

The King establishes conditions for recognition as a social enterprise or an agricultural enterprise



Two royal decrees dated 28 June 2019 finalise the regulatory framework for the two new types of recognition – as a social enterprise or as an agricultural enterprise – introduced by the Code of Companies and Associations.

On 11 July 2019, the Royal Decree of 28 June 2019 laying down the conditions for recognition as an agricultural enterprise and as a social enterprise (the "Royal Decree on conditions for recognition") was published in the *Belgian Official Gazette*, together with another decree of the same date relating to the presumption of recognition as an agricultural enterprise and as a social enterprise (the "Royal Decree on presumption of recognition"). Through these two decrees, the King has completed the legal framework for the two new types of recognition provided for by the new Code of Companies and Associations (the "Code").

The above-mentioned two types of recognition have been added to the existing types of recognition – as a cooperative company and as a forest grouping company – and are in a sense the successors of the agricultural partnership ("LV"/"S.Agr.") and the company with a social purpose or CSP ("VSO"/"SFS") (see also [The New Code of Companies and Associations – The corporate forms](#)). The four types of recognition provided for by the Code require the satisfaction of specific conditions and are granted by the competent federal minister. With respect to the social enterprise and the agricultural enterprise, it is precisely these specific conditions that were laid down in the Royal Decree on conditions for recognition.

Below we describe consecutively the conditions for recognition as a social enterprise, as a cooperative company and as an agricultural enterprise.

Recognition as a social enterprise

For undertakings in the "social economy", the legislator has provided for the possibility for (only) cooperative companies to be recognised as social enterprises by the Minister of Economy, instead of the abolished CSP, which was a form that was available for all types of companies with legal personality.

The Code had already set three conditions for recognition as a social enterprise:

- The main purpose of the company, in the general interest, is to generate a positive societal impact for humanity, the environment or society.

- The company does not distribute any patrimonial advantage to its shareholders, in any form whatsoever, exceeding the interest rate fixed by the King (currently 6%) applied to the amount actually paid by the shareholders on the shares, on penalty of nullity.
- Upon liquidation, the company allocates any positive remaining balance to a purpose that corresponds as closely as possible to its object as a social enterprise, on penalty of nullity.

A number of conditions have been added to these statutory requirements, some of which are similar to those previously existing for a CSP and some of which are genuinely "new".

The following conditions are similar to those set forth for a CSP:

- The articles of association must describe the purpose of the company in such a way that it expressly indicates that it serves to generate a positive societal impact for humanity, the environment or society. In comparison, CSPs were required to precisely describe the social purpose of the activities carried out in accordance with the company's purpose.
- The voting power of any shareholder is limited to one-tenth of the votes attached to the represented shares. Unlike in the case of a CSP, this percentage is no longer reduced to one-twentieth when one or more shareholders are employees of the company.
- A special report on the completed financial year must be prepared annually, and the mandatory information it must contain has been extended compared to what was the case for a CSP. In future, the report must be sent to FPS Economy by companies that are not required to include it in their annual report.

The following conditions are new compared to the CSP regime:

- In the event of withdrawal, the exiting shareholder receives, at most, the par value of his effective contribution.
- The mandate of a director is non-remunerated, unless the general meeting of shareholders decides on limited compensation or limited attendance fees.
- The amount of the dividend to be paid to the shareholders can only be fixed after determination of the amount that the company reserves for projects or purposes that are necessary or useful for the realisation of its purpose.

Thus, the King retained certain conditions identified by some as factors contributing to the limited numerical success of the CSP, such as the limitation of voting rights per shareholder, while adding new conditions, including the non-remunerated nature of directors' mandates, which could also be perceived negatively. However, other elements that needed to be mentioned in a CSP's articles of association are not required for social enterprises. These include the rules under which each employee could become a shareholder or waive their status as a shareholder.

The Royal Decree on conditions for recognition provides that regular control of cooperative companies recognised as social enterprises will be carried out by the administration of FPS Economy. If FPS Economy finds that the conditions for recognition are no longer fulfilled, the

Minister of Economy may retract the recognition.

Recognition as a cooperative company

Recognition as a social enterprise can be combined with recognition "as a cooperative company" by the Minister of Economy, in application of the act of 20 July 1955 establishing a National Council for Cooperation, Social Entrepreneurship and the Agricultural Enterprise. Recognition as a cooperative company opens up a number of tax and social advantages for cooperative companies whose primary purpose is to provide their shareholders with an economic or social advantage to meet their professional or private needs.

A company combining both types of recognition receives the designation "*erkende CVSO*" / "*SCES agréée*", which distinguishes it from the cooperative company (only) recognised as a social enterprise ("*CV erkend als SO*" / "*SC agréée comme ES*"). In addition to the act of 20 July 1955, recognition as a cooperative company is still governed by a royal decree of 8 January 1962 laying down the conditions for the recognition of groups of cooperative companies and cooperative companies. This royal decree, which has not yet been adapted to the CSA – except for its title – sets out conditions quite similar to those for recognition as a social enterprise, such as a dividend cap (also 6%, but calculated differently), a limit to shareholder voting power, non-remunerated directors' mandates and a special report. An "*erkende CVSO*" / "*SCES agréée*" must satisfy the conditions for both types of recognition simultaneously, but the legislator has expressly provided that such an "*erkende CVSO*" / "*SCES agréée*" is exempt from the requirement of having a primary purpose of providing its shareholders with an economic or social advantage to meet their professional or private needs.

Recognition as an agricultural enterprise

The agricultural partnership has been "replaced" by a new specific type of recognition, i.e. recognition as an agricultural enterprise. This recognition can be granted not only to cooperative companies, but also to private limited liability companies (BV/SRL), general partnerships (VOF/SNC) and ordinary limited partnerships (CommV/SComm).

Just as for the social enterprise, the Code left it for the King to determine the conditions for recognition as an agricultural enterprise. Whereas the Code set the statutory conditions for recognition as a social enterprise, it did not do the same for the agricultural enterprise. It only describes one of the consequences of such recognition, in relation to the Farm Lease Act being applicable to them.

Most of the conditions stipulated by the Royal Decree on conditions for recognition are identical or equivalent to the rules formerly applicable to agricultural partnerships:

- The shareholders must be natural persons.
- The company must have at least two shareholders, at least one of which is a "general

partner" ("werkende vennoot"/"associé gérant").

- The shares of the company are registered and of equal value.
- The general partner must devote at least half of his working hours to the operation of the agricultural activity and obtain at least half of his professional income from the active operation of the agricultural activity.
- For the dismissal of the general partner for serious reasons, it is necessary to follow the procedure required for amendment of the articles of association.
- The consent of each general partner is required for any amendment to the articles of association of the company, as well as for the voluntary dissolution of the company, with the exception of the dismissal of the general partner for serious reasons.
- With respect to any transfer of shares inter vivos, each managing partner has a right of first refusal.

Other conditions reflect changes compared to the provisions applicable to the former agricultural partnership. These include the following conditions:

- The main purpose of the company is to operate an agricultural and/or horticultural activity listed in Annex 1 to the Royal Decree.
- The appointment of a general partner does not require unanimity, but the procedure required for amendment of the articles of association must be followed.
- The consent of the general meeting of the company (and no longer the approval of all the general partners and the majority of the limited partners, as was provided for in article 804 of the Companies Code) is required for the transfer of the shares of one or more shareholders in the event of death or inter vivos.

The Royal Decree on conditions for recognition provides that regular control of cooperative companies recognised as agricultural enterprises will be carried out by the administration of FPS Economy. If FPS Economy finds that the conditions for recognition are no longer fulfilled, the Minister of Economy may retract the recognition.

Agricultural partnerships and CSPs existing at the date of entry into force of the Code are presumed to be recognised as an agricultural enterprise or a social enterprise respectively. This presumption can be reversed by the Minister of Economy following the procedures set out in the Royal Decree on presumption of recognition. The presumption is rebutted inter alia when the company waives the presumption, when it is granted recognition after having formally requested it (in which case the presumption is no longer relevant) and when it fails to provide the documents requested by the FPS Economy within the imposed time limit.

A ministerial decree dated 27 August 2019 (published on 4 September 2019) sets out the list of companies that are presumed to be recognised as an agricultural enterprise or as a social enterprise.

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