

ECONOMIC INTEREST GROUP, MODERN FORMS OF COMMERCIAL ACTIVITY DEVELOPMENT

OANA CARMEN RĂVAȘ*

ABSTRACT: *The legal basis for European Economic Interest Groups is EC Regulation no. 2137/85, which was published in the Official Journal of the European Communities,, "L 199 of 31 July 1985. Implementation was delayed for the Member States of the European Union; each state voted to implement laws governing certain matters relating to groupings and set rules for registering European economic interest groups (EEIG). EEIG have been created to encourage and facilitate cooperation between enterprises of distinct nationality, by providing a legal instrument supple, able to remove excessive formalism that marked the establishment of companies. In other words, European Economic Interest Group aims to facilitate economic activities of its members and the improvement or development results of these activities, but without creating profit for itself.*

KEY WORDS: *European Economic Interest Group, commercial trade, company, labor force, management, law regulation.*

JEL CLASSIFICATIONS: *K20, K22.*

1. PRELIMINARY ISSUES

Long before the introduction of a single European market, both the European Commission and the European Parliament have achieved the requirement for a specific legal instrument to help transnational and inter between economic operators, particularly small and medium enterprises (SMEs). The first proposals on this subject came from the European Parliament in the early 70s, but has reached an agreement at EU level only in the mid-80s, beginning in the then EU Single Market legislation.

The legal basis for European Economic Interest Groups is EC Regulation no. 2137/85, which was published in the Official Journal of the European Communities,, "L 199 of 31 July 1985. Implementation was delayed for the Member States of the

* Lecturer, Ph.D., University of Petroșani, Romania, oana_dumitrescu13@yahoo.com

European Union; each state voted to implement laws governing certain matters relating to groupings and set rules for registering European economic interest groups (EEIG). Some Member States of the European Union adopted the latest implementation of these laws (eg Italy, Luxembourg, Austria, Romania); Cyprus still not passed a law and in Liechtenstein, was also delayed adoption.

German parliament adopted EWIV-Ausfuehrungsgesetz (Law Implementation Gie) of 14 April 1988, which was published on April 22, 1988 in Bundesgesetzblatt I (Official German). According to German law implementation groups have been registered in Germany after July 1, 1989.

EEIG are harmonized to the extent that it refers to one law - European Union Council Regulation no. 2137/85, which is the same for all EU Member States (and take effect in the Member States of the European Free Trade Association - EFTA in the European Economic Area - EEA - Norway, Iceland and Liechtenstein).

Less harmonized is the name: each EU language has its own way of expression on the European Economic Interest Group and its abbreviation. Thus, for example, in French - Groupement Europeen d'interethnic Economique (EEIG) in German - Europaeische wirtschaftliche Interessenvereinigung (EWIV), Italian - GUPPO Europeo di Interesse Economic Grouping (EEIG), the Dutch - Europees Economische Samenwerkingverband (EESV) in Spanish - AGRUPACION Europeo Economic Interest (AEIE) etc. EU company law experts and entrepreneurs believe that in terms of a lack of harmonization is certain that this legal form has one different name or abbreviation in each official language of the EU. However, we can say that it fits better in a multi-lingual European Union.

European Economic Interest Groups (EEIG) in Romania are regulated by the provisions of Law no. 161/2003 on certain measures to ensure transparency in exercising public dignities, public functions and in business, prevent and punish corruption (Title V, Chapter II, art. 232-237 index 2).

At Community level, EEIG were established by Regulation no. 2137/85 of the Council on the European Economic Interest, published in the Official Journal of the European Communities,, "no. L 199 of 31 July 1985.

EEIG have been created to encourage and facilitate cooperation between enterprises of distinct nationality, by providing a legal instrument supple, able to remove excessive formalism that marked the establishment of companies. In other words, European Economic Interest Group aims to facilitate economic activities of its members and the improvement or development results of these activities, but without creating profit for itself.

According to art. 3 paragraphs. 1 of the Regulation, the aim of the group is 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 activity of its members and not be more than ancillary to those activities.

Consequently, a grouping is allowed:

- to exercise, directly or indirectly, the right to drive or control the activities of their members or activities of another undertaking, especially in human resources, finance and investment;

- to hold, directly or indirectly, with any title, part or shares of any kind in a member undertaking. Ownership of shares in another undertaking shall be possible only insofar as is necessary to achieve the objectives of the group and if done on behalf of members;

- to employ more than 500 people;

- to be used by a company to make a loan to a company director or any person in a relationship with him, when such loans is restricted or controlled under the laws of the Member States relating to companies. Also, a group can not be used for the transfer of property between a company and a director, or any person connected with him, except to the extent permitted by the laws of Member States relating to companies. For the purposes of this provision, means any loan transaction with similar effect, and can be movable and immovable property; - to be a member of another European Economic Interest Group (art. 3 para. 2 of the Regulation).

In the preamble to Regulation No. 2137/85 shows that, for individuals, companies or other legal entities, created a legal framework which facilitates the adaptation of their activities to the economic conditions of the EU and their effective cooperation across borders.

European economic interest groups have enjoyed great success in the European Union Member States, especially through their business activities, and non-commercial (in the form of European groups cabinets lawyers, business advisors, etc.). Moreover, in 2007, were established in the European Union over 1900 European economic interest groups, which shows the interest of the business community for this type of organization.

European Economic Interest Group is defined as a combination of two or more natural or legal persons, constituted for a fixed or indefinite period in order to facilitate or develop the economic activity of its members and improving the results of that activity.

2. EUROPEAN ECONOMIC INTEREST GROUP COMPOSITION. POWERS OF THE MEMBERS OF THE GROUP. LIABILITY FOR THE DEBTS OF THE GROUP MEMBERS

According to Regulation no. 2137/85 (art. 4 para. 1), there can be the members of the EEIG: - Companies and other public or private entities, formed under the laws of a Member State and having their registered or statutory office and central administration within the European Union. Where, in accordance with the law of a Member State, a company or other legal entity is not required to have a registered or statutory office, it is sufficient that the company or other legal entity to have its head office in the EU; - Individuals who exercise in the EU an industrial, commercial, craft, agricultural activity, or providing professional services or other in the European Union.

Regarding the number of members, Regulation leaves Member States the possibility to limit to 20 - in the Romanian legislation.

Under that regulation, an European economic interest group can not have more than 500 employees.

According to art. 4 para. 2 of Regulation No. 2137/85, European economic interest groups must be composed of at least: - Two companies or other legal entities which have their central administrations in different Member States or - Two individuals pursuing their principal activities in different Member States or - A corporation or other legal entity and an authorized individual person, of which the first has its central administration in a Member State, and the second his principal activity in another Member State.

According to art. 4 para. 4 of the Regulation, a Member State may prohibit or restrict, for reasons of public interest, participation in groups of certain categories of individuals, companies or other legal entities.

According to art. 41 para. 2 of the Regulation, in order to inform the Member States shall inform the Commission of the categories of individuals, companies or other legal entities which are forbidden to join the European economic interest groups.

The Commission shall inform the other Member States of the European Union. A very important aspect is the power of decision for the European economic interest group members.

According to art. 16 of the Regulation, the members acting collectively and the manager or managers of the group is its bodies. So, in general, members of the group as organs, influences the decisions they adopt, as the manager or managers, development group. Decision making power belongs to members acting together. The articles of association of a group may provide for other organs, in which case determine their powers. Members of a group acting as a body, may take any decision to achieve the goals of the group.

However, according to the Regulation no. 2137/85, members may, by decision, judgment or declare the dissolution or liquidation of a European Economic Interest Group,

Each member has one vote. However, the constitution of a group can give more than one vote to certain members, provided that no member shall not hold a majority.

Unanimous decision by the members is required for:

- change of the activity of the group;
- changing the number of votes allotted to each member;
- changing conditions of decision making;
- extending the group over the period fixed in the constitutive act of the group;
- alter the contribution by every member or by some members to the grouping's financing;
- amendment of any obligation of a member, unless otherwise provided in the articles of association of the group;
- to make any other changes to the constitution of the group, unless the articles of association provide otherwise.

Except where the Regulation provides that decisions must be taken unanimously, the memorandum of the grouping may prescribe the conditions for adopting the particular decisions of the group conditioned of quorum and majority. In the absence of such provisions, all decisions will be taken unanimously. At the

initiative of a manager or at the request of a member, the manager or managers must arrange consultation with the members, so that the latter can take a decision.

Each member is entitled to obtain information from the manager or managers concerning the group's business and consult books and records group (art. 17 to 18 of the Regulation). Members of a group bear unlimited joint and several liability for the debts of whatever nature. National law of each Member State must foresee the consequences of such liability.

3. CREATING THE GROUP

3.1. Establishment procedure

European Economic Interest Group is established by agreement signed by all members and notarially attested called articles of incorporation, which are recorded in the special register kept by the Member State in which the group establishes its head.

Subject to Regulation no. 2137/85, applicable law, on the one hand, the constitution of a group, except for matters relating to the status and capacity of natural persons and legal persons capacity and, on the other hand, the internal organization of the group, is the law of State of establishment situated, as provided in the memorandum of the group.

When a State comprises several territorial units each with its own rules applicable to the matters mentioned, each territorial unit is regarded as a state, to determine the applicable law (art. 2 of the Regulations).

Constitutive Act of the group shall be submitted to the special register.

According to art. 6 and art. 39 para. 1 of the Regulation, a group is registered in the State where it is established, the registry designated. Member States shall designate the registry or registries responsible for effecting the registration referred to in Articles and lay down the rules governing registration. Member States shall provide the conditions under which the documents are submitted.

If the documents have been prepared on behalf of a group before its registration in accordance with Article 6 of the Regulation and where, after registration, assume the obligations arising out of such acts, individuals, companies or other legal entities they shall bear unlimited joint and several liability for them (art. 9 para. 2 of the Regulation).

According to art. 8 of the Regulation in the Official Gazette of the Member State where the group has its headquarters, published the following:

- a. the particulars which must be included in the articles of association of a group and any amendments thereto;
- b. the number, date and place of registration and cancellation of such registration;
- c. the documents and particulars referred to in Article 7 bj.

Particulars referred to in art. 8 points a and b must be published in full. The documents and particulars referred to in point c can be published either in full or in extract form of a reference to them in the register in accordance with applicable national law.

According to art. 39 para. 1, paragraph 2 of the Regulation, Member States are obliged to ensure that the documents and particulars referred to in Article 8 are published in the official gazette of the Member State where the group has its headquarters, and may prescribe the manner of publication of the documents and identification data.

According to art. 38 of the Regulation, when a group exercise in a Member State an activity contrary to the public interest of the Member State competent authority of that State may prohibit that activity. You need to ensure that a competent authority's decision can be challenged in court.

In Romania, within 15 days from the date of authentication the constitution of European Economic Interest Group founders or managers or an agent thereof will require registration in the commercial register of the group in whose jurisdiction will be based the group.

Grouping acquires legal personality from the date of registration, which is performed within 24 hours from the date of delivery of the delegated judge's conclusion authorizing the registration of the group, so the group consisting of a capacity, in its own name, to be the holder of rights and obligations of any kind, to enter into contracts or other legal documents and legal proceedings.

European economic interest groups are not subject to the authorization provided for in Decree-Law no. 122/1990 on the authorization and operation of representative offices in Romania companies and foreign economic organizations, as amended and supplemented. Registration in the commercial register does not presume marketability of European Economic Interest Group. After registration, the Trade Registry Office shall, ex officio, an extract of the delegated judge's conclusion,, *Monitorul Oficial* ", is to be published at the expense of the applicant.

After every amendment to the articles of incorporation, directors submitted to the Trade Registry Office in whose jurisdiction the registered European Economic Interest Group within 15 days, the act modifier and full text of the articles of association authenticated updated with all modifications, be registered under delegated judge judgment. Trade Registry Office will submit its own motion, the act amended recorded and notified of the filing of the articles of incorporation into the updated text,, *Monitorul Oficial* ", and is to be published at the expense of the group.

The founders or administrators, are jointly and severally liable for any damage which causes the failure on the registration group (art. 234 of Law no. 161/2003). If the founders or European economic interest group representatives have requested registration in legal terms, any member may request the Trade Register Office effecting the registration after by notice or letter, put them in the late founders or representatives of the group, and they have not complied with no later than 8 days from receipt. (art. 234 index 1 of Law no. 161/2003, introduced by Government Emergency Ordinance no. 119/2006, approved with amendments by Law no. 191/2007). [1]

In case of irregularities after registration European Economic Interest Group is obliged to take measures to eliminate them, in 8 days from the date of their establishment. If European economic interest group does not comply with, any interested person may request the court to compel enforcement group, under penalty of paying certain penalty payment to remove irregularities found. The limitation period in

order to right the action settlement is 6 months and begins on the date of registration European Economic Interest Group.

3.2. Name and mention of the group

All invoices, offers, orders, tariffs, prospectuses, letter, notice, publication or other documents coming from a European economic interest group must specify its name, accompanied by the words,, European economic interest group "or initials,, EEIG ".The Court of Justice of the European Union decided that art. 5 letter of the Regulation no. 2137/85 - Article about the name EEIG - be interpreted as meaning that the name of an EEIG must include the words European Economic Interest Group,, ",, or initials EEIG ', while other elements that must be included in its name can as required by the provisions of national law applicable in the Member State where the group is established.

The Court noted that Regulation provides that a name must contain the words,, EEIG European Economic Interest Group "or the,, EEIG", but the name does not refer to the content. It follows that the requirements in this regard may be imposed by the national law applicable in the EU Member State in which the group is established.

3.3. Content of The Constitutive Act

Constitutive Act of the EEIG is under private partnership contract, which shall be recorded in specially designated for this purpose by the Member State of the European Union in which EEIG establishes its head.

Constitutive Act of the group determines how it is organized and shall include at least the following documents:

- the group name preceded or followed by the words "European Economic Interest Group" or the initials 'EEIG', unless those words or initials already form part of the name;
- headquarters of the group;
- the purpose for which the grouping is formed;
- name, business name, legal form, domicile or registered office, and the number and place of registration, if any, of each member of the group;
- duration of the group, except where this is indefinite (art. 5 of the Regulation).

In Romania, following the adoption of the Government Emergency Ordinance no. 119/2006, art. 234 para. 2, the aforementioned elements constitutive act of an EEIG established in our country, have been modified and is now in force only elements constitutive act referred to in art. 5 of Regulation No. 2137/85 and to which I referred above. European Economic Interest Group can not issue shares, bonds or other securities (art. 234 index 8 of Law no. 161/2003, as amended by Government Emergency Ordinance no. 119/2006). No group may appeal to the public subscription (art. 23 of the Regulation).

3.4. Invalidity of the group

In Romania, the invalidity of a European economic interest registered in the commercial register of the court may be declared only when:

- no articles of incorporation or when it has been concluded in authentic form;
- all founders were by law incapable at the date of the group;
- the activity of the group is unlawful or contrary to public order;
- no registration conclusion delegate judge of the group;
- administrative legal authorization missing the grouping, where this shall be provided in special laws for certain activities, such as the establishment of credit institutions [2] or insurance companies;
- incorporation provides no name, location and purpose of the group.

Invalidity may not be declared where its cause, invoked in the cancellation request was removed prior to draw conclusions on the merits in court, unless the nullity is caused by the unlawful nature of the object or contrary to public policy group economic interest. The court to which an application for invalidity was addressed, may of its own motion, a term for covering it. If, for covering invalidity is necessary to convene European economic interest group members or communicated to them the text of the draft decision with supporting documentation, the court will, in the end establish time for members to adopt the decision.

The date on which the judgment became final declaration of invalidity, the European economic interest is dissolved and enter into liquidation. By judgment of invalidity shall be appointed liquidators European Economic Interest Group. The Court will communicate this decision device Trade Register Office, which after the mention, will send it for publication in the Official Gazette of Romania, Part IV (art. 234 4 - Art. 234 index 7 of Law no. 161 / 2003, introduced by Government Emergency Ordinance no. 119/2006).

At Community level, according to art. 15 of the Regulation, when applicable law group provides its nullity, invalidity must be established or declared by a court. However, the court seised shall, where a regularization of affairs can, give a deadline by which to be done.

The nullity of a grouping shall entail its liquidation.

4. THE HEADQUARTERS OF THE EUROPEAN ECONOMIC INTEREST GROUP

European Economic Interest Group may establish subsidiaries in Romania and branches, representative offices and other units without legal personality.

The establishment of subsidiaries and branches in Romania is subject to the provisions relating to registration, specifying and publishing documents and facts required for Romanian economic interest groups.

Applications for registration shall indicate:

- name of the branch / subsidiary and name and registered European Economic Interest Group;

- the activity of the branch / subsidiary, indicating the scope and the main business and commercial or non-commercial nature thereof;
- the name and capacity in people who may be legal to third parties and European economic interest group and of those of them who are directly involved in the work of the branch / subsidiary;
- powers that were conferred representatives and if they are to exercise them together or separately;
- accounting documents of the European Economic Interest Group, checked and published under the laws of the State in which it is located.

Will be subject to registration and references to:

- the opening of insolvency proceedings or extra on European economic interest group;
- European Economic Interest Group dissolution name / name and its powers of liquidators;
- closure of the branch / subsidiary.

All these formalities will be done with the Trade Register at the headquarters branch or subsidiary.

If a European economic interest group set up more branches in Romania, incorporation documents and other documents of the same European group, necessary for registration of a branch shall be filed only in one branch. European law shall, in respect of secondary offices adopt the theory of registration. Thus according to art. 10 of Regulation no. 2137/85 on European Economic Interest, any grouping establishment situated in a Member State other than that in which it is situated, is registered in that State.

To register, the group filed with the appropriate registry in that Member State, copies of documents to be filed at the registry of the Member State of the branch, accompanied, where appropriate, a translation which conforms with the practice of the registry where it is registered the headquarters.

Letters, order forms and similar documents must indicate legibly:

- name of the grouping preceded or followed by the words 'European Economic Interest Grouping' or by the initials 'EEIG', unless those words or initials already occur in the name;
- the location of which is recorded in the register referred group and the group's registration number in the register;
- headquarters of the group;
- where applicable, that the managers must act jointly;
- where applicable, that the grouping is in liquidation.

Every establishment of a grouping, when registered in accordance with Art 10 must provide identification data above, together with those relating to its own registration, on the documents mentioned above, uttered by documents (Article . 25 of the Regulation).

According to art. 39 para. 1 par. 2 and 3 of the Regulation, Member States must ensure that anyone may, at the appropriate registry pursuant to art. 6 or, where applicable, Article 10 of the documents referred to in art. 7 and obtain, even by post, full or part thereof. Member States may provide for payment of fees on the transactions

referred without those fees may not exceed the administrative cost thereof. However, Member States must provide appropriate penalties for non-compliance of Articles 7, 8 and 10 of the Rules on advertising documents.

According to Law no. 161/2003, the representative or representatives of the branch of a European Economic Interest in Romania respond individually or jointly, as appropriate, to group or third parties for breach of the laws regulating economic interest groups, for non-compliance of association, either fault in activity, which caused damages to the group.

Where several representatives can be held liable for the same acts, the court shall determine the contribution of each in compensation.

According to art. 40 of the Regulation, the results of a grouping shall be taxable only to the members. In Romania, the annual income of the branch of a European Economic Interest taxed in accordance with Law no. 571/2003 regarding the Fiscal Code, as amended and supplemented. [4]

Regarding the main office, art. 12 par. 1 of the Rules provides that the premises mentioned in the articles of association of a group must be located in the European Union.

Therefore, the new headquarters must be all in the EU.

Address must be set: or where the group has its head office; either where one of the group members has its central administration or, in the case of a natural person, his principal activity, provided that the grouping carries on an activity there (art. 12 par. 2).

According to art. 13 to 14 of the Regulation, the seat of a European economic interest can be transferred within the Union. When such a transfer does not cause a change in the applicable law, the transfer decision shall be adopted under the conditions established by act of the group. When transferring the seat determines the change of applicable law, the transfer proposal is drawn up, filed and published both in the register of the State where the group has its headquarters, to the appropriate registry, seen the group and the official gazette of the Member State in which he or she has the headquarters.

In Romania, according to art. 1 of Law No. 237 index. 161/2003, European Economic Interest Group headquarters can be moved to another Member State, through the decision of group members made unanimously. The draft decision will be communicated by care managers, within 15 days of development, the Trade Register of European Economic Interest Group headquarters, in the interests of their intentions in the commercial register. Trade Registry Office will send the draft to be published in the Official Gazette of Romania, Part IV.

According to art. 1 paragraph 237 index. 3 of Law no. 161/2003 within two months of its publication in the Official Gazette draft, Part IV, any interested person may object on grounds of public policy, according to Law no. 31/1990, republished, as amended and supplemented.

According to art. 14 para. 1 par. 2 of the Regulation, any decision to transfer may be taken within two months of the publication of the proposal. Any such decision must be taken unanimously by the members of the group. Transfer shall take effect from the date on which the grouping is registered in the registry for the new premises.

Recording can not be done until there is evidence that it has published a proposal to transfer the seat. The decision to transfer shall take effect from the date of registration European Economic Interest Group in the registry for the new headquarters.

4. CONCLUSIONS

European Economic Interest Group (EEIG) is intended to be a flexible legal instrument in the first place because it adapts to the different needs of its members. Currently, there are about 2,000 such structures in the Member States of the European Union, which shows great interest at Community level for EEIG.

Most EEIG were established following purposes:

- facilitating a common sales or purchase of services in non-EU countries (countries of extra space, located right on other continents), such as Japan, USA, Canada;
- organizing exchanges of personnel and training courses;
- facilitating research and development.

Lawyers and tax consultants made use of EEIG to collaborate in many sectors, participating in joint training courses. Experts from several European countries have founded a group called European Advertising Lawyers Association (EALA), which, among others, publishes documents relating to the EEIG and try to develop a system for advertising campaigns.

There is no doubt that EEIG were founded by entrepreneurs of transactions involving common activities. Thus, for example, carriers have initiated the establishment of such groups to organize transport and logistics services.

Most EEIG were established in France, Belgium and Luxembourg, followed by the Netherlands, UK and Germany.

In a summary, some of the advantages of the EEIG are:

- is a legal framework that aims to develop and facilitate collaboration between entrepreneurs and can be a nucleus for its members;
- a legal instrument very flexible and non-bureaucratic, whose rules can be decided by members, observing several procedures laid down in the European Regulation no. 2137/85;
- can be established by subjects with a different legal status: self-employed persons, companies, firms, chambers of commerce etc .;
- members of groups continue to meet their own activities independently. They retain the activities they previously occupied and in addition obtains new business opportunities;
- absence of various taxes;
- a group can run its own business and have a trade mark may enter into agreements with business partners may act or be sued;
- the official address of the EEIG can be changed easily in any state in the EU.

Both economic interest groups and European economic interest groups are flexible structures, meaning that it can be both capital and non capital, may have civil or commercial nature, representing members' activities to improve results its.

Due to the fact that Romania joined the European Union since 1 January 2007, the EEIG is an instrument that is within the reach of Romanian society, individuals, companies or other legal entities, which can be universities and research institutions associations and all those who want to work in a wider European framework.

Romanian business environment has many connections with the European Union, Italy, France, Germany, Austria, with other countries in Central and Eastern Europe and is absolutely necessary for Romanian companies, firms, individuals and other legal entities to think about metamorphosis effect of the Single European Market, in the sense of a positive character, as in business collaboration in general and in Europe for example can be more successful than standing in Romania and waiting for potential

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