

# SMURF

## Key findings on the legal framework applicable to forest owners

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# Introduction to SMURF

**Milieu Consulting** is based in Brussels and provides expert legal and policy support to EU institutions, delivering legal and policy studies on biodiversity, climate, environment, consumers and citizens' rights, *inter alia*.

It is currently on two projects supporting DG ENV with:

- ▶ the implementation of the EU Forest Strategy, including
- ▶ the 3 Billion Additional Trees EU Pledge.

**SMURF** provides us with the opportunity to work with forest owners' organisations. Under WP2, we are responsible for:

- ▶ Analysis of the legal framework affecting small forest properties management across Europe (WP2.3)
- ▶ Review current national and European support systems (WP2.4)

# Introduction to SMURF

## Work package T.2.3: 2024 – 2025

The specific Task requires:

1. Prepare a report on the legal framework on SFO for EU Member States.
2. Identify the relevant legislation regulating SFO and the specific articles setting rights and obligations and provide the links to those basic and articles.
3. Define the legal framework for the economic activity of SFO in EU Member States.
4. Identify the main legal limitations or barriers for SFO in EU Member States.
5. Propose specific legal improvements, when considered necessary.

# Key Findings: Legal & Regulatory framework

**In most countries, the basic legal framework is composed of an array of legislative and regulatory acts making it complex and dispersed**

- ▶ Complexity of the legal framework reflects the different forest functions. While most countries have a Forest Act/Law/Code (AT, BE Wa, BG, CY, CZ, DK, ES, EE, EL, FI, FR, HU, HR, IE, LT, LU, LV, RO, SE, SI, SK) this is not always synonymous with clear framework.
- ▶ Complexity due to the variety of acts and measures:
  - ▶ Most countries have Forest National Strategies/Programmes or Plans setting more specific and up-to-date objectives or management guidelines.
  - ▶ Forest regulations implementing the Forest law/Act/Code, forest fires rules, biodiversity legislation, tax legislation or company law are also applicable.
  - ▶ RO has adopted a new Code to reflect the complexity of issues.
  - ▶ PT Forest Code 2009 integrating forest management regulatory rules caused implementation uncertainties. Derogated in 2012, a 2017 Forest reform still ongoing.
  - ▶ Challenging frame for a forest owner to understand the applicable legislation. Countries with Advisory bodies to forest owners improve their situation (FR).

# Key Findings: Legal & Regulatory framework

## **Governance and ownership structure have an impact on the legal framework**

- ▶ Decentralised governance systems and inconsistent regional implementation of forestry rules challenge forest owners.
  - ▶ FR National Center for Forest Property has regional representation whose supervisory competences support forest owners (e.g. adoption of SMP, management methods, land consolidation).
  - ▶ DK has gone through a centralization process.
  - ▶ In PL competences are shared between State and municipalities with no regional level involved.
  - ▶ RO restitution of forest land to communal structures with local/municipal level opposition.
- ▶ Forests Act is under responsibility of Environmental Agency/Ministry (e.g. DK, LU) or Agriculture Ministry.
- ▶ Some countries have strong (public or semi-public) companies managing State forests: AT, BG, CZ, FI, HR, HU, LT, LV, PL, RO, SK.
- ▶ While EU has 16 million private owners, the majority having holdings smaller than 5ha, there is no official data on the number of forest owners and forest holdings in some countries (e.g. CY, ES, IT, SK).

# Definitions

## **Most countries have definitions of forest owner**

- ▶ Some countries define forest owner in relation to private law property right on the land (FR) and/or the legal regime framing it (RO) legal right to decide on the destiny or have the exclusive use, control or benefit from the forest (ES)
- ▶ IE, PT, PL the forest owner definition covers property, lease, usufruct or occupation. DE two concepts: owner with possession or owner for use

Few countries have a formal definition of **forest manager, although the role may exist in practice**. Most definitions are related to **its function**:

- ▶ oversee management activities, relating to the conservation, improvement and use of the forest, contracted by owners. (AT, ES, IT, LT, RO, SK) or
- ▶ lawful user of the forest who is registered in the register of forest managers (HU) or a profession (FI)

## **Most countries do not have** formal definition of **forest holder**

- ▶ Forest holder in ES is who carries out a forest economic activity, organizing the assets and rights of the forest with business criteria and assuming the risks and responsibilities.
- ▶ In FI the holder is allowed to use the forest despite not being the owner.
- ▶ In RO may be the owner, administrator, provider of forestry services (incl. custodian or depositor).

# Definitions

**Most countries do not have** a formal definition of **forest contractor**, although the role may exist in practice

- ▶ RO: Forest contractor is the economic operator/specialised professional engaged in forestry operations and economic wood exploitation and who must hold a certificate from the professional association.

All Member States have a definition of **forest or 'monte' (ES)**:

- ▶ Some countries define forest as land occupied by forest 'plants' 'species' or 'stands', (might include scrubland and pastures or other spontaneous plant formations (PT, ES) or not (SE) excluding 'non-permanent' short-rotation plantations for rapid timber extraction (less than 20 years) or agroforestry areas (DE)
- ▶ Other countries (RO) define forest land populated with trees that reach a minimum height of 5 meters, covering at least 0.5 hectares (DK, FI, SE, RO), at least 0.25 hectares (SI), at least 0.10 ha (HR, PL) with a crown cover of more than 10% (SE)
- ▶ Forest land registered in the National Forest Registry or as non-agricultural land (HU)
- ▶ FI, PL and ES, refer to the purpose: (FI) producing an annual increment of volume growing stock of at least 1 m<sup>3</sup>/ha per year and not used for any other purpose (ES, PL) environmental, productive, cultural, landscape or recreational functions.

# Forest Ownership

- ▶ Proof of ownership is provided through Registry of Deeds or the Land Registry /cadastre (not specific to forest)
  - ▶ In NL, IE, LV, SE the registries record relevant documents (deposit) without third party attestation, but copies are used as evidence (i.e. for bank or subsidies).
- ▶ In most Member States registration is mandatory but in some countries is not: ES, DK and HU – or not enforced (PT).
  - ▶ ES, IT, PT have high number of non-registered forest land.
- ▶ Half of EU Member States have community-owned forests (AT, CZ, DE, EL, ES, FR, HU, HR, IT, PL, PT, RO, SE, SK).
- ▶ 60% of forest land in the EU is privately owned. It is very fragmented with a high number of small forests parcels in AT, BE, BG, DE, DK, ES, FR, HR, IT, PT, SI, SK, RO.
  - ▶ Land consolidation: slow, regional or municipal initiatives. However, it is considered a key tool and/or strongly supported in some countries/regions (BG, CZ, DE, EE, ES, FR, LV, NL, PT)
  - ▶ Some small forest parcels belong to community-owned forests, not always registered (ES, IT, PT)
  - ▶ The Digital Tools Directive 2017/1132 (amended in 2019 and 2025) provide solutions facilitating online registration of community owned forests to register as a Limited Liability Company.



# Key Findings: Forest owner's rights

- ▶ Most countries recognise rights and mandate certain activities to forest owners. Others (DK, FR) apply the rule of law principle: 'forest owner can exercise its property rights unless forbidden by law'.
- ▶ Right to decide on the forest management is widely recognised, with some conditions:
  - ▶ in BG if forest owners are registered
  - ▶ Following FMP (AT, BE fl, IE, FI, FR, IT, NL, RO, SE) issued by national the authorities (SI)
- ▶ Right to harvest timber
  - ▶ subject to felling license (IE) regulatory conditions to ensure sustainable forest management, i.e. environmental / climate change objectives (DE, PT) or following FMP (RO, PL, FR dep. size)
  - ▶ Fully/partially (carrying forward) regarding the target volumes (RO)
- ▶ Right to financial support
  - ▶ for public interest reasons: e.g. environmental pillar SFM (DE, FI, FR, PT, ES, SI) land use change, production (PL)
  - ▶ Compensation for damages due to natural disasters, pests, fires; for afforestation (DE, PL)
  - ▶ In IE, PL, RO the right to subsidies/incentives requires management plans/measures
- ▶ Right to technical/advisory/monitoring by public services (RO): properties up to 30 hectares.
- ▶ Hunting right tied to land ownership in some countries (BE fl, EE, FI, HU, LU, SE).

# Key Findings: Limitations to rights

- ▶ EU MSs require prior approval/permits for land use change (farm to forest) - balancing the forest owner's rights and economic interests with public interests.
- ▶ Regulatory conditions to harvest according to sustainable forest management in most countries. In ES there is also legal promotion of CO2 emission compensation.
- ▶ Ban of clear cutting only in SI but most MSs (except PL) ban certain forms of clear-cutting unless authorized/permit:
  - ▶ Large scale, high forest or cutting that reduces soil production capacity (DE, ES, HU)
  - ▶ Ecological disruption (IE) forest with nature conservation function (HU, DK, FI)
  - ▶ Certain age/maturity of trees (DK, SE)
  - ▶ Premature cutting or cutting of certain species (FR, PT) or salvage logging (FI)
- ▶ Individuals may collect small quantities of wild products, for personal use. In some countries (BE, NL) this is not allowed without permission of the owner/manager, and in others (AT), a prohibition for the general public to collect can be set through signs in the forest.
- ▶ Public access to forest land for enjoying nature and recreation (with some limits and/or exceptions). In some countries (NL, PL), private owner may limit/prohibit access.
- ▶ Use of fertilizers and/or chemical pesticides (banned in some countries or strictly regulated, such as in EE, LU) allowed but to be reduced (DE, FI, SE, PL).

# Key Findings: Forest owner's Obligations

- ▶ Manage forest sustainably is required in most MSs, not all (e.g. BE FI, DK)
  - ▶ With different meanings, incl. sustainable production (SE), continued use (PL)
  - ▶ Maintain roads, recreational facilities or the removal of disruptive installations (DE, RO)
- ▶ Most MSs require mandatory registration of ownership and/or forest land
- ▶ Report felling activities (FI, RO).
- ▶ Reforestation/Regeneration (native species or natural) of areas harvested or damaged within specified time frames (BG, BE-fl, CZ, EE, FI, HR, LT, LV, LU, RO, SI).
- ▶ Timber sale and trading rules compliance – EU law but in RO in Forest Code.
- ▶ Ensuring provision of minimal forest ecosystem services (RO).
- ▶ Payment of taxes are linked to property and income. In some countries forest land is exempt from property tax (BG, LT, RO) or VAT (FI).
- ▶ Prevent and/or manage to avoid forest fires (within national policies) in most countries (except BE Wa, DK, FI, NL, LU, SE) and pests.
- ▶ Cooperate with forest supervision authorities (BG, LV, RO).

# Key Findings: Forest land market

- ▶ In some Member States (BE Wa, CY, FI, LU, LV, SE) companies/individuals can buy and sell forest land freely.
- ▶ In others, transfer of forest land is limited by pre-emption rights to be respected (BE fl, BG, EL, IT, LT, SE, SK).
- ▶ In some Member States (AT, DE), transfer of forest land is subject to approval by a competent state authority
  - ▶ In AT: where purchaser lacks the necessary training in forestry, the Land Transaction Commission may require attendance at training courses in this field
  - ▶ In DE: To prevent excessive land fragmentation through inheritance or sales (e.g., less than 3.5 ha). Purchase price should not be disproportionate to the value of the land, thus protecting the integrity of the market
- ▶ In some Member States there are limitations to divide the land by selling (AT, CZ, EE, EL, HU, HR, IT, LT, SE, SK) or inheritances (SE, SI).

# Key Findings: Challenges

- ▶ Fragmented legal framework: secondary legislation/measures implementing the forest code, overlapping jurisdictions (national and local), inconsistent policies between forest use, forest conservation and other land-use sectors e.g. agriculture.
- ▶ Lack of harmonised/holistic approach by regions (AT, BE, ES, IT, RO).
- ▶ Private forest land highly fragmented (AT, BE, BG, DE, ES, FR, HR, HU, IT, LU, PT, SI, SK, RO) with no systematic solution: i.e. land consolidation (slow, regional).
- ▶ Lack of forest land registration (or not enforced).
- ▶ Lack of common understanding, implementation and enforcement of SFM.
- ▶ Conditions to require the adoption of Forest Management Plans related to size means:
  - ▶ in FR > 80% private forests are not subject to SMP. The lack SMP hinders the implementation of the SFM objectives (Code)
- ▶ Weak Enforcement of Forestry Laws due to inadequate monitoring systems to ensure compliance with SFM regulations, lack of severe penalties and corruption (RO).
- ▶ Lack of resources, knowledge and capacity to promote SFM and difficulty in
  - ▶ Accessing financial incentives/subsidies
  - ▶ Accessing support from public advisory bodies (BE fl, CY, CZ, BG, HR, EE, EL, NL, RO)

# Key Findings: Good practices

- ▶ New Forestry Code in RO strengthen penalties and forest conservation objectives, with reference to OGF and ecosystem services.
- ▶ Strong advisory/supportive/supervisory role of forest groups and/or associations (BE fl), Forest Agency (BG), or Forestry Research Institute (CZ) or National Center of forest property (FR)
  - ▶ For example, to improve access to financial support
- ▶ IE Afforestation Scheme: grants and annual premiums to landowners establishing new forests based on twelve distinct forest types, each with specific grants.
- ▶ IE Income Tax exemptions on profits from commercial woodland operations promoting sustainable use practices and 90% tax reduction on acquisition if compliant with SFM.
- ▶ Strong role of certification schemes for SFM in most countries (e.g. BG, CZ, IE, FI, PT, SK).
- ▶ Land consolidation considered a key tool and/or strongly supported in some countries (BG, EE, FR, LV).
- ▶ Wide range of financial incentives is available to forest owners (IE, LU).
- ▶ Mandatory registration of ownership and forest land.
- ▶ Owners are entitled to free basic forestry services, including monitoring; monitoring contracts and requirement for forest contractors to be professionally certified (RO).

# THANK YOU

