

PROPOSED STRUCTURE OF THE LEGISLATIVE FRAMEWORK FOR THE FORESTRY SECTOR

Terms used

In the content of this section, the following terms are used:

Legislative framework	The set of acts regulating the roles, responsibilities, relations and activities of the forestry sector, from the level of organic laws to ministerial orders , including the set of rules that govern the forestry regime
Regulatory category	Main criterion for horizontal structuring of the legislative framework based on the subject of interest around which the regulations are focused. Four such important topics are defined: forest ownership, organizational infrastructure, sustainable forest management and bioeconomy.
Regulatory domain	Secondary criterion for horizontal structuring of the legislative framework based on the specifics of each regulatory category.
Regulatory level	Single criterion for vertical structuring of the legislative framework based on the type of concern of the regulator: to establish (i) principles and definitions, (ii) rules and sanctions, (iii) context and conditionalities and (iv) constraints, results and procedures.

Need and opportunity - why a reform of the forestry regulatory framework is needed

During 2020, the central forestry authority carried out an extensive consultation process with stakeholders in the forestry sector. One of the topics up for debate was the current regulatory framework and the extent to which it serves the current needs of the sector. Unanimously, all actors in the forestry sector expressed the need for a structural reform of the existing regulations, underlining the multiple current deficiencies and the negative impact they have from a social, ecological, economic and silvotechnical point of view.

From a historical point of view, it is worth noting that before 1990, Romanian forestry was organized as a state enterprise at the national level. The Ministry played, in fact, a role of exhaustive management of all activities carried out through a number of county inspectorates, consisting of forest districts, districts and brigades and, at the lowest level, forestry cantons. At

the time of the change of the political regime, with the emergence of the Autonomous Forest Management, a large part of the internal logic of the organization of this enterprise was transferred to various normative acts, from ministerial orders to government decisions and even laws. Many of these regulations should be found at the level of the internal procedures of the current forestry administrators, they being the prerogative of the managerial act.

From the mentioned consultation process, but also from the direct analysis of the legislation and normative acts, a number of negative aspects of the current regulatory framework can be easily identified. In a random enumeration, this is:

Difficult to understand Regulations often contain *different terms used to denote the same meaning or the same term used to denote different meanings.*

For example, terms such as "sustainable forest management" and "sustainable forest management" are vaguely defined despite their structural importance, and their semantics overlap, creating confusion and possibilities for misinterpretation. If we admit that the terms «management» and «forest» are more generic, and the terms «management» and «forestry» are more technical, it is difficult to explain why forest management refers to the forest fund, and forest management refers to any land with forest, i.e. exactly the opposite of what would be expected.

Deficient in effectiveness The regulatory framework has a *clear orientation towards the procedural obligation* (binding legal norms), but it systematically omits the aspects related to the result obligation. As a general rule, the legislator or standard-setter is not sufficiently concerned with the finality of the regulation (the positive effects on the forest, the sector, etc.), leaving the effectiveness in the background.

Numerous examples in this sense can be found in the technical norms that make up the current forestry regime.

Costly Numerous regulations *generate costs for actors in the forestry sector without providing compensating benefits.* Often, the only beneficiary of the regulations is the central authority and the institutions under its responsibility, which obtain information that facilitates their act of control. Although the information obtained could also be exploited for the benefit of other actors in the sector, the regulations rarely provide the appropriate tools for this type of purposes.

Examples:

A notorious example is the SUMAL system which collects an impressive volume of data on the movement of timber through a significant bureaucracy, without making useful and relevant statistics and analysis available to the forestry sector and civil society.

Another example is the expense imposed on the forestry departments to equip the forestry personnel who have security duties with service weapons and, obviously, all related security accessories (arms, etc.).

Ambiguity There are aspects of the activity in the sector regulated in several normative acts that are not always complemented or synchronized properly. This leads to *implementation asymmetries* and *frequent errors or abuses of the control act*, also encouraging corruption through the possibility of intransigent or lenient interpretation.

Moreover, the low percentage of sanctions applied by state control bodies for violations of forestry regulations and overturned by the courts indicates serious problems of understanding and enforcement of the regulations.

An example from the current Forestry Code that regulates by reference to unclear terms (what are ecological materials?):

The facilities necessary for the creation of forest-parks - The facilities allowed in forest-parks are:

a. paths made of ecological materials

Excessive Many regulations refer to aspects related to the details of the execution of some technical activities. This aspect is particularly negative because *the unnecessary regulations weaken the necessary ones*, by creating a perception of intrusion in the managerial and technical act. The regulatory framework is based more on detailed mandatory legal rules, which cause an *exaggerated volume of regulatory texts*, and much less on clear prohibitive legal rules.

Likewise, the managerial act is seriously affected by depriving the manager or the technical expert of the freedom of decision, which leads to a *decrease in professional responsibility and concern for continuous improvement*.

Examples:

The provisions of the Guard Regulation create the obligation of individual guard, performed by the canton holder with a service weapon, although the provision of the guard is (according to the general legislation on this subject) a responsibility of the owner and the administrator. Guarding the forest should be a managerial decision that is taken in the concrete context of the forest fund managed by a forest administrator.

The Forestry Code contains provisions regarding the powers of the government to establish the regulation for the utilization of wood mass, although this aspect is strictly of a managerial nature and should be regulated by the administrator of the forest fund.

Badly delimited General and special norms are not always correctly ordered, which creates difficulties in implementation and monitoring considering that some are implemented before others.

Incoherent As a general observation, the regulatory domains are mixed, the domain regulatory scheme is complicated, and navigation through the regulatory framework is difficult. Sometimes very detailed aspects are found in the forestry code, and others - equivalent in terms of regulation - are at the ministerial order level. A practitioner wishing to apply the regulations spends considerable time identifying all the normative texts applicable to the case

before him.

Examples:

Establishing in the Forestry Code the dimensions of a forestry detour without taking into account the specificities of the forest fund it manages: The

specialized territorial structures of the central public authority responsible for forestry are established for the minimum area of forest fund, as follows:

- a. 60,000 ha in the lowland area;
- b. 120,000 ha in the hill area;
- c. 180,000 ha in the mountain area.

The establishment in the Forestry Code of the implementation details for a principle enunciated in the same normative act, although clarification would have been needed through an application norm (which is missing): Legal entities and public institutions that benefit, under an economic, ecological or social

relationship, of the effects of the protection function of the neighboring forests, other than those in the property, pay the counter value of these functions according to the provisions regulated by a special law.

Another example is the incoherence generated by the definitions and disorderly uses of the term «forest»:

The totality of forests, ..., contained in forestry arrangements on January 1, 1990, including surface changes, according to entry-exit operations carried out under the conditions of the law, constitute, regardless of the form of ownership, the national forest fund.

—
According to paragraph (1), the national forestry fund includes:

- a) forests;

—
Forests are considered, in the sense of this code, and lands with an area of at least 0.25 ha, covered with trees, are included in the national forest fund; the trees must reach a minimum height of 5 m at maturity under normal vegetation conditions.

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The term forest includes:

- d) lands covered with wooded pastures with a consistency greater than or equal to 0.4, calculated only for the surface actually occupied by forest vegetation;

—
Forests, as defined by this code, which, before its entry into force, were part of the category of forest vegetation on lands outside the national forest fund, become national forest fund and are integrated into production units and/or existing protection units or are set up in new production and/or protection units, if the conditions imposed by the technical rules for forest management are met and they acquire a forestry destination by being included in the forestry management.

General characteristics

In the construction of the present proposal for the structure of the legislative framework for the forestry sector, a series of general characteristics that it must meet were taken into account. They are:

- 1. Pragmatism**
The structure of the legislative framework has a limited number of categories and levels of regulation to facilitate easy navigation and quick identification of a case
- 2. Rigor**
The structure of the legislative framework strictly adheres to the definitions of each legislative category and each level of regulation, to keep in time its coherence
- 3. Responsibility**
The structure of the legislative framework favors decision-making as close as possible to the real processes of the field in order to make the decision-makers responsible and increase the quality of the results
- 4. Simplicity and coherence**
The provisions of the legislative framework are easy to understand, terminologically coherent, the normative acts specific to a field (subfield) of regulations are easy to identify and the regulatory scheme is easy to follow
- 5. Efficiency**
The implementation of the regulatory framework is inexpensive for entities and individuals involved in the sector

Levels of regulation

Current situation

Current structure of the framework i legislative has a pronounced heterogeneity in the four levels currently existing, according to the form of regulation: forestry code, law, government decision and ministerial order. The heterogeneity manifests itself mainly through the presence of operational details in high-ranking normative acts (such as the forestry code), which limits the flexibility of the governing act on the one hand and cancels the premises of rapid optimization of the provisions that prove to be unviable. The specific inertia of the legislative power, caused by the need to find ideological and political compromises, makes it difficult to take decisions that serve the development and operation needs of the forest sector actors.

Also, the current heterogeneous structure (non-observance of the new regulations) makes the knowledge and implementation of the laws very difficult: it is difficult to determine which are the main normative acts (by regulatory areas), it is difficult to understand the regulatory scheme.

Proposed organization

Four regulatory levels of the entire structure are proposed, which correspond to four types of concerns of public authorities, namely:

- Defining terms and establishing principles
- Establishing general rules of the regulatory category
- Defining roles and responsibilities
- Establishing operational rules

This classification is indicative, being able there are certain exceptions thoroughly justified by administrative or political arguments, but, for a good functioning of the proposed structure, it is advisable to follow this logic of legislative stratification as precisely as possible.

Level 1 contains definitions and principles that must be found at the level of the Forestry Code to give clarity to the entire legislative framework. Currently there is a whole series of terminological inconsistencies and overlaps of definitions that make it difficult to understand the regulations and favor conjunctural interpretations of the legal provisions. That is why level 1 must focus on answering rather the "why" question (why regulation is necessary in the spirit and letter of the subsequent provisions).

Level 2 corresponds to ordinary laws and is intended to establish a set of general rules that derive from the principles enunciated at the first level, remaining within the sphere of responsibility of the legislative power. The logic of regulations at this level must be guided by the need to answer the "what" question: what must be done to implement the stated principles.

Level 3 is equivalent to the act of governance and corresponds to the level of executive power. Based on the stated principles and the established general rules, the executive must find the appropriate answers especially for the questions «who», «when» and «where»: who applies (roles and responsibilities), when are the rules applicable or not (conditionality), where (geographical zoning, type of property, etc.).

Level 4 is equivalent to the public administration act and corresponds to the ministerial level. Based on the context created by the higher regulations, therefore knowing (most of the time) «why», «what», «who», «when» and «where», the central authority must mainly answer the question «how» : procedural constraints, result obligations, guidelines and technical or economic regulations, instructions regarding the application of higher-level normative acts. Also included here are those normative acts of ministerial level that have an individual character.



Regulatory categories

The proposed structure contains a number of four legislative regulatory categories, oriented on the major topics of the forestry sector:

- Forest property
- Sector infrastructure (or Administration)
- Sustainable forest management
- Bioeconomy (sustainable and integrated utilization of products and services)

Identification of the 4 categories it also starts from the need to separate as clearly as possible the regulatory functions from the management and control functions of the state.

Forest property is the first category to explicitly mark its importance from the perspective of coherent and effective regulation. Although apparently special attention has been paid to forest ownership in the last 30 years through the numerous regulations for the retrocession of forests to former owners, in reality the current legislative framework takes very little into account the specificities of private ownership (small area, high fragmentation, etc.) which creates numerous inconveniences or even obstacles for the implementation of the forestry regime.

Forestry infrastructure or administration is a category that groups all the regulations related to the structural elements that form the framework for the planning, execution, monitoring and control of forest sector activities.

Sustainable forest management is the third category, and its exact definition requires a clarification effort. In current use in the current legislative framework, the term is equivocal, unclear as to the differences between forest management and sustainable management, missing especially the elements that specify what sustainability is and how it is approached.

Finally, but not least, the bioeconomy is the category that brings together all the regulations that establish the economic and financial aspects of the sector. Its name is intended to signal the

acute need to redefine the products and services that the forest provides, many of which are currently completely ignored.

The structure of the proposed legislative framework

Forest property

From a principle point of view, forest property is no different from any other form of property defined in the general legislative framework of Romania, benefiting and at the same time obeying all the provisions of the Constitution and the Civil Code. For these reasons, all provisions that are redundant with those coming from the general legislation on property must be removed, being likely to cause erroneous interpretations.

However, there are also a number of peculiarities of the regulations regarding forest property, and these have their origin in the major interest of society towards the forest. The ecosystem services provided by the forest have an ecological and social importance that causes society to introduce restrictions or even bans on the manifestation of the three fundamental rights that derive from the quality of ownership: the right of possession, the right of disposal and the right of use.

Level 1 of this category of regulation is represented by a dedicated section of the Forestry Code in which must be included:

- Definition of forest property and recognized property types
- Enunciating the right of pre-emption of the state to purchase forest properties
- Establishing the obligation to provide minimum ecosystem services (validation of a limitation of the right of use)
- Establishing the principle of compensation for the provision of additional ecosystem services according to the interests of society and the state

Level 2 of the regulatory category is represented by forest property laws, in as small a number as possible. These laws must include:

- Defining the rules and limitations applied to the rights of use, disposition and possession
- Establishing the obligation to record forest property and the record instrument
- Defining the general rules regarding public access to forest properties
- Defining and functioning of associative forms of ownership

An additional note for this level regulatory: there are currently a number of legislative acts that refer to the process of returning forests to former owners. They also fall under the category of property laws, with the caveat that their importance steadily diminishes as the process draws to a close.

Level 3 regulation is divided into two regulatory areas: (i) record of forest properties and (ii) limitations and compensations applied to forest properties. At this level, the following must be regulated:

- Domain Forest property records
 - Establishing responsibilities for forest property records
 - Defining the information structure for forest property records

- Additional funding for the purchase of forest properties by the state
- Domain Limitations and compensations
 - Establishing limits for basic ecosystem services, mandatory for all forest properties
 - Defining the catalog of additional ecosystem services that the state compensates for and that owners voluntarily assume.
 - Establishing the compensations granted for additional ecosystem services

Level 4 regulation is also separated into the two previously mentioned areas. At this level, the following must be established and clarified by regulations:

- Domain Forest property records
 - Organization and operation of the forest property record register
 - Procedure for monitoring and showing pre-emption
- Domain Limitations and compensations
 - Assessment procedure for basic ecosystem services Assessment
 - procedures for additional ecosystem services
 - Procedure of compensation for additional ecosystem services

Sector infrastructure

The infrastructure of the forestry sector consists of a set of structural units, strategy elements and activities through which the state manifests its role as central authority.

The 1st level of regulation is represented by a specific section in the Forestry Code which contains:

- Statement of the principles of organizing the infrastructure of the forestry sector
- Statement of the activities that the state assumes as the central authority
- Statement of the obligation to develop and implement a forestry strategy
- Statement of the principles of entry and exit from the forest fund

Level 2 of regulation is constituted by the laws of the forest infrastructure and includes all the legislative acts (preferably in as few as possible) that refer to: The establishment and

- organization of the institutional framework necessary for the performance of the assumed activities, as well as the professional skills of related human resources
- The obligation and general structure of the information system of the sector, specifying the rules of access to information (every contributor must also be a beneficiary) The
- national forestry strategy, including the strategic directions, the targeted areas and the indicators that will reflect its implementation
- General rules governing the activities undertaken by the state as a central authority: financing, accessibility, security and integrity, monitoring and control, research, education and communication, forest management certification.

The 3rd level of regulation is structured on several regulatory areas and includes:

- Institutional framework and human resources field

- Establishment and organization of the state forest fund administrator
- General rules for establishment and organization of regime forestry areas
- Establishment, organization and responsibilities of monitoring and control institutions
- The relations of the institutional framework of the sector with other state institutions (environment, internal affairs, justice, agriculture, etc.)
- Domain Information system of the sector
 - The obligation to organize and maintain a coherent, integrated and high-performing information system, the definition of contributors and beneficiaries of this system
 - Establishment and organization Forest property record register
 - Establishing and organizing the timber tracking system
 - Establishing the structure of public information and the tools related to their presentation
- National Forestry Strategy Domain to
 - the Annual Plan for the implementation of the National Forestry Strategy
- Domain Financing
 - Defining the sources of financing and financial instruments used to support the activities carried out through the infrastructure of the sector
 - Defining the sources of financing and financial instruments offered to support the implementation of the National Forestry Strategy
- Domain Accessibility of forest fund
 - Establishing development priorities and maintenance of the access network in the forest fund, in accordance with the National Forestry Strategy
- Domain Protection and integrity of the forest fund
 - Establishing general rules regarding the protection of forests and the integrity of the forest fund
 - Defining the institutional responsibility of forestry administrators for the activity of guarding and ensuring the integrity of the forest fund
- Domain Monitoring and control of activities
 - Establishing the general rules for monitoring and control
 - Establishing the activities that are subject to monitoring and control
- Forest management certification domain
 - Defining the relationship between the state and forest management certification mechanisms
- Domain Research, education and communication
 - Establishing relations with research and education institutions in the forestry field
 - Establishing public communication tools and channels, including public relations on sector-specific topics

Level 4 it has an identical structure of regulatory areas and corresponds to the concerns of implementing the principles, rules and responsibilities defined in the higher levels. These are composed of:

- Domain Institutional framework and human resources

- Procedures for establishing, suspending and abolishing a regime forestry bypass
- Status of forestry personnel - simplified at the level of general provisions, without going into managerial aspects (career and performance management individuals, disciplinary violations and sanctions)
- Domain Information system of the sector
 - Procedures for collecting information in the information system
 - Procedures for beneficiaries to access information from the information system
 - Organization of access to public information
- Domain National forestry strategy
 - Procedures for monitoring and reporting the fulfillment of the annual plan of the application of the National Forestry Strategy
- Domain Financing
 - Procedures for accessing funding sources and financial instruments used to support the implementation of plans and programs specific to the sector and under the responsibility of the central authority res responsibilities of forestry (including the National Forestry Strategy)
- Forest Fund Accessibility Domain
 - Instructions regarding the implementation of normative acts from higher levels
- Forest Fund Protection and Integrity Domain
 - Norms/instructions regarding the manner of applying the procedures regarding the entry or exit of areas into and from the forest fund
 - Instructions regarding implementation of normative acts from level 4
- Domain Monitoring and control of activities
 - Monitoring and control procedures
 - Establishing mechanisms for verifying the quality and correctness of control
- Domain Forest management certification Domain
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- Research, education and communication
 - Annual research-development
 - plan Annual public communication
 - plan Organization of relations with the public on topics specific to the sector

Sustainable management of forests

This regulatory category brings together all the normative acts that refer to the application of the forestry regime, to all aspects concerning the areas protected forests and biodiversity, as well as the connections between forest ecosystems and climate change adaptation measures. All these perspectives overlap in many respects, therefore the legislative framework of the forestry sector must approach them in an integrated and unitary manner.

A special remark regarding hunting fauna: the proposed legislative framework does not include normative acts related to hunting management, considering that this aspect is the competence of environmental legislation where the multiple correlations and interactions between the various ecosystems existing in Romania (terrestrial, aquatic, marine) must be integrated). Hunting fauna is not only dependent on forest ecosystems, and its association with forestry is only a

consequence of a way of organization that has a certain inertia in the organizational memory in Romania (for several decades hunting and hunting were entrusted to the management of foresters).

Level 1 regulation of this category is represented by the third section of the Forestry Code in which the following must be included:

- Definition of the forest and forest fund
- Clear articulation of the notions of forest management, forestry administration and sustainable management of forests
- Statement of the fundamental principles of planning forests, including their integration with the principles of environmental protection.
- The statement of the fundamental principles of silvotecnics and the principles of ecological reconstruction.
- with European policy regarding climate change, biodiversity and environmental protection.
- points of alignment regarding hunting management

A special remark must be made regarding forest management, which is based on the application of the forestry regime: the lands outside the forest fund must be explicitly addressed through an unequivocal clarification of the management rules c they obey them. Thus, it is possible to encourage the maintenance of forest vegetation on private lands outside the forest fund, without the owner having the fear of being forced to change its use category.

The 2nd regulatory level of the category is constituted by the laws of sustainable forest management. The same recommendation to limit their number is maintained. Aceste legi trebuie să acopere următoarele aspecte:

- Definirea și reglementarea regimului silvic
- Definirea regulilor de stabilire a obiectivelor economice, sociale și ecologice pentru managementul ecosistemelor forestiere și a ponderii dintre aceste obiective
- Definirea regulilor pentru identificarea și gestionarea ariilor protejate forestiere, a parcurilor naturale și naționale, a pădurilor virgine și cvasi-virgine, inclusiv obligativitatea unei evidențe complete și corecte a acestora într-un catalog unic

Nivelul 3 de reglementare este constituit din acte normative care stabilesc în mod concret obiectivele economice, sociale și ecologice pentru perioade de timp care derivă din aplicarea strategiei forestiere. La acest nivel se regăsesc, printre altele:

- Prevederi referitoare la înființarea unor noi zone forestiere de protecție
- Prevederi referitoare la modalitățile de exploatare a masei lemnoase de pe fondul forestier de stat

Nivelul 4 de reglementare este structurat pe o serie de domenii de reglementare care reunesc norme și ghiduri tehnice cu privire la:

- Amenajarea pădurilor
- Regenerarea pădurilor

- Îngrijirea arboretelor
- Protecția pădurilor
- Exploatarea pădurilor
- Infrastructură silvică
- Dezastre și incendii de pădure
 - Definiția situației de dezastru și stabilirea derogărilor de la normele și ghidurile tehnice uzuale
 - Norme de prevenire și stingere a incendiilor forestiere, inclusiv responsabilitățile instituțiilor statului în astfel de situații
- Adaptare la schimbările climatice
- Conservarea biodiversității ecosistemelor forestiere
- Reconstrucție ecologică

Bioeconomie

Termenul de bioeconomie desemnează o sumă de aspecte și perspective care sunt mult mai largi decât practica actuală din România. Sunt cunoscute progresele făcute în acest domeniu de unele țări (mai ales din zona Europei de nord), care au investit resurse semnificative pentru a studia și dezvolta potențiale tehnologii de utilizare a biomasei lemnoase în diverse industrii ca înlocuitor al plasticului sau metalului. România este deocamdată departe de acest tip de preocupări, termenul de bioeconomie referindu-se aproape exclusiv la utilizarea lemnului ca materie primă pentru semifabricate și produse finite tradiționale (cherestea, elemente de construcție, mobilier etc).

Nivelul 1 al acestei categorii de reglementare este reprezentat de secțiunea a patra a Codului Silvic în care sunt precizate:

- Principiile exploatării și valorificării masei lemnoase în fondul forestier (corelarea cu posibilitatea)
- Principiile exploatării și valorificării masei lemnoase din afara fondului forestier
- Principiile valorificării altor resurse specifice ecosistemelor forestiere
- Alinierea obiectivelor de biodiversitate cu cele legate de promovarea bioeconomiei
- Stabilirea punctelor de aliniere cu politica europeană referitoare la bioeconomie

Nivelul 2 este constituit din legile referitoare la bioeconomie și abordează aspecte referitoare la implementarea principiilor enunțate în Codul Silvic:

- Stabilirea modului de calcul a posibilității anuale a pădurilor
- Modalitatea de calcul a recoltei anuale de masă lemnoasă
- Stabilirea regulilor și dreptului de recoltare și valorificare a altor produse specifice ecosistemelor forestiere (ciuperci, fructe de pădure etc)

Nivelul 3 de reglementare este compus din acte normative care tratează cu precădere rolurile și responsabilitățile referitoare la:

- Punerea în piață a masei lemnoase
- Circulația masei lemnoase

- Valorificarea masei lemnoase
- Standardizarea produselor forestiere
- Recoltarea și valorificarea produselor forestiere nelemnoase
- Instrumente economice de încurajare a dezvoltării durabile
- Monitorizarea pieței de produse forestiere

Nivelul 4 de reglementare este structurat similar cu nivelul 3 și tratează aspecte referitoare la procedurile specifice care se aplică pentru domeniile de reglementare menționate.

