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Role of Landowners in New Forest Legislation

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Abstract

Approximately 50% of the forests in Western Europe are privately owned, less than 30% areas are state forests and around 20% are communal forestlands. In Central and Eastern Europe, the restitution of ownership rights leads to a considerable increase of private and communal forest holdings. In the Community of Independent States (CIS Countries), it remains to be seen to what extent restitution and privatisation processes will change the existing public ownership pattern. Based on the constitutional right of ownership it is primarily the responsibility of the landowners to decide to what extent they are able and willing to provide goods and services. They are not obliged to carry incremental costs without compensation for forestry benefits resulting from demands of user groups and the public, which have been incorporated into new forest legislation. Forest policy and legislation have to regulate the financial dimensions of costs and benefits in sustainable resources management. Legal provisions that balance rights and responsibilities in private and public land management are indispensable in order to generate an optimal combination of benefits from sustainable forest management.

Key Words: Land Tenure, Forests Ownership, Forest Law, Forestry Investment, Multiple Use Forest Management.

1 Private and Public Ownership of Forests

The process of adapting forest legislation to new social and economic developments has gained momentum since the 1990s (Cirelli and Schmithüsen 2000). Forestry laws have been revised in many countries in Western European (Schmithüsen et al. 2000). Major Law revisions have also occurred in all Central and Eastern European countries. With transition to an open civil society, democratic institutions and a market economy, these countries have developed a new legal framework for addressing agriculture and forestry, nature conservation and environmental protection (Mekouar and Castelein 2002; Le Master et al. 2003).

The continuous adaptation and innovation in the forest laws of most European countries, which we have experienced during the last years, are induced by fundamental changes in society. Society's expectations are high and extend to new issues, in particular to environment protection and sustainable development. New demands, such as the use of forests as carbon sinks, illustrate that the social meaning of forests is a dynamic one. The public wants more information on economic and social issues and more participation in policy formulation and implementation. The distinction between private enterprise and public administration is increasingly permeable. The private sector has to deal with the incorporation of external effects in management and public authorities are working with models from business administration.

The ongoing changes in forest law determine profoundly forest management of private and public landowners and influence profoundly the behavior of citizens, land users and land managers. They establish complex policy and legal frameworks, which combine cross-sector regulations and legal instruments that are adopted by national and sub-national governments. In addition, legal instruments adopted by the international community, at the Pan-European level and by the European Union play an important role.

The actual repartition of private and public forest tenure is the result of long standing social, political and economic processes. It was during the 19th century that ownership rights in Europe have been determined by land delimitation, mapping and inscription in public land registers. Since then ownership, rights have changed considerably due to political events as well as a result of sales of forest lands, afforestation of marginal agricultural land, and of forest clearings mainly in urban and peri-urban areas. Table 1 shows for Europe as a whole the actual variety in land tenure distribution of forest and other wooded land. Due to the large surface of Russian forests, public land ownership prevails. The table also provides an overview on the distribution of forestland holdings where the number individual private unit dominates.

Table 1: Ownership and Number of Holdings of Forest and Other Wooded Land
(UN-ECE/FAO 2000, page 70)

	Reference Period	Area of Forest and Other Wooded Land Ownership (1.000 ha)		Number of Holdings	
		Public	Private	Public	Private
Albania	2001	1.019	11	36	n/a
Austria	1992-1996	712	3.212	170.548	
Belarus	1997	8.936	0	1.971	0
Belgium	2000	301	393	877	155.110
Bosnia & Herzegovina	1995	2.125	584		
Bulgaria	1995	3.903		177	0
Croatia	1996	1.651	454	672	
Cyprus	1999	157	229	403	
Czech Republic	1996	2.212	418	4.566	137.260
Denmark	2000	188	391	360	26.246
Estonia	1996	1.978	184	180	17.000
Finland	1991-2000	6.491	16.391		447.104
France	1995-1999	4.228	12.761	15.926	3.495.000
Georgia	1995	2.988	0		
Germany	1987	5.762	4.978	13.040	349.361
Greece	1992	5.331	1.182	2.190	1.265
Hungary	2001	1.116	757	912	53.636
Iceland	1985	39	91		
Ireland	2001	397	268	152	21.386
Italy	1995	3.687	7.155	2.241	815.586
Latvia	1997	1.678	1.317	575	117.645
Liechtenstein	1995	6.9	0.5	15	584
Lithuania	2001	1.513	606	53	164.000
Luxembourg	1997	41	47	295	13.785
Malta	1996	0.35	0	21	0
Moldova, Republic of	1997	355	0		
Netherlands	1995	173	166	2.558	28.870
Norway	1989	2.936	9.064	1.302	171.079
Poland	1997-2001	7.518	1.524	461	843.802
Portugal	1995	258	3.091	1.140	409.524
Romania	1997	6.320	360		
Russian Federation	1998	881.974	0	> 2000	0
Slovak Republic	2001	1.047	959	578	40.035
Slovenia	2001	350	844	251	300.000
Spain	1985-1995	5.608	20.376	8.718	661.992
Sweden	1998-2001	6.175	24.385	13.557	260.386
Switzerland	1996	878	326	3.503	257.700
Turkey	1999	20.745	18	1.623	152
Ukraine	1996	9.494	0	10.515	0
United Kingdom	1995-1999	1.030	1.741	546	106.000
Total		1.001.321	114.284	91.414	8.894.508

Forests are legally defined and spatially delimited property. Forestlands and forest stands are production factors, which are, within the limits set by legislation, at the free disposal of their owners. In accordance with the constitutionally secured guarantee of ownership and with the principles of a market economy the rights to use forests and the responsibility for forest protection and management is vested primarily with the land managers. At national level, there are remarkable differences with regard to ownership and forest usage rights. In many countries, private forests dominate owned either by farmers and small-scale tenants or by industrial enterprises of the forest and wood processing sector. Communal forests owned by cities and rural communities are a significant feature in some countries. In others a considerable part of the forests are owned by the central state or by sub-national state entities.

Criteria for determining the legal status of private and public forest tenure are usually set by land laws. The specific requirements for utilization and management are regulated by the prevailing forest legislation. They are usually different for private and public forests with a clear tendency to impose less restrictions on private forest owners. The distinction between private and public forest property is of importance as the goals of the land owners are not necessarily the same. Private forest owners have a strong interest to earn income from wood production and timber sales, and to use their property for a wide range of personal objectives. Most public forest owners also manage their forest for financial earnings. In addition, they have frequently other important management objectives such as to protect public infrastructure and to provide recreation opportunities for their citizens.

Distribution of forest tenure is more differentiated and dynamic as the overall picture suggests if we distinguish different parts of Europe. In the countries situated in Western Europe, more than 50% of the forests are privately owned. Less than 30% areas are state forests, and around 20% are communal forests. In most of these countries, private and public forest tenures coexist leading to varying combinations of private forests, communal forest and state forest. In the countries in transition to market economies in Central and Eastern Europe the restitution of private ownership is still in full swing and leads actually to a considerable increase of private and communal forest holdings. In the Community of Independent States (CIS Countries) and in particular in Russia the forests are at present exclusively classified as public lands. However, it remains open to what extent restitution and privatisation decisions will further modify the presently existing official landownership classification.

2 Rights and Responsibilities of Forest Owners

The principle of sustainable development has become the political benchmark for judging to what extent new and revised forest laws contribute to economic and social welfare and to a safe environment worthwhile for present and future generations. The essential content of sustainable development is that economic growth, social integration and caring for a livable environment are on an equal footing. They influence each other, cannot be substituted for and are requirements for social progress and common advancement of mankind.

As a consequence the goals of new forest laws are today more diversified and comprehensive. They refer to a wide range of private and public goods and values and acknowledge the equal importance of production and conservation. Forest law objectives are more and more incremental and refer to the multiple role of forests as an economic resource and an important part of environment. Increasingly they address alternative management strategies for a variety of ecosystems, the need to maintain biodiversity and the development potential of forestry in rural and urban areas.

Modern forest policies and laws establish a framework addressing all categories of ownership as well as the relevant user groups. They define management rights and responsibilities of the landowners, rights and obligations of immediate beneficiaries as well as competences of public entities to set general conditions in order to utilize and increase the forest resources potential. Increasingly they promote and provide a formal basis for joint management arrangements.

In a general way, the overall target of new forest policies and legislation is to protect forests as a renewable resource base by taking into account their full economic, social and environmental value (Figure 1).

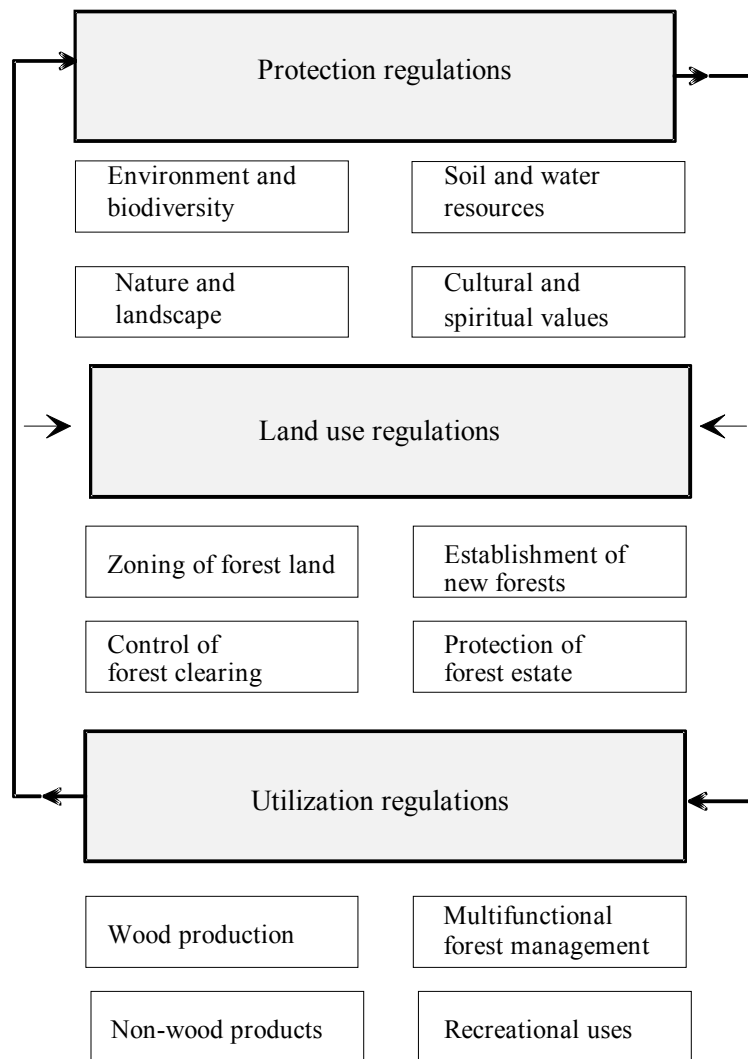
- Protection regulations refer to environment protection and maintaining biodiversity, to nature and landscape conservation, and to the preservation of cultural and spiritual values associated with trees and forests.
- Land-use regulations provide for zoning of forest land, control of forest clearing, protection of a permanent forest estate, and for the establishment of new forest resources through afforestation.
- Utilisation and management regulations establish rules for utilising forest resources in a sustainable manner by acknowledging the rights of forest owners to manage their property according to their own objectives as well as their responsibilities to consider determined interests of third parties and of the public.

The evolving political framework of natural resources management raises the question to what extent forest owners are able and may be obliged to face increasing demands of society and incremental regulations of the state. It is thus important to look at ownership rights and at the possibilities of landowners to respond to public demands in forest management. Issues to be considered are, for instance, ownership status of forests; rights and responsibilities of forest owners; provision of goods and services for the public; and new forest management strategies. It is important to state the following principles:

- Private and public landowners are key actors in natural resources utilization.

- The owners have constitutionally secured rights and are primarily responsible to make decisions in land management.
- Within the limits set by legislation they may use forest lands and forest stands as production factors in order to generate economic benefits and financial income.
- It is up to the private and public forest owners to determine which products and services are to be delivered to the existing markets or made available to the community as a whole.

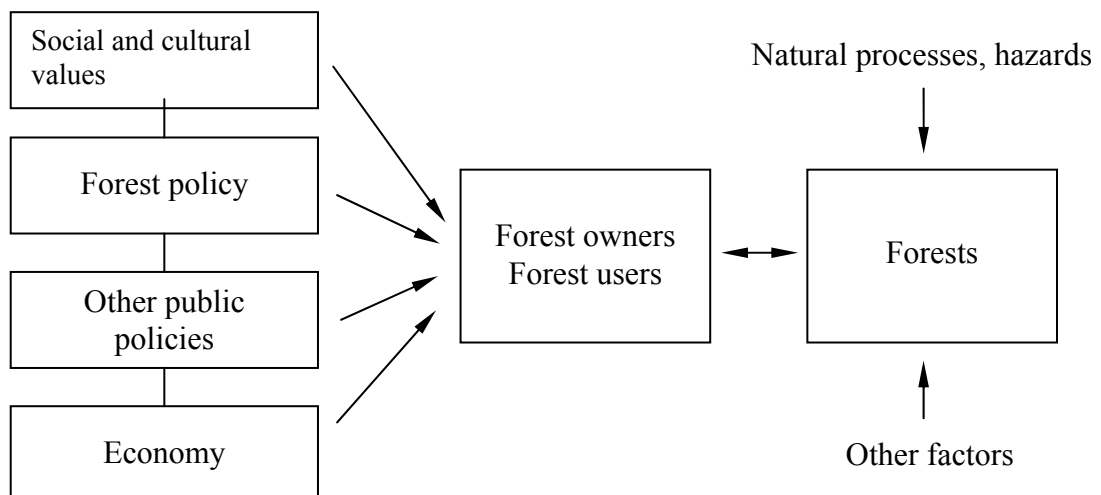
Figure 1: Forest Laws Regulating Protection, Land use and Utilisation



3 Role of Forest Legislation

One of the important tasks of public regulations is to determine and protect forest owners' rights and their interests to draw material and financial benefits in using and managing their property. The lawmaker has to consider the fact that sustainable wood production is geared by signals from markets and determined by considerations on economic profitability. The determination of forest owner rights and responsibilities needs a clear understanding of relevant production goals for which markets exist or can be developed. The same is true with regard to the cost efficiency of delivered market products. It is fundamental to acknowledge the attitudes and preferences of forest owners in designing effective public regulations for sustainable forest management (Figure 2).

Figure 2: Framework Determining the Behaviour of Forest Owners and Users



Source: Schmithüsen, Bisang and Zimmermann, 2001

Modern forest policies and laws are instrumental in generating a combination of private and public benefits. They address a large range of forestry outputs and services. And one has to acknowledge that new laws and regulations have frequently a tendency to place additional responsibilities on forest owners. Some of them may lead to additional costs, to restrictions in production, or to a reduction of market income. That is why a new approach in regulating the rights and responsibilities of forest owners is required. Designing effective forest legislation means in fact to find realistic balances between private and public interests in forest management practices. It means to respect the principle, that the provision of public goods and services must be financed with public financial resources. This is of particular relevance since the situation of forest owners changes rapidly as additional demands from external user groups and the public arise and are gradually incorporated into new forest legislation. There are limits to such developments that have to be qualified in accordance with the

constitutional rights of ownership. In particular, private landowners are not in a position to carry the incremental costs of external forestry benefits without compensation.

As a consequence new and amended policies and laws should favour collaborative forest management systems as a land-use strategies that are capable of functioning among divergent social interests and local conditions. This implies foremost:

- Decision-making processes involving forest owners, the principal users and environmental groups on an equal footing;
- New balances between private and public interests and the elaboration of workable arrangements for landowners facing public demands;
- A shift from governmental and hierarchical regulatory systems to negotiation, public process steering and joint management responsibilities;
- Realistic financial arrangements involving market proceeds, public funding and contributions from private user and interest groups to provide multiple forestry outputs.

Close-to-nature forestry is another land management strategy that is consistent with the principle of sustainable development and contributes to maintain biodiversity, variety of ecosystems and diversified landscapes. It favors flexible and long-term production cycles, offers attractive areas for recreation and leisure activities, and leaves options for future uses and developments. In relying on natural site factors, close to nature forestry combines more consistently than other management practices economic necessities with multiple social and environmental requirements.

One aspect, which needs particular attention, is to avoid or abolish unnecessary regulations, which are cumbersome for forest owners. They hinder sustainable forest development by increasing costs and creating undesirable incentives. Constraints result from bureaucratic procedures that increase transaction costs of management activities without producing corresponding public benefits. Legislation should clearly determine which agency has the power to make certain decisions. If this is not the case a key government stakeholder whose action is critical to the success of a particular strategy might find its authority to undertake that action open to challenge. Where the authority is fragmented among different sub-agencies, which do not function well together, governmental action, is again sub-optimal. An uncoordinated series of laws and regulations may authorise inspections of the same business, resulting in repeated and, in the end, harassing control.

4 Investment in Forest Resources Management

Sustainable management practices require re-investment and new investments to maintain and increase productivity of the available resources potential. New directions in policy and law can only be effectively implemented if they are supported by a rational repartition of private and public investment. The key issues are to determine:

- Outputs and services requiring public investment;
- Categories of private and public investments;
- Profiles and objectives of investors;
- Possible combinations of private and public financial resources.

Developing the potential of the rural space means today foremost, to facilitate economic and social interactions between landowners and land-users. Policies and laws have to be concerned with the financing of multiple outputs and services. They have to determine frame conditions for financial transactions between landowners, immediate beneficiaries and public entities. Cost sharing as commensurate with benefits that accrue to different parties is an indispensable prerequisite for the functioning of multifunctional forest management that provides multiple goods and services to private users and to the community. Where public interests are at stake, governmental intervention has to rely on compensatory payments and financial incentives. This is the case, for instance, for forestry measures protecting public infrastructure in mountain regions, for urban forest management and for measures promoting biodiversity.

Private and public investments in the forest sector have been undertaken for a long time. What have changed over time are the management objectives and the dimensions of investment needs. Investments are needed for the modernization of forestry and forest industries as an asset in rural areas providing employment, marketable products, and income to farmers and villagers. Contractual arrangements between national governments and regional entities are of particular interest. The European Union focusing increasingly on an integrated approach for investments in rural areas plays an important role. An increase of private and public investment is necessary in order to improve efficiency and international competitiveness in wood production. This refers to the modernization of wood supply structures, to a reduction of logging and transport costs, and to the establishment of more efficient marketing circuits. Public investments in research, professional education as well as managerial and technical training are other important measures in order to improve international competitiveness.

A considerable amount of public investment is needed in order to satisfy growing and multiple demands of society, which cannot be financed from, market proceeds. Typical examples are:

- Large investments for the regeneration of protection forests and avalanche control in the Alps;
- Investments for satisfying the demands for the protection against forest fires in Mediterranean region;

- Investments for maintaining forests and open green spaces within and around the cities;
- Investments for maintaining biodiversity, nature protection and management of natural landscapes.

Different investors have different strategies and expectations. Looking at the changing and diversified picture, the following issues need particular attention:

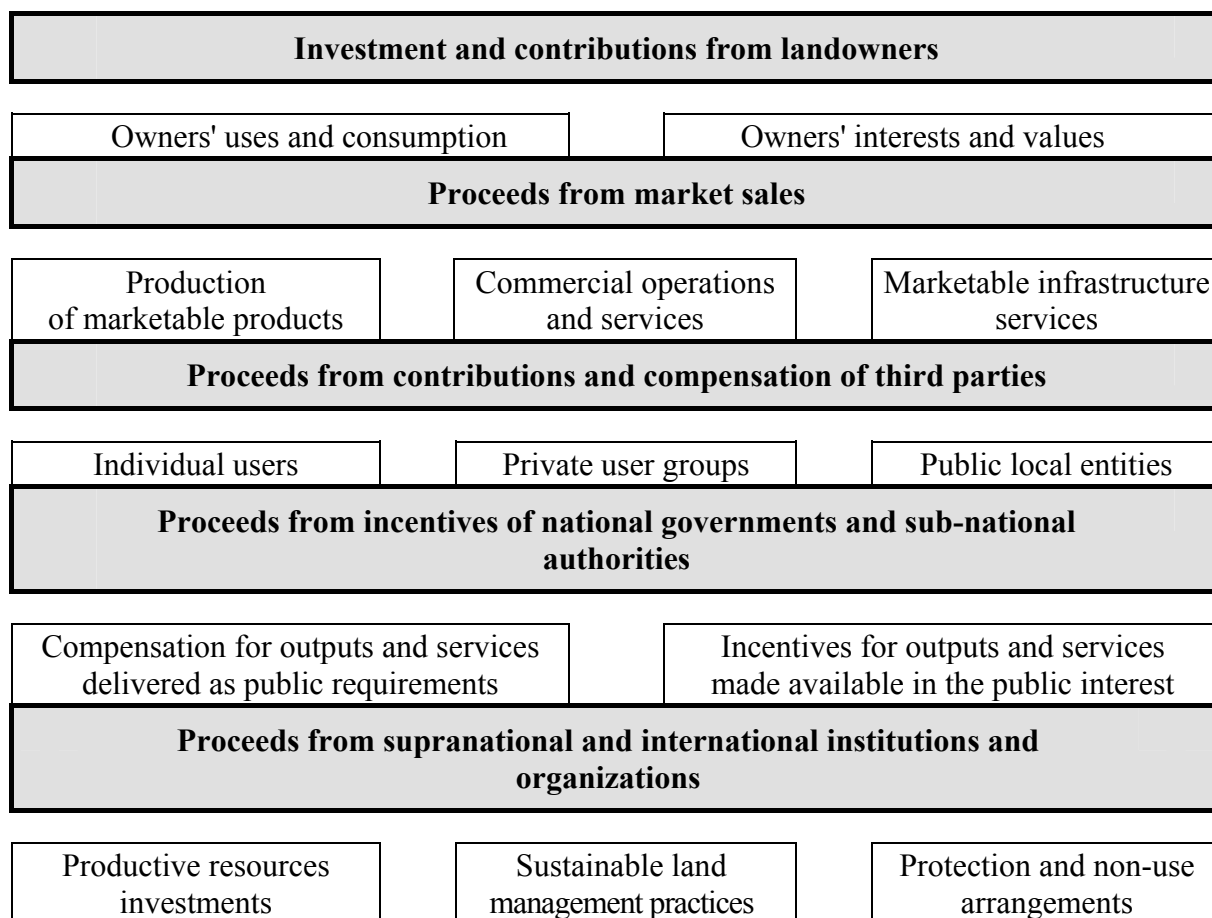
- Financial investments from private sources must show a proven profitability based on investment calculations. Social investments from public sources need proven benefits which are assessed in quantitative and qualitative terms.
- Social benefits that cannot be financed from market proceeds, need investments from those that benefit directly from them. Private user groups and local public entities play an important role in providing financial compensations for additional costs of proven additional benefit.
- If benefits from forests accrue to the community as a whole the clients of non-marketable forest services are citizens and communities. They have to decide which benefits they want to have and which public investments they are ready to make. This implies political decisions at all level of government.
- Economic valuation of non-monetary goods provides valuable information for public investment decisions. At least as important is to give clear indications on the level of the necessary investment volume and the resulting maintenance costs. Of equal importance is the prove that multifunctional and sustainable forest management undertaken in a cost effective manner.
- Investors such as private forest owners and the wood processing industry remain the back-bone of the European forest sector. In addition there is a whole range of public investors at different levels of government which gain importance in forest management. In short one has to look at the whole range of sources for finance and investments.

Financial means in managing the natural resource base derive from a variety of sources (Schmithüsen 2000). Significant elements are (Figure 3):

- Investments and financial contributions from the landowners;
- Proceeds from market sales of goods and services;
- Financial contributions and compensations from private user groups and local public entities;
- Proceeds from incentives and compensations from national governments and sub-national authorities;
- Proceeds from supranational and international institutions and organisations.

It is important that public policies and legislation deal with the financial dimensions of supplying private and public goods in sustainable resources management. They have to facilitate the sharing of financial commitments consistent with the economic realities of multiple uses. Instruments that favor an adequate transfer of resources commensurate with the tasks and responsibilities in land management are indispensable in order to generate an optimal combination of private and public benefits.

Figure 3: Financing Multiple Goods and Services in Forest Management



5 Conclusions

The far-reaching changes in the political framework for forest management call for a critical review of the ways and means for implementation. Issues to be considered refer to joint management responsibilities, choice of effective instruments and measures, consensus building among stakeholders, and to the role of public forest agencies.

The shift from state control to voluntary initiatives favors new forms of *joint management responsibilities* involving forest owners, the private sector, NGOs and public authorities.

- Policies and laws set the frame determining the requirements and performance standards of the parties concerned.
- Procedural arrangements support the promotion of co-operative forms of decision-making and contractual arrangements with third parties.
- Guidelines for best management practices, procedures for mediation and the exchange of information become institutionalised.
- Public authorities are increasingly involved in implementing more comprehensive programmes of land management.

- Negotiated activities on a contractual basis replace direct governmental intervention. They require a more precise understanding of targets, outputs and impacts of public policies and legislation.
- With more attention given to collaborative policies, informational and persuasive instruments gain considerable weight.
- Monitoring and evaluation of concrete results combined with free access to such information ensure greater involvement of citizens and stakeholder groups in public decision-making processes.

The choice of *appropriate instruments and measures* is currently in a process of change. Increasing emphasis is put on incentives, persuasion and participatory procedures instead on regulation.

- Labelling, for example, aims to influence the behaviour of timber customers by making the external costs of products more transparent.
- Voluntary agreements become more frequent between landowners and the public sector for the establishment of nature protection zones providing compensation for income losses from alternative uses.
- Persuasive instruments are more widely used as policy measures can be implemented more effectively if the addressees and stakeholders understand their reasons and agree with them.

New actors and a large range of stakeholders have to be integrated in forest management decisions. Institutional arrangements for *consensus building among stakeholders* gain weight since forestry practices have to demonstrate that they are in accordance with public demands and values. As a result of the demands of stakeholders and citizens for more participation and constitutional changes in the role of government, a significant acceleration in the revision of forest legislation is under way. New process-steering instruments in forest regulations concern for instance:

- Joint competencies of national, regional and local authorities in forestry matters;
- Integration of environmental functions in forest management regulations;
- Participation and joint responsibilities in management planning;
- More effective forms of cooperation, conflict resolution and public arbitration;
- Concerted and integrative approaches in law implementation;
- More transparency in decision making and more substantive information to the public.

The expanding framework of policies and laws requires a high amount of *process steering on the side of public forest agencies* and concerted decision-making on the side of the landowners, land users and environmental groups.

- This implies a shift to legislation which sets a frame for defining the requirements and performance standards of the parties concerned.
- It requires rules for the development of cooperative forms of decision-making and for contractual arrangements with third parties.
- From the viewpoint of the authorities it puts strong emphasis on output and not input oriented implementation of forestry programmes.
- And it supports negotiated activities on a contractual basis whereas direct governmental intervention is reduced.

The change from hierarchically structured forest services to public service organizations means a shift from individual decisions and projects to comprehensive land management and resources conservation programs. In addition, it means that the forest law encourages the use of services offered by the private sector. At the same time, the law needs to define precise duties and services to be delivered by public entities. The change in the role of public forest services is based on the allocation of financial resources in relation to specific targets. Global budgeting and service contracts subject to meaningful criteria of financial control are increasingly used. Measurement of efficiency (output/ input), effectiveness (attainment of objectives) and economic performance (real costs/ standard costs based on best practices) become a necessity.

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