

European Economic Interest Grouping (EEIG): A legal instrument specific to the European Union for transnational interprofessional cooperation between economic operators

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General aspects

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 organization „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 realized the need of a specific legal instrument to help transnational and inter-professional 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.

From the beginning of Romania's membership in the European Union, the EEIG will also be at disposition of Romanian companies, self-employed, but also of universities or research institutions, associations and all those who want to cooperate in a Europe-wide framework. The GEIE is a new company form – a true European one – for Romanian enterprises, and as it is accepted only very slowly in the 12 new EU Member States since 1.5.2004 (there has been just one EEIG registrated on 2.3.2006, in Lithuania), it is justified that Romanian possible EEIG partners are confronted already now. Romanian business has many links to the European Union, to Italy, France, Germany, Austria, to other Central and Eastern European countries, and it is absolutely necessary that Romanian companies etc. already think now how the effect of the European Single Market can be transformed into a positive automatism, as cooperation in business and generally in Europe means more success than sitting in Romania and waiting for clients.

Legal basis

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 version in Romanian language² can be downloaded from the databases of the European Institute from Romania under www.ier.ro. no. Celex 31985R2137.

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. Romania has, until now, not yet passed an

implementation law. Some EU Member States adopted these implementation laws late (like Italy, Luxemburg, or Austria; Cyprus has today not yet a law neither, and in Liechtenstein, in the European Economic Area, was also late for years). But it makes sense for business, if Romania would adopt an implementation law in time, when becoming a member of the EU.

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 harmonized 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 harmonized 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 Agrupacion europeo de intereses económico – AEIE³

EU company law experts as well as entrepreneurs consider it as a certain deficit that this legal form has a different name or abbreviation in every EU official language – however, many see this with a smile, fitting well to a multi-lingual European Union.

How to found an EEIG

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 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

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. Also, very often, national registers do not pass on the national GEIE registrations.

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 an EEIG 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 organization and in their contractual relations.

mixed composition offers a useful and innovative instrument and can have a very positive impact on the activities of the grouping.

A written contract is required by the EU regulation. This contract for setting up a grouping shall include⁴ 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.

Normally and under most European legislations, 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.

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 on the internet: <http://ted.publications.eu.int/official>.

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 the art. 3 of the EU 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, Austria 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, and this independently from national law, but by its EU law status.

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 (around 95%).

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, during which setting-up phase capital can be blocked.

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 (from 1,50 EUR), and a Romanian limited company has a minimum of capital of 200 RON.

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

The executive of a grouping with, for example, its official address in Germany, or in some other EU Member States, must, 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 Luxembourg⁶.

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.

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.

After all, also the seat of a GEIE can be transferred within the European Union. This is unique – at present – among all companies (with the exception of the European Company = *Societas Europaea*, S.E., which is since recently another transnational structure); it clearly is an advantage of the GEIE. All other legal structures would have to be closed down, with a lot of financial and bureaucratic efforts, and often with image losses (liquidation is often considered close to insolvency!), and they would have to be reopened again in other EU Member States – again with additional financial expenses and efforts. All this is not valid with a GEIE.

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 (for instance in UK the PAYE-tax) for their employees, if any.

However, a grouping does not pay any company taxes, such as corporation tax (art. 40 EU Regulation). Therefore a grouping can offer various advantages:

- for an EEIG there is no publicity duty;
- a balance is usually not required;
- no company taxes;
- operating expenditures can be deducted as in any other company.

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.

At the end of the fiscal year (in most cases also the calendar year) the accounts will have to be balanced; a GEIE is not allowed to transfer profits from one year to the other (with the exception of payments to a reserve fund).

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, which of course makes a GEIE extremely interesting. Thus there is another level of tax disposition above the taxation level of the members.

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 EU 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 organization.

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.

Experience shows, however, that in the internal decision-making of GEIE almost all decisions are usually made unanimously.

Typologies of problems which can arise

The EEIG represents a recent innovation and most of the implementation laws came into force in 1992. This is the reason why at that moment there is still almost no jurisprudence dealing with this new legal instrument in the European Union. Some reports (diploma theses, dissertations, practice reports etc.) 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 of some diploma thesis had a positive result: about 70% of the interviewees declared that they reached the objectives expected and only 9 % denied it, and in other thesis the positive figure is even at 90%. 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 1900 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 organize personnel exchanges and specialization 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)*. 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 organize transports and logistic services.

- the French-German cultural TV-channel „ARTE“ it is also a grouping.
- Belgian monks (beer producers) and French monks (cheese producers) founded an EEIG in order to market their products mutually.
- Italian and French chambers of commerce, for common consulting of start-up enterprises,
- 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.
- a grouping has been established in the Rhine river border region to run a scheduled bus service, which operates both in France and in Germany.
- Belgian and Irish horse breeders 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,

Universities of several EU Member States have founded a GEIE for research in language testing, as there are in general many research institutions (academies of science institutes, universities etc.) organized in a GEIE, if they want to cooperate in a pan-European way (some of them include for example also Russian universities as associated member⁷).

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

Integration of 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, researches 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 little 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, France, 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, nor in the European Economic Area. 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 (e.g. there are in some Germany-based GEIE Turkish directors) 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 in the EU 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 1900 groupings have been established in the European Union until April 2006. 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 1900 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, Great Britain and Germany.

Whereas each grouping is formed by 6 to 8 members on an average, there are currently (April 2006) about 15.000 entrepreneurs, legal bodies, associations which make use of groupings⁸.

Another research realized within the EU Commission came to a slightly different result in the first year of the 1990s: on the basis of 127 questioners feedbacks each grouping on an average is formed by 4, 3 members. Altogether, the number of members per GEIE has, however, increased in the last years and might strive towards 8-10.

Some reasons to prefer an EEIG to more traditional legal instruments

In a summary, some of the advantages offered by a grouping are as follows:

- it is a legal framework which aims to develop and facilitate the collaboration between entrepreneurs and can represent a profit centre for its members;
- 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;
- a grouping can be founded with or without assets, investment or know-how transfer;
- a grouping can be established by subjects with a different legal status: self-employed persons, private limited company, chambers of commerce etc.;
- 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, by a new interface of synergy they obtain;
- a grouping can guarantee a high-level liability: members have unlimited and several liability for its debts;
- 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;
- a grouping pays neither company taxes nor taxes on earnings;
- a grouping can run its own business and can have a trade mark; it can conclude agreements with business partners, can sue or be sued in economic life, and can act as a "one-stop shop" in business;
- the official address of a grouping can be easily transferred within the Community. Other legal instruments require a previous winding up of enterprise, which involves costs, activities and loss of corporate image;
- 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);

- GEIE must not be discriminated in public tenders or publicly financed programmes, according to a communication by the European Commission from 1997;
- 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 consortium which apply for EU programmes;
- their members can improve their knowledge of the European Single Market, as entrepreneurs meet regularly and facilitate a process of globalization.

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.

Romanian business should indeed avoid the mistakes of other new Member States of the EU and be trained in this way of cooperation⁹.

For some cooperation purposes, a GEIE might not be the most adequate solution, but also in these cases the GEIE should be known. After all, it is an unbureaucratic and easy to handle legal form for cooperation, favorable for taxation and management questions and with a transparent legal background – just what many Romanian companies need, which already have excellent contacts to the European Union.

NOTES:

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² All versions in official EU languages (and some languages of third countries, like Turkey and some Balkan states) can be found on the website of the European EEIG Information Centre (in German, English, French and Italian): www.libertas-institut.com, then button “EWIV” (German), “EEIG” (English), or “GEIE” (French and Italian). On this website there are also lots of other information, also in some other languages, including a list of all known GEIE and statistics (per EU Member State and year on the setting-up and liquidaton of GEIE). Also a (free) periodical can be subscribed: the “EWIV/EEIG/GEIE eJOURNAL” (in German and English).

³ Within the different abbreviations of a GEIE the Roman languages Italian, French and Romanian have the biggest advantages, as all three countries abbreviate “GEIE”. It is legal duty to mention the legal form on business papers, visitor cards etc.

⁴ It is possible indeed to write full GEIE statutes on one page. But is is adviseable to mention many other things in the statutes; the normal volume of GEIE statutes is between 20 and 30 articles (around 10-15 pages

⁵ There is a list of all EU-wide published and partly also nationally registered GEIE on the homepage of the European EEIG Information Centre. But not all national registers publish automatically the national registrations in the EU Official Journal S (although they should).

www.libertas-institut.eu

⁶ However, a very little number of GEIE has opted for such a management structure. Normally, most GEIE have a natural person as Managing Director.

⁷ There exist even EU documents recommending GEIE for research cooperation, as then the otherwise complicated consortium agreements can be left out.

⁸ Research realized by Michael Deichsel, University from Ulm/Germany, and estimations/extrapolations by the European EEIG Information Centre

⁹ At the 5th EEIG Practice Conference in November 2004 in Strasbourg/France, organized by the European EEIG Information Centre, there was discussed Romania’s possible role in GEIE: with EU neighbours in Bulgaria and Hungary, there is high potential for GEIE between Romania and Bulgaria, Hungary, Slovak Republic, Slovenia, Greece, but mainly Germany, Italy and France. The “EEIG axes” are not only between neighbouring countries, but also along the biggest trading lines, as well as involving smaller countries.