



# SMDG meeting 70

Sankt Petersburg  
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# SMDG New status

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A large, semi-transparent SMDG logo is overlaid on a background image of a port. The background shows a long pier with numerous gantry cranes and stacks of shipping containers. A large white ship is docked at the pier. The SMDG logo is positioned on the left side of the image, with the letter 'S' being significantly larger than the other letters.

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# Why the change?

- The previous status of SMDG were legally part of a private foundation attached to Gerry Endenburg.
  - Made 30 years ago
  - **not authorize the transfer of funds or status** to new stakeholder by European, Dutch, France and all the countries of our members.
  - It has been dissolved as of the 03/2017.
- The address of the SMDG and the subsequent foundation was the same as the one of Compas: Kamerlingh Onnesweg 10c 2991 XL Barendrecht The Netherlands
- Insure sustainability of SMDG on the long term and legal and financial strength to develop the items that SMDG deems indispensable for its future.

# Main Requirements:

- Sustainability of the Entity SMDG
  - Financial
  - Physical
- Reinforcement of the main contributor authority by having matching power VS their contribution Vs others members participations
- Financing of web site refactoring with added web services for provider certification and industry efficiency (same model as GL for GL2013. DLLs provided by class society)
- Increase of means of revenue (contributions, web services, certifications, trainings...)
- Transfer and audit of the status, members and funding.
- Ability of taking technical and financial position
- Ability to have at least one full time employee (cumulative) when needed to insure high standard and full representation of SMDG management
- Ability to have the financial means of promotion (UN, Asia, TOC, JOC....)
- Ability to finance common interest with other groups such as protect/ BIC/ UNCEFACT...

# 5 proposals

## Studied

1. Association law 1901 French
2. Anonymous society with simplified shareholding fixed capital
3. Anonymous society with simplified shareholding variable capital
4. German gGmbH (gemeinnützige Gesellschaft mit beschränkter Haftung)
5. Deutscher Verein "e.V", eingetragener Verein = Club
6. British LBG (company limited by guarantee)
7. Merge with an other existing, established and similar structure in terms to define common technical standards for the good of the transportation industry such as BIC, PROTECT,

## Might be requested

1. Association holding a commercial Anonymous society with simplified shareholding (no documentation yet)

# Options Forward: 1 Association

- **Association** like Bureau of International Containers
  - **Advantage** is association status which can be made non governmental with tax exempt but tax exempt do not mean that you do not pay any taxes but only certain taxes.
  - **Inconvenient:** association and structured not flexible. Voting right for members on administration or production not flexible and members are subjected to the criminal court. Liability may not be limited.
- Status and capital not transferable: only dissolution

# Options Forward: 2 SAS

- **Anonymous society with simplified shareholding** or LLC like Exis that has an authority of IMO for the DG or INTTRA.
- **Advantages:** status very flexible by law. Certified accountant and public normalised balance sheet as per IFRS mandatory. Account must be auditable at any point of time
  - Directorate we organise how we want to operate but we must be organised by law. Members are subject to commercial court only with limited liability according to capital.
  - Intra Europe and world wide VAT exemption. Minimum taxes.
  - Status and capital transferable.
  - This is the one we have now but with provisional status as final status has to be agreed on the directorate and finance....by law.
- **Commercial court**
- **Liabilities strongly limited**
- Most common structure for small close shareholding association



# Actual Registration under SMDG SAS

SAS SMDG

VAT ID : FR01 825234933

RCS Caen 825 234 933

1 rue saint Germain 14980 Rots France

This status is provisional and fund will be transferred to the final structure chosen by SMDG members

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# Proposal of New SMDG under SAS status

## Objectives:

- **The determination and commercialization** of Electronic Data Interchange (E.D.I), X.M.L (or other web services...) exchange standards, their application process, and their evolution along the global maritime logistics chain.
- **Training** of companies and users to these exchange standards.
- **Sustainability** of the entity by having very limited but existing dedicated management and sufficient revenues

# Proposal of New SMDG under SAS status

## Other Items part of the objectives

- More generally, all financial, commercial, industrial, civil, movable and immovable transactions which may be directly or indirectly connected with any of the above objects or with any other similar or related object.
- The **Company may also take participations or interests** in any company or company whose business is directly or indirectly related to its purpose or is likely to facilitate its realization.



## Proposal of New SMDG under SAS status and Association

- College organisation:

- 3 Colleges to gratify members active efforts within SMDG

- 1- SMDG Management including chairman, SG, all chairman or co chairman of the subgroups
    - 2- All subgroup members
    - 3- All other members of the SMDG

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# Proposal of New SMDG under SAS status

- Voting rights for all administrative and strategic subject (finance, nominations...):
  - 3 Colleges
    - 1- SMDG Management including chairman, SG, all chairman or co chairman of the subgroups (40-50%)
    - 2- All subgroup members (30-20%)
    - 3- All other members of the SMDG (30-20%)
- Voting rights for all technical subject unless deemed strategical proposed by the subgroups in general meetings:
  - 1 member per votes
  - No aggregation of votes rights allowed
- All Votes at the absolute majority of the attendant

## German gGmbH (gemeinnützige Gesellschaft mit beschränkter Haftung)

- non profitable, capital transferable to another gGmbH
- Partially or fully tax- free
- Articles of association can only be changed by members
- Quorum guaranteed

# German gGmbH

- In German tax law, gemeinnützige GmbH (gGmbH) is a limited liability company whose income is used for charitable purposes. As a corporation, the not-for-profit corporation is exempt from corporation tax and trade tax in accordance with section 55 para. 1 no. 1 sentence 2 of the German AO (Tax Code). The choice of Rechtsform GmbH often takes place in the case of non-profit companies wishing to operate economically (eg kindergartens or social services), which can sometimes be difficult in the legal form of the registered association. [1] [2] In addition, the company as a capital company allows greater flexibility than the member-based association.
- The gGmbH is exempted from certain taxes in whole or in part, provided that its statutes and actual management comply with the requirements of the non-profit-making right. The profits of a gGmbH must be used for the charitable purpose (or non-profit purposes) and can not be distributed to the shareholders in principle. In exceptional cases, a profit distribution is only permissible if the shareholders are non-profit-making. The use of tax breaks is governed by §§ 51 et seq. AO, and the approval of the charity is carried out by the responsible tax office.
- In addition, gGmbH is subject to the provisions of the GmbH-Gesetz and the provisions of the Handelsgesetzbuch (HGB). The use of the small letter "g" before the designation GmbH is referred to the charitable activity; In many cases the long form "gemeinnützige GmbH" is used. This is intended to distinguish the gGmbH from commercially active companies acting with a view to the goal of winning. The use of the designation gGmbH has been permitted since 29 March 2013. Art. 7 of the Act for the Strengthening of the Honorary Office of 21 March 2013 (BGBl I 556) incorporated a corresponding § 4 p. 2 into the GmbHG. The articles of association of gGmbH can be designed in such a way that a change of the purpose is only possible under special conditions. In this way, the gGmbH can be functionally approximated to a foundation. However, the foundation right does not apply to a Founding Board. It is also not subject to state supervision. However, it is often the case that charitable foundations are partners of non-profit-making limited liability companies. However, the Foundation and the GmbH are also separate legal entities.

Structure(source [https://de.wikipedia.org/wiki/Gemeinn%C3%B4tzige\\_GmbH](https://de.wikipedia.org/wiki/Gemeinn%C3%B4tzige_GmbH))

- In the company agreement (articles of incorporation) of gGmbH, the company's legal structure elements are combined with the requirements of the non-profit-making right. In addition to the requirements of the GmbH Act, the Articles of Incorporation must meet the requirements of the non-profit-making right in accordance with Section 52 of the AO in order to recognize the charity.
- The company must have a charitable, charitable or ecclesiastical purpose (or several such purposes).
- The object of the enterprise must consist of activities for the purpose of fulfilling this tax-favored purpose. The purpose must be selfless, strictly and directly pursued.
- It must be shown from the articles of incorporation that, with the exception of the tribal contributions, the company is not distributed to the shareholders upon dissolution of the company or the abolition of the tax-privileged purposes, but to another tax-beneficial body (asset).
- A distribution to the company's own shareholders is only permissible if they themselves are non-profit. The legislator inserted a model statute for non-profit corporations in the annex to § 60 AO [3].
- Although the financial administration partly requires a literal translation of the model rate, in practice it is generally assumed that such a formal rigor can not be demanded. The entrepreneur's company (limited liability company), which since 2008 has been known as a mini-GmbH and a German counterpart to the UK Limited, is also available in a non-profit variant. The not-for-profit entrepreneur is not a separate legal form, but a special form of the gGmbH and the GmbH law is applicable to them.



## TAX

- The advantages of gGmbH are in particular the exemption from corporation tax and trade tax, as well as the right to issue donation confirmations.
- These confirmations entitle the donor to the special issue deduction. In the case of services in the ideal area, the value-added tax is no longer applicable; for services in special-purpose enterprises, the reduced sales tax rate of currently 7% applies, provided that the services are not already completely exempted from value-added tax pursuant to § 4 UstG or Article 132 ff. The gGmbH combines advantages of the typical GmbH with the tax advantages offered by the non-profit-making right.
- It is a legal structure between the non-profit sector and the profit-oriented sector. For example, the Honorary **Office at gGmbH is regularly replaced by full-time managing directors.**

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# GmbH

- [https://en.wikipedia.org/wiki/Gesellschaft\\_mit\\_beschr%C3%A4nkter\\_Haftung](https://en.wikipedia.org/wiki/Gesellschaft_mit_beschr%C3%A4nkter_Haftung)

# Deutscher Verein "e.V", eingetragener Verein = Club

- Deutscher Verein "e.V", eingetragener Verein = Club
  - Club: Voluntary Association of two or more people united by a common goal
  - No money deposits
  - Bookkeeping not obligatory, but sensible (obligation to record the public utility)
  - At least 7 people are required to start the project
  - Change of members unproblematic
  - No shareholders, i. No "beneficial owner"
  - liability grds. With the association capacity, liability of the executive committee possible
  - Important decisions are taken by the General Meeting, in which each member of the Management Board Has a voice
  - Association board is (only) selected for a specific time
  - Minimum requirements for the executive bodies: Management Board and General Meeting
  - **Source: Hapag Legal**



## British LBG (company limited by guarantee)

- For non-profit organizations that require a legal personality
- No shared capital
- Can move to a CIC (Community of Interest Company) = asset lock prevents extraction of profits
- <http://www.companylawclub.co.uk/companies-limited-by-guarantee>

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# Community of Interest Company

- See slides on web site

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