

Adri.SmArtFish

„ Valorisation of Small-scale ARTisanal FISHery along the Adriatic coasts, in a context of sustainability “

Analysis of the possibilities of association in accordance with the regulations of the Republic of Croatia

For the purposes of the Adri.SmArtFish project (Work Package 5), which includes the establishment of an organized transboundary association of small fishermen, the Ministry of Agriculture reviewed and analyzed the existing Croatian and European legal provisions providing for forms of fishermen's association and possibilities for their transboundary cooperation. The project envisages that the association consists of two national associations registered in each of the partner countries, namely Republic of Italy and the Republic of Croatia.

The project envisages that the established association is organized and operates in accordance with FAO guidelines and is capable of defining and adopting multiannual resource management plans. It is also foreseen that the association, after completion of the project, may operate independently. In view of the above, Ministry made this analysis and review of the possibilities of association in the Republic of Croatia and the possibility of establishing cross-border cooperation in these forms of association, as well as the advantages and disadvantages of every possible shape.

Factors taken into account during the analysis of cross-border merger options were: the speed and cost of incorporation, the amount of share capital, the amount of capital needed to realize a business venture, the limitations on liability to third parties, the degree of control over the venture, the costs of organization and the ability to use different incentives and benefits, desire to keep the business confidential, business continuity and transfer of ownership rights, taxation and taxation policies. Also, an important factor during the analysis of the possibilities of cross-border association was the long-term self-sustainability of the organization, in which all members contribute to the realization of the long-term goals of the organization through joint efforts, i.e. self-management.

1. Form of association – company

The creation of a company is defined by the Companies Act (Official Gazette 111/93, 34/99, 121/99, 52/00, 118/03, 107/07, 146/08, 137/09, 125/11, 152/11, 111/12, 68/13, 110/15, 40/19), and these are possible forms of companies: company of persons - public company, limited partnership and economic interest association; and company of capital - joint stock company and limited liability company. Each company acquires the status of a legal entity by entry in the court register of the Commercial Court, and can be established to perform commercial or any other activity and for its obligations it is responsible for all its assets. It is important to emphasize that a company can have only one seat in the Republic of Croatia and can set up branches with different headquarters.

Society of persons - the aim is to unite persons, not capital, it is founded by at least two members whose task is to contribute to the work of the society			
Form	Basic features	Benefits	Shortcomings
Public society	<ul style="list-style-type: none"> - at least two persons, whether physical or legal; legal relations are governed by a social contract - join together to carry on an activity under a joint venture on a permanent basis - managed by all members, enter uniform roles - roles other than money may be in things, rights, work and other services or goods - correspond to the assets entered in the company and unlimited jointly and severally with all their assets - legal relations are determined by social contract 	<ul style="list-style-type: none"> - suitable for small and medium-sized enterprises - one third of the profit for the current year is distributed among the members in proportion to their shares in the capital of the company - the bond between members is solid - members directly manage the business 	<ul style="list-style-type: none"> - the legislative framework does not provide for cross-border mergers or acquisitions

	- making decisions with the consent of all members		
Limited partnership	<ul style="list-style-type: none"> - at least two persons (complementary and commanding officer), whether physical or legal, - the subject matter of the business is determined by the social contract - must be established as a permanent society 	<ul style="list-style-type: none"> - share of members in: money, things, rights, work and other services and goods - no minimum investment (capital) prescribed - as a rule, the complainants run the business of the company, and the commanders participate in the management of the company and have the right to supervise - principles: legality, subsidiarity, publicity, publicity, reality and trust 	<ul style="list-style-type: none"> - establishment on a permanent basis - at least one person for the obligations of the company is liable indefinitely and jointly and severally with all his property (complementary), and another at least up to the value of the role he has brought into the company (commander) - the legislative framework does not provide for cross-border mergers or acquisitions
Economic Interest Association	<ul style="list-style-type: none"> - two or more natural and / or legal persons for the purpose of facilitating and promoting the performance of the economic activities which constitute the objects of their business and for the purpose of improving or increasing their effect, but so that such legal person does not profit for himself - unless otherwise specified, the provisions of 	<ul style="list-style-type: none"> - members are persons engaged in economic activity, and may also be persons engaged in independent occupation regulated by a special regulation - no share capital - profit is distributed among members in the proportions 	<ul style="list-style-type: none"> - members of the association are responsible for the obligations of the association with all their assets - the legislative framework does not provide for cross-border mergers or acquisitions

	<p>the public company shall apply</p> <ul style="list-style-type: none"> - the agreement on the establishment of the association is concluded (company, headquarters, legal form, residence of members, duration) - the bodies of the association are members who work together and the management (one or more members) 	<p>specified in the founding agreement or in equal parts if not defined</p> <ul style="list-style-type: none"> - one member = one vote 	
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Capital company – founded by one or more persons, the minimum amount of capital is specified, the owners are solely responsible for the capital invested, but not their personal property

Form	Basic features	Benefits	Shortcomings
Joint stock company	<ul style="list-style-type: none"> - natural and legal persons - can be founded by one person and have one shareholder - the shareholder adopt the Articles of Association (Statute) and participate in the share capital subdivide into shares - payment of shares in cash and investment of property and rights - consists of the Management Board (main independent body), Supervisory Board (ensures the 	<ul style="list-style-type: none"> - members liable with their capital injected, not their own property - way of doing business, responsibilities, rights, obligations are precisely defined - business continuity is ensured by simple transfer of ownership - relative ease of access to sources of funding - no progressive taxation - entry and exit are free 	<ul style="list-style-type: none"> - excessive financial outlay - strict legal regulations - the minimum share capital is HRK 200.000,00 - obligation to create a reserve capital - complex procedure of company shutdown (bankruptcy) - complex and time-consuming, high-cost liquidation process - the need for double entry bookkeeping

	<p>supervision of the work of the Management Board) and the General Assembly (composed of all shareholders)</p>	<p>- affairs are managed by company bodies</p>	<p>- obligation of paying a membership fee to Croatian Chamber of Economy and Tourist Board, as well as contribution to the common forest functions</p>
<p>Private limited company</p>	<ul style="list-style-type: none"> - founded by one or more persons, a social contract is concluded, which is certified by a public notary - each founder must pay at least a quarter of the basic stake before the company is registered - the stakes are not equal in size and in proportion to which investors have a stake in decision making - it is prescribed when it must have a Supervisory Board - consists of: Assembly, Supervisory Board, Management Board 	<ul style="list-style-type: none"> - members liable with their capital injected, not their own property - legal elasticity which enables the achievement of different goals - a much lower level of formality of procedures and internal organization in the functioning of society (compared to joint stock company) - business continuity is ensured by easy transfer of ownership - production competitiveness - a access to a foreign market - business expansion - exploring new markets - new technologies - relative ease of access to sources of funding 	<ul style="list-style-type: none"> - startup costs - minimum share capital is HRK 20.000,00 (approx. EUR 2.500,00) - excessive financial outlay - strict legal regulations - Complex procedure of company shutdown (bankruptcy) - complex and time-consuming, high-cost liquidation process; - the need for double entry bookkeeping (higher price) - profit is maximized at the company level and belongs to the majority owner of the capital as well as the right to make business decisions

<p>Simple limited company</p>	<ul style="list-style-type: none"> - established by the Record of Establishment of Simple limited company certified by a public notary - minimum share capital is HRK 10,00 - the minimum nominal amount of a business share is HRK 1,00 - regulated by the provisions of the Companies Act relating to Private limited company - bodies: assembly, administration 	<ul style="list-style-type: none"> - quick, cheap and easy establishment (approx. HRK 800,00) - founding capital HRK 10,00 - total cost of establishment no more than HRK 1.000,00 - the process of growing into a Private limited company relatively cheap and easy 	<ul style="list-style-type: none"> - a maximum of five (natural or legal persons) members and one board member - obligation to create legal reserves of capital (25% of the amount of the annual profit of the company minus the loss from the previous year) - in case the share capital reaches the amount of share capital of the Private limited company (i.e. HRK 20.000,00), the company is no longer simple limited company, and is subject to the rules of the classic Ltd. - business investments in cash only
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Opportunities for the formation of a cross-border association:

It is defined that cross-border merger is one in which at least one of the companies is validly established under the law of the Republic of Croatia and at least one company is a capital company within the meaning of Article 2 Point 1 of Directive 2005/56 / EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability

companies, which is validly established under the law of another EU country. Merger is defined in detail in terms of authorized representation agencies, stock ratios and transfer, application, subscription and the like.

We believe that, for the purposes of the project and of the entities concerned, the merger through companies is extremely demanding and complicated, and it is necessary to ensure the founding capital or members corresponding to its own property.

2. Form of association - Cooperative

The establishment of a Cooperative is defined by the Cooperative Act (Official Gazette 34/11, 125/13, 76/14, 114/18, 98/19). A cooperative is a voluntary, open, and independent society run by its members, and through their work and other activities or the use of its services, on the basis of commonality and mutual assistance, realize, promote and protect their individual and common economic, social, educational, cultural and other needs and interests. Establishment by contract and by entry in the court register. A member of a cooperative is a person (physical and/or legal) who directly participates in the work of the cooperative or uses its services and directly participates in the achievement of the goals for which the cooperative was founded.

Cooperative – operates in the form of a company registered with competent Commercial Court		
Basic features	Advantages	Disadvantages
<ul style="list-style-type: none"> - Founding by at least seven founders - equal participation of all members in the business of the cooperative (business and profit sharing) - may establish branches - the founding assembly makes the rules of the cooperative (makes decisions by a majority vote of the founders of the cooperative) - the status of the legal 	<ul style="list-style-type: none"> - low cost of establishment - revenue is shared between the members and the cooperative in proportion to their participation in the joint business, in accordance with the contract - easier access to cash incentives and benefits - joint appearance on the market (lower costs) - larger entity (stronger 	<ul style="list-style-type: none"> - inability of cross-border merger under the provision of the Companies Act - poor status of cooperatives and unadjusted legal regulations - insufficiently updated and inadequate Cooperative Act - mandatory double-entry bookkeeping in accordance with the Accounting Act

<p>entity is acquired by entry in the court register of the competent commercial court</p> <ul style="list-style-type: none"> - bodies: Assembly, Supervisory Board, Manager - the amount of the basic stake is equal, the amount is determined by the Assembly, it cannot be less than HRK 1.000,00 - stake, as a rule, money; in the case of property and rights, the monetary value is assessed by a court expert - part of the profit is retained and invested in the cooperative 	<p>negotiating positions)</p> <ul style="list-style-type: none"> - lower production costs - more favorable procurement of raw materials - a cooperative in legal transactions is liable for it's obligations with all it's assets - the cooperative member is not responsible for the obligations of the cooperative (except in case of abuse of circumstances) - the cooperative is not responsible for the obligation of it's members - decision making on the principle of one member, one vote - profit is distributed to the development of the cooperative, distribution to the members according to the volume of their business, and to support other activities in the interest of the cooperative 	
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Opportunities for the formation of a cross-border association:

Cooperative association opportunities exist within the framework of the European Cooperative Society (SCE), which is regulated by Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE). SCE is a legal entity whose primary objective is to meet the needs of members of the cooperative and/or to develop their economic or social activities. The establishment of SCE is governed by regulations of the Member State, which are applied to establishment of cooperatives. The entry of the SCE in the court of register of a MS has a constitutive effect.

According to stipulations of the Companies Act, cooperatives cannot participate in cross-border mergers.

The basic features as well as advantages and disadvantages of the **European Cooperative** are given below.

Basic features	Advantages	Disadvantages
<ul style="list-style-type: none"> - establishment by natural or legal persons residing in at least two MS - establishment: 1. Ab initio (by 5 or more natural persons, 5 or more natural and legal persons, or 2 or more legal persons); 2. Fusion (2 or more existing cooperatives); 3. Reorganization of an existing cooperative (at least two years had a branch or a subsidiary in the MS) - the basic legal act is the Statute (the founding decision and the rules on internal organization) - decision making: one man= one vote - equity shares of individual members - investments in money, property and rights - legal entity 	<ul style="list-style-type: none"> - the members are not responsible for the amount of capital greater than the subscribed capital - suitable for small and medium-sized enterprises (enlargement and joint provision of services, market entry, competitiveness) - a flexible legal form for conduction an economic activity on the market 	<ul style="list-style-type: none"> - the minimum subscribed capital is EUR 30.000,00 - under national legislation (Companies Act) there is no possibility of cross-border merger - limited access to external capital

<ul style="list-style-type: none"> - registered office in the EU in the same MS where the head office is located - entry in the register of the MS in which it has its registered office - the registered office can be transferred to another MS, which will not cause the SCE to cease to exist or to create a new legal entity - freedom of entry and exit - Bodies: assembly of members, governing and supervisory bodies (the statute selects a dualistic system - a separate supervisory and management body; or a monistic system - a single governing body) 		
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3. Form of association - Association

The founding of associations is regulated by the Associations Act (Official Gazette 74/14, 70/17, 98/19) and the Ordinance on the content and manner of keeping register of associations of the Republic of Croatia and the register of foreign associations in the Republic of Croatia (Official Gazette 4/2015). Association is any form of free and voluntary association of several natural or legal persons who, in order to protect their interests or take for protection of human rights and freedoms, environmental and nature protection and sustainable development as well as for humanitarian, social, cultural, educational, scientific, sports, health, technical, information, professional or other beliefs and goals that are not contrary to the Constitution and the law, and without the intention of obtaining profit or other economically assessable benefits, are subject to the rules governing the organization and operation of this form of association. Principles of the association's activity: independence, publicity, democratic organization, non-profitability and free participation in public life.

Associations have the possibility of financing from the state budget and EU funds for programs and projects of interest to the common good, whose implementation over a long or time-limited period provides a visible added social value that enhances the quality of life of individuals and enhances the development of the wider community. Activities for the common good include, but are not limited to, protecting and promoting human rights, protecting and promoting the right of national minorities, the elderly and infirm, equality, peacemaking and combating violence and discrimination, protecting and promoting the rights of minority social groups, social services, humanitarian activity, promotion and development of social entrepreneurship, protection of consumer rights, protection of the environment and nature, preservation of cultural property, sustainable development, etc.

Association – the status of a legal entity is acquired on the day of entry in the Register of Associations of the Republic of Croatia		
Basic features	Advantages	Disadvantages
<ul style="list-style-type: none"> - Founding by at least three founder - the Statute is the basic general act of the association (adopted by the Assembly) - Assembly – the highest body of the association (all members or their representatives) - the association can have it's organizational forms (branches, clubs, etc.) - a foreign association is an association or other form of association established without the intention of making profit and is validly founded on the basis of the legal order of a foreign country - a foreign association may carry out it's activity in the 	<ul style="list-style-type: none"> - any natural or legal person may become a member - members manage the association directly or through their elected representatives - the association carries out economic activities if required by the Statute - associations can be united in an alliance, community, network, coordination or other form of association regardless of their field of activity (may have the property of a legal entity) - associations can join international associations and other organizations - the assets of the association consists of 	<ul style="list-style-type: none"> - the association may dispose of it's assets only for the purpose of achieving the goals and performing the goals and performing the activities specified in the Statute, in accordance with the Law - the economic activities of an association may be carried out in addition to those activities pursuing the objectives set out in the articles of association, but may not be performed for the purpose of profit for it's members or third parties - if in the course of economic activity an association generates a surplus of income over expenditures, it must, in accordance with the Statute, be used solely for the purpose of attaining the objectives set out in the Statute

<p>territory of the Republic of Croatia upon entry into the Register of Foreign Associations in the Republic of Croatia</p> <ul style="list-style-type: none"> - a foreign association does not acquire the property of a legal entity by entry in the register of foreign associations - associations and foreign associations are obliged to keep business books and prepare financial statements according to the regulations governing the way of financial operations and accounting of non-profit organizations - Status changes (mergers, division of the association) - Merger of one or more associations with another is recorded in the registry of associations (total assets are transferred from one to another association) - Fusion is the establishment of a new association to which the total assets of two or more merging associations passes - Division – an association can be divided into two or more associations (the associations created by division are responsible for the obligations of the divided association) 	<p>funds acquired by the association through payment of membership fees, voluntary contributions and gifts, funds acquired by the association by performing activities that achieve the goals, financing programs and projects of the association from the state budget and budgets of local and regional units and fund and (or foreign sources, it's immovable and movable property as well as other property rights</p> <ul style="list-style-type: none"> - programs and projects of interest to the common good in the Republic of Croatia, which are implemented by associations, can be financed from the state budget, the budget of the local and regional self-government units, EU funds and other public sources - special regulations may provide for tax breaks and other benefits for associations implementing programs or projects of interest to the common good as well as for legal and and 	<ul style="list-style-type: none"> - the association does not have the right to distribute the assets of the association to it's founders, members of the association, elected representatives, employees or related persons (spouse, blood relatives, etc.)
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	<p>natural persons who, through financial means, support actions of interest to the common good</p> <ul style="list-style-type: none"> - the association is responsible for it's obligations with it's entire assets - members of the association and members of it's bodies are not responsible for the obligations of the association - the members of the association themselves supervise the work of the association 	
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Opportunities for the formation of a cross-border association:

Article 20 of the Associations Act (Official Gazette 74/14, 70/17, 98/19), paragraph 1, provides for the association to join an alliance, society, network, coordination or other form of association, regardless of their field of activity, and in paragraph 2, envisages the membership of associations in international associations and other organizations. The main disadvantage of this type of association is that it is not possible to make a profit, but that any generated profit must be reinvested in the development of the association and the achievement of it's goals. Also, the objectives of the association can not only be economic but must also aim at protecting human rights and freedoms, protecting the environment and nature and sustainable development, and for social, cultural, educational goals that could be linked to small-scale coastal fisheries.

4. Form of association – Producer organizations

A regulation on the recognition of producer organizations was adopted in the Republic of Croatia, implementing the Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, which provides that the organization must be a legal entity, have at least seven (7) members, be economically active enough, and have an approved facility. The regulation does not specifically take into account the situation of small producers and small-scale coastal fishermen would not currently be able to be recognized as OP under the existing regulation as they would hardly satisfy sufficient economic activity which defines that the quantity of fisheries products landed and sold by the OP members:

- a) Is at least 4% of the total quantity of landed fishery products in the territory of the country and that the value of these products at first sale is at least HRK 10.000.000,00 or;
- b) Amounts to at least 15% of the fishery products landed and sold by a particular species group of fishery products for which recognition is sought in the territory of the country, or:
- c) Amounts to at least 30% of the landed and sold fishery products of a particular species or group of species in the landing area provided that the total landing of the vessels of all the members in the landing site for which they seek recognition is at least 10.000,00 kg per year.

The prerequisite for the establishment of the OP would be to amend the Ordinance on the recognition of producer organisations in fishery and aquaculture, organisation associations and inter-branch organisations (Official Gazette 112/2018, 84/2019) in terms of sufficient economic activity, and it would be necessary to consider other obligations defined by the Ordinance that would be significant for small-scale coastal fishermen in terms of facilitating and accelerating the administrative process.

Basic features	Advantages	Disadvantages
<ul style="list-style-type: none"> - legal entity - at least seven (7) members - sufficiently economically active - established role – contributes to the 	<ul style="list-style-type: none"> - defined by EU and national regulations - recognized as an important factor in the implementation of the Common Fisheries Policy and an actor in the 	<ul style="list-style-type: none"> - must be a legal person under the law of a Member State – in the Republic of Croatia this means cooperative, joint stock company or limited company (see these provisions) - current requirements for

<p>achievement of the objectives of the Common Fisheries Policy</p>	<p>common EU market - may be the beneficiary of financial support from EU funds - may partner with other OPs, nationally and transnationally - specific situation of small producers when setting up the OP may be taken into account (Article 6 (2) of the Regulation (EU) No 1379/2013).</p>	<p>recognition do not match the state of the SSF sector, changes require time - necessary to amend the Ordinance and adapt it to the SSF sector</p>
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Opportunities for the formation of a cross-border association:

Regulation (EU) 1379/2013 provides for the possibility of transnational association of OPs, which means that OPs from the Croatian and Italian sides can join a transnational association based on biogeographical features in order to seek partnership to establish common rules and conditions for all stakeholders involved in fisheries. However, it is a prerequisite that an OP be established in each MS under the law of that MS.

5. Conclusion

The resulting analysis shows the possibilities of cross-border organizations for the needs of the Adri.SmArtFish project. In the light of all the above, we believe that there are several possible forms of association that meet the basic goals of the project. One of them is the establishment of a national-level cooperative that would eventually grow into a small-scale fishery producer organization as new members join. The **Producer Organization (SSF)** could partner up with another national producer organization into a transnational association as provided for in Regulation No 1379/2013. However, such development requires a certain period of time that goes beyond the project duration. If the decision is made to go in this direction, it is necessary to make changes and amendments to the existing Ordinance on the recognition of producer organizations in fisheries and aquaculture, organization associations and inter-branch organizations (Official Gazette 112/2018, 84/2019). These would define

special conditions for the small-scale fisheries sector and would take into consideration the particular situation of small-scale producers in accordance with Article 6 (2) of the Regulation (EU) No 1379/2013, which is not currently taken into account in the currently applicable Ordinance. It should also be borne in mind that amending the Ordinance takes time. Establishing SSF national cooperatives and recognizing SSF producer organizations is a process that can take quite a while, and since the project timeline is one of the important factors to consider, we believe that establishing a transnational producer organization is not the right choice, although it could fully meet all the project objectives.

With respect to the establishment of a **European Cooperative Society**, besides a high amount of a minimum share capital (€ 30.000), there exist a legal inability in Croatian legislative to merge the two international cooperatives pursuant with Article 549.a (3) of the Companies Act (Official Gazette 111/93, 34/99, 121/99, 52/00, 118/03, 107/07, 146/08, 137/09, 125/11, 152/11, 111/12, 68/13, 110/15, 40/19). The article stipulates that cooperatives may not participate in cross-border mergers. The question is whether the Italian legislation is the same.

As an organizational form, the **Association** offers numerous advantages over other legal possibilities, however, the primary purpose of the association is to freely and voluntarily associate more natural or legal persons with the aim of protecting their interests, professional or other, which are not contrary to the Constitution and Law. These characteristics fully meet the project objectives. It is also important to emphasize that an association is not established for the purpose of profit, although it can be acquired through its activities, but the profit cannot be distributed to member or founders, rather it must be used to further develop and improve the goals of the association as defined in the Statute of the association. The assumption is that the Italian legislation also defined the associations, their establishment and functions, in a very similar way, but it should nevertheless be confirmed before undertaking any concrete activities. Association can join international associations and other organizations, which is important to emphasize as this is one of the goals of the project. Association or other form of international association must have a formal headquarters registered in Italy or Croatia and, accordingly, determine how that association operates in accordance with the national law of the country in which it is established. Therefore, it should be determined, depending on the advantages and disadvantages of national regulations, where this seat will be registered. In this respect, it is necessary to conduct a similar analysis of this kind from the Italian side. Based on positive and negative elements, the results of the review and analysis can be used in the final decision.