



The European Economic Interest Grouping in Italy

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European Company (?) Law

- *A shared competence of the EU and the MS*
 - *Not even specific definition of company at EU level – left to each Member State*
 - *And huge current debate on the purpose of a company*
 - *Purpose: create and maintain a common market*
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How operates European Company Law

- *Directives for harmonisation*
 - *Regulations for standardisation*
 - *Decisions for interpretation*
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Supranational forms

The idea is to create something at large equal all over the EU

- **EEIG** – European Economic Interest Grouping (1985) (support to cross border agreements between enterprises)
 - **SE** – European Company (2001) (large companies)
 - **SCE** – European Cooperative Society (2003) (coops)
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European Economic Interest Grouping

- Regulation 2137/1985/EEC
 - The «grandparent» of all the remaining forms
 - Not a company (recital 5)
 - Limited scope of application
 - Limited participation (even in number of members (art. 4(3)) (no invitation to the public for investment: art. 23)
 - It is a legal subject, but not necessarily a legal person
 - All the capability to have a patrimony, and be a part of contracts
 - Debatable success rate...
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Purpose

- Just ancillary: recital 5

*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, practice a profession, the concept of economic activities being interpreted in the widest sense*



Members?

- Yes, Art. 4.1

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**
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The grouping cannot...

- Act as a holding or so... (Art. 3.2)

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 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 immovable property;
 - (e) **be a member of another European Economic Interest Grouping.**
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Supranational

1. As of **members (art. 4.2):**

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.*
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Legal sources

Arts 1.1 & 2

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

Art. 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.



It's (partially) a matter of seat

Arts 6 & 12

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

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.*
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More info in the contract

Art. 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.*
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Disclosure

- Three levels:
 - A. Trade registry (Art. 7)
 - B. Publication in the national gazette (Arts 8 & 9 for effects – CodDir for Disclosure)
 - C. Publication in the EUOJ (restricted items, Art. 11)
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What to disclose?

- **Full information in Trade registry:**
 - *In particular contract and amendments (including change of members)*
 - *setting up or closure of any establishment of the grouping*
 - *judicial decision establishing or declaring the nullity*
 - *appointment of the 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 (the same for liquidators)*
 - **notice of a member's assignment of his participation in a grouping or a proportion thereof, in accordance with Article 22(1)**
 - *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)*
 - **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)**
 - This all also for establishments of foreign EEIGs
 - **Extracts in the national gazette**
 - **Just notice of constitution and conclusion of liquidation in OJEU**
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Members' liability

Art. 24: Rule

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.*



And again...

Before registration (Art 9.2):

*2. If activities have been carried 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.*



Exceptions? Some doubts...

Recital 10:

*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.*



How long?

Art. 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.

The new member: as a default rule his/her liability is **unlimited** and several **also for the obligation a company assumed before** his/her entrance, but a different agreement is possible



Nullity

- Cases: domestic law
 - Procedure (art. 15) ► Same principles of CodDir
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Organs

- Members acting collectively
 - Not properly a «general meeting»: less burdens
 - Per capita voting (default) (Art. 17.1)
 - Possible management decisions (Art. 16.3)
 - Different majorities; in the most severe cases even unanimous decisions (e.g.: membership's assignment (Art. 22); entrance of new members (Art. 26); consent to a member's withdraw (exit, Art. 27)
 - Consultation can be asked by request of any member (Art. 17.4); each member may have information (Art. 18)
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Manager(s)/Director(s)

- **Natural** (or even legal, if allowed under domestic law) **person**
 - **Disqualification** rules according to a net of domestic laws
 - *No person may be a manager of a grouping if:*
 - *by virtue of the law applicable to him, or*
 - *by virtue of the internal law of the State in which the grouping has its official address, or*
 - *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. (Art. 19.1b)*
 - Only the managers have **representative power** (same limits of CodDir)
 - Additional organs are possible and allowed, but in the case, the rules come from the contract
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Transparency...

Profits & losses (Art. 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.*



Membership related operations

- Transfer (assignment) (Art. 22.1)

*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.***

- Use of the participation as a security (Art. 22.2)

*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.***



Withdrawal and expulsion

- Art. 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.



Member's death

- Art. 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.



When a member ceases to be...

- ...a member, Arts 29 *seqq* apply
 - In summary:
 - Notice to the remaining members + disclosure
 - The EEIG continues with the remaining members, unless otherwise provided for in the contract or by unanimous decision
 - Liquidation to the withdrawn or expelled member pursuant the patrimony of the grouping as of its exit (Art. 33)
 - Liability for 5 years after exit (Arts 34-37)
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Winding up

- Mandatory, voluntary or judiciary
- General rule + **voluntary** (Art. 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.***

- **Mandatory** (art. 31.2 & .3)

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

- 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*
- 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.

- 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.
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Judiciary winding-up

- Art. 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 **applications 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.

- In addition to para 3, see Art. 4.4:

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.**

- Plus Art. 38 (but here we have no technical winding-up, but simply a prohibition to carry out some activities):

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.



Effects of winding up

- Art. 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.*



The transfer of seat

- Art 14 ► see also CodDir arts. 86b ss. after Directive (EU) 2019/1151

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 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.



The success of the EEIG

Rather debatable:

- *Very few established EEIGs (not even clear figures: according to Libertas, in 2020, + 2678 -472)*
 - *Systems of disclosure currently outdated*
 - *In Poland? 1, est. 2006.*
 - *Not truly standard*
 - *Unlimited liability is not appealing...*
 - *In some cases non legal persons (Italy, Germany)*
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Ant what about Italy?

- Interesting case: similar to a consortium, but cross-border
 - Established (as of September 2019):
 - 235 according to EUOJ
 - 425 according to the Business Register
 - Officially wound-up:
 - 32 (EUOJ)
 - 148 (Business Register)
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Ant what about Italy?

- So: active between 203 and 277
 - Improper comparison: in Italy 1 Million s.r.l.
 - But the EEIG is something different...
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How many members?

- Data available for 85 EEIGs only
 - Only 7 have 10 or more members (top: 18, but 15 are from Italy...)
 - 25 have 5 or more members
 - 26 have just 2 members
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From where?

- Italy: 240
 - Spain: 24
 - UK: 23
 - Germany: 17
 - France: 12
 - Belgium, Luxemburg, Slovenia and Romania: 4
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UK???

- Yes, a big problem, for instance when the grouping has just 2 members...
 - ...and one of them is from the UK, due to Brexit!
 - Reasonably: judicial winding up
 - Non-cross-border not because of the change of nationality of the member...
 - ...but because of the withdrawal of the State!
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How big are they?

- Grouping's patrimony
 - Present in 34 EEIGs
 - Over 1M€: 3
 - 90k-125k€: 2
 - 500-25k€: 29
 - Average: € 8.500
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Revenue

- Information available for 74 out of 143 EEIGs
- 38/74 under 10k€
- 7/74 over 1M€

So... useful for SMEs



Activities

- Real estate (35)
 - Consultants (31)
 - Professionals (engineers, architects) (1)
 - Tourism (8)
 - Software houses (6)
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Italian critical points

- Abandoned: no update since 1991
 - Many major reforms since then
 - Not applicable public procurement law
 - Not applicable bankruptcy law
 - Hard coordination with rules on Trade Register
 - Very little penalties for non complying directors
 - Major original flaw: incomplete regulation, and no cross-reference
 - Risks of abuse (real estate)
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A new life?

- Is it possible?
 - Features to be removed: unlimited liability first, and then disclosure and publication system
 - Is it advisable?
 - The purpose is generally good... But are we sure that it is not a *partnership*?
 - If so, perhaps it is not useless...
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