

**FORESTRY LEGISLATION IN
CENTRAL AND EASTERN
EUROPE:
A COMPARATIVE OUTLOOK**

by
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***FAO LEGAL PAPERS
ONLINE #23***

October 2001

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¹ This paper was originally authored by Maria Teresa Cirelli in 1998 and published as an FAO Legal Paper Online (<http://www.fao.org/Legal/default.htm>). Taking account of legal developments since then in the region, it was updated in May 2001 by Ali Mekouar from the FAO Development Law Service, with preparatory research work contributed by Astrid Castelein., and submitted to the 3rd International Symposium on *Experiences with New Forest and Environmental Laws in European Countries with Economies in Transition*, which took place in Jundola, Bulgaria, 12-16 June 2001.

SUMMARY

Following the political changes of the early 1990s, most of the countries of Central and Eastern Europe have adopted new forestry legislation. This study begins with a brief examination of the reasons that have led to this rapid replacement of existing forestry legislation, as well as the constraints which such reforms have encountered (Section I).

Section II of the study examines how developments in the forestry legislation of these countries relate to international developments currently taking place. The overall opening up of Central and Eastern European countries to international contacts and co-operation has influenced the formulation of domestic policies and legislation, and international initiatives (such as those which led to the adoption of the Rio Forest Principles) have been well received. Harmonization of forestry laws of these countries with those of the European Community, with a view to future accession, is not necessary at this stage, since Community legislation is mainly limited to the regulation of forestry financing programmes. Nevertheless, Community legislation envisages forestry as one aspect of integrated rural development, which is an overall approach that the countries of Central and Eastern Europe may wish to follow.

Section III examines how six principal issues are treated in the emerging forestry legislation of the region. The analysis shows that sustainable development of forests is generally an express objective of the legislation. One of the most complex issues concerns the establishment of a legal regime for private forests, whether natural forests which may have been distributed to former owners or otherwise privatized, or planted forests. Excessively stringent rules (such as the imposition of detailed management plans still prepared by the administration) may discourage private forestry activities, and are difficult to implement and enforce. In most of the laws studied, integrated, participatory forest management has not yet replaced the traditional emphasis on technical forest management, although some innovations in this regard have been introduced.

Among the final considerations is the necessity for appropriate subsidiary legislation, and for a sustained commitment by governments to implementation of the newly designed legal strategies (Section IV).

I. INTRODUCTION

In the wake of the political and economic reforms of the early 1990's, most of the countries of Central and Eastern Europe have adopted new forestry legislation². This process of replacing existing forest laws has taken place at surprising speed. Indeed, the issue of forestry legislation was often tackled before other complex issues also requiring urgent legislative attention.

In most cases, the perceived need for new forest laws has been related to reforms in the area of land tenure, mainly the recognition of private property rights, and has followed on the heels of the adoption of new land legislation and legal reforms aimed at privatizing various aspects of the economy. The influence of these trends on forest policy and law has varied from country to country. In some cases privatization has extended to the ownership of forest resources and lands. In other cases, however, while the trend has been to distribute *agricultural* holdings among farmers or former owners, some governments have decided to retain the ownership of *forest* resources and lands.³ Nevertheless, even in such cases, the new laws almost always provide for some form of privatization in the forestry sector, for example by allowing individuals or private companies to engage in forestry, with a reduction of State involvement in activities like logging, processing, marketing and fixing of prices, and with a growing openness to foreign competition. Although specific strategies have varied from one country to another, the general intention has been to restructure over-controlled and often inefficient State properties and enterprises.

Sometimes the adoption of new forestry legislation has also been seen by newly established governments as a way of giving further proof of their commitment to the new course, and demonstrating their effectiveness in dealing with such complex land issues.

In any case, new forestry legislation was perceived as an urgent necessity and was often hastily adopted. The success of such an approach faced many constraints. Existing expertise in the concerned countries was ill-suited for the purposes of designing whole-scale legal reforms in the forest sector, since that expertise had been developed almost entirely within previously existing systems. In some cases, previously instilled ideas have made it difficult to achieve substantial reform. In Armenia, for example, an extremely conservationist policy imposed by the central Government while the Republic was part of the Soviet Union has continued to exert its influence over the newly independent Armenian Government, making it

² A list of the legislation examined for this study is set forth at the end. Armenia was included because of the similarity of its conditions to those of the European countries considered.

³ For example, in Estonia the restitution programme is expected to lead to a privatization of 40-50% of the country's forests. In Hungary, 40% of the forests currently belong to private owners, although large forest areas, ecologically valuable areas and strictly protected forests remain the property of the State. Other countries are currently considering restitution to former owners or other forms of transfer of ownership of State forests which would lead to an even wider privatization (probably over 50% in Romania and up to 80% in Slovenia). In Albania and Armenia, the administration has not envisaged such wide privatization schemes for forest land, allowing only the creation of newly established "private" forests.

reluctant to provide for *any* form of exploitation of forests in the new forest policy and legislation.

Even where technical assistance in forestry law was sought from abroad, or where the experiences of market economies were closely considered, the complexity and unprecedented nature of the transformations that these countries were undergoing made it difficult to identify clear, satisfactory policy arrangements.

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The initial general assumption that privatization would consist of a transfer of ownership and that this, in itself, would lead to a revitalization of the economy has proven to be simplistic. Privatization, rather, required the establishment of a specific regime based on a balance between State action and private initiative, with a clear determination of each party's rights and responsibilities. Legislation was therefore crucial, but time was also required to assess the consequences of particular privatization programmes or policies, and to readjust them as necessary.⁴

The difficulties of identifying appropriate forest policy options were thus reflected in the formulation of new forestry legislation. In many cases the newly adopted legislation left a lot of the substantive regulation to the subsidiary legislation or to other texts to be subsequently adopted. This was appropriate to the extent that numerous issues required experimentation before they could be dealt with in detail in legislation. On the other hand, there remained significant loopholes in the emerging legal regimes. For example, in Russia and in some of the Republics of the former Soviet Union, as in Armenia, the newly adopted legislation practically ignored private forests, being based on the assumption that separate legislation would deal with them at a later stage. In the case of Russia, the "Principles of Forest Legislation" adopted in 1993 were already replaced by the Forest Code of 1997, but the latter still only addresses private forestry marginally.

Furthermore, various problems of the forest sector were mainly due to circumstances that were beyond the direct reach of legislation. For example, the loosening of State control, fuel shortages, poverty and fear of instability of ownership rights were often the underlying reasons for the rise in illegal felling. Economic difficulties also increase the risks of over-exploitation by governments themselves, which in difficult years could be tempted to draw excessively from forest resources to obtain badly needed capital for investments.⁵

⁴ Frydman and Rapaczynski (1994) illustrate how privatization in Eastern Europe should be seen not as mere ownership transfer, but as a comprehensive reform intended to liberate the productive forces of a society. It is a "prototype of a microeconomic restructuring process, in which the elements of design must work in tandem with unpredictable, spontaneous evolution of economic institutions."

⁵ Marghescu (1994) warns against the risks of overexploitation not only by private owners through illegal fellings, but also by governments implementing unsustainable policies.

This study outlines how some of the most significant issues have been addressed in the recent forestry legislation of countries of Central and Eastern Europe.⁶ Although it includes some suggestions for improvements, it is not primarily intended to make comprehensive recommendations in this regard. The analysis has been limited in scope to forestry laws (mainly principal legislation), and does not extend in detail to related legislation and policies, such as those on land tenure, agriculture, protected areas etc. In addition, the focus is on newly adopted forestry legislation. While an examination of pre-existing legislation would be instructive for comparative purposes, it is beyond the scope of this study.

II. INTERNATIONAL INITIATIVES

The transformation of forestry policy and legislation in Central and Eastern Europe has been taking place within an international context characterized by globalization.⁷ This trend is reflected both in the development of domestic policies and laws in ways that are similar in different countries, and in the participation of countries in numerous international initiatives.

As regards domestic legislation, for example, numerous countries, not only in Central and Eastern Europe, are moving towards a reduction of State control, the departure of forestry institutions from the civil service and greater involvement of the private sector in forestry. An even larger number of countries have accepted the principle of sustainable development and have developed laws embodying it as a guiding concept (e.g., by establishing maximum allowable harvesting levels, requiring that logging be done only in accordance with management plans, etc.).

There have been numerous initiatives at the global, international and regional levels, including a so far unsuccessful attempt to develop a global international legal instrument on forests. A number of international agreements, both global and regional, deal with forests, although not exclusively. International co-operation in forestry has also led to the adoption of significant soft law instruments, particularly the "Rio Forest Principles".⁸ Although not legally binding, and expressed in general terms, the Rio Principles embody a number of concepts on which the international community has reached a consensus, from sustainable development and biodiversity, to trade in forest produce and international technical co-operation. Although it is clearly recognized that countries have sovereign rights over their forest resources, they are urged to implement the Principles within their national forestry policy and legal frameworks. Various references to relevant parts of the Principles are made in the following part of this

⁶ The forest laws and regulations reviewed for this study were mostly adopted between 1992 and 2000.

⁷ Pettenella (1997) identifies three main trends which affect public institutions in the reform of public forestry administration: globalization of policies and institutions; search for greater efficiency in public administration; and the need to enlarge participation in the decision-making process.

⁸ "Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests". Other soft law provisions relating to forests are found in Agenda 21, whose Chapter 11 ("Combating Deforestation") recommends the development of forest strategies in every country, and describes the various policy areas which can address deforestation. It also emphasizes the importance of involving affected groups in forest management.

study.⁹ In general it can be said that the Central and Eastern European countries are moving in the directions recommended by the Principles as they reform their forest policies and legislation. The Georgian Forest Code of 1999, for example, refers directly to the Rio Principles as basic principles for the protection, management and development of Georgia's forests (sec. 4).

With the transformation of their economies, the countries of Central and Eastern Europe have expanded their co-operation with other countries. The process of forestry legislation reform has in itself stimulated these countries to seek international contacts in order to exchange views and obtain information, with each other and with the rest of the international community. Among the positive consequences has been the progressive accession to international environmental agreements.¹⁰ In this regard, Georgia's Forest Code provides that international agreements and treaties ratified by Georgia are part of the country's legislation dealing with, in particular, tending, protection, restoration and use of forest resources (sec. 2).

Among the relevant international initiatives in which European countries in transition have directly participated is the Helsinki process.¹¹ One of the Resolutions adopted following the Helsinki Conference (Resolution H3) specifically concerns co-operation with countries with economies in transition. The Resolution was signed by many countries of Central and Eastern Europe, as well as by the European Community. It recognizes the importance of forestry for countries in transition in relation to the development of their political, economic and social conditions, the possible consequences for forest conservation in the transition period, and the importance of enacting programmes to support sustainable forest development in these countries. It then emphasises the importance of co-operation, which may take the form of transfer of knowledge, bilateral and multilateral projects on technical, institutional and legal matters. Among other things, co-operation should lead to the development of information exchange and monitoring systems relating to transboundary factors causing forest damage, such as air pollution, fires, nuclear radiation, game and others. Among other possible donors

⁹ Other international initiatives at the global level include: (i) the establishment in 2000 of the United Nations Forum on Forests to consider, inter alia, the parameters for developing a possible international legal instrument on forests; (ii) the establishment in 1997, under the aegis of the UN Commission on Sustainable Development, of the Intergovernmental Forum on Forests, to continue the policy dialogue on forests that was initiated in 1995 by the Intergovernmental Panel on Forests; (iii) non-governmental initiatives, such as the establishment of the Forest Stewardship Council and the World Commission on Forests and Sustainable Development.

¹⁰ Global instruments include the 1992 Convention on Biological Diversity, the Ramsar Convention of 1971, the World Heritage Convention of 1972, the 1973 Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES), the Climate Change Convention of 1992 and its 1997 additional Protocol of Kyoto, the Desertification Convention of 1994, and the International Tropical Timber Agreement of 1994. Regional agreements relating to European countries include the 1979 Convention on the Conservation of European Wildlife and Natural Habitats.

¹¹ Following an initial Conference held in Strasbourg in 1990, a European Ministerial Conference took place in Helsinki in 1993 and adopted four resolutions, which were signed by most Central and Eastern European countries. Five years later, at the third Ministerial Conference on the Protection of Forests in Europe (Lisbon, 1998), pan-European criteria and indicators for sustainable forest management were adopted, and pan-European operational-level guidelines for sustainable forest management were endorsed.

(ECE, FAO, UNEP, UNDP, WB), the European Community undertakes to co-operate in mutually beneficial projects.

An issue of concern to the countries of Central and Eastern Europe is how their forestry policies and legislation should be adapted specifically with a view to their future accession to the European Union (EU). As regards forest management, a number of areas will require some intervention. For example, data collection and processing will have to be improved and harmonized in co-operation with European Union countries, and this will require a significant effort, particularly in light of the increasing privatization and consequent fragmentation of forest properties.

On the other hand, as regards the impact of future membership in the EU directly on forest legislation, the modifications which may be required are rather limited at this stage, since the European Community has not adopted a formal forestry policy, nor legislation imposing a specific common forestry regime for its member countries. Existing EU legislative texts that are related to forestry mainly deal with funding for afforestation, forestry statistics, forests' biodiversity, and the protection of forests against fires and atmospheric pollution. However, by a resolution of 1998, the Council of the European Communities adopted an EU forestry strategy, which identifies the main elements for sustainable forest management.¹²

There is, however, a general trend which the countries aspiring to accession to the European Union may consider. Although recognizing the importance of forests from an environmental perspective, relevant Community legislation thus far mainly envisages forestry as an aspect of rural development, and particularly as an alternative or a complementary activity to agriculture. Funding for afforestation activities, for example, is provided exclusively to farmers or their associations, pursuant to Regulation 2080/92 dealing with the aid regime to forestry measures in agriculture. Under this Regulation, planting of trees, tending to them for the first five years and other forestry improvement works may be financed. Compensation for abandoning crop cultivation in favour of forestry may also be available.

It would therefore be useful for the Central and Eastern European countries to address their agricultural and forestry policies in an integrated manner, taking other related policies (on environment, industry, economic development) into consideration. Although more specific legislation may have to be adopted in this regard at a later stage, it would be important, even now, to provide for integrated management in forest laws. This would argue against, for example, the preparation of forest management plans by forestry administrations in isolation, without any consultation with other authorities and the public, and particularly without consideration of interests other than strictly technical forestry matters.

III. PRINCIPAL ISSUES

3.1 Sustainable Development of Forests

¹² Resolution of 15 December 1998 on a forestry strategy for the European Union.

The newly adopted forest laws of Central and Eastern European countries widely recognize the multiple beneficial role of forests and the need for their sustainable use.¹³

The Croatian law of 1991, for example, refers to protection of soil from erosion, influence on water resources and hydroelectric power systems, soil fertility and agricultural production, climate, environment, oxygen generation, scenic beauty, recreation, tourism, hunting and even national defence (sec. 2).

Similarly, the Hungarian law of 1996 establishes that forests should be exploited in a sustainable manner, at a rate which allows their conservation for future generations, referring in particular to preservation of biological diversity, fertility and capacity to regenerate, and to defence, health, welfare, tourism, research, education purposes (secs. 2 and 15). It expressly requires that the creation of forestry districts for management purposes be done taking into account the possibility of sustainable forestry (sec. 11), and that any division of forest land be allowed only if it does not hamper sustainability (sec. 74).

Likewise, the Estonian Forest Act of 1998 provides for the management of forests as a renewable natural resource with a view to satisfying economic and other needs of the population without causing unnecessary damage to the natural environment (sec. 1). The same objective is spelled out in the first chapter of the Georgian Forest Code of 1999.

Forest management has traditionally been envisaged as a technical discipline exclusively within the competence of professional foresters. Management plans were usually prepared in a scientific manner by the administration and applied to their respective areas. Violation of such plans could be an offence. In Kosovo the plans remain the basis of permission to harvest timber from both public and private land. The newly established Kosovo Forest Authority must select and mark all trees on the basis of the plan before cutting (Law on Forests, secs. 20, 21, 35; UNMIK Reg. No. 2000/27, sec. 2.2(k); Adm. Dir. No. 2000/23, sec. 1).

This attitude continues to be reflected in the new legislative provisions on management planning. In most Central and Eastern European countries, the preparation of forest management plans is expressly required and the issuing of harvesting authorizations is tied to them. This is an appropriate means of ensuring sustainable exploitation of timber resources.¹⁴

Planning, of course, requires a careful consideration of the existing status of the resources, and this in turn is dependent on the availability of detailed and accurate information. In this regard, it would be advisable for legislation to require that entities involved in forest management provide information to those responsible for planning, especially as an increasing number of these entities are now private. Examples of provisions of this kind in the studied legislation are not frequent.

¹³ The Rio Forest Principles also suggest that all aspects of environmental protection and social and economic development as they relate to forests and forest lands should be integrated and comprehensive (Principle 3 (c)).

¹⁴ An exclusively technocratic approach, however, is inadequate from the point of view of integration of forestry with related sectors, and with respect to public participation, as pointed out below (3.3).

Some examples, however, are found in the Forestry Act of the Czech Republic (sec. 40) and in Georgia's Forest Code (sec. 10). Both require provision by private forest owners of statistical and other information on the condition of their forests. In Lithuania as well, forest owners are required to submit statistical data on cuttings and reforestation pursuant to the 1997 Regulations on Private Forest Management and Use (sec. 25-9). Although in other countries similar requirements may be introduced through subsidiary legislation, the analysis of most existing acts, such as Estonia's Forest Law of 1998, shows that the collection of information remains largely a governmental responsibility.¹⁵

Sustainable forest management is also addressed in all of the laws which have been reviewed by establishing at least basic requirements regarding the harvesting of resources.¹⁶ These usually apply to both State and private forests. In Romania, for example, the set of applicable rules included in the Forest Code, referred to as the "silvicultural regime", applies to the whole "forest estate", which includes public and private forests. In most laws, owners are made responsible for the adequacy of timber harvesting practice, as well as for facilitating appropriate regeneration techniques. They also are generally made responsible for activities designed to prevent harm to forests, such as the prevention of pests and diseases, "torrent control", and even damages caused by game. A rather detailed list of requirements is found, for example, in the law of the Czech Republic (secs. 31-35). Under the Estonian Forest Law (sec. 24), the Georgian Forest Code (sec. 10), and the Lithuanian Regulations on Private Forest Management and Use (sec. 25), forest owners are responsible for the conduct of protection measures against pests, diseases, and fires.¹⁷

Countries also tend to require that forest management be carried out by appropriately trained professional foresters. This may be an additional obligation imposed on forest owners, as is done for example in the law of the Czech Republic (sec. 37). Croatia's Law on Forests (secs. 28 and 42) and Lithuania's Regulations on Private Forest Management and Use (sec. 17) specify varying levels of required forestry training depending on the type of activity to be carried out, either by forest service staff or by private forest owners. The Albanian Regulation on the Granting of Professional Licences (1998) indicates the activities related to forestry, water supply and wildlife for which a professional licence is required, in respect of both national and foreign operators (sec. 3). These kinds of provisions, it should be noted, involve the risk of discouraging private land owners from practising forestry. They should therefore be carefully balanced with appropriate incentives, drawing upon a realistic appreciation of the owners' financial and practical capabilities.¹⁸

3.2 Privatization and Private Forestry

¹⁵ Contrary to this trend, the Rio Forest Principles recommend the provision of timely, reliable and accurate information on forests as being essential for public understanding and informed decision-making (Principle 2 (c)). They further suggest that scientific research and forest inventories carried out by national institutions should be strengthened through effective modalities, including international cooperation (Principle 12).

¹⁶ The subsection below on forest utilization deals with this aspect in more detail.

¹⁷ In Bulgaria, however, such tasks are the responsibility of the Forestry Department's local staff (secs. 32 and 35 of the 1994 Forestry Act).

¹⁸ Other considerations in this regard are made in the subsection below on privatization and private forestry.

The "privatization" of the forestry sector has typically included a number of different objectives in different countries. The following strategies have been the most common, and have been pursued to different extents and in a variety of ways:

- restitution, sale or other distribution of forested lands to former owners or other private entities, and specification of the regime applicable in privatized forests¹⁹;
- harvesting of trees, or planting or other forestry activities carried out by private entities, on private or State land;
- transformation of State enterprises carrying out forestry and related activities;
- liberalization of forest produce prices.

Any of the above objectives requires an appropriate legal regime. Such a regime is frequently not provided by the principal forestry legislation. For example, even where there have been large programmes for the restitution of forest lands to former owners, this is not usually referred to in the forestry legislation, since the enabling provisions may be included in a general land privatization law²⁰, or in a separate act specifically made to that effect, such as Georgia's law on the privatisation of forests²¹. The structure and functions of the former State enterprises may have been transformed by administrative instruments, and although some forest laws specify the renewed functions of the forestry administration, any "privatization" process which may have taken place (for example, splitting up of formerly vertically organized enterprises and sale of the processing units) is not addressed in them. Forest laws are also usually silent regarding prices or other payments due in relation to forest produce, although this may in itself imply a liberalization.

3.2.1 Regulation of Private Forests

A basic "privatization" issue facing practically all Central and Eastern European countries is the establishment of an appropriate regime for private forests. It is important for all countries to strike an appropriate balance between governmental control and encouragement of private initiative; this becomes a particularly urgent matter where wide areas of forests are now (or soon will be) held by private entities, as is the case in many of the countries under study. Following the vast privatization of forest resources, forest administrations may be prepared to lose part of the potential revenues deriving from those resources. However, they continue to consider all of the country's forests as a productive resource which requires appropriate management, and reject the possibility of leaving large forest areas outside the scope of management schemes prepared by them or under their supervision. Given the lack of professional competence and financial capacity of new forest owners, forestry

¹⁹ A legal basis for this kind of action can be found, for instance, in Albania's Law No. 8337 of 30 April 1998 on "giving ownership in agricultural lands, forests, pastures and meadows".

²⁰ This is crucial legislation for the success of any privatization programme. There are many possible conflicts which legislation should attempt to prevent, taking into account the peculiarities of forest lands. For example, there may be lands which have recently been logged and for which the owners may or may not be entitled to recover revenue; there may be areas where the State administration has invested on planting or other regeneration and for which it may or may not be entitled to recover expenses from the owners. The law should specify whether and to what extent any claims may be raised by the owners and by the State respectively. It should also attempt to resolve the numerous problems of succession which are likely to arise (e.g., what entity, if any, may succeed bodies which no longer exist?).

²¹ That law is referred to in section 9 of the Georgian Forest Code of 1999.

administrations take the position that appropriate management cannot be carried out by entities other than themselves.

In examining these perspectives, forestry administrations should evaluate the government's actual interest in retaining firm control over the management of private forests, and weigh that interest against the costs involved. The preparation and monitoring of plans for private forests is likely to entail heavy costs, given the number and variety of owners and individual forest areas. Assuming that the financial benefits from private forests will go mainly to the owners, it is possible that the interest of forestry administrations in being involved in the detailed management of such areas will diminish, particularly if the law in any event requires owners to observe basic forest protection rules. On the other hand, governments may retain an interest in increasing overall domestic forest production, whether or not this comes from the public or private sector; in this case they may feel that leaving resources unexploited is unacceptable, even when owners may wish to remain inactive.

The legislation of some of the countries, such as Russia, Armenia and Bulgaria, does not address the issue of management of private forests, and is based on the assumption that this may be dealt with in other legislation. Some other countries' laws, such as those of Croatia (secs. 34-36), Kosovo (secs. 20-21), Slovenia (sec. 9) and Romania (sec. 66), still require the preparation of management plans by the administration regardless of ownership, and make the implementation of such plans compulsory for the owners.

Other countries choose to experiment with various "compromise" solutions. Pursuant to the Estonian Forest Act of 1998, private owners must sustainably manage their forests (sec. 26-3), in conformity with applicable management plans or recommendations. At the same time, they are allowed to participate in the preparation of such plans and recommendations (sec. 7). On the other hand, forests to be privatized must be managed under the responsibility of the Minister of Environment until they are actually transferred to the private owners (sec. 57)²².

The fact that the central figure in the Hungarian law of 1996 is the "forest manager" (rather than the forest "owner") also shows an inclination towards forest production. The law makes the forest manager responsible for submitting a ten-year operational plan and an annual forestry plan, to be approved by the authorities (sec. 26). The problem of the management of forests being fragmented among different owners, which is of concern in many of the countries being considered, is addressed in Hungary by requiring that under specified conditions, owners of those forests must conduct joint forestry activities on them and appoint a common forest manager (sec. 13-4).

The Polish law of 1992 envisages the preparation of simplified plans for forests which are not the property of the State Treasury (sec. 19). On request and at their expense,

²² Note that lands that belonged to the State until 23 July 1940 and that are now covered with forests are not subject to privatisation.

management plans may be prepared for individual legal persons owning forests (sec. 21). Plans may be prepared at the expense of the State budget if this is requested by the *voivodship* governor for villagers' forests which are the property of physical persons (sec. 21). These provisions have been accompanied by a strong policy of co-operation with private owners. The administration has been particularly careful in taking the role of an advisor and extension agent for private forest owners, and has been successful in developing a productive relationship with them (Baresi, 1994).

Under the Forestry Act of Lithuania (1994, amended in 2001), in order to prevent excessive fragmentation of forest properties, a prohibition against dividing them into parcels which are smaller than 5 hectares has been established. For the same purpose and to encourage appropriate management practices, priority in purchasing forest lands is granted to forest professionals and owners of neighbouring forest lands (sec. 5). Among incentives to private forestry is the exemption of forest lands from land tax, and a general encouragement of co-operatives. The adoption of regulations is expressly required to specify the degree of control which may be exercised by forestry officers on private forests (sec. 7). Subsidies and credit may be provided by the government to private owners for forestry works, and compensation must be granted to them if their rights are restricted (sec. 8). In any case, forest owners are obliged to protect forests and allow their regeneration as appropriate. Management issues are also addressed under the 1997 Regulations on Private Forest Management and Use. Implementation of management plans is a responsibility of the forest owners. However, forest inventories and management plans must be prepared by the Forest Management Institute, and monitored by the Ministry of Agriculture and Forestry, in collaboration with the Ministry of Environment. Management plans must then be cleared by the relevant administrations and formally approved –or changed as required– by the Government (sec. 8).

Under the law of the Czech Republic, owners of forests which are larger than 50 hectares are obliged to arrange for the preparation of a forest management plan (sec. 24). The issue of management planning for smaller forests is addressed by establishing that, where their owners have remained inactive, the administration may prepare "guidelines", and the owners may notify their "management intentions" before their final approval. Following the adoption of the guidelines, the owners may choose to formally accept the form of management specified in them, in which case they are bound by some of the contents of the guidelines (for forests smaller than 3 hectares, only the maximum allowable cut; for larger forests, the maximum allowable cut and some regeneration techniques) (sec. 25). A specific part of the law addresses "promotion of forest management", listing possible services or financial aid which may be provided, to be specified in annual governmental rules (sec. 46).

It would be inappropriate to try to identify, among the examples which have been described, those which may be taken as a useful model for the whole region.²³ In general, any provisions encouraging the creation of associations or consortia among forest owners may be recommended (although unpleasant memories of the "co-operative" model in the countries of Central and Eastern Europe may create psychological obstacles). Such an objective would have to be appropriately supported through funding programmes, facilitation of access to

²³ Some of the observations and recommendations made in this section were first made in an interim report on forestry legislation by the author and M. Uliescu (1997), as consultants for FAO to the Government of Romania on forestry legislation, particularly with respect to the adoption of a legislative framework for private forests.

credit, tax exemptions, etc. In this regard, the Lithuanian Regulations on Private Forest Management and Use provide that, with a view to effectively managing forests, forest owners may voluntarily form cooperatives, establish funds and otherwise join efforts and pool resources to undertake forestry activities of common interest (sec. 5). In Hungary, owners of forests may establish profit-making associations under the 1994 law on forest owners' associations, which regulates the constitution, organization, operation, rights, duties and responsibilities of those associations and their members.

The forest administration could directly participate in owners' associations, with an advisory function, or simply exercise an external control function, e.g., approving proposed management plans. Where the State owns some of the neighbouring properties, it could become part of the agreement like any other forest owner. Owners and their advisors could agree on the manner of utilization of the concerned forest areas (the properties of the participants) and arrange for the provision of necessary services in an entrepreneurial manner (e.g., run auctions to sell timber or other produce, select contractors, hire surveillance personnel, build infrastructure, etc.). If owners were left free to expressly agree or disagree to any particular management measures recommended by the association or consortium regarding their particular land, they may be more willing to enter into such arrangements.

In addressing related issues together with forestry (e.g., tourism, provision of related services, etc.), these initiatives could be beneficial for local development if they cover a significantly large area of land. They may also be more likely to obtain international or other sources of funding than isolated investment actions over individual forest properties. For example, numerous European Union funding programmes are directed at integrated rural development initiatives, and in some cases already cover associated non-member countries in Central and Eastern Europe.

The adoption of a legal framework providing these options for private forests, as well as appropriate incentives, will not be sufficient unless accompanied by an adequate extension and educational campaign concerning the possibilities being offered to forest owners, the potential losses caused by inadequate forest management, and the potential benefits of appropriate forest management.

3.2.2 Tree Planting

Unless otherwise provided, the legal regime applicable to private forests applies to natural as well as planted forests on private lands. It therefore could have a strong influence on people's initiatives with regard to planting.²⁴ If a country wishes to encourage tree planting, whether within or outside the state forest estate, it should avoid legal provisions which may act as disincentives. Countries should therefore determine an acceptable level of State involvement with regard to plantations, wherever they are located.

At present, provisions conducive to plantations are generally lacking in the forestry legislation of the region's countries. In Hungary, for example, in the case of the plantation of

²⁴ Concerning planting of trees, the Rio Forest Principles emphasise the role of planted forests as sustainable and environmentally sound sources of renewable energy and industrial raw material, as well as an employment-generating activity for local populations (Principle 6 (d)).

new forests, it is the forest authority which must determine the primary purpose of the plantation, although the authority cannot "refuse to approve the commercial purpose of a forest planted lawfully, without using State subsidy" (sec. 16 of the 1996 law). A specific "plantation-implementation plan" must be approved by the forest authority (sec. 35). In any case, the State "grants support to plantations", as may be specified in regulations (sec. 34). Regulations on Forestry Planting Materials were adopted in 1997 (Decree No. 91) with a view to preserving and developing forest ecosystems and their genetic diversity. Thus, State support to tree planting is aimed at extending the forest domain and improving the conditions of the natural environment.

In Romania, in the absence of an express exemption in the Forest Code, it must be assumed that planted trees in the forest estate (which comprises private lands) are subject to the same "silvicultural regime" as natural ones, that logging is subject to the same authorization as for natural timber, and even to the annual maximum allowable cut limit. Post-logging regeneration is the responsibility of the owner. This regime is likely to result in a significant disincentive for private plantation, since the only exemption is for lands outside the existing forest estate (sec. 68).

Under the Estonian Forest Law, reforestation issues are addressed together with seed production and natural regeneration (secs. 10 and 11). Private forest owners are required to replant clear-cut areas as well as degraded areas of both protection and commercial forests. If an area is not properly regenerated within seven years, the Forestry Board must arrange for its reforestation at the owner's expense²⁵.

3.2.3 "Forest Estate"

The expression "State forest estate" or "national forest estate"²⁶ is commonly used in the legislation of the countries considered. In some cases the forest estate is composed of forest lands belonging to the State. In others, however, it includes all significant forest lands, regardless of their ownership.

Pursuant to the Russian Forest Code of 1997, the forest estate is defined as including "all forests", excluding only defence lands, urban settlements and municipal forests, and its boundaries are identified by demarcation (sec. 7). In light of this provision and of section 19, which establishes that the forest estate is under Federal State ownership, private property of forests can hardly be recognized. However, trees on private land are stated to be the property of the land owner (sec. 20).

In Albania, the law lists and defines lands which must be considered to be part of the forest estate, which also expressly includes State, Communal and private forests (secs. 2 and

²⁵ Chapter XVI of the Georgian Forest Code deals with forest plantations, mainly in the State forest estate. These plantations are primarily meant for the sustainable production of wood and other forest products. They must be carried out in accordance with the "Regulations for Managing Forest Plantations", to be prepared by the Forestry Department.

²⁶ The expression is often inappropriately translated into English as "forest fund", since in the respective original language the term is often derived from the Latin root "*fundus*" (e.g., "*fondul*" in Romanian, "*fond*" in Albanian, etc.). In French, this concept is generally known as "domaine forestier".

3). It also establishes a procedure for the admission and exclusion of lands into and from the forest estate, so that it is such formal recognition which actually makes any land a part of the forest estate (secs. 2 and 7).

In Romania, the Forest Code also defines in its initial provisions which lands constitute a part of the national forest estate (secs. 1-3). It subsequently refers to the forestry cadastre which is current at the date of entry into force of the Code for the identification of the estate (sec. 5). Both public and private forest lands which have been determined to be part of the forest estate are subject to the "silvicultural regime" ("régime forestier").

In Bulgaria, the Forestry Act uses the notion of National Forest Stock, which basically encompasses all forests, including "glades, pastures, cuttings, rocks, moraines, lakes, burnt out areas, barrens and screes within the boundaries thereof" (sec. 3)²⁷. All lands of the national forest stock are publicly owned (sec. 2).

The concept of forest estate seems to be well entrenched and it is unlikely that the countries which use it will depart from it. Nevertheless, this concept may make the interpretation of the laws ambiguous. In Albania, Romania and the Russian Federation, the law includes both a description of the lands which are part of the forest estate (rather than lands which "may be" part of it) and a statement that the forest estate is made up of lands identified to this end (in a forestry cadastre or as a result of a formal procedure). This easily generates confusion: there may be lands which meet the description but are not or have not yet been formally declared to be part of the estate, so their status would be uncertain.

In Armenia, most people interpret the Forest Code (1994) as applying to State forests exclusively, since no specific provisions expressly relate to private trees or forests. However, the opposite interpretation is also possible, since in the same document "forests" are declared to be State property without distinction. One could therefore claim that once a "forest" has been established even on private land, it becomes the State's property. This could of course result in a great disincentive to planting trees or any other forestry activities on private lands. Furthermore, the legislation does not clearly specify to what kind of control trees found on private properties are subject, so private owners are unaware of consequences which may arise.

These often unintentional disincentives to private forestry should be avoided in the drafting of forestry legislation. In many cases, it may be simply a matter of clarification, of stating in the law that trees planted or found on private lands are the property of the owners of the land (especially important where such private ownership is an innovation), and of clearly indicating which provisions of the law apply or do not apply to such trees, preferably avoiding ambiguous references to the forest "estate" as regards private lands.

²⁷ "Forest" is defined as any land exceeding 1 decare, covered or planted with forest trees or brushwood and located outside the boundaries of settlements (sec. 3). However, single trees in farm lands, afforested areas adjacent to monuments, forest belts on lands within cooperative and state farms, and forest stands planted by enterprises, organizations or cooperatives on their lands, are not part of the national forest stock (sec. 4).

Other disincentives to private forestry can be found in non-forestry laws. In general, the land legislation of Central and Eastern European countries tends to prescribe standards or activities aimed at ensuring productivity and appropriate use. At times, the right over private property itself may be subject to loss where inappropriate use is made of the land. This is a legislative device intended to discourage poor land use. As such, its overall utility is open to debate; in any event, with specific reference to forestry, it sometimes acts as a disincentive. If the definition of land "productivity" is limited to the growing of crops or fruit trees, then the planting of forest trees may be deemed an "unproductive" use of the land and therefore subject to extreme consequences such as expropriation.

3.3 Forest Management

Although traditionally forest management has focused almost exclusively on the production of a certain yield of timber products, it is increasingly recognized that such a focus is too narrow. Citizens in many countries increasingly require the consideration of other public values implicated in forest management –e.g., values associated with recreation, tourism, wildlife, local needs, etc.– as they may be interpreted from time to time and place to place.²⁸ The involvement of civil society in the decision-making process is therefore increasingly a feature of forestry laws.

Some of the recent initiatives in Central and Eastern European countries reflect this trend. The Estonian forest policy (1997), for example, was prepared following consultations with representatives of potentially conflicting interests, such as forest industry, private forest owners, non-governmental organizations and concerned ministries, and a brief account is given of these consultations in the text of the document itself. The 1996 law of Hungary requires consultation among different ministries (sec. 24), as well as the consultation of forest managers and municipalities concerned in the preparation of district forest plans (sec. 25). Slovenia's law of 1993 also requires that draft management plans be publicized and comments be incorporated (sec. 14). It states that the needs and proposals of forest owners must be respected as far as possible if consistent with the needs of the ecosystem and the law (sec. 5).

Under Bulgaria's Forestry Act, major issues concerning the management, protection and development of forests are under the purview of an interdisciplinary body, the Supreme Forest Management Board. This must include specialists from the Ministry of Forests, the Bulgarian Academy of Sciences, the Ministry of Construction and Architecture, higher educational institutions, etc. (sec. 11). Estonia's law, on the other hand, provides that forestry activities must be conducted in accordance with forestry development plans prepared by state authorities. Relevant NGOs must be involved in the preparation of those plans, as well as in the development of forestry policy and legislation (secs. 35 and 36). Under Georgia's law, substantial powers are given to local bodies for the management of local forests, and there is provision for public participation in decision-making processes regarding the management of the State forest estate (Chapter X).

²⁸ In this regard, the Rio Forest Principles encourage governments to promote and provide opportunities for the participation of interested parties, including local communities and indigenous peoples, industries, labour, non-governmental organizations and individuals, forest dwellers and women, in the development, implementation and planning of national forest policies (Principle 1 (d)).

Narrower solutions were adopted in other countries, like Poland, where proposed forest “masterplans” must be formally publicized only in case they concern forests which are the property of individuals (sec. 21 of the 1992 law).

In general, however, the legislation examined does not provide for thorough public consultation. Administrations in the region do not yet seem to have recognized the potential benefits of participatory planning and management, and the value of reaching a broad consensus among affected parties as a means of facilitating implementation once a decision has been taken. For examples, the Forest Code of the Russian Federation still defines “forest inventory and planning” as a “system of activities to increase efficiency and conduct a uniform scientific and technical policy in forestry” (sec. 72). Programs for the utilization and conservation of forests are developed exclusively by administrative bodies (sec. 72). However, Georgia's Code provides that, before a decision on forest use in a particular area is made by entities responsible for forest estate management, information concerning that area, such as the management plan or the protection regime, must be publicized (sec. 35-5). Under Lithuania's law, forest enterprises, park administrations, and regional departments of the Ministry of the Environment must be consulted prior to the approval of management plans (sec. 8).

On another important component of public participation –public access to relevant information which may be available to the authorities–, the countries' forest laws tend to remain silent. Some, indeed, impose obstacles to that access. The Hungarian law, for instance, expressly limits access to the “National Forest Database” to the owner or manager of a particular forest with respect to relevant data (sec. 32).

Another aspect which is still not adequately addressed is the integration of forestry with the management of related sectors, such as agriculture, grazing, tourism, wildlife and protected areas. This approach may be an innovation for the countries of Central and Eastern Europe, where the responsibilities of the forestry administrations have focused almost exclusively on technical forest management. A shift in the attitudes of forestry and other administrations would be necessary to make this approach a reality, but appropriate legislation could facilitate that process.

This is important because some activities related to forestry, such as agriculture and grazing, already put the forests under strong pressure in some countries of the region. Others, such as tourism, are likely to increase in influence. The increased accessibility of transportation, for example, will probably allow a much wider number of people (and therefore of bikers, hikers, skiers, etc.) to reach forest areas for recreational purposes. Utilization of forest produce other than timber in the context of activities of integrated local development –for example, collection and/or cultivation of honey, mushrooms and truffles, and their sale in connection with visitors' excursions– has become common in Western European countries, and similar developments could be foreseen for the rest of Europe.²⁹

²⁹ Upton (1994) demonstrates how a careful economic assessment of non-timber forest produce can be a useful tool in achieving the appropriate balance between environmental and economic demands on forest resources.

One “non-forestry” activity related to forestry that is frequently referred to in the forest laws under review is grazing. The provisions in this regard are often limited to a list of prohibitions. In Armenia, for example, existing regulations on grazing adopted under the principal forestry legislation prescribe in which areas grazing is prohibited, and also establish that only selected areas of certain types may be used for haymaking. In Romania, the Forest Code prohibits grazing in the whole national forest estate, with limited exceptions (sec. 6). In the Czech Republic, grazing and allowing livestock into forests is an offence under the Forest Act (sec. 53). More appropriately, the law of Croatia ties grazing to forest management programmes (sec. 46). In Bulgaria, the Forest Act provides for a combination of measures whereby: (i) grazing must be authorized by competent forest-range officers and performed in accordance with annual plans approved by the Minister of Forests; and (ii) areas where grazing is completely forbidden are identified (secs. 27-30).

Considering that there exist different kinds of forests, as well as different types of livestock, and since their possible interaction may vary greatly from case to case, a general prohibition on grazing may be inappropriate, and more flexible legal approaches should be considered. Some flexibility should be left for negotiations among users and the administration over the use of grazing lands.

3.4 Forest utilization

All of the laws studied require an authorization for the harvesting of timber, at least on a commercial scale. The legislation tends to provide a sound basis for the granting of such authorizations, in that it ties them to management plans and sometimes to yearly maximum harvesting limits.

In the simplest and most traditional arrangements, the administration issues harvesting authorizations and remains responsible for any activities other than logging in the areas subject to such authorizations (e.g., construction of roads, regeneration, etc.) and for control of the activities authorized. The Romanian Code, for example, provides for this arrangement.

Trees that may be logged are often to be identified by the administration. The laws of both Croatia (sec. 41) and Kosovo (secs. 20, 21, 35), for example, require selection and marking of every tree to be felled, in accordance with the annual forest management plan, regardless of the size of operations and the ownership of the concerned land (sec. 41). In theory, similar provisions ensure absolute protection against illegal activities which may be carried out under licence or concession agreements, but in practice they may not be a sufficient guarantee if enforcement is not perfectly accurate.

In some places, such as Albania and Armenia, limited innovations have been introduced in this basic scheme: (i) by establishing procedures, such as auctions, for the awarding of authorizations; or (ii) as was the case in Albania, by allowing the possibility of extending the duration of authorizations, and modifying fees if the holder of the authorization has invested on the concerned lands.

Various countries establish general conditions for the issue of licences. The law of the Czech Republic requires conditions regarding minimum age, citizenship, clean criminal record,

professional qualifications depending on the type of activity to be licensed, impediments to the issue of licences (e.g., holding particular positions in the State administration or business companies), and grounds for withdrawal (secs. 41-45).

Some of the countries of Central and Eastern Europe, and especially Russia, however, have long allowed forest exploitation under concession agreements, i.e., more complex and longer term arrangements concerning larger areas, under which a concessionaire may undertake additional obligations, e.g., replanting or allowing regeneration according to certain rules, etc. Other countries are now faced with the decision as to whether such a system could be appropriate for their situations, sometimes under pressure from interested foreign companies. This is a rather delicate policy decision, since control and law enforcement under such a system are particularly difficult and therefore serious risks of resource depletion are involved. In any case, for this option an appropriate legal framework should be in place, and this is not always the case in the countries being considered.

In this regard, the Russian Forest Code contains more substantive provisions than the other legislation examined. It provides for different types of arrangements for forest utilization. Large-scale, long-term exploitation –up to 49 years– may take place under lease agreements (sec. 31) or concessions (sec. 37). The latter are envisaged mainly for underdeveloped parcels requiring significant investment. For both cases, the Code specifies minimum contents of the lease or concession, which include the obligations of the parties with respect to conservation and regeneration measures (secs. 33 and 40). Basic rules for the allocation of leases and concessions through tenders are also established (sec. 34). The provisions on taxation and other payments are quite detailed (secs. 103-107).

Forest laws of most other countries lack sufficient details for regulating the “concession” type of arrangement. These can be spelled out either in specific acts³⁰ or in subsidiary legislation specifying the conditions applying to logging authorizations, which could be both generally applicable and agreed through negotiations on a case by case basis. For example, the holder of an authorization could be made responsible for the preparation of a detailed working plan for the concerned area to the satisfaction of the administration. Specific conditions as to the qualifications of potential contractors who wish to participate in tenders could also be imposed (e.g., admitting only companies which have a representative within the country, companies which employ personnel with proven abilities, etc.). For large-scale operations, there may be a requirement for ministerial approval, while for others an approval by lower level forest authorities may be sufficient. Appropriate provisions should authorize the administration to suspend or terminate logging authorizations under specific circumstances (mainly the violation of the authorization’s conditions or of the law).

Even for private forests, the legislation could impose some requirements, since an authorisation to log is generally required. But in this case, commercial aspects may have to be left to private negotiations between the parties.

3.5 Community forestry

³⁰ Examples of these include Bulgaria’s Concessions Act of 1995 (consolidated in 1999), and Lithuania’s Law on Concessions of 1996 (consolidated in 1998).

Local communities and indigenous peoples' rights and contributions are increasingly acknowledged in recent forestry legislation.³¹ Among the numerous ethnic minorities of the Russian Federation, there are indigenous groups which, since the *Glasnost* era, have claimed traditional rights to forest resources. In 1992, a decree was adopted to recognize some of these rights.³² Moreover, the Forest Code, adopted in 1997, requires that any legislation concerning forest utilization in areas populated by ethnic communities guarantee their traditional way of life.

Even where there is not a particular concern for the cultural identity of minorities, local populations frequently require forest produce, particularly fuelwood, for domestic uses, and in the past few years, recourse to illegal actions to obtain this produce has sometimes been unavoidable. To help meet these needs sustainably, community forestry activities are being undertaken in many places worldwide.

This approach is advisable also in Central and Eastern European countries, especially with rural populations already involved in agriculture and grazing. It may be possible to identify suitable parts of the State forest estate where, in collaboration with the forestry administration, local residents could undertake forestry activities with suitable incentives, for example, being exempted from payments normally due if the forests are not commercially viable. In this regard, under Georgia's Forest Code, priority is given to local people and bodies for receiving forest use tickets (sec. 61-4). These allow recipients to extract timber through cleaning, thinning, sanitary, passage, reconstruction, and special cuts as well as final cuts.

Legislation may not be strictly necessary to undertake initiatives of this kind. However, the law could in any case facilitate them by providing appropriate incentives, protecting weaker parties by establishing minimum requirements of the agreements, ways of settling disputes, etc. Attention may also be necessary to reduce constraints that might otherwise be imposed by application of the legislation in the community forestry context. For example, requirements applicable to commercial logging would be inappropriate for community forestry arrangements.

The current legislation of the countries which have been considered rarely takes this distinction into account, although on more than one occasion it clearly allows and encourages public access to forests. In Lithuania, the 1994 law allows citizens to gather medicinal fruits and herbs, to keep bees, etc. in any forests, except in limited specified cases (sec. 9). The Polish act of 1992 allows access to public forests –and private ones unless prohibited by the owner– as well as collection of fruits and herbs (under contracts with the forest districts if for commercial purposes) (sec. 27).

³¹ Likewise, pursuant to the Rio Forest Principles, “national forest policies should recognize and duly support the identity, culture and the rights of indigenous peoples, their communities and other communities and forest dwellers. Appropriate conditions should be promoted for these groups to enable them to have an economic stake in forest use, perform economic activities, and achieve and maintain cultural identity and social organization, as well as adequate levels of livelihood and well-being” (Principle 5 (a)).

³² Decree of the President of the Russian Federation on Defense of the Territories of Northern Indigenous Peoples, 22 April 1992, 18 Vedomosti SSSR, item 1009 (1992) (Russian Federation). Levin (1992) reports that a lawsuit has been initiated on the grounds of this decree.

Under Estonia's law, users may gather fruits, herbs, etc., in public forests as well as in private forests that are not fenced or marked, so long as they don't disturb the ecosystem and wildlife. Camping and making campfires are also allowed, but only in designated places or with the permission of the manager or owner of the forest (sec. 32). In Georgia, all citizens have the right to enjoy the natural environment of the forests. In addition to free access and movement in forests for recreation purposes, they can collect non-wood products for personal use. In return, they must care for the forests and protect their assets (sec. 88 of the Forest Code).

An approach tending to satisfy especially local needs for forest produce is being experimented with the creation of "communal" or "municipal" forests. In Albania, communal forests are to be created on State land handed over for the "common use" of one or several villages or communes. However, the decision to actually allocate communal forests is left to the forestry administration, which should for this purpose enter into agreements with local institutions, while local authorities are not expressly authorized to take any initiatives in this regard. Furthermore, the 1992 law does not establish even a basic regulatory regime. These shortcomings in the law have hampered the actual creation of any communal forests.

3.6 Law enforcement

Although Central and Eastern European countries have been faced with serious problems of forestry law enforcement, their principal forestry legislation typically does not endow enforcement officers with strong powers.

Specific provisions on enforcement powers of officers can be found in the law of Croatia, which is rather detailed on powers of inspection, and gives powers to suspend illegal operations and to seize produce (sec. 75-81). In the law of Lithuania, provisions on enforcement are less detailed but still allow inspections and suspension of illegal activities, although powers of seizure are not expressly given (sec. 7). Even less detailed on law enforcement measures, the Forest Act of Estonia refers to the Environmental Act as to applicable procedures (sec. 55).

The law of Hungary empowers officers to request offenders to prove their identity and initiate proceedings with the competent authorities, but this seems to be limited to offenders found within the forests (which would exclude, for example, vehicle inspections outside forests, etc.), and powers of seizure also are not expressly given. However, reference is expressly made to separate regulations in this regard (sec. 91). The same kind of powers are given to forest-range officers by the Bulgarian Forestry Act. In addition to checking all documents permitting felling and removal of timber, grazing, gathering of non-wood products, etc., they can stop and search all vehicles which transport timber or other forest produce (secs. 36 and 38).

Under the law of the Czech Republic, forest guards are vested with more stringent powers: they may request offenders to prove their identity and arrest them if there is no way of identifying them; power to suspend operations or seize produce, however, are not expressly addressed (sec. 39). The Georgian Forest Code also details the powers and responsibilities of forest personnel (secs. 108 and 109). Moreover, it provides for incentives for meritorious staff,

such as awarding the title of "Honorable Forester of Georgia" and granting special medals for successful work.

Although strengthening the powers of enforcement officers would not typically be considered an innovative approach to the formulation of forestry legislation, a more thorough treatment and, in some cases, enhancement of the powers of officers may be appropriate in the case of Central and Eastern European legislation. In some instances, it would be useful simply to define empowered officers and their powers more clearly in the forest law. It may also be useful to extend such powers to routine inspections on vehicles transporting forest produce or at processing or selling points, or to arrest offenders who refuse to prove their identity, where these powers might not be already envisaged. The power of suspending operations or seizing produce can also be strong deterrents to the commission of violations.

In addition to such traditional methods as the strengthening of enforcement capabilities, there are various other approaches which could be pursued to facilitate compliance with forestry legislation. Some could be achieved through legislation, but others require alternative solutions and incentives. For example, developing the awareness of local communities of the local resource base would be a means to facilitate enforcement. Increased public participation in decision-making processes could increase people's support for governmental action and decrease the number of violations. Strengthening the forest administration's extension capacity to spread knowledge of legislation as well as of the benefits of appropriate forest management may also be beneficial in this regard. An interesting illustration of the latter can be found in the Lithuanian Regulations on Private Forest Management and Use, which provide for the granting of free consultations by forest officers to private owners on existing laws and regulations governing the country's forests (sec. 6).

As a part of many privatization programmes in Central and Eastern Europe, the State forest authorities have been undergoing a process of transformation into privatized entities with commercial objectives. Especially in these cases, it is important to separate the commercial or exploitation functions from the law enforcement functions, which should be left unequivocally to the public authorities, in order to avoid conflicts of interest. Legislation should be designed accordingly, provided that the state forest administrations are endowed with sufficient means and personnel to be responsible for forestry law enforcement.³³ This has not been the case in Romania, for example, where a progressive privatization of the "Forestry Regia" through separate legislation has not been accompanied by a restructuring of enforcement arrangements. The Forest Code, therefore, continues to refer to the "Regia" as the authority responsible for enforcement.

A particular problem in Central and Eastern European countries has been the enforcement of the law in privately owned forests, where the owners themselves are often suspected of being responsible for illegal actions, but rarely bear the consequences. Sometimes simple clarifications in the legislation would be helpful. For example, the legislation should clearly

³³ Levin (1992) reports that in the Russian Republic of Buriatia the separation has been drawn so clearly that the financing of the enforcement agency is not in any way tied to commercial exploitation, but derives only from the State and from fines charged in the implementation of the agency's functions.

state whether particular rules, such as the requirement for a permit to harvest wood, apply also to private forests, and which public authorities are responsible for the enforcement of such provisions. Specific provisions to this end are rare. Hungary's law, for example, simply requires the forest manager to arrange for surveillance of the forest (sec. 90). The Lithuanian Regulations on Private Forest Management and Use, however, specifically provide for State control over private forest use, reforestation and protection by public forest officers (sec. 27). Private forest owners who fail to comply with control requirements are subject to the prescribed fines (sec. 31).

An unusual problem has occurred in Romania: because the provisions on offences call for punishment to be based on the amount of "damages" caused, an owner who had been accused of illegally logging his own land was able to raise a convincing defence simply by claiming that he had suffered no damage. This kind of problem could be easily resolved through more careful legislative drafting.

IV. CONCLUSIONS

The process of reform of forest legislation which has taken place in many Central and Eastern European countries in the recent past has brought about several positive developments. These can be briefly summed up as follows.

The commitment in all countries in the region to the development of market economies has been accompanied by a concern to protect forest resources from inadequate management. New forest laws provide, accordingly, for maximum productivity, while tending at the same time to ensure sustainability –whether or not the forest lands and resources have been privatized.

Another positive factor has been the significantly increased participation of Central and Eastern European countries in international initiatives regarding forestry. This has led to a greater exchange of experience and acquisition of information for the purpose of adopting appropriate domestic legal frameworks, and wider acceptance of international environmental obligations or recommendations, such as the Rio Forest Principles.

The formulation or improvement of a legal framework for private forests, which may prevent risks of inappropriate use and at the same time guarantee citizens' legitimate democratic rights, remains a complex task. Interesting solutions have been introduced in various countries and now require more practical experience on the ground and more careful evaluation.

There has been a moderate opening of the decision-making processes to public participation and integrated management. Some, although not all, of the laws which have been examined make the consultation of concerned parties compulsory for the adoption of forest management planning decisions. As non-governmental actors and interest groups become more active and gain importance, it is likely that they will be further considered even in the absence of more specific legislative provisions.

The fact that the laws which have been reviewed are relatively recent is probably a sign that most developments of the legal frameworks in the coming years will be effected through subsidiary legislation –and this is already happening in some countries–, since governments will be reluctant to promote a further complete replacement of laws. The adoption or replacement of appropriate regulations is, therefore, of crucial importance. Many of the desired developments could in fact be guaranteed even under the existing acts of parliament, if appropriate subsidiary legislation is put in place. This could be said, for example, with regard to the adoption of a legal framework for private forestry, to the prescription of conditions for forest exploitation, and to the enhancement of public participation. Hence, there will have to be an underlying continued commitment of governments to support the recommended approaches.

LEGISLATION REVIEWED

Albania

- ⇒ Law No. 7223 on Forestry and the Forest Police Service, 13 October 1992 (amended)
- ⇒ Decision on Tariffs in the Forest Sector, 26 February 1993
- ⇒ Regulation No. 577 on Protected Forestry Zones, 8 February 1993
- ⇒ Regulations Nos. 576 and 581 on Functions and Conditions of Admission into the Forest Service, 8 February 1993
- ⇒ Regulations on Exploitation of High Stands, Coppice Stands, Shrubs and Conditions of Cutting and Improvement, 11 January 1993
- ⇒ Guidelines on Auctions of Standing Wood, 25 July 1993
- ⇒ Instructions on Protection Against Forest Fires and Pests, 17 February 1993
- ⇒ Land Law, 19 July 1991 (amended, 2 June 1993)
- ⇒ Law on Compensation of Former Owners of Agricultural Lands, 21 April 1993
- ⇒ Law No. 8302 for the Management of Revenues Generated from States Forest and Pastures, 12 March 1998
- ⇒ Regulation on the Granting of Professional Licences, 21 March 1998
- ⇒ Law No. 8337 on Giving Ownership Agricultural Lands, Forests, Pastures and Meadows, 30 April 1998

Armenia

- ⇒ Forest Code, October 1994
- ⇒ General Forest Regulations
- ⇒ Regulations on Sale of Standing Timber
- ⇒ Regulations on Haymaking and Grazing, 1983
- ⇒ Land Law, 31 October 1990
- ⇒ Land Code, 29 January 1991

Bulgaria

- ⇒ Forestry Act, 1958 (amended, 1994)
- ⇒ Concessions Act, 5 October 1995 (amended, 1999)

Croatia

- ⇒ Law on Forests, 18 January 1991
- ⇒ Decrees on Amendments to the Law on Forests, 22 February 1991 and 30 July 1993
- ⇒ Forestry Seed and Seedling Act, 24 April 1998

Czech Republic

- ⇒ Forest Act, 3 November 1995

Estonia

- ⇒ Forest Act, 9 December 1998

Georgia

- ⇒ Forest Code of the Republic of Georgia, 22 June 1999
- ⇒ Law on Timber Exports, 20 February 1998
- ⇒ Decree of the President of Georgia Amending the Law on Timber Exports, 12 March 1998

Hungary

- ⇒ Law No. LIV on Forests and their Protection, 3 July 1996 (consolidated, 9 December 1997)
- ⇒ Decree No. 29 Implementing Law No. LIV on Forests and their Protection, 30 April 1997 (consolidated, 6 May 1998)
- ⇒ Decree No.92 on the Conservation and Utilization of Plant Genetic Resources, 28 November 1997
- ⇒ Decree No. 91 on Forestry Planting Materials, 28 November 1997
- ⇒ Law No. VII on Forest and Wildlife Management, 1961 (consolidated, 30 April 1997)
- ⇒ Decree No. 73 Implementing Law No. VII on Forest and Wildlife Management, 12 December 1981 (consolidated, 30 April 1997)
- ⇒ Law No. XLIX of 1994 on forest owners' associations, consolidated the 9 December 1997
- ⇒ Decree No. 37 of 1996 of the Ministry of Agriculture on the establishment and organization of the National Forestry Service, consolidated the 20 December 1997
- ⇒ Decree No. 155 on the Duties and Competencies of the Minister of Agriculture and Rural Development, 30 September 1998

Kosovo

- ⇒ Law on Forests, 1987 (still in force by virtue of UNMIK Regulation No. 2000/59, amended by UNMIK Regulation No. 2000/17)
- ⇒ Administrative Instruction No. 2000/1 on the Department of Agriculture, Forestry and Rural Development
- ⇒ Administrative Instruction No. 2000/23 on the Forest Authority

Lithuania

- ⇒ Forestry Act, 22 November 1994, amended in July 2001
- ⇒ Law on Concessions, 10 September 1996 (consolidated, 17 February 1998)
- ⇒ Regulations on Private Forest Management and Use, 24 July 1997

Poland

- ⇒ Act concerning Forests, 28 September 1991
- ⇒ Executive Order No.11 on the Statute of the State Forestry Administration, 27 May 1992
- ⇒ Order on Detailed Rules for the Preparation of Forest Management Masterplans, 25 August 1992
- ⇒ Order on Detailed Rules and Procedure for the Recognition of Protected Forests and their Management, 25 August 1992

Romania

- ⇒ Forestry Code, 26 April 1996
- ⇒ Land Law, 20 February 1991 (amended, 1997)
- ⇒ Law for the Conservation, Protection and Development of Forests and their Rational Exploitation of 30 October 1987

Russian Federation

⇒ Forest Code, 22 January 1997

Slovenia

⇒ Law on Forests, 26 May 1993

BIBLIOGRAPHY

- Baresi, P.A. "New forestry legislation in Eastern Europe: the Polish and Albanian models", 179 *Unasyiva* 1994, p. 34.
- Bergmann, T. "The Re-privatization of Farming in East Germany", XXXII *Sociologia Ruralis* 1992. p. 305.
- Buhler, W. "People and Forests, Forests in Latvia", Supplement to *Arbor Vitae*, February 1997.
- Christy, L.C. *Report to the United Nations Interim Administration in Kosovo on Forestry Legislation*, OSRO/KOS/913/NOR, Pristina and Rome, 2000.
- Cirelli, M.T. *Report to the Government of Armenia on Forestry Legislation*, FAO, TCP/ARM/4451, Rome, 1995.
- Cirelli, M.T. and Uliescu M. *Interim Report to the Government of Romania on Forestry Legislation*, FAO, TCP/ROM/6612, Rome, 1997.
- Csoka, P. "Forestry in a transitional economy: Hungary", 179 *Unasyiva* 1994, p. 11.
- Csoka, P. "The Role of the Private Sector, Economies in Transition and Issues of Privatization in Forestry", *Proceedings of the XI World Forestry Congress*, Antalya, Turkey, 13-22 October 1997.
- Csoka, P. "Forest Policy Activities in the Countries in Transition", *Proceedings of the International Conference on Forest Policy in Countries with Economies in Transition*, Prague, Czech Republic, 21-23 August, 1997.
- Eisma, D. "Impact of the EU Membership for Sustainable Forest Management", *Proceedings of the International Conference on Forest Policy in Countries with Economies in Transition*, Prague, Czech Republic, 21-23 August, 1997.
- FAO. *State of the World's Forests - 1997*, Rome, 1997.
- FAO/World Bank Cooperative Programme. *Albania - Integrated Forest Management Project Preparation Report*. Rome, 1994.
- Ferlin, F. *Policy for Conservation and Sustainable Development of Forest Ecosystems - Slovenian Example* (draft), FAO, Rome, 1997.
- Flasche, F. "Political Consideration for Private Forestry within the Framework of EU Enlargement", *Proceedings of the International Conference on Forest Policy in Countries with Economies in Transition*, Prague, Czech Republic, 21-23 August, 1997.

Frydman, R. and Rapaczynski, A. *Privatization in Eastern Europe: is the State Withering Away?* Central European University, 1994.

Humbert, G. "La réglementation forestière européenne et la place du droit forestier dans le système juridique français", in F. Schmithüsen (ed.), *Forest Law and Environmental Legislation*, ETA, Zurich, 1996, p. 159.

Lipman, D. "The Russian forest industry during the transitional period", 179 *Unasylva* 1994, p. 19.

Kern, E. (ed.). *Proceedings of the International Seminar on Land Reform and the Problems of Land Legislation*, Moscow, 10-14 June, 1991, FAO, Rome, 1991.

Kavcic, S. "The Development of Forestry Legislation in the Republic of Slovenia", 10 *Forestry Legislation* 1990, p. 149 (ETA, Zurich).

Krott, M. "Policies for Sustainable Forestry in Belarus, Russia and Ukraine", *Proceedings of the International Conference on Forest Policy in Countries with Economies in Transition*, Prague, Czech Republic, 21-23 August, 1997.

Lazdinis, M., Ostergren D. and Dudutis, D. "Lithuanian Forest Sector - Problems and Potential Solutions". Paper presented at the 3rd International Symposium on *Experiences with New Forest and Environmental Laws in European Countries with Economies in Transition*, Jundola (Bulgaria), 12-16 June 2001.

Levin, J. "Russian Forest Laws - Scant Protection During Troubled Times" 19 *Ecology Law Quarterly* 1992, p. 685.

Ljungman, L. "Analysis of Forest Policy and Institutional Reforms in a Forestry Sector Adjusting to Market Economic Conditions", *Proceedings of the Workshop on Experiences and Constraints in the Evolution of Policies and Institutions Relevant to the Forestry Sector in Eastern Europe*, Florence, Italy, 17-20 May, 1994. FAO, Rome, 1994.

Marghescu, T. "Safeguarding forest resources during the transition to a market economy", 179 *Unasylva* 1994, p. 32.

Moiseev, N.A. "Economic and Legal Aspects of Forest Management in Russia: Problems and the Way to Solve Them", *Proceedings of the IUFRO Forestry Conference on Experiences with Public Forest Ownership and Joint Management Systems*, Pushkino, Moscow region, Russia, June 1994.

Peck, T.J. and Descargues, J. *The Policy Context for the Development of the Forest and Forest Industries Sector in Europe*, ETA, Zurich, No. 14, 1995.

Pettenella, D. "New Trends in Public Forestry Administration", *Proceedings of the XI World Forestry Congress*, Antalya, Turkey, 13-22 October 1997.

Prins, G. and Korotkov, A. "The forest sector of economies in transition in Central and Eastern Europe", 179 *Unasyiva* 1994, p. 3.

Shvidenko, A. and Nilsson, S. "Are the Russian Forests Disappearing?", 188 *Unasyiva* 1997, p. 57.

Strykowski, W. "Changes in forest products production and marketing in Poland", 179 *Unasyiva* 1994, p. 25.

Tarasofsky, R. G. *The International Forests Regime - Legal and Policy Issues*, IUCN, 1995.

Upton, C. "Economics of non-wood forest products and services in Poland and Slovakia", 179 *Unasyiva* 1994, p. 38.

Vasicek, J. "A New Act in Forestry of the Czech Republic", *Proceedings of the XI World Forestry Congress*, Antalya, Turkey, 13-22 October 1997.

Winkler, I. "Legal Aspects of Forest Production in Slovenia", 11 *Forestry Legislation* 1992, p. 361 (Zurich, IUFRO Subject Group S6.13-00).