

### RECENT DEVELOPMENTS

#### Albania

- On the Criteria, Rules, Procedures and Framework Agreement for the Lease of Agriculture Lands owned by the State
- On Food Labelling and Provision of Information to Consumers
- On State Aid Regulation
- On the Amendments of the Contract Model for the Sale of Electricity
- On Certification of Management Systems for Information and Personal Data Security and Protection

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## RECENT DEVELOPMENTS IN ALBANIA

- **Decision no. 373, dated 20.6.2018 “On the criteria, rules, procedures and framework agreement for the lease of agriculture lands owned by the state”**

The Council of Ministers based on Law no. 8318, dated 1.04.1998 “On the Lease of Agriculture and Forest Land, Meadows and Pastures which are owned by the State”, approved the Decision no. 373, dated 20.06.2018 “On the criteria, rules, procedures and framework agreement for the lease of agriculture lands owned by the state” (hereinafter “**Decision 373**”).

According to Decision 373 the following lands may be leased to third parties:

- a) all free areas of agriculture land owned by the state, which are under the administration of ministry in charge with agriculture (hereinafter the “**Ministry**”);
- b) state-owned agriculture land leased from former agriculture directories, whose lease contract term has expired or expires after the entering in force of Decision 373.

For purposes of such Decision, the Lessor means the state represented by the Ministry and/or the institutions under the supervision of the Ministry, which have the right to enter into lease agreements regarding state owned agriculture lands through approval of the Minister.

The procedure of lease of agriculture lands owned by the state involves a publication in its official website by the public entity in charge with the administration of these lands of the announcement for lease. Interested parties having ownership claims or other claims that are in a judicial process regarding the state-owned agriculture land parcels publicly announced for lease may present such claims to the Lessor.

The granting of the lease is subject to a bidding process. The Lessor is responsible for drafting the necessary bid documentation and instructions, registration of requests, organization of the bid procedure, announcement and notification of the Board<sup>1</sup>’s decision approved by the Ministry, and monitoring of lease agreements.

The Board is in charge of assessing the offers presented for the lease of agriculture lands, of guaranteeing equality between the participants/bidders where there are several offers for the same agriculture land as well as taking the relevant decisions within the terms set out in the Decision 373.

The annual lease price is determined according to the quality of the land within the set limits as below:

If an agriculture land, object of the lease agreement, is part of more than one parcel with different categories, each parcel shall be calculated separately, and their sum shall be the total value of the land.

The Lessor is in charge of the monitoring of the performance of contractual obligations and of the agreements entered into pursuant to the Decision 373. For such purposes a register of lease agreements is kept, the form and substance of which are approved upon an instruction of the Minister.

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<sup>1</sup> The Board for the Evaluation of Offers for the lease of agriculture land is composed by not less than 5 members: 1 representative of the entity in charge for the administration

of agriculture land, a specialist of agronomy or livestock, a specialist of economy or city planner, a lawyer, a representative from the regional agency of extension.

**Table on lease prices**

<b>Categories of the land</b>	<b>I</b>	<b>II</b>	<b>III</b>	<b>IV</b>	<b>V</b>	<b>VI</b>	<b>VII</b>	<b>VIII-X</b>
<b>Minimum value ALL/ha per year</b>	17000-27000	15000-22000	12000-20000	10000-15000	7000-12000	5000-10000	5000-10000	6000

- **Decision of the Council of Ministers no. 434, dated 11.7.2018 “On Food Labelling and Provision of Information to Consumer”**

On 19.07.2018 the Official Gazette published the Decision of Council of Ministers no. 434, dated 11.07.2018 “On Food Labelling and Provision of Information to Consumer” (hereinafter “the Decision”).

The Decision is partly harmonized with the EU Regulation no. 1169/2011 “On the provision of food information to consumers” of the European Parliament and of the Council (hereinafter “the EU Regulation”). It will be effective two years after its publication in the Official Gazette, i.e. 19.07.2020. Until then the provisions of DCM no. 1344 will be in force.

In line with the spirit of the EU Regulation, the Decision establishes rules in order to guarantee high-level of protection of consumer’s health and interests by setting standards on providing full information regarding the products which will allow consumers to make well-thought choices based on all the needed information, and to use the products in the correct way, paying special attention to its health, economic, environmental, social and ethical aspects.

The Decision is applicable to 1) the food business operators at all stages of the food chain, where their activity concern the provision of food information; 2) all food destined for the final consumer, including foods delivered by mass caterers and foods intended for supply to mass caterers; 3) to catering services provided by transport undertakings.

Every food product intended for supply to the final consumer or to mass caterers must be accompanied by all the food information set out in the Decision.

The mandatory food information contains:

- information of the identity and composition, properties and other characteristics of the food product;
- information on the consumer’s health protection, including especially information on the composition specificities that may be harmful to the health of certain groups of consumers, durability, storage and safe use, health impact, including the risks and consequences related to harmful and hazardous consumption of a food;
- information on nutritional characteristics including those with special dietary requirements in order to enable consumers to make informed choices.

The Decision establishes the principle of the fair information practice which consists in:

- assuring that the food information is no way misleading especially linked to the food product’s characteristics, nature, identity, properties, country of origin or place of provenance, durability, quantity, composition, method of manufacture or production. It also prohibits to suggest in any way that the food product has effects or properties which does not actually

- possess, to suggest that the food products have some specificities, especially by emphasising the presence or absence of certain ingredients/nutrients when in fact all similar products have such specificities and/or by not emphasising on its appearance, description or pictorial representations, the presence of a particular food/ingredient, while in reality a component naturally present or an ingredient normally used in that food has been replaced with a different component or a different ingredient;
- ii. providing accurate, clear and easy to understand food information;
  - iii. not attributing to any food property of preventing, treating or curing a human disease and not even referring to such properties.

Moreover, the Decision determines the responsibilities of the food business operator who is the person responsible for the food information, under whose name (or trade name) is carried out the marketing/trade of the food product. In case of imported food products, the responsible person will be the importer.

### • On State Aid Regulation

On 4 September 2018 the Council of Ministers adopted the Decision no. 513 *“On the approval of the regulation “On the conditions and procedures of granting and authorizing certain categories of state aid” (“the Regulation”)* which is published to the Official Gazette No. 132, dated 14.09.2018.

The Regulation “sets out the scope and limits of the aid. It also provides for the criteria, such as transparency, incentive effect, intensity, and monitoring of the aid.

#### The Scope of the Regulation.

The following categories of aid fall within the scope of the Regulation:

The duties of the food business operator are to guarantee the presence and accuracy of the food information. Under the Decision he/she shall not trade food products which based on his professional knowledge are not compliant with the requirements of the legislation regarding food information.

Further, the food business operator is responsible for all changes made to the food information accompanying information of the product, for the food information regarding the non-prepacked food for final customer or supply to mass caterers, for complying with all rules and provisions of the Decision including the labelling rules.

In a nutshell the Decision sets out specific rules to be complied with regarding all aspects of labelling of food products and information of customers by appealing the former Labelling Regulation approved by Decision of Council of Ministers no. 1344, dated 10.10.2008 (DCM no. 1344).

- *State aid for small medium enterprises (SMEs)*. This type of aid refers to: investment aid, aid for small startups established by women entrepreneurs, aid for small medium startups, aid for consultation of the SMEs, aid for participation in fairs, and aid for financial risk.
- *State aid for research, development, and innovation*. This type of aid includes the aid granted for research and development projects, for infrastructure investments of scientific research projects, aid for the clusters of innovation, aid for incentivizing the innovation of SMEs.

- *State aid for environmental protection.* Under this type of aid fall the following: the investment aid related to the efficiency and saving of energy, investment aid to produce energy from renewable sources, operational aid to promote electricity from renewable resources, investment aid for the rehabilitation of polluted areas, investment aid for the recycling and reuse of wastes, investment aid related to the energy infrastructure, and aid for environmental studies.
- *Regional state aid.* The scope of the regional aid includes the aid granted for initial investments or for creating new job positions related to the initial investment, as well as aid for operational costs. The regulation also provides for other elements of the regional aid, including: the time of the investment, the rental costs for intangible assets, purchase of the enterprises or assets, substantial change, etc.
- *State aid for trainings.* This type of aid is granted when the criteria set in the Regulation are fulfilled and is not granted in cases when the enterprises organize mandatory trainings compliant to the national standards.

Whereas, the following aid categories are exempted from the scope of the Regulation:

- State aid on the exportation activities;
- Limited state aid for the use of the imported products compared to the imported ones;
- State aid in the fishing sector, with certain exceptions;
- State aid for agricultural products, with certain exceptions;
- State aid in the sector of processing and marketing of the agricultural products;
- State aid for companies in difficulties.

### Limits of the Aid.

The Regulation provides for granting a minimum of EUR 2 million and maximum EUR 100 million, depending on the category of aid from which is benefited.

### Transparent Aid.

The Regulation requires the aid to be transparent. Based on the suggestion of the Commission, it provides that the aid is transparent when the gross equivalent of the grant can be calculated accurately before granting the aid, by previously performing a pre-assessment of the competition in the relevant market, in accordance to the requirements and principles set out in the above-mentioned regulation itself.

The Regulation also sets out the categories of aid that are considered transparent.

### Incentive Effect.

The Regulation concerns only the aid that has incentive effects.

There are two procedures to prove this effect. The first procedure is initiated by the beneficiary, by submitting a written application for aid before starting the workings of the project or of the activity, together with the supporting information required by the Regulation. The second procedure is initiated *ad hoc* by the granting authority. The latter starts the procedure when it verifies that the beneficiary fulfils the criteria set out in the Regulation. In this case, the beneficiary shall submit supporting documentation, and the aid is granted when the aid serves to one of the purposes listed in the Regulation.

### Intensity of the aid.

The Regulation sets out the rules on the aid intensity, whether it is granted as a grant, in a form other than a grant, in installments, in tax advantages, etc.

## Monitoring the state aid.

The Regulation imposes to the authority that grants the state aid the obligation to publish on its website information related to the aid, within 6 months from the date when the aid is granted or in the case of tax

advantages within 1 year from the date when it has been declared with the tax authorities.

The publication of the websites of the authorities that grant state aid and of the summarizing information on the scheme is under the responsibility of the State Aid Commission.

- **On the Amendments of the Contract Model for the Sale of Electricity**

On 14 June 2018, the Competition Authority provided several recommendations to the Energy Regulatory Entity on the amendments of the contract model for the sale of electricity, entered into by the Operator of Distribution of Electricity (OSHEE SH.A.) and the priority producers of energy, as proposed by OSHEE SH.A.

The proposed amendment states that the contract must be concluded for a term of 15 years and the price shall remain unchanged during the term of the contract.

The Competition Authority recommended to the Energy Regulatory Entity that the conditions on the

determination of the price, and the term of the contract for the sale of energy shall be reflected clearly in the contract, in accordance with the legal provisions in force, by orienting it towards the real costs of investment, based on the reasonable return of their value, with a reasonable term. With regard to the price, the Commission of Competition concludes that it cannot be unchangeable for the whole term of 15 years of the agreement, not only because it violates the legislation in force but also because it may pertain risk for the market competition.

- **On the Certification of Management Systems for Information and Personal Data Security and Protection**

Under the Data Protection Law (law no. 9887/2008), controllers of personal data must undertake security measures to protect the personal data that they control.

Controller is any natural person or legal entity, public authority, agency or any other body that separately or together with others, determines the purposes and the means of processing the personal data, compliant to the laws and bylaws of this area and fulfills the obligations deriving from the Law.

A controller should ensure that its system of management of personal data security is in compliance with the applicable legal requirements.

In light of the above requirements, on 14.09.2018 the Data Protection Commissioner (the “**Commissioner**”) adopted the Instruction no. 48 “On the certification of the systems of management of information and personal data security and protection” (the “**Instruction**”).

The Instruction provides for an Accredited Body, which will be in charge for the issuance of the certificate of compliance of the security management systems of controllers with the applicable law requirements.

Accredited by the responsible accreditation authority and authorized by the Commissioner, the Accredited Body issues the certificate after having conducted independent controls at the premises of

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the controllers, and after having supervised the compliance of the management systems with the legislation on personal data.

The certification is valid for a period up to 3 years, renewable.

The Accredited Body shall notify on a case-by-case basis the Commissioner on the certificates that it issues, as well as on the reasons for issuing or cancelling a certificate. The Commissioner is entitled to revoke the issued certificate for the Controller or to order the Accredited Body not to

issue the certificate, if the criteria for the certification are not fulfilled.

The controllers create, maintain and develop continuously a system of management of the information security in pursuance with the requirements of ISO/IEC 27001 International Standard, as last updated.

A register of the certified controllers is kept by the Commissioner's Office and published in its official website.

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If you wish to know more on issues highlighted in this edition, you may approach your usual contact at our firm or the following:

[infocus@bogalaw.com](mailto:infocus@bogalaw.com)

## **Tirana Office**

40/3 Ibrahim Rugova Str.  
1019 Tirana  
Albania  
Tel +355 4 225 1050  
Fax +355 4 225 1055

## **Pristina Office**

27/5 Nene Tereza Str.  
10000 Pristina  
Kosovo  
Tel +383 38 223 152  
Fax +383 38 223 153

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## **BOGA & ASSOCIATES TOP TIER ACHIEVEMENTS 2018**

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**IFLR1000 2018:** Ranked in Tier 1 in Financial and  
Corporate and Project Development

**Chambers Global 2018:** Ranked in Band 1 in  
General Business Law

**Chambers Europe 2018:** Ranked in Band 1 in  
Corporate/Commercial and Projects

**The Legal 500 2018:** Ranked in Tier 1 in Legal  
Market Overview

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## Boga & Associates

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The firm’s particularity is linked to the multidisciplinary services it provides to its clients, through an uncompromising commitment to excellence. Apart from the widely consolidated legal practice, the firm also offers the highest standards of expertise in tax and accounting services, with keen sensitivity to the rapid changes in the Albanian and Kosovo business environment. The firm delivers services to leading clients in major industries, banks and financial institutions, as well as to companies engaged in insurance, construction, energy and utilities, entertainment and media, mining, oil and gas, professional services, real estate, technology, telecommunications, tourism, transport, infrastructure and consumer goods.