# Deliverable 8.1

# Report on EU & international regulations on the organization and status of multiverse universities

## Working Group on Legal Entity

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# Abstract

The report concerns the transformation of Unita into an autonomous legal entity and the possible options provided at EU and national level. It is based on the results of the work of the task force appointed by the members of the Alliance within the WP8 and on the directives formulated by the Unita Governance Board. It illustrates the reasons and aims pursued with the establishment of the legal entity, such as the possibility to manage financial resources, to participate to competitive procedures, to recruit staff and so on, but also the definition of a permanent governance model, and more in general the strengthening of the collaboration among the partners, accordingly with the purposes of the European Research Area (ERA). The methodology followed by the group and the steps of the analysis are explained. All legal entities available are illustrated, distinguishing between EU options, national non-profit options and public entities. The report concludes with the choice of some models to analyse in depth. All the templates filled by the members of the group are in annexes.

# 1. Introduction

The deliverable provides the identification and description of legal forms and contractual agreements that can be used in order to transform the UNITA Alliance - established in response to the UE Call 2020 relating to the "European Universities" by the Universidade de Beira Interior, Universidad de Zaragoza, Université de Pau et des Pays de l'Adour, Université Savoie Mont Blanc, Università di Torino and Universitatea de Vest din Timisoara - into an autonomous legal entity.

This transformation will attribute a permanent basis to the Alliance to support project and post-project activities and their financing. Thus, it will strengthen the collaboration between the members and their commitment in the realization of the purposes of the Alliance.

More precisely, with the establishment of a legal entity the Alliance would be able to autonomously manage the funds allocated to it, also by participating for this purpose to EU competitive procedures or to those launched by national public institutions, to establish employment and supply contracts, to be recognized as the owner of property rights on any assets acquired or created (including intellectual property), to establish partnerships with companies, public institutions and no-profit entities, and so on.

Moreover, the establishment of the legal entity would improve UNITA organization and its effective management governance, visibility and stability, for long-term sustainability.

The set-up of the legal entity could allow the definition of a permanent governance model appropriate to Unita purposes and coherent with the values of openness, inclusiveness, democratic participation and sustainability of academic communities involved. Thus, the by-laws drafted by the partners of the Alliance could provide for an elective body with the power to outline strategies and guidelines for the action of the Alliance; on an "intergovernmental" body directly representative of the members, composed by the Rectors (or the top bodies however named) or their delegates; and on an executive body ("Steering Committee"), designated by mutual agreement by the Universities. A "Student Council", representative of national student associations, may eventually be added, according to a model that is common in governance structures of number of EU alliances.

Furthermore, the founding of a permanent and autonomous institution is coherent with the aims pursued by EU Treaties within the European Research Area, conceived as a space “in which researchers, scientific knowledge and technology circulate freely” (art. 179 TFUE). Namely, it could enable the recognition of freedom of circulation of knowledge as “EU’s fifth freedom”[1] and facilitate future evolutions related to the freedom of circulation of personnel and students, such as mutual recognition of diplomas, of academic

qualifications and careers. Moreover, it could strengthen administrative cooperation between the universities involved facilitating the exchange of information and of administrative staff (art. 195 TFEU), together with the capacity building of the partners themselves.

To this extent, the report provides a short analysis of instruments regulated by national and EU legal systems that can be used by national universities for the foundation of UNITA legal entity.

[1] Cf. Communication from the Commission, Europe 2020. A strategy for smart, sustainable and inclusive growth, Brussels 3.3.2010, COM (2010) 2020 final, 13-16; Council Recommendation of 28 June 2011, Youth on the Move - Promoting the learning mobility of young people., 2911/C 199/01. Cf. J. Potcnik, The EU's Fifth Freedom: creating free movement of knowledge, speech at the Informal Competitiveness Council, Wurzburg (Germany), 26 April 2007

## 2. Methodology and Preliminary Considerations

An operative knowledge has been provided by concrete examples of national and EU regulations: each Alliance partner filled the same template to identify options available in his or her legal system and to underline related strengths and weaknesses.

The analysis included two types of considerations: firstly, those regarding the universities themselves, starting from the kind of relevant regulation (public or private law) and other general or special regulations that organize the functioning of universities in each national legal framework. Possibilities and limits to establish and join legal entities such as companies, non-profit entities and others have been specifically considered. Secondly, the modalities of organization of so called "multiverse universities" have been considered, with specific attention to models available and experiences realized.

The analysis has been developed in 4 steps:

1) Definition of the methodology.

2) Data collection and analysis: 2-3 examples have been collected per country based on the template provided and discussed by the members of the working group. Special attention has been paid on terms and conditions, key learning points and opportunities.

3) Discussion of the results within the working group and the Alliance governance board, to collect the reaction of the governance bodies and administrative staff.

4) Report elaboration, focused on potential for replication and adaptation and future development of the analysis.

The definition of the methodology required the punctual identification of the aims pursued by the establishment of the legal entity, which could appear as a pointless issue, but, on the contrary, is a seminal question. Focusing on the needs of Unita could help to identify the most suitable options available and to dismiss those which present the major disadvantages.

As it was previously recalled, the recognition of personhood to multiverse universities is essential in a short term to improve their management and organization. Moreover, it will strengthen the partnership and the commitment of members in a common permanent project.

In a long-term perspective, the establishment of a legal entity could be a pivotal instrument for the founding of a university "truly European" and able to recruit staff, enrol students, lend research and deliver diplomas within a European dimension.

To this extent, it is essential to anticipate that the options available at national and EU level are not fully satisfactory, as they are not conceived for the needs of teaching and research public institutions. For some of them the setting up is too bureaucratic: namely, the request of a state approbation could be perceived as a violation or a restriction of the autonomy traditionally attributed to Universities. Sometimes, the

management and organization provided by the law are too rigid and do not allow to adapt the governance model to the specific needs of an alliance based on open and inclusive communities. In other cases, the setting up is simple and the management flexible, but the withdraw of members seems excessively easy and the commitment required too weak. In some more cases, the legal entity could not exercise a full range of activities or it has severe limitations for personnel recruitment and for other expenses.

Nonetheless, the analysis carried out allowed the first identification of some options which seem more suitable for the extents of Unita. The Governance Board of the Alliance discussed the results achieved by the working group: this report considers the considerations formulated by its members.

The analysis summarized in this report could be considered as a preliminary study, useful especially to exclude less suitable options and to better focus on those which could be to some extent suitable for Unita purposes.

The classification proposed distinguishes between options regulated by EU legal system, no-profit options and public entities, both regulated at the national level.

National for-profit options have been deliberately excluded: even if in some national legal systems interesting possibilities are probably available (see for instance benefit corporations regulated by Italian law, or trading companies with public capital provided by Spanish law), other national laws provide special conditions and limitations for the establishment or joining of for-profit organizations by public universities.

As it is well known, all the members of Unita are public entities and they are subject in general to similar regulations based on a common public law tradition. Nonetheless, in the last decades several European legal systems have been deeply affected by the influence of legal and economic theories known as “New Public Management”, that in general promote - also in the public field - the utilization of models and instruments regulated by private law. Thus, with some cautions and conditions especially related to compatibility with institutional activities, for-profit options could be probably possible for some of the members of the Alliance (Italy, Spain, Romania, etc.).

However, some legal systems have been less affected by this evolution. More precisely, choosing a profit option could be a risk from the point of view of Unita French partners, especially considering some judicial pronouncements which recently voided the establishment of a profit corporation by a French public University, accordingly with the so called “specialty principle”[2].

# 3. EU Options

The legal entity models provided at EU level are of special interest for Unita purposes: the possibility to use a common regulation could easily allow to share aims and features of the legal entity and, consequently,

foster its establishment. Moreover, it seems particularly coherent with the European character of the Alliance itself.

EU legal system provides two interesting options: the European Economic Interest Grouping (EEIG)[3] and the European Grouping of Territorial Cooperation (EGTC)[4].

## 3.1 The European Economic Interest Grouping (EEIG)

The European Economic Interest Grouping (EEIG) is an institution based on the French model of the Economic Interest Grouping (EIG) and regulated by private law. It could be defined as a grouping with legal personhood that allows collaboration, in principle between companies, but open also to other entities (public or private ones).

It has its origins in the European Community's intention to strengthen the freedoms recognised by Articles 52, 54 and 58 of the Treaty of Rome; these provisions, which concern the 'right of establishment', aim to remove all obstacles to the effective exercise of the freedoms inherent in that right. In short, the aim is to establish the appropriate legal framework to enable natural persons, companies and other legal entities to cooperate across borders by adapting their activities to the economic conditions of the European Community.

According to EU law, it could be used "to facilitate or develop the economic activities of its members and to improve or increase the results of their activities". In principle, it could exercise only "ancillary" activities, which could require joint actions, such as promotional activities, research, assistance and so on. The only condition is that its activities should not be incompatible with those of its members.

2 See TA Paris 29 octobre 2013, n° 1217449, for the annulment of the creation of a private law company by the University Paris II Assas with an object corresponding to its institutional mission. About the same case, see CAA de Paris, conclusions du rapporteur public sur l'affaire n° 13PA04846 : «le principe de spécialité peut être vu comme impliquant que ces établissements (les universités) exercent leurs missions statutaires de façon directe, et non au moyen de sociétés filiales de droit privé, car cela remettrait en cause ce qui justifie leur propre existence, ce qui a présidé à leur création, c'est-à-dire le choix des procédés et règles du droit public et d'un régime de gouvernance et de contrôle exorbitant du droit commun».

3 Reg. 2137/1985 EEC 4

Reg. 1082/2006 EC

Its purposes could be commercial or purely civil, but its "for profit" nature is controversial (and that is the reason why it is compatible also with French legal system).

The European Economic Interest Grouping (EEIG) presents several strengths. In addition to the common EU regulation, it is an interesting option because is a flexible and unbureaucratic instrument: the setting up does not require a state approval and the EU regulation allows several possibilities

concerning the governance model and bodies. Moreover, it is open to public and private entities, forprofit and non-profit organization, which could be an interesting possibility for future evolutions.

Furthermore, its flexibility and openness do not exclude a high level of liability towards third parties and the request of a strong commitment to its members. EU regulation establishes the subsidiary liability of EEIG members for the debts of the entity. This feature could be considered a weakness factor, because of the financial exposure that it causes, but also a strength, as it involves a strong commitment of members in the EEIG functioning. This financial involvement could be counterbalanced by a strong and solid organization, characterized by a continuous and operational participation of the partners in one or more control bodies.

This strong involvement is confirmed by EU regulation on withdraw and windup, which are strictly regulated and limited, as they require a unanimous decision of EEIG members.

Finally, even if the realization of economic profits is not an immediate purpose of Unita, it would be unconscious to exclude it in the future. A special pro of the EEIG is the possibility of distribution of profits to its members.

On the other hand, the EEIG presents some minor weaknesses: firstly, national systems provide differences in the implementation of the EU model which could generate some uncertainty; secondly, the French version of the model imposes a supervisory board, with management controllers and auditors, which is likely to modify, influence and control the decision taken. More in general, as it has been conceived as an instrument of cooperation in the commercial sector, it is not sure that it could fit for a universities alliance.

An example of EEIG in higher education sector is the European Business School, which regroups several schools in Paris, London, Munich, etc.

## 3.2 The European Grouping of Territorial Cooperation (EGTC)

According to EU law, a European Grouping of Territorial Cooperation (EGCT) is a public entity of associative nature set up, as a rule, by public entities from at least two EU member states. Its purpose is to respond to difficulties encountered in the field of cross-border cooperation and «to facilitate and promote cross-border, transnational and interregional cooperation between its members», by providing support for cooperation schemes or large-scale projects. It could be considered particularly suitable for implementing cooperative actions or project co-financed by the Union (such as Interreg projects).

To some extent, the EGCT could be considered as a very interesting option for the Alliance: in addition to the common regulation, it presents the following major advantages:

1. a flexible organization. EU regulation requires as a minimum requirement two organs: an assembly, which is made up of representatives of its members, and a director, who represents the EGCT and acts on its behalf. Additional governing bodies may be provided for and described by the statute.

2. a high-level liability and a strong commitment of the members, as they have a subsidiary liability for its debts (proportional to their contribution to the budget of the entity).

On the other hand, the weaknesses of EGCTs are not negligible: participation is open only to public entities, which could be a disadvantageous limitation for the future development of the Alliance. As it is recalled by the mission statement of UNITA, the alliance "is not only composed of Universities, but also of relevant actors in each regional ecosystem represented by the socio-economic sector, public authorities, policy-makers and civil organizations". Even if the current intention is to open the full partnership only to higher education institutions, it is not possible to exclude further kinds of partnerships in the future (open, for instance, to charities, foundations, trusts or other non-profit institutions).

Moreover, the founding of an EGCT requires a complex procedure, which ends with a state authority approval (established and regulated at the national level). The same approval is necessary for the amendment of its by-laws and in general it could be perceived as an undue limitation of universities traditional autonomy.

Furthermore, considering that the large majority of existing EGCTs are based on cross-border regions, the risk of an approbation denial is considerable. The Universities partners of the Alliance are all based on territories with similar characteristics (rural and cross-border mountain regions), and the Alliance itself pursues the explicit aim of contributing to the development of these territories, which could be considered as a form of territorial cooperation coherent with the aims of the establishment of an EGCT. Nonetheless, the absence of a cross-border dimension could justify a negative decision by competent state authorities.

This risk is confirmed by the fact that the existing EGCTs founded by universities or other higher education institutions are all composed by entities situated in cross-border regions (such is the case of Eucor, situated in the Upper Rhine region in Germany, or of Iacobus, situated in Galicia-North Portugal).

# 4. Non-profit Options: Association and Foundation

A possible option is to establish a non-profit entity, such as an association or a foundation.

Associations and foundations allow the possibility of natural and legal persons to associate to carry out activities in the general interest, in the interest of certain communities or in their individual, non-pecuniary (non-profit) interest.

In all national legal systems involved, public universities may participate in the setting up of non-profit associations or foundations for purposes connected to their relevant areas of activity. In some cases, special hypothesis of foundations are regulated for public sector in general, or for research or higher education institutions (see for instance Public Law Foundations in Portugal; Scientific Cooperation Foundation and University Foundations in France). In other systems (Romania), individual associations and foundations may be recognized the status of public utility entities under certain conditions, in principle related to the general or community interest pursued, the continuous and efficient character of their activities, their collaboration with public institutions and authorities, national or from abroad, their financial resources and staff etc.

While the general rules concerning non-profit entities are applicable to both associations and foundations, the setting up formalities and the functioning rules are specific to each type of entity.

Both associations and foundations are private entities, governed by the provisions of general civil law. Nonetheless, the participation of public entities could entail some special functioning rules established at national or EU level (see for instance public procurement regulations).

Traditionally, an association could be established by an agreement of two or more natural and/or legal persons, to carry out activities in the general interest, in the interest of certain communities or in their own, non-pecuniary interest. Foundations may be set up by one or several natural and/or legal persons who, based on an act *inter vivos or mortis causa*, create(s) a legal patrimony which is assigned, on a permanent and irrevocable basis, to the attainment of a general or community interest.

Both kinds of institutions share similar pros: firstly, even if they are regulated by national law, they are based on a common model based on civil law, with a similar regulation in every national experience (the regulation of association date for all to the "*code Napoléon*"). Civil law regulation could in general be considered advantageous, because it entails more flexibility especially concerning staff recruitment and employment conditions.

Secondly, setting-up and recognition of personhood are simple and not too bureaucratic: national laws require in general a deed and a registration in a public register (the approbation of a state authority is not requested). Moreover, their structure is flexible and open to different solutions established in the statute.

Furthermore, non-profit activities could in general benefit from advantageous tax treatment established by national laws. Nevertheless, these options present some important disadvantages.

The first one that should be underlined is the essential and typical feature of a non-profit entity: associations and foundations could not distribute profits or benefits to their members, but they should reinvest all profits or benefits of their activities in the entity itself. Moreover, the possibility of exercising economic activities could be limited by each national legal system, or in any case it could be differently regulated. Even if they are based on a common model, some minor differences exist in every national regulation.

Moreover, the withdraw of partners is quite simple, such as it is simple to establish an association or a foundation. Consequently, the commitment requested to the members could be considered of a weak nature and this is certainly a major disadvantage, as Unita partners would establish a strong entity, able to act on a permanent basis and to affect the decisions taken by each institution of the Alliance.

Nonetheless, a non-profit entity could be established as a first step of "institutionalization" of the alliance and, in a second time, a more complex and suitable kind of entity could be created, with a deeper analysis of existing possibilities.

Some existing alliances established a non-profit association:

- UNA EUROPA (alliance composed by Alma Mater Studiorum Università di Bologna, KU Leuven, Freie Universität Berlin, University of Edinburgh, Helsingin Yliopisto/ Helsingfors universitet, Uniwersytet Jagielloński w Krakowie, Universidad Complutense de Madrid, Université Paris 1 Panthéon-Sorbonne), created an association according to Belgian law and based in Brussels;
- 4EU+ (alliance composed by the Trinity College Dublin, Universiteit Utrecht, Université de Montpellier, Charles University, Sorbonne University, University of Copenhagen, University of Milan, University of Warsaw), created an association which will be registered in Heidelberg, Germany.

# 5. Non-Profit Options: the International Non-Profit Making Association – Association International Sans But Lucratif (AISBL)

The International non-profit making association (AISBL) is a not-profit association ruled by Belgian law that could be considered of special interest.

Even if the head office must be set up in Belgium, the AISBL is open to members of all countries: thus, it could be an option available for Unita, even if none of the members are Belgian.

The AISBL gathers physical or moral persons aiming at a non-profit making goal *on an international scale*, which seems particularly coherent with Unita purposes. Moreover, the mandatory establishment of the legal seat in Belgium could be considered to some extent an advantage. The location in Brussels would probably allow a more fruitful collaboration with EU Commission, giving to the Alliance a truly European dimension and facilitating the participation to EU competitive procedures.

Nonetheless, the AISBL establishment and personhood recognition seems not so simple, as a royal decree is necessary (the King grants the legal personality). At the same time, all modifications of by-laws request for a royal decree, which could be an element of rigidity.

The AISBL deserves in general a deeper analysis, which will be carried out by the working group in the next future.

# 6. Public Entities

National legal systems provide in general for some special kinds of public entities explicitly established to allow cooperation between universities or higher education institutions. In addition to public (or university) foundations that have been already recalled, the working group took into consideration consortia and some others national models.

Consortia are explicitly regulated by national law at least in Spain, Romania and Italy. They are public law entities, with their own distinct legal personality, created by several Public Administrations or entities belonging to the institutional public sector for the development of activities of common interest to all of them within the scope of their competences.

Consortia may carry out activities for the promotion, provision or common management of public services, and any other activities provided for by law. They may be used for the management of public services, within the framework of cross-border cooperation agreements, and in accordance with the provisions of the international agreements.

Consortia present some advantages: they could benefit from exemptions from corporation tax, or at least from a special tax treatment; in some countries they have an easy set-up (Spain, Romania); they could create other legal entities of a private nature (corporate companies and foundations).

More in general, it is possible to conclude that they are perhaps the most natural and appropriate legal form for the purposes intended by UNITA.

Nonetheless, they also present some major cons: firstly, as they are public entities, their regulation has a national basis which could present important differences in each legal system involved. Moreover, their scope of activity is very limited and it is subject to a legal regime that provides guarantees, but is very inflexible. Special conditions and limitations are especially established for staff employment and recruitment. Finally, in most of cases they are not open to private entities (for-profit or not-profit), even if this feature could change from a national regulation to another.

Other special kinds of public entities are provided by national regulations, such as Public Interest Grouping and Public Experimental Institutions in France. In general, they share the same – or similar - pros and cons of Consortia.

The University of Zaragoza have founded an important consortium in which also the University of Pau is involved (Campus Iberus).

# 7. Conclusions

Even if any of the options considered is fully coherent for the purposes of Unita, the analysis carried out allows to exclude some models and to choose some others to focus on.

Firstly, as it was already recalled, all for-profit options have been excluded because of the limitations established by French legal system and its reluctancy to allow the utilization of corporations for the pursuit of Universities' institutional missions.

Secondly, public entities – such as consortia or public interest grouping – have been dismissed: even if they could be considered in general coherent with the purposes of the Alliance, their legal regime seems too rigid and not suited for Unita needs, especially considering functioning regulation (e.g. staff recruitment and conditions of employment), but also limitations related to their scope of activity and possibilities to enlarge the partnership. Moreover, European Grouping of Territorial Cooperation (EGTC) has been excluded for similar reasons, also in view of the complex set-up procedure and the risk of a denial of approbation.

Thus, the next step of the analysis will be focused on non-profit options regulated by national laws (association, foundation, but also the Belgian International Non-Profit Making Association) and on European Economic Interest Grouping (EEIG), which will considered in depth and discussed within the task force appointed by the Alliance and its governance bodies.

# 8. Annex: UNITA SURVEY - LEGAL ENTITY

## COUNTRY: PORTUGAL

**Preliminary analysis**

**Does national legal system establish any particular limit or condition for the creation of private law organizations by Universities?**

**(Law no. 62/2007 of 10 September - Legal Regime of Higher Education Institutions + Normative Order no. 10/2021 of 22 march, UBI Statutes)**

According to Portuguese legal system and the contact made with other Portuguese university institutions that are part of other alliances, it was reported that the organization so far in those alliances has been constituted under the European Project, and they are still discussing the Legal Entity part of the Alliance. Curiously, in one of those Alliances, this issue has been discussed in two working groups (Governance and Legal Status) but have not yet reached any conclusion.

Therefore, not having yet any experience of Portuguese university institutions that belong to other alliances in which we can have an example of success or failure for their integration in European legal figures, shows the difficulty in achieving and understanding of European legal figures, so we try to analyze the possibilities in accordance with our legal system.

According the UBI Statutes: "Article 8 - Establishment of other entities and consortia:

*1. The University may constitute or participate in the constitution of other legal persons of public or private law.*

*2. The private entities referred to in this article may have the nature of associations, foundations or societies, are constituted by pooling its own resources and those of third parties, and are intended to assist the University in fulfilling its purposes."*

**General Information**

**Type of legal entity (e.g. company, association, etc.) and relevant regulation (in national Language and in English):**

**- Nonprofit Association (articles 158 to 166 and 167 to 184 of the Civil Code)**

Nonprofit legal person pursuing aims in the general interest.

According to Portuguese legal theory, an association is understood to be a grouping of several individuals who place certain goods or services in common, with a purpose that excludes the search for personal gain.

**General description and procedures for setting up:**

Private Law entity.

**General Information**

According to Portuguese law, legal personality is granted form the moment the act of incorporation of the association is authenticated by a notary and that its content complies witg article 167 of the CC.
The act of incorporation shall specify the goods and services with which the members contribute to the corporate assets, the name, purpose and registed office of legal person, the form of functioning and duration, and shall be subject to public deed.
Compulsory preparation of by-laws and all their alterations are also subject to public deed. The association will consist of: management body and supervisory board.

Associations enjoy a legal capacity subject to the principle of speciality, according to which associations are recognised with the rights and obligations which are necessary but also appropriate to the pursuit of their purpose.
After its incorporation, the association is bound by the legal duties of legal persons among which are the fiscal duties (declaration of commencement of activity, registration with Social Securiy, communication of the incorporation of the association to the administration and respective commencement of activity to the Authority of working conditions.

To exist an association is therefore, necessary:
- A union of at least three person gathered together in a common spirit;
- A formal organisation, corresponding to the whole internal structure of the association, whether legal framework, such as the statutes, as well as that refering to the organic functioning of the bodies (Direction, General Assembly and Supervisory Board);
- A common object, which must be lawful possible, determined, namely in terms of its duration;
-In view of the altruistic aim it pursues, never aims to make a profit.

Associations may, on a secondary basis engage in other so-called commercial industrial and service activities, a fact which does not change its legal regime, as there is no distribution of profits among its members.

**Type of regulation and legal personality (public/private entity)**

Private entity.

**Specific terms and conditions**

Underline only the aspects particularly remarkable, especially considering the public nature of partners.

**Bookkeeping system:**

The supervisory board is the body in charge of monitoring the activity of the board of directors and ensures that the accounts are up to date.
The accounting obligations consist of the obligation to have organised accounts or a simplified bookkeeping regime in cases where the entity has the registration of income organised according to the various IRS categories, the registration of specific charges of each category and registration of inventory of assets that may generate taxable gains in the category of capital gains. (no. 1 of art. 124)

**Tax treatment:**

There is no specific tax regime or diplom for non-profit entities in Portugal, as the taxation regime is included in the various tax codes, namely the Corporate Income Tax Code, the Code on Municipal Tax on the Tranfer of Real Estate, the Municipal Property Tax Code, the Value Added Tax Code, the Stamp Duty

| Specific terms and conditions<br><br>Underline only the aspects particularly remarkable, especially considering the public nature of partners. |
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| Code, and the general regime enshrined in Law nº 151/99 of 14 September on the "regime of tax benefits and exemptions for legal persons of public utility".<br>Entities are taxed on income, consumption and wealth taxes in their capacity as taxpayers, tax debtors and taxable persons in respect of their main or ancillary activities.<br>Non-profit entities, as non-business entities, are taxed on overall income and not on profit, and taxation is subject to a lower rate than the rate applicate to business entities, as they are subject to a rate of 20% (art. 87, no. 5 of the CIRC).<br>In Portugal, the main tax to which these entities are subject is the corporate income tax, which is levied on legal persons in general, with ir without profit-making purposes.<br><br>**Possibility and limits for economic activities:**<br><br>Associations may have an economic purpose, not excluding patrimonial advantages for the associates, as long as they do not translate into profit as such. |
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| Key learning points and opportunities |
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| **What works well? Main success factors?**<br><br>The benefit corporation is an interesting model because it allows to emphasize the social mission of Unita. |
| **Challenges/Weaknesses**<br><br>**What doesn't work so well?**<br>---- |
| **Potential for learning or transfer**<br><br>---- |

| General Information |
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**Type of legal entity (e.g. company, association, etc.) and relevant regulation (in national Language and in English):**

**- Public Law Foundation (Non-profit entity)**
According to portuguese legislation *(**Framework Law on Foundations - Law no. 24/2012, of 9 July, amended by Law no. 250/2015, of 10/09***), public foundations are collective persons of public law, nonprofit, endowed with their own organs and heritage and with administrative and financial autonomy. Public foundations may have as their purpose the promotion of any public interest of a social, cultural, artistic or other similar nature.

The foundations governed by public law may be established only by legal persons governed by public law and by means of a legislative decree.

**General Information**

**General description:**
The form of public deed is required and the act of incorporation must indicate the purpose of the Foundation and specify the assets to be allocated to it.
The statutes of public foundations are approved in the founding act and regulate aspects:

a) Name, headquarters, attributions, object and recipientes of the Foundation;
b) Initial financial endowment and method of financing of the Foundation;
c) Organs, their competence, organization and functioning;
d) Ministry of guardianship, in the case of state foundations.

They apply to public foundations, whatever the particularities of their statutes and management regime:
a) The Administrative Procedure Code, in what concerns the activity of public management, involving theexercise of powers of authority, the management of the civil service or the public domain, or the application of other legal and administrative regimes;
b) The legal framework applicable to workers who exercise public functions;
c) The framework of State financial and patrimonial administration;
d) The public expenditure and public procurement regimes;
e) The system of incompatibilities of public office;
f) The civil liability regime of the State;
g) Administrative litigation laws, when acts and contracts of an administrative nature are at stake;
h) The system of jurisdiction and financial control of the Court of Auditors and the General Inspectorateof Finance.

However, given Portuguese legislation, there are drawbacks: these can only be created by the State, by the autonomous regions or by municipalities, alone or jointly, and although they recognize the participation of foreign entities, the foundation would have to be based in Portugal.

**Type of regulation and legal personality (public/private entity)** Public entity.

Public foundations may not engage in activities outside their remit or devote their resources to purposes other than those for which they have been entrusted.

**Some specific aspects could be regulated by legal provisions explicitly established for public entities and their associations, or for private organizations controlled or owned by public entities, such as procurement, or anti-corruption obligations.**

Public foundations are regulated by public law.

**Specific terms and conditions**

Underline only the aspects particularly remarkable, especially considering the public nature of partners.

**Bookkeeping system:**
Foundations, as person governed by collective law, are subject to the budgetary and financial regime of autonomous services and funds. Article 35, no. 1 of the Framework Law on Public Institutes.

**Tax treatment:**
Public foundations fall into the category of public institutes in general, and are therefore subject to the regime set out in the Framework Law on Public Institutes an to the regimes of financial and patrimonial

| **Specific terms and conditions**<br><br>Underline only the aspects particularly remarkable, especially considering the public nature of partners. |
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| administration of the State, as well as to the public procurement regimes and to the jurisdiction and financial control of the Court of Auditors.<br><br>**Staff regulation (recruitment procedures, legal treatment, collective bargaining agreement or public regulations):**<br>Public law is exclusively relevant.<br><br>**Possibility and limits for economic activities:**<br>---- |
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| **General Information** |

**Type of legal entity (e.g. company, association, etc.) and relevant regulation (in national Language and in English):**

**- EGTC (European Grouping of Territorial Cooperation)**

This is a new legal instrument for territorial cooperation with the EU, which allows for the creation of public entities, endowed with legal personality, with the aim of promoting territorial cooperation between its members. EGTCs are public legal entities of an associative nature set up, as a rule, by entities from at least two EU members states.
The EGTC is a legal figure that is particularly suitable for implementing cooperation actions or project cofinanced by the EU, when involving partners located in diferent member states.

According to portuguese legislation, Decree Law 376/2007 defines which portuguese entities can be members of an EGCT and which procedures must be followed to set up an EGTC or for portuguese entities to be able to participate in na EGCT or set up in another EU member states.

The EGTC is an entity endowed with legal personality and enjoys the widest legal capacity recognised to legal persons by Portuguese law authorising, namely, the acquisition or alienation of movable and immovable assets, the capacity to contract staff and to go into court.

**General description:**

Each prospective member shall notify the Member State under whose law i tis formed of its intention to participate in na EGTC together with the draft convention and draft statutes establishing the EGTC. The statutes of na EGTC shall be approved by its member, acting unanimously, and shall specify at least the following:

a) The operating provisions of its organs and their respective powers, as well as the number of representatives of the members in the relevant organs; b) The decision-making procedures;
c) The working language or languages;
d) The provisions relating to its functioning;
e) The procedures concerning staff management and recruitment;
f) The members' financial contribution scheme;

**Specific terms and conditions**

Underline only the aspects particularly remarkable, especially considering the public nature of partners.

g) The accounting and budgetary rules applicable to its members;
h) The appointment of the independent external auditor of the respective accounts; and i) Procedures for amending the statutes.

EGTCs established under Portuguese law must have a) a general assembly, where all members are represented; b) a director, who represents the EGTC and acts on its behalf; c) a supervisory board.

Example: the "IACOBUS" Program has as its main objective to foster cooperation and exchange between human resources from Universities, higher education institutions and technological centers in the Euroregion Galicia – North of Portugal - Teachers; Researchers; Administration and Services Personnel (PAS); Innovation Managers; R+D+i technicians, facilitating the sharing of training, research and dissemination activities. This Euroregion initiative is a pioneer in Europe and the GNP, EGTC is the managing entity of the IACOBUS Program.

**Type of regulation and legal personality (public/private entity)** Private entity.

**Key learning points and opportunities**

**What works well? Main success factors?**

In brief, in view of what has been presented, we consider that only association is probably a statute common to all partners' legal systems.

**Challenges/Weaknesses**

**What doesn't work so well?**

For public foundation there is no European statute for foundation.

**Potential for learning or transfer**

This publication explores the governance set-up of the European University Alliances formed under the EU's European Universities Initiative.

https://eua.eu/resources/publications/963:evolving-models-of-university-governance.html

## COUNTRY: SPAIN

**Preliminary analysis**

**Does national legal system establish any particular limit or condition for the creation of private law organizations (for profit or nonprofit) by Universities?**

In accordance with the provisions of the Spanish Organic Law on Universities, for the promotion and development of their purposes, the Universities, on their own or in collaboration with other public or private entities, and with the approval of the Social Council, may create companies, foundations or other legal entities in accordance with the general applicable general legislation. In this regard, the provisions

of Law 2/2011, of March 4, 2011, on Sustainable Economy, as well as the provisions of Law 2/2011, of March 4, 2011, on Sustainable Economy, shall be taken into account.

In any case, it can be concluded that there are no major impediments, from a legal perspective, to the creation of capital companies or foundations of a public nature in which universities may participate.

**Type of legal entity (e.g. company, association, etc.) and relevant regulation (in national Language and in English):**

**1) EUROPEAN ECONOMIC INTEREST GROUPING (EEIG) ("Agrupaciones europeas de interés económico")**

Council Regulation (EEC) 2137/1985 of 25 July 1985.
Law 12/1991, of 29 April 1991, on Economic Interest Groupings, and, in addition, by the rules of the General Partnership that are compatible with its specific nature.

Reglamento (CEE) 2137/1985 del consejo, de 25 de julio
Ley 12/1991, de 29 de abril, de Agrupaciones de Interés Económico, y, supletoriamente, por las normas de la Sociedad Colectiva que resulten compatibles con su especifica naturaleza.

**General description:**

The Economic Interest Grouping constitutes a non-profit trading company whose purpose is to facilitate the development or improve the results of the activity of its members, which does not necessarily have to be uniform.
The 'European Economic Interest Grouping' (EEIG) has its origins in the Community's intention to strengthen the freedoms recognised in Articles 52, 54 and 58 of the Treaty of Rome; these provisions, which concern the 'right of establishment', aim to remove all obstacles to the effective exercise of the freedoms inherent in that right. In short, the aim is to establish the appropriate legal framework to enable natural persons, companies and other legal entities to cooperate across borders by adapting their activities to the economic conditions of the European Community.

**Share capital:**
There is no legal minimum capital.

**Minimum number of members:**
Two.

Economic interest groupings may be formed only by natural or legal persons engaged in business, agricultural or craft activities, by non-profit entities engaged in research and by those engaged in liberal professions.
Liability:
The members shall be personally and jointly and severally liable among themselves for the debts of the economic interest grouping. The liability of the members is subsidiary to that of the economic interest grouping.

**Incorporation:**
By public deed (Article 8 of Law 12/1991, of 29 April 1991, on Economic Interest Groupings).

**Mercantile Register:**
Compulsory registration (Article 7 of Law 12/1991, of 29 April 1991, on Economic Interest Groupings).

**Tax regime:**

By community imperative, the results of the activity of the EEIG are only subject to tax at the level of its members.
Likewise, the benefits derived from the activities of the grouping are considered as benefits of the members and are distributed among them in the proportion provided for in the grouping contract or, in its absence, by parts.

**Rights and obligations of the shareholders:**
The members may consult and vote on the resolutions to be adopted at the members' meeting.

Unanimity is required for the adoption of resolutions, subject to exceptions. Unanimity of all members of the grouping is required for amendment of the majority of the resolutions in the Memorandum of Association.

Any member may withdraw from the grouping in the cases provided for in the memorandum of association, where there is just cause or with the consent of the other members.

Profits and losses arising from the activities of the grouping shall be considered as profits of the members and shall be divided among them in the proportion provided for in the memorandum or, failing this, in equal shares.

The managers of the economic interest grouping shall, on their own initiative or at the request of any member, convene the meeting. The meeting shall be convened by registered letter with acknowledgement of receipt sent to the members at least fifteen days before the date set for the meeting.

The company is represented by the directors.

**Administration of the company:**
The grouping shall be administered by one or more persons designated in the memorandum or articles of association or appointed by the members.

Unless otherwise provided for in the Deed, a legal person may be a director, and a shareholder is not required to be a director.

**What works well? Main success factors?**

The Economic Interest Grouping constitutes an interesting model because it allows to emphasize the social mission of Unita, and has a common regulation in all the member countries of the European Union, which greatly facilitates its assumption by the different universities that make up the Unita project.

**Challenges/Weaknesses**

**What doesn't work so well?**

The problem with these companies remains their hybrid private-public nature and also its non profit nature. Even though there are some relevant examples in the form of EEIG (Franco-German television channel ARTE, EURESA or Eurocité basque Bayonne-San Sebastian), this is a legal personification that is not particularly common in practice.

**2) BENEFIT CORPORATION**

| General Information |
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| **Type of legal entity (e.g. company, association, etc.) and relevant regulation (in national Language and in English):**<br><br>**TRADING COMPANY WITH PUBLIC CAPITAL ("Sociedad mercantil de capital con participación pública")**<br>Ley 40/2015, de 1 de octubre, de régimen jurídico del sector público (arts. 111 y ss.)<br>Texto refundido de la Ley de sociedades de capital, aprobado por Real Decreto legislativo 1/2010, de 2 de julio.<br>Ley 33/2003, de Patrimonio de las Administraciones públicas<br>Ley 19/2017, de contratos del sector público.<br><br>**General description:**<br><br>Trading companies with public capital are those companies whose share capital is totally or partially public, i.e. it comes totally or partially from the economic resources of the Public Administrations, which has a series of implications with great transcendence in practical reality for various legal and economic reasons.<br>Public administrations can create trading companies with public capital in accordance with the provisions of the law, which generally regulates public trading companies, of which there are many. In the event that the public shareholding in the capital is full, we would be dealing with what has traditionally been called a public company, while if public and private capital converge, we would be dealing with a mixed company. The second paragraph of Article 116.4.a) of Law 33/2003, of 3 November, on the Assets of Public Administrations, states that "(...) a private legal entity belonging to the public sector shall be understood to be a trading company in whose capital the direct or indirect participation of one or more public administrations or legal entities under public law is a majority shareholding".<br><br>These types of companies are subject, in their management and actions, to the principles of efficiency, transparency and good governance, to which end they shall promote good practices and codes of conduct appropriate to the nature of each entity. This is without prejudice to the general supervision that the shareholder shall exercise over the operation of the trading company, in accordance with Law 33/2003, of 3 November, on the Assets of Public Administrations.<br><br>In relation to the legal regime applicable to these companies, the new LRJSP respects the traditional three-stage system foreseen for these companies: special administrative regulations (LRJSP and the Public Administration Assets Act LPAP), referral to the private legal system and an exception clause when the administrative budgetary, accounting, personnel, economic-financial control and contracting regulations are applicable (art. 113 LRJSP). We will not expand here on the problems of unpredictability of the legislative response that this system poses (suffice it to say that Article 113 LRJSP has been given as an example of a "legal space in which indefinition reigns"). What we do wish to emphasise is that if the indeterminacy of which rule is applicable to a given fact of reality is always a problem of legal certainty, this deficit of legal certainty can turn into antinomy when the potentially applicable rules not only order different sequences for the same problems, but also when they do so from radically different conceptions of the specific phenomenon being regulated. And this is what happens with public companies. Administrative law and commercial law - corporate law - start from diametrically opposed points in their conception of them. In a very simplified way, it could be said that for the former, public companies are mere instruments of the administration (the emphasis is placed on the public nature of the shareholder), while the latter is based on the separation of the public and private sectors as a structural principle of companies with a corporate structure (the emphasis is placed on the private nature of the company). As regards the governance of such entities, the administration of a company can be entrusted to a single |

director, several directors acting severally, several directors acting jointly or a board of directors. The board of directors is therefore one of the possible ways in which company administration can be organised.

**General Information**

- As opposed to a single director, the board favours the adoption of more discussed and thought-out decisions.
- Compared to joint administrators, the board favours more flexible decision-making by not requiring unanimity.
- Compared to joint administrators, the board encourages collegiate decision-making, strengthening the link between the various administrators.

The members of the board of directors are the directors of the company and are therefore subject to all the provisions relating to appointment, capacity, term of office, exercise of office, prohibition of competition, remuneration, removal, liability, which make up the legal status of directors, with all their obligations and rights.
The board of directors must necessarily have a chairman and a secretary, with the possibility of appointing a vice-chairman and a deputy secretary, the other members of the board having the status of members. The statute may establish other bodies.

**Procedures for setting up:**

The creation of a public trading company or the acquisition of this status shall be authorised by agreement of the Governing Council of the University and the Social Council and shall be accompanied by a proposal for statutes and an action plan containing, at least:

a) The reasons justifying the creation of the company because these functions cannot be assumed by another existing entity, as well as the non-existence of duplicities. To this end, the analysis of the existence of bodies or entities that carry out similar activities in the same territory and population and the reasons why the creation of the new company does not entail duplication with existing entities must be recorded.

b) An analysis justifying that the proposed legal form is more efficient than the creation of a public body or other organisational alternatives that have been discarded.

c) Annual objectives and indicators to measure them.

**Type of regulation and legal personality (public/private entity)** It is formally a Private entity.
However, its mixed legal nature, in terms of its private legal regime and public ownership or dominant influence, determines the application of administrative rules (Administrative Procedure Act, Public Sector Legal Regime Act, Public Administration Assets Act or the Public Sector Contracts Act) and private law rules (Consolidated Text of the Capital Companies Act, among others).

**Specific terms and conditions**

Underline only the aspects particularly remarkable, especially considering the public nature of partners.

**Bookkeeping system:**
The entities that make up the State, Autonomous Community and Local public business sector must apply the accounting principles and standards set out in the Code of Commerce and in the General Accounting Plan for Spanish companies, as well as in the adaptations and provisions that develop it, in accordance with the provisions of article 121. 3 of Law 47/2003, of 26 December, General Budgetary Law, in article 200.2 of the Revised Text of the Law Regulating Local Treasuries, approved by Royal Legislative Decree 2/2004, of 5 March, and in the respective regulations governing this matter at the autonomous community level. The provisions of Order EHA/733/2010, of 25 March, which approves accounting aspects of public companies operating in certain circumstances, shall also be specifically applicable.

**Tax treatment:**

**Specific terms and conditions**

Underline only the aspects particularly remarkable, especially considering the public nature of partners.

In principle, the general corporation income tax regime would apply. It could also not be considered as a partially exempt entity.
For VAT, the activity of the company will be applicable.
For transfer tax, as it is not a public administration it will not have a subjective exemption, so the exemptions specific to each transaction subject to the modalities of the tax will apply.

**Staff regulation (recruitment procedures, legal treatment, collective bargaining agreement or public regulations):**
- The labour staff shall form the majority group in the workforce of the public company. They shall be selected in accordance with the constitutional principles of equality, merit and ability. The applicable legislation shall be labour law.
In this way, the company, as provided for in its Articles of Association, may form its own staff, which will depend on its management bodies and whose selection and usual legal regime will be labour law. - Temporary or trusted personnel. The public corporation may, where appropriate, provide for the appointment of personnel in this regime of trust when it has a budget appropriation and the due approval of its governing bodies.
Finally, there is the possibility that civil servants may be seconded in the process of founding and setting up the company. These are limited cases, since the career civil servant usually works in the Administration of origin (University).

**Possibility and limits for economic activities:**
In no case may they have powers that imply the exercise of public authority, without prejudice to the fact that, exceptionally, the law may attribute to them the exercise of administrative powers.

**Key learning points and opportunities**

**What works well? Main success factors?**

The trading company with public capital is an interesting model because it allows to emphasize the social mission of Unita, without excluding the realization (and distribution to members) of profit.

**Challenges/Weaknesses**

**What doesn't work so well?**

The problem with these companies remains their hybrid private-public nature. The particular mix of private and public elements determines that, in relation to their legal regime, problems of both legal certainty and justice arise (among the latter, the new regulation of the duties and liability of directors of public companies, to which we will refer later). These problems are compounded by the difficulty of achieving a unitary treatment for this type of company due to the different structures of their capital (at the extremes, there is the single-member public company and the mixed company) and the different activities to which they may be dedicated (companies providing public services and competitive or market companies).The problem with these companies remains their hybrid private-public nature. The particular mix of private and public elements determines that, in relation to their legal regime, problems of both legal certainty and justice arise (among the latter, the new regulation of the duties and liability of directors of public companies, to which we will refer later).
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**Key learning points and opportunities**

the extremes, there is the single-member public company and the mixed company) and the different activities to which they may be dedicated (companies providing public services and competitive or market companies).

**Potential for learning or transfer**

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**2) NONPROFIT ASSOCIATION**

**General Information**

**Type of legal entity (e.g. company, association, etc.) and relevant regulation (in national Language and in English):**

**PUBLIC SECTOR FOUNDATION ("Fundación del Sector Público")**
Ley 40/2015, de 1 de octubre, de régimen jurídico del sector público (arts. 128 y ss.) Ley 50/2002, de 26 de diciembre, de Fundaciones.
Ley 33/2003, de Patrimonio de las Administraciones públicas
Ley 19/2017, de contratos del sector público.

**General description:**

Public universities may create a public sector foundation with the aim of carrying out their own non-profitmaking activities for the fulfilment of general interest purposes, regardless of whether the service is provided free of charge or for consideration. In this sense, they may only carry out activities related to the sphere of competence of the founding public sector entities, and must contribute to the achievement of their purposes, without this implying the assumption of their own competences, unless expressly provided for by law. Foundations may not exercise public powers.

The governing and representative body of the Foundations is the Board of Trustees, whose members are called Patrons. The Board of Trustees must be made up of at least three people and its composition and appointment system must be established in the Articles of Incorporation and Bylaws. However, in the case of public sector foundations, such as the one that should be set up in the juridical personification of Unita, there must be another governing body, which is the Protectorate. The Protectorate of public sector foundations will be exercised by the body of the Administration of assignment that has attributed such competence, which will ensure compliance with the obligations established in the regulations on foundations. Thus, while the Board of Trustees is the ordinary governing body of the Foundation, the Protectorate acts as a link between the private activity of the foundation and public administrative intervention, i.e. between private law and public law.

**Procedures for setting up:**
he constitution of the Foundation by inter vivos act shall be carried out by means of a public deed, which must be registered in the Register of Foundations. The Deed of Incorporation of a Foundation is the document of creation of the Foundation and must include at least the following aspects, as established in Art. 10 of Law 50/2002 on Foundations:

- The name, surname(s), age and civil status of the founder(s), if they are natural persons, and their name or company name, if they are legal persons, and, in both cases, their nationality and address and tax identification number.
- The intention to set up a Foundation.
- The endowment, its valuation and the form and reality of its contribution.

**General Information**

- The Foundation's Articles of Association.
- The identification of the persons making up the governing body, as well as their acceptance if this is made at the time of foundation.

**Type of regulation and legal personality (public/private entity)** Private entity.
Some specific aspects are regulated by legal provisions explicitly established for public entities and their associations, or for private organizations controlled or owned by public entities, such as budgetary, accounting, economic-financial control and financial control rules, and procurement.
Except for these aspects, association functioning is regulated by civil law.

**Specific terms and conditions**

Underline only the aspects particularly remarkable, especially considering the public nature of partners.

**Bookkeeping system:**
All matters affecting the public interest (basically, everything related to the economic and financial regime), being public resources, will be subject to public sector regulations (public sector accounting and budgetary regulations).

**Tax treatment:**

If the entity complies with the requirements that the law requires, it may avail itself of the tax benefits offered by the special tax regime for these entities. Its tax regime will be regulated by Law 49/2002 (if it does not comply with the requirements of Law 49/2002, the regime of partially exempt entities will apply).

The following incomes are exempt (in summary):
(a) Arising from the activities that constitute its corporate purpose.
b) Arising from acquisitions and transfers by whatever title, to the extent that they are made in pursuit of the company's corporate purpose.
c) Generated in the transfer for valuable consideration of assets assigned to its corporate purpose. d) Income from movable and immovable assets.
The main question is whether its specific object or purpose is considered exempt, art. 7 Law 49/2002. The tax rate to which the taxable base of non-exempt income is subject is 10%. Other formal obligations.

VAT. This will depend on the provision of services and delivery of goods. Onerous/free of charge.

Transfer tax will be exempt if it complies with the conditions of Law 49/2002.

**Staff regulation (recruitment procedures, legal treatment, collective bargaining agreement or public regulations):**
The recruitment of personnel is subject to the rules of private and labour law, subject to the principles of equality, merit, capacity and publicity of the corresponding call for applications.

**Possibility and limits for economic activities:**
Public sector foundations may carry out all those activities which, without being for profit, are required for the fulfilment of general interest purposes, regardless of whether the service is provided free of charge or in return for payment. In this sense, they may only carry out activities related to the sphere of competence of the founding public sector entities, and must contribute to the achievement of their purposes.

**Key learning points and opportunities**

**What works well? Main success factors?**

Procedures for setting up are quite simple, as well as the regulation concerning management and governance. It has undoubted tax advantages, as well as having a non-profit nature, which is appropriately linked to the aims of public universities.

**Challenges/Weaknesses**

**What doesn't work so well?**

It is a non-profit entity, with all the limitations that this concept implies from the perspective of commercial activity.

**Potential for learning or transfer**

Two existing EU universities' alliances created a nonprofit association:

-**UNA EUROPA** (alliance composed by Alma Mater Studiorum Università di Bologna, KU Leuven, Freie Universität Berlin, University of Edinburgh, Helsingin Yliopisto/ Helsingfors universitet, Uniwersytet Jagielloński w Krakowie, Universidad Complutense de Madrid, Université Paris 1 Panthéon-Sorbonne) created an association according to Belgian law and based in Brussels.
The association is responsible for:

- pursuing integrated cooperation between its university partners in high-quality education research, and services to society
- creating a culture of excellence in education and research and fostering best practices
- contributing to the development of the European Higher Education Area and the European Research Area

Its governance structure is based on a General Assembly which consists of the eight partner universities and eight university-related members (foundations or other associations related to alliance members) represented by their Rectors or Presidents; a Board of Directors which consists of the eight partners' ViceRectors; an Executive Committee composed by the same members of the Board of Directors; an External Advisory Board designated by the General Assembly[2].

-**4EU+** (alliance composed by the Trinity College Dublin, Universiteit Utrecht, Université de Montpellier, Charles University, Sorbonne University, University of Copenhagen, University of Milan, University of Warsaw).
The Rectors of the members universities passed on 1 April 2021 a resolution to establish an association which will be registered in Heidelberg, Germany[6].

**3) PUBLIC ENTITY**

**General Information**

[2] See https://www.una-europa.eu/governance (last access: 20.05.2021) [6]

https://4euplus.eu/4EU-12.html?news=12648&locale=en (last access: 20.05.2021).

**Type of legal entity (e.g. company, association, etc.) and relevant regulation (in national Language and in English):**

**CONSORTIUM ("Consorcio")**
Ley 40/2015, de 1 de octubre, de régimen jurídico del sector público (arts. 118 y ss.)

**General Information**

Ley 33/2003, de Patrimonio de las Administraciones públicas
Ley 19/2017, de contratos del sector público.

**General description:**

Consortia are public law entities, with their own distinct legal personality, created by several Public Administrations or entities belonging to the institutional public sector, among themselves or with the participation of private entities, for the development of activities of common interest to all of them within the scope of their competences. Consortia may carry out activities for the promotion, provision or common management of public services, and any other activities provided for by law. Consortia may be used for the management of public services, within the framework of cross-border cooperation agreements in which the Spanish Administrations participate, and in accordance with the provisions of the international agreements ratified by Spain on the subject.

The governing and administrative bodies of the Consortium shall be those determined in the Statutes of creation of the same, which usually include collegiate bodies such as the Governing Board, made up of representatives of each of the consortium members and the Governing Commission, elected by the Board; and unipersonal bodies such as the President, the Manager and the Secretary of the Consortium. Consortia are public law entities, with their own distinct legal personality, created by several Public Administrations or entities belonging to the institutional public sector, among themselves or with the participation of private entities, for the development of activities of common interest to all of them within the scope of their competences. Consortia may carry out activities for the promotion, provision or common management of public services, and any other activities provided for by law. Consortia may be used for the management of public services, within the framework of cross-border cooperation agreements in which the Spanish Administrations participate, and in accordance with the provisions of the international agreements ratified by Spain on the subject.

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**Procedures for setting up:**
Consortia shall be created by means of an agreement signed by the participating administrations, public bodies or entities. In general, the agreement will include the statutes, an action plan and a budget projection.

**Type of regulation and legal personality (public/private entity)** Public entity.
With the exception of the limited scope for regulation of the organisation of the consortium provided for in the entity's own statutes, the remaining regulation is entirely public law.

| Specific terms and conditions<br><br>Underline only the aspects particularly remarkable, especially considering the public nature of partners. |
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| **Bookkeeping system:**<br>Consortia shall be subject to the budgeting, accounting and control regime of the Public Administration to which they are attached.<br><br>**Tax treatment:** |
| **Specific terms and conditions**<br><br>Underline only the aspects particularly remarkable, especially considering the public nature of partners. |
| If the consortium has the status of an autonomous body or entity of a similar nature to a CCAA, or a state public body, the consortium will have full subjective exemption from Corporation Tax; nor would the regime of Law 49/2002 be applicable. The special regime of partial exemption, in accordance with art. 9.3 of the Corporation Tax Law, insofar as it was a non-profit entity, and taking into account that the exemption would not cover income from economic activity, even if it were its corporate purpose.<br><br>**Staff regulation (recruitment procedures, legal treatment, collective bargaining agreement or public regulations):**<br><br>The personnel at the service of the consortia may be civil servants or employees and must come exclusively from the participating Administrations. Their legal regime shall be that of the Public Administration to which they are assigned, and their salaries may in no case exceed those established for equivalent positions in the former.<br><br>Exceptionally, when it is not possible to have personnel from the Administrations participating in the consortium due to the singularity of the functions to be performed, the competent body of the Administration to which the consortium is attached may authorise the direct contracting of personnel by the consortium for the exercise of said functions.<br><br>**Possibility and limits for economic activities:**<br>Consortia may carry out activities for the promotion, provision or joint management of public services, and any other activities provided for by law. Likewise, consortia may be used for the management of public services, within the framework of cross-border cooperation agreements in which the Spanish Administrations participate, and in accordance with the provisions of the international agreements ratified by Spain on the subject. |
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| Key learning points and opportunities |
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| **What works well? Main success factors?**<br><br>It is relatively simple to set up, has a uniform legal status (public law) and is perhaps the most natural and appropriate legal form for the purposes intended by UNITA. The Consortium, if required by its activity, may create other legal entities of a private nature (corporate companies and foundations). |

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| **Challenges/Weaknesses**<br><br>**What doesn't work so well?**<br><br>Its scope of activity is very limited and it is subject to a legal regime that provides guarantees, but is very inflexible (the public one). |
| **Potential for learning or transfer** |

## COUNTRY: FRANCE

**Preliminary analysis**

**Does national legal system establish any particular limit or condition for the creation of private law organizations (for profit or nonprofit) by Universities?**

It is the law of 12 November 1968 on the orientation of higher education, known as the Faure law, which creates the concept of EPSC : "Etablissement à caractère scientifique et culturel", and introduces the founding principles of modernised higher education : autonomy, participation and multidisciplinarity.

With the Law of 26 January 1984, known as the Savary Law, the professional character of universities appears and they become EPSCPs. Universities are now organised into training and research units (UFR), and also include institutes, internal schools and attached establishments such as the university institutes of technology (IUT) created in 1966 (decree of 22 June 1966).

The LRU Act of 10 August 2007, known as the Pécresse Act, broadened the powers of the university president, in the service of greater autonomy, which culminated in the transition to extended competences, giving universities control over their resources and their budget.

In France, the main qualification of university is "public institution". This notion is defined as :
"a legal person under public law with administrative and financial autonomy in order to fulfil a precisely defined mission of general interest, under the control of the public authority on which it depends". It is therefore a public administrative establishment defined as a person of public law that manages a public service (Code de l'éducation, art. L 712-1 et s.)

In French legal system, there is no possibility to create a university under a private form, as a commercial company. Nor can it outsource some of its tasks as a commercial company. For example, the Administrative Court of Paris has annulled the creation by the University of Paris-II Panthéon Assas of a subsidiary, in the form of a private law company, whose purpose is to organise a preparation for the summer entrance exam to the lawyer School.

**1) BENEFIT CORPORATION**

| General Information |
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| **Type of legal entity (e.g. company, association, etc.) and relevant regulation (in national Language and in English):**<br><br>**General description:**<br><br>**No commercial company can serve as a garment for a university grouping in France.**<br><br>But, however, some of the private law groupings may be useful for clustering purposes.<br><br>**1/EIG / EEIG (GIE/GEIE)**<br><br>The first is the EIG (Commercial Code, Art. L 251-1 et seq.). Its corporate nature is much debated, which is an advantage for us. It is a grouping with legal personality that allows collaboration, in principle between companies, but not only. The purpose of an EIG is not to make a profit; it can be set up without capital; its structure is very light and flexible. Above all, the purpose of an EIG may be commercial or purely civil. In general, its purpose is to facilitate or develop the economic activity of its members, to improve it, but |

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not to make a profit.

The EIG may be used to defend private or other interests. It may include public enterprises. And if its object is civil, it must still be registered in the commercial register, but this does not affect its noncommercial character.

The EIG is an auxiliary structure: it enables its members to carry out joint actions: promotional, research or assistance... each entity retaining its autonomy. The only condition is that the activity of the EIG is compatible with those of its members.

The rules for incorporation are simple: drafting a document and registering. There are few mandatory rules, the main thing being to focus on the drafting of the corporate purpose and the operation.

Members can be legal entities. The management must be assumed by at least two persons, natural or legal.

However, there is a major disadvantage: the EIG imposes a supervisory board, with management controllers, auditors, etc., which is likely to modify/influence/control the decisions taken in a difficult manner.

The EEIG (European Economic Interest Grouping) operates in the same way; it is open to higher education institutions. Joint decisions are also taken in an assembly, with each member having one vote and unanimity being the rule. However, the statutes may provide for different arrangements.

*Examples : the European Business School is operated as an EEIG; it comprises several schools in Paris, London, Munich, etc.*

**2/ Societas Europaea / SE (société européenne)**

The European Company (Societas Europaea, SE) may operate in all EU Member States under a single legal form common to all EU Member States, as defined by EU law (Reg. 2157/2001, Oct. 8, 2001; Dir. 2001/86/EC, Oct. 8, 2001; Commercial Code, Art. L 229-2 et seq.)

The share capital of a European Company must be at least €120,000.
The SE has a duty to register and a duty to advertise in the OJEU (Official Journal of the European Union).

The European Company cannot be created ex nihilo. It can only be formed by means of a merger, transformation, creation of a holding SE or a subsidiary SE. In other words, it is not really adapted to our situation; it is not open to public entities either.

**3/ Cooperative society / European cooperative (société cooperative européenne)**

The cooperative is a company governed by the law of 10 September 1947, reformed by the law of 31 July 2014. Its purpose is not to make and share a profit, but to improve the lot of its members and facilitate their cooperation.

The cooperative form is not a homogeneous form, but is a principle that takes on several forms that are distinguished by their legal status or the nature of their members : the cooperative must thus adopt a commercial form (SA, SAS, SARL...) which, in fact, prevents us from considering this solution again.

As for the European cooperative, if it can be created ex nihilo by legal entities, including public law entities, this solution must also be discarded because the taxation applicable is that applicable to

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commercial companies, even if a preferential regime exists.

Furthermore, its creation requires a share capital of 30,000 euros, divided into shares that must be registered, which is not appropriate to our situation.

Finally, the object of the European cooperative is not appropriate to our project either: satisfying the needs or developing the economic activities of its members...

**Specific terms and conditions**

Underline only the aspects particularly remarkable, especially considering the public nature of partners.

**Bookkeeping system:**
In all these groupings, private accounting prevails. The operation is that of a commercial company, even if the grouping is not in itself a commercial company. The model of commercial companies remains the reference.

**Tax treatment:**
The tax benefits are those provided for commercial companies. See
also the analysis of each grouping.

**Staff regulation (recruitment procedures, legal treatment, collective bargaining agreement or public regulations):**
In the absence of specific regulation, the provisions established for personnel recruitment in the public sector are relevant.
See also the analysis of each grouping.

**Possibility and limits for economic activities:**
See preliminary analysis and general description.

**Key learning points and opportunities**

**What works well? Main success factors?**

The only really relevant entity - and even then, with reservations - is the EIG or EEIG. It is an interesting model because it allows to emphasize the social mission of Unita, without excluding the realization (and distribution to members) of profit.

**Challenges/Weaknesses**

**What doesn't work so well?**

Clearly, in France, a University can’t participate in a profit entity.

**Potential for learning or transfer**

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**2) NONPROFIT ASSOCIATION**

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**Type of legal entity (e.g. company, association, etc.) and relevant regulation (in national Language and in English):**

Several avenues should be explored: GIP, association, foundation, GECT.

**General description:**

**1/ GIP/PIG (groupement d'intérêt public)**

Public interest groupings (GIP) appeared in the law of 15 July 1982 on research and were subsequently extended to other fields (e.g. education, sport, health and social action). Their purpose is to promote cooperation between public and private legal entities that they bring together to manage facilities or activities of common interest.

It is a legal entity under public law with a light operating structure and flexible management rules.

It can be formed between different public partners or between at least one public partner and one or more private bodies. With a specific objective to meet a non-profit mission of general interest, the public interest grouping has an administrative or industrial and commercial mission. It pools a set of resources and exists for a fixed period or, since Law n°2011-525 of 17 May 2011 on the simplification and improvement of the quality of law, for an indefinite period.

The GIP is inspired by economic interest groupings (EIGs).
The general rules applicable to public interest groupings are set out in Chapter II of Law n°2011-525 of 17 May 2011 on the simplification and improvement of the quality of law.

GIPs are created to pool resources from different partners to pursue objectives of common interest. They are set up to develop cooperation between public bodies.

The statutes of the GIP are established by a constitutive agreement concluded between the various partners and which specifies the purpose and operating procedures. This agreement is approved by the competent State authority.

The GIP may be established with or without capital, but if it has capital, the members' rights cannot be represented by negotiable instruments.

If the GIP is set up without capital, the founding agreement must specify how the members are to contribute to the operating and, where appropriate, investment costs of the grouping.

The most important body of the GIP is the general meeting of members. It alone can amend the founding agreement, admit new members, decide to withdraw a member or dissolve the ILG. The ILG's statutes may provide for the existence of a board of directors empowered to take decisions that are not reserved for the general meeting.

The GIP must have a director responsible for its day-to-day administration. The director is the grouping's authorising officer and has authority over the staff.

The Grouping's staff is essentially made up of employees (civil servants or private-sector agents) made available to the Grouping by its members. It may also include other public-sector staff on secondment or on loan and, in the alternative, contract staff.

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*Examples : Pôle universitaire de Lyon (1995-2007), transformed into a public establishment for scientific cooperation under the name Université de Lyon ; Mission de recherche « Droit et Justice » (Ministère de la justice / CNRS).*

**2/ Association**

Under French law, the association is a non-profit organisation governed by the law of 1 July 1901 and the decree of 16 August 1901.

An association under the 1901 law may or may not carry out commercial activities (this depends on the association's statutes). In all cases, the profits cannot be shared, which makes this form of enterprise different from other forms of enterprise, particularly commercial ones. Thus, the so-called profit-making income is subject to declaration and taxation.

An association under the Law of 1901 must meet several conditions : it must be made up of at least two people and have a purpose other than sharing profits. In addition, the activity of the association must not directly or indirectly enrich any of its members.

The association is the agreement by which two or more persons pool their knowledge or activity on a permanent basis for a purpose other than to share profits. Its validity is governed by the general principles of law applicable to contracts and obligations.

This law leaves the creators and members of associations free to : to organise themselves (in compliance with the laws in force) ; to choose the purpose of the association; to decide on the mode of organisation and internal operating procedures and to introduce them in the statutes, and possibly internal regulations ; to modify as often as desired or necessary its purpose, mode of organisation and operation ; the possibility of accepting or creating different means of financing its operation, such as membership fees, subsidies from the State or local authorities, manual donations, aid from partnerships or sponsorship ; the possibility of signing legal acts (opening a bank account, taking out insurance contracts, contracts for the provision of services, etc. ) ; the possibility of employing employees or the possibility of taking legal action as a legal person...

The tax regime for associations is a non-profit regime which leads to exemption from commercial taxes (VAT, corporation tax, territorial economic contribution). However, this non-taxation is the result of exceptions which require the respect of a certain number of conditions.

Be carefull : in principle, an association is non-profit. However, its tax regime may be reclassified by the tax authorities or a court as a profit-making association. It then loses its tax advantages, and is practically subject to the tax constraints of commercial companies, but retains the legal status of an association and therefore its restricted legal capacity.

The constitution and the operation, very liberal, are easy.

*European associations already exist at the level of higher education institutions : European University Association (which represents more than 800 universities and national rectors' conferences in 48 European countries), Association Internationale des Universités, Association Européenne des Institutions d'Enseignement Supérieur (EURASHE), Consortium international pour l'enseignement supérieur, la responsabilité civique et la démocratie…*

**3/ Foundation / Scientific cooperation foundation (FCS) / University foundation (fondation, fondation de cooperation scientifique, foundation universitaire)**

The term foundation is defined by Article 18 of the law of 23 July 1987: "A foundation is the act by which one or more natural or legal persons decide to irrevocably allocate property, rights or resources to the realisation of a work of general interest and not for profit. This law adds that a foundation "shall not have legal capacity until the date of entry into force of the decree of the Council of State granting recognition

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of public utility. It then acquires the status of a foundation recognised as being in the public interest".

The purpose of a foundation is to achieve a general non-profit interest. It is created to carry out a work using the assets allocated to it. The creation of a foundation is not intended to serve private interests. The notion of general interest is defined by Article 200 1. b) of the General Tax Code. For there to be a general interest, the work must be of a "philanthropic, educational, scientific, social, humanitarian, sporting, family or cultural nature, or contribute to the enhancement of the artistic heritage, the protection of the natural environment or the dissemination of French culture, language and scientific knowledge".

As a matter of principle, the foundation functions thanks to the fruits and revenues that its capital generates. It is these financial flows that must enable the entity to finance its activity.

A donation to a foundation recognised as being in the public interest entitles the donor to an income tax reduction of 66% of the sums paid, up to a limit of 20% of the donor's annual income (Article 200 of the General Tax Code).

The administrative functioning of a foundation recognised as being in the public interest is quite similar to that of a public limited company, in fact, such a foundation may opt for an organisation with a board of directors or a two-headed management (supervisory board/management board).

Foundations recognised as being of public utility are subject to administrative supervision and are subject to accounting obligations (drawing up an annual report and annual accounts).

Among the multitude of foundations, there is the scientific cooperation foundation (FCS), created by the research programme law of 18 April 2006, which is intended to carry out "any activity relating to the missions of the public research or higher education service", in order to carry out projects of scientific excellence involving companies and public or private higher education establishments. It is similar to a foundation recognised as being in the public interest (FRUP), but differs from it in that the majority or all of the endowment may come from the public authorities, whereas the FRUP can only receive a minority of public endowments. Moreover, the governance requires the presence of a government commissioner (rector of the academy) at the same level as the board of directors. Finally, the FCS is created by simple decree.

There is also the university foundation, created by the law of 10 August 2007 on the freedoms and responsibilities of universities and governed by decree n°2008-326 of 7 April 2008, then modified by the law on the modernisation of the economy n°2008-776 of 4 August 2008. The University of ClermontFerrand-I (University of Auvergne) is the first French institution of higher education to create such a foundation by a decision of its board of directors on 4 April 2008.

The aim of this foundation is to facilitate the provision of additional sources of funding to universities, by allowing the use of private donations (companies, individuals including former students), in addition to public budgets.
It does not really meet our needs.

**There is no European statute for the foundation.**

**4/ European Grouping of Territorial Cooperation (EGTC / GECT)**

The European Grouping of Territorial Cooperation or EGTC is a legal form of cross-border cooperation instrument whose constitution modalities have been defined by the European Parliament and the Council of the European Union in a regulation n°1082/2006 of 5 July 2006. Each EGTC has legal personality and is made up of legal entities from at least two member states (governments, local authorities, public

institutions, universities, etc.). Its purpose is to respond to difficulties encountered in the field of crossborder cooperation and to "facilitate and promote cross-border, transnational and interregional

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cooperation between its members", by providing support for cooperation schemes or large-scale projects.

The constitution and operation are simple.

The members of the EGTC unanimously adopt a convention specifying the name, the list of members, the location of the seat, the extent of the territory, the objective, the mission and the duration.

The statutes of the EGTC are adopted on the basis of this convention. They specify :

1/ the operating procedures of the EGTC's governing bodies, their competences and their composition 2/ the decision-making procedures of the EGTC ; 3/ the working language(s) ;
4/ the modalities of its functioning (management of its staff, recruitment procedures, nature of staff contracts, ...) ;
5/ the modalities of the financial contribution of the members and the applicable budgetary and accounting rules ;
6/ the arrangements for the liability of members ;
7/ the authorities responsible for appointing an independent external auditing body ; 8/ the procedures for amending the statutes.

The EGTC is governed by Regulation (EC) n°1082/2006 establishing it, by the provisions of its convention and statutes and, for matters not specified by the above-mentioned regulation, by the laws of the Member State where the EGTC has its seat.

An EGTC shall have at least one assembly, made up of the representatives of its members, and a director, who represents the EGTC and acts in the name and on behalf of the EGTC. Additional governing bodies may be provided for and described by the statutes.

The budget of the EGTC is annual and adopted by the assembly.

The preparation of the accounts of the EGTC and, where appropriate, the accompanying annual report, as well as the auditing and publication of these accounts, are governed by the laws of the Member State where the EGTC has its seat.

*Examples : the support of a network of universities (following the example of Eucor, the federation of Upper Rhine universities) or specialised cooperation networks already exist and function quite well. Within the framework of a call for projects from the European Commission for the creation of European universities, the University of Perpignan Via Domitia (UPVD) is going to submit an application alongside its 7 partners, from 5 countries, with whom it has formed a consortium around the "Univers" project.*

**Procedures for setting up:**
See also the analysis of each grouping.

**Type of regulation and legal personality (public/private entity)** Private entity.
Some specific aspects could be regulated by legal provisions explicitly established for public entities and their associations, or for private organizations controlled or owned by public entities, such as procurement, or anti-corruption obligations.
Except for these aspects, association functioning is regulated by civil law. It’s the same approach for foundation.

| Specific terms and conditions<br><br>Underline only the aspects particularly remarkable, especially considering the public nature of partners. |
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| **Bookkeeping system:**<br>See also the analysis of each grouping.<br><br>**Tax treatment:**<br>See also the analysis of each grouping.<br><br>**Staff regulation (recruitment procedures, legal treatment, collective bargaining agreement or public regulations):**<br>Civil law is exclusively relevant in general, except for GIP, which is under public law.<br><br>**Possibility and limits for economic activities:**<br>Associations could exercise an economic activity, even if they cannot distribute the revenues obtained by it. The revenues need to be invested in the association itself. GIP and foundation are more cooperation-oriented. |
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| Key learning points and opportunities |
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| **What works well? Main success factors?**<br><br>For all groupings, procedures for setting up are quite simple, as well as the regulation concerning management and governance.<br>Members are free to establish the most suitable governance.<br>But only association and GECT are probably a status common to all the partners' legal systems. |
| **Challenges/Weaknesses**<br><br>**What doesn't work so well?**<br><br>As it was already recalled, the association cannot distribute to its members the revenues obtained. For GIP, the statutes must be approved by the competent authorities of each State, which presupposes that the grouping is recognised in the country in question.<br>For foundation, scientific cooperation foundation or university foundation, the search for private sponsors is essential. And there is no European statute for foundation… |
| **Potential for learning or transfer**<br>See also the examples for each grouping. |

## Etablissement public experimental (EPE) – Public experimental institution

| General Information |
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**Country:**
France

**Type of legal entity (e.g. company, association, etc.) and relevant regulation (in national Language and in English):**

**General Information**

Ordonnance n° 2018-1131 du 12 décembre 2018 relative à l'expérimentation de nouvelles formes de rapprochement, de regroupement ou de fusion des établissements d'enseignement supérieur et de recherche

**General description:**
Experimental status for higher education institutions, which can merge to test new forms of organisation, functioning, in order to achieve a common project.

It does not mention the possibility to include universities from other countries.

**Procedures for setting up:**
Creation by the National Center for Research and Higer Education. It approves the statutes, which must already have been approved by each member.
Each modification of the statutes must be approved by the Executive Board of the EPE and validated by a decree.
The statutes must define many aspects of the EPE, such as:

- a list of its members
- the possibility and conditions to stop the collaboration of one member during the course of the experimentation
- the relation between the EPE and its members
- its missions and attributions (as well as the ones it shares with its members) • its aims and goals
- the role, attributions and designation mode of the nominated rector
- the role and rules of the Executive Board
- the other Boards, Committees and Bodies it will implement
- the possibility of having its own credits and employees

Created for max 10 years. Evaluation by the High Council for Higher Education and Research (HCERES), minimum a year prior to the end of the experimentation.
After two years, the EPE can ask to exit the experimentation status. This must be approved by the HCERES.

**Type of regulation and legal personality (public/private entity)**
Each member can keep their legal personality. They are called composing-institutions.
Each member can only join one EPE.
The EPE must respect the Education French Code as well as the Research French Code.

**Specific terms and conditions**
**Underline only the aspects particularly remarkable, especially considering the public nature of partners.**

**Bookkeeping system:**
No information

**Tax treatment:**
No information

**Specific terms and conditions**
**Underline only the aspects particularly remarkable, especially considering the public nature of partners.**

**Staff regulation (recruitment procedures, legal treatment, collective bargaining agreement or public regulations):**
Possibility to hire staff on its own. Very detailed and precise information but for French institutions.

**Possibility and limits for economic activities:**
No information

**Key learning points and opportunities**

**What works well? Main success factors?**

- Experimental status: possibility to innovate, try features and assess if they match our long-term vision of UNITA
- Possibility to ask for the accreditation to deliver common diplomas
- French universities and higher education institutions use it to increase their attractivity and visibility on an international scale + increase their research capacities: aim of UNITA

**Challenges/Weaknesses**

- New form: no hindshight
- The law does not mention the possibility to create an EPE with universities from other countires

**Potential for learning or transfer**

- Possibility to reflect on what we need for UNITA

## AISBL – Association international sans but lucratif – Internation non-profit making association

**General Information**

**Country:** Belgium

**Type of legal entity (e.g. company, association, etc.) and relevant regulation (in national Language and in English):**
Association
Country: Belgium – ruled by Belgian law.

article 46 de la loi du 27 juin 1921 (insérée par la loi du 2 mai 2002) (Belgium) Code des sociétés et des associations

**General description:**
It gathers physical or moral persons aiming at a non-profit making goal on an international scale. Its goal and the activities it plans on implementing must appear in the statutes.

The AISBL has two authorities: the general assembly and the administrative authority. The latter must be defined in the statutes of the organisation (legal form, composition, functioning, etc.)

**General Information**

/!\ it is different from the ASBL - non-profit making association and the ASBLE - non-profit making association abroad (an association which has its legal headquarters in another country but opens an operational centre in Belgium).

**Procedures for setting up:**
The head office must be set up in Belgium, but the AISBL is open to members of all countries. The legal personality is granted, after the approval of a notary, by a royal decree. All modifications must go through a royal decree. (sending documents to the Service Public Fédéral – Justice)
The King is therefore the one granting the legal personality.
The goals and activities must be clearly presented in the statutes.

**Type of regulation and legal personality (public/private entity)**
Legal personality. Not automatic, must be granted by the King (signature of a royal decree) No personal responsibility of the members.

**Specific terms and conditions**
**Underline only the aspects particularly remarkable, especially considering the public nature of partners.**

**Bookkeeping system:**
article 53 de la loi du 27 juin 1921- Belgium

Depends on the size: micro, small, large.

To be defined as micro, it must not exceed on of the following criteria:

- average of 10 full-time equivalent working per year
- yearly revenue of 700 000 €
- total balance sheet: 350 000 €

To be defined as large, it must exceed one of the following criteria:

- average of 50 full-time equivalent working per year
- yearly revenue of 9 000 000 €
- total balance sheet: 4 500 000 €

If it does not meet these criteria, it is defined as small.

To be eligible to a simplified bookkeeping system, the AISBL must meet two of the following criteria:

- average of maximum 5 full-time equivalent working per year
- yearly revenue of 334 500 €
- total balance sheet: 1 337 000 €

Micro AISBL: simplified bookkeeping system, showing the movements of the liquid assets and the accounts.
Small AISNL: classic bookkeeping system, establishing their annual accounting.
Large AISBL: hire auditors to control their bookkeeping system and the regularity of their spending.

The books must be sent to the Tribunal Registry or to the National Belgian Bank.

The large AISBL must, in addition to the books, write a report on the management of the accounts and the association.

**Specific terms and conditions**
**Underline only the aspects particularly remarkable, especially considering the public nature of partners.**

The AISBLs must adopt a budget, approved by the general assembly yearly. The assembly also has to approve the books of the previous year.

**Tax treatment:**
A tax declaration must be filled, even if the AISBL does not pay taxes on that year.

**Staff regulation (recruitment procedures, legal treatment, collective bargaining agreement or public regulations):**
**Possibility and limits for economic activities:**
No restrictions found

| Key learning points and opportunities |
|---|
| **What works well? Main success factors?**<br>• Well-known and widely used<br>• |
| **Challenges/Weaknesses**<br>• Head office must be set up in Belgium<br>• Set up and modification through royal decrees |
| **Potential for learning or transfer**<br>• Many of them: we can contact them and Exchange with them. |

## COUNTRY: ITALY

**Preliminary analysis**

**Does national legal system establish any particular limit or condition for the creation of private law organizations (for profit or nonprofit) by Universities?**

According to Italian law, public entities could create corporations only for the production of "goods and services strictly necessary for the realization of their institutional aims" (d.lgs. 19.08.2016, n. 175, art. 3.1).
No specific limits are provided for the establishment of nonprofit organization.
Considering the purposes of Unita and of the creation of a legal entity, it is possible to conclude that it is possible to choose both a for profit and a non-profit organization.

Public corporations could be limited liability or stock corporations.

### 1) BENEFIT CORPORATION

| General Information |
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**Type of legal entity (e.g. company, association, etc.) and relevant regulation (in national Language and in English):**

Benefit corporation ("società benefit") – limited liability corporation L. 28.12.2015, n. 208, art.1.376-384 Civil code, art. 2462 ss.
D.lgs. 19.08.2016, n. 175

**General description:**

The benefit corporation was recently introduced in the Italian legal system with the aim of increasing the confidence of consumers and attracting potential investors.
Its main character derives from the combination of the pursuit of a "common benefit" to the normal pursuit of profit. More precisely, the benefit corporation is a typical corporation (e.g. stock corporation, limited liability corporation and so on) which has two aims: profit (or cooperation) and "common benefit". The commercial activity needs to be integrated with the pursuit of the common benefit. According to the law, benefit corporations act "in a responsible, sustainable and transparent way towards people, communities, geographical areas and environment, cultural and social goods and activities, entities and associations and other stakeholders". The "other stakeholders" correspond to workers, consumers, providers, creditors, lenders, public administration and civil society.
The common benefit could correspond to a positive effect on the categories of stakeholders listed before, or to the reduction of a negative effect.
In the case of Unita the common benefit could correspond to the development of members' societies and territories in a European dimension, and to a greater mobility or integration of the academic communities involved.

The managers of benefit corporations are requested to balance the interest of the owners with the interest of the stakeholders or of those who can be impacted by the corporate activities. If they do not act consistently with the pursue of the common benefit, the corporation could be sanctioned by concurrence and market authorities (e.g. for misleading claims).

Unita can create a benefit corporation based on a limited liability company.

The governance of limited liability corporations is based on a General Assembly, composed by representatives of its members. Normally there is a unique director, but the assembly could attribute the management to a board composed of three or five members. Administrators cannot be employees of the public entities which control the corporation.
It is mandatory to provide for the appointment of a board of auditors.
The statute can establish other bodies.

**Procedures for setting up:**
According to Italian law, a limited liability company could be established by the signature of a contract, which needs to be signed in public form (in front of a notary).
The corporation acquires the legal personality with the deposit of the contract at the companies register office.

The common benefit aim of the corporation needs to be explicitly stated in its business objective. Furthermore, the corporation has to produce an annual report concerning the realization of the common benefit, which has to be joint to the financial statement. The report includes the description of the specific aims of the corporation and the actions realized by the administrators to pursue them; the evaluation of the impact generated and the descriptions of the new aims for the next exercise. It has to be publicized on the website of the company.

**Type of regulation and legal personality (public/private entity)** Private entity.
Italian law establishes a special regulation for "public corporations" (d.lgs. 19/08/2016, n. 175, "*Testo unico in materia di società a partecipazione pubblica*"). This regulation provides for some specific aspects concerning public corporations' functioning (e.g. liability, staff management and so on).
Some specific aspects could also be regulated by legal provisions explicitly established for public entities and for private organizations controlled or owned by public entities, such as procurement, or anti-corruption obligations.
Except for these aspects, public corporations' functioning is regulated by civil law.

**Specific terms and conditions**

Underline only the aspects particularly remarkable, especially considering the public nature of partners.

**Bookkeeping system:**
Corporations are subject to private entities bookkeeping regulation. Nonetheless, Italian law provides for some specific regulations for public corporations, namely concerning systems of separate bookkeeping for the activities to which Member States grant special or exclusive rights (d.lgs. 19/08/2016, n. 175, art. 6.1).

**Tax treatment:**
Some specific fiscal benefits have been provided for the establishment of a benefit corporation with a temporary regulation. Namely, benefit corporations could profit for 50% of tax credit until 30 June 2021: even if this provision will expire very soon, it is possible to foresee similar exemptions in the future.

**Staff regulation (recruitment procedures, legal treatment, collective bargaining agreement or public regulations):**
According to d.lgs. 19/08/2016, n. 175, public companies should adopt special regulation for staff recruitment in order to establish procedures inspired by EU principles of transparency, publicity and impartiality. In the absence of these regulation, the provisions established for personnel recruitment in the public sector are relevant.

**Possibility and limits for economic activities:**
See preliminary analysis and general description.

**Key learning points and opportunities**

**What works well? Main success factors?**

The benefit corporation is an interesting model because it allows to emphasize the social mission of Unita, without excluding the realization (and distribution to members) of profit.

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| **Challenges/Weaknesses**<br><br>**What doesn't work so well?**<br><br>A preliminary analysis needs to be conducted in order to verify if every member could participate in a for profit entity. In the case of 4EU+, for instance, the limited liability company was considered as an option for the creation of a legal entity, but it was finally excluded because it was not legally acceptable for some partners. |
| **Key learning points and opportunities** |
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| **Potential for learning or transfer** |

**2) NONPROFIT ASSOCIATION**

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| **General Information** |

**Type of legal entity (e.g. company, association, etc.) and relevant regulation (in national Language and in English):**

Association ("associazione riconosciuta")
Civil code artt. 14-35
D.P.R. 10.02.2000, n. 361, "*Regolamento recante norme per la semplificazione dei procedimenti di riconoscimento di persone giuridiche private e di approvazione delle modifiche dell'atto costitutivo e dello statuto*"

**General description:**
Persons or organizations could establish an association by the signature of a "contract of association", which needs to be signed in public form (in front of a notary). The contract creates an obligation to pursue a non profit aim, which basically means that any revenues that exceed expenses must be committed to the organization's purposes and not taken by parties. However, associations could exercise economic activities.

The governance of associations is based on a General Assembly, composed by representatives of its members and on a Board of Directors which is charged with the execution of Assembly decisions and of general management. In addition to these bodies, the governance could be designed by the statute without special limitation.

**Procedures for setting up:**
Associations acquire legal personality through the registration in the legal persons' register established by the prefecture of the place where the association is seated.
To obtain the registration, the parties have to deposit the contract ("atto costitutivo") and the statute of the association.
The contract of the association establishes the name of the association, its aim, its assets[3], the more important aspects of its management, the rights and duties of its members, the conditions to admit new members and so on.
The statute establishes in detail the regulation of management and governance of the association.

**Type of regulation and legal personality (public/private entity)** Private entity.
Some specific aspects could be regulated by legal provisions explicitly established for public entities and their associations, or for private organizations controlled or owned by public entities, such as procurement, or anti-corruption obligations.
Except for these aspects, association functioning is regulated by civil law.

**Specific terms and conditions**

Underline only the aspects particularly remarkable, especially considering the public nature of partners.

[3] The "third sector" code establishes that, in order to obtain the personhood, an association should dispose of a minimal amount of assets, corresponding to 15.000 euros. Nonetheless this provision does not apply to associations established by public entities (d.lgs. 2.7.2017, n. 117, art. 4.2).

**Bookkeeping system:**
Associations of public entities are subject to private nonprofit entities bookkeeping regulation.

**Tax treatment:**
Simplifications and facilitations are provided for non-commercial activities exercised by associations.

**Staff regulation (recruitment procedures, legal treatment, collective bargaining agreement or public regulations):**
Civil law is exclusively relevant.

**Possibility and limits for economic activities:**
Associations could exercise an economic activity, even if they cannot distribute the revenues obtained by it. The revenues need to be invested in the association itself.

**Key learning points and opportunities**

**What works well? Main success factors?**

Procedures for setting up are quite simple, as well as the regulation concerning management and governance.
Members are free to establish the most suitable governance.
It is probably a status common to all the partners' legal systems.

**Challenges/Weaknesses**

**What doesn't work so well?**

As it was already recalled, the association cannot distribute to its members the revenues obtained.

**Potential for learning or transfer**

Two existing EU universities' alliances created a nonprofit association:

-**UNA EUROPA** (alliance composed by Alma Mater Studiorum Università di Bologna, KU Leuven, Freie Universität Berlin, University of Edinburgh, Helsingin Yliopisto/ Helsingfors universitet, Uniwersytet Jagielloński w Krakowie, Universidad Complutense de Madrid, Université Paris 1 Panthéon-Sorbonne) created an association according to Belgian law and based in Brussels.
The association is responsible for:

- pursuing integrated cooperation between its university partners in high-quality education research, and services to society
- creating a culture of excellence in education and research and fostering best practices
- contributing to the development of the European Higher Education Area and the European Research Area

Its governance structure is based on a General Assembly which consists of the eight partner universities and eight university-related members (foundations or other associations related to alliance members) represented by their Rectors or Presidents; a Board of Directors which consists of the eight partners'

**Key learning points and opportunities**

Vice-Rectors; an Executive Committee composed by the same members of the Board of Directors; an External Advisory Board designated by the General Assembly[4].

-**4EU+** (alliance composed by the Trinity College Dublin, Universiteit Utrecht, Université de Montpellier, Charles University, Sorbonne University, University of Copenhagen, University of Milan, University of Warsaw).
The Rectors of the members universities passed on 1 April 2021 a resolution to establish an association which will be registered in Heidelberg, Germany[9].

## COUNTRY: ROMANIA

[4] See https://www.una-europa.eu/governance (last access: 20.05.2021) [9]

https://4euplus.eu/4EU-12.html?news=12648&locale=en (last access: 20.05.2021).

| Preliminary observation |
|---|
| **Does the national legal system establish any particular limit or condition for the creation of private law organizations (for profit or nonprofit) by Universities?**<br><br>All Romanian higher education institutions, whether state-funded, private or confessional, are set up and operate under the provisions of Law no. 1/2011 on national education. Such institutions include universities, academies, institutes, schools of higher studies and other similar bodies, all of which are governed by the general rules provided by Law no. 1/2011.<br><br>Pursuant to article 114(4)-(5) of Law no. 1/2011, universities are endowed with legal personality, have a nonprofit purpose and are apolitical. Depending on their source of funding (state or private), universities are considered either bodies (legal persons) governed by public law or private legal persons of public utility.<br><br>The analysis carried out in respect of the options included in the present survey takes due account of the specificities of Romanian legislation governing universities and is therefore limited to examples of legal entities whose setting up would be compatible with the functioning and general rules applicable to Romanian universities.<br><br>Under article 129 of Law no. 1/2011, universities may set up (by themselves or in association with other entities) companies, foundations, non-profit associations, in observance of the relevant legal provisions applicable to each type of entity. The prevailing condition for setting up such entities is that the latter effectively contribute to increasing the performance of the university and not have any negative impact upon the teaching and research activities of the institution. When setting up companies, foundations or non-profit associations, the contribution by the university is limited to monetary funds, patents or other industrial property rights. The university may confer, on a contractual basis and upon prior approval by the university senate, the right of use and/or administration over its assets to the companies, associations or foundations in which it is a shareholder or founder. The right of use and administration over public property assets cannot form the object of the university's contribution to the social capital of any company, foundation or association.<br><br>In conclusion, under Romanian law, the creation of both for profit and non-profit entities by public universities is possible, as long as the entity created serves a purpose contributing to the improvement of the university's performance and does not negatively impact the research and teaching activities of the institution. |

## I. NON-PROFIT ASSOCIATION OR FOUNDATION

| General Information |
|---|

**Country: Romania**

**Type of legal entity (e.g. company, association, etc.) and relevant regulation (in national Language and in English):**

NON-PROFIT ASSOCIATION OR FOUNDATION

Relevant regulation: Government Ordinance (G.O.) no. 26/2000 on associations and foundations (*Ordonanta Guvernului nr. 26/2000 cu privire la asociatii si fundatii*)

**General description:**

Associations and foundations allow the possibility of natural and legal persons to associate in order to carry out activities in the general interest, in the interest of certain communities or in their individual, non-pecuniary (non-profit) interest. Under Romanian law, associations and foundations are considered non-profit, private legal persons (article 1 of G.O. no. 26/2000). Two or several associations or foundations may, in their turn, set up federations, which function under the same legal regime as associations..

As indicated in the preliminary observations, public universities may participate in the setting up of nonprofit associations or foundations for purposes connected to their relevant areas of activity. While the general rules concerning non-profit entities are applicable to both associations and foundations, the setting up formalities and the functioning rules are specific to each type of entity (see the section below).

Individual associations and foundations established in accordance with Romanian legislation may be recognized the status of public utility entities under certain conditions. Such conditions are in principle related to the general or community interest pursued, the continuous and efficient character of their activities, their collaboration with public institutions and authorities, national or from abroad, their financial resources and staff etc.). The recognition of the public utility profile of an association or foundation is made by means of a Government Decision and entails several rights and benefits for the recognized entity, such as free use of public property and public assets relevant to its activities.

**Procedures for setting up:**

1. Associations

The setting up of an association under Romanian law requires the participation of three or more (natural and/or legal) persons “who, based on an agreement, decide to jointly use their material resources, knowledge or work efforts, without any right of restitution, in order to carry out activities in the general interest, in the interest of certain communities or in their own, non-pecuniary interest.” (article 4 of G.O. no. 26/2000)

The members of the association conclude the articles of association indicating, among others, the objectives of the new entity, its resources and its functioning rules, including administrative and governing bodies. The association acquires legal personality based on registration in the Registry of associations and foundations, kept by the *greffe* of the local court, in the jurisdiction where its registered office is located.

2. Foundations

Foundations may be set up by one or several natural and/or legal persons who, based on an act *inter vivos* or *mortis causa*, create(s) a legal patrimony which is assigned, on a permanent and irrevocable basis, to the attainment of a general or community interest.

The initial patrimony of the foundation must include assets (either monetary or in kind) whose total value amounts to at least 10 times the basic minimum gross income in Romania at the date of registration (in total, approximately Eur 5,000).

The foundation acquires legal personality based on registration in the Registry of associations and foundations, kept by the *greffe* of the local court, in the jurisdiction where its registered office is located.

**Type of regulation and legal personality (public/private entity)**

Both associations and foundations are private entities, governed by the provisions of general civil law, as well as by the specific rules comprised in G.O. no. 26/2000.

**Specific terms and conditions**
**Underline only the aspects particularly remarkable, especially considering the public nature of partners.**

**Bookkeeping system:**

No particular aspects, the general rules apply.
**Tax treatment:**

Associations and foundations receive a sole fiscal identification code and must register with the local tax authorities. For economic activities carried out by means of trading companies or other trading entities, associations and foundations are subject to the tax rules pertaining to the specific areas of activity and/or entity through which they operate (dividend tax, income tax, VAT).

**Staff regulation (recruitment procedures, legal treatment, collective bargaining agreement or public regulations):**

General labour law rules apply. Associations and foundations may employ staff in order to carry out their object of activity.

**Possibility and limits for economic activities:**

Under G.O. no. 26/2000, associations and foundations may obtain income from economic activity that could include investments, dividends obtained from trading companies set up by the association/ foundation or income resulting from direct economic activities carried out by the association/ foundation itself.

Associations and foundations may set up trading companies under the various legal forms available under Romanian legislation. In this case, dividends obtained by the association/ foundation from the activities carried out by the trading company must be either reinvested in the same company or be used solely for the purposes and objectives of the association/ foundation itself.

Associations and foundations may carry out any other direct economic activity, only if such activity is of an ancillary character and is strongly linked to the main objective of the entity itself.

| **Key learning points and opportunities** |
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| **What works well? Main success factors?**<br><br>Both legal forms (associations and foundations) are easy to set up and do not involve complex formalities or documentation. The setting up procedures are fast. The types and modes of participation in economic activities are flexible and adaptable to the purposes and objectives of a group of European universities. |
| **Challenges/Weaknesses**<br><br>Potential obstacles generated by the different legal regimes applicable to public universities in the relevant countries. |
| **Potential for learning or transfer** --<br>- |

## II. EUROPEAN GROUPING OF TERRITORIAL COOPERATION (EGTC)

| **General Information** |
|---|
| **Country: Romania / EU**<br><br>**Type of legal entity (e.g. company, association, etc.) and relevant regulation (in national** |

**Language and in English):**

**EUROPEAN GROUPING OF TERRITORIAL COOPERATION (EGTC)**

Relevant regulations:

- Regulation no. 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC)
- Regulation (EU) No 1302/2013 of the European Parliament and of the Council of 17 December 2013 amending Regulation (EC) No 1082/2006 on a European grouping of territorial cooperation (EGTC) as regards the clarification, simplification and improvement of the establishment and functioning of such groupings

**General description:**

EGTCs are structures aimed at facilitating and promoting cross-border, territorial cooperation between theis members, with the aim of strengthening economic, social and territorial cohesion in the EU.

**Procedures for setting up:**

EGTCs can be created by partners based in at least two Member States and may include, among others, bodies governed by public law, such as public universities.

EGTCs have legal personality and are governed by conventions concluded unanimously by their members. EGTCs act on behalf of their members, who adopt their statutes by means of special conventions outlining the organisation and activities of the EGTC. As a minimum requirement, an EGTC must have two organs: an assembly, which is made up of representatives of its members, and a director, who represents the EGTC and acts on its behalf.

The powers of EGTCs are limited by the respective powers of their members. Public authority powers, such as policymaking and regulatory powers, cannot be transferred to an EGTC. Members of the EGTC are financially liable for any debts, in proportion to their contribution to the budget of the entity.

**Type of regulation and legal personality (public/private entity)**
Public law entity

| **Specific terms and conditions**<br>**Underline only the aspects particularly remarkable, especially considering the public nature of partners.** |
|---|
| **Bookkeeping system:**<br><br>Depending on the rules of the domestic jurisdiction in which the registered offices of the EGTC are located. |

| **Tax treatment:**<br>Depending on applicable EU rules and the rules of the domestic jurisdiction in which the registered offices of the EGTC are located.<br><br>**Staff regulation (recruitment procedures, legal treatment, collective bargaining agreement or public regulations):**<br><br>To be included in the statutes of the EGTC and depending on the jurisdiction in which the registered offices of the EGTC are located.<br>**Possibility and limits for economic activities:**<br><br>Depending on applicable EU rules and the rules of the domestic jurisdiction in which the registered offices of the EGTC are located. |
|---|

| **Key learning points and opportunities** |
|---|
| **What works well? Main success factors?**<br>European entity with a novel character, uniform rules for the members. |
| **Challenges/Weaknesses**<br><br>Difficulties related to the setting up formalities. |

**Potential for learning or transfer**
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## III. PUBLIC ENTITY - UNIVERSITY CONSORTIUM

**General Information**

**Country: Romania**

**Type of legal entity (e.g. company, association, etc.) and relevant regulation (in national Language and in English):**

**UNIVERSITY CONSORTIUM**

Relevant legislation:

- Law no. 287/2004 on university consortia (*Legea consortiilor universitare nr. 287/2004*)
- Law no. 1/2011 on national education (*Legea educatiei nationale nr. 1/2011*)

**General description:**

The creation of a consortium including the UNITA universities can be analyzed as a public law entity option. The Romanian legislation contains specific provisions regarding the setting up of consortia, comprised in Law no. 287/2004 on university consortia.

Types of objectives pursued by means of university consortia (article 7 of Law no. 287/2004):

- The efficient use of material, financial and human resources of partner universities in the consortium;
- The proposing of collaboration principles and joint strategic objectives for the institutions in the consortium;
- The substantial reduction of costs by joint use of the available teaching and research facilities, accommodation, sports facilities and other similar assets, based on uniform policies;
- The promotion of joint academic programmes;
- Offering students the possibility to participate in courses and specialized programmes based on accumulation and transfer of credits within the consortium;
- An integrated admissions strategy and a single student guide, valid consortium-wide, comprising all the courses and specializations available, based on accumulation and transfer of credits within the consortium;
- Identifying areas of excellence in research and offering logistics and financial support to research centres resulting from the pooling of resources of the participating institutions;

- Facilitating the mobility of teaching staff within the consortium.

**General Information**

**Procedures for setting up:**

A notarized partnership agreement is concluded by two or several members of the consortium, out of which at least one must be an accredited university. The consortium may also include research and development entities, in addition to universities. The law indicates that an individual university or a research and development entity may be associated only with one university consortium (article 2(3) of Law no. 287/2004).

The partnership agreement clarifies the modes of cooperation and the main fields of activity of the consortium and establishes its distinct administration bodies, as well as a separate budget, based on the contributions of its members.

**Type of regulation and legal personality (public/private entity)**

Public entity: upon completion of the setting up formalities, the consortium is automatically recognized as a legal person of public utility.

**Specific terms and conditions**
**Underline only the aspects particularly remarkable, especially considering the public nature of partners.**

**Bookkeeping system:**

The general rules applicable to universities apply.

**Tax treatment:**

The general rules applicable to universities apply.

**Staff regulation (recruitment procedures, legal treatment, collective bargaining agreement or public regulations):**

The general labour law provisions apply, as well as the specific rules concerning the recruitment and regime of university staff under Law no. 1/2011.

The consortium recruits permanent staff, both technical and administrative, based on the provisions of the partnership agreement. The permanent staff working in the administrative structure of the consortium is remunerated under the remuneration schemes applicable in the system of higher education.

**Possibility and limits for economic activities:**

As university consortia are public law entities (with a recognized public utility purpose), the general rules applicable to such institutions are relevant.

In the case of joint investments by the members of the consortium, the investment contracts must indicate, for the respective partners, the following elements: (i) their contribution to the investment;
(ii) rights of use; (iii) access time allocation; (iv) share of expenses covered for the maintenance and functioning of the investment; (v) share of potential income obtained as a result of the investment. Any assets obtained from the activities carried out by the consortium are owned jointly and inseparably for the entire duration of the consortium.

In case the consortium ceases to exist or one of the partners withdraws, the applicable rules concerning the legal situation of the assets or of any other results of the joint activities are those established by the partnership agreement.

| **Key learning points and opportunities** |
| --- |
| **What works well? Main success factors?**<br>The university consortium structure allows its members a relatively high degree of flexibility in determining the objectives, activities and resources that will form the object of cooperation, while respecting their individual autonomy.<br><br>**Challenges/Weaknesses** |
| **Key learning points and opportunities** |

Different rules governing the functioning of universities in the relevant states may generate obstacles concerning the setting up and functioning of the consortium.