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DEVELOPMENT OF A SUSTAINABLE BIOENERGY MARKET IN SERBIA

ESTABLISHMENT OF ASSOCIATIONS OF PRIVATE FOREST OWNERS

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1. INTRODUCTION

As part of the efforts to identify the most appropriate structure for cooperation and operation of private forest owners, we have been tasked with analysing the regulatory framework affecting the establishment of private forest owners' association ("PFOA"), the list of services such PFOA would be able to conduct and finally the financing of PFOA

Currently, majority of the forest management activities in Serbia are still carried out only by the public enterprise Srbijašume, whereas the cooperation between private forest owners is not widespread and is of limited scope. After the initial significant growth in number of PFOAs, lately there has been sharp decrease in the number of registered PFOAs.

The Serbian Forests Act specifically recognizes only the associations of private forest owners formed in accordance with the Associations Act. This does not leave many options in terms of the available forms of cooperation between the private forest owners. This limitation further affects both the scope of activities that might be conducted by such associations and their operations. The analysis is solely based on the applicable legislation and publicly available information. Any changes, updates and/or other modifications to the legislation or the factual situation occurring following the submission of the final version of the analysis are not reflected herein and thus have not been accounted for in the assessment of the viable solutions for the Project.

2. EXECUTIVE SUMMARY

Small-scale forestry in Serbia has significant potential, however it still struggles with many obstacles. The private forest owners` properties are often fragmented in small plots with undeveloped infrastructure. In addition, the private forests are non-industrial, their owners are uninformed and, to certain extent, indifferent to the possibilities of cooperation and the benefits that can be achieved by joint operations.

Serbian regulatory framework enables different modes of cooperation among interested parties in order to satisfy their common interest. In the area of forest management, however, the Serbian Forests Act specifically recognizes only associations as the form of cooperation among private forest owners and enables the associations to perform certain forest management activities which are usually performed by the administrative authorities or public enterprise Srbijašume. This inflexible solution seems to hamper development of modern private forest management practices in the country and usage of forest on the commercial basis and as a considerable source of income for its owners.

Namely, associations as a legal form have limited ability to operate on a commercial basis – i.e. all types of commercial activities of an association have to be specifically prescribed in its foundation documents. Furthermore, association cannot distribute profit to its members, i.e. all excess in revenues has to be used for further activities.

Still, the structure and organization of an association can be tailored in a way that would enable it to achieve the goals that the forest owners place on it. Association is a voluntary, non-governmental and non-profit legal entity which gains this status upon registration with the Business Registers Agency. It is regulated by the Articles of Association and Articles of Incorporation. Members of association can be both natural persons and/or legal entities connected with the same goals and objectives who cooperate in order to fulfil the goals of the association. Given the regulatory limits on associations in Serbia, the PFOA can play a support role in the efforts of the private forest owners to modernise the way in which they manage their forests and contribute to increase revenues that they individually may achieve from their forests.

The Forests Act lists those forest management activities that can be delegated to PFOA. They mainly consist of: production of the annual plans of the forest management, production of the program of planting new forests and improvement of the existing ones, production of the plan of the production of forests against fire, harvest plans, monitoring of the biotic and abiotic factors to the health conditions of forests, marking of trees and issuance of the appropriate documents thereof, recording the illegally cut trees, recording the forest protection, cultivation and utilization works, reporting illegal conduct to the authorities and other professional and advisory activities. These activities can be delegated to PFOA if it is established in the form of association and if it employs the adequate qualified professional for carrying out such activities.

Besides the delegated forest management activities, PFOAs can perform other activities of service to its members provided that they are in line with the goals of the PFOA. The performance of commercial activities by the PFOAs is possible but is limited to those activities that are in line with and explicitly prescribed by the Articles of Association and performed only in small volume sufficient

for fulfilment of the association's objectives. One way of overcoming this restriction would be establishing a limited liability company by the PFOA, such company then providing commercial services without having to think about this restriction. PFOAs may be financed through various sources including membership fees, revenues from services performed, forest budgetary funds as well as other sources, such as charities, donations, financial subsidies, interests, fees, dividends.

3. OUR UNDERSTANDING OF PFOA AND ITS CORE ACTIVITIES

In accordance with Forests Act, private forest owners may be natural persons or legal entities (i.e. company, cooperative, church or other religious institutions, association). The forest owners are free to cooperate in order to achieve certain goals and objectives.

Cooperation among private forest owners is a standard practice across the world as it enables them to achieve sustainable forest management, sustainable productivity of forests and to satisfy the increasing demand for wood resources from wood processing manufacturers and bioenergy producers. Comparative theory and practice recognize different forms of cooperation among forest owners and have been discussing experiences of their application.

Serbia, as well as other countries in the Balkans region, has good chances for the formation and operation of PFOAs, mainly because of the high critical mass of the private forest owners. The number of private forest owners will probably increase when the completion of the restitution and privatization process.

Despite this growing number of private forest owners, they are barely accounted for in the national forest policies due to the lack of an independent interest association that would further the interests of private forest owners. The interests of private forest owners are mainly in the hands of public forest administration. The causes of existing situation are manifold and rooted in various reasons: the expectations of the private forest owners from the public administration, the small average size of individual private forests, difficult management of small parcels of fragmented forest land, demographic characteristics of the private forest owners and the political culture.¹

Our aim is to identify which legal form is suitable for the formation of PFOAs in Serbia as well as which activities such PFOA can undertake and to identify the sources of financing its operations.

¹ Peter Glueck, Mersudin Avdibegović, Azra Čabaravdić, Dragan Nonić, Nenad Petrović, Stjepan Posavec, Makedonka Stojanovska, *The preconditions for the formation of private forest owners' interest associations in the Western Balkan Region*, Forest Policy and Economics, Volume 12, Issue 4, 2010

4. MODELS AND BEST PRACTICES FOR PFOA IN EUROPE

Studies in the forestry sector show that nearly half of Europe's forests are privately owned - excluding Russian federation and a number of other Eastern European countries, where the forest lands are mainly state-owned.²

The pattern of forest ownership in Europe is established in two categories: public and private. Public ownership over forests is mainly with the state, its administrative units, or with the institutions or corporations owned by the state and its administrative units. On the other hand, the private ownership implies forests owned by individuals, families, communities, private cooperatives, corporations and other business entities, private religious and educational institutions, pension and investment funds, NGOs, nature conservation associations and other private institutions.

Private forest owners play a key role in sustaining forest ecosystems, biodiversity protection, climate change mitigation, policies in enhancing rural development as well as supplying various goods and services to the market. Below is a short overview of private forest ownership concepts in three European countries as an example and the models of their cooperation.

Recent trend in Europe is the increase of non-farm forest owners, also known as urban, non-traditional forest owners- "new owner types". They have practically no connection to agriculture or forestry. For them, working in and deriving income from their forests is of little or no importance.

4.1 Austria

The share of private forests in Austria is very high with the exception of the region of Wien. The public forests belong to Austrian Federal Forest (OBF-AG) and public forests holdings (Gebietskoerperschaften).

There are two main forests management approaches in Austria: joint management of (small) forest properties (forest owners' cooperatives or associations) and third-party management services such as management planning, harvesting and marketing. These approaches are rather oriented towards traditional owners and hardly take into account the characteristics of "new owner types".³

Associations regularly conduct a number of services for the private forest owners, e.g. wood mobilization services, joint wood marketing, organization of joint harvesting operations, forest management planning, etc. through two existing models: (i) forest management plan

² Pamela Pulla, Andreas Schuck, Pieter Johannes Verkerk, Bruno Lasserre, Marco Marchetti and Tim Green, *Mapping the distribution of forest ownership in Europe*, EFI Technical Report 88, 2013

³ Weiss, G., Aggestam, F., Hogl, K., Jandl, R., Živojinović, I., Ludvig, A., Wolfslehner B., *Forest Land Ownership Change in Austria*. COST Action FP1201 FACESMAP Country Report, European Forest Institute Central-East and South-East European Regional Office, Vienna, 2015

(*Waldpraxisplan*), which is oriented at small forest owners and offers them professional assistance, it also gives them an incentive to start active forest management; (ii) forest management contracts where association offers to private forest owners to take over the entire scope of forest management services, including management planning, monitoring, and organization of harvesting and tending measures as well as timber sale. This full forest management is done through a company which is founded by the association (forest association of Styria as an example).

4.2 Germany

In Germany, public forests include the property of the federal state, those at Länder level (sub-national: states) and communal forests, while private forests are properties of private individuals or institutions (e.g. church forests).

Private forest owners typically organize forest management activities through forest owners' associations or cooperatives. In both cases, the individual management rights are transferred to an association/cooperative, but the right to sell the products remains with the individual forest owners.

The associations manage their members' forest properties and make decisions concerning all management activities. In cooperatives, the forest owners, as members of the cooperative, keep the ownership of their individual properties and take part – to a greater or lesser degree – in governing the cooperative.

Associations offer various forest management services to the private forest owners, members of such association. Every private forest owner that wants to be a member of an association must go through the process of admission into membership.

Simultaneously with development of private forest associations, the level of forest management services provided by the public forest administration has been reduced, leaving a gap for forest owners associations to fill.

In addition, some of the states in Germany (e.g. Bavaria example) have been supporting private forest owner associations by introducing financial incentive schemes for professionalisation of the services provided by the associations which has resulted in more qualified personnel and overall increase in size of the associations.⁴

4.3 Italy

The main portion of the forest area is privately owned.

The associations of private forest owners conduct usual forest management activities on behalf of private forest owners. In addition, there are forest consortia as forms of partnership between public

⁴ Marc Koch, Caroline Maier, *Forest Land Ownership Change in Germany*, COST Action FP 1201 FACESMAP Country Report, European Forest Institute Central-East and South-East European Regional Office, 2015

and private forest owners aimed at achieving sustainable forest management.⁵ Consortia are also considered as a very successful mechanism for the co-management of forest resources as well as for resolving land use conflicts. It builds on common cultural values, trust and consensus. It provides a means of exchanging skills, knowledge, experiences and resources among a wide range of members. And it provides a way of sharing outputs, such as revenues, employment, and protection against natural hazards. It is considered a particularly valuable tool for co-funding sustainability in environmentally and socially critical areas like mountain regions.

4.4 International Cooperation

4.4.1 The Confederation of European Forest Owners (CEPF)

CEPF is the umbrella association of national forest owner organizations in Europe. It works as the representative of family forestry in Europe, by promoting the values of sustainable forest management, private property ownership and the economic viability of the forest holding. CEPF's mission is to assist and strengthen an economically viable, socially beneficial, culturally valuable and ecologically responsible sustainable management of private forests.

CEPF is a non-profit organisation representing the interests of European forest owners. It promotes and protects the concept of family forestry through enhanced collaboration by its members, cooperation with the European institutions as well as extensive networking and lobbying activities. The cooperation of CEPF members and stakeholder groups is sustained through the coordination and activities of its bodies including permanent and ad hoc working groups.

CEPF acts on emerging issues, making expert and constructive contributions on behalf of the forest owners. In this sense, CEPF has a bridge building role, enabling family forest owners from the local level to voice their concerns and transfer their knowledge to be available at the European level.

CEPF represents the interests of these forest owners through active participation in, monitoring of and working with the institutions of the European Union and other international initiatives.

At present, CEPF has 19 members, representing national organisations from and outside of the European Union. At present CEPF has 4 associated members, representing forest owners from specific regions or regional forest cooperative organizations.

CEPF also undertakes other activities such as playing a leading role in the development of forest producer organisations and a regular exchange of experiences and increase of know-how through its Cooperatives Working Group. In addition, CEPF encourages forest owners' economic cooperation and strongly contributes to sustainable forest management among forest owners across Europe.

⁵ Selly Jeanrenaud, *Communities and Forest Management in Western Europe*, A Regional Profile of WG-CIFM, The Working Group on Community Involvement in Forest Management, 2001

PFOA's from Serbia may join CEPF and benefit from such membership through their national confederation. If such confederation existed, it would be able to represent the interest of Serbian PFOA`s in CEPF as a member or associated member.

The Confederation of the associations of private forests owners in Serbia was established in 2009, however it is no longer active. It ceased to exist and to fulfil its main role in representing the member PFOA`s in Serbia and abroad in 2011. If such confederation or other association of similar kind becomes active again, it may represent PFOA`s interest on international level as a member of international organisations such as CEPF.

5. REGULATORY FRAMEWORK

Below is an overview of the central pieces of legislation relevant for structuring, developing and operating a PFOA.

- Forests Act (*Zakon o šumama*, "Official Gazette of the Republic of Serbia," no. 30/2010, 93/2012 and 89/2015) – "**Forests Act**"

The Forests Act represents a core piece of legislation in the area of forest management. The Act regulates conservation, protection, planning, cultivation and use of forests, management of forests and forest land, control over the implementation of this law, as well as other issues relevant to forests and forest land. Pursuant to the Forests Act Srbijašume is entrusted with the use of forests which involves lumbering in state owned forests, in accordance development plan program, processing and sale of wooden assortments in conformity with the principle of maximal quantitative and qualitative utilization. In similar fashion, the Act prescribes the sources of funding for carrying out the activity of general interest (i.e. revitalization funds, state budget, autonomy and municipality budgets). The provisions of the Forests Act apply to all forests and forest land, irrespective of the type of property. The Forests Act also stipulates that activities on the forest management for the forests covered by the forests management program, can be conducted by the associations of the private forest owners as a delegated activity. In order to conduct these delegated activities properly, the association of the private forest owners must employ qualified licensed professional. Licensing procedure is also regulated by the Forests Act and the by-laws adopted on the basis of the Forests Act.

Further, the Forests Act states that forests management activities are financed from the budget of the Republic of Serbia, or autonomous province of Vojvodina. The forests management activities for the forests covered by the forests management bases, can be carried out by the private forest owners. Finally, the forests management activities can be conducted by another entity on behalf of the private forest owner if it fulfils all the necessary conditions prescribed by the Forests Act and other applicable legislation.

Speaking of the form of the establishment of the PFOA, the Forests Act speaks only of the associations which are regulated by the Associations Act.

- Associations Act (*Zakon o udruženjima*, "Official Gazette of the Republic of Serbia", nos. 51/09, 99/11)- "**Associations Act**"

Associations Act defines associations and regulates their goals and objectives, incorporation, registration, governance, operation, financing etc. Since Forests Act directly refers to the associations as the appropriate form for the PFOA, the Associations Act is the key legislation for the purpose of our analysis.

6. PFOA'S INCORPORATED PURSUANT TO THE ASSOCIATIONS ACT

6.1 General

Based on the current state of the Serbian regulatory framework an association is the only viable way of establishment of the PFOA. Forest owners could theoretically establish limited liability companies or co-operatives to protect their interest but such entities would not be recognized under the Forests Act and would not be able to perform some of the activities which may be performed by an association as a delegated activity.

Associations Act defines associations as voluntary, non-governmental and non-profit organisation established for the purpose of implementation, improvement and protection of the rights and interest of its members, which can be both natural persons and legal entities.

An association is obliged to perform its activities publicly. The manner in which this obligation is fulfilled is to be detailed by the Articles of Association.

Association is usually established for indefinite period of time; however, it can also be limited in time. If not specified in the Articles of Incorporation, it is considered that an association is established for indefinite period.

Associations can further cooperate by unifying in federations and other associations both locally and internationally.

An association, as a legal entity, can in turn establish a limited liability company and perform commercial activities through such limited liability companies.

6.2 Establishment of an association

An association can be established by at least 3 members with one of them having its residence or seat of the company in the Republic of Serbia. Members must have full legal capacity however, a minor older than 14 years can also be a member of an association if he/she presents notarised approval for such membership from his/her legal representative.

An association is deemed established when the founders adopt the Articles of Incorporation and the Articles of Association of the association, followed by the appointment of the authorized representative of the association. Register of associations is kept by the Business Registry Agency. Pursuant to Associations Act, the registration of association in the Business Registry Agency is voluntary, but an association may obtain the status of legal entity only when it is registered in this registry.

In addition, Forests Act prescribes for a special registry of the associations of private forest owners to be kept by the Ministry of Agriculture, Forestry and Waters of the Republic of Serbia. This registry is, *inter alia*, supposed to contain records of the private forest owners and PFOAs. However, this registry is not yet established and even when it is established its purpose will be purely informational, i.e. the registration in the Business Registers Agency will still be the only way for an association to become a legal entity.

The Articles of Incorporation of an association should contain at least the following information: information on the members of the association, seat of the association, scope of activities, its objectives and goals and information about legal representative of the association. The Articles of Incorporation has to be signed and dated by all the members, along with the ID cards numbers. In case the legal entity is the member of an association, the legal representative of that legal entity will sign and stamp the Articles of Incorporation. Also, the company ID number and TIN of the member which is a legal entity needs to be stated in the Articles of Incorporation.

The Articles of Association is the main act of an association. All other general acts passed by the association, if any, need to be compliant with the Articles of Association, otherwise they are null and void.

The Articles of Association contain at least the following: name and seat of the association, scope of activities of the association, objectives and goals of the association, its internal organisation, bodies of the association, their composition, appointment and revocation of their members, capacities and decision making of the governing bodies and governance of the association in general. In addition, the Articles of Association shall also lay out the procedure of its amendments as well as the procedure of amending other internal acts (if any), legal representation of the association, publicity measures, membership policy including rights, obligations and liabilities of members, ways of acquiring the assets necessary for the fulfilment of the association`s objectives and goals as well as management of the assets. Also, if an association is conceived so to undertake commercial for-profit activities that has to be explicitly stipulated by the Articles of Association. Further, the Articles of Association regulate statutory changes, the procedure of dissolution, financial and other reporting and other issues as per the relevant legislation and the association`s objectives.

Registered name of an association must be in Serbian and written in cyrillic. It may consist of the foreign words if these are names of the international organisation an association belongs to, if they are common in Serbian language or if there is no adequate translation in Serbian language. The registered name can be in the language of the national minority and as such it can be stated in the relevant registry after the name in Serbian. Also, the registered name can be translated into foreign language. An association can use the abbreviated name if prescribed by the Articles of Association and registered. Registered name is used in legal transactions undertaken by an association as it is registered within the relevant registry. Finally, the registered name needs to be distinctive from other associations` registered names.

An association can be visualized by signs, logos and other symbols in accordance with the Articles of Association, however visualization needs to be distinctive to other associations.

The seat of association must be in the territory of the Republic of Serbia.

6.3 Membership and governance of an association

Every natural person and/or legal entity has equal right to become a member of an association in accordance with the conditions set out in the Articles of Association. Each association keeps the record of its membership.

Members govern an association directly or through their elected representatives in the association bodies.

6.3.1 General Assembly

The General Assembly is the main body consisting of all the members of the association. The Articles of Association can define the way members of association are represented in the General Assembly.

The General Assembly adopts the Articles of Association and its amendments, elect and revoke legal representative of an association, if the Articles of Association does not prescribe this procedure differently, decides on the further cooperation in the form of federations, adopts annual financial report, decides on the corporate changes and dissolution of an association.

The Articles of Association can regulate differently the body which would have the function of the General Assembly.

The General Meetings of the General Assembly are held usually annually with the possibility for the Articles of Association to provide different statutory framework for the calling and conduct of the general meetings. Extraordinary General Meetings can be held upon request of one-third of the members of an association. The minimum period for scheduling of Extraordinary General Meeting is 30 days from the day of its request. The Articles of Association provides rules on calling of all types of meetings, functioning and voting procedure of the General Assembly.

6.3.2 Legal Representatives

Association can have one or more legal representatives who are elected and appointed in accordance with the Articles of Association. The legal representative of an association can be person with the full legal capacity with the residence in the Republic of Serbia. The representative is obliged to abide authorisations set out in the Articles of Association and in decisions of the competent body of an association.

The Articles of Association can also stipulate for other bodies in the association.

6.3.3 Liability for damage

Members of association are liable for damage caused to the association in the decision-making process intentionally or with a gross negligence. Such liability can be avoided if a member separated

its opinion in the decision-making process which was appropriately recorded in a meeting minutes. The procedure for the compensation of damage is regulated by the Articles of Association.

6.4 Dissolution of an association

An association ceases to exist as a legal entity if it is deleted from the relevant Registry. Such deletion would take place if:

- (i) The number of members decreases below the number set out by the applicable legislation;
- (ii) Expires the definite period of time for an association established as a temporary;
- (iii) The authorised body of an association reaches decision on the cessation of the association;
- (iv) The corporate change is executed which has as a consequence cessation of an association;
- (v) It is determined that association does not carry out activities in accordance with its objectives and goals or it is not organised in accordance with the Articles of Association longer than 2 years continuously or if the meetings of the General Assembly were not held as per the deadlines set out in the Articles of Association nor the double the deadlines prescribed by the Articles of Association;
- (vi) An association is forbidden to operate;
- (vii) The bankruptcy is initiated against the association.

Before the deletion from the relevant registry, the procedure of liquidation must be carried out in all the situations listed above, except in case of corporate change and bankruptcy.

6.4.2 Prohibition of an association

The Constitutional Court may prohibit the work of the association if it conducts activities aimed at the violation of constitutional order, violation of the guaranteed human and minority rights or encouragement of racial, ethnic or religious hatred.

The prohibition procedure can be initiated by the Government, Public Prosecutor, Ministry for Public Administration, Ministry competent for the activities of the relevant association (in this case that would-be Ministry for Agriculture and Environmental Protection) or Business Registry Agency.

Associations whose work has been banned by the Constitutional Court are deleted from the relevant register on the date the Constitutional Court's decision is served to the competent body.

6.4.3 Liquidation of an association

Liquidation of an association can be carried out when an association has sufficient financial means to cover all of its obligations. The liquidation decision is adopted by the General Assembly and is published in the Official Gazette of the Republic of Serbia (publication in the Official Gazette is

considered as the official moment for commencement of liquidation). Upon commencement of the liquidation procedure, the association can undertake only those activities which are aimed at completion of the liquidation. Upon adoption of the liquidation decision and the appointment of the liquidation manager, all bodies of the association cease to exist. Further, the association is obliged to invite its creditors to file their claims against the association within 30 days from the publication of the liquidation decision.

All relevant information concerning liquidation of an association are registered in the relevant registry. The legal representative of association is liable for misdemeanour in case of failure to make the relevant notifications to the registry.

After completion of the liquidation procedure, the liquidation manager applies to the relevant registry for deletion of the association from the registry.

The liquidation procedure can also be conducted in the short-form procedure in accordance with the applicable legislation. The purpose of this short-form procedure is to delete the association from the relevant registry without actually carrying out the liquidation procedure described in this chapter. The majority of the General Assembly's members have to file a written statement that association does not have any outstanding tax obligations, debts or other unsettled relations with its employees in order to commence such short-form procedure of liquidation.

6.4.4 Bankruptcy

Bankruptcy of an association can be declared if an association is insolvent for a prolonged period of time. The bankruptcy procedure in this case would be carried out in accordance with the applicable legislation for bankruptcy.

The association is deleted from the relevant registry after the Decision on the Bankruptcy Procedure Completion is passed.

6.4.5 Corporate changes

Merger and spin-off of an association can be carried out in accordance with the decision of the competent body of an association in accordance with the Articles of Association.

6.4.5.1 Merger

Merger can be carried out either by the transfer of the assets from one association to another based on the merger agreement or establishment of a new association with the assets of 2 or more associations.

The merger has to be registered with the competent registry.

6.4.5.2 Spin-off

An association can be divided into two or more associations. The spin-off decision has the practical effect of enacting the new Articles of Incorporation. The initial association ceases to exist while the new associations become liable for the obligations of the initial association.

The newly established associations are registered after the division of the assets, rights and obligations.

6.5 Experiences of associations of the private forest owners in Serbia

The first association of the private forest owners was established in Serbia in 2006. By 2009 there were approximately 19 associations. During 2011 some of them were dissolved and erased from the registry. Currently there are 6 registered associations of the private forest owners.

All of these associations have common objectives and goals which are further prescribed in their Articles of Association. In order to achieve these objectives and goals, associations regulate in similar manner particular activities that should be undertaken.

Membership in the associations is regulated so to stipulate 3 types of members: ordinary, collective and honourable. Ordinary member can be any person interested in improvement of the activities in the rural environment through intensive forestry activities. Collective member can become any organisation or institution which has certain interests within objectives and goals of an association. As an honourable member, it can be declared any person or the representative of the society who significantly contributes to the associations` objectives and goals.

Registered associations differ in terms of the organisation and governance. Namely, some of them have only General Assembly and legal representative of the association, as a minimum governing body prescribed by law. On the other hand, other have management board and supervisory board besides the General Assembly, in which case the function of the legal representative of the association is conducted by the chairman of the management board (who is also the president of the association, in some cases).

6.6 PFOA ACTIVITIES

6.6.1 General

An association, in general, may perform only those activities which are required for fulfilment of its goals, as determined by its Articles of Association. Usually, the main goal set out in the Articles of Association of the existing Serbian PFOAs is the improvement of life conditions in the rural environment through intensive agricultural and forestry activities. The Articles of Association of the existing Serbian PFOA`s Articles of Association list the following goals:

- (i) protection of the common interests of the PFOA members and rural population;

- (ii) decision making concerning forestry, usage of natural resources and improvement of life conditions in rural community;
- (iii) protection of the natural resources and their sustainable consumption;
- (iv) joint participation of the PFOA members on the market;
- (v) improvement and development of forestry, forestry products, rural tourism, health food production, traditional crafts etc applying the best practice in agriculture and forestry;
- (vi) other activities connected to the operations of PFOAs such as: hunting, fishing, planting herbs, forests fruits, wood and other production;
- (vii) development of the information technology and educational programs;
- (viii) cooperation with the similar organisations and competent institutions;
- (ix) improvement of social life in rural environment.

The scope of the activities that an association can undertake is usually determined in its Articles of Associations. One important difference from the regulatory regime applicable to companies in Serbia is that the commercial activities performed by an association must be specifically listed in the Articles of Association (see 6.6.4). The Articles of Association of the existing Serbian PFOA's, list the following activities:

- (i) Collection and processing of scientific work in the field of the improvement of the rural environment, forestry development and sustainable development;
- (ii) Organisation of seminars, conferences and other expert meetings in the field of improvement of rural environment and forestry development;
- (iii) Publishing books and other publications concerning environmental protection;
- (iv) Engaging scientists and other experts on the education of children and youth in the field of the environmental protection;
- (v) Organising voluntary cleaning and protection of the nature, forest planting, cultivating in rural settlements and their surrounding;
- (vi) Cooperation with the universities, schools and professional associations locally and abroad concerning the environmental protection.

6.6.2 Activities regulated by the Forests Act

In terms of the activities regulated by the Forests Act, the PFOA may conduct only certain of these activities, depending on the type of forest in question, i.e. whether the specific forest is covered by the development plan of the forest area (*Plan razvoja šumske oblasti*), forest management basis (*Osnove gazdovanja šumama*) or by a forest management program (*Program gazdovanja šumama*).

In the private forests covered by the program, the PFOA can undertake the following activities ("Forest Management Activities"):

- (i) Preparation of the annual forest management plan;
- (ii) Preparation of the forest development plan and forest improvement plan;
- (iii) Preparation of the fire protection plan;
- (iv) Harvesting activities;
- (v) Monitoring of the biotic and abiotic factors of the forests health state;
- (vi) Marking of the cut trees and issuance of the applicable document thereof;
- (vii) Keeping the statistics on the illegal logging;
- (viii) Monitoring the works on the protection, cultivation and utility of the forests covered by the program;
- (ix) Reporting of all illegal actions concerning forests to the competent authorities;
- (x) Other professional and advisory activities of the forest owners.

In order to be able to perform these activities, PFOA must have an employee licensed for conducting such activities. Forests Act prescribes the procedure of licensing for the execution of the professional forests management activities. The licensing is carried out by the Chamber of Forestry Engineers. In order to obtain the license, an applicant must have at least a master degree or other degree of similar rank in forestry science. In addition, he/she must pass the state professional exam as well as professional licensing exam. Currently, the Chamber of Forestry Engineers is in the process of establishment and it did not grant any licenses yet. In practice, PFOAs have employees qualified for the Forests Management Activities but they are working without the formal license.

The Rulebook on the Program and Method for the Professional Licensing Examination in Forests Management Activities sets forth the program for the professional licensing exam.⁶

The Chamber of Forestry Engineers can revoke the license if the licensee has committed a serious violation of the principles of professional conduct. The Chamber of Forestry Engineers is supposed to keeps the record of granted and revoked licenses.

6.6.3 Delegation of the Forest Management Activities

⁶ the Rule book on the Program and Method for the Professional Licensing Examination in Forests Management Activities (*Pravilnik o programu i načinu polaganja stručnog ispita za sticanje licence za obavljanje stručnih poslova u gazdovanju šumama*), "The Official Gazette of the Republic of Serbia", no. 57/17

PFOAs undertake the Forest Management Activities as delegated activities. This means that a PFOA can conduct the Forests Management Activities in accordance with the written agreement concluded with the competent ministry, based on the delegation provision set out in the Forests Act. The competent ministry keeps the control over the execution of these activities as it, ultimately, remains responsible for them. The scope of this control primarily includes: reporting and notification to the ministry on the execution of the delegated activities, providing necessary instructions by the ministry to the PFOA etc.

If the ministry determines that the PFOA is not properly performing the Forests Management Activities, it can terminate the delegation and prevent the PFOA from further performance of the delegated activities.

For performing the Forest Management Activities, PFOA is entitled to receive funding from the budget of the Republic of Serbia. In turn, Srbijašume as public enterprise that is, by default, performing these activities would lose part of funding, i.e. the relevant portion of the funding would instead be directed to the PFOA. Consequently, one would expect resistance from Srbijašume to the process of delegation of the Forest Management Activities.

6.6.4 Commercial activities performed by PFOAs

PFOAs can also conduct commercial activities provided that such activities are:

- (i) Aligned with its goals declared by the Articles of Association;
- (ii) Explicitly prescribed by the Articles of Association;
- (iii) Carried out in small volume sufficient for the fulfilment of the association's objectives.

Profit achieved from the PFOAs commercial activities cannot be distributed to the association's members, employees and other related persons, i.e. it can only be reinvested and used for furtherance the PFOAs goals.

The PFOAs usually have commercial activities regulated in their Articles of Association. Most often they are defined with a code 2.10 from the Decree on Classification of Activities.⁷ This commercial activity is described as cultivation of forests and other forestry activities and consists of: planting and protection of forests, planting low growth plants, cellulose wood and firewood and activities on plant nursery.

⁷ The Decree on the Classification of the Activities (*Uredba o klasifikaciji delatnosti*), "The Official Gazette of the Republic of Serbia", no. 54/10

6.6.5 Activities in the private forests covered by the Bases

In private forests covered by the Bases, the Activities listed in Section 6.6.2 are conducted by private forest owners.

These activities can also be carried out by the legal entity engaged by the private forest owner if such legal entity fulfils conditions prescribed by the relevant legislation. Therefore, PFOAs could be engaged to perform these activities on behalf of private forest owners for the forests which are covered by the Bases.

6.6.6 Commercial offences and misdemeanour concerning the activities of an association

6.6.6.1 Commercial offence

An association (and its responsible official) will be fined if it conducts commercial or other activity in order to gain profit, if such activity is not aligned with its statutory objectives, not prescribed by its Articles of Association or if the association does not fulfil legal requirements for conducting such activities.

6.6.6.2 Misdemeanours

An association (and its responsible official) will be fined if it:

- (i) Undertakes activities against the law, its Articles of Association and other general act of the association, as well as against the rules governing federations which member an association is.
- (ii) Conducts commercial activity in greater volume meaning in the volume not necessary for the fulfilment of an association`s objectives and goals
- (iii) Does not use its assets for the fulfilment of its statutory objectives and goals
- (iv) The foreign representative of an association starts operating before it is registered in the relevant registry

In addition, an association (along with its responsible official) can be fined if it does not provide publicity in its operations prescribed by the Articles of Association, if it does not use its name in accordance with the Articles of Association and if it does not register all subsequent changes concerning an association`s status.

6.7 FINANCIAL SUPPORT FOR PFOAs

6.7.1 General

PFOAs can be financed from membership fees, charities, donations, financial subsidies, interests, fees, dividends and from the revenues achieved by performing the commercial activities to the extent allowed by the applicable legislation.

6.7.2 Membership fees

Membership fees seem to be a primary and the most reasonable source of financing the ongoing expenses of a PFOA. The membership fees are usually determined in a flat, equal amount for each member. However, one should be careful about setting the flat and equal membership fees to cover the expenses of the PFOA in order not to disadvantage the smaller forest owners and disincentivize them from participating in the association. The membership fees could, therefore, be determined in the amount proportional to the forest area of the relevant member to account for the different level of interest involved in the work of the association.

This may, however, raise the issue of equal vote and the decision-making process carried out within the PFOA - the members contributing more substantially to the operations of the PFOA would expect to be able to have higher influence on the decisions being made by the association. These points need to be clearly and specifically addressed in advance in the Articles of Incorporation and the Articles of Association, so that all potential members are fully aware of the process thereby avoiding future disputes.

One way of resolving this would be by differentiating between various matters to be decided by the bodies of the PFOA, with the most important ones requiring consensus or qualified majority of all the members. Another way of handling this matter would be by keeping the complete equality among members in terms of the membership fee, such fee covering only certain basic fixed expenses of the association from the membership fees and leaving the association to cover most of its costs from the revenues achieved by providing services to its members and third parties.

6.7.3 Revenues from commercial services

PFOAs can provide various commercial services to its members as well as to third parties, i.e. private forest owners who are not members of the PFOA. One should bear in mind that associations in general cannot generate and distribute profit, therefore, the services performed by the PFOA to the PFOA members should be provided at cost, whereas the revenues achieved from provision of services to third parties could be used to reduce the amount of membership fees as well as to finance other activities of the PFOA. Also, the provision of services to third parties may be limited by the general restriction for associations to engage in commercial activities. This restriction may be overcome by having the PFOA incorporate a limited liability company that would then be able to perform commercial activities on unrestricted basis.

The provision of services by the PFOA to its members and third parties should be covered by appropriate service contracts with the general terms and conditions of such service contract applying uniformly in order not to discriminate between PFOA members.

6.7.4 Access to the forest budgetary fund

PFOAs have priority in usage of the forest budgetary fund if they manage more than 100 ha of the forest land (regardless of how much land the association actually owns). The Forests Act provides for creation of a special budgetary fund to finance various forest management activities. The bylaws

adopted pursuant to the Forests Act⁸ determine the procedure and conditions for applying to use the proceeds of this fund. The procedure is carried out by the Forests Administration of the Ministry for Agriculture, Forestry and Water and entails publication of the annual public call for the use of proceeds in several different areas of forest management, i.e. forest protection, afforestation, forest care, construction and reconstruction of forest roads, forest seed production, production of forest propagating material, educational and promotion activities.

The process is competitive and open to forest owners/users, legal entities contracted to perform these works as well as science and research institutions.

In responding to the public call, the applicants must submit specific cost estimates, programs and/or designs for realization of the proposed projects prepared in accordance with the applicable law by the licensed engineers. The total amount of funds envisaged in the budget for 2017 amounted to RSD 750 million.

It is not entirely clear whether the PFOA could participate in this public call directly on the account of the fact that its members own the forest land or it would be necessary to submit contracts between the PFOA and the PFOA members under which the PFOA undertakes to perform the relevant works. In any event, PFOA would be able to take part in the process and the way this would be realized is more of a technicality rather than an obstacle for its participation.

6.7.5 Compensation for provision of Forest Management Activities

If PFOA undertakes to perform delegated Forest Management Activities, these activities are financed from the Budget of the Republic of Serbia and for the territory of autonomous province of Vojvodina, from its budget.

The terms and conditions of such delegation including the manner of cost reimbursement are determined pursuant to the delegation contract entered into between the competent ministry and the PFOA to whom the work is being delegated.

⁸ Rulebook on Specific Conditions and the Manner of Awarding and Usage of the Proceeds from the Annual Program of Using the Proceeds from the Forest Budgetary Fund of the Republic of Serbia and the Forest Budgetary Fund of the Autonomous Province, Pravilnik o bližim uslovima, kao i načinu dodele i korišćenja sredstava iz godišnjeg programa korišćenja sredstava budžetskog fonda za šume republike srbije i budžetskog fonda za šume autonomne pokrajine ("Official Gazette of RoS", no. 17/2013 and 20/2016); Decree on Determining the Annual Program of Usage of Proceeds of the Forest Budgetary Fund of the Republic of Serbia for 2017, Uredba o utvrđivanju godišnjeg programa korišćenja sredstava budžetskog fonda za šume Republike Srbije u 2017 ("Official Gazette of RoS", no. 13/2017)

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3. Companies Act (Zakon o privrednim društvima, "Official Gazette of the Republic of Serbia", nos. 36/211, 99/211, 83/214 – etc. And 5/15)
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