

SCHEDULE 1

COUNCIL REGULATION (EEC) No. 2137/85 OF 25th JULY 1985 on the European Economic Interest Grouping (EEIG)

HAS ADOPTED THIS REGULATION:

Article 1

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

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

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

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

Article 2

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

2. Where a State comprises several territorial units, each of which has its own rules of law applicable to the matters referred to in paragraph 1, each territorial unit shall be considered as a State for the purposes of identifying the law applicable under this Article.

Article 3

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

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

2. Consequently, a grouping may not:

- (a) exercise, directly or indirectly, a power of management or supervision over its members' own activities or over the activities of another undertaking, in particular in the fields of personnel, finance and investment;
- (b) directly or indirectly, on any basis whatsoever, hold shares of any kind in a member undertaking; the holding of shares in another undertaking shall be possible only in so far as it is necessary for the achievement of the grouping's objects and if it is done on its members' behalf;
- (c) employ more than 500 persons;

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (d) be used by a company to make a loan to a director of a company, or any person connected with him, when the making of such loans is restricted or controlled under the Member States' laws governing companies. Nor must a grouping be used for the transfer of any property between a company and a director, or any person connected with him, except to the extent allowed by the Member States' laws governing companies. For the purposes of this provision the making of a loan includes entering into any transaction or arrangement of similar effect, and property includes moveable and immoveable property;
- (e) be a member of another European Economic Interest Grouping.

Article 4

1. Only the following may be members of a grouping:
 - (a) companies or firms within the meaning of the second paragraph of Article 58 of the Treaty and other legal bodies governed by public or private law, which have been formed in accordance with the law of a Member State and which have their registered or statutory office and central administration in the Community; where, under the law of a Member State, a company, firm or other legal body is not obliged to have a registered or statutory office, it shall be sufficient for such a company, firm or other legal body to have its central administration in the Community;
 - (b) natural persons who carry on any industrial, commercial, craft or agricultural activity or who provide professional or other services in the Community.
2. A grouping must comprise at least:
 - (a) two companies, firms or other legal bodies, within the meaning of paragraph 1, which have their central administrations in different Member States, or
 - (b) two natural persons, within the meaning of paragraph 1, who carry on their principal activities in different Member States, or
 - (c) a company, firm or other legal body within the meaning of paragraph 1 and a natural person, of which the first has its central administration in one Member State and the second carries on his principal activity in another Member State.
3. A Member State may provide that groupings registered at its registries in accordance with Article 6 may have no more than 20 members. For this purpose, that Member State may provide that, in accordance with its laws, each member of a legal body formed under its laws, other than a registered company, shall be treated as a separate member of a grouping.
4. Any Member State may, on grounds of that State's public interest, prohibit or restrict participation in groupings by certain classes of natural persons, companies, firms, or other legal bodies.

Article 5

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

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

Article 6

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

Article 7

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

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

- (a) any amendment to the contract for the formation of a grouping, including any change in the composition of a grouping;
- (b) notice of the setting up or closure of any establishment of the grouping;
- (c) any judicial decision establishing or declaring the nullity of a grouping, in accordance with Article 15;
- (d) notice of the appointment of the manager or managers of a grouping, their names and any other identification particulars required by the law of the Member State in which the register is kept, notification that they may act alone or must act jointly, and the termination of any manager's appointment;
- (e) notice of a member's assignment of his participation in a grouping or a proportion thereof, in accordance with Article 22(1);
- (f) any decision by members ordering or establishing the winding up of a grouping, in accordance with Article 31, or any judicial decision ordering such winding up, in accordance with Articles 31 or 32;
- (g) notice of the appointment of the liquidator or liquidators of a grouping, as referred to in Article 35, their names and any other identification particulars required by the law of the Member State in which the register is kept, and the termination of any liquidator's appointment;
- (h) notice of the conclusion of a grouping's liquidation, as referred to in Article 35(2);
- (i) any proposal to transfer the official address, as referred to in Article 14(1);
- (j) any clause exempting a new member from the payment of debts and other liabilities which originated prior to his admission, in accordance with Article 26(2).

Article 8

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

- (a) the particulars which must be included in the contract for the formation of a grouping pursuant to Article 5, and any amendments thereto;
- (b) the number, date and place of registration as well as notice of the termination of that registration;
- (c) the documents and particulars referred to in Article 7(b) to (j).

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

Article 9

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

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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

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

Article 10

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

Article 11

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

Article 12

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

The official address must be fixed either:

- (a) where the grouping has its central administration, or
- (b) where one of the members of the grouping has its central administration or, in the case of a natural person, his principal activity, provided that the grouping carries on an activity there.

Article 13

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

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

Article 14

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

No decision to transfer may be taken for two months after publication of the proposal. Any such decision must be taken by the members of the grouping unanimously. The transfer shall take effect on the date on which the grouping is registered, in accordance with Article 6, at the registry for the

(1) OJ No. L65, 14.3.1968, p.8.

new official address. That registration may not be effected until evidence has been produced that the proposal to transfer the official address has been published.

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

3. Upon publication of a grouping's new registration the new official address may be relied on as against third parties in accordance with the conditions referred to in Article 9(1); however, as long as the termination of the grouping's registration at the registry for the old official address has not been published, third parties may continue to rely on the old official address unless the grouping proves that such third parties were aware of the new official address.

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

Article 15

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

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

3. A decision establishing or declaring the nullity of a grouping may be relied on as against third parties in accordance with the conditions laid down in Article 9(1). Such a decision shall not of itself affect the validity of liabilities, owed by or to a grouping, which originated before it could be relied on as against third parties in accordance with the conditions laid down in the previous subparagraph.

Article 16

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

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

2. The members of a grouping, acting as a body, may take any decision for the purpose of achieving the objects of the grouping.

Article 17

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

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

- (a) alter the objects of a grouping;
- (b) alter the number of votes allotted to each member;
- (c) alter the conditions for the taking of decisions;

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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

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

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

Article 18

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

Article 19

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

No person may be a manager of a grouping if:

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

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

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

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

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

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

Article 20

1. Only the manager or, where there are two or more, each of the managers shall represent a grouping in respect of dealings with third parties.

Each of the managers shall bind the grouping as regards third parties when he acts on behalf of the grouping, even where his acts do not fall within the objects of the grouping, unless the grouping

proves that the third party knew or could not, under the circumstances, have been unaware that the act fell outside the objects of the grouping; publication of the particulars referred to in Article 5(c) shall not of itself be proof thereof.

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

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

Article 21

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

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

Article 22

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

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

Article 23

No grouping may invite investment by the public.

Article 24

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

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

Article 25

Letters, order forms and similar documents must indicate legibly:

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

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (b) the location of the registry referred to in Article 6, in which the grouping is registered, together with the number of the grouping's entry at the registry;
- (c) the grouping's official address;
- (d) where applicable, that the managers must act jointly;
- (e) where applicable, that the grouping is in liquidation, pursuant to Article 15, 31, 32 or 36.

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

Article 26

1. A decision to admit new members shall be taken unanimously by the members of the grouping.
2. Every new member shall be liable, in accordance with the conditions laid down in Article 24, for the grouping's debts and other liabilities, including those arising out of the grouping's activities before his admission.

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

Article 27

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

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

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

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

Article 28

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

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

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

Article 29

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

Article 30

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

Article 31

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

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

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

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

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

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

Article 32

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

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

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

Article 33

When a member ceases to belong to a grouping for any reason other than the assignment of his rights in accordance with the conditions laid down in Article 22(1), the value of his rights and obligations

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

shall be determined taking into account the assets and liabilities of the grouping as they stand when he ceases to belong to it.

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

Article 34

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

Article 35

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

Article 36

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

Article 37

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

Article 38

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

Article 39

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

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

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

2. The member states shall ensure that the information to be published in the Official Journal of the European Communities² pursuant to Article 11 is forwarded to the Office for Official Publications of the European Communities within one month of its publication in the official gazette referred to in paragraph 1.

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

Article 40

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

Article 41

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

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

Article 42

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

- (a) to facilitate, without prejudice to Articles 169 and 170 of the Treaty, application of this Regulation through regular consultation dealing in particular with practical problems arising in connection with its application;
- (b) to advise the Commission, if necessary, on additions or amendments to this Regulation.

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

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

Article 43

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

It shall apply from 1 July 1989, with the exception of Articles 39, 41 and 42 which shall apply as from the entry into force of the Regulation. This Regulation shall be binding in its entirety and directly applicable in all Member States.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.