

EEIG

European Economic Interest Grouping

**The only transnational legal instrument
for co-operation between entrepreneurs
in Europe**

**EWIV / EEIG - TRUST
Hamburg Germany**

Hamburg, March 2012

Legal basis

The European Economic Interest Grouping (EEIG), a new – and rather unknown – legal form for a company has been conceived after the example of the French company form called G.i.e. (groupement d'intérêt économique). Well known examples of G.i.e. in France are or were the aircraft producer Airbus Industries in Toulouse, the space company Arianespace and the credit card organisation „Carte bleue“. G.i.e. are a common legal instrument in France with more than 10.000 foundations.

Long before the institution of a European Single Market, both the European Commission in Brussels and the European Parliament realised the need of a specific legal instrument to help transnational and interprofessional co-operation between economic operators, particularly small and medium-sized enterprises (SME). The first proposals dealing with this subject came from the European Parliament at the beginning of the 70s, but an EU-wide agreement was reached only in the middle of the 80s, in the framework of the then beginning EU Single Market legislation.

Legal basis for the EEIG is the EC Regulation No. 2137/85, which has been published in the Official Journal of the European Communities L 199, 31st July, 1985. The implementation of some provisions was deferred to the EU member states; each state passed implementation laws which rule certain matters relating to groupings and set up the necessary rules for the registration of groupings. For instance, the German legislation adopted the *EWIV-Ausführungsgesetz (EEIG Implementation Law)* from 14th April, 1988, which has been published on 22nd April, 1988 in the *Bundesgesetzblatt I* (German Official Journal). According to the German implementation law groupings could be registered in Germany after the 1st July, 1989.

EEIG thus are harmonised as they refer to one single law, the EC Regulation, which is equal for all EU member countries (and valid as well in the European Free Trade Agreement [EFTA] member states of the European Economic Area [EEA] of Norway, Iceland and Liechtenstein). Less harmonised is the name: every EU language has its own expression for an European Economic Interest Grouping and its abbreviation EEIG; for example in:

French	Groupement européen d'intérêt économique	G.e.i.e.
German	Europäische wirtschaftliche Interessenvereinigung	EWIV
Italian	Gruppo europeo di interesse economico	G.e.i.e.
Dutch	Europees economisch samenwerkingsverband	EESV
Spanish	Agrupación europea de intereses económico	AEIE, etc.

The exact estimate of the amount of EEIG founded in the EU represents a challenging task. Despite of the compulsory entry into the usual national company registration, groupings are registered and published in the EU Official Journal S (which usually publishes public tenders) often with a delay of some months, even if they already have been working for quite a long time. There is no EU-wide central register for EEIG.

The EEIG certainly cannot be considered a *quantité négligeable* inside European company law, even if this legal instrument and its potentials are still largely unknown.

Both entrepreneurs and legal and tax consultants should know how it is structured: groupings offer entrepreneurs suitable and useful opportunities or even an interesting alternative to „traditional“ legal instruments for transborder business co-operation.

Groupings have to be formed upon the terms laid down in the European regulation, but they are a very flexible legal instrument which can adapt to different economic conditions. The regulation guarantees a considerable freedom for its members in the internal organisation and in their contractual relations.

Members of a grouping

A grouping must be formed by, at least, two members coming from two different European states, companies or legal bodies having a central administration in a member state, or natural persons. There is no limit to the amount of members, except in Greece and Ireland where the maximal number of members is limited to 20. These companies can be in Chinese hands or the individuals can be U.S. citizens; the main condition is only their activity within the EU. Their national provenance does not count, neither does the character of the members: two companies or two freelancers, or one company or one freelancer etc.

Members of a grouping can be closed companies, stock companies, free lancers like architects, tax consultants, journalists etc., self-employed persons like craftsmen, associations, public law corporate bodies (for example: universities, chambers of commerce, towns, counties ...) and other legal bodies. A grouping can be formed e. g. by a Danish free lance journalist, an Italian joint-stock company, a German registered association and a British limited partnership. The opportunity of a mixed composition offers a useful and innovative instrument and can have a very positive impact on the activities of the grouping.

How to found an EEIG

A written contract is required by the EC regulation. This contract for setting up a grouping shall include at least:

- the name of the grouping preceded or followed either by the initials EEIG or the words European Economic Interest Grouping,
- the official address of the grouping,
- the object of the grouping,
- information about each member (name, company name, legal form, permanent address, number and place of registration if any),
- duration of the grouping, except where it is indefinite.

The signatures of the persons founding an EEIG or the signatures of the managing director(s) have to be authenticated, before registration, by a notary. Formalities required for the formation are very easy - each one who can found an association can also start an EEIG.

Names of the members, company name of the grouping, official address, foundation contract and the name(s) of the executive(s) have to be declared in the commercial register.

Commercial register and EU-wide publication

The groupings founded in each European country, after publication on the national level, are published in the Official Journal of the European Communities, which is also available in the internet: <http://ted.eur-op.eu.int>. There are references to the national official journal published on this website, in order to facilitate obtaining more detailed information and to guarantee transparency.

Object of the grouping

The object for which the grouping is formed represents an important element of the founding agreement. The object has to be declared with the register as a guarantee of publicity. The purpose of the grouping shall be to facilitate or to develop the co-operation among the members; its activities constitute an ancillary nature to the activities run by the members and can not replace the members' own activities. However, in practice it complies fully if "the co-operation of the members" is mentioned. According to art. 3 of the EC regulation the purpose of the grouping shall be „to improve and increase the results“ of the members' activities.

What a grouping may not

Consequent with its object, a grouping may not:

- be a member of another European Economic Interest Grouping;
- employ more than 500 persons (this limit has been introduced on a request of the German government aiming to avoid the application of the Employees Representation Act, which determines a form of joint management or co-determination);
- directly or indirectly hold shares in a member enterprise (so called holding prohibition; exemptions are foreseen);
- exercise a power of management or of control over its members' own activities;
- issue loans to members (prohibition of loans; some exceptions are foreseen).

In the practice of business life these limits do not really represent a problem.

Legal status

The grouping is endowed with legal status (except in some EU member states, e. g. Italy or Germany). The recognition of a legal status facilitates the attainment of the grouping's objects (development of the members' own activities). In all states, a grouping has the capacity, in its own name, to have obligations and rights of any kind. It can conclude a contract or accomplish any legal act, it can sue and be sued.

Registered capital

An EEIG can be formed with or without assets, cash or material contribution, or e. g. know how investment. Most of the groupings, at the time of founding, do not have any capital.

The members can decide freely to contribute or not to; a grouping represents from this point of view a much more convenient legal instrument than e. g. a private limited company.

Liability

The members of a grouping shall have unlimited joint liability for its debt, in the form of subsidiary liability (art. 24): at first the EEIG will be responsible, if this is not possible it is the matter of the members. The regulation provided by art. 24 does not represent a prejudice for the members: EEIG usually exercise ancillary activities and the main business activities are still run and controlled by the members.

The introduction of an unlimited joint liability is a consequence of the basic differences existing among national company laws dealing with this subject in Europe. A German private limited company answers for at least 25.000 Euro, a private limited company in UK may be liable for a much smaller amount.

Whereas a grouping is a legal instrument which can be used in each EU country, it has to be reliable. The unlimited joint liability is parallel to the EU-wide product liability regulated in an EU directive and subsequent national laws. It is based on the similar access to the EU Single Market which contributes to the kind of product liability (independent from the recognition of a fault) of the producers.

The European regulation guarantees considerable freedom for the grouping's members; they also can agree that some of them answer for different amounts. Furthermore, the expenses undertaken by the management can be limited until a decision of the members can be induced. Altogether, no single case of liability "harakiri" has been reported in the European Union, and this since 1989.

The management of an EEIG: legal persons can be appointed, too

The executive of a grouping with its official address in Germany shall be an individual person; executives coming from non-EU countries are allowed to run the business besides a (or more than one) EU executive.

In most of the other EU countries legal bodies, such as a private limited company or a joint-stock company, are allowed to be nominated executive. An individual person has to be appointed as their representative in this case.

A German private limited company, or a Swiss joint-stock company could therefore manage a grouping with an official address in Luxembourg.

An executive is usually one of the founders: they are generally endowed with initiative, communication capabilities and with an „European approach“ to business life, which are required to run successfully this kind of activity.

Management, winding up, insolvency, transfer of the official address and liquidation are ruled by the EU regulation, or by national implementation laws. In some points the rules differ from the rules laid down for other companies.

Taxation

An EEIG pays value added tax (V.A.T.) as every other company (EEIG should not forget to look for an European Union V.A.T. identity number, for EU transborder business!). They also pay employment taxes (e. g. in UK PAYE-tax) for their employees, if any.

However, a grouping does not pay any company taxes, such as corporation tax or, e. g. in Germany, taxes on trade earnings (art. 40). Therefore a grouping with an official address e. g. in Germany can offer various advantages:

- for an EEIG, a close company, there is no publicity duty;
- a balance is usually not required;
- no company taxes;
- operating expenditures still can be deducted in Germany in a larger scale than in many other European countries.

EEIG are taxed according to national laws, with the exception of company tax exemption, which is of course of extreme importance. The purpose of the grouping is not to make profits for itself: according to article 40 profits resulting from the activities of a grouping shall be taxable only with its members.

Profits shall be reinvested or divided up among the members (according to the agreements of the members). Profits, however, can be turned in reserves as well.

The financing of a grouping depends on a members' decision when it has not been already ruled in the foundation contract. The distribution of profits and losses, the kind of operating expenditures of the grouping, advances and subsequent payments have to be clearly ruled in advance in the foundation agreement or, even better, through members' decisions (for they can be changed easier than an agreement which would have to be submitted to the company register).

Finally, a grouping can own real estates, which are taxable for the EEIG.

Regulation reduced to a minimum

With the EC regulation, the European legislator laid down rules reduced to a minimum. The regulation provides the members of a grouping with a considerable freedom for their contractual relations and the internal organisation.

The statutes (or the founding agreement) should provide regulations limited to fundamental points, all further decisions should be better taken by the members each time. One has to remember: all changes in the founding agreement would have to be passed on to the commercial register which takes time and absorbs activity and costs.

Companies or freelancers dealing with EEIG should be endowed with European „multicultural“ knowledge, knowledge related to different legal instruments within the European countries, understanding and communication capabilities. A contract saved in the computer and signed without any further understanding cannot be useful in this case, whereas the widespread autonomy left to the members, the needs and the peculiarities of the members have to be taken accurately in consideration.

Typologies of problems which can arise

The EEIG represents a recent innovation and most of the implementation laws came into force in 1992. This the reason why at the moment there is still almost no jurisprudence dealing with this new legal instrument. Some reports dealing with specific cases are already available. They also describe the most common problems which can arise:

- internal communication and its costs;
- linguistic problems;
- doubts what taxation is concerned at the beginning;
- distribution of profits and losses where the members did not find an agreement in advance;
- lack of confidence in the other members.

Both entrepreneurs who made use of groupings and the European Commission, whose Direction General for Enterprise Policy constantly monitors the development of EEIG, are satisfied with the results reached. A research carried out within a diploma thesis at the University of Ulm/Germany had a positive result: about 70% of the interviewees declared that

they reached the objectives expected and only 9 % denied it. This can be considered as an excellent result.

Experience reports

EEIG are a useful and very flexible legal instrument, for they adapt to different needs of the members. More than 1200 groupings exist at present in the EU member states (groupings which have been founded and already winded up not included), and many of them would be worth of mention in order to confirm the considerable flexibility offered by this new legal instrument and the freedom guaranteed to the members.

- Groupings have been founded to exercise a common sales or purchase office in non-EU countries, such as Japan, United States, Canada, Eastern European countries,
- to organise personnel exchanges and
- specialisation courses,
- to carry out research and development.
- Consultants, lawyers and tax-consultants made use of EEIG to collaborate in many sectors: common training courses, personnel exchange, research and authorship of specialist literature, co-operation.
- Advertising experts from almost every country in Europe founded a grouping called European Advertising Lawyers Association (EALA EWIV). EALA, among others, publishes books and developed a system for legal evaluation of advertising campaigns all around Europe.
- Groupings have been founded by entrepreneurs (dealing, for example, in office articles) to carry on common activities,
- forwarders made use of groupings to organise transports and logistic services.
- The French-German cultural TV-channel „ARTE“ is also a grouping.
- Belgian Trappist monks (beer producers) and French Trappists (cheese producers) founded a EEIG in order to market their products mutually.
- Belgian and French chambers of commerce,
- movie makers,
- and seeds and seeds-machines producers from Germany, Portugal and Greece, together with a Spanish research centre, established an EEIG to carry out joint activities.
- The University for public administration in Kehl/Germany co-operates with a university in Strasbourg/France within an EEIG, which carries out its activities in mainly training civil servants on both sides of the Rhine.
- A grouping has been established in the same area to run a scheduled bus service, which operates both in France and in Germany.
- The TÜV Rheinland (technical inspection service) together with the French Bureau Véritas established a grouping called VERITÜV which accomplishes environmental impact studies and deals with quality management.
- Belgian and Irish horsebreeders also established a grouping,
- and Belgian and British osteopathy experts founded the „European Federation for Classical Osteopathy EEIG“.
- In the Netherlands, there exists the European Federation of Harley-Davidson clubs as an EEIG,
- and in Mons/Belgium another grouping works for the amelioration of cat breeding.

- Other examples are, just to name some of them, the filling station credit card system for lorries „TEPAR“ formed by five oil companies in Southern Europe,
- the co-operation of regional airports in Belgium, France and Spain,
- a grouping established by seven nuclear power companies for the improvement of the security standards and practice of nuclear power plants in Eastern European countries, etc.

There is no limit for company co-operation in Europe – and for the imaginative powers of its entrepreneurs.

Members from non-EU countries

Members of a grouping are usually legal bodies having their official address in EU countries or private persons running their activities within the European Union. But both entrepreneurs and privates often carry out activities involving subjects coming from outside the EU, from Switzerland, Eastern European countries, United States or Canada etc. and therefore want to include them into the EEIG.

Legal bodies and natural persons which have their official seats (or run their business mostly) within the EFTA states of the European Economic Area, i. e. in Norway, Iceland or Liechtenstein, can be members of a grouping or an EEIG can be located in these countries. Entrepreneurs and business people of these countries however seldom expressed interest for the grouping; the main reason for this may be in the few information on EEIG though everything is public.

Some problems can arise particularly in relation to countries which are often involved in business transactions or activities of any kind carried on by EU companies. Switzerland can be taken as example: there are in Italy, Germany and Austria countless entrepreneurs who have excellent business links in Switzerland. Swiss entrepreneurs are not allowed to full participation in the European Single Market. This is the reason why they are looking for other legal instruments to develop and facilitate any European business collaboration.

The solution of an **association** of an EEIG with non-EU partners still remains an interesting legal instrument to go beyond the limits foreseen by the European regulation. Whereas the establishment of an association with non-EU members could retard the registration of an EEIG, the members should establish it through a resolution adopted by the partners rather than in the foundation agreement. Experience show that associated members are not treated as second-class members, they take part in business activities, management and decisions. But in this case the question of responsibility should be well regulated between the partners.

Finally **a non-EU member of an EEIG can be appointed as executive** as there is no rule which prohibits it. There are some EEIG having managers from third countries who in this way integrate their partners from these countries.

Entrepreneurs from third countries can of course decide to **found an establishment within the European Union**, too, in order to answer to the prerequisites foreseen in the European regulation for European Economic Interest Groupings.

A grouping can also open an establishment in non-EU countries. In this case the grouping shall be subject to the local legislation.

The number of EEIG increases slowly, but constantly

Though literature dealing with the EEIG is quite widespread (mostly theoretical treatises), company law books still do not offer an adequate treatment of the subject, compared to more traditional legal instruments such as private limited companies or joint-stock companies. This lack of attention is due on the recent introduction of this new legal instrument and on general negligence and a smaller demand in relation to European law..

The amount of groupings increases constantly; about 1200 groupings have been established in the European Union until September 2001. According to the European Commission (the late Direction General XXIII, today DG Enterprise) at the 14.12.1995 there were 697 groupings. The figure of 1200 does not include groupings which still have not been published; there is no central register in the EU, only a central publication in the Official Journal S according to national register entries.

The majority of groupings have been established in France (whose G.i.e. can be considered the ancestor of the grouping), Belgium (as European centre of many entrepreneurs and associations) and Luxembourg (compared to its dimension), followed by the Netherlands and Great Britain. Relatively few groupings have been established in Germany and Italy.

Whereas each grouping is formed by 6 to 8 members on an average, there are currently 8.000-10.000 entrepreneurs, legal bodies, associations which make use of groupings (research carried out by Michael Deichsel, University of Ulm/Germany). Another research realised within the EU Commission came to a slightly different result: on the basis of 127 questionnaire feedbacks each grouping on an average is formed by 4,3 members.

Some reasons to prefer an EEIG to more traditional legal instruments

Some of the advantages offered by a grouping are as follows:

1. it is a legal framework which aims to develop and facilitate the collaboration between entrepreneurs and can represent a profit centre for its members of its own;
2. it is a very flexible and unbureaucratic legal instrument, whose rules can be decided by the members in observance of a few guidelines fixed in the European regulation;
3. a grouping can be founded with or without a assets, investment or know-how transfer;
4. a grouping can be established by subjects with a different legal status: self-employed persons, private limited company, chambers of commerce etc.;

5. the members of a grouping go on carrying out their own activities autonomously. They maintain the activities they ran before and besides obtain new business opportunities;
6. a grouping can guarantee a high-level liability: members have unlimited and several liability for its debts;
7. profits and losses resulting from its activities are taxable only in the hands of the members; profits must be divided up among the members, if not reinvested;
8. a grouping pays neither company taxes nor taxes on earnings;
9. a grouping can run its own business and can have a trade mark;
10. the official address of a grouping can be easily transferred within the Community. Other legal instruments require a previous winding up of the enterprise, which involves costs, activities and loss of corporate image;
11. due to the European regulation no. 2137/85 constituting the legal basis of EEIG and being drafted in each European official language, entrepreneurs do not feel discriminated because of the use of a foreign language (as it would be e. g. for an Italian partner in a German limited private company);
12. the members of a grouping are not required to show their previous knowledge in EU Single Market, the establishment of a grouping could be very useful for consortiums which apply for EU programmes;
13. their members can improve their knowledge of the European Single Market, as entrepreneurs meet regularly and facilitate a process of globalisation.

*

Entrepreneurs who would like to launch an EEIG should, however, ask for consulting. The costs for the consulting on EEIG and its taxation, for legal advice, the foundation agreement, registration by a notary and the commercial register are usually lower than the costs for the foundation of a private limited company. The European EEIG Information Centre offers help either directly or via its correspondents in several EU member states.

LIBERTAS

European Institute GmbH

Vaihinger Str.24, D-71063 Sindelfingen (Stuttgart)

Tel.: +49/(0) 70 31/61 86-80, fax: +49/(0) 70 31/61 86-86,

eMail: ewiv@libertas-institut.com

URL: www.libertas-institut.com

The European EEIG Information Centre

Legal, business administration and tax aspects of the European Economic Interest Grouping

What is an EEIG?

The EEIG, i. e. European Economic Interest Grouping is a company structure which can be registered in all European Union Member States according to EC Law (Regulation (EEC) 2137/85). The EEIG offers the possibility of **cross-border co-operation and collaboration** within Europe especially to small and middle-sized enterprises of every legal category including associations and local authorities. A precondition is however that at least two of the enterprises or other bodies of the grouping are located in at least two different EU Member States; enterprises from Member States of the European Economic Area can also take part. To date approximately 1200 EEIG have been registered in the EU with altogether about ten thousand members.

As a result of the growing demands on companies within the field of cross-border transactions, the EEIG is an attractive alternative for **co-operation in various economical fields**, examples are the establishment of a purchasing and marketing association, joint research and development or co-operation in fields of personnel and training. In addition an EEIG may have significant tax advantages (an EEIG is not submitted to corporate taxation etc.).

The European EEIG Information Centre

For the above reasons and due to the fact that up to now there has been relatively little information on this first supranational type of commercial entity, LIBERTAS - Europäisches Institut GmbH (European Institute Ltd) set up the

European EEIG information centre in 1993 where economists and lawyers both with extensive EU experience work together.

Objectives and activities of the Information Centre are:

- **Collection of literature, reports and other information** on business administration, tax and legal aspects of EEIG activities.
- **To keep archives of the registered EEIG** in the EU which are published in the Official Journal of the European Community.
- **Research, analysis and documentation** for enterprises and other bodies.
- **Promotion of publications** on the EEIG theme by Libertas publishing division, the promotion of other publications and the publishing of articles for periodicals. The EEIG documentation centre assists students towards studies i.e. diploma and doctoral thesis in this field especially with the view to possible publication of their work.
- **Arranging seminars** on various aspects of the EEIG and promoting seminars on EEIG themes in collaboration with Chambers of Commerce organisations and other business associations.
- **Consultation** whether it be before the establishment of an EEIG or during its operation; **mediation** in case of inner-EEIG conflicts.
- Help in locating and evaluating a **possible EEIG partner**.
- Publication of a **multilingual periodical** on legal, tax and business administration aspects of the EEIG, by electronic media.

Detailed research, office work, documentation and consultation are at a cost. The amount however is dependent on the extent and type of activity involved. The matter will then be laid before the client within the terms of an offer.

It is most certain that with the above short description of the EEIG, we haven't been able to be as comprehensive on the EEIG as we would like to be. Should you want to include an EEIG into your business strategy or just require detailed information on this new legal entity, then the European EEIG Information Centre is here for you. Its director is Hans-Jürgen Zahorka, an experienced lawyer and author on EEIG and European co-operation issues who knows this company structure from its beginning.