



COMMISSION OF THE EUROPEAN  
COMMUNITIES

EEIG

The emergence of a new  
form of European cooperation

Review of three years' experience

ENTERPRISE  
POLICY

COMMISSION OF THE EUROPEAN COMMUNITIES

**E E I G**

**THE EMERGENCE  
OF A NEW FORM OF  
EUROPEAN COOPERATION**

Review of three years' experience

**DOCUMENT**

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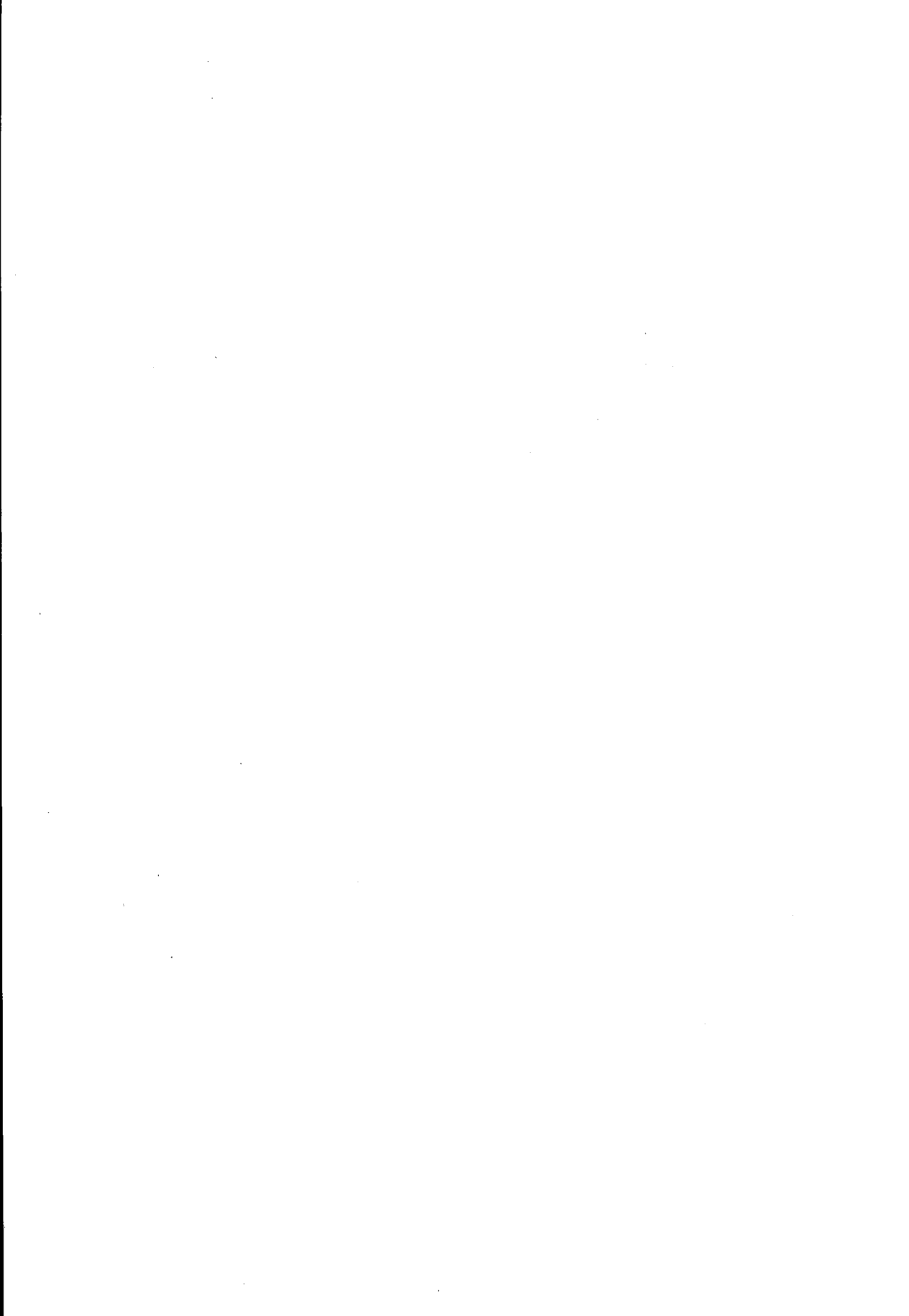
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## INTRODUCTION

"Men build too many walls and not enough bridges"

Newton

The establishment of the Internal Market and the European Economic Area (1993) provides a continental framework in which Community enterprises can operate. The result is a market with huge potential, allowing them to apply economies of scale, but it also exposes them to greater competition.

For many enterprises, and particularly SMEs, cooperation, and especially transnational cooperation, is an appropriate strategic response to this challenge.

Cooperation has a catalytic effect that broadens an enterprise's field of action: access to new markets, new clients, products, capital or technologies, etc. It can improve an enterprise's performance by strengthening its competitive position, improving its forecasting techniques, its productivity or its level of specialization.

The Community has therefore implemented numerous measures of a practical, legal and fiscal nature to facilitate and encourage projects for cooperation among enterprises in different Member States.



The European Economic Interest Grouping (EEIG) is one of the cornerstones of this strategy. Thanks to the introduction of the EEIG on 1 July 1989, the Community's economic agents have had at their disposal a specific legal instrument of European cooperation to facilitate, develop, improve or increase their economic activity. The EEIG was created as a result of the adoption by the Council of Ministers of the European Community, on 25 July 1985, of Council Regulation (EEC) No 2137/85<sup>(1)</sup>.

The EEIG is a unique instrument, the first truly European - rather than national - legal framework for the exercise of economic activities. This qualitative leap forward seemed the only way of removing some of the remaining obstacles to transnational cooperation, because, in particular, national legal provisions are necessarily limited to a specific geographical area. By setting out rules on formation and organization that are common to all partners, whatever the official address of the EEIG, Community law thus directly encourages cross-frontier cooperation.

Another unique feature is the fact that the EEIG provides an intermediate stage, bridging the gap between a simple cooperation agreement and the incorporation of a company. Formed on the basis of a contract, with all the advantages of flexibility, an EEIG has its own legal entity, which provides it with greater means of action and guarantees the safety of joint action. It is a far remove from the official formalities applicable to companies. In itself, the legal entity of an EEIG is not enough to compare it to a company. At the economic level, the activities of an EEIG must be connected to those of its members.

By giving this instrument great flexibility - as regards its formation (a written contract suffices), its operation (the will of the parties remains the principle) and its financing (no capital requirement) - the Community's intention was to make it accessible to the largest possible number of enterprises, and particularly SMEs, for the broadest possible range of projects: joint R & D, joint production, purchases or sales, the formation of multidisciplinary consortia for the submission of tenders, etc.

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(1) OJ L 199, 31.7.1985.

While publications are now available on the legal characteristics of the EEIG<sup>(2)</sup>, the aim of this report is to offer an assessment of European enterprises' initial experience with this instrument, three years after its introduction. Our specific objective is to help enterprises with a cooperation project to evaluate the feasibility of using the instrument of the EEIG, on the basis of past experience. This report should also help enterprises and their advisers to interpret the practical scope of the Regulation's provisions in various respects.

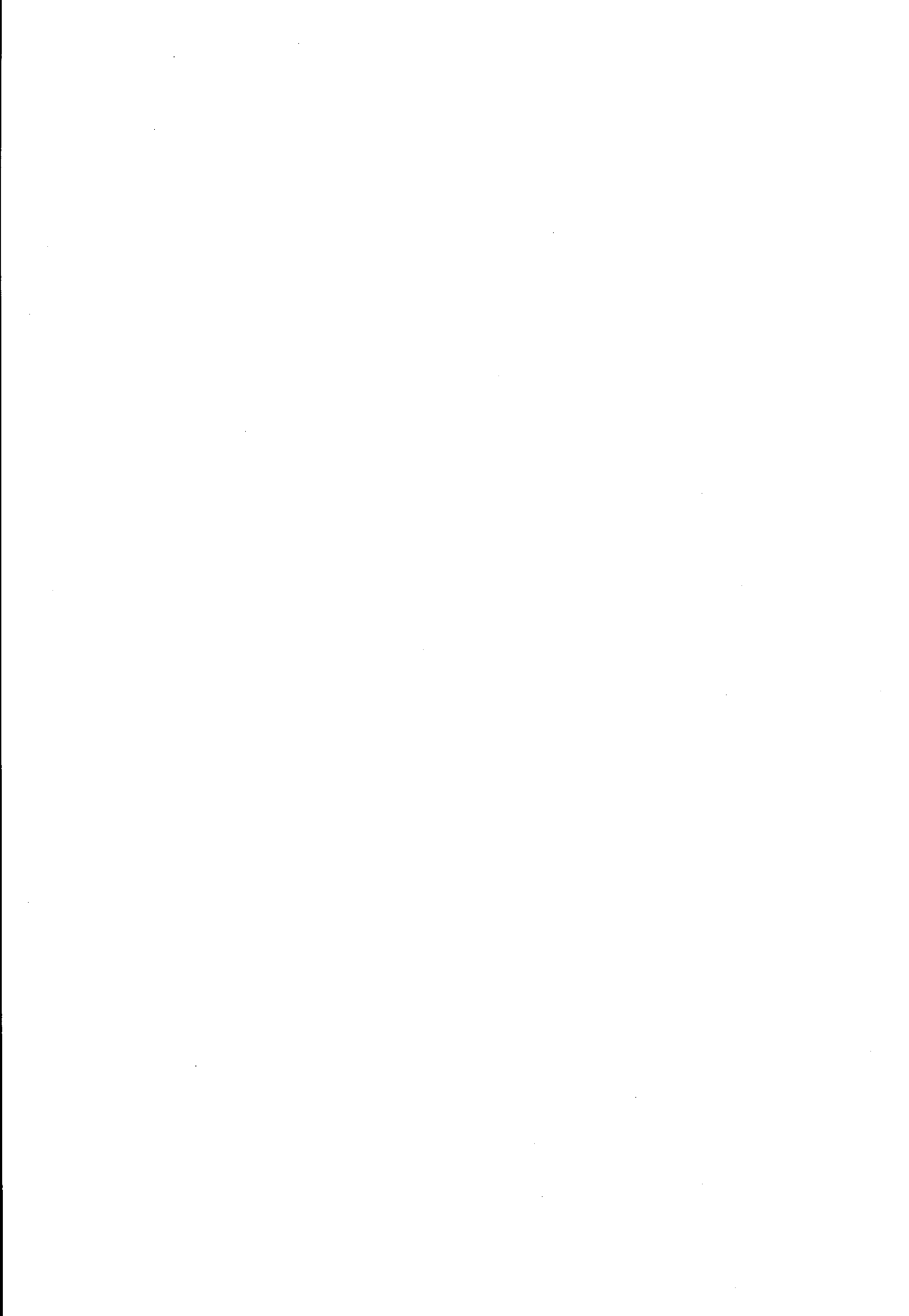
Our analysis is based on various information sources, the most important being a survey carried out by the Commission in mid-1991 of all EEIGs then in existence. Details of this survey are contained in Annex 1.

The Commission would like to thank all the EEIGs that took part in the survey and whose responses will serve as invaluable pointers for anyone thinking of setting up an EEIG.

The Commission feels that the EEIG has largely met its expectations, in that it has enabled enterprises of all sizes and in all sectors of activity to cooperate in a very broad range of areas. The growing popularity of the formula is evidence of its success.

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(2) Many legal and tax experts have commented on the provisions of the Regulation in reviews or specialist works. For its part, the Commission has devoted a European File to the EEIG (File 6/89 of April 1989) and, in 1991, published a guide on the use of the EEIG in the area of R & D.



1. ESTABLISHMENT OF THE LEGAL FRAMEWORK IN MEMBER STATES

a) Applicable legislation

The Regulation on the European Economic Interest Grouping (EEIG), which was adopted and entered into force in 1985, has been applicable since 1 July 1989. This delay in application allowed the prior establishment by the Member States of the necessary mechanisms for the registration of EEIGs on their territory, and publication of the necessary acts. Furthermore, Member States needed to take certain legislative and regulatory measures of their own to govern the operation of groupings on their territory.

At the time of writing, all the Member States have passed legislation on the issue (see Annex 2), which means it is possible to set up EEIGs in any Community country.

Moreover, an EEIG whose official address is in any part of the Community can act throughout the Community, purely on the strength of the Regulation. The Regulation has precedence over national law and establishes a set of standard rules on the formation and organization of an EEIG which are directly applicable in all Member States<sup>(3)</sup>. It thus places enterprises wanting to cooperate across national boundaries on an equal footing under the law, since, whatever the official address of an EEIG, its members will be fully aware of the content of their undertaking.

The application of national laws could not, however, be entirely dismissed and the Regulation refers back to national laws in two main areas. This combination of Community and national law is often felt to be confusing by enterprises and their advisers, but the application of national law is in fact more limited than it would appear. In the interests of clarity, it is useful to draw a distinction between the areas that are covered by the Regulation and those that are not.

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(3) See Article 189, paragraph 2 of the Treaty of Rome. The Regulation is binding in its entirety and directly applicable in all Member States. Any difficulty in interpretation of the rules applicable to EEIGs shall, in the last resort, be resolved by the Court of Justice of the European Communities.

In the areas covered by the Regulation<sup>(4)</sup>, reference is made back either to the internal law of the State in which an EEIG has its official address or to national law. By contrast with the "internal law" that is unique to the State in which an EEIG has its official address, national law includes the rules on "conflict of laws", making it possible to refer back to other laws.

Under Article 2(1) of the Regulation, the internal law of the State in which an EEIG has its official address is applicable to the contract for the formation of a grouping and to its internal organization. The contractual freedom of members is one of the essential features of an EEIG and, when the Regulation establishes a liberal framework without any specific rules<sup>(5)</sup> or is limited to a rule that applies in the absence of other rules, the law of the State in which a grouping has its official address may not intervene alternatively.

In the absence of a provision in the Regulation and the contract of formation, the internal law of the State in which a grouping has its official address will apply, for example, to the conditions of validity of the contract, except in the case of issues relating to the status and capacity of natural persons and the capacity of legal persons, which are governed by the law covering the member in question. Interpretation of the contract of formation is another area of application. As regards the internal organization of an EEIG, the internal law of the State in which a grouping has its official address may cover relations between members and management.

In other areas, the Regulation explicitly refers back to national law. These areas are, specifically, the status and capacity of natural and legal persons (Article 2(1)), the consequences of the unlimited joint and several liability of members of a grouping (Article 24(1)), liquidation of an EEIG (Article 35(2)), insolvency and cessation of payments (Article 36) and the tax law applicable to members, provided the principle of fiscal transparency is respected (Article 40).

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- (4) Generally speaking, the binding provisions of the Regulation concern the conditions governing the constitution of an EEIG, certain aspects of internal operation, and the protection of third parties and members.
- (5) As in the case of, for example, Article 16.1, which states that the organs of a grouping shall be the manager or managers and "the members acting collectively". These members have full freedom to organize their meetings and set the methods of decision-making. Postal votes are possible, as are teleconferences. National law cannot demand the holding of meetings attended by members in person; this would be contrary to the desired flexibility. By contrast, if the contract of formation of an EEIG provides for the holding of meetings without setting out specific procedures, and if a dispute arises concerning the validity of the methods used, the internal law of the State in which the EEIG has its official address shall be applicable.

Far-sighted partners

Since 1990, in the face of the present fierce international competition, especially in the advanced technology sector, strong advocates of "twelve stars" HDTV (High-Definition Television) have been making use of the EEIG as an instrument of collaboration.

In this case, the main objective of the EEG is the development of economic activities by transnational cooperation to launch the era of HDTV (after the pilot stage, 1992-94) in the mid-1990s. The European grouping serves as a network comprising all users of this new technology, from producers of HDTV equipment to programme producers.

The Community has not hesitated to use one of the most effective economic and legal means at its disposal to meet one of the most important economic challenges facing European industry.

By promoting a technological marriage of cinema and television, the EEIG is playing a truly significant role in this area.

Cooperation that is more than words on paper

For more than a year now, all the partners involved in the processing of sorghum for the manufacture of paper and board have been cooperating to promote, develop and implement new technologies for the processing of this crop.

The EEIG that has been set up for this purpose comprises both pure research bodies, and service and production enterprises specializing in this field.

The first much-vaunted results of this collaboration are the development of a special machine to hull the sorghum for paper production, and the drawing-up of special standards for the manufacture of paper pastes using this raw material. It is more than just paper cooperation...

In areas not covered by the Regulation, groupings are directly subject, in each Member State, to the rules usually applicable to all persons performing an economic activity. The privileged Community status of an EEIG stops where its economic activities commence, because its economic activities are pursued and understood independently of its legal form. This means that the provisions of Community law and of the law of the Member States, particularly as regards labour law, accounting law, competition law and intellectual property law, are applicable to EEIGs<sup>(6)</sup>.

b) Adaptation of national legislation to the Regulation

■ Designation of the legislation applicable to the contract for the formation of a grouping and to its internal organization, pursuant to Article 2(1) of the Regulation, differs from one Member State to another. In some cases, it is the law generally applicable to all legal persons (Netherlands). In other cases, it is the law applicable to a body with legal similarities to the EEIG, such as the Groupement d'Intérêt Economique (GIE - Economic Interest Grouping) under French law, the Groupement Complémentaire d'Entreprises (ACE - Complementary Grouping of Enterprises) under Portuguese law, or the Offene Handelsgesellschaft (OHG - general partnership) under German law.

Some Member States (Belgium, Luxembourg, Spain) have considered it helpful to introduce a formula analogous to the EEIG at national level - an Economic Interest Grouping regulated by national law. The national legislation in respect of these groupings will apply to the EEIG in the absence of relevant provisions in the Regulation. This means that their legislation has required the adoption of rules that are more elaborate than those laid down in other Member States.

In taking such measures, Member States have been obliged to respect the spirit of the Regulation: flexibility of use, few formalities, especially adapted tax procedures, etc. The Commission examines any measures taken and ensures that no additional constraints are imposed on EEIGs and that distortions do not emerge in application of the Regulation in the various Member States.

■ On some points, the European Regulation leaves national legislators the power to make certain choices.

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(6) See the fifteenth recital of Regulation (EEC) No 2137/85.



These choices concern:

recognizing the legal personality of an EEIG (Article 1(3)).

An EEIG has full, independent legal personality (Article 1(2)), which distinguishes it from purely contractual methods of cooperation. It has, therefore, all the attributes of a legal person. This means that, from the date of its registration in the State in which it has its official address, an EEIG has the capacity, in its own name and in all Member States, to have rights and obligations of all kinds, to make contracts or accomplish other legal acts, to sue and be sued, and to have its own assets and liabilities.

The Regulation does not endow an EEIG with "legal personality" because of the differences between current legislations on the tax consequences linked to the granting of such personality. In Germany and Italy, fiscal transparency, which is essential for an EEIG (see Section 5), is accepted only in the case of bodies that do not have legal personality. This means that these two States are the only ones that have not attributed legal personality to groupings. This choice is of very limited scope and does not affect an EEIG's full autonomy of action;

- the prohibition or restriction of participation in an EEIG of certain classes of persons (Article 4(4)).

This option has been taken by just one Member State, Belgium, which makes participation by public national credit institutions subject to the authorization of the competent minister;

- the restriction of the number of members of a grouping to 20 (Article 4(3)).

This limitation applies in Ireland and Greece;

- the access, under certain conditions, of legal persons to the functions of manager of a grouping (Article 19(2)).

This possibility is expressly permitted in Spain, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal and the United Kingdom;

- the exclusion of a member in the event of death (Article 28(1)).

This provision is expressly laid down in Germany, Belgium, Denmark, Spain, Ireland, Italy, Luxembourg, Portugal and the United Kingdom;

- the opposition to the transfer of the official address on the grounds of public interest (Article 14(4)).

This possibility has been taken up by Spain, the United Kingdom and Ireland.

- the winding-up or prohibition of a grouping whose activity is in contravention of a Member State's public interest (Articles 32(3) and 38).

This provision has been laid down in Denmark, the United Kingdom, Ireland and Luxembourg.

c) Formation of an EEIG

The formalities for the formation of an EEIG are very simple, resting on just two requirements: that a contract of formation be drawn up and that the grouping be registered at a registry designated by the Member State in which the grouping has its official address.

The contract for the formation of an EEIG must be in writing in order to be filed at a registry. It is not subject to any other conditions concerning its form<sup>(7)</sup>. Its compulsory content may be limited to the strict minimum laid down in Article 5 of the Regulation (name of the grouping, its official address, object and duration, where this is defined, and details of each member). In respect of the Regulation, the internal law of the State in which the grouping has its official address may not impose supplementary clauses simply because their application is mandatory for bodies similar to EEIGs.

The language in which the contract is drafted will normally be the language (or one of the languages) used by the competent registry where the grouping has its official address. Where compliant with practice, the registry may allow the contract to be registered in a language other than the one(s) it uses, provided it is accompanied by a translation which conforms with the practice of the registry.

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(7) By contrast with the formalities governing the formation of a company, the contract for the formation of a grouping does not have to be brought before a notary. A private deed is sufficient.

Registration, which precedes filing of the contract, must take place at the competent registry of the State in which the grouping has its official address<sup>(8)</sup>. Annex 3 contains details of the registries designated by each Member State. Registration marks the moment from which an EEIG enjoys its capacity to act independently throughout the Community.

Mandatory publication of documents and particulars is provided for, in an "appropriate" official gazette of the State in which the grouping has its official address (Articles 8 and 39(1)). Their publication means that such documents and particulars can be relied upon by the grouping as against third parties, in accordance with the conditions laid down for companies by each national law in application of the first Directive on company law<sup>(9)</sup>. Similar publication formalities must also be fulfilled as regards all important acts concerning the legal life of an EEIG, up to and including notice of its closure.

Due to the Community dimension of an EEIG, provision is also made for publication of notice of its registration and of the conclusion of its liquidation in the Official Journal of the European Communities, S Series (containing public calls for tender) and C Series (communications). Such publication does not in itself have any legal effect. Its sole purpose is to inform the public and help interested persons to obtain additional information on EEIGs at the registries at which they are registered.

The basic conditions for the formation of an EEIG have been fully described in the publications mentioned in our introduction.

d) Transformation

Several Member States have provided facilities for the transformation of certain forms of association or companies into EEIGs, and vice versa. This applies in France, the Netherlands and Portugal.

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(8) It was not possible to make provision for standard formalities at a single registry to be set up, for example, within Community institutions. A pragmatic approach has, therefore, been adopted: the use of existing national registries for companies. In some cases, a special section has been set up within these registries. This is true of, for example, Belgium. A new registry has been created in Greece.

(9) Directive 68/151/EEC of 9 March 1968, OJ L 65, 14.3.1968, p 9.

## 2. THE EEIG: GROWING INTEREST ON THE PART OF ECONOMIC AGENTS

This section of our report, which brings together a range of factual data on existing EEIGs, highlights the growing interest in this instrument that is being shown by economic operators in the Community. This interest is shared by enterprises in all Member States. Attention should be drawn to the prevalence of SMEs among members of EEIGs, though the public sector and large-scale enterprises also participate in many groupings.

### How many EEIGs have so far been formed?

According to the notices of formation of an EEIG that must be published in the Official Journal of the European Communities (Article 11 of Regulation (EEC) No 2137/85), there were 322 registered EEIGS at the beginning of June 1992, two of which have recently been liquidated.

This figure may be taken to be too conservative, since information provided by some national administrations points to the existence of EEIGs whose formation has not yet been notified in the OJ.

It is important to note the constant growth in the number of EEIGs, which is borne out by the chronological curve relating to the number of registrations per quarter over the past three years (see Graph 1).

At the end of 1989, 62 EEIGs had been formed; now there are five times that number.

Given the novelty of the instrument, which is the first legal body under European law and which serves as an intermediate formula between the signing of a cooperation contract and the formation of a company, a formula that is relatively unfamiliar to enterprises in most Member States, this increase in numbers reflects enterprises' considerable interest in the EEIG.

### Where do EEIGS have their official addresses?

*Members of an EEIG must establish the grouping's official address in the Community.* The parties are free to fix the official address either where the grouping has its central administration or 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.

The official address of a grouping need not necessarily be where the grouping carries out its principal activity, which may be carried out in another EC Member State or even outside the Community. A grouping may also carry out activities of equal importance in several Member States. To this end, a grouping may set up establishments<sup>(10)</sup>.

Once fixed, the grouping's official address may be transferred from one Member State to another without there being any need to wind up the grouping and reform it in the Member State in which it has its new official address. This possibility is not yet open to companies.

Graph 2 shows that most of the EEIGs currently registered are in Belgium and France, followed by the Netherlands, Germany and the United Kingdom.

Several factors may explain the Member States' varying levels of attraction as locations for the official address of groupings.

Firstly, it should be noted that, because of its "central" geographical position and the fact that it is home to Community institutions, Belgium has obvious attractions as a siting for EEIGs. This is why groupings whose role is to represent the interests of their members before the Communities (lobbying) or to disseminate European information often consider it appropriate to fix their official address in Belgium.

The large number of EEIGs situated in France can be explained by French enterprises' long experience with the Groupement d'Intérêt Economique (GIE - Economic Interest Grouping), which served as the model for the creation of the European Economic Interest Grouping.

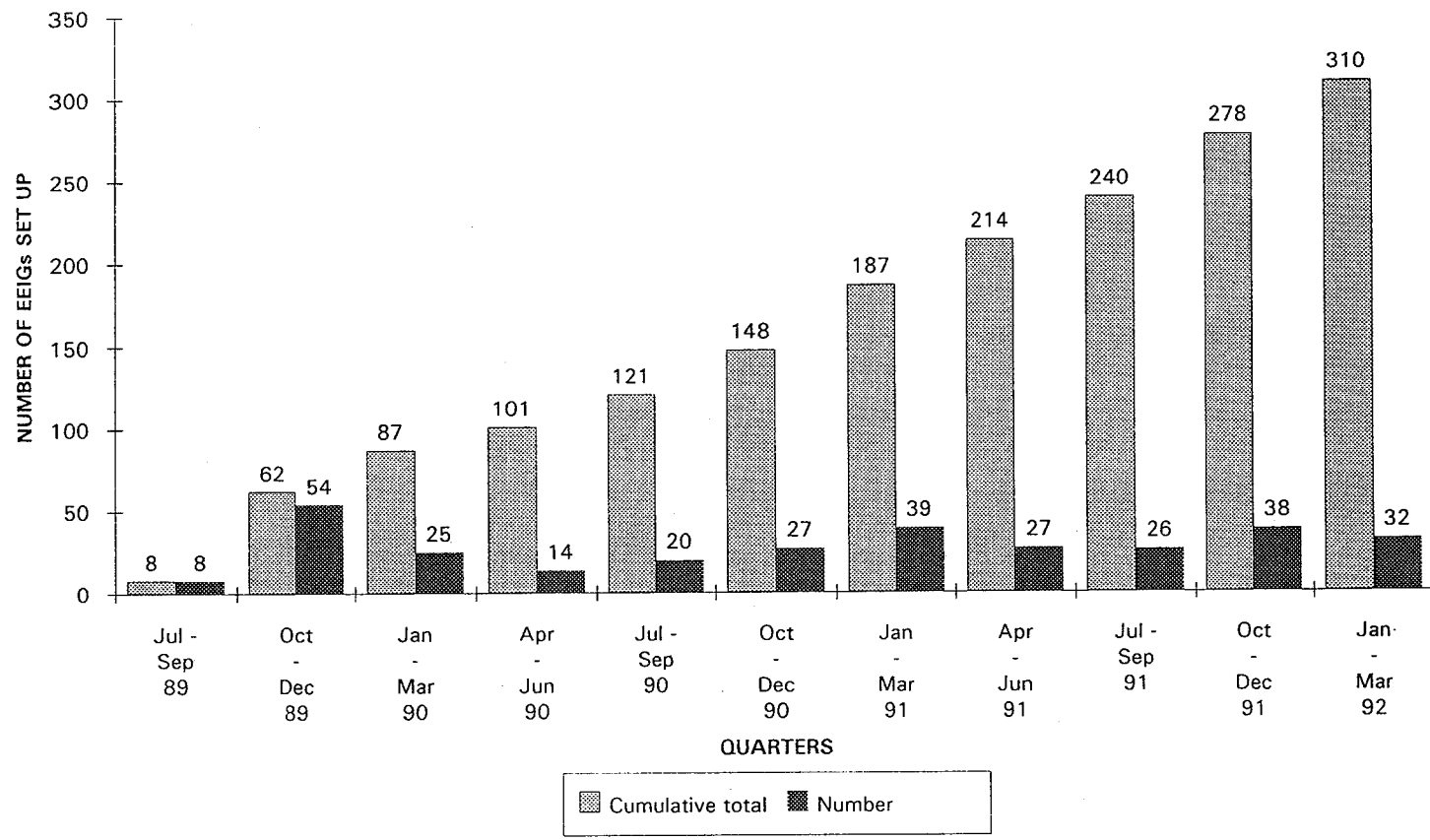
The case of the Netherlands is somewhat unique: 39 of the 62 EEIGs registered there were set up by the same members and exercise closely linked import/export activities in the sector of foodstuffs and meat products.

Finally, the small number of EEIGs registered in some other Member States is largely attributable to these countries' tardiness in adopting measures permitting the registration of groupings in their territory (see Annex 2).

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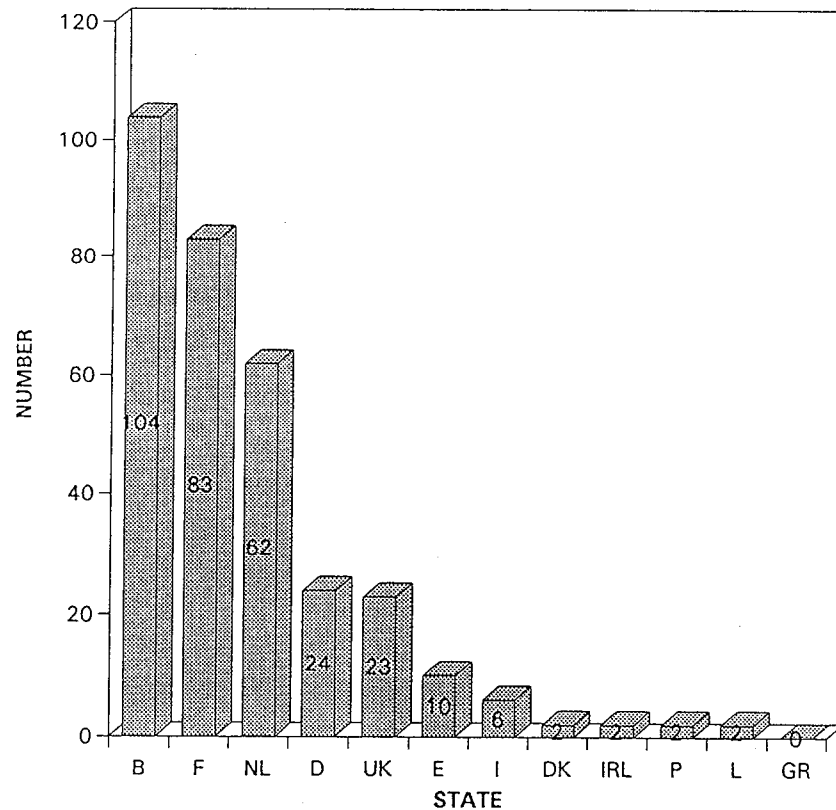
(10) Article 10 of the Regulation states that a grouping may set up establishments in Member States other than that in which it has its official address, provided they are duly registered.

### NUMBER OF EEIGs SET UP PER QUARTER



Graph 1

### BREAKDOWN OF EEIGs BY STATE OF REGISTRATION



### Who are the members of groupings?

The data given here are based on a sample of 157 EEIGs with a total of 805 members (that is, an average of 5.12 members per grouping).

#### *Nationality*

*Article 4(1) of Regulation (EEC) No 2137/85 states that companies or other legal bodies formed in compliance with the legislation of a Member State, must, if they wish to be members of an EEIG, have their registered or statutory office and/or their central administration in the Community; or, in the case of natural persons, must carry on an industrial, commercial, craft or agricultural activity or provide professional or other services in the Community.*

Graph 3 clearly demonstrates the interest shown by enterprises in all Member States in developing cooperation through an EEIG.

The breakdown by nationality of members of groupings is, then, of more significance than the breakdown of EEIGs by Member State, since the latter is, to a certain extent, conditioned by national legislation (see, for example, the large number of Italian and Spanish members, compared with the small number of EEIGs registered in Italy and Spain).

#### *Sectors of activity*

The inventory of sectors of activity in which members operate (see Graph 4) indicates a **predominance in the service sector**, and in particular the distributive trades, followed by industry.

The agricultural sector accounts for only a small proportion of EEIG members' activities.

The table shows the range of services and other sectors of activity covered by members. This remarkable diversity is explained by the absence of any specific conditions governing a grouping's area of activity, as well as by the fact that the only requirement of members is that they perform an "economic activity", a concept that is defined in a very broad sense by the Regulation (see Section 6.1).

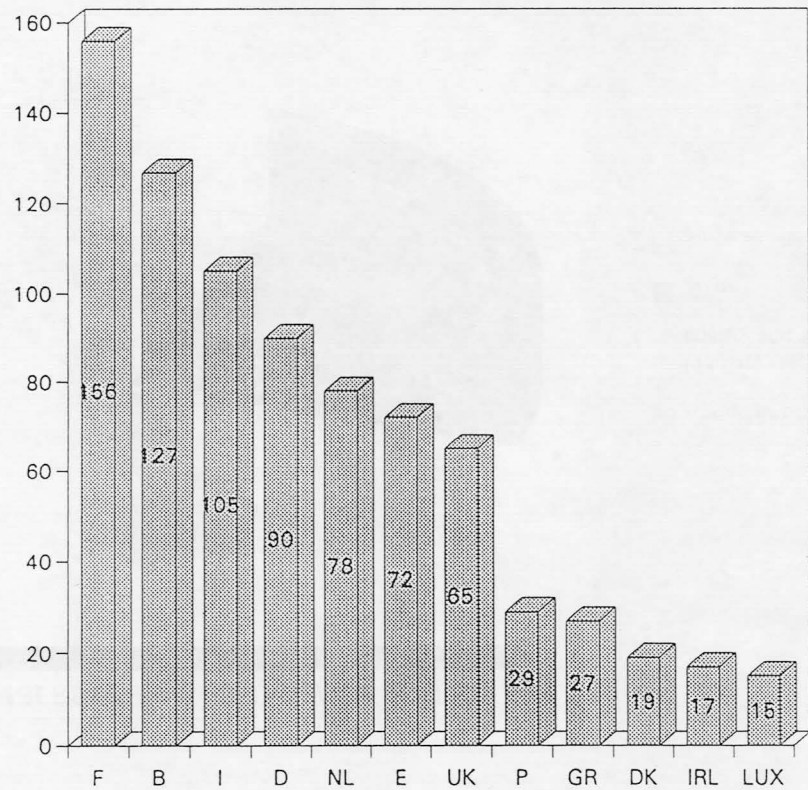
Finally, examination of the activities of members of each grouping enabled us to confirm that most EEIGs bring together members exercising the same type of occupational activity and are, therefore, **homogenous**.



RANGE OF AREAS OF ACTIVITY COVERED BY EEIGS  
(NOT AN EXHAUSTIVE LIST)

<b>AGRICULTURE AQUACULTURE</b>	GROWING OF OLIVES, CORK, AMBARI, LUPIN EUROPEAN PROJECTS CONCERNING WATER, CULTIVATION AND THE ENVIRONMENT
<b>INDUSTRY TECHNOLOGY ELECTRONICS R &amp; D ENERGY AND ENVIRONMENT</b>	NUCLEAR, ROBOTICS, OPTICS, TEXTILES, PAPER, BAKING FOODSTUFFS INFORMATION TECHNOLOGY HDTV (HIGH-DEFINITION TELEVISION), WHITE GOODS COMMUNITY PROGRAMMES, SUCH AS PHARE, EUREKA, ESPRIT, BRITE, IN THE AREAS OF INDUSTRY, FLAX, INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS  ELECTRICITY, ETC
<b>SUNDRY SERVICES FINANCE COMMERCE TRANSPORT AND COMMUNICATIONS TOURISM OTHER</b>	LEGAL AND FISCAL SERVICES, ACCOUNTANCY AND MANAGEMENT, ECONOMICS AND MANAGEMENT, TRANSLATION, ARCHITECTURE, ENGINEERING, ETC BANKING, INSURANCE, SAVINGS, MORTGAGES, ETC COMMERCE IN PRODUCTS (EG MOVABLES) OR SERVICES (EG DATA), ADVERTISING, MARKETING, COMMUNICATIONS, MAIL ORDER LOGISTICS, AUDIOVISUAL PRODUCTION, TELECOMMUNICATIONS, RADIO, TV, ETC HOTEL AND CATERING TRADE, SKI RESORTS, LEISURE AREAS, ETC COOPERATIVE, HUMANITARIAN AND PHILANTHROPIC ACTIVITIES, THIRD-WORLD DEVELOPMENT, CONSTRUCTION, FOODSTUFFS, ANIMAL HEALTH

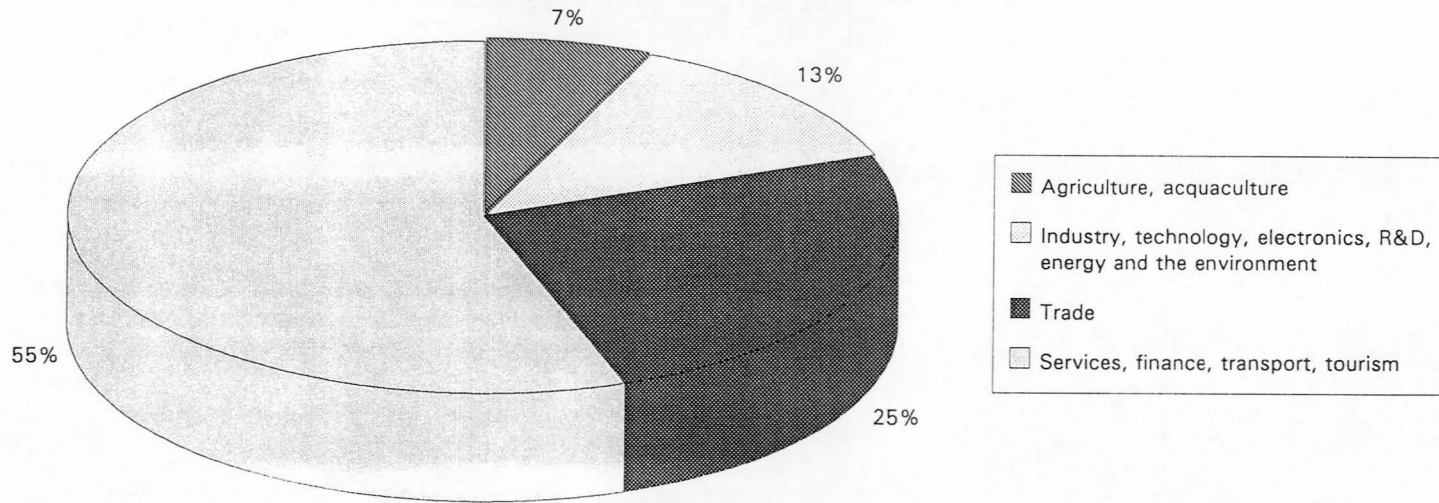
### NATIONALITY OF MEMBERS OF EEIGs



Graph 3

Sample of 157 EEIGs. Total number of members : 805

### BREAKDOWN OF MEMBERS OF EEIGs BY AREA OF ACTIVITY



### *Public or private sector*

The 1991 survey shows a very clear **predominance of the private sector** over the public sector (see Graph 5). It is nonetheless interesting to note the diversity of public agents cooperating within EEIGs. They may be public or semi-public enterprises, universities, regional or local authorities, credit institutions, research centres, chambers of commerce, etc.

For example:

- a French municipal authority in Savoie and an Italian company manufacturing mechanical lifts have joined forces to promote the development of a cross-border ski area;
- British and French universities have pooled their technological expertise at a new innovation centre based at the technological college in Caen;
- the European Community itself is a member of the R&D grouping "EMARC" (European Material Research Consortium).

### *Size of members*

The Commission's survey shows that the EEIG is used as an instrument both by sole traders (eg in the baking sector) and by major international groups (in the sectors of information technology, electronics, iron and steel, the hotel and catering trade, commercial television, etc).

By way of example, the largest international information-technology companies have formed a grouping to develop software to enable the exchange of data between computers throughout the world.

However, the majority of enterprises that have recourse to the EEIG as an instrument are **medium-sized enterprises**. Of the 60 EEIGs that responded to the Commission's survey, only nine said they had members (34 in total) employing more than 500 workers. In most cases, cooperation within an EEIG is undertaken by partners of the same size, though the survey also revealed cases in which partners of very different size were collaborating in a grouping.

### The search for partners

The Commission's survey shows that, in more than half of the cases, members of a grouping had been collaborating before the formation of the EEIG. Their previous work together had usually taken the form of informal collaboration, such as the exchange of services or cooperation between professions, which the partners had decided to make official by setting up a European grouping. In fewer than 10% of cases, these relations had been formalized by the signing of subcontracting contracts, technical-assistance contracts or reinsurance contracts, or else they had been "made official" by bringing together members within the same national or sectoral associations.

Still on the basis of the survey, it is interesting to note that groupings set up in the liberal professions (solicitors, lawyers, accountants, consultants, etc) usually represent the formalization of previous collaborative relations that have long existed among most members.

In these cases the EEIG has been seen as a means of formalizing and, more often than not, strengthening existing relations.

In other cases, instigators of a grouping project have had to seek out partners by various means, such as recourse to professional consultants, market analyses, the establishment of contacts through European professional organizations. Partners have sometimes met at European meetings or when participating in Community projects.

It is worth mentioning the existence of Community instruments to facilitate the identification of partners for cooperation, which are likely to encourage the formation of an EEIG.

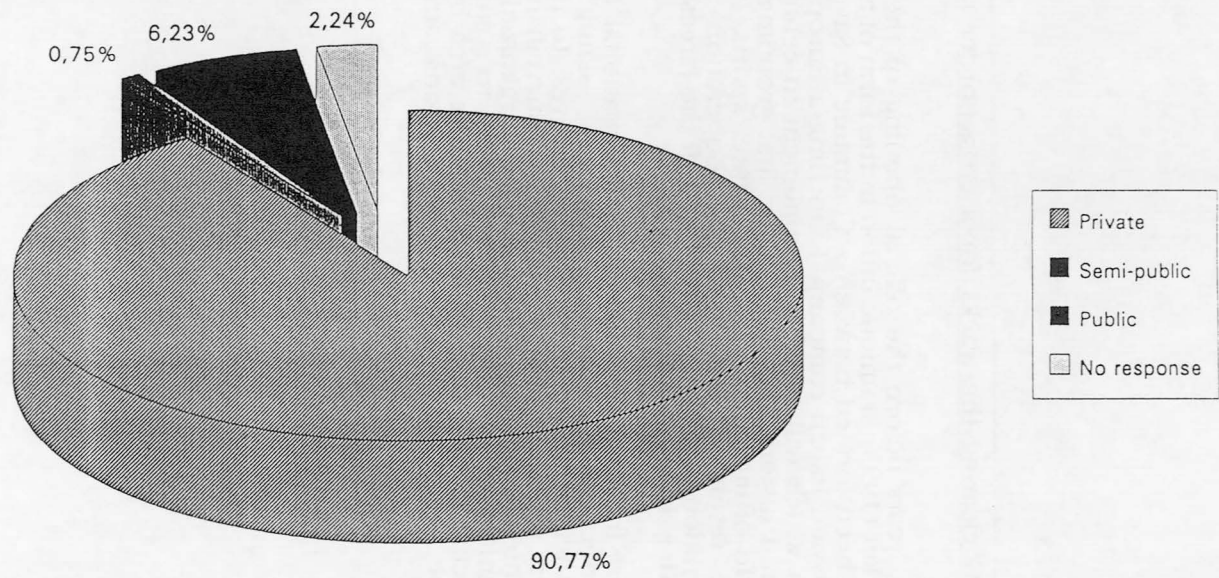
The **Business Cooperation Centre**, for example, runs a system of non-confidential search notices; the Business Cooperation Network (**BC-Net**) is a computerized system of confidential search notices, based on a network of close on 600 advisers throughout the Community and in some non-Member States; the purpose of **Europartenariat** and **Interprise** is to facilitate personal meetings of heads of enterprises in certain regions of the Community and of potential partners in the rest of the Community<sup>(11)</sup>.

In the great majority of cases (more than 90%, according to the survey), groupings comprise members belonging to the same sector of activity, whether potential competitors or offering complementary products or services.

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(11) Information on these various programmes can be obtained from Directorate-General XXIII/B/2 of the European Commission.

BREAKDOWN OF MEMBERS OF EEIGs BY SECTOR (PUBLIC/PRIVATE)



Graph 5

Source : Commission's survey, 1991

EEIG clearing the tracks for a cross-border ski area

Two years before the official opening of the Single Market (1993), a unique union in the form of an EEIG has been formed between a Commune in Savoie and a private Italian company. Launching a European ski area which will serve as a monument to centuries of shared history, this EEIG is the first grouping in the world of mountaineering and winter sports. It is the end result of five years of cooperation in the operation and promotion of one of the largest cross-border ski areas in Europe.

Apart from the creation of an international tourism product that allows "borderless skiing", this partnership is pursuing three objectives: to improve safety on the pistes by stepping up surveillance and maintenance; to facilitate the organization of mountain-rescue operations; and to guarantee effective commercial promotion of the area by using joint sales forces and communications strategies.

### 3. WHY SET UP AN EEIG?

#### Economic motivation

The table illustrates the broad range of objectives pursued within the framework of an EEIG. Drawn up on the basis of the Commission's survey, it indicates the relatively practical and organizational nature of the aims pursued. Whilst some EEIGs are set up with a very specific purpose of, for example, a technical or commercial nature, others have more general objectives, suggesting that cooperation is expected to take a concrete form over time.

In their responses to the Commission's survey, some groupings drew a distinction between their short and long-term objectives, thus demonstrating the fact that the EEIG is used as a framework for flexible, fluid forms of cooperation.

It is worth noting that the Regulation leaves members complete freedom in their choice as regards the duration of a grouping. Contrary to what one might think, given the unlimited joint and several liability of members, partners usually opt for an indefinite<sup>(12)</sup> or long period (more than 20 years).

Many groupings have been set up as a "trial framework" for collaborative relations that are to be strengthened in the future, sometimes within a different legal framework. In particular, several groupings stated their intention to set up a European company, as soon as this was possible.

#### **ECONOMIC MOTIVATION FOR THE FORMATION OF AN EEIG (examples)**

##### Technical objectives

- development, for non-food purposes, of the cultivation of a little-known type of vegetable, in Southern Europe;
- promotion of standards and technical harmonization (relating to the level of safety of nuclear reactors);

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(12) Article 5 of the Regulation lays down that the duration of a grouping, where it is not indefinite, must be specified in the contract of formation.



- response to a call for tenders for a public works contract;
- participation in research and development programmes (in the fibre-optics sector);
- technical management assistance in the East (iron and steel industry, etc);
- aid for SMEs.

Commercial objectives

- promotion of a water-treatment technique and of a biological fuel;
- setting-up of a group purchasing centre (industrial-paint products, etc);
- joint marketing;
- joint sales (distribution by mail-order catalogue, etc);
- promotion of vocational-training programmes (international commerce);
- study and implementation of rail projects.

Development objectives

- consolidation of member enterprises' position on the European market;
- improvement of services to customers;
- internationalization of activities (development of HDTV standard [High-Definition Television]).

Coordination objectives

- creation of a network of enterprises or bodies in various Member States who share common interests (eg lawyers, consultants, architects, advertising agencies, travel agencies, etc);
- representation of common interests before political bodies (lobbying by societies of authors, energy producers or farmers).

Organizational objectives

- staff training;
- creation of databases;
- exchanges of information and know-how (baking, fuel transport, pharmaceuticals sector);
- mutual assistance and advice (groupings of members of legal professions);
- exchanges of customers.

Financial objectives

- obtaining Community funding for the implementation of a demonstration project in the agri-foodstuffs business;
- financing of infrastructures (eg regional motorway network);
- reducing costs, economies of scale (in the sector of domestic electrical appliances or the media);
- limiting expenditure on publicity, financing and production of films;
- limiting members' expenditure on setting up agencies on a foreign market.

Legal motivation

The survey conducted by the Commission in 1991 made it possible to confirm the main reasons for European economic agents opting for the EEIG rather than any other legal framework for cooperation:

the fact that it is a **transnational instrument**: for this reason, the EEIG is considered more appropriate as a means of regulating collaboration among partners from different EC Member States. Also, the fact that participating enterprises can project a **European image** through their membership of a grouping is a very powerful motivation, now that the Internal Market is up and running;

its **legal neutrality**: the main features of the EEIG derive directly from the EC Regulation. This means that partners are placed on an equal footing, which is very important as regards overcoming the frequent fear, particularly on the part of SMEs, that one partner will be in a more favourable position than the other because it is working in a more familiar legal environment;

respect of the **economic and legal autonomy of partners** and the equality of partners: this autonomy is linked to the fact that the grouping cannot replace its members in the exercise of their activities. Thus, for example, an EEIG cannot exercise any control over the individual activities of its members or have holdings or shares in their capital. Partners' equality is ensured by the fact that no member of an EEIG can possess a majority of votes, and that the most important decisions must be taken unanimously;

its **simplicity**, which has been greatly appreciated by existing EEIGs at the stages of formation and organization of groupings;

its **flexibility**, which is reflected, in particular, in methods of financing and the possibility of integrating new members, which enables an EEIG to respond to any changes in conditions of cooperation;

its **innovative nature**, which was particularly highlighted by EEIGs bringing together members of the liberal professions (in that it is the first legal instrument of association in which they have been permitted to cooperate) and by public bodies seeking private partners or public partners in other Member States within the framework of their mandate.

Many EEIGs that took part in the Commission's survey stated that they had not considered any option other than the EEIG as a legal framework for their cooperation.

For others, the main alternative (in a third of cases) that might have been envisaged was the **contract of cooperation**. But the formula of the EEIG had been preferred to this alternative because it allows for better external representation of the partners, because of the greater cohesion it creates among them, and because it allows more effective means of action (thanks to its autonomous legal capacity).

The option of the **joint subsidiary** had been considered in some cases. It was rejected, in particular, because of its greater cost (incorporation of a new company) and its lesser flexibility, and for tax reasons. **Holdings and exchanges of shares** have other disadvantages in terms of complexity and cost, and sometimes in terms of loss of autonomy by the partners.

Finally, although certain national forms of grouping may have been considered, the EEIG won out because of its "European" nature.

#### 4. THE ORGANIZATION OF EEIGS

##### Activities

In order to achieve the objectives set by members (see Section 3), EEIGs may be responsible for a wide variety of activities. The Regulation allows an EEIG to exercise any legal economic activity in order to fulfil its mandate.

The Commission's survey, complemented by an analysis of the objectives of a larger sample of groupings, enables us to obtain some information on the types of activity assigned to EEIGs, independently of the sector of activity in which they operate (thus, the "type" of activity performed by an EEIG operating in the agricultural "sector" may be research in a particular area or the gathering of information for its members).

Graph 6 shows the prevalence of use of the grouping as a means of providing various services for its members and/or for third parties. Distribution comes second in the list of activities assigned to EEIGs, followed by research and production.

More specifically, EEIGs are often assigned one or more of the following tasks:

- Internal relations and services:
  - administration (joint secretariat, organization of meetings, organization of exchanges of opinion);
  - pooling of resources (equipment, staff, know-how);
  - assisting members (information, advice, management systems);
  - coordination of members' activities in the sphere of cooperation;
  - R & D;
- External relations (activities involving third parties):
  - joint purchasing;
  - promotion of a product or service; distribution; marketing;
  - public relations;
  - lobbying.

As regards EEIGs' **geographical area of activity**, the Commission's survey shows that the Community market was the main market targeted by most EEIGs (27). Then came the markets of Eastern Europe (17), EFTA (17), North, Central and South America (3) and Japan (2). The Middle East, New Zealand, Australia and Hong Kong were also cited.

## Organs

*An EEIG must have at least two organs: the college of members and the manager or managers. The sovereign organ, that is, the college of members, may take any decision for the purpose of achieving the grouping's objectives. The management of the EEIG, whether individual or collective, has extended powers to bind the grouping as regards third parties, who are guaranteed information by a full publishing provision. However, the contract for the formation of the grouping may make provision for other organs, whose powers it shall also determine, without prejudice to those attributed to the statutory organs by the Regulation.*

The 1991 survey shows that, in most cases, groupings have not wanted to make the structure of the EEIG unwieldy by setting up other management bodies. In some cases, however, supervisory bodies with monitoring functions have been set up, and the function of Chairman of the EEIG has been provided for (though this function has no impact on third parties, unless the contract of formation stipulates that it coincides with that of manager, in the sense of the Regulation).

It is also relatively common to find committees with a technical role (quality control, monitoring of techniques, commercialization and documentation, public relations, etc). It is likely that such technical committees also exist on an informal basis in other EEIGs, in the form of working parties.

## Staff

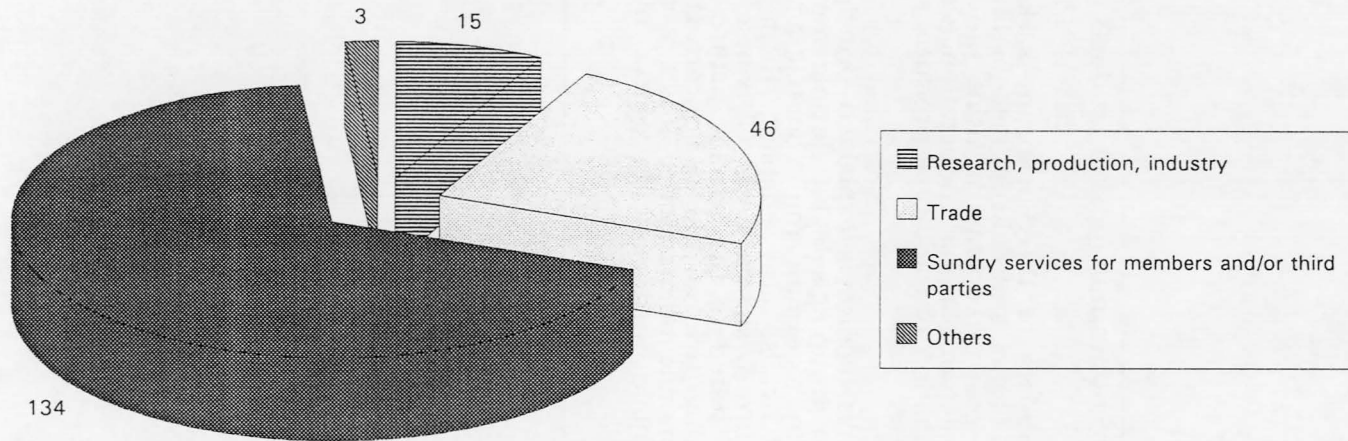
*Article 3 of the Regulation prohibits EEIGs from employing more than 500 people. This figure does not include employees seconded by member enterprises. Furthermore, all social issues, such as the labour law applicable to staff members and employees' social-security status, are governed by the law of the State in which the employee exercises his or her activities on behalf of the grouping<sup>(13)</sup>.*

Usually, the selection and number of employees will depend on the practical requirements of cooperation. The survey showed that **one EEIG out of two had no employees of its own**. For the 60 EEIGs that took part in the survey, a total of 43 employees was counted, plus 57 workers "seconded" by member enterprises. This means that an EEIG with its own staff has an average of only one or two employees.

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(13) This derives from the fifteenth recital of the Regulation which, as regards areas not covered by the Regulation, refers to the provisions of Member States' legislations and Community law.

BREAKDOWN OF EEIGs BY MAIN TYPE OF ACTIVITY



Graph 6

Statistics based on a sample of 198 EEIGs

European cooperation for craft products

Real crusaders of the European market, Trappist monks in France and Belgium have had no hesitation over the past three years in using the most recent formula of transnational cooperation (the EEIG) for the distribution of traditional products such as beer and cheese.

The monks' choice is explained principally by the European grouping's highly flexible framework and its capacity to expand the economic activities of its members whilst also enabling them to contain expenditure by sharing costs. Of course, the EEIG is perfectly suited to the specific nature of monastic undertakings, whose primary concern is to maintain their economic independence. It is a perfect marriage of economic wisdom and respect of tradition...

By contrast, a considerable number of people (1550) were cited in the responses as being "involved" in the operation of EEIGs; this tends to suggest that it is a proportion of the staff of member enterprises who ensure operation of the EEIG, and confirms that a grouping's activities are closely linked to those of its members.

When groupings do not have their own human resources, the grouping's official address is virtually always situated at the official address of one of its members; this reflects the simplest utilization of the instrument (economies made by not operating from separate premises, activities of the EEIG carried out by the staff of its member enterprises). This is often found to be the case for EEIGs set up by members of the legal professions or business consultants.

### Financing

The EEIGs that took part in the Commission's survey cited annual budgets ranging from some ECU 4000 to ECU 3-4 million. Some simply set themselves a minimum budget, whilst others seem to have a more flexible approach to financing, based on requirements, even if they have agreed on specific methods of covering expenditure.

Although start-up capital is not essential for the formation of an EEIG, all forms of contributions are possible:

- contributions in cash;
- contributions in kind (movable and immovable property);
- contributions in skill (know-how, technologies or patents, commercial or professional relations, etc).

Failing this, an EEIG's operating costs may be covered by the payment of contributions, advances on current accounts or remuneration for services rendered, etc.

However, certain methods of financing have been clearly established by usage. These are:

- in the great majority of cases, payment by the grouping's members of regular (usually annual) contributions;
- payment of remuneration to the grouping in return for services rendered (one EEIG out of four).



Other forms of financing - bank loans, commissions on sales or transactions concluded, entry taxes, percentage of members' budgets, external sources of financing (eg linked to participation in a Community programme) - are also possible.

More than half of EEIGs use a mixture of different methods of financing, or see the possibility of doing so.

This financial flexibility is important for enterprises, and for SMEs in particular. It distinguishes the formation of an EEIG from the incorporation of a company, since in the latter case large sums of money may be little or ill-employed for a certain period.

*In any event, members are obliged to contribute, in accordance with the stipulations of the contract of formation, to the payment of the amount by which expenditure exceeds income. Failing any contractual provision, the Regulation states that members shall effect that payment in equal shares (Article 21).*

Cooperation spreads in the world of white goods - in the form of an EEIG

Washing machines, fridges, cookers, microwaves... Producers of white goods are adopting a European approach.

Their alliance is underpinned by a desire to pursue two apparently contradictory objectives: to "federate" leading national brands on the market, where the diversity of consumer habits is suffering from world-wide standardization of major consumer goods, and to meet the economic need to expand their markets, not only so that they can develop their activities but also so that they can make economies of scale by sharing resources, exchanging know-how and cooperating on R&D and group purchasing of components.

The gamble has paid off for members of the EEIG (French, Spanish and British enterprises) who in 1991 saved some 32 million on the purchase of raw materials. And they are expecting much more from the partnership - an expectation that cannot be put down to blind faith, since another company has recently joined the grouping.

## 5. TAXATION OF EEIGS

*Article 40 of the Regulation on the EEIG establishes the principle of fiscal transparency, laying down that "the profits or losses resulting from the activities of a grouping shall be taxable only in the hands of its members". This means that, from a tax viewpoint, the EEIG is deemed to be the same as a partnership.*

*This principle is complemented by the fourteenth recital of the Regulation, according to which "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". Taxes such as capital duty, VAT, professional tax, wealth tax and property tax are governed by the Member States' tax laws.*

At the same time as they adopted national measures permitting registration of EEIGs on their territory, Member States often specified the tax provisions applicable to EEIGs (see Annex 2).

### Capital duty

At the time of entry into application of the EEIG, the issue was raised regarding whether Member States should impose capital duty on EEIGs set up with start-up capital. It has now been established that capital duty will not be levied on EEIGs in ten Member States.

Indeed, this duty has been completely abolished in Germany, France and the United Kingdom (in France, there remains only a fixed duty of FF 500). In other Member States, the EEIG is exempt (Belgium, Denmark, Spain, Ireland, Luxembourg, the Netherlands, Portugal).

Italy applies capital duty of 1%, whilst Greece - whose legislation on EEIGs is recent - has yet to decide on this matter.

### Income tax

The principle of fiscal transparency means that each member of a grouping is taxed on its share of the EEIG's income.

*Article 21 of the Regulation lays down the rule according to which "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".*

Although all the Member States have integrated the principle of transparency in their tax laws, there seem to be some discrepancies concerning where the taxable share of an EEIG's members should be taxed. For example, if an enterprise is resident in Member State A and is a member of an EEIG whose official address is in Member State B, should its share of the EEIG's profits be taxed in Member State A or in Member State B?

According to the principles of international taxation (OECD Model Convention on double taxation, 1977), the enterprise is, in principle, taxable in its country of residence, Member State A, unless the income in question can be connected to a permanent establishment in Member State B.

The Commission considers it desirable that Member States apply to EEIGs the same criteria as they apply to other legal bodies to determine the existence of a permanent establishment, which requires an individual examination of each EEIG.

In the case of a non-resident enterprise, the simple fact that it belongs to a grouping registered in a given Member State is not sufficient to prove that this enterprise has a permanent establishment in the Member State in question.

If the existence of a permanent establishment is proven, the enterprise will be taxed on its share of the results in the Member State in which the EEIG has its official address; double taxation will be avoided by the procedures provided for in the applicable bilateral agreement (between State A and State B).

In most Member States, the EEIG itself makes an overall declaration of the grouping's results to the tax authorities, in addition to the individual declarations submitted by its members.

The provisions in force on the taxation of EEIGs' results in the Member States are mentioned in Annex 2.

#### VAT

In accordance with the sixth VAT Directive (OJ N° L 145 of 13 June 1967, p. 1), as amended (OJ N° L 376 of 31 December 1991, p. 1), a taxable person is regarded as anyone who engages in an economic activity. There is no need for any profit to be generated. By contrast, the transactions (sales or supplies of services) must be carried out for valuable consideration.

Generally speaking, these conditions are met as regards EEIG activities vis-à-vis third parties. An EEIG is, therefore, liable to VAT in respect of such activities, and this enables it to recover VAT paid on its purchases and to invoice VAT on goods or services supplied by it.

The matter of whether VAT is chargeable in respect of the relations between an EEIG and its members is, however, more complicated. Two questions need to be asked.

**Are EEIGs subject to VAT as regards their relations with their members ?**

This question can be answered only on a case-by-case basis, depending on the nature of the revenue accruing to an EEIG by virtue of its activity. This is important when it comes to determining the arrangements for financing an EEIG. The entire range of services supplied by a grouping to its members in return for various kinds of remuneration (subscriptions or other payments) confers on an EEIG the status of taxable person. However, it is difficult to consider capital contributions as operations made for payment since there is no direct link between such contributions and services supplied.

Commercial and accounting standards should make it possible to distinguish between simple contributions of capital and genuine subscriptions.

**How would an EEIG be treated for VAT purposes (taxation or exemption) if it were deemed liable to the tax ?**

According to the generally accepted interpretation placed on the sixth VAT Directive, a distinction must be made between "individualizable", services, i.e. services having a particular beneficiary - and other services. Only "individualizable" transactions fall within the scope of VAT (and are taxed or, where appropriate, exempted). Consequently, measures taken to defend the general interests of an occupational category are not caught by the sixth Directive.

In the case of "individualizable" services :

■ the following are exempt :

- a) the services referred to in Article 13(A) para. 1(f) of the sixth VAT Directive, subject to the conditions laid down there (groups of persons whose activities are exempt, exact reimbursement of their share of the joint expenses, etc.);
- b) the services referred to in Article 13(A) para. 1(1) of that same Directive, subject to the conditions laid down there (non-profit-making organizations, subscription fixed in accordance with rules, political aims, services for the benefit of members). One example of supplies in this latter category would be the provision by the grouping to its members of information on a particular manufacturing process or on the situation in a particular market;

■ the following are taxable :

all other supplies, including, where point (b) is concerned, those not provided for the benefit of their members generally. For example, legal advice provided to a member in his own interest in connection with a particular matter would not qualify for an exemption.

#### European cooperation in full colour

Four independent, private companies in the European industrial-paints market have agreed to cooperate within the Community, in the fields of research and development, production, purchasing and marketing. In accordance with the wishes of its founding members, the EEIG that has emerged as a result of this collaboration enables each member company to retain its financial independence, as well as its decision-making power, within the grouping.

Apart from a strengthening of their positions in the EC, members may expect to reap numerous advantages from the EEIG. These could include an increase in the range of products on offer, the joint introduction of new technologies and full servicing throughout Europe.

## 6. ASSESSMENT OF INITIAL EXPERIENCES

An assessment of the initial applications of the EEIG showed that most of the difficulties encountered by the first groupings can be attributed either to "implementation" problems in the use of an entirely new legal instrument (see Section 6.1) or to cooperation itself, which is so much more difficult when it involves partners in different Member States. The restrictions inherent in the Regulation on the EEIG, although not without justification, can make use of the European grouping difficult or inappropriate in certain cases. They are, therefore, studied in more depth in Section 6.2.

This assessment also highlighted some very positive aspects, particularly the originality and complementariness of the EEIG in relation to other existing legal instruments (see Section 6.3).

Since the 1991 survey covered only existing EEIGs - who were, by definition, largely in favour of the instrument - the Commission also took account in its assessment of the most common comments made about the EEIG and tried to provide responses that would be of value to the large number of enterprises considering the possibility of setting up a grouping.

### 6.1. Difficulties of implementation

#### Access to information

It takes several years to familiarize enterprises and their advisers - lawyers, tax consultants, bankers, business consultants, etc - and even the competent authorities with a totally new legal instrument. This is why some founding members of EEIGs have had difficulty in obtaining the appropriate information and advice.

The Commission has made a considerable effort to ensure wide dissemination of the necessary information, both directly (publications, seminars, etc) and indirectly through its Euro-Info Centres throughout the Community<sup>(14)</sup>.

Furthermore, professional organizations, chambers of commerce and various business advisers have served as intermediaries to pass on this information.

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(14) A list of EICs can be obtained from the Commission's offices in each Member State.

There has been marked progress over the past few years, with information reaching an ever-widening audience, and the growing number of EEIGs cannot fail to have the effect of increasing and improving the information available on this instrument. In this respect, it is important that existing EEIGs share their experiences with the various information agencies, as well as with the Commission itself.

### Drafting of the contract of formation

A number of enterprises have expressed the desire to have access to "standard articles of association" to ease their task in drafting the contract for the formation of a grouping.

It should be noted that the Regulation lists the provisions that must be included in the contract and contains supplementary rules to be applied in default of certain clauses. Also, the EEIG is by nature a flexible instrument and the drafting of the contract of formation depends essentially on the objectives being pursued by the partners. Finally, certain clauses may depend on the legislation of the Member State in which the grouping is to be registered. For all these reasons, the Commission considers it inappropriate to draw up a standard contract of formation.

This notwithstanding, it should be mentioned that several bodies have drafted standard contracts to help their members or customers.

In any event, enterprises considering forming an EEIG are recommended to seek the advice of a lawyer, in the Member State in which the grouping is to have its official address, on the appropriateness of the instrument to their project, on the formulation of the contract for the formation of the grouping and, where applicable, on internal regulations.

### Interpretation of the Regulation

The main difficulties regarding interpretation of the Regulation mentioned by the circles concerned are to do with:

- the link that must exist between the EEIG's activities and those of its members;
- the ancillary nature of the EEIG's activities (Article 3(1) of the Regulation);
- the "economic" nature of the activities of its members.

This requirement distinguishes an EEIG from a company and must be assessed case by case. It is nonetheless possible to make the following general comments.

The EEIG's activities must be an extension of the economic activities of its members. The origin and aim of all the activities of an EEIG must arise from the activities of its members, just as all its results will go back to them. An EEIG in fact exists only to enable its members, thanks to a pooling of activities, resources and services, to develop their own activities and, if this result is achieved, to increase their profits. This means that the EEIG may not replace its members in exercising their activities. Each of them must retain total independence in conducting their own business, outside, of course, the specific areas in which the need for joint action has been recognized and assigned to an EEIG and where coordination proves essential. An EEIG cannot be a company heading a group or a holding company.

Also, an EEIG must not be used to launch, from scratch, activities that have no link or connection with the activities of its members. If this was what members wanted, they would have to set up a company.

The "ancillary" role of the EEIG's activities must not be interpreted too narrowly, that is, in the sense of "accessory", "of less importance". On the contrary, in several cases, a support such as an EEIG may be the only way of enabling the implementation of a particular kind of operation. To take the example of a tender in the public works sector: by joining together in an EEIG, several contractors of complementary disciplines will be able to meet the conditions of the tender, which they might not have been able to fulfil individually. If the contract is secured, the EEIG can also organize the distribution of tasks, and coordinate and monitor their execution.

Within these limits, which do not affect the EEIG's legal autonomy, an EEIG can take action in numerous areas.

The Regulation does not require that an EEIG extend all the activities of all its members. It is sufficient for it to engage in just one activity which is common to all of them and for which it is expedient to group together.

Except in the area of the liberal professions<sup>(15)</sup>, it would be wrong to restrict the role of the EEIG to that of a "society of means" whose sole purpose is to provide its members with the means (premises, secretariat, equipment, etc) to pursue their activities. To improve or increase the results of its members' activities, an EEIG can develop a specific activity with respect to third parties, provided this activity is an extension of its members' activities and does not replace them.

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(15) See the fifth recital of the Regulation, "...a grouping may not itself, with regard to third parties, practise a profession..."



The ancillary nature of an EEIG must be assessed in concrete terms, as a function of members' previous activities, viewed from a broad perspective and depending on the sector of activity concerned. The activities of the EEIG must support its members' activities. An EEIG is an instrument to promote its members' activities. This specific nature of the purpose of an EEIG should be the subject of case law that will be followed with interest.

Article 3(1) of the Regulation refers to the **economic activities** that members of an EEIG and the EEIG itself must exercise. According to the fifth recital of the Regulation, the concept of economic activities must be "interpreted in the widest sense". It is, then, a concept under European law whose content, which is broader than the definition given by national law, will ultimately be elucidated by the Court of Justice of the European Communities. The need to encourage transnational cooperation justifies this approach.

As the survey shows, all sectors of economic life are involved: agriculture, industry, the craft industry, commerce, the service sector and even the liberal professions.

The activities of an EEIG and its members must be connected to the satisfaction - even the indirect or long-term satisfaction - of a market requirement. Thus, even basic research shared by public or semi-public scientific bodies is one example of the use of an EEIG. This does not, however, apply to activities of a philanthropic or cultural nature, which fall into the domain traditionally reserved for associations.

### Registration of an EEIG

The procedures concerning registration of an EEIG were the subject of some critical comments by more than a third of the groupings that took part in the Commission's survey. Some of these criticisms concern the lack of information available from the national services responsible for registration. Others point to problems concerning the choice of name for an EEIG.

### *Length of the procedure*

Enterprises were questioned about the length of the procedure, from the signing of the contract of formation to actual registration of an EEIG. Assuming that the contract has been submitted to the registry immediately after its signature, average delays vary from two weeks in the Netherlands to three months in Germany. In Belgium, where the greatest number of EEIGs has so far been registered, the average delay is six weeks. To give an idea of extreme cases, we should point to the registration of an EEIG within two days in Spain, and that of an EEIG in France, which took 18 months.

EUROPOLIS NOW: the EEIG - an agent to promote the Europe of the regions

First concrete symbol of the emergence of a great regional "Europolis" - in 1991, six French and Belgian chambers of commerce and industry decided to cooperate within the framework of an EEIG. The grouping brings together more than 43 000 enterprises and two million people, using the European banner to demonstrate a desire for inter-regional cooperation.

The formation of this grouping, whose official address is in Belgium, will give its members the opportunity to express themselves as a single voice before the French and Belgian public authorities, as well as before the Community authorities.

The grouping has many objectives: to voice and protect its members' common interests in a single economic "Europolis", and to promote and accelerate regional exchanges. This pragmatic concern to establish an economic-exchange area prefigures the Europe of the regions.

Proof that the grouping is more than a mere symbol is its intention to develop existing road infrastructures in its area.

Savings go international

With a view to the Single European Market (1993), medium-sized savings banks have decided to set up an EEIG to collaborate at an international level.

The establishment of a platform for dialogue (exchange of know-how, supply of new banking services) and the creation of a European commercial organization to improve savings banks' position in the internal market for banking are the main tasks assigned to the grouping.

This cooperation gives members the benefit of broader representation through their mutual networks, as regards both customers and the Community's most important financial centres.

This experiment with collaboration may even open up new horizons, since the grouping is seriously considering the possibility of setting up a European company, as soon as this is legally allowed.

The difficulties encountered by some EEIGs can be explained in part by the "newness of the instrument" factor and, consequently, by the lack of experience in registration procedures, both on the part of national administrations and on the part of enterprises themselves, who sometimes provide registries with incomplete files. One notes, however, the long delays in the registration of EEIGs set up in 1991, that is, some two years after the Regulation's entry into force. The Commission has drawn Member States' attention to this point. However, according to the information gathered from national administrations, the length of the procedure for the registration of an EEIG is no greater than the average period for the registration of a company in the same country.

#### *Legal or administrative problems*

Some EEIGs mentioned problems posed by the national authorities as regards the choice of name.

The problem arose in Germany, in particular, following application to an EEIG of the law on general partnerships (OHGs), even though this law could not be applied to the case in point, given the specific nature of the grouping. This problem has since been solved by case law.

Under Article 5 of the Regulation, a grouping has its own name, which may be a contrived name and need not necessarily include the names of the grouping's members. The legal form of this new instrument must, without exception, be included: either the name of the grouping must be preceded or followed either by the words "European Economic Interest Grouping" or by the initials "EEIG", or those words or initials must already form part of the name.

The name given to the legal form of the EEIG<sup>(16)</sup> is protected in each Member State. Illegal use of it, as well as use of any expression likely to cause confusion, will give rise to sanctions. As a general rule, future members of an EEIG must respect existing legal constraints at national level that limit their free choice of name, particularly as regards disloyal competition. Otherwise, there do not appear to be any linguistic constraints in the Member States on the actual name of an EEIG. On this point, a grouping is treated in the same way as a company.

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(16) Its equivalent in the other Community languages are:  
DA: Europæiske Økonomiske Firmagruppe (EØFG)  
DE: Europäische Wirtschaftliche Interessenvereinigung (EWIV)  
GR: (phonetically, using the Latin alphabet): "Evropaikos omilos economicou skiprou (EEOS)" ΕΥΡΩΠΑΪΚΟΣ ΟΜΙΛΟΣ ΟΙΚΟΝΟΜΙΚΟΥ ΣΚΟΠΟΥ (ΕΟΟΣ)  
EN: European Economic Interest Grouping (EEIG)  
ES: Agrupación Europea de Interés Económico (AEIE)  
FR: Groupement Européen d'Intérêt Economique (GEIE)  
IT: Gruppo Europeo di Interesse Economico (GEIE)  
NL: Europese Economische Samenwerkingsverbanden (EESV)  
PO: Agrupamento Europeu de Interesse Económico (AEIE)

The problems associated with the choice of name for an EEIG illustrate a much wider issue, which has often been raised, and that is the question of the **nature and scope of monitoring of the formation of an EEIG**. Should a registry that has received an application for registration check its legality and respect of the terms and conditions of the Regulation or should it limit itself to an official check on the basis of the information provided by the parties, in accordance with Article 5 of the Regulation?

The Commission considers that monitoring by the registry should comprise a purely official check, essentially of the following points:

- compulsory inclusions in the contract;
- documents other than the contract which must be submitted at the time of registration, in accordance with the internal law of the State in which the grouping is to have its official address;
- members' capacity to contract;
- "attachment" of members of the EEIG to the Community;
- "attachment" of two members of the EEIG to two different States;
- location of the official address within the EC.

If registries were to undertake an in-depth check, the Regulation would have expressly mentioned it. Negotiations would have differed, since an in-depth check would require the presence of legal experts at national registries, which is currently not the case in most Member States.

**Monitoring of respect of the provisions of the Regulation (Article 3) on the object of the EEIG** can take place only *a posteriori*, by virtue of Article 32(1) of the Regulation (court order for the winding-up of a grouping, on application by any person concerned or by a competent authority).

#### Rules on competition

The Commission has noted some confusion in economic circles as regards treatment of the EEIG with respect to the rules on competition.

It is, therefore, worth specifying that an EEIG is subject to the same rules as is any agreement between enterprises, and in particular to *Article 85 of the EEC Treaty, which prohibits certain types of agreement which "may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market..."*.

Some EEIGs fall automatically outside the field of application of this Article, in that they are equivalent to **agreements "of minor importance"** (ie the market share of the participating enterprises, with respect to the goods and services covered by the agreement, is smaller than or equal to 5% of the entire market in the area of the Community in which the agreement has its effects; and the total annual turnover of the participating enterprises is less than or equal to ECU 200 million<sup>(17)</sup>).

Also, the Commission is favourably disposed towards cooperation among enterprises, and particularly small and medium-sized ones, since it puts them in a position to work more rationally and to increase their productivity and competitiveness in a larger market. Thus, in its "Notice concerning agreements, decisions and concerted practices in the field of cooperation between enterprises"<sup>(18)</sup>, the Commission indicates that **18 types of agreement** are not considered to restrict competition, provided their sole object is one of the forms of cooperation listed later (see list on page 33). These types of object correspond to those of a large number of EEIGs. However, it should be pointed out that, depending on the conditions and circumstances, these agreements may produce an effect on competition and are then caught by Article 85 of the Treaty of Rome.

Some EEIGs may also benefit from the **"block exemption"** arrangements applied by the Commission to agreements concerning, for example, research and development, know-how licensing, specialization, exclusive dealing, etc<sup>(19)</sup>.

In any event, where there is doubt about the compatibility of a planned EEIG with Community rules on competition, the enterprises participating must notify the Commission, requesting "negative clearance" or an individual exemption (non-applicability of Article 85(1) on agreements between enterprises).

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(17) OJ C 231, 12.9.1986.

(18) OJ C 75, 29.7.1968, amended by OJ C 84, 28.8.1968.

(19) See, in particular, Regulations Nos 418/85, 556/89, 417/85, 1983/83 in, respectively, OJ L 53, 22.2.1985, OJ L 61, 4.3.1989, OJ L 53, 22.2.1985 and OJ L 173, 30.6.1983.

So far, the Commission has received six notifications concerning planned EEIGs. It has given the go-ahead in two cases; the other files are still under examination. Thus, an agreement concerning the wholesale distribution of pharmaceutical and parapharmaceutical products was granted an exemption (as provided for in Article 85(3) of the EEC Treaty) in December 1990, even though it contains certain restrictions on competition.

Building a grouping to build further away...

In the construction sector, engineers within the same profession follow the same code of ethics, but in very different cultural and economic contexts. Laws, regulations, standards and practices differ not only from State to State but also from region to region.

This is why a group of 12 consultant construction engineers (with each Member State being represented) have chosen the EEIG formula to develop their respective activities, forging European-wide links that are stronger than those involved in a mere informal association.

At the technical level the use of this instrument allows for a European exchange of know-how and experience. At the commercial level, the grouping guarantees the signing of contracts and the representation of its members, particularly in the case of invitations to tender.

**List of types of agreement that do not, in principle, fall within the scope of Article 85 of the EEC Treaty**  
(OJ No C 75 of 29 July 1968)

- an exchange of opinions or experience;
- the joint carrying-out of comparative studies of enterprises or industries;
- the joint preparation of statistics and calculation models;
- joint market research;
- cooperation in accounting matters;
- joint provision of credit guarantees;
- joint debt-collecting associations;
- joint business or tax consultant agencies;
- the joint execution of research and development contracts;
- the joint implementation of research and development projects;
- the joint placing of research and development contracts;
- the sharing-out of research and development projects among participating enterprises;
- the joint use of production facilities and storing and transport equipment;
- the joint execution of orders (provided the participating enterprises are not in competition with each other as regards the work to be done);
- joint selling arrangements, provided the participating enterprises are not in competition with each other;
- joint after-sales and repairs service, provided the participating enterprises are not in competition with each other or, where they are competitors, provided they assign this service to a single independent enterprise;
- joint advertising (provided that no restriction prevents the participating enterprises from also advertising individually);
- the use of a common label to designate a certain quality (provided the label is available to all competitors on the same conditions).



### Tax arrangements

The Commission's survey and the numerous comments it has received show that, although the principle of fiscal transparency laid down by the Regulation is generally well established, there is still some major uncertainty by those involved as regards its practical implementation.

This uncertainty concerns, in particular, the taxation of results, the place of taxation and the possibility, in the case of a loss, of members deducting their share of the EEIG's losses or expenditure from their own results.

This is why the Commission is encouraging Member States to introduce the greatest possible transparency with respect to the tax arrangements applicable to EEIGs.

#### 6.2. Restrictions inherent in the Regulation

The Regulation on the EEIG contains certain restrictions that may make the choice of this instrument a difficult one in some cases. These restrictions do, of course, have a purpose, namely the protection of third parties. They are also the corollary to the other advantages characterizing the EEIG.

#### The unlimited joint and several liability of members

*The Regulation (Article 24(1)) lays down that: "The members of a grouping shall have unlimited joint and several liability for its debts and other liabilities of whatever nature"; other Articles specify the methods of invoking this liability.*

For the liability of one of the members of an EEIG to be involved, two conditions must be met. The debt in question must, firstly, be the EEIG's debt. Secondly, creditors may not proceed against a member of the EEIG for payment in respect of the debt in its entirety unless they have first requested the grouping to pay. A further condition is that, following this request, payment has not been made within an appropriate period. This means that two extreme situations are avoided: creditors are not obliged to wait until all legal recourse against the EEIG has been exhausted, but nor are they able to proceed against any member of the grouping immediately after requesting the EEIG to pay.

A member who has paid off a debt may then proceed either against the EEIG itself for full reimbursement, or against the other members for contributions to the settlement, in accordance with the proportions stipulated in the contract or, failing such a stipulation, in equal shares.

To many people, this personal commitment of members may seem very heavy. Indeed, more than a quarter of the EEIGs that took part in the Commission's survey considered the unlimited joint and several nature of liability to be one of the main disadvantages of the EEIG as an instrument. It is, however, the corollary to the contractual freedom which is the basis of the EEIG, and to the fact that members are not required to provide mandatory capital representing the minimum guarantee offered to creditors. It may enable third parties to enter more easily into a business relationship with an EEIG, or to grant it credit on the basis of the financial standing of one or more of its members.

The Commission's survey shows that existing EEIGs have paid a great deal of attention to this issue and have used various measures to "arrange" the liability of their members. A few general guidelines can be drawn from their experience:

- It is vital for the founding members of an EEIG to define precisely the **objective** of their cooperation in order to determine in advance the content of their undertakings. In this respect, it is perhaps advisable not to define an EEIG's objective too broadly in the contract of formation. If cooperation is to be extended, it is always possible to modify the object of an EEIG;
- The principle of the unlimited joint and several liability of members of an EEIG is governed by public law. If a grouping's contract of formation or internal regulations were to include a **general clause exempting or limiting the liability** of one or several members, this clause - though valid between members - would have no effect *vis-à-vis* third parties;
- However, in the case of a **particular contract** concluded by the EEIG with a third party, the third party could either decline to proceed against a selected member or agree to proceed against him only for a limited amount (tenth recital of the Regulation). One always has the option to surrender an acquired right. This option has been taken in practice. It should facilitate, in particular, participation in an EEIG by SMEs that want to cooperate with large-scale enterprises;

- The choice of the **manager or managers** of an EEIG is of particular significance. The activities of the manager, or of each manager, bind the EEIG in an unlimited way, even when the activities in question do not fall within the objectives of the grouping, unless the grouping can prove that the third party has acted in bad faith.
- The definition of the manager's powers, in the contract of formation or by a unanimous decision of the members, is also vital. Even though restrictions on these powers are valid only internally, members can invoke the manager's civil liability in the case of a breach of their stipulations. The only restriction that may be relied on as against third parties is the one that prevents a manager from acting under his signature alone, and obliges him to collect the signatures of one or several other managers (Article 20(2)). This restriction may be relied on as against third parties only if it has been published.
- Some EEIGs have appointed several managers (two or three) who must act jointly to bind the EEIG. Others have placed strict limits on the expenditure that can be contracted by the manager. In one case, all expenditure over a certain amount must be approved by the "double signature" of two members. Other budgetary techniques are used in an attempt to limit the consequences of members' unlimited joint and several liability;
- And finally, it should be remembered that the Regulation (Article 26) allows, under certain conditions, the exemption of a new member from the payment of debts which **originated before his admission** to the EEIG.

Apart from the general provisions mentioned above, some EEIGs have had recourse to special measures appropriate to their particular case. For example:

- Several EEIGs (lawyers and accounting experts) have had recourse to forms of **insurance** in the name of the EEIG; in one case, the EEIG checks that its members (lawyers' chambers) have adequate professional insurance;
- In the case of an EEIG formed to provide services in the context of public works contracts, the intention is to assign execution of the contracts - secured thanks to the EEIG - to a **limited company**.

The problem of the liability of members of an EEIG depends, in the final analysis, on the extent of the financial risks the EEIG will be expected to run in connection with its activities.

### Scope of action available to EEIGs

Regulation 2137/85 lists a number of restrictions on the means of action available to an EEIG. These restrictions are in part connected with the ancillary nature of an EEIG's activities in relation to those of its members.

*Thus, an EEIG may not, pursuant to Article 3(2) of the Regulation:*

- a) exercise a power of management or supervision over its members' own activities;*
- b) hold shares of any kind in a member undertaking; subject to certain conditions, hold shares of any kind in another undertaking.* The purpose of these two types of restriction is to prevent an EEIG behaving as a "company heading a group" in its dealings with its members;
- c) employ more than 500 people.* This restriction is due to considerations of labour law. Experience shows, however, that it has been possible to form large EEIGs with very few employees (see Section 4). It is worth stressing the fact that this restriction concerns the EEIG itself and not its members;
- d) be used to make a loan or transfer of property to a director of a company, except to the extent permitted by national laws.* The purpose of this restriction is to prevent EEIGs from being used to evade certain national provisions on the subject;
- e) be a member of another EEIG.* This restriction derives from a concern to avoid a complicated chain of liabilities in an international context.

These restrictions have probably had the effect of dissuading some enterprises from using the EEIG, which is an instrument of cooperation and not of integration. This notwithstanding, the Commission's survey shows that they have not raised any particular difficulties for most of the EEIGs included in the sample.

### The composition of an EEIG

A number of EEIGs regret that enterprises outside the Community cannot be members of a grouping (Article 4 of the Regulation). As the Commission's survey reveals, many groupings have devised formulas for "association" with enterprises outside the Community, though usually within Europe.

This restriction is soon to be raised with regard to enterprises in countries belonging to the European Free Trade Association (EFTA). The Regulation on the EEIG is part of the "acquis communautaire" that EFTA countries will have to adopt after a transition period, starting from the date of entry into force of the agreement on the European Economic Area. At the end of this period (three years for Switzerland and Liechtenstein and two years for the other EFTA countries - Norway, Finland, Austria, Sweden and Iceland), it will be possible to form EEIGs comprising members from the EFTA countries and it will also be possible to register groupings in those countries.

### 6.3. Towards a new form of European cooperation

Despite the teething difficulties encountered during the first years of the EEIG, experience indicates that economic agents have a definite and growing interest in this legal instrument. Experience has also shown that the EEIG has great qualities as a catalyst for cooperation, cooperation that is then carried along by the internal dynamics of a grouping.

#### Signs of success

The constant increase in the number of EEIGs in the Community testifies to the attractiveness of this formula to economic agents in Europe. This attraction is underlined by the fact that several Member States (Belgium, Spain and Luxembourg) have also found it useful to create national forms of the "economic interest grouping".

We are also witnessing not only an increase in the number of EEIGs being set up, but also a trend whereby existing groupings are opening up to new members. Thus, virtually all the groupings that took part in the survey indicated their intention to bring in new members. This may be interpreted as a sign of enthusiasm for the process of collaboration that has been begun, or as an expression of the importance of setting up a widespread European network, a network whose very existence is often a grouping's main concern. The concern from many groupings about the possibility of integrating members from outside the Community (and particularly from EFTA countries) also confirms the value of the EEIG as a framework for cooperation.

Experience over these first three years has shown that the EEIG can reasonably live up to its original intention as an instrument of cooperation that can be used for a very broad range of projects. The most diverse sectors of the European economy are represented in EEIGs from the sole trader to the multinational corporation and from the association to the local group.

The groupings that took part in the Commission's survey pointed to the advantages they saw in the EEIG as an instrument (see Section 3, "Legal motivations") and mentioned some of the projects they had been able to implement thanks to the EEIG. These include:

- participation in certain EC programmes (THERMIE, SPRINT);
- short-listing for an EDF project (Electricité de France);
- construction of a mechanical lift plant for a ski resort;
- implementation of a Franco-Italian project for telesurveillance of the Mediterranean;
- investment in Poland;
- installation of computers;
- adoption of a code of ethics and a common language;
- creation of a trademark...

Groupings also indicated that membership of an EEIG had had a positive impact on members' individual economic activities, including an increase in productivity, a rise in sales or an improvement in services. This impact is sometimes qualitative, for example, strength in numbers, a gain in credibility at national level or improved knowledge of the European market.

By providing its members with an organized framework of which cooperation is a part, an EEIG encourages the development of that cooperation. The organization of meetings, the appointment of one or more managers, the "networking" effect associated with membership of a grouping, all encourage, among other things, an internal dynamic within the group that leads to cooperation in increasingly practical and ambitious projects.

### The relationship of the EEIG to other legal instruments

The uniqueness of the EEIG in relation to other instruments manifests itself at various levels and, first and foremost, in the uses to which it is being put. It is, for example, interesting to note that - apart from the many EEIGs with a typically commercial, financial or scientific purpose - a large number of EEIGs are "general purpose", in that they are pursuing several objectives at the same time.

Very often, reciprocal services among members (information, building up client bases, etc) are the EEIG's main objective: typically, the EEIG is an instrument of "multilateral" cooperation, and all the more so, in that the great majority of EEIGs have more than two members (whereas most cooperation agreements are bilateral).

Another unique feature of the EEIG is that it often seems to be used as a framework for cooperation between public and private bodies (see Section 2).

A third notable feature of the EEIG is its "developmental" nature and the fact that it encourages further cooperation. Further cooperation may take place within the framework of the EEIG, with a strengthening of its resources or its expansion to include new members. It may imply the pursuit of collaboration within a different legal framework, such as that of the company.

It is reasonable, therefore, to claim that the EEIG has not only provided a European legal framework for cooperation projects of the "traditional" kind, but has also responded to cooperation needs that were either met inadequately or not met at all by other legal instruments: cooperation between partners of different kinds (public and private) or of different sizes (small and large enterprises); cooperation among many partners; "trial" cooperation that may not necessarily be very well defined at the outset but whose aim is to create a dynamic relationship (between enterprises or regions).

### The EEIG as support for other Community policies

The EEIG fits very neatly into the framework of other Community initiatives to promote cooperation.

It can be seen as a complement to the practical measures implemented by the Community to facilitate the **search for partners** with a view to cooperation (see Section 2): once a partner has been identified and a cooperation project has been clearly defined, the next question is to choose an appropriate legal framework, and the EEIG may be the answer.

This issue is also faced by enterprises taking part in **Community R & D programmes**. An EEIG comprising several bodies that are active in research can easily submit proposals within the framework of Community R & D programmes. Indeed, an EEIG has the legal capacity to conclude a contract with the Commission and it automatically meets the condition of "multinationality" laid down for these programmes.

As regards research, the EEIG can meet three main objectives: to create a coordination structure for the research activities of an EEIG's members; to create a management structure for a scientific team, a network of researchers or a database; to create a joint research centre undertaking clearly defined activities on behalf of the EEIG's members.

Experience has also shown that the EEIG is a valid instrument in the context of **inter-regional cooperation**. In several cases, for example, local authorities or bodies such as chambers of commerce have come together in an EEIG to promote the development of their respective economies. Examples include:

- an EEIG comprising six chambers of commerce in a region on the French/Belgian border: these bodies intend to use the EEIG to promote their region with the public authorities, to aid cross-border exchanges between their member enterprises, and to develop communication infrastructures to facilitate these exchanges;
- an EEIG comprising regional development bodies and research centres of five Member States, whose aim is to develop cooperation among their member enterprises;
- an EEIG comprising several financial bodies, whose purpose is to contribute to the financing of major European infrastructure projects, and particularly those receiving Community funding (EIB or Structural Funds).

This means that the EEIG is making a huge contribution to the success of Community initiatives to promote cooperation among enterprises.



When the South opens its doors to technological cooperation

Mediterranean regions and advanced technologies are the key terms summing up the objective of an EEIG comprising eight bodies in France, Spain and Italy. The purpose of the grouping, which brings together both public and private bodies, as well as a non-profit-making association, is to set up a network to develop inter-regional cooperation in the area of advanced technologies.

The EEIG's main objectives are to promote the exchange of information among its members; to conduct a survey of technology-transfer centres in its geographical area, with a view to putting them in contact with each other; and to promote the launching of programmes for technological, scientific and industrial cooperation.

To realize these objectives, the grouping is carrying out various activities, from in-depth economic analysis (of demographics, transport infrastructures, etc) to the practical implementation of forward-looking projects (effective collaboration between research laboratories and SMEs with strong innovative potential), via participation in Community programmes such as CIRCUS (detection of forest fires). Perhaps this gives truth to the equation "European region equals technological research"...

## 7. CONCLUSIONS AND OUTLOOK

After three years of application of the Community Regulation on the EEIG, the Commission considers that this instrument has largely met both its own expectations and those of economic agents by placing at their disposal a legal instrument that can be adapted to the broad range of situations that might be encountered as regards transnational cooperation.

The initial experimental stage, with enterprises "trying out" this new and unique legal framework, should now be followed by an expansion phase, with more and more EEIGs being created because the economic operators concerned have a better knowledge of the EEIG as an instrument and greater confidence in its operational capabilities.

With this in mind, it is important to make a sustained effort to inform the circles concerned. This report should itself help to increase the amount of information available on the practical uses of the EEIG.

The coming few years will see an extension in the use of the EEIG because enterprises in the EFTA countries will be permitted to join groupings and it will also be possible to register EEIGs in the EFTA countries (see Section 6.2).

The Commission, in collaboration with the Member States, will also make every effort to clarify the tax regulations governing EEIGs and their members so that remaining doubts do not dissuade use of this Community instrument.

ANNEX 1

Notes on the survey of EEIGs conducted by the Commission in 1991

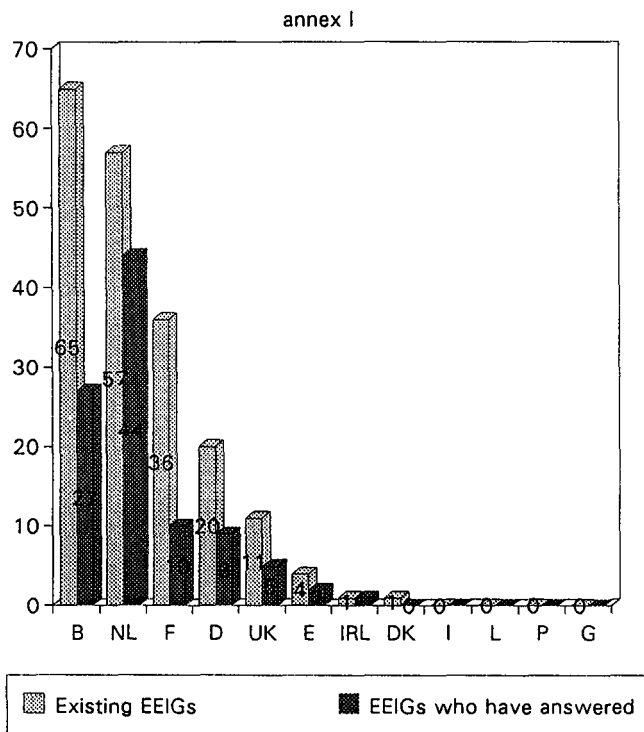
In June 1991, the Commission sent a questionnaire to 194 EEIGs whose notification of formation had been published in the Official Journal of the European Communities. It received 60 responses concerning 98 EEIGs (a joint response was sent for all 39 EEIGs registered in the Netherlands, in the sector of import/export of meat products).

A comparison of the geographical breakdown (by country of registration) of the total of 194 EEIGs and of those that responded to the survey indicates that the sample is highly representative, from the geographical point of view.

The relatively low response rate from French groupings can be explained by the fact that the addresses appearing in the registers no longer appear to correspond to EEIGs' current addresses in several cases.

When the survey was launched, it was not yet possible to register groupings in either Italy or Greece.

For some of the information included here, the Commission has been able to refer to a larger sample, thanks to the existence of other sources of information.



**Measures to implement Council Regulation (EEC) No 2137/85  
of 25 July 1985 and tax provisions in the Member States**

**I. Measures to implement Regulation (EEC) No 2137/85**

**1. BELGIUM**

- Law of 12 July 1989 containing various measures to implement Council Regulation (EEC) No 2137/85 on the formation of an EEIG (Moniteur Belge - 22 August 1989 - p 14385 *et seq*)
- Law of 17 July 1989 on economic interest groupings (Moniteur Belge - 22 August 1989 - p 14391 *et seq*)
- Royal Decree of 27 July 1989 on the publication of the acts and documents of companies and enterprises (Moniteur Belge - 22 August 1989 - p 14400 *et seq*)

**2. DENMARK**

- Law No 217 of 5 April 1989 on the formation of EEIGs (Lovtidende A, lov nr 217, hæfte No 52, 11 April 1989)
- Implementing administrative regulations Nos 534 and 535 of 7 August 1989 (Lovtidende A, hæfte No 80, 15 August 1989)

**3. GERMANY**

- EWIV - Implementing Law - 14 April 1988 (Bundesgesetzblatt 1988, I, No 16, p 514 *et seq*)
- Eighth regulation modifying the decree on the commercial register, 19 June 1989 (Bundesgesetzblatt I, No 28, p 1113 *et seq*)

4. GREECE

Presidential Decree No 38 on measures to implement in Greece Council Regulation (EEC) No 2137/85 on the EEIG (Official Journal of the Hellenic Republic, No 19, 14 February 1992, p 325)

5. SPAIN

- Law No 12/1991 of 29 April 1991 on the Economic Interest Grouping, including various measures implementing Regulation (EEC) No 2137/85 (Boletín Oficial del Estado [BOE], No 103, 30 April 1991, p 13638)
- Royal Decree No 1597/1989 of 29 December 1989 on approval of the regulation on the register of commerce previously allowing registration of EEIGs in Spain

6. FRANCE

- Law No 89-377 of 13 June 1989 on EEIGs (Journal Officiel, 15 June 1989, p 7440 *et seq*)
- Decree of 20 June 1989 on the registration of EEIGs (Journal Officiel, 30 June 1989, p 8101 *et seq*)

7. IRELAND

- European Economic Interest Grouping Regulations, 1989 (Statutory Instruments No 191 of 1989 - Government Publications Sales Office, Dublin)

8. ITALY

- Decree Law No 240 of 23 July 1991 (Gazzetta Ufficiale della Repubblica Italiana - Serie Generale, Anno 132 - No 182 - 5 August 1991, p 6)

9. LUXEMBOURG

- Law of 25 March 1991 on Economic Interest Groupings, Mémorial A 20 of 11 April 1991, p 452
- Law of 25 March 1991 containing various measures implementing Regulation (EEC) No 2137/85 on the formation of a European Economic Interest Grouping, Mémorial A 20 of 11 April 1991, p 459

10. THE NETHERLANDS

- Law of 28 June 1989 on implementation of Council Regulation (EEC) No 2137/85 of 25 July 1985 on the formation of an EEIG (Staatsblad 1989, blad 245...)

11. PORTUGAL

- Decree Law No 148/90 (Diario da Republica, I series, No 106, 9 May 1990, pp 2154-2155)
- Decree Law No 2/91 (Diario da Republica, I series, No 4, 5 January 1991, pp 74-76)

12. UNITED KINGDOM

- European Economic Interest Grouping Regulations  
- Statutory Instruments (Great Britain) 1989, No 638, Her Majesty's Stationery Office
- EEIG (Northern Ireland) 1989 - Statutory Rules of Northern Ireland 1989, Nos 216 and 218, Her Majesty's Stationery Office

## II. Tax provisions

### 1. BELGIUM

- Law of 12 July 1989, Articles 12-14, containing various measures implementing Regulation (EEC) No 2137/85 of 25 July 1985
- Circular No 8/1989 of 31 August 1989 concerning the tax provisions on VAT and capital duty applicable to EEIGs
- Capital duty - not applicable to EEIGs

### 2. DENMARK

- In Denmark, EEIGs are treated, from the tax point of view, as partnerships (Interessentskab); see Circular of the Minister for Tax, SKM 589-3721-2
- Capital duty - not applicable to EEIGs

### 3. GERMANY

- In Germany, EEIGs are treated as general partnerships (Offene Handelsgesellschaft)
- The principle of transparency is governed by Article 15 of the Einkommensteuergesetz for all partnerships
- Other tax provisions concerning EEIGs:  
¾¾ 19, 97, Abs. 1, Nr. 5, Bewstg;  
¾¾ 179, Abs. 2, Satz 2, 180 Abs. 1, Nr 1 A O;  
respectively ¾ 180 Abs. 1, Nr. 3 A O (non-profit-making);  
¾ 5 Abs. 1, Gewstg
- As partnerships, EEIGs are not subject to capital duty (Gesellschaftssteuer). Duty was abolished as of 1 January 1992

### 4. GREECE

- Capital duty: 1% if the EEIG is profit-making or stamp duty of 3% in other cases

5. SPAIN

- Royal Decree 1597/1989 of 29 December 1989 on the registration of EEIGs (Chapter VI, Articles 37 and 38)
- Law 12/1991 of 29 April 1991, Article 30 (tax provisions for EEIGs)
- Capital duty: not applicable to EEIGs

6. FRANCE

- Direct taxes: Article 239, Quater C of the General Tax Code
- Capital duty: abolished as of 1 January 1992
- Administrative Instruction of 10 May 1991 (4F-3-91) specifying the tax provisions applicable to EEIGs

7. IRELAND

- Chapter III, Section 24, Paragraph 2 of the 1990 Finance Act introduces the principle of transparency with reference to the EC Regulation on EEIGs
- According to Section 2, Paragraph 1 of the Capital Gains Tax Act 1975, EEIGs are not subject to this tax
- Other provisions applicable to EEIGs:  
Section 1(5) of the Corporation Tax Act, 1976  
Chapter III, Part IV of the Income Tax Act 1967 (with the exception of Section 72, Paragraph 8) and Section 4, Paragraph 5 and Paragraph 3 of Schedule 4 of the Capital Gains Tax Act 1975 apply, without prejudice to the provisions of Chapter III, Section 24, Paragraph 5 of the 1990 Finance Act
- Capital duty: not applicable to EEIGs

8. ITALY

- Articles 11 and 12 of Decree Law No 240 of 23 July 1991
- Capital duty: 1% (Article 12, ¾1)



9. LUXEMBOURG

- Law of 25 March 1991, Articles 13-16
- Capital duty: not applicable to EEIGs

10. THE NETHERLANDS

- Circular of the State Secretary for Finance, 1 March 1990, No WDB 90/63
- Capital duty: not applicable to EEIGs

11. PORTUGAL

- Article 5 of the Tax Code on the income of legal persons (IRC)
- Capital duty: not applicable to EEIGs

12. UNITED KINGDOM

- Section 510A of the Taxes Act 1988
- Sections 12A and 98B of the Taxes Management Act 1970
- Capital duty has been abolished

**List of competent registries for the registration  
of EEIGs in the Member States**

1. Germany

Registration in the register of commerce (Handelsregisterverfügung) at the competent court for the EEIG's official address

2. Belgium

Registration in the register of the record office of the commercial court in the area in which the EEIG has its official address (a register of EEIGs has been set up at the record office of each commercial court)

3. Denmark

Registration in the register of groupings set up at:  
Erhvervs- og Selskabsstyrelsen (Office of Enterprises)  
Kampmannsgade 1  
DK-1780 Copenhagen V

4. Spain

Registration in the register of commerce (Registro Mercantil) of the capital of the province in which the EEIG has its official address

5. France

Registration in the register of commerce and companies held at the record office of the commercial court in the area in which the EEIG has its official address

6. Greece

Registration with the court of first instance (companies section) with jurisdiction over the area in which the EEIG has its official address (a register of EEIGs has been established by decree)

7. Ireland

Registration in the register of companies:  
Companies Registration Office  
Lower Castle Yard  
Dublin Castle, Dublin 2

8. Italy

Registration in the register of enterprises of the civil court with jurisdiction over the area in which the EEIG has its official address (Registro delle Società, Ufficio della Cancelleria)

9. Luxembourg

Registration in the register of commerce and companies held at the record office of the district court with jurisdiction over the area in which the EEIG has its official address

10. United Kingdom

Registration on the register of companies:

1. in England and Wales:

Registration Office  
Companies House  
Crown Way  
Cardiff CF4 3UZ

and

London Search Room  
Companies House  
55-71 City Road  
London EC1Y 1BB

2. in Scotland:

Companies House  
100-102 George Street  
Edinburgh EH2 3DJ

3. in Northern Ireland:

Registrar of Companies  
IBD House  
54 Chichester Street  
Belfast BT1 4JX

11. The Netherlands

Registration on the register of commerce held by the chamber of commerce in the place in which the EEIG has its official address (Kamer van Koophandel en Fabrieken)

12. Portugal

Registration on the register of commerce (Conservatoria do Registo Comercial)

# Eastern Europe and the USSR

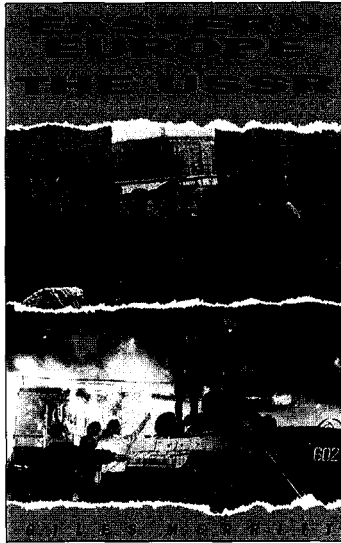
## THE CHALLENGE OF FREEDOM

GILES MERRITT

The sparks of unrest that leapt from Berlin in November 1989 to Moscow's Red Square in August 1991 are firing an explosion of political and economic change. Out of the ashes of Communism is emerging the shape of a vast new European market-place stretching from the Atlantic to the Pacific.

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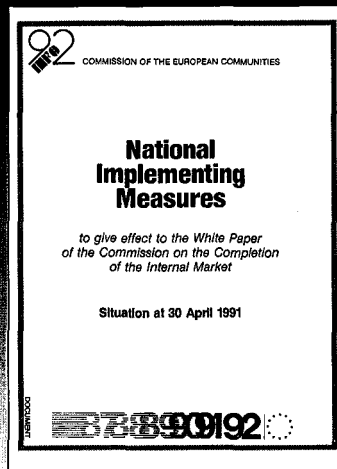
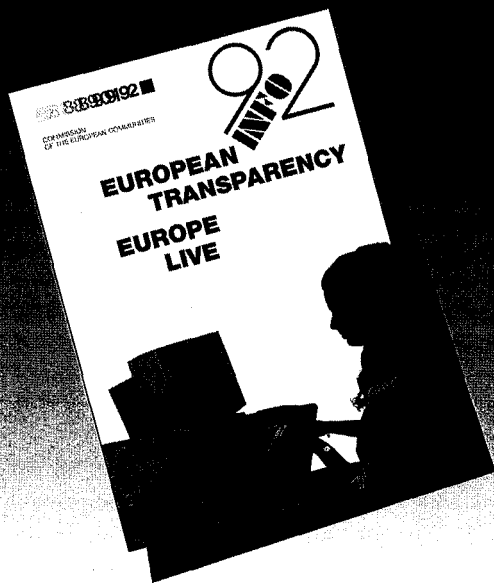
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# Success in business

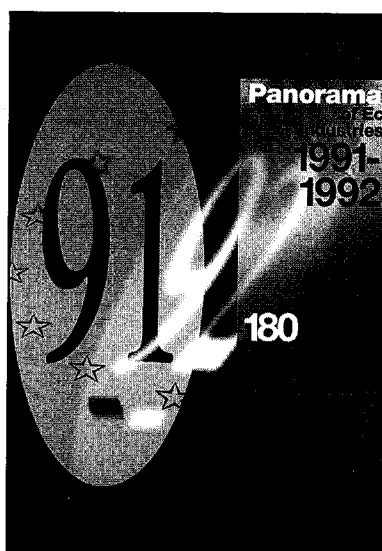
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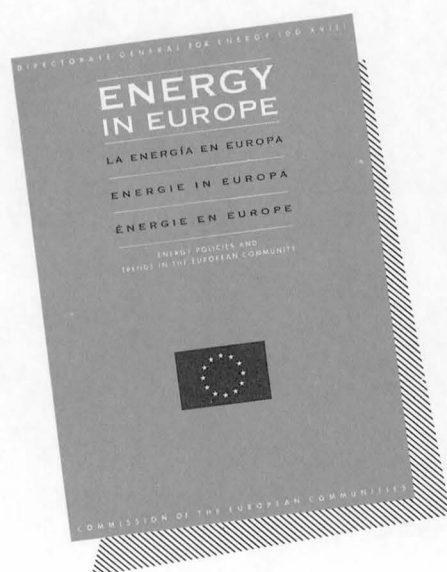
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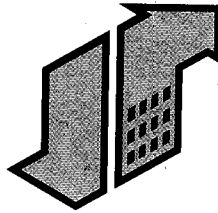
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