

ANALYSIS OF THE TYPES OF EUROPEAN LEGAL ENTITIES IN BENEFIT OF ENVIRONMENTAL AND RATIONAL INNOVATIVE INVESTMENT PROCESS FOR INTERNATIONAL ENERGY, TRANSPORT AND INFRASTRUCTURE PROJECTS' DEVELOPMENT AND THEIR PRACTICAL IMPLEMENTATION

Prof. M.Sc. Ivanov I. PhD.¹

Faculty of Electrical Engineering – Technical University of Sofia, Bulgaria¹
ivec@tu-sofia.bg

Assoc. Prof. M.Sc. Dimitrova E. PhD.²

Todor Kableshkov University of Transport - Sofia, Bulgaria²
edimitrova@bitex.bg

Abstract: *The high level of investment for the international energy, transport and infrastructure projects, in almost all cases need of a multi-source approach of financing is necessary, having the European funds as a main component. Each such project must be undoubtable innovative and in accordance with the safety and environmental European requirements. The Legal Entity (LE) is a key factor, acting for coordination of the management and for legal responsibility during the all phases of the project. Choose of the most appropriate type of LE for realisation of such project has very high priority in the whole investment process. In favour of this the report presents the main types of European Legal Entities with their advantages, disadvantages, tax issues, intellectual property rights (IPR), etc.*

Keywords: LEGAL ENTITY, INVESTING, ENVIRONMENT, RATIONAL, INNOVATIVE, ENERGY AND INFRASTRUCTURE PROJECTS

1. Introduction

The current European policy concerning the high tech investment proposals' realization for international energy, transport and infrastructure projects' development and their practical implementation requests environmental and rational innovative investment process. Taking into account the high level of investment for the international energy and infrastructure projects, in almost all cases is supposed that a multi-source approach of financing is necessary, having the European funds as a main component. Today, in all cases, each such project must be undoubtable an innovative project and in accordance with the safety and environmental European requirements.

That's why choose of the most appropriate type of Legal Entity (LE) for realisation of each international energy, transport and infrastructure project, is very important and it is a step with very high priority in the whole investment process. The LE is a key factor, acting for coordination of the management and for legal responsibility during the all phases of the project. There are many examples for high tech investment proposals' realization with needs of rational choose of most appropriate type of LE in Bulgaria [1], Europe [2] and around the world [3].

For the aim, with the report are briefly presented the main types of European Legal Entities with their advantages, disadvantages, tax issues, intellectual property rights (IPR), etc. On the popular, so called European company (SE), little more attention has been paid. These types could be considered from consortiums and investors, with view to choose some of them as basis for a LE of an international energy or infrastructure project' development and practical implementation of this type of LE.

2. European Economic Interest Grouping (EEIG)

In accordance with the Council Regulation No 2137/85 from 25 July 1985 the EEIG is a form of association between companies or other legal bodies, firms or individuals from different EU countries who need to operate together across national frontiers [4]. It carries out particular tasks for its member-owners and is quite separate from its owners' businesses.

Some main characteristics of an EEIG are:

- obtaining the legal entity statute, supposes a judicial procedure in the process of the formation of the grouping;
- the EEIG is a legal person of public or private law;
- there are in one grouping, as minimum, two members from different Member States and an EEIG cannot employ more than 500 persons;

- an EEIG does not necessarily have to be formed with capital. Members are free to use alternative means of financing, but the grouping may not invite investment by the public;
- the activities of the grouping must be related to the economic activities of its members, but cannot replace them.

The grouping's objective is to facilitate or develop the economic activities of its members by a pooling of resources, activities or skills. The liability of the members of EEIG relates primarily to respect the obligations of the grouping's legal statute, the subject of legal rights and obligations under the regulations, including expenditure and income. The EEIG has at least two organs: the members acting collectively and the manager or managers.

The provisions for taxation of EEIGs in the Member States are given in the relevant Finance Acts. For the purposes of taxation, a grouping is regarded as acting as the agent of its members. The EEIG is not subject to any accounting or auditing requirements, and therefore does not have to file an annual return with the relevant national Chamber of Commerce. The EU legal framework ("acquis") define the Intellectual Property Rights (IPR) in various aspects related with the possible activities of an EEIG, with relevant documents [5].

The EEIG under European law has a number of advantages including 'legal capacity' - the right to enter into contracts, to sue (or be sued), tax transparency, members have flexibility regarding the method of financing the grouping. As important disadvantage of the EEIG can be mentioned the lack of a capital requirement is unlimited joint and several liability of the members.

3. European Grouping of Territorial Cooperation (EGTC)

The EGTC was established the 5 July 2006 by Regulation (EC) 1082/2006 of the European Parliament and of the Council and came into force on 1 August 2006 [6], as first European cooperation structure with a legal personality defined by European Law designed to facilitate and promote territorial cooperation (cross-border, transnational and interregional cooperation), in view of strengthening the economic and social cohesion of the European territory. It is for management and implementation of territorial cooperation programmes or projects co-financed by the Community through the European Regional Development Fund (ERDF), the European Social Fund (ESF) or/and the Cohesion Fund (CF). The EGTC is created with Convention and Statutes adopted by the EGTC's members.

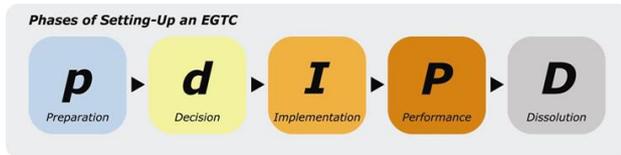


Fig 1. Setting-up of EGTS

As a general rule, an EGTC must be composed of at least two members coming from at least two EU Member States. The Revised EGTC Regulation allows accession of members from third countries or overseas countries of territories under certain conditions.

EGTCs have four main tasks to carry out:

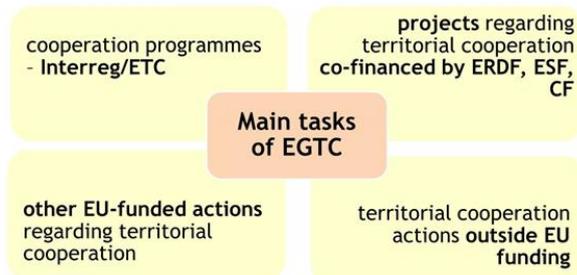


Fig 2. Main tasks of EGTS

The EGTC is liable for its potential debts. If the EGTC is not able to reimburse said debts itself, the members of the EGTC are then held liable. Organs of an EGTC are an assembly made up representatives of the EGTC members, and a director representing the EGTC and acting on its behalf. In order to be effective, the EGTC has to be able to manage the relationships from inside and outside, because each EGTC becomes knowable to the local and national authorities and in important communities and establishes an image and a portfolio of its performance, also in European level.

The Member States can establish paying income tax, for instance: Registration fees established by the laws in force; Donations and money or goods received by sponsorship; Incomes from compensation from insurance companies for damages produced to the own tangible assets.

The IPR shall be suitable reflected in the convention and in the statutes of an EGTC. In general scope of the European legislation the author of each work has the exclusive patrimonial right to decide whether, how and when the work will be used, including the right to consent on the using of the work by others.

Some advantages of EGTC are: offer the possibility for project partners to hire staff together and make joint purchases; can implement macroregional strategies; to build links to other programmes/funding sources and to spreading the reach of territorial cooperation; to open new forms of multilevel governance. It can be a tool to implement the Europe 2020 Strategy, boosting competitiveness and sustainability in Europe's regions.

EGTCs have disadvantages as discrepancies between planning and practice, in particular for the cross-border cooperation. Better in this aspects are the network-EGTCs. Concerning the multi-level governance sometime there are disadvantages in the implementation caused from the differences/not fully harmonized national legislations with EU legislation.

4. European Joint Undertaking (EJU)

EJU is a legal entity established under the TFEU (Treaty on the Functioning of the European Union) [7], as collaborative structure proposed for the efficient execution of EU research, technological development and demonstration programmes. The EJU objective is

to contribute for strengthen the overall research and innovation framework and coordinating efforts across the EU.

Some of the main characteristics of an EJU are: needs of a judicial procedure for its formation; the registration in this manner confers full legal capacity on the EJU throughout the EU; fostering the innovation potential of research infrastructures and their human resources and the R&D partnerships with industry, and to stimulate the creation of innovation clusters, also to support training and/or exchanges of staff managing and operating research infrastructures; reinforcing of European research infrastructure policy and international cooperation; creating of networks for excellent researchers and innovators; exploring the possibility of setting up an European IPR valorisation instrument.

The structure of an EJU could have (for instance similar with so called Fusion for Energy (F4E), created under the Euratom Treaty): Governing Board assisted by a Bureau; Administration and Management Committee; Procurement and Contracts Committee; Technical Advisory Panel and Audit Committee. Director, which is the CEO (Chief Executive Officer) responsible for day-to-day management of the organisation.

The EJU can combine H2020 and private sector funds within public-private or public-public partnerships in key areas where research and innovation could contribute to Europe's wider competitiveness goals, leverage private investment and help tackle societal challenges.

Taxation operates under a system of fiscal transparency; that is to say, any profits, losses or gains are shared between the members according to their shares. For the purposes of taxation, an EJU is regarded as acting as the agent of its partners. The EJU is subject to accounting or auditing requirements. The Member States can establish paying income tax for the types of income.

Concerning the IPR it shall be established in the contract of the EJU. Similar of the EEIG as LE the EJU has the almost the same advantages. Should be mention that an EJU creates opportunities for administration and coordination of international networks for excellent researchers and innovators.

As opposed to the advantages on one hand the specific objective of EJU is to endow world-class research infrastructures which are accessible to researchers from different countries in Europe and beyond and which fully exploit their potential for scientific advance and innovation. On other hand this important particularity of the EJU could see as a disadvantage because the research infrastructures are becoming increasingly complex and costly, often requiring integration of different equipment, services and data sources and extensive transnational collaboration. No single country or small EJU has enough resources to support all the research infrastructures it needs.

5. Societas Europaea (SE) or European company

Legislation and law applicable for this LE are the Council Regulation (EC) No 2157/2001 of 8 October 2001 [8] on the Statute for a European company (SE) and the Council Directive 2001/86/EC [9] supplementing with regard to the involvement of employees, thereby recognising their place and role in the business.

By reason of the accession of Bulgaria and Romania in EU is introduced Amending act of the Council Regulation (EC) No 1791/2006 of 20 November 2006 [10] adapting certain Regulations and Decisions in the fields of free movement of goods, freedom of movement of persons, company law, competition policy, agriculture (including veterinary and phytosanitary legislation), transport policy, taxation, statistics, energy, environment, cooperation in the fields of justice and home affairs, customs union, external relations, common foreign and security policy and institutions.

The SE's objective is to contribute to the completion of the internal market in Europe and to the improvement of the market brings about in the economic and social situation throughout the

Community, i.e. not only that barriers to trade to be removed, but also that the structures of production to be adapted to the Community dimension.

In accordance with the regulation [9] the SE is a legal structure that allows a company to operate in different EU countries under a single statute, as defined by the law of the Union and common to all EU countries. An SE is established with at least two companies originating in different EU countries, which means especially that it can only be created from an existing base. It must have a minimum capital of €120 000. In addition, an SE may itself set up one or more subsidiaries in the form of SEs.

Other important characteristics of an SE are: Accomplish combined application of the SE regulation and national law; No SE may be established without a model of employee involvement being selected by agreement between the management and the employees themselves, including information and consultation procedures and, where appropriate, employee involvement in the management bodies of the SE; The SE legislation represents a milestone not only in the field of EU Company Law but also in the field of European industrial relations.

One study on the current state of the SE founding in Europe (Andres Carlson e.a., European Trade Union Institute, Brussels) shows examples for important characteristic of the SEs, for instance:

Characteristic of growth shows that the number of SEs has increased steadily year by year (at almost exponential growth rates), with a total of 2,125 SEs in 2014.

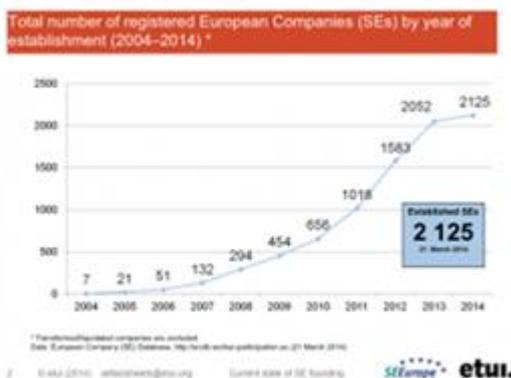


Fig 3. Growth of the number of SEs

The geographical characteristic shows that SEs can currently be found in 25 of the 30 countries of the European Economic Area (EEA) but they have very unbalanced distribution in Europe. The Czech Republic (70 % the central location of the country in Europe certainly has big influence) and Germany (14 %) host by far the highest share of the overall number of SEs. The TOP-10 SE countries together are home to approximately 97 per cent of all SEs. A considerable number of SEs can be found in the metal and the chemical sectors.

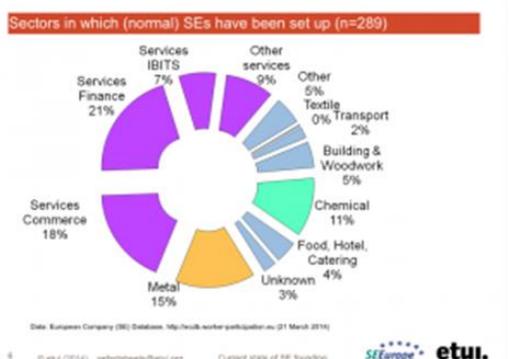


Fig 4. SEs by sectors in Europe

The SE Regulation describes 4 different ways of setting up an SE (Merger/Holding/Subsidiary/Conversion). The SE regulation also allows the SE to set up further SEs as subsidiaries.

Analysis of the form of foundation, as very important characteristic of SE, leaves no room for doubt about the preferred way of registering an SE: 78 % have been set up by way of subsidiary (mainly of another SE), 8 % by conversion, 4 % by merger and only 1 % by creating a new holding company.

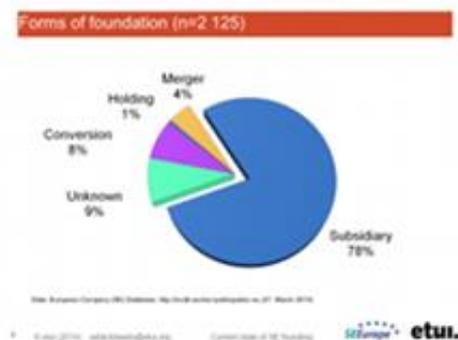


Fig 5. Forms of foundation of SEs

SE founding has so far been only rarely used as a tool for cross-border mergers within or between large companies with employees in many European countries.

Other very important characteristic of the SEs is the mobility. The idea of the SE is to provide the company with a large degree of flexibility and mobility within the European internal market. For this reason, the SE can transfer its registered seat to a different EEA member state. The map below shows that for SEs is not very popular to use this specific flexibility with regard to cross-border mobility: 2004-2014 less than 4 per cent (79) of the currently registered SEs migrated to another EEA country, sometimes immediately after their registration. For instance, the highest net inflow (incoming SEs minus outgoing SEs) before the Brexit was observed for UK (+11 SEs), Austria (+5) and Cyprus (+6). On the other hand, the highest net outflows have occurred in the Netherlands (-15) and Denmark (-7).



Fig 6. Mobility of SEs

By 2014 an arrangement on worker involvement had been concluded in only 105 of the currently established (2,125) SEs. In 55 SEs the workforce not only has the right to transnational information and consultation but also to participation in the SE's supervisory or administrative board, although as a fundamental principle and stated aim of the Directive is to secure employees' acquired rights as regards involvement in company decisions.

The SE itself must take the form of a company with share capital that being the form most suited on a European scale, in terms of both financing and management. The liability of SE relates primarily to respect the obligations of the SE's legal statute under the regulations, including expenditure and income. The members of a SE, for instance founded as holding, could contribute to the payment of the amount by which expenditure exceeds income.

Practically two organisation structures of SE are possible, i.e. the statutes of the European company can relate to two different systems:

- i. the single-tier system that provides simply for the general meeting and an administrative board.
- ii. the two-tier system that provides for a management board and a supervisory board in addition to the general meeting of shareholders.

For instance in the central located Czech Republic 98 per cent of SEs have stayed with the well-known two-tier system. The SE are subject to taxes and charges in all EU countries where their administrative centers are situated.

In order to be effective, the SE has to be able to manage the relationships from inside and outside. These relationships are based on the fact that SE becomes knowable to the local and national authorities and in important communities and establishes an image and a portfolio of its performances, and also in international level in Europe. The SE has to be knowable as much as possible and outside to presents to the public, a complete profile, with relationships with local and national authorities, European administration or other agencies, and also NGOs, active in the same field and geographic areas and general in Europe.

Concerning the IPR it shall be established in the contract of the SE. The SE under European law has a number of advantages including:

- ✓ the flexibility regarding the method of the founded and also by way Merger or Holding or Subsidiary or Conversion;
- ✓ a large degree of flexibility and mobility within the European internal market .
- ✓ 'legal capacity' - the right to enter into contracts;
- ✓ to sue (or be sued);
- ✓ tax transparency;
- ✓ possibility for a public limited-liability company.

The most fundamental innovation brought about by the SE legislation the possibility to internationalise the composition of employee representation on company boards.

As important disadvantage in the majority of SEs which have been set up by way of subsidiary is the threat to worker involvement rights in the SE. In this regard is difficult to negotiate workers' rights at a later point in time, when the company has recruited its employees. In this aspect, the above indicated advantages of the flexibility of the SEs could ne consider as increased uncertainty for the employees.

6. Conclusion

The types of LE presented above could be considered and accepted from investors and companies on one hand, and also from authorities and municipalities on other hand, in Bulgaria and other countries, not only as reasonable recommendations. These should be applied together with relevant effective measures and activities for possible most rational realization of big national or international energy, transport and infrastructure projects, and for achieve of safe and environmentally sound sustainable development of the investment process.

7. Acknowledgement

Significant part of this study is accomplished from the first author in the frame of EURATOM FP7 project (2013-2016) "Assessment of Regional Capabilities for new reactors Development through an Integrated Approach (ARCADIA)" devoted of the Advanced Lead Fast Reactor European Demonstrator (ALFRED) nuclear reactor, coordinated by RATEN ICN Pitesti, Romania.

8. References

1. Иванов И., и др., Доклад за ОВОС на Инвестиционното предложение за строителство на АЕЦ "Белене", НЕК и МОСВ, София, 2004/2005.
2. Apostol M., e. a., D4.6 – Management model of the legal entity, EURATOM FP7 project ARCADIA, Oct. 2016.
3. Ivanov I., Safety & Security & Environmental considerations for investment promotion and optimal allocation of resource of the world emerging industries, GLOBAL ECONOMIC LEADERS SUMMIT, Sept.4-6, 2011, Changchun city, Jilin province, China.
4. Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG), OJ L 199, 31.7.1985.
5. Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society (2001/29/EC).
6. Regulation (EC) 1082/2006 of the European Parliament and of the Council.
7. Consolidated version of the Treaty on the Functioning of the European Union., OJ C 326, 26.10.2012, p. 47–390.
8. Council Regulation (EC) No 2157/2001 of 8 October 2001, OJ L 294, 10.11.2001.
9. Council Directive 2001/86/EC of 8 October 2001, OJ L 294, 10.11.2001.
10. Council Regulation (EC) No 1791/2006 of 20 November 2006, OJ L 363, 20.12.2006, p. 1–80, OJ L 352M, 31.12.2008.