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**Proposal for a
regulation of the Council
on the European
cooperation grouping (ECG)**

**(submitted to the Council by the Commission
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**EUROPEAN COMMUNITIES
Commission**

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Proposal for a Regulation

The Council of the European Communities,

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

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament,

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

Whereas a harmonious development of economic activities throughout the Community and a continuous and balanced expansion must be brought about by the establishment of a common market in which conditions will be the same as those on a national market; whereas, to attain this objective, the legal conditions under which persons, firms and companies carry on business there must be such as to facilitate the adaptation of their activities to the economic conditions of an enlarged market; whereas for this purpose it is necessary that such persons, firms and companies should have at their disposal not only the appropriate legal machinery for restructuring their undertakings, but also the means whereby cooperation can take place between them irrespective of frontiers;

Whereas cooperation of this nature would at present be fraught with legal, fiscal and psychological difficulties; whereas the various forms under which it could take place under the national laws are not suitable for cooperation at Community level precisely because they are the creatures of national legal systems;

Whereas it appears therefore that action should be taken by the Community to attain the Community objectives referred to above;

Whereas these problems could not be dealt with by harmonizing national provisions as provided for by the Treaty; whereas, in particular, this would not solve the problem posed by a legal instrument which is supposed to be operating at multinational level and with undertakings from several countries remaining

subject exclusively to the national law of the country to which the member undertakings belong; whereas a new legal instrument should be introduced into Community law to enable such cooperation to take place in a satisfactory manner, particularly among small and medium-sized undertakings; whereas the most suitable means of achieving this end is the introduction of a vehicle for cooperation with a contractual basis under the form of a 'European Cooperation Grouping', whereas the formation and operation of such an instrument would remain subject to the Community rules on competition and the measures taken for their implementation;

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

Whereas to ensure flexibility for the grouping its founders should have wide powers to organize its functioning; whereas a subsidiary law must be applicable in respect of any matter for which this Regulation or the constitutive contract makes no provision;

Whereas the grouping must not in any way be a substitute for firms or companies, commercial or otherwise, since the purpose, objects and legal structure of the latter are completely different; whereas its activities should derive from those of its members and should remain co-terminous with them and ancillary to them;

Whereas, since there are in the Community a large number of undertakings owned by individuals, the grouping should be available to natural persons as well as firms and companies;

Whereas above all the grouping should be a vehicle for cooperation between undertakings carrying on business on the territory of the Member States;

Whereas, since the object of the grouping is to promote cooperation between its members, their involvement must of necessity be on a basis of equal rights;

Whereas, to enable the grouping to accomplish effectively the tasks set for it by the law and

by the contract, it should be endowed legal capacity;

Whereas, as a counterbalance the fact that whilst no capital is required, the grouping nonetheless has legal capacity, third parties should be protected by ensuring that liability on the part of its members is personal and joint and several, and that the affairs of the grouping are subject to disclosure;

Whereas the grouping must be able to have its own financial resources, to be contributed in the normal way by the members in cash or otherwise; whereas it should under no circumstances issue debentures or invite investment by the public;

Whereas the contract forming the grouping is one which is very much personal to the members and their rights should therefore not be transferable without the agreement of members in general meeting;

Whereas since the rules governing the liabilities of the grouping are strict, rules should be laid down to govern the consequences of a member entering or leaving the grouping;

Whereas the various matters which may result in the nullity of the contract may also affect the grouping and therefore, for the protection of third parties, it should not be possible to rely on such matters against them;

Whereas, in view of the limitations imposed on its objects, the grouping should not in principle make profits; whereas, however, the possibility cannot be excluded that profits may arise in certain cases; whereas, since the grouping does not constitute an economic entity from its members, any profits arising should be taxed only in the hands of the members;

Has adopted this Regulation:

Article 1

1. European cooperation groupings may be formed by contract for a fixed term, upon and

subject to the terms and conditions and in the manner and with the effects laid down by this Regulation.

2. Where in respect of any matter no provision is made by this Regulation, the law applicable thereto shall be the law in force in the State where is situated the head office as specified by the contract forming the grouping.

3. A grouping shall from the date of its registration as provided by Article 4, (2) of this Regulation have the capacity to enjoy and be bound by rights and obligations, to make contracts or accomplish other legal acts, and to sue and to be sued.

Article 2

1. The purpose of groupings shall be to facilitate or develop the business of their members and to improve or increase the results of such business. Groupings shall not seek to make profits for themselves.

The object of a grouping shall be defined in the contract forming the grouping and must conform to the requirements of paragraph (2) below.

2. The activities of a grouping shall be limited to:

(i) the provision of services exclusively to its members;

(ii) the processing of goods, or the packaging of finished products, exclusively for the purposes of its members;

3. A grouping may not exercise management functions in respect of the business of its members.

4. A grouping may not have more than 250 employees.

Article 3

1. A grouping shall consist of at least:

(a) two companies or firms, within the meaning of Article 58 of the Treaty establishing the European Economic Community, established under the laws of different Member States;

(b) two natural persons each of whom operates an industrial, commercial, small craft or agricultural undertaking and whose respective business are carried on principally in different Member States;

(c) a natural person carrying on one of the activities specified in subparagraph (b) above and a company or firm established under the law of another Member State.

2. Every member of a grouping must be resident in a Member State for tax purposes.

Article 4

1. The contract forming a grouping shall designate the head office thereof, which must be situated within the Community.

The contract shall furthermore contain at least the following:

(a) the name of the grouping;

(b) the object for which the grouping is formed;

(c) the names, and business names, if any, legal form, permanent address or registered office, and where appropriate the number and place of registration, of each member of the grouping;

(d) the term for which the grouping is formed.

2. The grouping shall be entered in a register designated for that purpose by the Member State where the head office is situated. The contract shall be filed at the time of registra-

tion; any subsequent amendments shall be filed also.

The matters referred to in paragraph (1) above shall be published in accordance with formalities to be adopted pursuant to Article 19 of this Regulation and any change in such matters shall be published in like manner. The same shall apply in respect of the names and addresses of the persons referred to in Article 7 (1) of this Regulation and, where appropriate, the indication that they must act jointly.

3. Failing completion of the formalities of registration and publication required by this Regulation the matters which should be published may not be relied upon against third parties, who may however themselves rely on such matters.

Article 5

1. A judicial decision shall be necessary for the contract forming a grouping to be declared void;

2. Such a decision may be relied upon against third parties only with effect from the date of publication of the judgement in the official journal referred to in Article 19 (1) of this Regulation, unless it can be proved that the third parties knew at time when they entered into contractual relations with the grouping that the contract forming the grouping was void.

Article 6

1. Subject to paragraphs 2 to 5 below and to Article 7 of this Regulation, the organs and the internal regulations of a grouping shall be determined by the contract.

2. The widest powers to pass any resolution or execute or do any act or thing for the purpose of achieving the object of the grouping

shall be vested in the members of the grouping in general meeting.

3. Resolutions shall be passed in accordance with the provisions of the contract or of this Regulation.

Unless otherwise provided by the contract, resolutions of the general meeting to amend the contract, for the winding up of the grouping before the expiry of the contractual term or for the extension of the term of the grouping shall be taken unanimously.

4. Each member shall have at least one vote. The contract may however give more than one vote to certain members.

5. A general meeting shall be convened at the request of a manager of the grouping or of at least one quarter in number of the members of the grouping.

Article 7

1. A grouping shall be managed by one or more natural persons appointed by the contract or by the general meeting.

2. The acts of a manager shall be binding on the grouping as against third parties even where they do not fall within the objects of the grouping. The contract may however provide that the grouping may be validly bound only by two or more managers acting jointly. Any other limitation on their powers, whether under the contract or a decision of the general meeting, may not be relied upon against third parties, even if it is published.

3. The name and address, or names and addresses, of the person or persons referred to above, and where appropriate an indication that they must act jointly, shall be published in accordance with the rules on publicity contained in Article 4 of this Regulation.

Article 8

1. The contract may require the members to make contributions in cash, in kind or by way of services. It may also lay down the terms and conditions on which the members are to make contributions, where necessary, to meet any excess of expenditure over revenue. If no such provision is made by the contract, such terms and conditions shall be laid down by the general meeting, failing which such contribution shall be made in equal shares.

2. Any assignment of a member's rights shall be subject to authorization by the general meeting. Unless otherwise expressly provided by the contract, such decision shall be taken unanimously by the members of the grouping and shall be published in accordance with the rules on publicity contained in Article 4 of this Regulation.

3. A grouping may not issue debentures or invite investment by the public.

Article 9

1. The members of a grouping shall be jointly and severally liable out of their own property for the debts thereof.

2. Creditors of the grouping may not proceed for repayment against an individual member unless they have first made a written demand for payment from the grouping and failed to obtain satisfaction.

3. If a member is proceeded against in respect of debt of the grouping he may rely on any defence which would be available to the grouping itself.

Article 10

On letters and orders issued by a grouping there shall be indicated legibly :

(i) the name of the grouping, followed by the words 'European cooperation grouping';

(ii) the number under which the grouping is registered as provided by Article 4 (2) of this Regulation and the name of the register in which it is entered;

(iii) the place where the grouping has its head office.

If the grouping is in liquidation, this fact shall also be indicated.

Article 11

1. Unless otherwise expressly provided by the contract, a unanimous resolution of the members of the grouping in general meeting shall be required for the admission of new members.

2. Every new member shall be responsible, in accordance with Article 9, for the debts of the grouping, including those incurred prior to his admission.

Article 12

1. The contract may provide for members to be able to withdraw by resigning. If it does so, it shall lay down precisely the terms and conditions on which resignation may take place, failing which the clause providing for resignation shall be void.

2. The members of the grouping in general meeting may expel any member who is regularly in breach of his obligations, or whose conduct disturbs the smooth running of the grouping. The decision shall be taken in accordance with the relevant provisions of the contract or, failing those, by the other members of the grouping unanimously.

3. If a member resigns or is expelled, the grouping shall continue to exist amongst the remaining members on the terms and condi-

tions contained in the contract or laid down by the general meeting.

Article 13

1. A grouping shall be wound up:

(a) upon the attainment or the extinction of its object;

(b) upon the expiry of its term;

(c) by a resolution passed by the members in accordance with Article 6 (3) of this Regulation;

(d) if the number of members falls below two.

2. A grouping which has come to consist exclusively of members subject to the law of one Member State shall be wound up, unless within six months it once more satisfies the requirements of Article 3 (1).

3. Unless otherwise provided by the contract, a grouping shall also be wound up:

(a) if one of its members being a natural person is declared bankrupt or being a company goes into liquidation by reason of insolvency;

(b) upon any other judicial or administrative measure being taken as the consequence of insolvency or suspension of payment of debts by one of its members;

(c) upon the death or incapacity of one of its members being a natural person or upon the winding up of one of its members being a company;

(d) upon the abandonment by one of its members of his or its business as mentioned in Article 3 (1) (b) or (c) or of his or its residence within the Community for tax purposes.

4. If the contract provides in any of the cases referred to in paragraph 3 above that the grouping is to continue in existence, the mem-

ber concerned shall cease to be a member of the grouping. The latter shall continue to exist amongst the remaining members on the terms and conditions contained in the contract or laid down by the general meeting.

Article 14

1. Where the object of a grouping as defined by the contract, or the business of a grouping, does not conform to the provisions of Article 2 of this Regulation, the court shall on application by any person who proves a legitimate interest order the winding-up of the grouping.

2. On application by a member, the court may order the winding-up of a grouping if it is just and equitable to do so.

Article 15

1. If one of the members of a grouping ceases to be a member thereof, a valuation shall be made of the assets of the grouping in order to determine the value of claims by or on that member. Unless the contract expressly provides otherwise, this valuation shall be carried out by the manager or managers, who shall be responsible for settling the position of the outgoing member.

2. A member who ceases to be a member of a grouping shall for a period of five years from the date of publication of such cessation in accordance with the rules on publicity contained in Article 4 of this Regulation remain responsible, in accordance with Article 9, for debts of the grouping having arisen prior to such publication.

3. The provisions of paragraph 1 shall not apply in the case of an assignment of the rights of a member in accordance with Article 8 (2) of this Regulation.

Article 16

1. Upon the winding-up of a grouping being resolved or ordered its liquidation shall be commenced. Unless otherwise expressly provided by the contract or resolved by the general meeting, liquidation shall be carried out by the manager or managers for the time being in office. Where winding up is ordered by the court pursuant to Article 14, or on an application, stating the reasons on which it is based, by one of the members, a liquidator or liquidators may be appointed by the court.

2. The grouping shall retain its capacity within the meaning of Article 1 (3) of this Regulation so far as is necessary for the purposes of the liquidation. A grouping in liquidation shall be represented by its liquidators.

3. The fact that a grouping is being wound up, together with the name or names of the liquidator or liquidators, shall be registered and published in accordance with Article 4 of this Regulation.

Article 17

1. The liquidators shall complete current transactions, recover the debts, and realize the assets to such extent as may be necessary for the purpose of meeting liabilities and of any distribution of assets among the members. Any balance of assets remaining after the debts have been paid shall be distributed amongst the members of the grouping in accordance with the provisions of the contract. In the absence of such provisions, such distribution shall be in equal shares.

2. The liquidators shall place on deposit or otherwise secure any sums of money, or other property, due to any creditor to whom they are unable to make payment or to any member to whom they are unable to distribute.

3. If any legal proceedings are commenced in connection with the distribution of the

assets, the liquidators shall, as regards the sums in question, suspend the distribution until a judgment or other pronouncement is given or made by the court having jurisdiction.

4. The liquidators shall register and publish the completion of the liquidation in accordance with the provisions of Article 4 of this Regulation.

Article 18

1. Rights of action against a grouping, or by a grouping against one of its members in connection with the performance of the contract forming the grouping, shall be barred five years after the publication of the completion of the liquidation of the grouping.

2. This period of limitation shall run from the date of publication of the completion of the liquidation as provided by Article 17 (4) of this Regulation.

Article 19

1. Member States shall take all necessary steps to ensure that the rules of this Regulation on publicity are applied.

They shall ensure that the matters referred to in Article 4 (1), and any changes in such matters, and in addition any other matters which this Regulation requires to be publicized, are published in the official journal for the publication of matters relating to companies in the State in which the grouping has its head office. They shall also ensure that all persons have access to the register designated under Article 4 (2) of this Regulation and to the documents filed therein.

2. Member States shall take appropriate steps to penalize:

(a) the unlawful use of the description 'European Cooperation Grouping' or of any other

expression likely to give rise to confusion therewith, by any grouping which is not constituted in accordance with the provisions of this Regulation.

(b) any offence against Article 10.

Article 20

Any profits made by a grouping shall only be taxable in the hands of its members.¹

¹ The text of this Proposal for a Regulation has been published in the Official Journal of the European Communities : OJ C 14, 15.2.1974.

Explanatory Memorandum

Introduction

The European Cooperation Grouping is a new legal instrument, primarily a creature of Community law, which is intended to enable cooperation to take place between undertakings established under the law of different Member States.

The Commission, in its Memorandum on 'Industrial Policy in the Community'¹ of 1970 observed that the present disparities between national laws on companies constitute a barrier to this type of cooperation, particularly where the parties involved are small or medium-sized undertakings. No doubt such undertakings could, like those of larger proportions, use the traditional company law methods of establishing such connections between themselves as they thought desirable: the taking of shares, contact between managements, contracts of all kinds, mergers. But these methods always necessarily take place under a national legal system, particularly since there are no international rules governing company mergers.

Recourse to a particular legal system is not always regarded as desirable in business circles, where ignorance of the laws of other Member States can give rise to apprehensions of which neither the reality nor the psychological importance can be doubted.

An instrument such as a grouping, with simple rules for its formation and operation which are for the most part outside the national legal systems, could eliminate these barriers and bring about more favourable conditions for cross-frontier contacts between undertakings. In this way a further step would be taken towards the creation of a true 'internal market', one of the objectives of the Community as set forth by Articles 2 and 3 of the Treaty.

Article 1

1. Paragraph 1

Paragraph 1 places groupings under Community law. As is explained by the commentary on

paragraph 2 the references which have to be made to the contract forming a grouping, or to the subsidiary law, are not inconsistent with this principle.

The contract forming the grouping must be concluded for a specified term. The reason for this requirement is that the grouping will either be an association for the achievement of one specific end (for example, the representation of its members as one unit for the purpose of tendering for a public works contract), in which case it is perfectly understood at what point the term will expire, or it will be a form of coming together on a trial basis, in which case the parties will only wish to commit themselves for a specified period. Even if it appears that the form of cooperation envisaged could be prolonged indefinitely, it is nonetheless useful to require the founders to set a term thereon, on the expiry of which they will in any case be perfectly free to continue the experiment by a resolution in general meeting (Article 6 (3)).

2. Paragraph 2

Subsidiary law

2.1. The hierarchy of legal rules applicable to groupings is as follows:

- (a) the Regulation itself, in its mandatory provisions (e.g. Article 4 (1), Article 9 (1));
- (b) where the Regulation makes express reference thereto, the constitutive contract (e.g. Article 8 (1));
- (c) the supplementary provisions of the Regulation in cases where the contract, though referred to for certain matters by the Regulation, makes no provision therefor (e.g. the second sentence of Article 8 (2), Article 13 (3));
- (d) the law applicable at the place where the grouping has its head office (Article 4 (1)).

¹ Commission: Industrial Policy of the Community — 1970 — 385 pages.

2.2. This hierarchy reflects the notion of what the grouping is.

The mandatory provisions of the Regulation are as limited as possible. A very small number of them relate to the structure of the grouping (Article 5 (2), Article 7 (1) and its composition (Article 3)); the others are prompted by concern for the protection, both of third parties (publicity (Article 4, Article 10), liability of the members (Article 13)) and of the members of the grouping at certain junctures in its existence (winding up (Article 13), liquidation (Article 17)). For the rest, the Regulation frequently leaves problems to be settled by the contract or the general meeting in accordance with the wishes and the convenience of the parties.

Thus, subject to sovereign power being vested in the members in general meeting (Article 6 (2)), and to the compulsory appointment of one or more managers (Article 7 (1)), the contract or the general meeting may create other organs and determine the rules of procedure of the grouping (Article 6 (1)), may give weighted votes to various members (Article 6 (4)), and may regulate the financial affairs of the grouping (Article 8 (1)), the procedure for admitting new members (Article 11 (1)), etc. The grouping can therefore be seen to be of a very flexible nature; its founders can give it the structure which is most suited to their objectives, and during the life of the grouping can modify it when necessary to adapt to new situations.

The Regulation contains the necessary supplementary provisions for cases for which the contract makes no provision or the general meeting omits to take a certain measure.

Finally, any problem which is not dealt with by any of the rules above mentioned must be dealt with by the law in force at the place where the grouping has its head office.

2.3. The reference to a subsidiary law is prompted by the Commission's desire to create an instrument which is simple and flexible but

at the same time guarantees the protection of third parties.

It should be noted at this point that reference to the subsidiary law should not need to be made very often. For whilst questions concerning the structure of the grouping are governed by the Regulation, the contract or the general meeting; those concerning relations with third parties are governed by the Regulation.

There remain the legal problems concerning the transaction of the grouping's business: the conclusion of contracts, possible litigation etc.; and the more general problems which may arise from time to time during the existence of any kind of legal person: capacity of contracting party, matters of public policy. In this connection the position of the grouping is the same as that of any other legal person and does not call for any particular comment.

2.4. However, reference to the 'law of the head office of the grouping' does not solve the question of which branch of the law should be applied.

The answer to this question will depend on the dispute which is the subject of the reference; where it concerns the performance of a contract or the settlement of a case of non-contractual liability incurred by the grouping, no particular difficulties arise. If the dispute relates to the structure of the grouping or the relations of the grouping with its members or with third parties, it should be settled by applying the Regulation on the contract or, if these fail, the judge should be guided by the rules of national law which govern institutions similar to the grouping.

Hence in France, where there exists the 'groupe-ment d'intérêt économique' with a similar structure, the judge will be able to be guided by judicial decisions concerning that kind of 'groupement'; in Belgium, the law on 'associations momentanées' and in Italy the judicial decisions on 'consorzi' which may provide solutions which could be adapted to the grouping.

Another solution would be to draw up original rules, in keeping with the spirit of the new

institution as it emerges from an analysis of the Regulation.

Paragraph 2 of Article 1 does not set out expressly the hierarchy of rules given in point 2.1. above. In particular, the contract is not mentioned: this omission is made advisedly. If the contract were mentioned this would seem to give it the same legal importance as the Regulation itself; moreover the text could then be interpreted as allowing the contract to make derogations not only from the mandatory provisions of the national law applicable at the place where the grouping has its head office but also from the provisions of the Regulations itself, which is not the case. In particular, the provisions of national law relating to the creation of workers representative bodies in the business establishment must be applied.

In any case it is not strictly necessary that the contract be mentioned, since the Regulation itself makes references to it at several points and in so doing implicitly but undeniably includes it in the hierarchy of rules.

3. Paragraph 3

Legal capacity

The grouping must be able to take a normal part in the business life of the Community. It is therefore essential that it should have the attributes of a legal person.

3.1. This is the significance of paragraph 3. It deliberately refrains from using the expression 'legal personality' as this expression does not have the same meaning in all the Member States. Thus the 'Offene Handelsgesellschaft' under German law (which is comparable to the 'société commerciale en nom collectif' under French law) does not have 'legal personality' within the meaning that French law gives to that expression; it does however, have certain attributes of legal personality, particularly those that go to make up 'legal capacity' (Article 124 of the German Commercial

Code). The 'société civile' under Belgian law does not have legal personality, whilst the 'société civile' under French law does have it, by virtue of a series of consistent judicial decisions; the 'vennootschap onder firma' under Dutch law does not have legal personality either but only certain attributes thereof; there are other divergences between the other national laws.

Important differences also exist between the laws of the Member States as regards the legal consequences of having or not having legal personality: thus in Germany, for example, one consequence of legal personality is that the legal person concerned must be subject to the tax rules of the general law on firms and companies, whilst the Regulation provides for the grouping to be subject to particular rules on tax.

By avoiding the use of the expression 'legal personality', the Regulation cuts through all doctrinal controversies as to the meaning and consequences thereof, and prevents the differences in legal rules which could arise therefrom.

3.2. The proposed definition of capacity is taken from the second sentence of Article 7 of the Convention on the Mutual Recognition of Companies and Legal Persons,¹ signed at Brussels on 29 February 1968 and already ratified by several Member States. With the aim of avoiding the same difficulties as are mentioned above, the Convention does not make the effects of recognition depend on the criterion of legal personality, but on that of a minimum of legal capacity which, it defines.

Article 2

1. Paragraph 1

Purpose of the grouping

1.1. Unlike a company, the grouping does not constitute an economic entity separate and

¹ Supplement to Bulletin EC 2/69.

independent from its members, operating autonomously and seeking to make profits only part of which would be distributed, the rest being retained for its own purposes in the form of reserves, provision for depreciation etc.

The grouping does not seek to make profits for itself; it is simply a vehicle for the business of its members. It is created to enable them, by means of the temporary pooling of certain resources, to develop their own business and, if this result is achieved, to increase their own profits.

Each member retains complete economic independence: in this way the grouping also differs from a group, in which one company is in a position to give orders to other companies, which may even be contrary to the interests of the shareholders of companies; for the same reasons also, the company is different from a subsidiary (whether wholly or partly owned).

The grouping is different from any kind of merger since not merely does each member keep its own legal personality but indeed, that is a *sine qua non* for the existence of the grouping.

The grouping is therefore a legal structure which is an auxiliary to its members; its activities are aimed at making profits for them and at no moment does it stand in their place, neither can it assume such importance that the activities of the members are taken over by it or made dependent on it. If this were so then the grouping would be operating like a firm or company; its legal form would be merely a camouflage and by going outside the limits set on its objects by Article 2 it would be laying itself open to be treated as a firm or company.

These points are further dealt with by the commentaries on point (2) below.

1.2. The prohibition in principle on the grouping seeking to make profits for itself entails a number of practical consequences.

The services rendered by the grouping to its members must be invoiced to them at cost price: tax administrations within whose juris-

diction these groupings are operating, must use all means at their disposal to ensure that this rule is complied with. The funds necessary for the grouping's activities must be made available to it by its members, by whatever method is most suitable in each case: for example advances paid into a current account at the bank, or in cash.

Should a profit nevertheless appear in the accounts of the grouping, it would be subject to the rules laid down by Article 20 of this Regulation (see text and commentaries thereon).

2. Paragraph 2

Permitted activities of the grouping

The purpose of the grouping is to be an organ for the promotion of the interests of its members. But the purpose should be made clearer by specifying as precisely as possible the types of activity that the grouping may undertake to achieve its purpose.

2.1. Firstly, such activities may consist (first indent) of the provision of services exclusively for its members. By way of example, the following activities:

(i) common buying office: the grouping assembles the various orders of its members for the same product, or for similar products, and on the strength of the combined orders seeks to obtain better prices from suppliers;

common sales office: manufacturers of a certain product or of similar products come together to study their market and possibly create a common trade mark under which the grouping undertakes to market their products, launching a publicity campaign and seeking buyers on behalf of the members; it collects the orders and apportions them among the members according to a formula determined by them;

(ii) provision of specialized services: the members, wishing to make economies in certain areas of activity which are indispensable to

each of them, entrust the grouping with the carrying out of these activities on their behalf: in this way the grouping could pay the wages of the members' employees, or instal and operate a mechanized accounting system;

(iii) representation of the members for the purposes of individual transactions: the members, interested in a contract which is of too great a size for any one of them individually to be able to handle it, from a grouping to compete for the contract on their behalf and, if the contract is awarded to them, to apportion the various tasks and coordinate and supervise the carrying out of such tasks.

(iv) coordination of certain technical activities of the members: the members decide to entrust to the grouping the coordination of their research effort on a new product or the prototype of a machine etc . . .

This list does not purport to be exhaustive.

In the cases mentioned above, all the activities of the grouping derive from and have their object in the activities of the members, in the same way that all the results find their way back to the members.

The particular feature of the grouping's activities is that its members are the exclusive recipients of its services: this is a logical restriction having regard to the purpose of the grouping, for if it were to provide services to third parties for consideration, it would have to be treated as a commercial firm or company.

2.2. The grouping may also (second indent) purchase and process goods, provided that this is done exclusively for the account of its members. This type of activity does not however make the grouping a firm or company, since the goods are not to be resold to make profit but can only be transferred to the members at cost price.

Generally speaking, the situation will be as follows: several undertakings producing the same or similar goods (for example cheeses) each carry out for the purposes of their own production certain operations identical to those

carried out by the others (for example, the purchase and seasoning of wood, cutting into strips); this identity of operations ceases at a certain stage in the process (manufacture of boxes and labelling, since cheeses have various trade marks and other peculiarities). Instead of each carrying out these operations for their respective accounts they have them carried out in common by a grouping, with the attendant advantages from the commercial point of view.

To take a second example, the grouping could, again exclusively on behalf of its members, carry out packaging operations, which presupposes finished products, and in most cases would involve preparing the products in question for the market; they could for example be the packing of reading lamps or the placing of vegetables in plastic containers to be placed on sale in large stores etc.

3. Paragraph 3

One of the fundamental characteristics of the grouping is that since it is created by a contract where the personal commitment of the signatories is a decisive factor, it brings them together on an equal footing. Each one joins freely and with full knowledge of the obligations involved; as provided by Article 6 (2), the sovereign decision-making body is the general meeting of the members, in which the most important decisions can only be taken unanimously. Alongside these formal characteristics, which make it a vehicle for cooperation and coordination of its members' business, there are the limitations on the nature of the activities that may be undertaken by the grouping, with the result that the grouping must always be at the service of, and dependent on, its members.

However, to prevent the economic autonomy of the members from being weakened by an abuse of the coordinative function, it is expressly forbidden for the grouping to give orders to its members.

Thus the text shows clearly the areas of its members' business in which the grouping may

involve itself and the methods that it may use; it is free to advise its members, in the same way as they are free to coordinate within the grouping that part of their businesses or the particular function that they have decided to pool.

Article 3

Since the grouping is intended to enable cooperation to take place between undertakings across national frontiers, its founders and members must satisfy a certain number of requirements.

1. They must be at least two in number: A cooperation grouping founded by one person only would be a contradiction in terms. Similarly, if during the existence of the grouping the number of members, by reason of resignations, death or otherwise, falls below two, the grouping must automatically be wound up (Article 13, 1(d)).

2. The founders must be either natural persons carrying on a business, or firms or companies.

2.1. Natural persons should be admitted because in the present economic circumstances of the Community a large number of undertakings belong to individual proprietors and their general rôle is still very important (although it varies from one Member State to another).

Moreover it is to precisely this type of undertaking that a vehicle such as the grouping could prove to be of particular interest.

2.2. The types of firms and companies which may form a grouping are defined by reference to the second paragraph of Article 58 of the Treaty establishing the EEC, which includes not only companies under civil or commercial law, but also cooperative societies and other bodies under public and private law. Under Article 58 the only kinds of firm or company

excluded are those which do not operate with a view to profit (such as, in France, 'associations' under the law of 1901, in the Netherlands 'fondaties', and in Italy 'fondazioni'). It should be pointed out in this connection that 'operating with a view to profit' does not necessarily mean the same thing as actually making and distributing profits.

2.3. Firms and companies, thus defined, can be presumed to be carrying on a business; in the case of members of the grouping who are natural persons, on the other hand, it must be provided expressly that they must satisfy this requirement and, moreover, satisfy it prior to the formation of the grouping. Accordingly subparagraph (b) states: 'each of whom operates an industrial, commercial, small craft or agricultural undertaking'.

The expression 'undertaking' is freely employed in the Treaty, albeit not therein defined; its use can therefore be justified in this Regulation.

Requests for its interpretation can always be made to the Court of Justice of the European Communities.

2.4. The two undertakings necessary for the formation of a grouping, whether persons, firms or companies or any combination thereof, must be subject to the laws of different Member States, if they are firms or companies, or must carry on their business on the territories of different Member States, if they are natural persons. This requirement is the expression in legal terms of the idea that the grouping must be 'European'.

3. Paragraph 2 contains the last substantive requirement that must be satisfied by all the members of the grouping: They must be resident within the Community for tax purposes.

Article 4

1. Paragraph 1

1.1. Listed in paragraph 1 are the compulsory minimum contents for all contracts for-

ming groupings; these minimum contents, which must subsequently be published pursuant to the second subparagraph of paragraph 2, enable third parties wishing to do business with the grouping to obtain sufficient information to carry out their transactions on a sound footing.

1.2. The 'object' referred to under item (b) is the particular object of the grouping which has been formed, its contractual object. There is thus a difference between this definite and particular object and the 'purpose' of the institution as defined in Article 2 (1); but the object must in all cases fall within the limits of this legal 'purpose'. Accordingly a grouping may have as its object the rationalization of stock control among its members; this object will be stated in the contract; it fits into the framework set out by Article 2.

The grouping must be required to define its own object, to permit too loose a definition, taken in general terms from the wording of Article 2 would render more difficult the review of the grouping's activities provided for by Article 14 (2) of the Regulation.

Moreover the object, thus specifically defined, forms the actual basis of the grouping and the justification for its existence and activities.

1.3. For the protection of third parties, the identities of the persons empowered to bind the grouping should be easily ascertainable; if the powers of these persons are limited, in the only way authorised by the Regulation (see Article 7 (2)), then this fact also should be brought to the knowledge of third parties.

2. Paragraph 2

Machinery for publicity

One of the founders, duly authorized, must attend the authority designated in each Member State by law or by the Regulation to keep the register of European groupings, in order to complete the registration formalities.

The authority in charge of registration must in all cases ensure that the contract contains the compulsory provisions set out in paragraph 1.

2.2. Registration is completed by the attribution to the grouping of a number, which, when subsequently published pursuant to Article 4 (2) and Article 10 of the Regulation, will enable it to be identified; simply by reading the number, which may, if the Member States think fit be accompanied by some other indication, third parties will be able easily to determine in which register the grouping is entered and to inspect such register to inform themselves on the contract in its entirety. The contract is filed at the time of registration and any subsequent amendments thereto are filed also.

The compulsory contents of the contract are then published in accordance with formalities to be adopted by the Member States pursuant to Article 19 of the Regulation.

It was not thought advisable to provide for the publication of the whole contract; it suffices that the information necessary for the protection of third parties should be brought to the knowledge of the public.

2.3. Default in publication of one of the compulsory items under paragraph 1 (or of any change therein) means that such items cannot be relied upon against third parties acting in good faith.

On the other hand a third party could defend himself against the grouping by deposing from his personal knowledge to a fact covered by paragraph 1, even though the fact in question has not received the required publicity.

Article 5

1. With regard to the nullity of groupings, the general rule is that the subsidiary law should be applicable. The judicial decision should take account inter alia of the place where the contract was signed and the nature and capacity of the persons involved.

However in the interests of protecting third parties, the text lays down certain uniform rules with regard to nullity.

2. Nullity does not supervene automatically; it must be declared by the court and this gives substantial protection not only to third parties but also to the grouping itself. A grouping declared void must be wound up. The court may make such provision as may be necessary in respect of the effects of nullity on third parties, save as regards the date from which nullity can be relied upon, as provided by Article 5 (2).

3. Third parties are divided into two categories as regards the effect of nullity on them:

(a) Third parties acting in good faith, who were ignorant of the nullity until the date of the judgment declaring it, are protected: for example, nullity cannot be relied on against them as a defence to an action for the nonperformance of a contractual obligation entered into before that date

(b) Third parties who, being aware of the nullity even before the publication of the judgment, nevertheless entered into contractual relations with the grouping: nullity can be relied on against them.

Article 6

1. The grouping owes its existence to the signing of a contract: Paragraph 1 of this Article leaves the founders of the grouping free to determine for themselves the number, the powers and the rules of procedure of its organs (subject however to certain mandatory provisions: see below).

Thus the members may create, apart from what is provided by Article 7, as many organs armed with such powers as they may think fit for the management of the grouping; they may give weighted voting powers according to such standards as appear appropriate to them (paragraph 4) or they may determine what

majorities shall be required for the passing of certain kinds of resolution (paragraph 3).

2. There are certain exceptions to this general principle: members may not derogate from the vesting of the supreme power of decision in the members in general meeting (paragraph 2): the persons who come together to form the grouping, and who chose its object and organised its structure, must be the ones who meet to take the important decisions arising in the course of its activities. An example of such decisions is afforded by the list in paragraph 3: one could add thereto some referred to elsewhere in the text, such as the admission or expulsion of members (Article 11), the assignment of members' rights (Article 8 (2)) on the exclusion of insolvent members (Article 12 (2)).

3. In principle, the general meeting, as the sovereign organ, may pass resolutions according to such rules as quorum and/or majority as it may deem appropriate.

However, this freedom of action may be restricted, either by the contract itself — the founders of the grouping may have lawfully laid down rules in advance for the passing of certain resolutions by the general meeting (e.g. for the admission of new members (Article 11 (1)) — or by the Regulation in cases where, the resolution involved being a particularly serious decision (e.g. the expulsion of a member (Article 12 (2)) and the contract making no provisions therefor, the text imposes a particular requirement (unanimity) in the common interest of protecting the members' commitments to each other as much as in the interests of each individual member. Unanimity is required, *inter alia*, for amendments to the contract, for the anticipatory winding-up of the grouping and for the extension of the term of the grouping.

In all cases for which neither the contract nor the Regulation makes special provision, the general meeting is free to adopt its own voting procedure.

4. The members of the grouping may give weighted voting rights in general meetings

according to such standards as they think fit: amounts contributed, seniority in the grouping, or may have equal rights amongst all of them. However each member, whatever the size of his stake in the grouping, must have at least one vote.

5. A manager, who may often be well placed to gauge the advisability of convening a general meeting of the members, or a quarter in number of the members, may demand that a meeting be convened, upon which a meeting must be convened accordingly.

Article 7

1. The manager is the second and last organ which the grouping is obliged to contain, whose appointment must be made by the contract or resolved upon by the general meeting.

His powers are also determined by the contract or by a resolution of the general meeting in such manner as the members shall deem most suitable. These decisions shall be binding the members in their legal relationships with each other, with all the consequences that this may entail, for example, in cases of non-contractual liability where there has been abuse of powers.

2. However, this definition of the powers of the manager or managers has no effect as regards third parties, against whom only one limitation of such powers can be relied upon; that which prohibits a manager from acting alone and requires him to procure the signature of one or more other managers (Article 7, 2). Even this restriction can only be relied upon if it has been brought to the knowledge of the public by publication pursuant to Article 4 of the Regulation.

Subject to this one exception, the acts of the managers are binding on the grouping, even if they do not fall within the object of the grouping. This solution was prompted by the need for the protection of third parties.

3. The text excludes the possibility of a legal person being appointed as a manager.

Article 8

1. The grouping differs from, *inter alia*, companies in that it does not have to be formed with a 'capital', in the sense of an amount expressed as a sum of money equalling the amounts subscribed in cash and in kind (at the time of formation) and representing the minimum safeguard for creditors. It may however have certain assets if the contract or the members in general meeting decide that each member, or a certain number of them only, should make a contribution to the grouping. In one of the usual ways (in cash, in kind or by way of services—services in this context include the making available of know-how, etc.).

If the contract or the general meeting do not provide for contributions to be made, then they must determine the manner in which the expenditure of the grouping is to be met; they are completely free to decide in what proportion and by what method each party is to bear its share: by transfer into a bank account, or by the provision of cash, for example.

If, exceptionally, this matter is dealt with neither by the contract nor by the general meeting or if, failing agreement between the members, the general meeting is unable to do so, the Regulation provides that contribution shall be made in equal shares.

2. Because of the personal nature of the contract forming the grouping, no member may assign his rights thereunder without approval being given by a unanimous resolution of the other members. If this were not so, then in whatever legal guise these rights might be represented and whatever the consequent means of assigning them the use of this facility could result either in the other members having a newcomer foisted on them, possibly against their wishes, or in one member accumulating shares in the grouping and thus disturbing the contractual balance desired by the members as a whole.

In view of its importance from the point of view of creditors, any such resolution must be brought to the notice of the public.

3. It is possible for the assets of a grouping to be very small; it is therefore inadvisable that it should issue securities to the public, that is to say, to persons other than the founders, the members and third parties who by virtue of their business contacts with the grouping are fully aware of its true situation.

For this reason groupings are forbidden to raise capital by the creation of debentures or other securities to be allotted amongst the public by one of the methods of public issue commonly used by commercial companies: the issue of a prospectus, advertising in specialized journals or in the national press and all other kinds of publicity.

This provision does not prevent the grouping from raising capital by means of bank borrowing or by issuing loan certificates or other varieties of paper to persons with whom it is in direct contact.

Article 9

1. It is not necessary that the grouping should be formed with a capital; the members may make contributions. These contributions may be entirely by way of services (technical know-how, patents, commercial or professional contacts, various services etc.). It may even happen that neither the contract nor the general meeting makes provision for contributions, judging that the grouping will be able to function either by means of regular subscriptions or by the provision of funds through current bank accounts; in the last case the assets of the grouping could be very small indeed. On the other hand, the grouping has legal capacity and its manager or managers may enter into commitments having financial implications which should be guaranteed.

Such is the object of Article 9 (1) which makes the members of the grouping jointly and severally liable for its debts.

2. This system works as follows: a creditor of the grouping seeking payment may after

having approached in vain the grouping itself address himself to any one of its members for payment of the debt in its entirety. The member concerned must pay the whole debt even if this involves depleting his own personal property (in the case of a member who is a natural person) or its own assets (in the case of a firm or company), and may afterwards claim contributions to the payment of the debt from the other members of the grouping in such proportions as are provided by the contract or by a resolution in general meeting or, failing these, in equal shares.

3. If the member from which payment is demanded is a company, it will be liable up to the amount of its issued capital; this means that as a last resort the creditor can petition for the company to be wound up, if no other means of settling the debt can be found.

4. The expression 'Written demand for payment' does not refer here to any specific civil or commercial legal procedure but the act whereby the creditor makes known to the debtor his desire to obtain payment of the debts: this may be done simply by letter.

5. A consequence of the rule of joint and several liability is that the member from whom payment of the grouping's debts is demanded may raise against the creditor the defences which would be available to the grouping itself: set-off, or possibly nullity of the contract.

Article 10

It is important that in its day to day business the grouping should be presented to third parties in such a way as to leave them in no doubt as to its legal nature.

For this reason the business papers of the grouping must bear, after its name, the words 'European cooperation grouping', followed by the registration number given to it when the formalities under Article 4 (2) were completed,

and an indication of the place where the register is kept. Third parties will thus be enabled to search the register to consult the contract forming the grouping.

It does not appear necessary for the protection of third parties to provide that any further information concerning the grouping should appear.

Article 11

1. The rule of joint and several liability of the members of the grouping and the personal nature of the founding contract make it necessary to take certain precautions regarding the admission of new members to the grouping.

The purpose of these precautions is either the protection of third parties or the protection of the members themselves; for this latter purpose, the system provided by the regulation is as follows: either

(i) the contract expressly lays down a procedure for admissions, in which case the members (who may, for example, have agreed that admissions should be resolved upon by a majority vote) accept in advance any risks inherent in the course they have chosen; and the contractual procedure is the one which is applied; or

(ii) the contract makes no provision on this subject and, in this case, an admission can only be authorized by a unanimous resolution of the members in general meeting.

2. The entry of a new member must not affect the joint and several liability of members, lest the safeguards for persons contracting with the company be weakened thereby; it is therefore provided that a new member must assume responsibility for the grouping's debts on the same footing as the other members, including debts incurred prior to his admission.

In any case, if the members of the grouping consider the latter rule to be too strict, they are at liberty, notwithstanding the provisions of Article 9, to temper the severity of the rule by

agreeing a contract with the newcomer containing special terms and conditions regarding his personal position in the grouping; it may be agreed, for example, that for purposes of the internal relations between the members, the rule under Article 11 (2) shall not apply to new members. Under Article 9, however, an agreement of this kind cannot be relied on against third parties.

3. Since it constitutes an amendment to the contract forming the grouping, which under Article 4 must be published, the admission of a new member must also be published (second subparagraph of Article 4 (2)).

Article 12

1. To render the functioning of the grouping as flexible as possible, the founders of the grouping may include provisions in the contract enabling members to resign.

The contract must also provide on what terms and conditions this right may be exercised. The right to resign must also be subject to substantial procedural safeguards, otherwise the stability of the grouping could be in grave danger.

2. Members may, in accordance with procedure laid down by the contract or adopted by them unanimously, expel one of their member if he 'regularly acts in breach of his obligations or if he disturbs the smooth functioning of the grouping'.

'Regularly acts in breach of his obligations' is a notion which it is fairly easy to conceive of and to apply. As regards the words 'disturbs the smooth functioning of the grouping' their interpretation is a matter for the competent court, which may award damages to any member wrongfully expelled.

If however the court confronted with this notion experiences difficulties in its interpretation, it is always possible for it to apply to the

Court of Justice of the European Communities for a Community interpretation.

3. It can properly be taken as a principle that where a member resigns or is expelled, the grouping should continue in existence for the remaining members: expulsion signifies the desire of the other members to continue their undertaking once it is again functioning under normal conditions; no more in a case of resignation is it the activity of the grouping as a whole that is involved, but rather the desire of one member to free himself of the obligations undertaken by him (subject to the provision of this Regulation, and particularly of Article 15 thereof, concerning claims by and on members who resign).

Article 13

1. A winding-up on one of the grounds listed in Article 13 takes effect automatically without the need for recourse to an administrative or judicial authority (except, of course, where it is challenged by an interested third party or member of the grouping).

The effects of winding-up are described in Article 16 above.

2. The grounds for winding-up contained in paragraph (1) (a), (b), (c) and (d) do not require special comments.

It seemed justifiable to provide in subparagraph (e) for automatic winding-up where the number of members of the grouping falls below two: a grouping operating according to principles based on cooperation and reduced to one person would be a contradiction in terms.

3. Paragraph 2 provides for winding-up also in cases of failure to satisfy fundamental requirements for the foundation of a grouping, as listed in Article 3 of the Regulation, is not satisfied, namely:

(i) where the grouping is made up exclusively of companies, two of them, at least, must be subject to the laws of different Member States.

(ii) where the grouping is made up exclusively of natural persons, two of them, at least, must carry out their main industrial, commercial, small craft or agricultural activities in different Member States.

(iii) where the grouping is made up of a company and a natural person, the latter must not have his principal place of business in the Member State to which the company belongs or vice versa.

In other words, at least one of the members of the grouping, whether a natural person or a company, should be of foreign origin with regard to the other or others, according to the rules of the category to which he belongs (nationality for companies; principal place of business for natural persons); a grouping which failed to satisfy this minimum requirement would no longer deserve to be called European and it would not, therefore be proper for it to enjoy the status provided for in this Regulation.

However, it has been provided that, in the interests of flexibility and to prevent the winding-up of a grouping when the foreign origin requirement is, accidentally, not being satisfied, members have six months in which to regularize the situation of the grouping in this respect.

4. There is a fundamental difference between the reasons for winding-up listed in Article 13 (1) and (2) and these in Article 13 (3).

Indeed, the first refer to the situation where the grouping, which was legally formed in the first place, no longer satisfies one of the requirements for its formation as listed in Article 3: foreign origin, more than one member; or else, applying the general contractual law of Member States, the contract is no longer effective.

Through lack of substance or because its term has ended, for example. In these cases, since it is a question of the formal regularity of the grouping, winding-up is automatic and the

parties have no remedy nor will the judge intervene excepts in cases of dispute.

The cases referred to in paragraph 3 are quite different; it is no longer a question of complying with the terms of the contract forming the grouping, but of protecting its own members by providing for winding-up upon the happening of any event sufficiently grave to upset the balance established at the time of signing the contract. These cases include the bankruptcy of a member, the winding-up of a company which is a member of the grouping, etc...

However, since it is the protection of the members which is involved, it seemed reasonable to enable them to renounce such protection by providing in the contract at the time of its signature that the happening of one of the events listed in paragraph 3 should not entail the winding-up of the grouping. The contract should also lay down the terms and conditions on which the grouping should continue; if not, it will be for the general meeting to determine these. In any case, the member involved in the event in question must cease to be a member of the grouping.

Article 14

While Article 13 listed the cases in which the grouping is automatically wound up, Article 14 lists these in which a judicial decision is necessary.

1. The grouping may be wound up where its object, as defined by the contract, or its business does not conform to the provisions of Article 2 of the Regulation.

The aim of this paragraph is to ensure that groupings are not used illegally by undertakings, as in the carrying out of activities which would normally be performed by companies or non-profit making organizations.

The winding-up may be applied for by any person who can prove a legitimate interest, in conformity with the general law in Member States.

2. On the other hand, a member of the grouping may apply to the court for a winding-up order, if there are just and equitable grounds. The concept of 'just and equitable grounds' exists in the legal systems of most Member States.

Article 15

1. A member who ceases to belong to a grouping as a result of his resignation (Article 12 (1)) diassociates himself from the future activities of the grouping. It is fair, therefore, that at the time of resigning there should be an assessment of his rights or obligations for a settlement of his position. The grouping's financial situation should be evaluated and the member stepping down may either have to hand over a certain amount of money or fulfil certain obligations, or, on the contrary, benefit from certain advantages. Thus, he will not be indebted to the grouping, except, however, that with regard to third parties he remains responsible for debts of the grouping, as provided in Article 15 (2).

2. It is normal to proceed in this manner in the case of expulsion (Article 12 (2)) except that here it is not the interests of the member stepping down which are being protected but more of the members wishing to have him removed.

3. It is different in the case of assignment of rights (Article 8 (2)) which is similar to the acceptance of responsibility by a third party for all the rights and obligations of an outgoing member; the latter must be compensated, if such be the case, not by the grouping, but by his assignee. The rules as to compensation are to be agreed upon between buyer and seller, except where decided otherwise by the general meeting which under Article 8 (2), is obliged to involve itself in all cases of assignment.

4. If the contract does not provide procedure for assessing the value of the grouping's assets in these circumstances, such assessment shall be

made by the manager who shall also settle the position of the outgoing member. When this has been completed the member is in the position of a third party with regard to the grouping, except in so far as he is responsible for debts of the grouping incurred prior to his withdrawal (Article 15 (2)).

Since the purpose of the last provision is to protect third parties it should apply especially to the assignment of a member's rights, just as it applies to other forms of withdrawal (resignation or expulsion): indeed, as regards third parties, the withdrawal of a member for whatever reason, may mean that a solvent debtor is replaced by less reliable debtor, or even that a debtor purely and simply disappears.

Article 16

1. When the grouping is to be wound up it must go into liquidation. Unless the contract makes provision for liquidation or the general meeting passes a resolution, the manager for the time being in office shall become the liquidator in accordance with Article 17.

Any member of the grouping, however, who disapproves of the manager may apply to the Court to appoint another manager; if the winding-up is the result of a judicial decision, the Court itself may appoint a liquidator.

2. The fact of the winding-up is published so that third parties will be informed of this important event in the life of the grouping.

Article 17

1. It is the duty of the liquidators to carry out a number of obligatory acts. These acts are listed in Article 17 and are included for the protection of third party interests.

2. If such be the case liquidation shall be carried out in accordance with the subsidiary law applicable to the grouping (particularly if

it follows a declaration of insolvency by a competent Court).

Article 18

1. In order to ensure that the grouping and its members enjoy the maximum security compatible with the rights of third parties, and in conformity with the general principles common to the law of obligations in all Member States, the Regulation makes provision with respect to any rights of action which may arise from the grouping's activities. These measures are ordered five years after the publication of the closure of the grouping.

2. In this category should be included actions capable of being brought either by creditors, or by third parties who, through force of circumstances, find that they have an action against the grouping (for example a member's heirs), or finally by members themselves (for example, where a member, who has been expelled, contests the settlement of his position carried out under Article 15 (1) of the Regulation). As a protective measure, types of action are not defined nor is there any indication of what may or ought to be the subject of such actions.

3. Actions capable of being brought by the grouping against one of its members are these which might, for example, arise out of the non-performance by a member of the obligations which he took upon himself when signing the contract.

4. In accordance with the general law the period of five years does not apply where the action has been brought before the period has run out.

Article 19

Paragraph 1 is essential for ensuring the security of third parties.

There are grounds for penalizing misuse of description or insufficiency of publicity by

members of the grouping who aim to delude the public as to the nature of the legal entity concerned.

The 'appropriate steps' may be either civil or criminal according to what is most suitable in each Member State.

Article 20

It does not seem necessary to provide special rules for the grouping as regards tax law. Moreover, it should be noted that the taxation of profits ought not to raise any problems since the grouping as such is a non-profit making organization and should not, as a general rule, make any profits. However, there is always the possibility that, in certain cases, profits will be made. For this reason it seemed preferable, since the grouping is not to be an economic entity separate from its members, to lay down that profits made by a grouping should be taxable in the hands of its members.