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Common forest legislation issues in European countries reforestation obligations, public access and use of non-wood forest products

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Common Forest Legislation
Issues in European Countries

Reforestation obligations, public access
and use of non-wood forest products

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Abstract

This paper summarizes the main findings of a study undertaken for the UNECE/FAO Timber Branch and as Geneva Forest Discussion Paper Nr. 37.

Forest laws of 23 European countries have been examined in order to analyse the approach towards three basic legal issues, which are of relevance in the relationship between society and forestry: (1) reforestation obligations after final cutting or loss of forest cover due to fire and natural calamities, (2) public access to forests and (3) public use of non-wood forest products (NWFP). National forest legislation includes regulations for obligatory reforestation thus confirming the importance of maintaining a continuous forest cover. Public access to forests is allowed in most of the analysed countries; however, forest owners may have specific rights to limit such access. Limitations exist mainly because of nature protection (e.g. rare biotopes) or because of property rights of the forest owners. In most of the examined countries the public has usage rights to collect certain non-wood forest products in defined quantities. On the whole the findings of the study show a common concern of the reviewed countries in regulating the three issues in their national forest law. However, there are differences with regard to the extent of regulation which reflect sub-regional variations in demand and resource potentials as well as historical developments and national traditions. Altogether the findings provide a useful input to the dialogue about forestry policies in Europe and the contribution of forest land use to overall sustainable development.

Key Words: Forest Law, Reforestation, Access Rights to Forests, Non-wood Forest Products

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1. INTRODUCTION

Forest legislation developments in Europe are dynamic and innovative. In most European countries new forest laws have been enacted or existing laws substantially amended during recent years. In Western Europe recent modifications of the law result largely from needs and pressure to ensure more environmental and social benefits of forest lands (Cirelli and Schmithüsen 2000, Schmithüsen et al. 2000). Current changes in forest legislation in Western European countries also reveal that management and use of forests and their products are subject to important developments in other public policies and laws reflecting broad macro-economic and political trends.

Progress in forest legislation has been most evident in Central and Eastern European countries where the need for new forest laws has been induced by reforms of the political system, transition to market economies, new social aspirations and reform of land tenure (Cirelli 1999; FAO 2002b). Case studies on national forest law developments in Central and Eastern Europe conducted by the IUFRO research group on forest law and environmental legislation confirm these trends. They also show that these countries increasingly participate in international initiatives and activities regarding forestry and are in the process of adapting their forest laws to international standards (Schmithüsen et al. 2002, Le Master et al 2003, Schmithüsen et al. 2004). Although the formulation or improvements of a legal framework for private forests remains a complex task, new solutions have been introduced in several countries. Further, public participation in the adoption of forest legal acts 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 Central and Eastern Europe (Le Master and Owubah 2000).

In all European countries international agreements have a significant impact leading to substantial changes in forest legislation in order to foster a more integrative approach in forest ecosystem and landscape management (Tarasofsky 1999; FAO 2002a). The commitments, which result from international forest-related legal instruments, favour the expansion of continental, regional, national and local policy networks. The multiple impacts on land owners and the consequences for land management and public decision making that result from such networks, have to be assessed in relation to user-specific needs and to the resource potentials of the prevailing ecosystems. The expanding multilevel and multi-sector public policy and legislative trends require broader and more consistent political objectives and policy measures governing conservation and sustainable utilization of forests, protection of ecosystems and landscape, and land use and utilization regulations (FAO 2003b, Schmithüsen 2000, 2003).

The Pan-European Process of the international Ministerial Conferences on the Protection of Forests (MCPFE) contributes to translate the general approach of sustainable forest management into the European context, giving more specific guidance to countries in elaborating national forest programmes (Chaytor 2002). The Forestry Strategy of the European Union (EU) calls for coordinated action and decision-making on forest-related issues within the Commission. The strategy emphasizes the need to implement international commitments, principles and recommendations as well as the resolutions of the MCPFE. On the other hand, the EU Forest Strategy as well as the MCPFE process strongly recognize the principle of subsidiary and underline that the responsibility for forestry policy lies with countries themselves.

2. CONTEXT, OBJECTIVES AND RESEARCH APPROACH

In 2000 the UNECE Timber Committee and the FAO European Forestry Commission conducted a survey among European countries and reported on substantive changes in forest law and policy. Country correspondents drew attention to the necessity for sustainable forest management balancing economic, ecological and social functions of forests. They stressed the relevance of national measures for global and regional forestry dialogues and stated that national policies and laws are increasingly linked to, or based on, decisions of the International Panel on Forests (IPF), the International Forum on Forests (IFF), the United Nations Forum on Forests (UNFF), and the Ministerial Conference on Protection of Forests in Europe (MCPFE). Member countries of the European Union and accession countries reported that they were bringing national forest policy in line with broad EU objectives as indicated in the Council Resolution of December 1998 on a forestry strategy for the European Union (1999/C 56/01). The European Forestry Commission took note of similarities and differences between countries in formulating policy objectives and called for comparative analysis of applicable forest regulations at national level.

A UNECE/FAO study was launched in order to compare forest law regulations of selected European countries in three areas: reforestation obligations, public access to forests and use rights of non-wood forest products. The objective was to examine national forest laws in Europe in order to identify common approaches to important aspects in the relationship between forest land use and society. The forest laws of the following 23 countries were reviewed: Finland, Norway, Sweden (Nordic countries); Austria, France, Germany, Liechtenstein, Switzerland and the United Kingdom (Western Europe); Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Lithuania, Poland, Romania, Russia, Slovak Republic and Slovenia (Central and Eastern Europe); and Cyprus and Turkey (Southern Europe). The countries were selected on the basis of the importance of the forest sector, but also considering the availability of data and information. As changes in forest legislation have been especially extensive in Central and Eastern Europe, this region had particular emphasis in the study.

The main source of applicable legislation was the database created and maintained by FAO's Development Law Service (LEGN) (FAO 2003a). The database of the European Forest Institute (2003) which includes forest legislation of several European countries was also used. After preliminary analysis of the relevant regulations in each national law a draft report, together with an inquiry, was sent to national forest policy experts in all European countries. The aim of the questionnaire was to obtain comments on the preliminary country-specific results and to collect complementary information and material.

The comments of the respondents were taken into account in revising the report, in particular if they provided clarifying information in cases where the forest act does not make explicit reference to the legal issue in question. Respondents from Germany and Switzerland commented that an analysis of this kind should comprise both national and sub-national forest laws. Sub-national legislation, in the case of these countries the forest laws of the Lander or Cantons, provide an important source of complementary and more detailed regulations. In Germany, for instance, regulations on public use of non-wood forest products are laid down on a sub-national level. With regard to the study in question it was decided to concentrate for the moment on national forest law and to indicate sub-national regulation in the relevant country context. The reason for this decision was that the current analysis is conducted from an intergovernmental perspective and thus focuses on the national level. The question of subsidiary forest legislation remains, however, an important argument and it is obvious that future work needs a combined approach in countries with federal political systems.

Other respondents suggested taking into account legal definitions and a long list of terms and subjects has been proposed. It refers to forest management including different categories of forest areas, to forest resources and ecosystem integrity, to forest fires and natural calamities; to public participation in forest activities and in particular legal rights of stakeholders other than the state, to the role of civil society and to transparency in forest policy decision making, to the restrictions of property rights of land owners and to splitting up of forest properties, to methodology for calculating damage caused to forest stands by air pollution, and to the responsibility of subjects emitting air-polluting substances.

3. RESULTS

The results of the comparative analysis have been published in 2004 as an UNECE/FAO Geneva Timber and Forest Discussion Paper (Bauer et al. 2004). The paper provides a synopsis of the actual regulations addressing reforestation obligations, public access to forests, and public use of non-wood forest products (NWFP) in each national forest law. In the following we summarize the general findings in as much as they appear of interest in the European context.

3.1 Reforestation Obligations

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, Estonia, Finland, Hungary, Lithuania, Poland, Romania and Sweden. The law of Estonia requires, for instance, that all clear cut areas and perished parts of forests with an area of more than one hectare have to be reforested within three years after cutting or perishing. If the forest is not regenerated within seven years the Forestry Board is entitled to regenerate the stand at the owner's expense.

The laws of France, Germany, Slovak Republic and Switzerland provide for reforestation as part of the principle of sustainable forest management and planning. In the case of Germany and Switzerland the state forest laws of the Cantons and Lander contain complementary provisions. 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. Specific obligations of lease and concession agreements concerning forest reproduction are made on a case-by-case basis. 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 undertaken in such a manner that it promotes future production or re-vegetation. Somewhat similar is the situation in the United Kingdom where the felling licences 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 regulations exist but the silvicultural system practiced in the state forests encourages natural regeneration and planting is used when natural regeneration fails.

The results of the country review show that the most applicable forest laws include either regulation for obligatory reforestation after final cuttings or regulate the subject as part of sustainable forest management practices and forest management planning. Notable differences with regard to concrete obligations were observed. First, there are differences in how detailed the regulations of the forest law are. In several cases the provisions of the law are rather general and do not set specific commitments. Subsidiary regulations to the law or other legal texts may have to be consulted. Second, emphasis is usually put on replanting as obligatory after clear-cuttings whereas provisions concerning natural regeneration are either missing or only vaguely

formulated. Third, in several cases the law neither determines time limits for replanting or natural regeneration nor does it determine criteria of what is to be considered a successfully regenerated forest stand. Fourth, reforestation in order to avoid severe damage or disappearance of forests following natural calamities and impacts from fires is another issue that may need to be addressed by legislation.

3.2 Regulations Concerning Public Access to Forests

There are two significant approaches. In some countries, in particular in Scandinavia, access of the public for recreation and leisure, such as walking or hiking, is a traditional customary right. In other countries public access to forests is regulated by the forest and/or other laws establishing specific rights of the public to use all or certain forest areas for recreation and leisure. The legal situation and concrete regulations of public access are thus quite specific at country level. In the United Kingdom, for instance, access is only allowed in public forests whereas access to private forests and wood-lots requires an authorization from the owner. Similarly in Turkey access to privately owned land is allowed through permission only, whereas in France and Poland private forest owners may prohibit access to their forests. In countries like Austria, Czech Republic, Estonia, Hungary and Slovenia owners are entitled to restrict access to the forest for specific reasons. In Switzerland the Federal Forest Law obliges the Canton to ensure that the public has access to the forest but provides also that the Cantons are empowered to restrict access to certain areas if it is necessary for the purpose of forest conservation or some other reason of public interest. Some forest laws do not explicitly refer to public access although they may regulate the use of forest roads such as in the case of Bulgaria, Croatia, Cyprus and Romania.

The form of access e.g. by foot, cycling, riding or using motor vehicles is regulated in the analysed laws to a varying extent. The most important and widespread regulation refers to the use of motor vehicles on roads serving primarily forestry. Such use is generally prohibited for the public, requires special permission or is severely restricted. Exceptions may be made by the competent public authorities and/or by land owners for specific reasons as determined in the law. Driving of motor vehicles off road is for example prohibited in countries like the Czech Republic, Hungary, Liechtenstein and Switzerland. Cycling and riding may be restricted to determined paths and roads such as in Austria and Germany, access to certain categories of forest lands may be prohibited with motor vehicles e.g. in Bosnia and Herzegovina and in the Slovak Republic.

On the whole the results of the study show, that most of the countries under review guarantee free public access to all or to certain categories of forests. Quite common is the regulation that visitors must avoid damage and harm to the forests or inconvenience to the land owners and third parties. Access rights are usually subject to certain specified conditions and to more or less explicitly defined restrictions and/or prohibitions. However, this is not always the case. Especially in the Nordic countries, where the principle of everyman's right has a strong tradition with the consequence that public access rights to forests are possibly the most widespread in Europe, the extent of the rights is largely determined by customs and tradition and only partly addressed in the national legislation (Saastamoinen 1999). There are also considerable differences between countries in regulating access rights to private versus public forests. The conditions of access, the use of vehicles, and certain use practices of forest visitors may require permission in private forests whereas they may be regulated in a more liberal manner in public forest areas. There are also countries which provide incentives to private forest owners for allowing access and use practices of visitors in their forests. In some countries (e.g. Czech Republic) there are rules foreseen to reimburse additional costs for public installations or compensation for damages that may be caused by visitors.

3.3 Public Use of Non-Wood Forest Products (NWFP)

With regard to the legal basis for the collection of non-wood forest products for personal use there is a somewhat similar situation to the conditions covering public access to forests. The collection for personal use may be undertaken as part of traditional customary rights or they may be positively defined by legislation. The use of NWFP is generally allowed in most of the analysed countries but there are considerable variations among countries in terms of the nature of the rights in respect of the restrictions to collect and use non-wood forest products. Five categories of regulation may broadly be distinguished. First, there are countries where the rights to use NWFP are fairly general and refer to different categories of ownership, as for instance, in Bulgaria, Czech Republic, Hungary, Slovak Republic and Russia. A particular case is that of the Nordic countries where the principle of everyman's right has a long-standing tradition which gives considerable and well determined rights by custom to the public. Second, there are countries where the public has general rights for the use of NWFP, but where landowners may restrict or prohibit the use of certain products or may charge fees for their collection such as in Bosnia and Herzegovina, Estonia, and Slovenia. Third, there are cases such as Poland where the collectors have considerable rights in public forests but where landowners may prohibit collecting in private forests. A fourth group is formed by countries where use of non-wood forest products generally requires a permission with or without payment from the collector, and where collection can be totally prohibited, for example, in private forests such as in Croatia, Cyprus, France, Lithuania, Turkey and the UK. Finally, there are countries where the national forestry law does not explicitly refer to the use of NWFP. Relevant regulations may exist in other national legislation such as nature protection acts, land ownership legislation or civil codes. In countries with a federal and state legislation such as Germany and Switzerland the complementary sub-national forest legislation has to be consulted.

On the whole one may say that in many countries the public has the right to use at least some non-wood forest products. But on the other hand the country-specific findings of the study show that there are notable differences in the applicable forest law regulations which may be explained by the broad variety of NWFP as well as the respective availability and the economic and social relevance of NWFP which varies between countries and within the region. Such differences refer, for instance, to the extent of the admitted rights and the level of regulation with regard to public and private forests. There are also differences with regard to the categories of products that may be collected and different restrictions may be made with regard to the quantity and methods that are admitted for collection. There are also differences in regulating NWFP for individual and family use versus collection for commercial use and trade. Private and public forest owners may be entitled to require special authorizations and/or issue licences for the collection of determined non-wood forest products respectively for quantities which exceed the legally-established level of collecting rights of the public.

4. DISCUSSION AND CONCLUSIONS

The analysis of forest laws and the questionnaire addressed to national correspondents revealed that the three legal issues that have been chosen are significant elements of sustainable forest management and of considerable interest in a European perspective. The synopsis of applicable regulations provides an interesting picture of the common public objectives which determine reforestation obligations, public access to forests, and use of non-wood forest products at country level. It shows at the same time that there are differences in concrete regulations.

In discussing the findings one has to be aware of the different political cultures, constitutional competences and law systems which exist in and influence the *national forest legislation* of the various European countries that have been reviewed. There are marked differences with regard to degree of detail of regulation and law enforcement mechanisms. Sometimes there is a single comprehensive forest law which deals extensively with most forestry issues. Sometimes the forest law is fairly general and regulation relies mainly on subsidiary decrees and administrative circulars. In some countries national as well as the sub-national forest laws intervene whereas in others forestry matters are exclusively the competence of the national government. One has also to note that forest laws are not necessarily the only relevant texts. Environmental laws, in particular nature and landscape legislation, and laws concerning land use and land ownership rights are increasingly of importance in addressing public policy objectives relevant to forests.

The obligation to take care of *reforestation* after final cuttings, forest fires, diseases or storm damage is a traditional public goal in Europe and an important aspect in the relationship between forest owners and society. Having in mind the experience of over-cutting which has occurred in many countries at different times, society has been and still is concerned about a possible reduction of the long-term wood production potential, disappearance of forests and uncontrolled changes of forest land. There is also need to avoid negative consequences with regard to forest benefits like recreation, water protection and, more recently, carbon sequestration. Obligatory reforestation is thus an important issue in forest legislation of the European region. In all of the analysed countries the applicable forest law provides for regulations concerning obligatory reforestation either in a general manner as part of provisions addressing sustainable forestry practices and forest management plans, or in the form of specific regulations in the law. The reasons for valuing forests may differ between countries, but the goals of maintaining the forest cover and the long term productivity of forest stands are largely comparable.

On the basis of the reviewed forest acts there might be a common European view on the regulation of regeneration of forest after cutting or loss of forest cover due to natural calamities, which might be summarized 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 damage. 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 need a separate and specific regulation procedure by the national forest law.

Public access to forest is historically a fundamental right of people in many European countries which may be ensured by the constitution, laws and/or by tradition and customs. The principle of access, subject to certain restrictions, allows the use of forests for recreation and amenities, has considerable importance for public health and welfare, and is an important issue in regulating the

relationship between forest owners, the state and society. Public access to forests is possible in most of the analysed countries in one way or another. However, there are fundamental differences with regard to the constitutional rights of land owners between countries and various legal systems with the result that the scope and concrete content of the rights of forest visitors may differ greatly. In some cases there may be strong landowners' rights to prohibit and/or restrict access of individuals and the public whereas in others the right of public access may be confirmed as a legal principle. There may also be a significant difference between regulations of access rights in private forests versus such rights in public forests. In private forests access may be prohibited in principle except with the consent and agreement of the landowners whereas in public forests access may be a general right of the public subject to restrictions as defined by the applicable legislation. Important reasons for restricting access are, for instance, forest management requirements, such as protection of natural regeneration in an early stage or protection of forest plantations and young stands, ecosystem and nature protection such as preservation of valuable ecotypes, flora and fauna, prevention of erosion, and fire prevention during the dry season.

Despite the actual and rather diversified forest law regulations in the countries under review, it can be concluded that in a European perspective current regulations in many countries on public access to forests are along the following lines. The public has the general right to access certain categories of forests provided that no damage or harm results from such uses to forest stands and to the forest environment. Private forests may be subject to a more restrictive regulation as compatible with country-specific ownership regulations of private holdings. Appropriate precautions have to be taken by the visitors in order to avoid inconveniences to forest owners and third parties and to avoid damage to their property that may result from admitted access and use practices. Specific instructions of the owner or tenant of the forest are to be respected. Restrictions of access and use rights may be determined by the competent public authorities and/or the forest owner for reasons of forest protection or in the interest of the health and safety of the public. Allowable restrictions and prohibitions need to be specified by law and regulations.

Public use of non-wood forest products, e.g. the collection of mushrooms, leaves, berries and litter as well as brushwood, was essential for human life in rural areas and often a significant complement to agriculture. And in a considerable number of countries the use of such products is still today a significant part of family consumption in rural areas and a source of additional income for farmers and villagers. In particular, in Scandinavia and in Eastern, Central and Southern European areas, the economic and trade value of certain NWFP such as mushrooms and berries that are collected in forests is considerable. In some other countries of the region, and especially in the vicinity of large cities and settlements, collecting and using non-wood forest products may nowadays be more a part of recreational activities than an economic activity. The findings of the comparative study show that in most European countries the public has certain rights to use non-wood forest products for non-commercial/individual purposes subject to some form of regulation in the national forest legislation. There are also some country regulations which determine more specifically the collection of NWFP for commercial purposes. On the whole one may say that collection and use of non-wood forest products are regulated either in the form of legally-defined and usually limited rights, or as in Scandinavia as part of everyman's rights which allow for customarily determined traditional use rights of the public. Another observation is that the right to use non-wood forest products is usually more precisely defined and/or restricted than the right of public access to forests.

The findings of the study point to the fact that the presently existing rights to collect non-wood forest products are determined either as part of traditional customary rights or as specific rights

regulated in the national legislation of the reviewed countries. The extent and precision with which they are regulated vary considerably between countries. From an intergovernmental perspective the scope in which such rights are currently addressed is the following. The public has the general right to gather defined quantities of non-wood forest products such as berries, mushrooms, nuts, leaves and brushwood. Collection of NWFP should not endanger the survival and productivity of the forest ecosystems in which they are collected. The products to be collected have to be determined by law and/or by permission of private and public landowners. If the demand for certain products exceeds the long-term production potential specific restrictions e.g. with regard to collection techniques and/or admitted quantities to be collected per person and time periods may have to be invoked. A distinction in regulation between collection for individual and family consumption versus commercial collection may be required. Different legal regimes for collection of NWFP in public and private forests may be appropriate.

On the whole the *legal basis and the regulation of the use of forests* in the 23 European countries is a significant aspect of the economic, ecological and social interactions between the forest sector and the public. The findings show that there is a common ground in the general approach towards the three analysed legal issues, whereas concrete regulations vary considerably between the reviewed countries. An appropriate definition of the content and extent of the role of forest law providing a balance between the interests of the public and those of the landowners is a significant part of the European and international forest policy dialogue. The ‘bottom-up’ approach chosen in the current study provides empirical evidence on such elements of forest regulations at the national level that are useful in order to foster dialogue among countries in the European region.

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