REGIE figures, the majority of EEIGs (59,7%) finance their activities on the basis of annual membership fees, while 17.5% of EEIGs have recourse to the creation of capital and 9.4% to members' current accounts. Finally 13.4% use other sources of financing (see Chapter XI and Table 3).

- If the EEIG is used as a structure for coordinating some of the members' activities, *regular contributions* are preferred to cover the operating costs, rather than endowing the grouping with a fixed capital. This method is used chiefly in the banking and consultancy sector where the EEIG is used for joint marketing purposes or to pool international clients.

⁴⁷ See above, Chapter IV, section 4; see also Annex B: Commission Communication on the participation of European Economic Interest Groupings (EEIGs) in public contracts and contracts financed by public funds, OJ C 285 of 20 September 1997, p. 17.

⁴⁸ See Chapter XI

- EEIGs active in the service sector in particular tend to finance their activities through *remuneration for the services rendered* by the EEIG to its members. Numerous groupings set up between law firms adopt this approach and EEIGs in retail and production appear to find it an appropriate financing method.
- the *creation of capital* is used in a limited number of cases. This financing method is used mainly by EEIGs established to develop public works projects or large projects for the benefit of all members. Long-term capital has also been provided for permanent structures in international sales and purchasing.
- The option to establish a *current or savings account* on behalf of all members is used by EEIGs active in consultancy, research and development and EEIGs between regional or local authorities.
- Some EEIGs are *financed on a project basis*. This financing can come from members, but also from national, regional or local governments and Community funding (public procurement, regional funds, Community programmes for R&D and so on).
- Examples of financing by means of *sales or provision of services to third parties* are reported as well. In this way the operating costs of the EEIG are covered by the proceeds from normal commercial activity. (This should in fact normally be the case). Any remaining profit from this activity, like any loss, is considered - be it only for tax reasons - to be redistributed to the EEIG's members⁴⁹.

A considerable number of EEIGs have chosen a *combination* of the above-mentioned forms for financing their activities. Contributions in *kind* are scarce, one example being a rail transport EEIG in Spain, in which the members contribute by providing wagons to the grouping. Members of the various EEIGs also contribute in *skills* by providing human resources to the EEIG. This involves mainly (part-time) secretarial staff or researchers.

3. ACCESS TO EXTERNAL FINANCING

An EEIG might however wish to carry out new initiatives which could require investments that go far beyond its cash-flow capacity. The EEIG would then have to turn to a bank or other financial institution to obtain the financial means. Of course, EEIGs, like any other entity, must provide evidence of their solvency and financial soundness.

3.1 Guarantee requests

The request for credit by an EEIG should be considered as a request coming from any other comparable legal form for which the members have unlimited joint and several liability⁵⁰. In fact, the personal assets of each member provide, by virtue of Article 24 of the Regulation, an indisputable guarantee for creditors, including banks and other financial institutions. To

⁴⁹ See Article 40 of the Regulation.

⁵⁰ See Annex B: Commission Communication on the participation of European Economic Interest Groupings (EEIGs) in public contracts and contracts financed by public funds, OJ C 285 of 20 September 1997, p. 17.

require personal guarantees from the EEIG members would therefore be superfluous, considering that the members are already liable for the whole of their possessions⁵¹.

3.2 Negotiations

The legal capacity of the EEIG allows its managers to negotiate on behalf of all members. In contrast to the situation of joint ventures without legal capacity, this reinforces the negotiating position of the grouping. In this way, the individual members do not have to negotiate directly with financial institutions, but will be represented by the managers of the grouping.

4. PROFITS AND LOSSES

Article 3-1 of the Regulation states that making profits for the EEIG's own account shall not be the grouping's purpose. However, profits may arise from carrying out certain activities. It should be clear that the EEIG is not prohibited from making profits in its business activities with third parties as long as making profits is not an aim in itself. As mentioned in section 2, the EEIG can even finance its activities by the profits that have arisen.

When profits or losses do occur, they will be divided in accordance with the stipulation in the contract of formation. In the absence of any contractual provision, they will be apportioned in equal shares and taxed in the hands of the members (taxation is examined below in Chapter IX).

4.1 Creation of reserves

The question as to whether part of the profits of an EEIG can be reserved for future activities has caused some confusion. According to Article 21 and Article 40, profits resulting from the grouping's activities are automatically profits of the members. In relation to reserves, the following distinction needs to be made:

1. The creation of a “**provision**” means that part of the *pre-tax* profits is intended to cover a specific future liability. This reserved amount should be quantifiable and related to the year in which the specific loss is anticipated. For example, a grouping that will have to make a redundancy payment to an employee who will be laid off in the next financial year, may wish to create a provision to cover this future liability. This specific provision may be an allowable deduction from profits for tax purposes to the extent that the tax authorities of the Member States allow legal forms similar to the EEIG, in particular partnerships, to deduct such provisions.

2. The creation of “**reserves**”, however, is the members' financial decision to lodge their *post-tax* profits to the capital of the grouping. This is a financing method which is completely compatible with the tax transparency principle of the Regulation, since the profits will be taxed in the hands of the members and subsequently reallocated to the EEIG (see Chapter IX on taxation for further details).

⁵¹ See above Chapter IV, section 4.

5. ANNUAL ACCOUNTS IN ECU/EURO

It has been recommended by EEIGs and experts that, parallel to the official accounts kept in the currency of the country of residence of the EEIG, the EEIG's accounts and financial reports should be drawn up in ECU (European Currency Units). This is mainly for two reasons:

- Annual accounts in ECU provide a neutral common reference currency which members can use in order to make their own bookkeeping and financial reports comparable.
- This helps the grouping and its members to prepare for the introduction of the Single Currency. From 1 January 1999 the EURO will replace the ECU in a 1:1 proportion, and national currencies participating in Stage III of Economic and Monetary Union will cease to be legal tender at the latest on 30 June 2002.

CHAPTER IX

TAXATION

1. WHO IS TAXABLE ON THE PROFITS: THE MEMBERS OR THE EEIG?

Article 40 of the EEIG Regulation states that the profits or losses resulting from the activities of an EEIG shall be taxable only in the hands of its members. Moreover, the fourteenth recital of the Regulation states that national tax laws apply, particularly as regards the apportionment of profits, tax procedures and any obligations imposed by national tax law.

This means that, for the tax treatment of profits or losses, the EEIG is treated in the same way as a partnership: the profits and losses are divided between the members for each tax year and included in **their** taxable income. For example, for corporate members, the profits will be included in their calculation of taxable income for corporation tax purposes, and for individual members the profits will be included in their calculation of taxable income for income tax purposes. The EEIG itself is not taxable on any profits or losses.

This avoids the possibility of any double taxation of profits, once at the level of the EEIG and again at the level of the members.

2. WHAT ABOUT OTHER TAXES SUCH AS VAT OR PROPERTY TAXES?

For the purpose of all taxes other than on profits, the EEIG is normally taxable, like any other entity. That applies for example to VAT and, where they exist, to taxes such as professional tax, property tax and capital duty. Further details on VAT are provided below (point 4).

However, when Member States adopted national measures permitting registration of EEIGs on their territory, the tax provisions which apply to EEIGs were also often specified. Further details are given in Annex C. In the case of capital duty, for example, which applies to businesses with start-up capital, most Member States which had capital duty specifically exempted EEIGs from this tax. In some countries, however, capital duty still applies. The precise position in the country in which the EEIG is resident should be checked with the national tax authorities.

3. IN WHICH COUNTRY ARE THE MEMBERS OF THE EEIG TAXABLE?

The EEIG is taxable (section 2 above) in the country in which it is resident, i.e. the country in which it has its official address.

The position for taxation of profits or losses divided between the members (section 1 above) is however more complex. For example, if a member is resident in Member State A but the

EEIG is resident in Member State B, should the member's share of the EEIG's profits be taxable in Member State A or in Member State B?

According to the principles of international taxation (OECD Model Convention on Double Taxation) the member (enterprise or person) is, in principle, taxable in his or her country of residence unless the income in question can be linked to a "permanent establishment" in another country.

However, there are more than one hundred bilateral relations between the Member States of the EU, and these bilateral relations are not all properly covered by double taxation treaties. Moreover, the exact definition of "permanent establishment" varies in these treaties. The position is complicated further by different interpretations of the effects of Article 40 of the EEIG Regulation in different countries.

As the great majority of EEIGs consist of members from more than two countries, it is clear that these different interpretations can contradict each other. Moreover, if a member's profits are not taxed in his or her country of residence, specific national tax allowances, reliefs and exemptions will normally not be available. Similarly, relief for losses will be lost.

The best solution would be that the member's share of profits or losses **should always be taxable in the member's country of residence**. This is a logical outcome which follows the principle in Article 40 that the profits or losses from the activities of the EEIG are taxable only in the hands of the members, and not in the hands of the EEIG. This solution would avoid the difficulties described above and would, if applied consistently by all Member States, remove anomalies arising from different interpretations and leading to different tax treatment for members of the same EEIG.

Furthermore, **in practice** the tax treatment of profits and losses is normally simplified considerably by the fact that the main purpose of an EEIG cannot be to make profits for itself, so that profits made by EEIGs are normally small or negligible.

4. IS THE EEIG SUBJECT TO VAT?

According to the Sixth VAT Directive, a taxable person for VAT purposes is regarded as anyone who engages in an economic activity. There is no need for any profit to be generated. By contrast, the transactions (sales or supplies of services) must be carried out for consideration.

It is important first to distinguish two different principles of VAT:

- some transactions are **not subject** to VAT, like annual contributions to the general budget to cover the EEIG's running costs (see below) or contributions to the grouping's capital. The fact that these transactions do not qualify for VAT purposes does not mean that they are exempt: they are simply not within the scope of VAT.
- some activities are **exempt** from VAT. These activities would normally be considered as subject to VAT but they have been declared exempt for special reasons. The exempt

activities fall within specific categories which are covered exhaustively in the Sixth VAT Directive.

If an EEIG's activities are not exempt from VAT, a distinction needs to be made regarding: a) transactions between an EEIG and third parties; and b) transactions between an EEIG and its own members.

- *Transactions between an EEIG and third parties*

Generally speaking, the conditions for VAT liability are met as regards EEIG transactions with third parties. An EEIG is, therefore, liable to VAT in respect of such transactions. This means that it must invoice VAT on goods and services supplied by it and that it can deduct or recover VAT paid on its purchases.

- *Transactions between an EEIG and its members*

A further issue is whether in the case of an EEIG there is exemption from VAT for services between groups of persons that exercise an exempt activity⁵². The exemption of Article 13-A-1-f) of the 6th Directive (77/388/CEE) can be applied to EEIGs, provided that the conditions for the exemption are met:

- All EEIG members carry on activities exempt of VAT or outside the scope;
- The services rendered by the EEIG concern the direct needs of the activities which are exempt or outside the scope;
- Payment of services received by members is the exact reimbursement of their share of the joint expenses.

Some Member States allow EEIGs to keep the exemption, even if they supply some services to non-members (which are normally taxed) up to a certain percentage (50% in the case of France).

5. WHERE CAN I GET MORE INFORMATION ABOUT TAXATION?

Further information on all tax questions relating to EEIGs should be sought from the national tax authorities. It is particularly important to check the tax position with the national tax authorities **before** the EEIG has been set up.

⁵² Art 13.A.1(f) of the 6th VAT Directive: "Services supplied by the independent groups of persons whose activities are exempt from or are not subject to value added tax, for the purpose of rendering to their members the services directly necessary for the exercise of their activity, where these groups merely claim from their members exact reimbursement of their share of the joint expenses, provided that such exemption is not likely to produce distortion of competition".

CHAPTER X

EEIGs AND EU COMPETITION LAW

The Commission is favourably disposed towards cooperation amongst enterprises, particularly small and medium-sized ones, since it puts them in the position to work more rationally and to increase their productivity and competitiveness in a larger market. Community rules on competition aim at maintaining and developing effective competition in the European Union. These rules apply to cooperation agreements which appreciably affect the market situation.

An EEIG is subject to these rules as is any agreement between enterprises. It cannot be ruled out that some EEIGs, which organise enterprises covering a dominant part of a market or an industry, directly or indirectly can be used for anti-competitive behaviour. Therefore, one has to examine whether an EEIG is indeed intended to operate on the market and to what extent the cooperating partners can influence Community-wide competition by means of an EEIG. Two competition policy instruments will be discussed here: Article 85 of the Treaty and the Merger Control Regulation⁵³.

1. EEIGS AS JOINT VENTURES

Joint ventures are undertakings which are jointly controlled by two or more undertakings. In practice joint ventures encompass a broad range of operations, from merger-like operations to co-operation for particular functions such as R&D, purchasing, selling, production, distribution, the provision of services and advertising. Joint ventures can be caught by both Article 85 of the Treaty and by the Merger Control Regulation.

An EEIG can be considered as a joint venture endowed with legal capacity. Although one of the characteristics of an EEIG is its ancillary role relative to its members, it is conceivable that a grouping, when operating in the market could be caught by competition rules i.e. by Article 85 or, exceptionally, by the Merger Control Regulation, if it has the character of a full function joint venture. If doubts arise as to whether a planned EEIG is compatible with Community rules on competition, the participating members should notify the project to the European Commission, requesting “negative clearance” or exemption under Regulation 17/62.

2. EEIGS AND ARTICLE 85 OF THE TREATY

Article 85 explicitly prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member states and which have as their object or effect the prevention, restriction or distortion of competition

⁵³ Regulation (EEC) 4064/89 of the Council of 21 December 1989 on the control of concentrations between undertakings, OJ L 395, 30.12.1989, p.1, corrigendum in OJ L 257, 21.9.1990, p. 13, as amended by Regulation (EC) 1310/97 of 30 June 1997, OJ L180, 9.7.1997, p. 1.

within the common market. Agreements or concerted practices between the members of an EEIG which directly or indirectly fix purchasing and selling prices or any other trading conditions, and also practices which limit or control production, markets, technical development, or investment, can be incompatible with competition rules. If the EEIG concerns market oriented matters such as purchasing, manufacturing, sales or the provision of services, it will normally lead to coordination if not even to a uniformity of the competitive behaviour of the members at that particular economic level and will thus fall within the scope of Article 85.

2.1 Agreements of “minor importance”

Only those agreements which have an appreciable impact on market conditions are prohibited, in that they appreciably alter the market position (i.e. in other words, the sales or supply possibilities) of third undertakings and of users. If an EEIG meets the quantitative criteria of the agreements “of minor importance”⁵⁴ (*de minimis* principle) it falls automatically outside the field of application of Article 85-1. These criteria are that:

- the goods or services which are the subject of the agreement together with the participating undertakings’ other goods or services do not represent more than 5% (for horizontal restraints) and of 10% (for vertical restraints) of the total market for such goods and services in the area of the common market, or
- the EEIG is only composed of SMEs in the sense of the Commission’s definition of 3.4.1996⁵⁵.

However, most EEIGs are formed by small and medium-sized enterprises. According to the definition of small and medium-sized enterprises, the maximum annual turnover of an SME is ECU 40 million. Therefore, most EEIGs fall outside the scope of Article 85-1.

2.2 Types of cooperation agreements that do not fall within the scope of Article 85-1

In its Notice concerning agreements, decisions and concerted practices in the field of cooperation between enterprises⁵⁶, the Commission indicated that 17 types of agreements are not caught by Article 85-1, provided their sole object is one of the kinds of cooperation which are listed below. These types of cooperation correspond to those of the majority of EEIGs (see Chapter IV).

⁵⁴ Commission Notice on agreements of minor importance which are not caught by the provisions of Article 85(1) of the EC Treaty, OJ C 372 of 9.12.97, p. 13.

⁵⁵ Recommendation of the Commission of 3.4.1996 concerning the definition of small and medium-sized enterprises, OJ L 107, 30.4.1996, p. 4

⁵⁶ OJ C 75, 29.7.1968, p. 3, amended by OJ C 84, 28.8.1968, p. 14.

List of types of agreement that do not, in principle, fall within the scope of Article 85 of the EEC Treaty. (OJ C 75 of 29 July 1968)

- An exchange of opinions or experience
- Joint market research
- The joint preparation of statistics and calculation models
- The joint carrying-out of comparative studies of enterprises or industries
- Cooperation in accounting matters
- Joint provision of credit guarantees
- Joint debt-collecting associations
- Joint business or tax consultant agencies
- The joint implementation of R&D projects
- The joint placing of R&D contracts
- The joint sharing-out of R&D contracts among participating enterprises
- The joint use of production facilities and storing and transport equipment
- The joint execution of orders (provided that the participating enterprises are not in competition with each other as regards the work to be done)
- Joint selling arrangements
- Joint after-sales and repairs services (provided the participating enterprises are not competitors with regard to the products or services covered by the agreement)
- Joint advertising
- Use of a common label to designate a certain quality, where the label is available to all competitors on the same conditions

For the agreements listed, it is not necessary to obtain negative clearance from the Commission. However, when it is doubtful whether in an individual case an EEIG restricts competition or if an agreement, in the view of the members, does not restrict competition and is not listed here, members are free to apply for negative clearance from the prohibition set out in Article 85 of the Treaty according to Article 2 of Regulation 17/62.

2.3 Individual exemptions

The prohibitions pursuant to Article 85-1 should nonetheless not result in a loss of productivity or competitiveness for European business. Therefore, the third paragraph of Article 85 allows exemption for those agreements or concerted practices which contribute to improving of production or distribution of goods, or to promoting economic and technical progress while allowing consumers a fair share of the resulting benefit. Furthermore, the agreements should not impose restrictions on the parties if they are not indispensable to the attainments of the above-mentioned objectives, and they should not either afford the parties the possibility of eliminating competition in respect of a substantial part of the products in question. Pursuant to Regulation 17/62⁵⁷, an individual exemption can only be issued if the participating undertakings have notified the agreement, decision or concerted practice on which the cooperation is to be based.

2.4 Block-exemptions

By way of regulations the Commission has declared that Article 85-3 applies to certain categories of agreements and concerted practices. No notification is required for exemption based on these regulations.

⁵⁷ OJ 13, 21.2.1962

With regard to EEIGs, the main categories of exempted agreements encompass:

- exclusive distribution⁵⁸ and exclusive purchasing⁵⁹ agreements
- technology transfer agreements⁶⁰
- specialisation⁶¹ and research and development⁶² agreements

3. EEIGS AND THE MERGER CONTROL REGULATION

The objective of the Merger Control Regulation is to prevent restructuring in the market from seriously jeopardising fair competition by creating or strengthening a dominant position.

The Merger Control Regulation applies to concentrations with a Community dimension i.e., first of all, if the combined aggregated worldwide turnover of all the undertakings concerned is more than ECU 5000 million or ECU 250 million for Community-wide turnover. Moreover, further to a modification adopted by the Council in 1997⁶³, the Commission's competence under the Merger Control Regulation is now extended to merger cases which fulfil the following criteria:

- (a) The combined aggregate worldwide turnover of all the undertakings concerned is more than ECU 2 500 million;
- (b) in each of at least three Member States, the combined aggregate turnover of all the undertakings concerned is more than ECU 100 million;
- (c) in each of the three Member States included for the purpose of (b), the aggregate turnover of each of at least two of the undertakings concerned is more than ECU 25 million; and
- (d) the aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than ECU 100 million.

Furthermore, according to this modification, full function joint ventures now fall within the scope of the Merger Control Regulation. However, even the newly adopted lower thresholds are relatively elevated for the kind of co-operation normally carried out by means of an EEIG: most EEIGs would therefore still fall outside the scope of the Merger Control Regulation.

⁵⁸ Commission Regulation 1983/83 of 22.6.1983, OJ L 173, 30.6.1983; Corrigendum OJ L 281, 13.10.1983, extended until the end of 1999 by Commission Regulation (EC) No 1582/97 of 30 July 1997, OJ L 214, 6.8.1997, p. 27.

⁵⁹ Commission Regulation 1984/83 of 22.6.1983, OJ L 173, 30.6.1983; Corrigendum OJ L 281, 13.10.1983, extended until the end of 1999 by Commission Regulation (EC) No 1582/97 of 30 July 1997, OJ L 214, 6.8.1997, p. 27.

⁶⁰ Commission Regulation 240/96 of 31.1.1996, OJ L 31, 9.2.1996

⁶¹ Commission Regulation 417/85 of 19.12.1984 OJ L 53, 22.2.1985; as amended by Commission Regulation 151/93 of 23.12.1992, OJ L 21, 29.1.1993

⁶² Commission Regulation 418/85 of 19.12.1984, OJ L 53, 22.2.1985; as amended by Commission Regulation 151/93 of 23.12.1992, OJ L 21, 29.1.1993 and Council Regulation 2821/71 of 20.12.1971, OJ L 285, 29.12.1971

⁶³ Article 1 (1) of Council Regulation 1310/97 of 30.6.97, OJ L 180 of 9.7.97, p. 1 (entry into force: 1/3/98).

4. ARTICLES 92 AND 93 OF THE TREATY OF ROME

Article 92 (1) of the Treaty of Rome prohibits, in so far as it affects trade between Member States, State aid in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods. Paragraph 3 of that Article, however, authorises certain derogations to this prohibition. Bearing in mind the important role played by SMEs in the economic and social development of the Community and the particular difficulties that they face because of their size, the Commission has traditionally taken a more favourable stance towards State aid for SMEs and, in order to make its position clear to them in this area, has adopted a “Community framework for State aid to small and medium-sized enterprises”.

This framework applies to SMEs satisfying the harmonised definition adopted by the Commission on 3 April 1996. In addition to criteria of size (a maximum of 250 people) and turnover and balance-sheet values, this definition also contains a criterion of the SME’s “independence” from major enterprises of which it could be a subsidiary.

If SMEs covered by the Community definition form an EEIG, this would not normally be prejudicial to their nature as SMEs given that they form EEIGs only for a precise object and for activities ancillary to their principal activities and that they retain their independence as regards capital and voting rights. They could therefore continue to receive State aid within the limits of this framework. If the EEIG itself is used as a simple coordination structure, it would be very exceptional for it to acquire a size such that it was excluded from the scope of application of the framework.

CHAPTER XI

THE REGIE NETWORK: “EUROPEAN NETWORK OF EEIGS”

Promotion of the EEIG has to go together with a genuine information campaign. It is for this reason that the Commission took the initiative of setting up a network with the aim of collecting and disseminating the most pertinent data on existing EEIGs. The information that Directorate General XXIII of the Commission gathers from a questionnaire (see Annex F) is processed by a database whose name mirrors that of the initiative: REGIE, standing for “Réseau Européen des GEIE” [European Network of EEIGs].

1. WHAT ARE THE INITIATIVE’S OBJECTIVES?

The REGIE initiative aims to make enterprises and other economic operators, whether public or private, aware of the transnational cooperation possibilities offered by the EEIG. The Commission’s aim in this respect is to promote the growth of this as yet unique Community legal instrument. The objectives of the REGIE initiative in this context are to:

1. provide a genuine information service, in particular for SMEs, by answering practical questions about the setting up and development of EEIGs,
2. draw up a review of different EEIG practices and methods of use,
3. organise a regular conference for EEIGs and all other persons interested in this cooperation instrument⁶⁴.

2. THE REGIE DATABASE: WHAT TYPE OF INFORMATION DOES IT CONTAIN?

This database surveys all EEIGs whose formation has been published in the Official Journal of the European Communities. The list that it draws up should not therefore be considered exhaustive, since details of some groupings have not been published at Community level. A whole range of information, some of which is treated confidentially, is surveyed, from which statistics can be prepared.

⁶⁴ In March 1996, a first conference was organised within the framework of the REGIE initiative, in order to review six years of EEIG experience. This conference provided an opportunity for the Commission, EEIGs and economic operators interested in this form of cooperation to meet.

3. FOR WHOM IS THIS INFORMATION INTENDED?

This practical information is of interest both to existing EEIGs and their advisers and to those attempting to set one up. There is therefore a very substantial potential audience. DG XXIII's task is therefore to collect and disseminate information dispersed throughout the various Member States in order to provide a Community overview. Since there is no direct access to this database, any person interested is invited to contact:

European Commission
Mr R. Schulte-Braucks
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rue de la Loi 200 - AN 80 03/76
B-1049 Bruxelles
Fax: +32 2 295 9784

An Internet presentation of the REGIE initiative can be accessed at the following address:
<http://europa.eu.int/en/comm/dg23/index.htm>.

COUNCIL REGULATION (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG)

COMMUNICATION FROM THE COMMISSION

Participation of European Economic Interest Groupings (EEIGs) in public contracts and programmes financed by public funds

MEASURES TO IMPLEMENT REGULATION 2137/85 AND TAX PROVISIONS IN THE MEMBER STATES

I. IMPLEMENTING MEASURE

BELGIUM:

- Law of 12 July 1989 containing various measures to implement Council Regulation (EEC) 2137/85 on the creation of an EEIG. (Moniteur Belge - 22 August 1989 - p 14385 et seq).
- Law of 17 July 1989 on Economic Interest Groupings (Moniteur Belge - 22 August 1989 - p 14391 et seq).
- Royal Decree of 27 July 1989 on the publication of the acts and documents of companies and enterprises (Moniteur Belge - 22 August 1989 - p 14400 et seq)

DENMARK:

- Law 217 of 5 April 1989 on the creation of EEIGs (Lovtidende A, lov 217, Hæfte nr 52, 11 April 1989)
- Administrative implementing regulations 534 and 535 of 7 August 1989 (Lovtidende A, Hæfte No 80, 15 August 1989).

GERMANY:

- EWIV - Implementing law - 14 April 1988 (Bundesgesetzblatt 1988, I, No 16, p 514 et seq)
- Eighth Regulation modifying the decree on the commercial register, 19 June 1989 (Bundesgesetzblatt I, No 28, p 1113 et seq).

GREECE:

- Presidential Decree 38 on measures to implement Council Regulation (EEC) 2137/85 on the EEIG in Greece, Official Journal of the Hellenic Republic 19 of 14 February 1992, p 325.

SPAIN:

- Law 12/1991 of 29 April 1991 on the Economic Interest Grouping, setting out various measures to implement Regulation (EEC) 2137/85; Boletín Oficial del Estado (BOE) 103, 30 April 1991, p 13638.
- Royal Decree 1597/1989 of 29 December 1989 approving the regulation relating to the Trade Register previously allowing registration of EEIGs in Spain.

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FRANCE:

- Law 89-377 of 13 June 1989 on EEIGs (Journal Officiel, 15 June 1989, p 7440 et seq)
- Decree of 20 June 1989 on the registration of EEIGs (Journal Officiel, 30 June 1989, p 8101 et seq).

IRELAND:

- European Economic Interest Grouping Regulations, 1989 Statutory instruments 191 of 1989 - Government Publications Sales Office, Dublin.

ITALY:

- Decree-Law 240 of 23 July 1991, Gazzetta Ufficiale della Repubblica Italiana - Serie Generale, Anno 132° - Number 182 - 5 August 1991, p 6.

LUXEMBOURG:

- Law of 25 March 1991 on Economic Interest Groupings, Mémorial A 20 of 11 April 1991 p 452.
- Law of 25 March 1991 setting out various measures to implement Regulation (EEC) 2137/85 on the creation of an European Economic Interest Grouping; Mémorial A 20 of 11 April 1991, p 459.

NETHERLANDS:

- Law of 28 June 1989 implementing Council Regulation (EEC) 2137/85 of 25 July 1985 on the creation of EEIGs (Staatsblad 1989, p 245 et seq)

PORTUGAL:

- Decree-Law 148/90, Diario da Republica, Series I, 106 - 9 May 1990, pp 2154-2155.
- Decree-Law 2/91, Diario da Republica, Series I, 4 - 5 January 1991, pp 74-76.

UNITED KINGDOM:

- The European Economic Interest Grouping Regulations - Statutory Instruments (Great-Britain) 1989, No 638 - Her Majesty's Stationery Office.
- E.E.I.G. (Northern Ireland) 1989 - Statutory Rules of Northern Ireland 1989, Nos 216 and 218 - Her Majesty's Stationery Office.

AUSTRIA

- Law of 8 August 1995 implementing Council Regulation (EEC) on the institution of the European Economic Interest Grouping (EEIG) and amending the law relating to the trade register, the law relating to judicial auxiliaries and the law relating to judicial costs. (BGBl No. 521/1995).

FINLAND

- Law 1299 of 22 December 1994 on European Economic Interest Groupings. (Svomen Sääddoskokoelma, Julkaistu Helsingissä 27 päivänä joulukuuta 1994).

SWEDEN

- Law 1994:1927 of 20 December 1994 on European Economic Interest Groupings. (SFS - Svensk Författningssammling, 30 December 1994).
- Law 1994:1933 of 20 December 1994 on the register of European Economic Interest Groupings (SFS - Svensk Författningssammling, 30 December 1994).

EFTA COUNTRIES - EUROPEAN ECONOMIC AREA AGREEMENT

NORWAY

- Law 85 of 22 December 1995 relating to the European Economic Interest Grouping. Implementation of Annex XXII, point 10 of the EEA Agreement (Council Regulation (EEC) 2137/85). (ot.prp. No 72 (1994-95); Innst. O. No 10, Belsl. O. No 24 (1995-96).

ICELAND

- Law 159 of 31 December 1994 on European Economic Interest Groupings. (Firmu og Felög með ótakmarkadri Aðyrgd No 159-1994 - p 1301 et seq).

LIECHTENSTEIN

Legislation to be adopted.

II. TAX PROVISIONS

BELGIUM:

- Law of 12 July 1989, Articles 12 to 14, setting out various measures implementing Regulation (EEC) 2137/85 of 25 July 1985.
- Circular 8/1989 of 31 August 1989 concerning tax provisions on VAT and capital duties applicable to EEIGs.
- Capital duty: not applicable to EEIGs.

DENMARK:

- In Denmark, EEIGs are treated, from the tax point of view, as partnerships (Interessentskab); see circular of the Minister for Taxation SKM 589-3721-2.
- Capital duty: not applicable to EEIGs.

GERMANY:

ANNEX C

- In Germany, EEIGs are treated as general partnerships (offene Handelsgesellschaft).
- The principle of transparency is governed by Article 15 of the Einkommensteuergesetz for all partnerships.
- Other tax provisions concerning EEIGs:
 - § 19,97 Abs. 1 Nr. 5 BewStG;
 - § 179, Abs.2 Satz 2, 180 Abs. 1 Nr. 1 AO
 - respectively § 80 Abs 1 Nr. 3 AO (non-profit-making);
 - § 5 Abs. 1 GewerbesteuerG
- As partnerships, EEIGs are not subject to capital duty (Gesellschaftssteuer). Duty was abolished as of 1 January 1992.

GREECE:

- Capital duty: 1% if the EEIG is profit-making or stamp duty of 3% in other cases.

SPAIN:

- Royal Decree 1597/1989 of 29 December 1989 on the registration of EEIGs (Chapter VI, Articles 37, 38).
- Law 12/1991 of 29 April 1991, Article 30 (taxation arrangements for EEIGs).
- Capital duty: not applicable to EEIGs.

FRANCE:

- Direct taxation: Article 239 quater C of the General Taxation Code.
- Capital duty: abolished as of 1 January 1992.
- Administrative instruction of 10 May 1991 (4F-3-91) specifying the taxation arrangements applicable to EEIGs.

IRELAND:

- Chapter III, section 24 (2) of the 1990 Finance Act introduces the principle of transparency with reference to the EEIG Regulation.
- According to section 2 (1) of the Capital Gains Tax Act 1975, EEIGs are not subject to this tax.
- Other provisions applicable to EEIGs:
 - Section 1(5) of the Corporation Tax Act, 1976.
 - Chapter III, Part IV of the Income Tax Act 1967 (with the exception of section 72 (8)) and sections 4(5) and 4(3) of schedule 4 of the Capital Gains Tax Act 1975 apply, without prejudice to the provisions of Chapter III, section 24(5) of the 1990 Finance Act.
- Capital duty: not applicable to EEIGs.

ITALY:

- Articles 11 and 12 of Decree- Law 240 of 23 July 1991.
- Capital duty: 1% (Art. 12, §1).

LUXEMBOURG:

- Law of 25 March 1991, Articles 13 to 16.
- Capital duty: not applicable to EEIGs.

NETHERLANDS:

- Circular of the Secretary of State for Finance of 1 March 1990, WDB 90/63.
- Capital duty: not applicable to EEIGs.

PORTUGAL:

- Article 5 of the legal persons' taxation code (IRC).
- Capital duty: not applicable to EEIGs.

UNITED KINGDOM:

- Section 510 A of the Taxes Act 1988.
- Section 12A and 98B of the Taxes Management Act 1970.
- Capital duty has been abolished.

FINLAND:

- Law 16.12.1994/1223 modifying the Income Tax Act, article 16a.

LIST OF REGISTRIES COMPETENT TO REGISTER EEIGs IN THE MEMBER STATES

Germany

Registration in the trade register (Handelsregister) at the court competent for the EEIG's official address.

Belgium

Registration at the registry of the record office of the commercial court of the area in which the EEIG has its official address (a register of EEIGs has been established at each commercial court's record office).

Denmark

Registration in the register of groupings established at :
Erhvervs-og Selskabsstyrelsen (Office of Enterprises)
Kampmannsgade 1
DK-1780 Kobenhavn V

Spain

Registration in the trade register (Registro Mercantil) of the provincial capital in which the EEIG has its official address.

France

Registration in the trade and companies' register kept by the record office of the commercial court of the area in which the EEIG has its official address.

Greece

Registration at the court of first instance (companies' section) with jurisdiction over the area in which the EEIG has its official address (a register of EEIGs has been established by decree).

Ireland

Registration in the companies' register:
Companies Registration Office
Lower Castle Yard,
Dublin Castle, Dublin 2

ANNEX D

Italy

Registration in the companies' register of the Chamber of Commerce, Industry and Crafts with jurisdiction over the grouping's official address.

Luxembourg

Registration in the trade and companies' register kept by the record office of the district court with jurisdiction over the area in which the EEIG has its official address.

United Kingdom

Registration in the companies' register:

1) For England and Wales:

Registration Office
Companies House
Crown Way
Cardiff CF4 3UZ

and

London Search Room
Companies House
55-71 City Road
London EC1Y 1BB

2) for Scotland:

Companies House
100-102 George Street
Edinburgh EH2 3DJ

3) for Northern Ireland :

Registrar of Companies
IBD House
54 Chichester Street
Belfast BT1 4JX

Netherlands

Registration in the trade register kept by the Chambers of Commerce of the place in which the grouping has its official address (Kamers van Koophandel en Fabrieken).

Portugal

Registration in the trade register (Conservatória do Registo Comercial).

LIST OF OFFICIAL NATIONAL GAZETTES

<u>Austria:</u>	Wiener Zeitung
<u>Belgium:</u>	Moniteur belge
<u>Denmark:</u>	Statstidende
<u>Germany:</u>	Bundesanzeiger
<u>Finland:</u>	Virallinenlehti
<u>France:</u>	Bulletin Officiel des Annonces Civiles et Commerciales (BODACC)
<u>Greece:</u>	ΕΦΗΜΕΡΙΔΑ ΤΗΣ ΚΥΒΕΡΝΗΣΕΩΣ
<u>Ireland:</u>	Iris Oilfigiuil
<u>Northern Ireland:</u>	Belfast Gazette
<u>Italy:</u>	Gazzetta ufficiale della Repubblica Italiana
<u>Luxembourg:</u>	Recueil spécial des sociétés et associations du Grand Duché du Luxembourg
<u>Netherlands:</u>	Nederlandse Staatscourant
<u>Portugal:</u>	Diário da República
<u>Spain:</u>	Boletín Oficial del Registro Mercantil Español (BORME)
<u>Sweden:</u>	Post-och Inrikes Tidningar
<u>United Kingdom:</u>	The London Gazette

REGIE : European Network of EEIGs

QUESTIONNAIRE

This questionnaire should be returned to :

European Commission
Secretariat of Mr Reinhard Schulte-Braucks - DG XXIII/A/1
Rue de la Loi 200 - AN 80,
B-1049 Bruxelles
(Fax +32 2 295 97 84)

(*) Note: EEIGs should complete parts A and C; other persons or enterprises should complete parts B and C.

Part A (to be completed only by EEIGs already in existence)

1. Particulars of the EEIG:

Name :

a) Official address:

Street and No:

Country⁶⁵:

Post code:

Town:

Telephone:

Fax:

b) Address for correspondence:

Contact person:

Mr/Mrs/Miss/Ms/Title⁶⁶:

Name:

Forename:

Street and No:

Country⁶⁵:

Post code:

Town:

Telephone:

Fax:

⁶⁵ Please use the following abbreviations :

A = Austria

B = Belgium

D = Germany

DK = Denmark

E = Spain

F = France

FIN = Finland

GR = Greece

I = Italy

IRL = Ireland

L = Luxembourg

NL = Netherlands

P = Portugal

S = Sweden

UK = United Kingdom.

LIE = Liechtenstein

ISL = Iceland

NOR = Norway

⁶⁶ Delete as appropriate.

2. Object⁶⁷

- | | | | |
|-------------------------------------|--------------------------|----------------|--------------------------|
| - production of goods | <input type="checkbox"/> | - promotion | <input type="checkbox"/> |
| - provision of services | <input type="checkbox"/> | - distribution | <input type="checkbox"/> |
| - participation in calls for tender | <input type="checkbox"/> | - lobbying | <input type="checkbox"/> |
| - research and development | <input type="checkbox"/> | - other..... | <input type="checkbox"/> |

3. Sector of activity⁶⁸:

4. Number and nationality of members (please state whether they are already members of DG XXIII networks, such as BC-Net, BCC, Euromanagement, VANS and EIC):

- Number of members
- Countries represented⁶⁵
- Networks represented

5. Are your members⁶⁹:

- exclusively SMEs?
- mostly SMEs?
- mostly large enterprises?
- bodies other than enterprises (chambers of commerce, research centres, etc.)?

6. Date of formation of the EEIG (registration at the national registry):/...../..... (dd/mm/yy)

7. Does the EEIG as such belong to the BC-Net, BCC or any other European network (if so, which one)?
.....

8. Number of people employed by the EEIG⁷⁰ :

- Employed by the EEIG itself
- Seconded by its members

⁶⁷ Tick the boxes applicable.

⁶⁸ Use the NACE code if known.

⁶⁹ For the purposes of this questionnaire, SMEs are defined as enterprises with no more than 250 employees. Members of the professions (lawyers, accountants, architects, etc.) are treated as enterprises.

⁷⁰ These data will be treated confidentially.

9. Financing⁷⁰

- Paid up capital
- Annual membership fee
- Members' current account
- Other (please specify):

10. Number of establishments dependant on the EEIG (e.g. branches, representative offices, production sites, research centres):

- situated in the country where the EEIG has its official address:
- situated outside the country in which he EEIG has its official address:

11. Have you already had contacts with other EEIGs in the same sector and, if so, what kind of contact⁷¹?

12. Experience⁷¹:

- What are your reasons for setting up an EEIG?
- What problems have you encountered?
- What benefits have you derived?

Part B (to be completed by persons or enterprises other than EEIGs)

1. Since you are not an EEIG, please state to which of the following categories you belong:

- | | | | |
|-------------|--------------------------|----------------|--------------------------|
| enterprise | <input type="checkbox"/> | tax specialist | <input type="checkbox"/> |
| association | <input type="checkbox"/> | public body | <input type="checkbox"/> |
| university | <input type="checkbox"/> | consultant | <input type="checkbox"/> |
| lawyer | <input type="checkbox"/> | other | <input type="checkbox"/> |

⁷¹ Attach additional pages if necessary.

2. Please enter your particulars:

Mr/Mrs/Miss/Ms/Title⁶⁶:

Name:

Forename:

Street and No:

Country⁶⁵:

Post code:

Town:

Telephone:

Fax:

3. Are you planning to set up an EEIG and, if so, why⁷¹?

4. Describe your relations with existing EEIGs⁷¹?

Part C (to be completed by EEIGs **and** other persons or enterprises)

1. Would you be interested in receiving Commission publications relating to EEIGs?

Yes No

2. The Commission will keep the information you supply in a database and will not use it for commercial purposes. This database will be used to establish a network of contacts between the Commission, EEIGs and other interested parties. You may inspect the information collected in this way and make any necessary corrections to it. Do you authorise the Commission to divulge your particulars and to publish them in an EEIG guide, on the understanding that it will not divulge or publish data on numbers of employees and sources of financing?

Yes No

Place:

Date:

Signature:

KEY TO FIGURES

Table 6 - Own personnel

0
between 1 and 3
between 4 and 10
over 10

Table 7 - Seconded personnel

0
between 1 and 3
between 4 and 10
over 10