



Regulations of the Agricultural Cooperatives in Georgia

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ABSTRACT

Agricultural cooperatives have a huge history in Georgia. Roots of cooperation in Georgia date back as early as the 19th century. Although, legal regulations of the agricultural cooperatives in Georgia appeared only in 2013 when the Georgian Law on Agricultural Cooperatives was created and entered into force on the 12 of July. Before the specific provisions for the agricultural cooperatives, the regulation on different types of cooperatives existed in the law on Entrepreneurs, however, provisions were general and at the same time scarce. Due to EU approximation, the Georgian Law on Entrepreneurs was changed and the new version entered into force on 1st January of 2022. Consequently, the part of the cooperatives was rewritten, hence Law on Agricultural Cooperatives needs further amendments.

In this article, the impact of the change of the law on Entrepreneurs on the regulations of the agricultural cooperatives will be provided regarding some aspects. A comparison with the regulations in the different European countries will be provided where needed. Analyzing the impact of existing changes and further possible changes will illustrate the existing situation of the Georgian regulation on agricultural cooperatives and the necessity of some amendments.

INTRODUCTION

Agricultural cooperatives are regulated by the Law of Georgia on Agricultural Cooperatives and the Law of Georgia on Entrepreneurs. The regulations of agricultural cooperatives are compelling, as the Law on Agricultural Cooperatives is a relatively new regulation in Georgian reality and has some particular moments, which need to be discussed in detail.

The following article will analyze Georgian regulations for agricultural cooperatives. The articles of the two main governing documents are considered, and the comparative analysis is given where needed.

In this work not only regulative issues are present. One can discover the current social situation which impacted the way the law is written and functions. This paper's main goal is to show the existing situation step-by-step and underline problematic moments.

1. DEFINITION OF THE COOPERATIVE

The main sources of agricultural cooperative law in Georgia are the Law of Georgia on Entrepreneurs¹ and the Law of Georgia on Agricultural Cooperatives².

The Law of Georgia on Entrepreneurs defines the general structure and basic rules for different types of cooperatives, including agricultural, when the Law of Georgia on Agricultural Cooperatives gives provisions regarding matters related to the agricultural cooperatives specifically. While these two legal documents provide regulations on the same subject in different scopes, the interesting overlapping part, on the one hand, is the definition

of the cooperative in the Law of Georgia on Entrepreneurs and on the other hand the definition of the agricultural cooperative in the Law of Georgia on Agricultural Cooperatives.

The definition of the agricultural cooperative is a core of the law and the whole cooperation system. Deriving from this idea, one can conclude that there is the highest interest in determining the definition of an agricultural cooperative. The definition of the cooperative differs from country to country. Still, in the legislation of every developed and democratic country, the spirit of cooperation and the pure notion of cooperation is conserved.

The universally recognized definition of cooperatives as contained in ILO R. 193, Paragraph 2 not only reflects a certain understanding of what cooperatives are, it also pre-shapes the contents of the whole law. It reads: *A co-operative is an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise.*³

Not only ILO guidelines are defining the notion of the agricultural cooperative, but International Cooperative Alliance (ICA) has also elaborated on the following notion of the agrarian cooperative: *an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise.*⁴

While these two have recommendation characteristics, countries – especially Europeans tend to incorporate in their legislation the above-mentioned definitions.

Meanwhile, Georgian law on Entrepreneurs offers the following: *A co-operative is a company based on the labour activity of its members or incorporated to support the economic or social activities of its members, the objective of which is to satisfy the needs of its members, and the primary*

1 Document number: 875-Vრს-Xმპ, the document passed by: Parliament of Georgia, date of passing the document: 02/08/2021, <<https://matsne.gov.ge/ka/document/view/5230186?impose=translateEn&publication=0>> [Last accessed: 9 September, 2022]

2 Document number: 816-რს, the document passed by: Parliament of Georgia, date of passing the document: 12/07/2013, <<https://matsne.gov.ge/ka/document/view/1972742?impose=translateEn&publication=3>> (English version dates: 07.12.2017). [Last accessed: 9 September, 2022] <<https://matsne.gov.ge/ka/document/view/1972742?publication=9>> (Georgian version last accessed: 09.09.2022)

3 Hagen H., (2012), Guidelines for Cooperative Legislation, the third revised edition, International Labour Office, <https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/documents/publication/wcms_195533.pdf> [Last accessed: 9 September, 2022]

4 International Cooperative Alliance. <<https://www.ica.coop/en/cooperatives/what-is-a-cooperative>> [Last accessed: 9 September, 2022]

goal of which is not to make a profit. The terms concerning agricultural co-operatives must be determined in the specific law⁵.

The Law on Agricultural Cooperatives defines cooperatives by its 3rd article in the definition of terms stating the following: *a legal entity organised under private law and legally established as a cooperative according to the Law of Georgia on Entrepreneurs, which carries out the agricultural activity and which has been given the status of an agricultural cooperative under this Law*⁶.

If we compare these two definitions in the Georgian legislation, one can assume that Law on Entrepreneurs follows the spirit of cooperation and internationally recognized definition of agricultural cooperative, while the Law on Agricultural Cooperatives makes reference to the law on entrepreneurs and does not define agricultural cooperatives in the same way.

Given the fact that the Law on Agricultural Cooperatives is a document regulating the specific type of cooperatives⁷ and the agricultural cooperative as a term has a tremendous meaning and behind it is a whole complex of business, management and cooperation among persons. Deriving from this, the law on agricultural co-operatives needs a definition of the agricultural cooperative which is in conformity with the internationally recognized definition, despite the fact that the definition is given in the Law of Georgia on Entrepreneurs.

2. COOPERATIVE AS A COMPANY

2.1. The legal status of the Cooperative

The Law on Entrepreneurs determines that cooperatives have limited liability, in spite of the definition of the cooperative as the entity whose primary purpose is not the making of a profit. *A cooperative is*

5 Law of Georgia on Entrepreneurs. <<https://matsne.gov.ge/ka/document/view/5230186?impose=translateEn&publication=0>> [Last accessed: 9 September, 2022]

6 Law of Georgia on Agricultural Cooperatives, Article 3. <<https://matsne.gov.ge/ka/document/view/1972742?impose=translateEn&publication=3>> [Last accessed: 9 September, 2022]

7 It is worth mentioning that the Law of Georgia on Entrepreneurs determines nine different types of cooperatives, and for only two of them there are specific laws ex: Law of Georgia on Agricultural Cooperatives.

*a purposefully distinct organizational unit from other legal forms. The uniqueness of the cooperative is manifested in the fact that it is an entrepreneurial society based on the labour activities of its members or created to promote the economic or social activities of its members, whose primary task is not to make a profit but to meet the needs of its members directly.*⁸

On the one hand, the limited liability of the cooperative and on the other hand the above-mentioned non-for-profit purpose, working for the social and economic needs of its members may create ambiguity regarding the legal nature of the cooperative. Is it a commercial society as LLC, or is it a union of persons like a General Partnership, where partners are liable for all of the liabilities of the union? These characteristics create the fact that the agricultural cooperative disposes of the *sui generis* nature.

The cooperative is the union of the persons interested in working together or creating and receiving some goods and services that are unavailable for them solely but reunited they can do so. The fact of carrying out activities together, working with and for its members may create a sort of appearance that a cooperative is more a partnership with no legal status or unlimited liability of its members.

The limited liability cooperatives are not only in Georgia. The German Cooperative Societies Act (Genossenschaftsgesetz–GenG) in paragraph 2 states the following *“Only the assets of the cooperative are liable to the creditors for the obligations of the cooperative”*.⁹

2.2. Creation of the cooperative and agricultural status

The interesting phenomenon in the Georgian cooperative regulations, concerning agricultural cooperatives is the granting of the status “agricultural” to the registered cooperative.

8 Jugeli G, Giguashvili G. (09.02.2021). Definitions of the project of the Law of Georgia on Entrepreneurs. GIZ. <http://lawlibrary.info/ge/books/GIZ_-Draft-Law-on-Entrepreneurs_2021.pdf> [Last accessed: 9 September, 2022]

9 § 2 Haftung für Verbindlichkeiten Für die Verbindlichkeiten der Genossenschaft haftet den Gläubigern nur das Vermögen der Genossenschaft. <<http://extwprlegs1.fao.org/docs/pdf/ger158133.pdf>> [Last accessed: 5 June, 2022]

To begin with, the Law on Entrepreneurs in the 3rd part of the second article recognizes a cooperative as a company stating the following: *A general partnership, a limited partnership, a limited liability company, a joint-stock company and a cooperative shall all be deemed companies*¹⁰.

In Georgia, the company is deemed established from the moment of its registration¹¹, meaning that after the registration in the National Agency of the Public Registry¹² cooperative is able to conduct any activities which is allowed by the legislation. However, the Law of Georgia on Agricultural Cooperatives requires, that the agricultural cooperative must be granted the status¹³ by the Ministry of Environmental Protection and Agriculture of Georgia¹⁴. As the status of an agricultural cooperative

is granted by the Ministry, the termination of the status is upon the decision of the same authority. The termination of the status can have different reasons¹⁵ the most important and frequent in the Georgian reality is the negative results of the monitoring¹⁶ which is held by the Agency.¹⁷

Monitoring serves as the guardian of the compatibility of the activities of the agricultural cooperative with the Law on Agricultural Cooperatives.¹⁸

10 Inconsistent translation. The phrase “for the purposes of this Law” is not present in the Georgian version of the law. <<https://matsne.gov.ge/ka/document/view/5230186?impose=translateEn&publication=0>>

[Last accessed: 9 September, 2022] See the original Georgian version

<<https://matsne.gov.ge/ka/document/view/5230186?impose=original&publication=0>> [Last accessed: 9 September, 2022]

11 Law of Georgia on Entrepreneurs. Paragraph 6, article 8, <<https://matsne.gov.ge/ka/document/view/5230186?impose=translateEn&publication=0>>

[Last accessed: 9 September, 2022]

12 There is no need for separate registration in the tax organ Law of Georgia on Entrepreneurs. Article 8, part 1: Registration of an entrepreneur entails both state registration and tax registration. (last accessed 09.09.2022).

13 Law of Georgia on Agricultural Cooperatives, paragraph 1, article 7, In order to obtain the status of an agricultural cooperative, a legal entity under private law legally established as a cooperative, shall submit an application to the Agency. Article 7, paragraph 4: The Minister of Environmental Protection and Agriculture of Georgia makes a decision on the basis of the application determined in the article 3, regarding granting the status of Agricultural cooperative to the legal entity of private law established under the legal form of the cooperative. <<https://matsne.gov.ge/ka/document/view/1972742?impose=translateEn&publication=3>> [Last accessed: 9 September, 2022]. inconsistent translation of Article 7, paragraph 4 in the English version of the law. See the original Georgian version: <<https://matsne.gov.ge/ka/document/view/1972742?impose=original&publication=9>> [Last accessed: 9 September, 2022]

14 Law of Georgia on Agricultural Cooperatives, paragraph “o”, article 3, Agency – non-entrepreneurial (non-commercial) legal entity – Agricultural and Rural Development Agency (hereinafter “Agency”), entering in the system of the Ministry of Environmental Protection and Agriculture of Georgia. (translation of author). <<https://matsne.gov.ge/ka/document/view/5230186>

>[?impose=original&publication=9](https://matsne.gov.ge/ka/document/view/1972742?impose=original&publication=9)> [Last accessed: 9 September, 2022]

15 Law of Georgia on Agricultural Cooperatives, paragraph 6, article 7, Minister of Environmental Protection and Agriculture of Georgia makes a decision on termination of the status of an agricultural cooperative. The basis of the termination of the status may be:

- a. Negative results of monitoring;
- b. Diminution of members as defined in paragraph 3 of article 11 of this law;
- c. Application of agricultural cooperative on termination of the status of an agricultural cooperative. (translation of the author).

inconsistent translation. See the original Georgian version: <<https://matsne.gov.ge/ka/document/view/1972742?impose=original&publication=9>> [Last accessed: 9 September, 2022]

16 This phenomenon could be provoked by the fact that most of the agricultural cooperatives in Georgia were created for the sole purpose – get governmental support or grants from different international organizations. One of the examples is a finding of an ENPARD-facilitated study that cooperative support programmes, “as well as grant components of international programmes motivate local farmers to establish cooperatives.” What the study captured actually was the tendency in behaviour that often leads to forming of false cooperatives. Similar findings are observed elsewhere too. This tendency is confirmed by a non-ENPARD survey of Tbilisi State University researchers held in Kakheti and Imereti regions of Georgia in 2016, which concludes that majority of farmers so far have negative relation to the process and cooperation and note that they opened cooperatives for the purpose of taking part in State programs or getting grants. Sustainable management of natural resources and resilience, TITLE – Evaluation of ENPARD Programme in Georgia, Submission Date 21/01/2021. SOGEROM SA consortium, EuroPlus Consulting & Management, SOGEROM SA, Applus+.

17 Law of Georgia on Agricultural Cooperatives, Article 8: The Agency is entitled to monitor agricultural activities of legal person having status of agricultural cooperative. (last accessed 09.09.2022). (translation of author). Inconsistent translation. See the original version <<https://matsne.gov.ge/ka/document/view/1972742?impose=original&publication=9>> [Last accessed: 9 September, 2022]

18 During the monitoring, the authorized person of the

If the compliance is interrupted, cooperatives face consequences. The agricultural status has the importance, not only for the registration or functional purposes – having agricultural status has several tax impacts for the cooperatives, which will be discussed in the further part of the article.

One can assume that special circumstances pushed the legislator to create particular regulations for the agricultural cooperatives, which may not seem conventional, however, they may be necessary for the proper functioning of the cooperation.

3. MEMBERS OF AGRICULTURAL COOPERATIVE

The Law on Entrepreneurs regulates membership of the cooperative in a general manner and defines that members of the cooperative can be both legal and physical persons, and the minimum number of them must be 5.¹⁹ In addition, the Law on Entrepreneurs offers a new type of member – Investor member.²⁰ Essentially a cooperative is an entrepreneurial society based on the labor activities of its members, which aims to meet the needs of its members. However, this does not exclude the possibility of the cooperative attracting additional capital to achieve the set goal. Large investors usually claim special rights in corporate governance to protect their investment. Accordingly, ..., the investor member of the cooperative may be given a veto by the charter regarding the decisions related to the investments made by him. However, an inves-

tor member may not have more than 25% of the vote.²¹

On the other hand, Law on Agricultural Cooperatives defines the membership possibilities in a different manner.²² According to the last, the member of the agricultural cooperative can be a shareholder²³ and the associate member. The shareholder can be Georgian citizen above 18 and another agricultural cooperative²⁴, while other legal entities (Georgian or foreign) and foreign citizens above 18 can be only associate members.²⁵

The main difference between the shareholder/member and the associate member is the voting rights. Shareholder/member gets the right to vote on general meeting and take the part in the decision-making process, while the associate member has only a deliberate vote, meaning that they can express their idea, but their position will not be considered while voting.²⁶ Another difference is the possibility to receive back the associate members' belonged share from the agricultural cooperative in the event of the liquidation or reorganization and after covering the liabilities of the agricultural cooperative, and receive a dividend under the procedure defined by this Law and the contract signed with the agricultural cooperative, before the distribution of the remained property between the shareholders of the agricultural cooperative.²⁷

Agency checks: Whether the agricultural cooperative carries out the agricultural activities provided for by the Law of Georgia on the Agricultural Cooperative; Whether the minimum of the members of the agricultural cooperative is established by the legislation of Georgia; Whether the agricultural cooperative is being liquidated or insolvency proceedings are underway. (translation of author). See the original. <<http://cooperatives.rda.gov.ge/monitoring>> [Last accessed: 9 September, 2022]

19 Law of Georgia on Entrepreneurs. Article 227. <<https://matsne.gov.ge/ka/document/view/5230186?impose=translateEn&publication=0>> [Last accessed: 9 September, 2022]

20 Law of Georgia on Entrepreneurs. Article 232. <<https://matsne.gov.ge/ka/document/view/5230186?impose=translateEn&publication=0>> [Last accessed: 9 September, 2022]

21 Jugeli G, Giguashvili G. (09.02.2021). Definitions of the project of the Law of Georgia on Entrepreneurs. GIZ. <http://lawlibrary.info/ge/books/GIZ-Draft-Law-on-Entrepreneurs_2021.pdf> [Last accessed: 9 September, 2022]

22 Law of Georgia on Entrepreneurs entered into the force in January of 2022 and was a subject of major changes, while the Law of Georgia on Agricultural Cooperatives remained the same.

23 Shareholder in Georgian is “მეპაიე” (mepaie) which means the holder of „პაი“ (pai) – share, but differs from the share in other companies such in LLC.

24 The physical persons and cooperatives can be the members of the same cooperative and this still be the cooperative of the first tier.

25 Law of Georgia on Agricultural Cooperatives, Article 11. <<https://matsne.gov.ge/ka/document/view/1972742?impose=translateEn&publication=3>> [Last accessed: 9 September, 2022]

26 Law of Georgia on Agricultural Cooperatives, subparagraph “a”, paragraph 3, Article 132. <<https://matsne.gov.ge/ka/document/view/1972742?impose=translateEn&publication=3>> [Last accessed: 9 September, 2022]

27 Law of Georgia on Agricultural Cooperatives subparagraph “b”, paragraph 3, Article 132. <<https://matsne.gov.ge/ka/document/view/1972742?impose=translateEn&publication=3>> [Last accessed: 9 September, 2022]

In other aspects, members and associate members share the same rights. They both can be elected as members of the administrative organ or supervisory board²⁸ of the cooperative or receive information about activities of the cooperative²⁹.

Neither Law on Entrepreneurs, nor the definitions of the project of the Law of Georgia on Entrepreneurs³⁰ explain the notion of the investor member. The answer about who is the investor members can be found in the legal doctrine.

A recent solution, which legislatures are increasingly adopting, is the possibility to admit to cooperative membership investor members, namely, members who do not make use of the cooperative enterprise (so that they are not user-members), but enter the cooperative for other reasons, notably to obtain a return on capital... In order for a cooperative to raise capital through investor members' subscriptions, investor members are usually granted a preferred status as regards the distribution of profits (profit distribution constraints do not apply to them or apply only to a limited extent) and the devolution of residual assets.³¹

The doctrinal answer to the definition of the investor member and the definition of the associate member³² of the Law on Agricultural Cooperatives gives the possibility to assume that the associate

member is the investor member. At this level, there is a need to consolidate these two regulating documents.

Still, they are the carriers of the exact same financial character, it must be mentioned that the law on entrepreneurs limits the voting right of the investor members up 25% of total votes, while the Law on Agricultural Cooperatives does not consider voting right at all for the associate members.

Not only associate member and investor members need to be unified on the level of the terminology. In the Georgian version of the Law on Agricultural Cooperatives, the law needs consolidation of the terms. In some articles, the term shareholder is used³³ and in some cases the term member.

Another inconsistency between Law on Entrepreneurs and Law on Agricultural Cooperatives is the minimum number of cooperative members. According to the new law on Entrepreneurs the minimum number of members is five, while in the Law on Agricultural Cooperatives minimum number of members in order to establish the cooperative is 9 in general, and as an exception 3 in mountainous areas³⁴. In this case, the law on Agricultural Cooperatives needs to augment the number of members up to 5 in the mountainous areas, as in the Law on Entrepreneurs exemptions are not envisaged.

Transactions with the non-members are not opted out of the Georgian regulations. There is no word about this matter in the law on Entrepreneurs, however, the Law on Agricultural Cooperatives defines that a cooperative is not entitled to render the service or buy goods the amount of which exceeds the 50% of the annual turnover of the agricultural cooperative.³⁵

28 [on=3](https://matsne.gov.ge/ka/document/view/1972742?impose=translateEn&publication=3) [Last accessed: 9 September, 2022] subparagraph "a", paragraph 3, Article 132. <<https://matsne.gov.ge/ka/document/view/1972742?impose=translateEn&publication=3>> [Last accessed: 9 September, 2022]

29 Law of Georgia on Agricultural Cooperatives subparagraph "c", paragraph 3, Article 132. <<https://matsne.gov.ge/ka/document/view/1972742?impose=translateEn&publication=3>> [Last accessed: 9 September, 2022]

30 The project of the law was voted and now it's an existing law on entrepreneurs.

31 Fici A. (2013). "An introduction to Cooperative Law" in Cracogna D. Fici A., Henry H (editors). International Handbook of Cooperative Law (2013) Germany, Springer.

32 Law of Georgia on Agricultural Cooperatives, Article 11, paragraph 4: An associated member of the agricultural cooperative may be a physical person (including citizens of foreign countries) having attained the age of 18 and/or a legal person (including a legal person registered abroad), which agrees with the principles of activities of this cooperative, which may not be engaged in the activities of this cooperative and which made a contribution of associate member in accordance with this law and charter of agricultural cooperative. <<https://matsne.gov.ge/ka/document/view/1972742?impose=translateEn&publication=3>> [Last accessed: 9 September, 2022]

33 See 23.

34 Law of Georgia on Agricultural Cooperatives, Article 11, paragraph 3: The number of members of an agricultural cooperative in settlements to which the Law of Georgia on the Development of High Mountain Regions applies shall not be less than 3, and in the rest of Georgian territory – less than 5. <<https://matsne.gov.ge/ka/document/view/1972742?impose=translateEn&publication=3>> [Last accessed: 9 September, 2022]

35 Law of Georgia on Agricultural Cooperatives, Article 134: 1. The total cost of agricultural products purchased and/or services rendered for an agricultural cooperative during the current reporting year by those persons who are not shareholders, shall not exceed 50% of annual circulation of goods of the agricultural cooperative. 2. The limitation provided for by the first paragraph of this article shall not apply to the industrial and

The Law on Agricultural Cooperatives does not speak about the consequences if the provisions of Article 13⁴ are breached. However, the agricultural cooperative could be deprived of the status of agricultural in case of inconsistency with the Law on Agricultural Cooperatives, meaning that the results of the monitoring can be negative. Being deprived of the status means that members of the agricultural cooperative and the agricultural cooperative itself will not be able to enjoy different perks deriving from the above-mentioned status.

Similar regulations regarding transactions with non-members can be found in Scandinavian countries, for example, In Norway, Sweden and Denmark, the question of trade with non-members depends upon the legal definition of a cooperative, more precisely on the requirement of promotion of member interests. All legislations accept transactions with non-members without fixing a specific limit. According to Norwegian and Swedish law, society does not qualify as a cooperative if the major part of its business is with non-members. The dominant view of Danish law is that there is no limit to such transactions, but that substantial transactions with non-members might be disadvantageous from a tax perspective.³⁶

Limitations of transactions with the non-members are justified, especially in the cooperatives with a small number of members. In some cases, especially in countries with scarce land resources, where cooperatives are the only device for people to produce, create some goods or receive services only reunited and they should have the chance to enjoy each and every opportunity that cooperation can offer. Otherwise, if cooperative works with non-members, it becomes mostly like a for-profit organization which is created under the cooperative veil, in order to have tax exemptions or some type of assistance from different authorities.

technological processes and the planting and Seeding materials necessary for the reproduction, and to products necessary for animal nutrition and propagation. <<https://matsne.gov.ge/ka/document/view/1972742?impose=translateEn&publication=3>> [Last accessed: 9 September, 2022]

36 Fjørtoft T, Gjems-Onstad O. "Chapter 26, Norway and Scandinavian Countries" in Cracogna D. Fici A., Henry H (editors). International Handbook of Cooperative Law (2013) Germany, Springer.

4. GOVERNANCE OF THE AGRICULTURAL COOPERATIVE

Effective management of the cooperative is achieved through the division of competencies between the governing bodies and the achievement of interdependence and balance between them as a result of this division.³⁷

Agricultural cooperatives in Georgia are created with the same spirit as in the most of the European countries, meaning that its purpose is to work for its members and with its members and be independent and governed by the members.

The Georgian Law on Agricultural Cooperatives provides the principles of the activities of the agricultural cooperatives, which are consistent with the Principles of the ICA.³⁸ The second of them is democratic governance.

One of the main characteristics of large cooperatives is the large number of members. An increase in the number of decision-makers proportionally increases the transaction costs incurred in the decision-making process. In order to save such costs, it is necessary to create a separate, relatively flexible and highly efficient governing body that will oversee the activities of the cooperative's governing body. In other, relatively small, cooperatives, the formation of such a body may be associated with additional, disproportionate costs.³⁹

The Georgian model of cooperative governance is simple. The Law on entrepreneurs offers two types of management monistic and dualistic. Consequently – monistic is cooperative with only

37 Jugeli G, Giguashvili G. (09.02.2021). Definitions of the project of the Law of Georgia on Entrepreneurs. GIZ. <http://lawlibrary.info/ge/books/GIZ_-_Draft-Law-on-Entrepreneurs_2021.pdf> [Last accessed: 9 September, 2022]

38 Law on Agricultural Cooperatives cites only 4 of the 7 principles of ICA: Voluntary and Open Membership, Democratic Member Control, Member Economic Participation, Concern for Community. However, the law addresses these principles with the following wording: voluntary membership, democratic management, economic participation of members (shareholders) of agricultural cooperatives, social responsibility, fairness and mutual assistance.

39 Jugeli G, Giguashvili G. (09.02.2021). Definitions of the project of the Law of Georgia on Entrepreneurs. GIZ. <http://lawlibrary.info/ge/books/GIZ_-_Draft-Law-on-Entrepreneurs_2021.pdf> [Last accessed: 9 September, 2022]

one organ of the management and in the dualistic model exists one management body and the supervisory board. The Law on Entrepreneurs stipulates that if the charter of the cooperative remains silent on the choice of governance, it is considered that the cooperative has a dualistic model of governance.

The Law on Agricultural Cooperatives does not have any provision regarding governance, meaning that the only source on cooperative governance is the Law on Entrepreneurs.

Notwithstanding that Law on Agricultural Cooperatives does not speak about the governance of the cooperatives, it mirrors one of the ground rules – “one member one vote”.⁴⁰ This rule is particularly for the agricultural cooperatives and is the second principle of ICA – Democratic Member Control.⁴¹ This fundamental rule is depicted in every charter of the agricultural cooperative and each agricultural cooperative and its members follow this rule.

Agricultural cooperatives are unions of persons gathered to undertake common activities, which contribute to their individual interests. In the agricultural cooperative, the number of members can be hundreds and the interest of each of them must be considered and the voice of every member must be heard. For these purposes, each member, not considering their economical engagement or the size of their contributions, are having equal voting rights, in order to maintain the balance in the decision-making.

5. CAPITAL OF THE AGRICULTURAL COOPERATIVE

As other issues, capital matters are regulated by the Law on Entrepreneurs. The law on Entrepreneurs states that the cooperative may have

subscribed capital⁴². The notion of the subscribed capital is the new notion in the Law on Entrepreneurs. The placed capital is called Equivalent to authorized capital (statutory capital, legal capital, charter capital, subscribed capital). The main function of invested capital in establishing capital-type societies is to equip the community with start-up capital, which, even if minimally, is a kind of limited liability filler, balancing.⁴³

The existence of subscribed capital, or as the creators of the new Law on Entrepreneurs the equivalent of the statutory capital, is not mandatory in the case of different types of cooperatives. While this rule applies to the eight other cooperatives, in the case of agricultural cooperatives member contributions on the level of establishment is mandatory, as it is requested in order to obtain agricultural status.⁴⁴

Despite the fact that no one calls it a statutory or subscribed capital, during registration, founder members of the cooperatives must make monetary contributions of a minimum of 300 Gel⁴⁵.

The contribution of 300 Gel was introduced in December of 2019⁴⁶ and evoked debate on its nature, which are active even today.

Before the introduction of the existing version of share⁴⁷ the Law on Agricultural Cooperatives

40 Law on Agricultural Cooperatives, paragraph g) article 3: democratic management – equal opportunity for members of an agricultural cooperative to manage and control the cooperative’s activity, for which each member of the cooperative has one vote on the general meeting <<https://matsne.gov.ge/ka/document/view/1972742?impose=translateEn&publication=3>> [Last accessed: 9 September, 2022]

41 International Cooperative Alliance. “Cooperative identity, values & principles”. <<https://www.ica.coop/en/cooperatives/cooperative-identity>> [Last accessed: 9 September, 2022]

42 Article 228, paragraph 1: The subscribed capital of a cooperative may be determined by its statute. <<https://matsne.gov.ge/ka/document/view/5230186?impose=translateEn&publication=0>> [Last accessed: 9 September, 2022]

43 Jugeli G, Giguashvili G. (09.02.2021). Definitions of the project of the Law of Georgia on Entrepreneurs. GIZ. <http://lawlibrary.info/ge/books/GIZ_-_Draft-Law-on-Entrepreneurs_2021.pdf> [Last accessed: 9 September, 2022]

44 Law on Agricultural Cooperatives, subparagraph “d”, paragraph 2, article 7: the application must include following documents: the document proving the payment of the shares (pai). (translation of author). Inconsistent translation. See the original version: <<https://matsne.gov.ge/ka/document/view/1972742?impose=original&publication=9>> [Last accessed: 9 September, 2022]

45 Georgian Lari – national currency of Georgia – <<https://nbg.gov.ge/en/georgian-money/georgian-lari>> [Last accessed: 9 September, 2022]

46 Law of Georgia on making changes in the Law of Georgia on Agricultural Cooperatives. Date of adoption of the law – 11.12.2019. <<https://matsne.gov.ge/ka/document/view/4717765?publication=0>> [Last accessed: 9 September, 2022]

47 Law on Agricultural Cooperatives, paragraph e1 article 3: share– yearly compulsory contribution of a member of an agricultural cooperative in share fund, not less than 300 GEL, for his/her economical participation in agricultural

defined it without mentioning any amount. The paragraph e¹ of 3rd Article stated that share is the contribution made in the shares fund, additional share contribution and contribution of the associate member⁴⁸.

The above-mentioned perspective of the Law on Agricultural Cooperatives is very concrete, when the Law on Entrepreneurs does not provide a definition of the shares in the cooperatives. In spite of this, it defines rules for the alienation of shares and possibilities of existing different categories of the shares. "*Pai (share) is the obligation of the member of the cooperative to pay the prescribed contribution in accordance with the law and the charter. Also, a share gives rise to consequential rights in a cooperative*".⁴⁹

The most important and interesting phenomenon regarding the compulsory contribution of 300 GEL is that the contribution is yearly.

Here is the question what is the perception of the article from the different sides?

When reading the law, we clearly see the wording "*yearly compulsory contribution of a member of an agricultural cooperative in share fund, not less than 300 GEL, for his/her economical participation in the agricultural cooperative, which gives him/her possibility to participate in activities of this cooperative, receive a dividend from incomes of this agricultural cooperative and gives him/her right to vote on general meetings*".

The word-to-word interpretation and the first perception is that the compulsory monetary contribution is made to the share fund, in order to become a member and have the possibility to work with a cooperative. And in effect, what is written is read. There is no sense behind and the formulation does not create ambiguity. However,

er, from another point of view, the simple definition from the first sight bears a totally different meaning and the 300 GEL contribution is not the money given from the member every year to the cooperative, rather a member must engage with the cooperative in the agricultural activities and the value of these activities must be at least worth of 300 GEL. This notion is not read in the definition of share.

In addition, if we recall the older version of the share in the law on Agricultural Cooperatives⁵⁰, it is defined as the contribution made in the share fund. Everything leads to the textual interpretation, that the share is a monetary contribution and not the economic activities or engagements of the member.

The definition of minimum share contribution in the amount of 300 GEL has its explanation, that members should work with the cooperative and create goods or services, rather than just have the agricultural status and profit from it, in the form of governmental or international grants. This is rightful to demand from persons to create a cooperative for real work and not create imposter organizations for narrow personal needs.

However, if one wishes to control the existing situation and establish a fair environment for agricultural cooperatives, the definition needs to change. Shares shall be described as monetary contributions and a new article regarding the minimum engagement of the member in the cooperative must be created. The economical engagement of the member with the cooperative must be defined and shall embrace every possible activity and its minimum amount, while share needs to be defined in its own context and not be hybrid as it is in the existing version of the law.

The clarity is needed, not only for the formal appearance of the law but for its users such as members of the cooperative, their contractors, lawyers and everyone interested in the subject.

The ambiguity in the law today, which may seem unimportant, tomorrow is able to create a discussion in the court or argument among the members or managers of the cooperatives.

cooperative, which gives him/her possibility to participate in activities of this cooperative, receive a dividend from incomes of this agricultural cooperative and gives him/her right to vote on general meetings. <<https://matsne.gov.ge/ka/document/view/1972742?impose=translateE&publication=3>> [Last accessed: 9 September, 2022]

48 Law of Georgia Regarding making changes to the Georgia Law "On Agricultural Cooperatives". <<https://matsne.gov.ge/ka/document/view/3056436?publication0>> [Last accessed: 9 September, 2022]

49 Jugeli G, Giguashvili G. (09.02.2021). Definitions of the project of the Law of Georgia on Entrepreneurs. GIZ. <http://lawlibrary.info/ge/books/GIZ_-_Draft-Law-on-Entrepreneurs_2021.pdf> [Last accessed: 9 September, 2022]

50 See 48.

6. TAX REGULATIONS FOR THE AGRICULTURAL COOPERATIVES

The Tax code of Georgia envisages several tax exemptions for the agricultural cooperatives and its members. Additionally, there are some regulations for the agricultural activities⁵¹.

According to the subparagraph “K” of paragraph 1 of article 82 of the Tax Code of Georgia states that the taxable income earned from the primary supply of agricultural products produced in Georgia by a natural person engaged in agricultural production until 1 January 2023 if the gross income earned by the natural person from such supply during the calendar year does not exceed GEL 200 000 is exempt from income tax.⁵²

In addition, it is necessary to note that Tax Code of Georgia frees persons from paying profit tax if profit is earned by an agricultural cooperative from a primary supply of agricultural products made in Georgia before their industrial processing (changing their commodity code) before 1 January 2023 or distribution of profit, and expenses incurred/disbursements made within the scope of the same activity that are provided for in Article 97(1) (b-d) of this Code.⁵³

The second paragraph of the second article of the Law of Georgia on Grants states that Funds issued for the achievement of entrepreneurial goals shall not be considered a grant, except for funds issued to a legal entity that has been granted the status of an agricultural cooperative in accordance with the Law of Georgia "On Agricultural Cooperatives", and funds issued for the achievement of political goals.⁵⁴ The amount of money given to the agricultural cooperative by any person, natural or legal, local or foreign is considered as a grant and consequently is not levied by taxes such as income profit tax⁵⁵, VAT exemption on import⁵⁶, refund of VAT⁵⁷ and is free from import duty⁵⁸.

51 According to subparagraph “t” of paragraph 4 of article 172 of the Tax Code of Georgia, the supply of agricultural products, produced in Georgia before their industrial processing (change of commodity code) shall be exempt from VAT with the right of deduction.

Subparagraph “u” of paragraph 4 of article 172 of the Tax Code of Georgia defines that the supply of cheese made as a result of industrial processing of products obtained from animals living in Georgia shall be exempt from VAT with the right of deduction.

According to the Tax Code of Georgia, particularly Article 197, the commodity code changes if the amount of packaged milk does not exceed 2 litres. It means that the milk that is packed in the big vessels (more than 2 litres) does not change the commodity code and stays as a primary product. If we remember the subparagraph “t” of paragraph 4 of article 172 of the Tax Code of Georgia and analyze it in the frame of article 197, this leads us to conclude that the milk, that is packaged in the original packing the size of which exceeds 2 liters is free from VAT <<https://matsne.gov.ge/ka/document/view/1043717?impose=translateEn&publication=175>> [Last accessed: 9 September, 2022]

52 Law of Georgia, Tax Code of Georgia. Article 82. <<https://matsne.gov.ge/ka/document/view/1043717?impose=translateEn&publication=175>> [Last accessed: 9 September, 2022]

53 Tax Code of Georgia, subparagraph “f”, paragraph 1,

article 99. <<https://matsne.gov.ge/ka/document/view/1043717?impose=translateEn&publication=175>> [Last accessed: 9 September, 2022]

54 Law of Georgia on Grants, <<https://matsne.gov.ge/ka/document/view/31510?impose=original&publication=30>> [Last accessed: 9 September, 2022]

55 Tax Code of Georgia, subparagraph “a”, paragraph 2, article 97 – Object of profit taxation The object of profit taxation of a resident enterprise (except for cases under paragraphs 2, 8 and 9 of this article) shall be the costs incurred, or other payments not connected with economic activities and/or which are not related to the objective of the organisation’s activities (including those not connected with charity activities or not related to the objective of a grant agreement) <<https://matsne.gov.ge/ka/document/view/1043717?impose=translateEn&publication=175>> [Last accessed: 9 September, 2022]

56 Tax Code of Georgia, paragraph “z1”, article 173, The following shall be VAT exempt: the import of goods provided for under a grant agreement by a grantor or a grantee <<https://matsne.gov.ge/ka/document/view/1043717?impose=translateEn&publication=175>> [Last accessed: 9 September, 2022]

57 Tax Code of Georgia, paragraph 2, article 181, a grant recipient, who has purchased goods and/or services within a grant agreement, shall be entitled to a deduction or a refund of the VAT paid for the goods/services, on the basis of a tax invoice or, in the case of reverse charge, of a document evidencing payment of the VAT to the budget filed with a tax authority <<https://matsne.gov.ge/ka/document/view/1043717?impose=translateEn&publication=175>> [Last accessed: 9 September, 2022]

58 Tax Code of Georgia, paragraph “c” Article 199, The following shall be exempt from import duty: import of goods financed with grants or with a concessional loan granted by the state authority of a foreign country and/or an international organisation, of which at least 25% accounts for a grant element. The Ministry of Finance of Georgia shall calculate the grant element in accordance with a resolution of the Parliament of Georgia <<https://matsne.gov.ge/ka/document/view/1043717?impose=translateEn&publication=175>> [Last accessed: 9 September, 2022]

The tax regulations on agricultural cooperatives are very beneficial for the cooperative as for the entity and in addition for the members of the cooperative as physical persons. Tax alleviations serve to promote agricultural activities among Georgian residents, who wish to engage in agricultural activities. This approach from the government encourages small and medium scales farmers and cooperatives to do their best and gain more profit.

It is clear that Georgian regulations on agricultural cooperatives more than often are in con-

formity with the best practice of regulations and international principles. Hence there are particularities such as mandatory contribution as a share, which will be addressed I believe. In general, in Georgia, agricultural cooperatives profit from their status in terms of tax exemptions. Many international or national organizations support cooperatives, not only financially but in terms of education and knowledge on the vast variety of agricultural matters. Cooperatives are continuing to develop so will do the regulations.

BIBLIOGRAPHY:

1. Hagen H., (2012), Guidelines for Cooperative Legislation, the third revised edition, International Labour Office. <https://www.ilo.org/wcms-sp5/groups/public/---ed_emp/---emp_ent/documents/publication/wcms_195533.pdf> (in English)
2. Jugeli G, Giguashvili G. (09.02.2021). Definitions of the project of the Law of Georgia on Entrepreneurs. GIZ, <http://lawlibrary.info/ge/books/GIZ_Draft-Law-on-Entrepreneurs_2021.pdf> (in Georgian)
3. § 2 Haftung für Verbindlichkeiten Für die Verbindlichkeiten der Genossenschaft haftet den Gläubigern nur das Vermögen der Genossenschaft. <<http://extwprlegs1.fao.org/docs/pdf/ger158133.pdf>> (in German)
4. Evaluation of ENPARD Programme in Georgia, Submission Date 21/01/2021. SOGEROM SA consortium, EuroPlus Consulting & Management, SOGEROM SA, Applus+. (in English)
5. Fici A. (2013). "An introduction to Cooperative Law" in Cracogna D. Fici A., Henry H (editors). International Handbook of Cooperative Law (2013) Germany, Springer. (in English)
6. Fjørtoft T, Gjems-Onstad O. "Chapter 26, Norway and Scandinavian Countries" in Cracogna D. Fici A., Henry H (editors). International Handbook of Cooperative Law (2013) Germany, Springer. (in English)
7. How to Regulate Cooperatives in the EU? A Theory of Path Dependency Ger J.H. van der Sangen, DQ December 2014 | No. 4. (in English)
8. The Essential Role of Cooperative Law, Antonio Fici, DQ December 2014 | No. 4. (in English)
9. Transnationalization of Agricultural Cooperatives in Europe, Jos Bijman, Perttu Pyykkönen & Petri Ollila, DQ December 2014 | No. 4. (in English)
10. Serbian Agricultural Cooperatives and their path towards the European Union – Legal Aspects, Gordana Ljubojević1, Nina Maksimović Sekulić2, Economics of Agriculture, Year 68, No. 1, 2021, (pp. 173-190), Belgrade. (in English)
11. The Law of Georgia on Agricultural Cooperatives. <<https://matsne.gov.ge/ka/document/view/1972742?impose=original&publication=9>> (in Georgian)
12. The Law of Georgia on Agricultural Cooperatives. <<https://matsne.gov.ge/ka/document/view/1972742?impose=translateEn&publication=3>> (in English)
13. The Law of Georgia on Entrepreneurs. <<https://matsne.gov.ge/ka/document/view/5230186?impose=original&publication=0>> (in Georgian)
14. The Law of Georgia on Entrepreneurs. <<https://matsne.gov.ge/ka/document/view/5230186?impose=translateEn&publication=0>> (in English)
15. The Tax Code of Georgia. <<https://matsne.gov.ge/ka/document/view/1043717?impose=original&publication=185>> (in Georgian)
16. The Tax Code of Georgia. <<https://matsne.gov.ge/ka/document/view/1043717?impose=translateEn&publication=175>> (in English)
17. The Law of Georgia on Grants. <<https://matsne.gov.ge/ka/document/view/31510?publication=30>> (in Georgian)