

LAW ON AGRICULTURAL COOPERATIVE COMPANIES IN ALBANIA; A REVIEW

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Abstract

This paper is oriented to thoroughly examine the provisions of the Law no. 38/2012, dated 05.04.2012 “On Agricultural Cooperative Companies”. In the first part of the paper it is analyzed how the cooperative company is established, the object of activity and quality of its members. Further, the paper deals with the organization structure of the agricultural cooperative companies by detailing its governing and managerial bodies, namely the general assembly and the administrator(s).

In the second part of the paper it is conducted a brief comparison of the Albanian law on agricultural cooperative companies versus EU the like legislation having regard especially to the combination of financial and social aspects of various laws.

Keywords: Cooperative, agriculture, members

Introduction

On April 05, 2012 the Albanian parliament adopted a new Law no. 38/2012 “On Agricultural Cooperative Companies” which according to the legislator has been partially approximated with the Council Regulation (EC) 1435/2003 of July 22 July 2003 on the Statute for a European Society.

The initiative is to be welcomed for different reasons including important ones such as provides legal means to farmers in order to join forces to better satisfy their needs or for more competitiveness in the market, complies diligently with *acquis communautaire* as required by the association and stabilization agreement, the binding instrument signed by the Republic of Albania on 2006 and last but not least this initiative is to be appraised as a noble attempt to pierce the hostility of local farmer, who still has vivid memories of kolkhozes of the communist era.

Object – Establishment – Members – Company’s Bodies - Decision Making Process

The law starts by enunciating that agricultural cooperative companies are entities established on voluntarily basis by natural and legal persons and which primarily scope is fulfillment of members’ needs in the field of production, processing, commercialization of the livestock and agricultural products.

The legislator envisages the below types of agricultural cooperative companies (Law no. 38/2012, “On Agricultural Cooperative Companies”, 2012):

- (1) **Companies active in the field of agricultural production and marketing.** Such companies might engage in activities of production, manipulation, processing, transportation, distribution and commercialization of natural/processed agricultural and livestock products.
- (2) **Companies engaged in agricultural working activities.** Such type of companies might perform working activities for their members or provide services to third parties.
- (3) **Companies for the consumption of goods and materials.** Such companies might engage in activities for supply of goods and services being the same bought by their members, third parties or which are produced by the company itself and used for consumption by the members of the company or third parties.
- (4) **Companies for inputs.** These type of companies’ might buy, process, produce and manufacture with any kind of process, food for livestock, fertilizers, seeds, phyto-sanitary products, materials, machineries, plants, livestock by-products and any other product necessary or appropriate for the development of the agricultural and livestock production.
- (5) **Companies engaged in other agricultural activities.** These companies might exercise in any type of activity which favors the economic, technical and ecological development including the working conditions of farmers and/or economic operators.

The bylaws of the agricultural cooperative company might establish that the company can engage in activities and services not only with its members but also with third parties (natural or legal persons) provided that this constitutes up to 40% (forty percent) of the total revenues.

The agricultural cooperative company requires a minimum 7 (seven) members (either natural or legal persons) for its establishment. The number of members of the company might increase or decrease but in no case such number might be lower than 7 (seven). This means that in case the company

will find itself under the above indicated threshold, the same should undergo the liquidation procedure with consequent de-registration of the company from the Commercial Register.

The Albanian legislator has not set up a special register for agricultural cooperative companies; therefore such companies are registered with the same register of limited liability companies, joint stock companies, etc.

Once registered with the Commercial Register the company acquires legal personality, and the latter responds for the obligations incurred with all its present and future assets. The members of the company are responsible for the obligations of the company up to the value of their respective contribution being the same already paid up or just subscribed.

The minimum capital for the establishment of the agricultural cooperative company is ALL 100.000 (one hundred thousand). The contribution to the company's capital might be either in cash or in kind. In the latter case the in kind contribution should be expressed in monetary value and the paid up in its entirety. Should the company's capital go below the above indicated threshold the company will undergo liquidation and consequent de-registration from the Commercial Register. The bylaws of the agricultural cooperative agricultural company might provide for a minimum capital which should be mandatorily paid in by the members.

According to the law provisions there is a procedure for acceptance of new members in company being this a specificity not found in the Law no. 9901, dated 14.04.2008 "On entrepreneurs and commercial companies" as amended, which according to the legislator has been the benchmark for structuring the agricultural cooperative company (together the EC Regulation 1435/2003).

Having said that, new members should address a written request to the administrator of the company, who from his side forwards such request to the general assembly for approval in the forthcoming meeting. Should the general assembly approve the new entrant, the latter has to subscribe and consequently perform payment of the mandatory portion of the capital. The bylaws of the agricultural cooperative company might provide for other criteria of acceptance of the new members. New entrants are registered with the company register as well as with the Commercial Register held by the National Registration Centre.

Members of the agricultural cooperative company are vested with several rights and obligations.

Members are entitled to the following rights (Law no. 38/2012, "On Agricultural Cooperative Companies", 2012):

- (i) Propose change of the administrator(s) of the company;
- (ii) Propose amendments to the bylaws of the company;

- (iii) Require to be provided with copy of the bylaws, internal regulation or resolutions of the decision making bodies, (generally, where such resolution affects their interest);
- (iv) Require data on the financial and economic situation of the company;
- (v) Upon written request to obtain annual financial accounts, reports on company's activity including reports of the certified accountants and methods of distributions of profits; and
- (vi) To be informed on regular basis on the meetings of the general assembly, including the agenda and the respective documentation, especially where the resolutions to be taken affect the interest of the member.

The above it is not an exhaustive list of the rights acknowledged to company's members as the bylaws might provide for additional rights.

The administrator should provide the member with the necessary information within 30 (thirty) days from the receipt of the request. Should the administrator refuse to provide the member with the required information, the latter within 30 (thirty) days from the refusal is entitled to address the court and ask the same to oblige the administrator to deliver the information.

Should be pointed out that the law fails to address the omission of the administrator, meaning in those cases where the administrator upon receipt of the request for information, simply disregards the same by omitting to provide the member with the required information, without formally rejecting his request which will trigger involvement of the court. The member of the company should be entitled to address the court should he/she not receive any response as a consequence of the omission of the administrator. However, it is to be established when the company's member will be entitled to address the court, from what date he/she may file with the court for obliging the administrator to provide the required information. In filing the request he/she take into consideration all the 60 (sixty) days as in the case of the formal refusal or he/she should benefit for a short or a longer. In my opinion the member should be entitled to file with the court immediately after the elapsing of the 30 (thirty) days given the absence of the response by the administrator as by that time should be considered a refusal to provide the required information. For analogy as in the case of formal refusal he/she will be bounded to file within next 30 (thirty) days following the elapsing of the first 30 (thirty) days.

As for the obligations of the members they consist in the following (Law no. 38/2012, "On Agricultural Cooperative Companies", 2012):

- (i) Participation in the general assembly;

- (ii) Applying the agreements approved by company's decision making bodies;
- (iii) Participation in activities constituting the company object and participate in qualification and formation activities;
- (iv) Not to disclose company's secrets or data;
- (v) Not to engage in competing activities, except in case such activity has been authorized by the general assembly;
- (vi) Perform payment of the contributions in the capital of the company.

As the above list it is not exhaustive the company's bylaws might provide for additional obligations for the members.

The bodies of the company are general assembly and the administrator.

The general assembly is the highest decision making body and is composed by all members of the company.

The general assembly has the following not exhaustive competencies (Law no. 38/2012, "On Agricultural Cooperative Companies", 2012):

- (i) Determines the economic policy of the company;
- (ii) Appoints and dismisses the administrator(s), certified expert(s) and liquidator(s) and determine their compensation;
- (iii) Examines the financial situation of the company including annual accounts, financial management, etc.;
- (iv) Approves the increase or decrease of the company's capital;
- (v) Approves amendments to the company's bylaws;
- (vi) Approves the distributions of the company's profits;
- (vii) Resolves on the dissolution, demerger and transformation of the company;
- (viii) Resolves on the participation in other agricultural cooperative companies, and eventual adherence in representative organizations including exit from them.

The resolutions of the general assembly validly taken are obligatory to all members of the company.

As the decision making process the Albanian legislator provides that any (subscribed) quota entitles to one vote in the general assembly. Such provision marks the most significant difference with stipulations of the Law no. 9901, dated 14.04.2008 "On entrepreneurs and commercial companies" as amended (i.e. reference is the limited liability company for which it is provided that the vote in the assembly is proportional to the quota held in the company's capital), the benchmark piece of legislation (together the EC Regulation 1435/2003) on which the legislator relied upon to build up the agricultural cooperative law. Such provision emphasizes the cooperative

character of such type of companies by giving equal rights in terms of decision making to the company's members.

It is believed that the same criterion does not apply when it comes to the distribution of profits. Although the legislator did not expressly address the matter, distribution is made proportionally to the quota held in the company.

The general assembly appoints one or more legal persons as the administrators of the company. The term of office for the administrator is 5 (five) years, renewable. The general assembly may dismiss by simple majority the administrator at any time.

The administrator is entrusted with the following powers and responsibilities (Law no. 38/2012, "On Agricultural Cooperative Companies", 2012):

- (i) Represents the company with third parties;
- (ii) Carries out all the necessary actions for the management of the company's activity pursuant to policies set out by the general assembly;
- (iii) Drafts and sign the balance sheet including the consolidated one and the report on the economic situation of the company together with the proposed distribution of profits and submits the same to the general assembly for approval;
- (iv) Sets up a proper system of information to prevent circumstances that may harm the company's activity and its very existence;
- (v) Performs the mandatory registrations with the Commercial Register held by the National Registration Centre and assures the company's books are properly held.

The bylaws might provide for additional competencies and responsibilities of the administrators.

Law 38/2012 vs. European legislation - a comparative view

Cooperative firms and social enterprises can, despite their differences, be interpreted in a united way as socially-oriented firms: they are entrepreneurial organizations that do not have as their main objective the maximization of private returns (net surpluses or profits) accruing to the investment of capital. Rather, cooperative firms are mutual-benefit organizations that are usually controlled on an equal voting rights basis not by investors, but by different types of patrons (eg. producers, workers, consumers) or by a mix of them (multi-stakeholder cooperatives). They are created to protect first and foremost their members through the satisfaction of their needs, which can be private or social in nature (Movsisyan, 2013). Law 38/2012 certainly falls under the above the definition that appears to be the common denominator set out by the EC Regulation 1435/2003 transposed also by the EU countries in their respective domestic legislation.

Most of the EU countries have general laws on cooperative companies (Movsisyan, 2013). This was also the case of Albania until adoption of the Law 38/2012 dedicated to agriculture. In fact, on 1996 the Albanian legislator adopted its general law on cooperative companies which provisions applied to all types of cooperative companies. With the enacting of the Law 38/2012, agriculture has its special law with its specific rules and procedures.

According to Movsisyan there are partially different views of the cooperative phenomenon, according to the different manners in which the financial aspect and the social aspect are combined in a cooperative law. In some EU countries (i.e. Austria) the cooperative companies are permitted to distribute profits and assets to members and are not obliged to establish reserves. On the other hand the Italian law provides for a mandatory 30% (thirty percent) of contribution to the legal reserves (Movsisyan, 2013).

The Albanian legislator has apparently taken the ‘third way’, meaning that members are allowed to receive profits provided that firstly they allocate a certain percentage of profits to two different funds. The first one is the compulsory reserve fund to which are dedicated net profits of 15% (fifteen percent) per annum up to an amount equal to company’s capital (i.e. ALL 100.000). The other is the emergency fund to which the company should allocate at least 10% (ten percent) of net profits. The fund cannot be distributed to the members except in case of liquidation of the company.

Conclusion

Law no. 38/2012 dated 05.04.2012 “On Agricultural Cooperative Companies” adopted by the Albanian parliament has partially transposed the provisions of the EC Regulation 1435/2003. The law is to be welcomed as *inter alia* provides the Albanian farmer with the legal means to join forces to satisfy better their needs or being more competitive in the market, but its effects are yet to be tested. To the best of knowledge there is no statistics of the number of the agricultural cooperative companies registered with the Commercial Register. The search (unofficial online search) with the said register revealed no traces of registered agricultural cooperative companies. Also from the search at the official website of Ministry of Agriculture, Rural Development and Water Administration emerged no evidence of such registered cooperative companies. Even though the law has already been adopted since 2012, in the last years the practice has revealed low applicability. This means either the government failed to promote its benefits (including tax benefits), or the mistrust of the local farmer versus such type of cooperation is so great that undermined the law applicability. Either way, the result is discouraging as agricultural cooperative companies might be a useful vehicle for the Albanian farmer to become a true and successful entrepreneur. It is recommendable strong awareness campaigns in this regard by the

Albanian government, which should emphasize the benefits of the law, including tax benefits applicable to such type of cooperative companies.

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