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Task 2.1

Analysis on the object of the academic EEIG

EGAI - UNITA AS A MODEL FOR INSTITUTIONALIZED UNIVERSITY COOPERATION: FROM THE EUROPEAN GROUPING OF ECONOMIC INTEREST TO THE EUROPEAN GROUPING OF ACADEMIC INTEREST

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Abstract

The report concerns the legal analysis of the possible purpose of an EEIG applied to university teaching, knowledge transfer and research activities.

The report sets out to analyse the activities that can be entrusted to the UNITA EEIG and to clarify their definition.

It will also seek to clarify the notion of economic and ancillary activity of the EEIG, particularly as understood under European Union law and by the Court of Justice of the European Union, to identify in concrete terms the economic activities that are legally compatible with the institutional missions of universities, as well as to highlight some issues relating to the financing of EEIGs.

1. Introduction

This report is part of a more global approach which consists of analysing an a priori new model of EEIG, the object of which is university teaching and research activities.

The overall aim is to study the legal compatibility of traditional university teaching and research needs with the possible purpose of an EEIG.

The research is wide-ranging, since it raises questions about the legal tools that an EEIG with an academic purpose can use to share staff, material resources and data.

Our report is therefore part of an overall research project to develop a legal toolbox for the practical operation of the UNITA EEIG.

There are many major problems.

The compatibility of the EEIG with the purposes of university cooperation leaves room for uncertainty thus calling for further legal investigation and analysis.

First of all, there is a need for a clear delimitation of those services that the partner universities, all of which are public entities established for purposes of general interest, can concretely entrust to the EEIG, as the latter is established for the purpose of developing and intensifying cooperation among the partners through the exclusive provision of ancillary activities of an economic nature.

The EEIG is open to the participation of public entities and universities that "can offer educational services which, due to their nature, financing structure and the existence of competing private organizations, are to be regarded as economic" (Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest (2012/C 8/02)).

However, it seems advisable to carry out a study aimed at identifying and circumscribing the types of activities that can be entrusted to the EEIG, also in light of the European Commission definition of "joint interdisciplinary transnational educational activities" (Council Recommendation of April 5, 2022 on building bridges for effective European higher education cooperation, 2022/C 160/01).

Further research is also necessary to shed light on the conditions of such attributions and the legal consequences in terms of funding arrangements and the application of competition regulations.

At the same time, it is necessary to thoroughly analyze legal instruments and arrangements to allow for the sharing of resources, especially in light of the unlimited, joint and several liability of the partners that characterizes the EEIG framework.

2. Background

UNITA's partners identified the EEIG as a suitable tool for long-term institutionalized cooperation following an in-depth analysis aimed at highlighting its advantages in comparison with the other instruments offered by the European Union legal system (including the European Territorial Cooperation Grouping, the Societas Europaea and the European Research Infrastructure Consortium).

The analysis carried out by the partners - which can only be briefly recalled here - has led to the exclusion of the EGTC due to its excessively complex establishment procedure as well as its inherent nature, which seems more appropriate for cross-border cooperation between neighbouring Member States. The Societas Europeae was likewise excluded because of constraints posed by national legal systems (especially French law) about the establishment of for-profit entities by public bodies. The ERIC, on the other hand, was deemed to have too narrow of an object in relation to the missions associated with universities (as well as its overly complex establishment procedure).

Hence the choice to focus the analysis to be carried out within EGAI on the EEIG, as the instrument that the alliance partners have chosen to institutionalise their cooperation.

However, collaboration with EUt+, whose project "STYX" was also selected, will allow for the observation of the establishment procedure and the functioning of the EGTC, providing useful insights with a view to possibly reconsidering the choice in favour of the EEIG.

Among the strengths of the EEIG is undoubtedly the flexibility of the instrument, which allows for versatile organisational solutions with a view to adapting to the unique features of the academic community, the various components of which (professors and researchers, students, administrative staff), as well as the autonomy of its governing bodies, can be transposed in ad hoc governing bodies to be defined by the EEIG statutes.

An additional advantage is that of the simplicity of the EEIG's establishment procedure, which only requires registration with a national authority (the Chamber of Commerce, Industry, Handicrafts and Agriculture of the place of its registered office according to Italian rules) and no prior approvals from other national authorities. This simplicity enabled the UNITA - Universitas Montium alliance to complete the registration of the EEIG within the timeframe of the EU-funded project.

3. Specific Objectives

To enable systemic, structural and sustainable cooperation and to test the EEIG, it is required in a first step to analyze and define the activities that can be entrusted to the EEIG in light of the notion of "economic activity" (which should “not be more than ancillary" to those of the partners) under the European discipline (Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG), art. 3) and the character of general interest of the institutional missions of the alliance partners.

This entails the preparation of a preliminary study which, after having clarified the notion of economic activity according to the jurisprudence of the EU Court of Justice, with a particular focus on services of general economic interest (art. 106, TFEU), will proceed to identify which economic activities are compatible with the institutional missions of the universities and therefore can be entrusted to the EEIG.

To this end, it is useful to analyse – also with the aid of artificial intelligence tools - the data held by the project partners, to determine which of the activities they carry out are economic in nature and are capable of contributing to the development of the target territories.

In addition to that, there is a need to clarify the legal framework in which these activities can be carried out (public procurement rules and in-house providing organizations) and what are the consequences of the aforementioned economic character vis-à-vis European competition rules (e.g. state aid rules).

About research activities, such analysis will require a particular focus on the relationship with the market and the relevant framework for data sharing and intellectual property of the outputs. This analysis seeks to investigate the compatibility of the free and open research paradigms promoted by European Open Science policies with the economic character of the EEIG activities.

The project team will oversee the implementation of this study, the outputs of which, as well as the lessons learnt, will be presented at a scientific conference to be held at the conclusion of the project and to be published in a collective volume. Moreover, outputs and lessons learnt will be shared with the other alliances and universities interested in the EEIG as a possible tool of cooperation through the organization of a winter school at the conclusion of the project.

Analyze and define the EEIG's economic and financial needs also with a view to identifying a "test" blended learning activity to be entrusted to the grouping as an initial test of its operability.

4. Methodology and Preliminary Considerations

To analyse and determine the activities that can be entrusted to the EEIG in light of the notion of "economic activity" under the European discipline and the character of general interest of the institutional missions of the alliance partners, it will be necessary to:

(a) Identify, in agreement with the UNITA alliance's governance bodies, the activities they intend to entrust to the EEIG and the activities of economic relevance they already carry out.

For this purpose, a questionnaire will be submitted to the UNITA Management Committee to outline which of the partners' activities are economic in nature and therefore can be entrusted to the grouping.

Artificial Intelligence tools will be employed to evaluate the economic relevance of the activities carried out by the partners to assess their economic impact in relation to the development of the territories.

The questionnaire, provided in the form of a survey, is currently being carried out in the partner universities.

(b) In parallel, an in-depth analysis will be conducted on the notion of economic activity against the backdrop of EU case law and prevailing doctrine, with a specific focus on the consequences arising from the qualification of an activity as economic under EU competition rules (e.g., state aid rules).

Attention will also be paid to the legal framework applicable to the outputs of research activity which consist of data and intellectual products, to investigate the compatibility of the economic character of the activities with the open regimes promoted by European policies.

All the collected material will be stored in a database open to consultation by partners.

To achieve this objective, a number of researchers from the UNITA Alliance have examined the crucial issues identified in advance and have drawn a number of conclusions which are set out in this report.

(c) The intersection of the outcomes of the survey under a) with the one conducted under b), will allow to identify the activities that can be concretely entrusted to the EEIG as well as its legal regime.

5. Fundamental Questions

To pursue the objectives of our task force as effectively as possible, we have considered 4 key questions, on which 4 Alliance researchers and legal experts have worked and reached conclusions.

This work was the subject of a webinar in Pau on Thursday 14 September 2023 and will be published in the toolbox.

1/ Eugenia JONA is Ph.D. Candidate in administrative law from the University of Turin, presented a paper entitled: *Study on university activity and services of general economic interest*.

2/ Riccardo RUSSO is a Researcher in Commercial Law from the University of Turin, talked to us about cooperation between universities and enterprises.

3/ François-Vivien GUIOT is University lecturer from the University of Pau, treated the question of what would be the legal status of an EEIG only composed of legal entities under public law ?

Further studies will be carried out. For example, a legal study will be carried out into the question of legal instruments for sharing staff, material resources between partners and data.

6. Concrete analysis

The various analyses that follow are part of a desire to examine in greater depth certain issues raised by the creation of this EEIG composed exclusively of Universities. As this status was not specifically envisaged for universities, this work sheds light on and provides numerous elements concerning the compatibility of the EEIG and the activities of universities.

The first study looks specifically at the possibility of universities carrying out economic activities and thus falling within the scope of services of general economic interest within the meaning of EU law (6.1). The second addresses the issue of cooperation between universities and companies within the Italian legal framework. Increasingly common in the university environment, a study of the various Italian legal provisions governing cooperation between the public and private sectors provides an insight into the possible activities that the EEIG could undertake (6.2). The third presentation is part of a more global context, as it aims to highlight certain questions regarding the constitution and operation of the EEIG. It is therefore the EEIG's statutory rules and regime that will be examined (6.3). Finally, the fourth presentation aimes at highlighting the financing regime of an EEIG composed by public law entities such as universities (6.4).

6.1 Study on university activity and services of general economic interest

It is important to analyse the role of university institutions on the European Union market and their economic effects and try to understand to what extent their activities can be covered by the discipline of services of general economic interest- Thus, the aim will be to understand which of the missions entrusted to universities (research, teaching, third missions) can be regarded as being of general economic interest.

The following considerations concern the relationship between university activity and services of general economic interest. It is therefore crucial to understand whether and how the activity of universities can fall within the scope of the SGEI under EU law (art. 106 TFEU).

In order to fully comprehend their correlation, firstly one needs to define the institutions to understand their legal status and their interpretation of the Court of Justice of the European Union.

1/ Definition of services of general interest.

Services of general economic (hereinafter SGEI) interests find their discipline in the Treaty on the Functioning of the European Union, in particular Article 106.

The first paragraph of Article 106 TFEU makes it clear that the Member States may own public or private undertakings and grant them special or exclusive rights without infringing European Union law, subject to compliance with the Treaties and with the rules on non-discrimination (Article 18 TFEU) and competition, including State aid (Articles 101 to 109 TFEU).

The second paragraph, on the other hand, provides for a derogation from the principle of applicability of EU law, although it may also be invoked in favour of private undertakings to which Member States have not granted a special or exclusive right.

The derogation provided for in this second paragraph only applies if the following three conditions are met:

a) there is an undertaking entrusted with operating a service of general economic interest or having a fiscal monopoly;
b) the application of the Treaty rules must not have the effect of hindering the provision of the service in question;

c) the derogation must not have an effect on the development of trade to an extent contrary to the interests of the European Union.

As the Court of Justice of the European Union has repeatedly emphasised, services of general interest are distinguished from other services by the predominance of the solidarity aspect, as opposed to the economic aspect which prevails in services of general economic interest.

They are services that Member State authorities consider to be of general interest and therefore subject to specific public service obligations. The term covers both economic activities as well as non-economic services. Only services of general economic interest are subject to regulation by the Treaty on the Functioning of the European Union, while the regulation of services of general interest is subject to the division of competences within the European Union. It is an additional corrective to the social market economy and a way of adjusting the EU services market to correct information asymmetries that create inequalities. Market and competition rules apply to undertakings entrusted with operating services of general economic interest, provided these rules do not prevent them from performing their general interest tasks.

2/ What kind of aid, interesting for us, can be authorized?

The entrusted undertaking would not carry out this activity under free market conditions because it would not be profitable. By providing compensation, the Member State essentially makes it attractive for the public or private undertaking to provide this service. Compensation is paid to the undertaking entrusted with the service when the activity is not sufficiently profitable and would be uneconomic for the undertaking without compensation, but is necessary to ensure political, territorial and social cohesion in a Member State.

If the compensation meets the criteria laid down by the Court of Justice of the European Union, as we will see shortly, it is compatible with the state aid rules.

In other words, it does not constitute state aid. On the other hand, if the criteria are not met, the compensation is state aid and therefore in breach of the TFEU prohibition if it is granted through state resources in any form. This is due to the simple fact that, in a market economy such as the European one, a company in receipt of such aid would have an advantage over its competitors by being in a dominant and privileged position vis-à-vis others.

However, State aid may be authorised, and thus not infringe the prohibition, if it is justified by objectives of general interest, as provided for in the Commission Regulation (EU) 651/2014, which authorises certain types of aid and exempts them from having to be notified to the Commission. In the Treaty on European Union, article 14 provides that “everyone has the right to education and to have access to vocational and continuing training”. In addition, the European Union shall contribute

to the development of quality education by encouraging and facilitating cooperation between Member States and by supporting and supplementing their action (Article 165 TFEU). Among state aids that are compatible, there are state aids to R&D, environment, training, employment and cultural activities.

So, under those circumstances, education and research fall certainly within the definition of service of general interest where the aspect of solidarity prevails. On the other hand, education and research might also be considered services of general economic interest of the European Union because of the following reasons.

Firstly, although the right to education is guaranteed and protected by the Treaty on the Functioning of the European Union (Art. 165 TFEU), it does not specify which bodies are responsible for providing education at territorial level. In other words, it does not specify whether these bodies should be public or private, nor their main features and functions. Regardless of their nature, it is common ground that higher education institutions play a decisive role in the EU competitive market, insofar as they provide services of economic interest, including economic ones.

3/ Definition of University and link with services of general economic interest

In the Commission Regulation (EU) n.651/2014, universities are defined as "research and knowledge dissemination organisations", i.e., as "entities, irrespective of their legal status (private or public) or source of funding, whose principal objective is to carry out independently fundamental research, industrial research or experimental development, or to ensure the wide dissemination of the results of such activities through teaching, publication or transfer of knowledge. The financing, costs and income of these economic activities must be shown separately if this body also carries out economic activities. No preferential access to the results generated shall be granted to undertakings in a position to exercise decisive influence on such an entity, for example as shareholders or partners".

The European Union has no competence, not even a residual competence, over services of general economic interest which the Member States must provide on their territory, according to the provisions of the Treaties - i.e., according to the principle of conferral. However, the activities which are the subject of services of general economic interest are close to matters falling within the competence of the Union, in which the Union can well act to guarantee "social and territorial cohesion" within the Union (Article 14 TFEU). In other words, a given public service becomes a "service of general economic interest" and, as such, must comply with the fundamental principles of the European Union's system.

The ambiguity of the division of competences between the Member States and the European Union has complicated the definition of services of general economic interest. Initially, the Court of

Justice, the Parliament and the Commission were very cautious in defining services of general economic interest to avoid encroaching on their competences, as they considered public services to be an expression of the sovereignty of the Member States.

4/ Characteristic elements of services of general interest and problematic of state aid

A characteristic element of services of general economic interest is the concept of **undertaking**, which is broader than the traditional concept of business law and which is needed to understand whether universities can also be covered by this definition and therefore exercise an economic activity.

An "undertaking" is any entity which is engaged in an **economic activity**. The nature of the undertaking may vary from time to time, but which in any event is the production of goods and services on the market. In fact, it is the Court of Justice of the European Union which has the role to check the compatibility of the Member States' regulations with the Treaties and determines whether the activity is economic and defines it accordingly where the Court is clearly called upon to do so.

In addition to the definition of an undertaking, there is also the definition of "economic activity". This has given rise to several difficulties of interpretation over the years.

The Court of Justice of the European Union in its judgement C-404/22 of 6 July 2023 (Ethnikos Organismos Pistopoiisis Prosonton & Epaggelmatikou Prosanatolismou v. Elleniki Dimosio) states that economic activity "includes any activity consisting in **offering goods or services on a given market**" (inter alia, judgments of 20 July 2017, Piscarreta Ricardo, C-416/16; 11 November 2021, Manpower Lit, C-948/19; 6 September 2011, Scattolon, C-108/10; judgments of 10 December 1998, Joined Cases C-127/96, C-229/96 and C-74/97; 25 October 2001, Case C-475/99, Ambulanz Glöckner, ECR. I-8089, paragraph 19; 24 October 2002, Case C-82/01 P, Aéroports de Paris v Commission [2002] ECR I-9297, paragraph 79; 10 January 2006, Case C-222/04, Cassa di Risparmio di Firenze and Others).

All activities relating to the exercise of public authority are excluded from the classification of "economic activity". On the other hand, all services "provided in the public interest and on a non-profit basis and **in competition with those provided by operators acting for profit** are covered. The fact that those services are less competitive than similar services provided by profit-seeking operators does not prevent the activities concerned from being regarded as economic activities" (Case C-404/22 of 6 July 2023 - Ethnikos Organismos Pistopoiisis Prosonton & Epaggelmatikou Prosanatolismou v Elleniki Dimosio). Services of general economic interest can only be subject to competition rules and internal market obligations if they carry out an economic activity. The nature of the services of general economic interest therefore determines the applicability of the rules to

certain sectors, including social sectors, where the activity carried out has economic aspects, as in the case of higher education institutions.

It is the judgement C-280/00, known as the Altmark Trans judgement, delivered by the Court of Justice of the European Union on 24 July 2003, which for the first time clarifies the criteria that must be met in order for State aid intended to compensate undertakings for providing services of general economic interest not to be considered State aid (point 88 of the judgement).

The four criteria are as follows

a) the undertaking must be entrusted with a public service obligation and the public service obligation must be clearly defined (paragraph 89);

b) the parameters for the calculation of the compensation must be clearly and objectively defined ex ante (paragraph 90);

c) the compensation must not exceed what is necessary to cover the costs incurred in discharging the public service obligations, so as to ensure that the undertaking receiving the compensation does not enjoy an advantage that distorts competition (paragraph 92);

d) an open and transparent procedure must be followed for the selection of the undertaking to be entrusted with the discharge of the public service obligations (paragraph 93).

5/ University and services of general economic interest

The definition of an economic activity in the context of services of general economic interest may vary from case to case. The Court of Justice of the European Union has adopted a flexible approach to this issue. Case law has sought to strike a balance between the need to preserve the ability of public authorities to provide services of general interest and EU competition and internal market rules.

University education falls **both within the scope of services of general interest** and, for certain activities carried out by universities, also **within the scope of services of general economic interes**t. Universities play a key role in providing quality higher education and research. They also promote access to education for all.

But the legal regulation of higher education institutions varies from one EU Member State to another, which means that there is no uniformity of higher education structures at European level, without prejudice to the recognition and equivalence of qualifications.

So, universities fall under the definition of "**economic operator**" in the 2014 Public Procurement Directives (Directive (EU) 2014/24), again following the interpretation of the Court of Justice of the

European Union. It is important to note that the definition of the Court of Justice of the European Union initially excluded universities and all entities not primarily engaged in profit-making activities.

Indeed, recital 14 of Directive (EU) 2014/24 provides that "it should be made clear that the term economic operator' should be interpreted broadly to include any person and/or entity offering on the market to carry out works, to supply products or to provide services, whatever the legal form under which it has chosen to operate. Thus, companies, branches, subsidiaries, partnerships, cooperatives, limited liability companies, public or private universities or any other form of entity other than a natural person should be included in the definition of economic operator, regardless of whether they are "legal persons" or not".

This definition also includes the **EEIG**, a European Economic Interest Grouping "set up pursuant to Legislative Decree No 240 of 23 July 1991, which offers on the market respectively to carry out works, to supply products or to provide services". In fact, the Court of Justice has ruled that the concept of economic operator also includes entities that "do not pursue a predominant profit-making aim, do not have the organisational structure of an undertaking and do not ensure a regular presence on the market, such as universities and research institutes, as well as groupings formed by universities and public administrations in order to participate in a public service contract" (ECJ, C-305/08, judgement of 23 December 2009, CoNISMa v Regione Marche).

6/ Conclusion with annex.

In the light of these criteria laid down by the Court of Justice of the European Union, it is now necessary to assess whether this approach is compatible with the activities of universities, and in particular which of the various missions they perform.

Numerous studies carried out by various universities have shown that universities, whether publicly or privately funded, have an **economic impact on the territory and the local economy**. There are three types of effects: direct, induced and indirect, which are generated by the presence of a university on the territory. Direct effects consist of the financial resources that the university receives to support its activities. Induced effects consist of the fact that the increase in expenditure in a given area leads to an increase in income, which generates other consumption.

It therefore seems clear that the activity of a university undoubtedly increases productivity and the circulation of capital in a given geographical area, even if it cannot be defined as economic in a general sense.

It is therefore necessary to understand the extent to which this notion of cost-effectiveness, as defined in the Altmark judgement, fits the typical tasks of a university in relation to the economic

impact that the presence of a university has on a territory. It is necessary to understand which of the three typical missions of the university (research, teaching, and innovation) meets the criteria set out in the Altmark judgement and which have always been respected to date.

The following diagrams compare the Altmark criteria with research and teaching missions of the university using the Italian university as an example. Further analysis should be devoted to innovation activities, which are to heterogenous to be summarised in a unique diagram.

RESEARCH ACTIVITIES

Criteria	Economic Activity	Research activities
Nature of the activity	It provides for the supply of goods or services on the EU market.	It provides for the creation of knowledge, innovation and the enhancement of workers to access the EU market.
Remunerative character	A direct or indirect payment by the users of that economic activity	A direct or indirect payment by the users who benefit from that research activity (e.g. patents and IP rights). Not all research is freely usable today (but a lot of it is).
Competitive character	Competition with other players in the market who render the same activity.	Competition with other players in the market who render the same activity.

Economic risk	The risk of financial loss depends on multiple factors in the acceptance of products on the market, but it is a real risk for all those who do business in a free market.	N/A
Organisation	The organisation of the person exercising the economic activity must be organised and continuous.	Research activities are usually organised on a continuous basis.
Goal	Making an economic profit.	Knowledge creation.

EDUCATION		
Criteria	Economic Activity	Teaching activities
Nature of the activity	It provides for the supply of goods or services on the EU market.	It provides for the training of students.
Remunerative character	A direct or indirect payment by the users of that economic activity	The users (students) pay an application fee that partially supports the education service.

Competitive character	Competition with other players in the market who render the same activity.	Different educational and training offerings could attract students to certain university centres over others.
Economic risk	The risk of financial loss depends on multiple factors in the acceptance of products on the market, but it is a real risk for all those who do business in a free market.	N/A
Organisation:	The organisation of the person exercising the economic activity must be organised and continuous.	The organisation of the provider is organised and continuous in such a way as to guarantee a constant service.
Gole	Making an economic profit.	Training of students.

It seems difficult to consider the teaching activity as an economic activity in the sense of SGEIs regulation. But it can be considered an indirect economic one because of the impact on the territory-

The general answer to the question of whether universities can engage in economic activity is yes. They too fall within the definitions that the Court of Justice of the European Union has established over the years. The institution “university” is thus configured as eclectic and multifaceted. It is capable of directly and indirectly engaging in economic activities that enable the dissemination of knowledge, education, and research. In addition, they are configured as centres for the dissemination of knowledge, with indirect economic effects also on the surrounding territory, enabling its greater development.

6.2 Cooperation between universities and enterprises: the Italian Case

The issue of legal forms of collaboration between universities and enterprises is part of the broader framework of the relationship between the public and private sectors. The public-private partnership is regarded as a kind of laboratory for the design of educational cycles as well as an effective means of transferring knowledge; it also facilitates the dissemination of results by allowing the shared use of patents and licences and the joint exercise of intellectual property rights .

The provision of links between the academic and business spheres gives the partners mutual benefits: universities can have an additional channel of funding; companies, in parallel, can contribute to the definition of training programmes and increase their visibility also through the conclusion of sponsorship contracts.

In the Italian system, two archetypes are most used in this field: the university foundation and the consortium company.

As an example of this kind of cooperation in the field of research, it is possible to recall the 'industrial doctorate', introduced in Italy by Article 11, Ministerial Decree no. 45 of 8 February 2013, which is also known beyond national borders. Similar characteristics to the 'industrial doctorate' can be found in the so-called 'Doctorat Industrial', whose cycles have been activated since 2012 on the initiative of the Generalitat of Catalonia.

This doctorate is subdivided, in the Italian system, into several types:

- the 'doctorate in agreement with the company';
- the 'executive industrial doctorate';
- the 'high apprenticeship industrial doctorate'.

The 'doctorate in agreement with the company' is aimed at those who hold a master's degree and is financed by the company, which expresses its opinion on the training project and appoints its representatives to the Board of Lecturers.

The 'executive industrial doctorate' and the 'high apprenticeship industrial doctorate' can be accessed by graduates employed by the company that has paid a direct contribution to the operation of the course. The peculiarity of the latter doctorates lies in the fact that the doctoral candidates maintain their employment with the company[1].

[1] It should be added that the industrial doctorate returned to the attention of the Ministry of Universities and Research in 2022. In fact, point 3.1 of the Guidelines for the Accreditation of Doctoral Programmes, published on 22 March 2022, states

The global idea of the investigation is to trace, therefore, a general outline within which to include two more circumscribed aspects: i) the misalignments from civil law 'types' in the discipline of mixed entities, i.e. those made up of universities and businesses; ii) the influence exerted by the techniques adopted by the legislator on the organisational choices of universities and businesses.

1/ The university foundation: a general overview

The university foundation is, with the consortium company, one of the pieces in the complex mosaic of partnership; these models are used, albeit with different intensities, in the realisation of research and training initiatives.

The advent of the university foundation, which began quietly between the lines of an amendment to the financial law for 2001, played a crucial role in overcoming an interpretative strand that had long been in the majority. Close to the entry into force of the civil code of 1942, the idea had emerged that the foundation was essentially a 'universitas bonorum', characterised by the absolute predominance of the patrimonial aspect: the association was defined, on the other hand, as a 'universitas personarum' in which the personal element was predominant. To support this exegetical reconstruction, arguments of a mostly literal nature were used. It was pointed out that the mandatory nature of the assembly body was provided for only with reference to the association (Art. 20 of the Civil Code) and that the assembly, even if constituted by statute, would have been given powers of modest extent. Moving from this premise, the relevance of the position of the participants in the foundation was devalued as well as emphasising the tendency of the foundation's purpose to remain unchanged and the detachment of the entity from the founder.

But this approach was not without criticism from those who correctly emphasised that the foundation is, like the association, an 'organisation of persons'; the criterion for distinguishing between the two legal persons lies, if anything, in the different relationship between the personal aspect and the patrimonial aspect, which are present, however, in both organisational schemes.

On the other hand, the scope of the patrimonial element appears in the university foundation to have been downgraded.

Alongside the features common to the 'classic' foundation - the preclusion of the pursuit of profit; the prohibition of profit distribution; the correlation between acquisition of legal personality and administrative recognition by the governmental authority - the discipline of the university foundation has clear specificities.

that "it is required that at least one person of high scientific or professional qualification from each company involved in the doctoral course be present in the doctoral college"; point 3.2 specifies that each participating company must indicate "the scientific and training objective/project that it intends to implement by participating in the doctoral course".

The university foundation aims to bring many business partners closer to the university and is open to the involvement of parties other than the original founders: it is not surprising, therefore, that several ways of joining the body are outlined - 'founders', 'institutional participants', 'participants' - which differ according to the size of the contribution made (Art. 6).

Consequently, the assets themselves take on a dynamic configuration and are the result of the combination of the endowment initially conferred by the founders, the movable and immovable property that the university foundation has received during its life and the income from the activities it carries out (Article 4(b) and (c)).

Moreover, the purpose of the university foundation is not discretionarily determined by the founders, but is identified within a grid that, albeit made up of particularly wide meshes, has been defined by the legislator; the rules on the body's seat are also imperative, which must be located 'in the territory of the municipality where the main seat' of the participating university is established (Article 1(2)).

Conversely, a lesser compression of statutory autonomy can be noted with reference to the internal architecture of the foundation. There are three organs whose presence is indefectible:

i. the president (Art. 8);
ii. the board of directors (Article 9);
iii. the board of auditors (Art. 11).

However, there is nothing to prevent the provision of an additional body modelled on the shape of the assembly; it should be emphasised, however, that this option is followed, in practice, by a small number of university foundations.

The absence of a body representing the community of participants corresponds to the extension to the university foundation of institutions typical of commercial law which, in the civil code, are not immediately linked to the foundation. First of all, there is an internal control body - the board of auditors - whose powers are determined, by reference, by the provisions that, in the context of joint-stock companies, regulate the functioning of the board of auditors (Article 2397 of the Civil Code). This is an element of profound difference from the "classic" foundation, in which the directors' resolutions can be censured from the outside - i.e. by the governmental authority - exclusively from the perspective of strict legality (Art. 25, para. 1 of the Civil Code) ; on the other hand, the reference to the auditors leads one to believe that the activities of the university foundation's board of trustees can also be scrutinised from the different (and broader) profile of substantive legitimacy.

In addition, the university foundation must draw up, pursuant to Article 2423 of the Civil Code, the financial statements, which - even where a para-assembly body is provided for in the statutes - are

approved by the board of directors and forwarded, within the following thirty days, to the universities.

A quick mention of the position occupied by accounting records in the Italian systematics appears useful.

According to a first opinion, accounting records have mainly external relevance. Elsewhere, on the other hand, their character as an instrument of self-control has been accentuated, emphasising their internal relevance: the regular keeping of accounting records has been defined, in this way, as a 'necessary element of the orderly management of the business'; if this view were accepted, the external relevance of accounting records would have a circumscribed and exceptional value, allowing the ex post reconstruction, in the event of the company's bankruptcy, of the relationships between the entrepreneur and third parties. Occupying an intermediate position are those who assert that "the legal function of an 'orderly accounting system' is to be an actual or eventual instrument of information and control, both internal and external to the business activity, especially by means of the balance sheet. The internal information process is aimed at the proper management of the business, the external information process is aimed at the need for information and control of minority shareholders and third parties and the market, for the analytical reconstruction of the entrepreneur's assets and of the individual relationships established in the exercise of entrepreneurial activity'.

2/ Consortia and cooperation between universities and enterprises

In the area of partnership, it is far more common to note the application by universities and companies of the consortium scheme than the establishment of university foundations.

It seems useful to propose two points here: i) the presence of a public partner such as the university seems to affect the purposes of the entity, which are given a general scope and "not limited to the selfish intentions" of the consortium members ; ii) the carrying out of research and training activities can be seen as a phase of the business activity exercised by the consortium company.

It has been said that the intersection between consortium purpose and company form entails the "automatic disapplication of the provisions pertaining to the profit-making purpose". The rules governing commercial companies," reads a decision on the merits, "are destined to prevail over the rules applicable to the consortium and are derogated or derogable only insofar as they are incompatible with the consortium's purpose. An example may, perhaps, clarify the jurisprudential assumption: since relations between the consortium company and third parties are governed by the rules of the type chosen, the articles of association may not introduce hypotheses of personal

liability of the partners since a clause of this tenor would collide with one of the cornerstones of corporations.

it should be noted that the university has been granted the possibility of **participating, together with entrepreneurial entities, in consortia or capital companies 'for the design and execution of research programmes aimed at scientific and technological development';** Art. 91-bis, Presidential Decree No. 382 of 11 July 1980 does not merely provide that universities be guaranteed 'equal participation' in the definition of research programmes, but goes so far as to impose strict limits on the entry of universities into consortium companies.

These limitations require some notes of clarification.

First of all, **profits may in no case be distributed to shareholders**, as their reinvestment must implement scientific purposes. In profit-making joint-stock companies, it is well known that the decision of the shareholders' meeting not to distribute profits, even for prolonged periods, among the shareholders is considered legitimate. This problematic aspect intersects with the theme of social interest: it has been stated that it is 'impracticable to conceive of social interest as a mere interest of current shareholders in the division of profits. It seems more appropriate today to define the social interest as the contractual interest of the shareholders in the valorisation of the shareholding in terms of both income and assets in a long-term perspective".

Furthermore, the participation of universities can only take the form of the contribution of scientific work. As is well known, the provision of work or services cannot be the subject of a contribution in the context of a joint-stock company (Article 2342, last paragraph, of the Italian Civil Code). In limited liability companies, on the other hand, the contribution may coincide with the provision of an insurance policy or a bank guarantee aimed at guaranteeing the obligations assumed by the shareholder whose object is the provision of work or services in favour of the company, for the entire value assigned to such obligations (Article 2464, paragraph 6, of the Italian Civil Code). It has been observed, in this regard, that "the distinction between 'work' and 'services' refers to the different content of the performance or rather to the different manner of the obligation, which may be one of result or of means. Thus, the shareholder may undertake to do something aimed at achieving a certain result or he may undertake to make available his working energies for the benefit of the company'.

3/ Others experiences, others countries

Common to several European legal systems is the idea that collaboration between universities and companies is fertile ground for the development of innovative solutions to be incorporated into industrial processes; from this angle, these processes become a tool for increasing the

competitiveness of companies. From a strictly lexical point of view, the term **'innovation'**, if viewed through the comparative lens, receives a dual meaning: it evokes an original product or production process or one characterised by clear improvements over existing ones.

The French executive has launched, in quick succession, two separate projects - 'Nouvelle France Industrielle' and 'Industrie du Futur' - comprising innovation support initiatives implemented with the involvement of the regions. The incentives are coordinated at the national level by the Alliance Industrie du Futur, an association in which universities, specialised technological research structures - including the Commissariat à l'énergie atomique et aux énergies alternatives (CEA), the Centre technique des industries mécaniques (CETIM), the Institut MinesTélécom and Arts et Métiers Paristech - as well as professional organisations and instrumental bodies for financing companies participate.

Points of contact are found between the French and Spanish systems. In the Iberian experience, fiscal stimuli to small and medium-sized enterprises are provided in the context of partnerships that locate the driving forces in universities and Comunidades autónomas. Article 3 of Orden EIC/ 742/2017, of 28 July 2017, stipulated that the projects of companies wishing to apply for access to public funding must insist on a rather wide range of thematic areas, among which, by way of example, we can mention massive data processing, additive manufacturing, three-dimensional printing processes.

4/ Conclusion

Partnership in the field of research and education is a polychromatic phenomenon. This is due to the fact that cooperation between universities and entrepreneurial entities reacts to a variety of purposes: from the organisation of master's degrees and internships to assistance for small and medium-sized enterprises specialising in technological innovation; from the setting up of competence centres to the activation of doctoral courses reserved for company employees.

The different initiatives, in their conspicuous heterogeneity, are united by a twofold purpose: while the public partner aims, through the outsourcing of certain activities, to find resources that would otherwise be absent, the companies derive from the collaboration with the academic environment a significant return in terms of image - undoubtedly amplified by the conclusion of sponsorship contracts - and have the opportunity to influence the definition of the training offer.

It seems possible, first of all, to answer in the affirmative the question of whether mixed entities receive, by virtue of the University's participation, a regulation that is peculiar to civil law models.

A second question was outlined: is the choice of the legal form of collaboration between universities and companies influenced by the regulatory techniques followed by the legislator?

The answer, again positive, but requires some specification.

6.3 What would be the legal status of an EEIG only composed of legal entities under public law?

The legal situation of the PP EEIG is complex, insofar as it typically falls under what is now known as transnational administrative law: these legal determinants are not in fact limited to the Italian and European legal systems alone, but result from interactions between all the legal orders attached to the members according to mechanisms that have not yet been studied, as these situations of cross-border and deterritorialised cooperation are still fairly rare and have so far been the source of few disputes.

It is necessary to qualify the legal situation created by the creation of this grouping between legal entities under public law, in this case between public education and research establishments.

Firstly, it is a situation of **transnational cooperatio**n. Although the framework of this cooperation is geographically broader than so-called cross-border cooperation, the conceptual and scientific tools developed for the latter, which is more frequent and more structured, can usefully be transposed to assess the cooperation at work in our working hypothesis. From this perspective, a transnational grouping of public bodies should be considered as an institutionalised form of cooperation.

However, this leaves open the question of the intensity of this institutionalisation. In other words, we still have to determine whether the structure thus created should be considered as serving what, by analogy, I would call a simple "management transnationality", or, on the contrary, as being at the origin of, or capable of being at the origin of, a "project transnationality". The more advanced degree of the second form of institutionalisation will only be seen in the case of inter-university cooperation insofar as the grouping has the "skills to implement a genuine development project" for the university as a whole.

A number of key issues need to be addressed.

1/ <u>Legal issues relating to the formation of an EEIG between public institutions</u>

The first question to ask is whether the purpose of the EEIG is compatible with the project of inter-university cooperation, since the EEIG was clearly not designed with the aim of bringing together public institution. It is widely described as an "instrument of inter-company cooperation".

Admittedly, the concept of a company in European Union law is autonomous and functional, but the fit is not obvious.

In particular, the criterion of the ancillary nature of the economic object of the EEIG presupposes in principle that the members of the grouping, even if they are public institutions, have an economic activity, of which the grouping is the simple extension.

However, the **concept of economic activity** may seem rather broad.

► The European Commission has taken the view that "any activity, even if it is not profit-seeking, **which takes part in economic exchanges**, constitutes an economic activity" (Decision 92/521/EEC of 27 October 1992 relating to the procedure for applying Article 85 of the EEC Treaty - Distribution of tourist packages during the 1990 Football World Cup). In this sense, training and research can participate at least indirectly in these economic exchanges.

► However, case law may not be as comprehensive. While the Court of Justice also takes a functional approach, it considers more strictly that an economic activity consists of **offering goods and services on a market**.

► Is there an education and research market?

This question, which may appear to be open under EU law, can be taken up again in the field of domestic law, by asking whether a public entity, and here in particular an public institution “à caractère scientifique, culturel et professionnel” by virtue of the qualification given by French law to universities, can satisfy this criterion of economic activity ?

The reflex here for a French lawyer will be to compare the criteria for identifying an industrial and commercial public service with the way in which the University operates and, in particular, the question of its **funding**. In this area, the bulk of funding comes from subsidies granted by public bodies, primarily the State. There are, of course, own resources, and some of these may be in return for services rendered, such as continuing education, the sale of publications, rentals or research services. In line with this observation, we should add that research activities are likely to be the subject of a certain amount of exploitation... for example by **filing patents or providing services**.

But all this seems still rather secondary to the core mission of universities.

In this context, the difficulty is not the possibility for a university to participate in an economic activity, which it is now doing to an increasing extent through its research partnership policy.

Similarly, a university's participation in an EEIG is not in itself problematic. In fact, this was the subject of a written question to the government from Senator Pierre Vallon in 1991. In his reply, the Minister for Higher Education and Research stated that a higher education institution could take

part in the creation of or join an existing EEIG, although he only envisaged the situation where the purpose of the grouping was to form a partnership with one or more companies.

What is more uncertain is the possibility of bringing together only public institutions responsible for a teaching and research PS mission, insofar as the economic dimension of their activity seems very secondary compared to the main one, which is to offer a non-market public service.

2/ Legal issues relating to the operation of an EEIG between public institutions

With regard to the public institution EEIG regime, the solutions to the legal questions that its operation may raise seem to depend for the most part on whether or not the grouping is capable of abstracting itself from the attractiveness and territoriality of public law. In principle, if by its nature an EEIG is not intended to be subject to the specific rules of public law, and a fortiori the public law of a third country in relation to the country of registration, the composition of a public institutions EEIG raises uncertainties here too.

Three points stand out in particular.

a) First, **the status of EEIG employees**.

In the case of an EEIG registered in France, the solution should in principle be the application by extension of the EEIG regime, which gives EEIG employees **private law status**. This solution should be identical in the other Member States, once again because of the very genesis of the EEIG as a legal tool for companies.

However, in the case of another form of grouping known in France, the GIP, in which public institutions can participate, the classification of employment contracts varies. Private law contracts will apply whenever the service managed is of an industrial and commercial nature, but the director and his staff will be subject to a public law contract whenever the grouping provides an administrative type of service.

What does this mean for the public institutions EEIG? The economic nature of the EEIG and the original links with the EIG militate in favour of this private law status. But given the nature of the public service offered by the EEIG, the financing arrangements and the control of the EEIG by the public institutions, it is not certain that the economic nature of the public institution EEIG would prevail in the case of registration in France.

Furthermore, if it does not have employees, the EEIG may benefit from the provision of its members' staff. In this case, the rules laid down by the national law of each member must be complied with in order to assess the arrangements for such secondment. In the case of civil servants, the question of concurrent employment will have to be taken into account, since the civil service statute strictly

regulates this. The profit-making nature of the organisation to which the employee is seconded is an essential criterion in this respect. Although an EEIG is not intended to make profits for itself, for tax purposes it has been considered in France that EEIGs are nonetheless profit-making insofar as, for example, their members benefit from savings thanks to the EEIG. It is not certain that this analysis is applicable to inter-university cooperation EEIGs.

b) In a second step, **obligations relating to compliance with competition law, and more specifically state aid law and public procurement law**.

Firstly, with regard to the funding and subsidies that may be granted to the EEIG PP by the Member States, it will be necessary to apply the prohibition on State aid where this grouping could be classified as an undertaking within the meaning of Article 107 TFEU.

It will therefore be necessary to consider whether financial payments to a PP EEIG are likely to constitute State aid (in which case they are only valid if they have been notified in advance or if they can benefit from an exemption clause).

In accordance with the case law of the CJEU, the prohibition on State aid does not apply to direct European aid or to European aid implemented without any discretionary power on the part of the Member States.

The problem is more acute when it comes to payments made by public institutions and in particular member universities. Admittedly, by virtue of Commission Regulation De minis 2020/972 of 2 July 2020, only aid of more than €200,000 is likely to fall within the scope of the prohibition on EAs. However, in this case, it will be necessary to check, as previously mentioned, whether the payment is understood as a normal investment in a market economy (consideration for a service), or as strict compensation for an SGEI in accordance with the Altmark case law.

As far as public procurement is concerned, once again there is a threshold effect to be noted: contracts below the European thresholds are not subject to compliance with the provisions of Directive 2004/18. However, even below the thresholds, the Court of Justice has very clearly affirmed the obligation of any body governed by public law to comply with the fundamental principles of public procurement: the principles of freedom of access to public procurement, equal treatment of candidates and transparency of procedures.

This raises the question of whether **public procurement law** applies to an EEIG public institutions, in other words, whether the EEIG public institutions is a contracting authority within the meaning of European Union law and therefore of the applicable national law.

The assumption that an EEIG qualifies as a public body raises two difficulties: firstly, if it is indeed set up to manage a mission of general interest, its formally economic purpose could lead to the view that it meets industrial or commercial needs; secondly, it should be noted that the EEIG Regulation

leaves it to national law to decide whether or not to grant legal personality to groupings registered in their country.

In reality, however, Directive 2014/24 offers a much more unambiguous solution: under the concept of "contracting authority", Article 2(1) directly identifies "the State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law". Although, as we have just explained, it is not certain that a PP EEIG is in itself a body governed by public law, the members of a PP EEIG are certainly bodies governed by public law within the meaning of Community law. Universities are therefore subject to public procurement rules in France.

c) In a final step, **uncertainties as to the administrative nature of unilateral decisions adopted by the public institutions EEIG**.

This has important consequences in terms of litigation. If we reason by analogy with the situation of EPICs in French law, we can think that even if the EEIG's eco nature is retained, it will still be necessary to consider that certain decisions adversely affecting users and the staff of member universities can be challenged before the administrative courts (criterion: organisation of the service). For example, a decision defining the conditions for benefiting from an internal mobility programme at Unita could have to be challenged.

And in terms of legal recourse, there are two possible options: recourse to the courts of the country of registration (in this case Italy), but also recourse against the measures for applying this decision by the member universities before the internal courts of each member of the EEIG.

Another question raised by the administrative or non-administrative nature of an EEIG's activities is whether there is an obligation to disclose its decisions and the documents it holds.

3/ Others questions

I. Another area is likely to raise new questions: that of taxation (BOIAF 3-91: instruction of 10 May 1991). Despite the principle of fiscal transparency set out in Article 40 of the Regulation, there are disputes under French law concerning the taxation of EEIGs in terms of prof tax - a tax that has now been replaced by the CET.

II. Another issue that could be raised is the application of accounting principles. Should the EEIG be subject to public accounting rules and the associated public management obligations?

III. By analogy with the EGTC, whose activities are subject to control by the prefect and the audit office, we might also wonder whether the activities of an EEIG between universities could be

subject to control by the competent supervisory authority, in this case the Minister for Higher Education and Research, and to audit by the Court of Auditors.

IV. Finally, in public law there are specific rules in the event of liquidation with regard to public bodies; are they compatible with the joint and several liability between the members imposed by the regulation: in a note entitled "the CCI of tomorrow", CCI France notes in a fairly general way that the participation of a CCI in an EIG or EEIG is problematic with regard to a public administrative establishment insofar as in "this form of private law grouping [the members] may be jointly and severally liable for its debt"?

6.4 The financing of EEIGs composed of legal entities under public law

As regards the financing of European Economic Interest Groups, the current regulation, i.e. Regulation (EU) 2137/85, is a rather flexible regulatory instrument, which allows an EEIG to use, in principle, any financing method, public or private, traditional or alternative. This has also been emphasised by the European Commission.

For example, in Communication 97/C on the Participation of European Economic Interest Groupings (EEIGs) in public contracts and programmes financed by public funds (1997), the Commission first pointed out that the EEIG is a flexible structure which allows its members to create links of an economic nature while preserving their economic and legal independence. The characteristics of the EEIG could be summarised under that Communication as follows:

- (i) the legal nature of European law, its legal neutrality from the point of view of national regimes placing the members of the group on an equal footing.

- (ii) full legal capacity, which distinguishes an EEIG from any cooperation of a purely contractual nature.

- (iii) the ancillary nature of the activity carried out by the EEIG, which differs in principle from an undertaking/company in its objectives, which are to facilitate or develop the economic activities of the members with a view to increasing the profits obtained by the members of the Grouping. The Grouping's activity must therefore be related to the economic activities of its members, without replacing them. However, the Grouping must be the legal framework that facilitates the adaptation of the economic activities of its members to the economic conditions of the market, which means that the ancillary nature of the Grouping's activities is not an operational constraint limiting the Group to a subsidiary or minor role. An EEIG is thus able to perform any functions that any other form of association or grouping can perform when it comes to participating in a public contract or in a publicly funded programme. The example given by the

Commission in the abovementioned Communication concerns its use as an instrument for coordinating and organising the activities of its members or as a party standing on its own behalf in a contract awarded by a public authority (and performing it as such) or participating on its own behalf in a publicly funded programme.

- (iv) stability and flexibility. The Regulation allows EEIGs to adapt to economic conditions through the freedom enjoyed by its members in their contractual relations as well as through the internal organisation of the grouping. In the Commission's view, the flexibility of EEIGs is reflected both in the rules governing their formation and the duration of their existence and in the financing and operating arrangements available to them.

In terms of funding, it can be argued that an EEIG can be funded in the following main ways:

- equity capital, formed by contributions from members, excluding public subscription.

- **regular contributions from members**, payable by virtue of their membership of the EEIG (participation fees).

- **payments** received by the EEIG for services provided to its members or to third parties, which may in principle be public or private legal entities.

- **external financing** through private credit institutions or others, such as public bodies or institutions.

Regarding equity capital, it should first be pointed out that there is no need to subscribe and pay up share capital when the Grouping is established. Unlike in the case of any company taking the form of a legal entity, the EIIGs regulation allows for the optimal use of the funds available to members, who can contribute with a variety of contributions, in cash, in kind or in other forms, e.g., industrial property rights, knowledge, patents, commercial relationships and others. It needs to be clarified, according to the applicable national laws, to what extent they allow a public law entity such as a university to contribute to the capital formation of an EEIG, by whatever kind of contributions are involved.

The EEIG may also operate based on **regular contributions** or based on transfers made by its members when funding is required. The same comment should be made about the possibility of paying a fee or contribution as a member of the EEIG in relation to national regulations governing the financial aspects of higher education entities.

Regarding the remuneration or payment for services provided to members of the Grouping or third parties, several issues should be clarified. On the one hand, these services, if provided to members, should not lead to the conclusion that they are related to the management or supervision of the (economic) activities of the members or of a third undertaking. On the other hand, the tax regime applicable to the income generated by an EEIG should be also considered.

With regard to external financing, Article 23 of the Regulation prohibits a Grouping from having recourse to financing by public subscription, but there is no legal text which prevents it from having recourse to bank credit as a source of financing and, in fact, to any source of financing to which the member entities of the Grouping would have access, regardless of whether the source is public or private, provided that the other conditions set out in this report in relation to services of general economic interest and the state aid regime are respected.

Subject to the relevant national regulations, an academic EEIG could most likely draw on the sources of funding available from both public and private sources through specific instruments, i.e., sponsorship contracts, technology transfer contracts, funding of scholarships, research projects, etc.

However, it remains to be examined to what extent the financing of an EEIG made up of public law entities such as universities could be carried out through bank loans or other sources of private financing, from the point of view of the compatibility of these financing instruments with the degree of financial autonomy enjoyed by the members of the Group and, at the same time, from the point of view of the responsibility that the Group and each member assumes in relation to the financier.

Article 24 of the Regulation provides that "1. The members of a grouping shall have unlimited joint and several liability for its debts and other liabilities of whatever nature. National law shall determine the consequences of such liability. 2. Creditors may not proceed against a member for payment in respect of debts and other liabilities, in accordance with the conditions laid down in paragraph 1, before the liquidation of a grouping is concluded, unless they have first requested the grouping to pay, and payment has not been made within an appropriate period."

The quoted text clarifies to some extent the issue of liability, but the question of the compatibility of private financing with the public law regime and the degree of financial autonomy allowed to members of the Group remains a delicate one. The national regime of the Member State in which the EEIG is registered should probably be taken into account first and foremost, but the regime governing the liability of group members for their debts, whatever their nature, means that each member is obliged to take account of the regime applicable to it under its own national law, and the assumption of financing at group level can thus become a rather difficult matter in the absence of compatibility in this respect.

Conclusion

Therefore, although the European rules, in their current form, do not seem to hinder access to the various sources of funding, except possibly from the perspective of compliance with the regime of services of general economic interest and state aid, which has already been pointed out, the problem of taking on funding contracts (from whatever source) and the related obligations can only be resolved for the time being by taking account of the various national public law rules on the financial autonomy of universities, the degree of indebtedness allowed, the sources of funding compatible with the applicable public law rules, the categories of financial obligations that can be taken on, the way in which they are to be discharged etc.

7. Conclusions

Several conclusions can be briefly drawn.

Firstly, universities can have an economic activity within the meaning of the analysis of the Court of Justice of the European Union. There is no doubt about it. Universities are sufficiently flexible to be able to engage in economic activity in the European sense of the term. These economic activities are obviously specific in that they are focused on the dissemination of knowledge, education and research, of course. They are essential because they also have an indirect economic impact on the surrounding area, enabling it to develop further.

Secondly, the partnership in the field of research and education is not only possible, but also multifaceted. For example, cooperation between universities and entrepreneurial entities can be aimed at organising master's degrees and internships, assisting small and medium-sized enterprises specialising in technological innovation, or creating skills centres to activate doctoral courses reserved for company employees.

The possibilities are in fact enormous.

Finally, uncertainties remain. What is uncertain is that only public institutions like universities entrusted with a public service mission of teaching and research should be brought together, insofar as the economic dimension of their activity seems very secondary compared with the main one, which is to offer a non-market public service. The status of staff employed by the EEIG also raises questions about qualifications under national law. The same applies to the public procurement regime and the application of competition law to the EEIG, as well as to financing questions.