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Version: 01 Jan 2021

Council Regulation (EEC) No 2137/85

of 25 July 1985

on the European Economic Interest Grouping (EEIG)

Introductory
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Council Regulation (EEC) No 2137/85

of 25 July 1985

on the European Economic Interest Grouping (EEIG)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas a harmonious development of economic activities and a continuous and balanced expansion throughout the Community depend on the establish-mend and smooth functioning of a common market offering conditions analogous to those of a national market; whereas to bring about this single market and to increase its unity a legal framework which facilitates the adaptation of their activities to the economic conditions of the Community should be created for natural persons, companies, firms and other legal bodies in particular; whereas to that end it is necessary that those natural persons, companies, firms and other legal bodies should be able to cooperate effectively across frontiers;

Whereas cooperation of this nature can encounter legal, fiscal or psychological difficulties; whereas the creation of an appropriate Community legal instrument in the form of a European Economic Interest Grouping would contribute to the achievement of the abovementioned objectives and therefore proves necessary;

Whereas the Treaty does not provide the necessary powers for the creation of such a legal instrument;

Whereas a grouping's ability to adapt to economic conditions must be guaranteed by the considerable freedom for its members in their contractual relations and the internal organization of the grouping;

Whereas a grouping differs from a firm or company principally in its purpose, which is only to facilitate or develop the economic activities of its members to enable them to improve their own results; whereas, by reason of that ancillary nature, a grouping's activities must be related to the economic activities of its members but not replace them so that, to that extent, for example, a grouping may not itself, with regard to

third parties, practise a profession, the concept of economic activities being interpreted in the widest sense;

Whereas access to grouping form must be made as widely available as possible to natural persons, companies, firms and other legal bodies, in keeping with the aims of this Regulation; whereas this Regulation shall not, however, prejudice the application at national level of legal rules and/or ethical codes concerning the conditions for the pursuit of business and professional activities;

Whereas this Regulation does not itself confer on any person the right to participate in a grouping, even where the conditions it lays down are fulfilled;

Whereas the power provided by this Regulation to prohibit or restrict participation in grouping on grounds of public interest is without prejudice to the laws of Member States which govern the pursuit of activities and which may provide further prohibitions or restrictions or otherwise control or supervise participation in a grouping by any natural person, company, firm or other legal body or any class of them;

Whereas, to enable a grouping to achieve its purpose, it should be endowed with legal capacity and provision should be made for it to be represented vis-à-vis third parties by an organ legally separate from its membership;

Whereas the protection of third parties requires widespread publicity; whereas the members of a grouping have unlimited joint and several liability for the grouping's debts and other liabilities, including those relating to tax or social security, without, however, that principle's affecting the freedom to exclude or restrict the liability of one or more of its members in respect of a particular debt or other liability by means of a specific contract between the grouping and a third party;

Whereas matters relating to the status or capacity of natural persons and to the capacity of legal persons are governed by national law;

Whereas the grounds for winding up which are peculiar to the grouping should be specific while referring to national law for its liquidation and the conclusion thereof;

Whereas groupings are subject to national laws relating to insolvency and cessation of payments; whereas such laws may provide other grounds for the winding up of groupings;

Whereas this Regulation provides that the profits or losses resulting from the activities of a grouping shall be taxable only in the hands of its members; whereas it is understood that otherwise national tax laws apply, particularly as regards the apportionment of profits, tax procedures and any obligations imposed by national tax law;

Whereas in matters not covered by this Regulation the laws of the Member States and Community law are applicable, for example with regard to:

- social and labour laws,
- competition law,
- intellectual property law;

Whereas the activities of groupings are subject to the provisions of Member States laws on the pursuit and supervision of activities; whereas in the event of abuse or circumvention of the laws of a Member State by a grouping or its members that Member State may impose appropriate sanctions;

Whereas the Member States are free to apply or to adopt any laws, regulations or administrative measures which do not conflict with the scope or objectives of this Regulation;

Whereas this Regulation must enter into force immediately in its entirety; whereas the implementation of some provisions must nevertheless be deferred in order to allow the Member States first to set up the necessary machinery for the registration of groupings in their territories and the disclosure of certain matters relating to groupings; whereas, with effect from the date of implementation of this Regulation, groupings set

up may operate without territorial restrictions,

HAS ADOPTED THIS REGULATION:

Article A1

1. In this Regulation-

- (a) “the EEIG Act” means the European Economic Interest Grouping Act, 1993;
- (b) “Registrar” has the meaning given in section 2(1) of the Companies Act 2014.

2. In this Regulation-

- (a) except in Articles 1(1) and 1A, references to a European Economic Interest Grouping are references to a European Economic Interest Grouping that has its official address in a Member State; and
- (b) unless the contrary intention appears, references to a grouping are references to a Gibraltar Economic Interest Grouping.

Article 1

1. A European Economic Interest Grouping registered in Gibraltar immediately before IP completion day-

- (a) is, on IP completion day, converted into a Gibraltar Economic Interest Grouping; and
- (b) accordingly, on and after IP completion day, is to be known by that name (see Article 5).

2. A Gibraltar Economic Interest Grouping-

- (a) is a body corporate and continues to be registered as such;
- (b) is, on and after IP completion day, deemed to be formed upon the terms, in the manner and with the effects laid down in this Regulation in relation to such groupings;
- (c) has 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. Paragraph 1 does not apply to an outgoing grouping (as to which, see section 9 of the EEIG Act).

4. In paragraph 3, an “outgoing grouping” means a European Economic Interest Grouping-

- (a) which, immediately before IP completion day, is registered in a Member State pursuant to a transfer of its official address from Gibraltar to that Member State in accordance with Article 14; but
- (b) whose registration in Gibraltar has not been terminated before IP completion day.

5. In paragraph 4(a), the reference to Article 14 is a reference to Article 14 of Council Regulation (EEC) No. 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG) as it applied in the European Union immediately before IP completion day.

Article 1A

1. The conversion of a European Economic Interest Grouping into a Gibraltar Economic Interest Grouping pursuant to Article 1(1) does not affect any rights or obligations of the European Economic Interest Grouping or render defective any legal proceedings by or against it.

2. Any legal proceedings that might have been continued or commenced against the European Economic Interest Grouping before its conversion, may be continued or commenced against the Gibraltar Economic Interest Grouping into which it has converted.

3. Any document which-

- (a) relates to anything done by a European Economic Interest Grouping registered in Gibraltar; and
- (b) is in effect immediately before IP completion day;

is to be read as if references to the European Economic Interest Grouping in that document were references to the Gibraltar Economic Interest Grouping into which it has converted.

Article 2

Omitted

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;
- (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 Gibraltar law relating to 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 Gibraltar law relating to. 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 a European Economic Interest Grouping.
- (f) be a member of another Gibraltar Economic Interest Grouping;
- (g) have a European Economic Interest Grouping as a member.

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, the law of the United Kingdom, or the law of Gibraltar and which have their registered or statutory office and central administration in the Community, the United Kingdom or in Gibraltar; where, under the law of a Member State, the law of the United Kingdom, or the law of Gibraltar, 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, the United Kingdom or in Gibraltar;
- (b) natural persons who carry on any industrial, commercial, craft or agricultural activity or who provide professional or other services in the Community or in Gibraltar.

2. A grouping must comprise at least-

- (a) two companies, firms or other legal bodies, within the meaning of paragraph 1-
 - (i) which have their central administrations in different Member States, or
 - (ii) at least one of which has its central administration in Gibraltar and one of which has its central administration in the United Kingdom or a Member State; or
- (b) two natural persons, within the meaning of paragraph 1-
 - (i) who carry on their principal activities in different Member States, or
 - (ii) at least one of whom carries on his or her principal activities in Gibraltar and one of whom carries on his or her principal activities in the United Kingdom or a Member State; 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 or her principal activity in another Member State; or
- (d) a company, firm or other legal body within the meaning of paragraph 1 (“the first body”) that has its central administration in a Member State or in the United Kingdom or Gibraltar and a natural person that carries on his or her principal activity in Gibraltar (where the first body has its central administration in a Member State or the United Kingdom) or in a Member State (where the first body has its central administration in Gibraltar).

Article 5

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

- (a) the name of the grouping;
- (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.

Where, immediately before IP completion day, the name of a grouping in the contract for its formation-

- (a) includes-
 - (i) the words “European Economic Interest Grouping”,
 - (ii) the initials “EEIG”, or
 - (iii) an authorised equivalent of those words or initials in a Community official language, set out in Schedule 3 of the EEIG Act; or
- (b) is preceded or followed by any of those words or initials;

those words or initials have effect on and after IP completion day as if they were substituted by “Gibraltar Economic Interest Grouping” or “GEIG”, as the case may be.

Article 6

Omitted

Article 7

The following documents and particulars must be filed with the Registrar:

- (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 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 Gibraltar, 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 Gibraltar, and the termination of any liquidator's appointment;
- (h) notice of the conclusion of a grouping's liquidation;
- (i) *Omitted*
- (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

Omitted

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 which implements Article 3 (5) and (7) of Council Directive 68/151/EEC of 9 March 1968 on coordination 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.

2. If activities have been carried on on behalf of a grouping before its registration 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

1. A European Economic Interest Grouping that has an establishment in Gibraltar must register that establishment with the Registrar.

2. For the purposes of such registration, a grouping must file, with the Registrar, 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 Registrar's practice.

Article 11

Notice 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, must be given in the Gazette.

Article 12

Omitted

Article 13

1. The official address of a Gibraltar Economic Interest Grouping must not be transferred outside of Gibraltar.

2. Any term in the contract for the formation of a grouping which permits a transfer of the official address within the Community is to cease to have effect on IP completion day.

Article 14

Omitted

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;
- (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:

- by virtue of the law applicable to him, or
- by virtue of the law of Gibraltar, or
- following a judicial or administrative decision made or recognized in a Member State or in Gibraltar

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 or another Gibraltar Economic Interest Grouping.

2. Omitted

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 section 15 of the EEIG Act.

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.

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 'Gibraltar Economic Interest Grouping' or by the initials 'GEIG', unless those words or initials already occur in the name;
- (b) *Omitted*
- (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 Articles 15, 31, 32 or 36.

Every establishment of a European Economic Interest 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 section 15 of the EEIG Act.

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).
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 Article 7. 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 situation 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 Article 7. 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 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 applications by a member, the court may order a grouping to be wound up on just and proper grounds.

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 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. *Omitted*
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 Article 7.

Article 36

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 section 15 of the EEIG Act, 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 section 15 of the EEIG Act, 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

Omitted

Article 39

Omitted

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

Omitted

Article 42

Omitted

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.

Done at Brussels, 25 July 1985.