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CORPORATE FORMS FACILITATING NON-PROFIT NETWORKING: FORMALIZING THE INFORMAL

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ABSTRACT

Cooperation and networking among a variety of organisations for the purpose of research, projects, and other activities ranges from *ad hoc* to long term organisational relationships, formalised or based on informal cooperation. Although informality is frequently much valued and drives organisations to partner on substance rather than bureaucracy, formalisation of networks and cooperation might be indispensible for effective partnerships and activities, as well as representation of mutual interests beyond the national level. How

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shall such networks be formalised at European and/or national levels so that they are flexible enough, involve minimum bureaucracy, and engage the maximum scope of possible activities? This article focuses on the analysis of possible legal structures facilitating the work of a group of entities and individuals engaged in cross-border activities. This study examines the potential of national legal opportunities in five countries: Belgium, Estonia, Lithuania, Poland and the Netherlands, and the proven legal form of EEIG in reducing the barriers for cooperation, as well as the advantages and disadvantages of these legal forms for a formalized network and the purposes it serves.

KEYWORDS

Multinational network, EEIG, Non-profit organisations, Association, Foundation

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INTRODUCTION

Collaboration among various legal entities, in particular non-profit seeking organizations (NPO), is expanding across Europe and beyond. Partnerships are seen as a way for expanding the capacity of the services and impact making, as well as creating long-term capacity. The establishment of the non-profit partnerships is highly encouraged by the European Commission through various funding schemes; however, only few partnerships survive after the funding is over, which quite often casts doubts on the additional value of the sustainability of projects' results. The underlying problem is that the networks are usually formed on an *ad hoc* basis for the purposes of time-bound project activities and do not engage in a long-term relations as an institutionalized structure due to various factors, ranging from lack of willingness to have a long-term commitments to non-existing knowledge how to formalize a multinational network.

Various corporate forms for formalizing non-profit networks exist at the national (e.g. foundation, association) and European level (e.g. EEIG is the EU corporate form strictly purpose-bound corporate structure limited to non-profit activities[1]). However, it is not evident which of these forms is the most suitable for making impact on policy formation (interest representation) and consolidation of capacities for R&I&D project fund-raising. Due to the limited harmonisation of the legal framework in which public benefit purpose entities carry out their activities at the national level, the activities are usually based on national laws, which as a result of substantial regulatory differences make cross-border operations of the entities costly and burdensome.[2] Consequently, as the European Commission notes, "the cross-border channelling of funds to public benefit purposes remains largely underexploited."[3]

The article studies the suitability of a range of available corporate forms that may operate on "not-for-profit" basis based on national experiences in five countries as well as European level. The suitability is assessed in view of the legal criteria (establishment and certain operation conditions) and economic relevance (cost-benefit for establishment and maintenance).

To address the main problem, the following two issues will be addressed:

- A legal comparative analysis of the main regulatory differences as regards the establishment and operation of a legal non-profit entity in five countries

[1] Holger Fleischer, "Supranational Corporate Forms in the European Union: Prolegomena to a Theory of Supranational Forms of Association," *Common Market Law Review* 47 (2010): 1705.
[2] *Proposal for a COUNCIL REGULATION on the Statute for a European Foundation*, COM/2012/035 final - 2012/0022 (APP) // http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52012PC0035.
[3] *Ibid*.

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(Belgium, Estonia, Lithuania, Poland and the Netherlands), legal and economic relevance of their establishment (Part 1). The rational for choosing countries for the analysis was practical and general-knowledge based. To get the bigger picture of transnational differences the countries we chose from two different geographical regions, Belgium and Estonia being the focal points due to their representation in SENTER project.[4] Being the centre of EU institutions, Brussels has become the centre for lobbying activities since the European Commission has always recognized the importance of consultation and interest representation.[5] Additionally, Belgium "ranks among the ten most competitive countries in Europe"[6] and non-profit organisations are the dominant form in the associative sector there.[7] Estonia is commended by OECD for numerous strengths, including an excellent business environment, high educational attainment and labour market participation, an innovative ICT sector and solid public finances.[8] Other neighbouring countries were chosen for comparison with the aim to discover if the countries may become the new attractive jurisdictions for establishing a non-profit legal entity.

- The advantages and disadvantages of the legal form of EEIG (Part 2) in relation to the findings of Part 1 concerning different national legal forms. An EEIG was the first supranational legal body regulated under the EU law and the first European effort towards a EU company made back in 1985 by Council Regulation (EEC) No 2137/85,[9] which aimed at facilitating transnational co-operation between companies, as part of the completion of the internal market.[10] The "somewhat original framework"[11] has become a useful means of cooperation between the small and medium companies for the purposes of research and development,[12] by making it possible for public and private entities and individuals from different EU Member States, in particular small and medium enterprises, to interlink some of their economic activities with other companies and individuals thus maximizing their efforts and strengths in an enlarged market (in terms of expertise, financial

[4] SENTER, "Strengthening European Network Centers of Excellence in Cybercrime" // http://www.senter-project.eu.
[5] Andreas Geiger, *EU Lobbying Handbook* (Brussels, 2012).
[6] OECD, "OECD Economic Surveys: Belgium 2017" (June 2017): 14 // http://dx.doi.org/10.1787/eco_surveys-bel-2017-en.
[7] GHK, "Study on Volunteering in the European Union. Country Report Belgium": 8 // http://ec.europa.eu/citizenship/pdf/national_report_be_en.pdf.
[8] OECD, "OECD Economic Surveys: Estonia" (September 2017): 10 // http://www.oecd.org/economy/surveys/Estonia-2017-OECD-economic-survey-overview.pdf.
[9] *Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG)*, OJ L (1985, 199).
[10] Committee on Economic and Monetary Affairs and Industrial Policy, "Report on the communication from the Commission on the participation of European Economic Interest Groupings (EEIGs) in public contracts and programmes financed by public funds (COM(97)0434 - C4-0590/97). Explanatory statement" (May 1998) // http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A4-1998-0196+0+DOC+XML+V0//EN.
[11] Frank Wooldridge and Andenæs Tønnesson, *European comparative company law* (Cambridge University Press, 2009), 377.
[12] *Ibid.*, 379.

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capacity, etc.) and establish a non-profit seeking legal entity representing their interests in a more simplified way. The mechanism clearly gives the participants of the grouping a greater negotiating power than they could enjoy as individual entities by creating, as Labropoulos points out, "the impression of a larger business than is actually the case."[13] It is much favoured by the European Commission. Since July 1, 1989[14] there have been 2547 EEIGs established (as of 12 October 2017);[15] however, due to varying opinions it remains unclear whether the networks engaged in a non-profit activities and seeking funding for R&I&D may benefit by choosing the promoted supranational legal form in comparison to the national legal forms.

The data on legal regulation was collected using numerous online official sources available at the credible websites and secondary sources from academic literature, analytical and scientific evaluations and reports. There is a wide range of literature that documents individual types of national corporate forms, ranging from official websites of various national institutions to scholarly articles ; however none of them present a thorough comprehensive comparative analysis on non-profit legal entities in different EU Member States. Furthermore, although selected data is reliable, the authors faced the difficulty to verify all the data by primary sources (legal acts) due to language issues (e.g. Dutch). For the purpose of the analysis on the EEIG legal form, the legal acts guaranteeing the implementation of the Regulation were selected from the list of the national legal acts composed by the EEIG Information Centre.[16] The analysis was complemented by interpretations of the EEIG Regulation that are vast; however majority of them focus more on description of the cooperate form rather than analysing it or identifying its benefits and disadvantages in comparison to other corporate forms.

For an in-depth analysis of the data, the inductive approach has been chosen. There are numerous aspects related to the establishment and functioning of a legal entity; however, only the characteristics directly relevant to the indicators of legal

[13] Neocleous Labropoulos, "European Economic Interest Grouping," *The Comparative Law Yearbook of International Business* (2008): 154.
[14] Committee on Economic and Monetary Affairs and Industrial Policy, *supra* note 10.
[15] More than 50% founded in 3 EU Member States (Belgium, France, Germany), almost 90% of them registered in 7 Member States - Belgium, Germany, Spain, France, UK, Italy and Netherlands (LIBERTAS – European Institute GmbH, "EEIG Statistics from the European EEIG Information Centre" (October 2017) // http://www.libertas-institut.com/ewiv-informationszentrum/ewiv-statistik/). In the view of the European Commission, Belgium is chosen for its "central" geographical position and the fact that it is home to Community institutions. The large number of EEIGs situated in France can be explained by French enterprises' long experience with the Groupement d'Interet Economique (GIE - Economic Interest Grouping), which served as the model for the creation of the EEIG (European Commission, "The emergence of a new form of European cooperation" (1993) // http://aei.pitt.edu/33585/4/A202.pdf). In Germany the EEIG is mostly chosen by professional groups (including law firms) (Holger Fleischer, *supra* note 1: 1673).
[16] LIBERTAS – European Institute GmbH, "Laws" (February 2011) // http://www.libertas-institut.com/en/eeig-information-centre/laws/.

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and economic relevance were scrutinized. To this end varied legal and non-legal data (e.g. taxation rates, registration fees) was condensed and compared.

1. NATIONAL OPPORTUNITIES FOR FORMALISING CROSS-BORDER NON-PROFIT NETWORKS

This part of the Article looks into various national options for formalizing cross-border networks by covering on a comparative basis the main regulatory differences as regards the establishment of a legal non-profit organization (entity) (NPO) in five EU Member States (Belgium, Estonia, Lithuania, Poland and the Netherlands) from the perspective of legal and economic relevance of their establishment and selected aspects of its operation. The various options that exist at the national level in different EU Member States for formalising networking are compared against the following indicators of (1) legal relevance and (2) economic relevance.

1.1. LEGAL RELEVANCE

The legal relevance of establishing an NPO at the national level could be assessed by analysing the type of available legal entities and their founding conditions, including participation of foreigners among the founders, the burden of bureaucracy (documentation) needed for registration, the simplicity of procedures for registration, including electronic registration, possibility to engage in economic/commercial activities, as well as time considerations that would be involved for resorting to these legal options. Not less important are requirements for mandatory internal structures of the entity and the scope of annual obligations, as this adds to (non) attractiveness of the organisation for foreign groupings.

1.1.1. THE TYPE OF ENTITIES AND THEIR FOUNDING CONDITIONS

While association and foundation as formal options for registering a group of entities with similar interests is known in all the countries analysed, several more specific types of non-profit organisations are known at national jurisdictions. These include public organisation ("*viešoji įstaiga*") (Lithuania), international not-for-profit association or AISBL ("*Association internationale sans but lucratif*") and operations centre of a foreign NGO (Belgium). For instance, in Estonia the non-profit organizations can be foundations or non-profit associations.[17] However, as

[17] Both are regulated by the *Non-profit Associations Act of Estonia* // https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/520062017014/consolide.

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foundations are more suitable for charitable purposes the most favourable non-profit in case of cross-border cooperation for joint activities and projects would be a non-profit association. The establishment of some of these organisations require the existence of just one founder (foundation in Poland and the Netherlands, public organization in Lithuania), associations usually require 2-3 founders, except in Poland where at least 7 founders are needed for establishment of an association.[18] There is a possibility to register a so-called simple association (or simplified form of association) in Poland, which requires only 3 founders, but such an association would not have a status of a legal person.[19] All of these organisations can be established by foreigners, and only Poland requires the foreign founders of the association to have an official residence in Poland.[20]

With regard to economic activities, NPOs in most of the countries analysed may engage in economic activities. In Poland, associations are allowed to engage in economic activities, but proceeds must be directed to its statutory purposes and may not be shared among its members.[21] A foundation is allowed to engage in economic activities to the extent serving to accomplish its purposes.[22] Additionally, NPOs with public benefit status can receive funding from 1% tax designation mechanism (1% income tax designated by individual taxpayers).[23] In Lithuania and Estonia, such economic-commercial activities have to be linked to the purposes of the NPO.[24] In the Netherlands as well as in Lithuania, associations may pursue all types of objectives, not just non-profit objectives, but also commercial objectives. The only restriction is that the association may not distribute profits to its members (or members of its internal bodies).[25] The profit obtained by domestic association (ASBL) in Belgium cannot be distributed among the members but can be used for its non-material purposes; it cannot aim to make a profit but can charge membership fees and organize activities in return for payment where these are compatible with its purpose. In 2017, the Minister of Justice was preparing a legal initiative to allow non-profit organizations to develop unlimited economic activities. Whether this initiative will make it into law still must be determined.[26]

[18] *Law of Associations of Poland*, art. 9 // http://www.legislationline.org/topics/country/10/topic/1.
[19] *Ibid*., art. 40.
[20] *Ibid*., art. 4.
[21] *Ibid*., art. 34.
[22] *Law of Foundations of Poland*, art. 1 and art. 5, sec. 5 // http://www.legislationline.org/documents/action/popup/id/4592.
[23] ECNL, "Handbook on civil society organisations registration and operation" // http://ecnl.org/wp-content/uploads/2016/04/Rukovodstvo_eng_fin-web_poland.pdf.
[24] *Law on Public Organisations of the Republic of Lithuania*, Official Gazette (1996, no. 68-1633, new version 2004, no. 25-752), art. 3, sec. 4. *Law on Associations of the Republic of Lithuania*, Official Gazette (1996, no. 68-1633), art. 11, sec. 2. *Non-profit Associations Act of Estonia*, *supra* note 17, para. 1, sec. 2.
[25] *Dutch Civil Code*, art. 2, sec. 26 // http://www.dutchcivillaw.com/civilcodebook022.htm.
[26] A4ID, "EU registration options for NGOs Preparing UK-based NGOs for Brexit. A guide to establishing NGOs in Europe" (February 2017) // http://www.a4id.org/wp-content/uploads/2017/02/EU-registration-options-for-UK-NGOs-post-Brexit-FINAL-PDF-1.pdf.

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1.1.2. THE BURDEN OF BUREAUCRACY (DOCUMENTATION) NEEDED FOR REGISTRATION AND THE SIMPLICITY OF PROCEDURES FOR REGISTRATION

Registration of organisation in all of the countries analysed requires at least the submission of three documents: application form, founding document signed by all founders and a statute (articles of association signed by all founders). In addition, various countries provide additional requirements. In Estonia, associations need to provide contacts of the organisation, while the application form needs to be signed by all members of the management board and notarized.[27] In Lithuania, for associations and public organisations, additionally the inaugural meeting protocol with attachments; documents confirming the details of the founders and elected (appointed) members of management bodies, as well as owner's consent to grant the premises of the legal entity's registered office are required.[28] Belgium requires for the chart of the international association (AISBL) to be approved by the notary, for both ASBL and international association, electronic ID card is necessary, a list of members of the first management board, an office in Belgium and publication of articles of association, as well as additional information (surnames, first names, professions and places of residence of the directors) must be published in the appendices to the Belgian Official Gazette *Moniteur Belge*.[29] The conditions of the establishment of an operations center of a foreign NGO in Belgium requires the Articles of Association to be in French or Dutch (preferably translated by a sworn translator), the address of 'parent' NGO, a statement of its goals and activities and its address in Belgium, as well as a document stating who is authorized to represent the organization.[30] In Poland, additional documents for establishment of association require signature of the statute by the founding committee, the content of the statute is regulated by the law;[31] list of founders containing each founder's first name, last name, date and place of birth, present address and signature; protocol of founding committee meeting signed by the chairman and secretary of the meeting; written consent (authorization) of a person/people appointed to the board.[32] For foundations, the declaration of establishment shall be approved by a notarial deed; the statement indicating the line minister for supervision, if not included in the declaration of establishment; the resolution of appointment of the

[27] *Non-profit Associations Act of Estonia*, *supra* note 17, para. 8.
[28] *Law on Public Organisations of the Republic of Lithuania*, *supra* note 24, art. 4; *Law on Associations of the Republic of Lithuania*, *supra* note 24, art. 6.
[29] BridgeWest, "Register a Non Profit Organization in Belgium" (October 2012) // http://www.bridgewest.eu/article/register-non-profit-organization-belgium.
[30] Local Knowledge, "Registering an Operations Centre" (November 2010) // http://localknowledge.be/set-up-a-non-profit-organisation/registering-an-operations-centre/.
[31] *Law of Associations of Poland*, *supra* note 18, art. 10.
[32] *Ibid*., art. 12.

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governing bodies, which establishes a board of trustees and creation of the foundation's council; proof of payment of the registration fee; written consent (authorization) of a person/people appointed to the board.[33] In the Netherlands, the establishment procedures for associations require the submission of names and addresses of the members of the management board, directors and other persons, as well as additional information.[34]

All of the countries analysed except the Netherlands allow for online registration of an organization. This option is not possible for international association in Belgium for the reason that the approval of the notary and issuance of a Royal Decree are part of the registration process. At present, in Estonia, so called e-residents only need to visit Estonia once if they want to set up an Estonian business bank account, although even this could be done remotely in the near future. Everything else can be dealt with online from anywhere in the world. First, e-Residency card shall be obtained and then it does everything online.[35] Registering bodies vary from courts[36] to other bodies.[37] Some of the countries analysed require more formal documentation. For example, in Belgium the chart of the association has to be approved by a notary for the international association, while the main documents: the extract of publication of articles of association, surnames, first names, professions and places of residence of the directors must be published in the appendices to the Belgian Official Gazette *Moniteur Belge*.[38] In Poland, the declaration of establishment of a foundation shall be formed as a notarial deed.[39] In the Netherlands, the articles of incorporation shall be embodied in a notarial deed,[40] while in Estonia the application shall be notarised.[41] In Lithuania the articles of association and other incorporation documents have to be authenticated by a notary if online registration is not possible[42] or the founders are unwilling to proceed with online registration.

Timewise, registration is fastest in the Netherlands (1-5 days), as well as in Lithuania (3-5 days), Estonia (5 days), Poland (7 days) and slowest in Belgium (can

[33] *Law of Foundations of Poland*, *supra* note 22, art. 2, 4-5.
[34] *Dutch Civil Code*, *supra* note 25, art. 2:289.
[35] Centre of Registers and Information Systems, "Company Registration Portal" // http://www.rik.ee/en/company-registration-portal.
[36] E.g., the Registration department of Tartu County Court in Estonia, District Commercial Court in Belgium (for domestic associations), National Court Register in Poland.
[37] E.g., the Register of legal entities division within the Centre of Registers in Lithuania, Federal Department of Justice (Service Public Fédéral de Justice – SPFJ) in Belgium, Chamber of Commerce in the Netherlands.
[38] *Act on Non-profit-making Associations, Non-profit-making International Associations and Foundations of Belgium*, art. 51, sec. 3 // https://www.aib-net.org/documents/103816/-/-/f2329179-3e52-417d-03d7-224e7f520ee4.
[39] *Law of Foundations of Poland*, *supra* note 22, art. 3, sec. 1.
[40] *Dutch Civil Code*, supra note 25, art. 2:289, sec. 1.
[41] *Non-profit Associations Act of Estonia*, *supra* note 17, para. 79.
[42] *The Regulations of the Register of Legal Persons of Republic of Lithuania*, Official Gazette (2003, No. 107-4810), art. 47.

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take up to 6 months).[43] This is because the international non-profit association establishment needs government agreement through a Royal Decree ("Arrêté Royal"), while the publication of this act containing the recognition of the association takes approximately 6 months. Registration of association in Poland was quite long in timeframe, but in comparison, the foundation registration takes 7 days only, however the time for registration of association was reduced to 7 days in 2016.[44] In addition, the registration fees range from 20 euro in Estonia to 450 euros in the Netherlands, which is high because of the notarial fees. For example, in Poland, associations are exempt from entry fees.[45]

1.1.3. REQUIREMENTS FOR MANDATORY INTERNAL STRUCTURES OF THE ENTITY

Requirements for mandatory internal governance structures differ, although all forms of NPOs in the countries analysed shall have a general assembly or meeting of members/stakeholders as a supreme body. There is specificity for foundations only. For example, in the Netherlands, the foundations shall have the Board of Directors in charge of administration and management,[46] but they do not separately need mandatory management bodies, while in Poland the only compulsory body is a governing board that manages and represents a foundation.[47] The rights and duties of this body and the manner of how its members are elected is at the discretion of the founder and must be described in the foundation's statutes.[48] Among the management bodies, which are mandatory, there are management boards (collegial or individual-director in Estonia[49]), executive or administrative body (in Belgium, single or collegial in Lithuania for associations and director for public organization), boards or boards of directors (for associations in Belgium and Poland, the Netherlands), representative (for Operations centre of a foreign NGO in Belgium). Also, some NPOs are required to have other mandatory bodies, like revision commissions (in Lithuania, if prescribed), representative or a Manager (Belgium). Associations in Poland among other mandatory bodies shall have a board and internal auditing body.[50] For foundations in Poland a supervisory

[43] ECNL, "Handbook on Civil Society Organisations Registration and Operation: Comparative Aspects" (April 2016): 83-84 // https://issuu.com/assembly_of_ngos/docs/handbook_on_civil_society_organizat.
[44] CGO Legal Counseling, "Changes in the Law on Associations" (May 2016) // https://en.cgolegal.pl/2016/05/30/changes-in-the-law-on-associations/.
National Court Registration Law of Poland, art. 20, sec. a // http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU19971210769/U/D19970769Lj.pdf.
[45] *Law of Associations of Poland*, *supra* note 18, art. 17, sec. 3.
[46] *Dutch Civil Code*, supra note 25, art. 2:291, sec. 1.
[47] *Law of Foundations of Poland*, *supra* note 22, art. 10.
[48] *Ibid*., art. 5, sec. 1.
[49] *Non-profit Associations Act of Estonia*, *supra* note 17, para. 26.
[50] *Law of Associations of Poland*, *supra* note 18, art. 11, sec. 3.

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body is optional, but NPOs with public benefit status shall have a statutory collegiate audit or supervision body, separate from the management body and not reporting there to within the scope of internal audit or supervision. They also shall not have been convicted by virtue of a final court judgement for any crime involving intentional fault.[51] In the Netherlands, the articles may provide for other internal bodies, as long as this does not conflict with the legal prohibition of membership in foundations. Associations may require a supervisory board.

1.1.4. REPORTING AND OTHER OBLIGATIONS OF REGISTERED NPOS

Registered NPOs have a range of obligations during the year in every country and this indicator is also important to consider for any network that would like to formalize itself under national law in these countries. Common obligation applicable to all NPOs in the countries analyzed is annual reporting after the end of financial year, which is usually submitted to the registrar of legal entities in the country, court registry or the minister designated by the registry court, typically minister whose competencies are close to the foundation's purpose (Poland),[52] as well as to tax authorities (Tax and Customs Board in Estonia, Tax Inspectorate in Lithuania, Tax authorities in Poland). In Estonia obligation to submit an annual report after the end of the financial year applies even if the association did not conduct any economic activities, the report has to be approved by the General meeting.[53] Such report consists of financial statements, the management report, the auditor's report (if an audit is required) and the profit distribution proposal. In Belgium such annual financial report shall be approved by the General Assembly of the organization and submitted to the Commercial Court Registry. In the Netherlands:

> The foundation has no obligation to publish annual accounts unless it carries out an enterprise. If it qualifies as a charity for tax purposes, it should – depending on its character – publish some information on a website for 'the public' such as a balance sheet and accounts, the board members, and the compensation policy of the organisation. Apart from the disclosure of certain information on the internet, there is no requirement to report annually to the tax authorities.[54]

In addition to a financial report, where required, almost all countries analysed require an activity report. Lithuania requires such reports since 2011 both from public organisations and associations,[55] Poland requires this sort of report from

[51] *Law on Public Benefit and Volunteer Work of Poland*, art. 20, sec. 1, item 4 and 5 // http://www.legislationline.org/topics/country/10/topic/1.
[52] *Law of Foundations of Poland*, *supra* note 22, Art. 12(2).
[53] *Non-profit Associations Act of Estonia*, *supra* note 19, para. 36.
[54] A4ID, *supra* note 26: 53.
[55] *Law on Public Organizations of the Republic of Lithuania*, *supra* note 24, art. 12, sec. 1; *Law on Associations of the Republic of Lithuania*, *supra* note 24, art. 10, sec. 1.

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foundations only and these reports are public,[56] the Netherlands requires it from all NPOs. In Estonia this obligation applies to non-profit associations that have public-benefit status.

Among additional formal obligations applicable to NPOs annually in the countries analysed are obligations related to: a) registration as VAT taxpayer; b) information about employees; c) appointment of certain members; and, d) bank accounts. For example, in Estonia, the obligation to register as VAT taxpayer applies if the annual turnover from the supply of non-exempt goods or services exceeds €16,000. In Lithuania there is no mandatory registration if the organization provides tax-exempt goods and services. However, the requirement to register as a VAT payer is mandatory if the organization provides economic non-exempt services or goods that exceed €45,000 per 12 months.[57] The threshold for mandatory VAT registration for taxable person with registered office, place of business or fixed establishment in Poland is sales turnover of PLN 200,000 (€47,560) attained in the period of 12 previous consecutive months.[58] VAT is only applicable in Belgium in case of economic activities generating an income of more than €25.000/year.[59]

In Lithuania, the organization is obliged to submit information about all new employees, maternity/paternity leaves, termination of contracts to the State Social Insurance Fund Board (SODRA), but this obligation applies to all legal entities, not specifically to NPOs.[60] In Belgium, very large NPO's have to appoint one or more commissioners from the members of the Institute of Company Auditors. For associations in the Netherlands, where there is neither a supervisory board nor an audit by an external accountant, the general meeting appoints two independent members as an audit committee that reports to the general meeting. NPOs in Poland (both types) need a bank account for carrying out any economic transaction, although the law does not expressly stipulate it. In addition, opening a bank account is required when applying for a tax identification number.[61] Opening a bank account for public organisation is required only after registration of an organisation in Lithuania.

1.2. ECONOMIC RELEVANCE

The economic relevance of establishing an NPO at the national level can be assessed by analysing the financial conditions attached to the establishment and

[56] *Law of Foundations of Poland*, *supra* note 23, art. 12, sec. 2 and art. 12 sec.3.
[57] *Law on Value Added Tax of the Republic of Lithuania*, Official Gazette (2002, no. 35-1271), art. 71, sec. 2.
[58] Accace, "2017 Tax Guideline Poland": 15 // https://accace.com/wp-content/uploads/2016/12/2017-Tax-Guideline-Poland-EN.pdf.
[59] A4ID, *supra* note 26: 8.
[60] ECNL, *supra* note 23: 91.
[61] *Ibid*.

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operation of the entity, like the requirements for mandatory staff and other members of the organisation, which involves costs, financial employment conditions and employment flexibility, as well as taxation and its benefits.

1.2.1. MANDATORY STAFF AND EMPLOYMENT FLEXIBILITY

Establishment of an organization naturally involves costs for staff. Thus, it is important to consider where requirements for staff members are reasonable, as well as whether foreigners are allowed to become the founders and members of the NPO. Not all NPOs in the countries analyzed are required to have full time staff for running the organization.[62] Full time staff is only required in the Netherlands for associations, but not for foundations. In all countries analyzed NPO regulation allows for foreigners to become founders and members of the organisation. In Estonia, foreigners can be members of the management. There is a limitation though – if the place of residence of at least one-half of the members of the management board is not in Estonia, in another Member State of EEA or in Switzerland, then the organization must appoint a person in Estonia who has the legal right to receive official documents from the authorities.[63] No other specific requirements exist in other countries analysed. None of the NPOs are required to have an accountant employed by the organization. For example, in Lithuania and Estonia an accountant may be outsourced, which saves the costs, while in Poland there is no such requirement, but there is an obligation to keep the books. The book-keeping can be contracted to external accountant or an accounting company, thus in any event involves additional cost. There exists the possibility of keeping a simplified accounting for small national associations in Belgium (those that do not reach two of the following criteria: 5 workers, revenue and € 250,000 to € 1 million heritage).[64]

Staff employment flexibility usually differs. In Estonia, apart from employment contracts under Labour Law volunteering contracts also exist (contracts are not mandatory, but regulated by the Code of Conduct of volunteering and the Non-Profit Associations Act). When employing volunteers in Estonia, the volunteering contract is not always required, but it is within the benefit of the association as it is easier for the organisation to account in their annual report. Employment contracts (Labour law) and volunteering contracts (civil law and

[62] *Ibid*.: 97.
[63] *Non-profit Associations Act of Estonia*, *supra* note 17, para. 26, sec. 3; AnsonBaer, "How to start an Estonian company?" // http://ansonbaer.com/info/how-to-start-an-estonian-company/.
[64] Philippe Malherbe, "Charitable organisations in Belgium: overview" // https://uk.practicallaw.thomsonreuters.com/8-633-0854?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1.

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volunteering act based) are envisaged also in other countries (Lithuania,[65] the Netherlands, Poland[66]).

1.2.2. FINANCIAL EMPLOYMENT CONDITIONS

Financial employment conditions are considered one of the criteria for assessing the attractiveness of the country for foreign investors; thus it can be applied for the purpose of our study as well considering that it assesses the costs that might be involved in establishing and running an NPO in a foreign country. The tax wedge (which includes income tax, as well as employee and employer social security contribution) for an average single worker is between 30-40 percent in all countries analyzed except Belgium, where this tax reached 54 percent in 2016, which was the highest among the 34 OECD member countries. All other countries ranged in 2016 from 39 percent in Estonia, 37.5 percent in the Netherlands, 35.8 percent in Poland and 31 percent in Lithuania (2015).[67] In 2017, out of the countries analysed who are OECD member countries, Poland had the smallest wedge, Belgium remaining on the top of all OECD members, then the Netherlands and Estonia;[68] while Lithuania is not OECD member it is not on the rank. Personal income tax varied between 20.8 percent in Belgium, 15.2 percent in the Netherlands, 15 percent in Lithuania, 12.5 percent in Estonia, and as low as 6.1 percent in Poland in 2016.[69] Average employee social security taxes are low only in Estonia (1.2 percent). The employer's rate here is 25.3 percent. In the other countries it is more balanced between the rate applicable to employees and that of the employer. For example, in Belgium, the employee rate stands at 10.9 percent, while employer's social security tax is 32,50 percent. In the Netherlands, this balance is even more evident as the employee social security tax is 12.2 percent, while the employer's is 18.4 percent; Poland has the same tendency: the employee rate is 15.3 percent,[70] while the employer's is 20.6 percent.[71] The situation in Lithuania is quite special, because the employer's rate is very high (31 percent), while the employer is also taxed not at the lowest rate (9 percent).[72] The minimum

[65] *Law on Voluntary Activities of the Republic of Lithuania*, Official Gazette (2011, no. 86-4142), art. 6, sec. 3, 4, 6, 9.
[66] *Law on Public Benefit and Volunteer Work of Poland*, *supra* note 51, art. 44.
[67] OECD, "Taxing Wages 2017" (April 2017) // http://www.oecd.org/ctp/tax-policy/taxing-wages-20725124.htm.
[68] *Ibid.*: 4.
[69] *Ibid*.
[70] *Ibid.*; KPMG, "Employer social security tax rates" // https://home.kpmg.com/xx/en/home/services/tax/tax-tools-and-resources/tax-rates-online/social-security-employer-tax-rates-table.html.
[71] Accace, "Labour Law and Employment in Poland – 2017 Guide" (January 2017): 7 // https://accace.com/wp-content/uploads/2017/01/2017-Labour-Law-and-Employment-Poland-EN.pdf.
[72] SODRA, "Information of Social Security Fund" (August 2017) // http://www.sodra.lt/lt/situacijos/imoku-tarifai/imoku-tarifai-taikomi-uz-samdomus-darbuotojus.

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wage applicable to the worker in January 2017 was lowest in Lithuania (€380/month), similar in Poland (€454,52/month) and Estonia (€470/month), and highest in Belgium (€1,531.93/month for workers whose age is <18) and the Netherlands (€1,551.60/month).[73] Several countries have special incentives for employing workers below the age of 25 (Belgium, Poland[74], Lithuania).

1.2.3. FINANCIAL CONDITIONS ATTACHED TO THE ESTABLISHMENT AND OPERATION

With regard to taxation, the highest taxation is in the Netherlands out of the countries analyzed. Estonia offers the best income taxation by charging 0 percent when earned profit is not distributed, while all income is exempt, provided it is not shared but used for the NPOs' statutory purposes.[75] In order for a non-profit association to qualify for income tax exemption, the law requires for the organisation to be entered in a certain list (the list of non-profit associations, foundations and religious associations benefiting from income tax incentives shall be approved by the Government of the Republic after obtaining a recommendation from a expert committee).[76] The same rate of 0% income taxation applies in Belgium, if the non-profit organisation does not conduct industrial, commercial or agricultural activities, which generate income that would be considered as professional income subject to personal income tax if this activity was conducted by a natural person. There is also exclusion from corporate tax if the entity has a non-profit status (which implies a non-distribution constraint), and does not carry out profit-making operations. If this last condition is not met, the exemption is still granted if the entity performs activities that include only incidental industrial or commercial operations or which do not involve the use of industrial or commercial methods. The highest income tax rate is in the Netherlands, which stands at 20 percent. Non-profit organizations may be liable for corporation tax, but only if they perform economic activities on a regular basis. Exemptions as well are possible when the profit is limited to NLG 13,000 (€ 5,899) or does not exceed NLG 65,000 (€ 29,496) in that year and the four preceding years together. Poland stands at 18 percent of income tax[77] and tax exemption is for income devoted to the objectives listed under Art. 24(1) of the Law on Public Benefit and Volunteer Work. In addition, there is an income tax exemption for organisations with the statutory

[73] Eurofound, "Nominal levels of statutory minimum wage 2017" // https://www.eurofound.europa.eu/observatories/eurwork/articles/statutory-minimum-wages-in-the-eu-2017.
[74] *Act on Promotion of Employment and Labour Market Institutions of Poland*, art. 6, 50 // http://www.paih.gov.pl/files/?id_plik=7318.
[75] ECNL, *supra* note 23: 88.
[76] *Income Tax Act of Estonia*, para. 11 // https://www.riigiteataja.ee/en/eli/530012014003/consolide.
[77] Accace, *supra* note 58: 7.

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objectives listed under Art. 17 (1), (4), (5) of the Corporate Income Tax Law. In Lithuania, income tax is very similar and stands at 15 percent; however exemption is possible for income from activities related to the statutory purposes (up to €7,250 per fiscal year income from the non-statutory economic activities are tax-exempt as well).[78]

Regarding VAT taxation, the lowest VAT rate is again in Estonia (20 percent),[79] the highest is in Poland (standard is 23 percent), while Lithuania, Belgium and the Netherlands share the same VAT rate of 21 percent. Exemptions from VAT are also possible. In Estonia exemption is fixed to the amount of turnover (€16,000).[80] In addition, the VAT exemption in Estonia for supply of services provided by a non-profit association to its members is free of charge or for a membership fee.[81] In Lithuania, social services and services in the fields of healthcare, education, culture, and sports, as well as services provided by NPOs to their members and income generated during charity events are exempt from VAT.[82] To the rest the general VAT rate of 21% applies. In Poland, there is a list of VAT exempt goods and services, included in Art. 43 of the Law on Value Added Tax. Grants provided to a NPO to pursue its statutory activities are also exempt from VAT. In Belgium, non-profit associations are in principle subject to income tax on legal entities, not to corporation tax.[83] They will not be taxed on subsidies, gifts, membership fees or any other income from its activities if they are of a non-profit making nature. But in purchasing goods and services they have to pay VAT, although exceptions are frequent. There is a similar situation in the Netherlands, where non-profit organizations are in principle subject to VAT if they provide services or goods on a regular basis for which they charge a remuneration (general VAT registration thresholds were €75,000 (sale of goods) or €37,500 (services)). A number of services are exempt from VAT (Section 11 of the Turnover Tax Act).

Tax benefits for donors exist in all of the countries analysed. "The Belgian income tax code provides for a possible deduction of 45% from the taxes of all donations made by individuals of at least €40 made to recognized NPO's."[84] In Estonia, benefits apply to donations to NPOs with public benefit status. For individual donors donations of the value up to the 5% of the donor's total income but not more than €1,920 in total can be deducted. For corporate donors the total amount of donations may not exceed either 3% of the payments made during the

[78] ECNL, *supra* note 23: 88.
[79] *Value-Added Tax Act of Estonia*, para 15, sec. 1 // https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/514072017001/consolide.
[80] *Ibid*., para 19, sec. 1.
[81] *Ibid*., para. 16. sec. 3.
[82] *Law on Value Added Tax of the Republic of Lithuania*, *supra* note 57, art. 20-23, 24, sec. 1.
[83] Philippe Malherbe, *supra* note 64.
[84] Law Right, "Foundation: aspects of Belgian Law" // http://www.law-right.com/activities/a-foundation-what-for/.

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year to the salary fund or 10% of the calculated profit of the latest fiscal year.[85] In Lithuania, legal entities can deduct double the amount of the donation and up to 40% of taxable income from their taxable income. In Poland, individuals may deduct up to 6% and legal entities up to 10% of their taxable income on donations to an organization conducting public benefit activities in accordance with the Law on Public Benefit and Volunteer Work, regardless of whether the organisation holds a public benefit status.[86] In the Netherlands, donations are deductible if the total amount is at least 1% of individual's income. The maximum amount is 10% of income.[87]

1.2.4. ADDITIONAL ISSUES: LANGUAGE, OFFICE AND OTHERS

The most favourable jurisdictions for the registration of groupings interested in formalizing their cross-border partnerships may have additional aspects that need to be taken into account. For example, Estonia, Lithuania and Poland have strict local language requirements that apply to NPOs. For example, in Estonia, the language used for writing the name of the association is mandatory Estonian (it shall be written in Estonian, with Latin alphabet). According to the Language Act it can be assumed that this norm is absolute, as para. 17 of the Language Act states:

> Language of reporting Agencies, companies, non-profit associations and foundations, which are registered in Estonia shall report in Estonian pursuant to the procedure prescribed by Acts; para. 21(2): the seals, stamps and letter-heads of agencies, companies, non-profit associations, foundations and sole proprietors which are registered in Estonia shall be in Estonian. An agency, company, non-profit association, foundation or sole proprietor may append a translation into a foreign language to an Estonian text.

In Belgium, translation into Dutch and/or French of official documents is required.[88]

Concerning the requirement for the office, in Poland there is an obligation to have a mailing address with the document proving the right to use the premises from the owner. The mailing address is a precondition for obtaining the tax identification number. The regulations in Belgium include a requirement for every company to have an office.[89] Even if the organisation's staff prefers working at home, from cafes or while travelling around the world, the organisation would still

[85] Kristina Mänd, "The Percentage Tax Mechanism: Past, Present and Future (DRAFT), Estonian overview" (July 2015) // http://taxdesignation.org/estonia/.
[86] ECNL, *supra* note 23: 88-89.
[87] Arnoud Knijnenburg, "Netherlands: Unique tax regime for not-for-profit and charitable activities" (November 2014) // https://www.twobirds.com/en/news/articles/2014/global/tax/oct-14/netherlands-tax.
[88] A4ID, *supra* note 26: 6.
[89] A4ID, *supra* note 26: 10, 12-13.

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be made to pay for that office in Belgium. This is not just a requirement for a legal address, like in Poland or Lithuania, "as entrepreneurs in Belgium must prove they have leased office space for at least one month when they are incorporating their company".[90]

The liability of founders is one more aspect that shall be seriously reviewed. Most of the countries provide for limited liability of NPOs.[91] In Estonia, the liability of founders of an NPO is in solidarity with the members of the management board, if they cause damage to the association by submission of incorrect or inaccurate information or breach of other obligations, unless they prove that were not aware nor should have been aware of the circumstances, which caused the damage.[92] In the Netherlands, as long as the formal association or a foundation is not entered in the commercial register the members of the management board are personally liable for the legal acts by which they have bound the organisation.

2. EUROPEAN ECONOMIC INTEREST GROUPING

This part of the Article looks into the legal form of the EEIG by analyzing the nature and peculiarities of the legal form as well as making comparison with the national legal forms analyzed above from the perspective of legal and economic relevance of their establishment. For the most part the analysis follows the structure of part 1; however certain deviations are made due to the partial relevance of some of the indicators to the functioning of the legal entity.

2.1. THE NATURE OF EEIG AND ITS FOUNDING CONDITIONS

As all of the previously discussed national legal forms, an EEIG can be considered a specific form of association with its own legal personality[93] endowed by the EU Member State where the EEIG is registered. Despite the fact that the EEIG Regulation emphasizes the significance of the legal capacity to the accomplishment of the legal entity's goals,[94] Article 1(3) leaves it to the discretion to the Member States to decide if groupings registered at their registries have legal personality. In fact, as an EEIG itself is not subjected to taxes (see part 2.5) some

[90] E-Residency Blog, "How I Started an EU-based Business with Almost no Money" (March 2017) // https://medium.com/e-residency-blog/customer-story-1-how-i-started-an-eu-based-business-with-almost-no-money-9d715e7345b0.
[91] E.g. *Law on Associations of the Republic of Lithuania*, *supra* note 24, *Law on Public Organizations of the Republic of Lithuania*, *supra* note 24, art. 2, sec. 1.
[92] *Non-profit Associations Act of Estonia*, *supra* note 17, para. 10^1.
[93] Frank Wooldridge and Andenæs Tønnesson, *supra* note 11, 379.
[94] *Council Regulation (EEC) No 2137/85*, *supra* note 9, preamble.

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countries deny the legal personality to the entity.[95] It is not the case in the countries under discussion.

The European Commission views an EEIG as a unique creature having features both of a partnership (the members set it up by means of a simple contract) and a company (it has its own administrators entitled to act in its name).[96] The European Commission describes the form as essentially 'ancillary' in nature.[97] In contrast to most analyzed national legal forms (see 1.1.1.), it seeks to facilitate and improve the economic activity of its members, to enhance its members' profits, and not to make profits itself; therefore the activities of the EEIG cannot substitute the activities of its members.[98] Although it may sound like a significant limitation,[99] the European Commission is mitigating the language of the EEIG Regulation emphasizing that "there is nothing to prevent an EEIG carrying on some of the activities of its members for a limited period."[100] In the European Commission's view, the EEIG can have multiple functions: "it can be used simply as a framework for coordinating and organizing its members' activities or it can conclude in its own name and execute contracts awarded by the public authorities or under programmes financed by public funds."[101]

The transnational character of an EEIG, which is one of the key characteristics of the legal entity, is a consequence of a requirement of at least two members having their administrative seat in two different Member States.[102] In the view of the European Commission, being inherently transnational, the EEIG can be considered as a 'consortium` and is always entitled to apply to participate in Community programmes, including those which require the participation of legal entities in several Member States.[103] This is an additional advantage for the interested parties who establish an EEIG for the purposes of submitting and securing tenders for research, development and innovations.

One of the biggest advantages of the legal form is its openness to the various types of members. The Regulation aims to make the membership at an EEIG as open as possible both to any natural and legal person, who has been engaged in an "economic activity" in the EU prior to becoming a member of the EEIG.[104] This is particularly important for certain sectors, such as academia, or large organizations where the decision making process regarding the participation of a legal person

[95] Except for Italy and Germany (Frank Wooldridge and Andenæs Tønnesson, *supra* note 11, 379).
[96] Committee on Economic and Monetary Affairs and Industrial Policy, *supra* note 10.
[97] *Ibid*.
[98] Graham D. Vinter and Gareth Price, *Project Finance: A Legal Guide* (Sweet & Maxwell, 2006), 73.
[99] Jan Wouters, "European Company Law: Quo Vadis?" *Common Market Law Review* Vol. 37, No. 2 (2000): 261.
[100] Committee on Economic and Monetary Affairs and Industrial Policy, *supra* note 10.
[101] *Ibid*.
[102] *Council Regulation (EEC) No 2137/85, supra* note 9, art. 2, sec. a.
[103] Committee on Economic and Monetary Affairs and Industrial Policy, *supra* note 10.
[104] *Council Regulation (EEC) No 2137/85, supra* note 9, art. 4, sec. 1.

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(e.g. Higher Education Institution) in this type of partnership is usually complex and lengthy. It can even be unpredictable, in particular in the cases where only few employees have the expertise necessary to the partnership, which can naturally reduce the willingness of the legal person to become part of another legal establishment. Thus, although the grouping will benefit more from having legal persons as members (due to limitation of maximum 20 members in a grouping, established in Article 4(3) of the EEIG Regulation),[105] the door remains open for individual experts who may not even be employees of a particular organization. For example, both universities and other education and science institutions may participate in an EEIG; however, the creation of an EEIG is also permitted between experts (e.g. professors) or between the institutions and experts.

Though an EEIG is designed primarily for the private partners, public authorities may in theory join an EEIG as well, unless a Member State establishes certain restrictions. In Belgium, for instance, national public credit institutions cannot be members of a grouping without the consent of supervisory ministers.[106] However, as Jaansoo, Groenendijk and Zapletal accurately mention, the EEIG format is not suited for public bodies, as it aims at maximizing private economic results,[107] which is not the main goal of public authorities even if their purpose is business development.[108] This issue is relevant in the case when partners, e.g. universities or research institutes are public institutions and therefore might not be able/willing to join an EEIG due to incompatibility of the EEIG's goals with the in-house policies. An individual working in a public authority might get into conflict of interest if he/she decides to participate in the EEIG's activities without the approval of the public authority. Therefore, the formalization of the partnership of public and private sector, which is increasingly promoted by various tenders, is less feasible using the legal form of EEIG.

In contrast to the discussed national legal forms, an EEIG has a European recognition due to uniform, legally neutral regulation at the European level, which makes it comprehensible to all actors within and outside the EU. Some scholars describe an EEIG as "supranational entity with recognized capacity under European

[105] The rule requested by Great Britain based on the fact that British Companies Act of 1985 established a similar rule applicable to all non-profit organizations, not organized as a company, at the time when the EEIG Regulation was adopted (Holger Fleischer, *supra* note 1: 1694).
[106] *Law of Belgium Containing Various Measures to Implement Council Regulation (EEC) 2137/85 on the Creation of an EEIG (Loi portant diverses mesures d'application du Règlement (CEE) n° 2137/85 du Conseil du 25 juillet 1985 relatif à l'institution d'un groupement européen d'intérêt économique)*, art. 3 // http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1989071236&table_name=loi.
[107] Annika Jaansoo and Nico Groenendijk, "Cross-border delivery of public services: How useful are EGTC's?" 54th ERSA Congress, St. Petersburg (August 26-29, 2014): 13.
[108] Jirka Zapletal, "The European Grouping for Territorial Cooperation (EGTC): A new tool facilitating cross-border cooperation and governance," *Quaestiones Geographicae* Vol. 29, No. 4 (2010): 20.

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law and national laws of the various Member States."[109] Although being an original European corporate form,[110] from the practical point of view, as accurately suggested by Wooldridge, an EEIG is governed by a mixed regime.[111] Despite the uniformity of the main rules governing the nature of the legal entity, its formation, decision-making, etc., the Regulation permits the Member States to adopt certain provisions governing EEIGs at the national level as long as the rules do not conflict with the scope or objectives of the Regulation.[112] As a result the national legal acts of the Member States may envisage different requirements for the legal entity, e.g. regarding its management or auditing, insolvency,[113] even, as has already be mentioned above, the legal personality. Furthermore, the law applicable to the grouping's internal organization is the internal law of the Member State where it is officially situated.[114] Thus although "the reference of internal (as opposed to that of national law) excludes the provisions of international private law of a relevant state",[115] the applicability of national law on numerous issues brings significant national impact on the grouping's work which is frequently mentioned as a weakness of the measure.[116] To mitigate this issue, the Regulation secures a high degree of flexibility shall the grouping decide to change the applicable national law as an EEIG may transfer its seat from one Member State to another which results in a change of applicable law.[117] This is the privilege stemming from the EEIG Regulation at the EU level.

2.2. REGISTRATION: THE WEIGHT OF PAPERWORK AND THE COMPLEXITY OF THE PROCEDURE

Although a simple establishment of an EEIG is often mentioned as another advantage of the legal form,[118] it must be observed that the simplicity in this regard, if one looks for an establishment of a non-profit entity, is more related to the common substantive rules provided in the EEIG Regulation rather the establishment procedure itself. An EEIG is established and registered in one of the Member States of the EU in much the same way as a legal person under private law. In Estonia, Poland and Lithuania an EEIG is a private legal person to which the

[109] Michala K. Meiselles, "The European Economic Interest Grouping – A Chance for Multinationals?" *European Business Law Review* Vol. 26, No. 3 (2015): 399.
[110] Holger Fleischer, *supra* note 1: 1685.
[111] Frank Wooldridge and Andenæs Tønnesson, *supra* note 11: 378.
[112] *Council Regulation (EEC) No 2137/85, supra* note 9, preamble.
[113] *Ibid*., preamble.
[114] *Ibid*., art. 2, sec. 1.
[115] Frank Wooldridge and Andenæs Tønnesson, *supra* note 11: 378.
[116] Jan Wouters, *supra* note 99: 260.
[117] *Council Regulation (EEC) No 2137/85, supra* note 9, art. 14.
[118] Neocleous Labropoulos, *supra* note 13: 153.

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rules of general partnership are applied.[119] Despite of the fact that it is subjected *mutatis mutandis* under the legal regime of general partnership, the EEIG is a separate legal person in the whole system and not a subtype of the general partnership. Similarly, in Netherlands an EEIG is a separate form of incorporation, showing great similarity to the general partnership in many respects.[120] In Belgium an EEIG is a separate legal person[121] resembling the corporate form of Economic Interest Grouping.[122]

Registration of EEIG in all of the countries analysed requires at least the submission of two documents: application form and a contract for the formation of a grouping. In addition, the Member States set further requirements in the laws guaranteeing the application of the EEIG Regulation, usually requesting to submit all the documents necessary for the registration of the legal entity which status the EEIG acquires in line with Article 39 (1) of the Regulation, which empowers the Member States to lay down the rules governing the registration. In Lithuania, for example, for the purpose of registration an EEIG has to provide all other documents listed in the Civil Code of Lithuania for the registration of a private legal person.[123]

The EEIG Regulation sets two additional formal requirements that are usually (except for Belgium) absent in the analysed national jurisdictions, i.e. publication of the notice that a grouping has been formed in the appropriate official gazette of the Member State in which the grouping has its official address (identifying the particulars which must be included in the contract for the formation of a grouping under Article 5 of the EEIG Regulation), and the consequent notice in the Official Journal of the EU (stating the number, date and place of registration and the date,

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[119] *Implementation Act of Estonia of Council Regulation (EEC) No. 2137/85 on the European Economic Interest Grouping*, art. 1, sec. 3 // https://www.riigiteataja.ee/en/eli/512012015001/consolide; *Act of Poland of 4 March 2005 on the European economic interest grouping and the European company (Ustawa z dnia 4 marca 2005 r. o europejskim zgrupowaniu interesów gospodarczych i spółce europejskiej)*, art. 3, sec. 1 // http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20050620551/T/D20050551L.pdf; *Law of the Republic of Lithuania on European Economic Interest Groupings*, Official Gazette (2004, no. 4-43), art. 2, sec. 1.

[120] *Dutch Law of 28 June 1989 implementing Council Regulation (EEC) 2137/85 of 25 July 1985 on the creation of EEIGs* // http://www.businesslegalconsultancy.com/en/2670/afdeling-1.html; Steven R. Schuit, ed., *Corporate Law and Practice of the Netherlands. Legal, Works Councils and Taxation* (The Hague, London & New York: Kluwer Law International, 2002), 55.

[121] *Law of 12 July 1989 of Belgium containing various measures to implement Council Regulation (EEC) 2137/85 on the creation of an EEIG (Loi portant diverses mesures d'application du Règlement (CEE) n° 2137/85 du Conseil du 25 juillet 1985 relatif à l'institution d'un groupement européen d'intérêt économique)* //
http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1989071236&table_name=loi.
Law of 17 July 1989 on Economic Interest Groupings of Belgium (Loi sur les groupements d'intérêt économique), art. 1 //
http://www.ejustice.just.fgov.be/cgi_loi/arch_a1.pl?sql=(text+contains+(%27%27))&rech=1&language=fr&tri=dd+AS+RANK&value=&table_name=loi&F=&cn=1989071733&caller=archive&fromtab=loi&la=F&ver_arch=003.

[122] *Company Code of Belgium (Code des sociétés de Belgigue)*, art. 839 //
http://www.wipo.int/wipolex/fr/text.jsp?file_id=376617.

[123] *Law of the Republic of Lithuania on European Economic Interest Groupings*, *supra* note 119, art. 4, sec. 2.

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place and title of publication).[124] The double publication of relevant information time-wise is far less attractive than most national legal forms.

2.3. REQUIREMENTS FOR THE MANDATORY INTERNAL STRUCTURE OF THE EEIG

Mandatory internal governance structure laid down in Article 16 of the EEIG Regulation resembles that of the governing bodies required for different legal entities in respective national jurisdictions. The members of a grouping, acting as a body, form the supreme governing body of the legal entity, accompanied by the Manager or Managers. Similarly to most national legal forms, a contract for the formation may provide for other organs.

As in the case of national legal bodies analysed above, the EEIG gives the freedom to the founders of an EEIG to decide the powers of the governing bodies in a contract for the formation of the grouping and decision-making procedures. The decision-making mechanism within an EEIG may become a disadvantage[125] in comparison to the flexible procedures within the analysed national legal entities – except where the Regulation requires unanimity.[126] The grouping may set the decision-taking rules in the contract for the formation of a grouping. However, in absence of specific rules regarding decision-making, decisions are taken unanimously. Unanimity may be in general difficult to realize if an EEIG has numerous members. Another important shortcoming of the unanimity rule in this context is that the grouping may suffer from inability to gather all the members having decision-making power at the respective Members for decision-making at an EEIG, as most of the decisions at the HEIs or research centres have to be approved by highest-level administrators. Therefore, the grouping may easily suffer from individual participants blocking decisions.

Another trigger is the limited possibility of the Members to restrain the powers of the managers, who represent the EEIG, by the contract for the formation of the grouping or a decision by the members, with the aim to minimize the risk of possible loses. The Regulation establishes the binding force of the managers' decisions as regards third parties when they act on behalf of the grouping, even where their acts do not fall within the objects of the grouping.[127] In this case the grouping may only try to prove that the third party knew or could not, under the

[124] *Council Regulation (EEC) No 2137/85*, *supra* note 9, art. 11.
[125] Thomas Ratka, "The "European Business Register EEIG" as a Network of European Commercial Registers": 181; in: Mark Fenwick, Stefan Wrbka, and Steven Van Uytsel, eds., *Networked Governance, Transnational Business and the Law* (Springer, 2014).
[126] *Council Regulation (EEC) No 2137/85*, *supra* note 9, art. 17, sec. 2.
[127] *Ibid*., art. 20, sec. 1.

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circumstances, have been unaware that the act fell outside the objects of the grouping;[128] however it requires additional effort.

2.4. REPORTING AND OTHER OBLIGATIONS OF A REGISTERED EEIG

As under the EEIG Regulation the activities of groupings are subject to the provisions of Member States laws on the pursuit and supervision of activities,[129] the reporting burden of EEIGs is similar to the one of the analysed legal forms. A common obligation established in all implementing national laws guaranteeing implementation of the EEIG Regulation in the countries analysed is annual reporting after the end of financial year. The Dutch law requires annual financial statements, audited by a certified public accountant (no publication is required).[130] In Belgium, the Members must approve annual financial statements within a period of six months from the end of the year. Within 30 days of their approval the annual accounts and a document containing the name, first names, profession and domicile of the managers have to be deposited at the National Bank of Belgium by the manager(s).[131] In Lithuania, the Members must approve the annual financial statements within a period of five months; the financial statements have to be submitted to the Registrar of Legal Persons within 30 days from the date of approval.[132] In Estonia, the financial statements of the grouping are submitted by the management board.[133]

2.5. FINANCIAL CONDITIONS ATTACHED TO THE EEIG'S ESTABLISHMENT AND ITS OPERATION

The economic relevance of establishing an EEIG could be assessed by additionally analysing regulation specific to the EEIG. The EEIG will suffer the same cost for staff, and will face the same financial employment conditions and flexibility and similar taxation rules as the analysed legal entities.

The flexibility regarding the method of financing the grouping, except for public investment, which is explicitly excluded as a form of incomes by the EEIG Regulation itself,[134] is regarded as a benefit of the legal form. For instance, when individuals or small organizations are engaged, they may contribute "through

[128] *Ibid*., art. 20, sec. 1.
[129] *Ibid*., preamble.
[130] *Dutch Act of 28 June 1989*, *supra* note 120.
[131] *Law of 12 July 1989 of Belgium Containing Various Measures to Implement Council Regulation (EEC) 2137/85, supra* note 121, art. 8.
[132] *Law of the Republic of Lithuania on European Economic Interest Groupings*, *supra* note 119, art. 6, sec. 2.
[133] *Implementation Act of Estonia of Council Regulation (EEC) No. 2137/85, supra* note 119.
[134] *Council Regulation (EEC) No 2137/85, supra* note 9, art. 23.

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rendering of research and development skills, consultancy services, intellectual property (such as patents and know-how), materials and resources (premises, laboratories, electronic resources, personnel and so on)."[135] Additionally, there are no requirements on minimal capital formation. This is particularly beneficial in the cases where the network is seeking to engage individual experts from academia or non-profit entities who usually do not have the capital for investment.

With regard to taxation, under the Regulation the EEIG is tax transparent[136] in contrast to analyzed national legal forms. Its profits as well as the losses appear to be automatically imputed to its members[137] and are apportioned among them in the proportions laid down in the EEIG contract or, in the absence of any such provisions, in equal shares.[138] The EEIG as a company is responsible for VAT and employer's taxation duties under the laws of the state of registration; therefore as regards taxation an EEIG will face similar expenses in comparison to the legal forms analyzed above.

2.6. OTHER ISSUES RELATED TO THE EEIG'S ESTABLISHMENT AND ITS OPERATION

Regarding additional aspects that may affect the choice of one or other legal form discussed in part 1.2.4, most of restrictions/requirements (e.g. national language or office) are also applicable to the EEIG since the founders have to follow national procedure regarding the registration of the legal entity. However, apart from the general rules, there are couple of aspects that are specific to the EEIG.

With respect to the language requirement, the Regulation does not regulate the use of the language for the documentation; however, it establishes the rule that the name of the grouping must be "preceded or followed either by the words 'European Economic Interest Grouping', or by the initials 'EEIG', unless those words or initials already form part of the name".[139] In addition, as confirmed by the CJEU, the Regulation is silent as to the content of the name of the grouping; therefore the requirements in that connection may be imposed by the provisions of internal law.[140]

The EEIG must establish the grouping's official address in the EU.[141] The European Commission emphasizes that the EEIG Regulation leaves a wide discretion of choice to the Members of the grouping, as the official address of a

[135] Michala K. Meiselles, *supra* note 109: 401.
[136] Graham D. Vinter and Gareth Price, *supra* note 98, 73.
[137] This is the reason why an EEIG does not have legal personality in Germany and Italy (*ibid.*).
[138] *Council Regulation (EEC) No 2137/85, supra* note 9, art. 21, sec. 1.
[139] *Ibid.*, art. 5.
[140] *European Information Technology Observatory*, Court of Justice (1997, C-402/96), ECLI:EU:C:1997:634, para. 22.
[141] *Council Regulation (EEC) No 2137/85, supra* note 9, art. 12.

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grouping need not necessarily be where the grouping carries out its principal activity, which may be carried out in another Member State. In this regard the Regulation stipulates that the official address must be fixed in the Member State "where the grouping has its central administration, or where one of the members of the grouping has its central administration or, in the case of a natural person, his principal activity, provided that the grouping carries on an activity there."[142] Additionally, as has already been mentioned in part 2.1, in contrast to the previously analyzed national legal entities, the EEIG may transfer its seat from one Member State to another[143] which in terms of economic relevance gives the freedom to react to changing national regulation regarding financial and other obligations and choose most favorable (cost-effective) jurisdiction.

As to the liability of founders (mentioned earlier in part 1.2.4.), it is limited in the case of NPOs in most of the analysed countries. The EEIG regime establishes an opposite rule, which is mentioned by almost all scholars as one of the main disadvantages of the legal entity.[144] The financial liability for the activities of any of the EEIG members is not limited; therefore each member can individually be held liable for the activities of the EEIG.[145] In the view of the European Commission the rule is set aiming to provide the maximum effective protection for third parties entering into a business relationship with the grouping.[146] The unlimited joint and liability of the members is also viewed as the price to pay for the lack of a capital requirement.[147] Having these rules in mind, Graham and Gareth calls an EEIG a "rather a curious beast",[148] as at the same time the EEIG Regulation grants the entity legal personality, the aspect noticed by numerous commentators.[149]

The shortcoming of this regulation is twofold. First of all, although the third parties are protected by various provisions of the Regulation, in particular these regarding unlimited joint and several liability of the members, they might not have the confidence to sign contracts with the EEIG as a legal subject as in case of any problems they will have to deal with numerous entities (which may be both natural and legal persons). Secondly, the unlimited liability clause may discourage the companies, particularly large ones, to become the Members of the EEIG.

[142] *Ibid*., art. 12.
[143] *Ibid*., art. 13.
[144] Neocleous Labropoulos, *supra* note 13: 154; Jan Wouters, *supra* note 99: 261.
[145] *Council Regulation (EEC) No 2137/85*, *supra* note 9, art. 24, sec. 1.
[146] Committee on Economic and Monetary Affairs and Industrial Policy, *supra* note 10.
[147] Mateo Perfetti, "EEIG advantages and disadvantages" (May 2016) // https://www.linkedin.com/pulse/eeig-advantages-disadvantages-matteo-perfetti/; Committee on Economic and Monetary Affairs and Industrial Policy, *supra* note 10.
[148] Graham D. Vinter and Gareth Price, *supra* note 98, 73.
[149] Machiel Lambooij and Robert Boon, "Reading the Implications of the Netherlands Circular Letter," *International Tax Review* (1990): 22.

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CONCLUSIONS

- Considering the legal relevance of the formalisation of informal cross-border networks, the most appropriate form for foreign groupings is an association in the countries analysed. The indicator of registration options demonstrates that the most complicated procedures and requirements exist in Belgium, the Netherlands and to a lesser extent in Poland, where notarial acts are involved, residence by the foreign founder in the country or a large number of founders is required, or official registration has to undergo long and very formalised procedures. Based on this indicator, it seems that there are more attractive options to register an NPO in Estonia or Lithuania rather than in the other three countries. This is also confirmed by the time involved in registration and the fees applied.
- The requirements for mandatory internal structures do not distinguish the countries significantly, but in view of additional mandatory bodies, requirements in Estonia and Lithuania might be more simplified as those bodies can be reduced to single in comparison with collegial bodies. The indicator of reporting obligations demonstrates that requirements are also quite similar in all the countries analysed and involve financial and activity reports, as well as additional obligations of registration as tax payers (including VAT), submission of additional information to the authorities or bank account opening.
- Considering the economic relevance of formalisation of informal cross-border networks, the indicator of mandatory staff and employment requirements for staff demonstrates that the options existing in the countries analyzed provide for a similar set of requirements, while the associations in the Netherlands might be considered as less attractive due to a requirement to have a full time staff. Countries with more flexible regularization of staff might be a bit more attractive, considering that besides the employment contracts that usually involve quite strict regulatory conditions, volunteering contracts are also available (Estonia, Lithuania, the Netherlands and Poland).
- The indicator of financial employment conditions for staff demonstrates that Poland seems to have most favourable taxation situation with regard to employment taxes among the countries analyzed, while Belgium and the Netherlands have high taxation generally on several taxes. Although Lithuanian taxation on employment is high, the minimum wage is still quite low in comparison with other countries.
- Additional requirements applied to operation of non-profit organisations in the five countries in terms of language, offices and liabilities are equally important to consider. While a registered office is a typical requirement for registration and

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operation of an organisation in the five countries, in some countries it is not applied formally and thus adds to the costs of running an organisation (e.g. in Belgium). Concerning the liability of founders, some exceptions to limitation of such liability might cause attention in the Netherlands only, as personal liability of the management board is applied as long as the organisation is not entered in the register of organisations.

- Although the legal form of an EEIG may offer to a cross-border network a better visibility at the European level, the more attractive form of formalization of the network remains an association. Such benefits as the possibility to transfer the seat of an EEIG to another Member State and the flexibility regarding the method of financing the grouping are overridden by unlimited joint and several liability of its members, a limited possibility of the members to restrain the powers of the managers that may act on behalf of the legal entity and mandatory unanimity voting procedure in specific cases, the issues that are not present in the legislative regime of associations or may be solved in the founding agreement. This finding has particular relevance in the situation in which the founders are public entities seeking financing in the field of research, development and innovations.
- Furthermore, the harmonised regulation does not eliminate the significant impact of national law, both in the process of registration and daily activities; therefore it cannot be considered as a prevailing argument for the choice of the EEIG legal form from the economic relevance perspective either. The indicators of financial employment conditions for staff, taxation rates, linguistic issues and office costs are not relevant for the choice between these alternatives, as they are governed by the national or internal regulation. Additionally, the procedure for registration of an EEIG is even less attractive time-wise in comparison to the national legal entities, due to a double publication requirement established by the Regulation.

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