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# Report

## on the assessment of potential legal solution for the registration and operation of LEADER Local Action Groups (LAGs) in Moldova

EU financed SARD Programme  
implemented by UNDP

May, 2017

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## Foreword

This report will present the meaning of Local Action Groups, analyze the best practices of implementation of the EU LEADER Programme in EU Member States and non-EU countries, will review the current Moldovan legislative framework and will assess the main impediments related to the operation and registration of LAGs in Moldova, will present conclusions and recommendations in forms of scenarios to accomplish successful operation and future registration of Local Action Groups in Moldova.

## I. The Meaning of Local Action Groups

Local Action Groups (hereinafter LAGs) are vehicles employed by the Member States to ensure effective implementation of the EU LEADER Programme, which is part of the Common Agricultural Policy and is devoted to local and rural development. The EU regulates at EU level the responsibilities of the Member States in implementing the LEADER Programme at national level, including it sets the minimum requirements with respect to the form, composition, decision making and responsibilities of these structures.<sup>1</sup>

The EU Regulation 1303/2013 provides for two options of activity for LAGs:

- a) Entity with legal personality registered in accordance with the national legislation of the Member States, which is founded/has members which are local public authorities, private business and civil society
- b) Entity without a legal personality, with the participation of local public authorities, private business and civil society, with one of the members of the LAG taking the functions of the accountable body on administrative and financial matters with respect to the managing authority (usually it is the Ministry of Agriculture and Rural Development)

The EU Regulation also envisages that the LAGs are public-private partnerships, which do not pursue a profit aim, thus, the options of registration of a LAG are confined to the ones which do not have a profit scope.

Thus, the key features with respect to LAGs is that:

- a) the initiative of local development comes from the local level;
- b) it is a result of coordinated position from the representatives of the public authorities and the local partners which are not public authorities;
- c) there is a non-discriminatory and transparent selection procedure and objective criteria for the selection of operations, which avoids conflicts of interest and where at least 50% of the votes are cast by the non-public partners<sup>2</sup>;
- d) there is either one partner within the LAGs as lead partner in administrative and financial matters in the relation with the managing authority/authorities or as a common structure legally constituted which represents all partners<sup>3</sup>;
- e) the LAGs represent the interests of the local communities and are responsible for the design and implementation of the local development strategies<sup>4</sup>;
- f) the LAGs take on board the responsibilities of:

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<sup>1</sup> "Regulation 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006" offers a detailed list of provisions with respect to the role and functions of the LAGs.

<sup>2</sup> Article 34 para. (3) letter b) of the Regulation 1303/2013

<sup>3</sup> Article 34 para. (2) of the Regulation 1303/2013

<sup>4</sup> Paragraph 31 of the Preamble of the Regulation 1303/2013, article 34 para. (1) of the Regulation 1303/2013

- a. coherence when selecting operations with the priorities of the objectives and targets of the local development strategies,
- b. preparation and publication of the calls for proposals, including definition of selection criteria,
- c. receipt and assessment of applications,
- d. Selection of operations and establishment of the amount of support,
- e. Monitor the implementation of the strategy and of the operations, as well as evaluation of activities linked to the strategy.<sup>5</sup>

Thus, two possible scenarios will be reviewed from the legal point of view – registration of a legal entity with the participation of all partners active within a particular LAG; and – transferal of the administrative and financial matters, particularly with regard to the managing authority to one leading partner which holds legal personality within a particular LAG.

Below we shall briefly assess the experience of selected new EU Member States in adjusting their legal frameworks to allow registration of LAGs as legal entities with the participation of local municipalities, the local business and the local NGOs and interim practices used by the EU Member States until relevant legislation was amended, as well as the current legislative framework of Moldova and the available options as of today.

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<sup>5</sup> Article 34 para. (3) letters c)-g) of the Regulation 1303/2013

## II. Experience of EU Member States in setting up the legal framework for registration of LAGs

### 1. Romania

#### Start of the EU LEADER Programme in Romania

The EU LEADER Programme in Romania started to be implemented during the 2007-2013 programming period. The first LAGs were established in Romania in 2011. This was also the year when the EU LEADER Programme in Romania started the selection process of LAGs. The Ministry of Agriculture and Rural Development acted as the managing authority. The LAGs were registered as NGOs from the beginning and no additional legislative amendments were necessary for local public authorities to act as founders and/or members of NGOs for the particular case of LAGs.

Additional It is needed to select an accountable entity for LAGs to benefit from the EU LEADER Programme in Romania were developed during the 2007-2013 programming period.

#### Current legal framework

Currently, the key Romanian legal framework relevant to the registration of LAGs is comprised of:

- a) The Government Ordinance no. 26 from 30 January 2000 on associations and foundations<sup>6</sup>
- b) Law of the Romanian Parliament no. 246 from 18 June 2005 on the approval of the Government Ordinance no. 26 from 30 January 2000 on associations and foundations<sup>7</sup>
- c) Law of the Romanian Parliament no. 215 from 23 April 2001 on local public administration<sup>8</sup>

Article 1 (1) of the Government Ordinance no. 26 from 30 January 2000 provides that “physical and legal entities who aim at delivering activities of general interest or for certain collectivities’ interests, or if applicable, in their personal non-profit interest may create associations or foundations as provided by the present Ordinance.

This provision allows ALL physical and legal entities the option of creation of association or foundations as non-profit organisations in Romania.

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<sup>6</sup> Government Ordinance no. 26 from 30 January 2000 on associations and foundations, accessible at: <http://legislatie.just.ro/Public/DetaliuDocument/20740>, updated as of 4 April 2016

<sup>7</sup> Law of the Romanian Parliament no. 246 from 18 June 2005 on the approval of the Government Ordinance no. 26 from 30 January 2000 on associations and foundations, available at: <http://legislatie.just.ro/Public/DetaliuDocumentAfis/63457>

<sup>8</sup> Law of the Romanian Parliament no. 215 from 23 April 2001 on local public administration, accessible at: <http://legislatie.just.ro/Public/DetaliuDocument/28009>, updated as of 30 June 2016

Additionally, the Law no. 215 from 23 April 2001 on local public administration does not restrict the local public authorities to participate in foundation of associations and foundations, as provided by the Government Ordinance no. 26 from 30 January 2000. Moreover, articles 14 and 17 of the Law no. 215 from 23 April 2001 on local public administration encourages participation of local public administration in implementation of regional and local development, including in delivery of local public interest services.

The District Courts are responsible for the registration of the associations and foundations in the Public Registry of non-profit organisations.<sup>9</sup>

The LAGs registered under Romanian legislation are considered non-profit public-private partnerships. This may be extracted from a number of samples of Statutes of LAGs registered in Romania.<sup>10</sup>

The Romanian legal framework also allows the use of the second option of formalisation of LAGs, using the general provisions of the Civil Code – conclusion of the agreement of association with participation.<sup>11</sup> This form of agreement may be further subject to the terms and conditions of compliance which the management authority should draft when implementing LAGs directed funding for local development.

## Summary of findings for Romania

As we can see from the data presented above, in the case of Romania, no legislative amendments were necessary to allow the formation of LAGs as NGOs. The Romanian framework was sufficient to allow the creation of LAGs as legal entities. This was possible because of the permissive legal framework for local public authorities to found and be members in NGOs.

Romania did take actions to adjust its normative framework to ensure the proper implementation of the EU LEADER Programme and the first steps were taken in 2007. The activities were related to the appointment of the management body, approval of technical regulations for LAGs to be eligible for the EU LEADER funding, including for the review of appeals of the decisions on approval/non-approval of projects.

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<sup>9</sup> Article 7 of the Government Ordinance no. 26 from 30 January 2000 on associations and foundations

<sup>10</sup> See for example the Statute of the Giurgiu G10 LAG, available at: <http://www.g10.ro/wp-content/uploads/2012/04/STATUTUL-ASOCIA%C5%A2IEI.pdf>

<sup>11</sup> Articles 1949-1954 of the Civil Code of Romania, accessible at: <http://legislatie.just.ro/Public/DetaliuDocument/130143>, updated until 4 July 2016

## 2. Estonia

### Start of the EU LEADER Programme in Estonia

At the beginning of 2006 Estonia approved the technical regulations which allowed the creation and further activity of LAGs. They were approved part of the Estonian Action Plan for 2004-2006 to adapt to structural funds. At that time, already 3 partnerships were created based on a pre-EU LEADER Programme financed by the UK for the three Baltic states. Those partnerships acted on the basis of a partnership agreement, without a commonly created legal person. After the approval of the technical regulations and the amendments to the local government organisation Act and the non-profit associations Act, LAGs were registered as NGOs, but with specific provisions in their statutes that they act as LAGs.

### Current legislative framework

The key Estonian legal framework with respect to the registration of LAGs is comprised of:

- a) The non-profit associations Act from 06.06.1996<sup>12</sup>
- b) The Local Government Organisation Act from 02.06.1993<sup>13</sup>

The Non-profit associations Act allows registration of associations by at least two founders, who may be either legal or physical entities.<sup>14</sup> The Local Government Organisation Act expressly prescribes the right of local governments to found and participate as members in non-profit associations, pursuant to the terms and conditions of the Local Government Financial Management Act<sup>15</sup>. It is up to the municipality to approve the particular local regulation of participation in private, including non-profit organisations, taking into account the terms and conditions of the Local Government Financial Management Act.<sup>16</sup> Some of the key restrictions applicable to persons who may not be members of the managing bodies of foundations or non-profit organisations where the municipality is a founder are:

- a) a person whose act or omission has led to a person's bankruptcy
- b) a person whose wrongful act or omission has led to the activity licence issued to a legal person being declared invalid;
- c) a person who is subjected to a prohibition on business;
- d) a person whose wrongful act or omission has caused damages to a legal person;
- e) a person who has been punished for an economic criminal offence, criminal official misconduct or a criminal offence against property;

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<sup>12</sup> The non-profit associations Act of Estonia, from 06.06.1996, accessible at: <https://www.riigiteataja.ee/en/eli/510042014003/consolide>, translation into English updated until 10.04.2014

<sup>13</sup> The Local Government Organisation Act, from 02.06.1993, accessible at: <https://www.riigiteataja.ee/en/eli/509012014003/consolide>, translation into English updated until 09.01.2014

<sup>14</sup> Article 5 of the Non-profit Associations Act of Estonia

<sup>15</sup> The Local Government Financial Management Act, from 16.09.2010, accessible at: <https://www.riigiteataja.ee/en/eli/523052014001/consolide>, translation into English updated until 23.05.2014

<sup>16</sup> Article 35 of the Local Government Organisation Act of Estonia

- f) a person who has significant business interests with the legal person in private law expressed, inter alia, in the possession of a significant holding in this legal person.<sup>17</sup>

Additionally, the non-profit associations Act specifically refers to the prohibition to act as members in management boards, including in non-profit associations, if a court decision was issued on his/her name banning membership in management boards or who has committed acts of abuse of office or fraud.

Currently the Estonian legal framework offers the LAGs the option of registration as non-profit associations, bearing in mind the fact the specific conditions mentioned above with respect to the founders and physical/legal entities as participants in the foundation/activity of LAGs, as well as compliance to the technical regulations related to the operation of the LAGs, including conditions to access funding.

### Summary of findings for Estonia

Estonia started the implementation of local partnerships before the EU LEADER Programme was available for the country. Initially, the legislative framework did not allow the creation of LAGs in the form of NGOs, so the partnership agreement option was used instead.

With the opening of the EU funds for Estonia, during 2004-2006 21 new LAGs were created based on the legal amendments and the technical regulations approved by Estonia to allow the absorption of structural funds.

Currently, the LAGs operate as NGOs, but with specific provisions in their statutes to allow compliance to the EU LEADER rules applicable to LAGs. The national technical regulations are the guiding rules in this respect. The previously created partnerships were also allowed to participate as LAGs and access funding.

## 3. Lithuania

### Start of the EU LEADER Programme in Lithuania

The first LAGs were created in Lithuania in 2003 and they acted as NGOs from the beginning. The legislation on local self-government did not prohibit local public authorities to be founders and members of NGOs.

When the EU LEADER Programme was launched in 2004 there were two legal acts relevant for the status of LAGs – the law on associations and the Law on public organisations. The Law on public organisations required these legal entities to be non-profit in their activity. This law however was repealed in 2004 and since then the Law on associations was the one applicable for LAGs as NGOs.

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<sup>17</sup> Article 35 para. (3<sup>1</sup>) of the Local Government Organisation Act of Estonia

Additional requirements for LAGs to access EU funding under the EU LEADER Programme were approved by the national managing authority. These relate to the statute and the rules of procedure of the NGOs who claim to have a LAG status.

### Current legislative framework

As of today, the key Lithuanian legal framework with respect to the registration of LAGs is comprised of:

- a) The Law on associations<sup>18</sup>
- b) The Law on local self-government<sup>19</sup>

The Law on associations provides for general permissive options of registration of associations, based on the intention of at least three persons, both legal and physical entities. There are no limitations as to the quality of legal entities, either of public or of private law.<sup>20</sup> The Law on local self-government does not have specific restrictions as to the foundation of associations by municipalities, as has numerous provisions with respect to the cooperation with non-profit organisations and associations generally.<sup>21</sup>

The Ministry of Justice, based on the Law on associations, offers templates of Statutes for potential founders of associations how to draft the main provisions of their Statutes.<sup>22</sup>

The Lithuanian legal framework treats LAGs as non-profit associations and does not prescribe for specific restrictions or special conditions for the founders of LAGs. The LPAs on the other hand have a rather permissive legislation to initiate cooperation, including as founders of non-profit associations who have as aim the ones identified with LAGs.

### Summary of findings for Lithuania

The Lithuanian experience shows that little legislative action was necessary for LAGs to register as NGOs, as local public authorities could participate as founders and members of NGOs. Supplementary technical regulations were approved by Lithuania to ensure that the NGOs who claim to act as LAGs comply with the purposes and aims of the EU LEADER Programme rules.

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<sup>18</sup> Law on associations of Lithuania, no. IX-1969 from 22 January 2004, accessible at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/066670f3168011e5bfc0854048a4e288?jfwid=-wd7z7nlfj>, with updates in English until 23.05.2015

<sup>19</sup> Law on local self-government of Lithuania, no. I-533 from 7 July 1994, accessible at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/c18a8ae0f55e11e3b62ec716086f051f?jfwid=5sjolgbam>, with updated in English until 15.05.2014

<sup>20</sup> Article 4 para. (1) of the Law on associations of Lithuania

<sup>21</sup> For example, article 4, para. (9), article 6, para. (12), article 20, para (3), p. 6) of the Law on local self-government of Lithuania

<sup>22</sup> The template may be accessed in Lithuanian at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.400857>

#### 4. Bulgaria

##### Start of the EU LEADER Programme in Bulgaria

The first LAGs started their activity in 2008. By 2011, around 136 LAGs passed the compliance and capacity building programme, which covered over 90% of the country's territory.

Bulgarian LAGs have always been established as legal entities in public interest (NGOs) under the Law on non-profit corporate bodies. However, to be recognizable as LEADER LAGs they have to meet additional criteria, as provided by the specific legislation mentioned below.

##### Current legislative framework

The key Bulgarian legal framework with respect to the registration of LAGs is the comprised of:

- a) The Law on non-profit corporate bodies<sup>23</sup>
- b) Law on local government and local administration<sup>24</sup>

The Law on non-profit corporate bodies sets the minimum requirements for the registration of a non-profit corporate entity, which is minimum 3 persons, without any restrictions on the quality of the founders, and of minimum 7 physical entities or 3 corporate entities, if the non-profit organisation delivers a socially useful activity (in other words has a public interest scope).<sup>25</sup> Additionally, the Law on local government and local administration excludes the minimum requirements provided for non-profit organisations having a public interest scope, if one of the founders is a municipality.<sup>26</sup> These provisions have been included by an amendment law from 2008. The non-profit organisation founded with the participation of municipalities has a public interest scope.

The Bulgarian legal framework allows the creation of LAGs as non-profit corporate bodies (associations) with the participation of LPAs. The Bulgarian legal framework sets from the beginning that the non-profit organisations founded by LPAs has a public interest scope and does not require an additional procedure of certification to hold this status.

There are several other legislation instruments, which the LAG has to meet in 2014-2020 before being recognized as eligible for managing EU funds under the Community-Led Local Development (CLLD):

- 1) The Law on management of EU Structural and Investment Funds from 2015

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<sup>23</sup> Law on non-profit corporate bodies, accessible at: <http://www.bcnl.org/en/articles/866-law-for-the-nonprofit-corporate-bodies-legal-entities.html>, last accessed on February 2, 2017

<sup>24</sup> Law on local government and local administration, accessible at: <http://www.bcnl.org/en/articles/902-law-for-the-local-government-and-the-local-administration.html>, last accessed on February 2, 2017

<sup>25</sup> Article 19 of the Law on non-profit corporate entities

<sup>26</sup> Article 61 para. (3) of the Law on local government and local administration

- 2) Ordinance 22/2015 of MAF stipulating additional requirements for LAGs constitution and operations
- 3) Council of Ministers Decision 161/2016 on CLLD coordination mechanisms among various participants – MAs of various ESIF programmes and LAGs
- 4) Council of Ministers Decision 162/2016 on detailed rules for extending financial support under the ESIF programmes (this is applicable by all LAGs benefiting from ESIF programmes other than the BGRDP 2014-2020)

#### Summary of findings on Bulgaria

The Bulgarian experience is that there were no legislative impediments in the creation of LAGs as NGOs, because the national law relevant at the time when the EU LEADER Programme became available in Bulgaria did not prohibit local public authorities from being founders of NGOs. However, to ensure the proper implementation of the EU Regulations, including specific requirements for LAGs, additional regulatory acts were approved, which target the ability of the LAGs to approve the local development strategies, implement them and manage funds. Additionally, if the NGOs are created with the participation of local municipalities, they must have a public interest scope in their statutes.

## 5. Poland

### Start of the EU LEADER Programme in Poland

Although formally the EU LEADER Programme was available for Poland starting its membership in 2004, Poland initiated its first LAGs starting with 2006, due to the need to establish the administrative procedures to implement the Programme. Until 2007, the legal form that the LAGs used were associations. The Law on associations did not prohibit local public authorities to act as founder and members of NGOs. With the approval of the law on rural development support, a special form of LAG was included in the Polish legislation.

### Current legislative framework

Currently, the key legislative acts of Poland which regulate the registration of LAGs are the following:

- a) The Law on associations<sup>27</sup>
- b) Law on support for rural development with the participation of the European Agricultural Fund for Rural Development (hereinafter the Law on rural development support)<sup>28</sup>

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<sup>27</sup> Law on associations no. 20 from 7 April 1989, consolidated version of the Law accessible in Polish at: <http://isap.sejm.gov.pl/Download?id=WDU19890200104&type=3>, last accessed February 6, 2017

<sup>28</sup> Law no. 64 from 7 March 2007 on support for rural development with the participation of the European Agricultural Fund for Rural Development, consolidated version of the Law accessible in Polish at: <http://isap.sejm.gov.pl/Download?id=WDU20070640427&type=3>, last accessed February 6, 2017

The two pieces of legislation regulate the general framework of registration and activity of associations, as non-profit organisations.

The special Law on rural development support was adopted only in 2007 as an implementing Act of the EU Regulation 1698/2005<sup>29</sup>, which was repealed by the EU Regulation 1305/2013<sup>30</sup>. With the approval of the latter, the Polish legislator offered specific provisions for the creation of LAGs, following the requirements of article 62 of the Regulation 1698/2005 and prescribed for the following conditions:

- a) LAGs are registered as associations and hold the general status of associations
- b) The founders of the LAGs are physical persons and legal entities, including local municipalities, with the exception of voievodships. Thus, counties and local municipalities may be founders of LAGs as non-profit associations;
- c) The activity of LAGs is supervised by the voievodships
- d) The LAGs may undertake economic activity which is directed at the implementation of the Local development strategies and is in line with the provisions of their statutes;
- e) Apart from the general bodies of the association, which are the general assembly, the executive and the censor or audit body, the LAGs must have a council entrusted exclusively with the decision to decide on the projects to be financed and selected under the local development strategy;
- f) The members of the Council are elected from the members of the General Assembly of the LAG, which cannot hold at the same time positions in the executive (board of directors) and in the audit body.<sup>31</sup>

Unlike the case of other EU jurisdictions analysed above, the Polish solution envisages a special Law which transposed and EU Regulation and which had specific provisions with respect to LAGs and their membership. This solution was particularly important to allow legal entities to be part of LAGs as a special form of association. Unlike general associations, the activity of which is regulated by the Law on associations from 1989, the special law allows the creation of LAGs as separate types of legal entities, particularly designed to absorb the EU funds available under local development component within the LEADER programme.

No specific provisions were inserted into the specific Law which regulate the activity of voievodships, counties and municipalities. There are separate legislative acts for each of the three levels of territorial-administrative organisation of Poland, which regulate their autonomy.

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<sup>29</sup> EU Regulation 1698/2005 from 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), accessible at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:277:0001:0040:EN:PDF>

<sup>30</sup> EU Regulation 1305/2013 from 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005, accessible at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:347:0487:0548:EN:PDF>

<sup>31</sup> Article 15 of the Law of Poland on rural development support

Later on, to cover the legislative gap which existed until 2007, the Polish Ministry of Agriculture offered incentives for LAGs registered as associations to re-register as a special legal form available under the 2007 law on support for rural development.

#### Summary of findings on Poland

The EU LEADER Programme in Poland started with the use of NGOs as the legal form for LAGs. Unlike the case of other EU jurisdictions, Poland approved a separate law transposing the provisions of the EU Regulation relevant for the EU LEADER Programme and created a separate legal form of LAG. The Ministry of Agriculture created additional incentives for NGOs previously registered as LAGs to re-register using the new available form.

## 6. Serbia

### Start of the EU LEADER Programme in Serbia

The first LAGs started operating in Serbia in 2007. All the LAGs took the form of NGOs only with respect to the accountable body, whilst the LAG itself was created based on the general legal provisions in the Civil Code of partnership agreements. No legislative amendments were made to the Serbian legal framework to accommodate the registration of LAGs as NGOs.

### Current legislative framework

The relevant legal framework in the case of Serbia for the purposes of our research are two laws:

1. Law on associations no. 51 from 2009<sup>32</sup>
2. Law on local public administration<sup>33</sup>

The Law on associations does not provide for any specific restrictions on the registration of associations with the participation of local public authorities. Article 10 of the Law on associations specifies that the founders may be physical or legal persons with legal capacity, there must be at least three persons as founders, out of which one should be resident.

The Law on local public administration provides for in article 20 a list of competences for local public administration, among which the competence to found organisations and institutions responsible for municipal services and education, culture and other local interest issues. The Law however does not stipulate an express competence of the local municipalities to found associations, or better found local action groups. Article 13 of the law allows the local public authorities to found professional associations. They however comprise LPAs only and are not open for other forms of legal or physical entities such as civil society and business.

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<sup>32</sup> Law on Associations of Serbia no. 51 from 2009, with amendments by law no. 99/2011, accessible at: [http://www.paragraf.rs/propisi/zakon\\_o\\_udruzenjima.html](http://www.paragraf.rs/propisi/zakon_o_udruzenjima.html)

<sup>33</sup> Law on local public administration of Serbia, no. 129 from 2007, with amendments by law no. 83/2014 and 101/2016, accessible at: [https://civilnodrustvo.gov.rs/upload/documents/zakoni/zakon\\_o\\_lokalnoj\\_samoupravi.pdf](https://civilnodrustvo.gov.rs/upload/documents/zakoni/zakon_o_lokalnoj_samoupravi.pdf)

The practical aspects of application of the EU Regulation 1303/2013 and of the national Serbian legislation proves that the Association of Local Action Groups from Serbia chose the second option available under article 34 of the EU Regulation 1303/2013, which allows the transfer of the competences to represent from the administrative and financial point of view the LAG to a local legal entity, with the condition of conclusion of a partnership agreement. These two instruments have been widely used to promote the EU LEADER Programme in Serbia based on the available IPARD funds to Serbia as a candidate country for EU Membership.

#### Summary of findings on Serbia

The Serbian case shows that the accountable body option is used to implement the EU LEADER Programme. Unlike the EU jurisdictions analysed above, the Serbian case is different from the funding perspective, as it allows less funding under IPARD. The funding agreement with the EU implies that Serbia will adopt technical regulations to monitor the activity of LAGs, including their statutes and mandates. As of today, the partnership agreement is used to scrutinize the compliance of the Serbian LAGs with the legal requirements pursuant to the EU Regulation 1303/2013.

#### Summary of findings

##### Romania

In the case of Romania, no legislative amendments were necessary to allow the formation of LAGs as NGOs. The Romanian framework was sufficient to allow the creation of LAGs as legal entities. This was possible because of the permissive legal framework for local public authorities to found and be members in NGOs.

Romania did take actions to adjust its normative framework to ensure the proper implementation of the EU LEADER Programme and the first steps were taken in 2007. The activities were related to the appointment of the management body, approval of technical regulations for LAGs to be eligible for the EU LEADER funding, including for the review of appeals of the decisions on approval/non-approval of projects.

##### Estonia

Estonia started the implementation of local partnerships before the EU LEADER Programme was available for the country. Initially, the legislative framework did not allow the creation of LAGs in the form of NGOs, so the partnership agreement option was used instead.

With the opening of the EU funds for Estonia, during 2004-2006 21 new LAGs were created based on the legal amendments and the technical regulations approved by Estonia to allow the absorption of structural funds.

Currently, the LAGs operate as NGOs, but with specific provisions in their statutes to allow compliance to the EU LEADER rules applicable to LAGs. The national technical regulations are the guiding rules in this respect. The previously created partnerships were also allowed to participate as LAGs and access funding.

## Lithuania

The Lithuanian experience shows that little legislative action was necessary for LAGs to register as NGOs, as local public authorities could participate as founders and members of NGOs. Supplementary technical regulations were approved by Lithuania to ensure that the NGOs who claim to act as LAGs comply with the purposes and aims of the EU LEADER Programme rules.

## Bulgaria

The Bulgarian experience is that there were no legislative impediments in the creation of LAGs as NGOs, because the national law relevant at the time when the EU LEADER Programme became available in Bulgaria did not prohibit local public authorities from being founders of NGOs. However, to ensure the proper implementation of the EU Regulations, including specific requirements for LAGs, additional regulatory acts were approved, which target the ability of the LAGs to approve the local development strategies, implement them and manage funds. Additionally, if the NGOs are created with the participation of local municipalities, they must have a public interest scope in their statutes.

## Poland

The EU LEADER Programme in Poland started with the use of NGOs as the legal form for LAGs. Unlike the case of other EU jurisdictions, Poland approved a separate law transposing the provisions of the EU Regulation relevant for the EU LEADER Programme and created a separate legal form of LAG. The Ministry of Agriculture created additional incentives for NGOs previously registered as LAGs to re-register using the new available form.

## Serbia

The Serbian case shows that the accountable body option is used to implement the EU LEADER Programme. Unlike the EU jurisdictions analysed above, the Serbian case is different from the funding perspective, as it allows less funding under IPARD. The funding agreement with the EU implies that Serbia will adopt technical regulations to monitor the activity of LAGs, including their statutes and mandates. As of today, the partnership agreement is used to scrutinize the compliance of the Serbian LAGs with the legal requirements pursuant to the EU Regulation 1303/2013.

### III. Current legislative framework of Moldova with respect to registration of LAGs

#### 1. General legal provisions

The general legislative acts which regulate the activity of non-profit associations and of the local municipalities are:

- a) the Law on non-profit associations<sup>34</sup>
- b) the Law on local public administration<sup>35</sup>

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<sup>34</sup> Law no. 837 –XIII from 17.05.1996 on non-governmental organisations, accessible in Romanian at: <http://lex.justice.md/index.php?action=view&view=doc&id=325424>, last accessed February 2, 2017

The law on non-profit associations limits the list of founders who can register non-profit associations, with **specific prohibition of the public authorities as founders and members of non-profit organisations**.<sup>36</sup> There is also a numeric limitation of three physical and/or legal entities necessary to decide the foundation of an association.<sup>37</sup> It must be mentioned that current work is under way with respect to a new piece of legislation which will regulated all forms of non-profit organisations, not just associations, but also foundations and private institutions.

The law on local public administration does not have specific restrictions for local municipalities to found or participate as founders of non-profit organisations. It has general provisions with respect to conclusion of partnership agreements, including with national non-governmental organisations<sup>38</sup>, but does not expressly allow foundation or participation as member of national non-governmental organisations.

The local municipalities can found municipal enterprises and commercial entities<sup>39</sup>, be members of local municipality associations and cooperate with each other to deliver on their functions<sup>40</sup>.

Thus, in terms of current Moldovan legislative framework, the formation of a LAG based on the principles and requirements set forth by the EU Regulation 1303/2013, is not possible if the option of the creation of a common legal entity is pursued.

However, the general civil legislation is rather permissive in terms of cooperation without the setting of a legal entity. Thus, articles 1339-1354 of the Civil Code allow the conclusion of a civil association contract among legal and physical entities, without the creation of a legal entity with the aim to pursue common commercial or other scope. The above-mentioned provisions of the Civil Code limit the scope of the civil society contract to a legitimate and common interest scope.<sup>41</sup>

## 2. Formal registration of legal entity according to Moldovan legislation

The national legislative framework allows the creation of the following legal persons without a profit scope<sup>42</sup>:

- a) Associations<sup>43</sup>
- b) Foundations<sup>44</sup>
- c) Private institutions<sup>45</sup>
- d) Unions of legal entities<sup>46</sup>

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<sup>35</sup> Law no. 436-XVI from 28.12.2006 on local public administration, accessible in Romanian at: [http://lex.justice.md/document\\_rom.php?id=C8E304A4:037190E8](http://lex.justice.md/document_rom.php?id=C8E304A4:037190E8), last accessed February 2, 2017

<sup>36</sup> Article 11 para. (3) of the Law on non-profit organisations

<sup>37</sup> Article 1 para. (1) of the Law on non-governmental organisations

<sup>38</sup> Article 14 para (2) letter j), article 43 para. (1) letter t) of the Law on local public administration

<sup>39</sup> Article 80 of the Law on local public administration

<sup>40</sup> Article 5 of the Law no. 435-XVI from 28.12.2006 on administrative decentralisation

<sup>41</sup> Article 1340 of the Civil Code

<sup>42</sup> Article 180 of the Civil Code, Law on associations no. 837-XII from 17.05.1996

<sup>43</sup> Article 181 of the Civil Code, Law on foundations no. 581-XIV from 30.07.1999

<sup>44</sup> Article 182 of the Civil Code

<sup>45</sup> Article 183 and 185 of the Civil Code

The status of associations is regulated by the Law on Associations no. 837-XIII from 17.05.1996. This law provides for the procedure of registration of NGOs. Article 11 para. (4) prohibits public authorities to found and or hold membership status with associations.

Private institutions are regulated by the provisions of the Law on associations. This temporary solution was used until special legislation is approved, which until now is still pending.

The foundations as defined by the legislative framework cannot accommodate the requirements of LAGs as prescribed by the EU Regulation 1303/2013.

The unions of legal entities are formed only by legal entities, and physical entities cannot be part of these types of legal entities. Thus, neither the unions of legal entities can accommodate the requirements for the creation of LAGs, as they do not offer access to individuals who may also represent local civil society.

Besides these forms, the Civil Code offers an open provision with respect to other forms of legal entities without a profit purpose – article 59 para. (1) states that legal entities of private law (i.e. all legal entities that are not regulated by public law) may be formed only on one of the forms prescribed by law.

The main conclusion is that at this stage the national law does not offer the option of formal registration of LAGs as required by the EU Regulation 1303/2013.

### 3. Creation of entities without legal registration

The Civil Code offers the option of cooperation between two or among more than two legal and/or physical entities without the formal creation of a new legal entity via the conclusion of a partnership agreement, which is regulated by the general provision of the Civil Code with respect to conclusion of civil law agreements or by the conclusion of a contract of civil society.<sup>47</sup>

The Civil Code defines the contract of civil society as a contract concluded by two or more persons (associates, participants) who take mutual responsibility to follow common economic goals or other goals, without the creation of a legal entity, sharing among them the benefits and losses. The provisions of the Civil Code with respect to the civil society contract are somehow limitative with respect to the contents of the contract, which among other should have the procedure of distribution of income and losses among the members and the procedure of exclusion of a member of the civil society contract.

On the other hand, the general provision of the Civil Code with respect to conclusion of civil law agreements is regulated wide enough to allow all parties as identified by the EU Regulation 1303/2013 to conclude a partnership agreement specifying the purposes, conditions of participation, duration of the agreement, activities to be

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<sup>46</sup> Article 104 of the Civil Code

<sup>47</sup> The peculiarities of the conclusion of a contract of civil society are regulated by articles 1339-1354 of the Civil Code

carried out etc. Thus, the solution of use of general provisions of the Civil Code with respect to the conclusion of civil acts is recommended.

#### IV. Conclusions

The analysis of the best practices and solutions with respect to the application of the EU LEADER Programme in the EU Member States and possible solutions for the legislative framework in Moldova, the following conclusions may be drawn:

- a) All the assessed EU jurisdictions have passed some form of legislative amendment relevant to the registration of non-governmental organisations, the competences of local public administrations and/or criteria to establish the eligibility of LAGs for EU LEADER funds. In the cases of Romania, Bulgaria and Lithuania the legislation did not prohibit from the beginning the creation of LAGs as NGOs and the technical regulations were the primary objective to implement the EU LEADER Programmes rules. In the case of Poland and Estonia, the legislation was amended specifically to create a special form of legal person (LAGs in Poland) and safeguard the participation of the public authorities in the creation of NGOs (Estonia);
- b) The general civil law legislation, applicable under the same principles in all the assessed jurisdictions suggests the use of an interim solution until legislation was amended (Poland, Estonia) in the form of civil society contracts or other legally acceptable acts signed by the partners of LAGs (local municipalities, business and NGOs), with one of them being entrusted with the administrative and financial matters, as EU Regulation 1303/2013 prescribes for.
- c) In some jurisdictions, such as Bulgaria and Romania, there was no need to adjust the legislation relevant to local public authorities and associations, which allowed registration of LAGs as NGOs. In other cases, such as Poland, a special law was approved, because the initial legal framework did not allow the creation of NGOs with the participation of legal entities.
- d) All the assessed EU jurisdictions took action to strengthen their legislative and/or regulatory framework as they have considered more appropriate to use the legal personality option of either general form of NGO or special legal form of LAG and have only used as an interim solution the partnership contracts. The reasons behind using the legal personality option is that in the long run it can ensure more sustainability for the LAGs as an instrument of local development if they hold such legal personality and the less cumbersome procedures in the implementation of the EU LEADER Programme.

With respect to the current Moldovan legislative framework:

- a) The current legislative framework does not allow the formal registration of LAGs as a legal body with the particularities prescribed by the EU Regulation 1303/2013;
- b) Piloting community led local development approach in Moldova, by creating LAGs (local action groups), can be based on establishing a Partnership Agreement of the members. One of the Mayors elected from the list of mayors

who represent the relevant local authorities, who could also have the function of LAG Chairman may be entrusted to sign contacts with donors (E.g. SARD Programme, Managing authority, i.e. the MAFI, or others) in name of the concluded Partnership, and an Accountable Body with legal personality among the members of each LAG will manage all the financial and administrative matters. All rules of operation of the LAGs must be prescribed in the Partnership Agreement signed by all parties and later approved by the constitutive bodies of the LAG, created on the basis of the Partnership Agreement. The agreement and the subsequent documents approved by the LAG bodies must thus transpose the requirements for LAGs under EU Regulation 1303/2013, including the rules of procedures on selection of projects, the approval of the local development plans, the voting requirements (quorum, distribution of voting rights, secret vote etc.), casting of voting by the public and private partners etc.

- c) Two parallel processes must be initiated to promote the activity of LAGs at national level: a) advancement with the long-term solution to develop new legislation and/or amendments to current legislation to allow the registration of LAGs and conferral of legal personality, and b) development of the partnership agreements which fall under the term of contract of civil society regulated by the Civil Code, with inclusion of specific provisions as mentioned above;
- d) The consultative meetings reinforced the advancement of LAGs, as MAFI, the State Chancellery, MoJ, MRDC all agree that this EU tool directed at local development must be further promoted. The team received assurances of further support for the promotion of LAGs, including at the relevant stages of the legislative drafting process.
- e) The current provision of the Civil Code may be used, along with the best practices of regulation at the management authority level (SARD, Ministry of Agriculture, other donors), the partnership agreement (consortium) and the accountable organisation in the process of implementation of EU LEADER or other community led development programmes. Careful consideration of the conditions of participation at potential calls for proposals must be made to avoid multiple funding, fraudulent activities, abuse of dominance of certain national networks in the application process and absorption of donor funds. The regulation should touch on both the Partnership agreements (consortiums) and their relations with the national NGO networks and the technical specifications on the local implementation of the projects by selected partner organisations.

## V. Legal solutions proposed to overcome the impediments in the creation of LAGs<sup>48</sup>

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<sup>48</sup> Part of the review of the legal solutions available for the creation of LAGs were consultative meetings held with key stakeholders. Detailed minutes of the meetings may be found at Annex no. 1.

As the EU Regulation 1303/2013 offers two options for the creation of LAGs – formal creation of a new legal entity and the selection of one accountable entity among the participating members of the LAGs, there are two groups of solutions available for the promotion of LAGs:

- a) Use of current general provisions of the Civil Code;
- b) Legal amendments to the national legislative framework with respect to the activity of non-profit legal entities / new law.

#### 1. Use of current general provision of the Civil Code

The use of the current general provisions of the Civil Code with respect to the conclusion of civil law agreements is the *temporary solution*.

The advantages of this option are that:

- a) There are no legal barriers to pursue the piloting of Local Action Groups for implementation of the community led local development/ LEADER approach in frame of the EU SARD and potential other donor programmes implemented in the Republic of Moldova;
- b) The general guidance on the contents of the civil law agreement is provided by the Civil Code;
- c) This is one of the legal solutions recognized by the EU Regulation 1303/2013 and is consistent with the ENPARD agreement concluded by the Moldovan Government and the European Commission;
- d) It allows fast alignment to the requirements of the ENPARD Agreement, provided that the Ministry of Agriculture and Food Industry will develop the necessary initial qualification requirements for future LAGs and further will develop the subsequent normative framework on the application of funds, selection of projects, resolution of complaints etc.

The disadvantages of this option are that:

- a) It implies a decision to select one accountable entity among the members of the LAGs, which may prove difficult;
- b) An elaborate partnership agreement will have to be drafted to foresee a large number of possibilities and prescribe the procedures related to decision-making, casting of votes, selection of projects, avoidance of conflict of interests etc.

To be able to comply with the requirements of the Law, the local public authorities will have to conclude a cooperation memorandum, stating that they are forming the group of LPAs, which will be later part of the LAG. In this respect, the provisions of the Law on decentralization<sup>49</sup>, particularly article 5 of the Law allows cooperation among local public authorities. The mayors will have to promote such a cooperation through the local councils, who will need to approve a decision to appoint the mayor with this function of representation under the cooperation agreement with the other

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<sup>49</sup> Law no. 435 from 28.12.2006 on administrative decentralization, accessible in Romanian at: <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=321387&lang=1>

local public authorities. Finally, the mayors will choose one of them to represent the LPAs in the LAG. Templates of such local council decisions will have to be developed to ensure legality for the decisions the mayors will take. The civil society and the business representatives are not limited by law to conclude cooperation agreements. In their case, the representation of the civil society and the business community may take a similar form of internal decisions from the legal entities or consent from physical entities and further selection of the representative of the civil society and of the business community in the LAG.

## 2. Amendment of the current legislative framework

This option may have two sub-scenarios:

### i. Targeted amendments

Amendment of the Law on Associations and the Law on local public administration to enable the local public authorities to participate in the foundation of LAGs and subsequently be members of LAGs.

The advantage of this solution is that the legislative amendments will not involve substantial legislative drafting and will focus on the process of registration of LAGs only and will in turn consume less time compared to the drafting of a new law on local action groups.

The disadvantages of this option are that:

- a) The amendments may miss some of the important aspects of further activity of LAGs;
- b) LAGs will be given the legal form of associations, which are very different from LAGs as defined by the EU Regulation 1303/2013;
- c) The Ministry of Agriculture and Food Industry will have to ensure an additional review mechanism to make sure that the LAGs registered by the Ministry of Justice (as the Law on association currently provides) comply with the requirements to access funding under existent and potential financial instruments;
- d) The actual criteria which define a LAG will not be found in the targeted amendments, but in subsequent normative acts to be approved by the Ministry of Agriculture and Food Industry;
- e) The formal aspect of non for profit public private partnership requirement will not be included in the amendments, as the two specific laws on associations and local public administration do not have as object regulation of such form of activity.

Below are the proposed amendments to the specified laws:

1. The Law on associations no. 837-XIII from 17.05.1996, article 11 para. (3) is complemented with the following passage:”, with the exception of cases when they found and/or join a local action group as provided by the Law on local public administration.”
2. The Law on local public administration no. 436-XVI from 28.12.2006:
  - a. Article 1 general notions is complemented with the following notion: “local action group - non-for-profit public private partnership, with legal personality, founded by local public administration authorities who have common borders within the group, local representatives of the civil society and local business community, with the aim to promote local development, where the maximum share of votes of the local public administration authorities is 50% out of the total number of cast votes”
  - b. Article 14 para. (2) letter j<sup>1</sup>) becomes j<sup>2</sup>) and letter j<sup>1</sup>) with the following content is inserted: j<sup>1</sup>) decides to found or join local actions groups with other local public administration authorities, with local civil society representatives and with local business community”

ii. New law on local action groups

This option implies the drafting and approval of a new law, which specifically regulates the activity of local action groups as a specific form of non-for-profit public private partnership and which defines clearly the conditions for setting up of a LAG, the registration of the LAG, the minimum requirements with respect to the Statute of the LAG, the authority responsible for their registration, as well as the restrictions in the creation of a LAG. Also, the institutional competences may be developed under this specific law, offering the Ministry of Agriculture and Food Industry the necessary competences to pursue as management authority the approval of the necessary normative acts to ensure a high level of transposition of the provisions of the ENPARD Agreement into national legislation.

The advantages of such a solution are multiple. The main ones are mentioned below:

- a) Separate piece of legislation, which takes into account the specificity of LAGs, their activity, structure, provisions of the statute, decision making procedures, casting of votes etc., which in turn ensures more safeguards that the public funds allotted for local development through LAGs are adequately used;
- b) Clear institutional competences and functions of the management authority, i.e. of the Ministry of Agriculture and Food Industry;
- c) Structured approach towards the implementation of the ENPARD commitments by Moldova;
- d) Clarity as to when public authorities may found LAGs, which excludes the risk of abuse of the rights to create associations if the previous solution of targeted amendments is to be used;

The main disadvantage of this solution is the need for more effort and time to accomplish it, including more effort to promote a new piece of legislation, instead of amendments.

However, due to the high interest to ensure higher aid absorption capacities from the Government and the high priority in the Governmental agenda for local development, the new law may pass with substantial support from the Governmental institutions and from the Parliament.

Below is the proposed structure of the new law on local action groups:

1. General provisions
  - Article 1 – Aims of the law
  - Article 2 – Scope of the law
  - Article 3 – General notions
  - Article 4 – Subjects of cooperation within local action groups
2. Registration of local action groups
  - Article 5 – Participating founders
  - Article 6 – Statute of the local action group
  - Article 7 – Registering authority
  - Article 8 – Amendments to the statute and founding documents
3. Institutional framework
  - Article 9 – National management authority
  - Article 10 – Competences and functions of the national management authority in the area of local development
  - Article 11 – National payment authority
  - Article 12 – Competences and functions of the national payment authority
  - Article 13 – National local development Fund
4. Selection of projects for funding
  - Article 14 – Criteria to select projects for funding from national resources
  - Article 15 – Review and approval of projects
  - Article 16 – Appeal of decisions on funding of projects
  - Article 17 – Award of funding
5. Implementation and periodic review
  - Article 18 – Minimum implementation standards
  - Article 19 – Periodic review and sanctions
6. Transitional and final provisions
  - Article 20 – Transitional application of partnership agreements
  - Article 21 – Amendments to the legislative framework
  - Article 22 – Entry into force

## VI. Recommendations on next steps

1. Initiate the revision/legal drafting of legislation to allow registration of LAGs. This initiative has been already taken by MAFI. The EU SARD Programme, other relevant donor support projects and programmes may take further steps to support MAFI in defining the legislative package.

The actual form of legislative initiative requires further elaboration. The positions of consulted parties are different. This particular subject requires additional discussions with MAFI representatives in a broader format.

The Ministry of Justice suggests the development of a specific law on local action groups, which may still provide the formal registration procedure with the Ministry of Justice, but will have a comprehensive list of requirements for LAGs and their further activities, including management of funds for local development projects. LAGs and local development will have a separate piece of legislation, which ensures stronger position of the local development policy in general in the group of public policies responsible for sustainable local development (regional development, cross-border cooperation etc.).

Essentially, MAFI has two options to follow:

- a. Pursue the legislative amendments solution, which involves targeted changes to the following specific legislation:
  - i. The Law on associations (Legea privind asociatiile obstești)
  - ii. The Law on local public administration (Legea privind administratia publica locala)
- b. Drafting of a **new law on local action groups** and targeted amendments to the:
  - i. Law on local public administration

The approval of amendments to current legislation, which will require adjustment of the requirements for LAGs as provided by EU Regulation 1303/2013 in the Law on associations and specific empowerment of the local councils to approve founding/participation in LAGs via amendments in the Law on local public administration is a little faster in terms of legislative initiative than the drafting of a new law on local action groups. New pieces of legislation require a broad consultative process, including consultation with central public administration actors (ministries, agencies, State Chancellery etc.).

However, these amendments may not be as effective as the new law, as they miss some of the important aspects of effective implementation of the EU LEADER in Moldova using the existent opportunities of financing from ENPARD as well as other available or potentially available funding.

Although the effort to draft a new piece of legislation and targeted amendments to current legislation may be a more demanding task, the results foreseen of such an activity are much stronger, as the legislative drafting process will inevitably generate

a higher quality. This option is subject to availability of funds, time and openness from the main partner institution to pursue such a scenario.

2. MAFI should advance with the drafting of a comprehensive package of legislative and normative acts to allow:
  - a. The registration of LAGs
  - b. Post-registration authorization procedure for LAGs
  - c. The operation of the financial support mechanisms to LAGs
  - d. Monitoring of implemented projects
  - e. Procedure of complaints handling on the selection of specific projects
  - f. Procedure of disbursement and retrieval of funds (if used not in compliance with the agreed project), taking into account the rules of state aid as provided by the Law on state aid and the Regulations approved by the Competition Council
  
3. The EU SARD Programme should consider:
  - a. Pursuing support for the MAFI to develop the legislative amendments/new piece of legislation
  - b. Developing the template partnership agreement for LAG parties until legislative amendments/new piece of legislation is approved

**I. Recommended short-term and medium-term priorities in advancing with LAG promotion**

The following short-term priorities are proposed:

- a) SARD will develop a pilot partnership agreement and supporting documentation to initiate pilot implementation of the community led local development/LEADER approach by facilitating the creation of pilot LAG initiatives in frame of implementation of the SARD Programme.
- b) MAFI shall initiate legislative amendments to the pertinent legislation to allow registration of formal LAGs
- c) MAFI shall initiate the drafting of a new law on local action groups, part of the commitments Moldova has with the EU in the context of the ENPARD Agreement

The following longer term priorities are proposed:

- a) MAFI shall develop the relevant regulations on the selection, implementation, monitoring and complaints handling for LAGs and projects implemented by local partners by taking into consideration international practices and piloting LAG experiences implemented in the Republic of Moldova (E.g. the SARD pilot examples)

- b) Drafting of the new law on local action groups/ amendments to the current legislative framework to allow registration of LAGs as separate legal entities and its approval by the Government and Parliament
- c) Adjustment of the Regulations approved by MAFI to comply with the newly approved pieces of legislation

Annex no. 1

Template to

TERRITORIAL PARTNERSHIP AGREEMENT  
(IN FRAME OF THE SARD LEADER IMPLEMENTATION)

On the creation of the local action group (LAG)

\_\_\_\_\_ (name)

concluded at \_\_\_\_\_ (date, place)

The present Partnership Agreement is concluded among the following **members**:

- 1.
- 2.
- 3.
- 4.
- 5.

The signatories of this Statement, representing civil society, local public administration authorities and the business representatives, named above, share similar missions and wish to cooperate in areas of mutual concern to enhance the effectiveness of development efforts and to improve local inhabitants' quality of life by implementation of the EU LEADER approach at the territorial level, with initial facilitation provided by the SARD Programme.

The purpose of this Agreement is to establish the territorial framework for cooperation between the Parties in areas of common interest in particular the socio-economic development of the delineated rural territory.

Signatories declare that the territorial partnership is established by following the **criteria of the LEADER partnership formalization, provided by the SARD Programme.**

The signatories have agreed that the local LEADER area, established by the parties cuts across local authority boundaries between the following administrative-territorial units: ....

municipality names with the corresponding localities included in their administrative territory.

### **Purpose**

The purpose of this Partnership Agreement between the civil society, business and the local public sector representatives is to formalize the creation of the LAG (Local Action Group) \_\_\_\_\_ (name).

### **Duration**

This Partnership Agreement is concluded for an indefinite period of time.

### **Objective**

The main objective of the LAG \_\_\_\_\_ (name) is contribute to the local economic and social development in the settlements which are part to the LAG \_\_\_\_\_ (name) using the methods and tools available under the current and future local development support programmes offered by the SARD Programme, the Moldovan Government, by the EU and by other development partners.

### **Mission**

The mission of the LAG \_\_\_\_\_ (name) is to use all legal means possible to attain high standards of life for the citizens living in the territory of the LAG, by promoting entrepreneurship, increasing the visibility of the settlements within the LAG, value local traditions, customs and geographical attractiveness, increase social inclusion and involvement (to be further completed in each particular case).

### **Function**

The LAG \_\_\_\_\_ (name) will promote its mission via the participatory development, approval and implementation of the local rural development plan acting for the territory and society of the LAG, and will take actions for its

implementation providing equal opportunities to all members of the local society to take part and benefit from it.

### **Partnership Council**

Within 60 days (other period) from the conclusion of this Partnership Agreement, the members of the LAG \_\_\_\_\_ (name) will convene the first session of the Partnership Council.

The Partnership Council shall have the following functions:

- d) Approves the detailed Rules of Procedures of the LAG, the Board, the Selection Council and the Audit Council;
- e) Elects among the members of the LAG, for a mandate of 2 years the members to the:
  - a. LAG Board
  - b. Selection Council
  - c. Audit Council
- f) Selects among the members of the LAG an accountable body responsible for the administrative and financial relations of the LAG with the managing and financing institutions;
- g) Approve the LAG's Strategic Action Plan, the membership fees and the financing strategy of the LAG.

### **LAG Board**

The Board of the Local Action Group (LAG) contains 6-9 persons, elected by and represents the three different sectors where the LAG members come from. All three stakeholder groups of the LAG members, the civil society, business and local public sector representatives elect 2 or 3 board members representing their sector in the LAG Board. The Chairperson of the Board is one of the Mayors, who is elected by and represents the relevant local authorities. The group of elected representatives of the relevant villages include at least one representative of the local public institutions.

### **Selection Council**

The Selection Council has at least 50%+1 vote represented by the civil society and business representatives and the rest represents the local public sector from the LAG. LAG Chairman is member of the Selection Council. The Selection Council contains 5-9 persons.

The Selection Council is responsible for the selection of the project proposals, which could be potentially financed by the public resources available for rural development or for other related purposes.

After each call for proposals, managed by the accountable body, the Selection Council assesses and selects the project proposals from local partners to implement the scope and objectives of the local development plan. The selection and evaluation criteria are set at the stage of publication of the calls for proposals.

The members of the Selection Council, which represent the parties who have submitted applications as a result of the calls for proposals do not participate in the decision making process. The Selection Council can decide on each particular application only if the requirement of at least 50% of cast votes originate from the civil society and business representatives.

The decisions taken by the Selection Council are signed by the Chairman of the Selection Council. Minutes of each Selection Council sessions are taken and signed by the Chairman and the secretary of the meeting.

### **Audit Council**

The activities of the LAG \_\_\_\_\_ (name) are monitored by the Audit Council, comprised not less than 3 and not more than 5 members.

The Audit Council exercises control over how the accountable body and the Selection Council have used the resources of the LAG.

The audit over the use of funds takes place at least once a year, in accordance with the Detailed Rules of Procedure approved by the Partnership Council.

### **The Accountable Body**

The accountable body appointed by the Partnership Council to manage the administrative and financial relations of the LAG with the managing and financial authorities for a mandate of 3 years, which is renewable.

The accountable body has the following main competences:

- a) Keeps the secretariat of the Partnership Council, Selection Council and Audit Council
- b) Keeps records of the calls for proposals and the selection results
- c) Promotes the selected projects for financing, including presentation to the managing and financing authority of necessary justifications with respect to their selection
- d) Maintains close contact with the managing and financing authorities
- e) Informs on other open applications from other financing sources to the members of the LAG
- f) Receives applications from new members to the LAG
- g) Involves experts at the request of the Partnership Council, Selection Council or Audit Council in the course of the enforcement of their respective duties
- h) Carries out other tasks related to the promotion of the LAG agenda, including the implementation of the local development plan.

### **Amendments to the Partnership Agreement**

Any amendments can be made to the Partnership Agreement as an annex to the present one, signed by all members of the Partnership Agreement, including the members of the LAG who have joined the LAG at a later stage.

No amendments to the present Partnership Agreement can be made to eliminate the main objective and purpose of the creation of the LAG, with respect to the decision making rule of at least 50% representation of the civil society and private business representatives and of at most 50% representation of the local public authorities in the working bodies of the LAG – Partnership Council and Selection Council, and to the requirement of exclusion of conflict of interest in the selection of projects by the Selection Council.

The terms and conditions of the present express of will, which is constituted in the present Statement are known and accepted by all partners.

Place and date of the signature

On behalf of .... 1-2-3-4

Name

.....

Signature

## Criteria and Procedure to establish the formal LEADER Local Partnerships

This material is prepared to inform potential SARD LAGs by the Community Coaches on the first working meeting that will be held in March, 2017

### **A. List of criteria to LEADER partnership formalization**

1. One municipality cannot be part of more than one LAG and the territory of the LAG has to be cohesive.
2. At least three municipalities can establish LAG and the number of inhabitants covered by the municipalities has to be minimum 10 000.
3. Urban centers cannot be part of the LAG, but it is recommended to LAG-s to cooperate in strategic issues with urban centers of their territory.
4. Rate of different stakeholders in a LAG: 33,3% public organizations, 33,3% businesses, 33.3% civil society representatives.
5. Rate of different stakeholders in LAG Selection Council: at least 50% of the members + 1 person representing business and civil society sector and 50% of the members - 1 person representing local administration.
6. It is important to identify the common cultural and/or economic and/or historical and/or environmental, etc. background behind the established territorial partnership as a backbone of the necessary territorial cohesion.
7. It is important to give attractive names to the LAGs that are linked to their identity specified above.
8. It is recommended by SARD to do not change the pre-established partnerships, which have signed the SARD initiated partnership letter in December, 2016, but, it will be recognized by SARD as a positive improvement, if these existing eight partnerships extend their territory with involvement of further municipalities. SARD LAG submitted documentation on the formalized partnership has to include the minutes on official decision of each member on their interest to be member of the

LAG. It means that the local council of the municipalities, general assembly of the local NGO-s, business boards, etc., who are members of the given LAG have to make formal decision on their interest on LAG membership **before** the submission deadline of the partnership documentation. See more information about the deadline and needed documents below.

9. LAG members can be local organizations or physical persons. National or international NGO, which has local branch offices or member organizations in rural areas, cannot be member of more than one LAG.

## **B. Procedure to establish the LAG Partnership**

1. Short introduction of each member of the formalized LAG partnership has to be prepared
2. Copy of the legal documents of each of the members has to be submitted
3. Minutes on decision of the legal decision-making body of each member organization about joining the given LAG partnership and the name, function and contact of the elected representative of the given member, who will have the voting power in the LAG.
4. LAG territories will be delineated by decision of the relevant Local Councils. Local Councils have to make decision on joining a given LAG, and the Mayors have to sign the LAG Partnership Agreement. The territory of those municipalities will be the territory of a LAG, which municipalities' mayors sign the given LAG Partnership Document, based on the decision of the given local councils. Minutes on relevant decisions of the local councils have to be submitted.
5. To be able to comply with the requirements of the Law, the local public authorities will have to conclude a cooperation memorandum, stating that they are forming the group of LPAs, which will be later part of the LAG. In this respect, the provisions of the Law on decentralization<sup>50</sup>, particularly article 5 of the Law allows cooperation among local public authorities. The mayors will have to promote such a cooperation through the local councils, who will need to approve a decision to appoint the mayor with this function of representation under the cooperation agreement with the other

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<sup>50</sup> Law no. 435 from 28.12.2006 on administrative decentralization, accessible in Romanian at: <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=321387&lang=1>

local public authorities. Finally, the mayors will choose one of them to represent the LPAs in the LAG.

6. Individuals can be members by signing a letter of intent and the LAG Partnership Document. Signed letter of intent has to be submitted.
7. Non-registered organizations without legal body can be members through signing a letter of intent by all members of the given non-registered organization (e.g. youth club, women club, sport club, etc.), nominate their representative, who will have the voting power in the LAG, and sign the LAG Partnership Document by the given representative. Minutes of the decision making event and the signed letter of intent have to be submitted.
8. The long-term LAG Partnership Agreement signed by all members has to be submitted.

## Annex no. 3

### Report on consultative meetings held with respect to the perspectives of registration of LAGs

This report is the second deliverable under the individual contract signed with EU SARD Programme and is presenting the main findings and proposed solutions by the key stakeholders on the registration of LAGs in Moldova. The purpose of the consultative meetings is to inform the key stakeholders on the existent initiative to promote LAGs in Moldova, including in the context of the ENPARD Agreement, to collect opinions on best legal forms for LAGs and to collect feed-back on the proposed legislative solutions to further promote the initiation and activity of LAGs.

The report presents the list of consultative meetings, the main topics discussed and concerns raised, as well as has conclusions and recommendations, including the short and medium-term actions to be further taken to promote the activity of LAGs in Moldova.

#### II. General data on the consultative meetings

During the period of 1 – 17 February the following consultative meetings were held as shown in the table presented below:

**Table no. 1: Overview of interviews**

No.	Date	Institution	Participants
1.	1 February 2017	Ministry of Agriculture and Food Industry (MAFI)	<b>Marin Morteau</b> , Chief of Department of Rural Development, Agricultural Statistics and Marketing <b>Panos Panaiotis</b> , EU Expert of LAGs, EU technical assistance project implemented by Agrotec SPA <b>Roman Palanciuc</b> , Project Officer EU SARD <b>Iulian Rusu</b> , legal expert, EU SARD
2.	7 February 2017	EU EU SARD Programme	<b>Márta Márczis</b> , Expert of LAGs, EU SARD <b>Anatolie Terzi</b> , Project Manager EU SARD <b>Roman Palanciuc</b> , Project Officer EU SARD <b>Iulian Rusu</b> , legal expert, EU SARD
3.	10 February 2017	Ministry of Regional Development and Construction (MRDC)	<b>Dorin Andros</b> , Secretary of State, MRDC <b>Roman Palanciuc</b> , Project Officer EU SARD <b>Iulian Rusu</b> , legal expert, EU SARD
4.	15 February 2017	State Chancellery	<b>Victoria Cujbă</b> , Deputy Chief of Department of local public administration reform, State Chancellery <b>Veaceslav Sîrbu</b> , Chief of Department Administrative Control, State Chancellery <b>Roman Palanciuc</b> , Project Officer EU SARD <b>Iulian Rusu</b> , legal expert, EU SARD

5.	17 February 2017	Ministry of Justice	<b>Alexandrina Culcițchi</b> , Chief of Department of non-commercial organisations, Ministry of Justice
			<b>Veronica Ignat</b> , Consultant within the Department of non-commercial organisations, Ministry of Justice
			<b>Roman Palanciuc</b> , Project Officer EU SARD
			<b>Iulian Rusu</b> , legal expert, EU SARD
6.	17 February 2017	Ministry of Agriculture and Food Industry (MAFI)	<b>Marin Morteau</b> , Chief of Department of Rural Development, Agricultural Statistics and Marketing
			<b>Panos Panaiotis</b> , EU Expert of LAGs, EU technical assistance project implemented by Agrotec SPA
			<b>Roman Palanciuc</b> , Project Officer EU SARD
			<b>Iulian Rusu</b> , legal expert, EU SARD

Roman Palanciuc facilitated the meetings with the Ministry of Agriculture and Food Industry, whilst Iulian Rusu arranged the meetings with the representatives of the Ministry of Regional Development and Construction, State Chancellery and the Ministry of Justice.

### III. Minutes of the meetings held

#### 1. Meeting of 1 February 2017 – Ministry of Agriculture and Food Industry

The meeting with the MAFI representatives Marin Morteau, as well as the EU expert on LAGs Panos Panaiotis, had the purpose to exchange views and inform on the various options of legal registration and operation of the LAGs.

**Iulian Rusu** presented the legal solutions identified in the process of assessment of practices of various EU Member States in adjusting their legislative framework as well as the temporary solutions used until the laws have been fully amended.

All five EU jurisdictions (Romania, Bulgaria, Poland, Estonia, Lithuania) had restrictions on participation of local public administration as founders/members of NGOs.

Until the specific legislation which governed the status of associations and the competences of local public administration was amended, all of them used the solution of conclusion of partnership agreements, by means of which the members of LAGs approved their rules of activity, the competences to approve the local development plans, the list of projects and the voting procedure and entrusted one of the members of the LAG as accountable entity in its financial and administration relations for the managing entity (usually the Ministry of Agriculture and Rural Development).

The medium-long term solution was to either amend current legislation (ex. Romania) or approve new legislation specific to the activity of LAGs (ex. Poland). Either of the solutions involve in the Moldovan case the amendment of the Law on associations and the Law on local public administration or approval of a new law on local action groups and subsequent

adjustments to the law on local public administration with respect to competences of local councils to approve decisions to found/participate as members in LAGs.

**Roman Palanciuc** presented the general objectives of the EU SARD Programme, as well as specific objectives pertinent to the implementation of the LEADER approach in Gagauzia and Taraclia. Roman Palanciuc also highlighted the importance of a legislative solution at national level.

**Marin Morteau** presented the view and the interest of the MAFI with respect to the promotion of LAGs, including in the context of implementation of the ENPARD agreement. MAFI was empowered with additional competences with respect to promotion of rural development policy and is the main counterpart of the EU with respect to the implementation of the ENPARD Agreement. Since August 2016 the Department of Statistics and Marketing of MAFI is also responsible for rural development. He stressed on a number of specific issues which may come up in the process of implementation of the EU LEADER approach in Moldova:

- a) The project implementers should be local entities, not branches of national networks of NGOs or businesses, such as UNIAGROPROTECT, Association of producers and exporters of fruit, grapes, wines etc. This is crucial in ensuring that the funds allotted to local development stay with the communities.
- b) There must be a Compliance Review mechanism put in place to assess the compliance of the LAGs with the requirements developed by the implementing agency, i.e. MAFI. The compliance review should limit itself to assessing if the entity wishing to act as a LAG is in fact complying with the requirements set for LAGs.

**Panos Panaiotis** mentioned that the support from the EU project includes the setting up of the national mechanism to implement the EU LEADER approach in Moldova. Also, he mentioned that under EU legislation and practice the NGOs or other organisations that have national coverage cannot be accountable for more than one LAG. This limitation will ensure that the local actors are involved in the creation and management of LAGs, instead of organisations with national networks, which if admitted, may abuse their dominant position and take over the management of a large number of LAGs and thus exclude the local actors from effectively participating in local development. Indeed, this solution is part of the compliance to the EU Regulation 1303/2013 which requires that local actors should be involved, not the national ones.

## **2. Meeting of 7 February 2017 – EU EU SARD Programme**

The meeting took place with the participation of Anatolie Terzi, project manager, Roman Palanciuc, project officer, Márta Márczis, SARD expert on LAGs and Iulian Rusu, legal expert. The purpose of the meeting is to have an update of the latest findings on EU Member States' practices and discussions held with the MAFI representatives.

**Iulian Rusu** underlined the conclusions in the first report, which makes a comparative assessment of the legal framework of 5 EU Member States – Romania, Bulgaria, Estonia, Poland and Lithuania. All five jurisdictions have passed an amendment process to accommodate a registration of LAGs as NGOs.<sup>51</sup> The solutions were different from one jurisdiction to the other, however all of them had to pass through a legislative amendment

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<sup>51</sup> For more details, please consult report no. 1 on the comparative legal analysis of five EU jurisdictions

process to allow the registration of LAGs as legal entities. Poland transposed EU Regulation 1698/2005, which is the predecessor of the current EU Regulation 1303/2013, via the approval of a separate law which allows the registration of LAGs as a special form of NGOs. Current actions are taken by the Polish Ministry of Agriculture and Rural Development to re-register all LAGs as special forms of NGOs, instead of having the status of general NGO.

Romania, Estonia, Lithuania and Bulgaria approved amendment legislation to the existent one – the Law on associations and the Law on local public administration, where it set the option to found/be member of an NGO for public authorities and specifically mentioned the competences of LPAs to found/participate as members in NGOs. This form of NGOs is treated as a Public-Private Partnership without a profit making purpose.

**Márta Márczis** underlined that two activities must be considered simultaneously: 1) – the long-term option to draft amendment legislation/new legislation which allows registration of LAGs as associations, and 2) – the short-term option to work on the template cooperation agreement among the members of LAGs and thus use the second option available under article 34 of the EU Regulation 1303/2013 – the identification of an accountable member of each LAG which holds legal personality and which is empowered by all the other members of each LAG to manage all the administrative and financial matters with the national management authority (i.e. the Ministry of Agriculture and Food Industry).

**Anatolie Terzi** underlined that the focus of the remainder of the activity should be the development of draft cooperation agreement, which will include the requirements under EU legislation for LAGs to function. The long-term option of legislative amendments/new legislation to accommodate LAGs is also to be considered under a broader scope with the participation of relevant stakeholders, mainly the Ministry of Agriculture and Food Industry.

### **3. Meeting of 10 February 2017 – Ministry of Regional Development and Construction**

The meeting took place with the participation of Dorin Andros, State Secretary of the Ministry of Regional Development and Construction, Roman Palanciuc, EU EU SARD Programme officer and Iulian Rusu, legal expert. The aim of the meeting was to inform the MRDC on the legal aspects of LAGs' registration and to exchange views on the best solutions to launch the LAGs as vehicles of local development.

**Dorin Andros** mentioned that this initiative may well support the same direction the MRDC is working on, thus contributing to greater synergies of the public funds' use. He underlined the importance of clear understanding of what is local and what is regional development and how these two public policies may be harmoniously implemented to ensure public funds cost-effective expenditures. He thanked for keeping him informed of the current initiatives and suggested working both on the regular legislative drafting procedure but also consult with the MPs in the Parliament on their views and already liaison at this stage to accommodate smooth passing of the legislation in the Parliament without serious interference into the proposed texts of the legislative initiative.

**Iulian Rusu** mentioned the importance of a clear set of criteria to be prescribed in the new legislation to accommodate the specificity of LAGs as compared to all other forms of non-profit making organisations. The concept of LAGs and the preliminary conclusions of the comparative legal research, which was conducted so far, were presented in brief.

**Roman Palanciuc** offered examples of forms of local cooperation using the model of LAGs which ensure bottom-up approach and generate opportunities, economic growth, civil involvement and transparency of selection and awarding procedures.

#### **4. Meeting of 15<sup>th</sup> of February 2017 – State Chancellery**

The meeting took place with the participation of Victoria Cujba, deputy chief of Department of local public administration reform, Veaceslav Sirbu, Chief of Department of administrative control, Roman Palanciuc, EU SARD Programme officer and Iulian Rusu, EU SARD legal expert. The purpose of the meeting was to inform the State Chancellery in more detail of the concept of LAGs under the EU LEADER programme, discuss the preliminary conclusions with respect to the legislative options to accommodate the functioning of LAGs, review the case of cancelled local public administration decision to found a local action group and assess which next steps can be taken to ensure synergy and coordinated action with the State Chancellery on the promotion of legislative amendments for LAGs in Moldova.

**Victoria Cujba** underlined the importance of being contacted at this early stage and highlighted commitment to nominate one person from the State Chancellery who will participate at all the EU SARD steering committee meetings in the future. She also clarified that the State Chancellery will be asked to give a reasoned opinion on any draft legislation which involves the participation of LPAs. She encouraged the project to proceed with legislative amendments to ensure the possibility to boost up local development and ensure greater absorption capacities for local communities of external aid.

**Veaceslav Sirbu** mentioned in greater detail the steps which followed the registration of the local action group, which was further challenged by the regional office of the State Chancellery. He underlined that the group was created as a Union of Legal Entities, which is regulated in general terms by article 104 of the Civil Code. Mr. Sirbu explained that the current legislative framework is not precise enough to establish clear permissive options for LPAs, as there are quite a few types of legal non-profit forms of entities which may be registered under current legislation, there being less clarity as to what elements the union of legal entities should comply with to be able to get registered.

**Iulian Rusu** elaborated on the key features of the LAGs, including that they should be represented by three parties: local public authorities, private businesses and civil society, which may be represented both by NGOs and civic activists in the region; they should have a clear decision making process prescribed by their statute, which implies a transparent, objective, merit-based process of selection of project with no conflict of interests; at least 50%+1 vote in the LAG must be cast at all times by the non-public members; and the LAGs approved the local development plans and oversee the implementation of the selected projects.

As of today, only the contract of civil society, which is regulated by articles 1339-1354 of the Civil Code, is flexible enough to accommodate the requirements prescribed by EU legislation with respect to LAGs. The use of union of legal entities is also a limited one as it does not allow the participation of physical persons and has been developed to accommodate professional unions of legal entities, which in practice has a different meaning than the creation of LAG. This practical application of the form of union of legal entities of the same form and who pursue similar aims may lead to the cancellation of foundation of such unions, if different forms of legal entities with different purposes have originally created it. This is what happened with respect to the decision of local community in Straseni rayon when the local court quashed the decision of the local community.

**Roman Palanciuc** underlined the importance of existence of LAGs as they are a strong vehicle to pursue local development and have proved their efficiency for more than 25 years in the EU. He also underlined the importance of the State Chancellery as an actor in the steering of the processes within the EU EU SARD Programme and welcomed a more active participation of the State Chancellery during these steering committee meetings.

#### **5. Meeting of 17<sup>th</sup> of February 2017 – Ministry of Justice**

The meeting took place with the participation of Mrs. Alexandrina Culcitchi, Chief of Department of non-commercial organisations at the Ministry of Justice, Ms. Veronica Ignat, consultant at the same Department, Mr. Roman Palanciuc, EU EU SARD Programme officer and Iulian Rusu, EU SARD legal expert. The purpose of the meeting was to discuss in greater detail the available options for registration of LAGs and to exchange views as well as to hear from the experience of the Ministry of Justice on the registration of non-commercial legal entities.

**Iulian Rusu** offered a brief overview of the conditions LAGs must comply with as provided by the EU Regulation 1303/2013 and the preliminary conclusions available so far in the context of the comparative legal assessment of five EU jurisdictions.

**Roman Palanciuc** offered a brief overview of the EU EU SARD Programme and its objectives as well as the practical options of its implementation with respect to the creation of LAGs.

**Alexandrina Culcitchi** underlined the following key lines with respect to the registration of LAGs:

- a) The Union of Legal Entities is registered by the Ministry of Justice as an application of analogy of law, as there are no specific provisions for the Ministry of Justice to register them
- b) The Straseni LAG case was based on the insistence argument from the applicant to be registered similarly as CALM (Local Authorities Congress from Moldova) was previously registered. She agrees that this form is troublesome and may not be applied to LAGs
- c) There is a new draft law on non-commercial organisations, which she shared later on with the legal expert, which also contains the restriction to found/be members of NGOs for LPAs
- d) The best solution, which will imply more effort, is the drafting of a new piece of legislation, which addresses specifically the LAGs, which could be registered by the Ministry of Justice, but require an additional clearance at a later stage from the Ministry of Agriculture if they are to be considered potential applicants under the local development funds available and managed by the MAFI.
- e) Another solution would be to amend the current and perspective legislation on associations, but this may prove difficult to implement later on, as there are very large differences in terms of general NGOs and the specific form of activity of a LAG. The amendments may not resolve issues which may come up at a later stage: i.e. if the LAG is subject to administrative proceedings or subject to general procedure rules, who will check if the LAG is indeed a LAG as prescribed by the EU Regulation, which must be transposed somewhere in the national legislation, who will verify if they are keeping with their requirements of decision making after being registered to ensure that the public funds are managed as the EU Regulation provides for etc.

#### **6. Meeting of 17<sup>th</sup> of February 2017 – Ministry of Agriculture and Food Industry**

The meeting took place with the participation of Marin Morteau, Chief of Department of Rural Development, Agricultural Statistics and Marketing, Panos Panaiotis, EU expert of LAGs, Roman Palanciuc, EU SARD Programme officer and Iulian Rusu, EU SARD legal expert. The purpose of the meeting was to share so far with the findings and the positions of the main stakeholders – Ministry of Regional Development and Construction, Ministry of Justice and State Chancellery on how to better ensure the registration of LAGs.

**Marin Morteau** asked about the possibility to register LAGs without the participation of LPAs. He also underlined the importance of coordinating the efforts with CALM and convince them of the importance of this measure. He also mentioned the need to clarify the level of participation of national networks of professional associations in the implementation of EU LEADER approach in Moldova via the ENPARD agreement.

**Roman Palanciuc** clarified that the aim of the LAGs is to involve all three forms of association members and that if LPAs are not involved, then this is not a genuine LAG, although we might call them in such a manner. He also elaborated on the solution of a separate piece of legislation which would give more stable ground for LAGs in the future, than to work on targeted amendments to different pieces of legislation and face the consequences of an incomplete set of regulations with implications for the effectiveness of LAGs when the management of public funds will start.

**Panos Panaiotis** confirmed the importance of participation of LPAs in the formation of LAGs

**Iulian Rusu** underlined the importance of safe and all-encompassing rules to make sure the implementation of the projects will not generate potential loss of the public funds allotted to the implementation of LAG projects, including a separate due diligence on the accountable members of the LAG if the short-term solution of cooperation agreement is considered. Also, the development of the cooperation agreement must be coupled with additional decisions to be taken by the LPAs and other members of each LAG as prescribed by their internal statutes (decision by the executive director, board of directors etc. for enterprises, decisions of NGOs from the competent body – executive director, general assembly etc., personal application from physical entities to be members of the LAG, minutes of the founding assembly of the LAG and other pertinent documentation. The legal form of the cooperation agreement may be the contract of civil society, which is permissive enough and allows both legal and physical entities to participate, including for LPAs without the registration of a separate legal entity.

#### **IV. Conclusions**

The consultative meetings held during 1-17 February allowed the formulation of the following conclusions:

1. The current legislative framework does not allow the formal registration of LAGs with the particularities prescribed by the EU Regulation 1303/2013;
2. The activity of LAGs may be ensured by the use of an intermediary solution – selection of an accountable body with legal personality among the members of each LAG who will manage all the financial and administrative matters with the managing authority (i.e. the MAFI). All rules of operation of the LAGs must be prescribed in the Cooperation Agreement signed by all parties. The agreement must thus transpose the requirements for LAGs under EU Regulation 1303/2013, including the rules of procedures on selection of project, the approval of the local development plans, the

voting requirements (quorum, distribution of voting rights, secret vote etc.), casting of voting by the public and private partners;

3. Two parallel processes must be initiated to promote the activity of LAGs at national level: a) advancement with the long-term solution to develop new legislation and/or amendments to current legislation to allow the registration of LAGs and conferral of legal personality, and b) development of the cooperation agreements which fall under the term of contract of civil society regulated by the Civil Code, with inclusion of specific provisions as mentioned above;
4. The consultative meetings reinforced the advancement of LAGs, as MAFI, the State Chancellery, MoJ, MRDC all agree that this EU tool directed at local development must be further promoted. The team received assurances of further support for the promotion of LAGs, including at the relevant stages of the legislative drafting process.

## V. Recommendations

The following recommendations for next steps may be derived after the held consultative meetings:

4. Initiate the revision/legal drafting of legislation to allow registration of LAGs. This initiative has been already taken by MAFI. The EU SARD Programme, other relevant donor support projects and programmes may take further steps to support MAFI in defining the legislative package.

The actual form of legislative initiative requires further elaboration. The positions of consulted parties are different. This particular subject requires additional discussions with MAFI representatives in a broader format.

The Ministry of Justice suggests the development of a specific law on local action groups, which may still provide the formal registration procedure with the Ministry of Justice, but will have a comprehensive list of requirements for LAGs and their further activities, including management of funds for local development projects. LAGs and local development will have a separate piece of legislation, which ensures stronger position of the local development policy in general in the group of public policies responsible for sustainable local development (regional development, cross-border cooperation etc.).

Essentially, MAFI has two options to follow:

- a. Pursue the legislative amendments solution, which involves targeted changes to the following specific legislation:
  - i. The Law on associations (Legea privind asociatiile obstești)
  - ii. The Law on local public administration (Legea privind administratia publica locala)
- b. Drafting of a **new law on local action groups** and targeted amendments to the:
  - i. Law on local public administration

The approval of amendments to current legislation, which will require adjustment of the requirements for LAGs as provided by EU Regulation 1303/2013 in the Law on associations and specific empowerment of the local councils to approve founding/participation in LAGs via amendments in the Law on local public administration is a little faster in terms of

legislative initiative than the drafting of a new law on local action groups. New pieces of legislation require a broad consultative process, including consultation with central public administration actors (ministries, agencies, State Chancellery etc.).

However, these amendments may not be as effective as the new law, as they miss some of the important aspects of effective implementation of the EU LEADER in Moldova using the existent opportunities of financing from ENPARD as well as other available or potentially available funding.

Although the effort to draft a new piece of legislation and targeted amendments to current legislation may be a more demanding task, the results foreseen of such an activity are much stronger, as the legislative drafting process will inevitably generate a higher quality. This option is subject to availability of funds, time and openness from the main partner institution to pursue such a scenario.

5. MAFI should advance with the drafting of a comprehensive package of legislative and normative acts to allow:
  - a. The registration of LAGs
  - b. Post-registration authorization procedure for LAGs
  - c. The operation of the financial support mechanisms to LAGs
  - d. Monitoring of implemented projects
  - e. Procedure of complaints handling on the selection of specific projects
  - f. Procedure of disbursement and retrieval of funds (if used not in compliance with the agreed project), taking into account the rules of state aid as provided by the Law on state aid and the Regulations approved by the Competition Council
  
6. The EU SARD Programme should consider:
  - a. Pursuing support for the MAFI to develop the legislative amendments/new piece of legislation
  - b. Developing the template cooperation agreement for LAG parties until legislative amendments/new piece of legislation is approved

## **VI. Next short-term and medium-term priorities in advancing with LAG promotion**

The following short-term priorities (until June-July 2017) are proposed:

- d) Development of the draft cooperation agreement and supporting documentation to initiate LAGs using the contract of civil society
- e) Initiation of legislative amendments to the pertinent legislation to allow registration of LAGs
- f) Initiation of drafting of a new law on local action groups, part of the commitments Moldova has with the EU in the context of the ENPARD Agreement
- g) Development of the draft Regulations by MAFI on the selection, implementation, monitoring and complaints handling for LAGs and projects implemented by local partners

The following medium-term priorities (until December 2017) are proposed:

- h) Drafting of the new law on local action groups/ amendments to the current legislative framework to allow registration of LAGs as separate legal entities and its approval by the Government and Parliament
- i) Adjustment of the Regulations approved by MAFI to comply with the newly approved pieces of legislation