

# EEIG

## *EU Company Law*

### Exam question

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Explain and discuss how an EEIG (a European Economic Interest Grouping) is established, when and why should one consider establishing an EEIG, the structure of the EEIG and the liability of the members of the EEIG.

### Introduction

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#### Source of EU law

Regulation 2137/85 (The EEIG Regulation)

The EEIG became a reality as of 1 July 1989.

The EEIG Regulation applies not only in the European Union, but also throughout the European Economic Area (EEA) (i.e. Iceland, Norway and Liechtenstein).

Vehicle for cross-border cooperation / partnership-like business form

#### Characteristics of the EEIG

- Large degree of freedom of action for the members to design their contractual relationship and the internal organization of the grouping
- The **purpose** of the grouping is *only* to **ease and develop** the economic activities of the members.
  - The activities of the grouping shall therefore be tied up to the economic activities of the members.
  - Its purpose is **not** to make profit for itself.
  - Activities must not be more than *ancillary* to the economic activities of the its members.
- Large degree of publicity
  - Several particulars must be published.
  - Minimum content of the contract, the number, date and place of registration and almost all of the documents and particulars that have to be filed at the registry.
  - Publication is essential in relation to third parties.
  - Publication follows 1<sup>st</sup> directive.
- Member liability
- Has capacities distinct from its members; (Legal personality)
  - has capacity to, in its own name, to have rights and obligations of all kinds, to make contracts or accomplish other legal acts, and to sue and be sued.
  - Not all MS acknowledge the EEIG as being a legal person. (Denmark not expressly, Germany and Italy does not)
- Fiscal transparency
  - Members are taxable to profit and losses of the grouping.

#### Which activities may a EEIG in practice for example conduct?

- Sale of its members' products.
- Marketing activities for its members.
- Function as offerer on behalf of its members in relation to building and construction projects.
- Conduct joint research activities for its members.

- Serve members with service functions such as transport, purchase and sale.

## The EEIG is governed by what?

The EEIG Regulation has precedence over national law. Directly applicable in all Member States.

“**Legal neutrality**” for all members of the grouping. However, the EEIG Regulation does not cover all aspects of the grouping. The issues dealt with are:

- formation
- internal operation (certain aspects)
- protection of third parties and members

NB! Provisions of national law may complete the EEIG Regulation. In addition, a number of important matters such as:

- consequences of liability
- consequences of insolvency

are referred to in their entirety to national law.

## Why consider establishing an EEIG?

### Purpose of the grouping

Art. 3:

- “The purpose of a grouping shall be to facilitate or develop the economic activities of its members and to improve or increase the results of those activities; its purpose is not to make profits for itself.
- Its activities shall be related to the economic activities of its members and must not be more than ancillary to those activities.”

Partners who wish to start a new activity that is not connected with their own activities have to set up another type of business organization such as a company.

Partnerships or capital companies will usually be the choice of business organization when profit making is the target.

- When common expense demanding measures are involved, it will at times be more appropriate to choose a grouping.

### A grouping may not – Art. 3

- Exercise – directly or indirectly – a power of management or supervision
  - of its members’ own activities or
  - over the activities of another undertaking,
  - in particular in the field of personnel, finance and investment
- Directly or indirectly – hold shares of any kind in a member undertaking;
  - the holding of shares in another undertaking shall be possible only in so far as it is necessary for the achievement of the grouping’s objects and if it is done on its members’ behalf
- Employ more than 500 persons
  - → stems from German employee representation requirements (>500).
- Be used by a company to make loans to a director of a company
  - when the making of such loans is restricted under the Member States’ laws governing companies
- Be a member of another EEIG

# Formation

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## A grouping may be formed by whom:

- companies, firms (cf. Art. 58 of the Treaty) or legal bodies
  - governed by public or private law formed in accordance with the law of a Member State and which have their registered / statutory office and central administration in the Community;
    - where, under the law of a Member State, a company, firm or other legal body is not obliged to have a registered or statutory office, it shall be sufficient for a such a company, firm or other legal body to have its central administration in the Community.
- natural persons who carry on industrial, commercial, craft or agricultural activity or who provide professional or other services in the Community
- cf. Art. 4

## A grouping must comprise at least:

- 2 companies, firms or other legal bodies which have their central administration in different Member States
- 2 natural persons who carry on their principal activities in different Member States.
- a company, firm or other legal body AND a natural person of which the first has its central administration in one Member State and the second carries on its principal activities in another Member State
  - i.e. a cross-border element

A Member State may provide that groupings registered in it's the said state shall have no than 20 member.

cf. Art. 4

## Capital

No initial capital requirement.

## Formation contract

Parties intending to form a grouping must conclude a contract and register it in the MS of the official address.

The contract must include: cf. Art. 5.

- names + "EEIG"
- official address of the grouping
- object of the grouping
- name, legal form, permanent address or registered office and place of registration **of each member**
- duration of the grouping (except where indefinite)

## Official address

The official address referred to in the formation contract must be situated in the Community.

Further more, the official address must be fixed either: cf. Art. 12.

- where the grouping has its central administration or
- where one of the members has its central administration or
  - → makes it legal to to conduct activities using the infrastructure of this member.
- in case of a natural person, where the natural person has his principal activities, provided that the grouping carries on an activity there.

## Registration

The formation contract must be registered at the commercial registry of the MS in which it has its official address.

Upon registration

- → the grouping has capacity to, in its own name, to have rights and obligations of all kinds, to make contracts or accomplish other legal acts, and to sue and be sued cf. Art. 1.
- If the grouping does not assume these obligations, the persons who carried out those activities will bear unlimited joint and several liability for them cf. Art. 9(2).

## Transfer of official address

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The official address may be transferred within the Community.

- If the official address is moved from one Member State to another the transfer will result in a change of applicable law.
  - In this case a transfer proposal shall be drawn up and filed and the proposed address must be published.
- The transfer decision may only be taken 2 months after publication.
  - During the 2-month period a competent authority in the Member State in which the EEIG is registered may oppose its transfer (on grounds of public interest).
- The members must decide unanimously.
  - If no objection → transfer may take place by registration of the EEIG in the transferee state.
- Cf. Art. 14.

## Structure

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### Company bodies

Mandatory organs:

- Members / General Meeting
- Manager / Managers

The contract may provide for other organs as well

### The general meeting

Each member has one vote

- Unless the formation contract gives more than one vote to certain members.
- However, no member may hold a majority of the votes.

**Unanimity** is always required for:

- Change of objects of the grouping
- Change of numbers of votes allotted to each member
- Change the conditions for taking decisions
- Change the contribution by the members to the grouping's financing
- Transfer of official address
- Change the formation contract

For **other decisions** the contract may set the rules.

- In absence of such rules → unanimity is required.

The members has **full freedom** to organize their meetings and they can regulate their own methods of decision making which may take place.

## Manager(s)

The grouping is managed by one or more natural persons.

- Legal persons may manage the group → of course represented by natural persons.
  - These persons are liable as if normal managers.

Appointment / removal of managers

- Determined by the formation contract or
- by unanimous decision of the members

Each manager may **represent** the grouping toward third parties and **bind** the grouping acting on behalf of it.

The law of the Member State in which the grouping has its official address governs the liability of the manager towards its members.

## Tax

Art. 40:

Fiscal transparency.

I.e. the profits and losses are taxable only in the hands of the its members

## Liability of members

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### Members – liability (external)

Art. 24

- The members of a grouping have **unlimited, joint and several liability** for the debts and other liabilities of the grouping.
- Creditors may not proceed against a (former) member for payment in respect of debts and other liabilities before the liquidation of a grouping is concluded,
  - unless the creditors have first requested the grouping to pay and payment has not been made within an appropriate period.

### New members:

New members incur all existing liabilities

- unless a clause is added in the formation contract exempting a new member from liabilities that originated prior to the said members admission.

### Former members:

Former members **remain liable for 5 years**, following their withdrawal,

- for liabilities arising out of the grouping's **activities during the period of their membership**.

### Members – liability (internal / recourse possibilities)

National law determines the consequences of the liability of members and former members, such as the recourse a member may take on his co-members in case he has paid more than his share.

### Members – profits

Profits resulting from a grouping's activities shall be deemed to be the profits of the members and shall be appointed among them in the proportions laid down in the formation contract – or – in the absence of such provision – in equal shares.

The members shall contribute to the payment of the amount by which expenditure exceeds income in the proportions laid down in the formation contract – or – in the absence of such provision – in equal shares.

cf. Art. 21.

### **Members – transfer**

Members may assign his participation in the grouping to a third party or another member only if all other members consent to the transfer.

cf. Art. 22.

## **Perspectives of the EEIG**

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### **Sammenligning med andre selskabsformer**

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- Minder mest om interessentskabet.
- Lederskabet minder dog mere om A/S eller ApS
- Fordelen ved EEIG
  - Hviler på ensartet retsgrundlag I hele EU.
  - Meget fleksibel regulering af interne forhold.
  - Har rets- og handeevne.
  - Skattemæssigt transperant.
- Typisk anvendelse
  - Tilbudsgivning og forretningsudvikling.