

## Draft contract establishing EEIG

*This contract is a general pattern that must be adapted to the specific needs of the promoters of the EEIG. To get specific assistance for the establishment of an EEIG it is necessary to contact a lawyer. No responsibility can be derived from the use of this scheme to the author.*

### SCHEME OF CONTRACT OF FORMATION OF A EUROPEAN ECONOMIC INTEREST GROUPING – E.E.I.G.

\_\_\_\_\_ (name of the group) GROUP E.E.I.G.

DATE: \_\_ / \_\_ / \_\_

**NAME / BUSINESS NAMES, LEGAL FORM, PERMANENT ADDRESS OR REGISTERED OFFICE, NUMBER AND PLACE OF REGISTRATION, IF ANY, OF EACH MEMBER OF THE GROUPING**      *(mandatory information about each member)*

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**Contract of formation of a European Economic Interest Group – E.E.I.G.**

By and between the undersigned

**NAME OF THE MEMBER**, a company incorporated under the laws of \_\_\_\_\_, with registered offices in \_\_\_\_\_, registered under number \_\_\_\_\_ with the Registry of Enterprises of \_\_\_\_\_, represented by Mr. \_\_\_\_\_ in his capacity as \_\_\_\_\_.

**NAME OF THE MEMBER**, a company incorporated under the laws of \_\_\_\_\_, with registered offices in \_\_\_\_\_, registered under number \_\_\_\_\_ with the Registry of Enterprises of \_\_\_\_\_, represented by Mr. \_\_\_\_\_ in his capacity as \_\_\_\_\_.

NAME OF THE MEMBER, born on \_\_\_\_\_, in \_\_\_\_\_, domiciled in \_\_\_\_\_.

(OTHERS MEMBERS) ...

there is herewith formed an **European Economic Interest Grouping – EEIG**, governed by Council Regulation (EEC) No 2137/85 of 25<sup>th</sup> July 1985 on the European Economic Interest Grouping - EEIG ("EEIG-Regulation") and by the Italian Law - Decree of July, 23<sup>rd</sup> 1991, n. 240, implementing "EEIG Regulation" on the institution of the European Economic Interest Grouping, on which the following provisions are applicable.

## I. GENERAL PROVISIONS

### Article 1: Name of the grouping

The E.E.I.G. is named

***"GO EASE – E.E.I.G.: Trans European network for the sustainable growth of social and responsible businesses"***

where the acronym E.E.I.G. stands for "European Economic Interest Grouping".

### Article 2: Scope

The E.E.I.G. is a non-profit body, whose principal goal shall be the development of transnational cooperation among social enterprises involved in the activities of the project "*EASE&SEE Project Enabling Actions for Social Enterprises in South East Europe*" (funded by the European Union under the South East Programme), after the end of the project itself.

The purpose of the grouping shall be to facilitate and develop the economic activities of its members, to enable them to improve their own results: its purpose is not to make profits for itself, since its role must not be more than ancillary to the activities of the members.

The object of the E.E.I.G. shall be in particular:

- The development of sustainable operating and **funding structure for transnational cooperation** among social enterprises, firms and other legal bodies as well as natural persons, promoting both the **sector of recycle & re-use** and the **social agriculture sector** connected to food production or catering industry in order to develop slow food philosophy and social innovation initiatives;
- representing the interests of the members with all private and state-run institutions;
- the **exchange of information** and experiences amongst the members of the grouping; good practice transfer amongst the members; training for members; joint participation to conferences and events;
- the **co-ordination and the rationalization of activities of the members**, as well the enhancement and **marketing activities** of the Members;
- **to facilitate and develop the undertakings and initiatives of the Members, to enable them to** improve the results of such activities (Joint purchasing activity, selling / exchange of good or services among partners, Joint selling agencies in third countries, exchange of personnel, joint handling of clients, joint data processing)
- **applying for public contracts** and the participation in programmes financed by public funds
- **making applications for national and international public funding**; actively seeking for funds in order to realize the object of the Grouping; giving assistance to members on EU policies and funding programmes / tenders
- **promoting the collaboration with other organisations** which have similar objects for: lobbying

- purposes, marketing initiatives, technical assistance and cooperation;
- **gaining experiences about work and collaboration within the framework of an EEIG** (best practices exchange, technology transfer, business model transfer);
- **legal monitoring of the relevant areas** (international trade law referring to the sectors involved, intellectual property issues, other legal issues);

The role of the E.E.I.G. shall be ancillary to the statutory activities of the Members in that it is intended to enable the Members to improve their economic results rather than to be a substitute for their activities.

**Article 3: Official address**

The official address of the E.E.I.G. is \_\_\_\_\_ (Italy).

The grouping contract is filed with the Business Register of the Chamber of Commerce of ... (Italy).

At the same Registry shall be deposited acts listed in Article 7 of Regulation (EEC) No 2137/85.

The seat can be moved, together with the Administration, within the territory of the Italian Republic to the decision of its members. The decision to transfer the seat in another Member State of the European Union requires the unanimous vote of the Members and the respect of the procedures provided by art. 14 of Reg. 2137/1985.

**Article 4: Duration**

The E.E.I.G. is entered into for an indefinite period and shall continue until wound up in accordance with the terms of this contract and of the Internal Regulation.

**II. FINANCING OF THE GROUPING**

**Article 5: Capital**

The E.E.I.G. shall be formed without start-up capital; however where appropriate, the Members acting collectively may decide by unanimous votes to endow the E.E.I.G. with a capital. At that time, they shall specify the amount of the capital, the value of each quota and shall establish each Member's contribution thereto.

**Article 6: Financing**

The E.E.I.G. shall be financed by:

- Subscriptions or other contributions by Members, under the conditions laid down by the Members acting collectively; others terms and conditions applying to these subscriptions or other contributions are governed by the Internal Regulation;
- Payments for services rendered to the Members of the E.E.I.G. or to third parties: terms and conditions of such payments shall be established by the Managers;
- Where appropriate, the Members acting collectively may charge new Members an admission fee, under the terms and conditions laid down in The Internal Regulation.
- EU funding to projects.
- Any additional financial resources consistent with the purpose and nature of the Group.

**III. MEMBERS**

**Article 7: Admission of new Members**

The admission of new Members shall be approved by the Members acting collectively, by unanimous votes.

The admission of a new Member may be subject to the payment of an admission fee established by decision of the Members acting collectively under the terms and conditions laid down in the Internal Regulation.

A new Member may join the E.E.I.G. only at the beginning of the financial year.

The Internal Regulation defines the admission procedure and the required profile of a new member regarding its fields of activity, in compliance with the requirements of Article 4 of Regulation ( EEC ) No 2137/85.

**Article 8: Associate members**

The E.E.I.G. may enter into co-operation relationships with other entities having their central administration outside a Member State of the European Economic Area – EEA (28 UE Members, Iceland, Liechtenstein, and Norway).

Such entities shall not be considered as Members but may acquire the status of "associate". The content of co-operation relationships with such subjects shall be laid down by the Members acting collectively by a simple majority of Members.

The terms and conditions for being accepted as “ associate member” shall be laid down in the

Internal Regulation.

**Article 9: Withdrawal of a Member**

Any member of the grouping may withdraw from the grouping with the unanimous agreement of the other members. If unanimity is not reached within 3 months after receipt of a written notice, a simple majority of votes shall be sufficient afterwards.

Any member of the grouping may, in addition, withdraw on just and proper grounds.

Such withdrawal shall take effect after notice has been served on the Managers at least 6 months prior to the end of the financial year, by registered letter with advice of receipt.

**Article 10: Expulsion of a Member**

Any Member of the E.E.I.G. may be expelled if it seriously fails in its obligations or it causes or threatens to cause serious disruption in the operation of the E.E.I.G..

Any Member may also be expelled from the grouping on one of the grounds listed in the Internal Regulation.

A decision to exclude a Member shall be made by the Members acting collectively by a majority of three quarters of the remaining members. The member whose expulsion is proposed shall be heard, but the member shall not be entitled to participate in the voting.

**Article 11: Resignation**

A Member ceases to belong to the grouping:

- When no longer fulfils the conditions of Article 4 of Regulation ( EEC ) No 2137/85 and those shared by the Members in the Internal Regulation;
- In the event of the death of a natural person who is a Member of the grouping (in that case, authorisation to admit his successor to the grouping shall be given by the remaining members unanimously);
- In case of the winding-up of the member, whereas a mere change of the legal form of a member does not affect the member's membership of " GO EASE – EEIG" as long as the new legal entity conforms with the regulations in force in the member state where the member carries out its profession, and as long as the new legal entity acts as the legal successor of the former entity, and as long as the legal entity thus modified still matches the membership profile defined in the Internal Regulation;
- If the liquidation of the member has been determined;
- If insolvency proceedings have been opened on the Member's assets.

**Article 12: Assignment of participation**

Any Member may assign his participation in the E.E.I.G., or a proportion thereof, either to another Member or to a third party having all the necessary requirements. Such assignment shall not take effect without the authorisation, by unanimous votes, of the other Members. In any case, the member continues to be liable for the obligations of the Group taken prior to the assignment. Such assignment shall take effect only at the end of the financial year.

**Article 13: Rights and obligations of a Member who withdraws**

When a Member ceases to belong to the grouping for any other reason than the assignment of its rights in accordance with the conditions laid down in Article 12, the value of rights and obligations shall be determined taking into account the assets and liabilities of the E.E.I.G. as they stand at the time it ceases to belong.

**Article 14: Right of discovery and inspection**

Each member shall be entitled to obtain information from the managers concerning the grouping's business and to inspect the grouping's books and business records after sufficient notice.

**Article 15: Liability**

The Members of the grouping shall have unlimited joint and several liability for the debts and other liabilities of whatever nature. National law shall determine the consequences of such liability.

Creditors may not proceed against a member for payment in respect of debts and other liabilities, before the liquidation of a grouping is concluded, unless they have first requested the grouping to pay and payment has not been made within an appropriate period.

New Members shall not have unlimited joint and several liability, in respect of third parties, for the payment of debts of the E.E.I.G. that originated prior to their admission. This opportunity, provided by art. 26 of Council Reg. (EEC) No 2137/85 - "EEIG Regulation", is enforceable against third parties under the conditions of art. 9, co.1 the EEIG Regulation, only if it is published in accordance with art. 8 of the Regulation.

By means of a specific contract between the grouping and a third party, the members can exclude or restrict the liability of one or more of its members in respect of a particular debt or other liability, as allowed by EEIG Regulation at 10<sup>th</sup> recital, provided that the third party has given its consent.

In relations between the members of the grouping, obligations are divided in proportion to the participation of each member in the profits and to the reserve fund, in accordance with the provisions of the Internal Regulation: the Board of Members may approve, unanimously, a differentiated distribution of responsibilities among members<sup>1</sup> and may provide a differentiated participation to financial results of the Group, based on different levels of contribution.

In the absence of agreements, the division of responsibilities is partly equally among the members.

## IV. GOVERNANCE

### **Article 16: The Members acting collectively**

The organs of a grouping shall be the members acting collectively and the manager or managers.

The Board of Members shall include all the Members of the E.E.I.G.: they may take all decisions to achieve the grouping's purpose.

### **Form of the meeting**

The members acting collectively shall be consulted four times a year.

This consultation shall take the form of:

- a physical meeting or
- a telephone meeting or Skype meeting
- an internet based communication platform meeting or any adequate new technology.

### **Annual general meeting**

The Board of Members will meet physically, for a general meeting, at least once a year, to approve the balance sheet and the income statement, in order to decide on the budget, to approve payments of members. The summons must contain the agenda, the place and time of the meeting.

The assembly is valid only with the participation of half plus one of the members. It decides on the topics on the agenda and may resolve other issues only if they are present and consenting all members. Members may be represented by one delegate.

### **Convening of the meeting**

In the event of consultation of the Board of Members, the manager shall convene the members by e-mail. The receipt of the convening notice shall be acknowledged within five working days after the successful sending of the e-mail. If a member fails to do so, the manager has to inform this member accessorially by phone about the convening of the meeting.

In the event of a physical meeting the manager shall convene the members acting collectively two months prior to the date of such meeting. In all other cases the manager shall convene the members acting collectively two weeks prior to the date of the meeting.

The convening notice shall contain the agenda of the meeting.

If all members of the grouping are present or represented at the meeting, and if they agree with the decision-making, decisions can be taken even if the legal or contractual provisions regarding the convening of the meeting are not fulfilled.

### **Chairperson**

The members at the meeting elect a chairperson by simple majority of votes.

### **Minutes**

Of the meetings of the members minutes shall be made. These have to comprehend time and place of the meeting, participants, objects of the agenda, tenor of the negotiations and the decisions adopted by the

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<sup>1</sup> The internal agreements about participation within the debts of the EEIG different for each member will not be opposable to third parties. However, the internal validity of the covenant of the limitation of liability will allow the member seek payment from third parties (who made all the payment), the compensation from the other, which are required to pay their share of the debt in the amount established in the Covenant and transposed the Internal Regulation.

members acting collectively. The issuer of the minutes has to be mentioned in the document. Each member shall be supplied with an exemplar.

The minutes together with the attendance register shall be filed in the grouping's Meeting's Register which shall be established and kept at the grouping's central administration.

#### **Article 17: Decisions of the members**

Each Member shall have one vote.

A decision by unanimous votes shall be required to:

- a) modify the scope of the E.E.I.G.;
- b) modify the number of votes allotted to each Member;
- c) modify the conditions for taking of decisions;
- d) modify the contribution by every Member or by some Members to the E.E.I.G.'s financing;
- e) transfer the official address of the E.E.I.G. to another Member State of the EEA;
- f) admit new Members, according to art. 7 of this contract and to the Internal Regulation;
- g) assign their participation or a proportion thereof either to another Member or to a third party having all the necessary requirements;
- h) wind up the E.E.I.G..

The meeting may deliberate validly only if at least half of the members is present or represented. If less than 50% are present or represented, another meeting must be convened immediately, with the same agenda, and held within three months following the second convocation. This new meeting shall not be subject to a quorum requirement.

Decisions shall be taken by a majority of the votes of members present or represented, unless otherwise provided in the clauses of this contract.

#### **Article 18: Managers**

The grouping shall be managed by one or more individual(s), as manager(s), who do not necessarily have to be members. The grouping shall also have one or more individual(s) as substitute manager(s).

The manager(s) and the substitute manager(s) shall be appointed by the members acting collectively by a majority of members.

They shall be appointed for a period of 2 years; such appointment may be revoked without prior notice under the same conditions as their appointment.

On the occasion of each appointment the members acting collectively shall decide if and to what extent the manager(s) and the substitute manager(s) will be provided with a fixed or variable reward charged to the overhead costs of the grouping.

#### **Article 19: Powers of Managers and the substitute managers**

The manager(s) shall manage the grouping with all requisite diligence. The manager(s) may perform any act required or useful for the achievement of the objects of the grouping, excepting those set aside by law, this contract or the Internal Regulation for the members acting collectively.

The same applies to the substitute manager(s) if the manager(s) is/are prevented for any reason.

In particular, the managers are charged of:

- a) comply with the formalities of registration and advertising;
- b) organize the keeping of accounting records and other duties;
- c) maintain a current list of members, with its address;
- d) appoint attorneys or substitutes, granting them the necessary powers.

Tasks of managers and limits to their representation power towards third parties are detailed by the Internal Regulation. Any limitation to powers of managers is enforceable against third parties only if published, according to article 7 (d) of Council Regulation (EEC) No 2137/85 "EEIG Regulation".

#### **Article 20: Optional Organs**

##### **1) Technical committees**

Within the grouping, technical committees may be set up. These technical committees may also take the form of informal working parties within the EEIG.

The definition, composition and organisation of the technical committees or informal working parties are set

out in the Internal Regulation.

**2) Coordination secretariat**

The manager may be assisted by a coordination secretariat. The role and tasks of the coordination secretariat are laid down in the Internal Regulation.

**3) Supervisory Board**

If considered as necessary, a supervisory board with monitoring functions may be set up within the grouping. The Members acting collectively may task to the supervisory board, composed by external experts, the auditing of the financial position, annual accounts and management. Its functions are laid down in the Internal Regulation.

## **V. ECONOMIC AND FINANCIAL MANAGEMENT, WINDING UP, LIQUIDATION**

**Article 21: Financial year**

The financial year shall start on 1 January and ends on 31 December of each year. Exceptionally, the first financial year shall start on the date of registration of the grouping and shall end on 31 December.

**Article 22: Annual accounts**

At the end of each financial year, annual accounts shall be drawn up by the Managers, together with the annual management report. The managers shall submit them to the Members for approval within three months of the end of the financial year.

**Article 23: Profits and losses**

The distribution of profits and losses realized by the Group relies on the conditions of liability referred to in art. 15 of this contract and on those laid down in the Internal Regulation.

In the event that the exercise would result in profits, members acting collectively can decide to distribute them among the members in proportion to the degree of responsibility agreed upon, unless they decide to allocate all the profits (or a certain proportion of them) to the reserve fund.

In the event of loss, it will be covered by the members in proportion to the degree of responsibility established for each member and in compliance with any further limitation of liability set by specific contractual agreements with third parties.

In the absence of agreements, the allocation of profits and losses of the Group occurs equally among the members.

**Article 24: Winding up**

The Members acting collectively may decide to wind up the E.E.I.G. early by a majority of three quarters of members. The Group may be wound up by:

- a) the time limit specified in the contract;
- b) the achievement of the company or the inability to attain it;
- c) Loss of the requirements of Council Regulation (EEC) No 2137/85.

The winding up of the grouping shall entail its liquidation.

**Article 25: Liquidation**

The liquidation of the grouping and the conclusion of its liquidation shall be governed by national law.

If the E.E.I.G. is wound up early, the grouping shall be liquidated by the Managers and by one or more liquidators, if so decided by the Members acting collectively.

Any assets or liabilities remaining after payment of the E.E.I.G.'s debts and liabilities shall be apportioned among the Members pro rata to their contributions, as laid down in the Internal Regulation, or, in the absence of provisions, in equal parts.

## **VII. FINAL PROVISIONS**

**Article 26: Disputes between Members**

Any dispute which may arise in respect of the validity, interpretation or performance of this contract or the Internal Regulation, either between the Members and/or the Managers and/or the E.E.I.G., or between the Members themselves, and which shall not compulsorily be submitted to the competence of judicial authority, shall be submitted to a (board of) mediator (s) appointed by the members acting collectively by a majority of three quarters of members.

If no agreement is reached with the informal mediation, the dispute shall be submitted to Mediation Service of the Venice Chamber of Arbitration at the Venice Chamber of Commerce and resolved in accordance with its Mediation Rules.

If the mediation cannot be carried out or fails, all disputes arising out or in connection with this agreement with particular reference to, without limitation, its execution, performance, validity, default, termination and assessment of relevant damages, shall be settled by arbitration under the Arbitration Rules adopted by the Venice Chamber of Arbitration by an Arbitral Tribunal which shall consist of a *Sole Arbitrator* appointed by the Venice Chamber of Arbitration in accordance with those Rules.

The Arbitral Tribunal shall decide in accordance with the rules of law of Italy. The seat of the arbitration shall be the City of Venice. The languages of the arbitration shall be Italian and /or English language.

**Article 27: Internal Regulation**

The Internal Regulation annexed to these contract shall contain provisions for the execution of these contract within the limits of the regulations set up by law and by these contract and for the transactions of the grouping. In particular, it determines the rights and obligations of the members, manager(s) and his/her/their substitute(s).

The members may amend the provisions of the Internal Regulation by a decision taken unanimously. Members shall commit themselves to the respect of the Internal Regulation in force at the moment they join the grouping.

In case of a conflict between the Internal Regulation and these contract, the contract shall prevail.

**Article 28: Requirement of written form, Language, Applicable Law**

All agreements between the members or between the grouping and the members regarding membership matters must be made in writing in order to be effectual, unless notarisation is compulsory. This shall also apply to any waiver of the written form.

The contract is written in Italian and English. The English text of this contract shall prevail as the official text. For any report or official communication between the members will use the English language.

**Article 29: Final Dispositions**

This contract shall be governed by and construed in accordance with Regulation (EEC) n. 2137/85 of the Council, of 125 July 1985m with Italian Law D.lgs. 23 July 1991, n. 240 and all other rules mentioned by the latter.

Should any of the provisions of the present contract be or become totally or partially void, or should the contract turn out to contain loopholes, validity of the remaining provisions shall not be affected.

The invalid provision shall be replaced by another reasonable provision which provides for effects as close as possible to the effects which the contractual parties have intended.

In case of loopholes a provision shall be considered as agreed that resembles the one the most, that the members would have agreed if they had perceived the loophole.

Done at \_\_\_\_\_, on \_\_\_\_\_

Signed by for and on behalf of: *(Founding Members signatures)*

Name of the member By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: Title: Signed by for and on behalf of:

Name of the member By: \_\_\_\_\_

Date: \_\_\_\_\_

... *(Others members)*