ORGANIZATIONAL LEGAL ASPECTS OF CLUSTERS IN THE REPUBLIC OF SERBIA¹

Vesna Parauši², Branko Mihailovi³

Abstract

In theory and in practice, clusters, as specific form of economic entities association, differ significantly. Theoretically defined, a cluster is often hard to recognize in practice, especially in transitional and less developed countries. There are many dilemmas in scientific and professional public about the legal form of clusters. The most frequent perplexities are regarding clusters' legal aspects issues (is it necessary or obligatorily for cluster to be registered or not?), legal forms in which it can function, internal clusters organization (authorities, rights and obligations of members, etc.). This paper will be focused at a discussion of organizational-legal aspects of clusters in the Republic of Serbia. Base for this issue analysis and drawing conclusions will be a case study (analysis of organizational-legal form of a cluster in the field of Serbian food industry), the analysis of legal documents which regulate the issues of establishment and work of clusters in the Republic of Serbia, as well as the analysis of the governmental documents in the field of clusters motivation in domestic economy.

Key words: clusters, associations, organization, legal form

Introduction

In theoretical and practical sense, the most frequent perplexities are regarding clusters' organizational-legal functioning. The most common questions of professional and scientific public and especially economic

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² Vesna Parausic, PhD, Research Assistant, e-mail: <u>vparausic@sezampro.rs</u>, Institute of Agricultural Economics, Volgina 15 Street, Belgrade

³ Branko Mihailovic, PhD, Research Associate, e-mail: <u>brankomih@neobee.net</u>, Institute of Agricultural Economics, Volgina 15 Street, Belgrade

entities, which show an intention to join clusters, are in the field of clusters' legal registration, organizational structure and a way of clusters functioning. In this paper, the authors tried to explain the clusters organizational-legal issues and thereby offer a contribution to legal entities, entrepreneurs, as well as scientific-educational institutions (scientific institutes and faculties) and regional/local authorities in concrete activities linked to a foundation and work of clusters.

Research methodology

In accordance to a desk research, i.e. a review of comprehensive world literature on clusters was given, first of all, a definition of a cluster and review of basic characteristics of this form of economic entities networking. The desk research has also served for consideration of an issue if a cluster has to be legally registered or not, as well as which has been the most often legal form of clusters organization, in case it had been registered.

An accent in the paper was put on organizational-legal issues of clusters functioning in economy of the Republic of Serbia. The clusters base in Serbian economy has the Ministry of Economy and Regional Development⁴, but much wider clusters base, used in the paper, was get via the Serbian Business Registers Agency⁵, where are immanent all clusters in the republic with legal registration. Over the search base of legal entities and entrepreneurs of the Serbian Business Registers Agency, by typing a word "cluster" in a field "business name" we came to a number of clusters in domestic economy. In this way was get a list of all legal entities and entrepreneurs who have in their name a word cluster, which means that they tend to do business after the cluster principle. Analyzing available data of these economic entities, also via the base of the Serbian Business Registers Agency, has come to the data in which legal form the clusters have been registered. It is necessary to emphasize that the number of registered clusters in the Republic of Serbia's economy is greater for those clusters which tend to function as clusters, and in their

⁴ Serbian Clusters have started to develop in the period 2004-2005, along with support of the Ministry of Economy and Privatization, later the Ministry of Economy and Regional development. Internet presentation of Serbian Clusters: http://klasteri.merr.gov.rs/Klasteri-u-Srbiji

⁵ http://www.apr.gov.rs/

name they do not contain a word cluster, then for the clusters which have not been registered in the Serbian Business Registers Agency, as well as for the clusters which have no legal registration, while in practice they function on cluster principle.

Regarding that the greatest number of legal entities and entrepreneurs in the Serbian Business Registers Agency, which has no word cluster in their name, is registered as an association, there has been in detailed analyzed the Law on Associations from 2009, in order to present the most significant legal clauses and organizational aspects of clusters functioning. The research was completed by a case study, in which was analyzed a statute of clusters\associations of food products ,,Polux", with locality in Kikinda.

Concept and basic characteristics of clusters

The clusters are highly complex phenomenon which is not easy to define. While some types of clusters are easy to recognize (classical examples Silicon Valley or Fashion Cluster in Milan, or Swedish Cluster of Cellulose and Paper), in most of cases in practice it is about more or less border situations of cluster existence, i.e. the existence of certain level of enterprises concentration in the same or similar industry with certain level of developed cooperation among actors⁶. In addition are several definitions of clusters:

- Professor Porter defines a cluster as geographic concentration of mutually connected companies and institutions in certain activities field (one business field) or, again, as a critical mass of enterprises and institutions at the same place, of unusual competitive success in certain fields of activity⁷.
- According to Innobarometer 2006, the clusters are groups of correlated enterprises, suppliers, service providers and associated institutions in certain field of activity/business, which are geographically, located one close to another⁸.

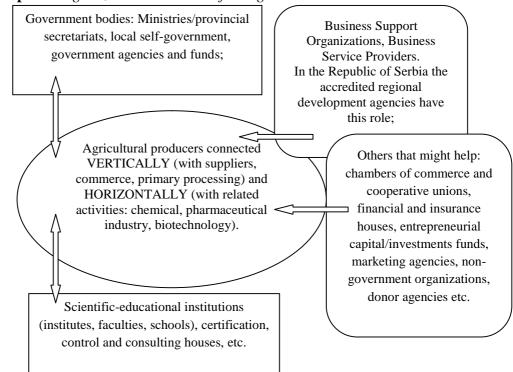
⁷ M. E. Porter (1998): Clusters and the New Economics of Competition, Harvard Business Review, November-December 1998, page 78.

⁶ Innobarometer on cluster's role in facilitating innovation in Europe, Analytical Report, July 2006, page 18.

⁸ Innobarometer on cluster's role in facilitating innovation in Europe Analytical Report, July 2006, page 16.

• Ministry of Economy and Regional Development of RS, authorized for clusters development in the Republic of Serbia, defines clusters as a form of business associations of geographically concentrated enterprises with institutions which provide them support in some field in which they compete, but also cooperate. 9.

Graph 1. Organizational network of an agricultural cluster in Serbia



Source: A review of the autors based on literature: "Clusters for Competitivenes: A Practical Guide and Policy Implications for Developing Cluster Initiatives", International Trade Department, The World Bank, February 2009 i Sölvell, Ö., Ketels, C. and Lindqvist, G. (2003), The Cluster Initiative Greenbook, Ivory Tower AB, Stockholm, page 18.

In this paper, under a concept cluster will consider the next cluster definition, given by the authors based on large-scale research of the world literature on clusters: A cluster is a group/network of connected

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⁹ The Public call for Cluster Development Support Programme in 2011, Ministry of Economy and Regional Development of the R. of Serbia.

enterprises, educational-scientific institutions and government agencies in certain field of activity/business and in specific geographic region (town, district, and province). The review of clusters functioning network was given in the graph 1.

Based on comprehensive world literature studying on clusters can emphasize that successful cluster association has the following characteristics¹⁰:

- Geographic vicinity of the companies and the institutions,
- Successful clusters are concentrated in one or more economic sectors within the region (clusters density), they have width (established horizontal connections with the cluster participants) and depth (vertical connections between the members in the cluster),
- Clusters are characterized by an existence of, so called, "social adhesive": built trust, cooperation and partnership between the companies, government bodies and scientific-educational institutions,
- Cooperation between the cluster members realizes through an intensive cooperation, but also through competitive relation.

Key positive contributions of the cluster, especially in the sector of small and medium enterprises, are 11:

- Reducing production costs and growth of productivity based on highly specialized production, presence of specialized suppliers, using the government programs of infrastructure and/or technology improvement,
- Increase of enterprises' innovativeness, engaged in the cluster as a result of ideas, information and knowledge exchange,
- Stimulating entrepreneurial ship development, establishing new enterprises and growth of employment in the region in which the cluster function.

¹⁰ (1) M. E. Porter (2008): O konkurenciji, pp. 227-228; (2) M. Enright (2003): Regional Clusters: "What We Know and What We Should Know", pp. 99-129, 114; (3) "The concept of clusters and cluster policies and their role for competitiveness and innovation", Commission Staff Working Document SEC, 2008, EC, pp. 09-012.

¹¹ (1) A Practical Guide to Cluster Development, Englands Regional Development Agencies, 2003; (2) M. E. Porter (1998): "Clusters and the New Economics of Competition", Harvard Business Review, pp. 80-84; (3) M. E. Porter (2008): "O konkurenciji", pp. 215-227.

Everything previously mentioned benefits of a cluster lead to building and strengthening of sustainable sources of the members/regions' competitive advantage on domestic, and especially international market.

Basic points of formal-legal registration of clusters

The most often cites in the literature on clusters the following possible legal forms of a cluster ¹²:

- 1. Non-profit organizations (which realized profit do not allocate to the members and which do not realize an interest from income non-taxing),
- 2. Industrial associations.
- 3. Corporation (company), when clusters should receive a contribution and invest, when the state financing is involved (then it is usually necessary professional management and formally legal registration of clusters).

However, based on comprehensive world literature on clusters can point out that the formal-legal association in the cluster (registration of a cluster as legal entity) is a phenomenon of bureaucratically-administrative character and the most often is connected to use of donor and/or budgetary stock-in-trade and clusters investments, when is necessary for the cluster to have the legal registration and the professional management. Otherwise, a need for legal registration the clusters participant cannot recognize and it does not represent a precondition for the cluster members to be networked after the cluster principle. Also, becoming a member of a cluster and cluster's legal registration can be opposed to the legal clauses too, which concern protection and strengthening of competition on the market.

In previous context observed, it is important to mention a difference between empirical phenomenon of the cluster, as grouping the economic activities in some location (when the cluster is not obliged to be the legal entity) and the cluster initiatives or the cluster organization. In addition

¹² The Concept of Clusters and Cluster Policies and their role for competitiveness and innovation, Commission Staff Working Document SEC (2008) 2637, EC, p. 010.

will be made a difference between definitions of some concepts closely related to the cluster concept: ¹³

- *Cluster initiatives* are organized efforts in order to increase growth and competitiveness in the cluster by including firms in the cluster, government/state bodies and/or research institutions.
- Cluster organizations are often a part of the cluster initiatives and they have an important role in motivation of the cluster development. They define as legal entity for cluster management (public private partnership), which manager usually does business in offices, and takes part in the cluster activities.

Neither one nor the other concept (the cluster initiative/cluster organization) are not related to an essential existence of the cluster (so called natural cluster), and very often, in practice, exactly the cluster initiatives and the cluster organizations call them selves the clusters, as it is the case with all initiatives of that kind in the Republic of Serbia¹⁴.

Although the clusters are not obliged to have the legal registration, and in practice can function as cluster, based on rich experience in this field, there can point out that, so called, "empirical" or "natural" cluster (group and network of businessmen in one production or in specific region), as recognizable on the market, almost cannot be identified in our economy. Maybe the registration/grouping of economic activities in one region, which is primarily similar to a cluster, is raspberry growers in Zlatibor area. The raspberry growers in this area have not been registered as a cluster in the Serbian Business Registers Agency, neither in this area have existed the cluster initiative or the cluster organization. However, in Zlatibor area, major population deals with raspberry production/there is a concentration or a critical mass of producers and cold storage plants, realizes massive production of raspberry from the world production¹⁵ point of view, the Republic of Serbia has been recognizable after this type of production in the world, realizes significant export results, producers have long tradition of production, etc. Nevertheless, what "pulls away" these producers from the cluster approach is: constant conflict of interests

¹⁴ Dragisa Mijacic (2011): State analysis of business infrastructure in the Republic of Serbia, National Agency for Regional development, p 23.

The concept of clusters and cluster policies and their role for competitiveness and innovation, Commission Staff Working Document SEC (2008) 2637, EC, p. 010.

¹⁵ According to FAO statistics data, Serbia is on the third position in the world by raspberry production, after the Russian Federation and Poland. http://faostat.fao.org/site/339/default.aspx

on relation primary agricultural producers – cold storage plants; lack of government programs for this production improvement and making favourable economic environment for bigger investments; insufficient role of science and innovations in production organization, introduction of new sorts, transport etc.

What is important to emphasize is a fact that to developed clusters in the world (clusters with sustainable competitive advantages), which are not obliged to be legally registered, are often available the organizations, as legal entities, for support and help to SMEs in the cluster (BSO-Business Support Organizations and BSP-Business Service Providers).

In the Republic of Serbia, too, functioning of clusters can be significantly supported by exactly those organizations. In our country those are public private partnerships for cooperation and support to SMEs and regional development or accredited regional development agencies ¹⁶. All regional agencies in Serbia have been established with the EU support, have been based on public private partnership and have been organized by legal form of non-profit character shareholding. ¹⁷ The agencies have a capacity to attract budgetary resources of the republic and the EU funds and can significantly help enterprises in the cluster to increase their competitiveness on the national and international market.

Legal form of clusters registered as an association in the Republic of Serbia

Taking into consideration remarks on number and registration of clusters in Serbian economy, provided in the item Research Methodology, can be pointed out that in the Serbian Business Registers Agency was registered on the day September 10th 2012:

• 70 clusters in legal form of association (according to the Law on Associations, "Official Gazette of RS" no. 51/09)

¹⁶ A list of regional development agencies which have been accredited by the National Agencies for Regional Development of the R. of Serbia is available on web site http://narr.gov.rs/index.php

¹⁷ Controlling capital owners of these agencies are local authorities' units. Besides the Republic of Serbia Government, a partnership is made of municipalities/towns, regional chambers of commerce, associations, NGOs, companies, scientific research and educational institutions.

- 9 clusters in legal form of non-profit company (according to the Law on Companies, "Official Gazette of RS", no. 125/04)¹⁸,
- 3 clusters in legal form of foundation (it is about clusters in the field of tourism).

In accordance to the cluster's legal registration review and empirical experience of the authors, there can point out that the cluster can have more legal registrations (there are no legal obstructions for this). For example, the cluster Somborski salasi was registered in the Serbian Business Registers Agency as: 1) association, 2) company (stock company) and 3) agricultural cooperative¹⁹.

The association as the most common legal form of clusters in economy of the Republic of Serbia. The most of registered clusters in economy of the Republic of Serbia were registered in Business Registers Agency as an association. This legal form seems as the most favourable to the cluster members, especially due to this form is required also by the Ministry of Economy and Regional Development of the Republic of Serbia, which in cooperation with the National Agency for Regional Development and network of the regional agencies/centres, conducts the Program of Innovation Clusters Development in the Republic of Serbia. For example, as an assumption of using irreversible budgetary resources for clusters development, the National Agency for Regional Development in Public Announcement in 2012, states that a right for using the irreversible assets have innovative clusters which are 20:

- Registered in the Register of Associations of the Serbian Business Registers Agency,
- Have at least 12 active members (9+3): at least nine companies, entrepreneurs and at least three institutions for support (carriers of innovation activity according to the Law on Innovation Activity, educational institutions, research-developmental institutions, business associations, regional agencies etc.),

¹⁸ By the statute, or by the Founding document of the company, emphasizes that a profit which the company gains by its business does not allocate on the company's members, but invests in financing further business of the company.

¹⁹ http://www.apr.gov.rs/

Public call for the support to innovative clusters in 2012, http://klasteri.merr.gov.rs/Konkursi/Javni-poziv-za-dodelu-bespovratnih-sredstava-inovativnim-klasterima.

• Have for members minimum 60% small and medium enterprises and entrepreneurs and at least one scientific-research organization.

Considering that the most of clusters in Serbia have been registered as associations, according to the Law on Associations from 2009, in addition is quoted the most important decrees of this law, which has significantly simplified formal legal registration of clusters in domestic economy:²¹

- Association defines as a voluntary and non-government non-profit organization based on freedom to associate more physical persons or legal entities, established to realize and improve certain mutual or common goal and interest, which are not forbidden by law or the Constitution.
- The law enables that different market actors (physical persons and legal entities) can be founders of new business entity/legal entity.
- Association can be established by at least three founders, in regard that at least one of the founders must have a residence, i.e. to be located on the territory of the Republic of Serbia.
- Every legal entity in private law (for example, company, institution, fund, other association, communion, political party, etc.) can be a founder or a member of the association. If it is about the government bodies as authority carriers, which have a character of legal entity (ministries, municipalities, etc.), the basic rule is that they cannot be founders or members of the association.
- Considering that the association is non-profit organization, it
 cannot be established in order to do economic and other activity
 by which gains a profit, neither the association has a right to, its
 property and eventually realized profit from economic or other
 activity, allocate to its founders, members, employees or related
 persons. Incomes of activities can be used only for financing the
 statutory goals of the association, including also the costs of
 regular work of the association.
- The association can, under legitimated conditions, to do also economic or other activity by which gains a profit (so called related economic activity), in order to provide additional funds necessary for doing its basic (non-profit) activity, but under the

²¹ Law on Associations has come into effect in July 22nd 2009 and has started to apply on October 22nd 2009. The Law on Associations ("Official Gazette of RS", no. 51/09). A Guideline for applying the Law on Associations, Ministry of Public Administration and Local Self-Government, Civic Initiatives, British Embassy in Belgrade, OEBS Mission in Serbia, Belgrade, October 2009

following conditions: that the activity is in compliance with its statutory goals, that the activity is anticipated by the constitution and that the activity is small-scale. However, the law does not determine reliable criterion linked to larger-scale economic activities.

Difference between the registered and unregistered associations. The Law on Associations makes a difference between the formal associations (those which have got a status of legal entity by registering into the Serbian Business Registers Agency) and informal associations (on which apply legal regulations on civil partnership, i.e. for obligations of informal associations are responsible the founders and the members by their entire property). The association gains series of benefits by registering into the associations register:

- It can act independently, as the legal entity, with its mark, logo and other symbols, in transactions, to sign contracts (for example, a contract on office lease) and to undertake other legal activities for itself (it can open a bank account, to make a stamp).
- After legal entity status achieving, the association can enrol the economic activity it does directly (there enrols a main activity),
- Possibility of belongings gain from a membership fee, benefactions, donations and gifts (in money or paying in kind), financial subsidies etc. 22
- Association can apply for getting the republic budgetary resources, from the province or the local self-government units for realizing the public interest programs, then can apply for the EU assets, private donations, etc. ²³
- For obligations took over in transactions it is responsible only by its property (if any), and not by property of the members or the founders.
- Association can be a founder of a company independently or with other persons (e.g. the association can found a limited liability company). Whether will the association do economic or other activity directly or via especially founded company is a matter of its business evaluation. In principle, if the association desires to do larger-scale economic or other activity, there recommends to

²² Physical persons and legal entities which make donations and present to associations can be void of some tax burdens

²³ For the legal safety, for using these assets are necessary for an association to be registered, i.e. to have a status of legal entity.

found a special company, especially taking into consideration that thereby avoids a risk of sanctions, due to imprecise legal clauses regarding its allowed size of the economic activity's direct performance.

 Association can have some customs, budgetary and tax relieves (privileges).

Foundation method and association's authorities. According to the Law on Associations, it founds at the inaugural meeting of the assembly, in which adopts: foundation official document, statute and there elects a person for the association's representation. The association is obliged to make a record of the assembly on course of events and contents of done activities and made decisions, which will, among the others, submit as an application form's enclosure for registering the association into the Registers. None of founding property is necessary for the association's foundation. The obliged association authorities are:

- Assembly (the highest association's body, and a way of decision-making of the Assembly arranges closely by the statute). The Assembly adopts the statute of the association, its alterations and supplements, elects and releases a person authorized for the representation, makes decision on the statutory alterations of the association etc,
- Representative of the associations (a person which signs contracts and undertakes other activities in transactions on behalf of the association).

Besides the assembly and the representative, the association can have also other authorities (singular and collegial), if they are anticipated by the association's statute, i.e. if the assembly suggests them: an Administrative Board (executive body which makes decisions in order to the association's goals achievement), a chairmanship, a director or the president of the associations, an inspecting committee (which controls the association's financial business) etc. In case when the association has the administrative board, there is usual practice that the assembly nominates and releases the administrative board, and the administrative board nominates and releases duties of the association's representatives. Whether the associations will decide to have, besides the assembly and the representatives, also other bodies depends on series of circumstances, including a size of the associations, field of activity, financing sources, etc.

Name and locality of the association. A name must be on Serbian language and in Cyrillic. There are neither special limitations, nor conditions to found an association which will contain in its name a word cluster. The association has a locality, which must be on the territory of the Republic of Serbia, provided that as the locality determines the local self-government unit on which territory is a location from which the association manages.

Some aspects of legal-formal cooperation between the members in the cluster are in addition:

- By registering into the cluster every member keeps its legal and business/economic independence (in transactions each member performs independently), and at the same time, has a possibility to benefit from mutual activities and using budgetary or donor assets,
- Each person can, under equal conditions determined by the statute, become the member of the association. The association independently regulates the conditions for gaining and loosing a characteristic of the association's member.
- There is no difference between the founders and the members (the founders have no special privileges, nor status). Each members of the cluster has a right to take part, on an equal footing with other members, in realizing the cluster's goals, then to participate directly in decision-making at the assembly, as well as via the association's authorities.
- Relations between the members of the network should be characterized by: frequent meetings/contacts, ideas, information and knowledge exchange, competitiveness, mutual activities regarding mutual goals and problems solving,

The cluster/association in the field of financial business is obliged to keep the books, to make financial reports and succumbs to the financial reports revision, in accordance with regulations on accountancy and revision.

Case study: food cluster "Polux", Kikinda

In the internal documentation of food cluster Polux (cluster statute, cluster presentation) in addition are presented the basic organizational-legal issues of this cluster functioning.

The cluster "Polux", Kikinda is the association of Serbian food products producers (http://www.klasterpolux.rs). The cluster was founded on March 2010, with the locality in Kikinda. The association gathers the members who, by their size, belong to a category of small and medium enterprises and entrepreneurs which produce food products of domestic production, food products without additives and preservatives, organically grown products. The members of the cluster were presented in the graph 2.

The main goal of joining in cluster is increase of its member's competitiveness. As the most important directions of the cluster members activity mention:

- Using joint resources,
- Making joint supply/sale network,
- Organizing mutual marketing activities and winning new markets,
- Education of members and raising business culture,
- Exchange of information, knowledge and ideas,
- Organizing the group quality system conduction (HACCP),
- Support in applying for incentives, etc.

The enterprises/founders of the cluster "Polux" point out the following advantages of joining into the cluster:

- With its products the member participates in joint supply, whereby decrease commercial costs in the enterprise,
- Mutual goods exchange among the members provides lower prices of raw materials and equipment and ensures reliable suppliers,
- Mutual performance on the market decreases the costs after various bases, as: joint products supply, services of products control, introduction of quality standards, etc.
- With mutual performance on the market and organized transport realizes a possibility that small enterprises sale their products on remote markets,
- Common web-site and catalogues, performances in fairs and various forms of marketing activities,
- Bigger changes for allocation of financial support by different government and non-government organizations and institutions,
- Mutual exchange of experiences and knowledge, organized education etc.

Graph 2. Members of the cluster "Polux"

Members of Polux cluster

Primary members: primary agricultural producers, processors, shops/trade

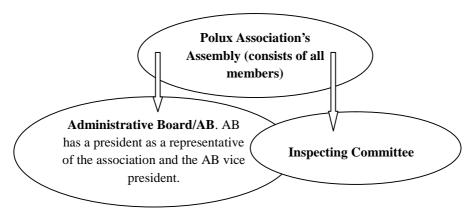
Supporting members: producers of packing and equipment, printing firm, marketing and consulting agencies (specialized consultants for business support and small business), certification houses etc.

Supporting institutions: government bodies and agencies, institutes and faculties, regional development agencies, local self-government, chambers of commerce

Source: *Internal documentation of the cluster "Polux"*.

The managing bodies in the cluster, defined by the statute, are shown in the graph no.3.

Graph 3. Management of the cluster "Polux", Kikinda



Source: *Internal documentation of the cluster* "*Polux*".

Obligations of the cluster members. The members of the cluster POLUX keep their economic independence, and in regard to the cluster have the following obligations:

- 1. participation in the assembly's work and in realizing the association's goals,
- 2. regular payment of membership fee,
- 3. Submitting the data on business and products.

The member of the cluster has a right to: 1) participate in decision-making via the association's bodies, 2) to be elected in the association's bodies, etc.

Conditions for acceptance in the clusters membership. A decision on the acceptance into the association makes the assembly and informs about it an applicant. The conditions of new member acceptance into the cluster POLUX are:

- Member of the cluster has to be familiar with the cluster's statute.
- Member should have clearly defined interest goals of its membership, and the goals must be in accordance with working policy of the cluster,
- That the member was not in a financial blockade in past year (for legal entities),
- If the member is of production character, it must have in its content at least 51% of domestic origin raw materials.

Conclusion

A cluster in a real and essential comprehension of this concept can exist only as a formal legal registered legal entity, but also can function if it is not legally registered, does not have managing bodies, or clearly defined organizational network/structure of functioning. Generally, formal-legal association into a cluster (registration of a cluster as a legal entity) is a phenomenon of a bureaucratic-administrative character and is mostly connected to use of donor and/or budgetary resources for work and investments of cluster, when is necessary for the cluster to be legally registered and to have a professional management. Otherwise, a need of the legal registration members of a cluster do not recognize and it does not represent a precondition for cluster members to be networked after cluster principle.

What is important to emphasize is that, for developed clusters in the world, clusters which must not be legally registered, are available organizations for support to small and medium enterprises sector (so called, BSO-Business Support Organizations and BSP-Business Service Providers), as legal entities in public private sector, which help enterprises in cluster and the cluster in whole to build and increase their competitiveness on the national and international market.

There can be concluded that each cluster follows its own path of creation and development, i.e. its history, requires less or more organized form, can have formal or informal character and ad hoc or long-term character.

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