



# **Romanian Regulatory Frame**

## When too many rules weaken the rule of law

Laura Bouriaud and Liviu Nichiforel University "Stefan cel Mare" Suceava

3rd of November 2020



High degree of naturalness, artificial stands are rather exceptions

### Ratio increment/ harvesting NFI data: 66%

Species	% ratio increment/ harvesting
Coniferous	76%
Beech	67%
Oaks	58%
Other broadleaves hardwood	54%
Other broadleaves softwood	56%
Total	66%

Naturalness	unit	Total
Virgin / primary, no human intervention	ha	29.209,49 (0,4%)
Cvasi-virgin / secondary natural type, scarce interventions	ha	54.610,60 (0,6%)
Fundamental natural type, based on natural regeneration	ha	5.314.469,98 (76,7%)
Natural modified, partly or totally modified vegetation	ha	854.319,64 (12,3%)
Artificial, autochthone species adapted to site	ha	572.361,46 (8,3%)
Artificial, autochthone species, not adapted to site	ha	62.813,43 (0,9%)
Undefined (different degree of naturalness)	ha	41.262,82 (0,6%)
	ha	6.929.047,44 (100%)
Total	EE[%]	1,034

# Romanian forest rules result in low intensity forest management is system

e.g. Norway spruce and beech forests (Bouriaud et al., 2016) (cut and leave system)

e as in the German		Age classes	Area in Romania (ha)	Productivity in Romania (m <sup>3</sup> •ha <sup>-1</sup> •y <sup>-1</sup> )	Productivity in Germany (m <sup>3</sup> •ha <sup>-1</sup> •y <sup>-1</sup> )
11 to 18% of the	Picea	0–20	103356	1.4	7.1
-	Г	21–40	218082	7.9	19.8
ny intervention in		41–60	212645	9.3	(19.8)
riod" "sanitation		61–80	199526	8.4	14.9
		81–100	149529	7.9	13.3
roduction forests		101–120	78967	7.0	11.5
in Germany despite_		121–140	23255	6.6	9.6
		141–160	7308	6.2	7.9
ion length, two n Germany when		>160	1528	5.8	5.1

- Twice as many trees per hectare as in the German site for the same age.
- Low intensity thinning: by law: 11 to 18% of the volume
- Between 60 (80) and 90 (110): any intervention in the stands ("leave period" "sanitation period")
- The productivity in Romanian production forests was 20 % lower than in Germany despite\_ a similar fertility.
- Provided the difference in rotation length, two crops are harvested in Germany when only one is harvested in Romania.

## Rules effect: Limit productivity, but increased naturalness and period of no intervention



Complex technical forestry, pushed forward through laws, subsidiary legislation and FMP

# Forest Management Planning as main regulatory instrument

- Assignment of up **to 3 functional categories** (i.e. forest ecosystem services)
- Calculates the annual allowable cut for each sylvicultural system (SUP) considering the average annual growth
- Operational plan for silvicultural works

   (afforestation, tending, thinning, sanitation cuttings, natural regeneration and conservation)

.....at the owners' costs:

- State subsidise the costs of monitoring forests against illegal logging for parcels that are smaller than 30 ha
  - No other financial instruments addressing operational forest management
- National compensation mechanisms for forests in no intervention zones (TI -3%) and in conservation (TII- 21%):
  - compensation mechanisms for PFO are included in the forest act since 2008 but the mechanisms for payment were established only in 2017 and payed only in that year

## A Forestry system dominated by technical prescriptions



Adherence to rules and regulation: socialist legacy of strong technical forestry (Lawrence, 2009) or normativism (Brukas et al, 2012)

The state by tradition relies on command and controls instruments.

Solutions to protect the forests (*Bouriaud, 2009*):

- 1. Property rule: State retains the ownership on most valuable forests
- 2. Liability rule: State make landowners liable for any damage to the valuable forests
- 3. Contractual rule: State pays landowners for protecting the valuable forests

#### Mandatory forest management planning:

Long production cycles – rotation of 90-140 years Long regeneration periods (15-30 years)

Clear cuts limited to 3 ha and only possible for Norway spruce

Designed every 10 years by an authorised planning company and approved by the governmental authority



### ...amongst the most regulatory legal frames in Europe





(Nichiforel et al, 2018, How private are European Forests? Land Use Policy)

## ... setting management goals and implementing management operations is out of owners' control





(Nichiforel et al, 2018, Land use policy)

### The number of laws and subsequent legislation is in continuous modification as result of political instability



#### Forest Codes: 1996, 2008, substantially modified 2015; since then, modified 7 times

109; abrogă art. 97 alin. (1) lit. a<sup>1</sup>); completează a

omulgată:	→ <u>D. nr.380/2008</u>	privind promulgarea Legi	ii - Codul silvic	
lodificată:	→ <u>O.U.G. nr.193/2008</u>	privind modificarea și coi - modifică art. 37 alin. (1)	mpletarea art. 37 și 3 ) <i>lit. a) și b), art. 39 a</i>	39 din Legea nr. 46/2 lin. (1) si (2): introdu
	→ <u>O.U.G. nr.16/2010</u>	privind unele măsuri de e	eficientizare a activită	ății de întreținere a c
	→ <u>L. nr.54/2010</u>	pentru abrogarea alin. (2)	) și (3) ale art. 34 din	1 Legea nr. 46/2008
	→ L. nr.95/2010	<ul> <li><u>abrogā</u> art. 34 alin. (2)</li> <li>pentru modificarea alin. (</li> </ul>	s <i>i (3)</i> (1) al art. 10 din Lege	ea nr. 46/2008 - Cod
		- <u>modifică</u> art <sub>Republicare</sub>		<u>M.Of. nr. 611/12 aug. 2015</u>
	→ <u>L. nr.156/2010</u>	- introduce al	: → <u>L. nr.227/2015</u>	privind Codul fiscal - abrogă la 1 ianuarie 2016 art. 130
	→ <u>L. nr.60/2012</u>	privind aprob - <u>modifică</u> art	→ <u>L. nr.232/2016</u>	privind industria naţională de apărare, precum şi p - <u>modifică</u> art. 36 alin. (1); <u>introduce</u> alin. (5) la art.
	→ <u>L. nr.187/2012</u>	pentru puner - la data de 1 dispune <u>repu</u>	→ <u>L. nr.175/2017</u>	pentru modificarea și completarea Legii nr. 46/200 domeniul public al statului și din administrarea Re- - <u>modifică</u> art. 2 alin. (2) lit. e), art. 4, art. 6 alin. (2)
	→ <u>L. nr.255/2013</u>	pentru puner		alin. (3), art. 73, art. 90 alin. (2), art. 97 alin. (1) lit.
	→ L. nr.133/2015	pentru modifi		art. 51, lit. c) la art. 59 alin. (3), alin. $(5^{7})$ - $(5^{9})$ la ar
		- <u>modifică</u> art		105, art. 107 <sup>1</sup> , art. 133, anexa nr. 2; <u>abrogă</u> art. 1:
		alin. (5) lit. c) alin. (1), art.	→ <u>L. nr.112/2018</u>	- <u>introduce</u> alin. (6) şi (7) la art. 36
		39 alin. (1), ( și alin. (2), ar	→ <u>L. nr.230/2018</u>	pentru modificarea și completarea Legii nr. 46/200 - modifică art. 16 alin. (4) și (10), art. 37 alin. (1) lit
		art. 71 alin. ( alin (3) art	→ <u>O.U.G. nr.104/2020</u>	) pentru modificarea art. 36 alin. (6) din Legea nr. 41 - modifică art. 36 alin. (6)
		$(1^{1})$ si $(1^{2})$ la	→ <u>L. nr.197/2020</u>	pentru modificarea și completarea Legii nr. 46/200
		şi (5) la art. 6		- <u>modifică</u> art. 14 alin. (5), art. 20 alin. (3), art. 27 ε
		dispune <u>repu</u>		(11), art. 62 alin. (3), art. 83 alin. (2), art. 97 alin. (
				alin. (1), anexa nr. 1 și 2; <u>introduce</u> lit. n) la art. 5,
				art. 54, lit. a <sup>1</sup> ) la art. 60 alin. (5), alin. (6)-(9) la art.

1990-2020: 456 acts with 'silvic' in title

2000-2020: 141 acts with 'forest regime' in text

#### 2017, adopted forest legislation: 20 forest acts (5 laws)

## The number of laws and subsequent legislation: no strategic view



(There is no social consensus about what the forest resource should be used for? (*Abrudan, 2015*)

Ex: There is no red line on Rules of timber selling system from public forests:

**7** Regulation acts: 1995, 1998, 2004 (modified once), 2006, (modified 2010, 2011), 2015 (modified once), 2016, 2017 (modified 2019)

1.	H.G. nr.342/26-05-1995 HOTĂRÂRE referitoare la aprobarea Regulamentului privind organizarea și desfasurarea licitatiilor pentru vanzarea masei lemnoase destinate agentilor economici								
2.	H.G. nr.695/08-10-1998 HOTĂRÂRE pentru aprobarea Regulamentului de vânzare de către Regia Națională a Pădurilor a masei lemnoase destinate agenților economici								
3.	<u>O. nr.70/01-02-1999</u> (M.A.P.P.M.) ORDIN al ministrului apelor, pădurilor ș atestare a agentilor economici in activit a masei lemnoase pe picior	i pro atea	tecției mediului pentru aprobarea Regulamentului privind organizarea și functionarea Comisiei de de exploatare forestiera, in vederea participarii acestora la licitatiile și negocierile directe de vanzare						
4.	H.G. nr.85/29-01-2004 HOTĂRÂRE pentru aprobarea Regula agenții economici	1.	H.G. nr.924/04-11-2015 HOTĂRÂRE pentru aprobarea Regulamentului de valorificare a masei lemnoase din fondul forestier proprietate publică						
5.	H.G. nr.1.174/06-09-2006 HOTĂRÂRE pentru modificarea și con publică, către agenții economici, aprot	2.	H.G. nr.43/03-02-2016 HOTĂRÂRE pentru modificarea și completarea Regulamentului de valorificare a masei lemnoase din fondul forestier proprie						
0.	ORDIN al ministrului mediului și pădur forestier proprietate publică a statului a	3.	<u>H.G. nr.617/31-08-2016</u> HOTĂRÂRE pentru aprobarea Regulamentului de valorificare a masei lemnoase din fondul forestier proprietate publică						
7.	O. nr.89/17-01-2011 (M.M.P.) ORDIN al ministrului mediului și pădur anual din fondul forestier proprietate p mediului și pădurilor nr. 1.898/2010	4.	<u>H.G. nr.715/05-10-2017</u> HOTĂRÂRE pentru aprobarea Regulamentului de valorificare a masei lemnoase din fondul forestier proprietate publică						
8.	O. nr.1.460/24-05-2011 (M.M.P.) ORDIN al ministrului mediului și pădur anual din fondul forestier proprietate p mediului și pădurilor nr. 1.898/2010	5.	H.G. nr.55/08-02-2019 HOTĂRÂRE pentru modificarea și completarea Regulamentului de valorificare a masei lemnoase din fondul forestier proprie 715/2017						

## Illustrating the regulatory frame with Timber traceability – from Forest management planning to Estimation act and Transportation act



... a heavy documentation:

#### Amenajament - Planul decenal;

Delegație de marcare/ Delegation of authority for marking Carnet de inventariere; / Inventory list Lista înălțimilor (diametru med central); /Height list Lista arborilor escari; / Died trees list Raportul de activitate (pe delegația respectiva); / Activity report Procesul verbal de stabilire a distantei de scos-apropiat; / Proces-verbal on forwarding distance

#### APV (Estimation act)

Schița parchetului cu înscriere coordonate parchet si platforma primara; (organizare licitație)

Contractul de vanzare-cumparare masa lemnoasa pe picior, inclusiv esalonarea;

Autorizație de exploatare; / Harvesting authorisation

Proces-verbal predare- primire parchet cu anexe, de ex. tehnologie exploatare, declaratie mediu protejare cursuri de apa; Proces verbal de control preventiv de exploatare (o data la doua luni inginerul si lunar raportul padurarului); Proces verbal de reprimire parchet, cu anexe FSC eventual.

Documentatie NTSM – norme tehnice de securitatea muncii, cuprinde și PSI și o Declaratie de mediu.

#### Avize de expediție (Transportation acts) inregistrate in SUMAL agent.

## Tones of paper printed, stamped, mailed, but NO information, and little feed-back to compliance objective



Imposed paper work: not correlated with business needs; does not offer back relevant information for corrective actions

More than 15 legal forms (often with Annexes), 19 procedures, and 11 interactions for harvesting in a normal, mature forests

-





Huge paper work: a chain of papers from marking to delivering wood to market, only to comply with the legal norms

## Case study: Windstorm on 1,6 hectares, small scale property WITH FMP



Windstorm on 1,6 hectares, small scale property WITH FMP			Level		The volume approved to be harvested is larger than remaining AAC in FMP		Level			
	Action			FD Office	Field Forest guard			FD Office	Forest guard	Ministry
Day 1	Request for marking t	g trees - standardized form				Day 42	New procedure initiated for a derogation from FMP	Х		
Day 2	Request for marking t					Day 43				
Day 2	Respond to the reque	nuet				Day 44				
Day 3	Respond to the reque	quest				Day 45	New documentation cent to Forect Guard	×	Y	
Day 4	Forest district shoof is	auga marking normait		v		Day 40 Day 47	Legal time for the authority to respond = $20 \text{ days}$	^	^	
Day 5	Forest district cheef is	sues marking permit		X		Day 47				
Day 6		The volume of the wind	dstorm is larger than 20% of standing volume	<ul> <li>special d</li> </ul>	erogation is needed	Day 49				
Day 7		Day 18 Field visit with r	representative of Forest Guard, management p	lanner and	Forest District	Day 50				
Day 8	Marking and measurin	Day 19				Day 51				
Day 9	& making photo docu	, Day 20				Day 52				
Day 10		Day 21				Day 53				
Day 11		Day 21				Day 54				
Day 12	Forest inventory data	Day 22				Day 55				
Day 13	Introducing the data in	Day 23				Day 50				
Day 14		Day 24 Forest district is	ssues documentation to justify the need to har	vest the tre	ees	Day 58				
, Dav 15	Internal check on the	Day 25 Legal time for t	he authority to respond = 15 days			Day 59				
Day 16	Signing the verification	Day 26				Day 60				
Day 17	Notification to Forest	Day 27	Suprafata totala act - (ha): 23,10 Informatii privind	Grupa de Nr. de	e Vol.	Day 61				
Day 17	Notification to rolest	Day 28	Tratament : PROGRESIVE (TAIEREA 1-4) N.T.S.M. Natura produsului : PRINCIPALE CODRU Stancarii pe - (ha) :	Rasinoase	ri arbore 456 1383	Day 62				
		, Day 29	Tehnologia de exploatare : SORTIMENTE SI MULTIPLI DE Data inventarierii : 24.07.2019 cu un volum de - (mc) :	FAG 9 Quercinee	944 2457	Day 63				
		Day 30	Anul exploatant : 2020 Procedeul de inventariere : FIR CU FIR cu un volum de - (me) :	Diverse tari Diverse moi	185 191	Day 64				
		Day 30	Ciocan rotuna nr. : RP-53-537 Ciocan patrat nr. :	Total : 1:	585 4031	Day 65				
		Day 31	Specia SORTARE DIMENSIONALA Lem G1 G2 G3 M1 M2 M3 LS luer	n Coaja Lemn de t	foc Volum VF brut	Day 66	Forest Guard issues decision that AAC can be adjusted, but		X	
		Day 32	BRAD         55         6         2         1         0           MOLID         743         182         35         20         5         1         98	54         7         41           36         90         195	7 112 51 1271	Day 67	in 5 days a documentation has to be sent at the ministry			
		Day 33	FAG         667         631         68         37         15         1         14           PALTIN DE MUNTE         21         62         9         6         1         9         9         1         9         1         1         14	19         74         964           99         9         67	130 2457 7 175	Day 69				
		Day 34	ULM DE MUNTE         6         1         1           TOTAL         1486         887         37         99         49         16         2         25'	8 2 6 76 182 1273	16 195 4031	Day 05				
		Day 35	U.A. Suprafata Varsta Panta Semintis utilizabil		Total volum	Day 71				
		Day 36	ba         ani         G         %         S. tot         Compozitie           59A         23.10         130.0         25.00         80.09         18.50         7Fa2Br1Mo	H. 1,50	brut 0 4031	, Day 72				
		Day 37	Total         23,10         80,09         18,50		4031	Day 73	The documentation is sent at the ministry			Х
		Day 38				Day 74				
		Day 30				Day 75			A to be a second designed in the second second	- Tepele Juge
		Day 59				Day 76				
						Day 77				
	Day 41 Forest Guard issues permits				Day 78	SUMAL - OCOL		SUM	AL - AGENI	
		0.4				Day 80				
		84 0	uays			Day 81		-	Baza: Hu sunteși conec	aat la nici un server.
		10.	nraaduraa			Day 82	Ber fit under half in a new		halt	
	<sup>7</sup> 19 procedures					Day 83	Ministry approves the request to adjust the AAC			x
						Day 84	The inventory document is finally approved and the harvesting is authorised in SUMAL	х		

### A heavy regulatory frame leads to corruption and vulnerabilities

- Corruption vulnerabilities and inefficient sanctioning mechanisms (Bouriaud and Marzano, 2014). Vulnerable people versus corrupted people. Timber robbery cannot be distinguished at the present state from irregular cuttings and from corruption-related practices.
- Failure of control (efficient/effective). Paper control instead on forest control. Focusing control on standing volumes and flow (extractions) needs accurate estimation of standing timber and sold timber, which is not the case.
- Failure to benefit from modern technologies of monitoring (video camera, image detection of volume, timbermetertype of control)
- Failure to spread out simple means already in use as best practices (barriers on forest roads with a program of wood delivery from forests, standardized log length, video recording of sensitive forest operations).



112.900 controale în păduri 6.656 infractiuni constatate 2017: **7.168 dosare** înregistrate la parchete <sup>2</sup> **Prosecuted: 20.835 cazuri:** Solved: 5.467 de cazuri (26,24%). Sent to courts: 605 (11,07%) 723 dosare trimise în instantă 560 pedepse suspendate 2016: 250 amenzi între 100 si 3000 lei **Prosecuted: 18107 cazuri;** 34 condamnări la închisaore Solved: 5.447 de cazuri (30.08%). cu executare Sent to Courts: 597 (10.96%)



## A heavy regulatory frame leads to neglecting social needs and consequently informal feed-back loop develops

#### Forest landowners' needs

- 386 thousand ha heavily degraded, 38 thousands clear-cut in 1990-2000 (most of them still without proper measures of ecological restoration/ regeneration); half of million ha with fuzzy ownership situation (unknown owner);
- owners would rather take the needed (fire) wood from their own land in avoiding bureaucratic procedures they cannot comply with at a reasonable cost;
- This qualify as 'illegal logging' : omitting to comply with the rules (as compared with "autoconsommation" and irregular cuttings omitting to declare that justify most of the difference of the NFI data in France and Germany, e.g. 19 million cm)
- The Forest Code and in general, the current regulatory system do not address the stressing firewood needs.
- Not yet a solution for the firewood consumption that equals the official Romanian timber production. High firewood demand empowers the local (informal) networking of accessing wood resource

\*\*\*. Huge firewood demand do not exclude the existence of illegal logging of timber for industrial purposes!





## A heavy regulatory frame leads to failures in cross-sectorial coordination



#### Late and not-yet finished correlation between the forest management plans and environmental regulation

 Overlapping and in-progress process of harmonizing environmental and forestry regulation while establishing forest management plans (not enough research data – legal norm driven silviculture, versus experimental and learning)

#### Completely decoupled regulation between the agricultural sector and forest sector

- Bureaucratic process and very restrictive rules for afforestation of agricultural lands;
- Purpose of intent in maintaining an open landscape: payments for cleaning the bushed and the forest vegetation versus forest-related restrictions on land management

#### A marginal contribution of forest sector in defining energy policies

- o firewood represents a huge part of Romanian contribution in green energy production
- No consideration of energy poverty and vulnerable client while heating system is based on firewood.

#### No real advancement in improving the enforcement of forest legislation through cooperation with prosecution institutions

- Despite of including the forest protection as a issue of national security interest (2015), a systemic approach of illegal logging as a corruption-related phenomenon is still on the way
- The Forest Code modification in 2020 allows a wider definition of the penal cases
- The strong political and societal debate about an "Anticorruption Department for Forests" may be the sign of raising awareness about the need to approach the forest legislation compliance in a systematic (cross-sectorial) way

## Is there a future for regulatory and normative approach? We are interested in results, not in complying with procedures!



- 1. New paradigm is definitely needed (better protection, better use)
- 2. Pros and cons of the current normative approach:
  - Low intensity, naturalness, but need to integrate the social needs and to address climate change challenges
  - The rigorous technical background needs a refreshment from research, at least in two areas:
    - which silvicultural measures for more diverse stands (as compared with 60'ies); Which type of forestry to address the
      functional zoning (e.g. how to regenerate conservation forest TII without practicing clear cuts, how to regenerate the
      recreation forest without offending the large public)
    - How to integrate modern biomass estimation methods and techniques in the current regulation, to achieve more accurate and less time consuming estimation methods.

Any further continuation on the 'strengthening the rule of law' with more rules will lead to a major lockdown of any forestry activities (e.g. SUMAL 2.0., private forest management, windthrows wood extraction). Applying the norms is killing forest profession creativity and is the major barrier to any climate change adaptation (*Bouriaud et al., 2015*). Tird party evaluation should facilitate learning.

3. The advantage of regulation based on rigorous technical norms should be combined with local flexibility in forest management and with tailor-made solutions taking into account the form of ownership. We need a good flow of rules, but a point-of-entry system control.



## Thank you!





## Liviu NICHIFOREL

University "Ștefan cel Mare" of Suceava

nichiforel@usv.ro

