

THE IMPLEMENTATION OF EUROPEAN FOREST LEGISLATION FOR A SUSTAINABLE DEVELOPMENT

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Abstract: *This report presents the results of an extra budgetary project which analyses similarities and common approaches in European national forest legislation. The forest laws of 23 countries have been examined in order to find out whether provisions are made to put into practice the following three legal issues: reforestation obligations after logging through final cutting or loss of forest cover due to fire and natural calamities; regulations concerning public access to forests; and public use of non-wood forest products occurring on forest land. All three legal issues are addressed by the analyzed national legislation. In most countries legislation includes regulations for obligatory reforestation Public access to forests is allowed in most of the analyzed countries, although, forest owners have specific rights to limit such access. Limitations exist mainly with regard to nature protection in order to protect replanted or naturally regenerated forest stands. In most of the examined countries the public has usage rights to collect some non-wood forest products: Considerable variations between countries are to be found; the practice of such rights usually requires consent or authorization from the forest owner; and many rights may be subject to regulation and specific restrictions.*

Key words: *forest law, reforestation, non-wood forest products, sustainable forest management*

INTRODUCTION

Forest resources provide a broad variety of environmental and social benefits to society and contribute significantly to overall sustainable development in Europe. The protection of forests and ensuring these benefits over the long-term is thus an essential subject of policy concern in the region. The importance of forests is reflected in national forest legislation, and more concretely in national forest programmes, which have been developed and implemented in European countries over the last few years. In recent years, changes taking place in Central and Eastern European countries have required revision of the political and legislative frameworks of the forest sector. Essential rules for the interaction between forests and society have been set up, taking into account experiences from the past as well as from western European countries.

The current study provides a synopsis of present day forestry legislation; on this basis similarities and common approaches in European national forest legislation were analyzed. Three essential rules were explored: obligation to reforest, public access to forests and public use of non-wood forest products. The study shows that all three issues are addressed by most of the analyzed national legislation, while the specific implementation and execution of these legislative rules differs to some extent from country to country. The conclusion drawn is that common rules already exist in national forest related legislation in many European countries. The outcome of the study can be used as a basis for further comparison of national forest policies and legislation in practice, and their common features, demonstrating their contribution to the sustainable development of the region.

MATERIAL AND METHODS

Forest legislation developments in Europe are dynamic and innovative. In practically all European countries, new forest laws have been enacted or existing laws substantially

amended in recent years. Due to the remarkable changes in society, progress in forest law development is most evident in Eastern and Central European countries where the need for new forest laws has been induced by reforms of the political system and changes in land tenure. In Western Europe important trends in new forest legislation result from a greater appreciation of multiple uses and social needs in forest management, moves towards close to nature forestry practices, sustainable development as the overarching principle in the forestry sector, and more emphasis on participatory processes in forest planning at national and local levels. International agreements have a significant impact on the adoption of new forest laws that recognize the need for a more integrative approach in forest ecosystem and landscape management.

There are wide differences in the form and content of national forest legislation in European countries: basic legal framework and doctrine, degree of detail, enforcement mechanisms, roles of owners, state forest services. Sometimes there is a single comprehensive forest law; sometimes forest issues are dealt with in a range of other laws, sometimes in administrative documents, sometimes at the sub-national, and sometimes at the national level. The question is whether this diversity of legislation is an indicator of fundamental differences in approach to forest management issues, or whether it presents merely an expression of national legal and cultural habits, concealing a deep unity of purpose and common approach to basic problems.

Considering common trends and challenges to European forestry, but also the diversity and specificities of national forest legislation there are on common forest law issues in European countries has three objectives:

- 1) To contribute to a synopsis of presently applicable regulations and rules in national legislations for selected issues.
- 2) To collect information on national legislations and update the available databases.
- 3) To provide a basis for a better knowledge of forest law issues of common interest from a European point of view.

The following three areas have been selected for a more detailed analysis:

- Obligation to reforest.
- Public access to forests.
- Use rights of non-wood forest products.

The analysis of relevant regulations and the expert inquiry are based on a “bottom-up” approach. They examines the content of existing forest laws in a form of a synopsis in order to ascertain whether or not, respectively how, these issues are dealt with in the forest law of the country. The synopsis complements the ongoing international dialogue focusing on the forest sector and its contribution to sustainable development of society.

The FAO European Forestry Commission, EFC, monitors developments in forest policy, legislation and institutions. At its session in 2000, the EFC surveyed recent developments based on information made available by twenty-four European countries that had submitted national reports. Most countries reported on substantive recent changes in the forest law and policy framework, notably on recent statements or modifications of broad policy objectives, national debates on forest policy goals, and initiation of processes leading to national forest programmes. All reporting countries drew attention to the necessity of sustainable forest management and of balancing economic, ecological and social functions of forests. Many stressed the importance of a holistic, cross-sector approach linking forest policy programmes to rural development and environmental conservation. The countries stressed the relevance of national measures to global and regional forestry dialogues, by stating that national policies are explicitly linked to, or based on, the results of IPF/IFF or MCPFE. Member countries of the European Union and candidate countries to accession frequently

referred to major EU documents. They reported that they are bringing national forest policy in line with broad EU objectives as indicated in the forest strategy and in various directives and regulations.

Most reporting countries had either recently completed a fully revised statement of national forest sector policy or were in the process of preparing such statements. The European Forestry Commission took note of the considerable differences between countries in formulating policy objectives, even if the policy content appeared to be broadly the same. A source of reference material for comparative forest policy and law analysis is the work of the IUFRO research group on forest law and environmental legislation.

A complex network of regulations addresses directly or indirectly forest conservation and sustainable forest resources utilization in areas such as environmental protection, nature and landscape conservation, water protection, fishery and wildlife conservation. Significant trends in country specific forestry legislation include sustainable forest management, forest management planning, stakeholder involvement, advice and support to private forestry, government financial support to forestry, harmonization with forestry related policies and legislation, and protection against forest fires. In Western Europe, the European Community has adopted a considerable amount of legislation regarding forests. Such policies and regulations refer, for instance, to funding for afforestation, protection of forests, harmonization of procedures for data collection and related activities. Such measures are to a large extent part of the framework of the Common Agriculture Policy (CAP) but also of environmental policy measures of the Community Forestry legislation trends in Central and Eastern Europe are analyzed in a FAO survey published in 1999 and updated in 2002. Many countries such as Albania, Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Russia, Slovakia, Slovenia and Ukraine have adopted new forest legislation since the political changes of the early 1990s. The reasons for this rapid replacement of laws and the constraints that such reforms have encountered are discussed.

In most cases the development of new forest laws has been induced by constitutional changes in the transition process to market economies and has led to important land tenure reforms and privatization in the forest sector. A considerable number of case studies on forest law developments in Central and Eastern Europe is available from the IUFRO research group on forest law and environmental legislation which has organized a series of international symposia with participants from countries in transition to market economies. The case studies show that the countries in Central and Eastern Europe increasingly participate in international initiatives and activities regarding forestry. Although the formulation or improvement of a legal framework for private forests remains a complex task, new solutions have been introduced in several countries. Further, public participation and integrated management for the adoption of forest management planning decisions play an increasingly important role.

An analysis of instruments and tools that are currently used in forest legislation shows that there is a great deal of commonality among forest and environmental policies adopted in the 1990s in Eastern European countries. By assessing the relationship between forest tenures, sustainable forest management and the nation state the authors show that opportunities exist for the application of a variety of forest policy tools, including particularly forest tenures. The relationships between forest tenure structure, forest landowner conduct and tenure performance in terms of forest stewardship are summarized indicating that many options are available to nation states with regard to forest tenures. Both theory and experience indicate that forest tenure directly affects the conduct of forest landowners, which in turn affects sustainable forest management. The study concludes that the issues facing Eastern European countries are less the role of public and private ownership, but rather whether the forest tenures are able to

promote sustainable forest management. National forest policies and laws refer explicitly to international commitments made by the governments, notably at United Nations Conference for Environment and Development, UNCED, in Rio in 1992. International processes such as Ministerial Conference for the Protection of Forests in Europe, MCPFE, and the Intergovernmental Panel on Forests (IPF), the Intergovernmental Forum on Forests (IFF) and the United Nations Forum on Forests (UNFF) have developed a strong international consensus on the main elements of sustainable forest management. At the same time they recognise the pre-eminent role of national sovereignty in forest matters. Efforts in international cooperation on sustainable forest management are to a large extent “top down” starting with basic principles like sustainable forest management and subsequently translating them into more detailed approaches and measures. On the other hand it is obvious that many legal principles and basic rules are already in force in most European regions and countries. Forestry related international legal instruments, adopted prior to, during and after the United Nation Conference on Environment and Development, UNCED, in Rio 1992, have led to a substantial expansion of international law that influences increasingly national policy and law development.

The commitments, which result from international forest-related instruments, have to be seen within the context of continental and regional, national and local policy networks. Major forest and forestry related issues thus extend from local to global levels. The multiple impacts on land owners and the consequences for land management and public decisions making, which are addressed by the different policy, and legal network have to be assessed in relation to user specific need and to the resources potentials of the prevailing ecosystems. The expanding multilevel public policy and legislative framework has strong impacts on the principal objectives and measures governing conservation and sustainable utilization of forests, protection of ecosystems and landscape, and land use and utilization regulations. The variety of conditions under which the process of adapting the policy and legal framework occurs is illustrated by giving examples of new forest legislation in ten European countries. Significant aspects of change include the adaptation of legislation to changing social demands, multifunctional policy objectives, transfer or delegation of constitutional competencies in forestry matters. Other innovative aspects are the use of new regulative and incentive instruments, increasing emphasis on information and process-steering processes, new strategies to support forest owners, a strong promotion of forestry practices close to nature, a proactive approach in identifying issues of political concern, and new approaches in implementation.

Another key issue is to determine to what extent the prevailing public framework of laws and public policies contributes to the European and international forest dialogue and to a more effective implementation of the principles of sustainable development.

Review of Forest Laws and Expert Inquiry

The 23 countries the forest laws of which have been reviewed are: Finland, Norway, Sweden (Nordic countries), Austria, Germany, France, Liechtenstein, Switzerland and the United Kingdom (Central and Western Europe), Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Lithuania, Poland, Romania, Russia, Slovak Republic and Slovenia (Eastern Europe) and Cyprus and Turkey (Southern Europe). The countries have been selected on the basis of the importance of the forest sector, but also considering the availability of data and information. The analysis was carried out using as reference material the forest acts of the selected countries. The chosen approach has limitations in as much as forest laws are not necessarily the only relevant texts that deal with the three selected subject matter issues. Environmental laws, in particular nature and landscape legislation, and laws concerning land use and land ownership rights may also be relevant. Moreover one would have to consult for a

detailed analysis the subsidiary regulations to the forest law as well as administrative rules and orders. However, in view of the large number of countries that have been considered and the limited resource available it was considered that focusing on the laws would at this stage provide a useful and informative overview and offer a basis for future more detailed work if needed.

Several legal issues of common interest in a European perspective have been proposed by the respondents. The proposals may be divided into the following three groups:

1. Sustainable forest management: Suggestions were to analyse legally binding measures for the implementation of sustainable forest management at a national and international level. Further, to comprise all three pillars of sustainable forestry (ecology, economy, social). The survey should built on the six criteria of the Helsinki-process and analyze some basic Pan-European indicators for a sustainable forest management. It was also suggested that the collection of data for information systems in relation to monitoring of criteria and indicators of sustainable forest management should be considered in the analysis.

2. Forest management in general: Proposals for this issue were support of forest management from public sources of funds as well as incentives for forest protection, afforestation and development. Furthermore, the obligation to have a forest management plan for forest owners in various types of ownership is considered as an important legal issue. Suggestions also included the management of private forests, the issue of public and private forest roads, buildings and construction in forests, cutting limitations and supervision over the abidingness of forest law.

3. Compensation payments: Financial evaluation of the protective functions of forests in order to provide compensation for forest owners in strictly protected areas is regarded as an important legal issue. Another suggestion was to consider obligatory compensation paid by hunting organizations or by the state for damage caused by wild animals to forests and plantations of trees. Compensation payments for planning as well as payment by the administration for services that forest give to society was also proposed as an additional legal issue.

In addition, it was suggested to take account of legal definitions and a long list of terms and subjects has been proposed. It refers to forest management including forest area, to forest resources and ecosystem integrity, to forest fires and natural calamities; to public participation in forest activities in particular legal rights of stakeholders other than the state, to the role of civil society and transparency in forestry activities, to the restrictions of property rights of forest owners and to splitting up of forest properties, to methodology for the calculation of damage caused to forest stands by air pollution, and to the responsibility of subjects which emit air-polluting substances. Altogether, a quite broad range of issues was raised by the addressees, which will need to be thoroughly evaluated according to two considerations. One is whether the proposal is expected to be common in forestry legislations of European countries, and another whether the suggested legal issue can be seen in the context of sustainable forest management.

RESULTS AND DISCUSSIONS

The obligation to take care of reforestation after final cuttings, forest fires, diseases or storm damages is a traditional goal of European societies and an important issue in the relationship between forest owners and society. Having in mind the experience of radical over-cutting in history, modern society is concerned about the disappearance of forests and uncontrolled change of forest land to agriculture, urbanization and industrialization uses that may have negative consequences with regard to forest benefits like recreation, water protection

and, more recently, carbon sequestration. Obligatory reforestation is thus expected to be an important issue in forest legislation of European countries.

Synopsis by Romania

The Forest Code of Romania defines the national forest fund and divides it into the public property forest fund and to the private property forest fund. Regulations concerning reforestation are given separately for both funds. Title II, Chapter II, Section 2 defines regulations concerning regeneration of public property fund forest. Clear cuttings are permitted in certain types of forests, the maximum size being normally three hectares. Completion of natural regeneration and reforestation works shall be carried out within two years after the final cutting. Owners of private property fund forests are obliged to ensure the permanence of the forest. The regeneration of private property forests after cutting shall be achieved by the owners within two years. If the owner fails to fulfill the obligations reforestation and maintenance up to the newly established stand shall be carried out at the owner's expense. The Code does not include direct regulations concerning reforestation of forest vegetation outside the forest fund. However, according to the Code, the central public authority responsible for forestry controls the mode in which the security and forest rules are applied on those lands. Furthermore, the state encourages the planting of degraded private land property.

Reforestation is obligatory and some kind of time limit for regeneration is defined in the forest laws of Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Finland, Hungary, Lithuania, Poland, Romania and Sweden. The law of Estonia requires in a general way owners to ensure the conditions for regeneration and reforestation. It obliges to replant clear cut areas and degraded stands, but it does not define under which conditions natural regeneration may be practiced. The laws of France, Germany, Slovak Republic and Switzerland provide for reforestation in a general manner as part of the principle of sustainable forest management and planning. In the case of Switzerland and Germany the state forest laws of the Cantons and Länder contain complementary provisions and have to be consulted. According to the law of Slovenia, reforestation is obligatory but there are no detailed regulations concerning natural regeneration. The law of the Russian Federation obliges forest users to carry out reforestation work but obligations of lease and concession agreements concerning forest reproduction are made on a case by case approach. No time limits for satisfying regeneration periods are defined in the law.

In Norway the law does not include strict rules for regeneration, but provides that felling has to be done in such a manner that it promotes future production or re-vegetation. Somewhat similar is the situation in the United Kingdom where the felling licenses issued on land managed by the Forestry Commission usually include conditions for restocking. In the forest law of Turkey protection and extension of forests is considered important, but little is said on replanting or natural regeneration. In Cyprus, no specific and planting is used when natural regeneration fails. On the basis of the reviewed forest acts a common European approach on rules that concern legal commitments regulating regeneration of forest stand after cutting or loss of forest cover due to other interventions and natural calamities could be formulated as follows.

- A cleared area on forest land shall be reforested in a reasonable time frame as specified by regulations and/or national forest management authorities.
- The forest owner shall regenerate forest stands after clear-cutting or if destroyed due to forest fires, diseases or storm damages.
- Replacement of forest stands can either be performed by natural regeneration or artificially by planting and seeding.

- Species adapted to the site and quality of the planting stock are to be specified on an ecological basis by implementing rules, guidelines or regulations.
- Changes of forest land into other forms of land use (agriculture/urbanisation/industrialisation) need a separate and specific regulation procedure by the national forest law.

CONCLUSIONS

The study has analyzed three legal issues concerning the use of forests in 23 European countries, especially Romania, which are of economic, ecological and social importance to the interaction between forestry and the public. Altogether, the analysis shows that there are common issues in the presently applicable forest laws that have been reviewed.

Even if there are considerable differences between the various forest laws, most important is the similarity in basic regulations. In all of the analyzed countries legislation provides for regulations on *obligatory reforestation* either in a general manner as part of provisions addressing sustainable forestry practices and forest management plans, or in form of specific regulations in the forest law.

The result of the analysis confirms thus the basic assumption that the permanent existence of forests and sustainability of forestry production is an essential requirement of governments and society in Europe. The reasons for valuing forests may differ between countries, but the goals of maintaining forests and forestry production are largely similar.

Public access to forests is allowed in most of the analyzed countries as was expected. There are differences between countries in the scope and concrete content of *public access rights to forests*. For example, owners' rights to restrict access form of access and reasons to regulate access vary from country to country, but the general pattern of acknowledging the right of the public to visit forests is largely the same. Important reasons for restricting access are related to ecosystem protection such as preservation of valuable ecotypes, prevention of erosion and fire prevention or forest management considerations such as protection of natural regeneration in an early stage or protection of forest plantations and young stands. The right to use *non-wood forest products* is provided in the legislation of most of the countries, but it is usually more restricted than the right of access to forests. Moreover the scope of rights and the intensity with which they are regulated varies considerably more between countries.

National and international policies and instruments related to forestry are commonly reflected in the forest legislation of European countries. The results of this report indicate that a common ground in European forest legislation exists. The 'bottom-up' approach chosen in this study presents an efficient tool for international dialogue on the contribution of the forest sector towards an overall sustainable development. Although the study considers only three legal issues, it presents a detailed comparison and overview of important elements of national forest legislation in Europe. The subjects that have been chosen relate to ecological, social and economic aspects of forestry. The study thus provides a basis for further debate and research on the context of European forest law. To this end, it would be promising to analyze further ecological issues related to forestry and environment as regulated in the applicable national legislation in order to complete the findings of the present study. In subsequent studies the regional aspect of forest legislation within countries should also be considered as in some countries legislation subsists on a federal and a subordinate (federal state) level where more detailed regulation is provided.

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