



EU TECHNICAL ASSISTANCE AND INFORMATION EXCHANGE (TAIEX) EXPERT MISSION REPORT

REFORM OF FOREST GOVERNANCE IN UKRAINE¹

¹ The EU TAIEX expert mission report is published in line with the General Data Protection Regulation (EU) 2016/679. All authors of the report, experts of the EU Member States and the European Commission, and the beneficiary administration of the EU TAIEX expert mission, the Ministry of Agrarian Policy and Food of Ukraine, gave written and explicit consent to the external publication of this report.



1. INTRODUCTION

The EU Technical Assistance and Information Exchange (TAIEX) expert mission on reform of forest governance took place between 29 January – 02 February 2018 upon request of the Ministry of Agrarian Policy and Food of Ukraine (MoAPFU). The objective of the EU TAIEX mission was to analyse the present institutional system of forest governance in Ukraine, identify problems and irregularities and develop specific proposals for institutional restructuring. A particular emphasis was placed on institutional separation of functions of forest policy development, control and economic management.

The MoAPFU has assisted the EU TAIEX mission, consisting of experts from the European Commission and EU Member States, with identification with interlocutors from all public bodies with competencies in forest governance in Ukraine. Meetings were held with the Ministry of Environment and Natural Resources of Ukraine (MoENRU), State Environmental Inspection of Ukraine (SEIU), State Forest Resources Agency of Ukraine (SFRAU), State Forest Enterprises (SFEs), State Fiscal Service of Ukraine (SFSU) and National Police of Ukraine.

The purpose of the mission was twofold. First, the mission mapped the system of forest governance in Ukraine, including its irregularities and gathered facts on illegal logging and illegal trade. Second, the mission developed proposals for institutional reform of the forest governance system in Ukraine and provided advice on institutional restructuring.

A particular emphasis was placed on analysing the system of forest monitoring and control and developing options for its restructuring. In conclusions of the mission, the expert team participated in a Working Group meeting chaired by the Deputy Minister of Agriculture for European Integration, where main findings of the mission were presented and discussed with the Working Group participants.

The present report introduces a detailed description of the institutional structure of forest governance in Ukraine, identifies and documents persisting issues in Ukrainian forest governance system, and finally, develops a set of proposals for reform of the system.

2. INSTRITUTIONAL STRUCTURE OF FOREST GOVERNANCE IN UKRAINE

2.1. FOREST POLICY

The functions of forest policy and legislation development are fragmented across different bodies in Ukraine. Ukrainian legislation stipulates that the responsibilities for formulation of forest policy and legislation are assigned to the Ministry of Agrarian Policy and Food of Ukraine (MoAPFU).

The State Forest Resources Agency of Ukraine (SFRAU) is a central executive body that implements state policy in the forest sector. The SFRAU is formally subordinated to MoAPFU. The MoAPFU does not have a dedicated organisational unit for forestry within its structure and lacks human resources competent in the forest sector. Hence, formulation of forest policy and legislation depends extensively on the SFRAU. In practice, the SFRAU develops policies and legislation independently with



the institutional memory of being a separate Ministry of Forestry (1990–1997) and a State Committee under direct subordination to the Cabinet of Ministers of Ukraine (1997–2010).

The organisational structure of the SFRAU consists of the central head-quarters in Kyiv and 24 Regional Forest and Hunting Departments within Oblast Administrations. There are 365 State-Owned Enterprises under subordination to the SFRAU. Altogether, the SFRAU with its Regional Forest and Hunting Departments and state-owned enterprises employs around 50.000 staff.

The SFRAU carries out policy related functions, but its implementation is strictly limited to forests under its direct subordination – 73% of all forests. With underdeveloped policy functions on the ministerial level there is no executive body responsible for policy coordination and monitoring for the remaining share of forests under permanent use by other entities. This leaves effectively almost one third of all forests in Ukraine without any policy supervision on the central level.

The Ministry of Environment and Natural Resources of Ukraine (MoENRU) assumed supervision functions over the SFRAU in the past (2010–2013). This institutional legacy manifests itself in maintenance of some of the policy related functions in the forest sector at the MoENRU. Within its institutional structure the HQ of MoENRU contain a Department for Natural Reserves, Forests and Plants. The MoENRU assumes competencies for introducing amendments to and issuing of final approvals of the Forest Management Plans (FMP) and the related Annual Allowable Cut (AAC) that is stipulated therein. The MoENRU also engages in development of legislative acts.

2.2. FOREST MONITORING

The SFRAU is a central executive body that implements and monitors state policy in the forest sector. The functions of forest monitoring lie with the SFRAU.

The organisational structure of the SFRAU consists of the central HQ in Kyiv and 24 Regional Forest and Hunting Departments within Oblast Administrations. There are 31 State-Owned Enterprises under direct subordination to the SFRAU HQ. These include research institutes, educational establishments, training centres and consulting services dedicated to fulfil some of the forest monitoring and management planning tasks. Multiple forest monitoring tasks are currently fulfilled by specialised State-Owned Enterprises under the SFRAU. This includes forest management planning – Forest Management Planning Enterprise (Ukrderzhlisproekt); inspection of forests on pathological grounds – Forest Pathology Enterprise (Ukrderzhliszakhyst); monitoring of logging operations, transport and wood sales – Forestry Innovation and Analytical Center (LIAC).

There are 365 State-Owned Enterprises under subordination to the SFRAU. 272 State Forest Enterprises (SFEs) report to SFRAU Regional Departments and are responsible for the full range of forest related work from planting of trees to their felling. The SFRAU Regional Departments also control 49 Hunting Enterprises, 6 Enterprises for National Parks and 7 Enterprises for Natural Reserves.

The SFRAU and its subordinate State-Owned Enterprises play a key role in issuing of Felling Licences and development of Forest Management Plans (FMPs). In the following sections these two aspects are analysed in detail

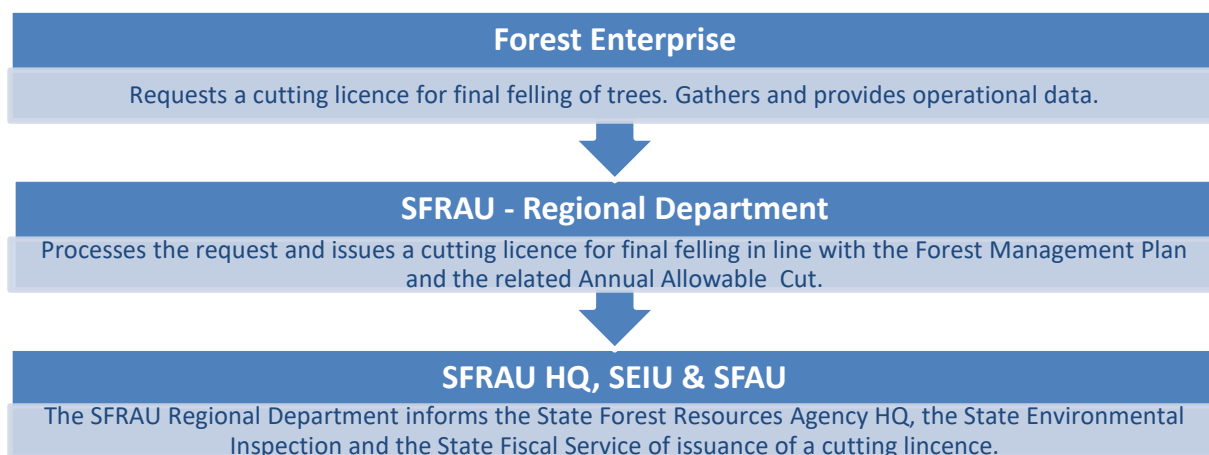


Issuing of Felling Licences

Ukrainian law foresees different procedures for issuing of Felling Licences for wood harvest from final felling and sanitary felling.

For harvest from final felling, the Regional Departments of the SFRAU represent the authority in charge of issuing felling licences. In the first instance the forest user i.e. forest enterprise requests a felling licence and provides all relevant data to the competent Regional Department of the SFRAU. This processes the request and reviews it on compliance with the applicable FMPs and AAC. Subsequently, a felling licence is issued. Regional Department of the SFRAU informs its HQ as well as the SEIU and the State Fiscal Service of Ukraine (SFSU).

ISSUANCE OF FELLING LICENCES FOR FINAL FELLING



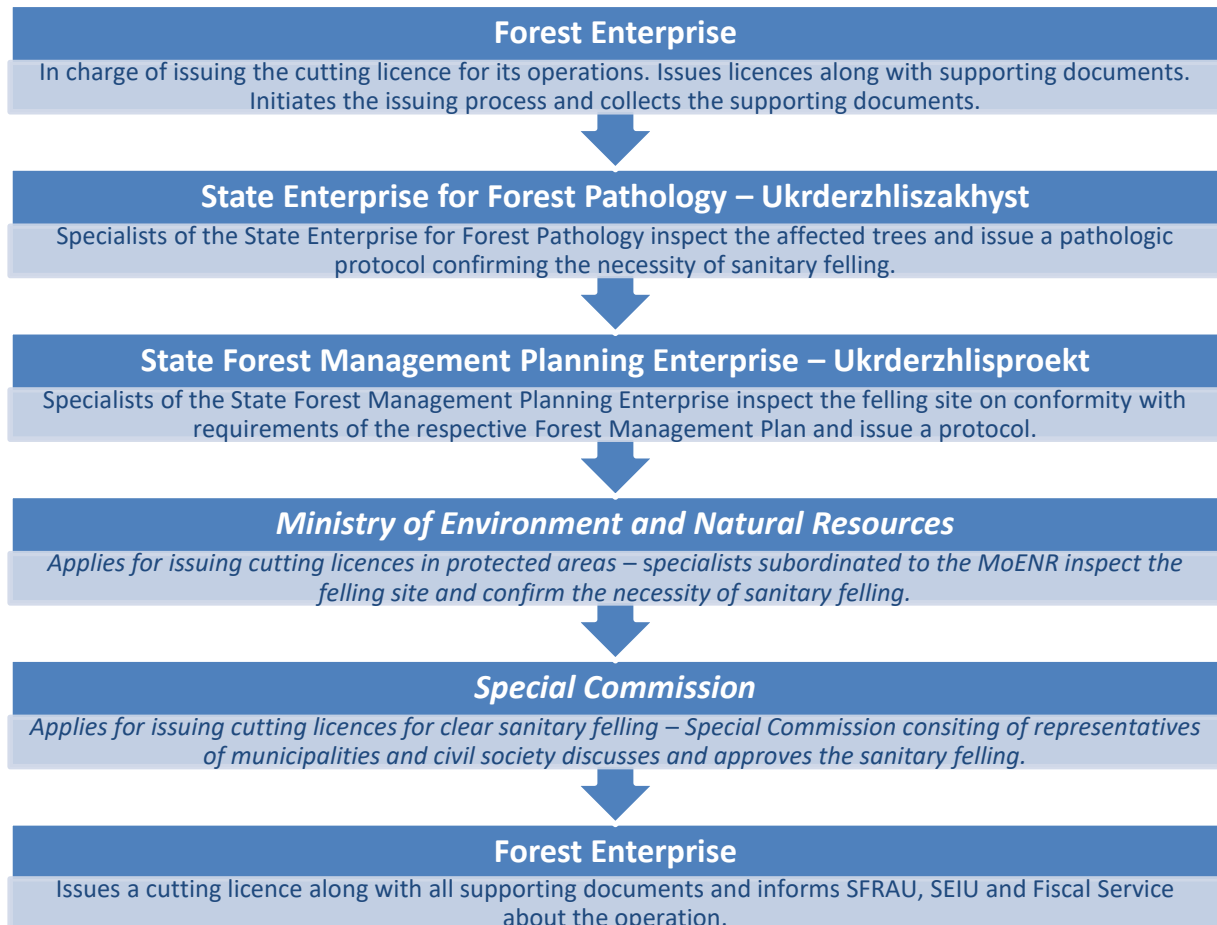
For harvest from sanitary felling, the authority in charge of issuing felling licences is the forest user itself. Depending on the ownership structure, it is the State Forest Enterprises subordinate to the SFRAU, Forest Enterprises of other ministries and local authorities as well as the small percentage of private forest owners hold this authority. The directors of the forest enterprises are in charge of issuing the felling licence for the operations of its own enterprises. Before issuance of a felling licence a number of supporting documents that confirm the necessity of sanitary felling have to be acquired. The procedure diverges depending on whether a sanitary felling is selective or clear. In both cases the forest enterprises remain the authority to issue logging permits for themselves.

For selective sanitary fellings an inspection of the State Enterprise for Forest Pathology and the State Forest Management Planning Enterprise are needed. For sanitary clear fellings the above as well as approval of a Special Commission consisting of representatives of local authorities and the civil society are needed. This has been linked to a delay in removal of trees infested with bark beetle. In cases where a sanitary felling is conducted in protected areas, the Ministry of Environment inspects the felling site and has to approve the possibility of a sanitary felling.

The issue of sanitary felling is also linked to the wood auctioning procedures. Forest enterprises are required to organise auctions for sales of wood harvested from final felling. However, there are no regulations as to selling wood harvested from sanitary felling, and hence the forest enterprises are free to choose whether such wood is sold in auctions or through direct contracts.



ISSUANCE OF FELLING LICENCES FOR SELECTIVE & CLEAR SANITARY FELLING



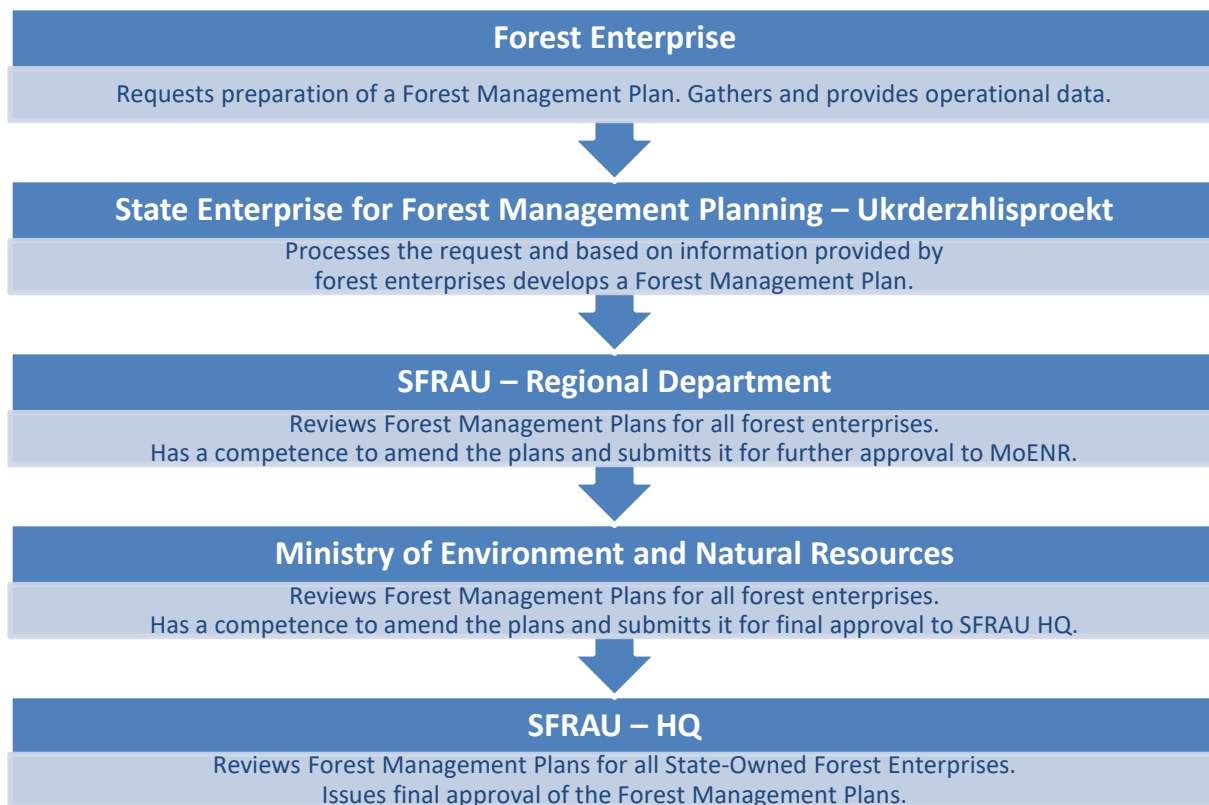
Approval of Forest Management Plans

In Ukraine FMPs are in place for all forests subordinated to the SFRAU. Forest Management Planning is less developed in forests subordinate to local authorities, several other ministries and reserve forests.

The FMPs are prepared for a period of 10 years. FMPs are developed only on the local level by individual forest enterprises. FMPs are initially developed on the local level by the individual forest enterprises, which collect and compile all relevant operational data. Survey of plots is conducted by a dedicated State Enterprise for Forest Management Planning – Ukrderzhlisproekt. This also prepares the final version of a FMP and submits it for further validation.



APPROVAL OF FOREST MANAGEMENT PLANS



2.3. FOREST INSPECTION AND CONTROL

The State Environmental Inspection of Ukraine (SEIU) is a central executive body in charge of environmental law enforcement and control. It is subordinated to the MoENRU. The SEIU is responsible for control across all areas including soils, waters, air, bio-resources and forests. In forests, the tasks of the SEIU include supervision and enforcement of compliance with both environmental and forest law. As such, the SEIU is responsible for implementing state control over all forests in Ukraine regardless of the form of its ownership.

The organisation structure of the SEIU consists of HQ and Regional Departments. The HQ of SEIU is structured into four divisions: i) Natural Reserves, Forests and Plants; ii) Wildlife and Fisheries; iii) Air and Water Resources; iv) Waste Management. Each of these divisions has its staff in the Regional Departments of SEIU. The SEIU division for Natural Reserves, Forests and Plants has altogether 188 inspectors. These are responsible for conducting environmental and forest law related inspections for the whole of Ukraine.

The SEIU has access to the factual information in cutting licences and FMPs, but lacks the full qualitative and quantitative information about the forest stands. The latter is only held by SFRAU.

The SEIU is obliged to check every forest enterprise regardless of ownership at least once in two years. Legislation applicable in 2017 required every forest enterprise to be inspected at least once a year. In 2017, 900 forest enterprises were checked and 3,400 violations were discovered.



Unscheduled inspections can be conducted based on citizens' complaints. The SEIU is entitled to impose fines and is responsible for notification of law violation to the National Police for further investigation.

The Forest Code of Ukraine stipulates that the State Forest Guard is in charge of protection of forest stands from fire, pests and diseases, illegal logging, prevention of crimes and administrative offences. The State Forest Guard is in practice not a separate institution, but rather an administrative status that applies to staff of SFRAU and its enterprises at different levels. The State Forest Guards have a law enforcement status and are entitled to carry a weapon while exercising their duty.

The State Forest Guard is responsible for patrolling the forests on a daily basis. Employees of State Forest Enterprises with the status of State Forest Guard form Operational Groups for forest patrol. These are in charge of patrolling forests in order to ensure protection from offences. On average, one member of the State Forest Guard is in charge of patrolling some 1,000 ha of forest land.

In cases of infringements of the law on protection, safeguarding, use and restoration of forests the State Forest Guard is responsible for identifying violations and drawing up administrative protocols. The State Forest Guard cooperates closely with the National Police. Operational Groups often conduct joint patrols with members of the National Police. In 2017, Operational Groups of the State Forest Guard conducted 36,800 operational patrols that resulted in 6,500 administrative protocols.

State Fiscal Service of Ukraine (SFSU) is a central executive body responsible for implementing state tax and customs policy. The SFSU is in charge of inspections on compliance with tax and customs legislation, including checks of private sawmills and border inspection. Ukraine currently has a moratorium in place temporarily prohibiting unplanned inspections of private enterprises. This specifies that regulatory bodies can carry out unplanned inspections only in exceptional cases such as in case of a court decision, an industrial accident, or upon an individual's request on violating rights.

2.4. FOREST MANAGEMENT & WOOD MARKET

Forest management is a responsibility of a respective forest owner or permanent user in Ukraine. 272 State Forest Enterprises (SFEs) subordinated to SFRAU are in charge of managing 73% of forests in Ukraine. Dedicated forest enterprises of other ministries and local authorities are in charge of managing the remaining 27% of forests in Ukraine.

Supervision of SFEs is carried out by the SFRAU Regional Departments. These engage in full administrative and economic management of the SFEs. Operational business meetings are conducted at the SFRAU Regional Departments with all SFEs in a given region on a regular basis.

Forest enterprises are responsible for the full range of forest related work from planting of trees to their felling. Logging operations are managed by SFEs either directly or through private contractors. Harvested wood is sold on the market by the individual forest enterprises. Depending on the type of harvest forest enterprises may organise dedicated auctions for wood sales, or marked wood through direct contract. A number of forest enterprises also have a capacity of primary wood processing.

According to Ukrainian legislation, market participants may only participate in auctions once they are registered by the Ministry of Economic Development and Trade (MoEDT). A major pre-condition is to



have a registered office in Ukraine. It is legally obligatory to market wood harvested from final felling in open auctions. There are two types of auctions: general auctions of mixed wood categories and specialised auctions, usually of selected wood categories, often of particular species, qualities and/or dimensions of wood. Categories are determined according to the old Soviet classification (Ghost). Ukrainian legislation does not specify requirements for marketing wood harvested from sanitary fellings. Hence, it is at discretion of the respective forest owners and permanent users whether to organise dedicated auctions or sell such wood by direct contracts.

A relatively high percentage of wood put up for auction is not sold there. 12% of generalised and 55% of specialised auctions is reported to be unsuccessful. As a result, much wood is finally sold by direct contracts.

3. PROBLEM IDENTIFICATION AND DOCUMENTATION

3.1. INSTITUTIONAL ORGANISATION & CAPACITIES

One of the largest problems in the institutional set up of Ukraine's forest sector is that all forest related functions, including policy, monitoring, control and management, are concentrated within one authority – the SFRAU.

The SFRAU, including its subordinate institutions and enterprises, is responsible for most policy and legislation development, prepares the FMPs, issues cutting permits, monitors and guards the forests, as well as manages them and harvests timber in 73 % of Ukraine's forests. This institutional set-up contains an inherent conflict of interests and is extensively prone to corruption.

As a result of this consolidation of most forest-related functions in SFRAU, it is also the best forestry-expert staffed authority in Ukraine. On the contrary, capacities in the forest sector on the ministerial level remain weak. MoAPFU and MoENRU share certain forest policy functions, however, both are massively understaffed and lack a dedicated organisation unit for forest policy. What is more, fragmentation of forest policy functions between MoAPFU and MoENRU further inhibits good governance in the forest sector.

Forest monitoring functions, including forest management planning, are shared between the SFRAU and MoENRU. The SFRAU is in charge of preparing FMPs and at the same time issues their final approval. The MoENRU has the responsibility of reviewing and approving all FMPs, in practice though the MoENRU has only one single expert in charge of reviewing FMPs. As a result, only around half of the FMPs can be thoroughly examined.

Functions of forest control are shared between SFRAU and SEIU. The SEIU, under subordination to MoENRU, is in charge of inspections in forests. Yet, the SEIU has only 188 inspectors conducting forest-related checks along with other environmental inspections. Taking into account factors such as forest governance, corruption, risks and poverty levels, a forest control system with only 188 part-time inspectors does not seem suitable.

Forest patrol is carried out by SFRAU through the State Forest Guards, in addition to inspections conducted by the SEIU. The separation of inspection from patrol creates coordination problems and



duplicates control functions. Forest patrol in this context is understood as guarding of forest to prevent illegal logging by individuals and criminal groupings.

3.2. ISSUING OF PERMITS & SANITARY LOGGING

In Ukraine, the most important part of the control of legal use of forest resources and the main foundation of the inspections, issuance of felling licences, is not within the authority who is in charge of inspections and control in the forest. As a result, the forest control system is much less effective. The SEIU, being in charge of control, only has access to the information in the felling licences upon request from SFRAU and has no competencies of disputing, altering, and of fining felling licences issued not in line with forest law.

The process of issuing felling licences in Ukraine includes a number of irregularities. Felling licences for final felling are issued by the SFRAU Regional Departments. This applies equally to all forest enterprises independently of their subordination status. In case of the SFEs under the SFRAU this means though that licencing and forest management is not duly separated, which represents a conflict of interests.

Yet, even more strikingly, there are also cases when felling licences are issued by the forest users themselves. This is the case for all types of sanitary cuttings selective and clear. In this instance the Director of a given forest enterprise holds the authority to issue felling licences for sanitary felling conducted by its own forest enterprise. A number of supporting documents must be acquired and in cases of clear sanitary felling approval must be granted by a special commission. Still, however, this set-up demonstrates an outright conflict of interests.

When looking into the practice of sanitary logging in Ukraine it also becomes clear that these rules have also been a large source of corruption practices. The huge share of sanitary felling on total harvest (around 30–40%) provides much bigger space for the risk of illegal logging. In sanitary felling there is more room for interpretation to allow for ungrounded logging of healthy trees as well. After harvesting, it is much harder to control sanitary cuts and their compliance to legislation than other kinds of cutting. Unfortunately, in Ukraine, sanitary cuts are used very extensively, perhaps also in forests where other kinds of cutting could be used as well as in places where cutting would have to be stopped.

The very extensive amount of sanitary logging in Ukraine has stimulated societal debates and changes in the legislation. In 2016, amendments to sanitary rules in forests were introduced by the Cabinet of Ministers. Overall, these amendments introduced more stringent procedures for approval of sanitary felling. This is particularly the case for sanitary clear felling, where a requirement of an approval by a special commission was introduced.

The MoENRU pointed out that the previous sanitary rules allowed for abusive use of sanitary logging which led to very large amounts of sanitary logs. It was argued that the rules were up for interpretation to the respective forest users and this gave reasons for civil society organisations and local populations to think that much of the sanitary logging was ungrounded.



All concerned Ukrainian authorities, SEIU, MENRU as well as SFRAU, confirmed that reasons for the extensive amount of sanitary logging under the previous rules used to be twofold. It was argued that one half of the amount of sanitary felling was indeed well-grounded on reasons like overgrown forest stands, dead trees, or dryness in the forests. However, one half was subject to misinterpretation and corruption which stemmed from the easiness of acquiring permits.

Still, nowadays, all concerned Ukrainian authorities, including the SFRAU as well as SEIU, MENRU, acknowledged that the current approval procedures are at times too stringent and do not allow for rapid reaction in cases where it is needed.

It was noted that presently, also as a result of the stringent procedures, sanitary conditions in the forests are often critical. In emergency situations, like an outbreak of bark beetles, it takes too much time to get the approval and the felling licences, which seems a fair complaint in cases where a special commission consisting of several parties is involved.

3.3 ILLEAG LOGGING & LAW ENFORCEMENT

One of the problems that Ukraine's forest sector faces is illegal logging and ineffective system of law enforcement to tackle forest crime. The official figures on volumes of illegally logged timber held by the SFRAU correspond to 0.1% of total timber harvest. Taking into account the state of governance and corruption in Ukraine as well as the estimates on illegal logging by NGOs (between 5% and 30%) this percentage is very low.

The low official figures of recorded illegal logging by the SFRAU partially also depend on the official understanding of illegal logging by SFRAU. The SFRAU, through its State Forest Guard, is in charge of detecting illegal logging committed by outsiders and is not meant to cover the most problematic part of the illegal logging which is illegal logging 'with papers' or 'illegal' forest management. The fact that often same individuals who are engaged in forest management also fulfil the control functions in their extended capacity of State Forest Guards demonstrates the inherent conflict of interest that presents effective forest control.

It is believed that often State Forest Guards themselves are involved in illegal logging. On the other hand, resulting from their work of fighting against organised forest crime, there are also frequent cases when State Forest Guards are being threatened, attacked or are subject of vengeance.

While SFRAU does not recognise other illegal logging apart from theft by individuals and organised groupings outside of official authorities, the SEIU, National Police, and SFSU admit that a far larger problem is illegal logging 'with papers' that involves corruption of public sector employees and forgery.

The SEIU states that there are two aspects of illegal logging. The first is 'illegal logging' or wood theft done by private people or criminal groups, and the second is 'illegal forest management' or 'illegal forest activities'. The second is connected with cutting wrong volumes, in wrong areas, tree species or sizes, at a wrong time of cutting and similar, while the cutting licence is present. The SEIU admits that the second kind of illegal logging causes a much larger damage – in all forests across the country.



In 2017, the SEIU conducted inspections of 900 forest enterprises and detected 3,400 violations. The SEIU records that the majority of these violations are committed by forest enterprises in ownership of SFRAU or other authorities. Ukrainian law, however, only allows for sanctions against individuals and hence forest enterprises cannot be fined for violating forest law. There are also no mechanisms in place for sanctioning forest management that is not in line with the forest law. In practice this means that forest inspections to a large extent are superficial as there are laws and rules but no sanctions when those are breached. The SEIU notes that, for example, when a felling ticket is issued wrongly, nothing can be done. This is a major drawback of the forest control system in Ukraine. The SEIU furthermore reveals that even handing cases over to courts is not a solution as their capacities are too little to engage in legal proceedings.

One other significant forestry-related legislative gap in Ukraine is that same forest rules do not always apply to all forests and for all forest users. It is seen that forests under subordination to SFRAU are largely managed in a consistent manner, whereas forests in use of other authorities follow a different pattern and are able to evade effective law enforcement. For example, the electronic timber-tracking system is currently obligatory only for the SFRAUs forests, and this gap makes all timber tracking in Ukraine less effective. However, on the whole, if the most significant problem of illegal logging in Ukraine is corruption and illegal logging ‘with papers’, the absence of electronic timber-tracking in all forests bears only a partial contribution to the problem.

3.4. ILLEGAL TIMBER EXPORTS

In 2017, the National Police recorded 380 criminal offenses related to illegal logging and/or illegal export. It identified 6 organised crime groups involved in illegal logging and export. In these cases, the destination of timber was Romania. Currently the National Police has 10 cases connected to timber export – mostly attempts to export high quality timber as fuelwood.

In 2017, the SFSU recorded 126 protocols related to timber exports, mostly connected to failure to declare goods, forged documents, and false goods declarations. Most of these breaches of the law are considered as administrative violations, because in 2012 decriminalisation of customs violation was conducted in Ukraine. As the violations are administrative, investigations can only concern any particular case, but a full investigation cannot be conducted. Cases involving forgery and corruption are criminal cases and are handed over to the National Police. The SFSU underlines that the root of the problem is in the forest as effective control in the forest is absent.

Inter-agency cooperation between the National Police, SEIU and SFRAU varies. National Police informed that about 300 cases were handed over to them by the SEIU. There are also many cases handed over by the SFRAU, however, as the National Police notes that these cases often lack necessary evidence and in some cases are misleading by purpose. Therefore, most of them do not lead to any results. On the other hand, the SFRAU complains that very few cases by the National Police are taken further to the courts.

Among the reasons that make it more difficult to fight illegal logging and illegal timber trade, the National Police cited corruption, physical threats, lack of electronic timber-tracking applicable to all forest users, and ‘GOST’ technical standards for timber measurement which do not allow for comprehensive identification of timber assortments. Moreover, because illegal logging is considered



as a minor offence under Ukrainian law, the National Police is not able to use its full range of methods for intelligence gathering, such as phones tapping or video surveillance in forests.

The SFSU, responsible for tax and border checks, points to the problem with 'GOST' measurement standards, where descriptions of 'fuel wood' and 'wood in the rough' are similar, and some are using this deficiency for illegal export. Before the log export ban this issue was not a problem, but now offenders try to smuggle sawn quality logs as fuelwood. The SFSU underlines that the problem is not in export classification standards, which are the same as in the EU, but in Ukrainian 'GOST' standards. The SFSU shared documentation of examples when false declaration is used to smuggle sawn quality logs as fuelwood. The Figure below depicts an example of a smuggling attempt that the SFSU intercepted. The photograph documents the quality of the timber, which clearly appears as wood in the rough (4403), while the documentation declares the timber as fuel wood (4401). The SFSU indicated that in around 90% cases of this kind of violation the SFEs subordinate to SFRAU are involved.

FIGURE – FALSE DECLARATION OF WOOD IN THE ROUGH AS FUEL WOOD



One more risk group in timber exports for the SFSU, which showed up after the log export ban, is sawn wood when logs (or 'wood in the rough') are very minimally modified to be exported as sawn timber.

The Figure below represents a case where the SFSU intercepted a false declaration of minimally modified wood in the rough (4403) as sawn wood (4407). The photograph presented by the SFSU was described as wood that has been felled, split and debarked on the parallel sides and roughly



squared on two opposite sides. Half-squared wood of this kind is commonly sent for further processing into timber. Characteristics of this type of wood are more consistent with rough wood rather than with a finished product. The SFSU explained that such false declaration is committed with the purpose of circumventing the export ban on wood in the rough as well as of gaining a monetary advantage from lower tax obligations.

FIGURE – FALSE DECLARATION OF WOOD IN THE ROUGH AS SAWN WOOD

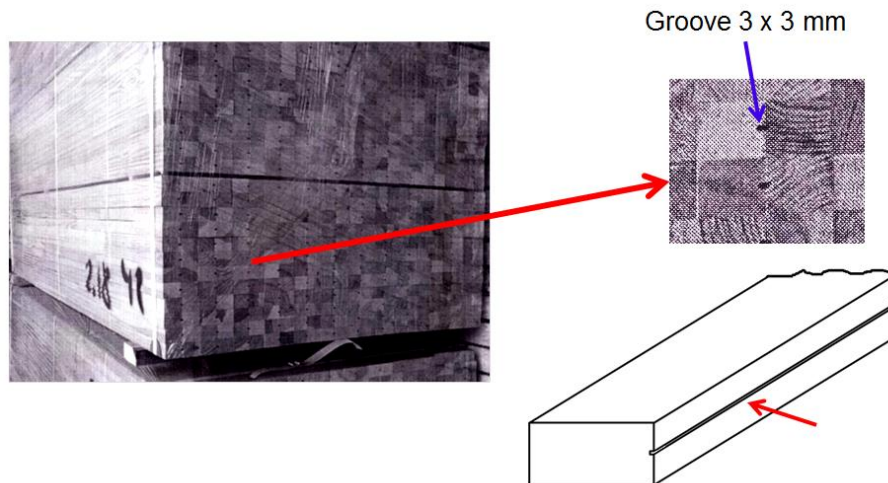


Another risk group involves trying to avoid presenting the Certificates of Origin, which are obligatory documents for export of sawn wood and some other unfinished products. In these cases there are attempts to export sawn timber as a finished product by, for example, making very small grooves on the sides of the sawn timber.

The figure below depicts an attempt to export sawn wood (4407) as a finished product (4409). The latter is classified as wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, v-jointed, beaded, moulded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or end-joint. The SFSU explained, however, that the sawn timber in the below example is lacking any surface treatment and the carved groove is too small to serve for assembling as a finished product. Such false declaration is committed with the objective of avoiding the obligation to present a Certificate of Origin necessary for sawn timber, but not for finished products.



FIGURE – FALSE DECLARATION OF SAWN WOOD AS FINISHED PRODUCT



To have more efficient checks regarding sawn timber, the SFSU request access to the data on whose bases the Certificates of Origin are issued by the SFRAU's Regional Departments, however, they are not granted such information. The SFSU also requests to prepare legislative amendments so that the Certificates of Origin contain more wholesome information on the timber category/grade, but no work is ongoing in this regard.

4. OPTIONS FOR INSTITUTIONAL RESTRUCTURING

The main objective in the preparation of proposals was reduction of the conflicts of interest to be achieved through separation of the function of forest policy and legislation, forest monitoring, forest control and forest management. At the same time the principles of transparency, internal and external accountability, and the possibility of public oversight have been reflected. This very distinguishing between various functions as well as conspicuous tasks and responsibility of an individual function are the key moment in the proposed restructuring.

The proposal is, furthermore, in line with good practices within EU member states. Here it must be underlined, however, that the options for institutional restructuring were developed on the basis of hitherto gathered information and the knowledge of the characteristics of Ukrainian forestry. For this very reason we propose four different options that indeed follow all of the described principles, but do differ from each other in certain details. The proposed options are understood as a functional analysis of many solutions with regard to the current problems in the effective creation and implementation of forest policy in Ukraine and in the enforcement of successful control mechanisms.

For the purpose of preparing different options for institutional restructuring of the Ukrainian forestry sector functions of forest policy development, control and management are divided as follows:



Forest Policy & Legislation
<ul style="list-style-type: none">• Forest Policy Development:<ul style="list-style-type: none">○ Adapting and Approving of Strategic Forest Management Plans;○ Conduct Public Consultation on Strategic Forest Management Plans;○ Strategic Forest National Inventory;○ Silviculture Systems;○ Afforestation;○ Forest Protection (Pest, Disease and Fire);○ Forest Conservation (Biodiversity);○ Approving Annual Allowable Cut;○ Wood Sales;○ Wood Processing and Forest Industry;○ Game and Wildlife Management;○ Non-wood Forest Products and Ecosystem Services;○ Forest Land Use Titles;○ Evaluation and Review.
<ul style="list-style-type: none">• Forest Legislation Development
<ul style="list-style-type: none">• International Forest Policy
<ul style="list-style-type: none">• Finance, Budget, Administration

Forest Monitoring
<ul style="list-style-type: none">• National Forest Inventory
<ul style="list-style-type: none">• Data Collection, Management, Statistics, Reporting
<ul style="list-style-type: none">• Support to Policy and Legislation Development
<ul style="list-style-type: none">• Preparing Strategic Forest Management Plans
<ul style="list-style-type: none">• Adapting and Approving Operational Forest Management Plans
<ul style="list-style-type: none">• Conduct Public Consultation on Operational Forest Management Plans
<ul style="list-style-type: none">• Calculating Annual Allowable Cut
<ul style="list-style-type: none">• Issuing of Cutting Licences (Final, Intermediate, Sanitary)
<ul style="list-style-type: none">• Timber-Tracking Monitoring
<ul style="list-style-type: none">• Timber Sales Monitoring
<ul style="list-style-type: none">• Coordination of Fire Prevention and Combat

Control Function



<ul style="list-style-type: none"> • Forest Inspection on Compliance with Law & Forest management Plans: <ul style="list-style-type: none"> ○ Regeneration; ○ Tending; ○ Cutting (Final, Intermediate, Sanitary); ○ Forest Protection; ○ Forest Biodiversity and Conservation; ○ Non-wood Products & Services; ○ Game Management Control; ○ Forest Patrol.
<ul style="list-style-type: none"> • Control and Verification of Cutting Licences
<ul style="list-style-type: none"> • Control of Timber-Tracking
<ul style="list-style-type: none"> • Control of Timber Sales
<ul style="list-style-type: none"> • Investigation
<ul style="list-style-type: none"> • Sanctioning of Civil Violations
<ul style="list-style-type: none"> • Notification of Criminal Violations
<ul style="list-style-type: none"> • Cooperation with Law Enforcement (Police, Fiscal Service, Environmental Inspection, etc.)

Forest Management
<ul style="list-style-type: none"> • Preparing Operational Forest Management Plans
<ul style="list-style-type: none"> • Forest Regeneration
<ul style="list-style-type: none"> • Tending
<ul style="list-style-type: none"> • Afforestation
<ul style="list-style-type: none"> • Cutting (Final, Intermediate, Sanitary)
<ul style="list-style-type: none"> • Timber-Tracking
<ul style="list-style-type: none"> • Timber Sales
<ul style="list-style-type: none"> • Wood Processing
<ul style="list-style-type: none"> • Non-wood Forest Products and Services
<ul style="list-style-type: none"> • Forest Infrastructure
<ul style="list-style-type: none"> • Fire Prevention and Combat
<ul style="list-style-type: none"> • Game and Wildlife Management

The three key changes in the current organisational arrangement, which are the same in all proposed options, are:

- Consolidation of forest policy development tasks into one single institution, i.e. Ministry of Agrarian Policy and Food of Ukraine;
- Development of a robust system of control, including inspection, patrol and sanctioning mechanisms;
- Consolidation of the organisational structure for forest management and formation of a uniform company for management of state forests.

Forest Policy

So far, the creation of forest policy within the framework of the MoAPFU has been of formal nature, considering that MoAPFU has no suitable capacities for these tasks, which have in fact been carried out by the SFRAU with the preparation of all legislative proposals. The actual transfer of tasks of



forest policy creation to the MoAPFU is crucial for further development of the entire forestry sector. Thus the forestry sector becomes equivalent to other sectors with a chance to actively cooperate and exert influence on the development of different national policies concerning forests and forestry. It fully assumes coordination in the preparation and adoption of forest-related legal acts.

With this change, the possibilities of preparing effective measures of forestry policy for further development and the entire forest-based sector would be significantly improved. The ministry is a key institution, which has to cooperate in international alliances as well as to exploit various possibilities of the existing financial mechanisms in Europe and the world. Also a pre-requisite is the reorganisation of the MoAPFU, which would set up an independent internal unit as a 'Forest Department'. In the MoAPFU's organisational structure, the proposed department should hold the same position as other organisational units.

Forest Monitoring and Control

The forest monitoring practices are established in Ukraine. However, some fragmentation persists. The proposed approach outlines that all forest monitoring functions are fulfilled by the executive agency in charge for forest policy implementation – the SFRAU. This shall include forest management planning, inventory, felling licencing, timber tracking and sales monitoring. Many of these functions are currently fulfilled by separate specialised state-owned companies, which lead to impede coordination and monitoring effectiveness.

The forest control system in Ukraine is not functioning properly. The SEIU does not possess all the legal instruments and administrative staff to be in a position to exercise effective control over all forests of Ukraine. The SEIU is not entitled to sanction felling licences issued in breach of the legislation. The SFRAU is in charge of issuing felling licences and also carries-out parallel forest patrols. In order to address the problems of Ukraine's forest sector a robust control system is to be developed. All control functions are to be unified in one body, including inspection and patrol.

It is of utmost importance that instruments for sanctioning of all types of violations, including incorrectly/illegally issued felling licences and violations of cutting licences, are being developed and implemented.

There are fundamental problems with how felling licences are being issued in Ukraine, in particular as regards approvals for sanitary felling. It should be unthinkable that an enterprise is in charge of issuing a felling licence for its own operations, which is currently the case for all sanitary felling. These processes shall be reformed and a well-staffed authority should be charged with issuing of felling licences. A number of options for such restructuring can be considered in Ukraine and are introduced below.

Forest Management

Consolidation of the excessive number of SFEs managing forests under subordination to SFRAU is one of the key impediments to more economically effective and efficient forest management in Ukraine. Formation of a uniform company for state forest management is a key proposed change in the existing system. At this moment there are 272 state owned companies that are subordinated to SFRAU. Such organisational arrangement, however, is highly non-transparent. Implementation of the



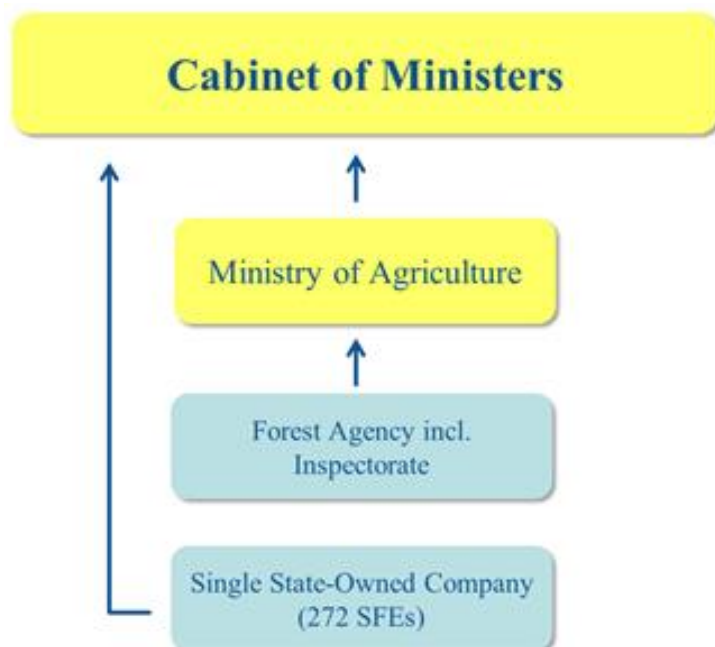
same type of tasks can hardly be coordinated and the companies work under very different management conditions (different quality of forests and yield), which often leads to financial troubles as well as problems in providing for the implementation of works in the forests – including re. the field of forest conservation and silviculture and implementation of sanitary measures. In such conditions, also the wood market is highly fragmented (too many providers), even though forests are almost all state owned. With the founding of a uniform company, several hitherto problems would be solved. With a uniform company and uniform management (including financial), the implementation and financing of all urgent measures in the forests would become incomparably easier – even in the areas that are economically less effective owing to the lower quality of forests.

The most significant advantage of such a change, however, is a positive impact on the wood market. The strategic designation of Ukraine is to develop the entire forestry (and particularly timber sector), which would be capable of wood processing and wood product marketing with a higher added value. For this purpose, Ukraine has adopted the measure of banning timber export which, however, has not brought any major investments in wood processing according to the information from the representatives of Ukrainian woodworking industry. According to the experience and demands of woodworking industry in other European countries, the following two factors are of key importance for their development: transparency in wood supply on the market (equal terms for all buyers) and stability in its delivery (known quantity of wood and delivery deadlines). And both mentioned factors can certainly be achieved with a uniform company and uniform sales policy for wood from state owned forests.

In order to arrive at a more optimal situation, consolidation of SFEs is indispensable. A uniform company is suggested as a general proposition, which has numerous advantages in comparison with the current system. It must be underlined, however, that the existing national characteristics should be taken into account in the implementation of restructuring itself. An important factor is also the stipulation that privatisation of such a company is prohibited.



Option No. 1



Institutions	Functions			
	Forest Policy	Forest monitoring	Control	Forest Management
Ministry of Agriculture	●			
Forest Agency & Inspectorate		●	●	
Single State-Owned Company				●

Forest Policy

The MoAPFU is fully responsible for the development, preparation and adoption of forest related regulations and for all strategic documents at the national level. The option would necessitate that certain forest policy related functions that currently reside with the MoENRU are transferred to MoAPFU, notably approval of forest management plans and policies relating to control and inspection of forests. Moreover, functions that are at present practically fulfilled by SFRAU would need to be taken up by a reinforced forest administration in MoAPFU.

Forest monitoring and control

Forest monitoring and control is organised within the framework of a uniform service. In this scenario a reinforced central executive body consolidates functions of SFRAU in forest monitoring and functions of SEIU in forest control into one administrative body. As the SFRAU is currently the best forestry-expert staffed body in Ukraine, it could be envisaged that under this options the SFRAU would be boosted with experts on forest control fulfilling all the associated functions, most notably inspection and sanctioning functions. Forest monitoring tasks would also be fulfilled by this



reinforced body and would be consolidated from specialised forest enterprises, including strategic forest management planning from Ukrderzhlisproekt as well as monitoring of timber tracking and sales from LIAC.

Forest Management

Forest management is carried out within the framework of a uniform company, which includes all companies functioning within SFRAU.

Pros and Cons

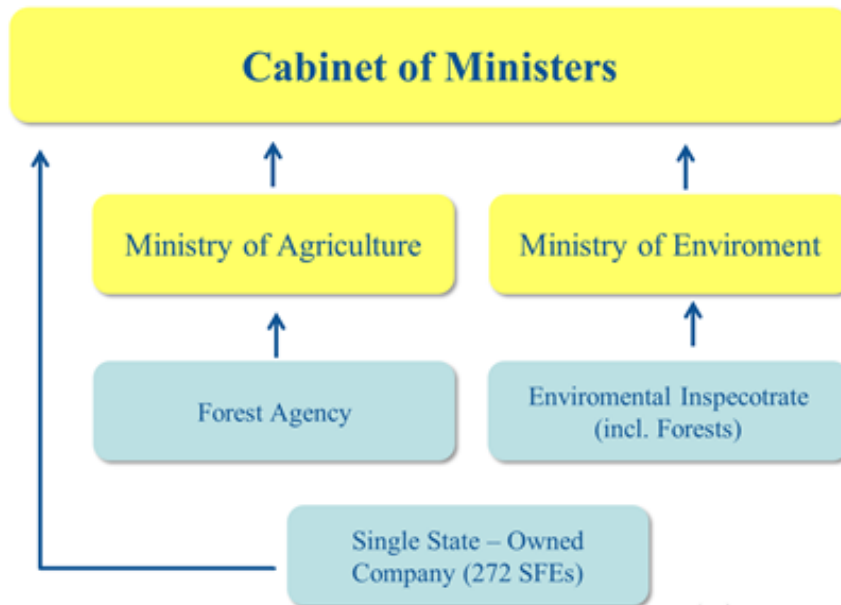
The proposed option 1 follows the majority of described principles. Division of function of forest policy development, control and management is separate, whereas the functions of monitoring and control reside in one authority.

Ukrainian system of forest control bases on issuance of felling licences and subsequent inspection and sanctioning. The proposed model enhances the system by unifying the tasks of issuing felling licences and controlling against them into one authority, which allows for more effective and efficient control. The option is resource efficient as staff that is responsible for issuing felling licences is simultaneously in charge of controlling that logging is being done in accordance of the licences. No need for massive increases in the number of staff engaged would thus be needed.

The main deficiency of the model is that the greater part of the current institutional system may remain unchanged, and hence corruption risks would not be eliminated. Considering the present situation in the forest sector in Ukraine, boosting the central executive body responsible for forest monitoring with control functions may not eliminate the persisting corruption elements.



Option No. 2



Institutions	Functions			
	Forest Policy	Forest monitoring	Control	Forest Management
Ministry of Agriculture	●			
Ministry of Environment	● <i>(partly)</i>			
Forest Agency		●		
Environmental Inspectorate			●	
Single State-Owned Company				●

Forest Policy

The MoAPFU is responsible for most development, preparation and adoption of forest related regulations and for strategic documents at the national level. The MoENRU is in charge of forest control related policies and legislation. This option foresees that certain policy functions are transferred from the MoENRU as well as from the SFRAU to the MoAPFU. However, both MoAPFU and MoENRU will continue to share certain policy functions.

Forest monitoring

Forest monitoring is organised within the framework of a uniform service, which to a great extent includes the tasks currently fulfilled by SFRAU. It is foreseen that the SFRAU will consolidate forest monitoring functions from a number of specialised state-owned enterprises. This would ensure a



more effective approach to forest monitoring and centralisation of all relevant information on forests in one body. Functions, such as strategic forest management planning, performed by Ukrderzhlisproekt, and monitoring of timber tracking and timber sales, carried-out by LIAC, would be taken over directly by the SFRAU.

Forest Control

All functions related to forest control and inspection would be fulfilled by an environmental inspectorate under subordination to MoENRU. This option foresees that capacities of the SEIU will be boosted to include a fully-fledged department in charge of robust control over forests.

Same as presently, the SEIU will carry-out inspection of forests on compliance with both environmental and forest legislation and be in charge of sanctioning violations. It would be foreseen that SFRAU transfers its control related functions to SEIU to enhance its competencies in forest control. This would very importantly include issuing of all types of felling licences for regular and sanitary felling. The competence for issuing felling licences must lie in the same body that is responsible for inspection in order to ensure effective and efficient control. The SFRAU would also transfer its functions of forest patrol to the SEIU. As a result, forest patrol will be carried out hand in hand with forest inspections and be fulfilled by a uniform body.

Forest Management

Forest management is carried out within the framework of a uniform company, which includes all companies functioning within SFRAU.

Pros and Cons

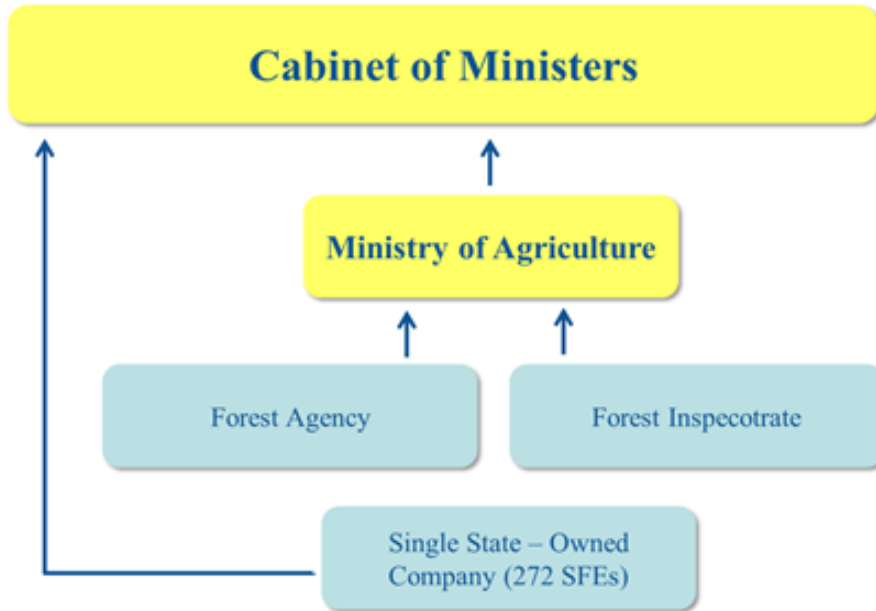
In this option, all principles as to the division of tasks per individual institutions are taken into consideration. Control is carried out by a uniform body with regard to the observance of regulations from the sphere of forestry and implementation of measures stipulated with forest management plans. However, in this option full control functions over forest actives are under subordination to MoENRU. This leads to maintenance of some fragmentation of policy related tasks.

The jurisdiction of the MoENRU spreads also to the sphere of forest policy and legislation that concerns implementation of forest control. A danger of duplication persists with regard to the competencies of MoAPFU, which is to be responsible for all other forest policy and law.

The advantage of this option is that the control is in the jurisdiction of the SEIU, under subordination to MoENRU, which already has much experience with control in nature. Moreover, by boosting SEIU competencies with the function of issuing of licences for felling along with the inspection functions, SEIU would be in a position to exert more effective control over forests. Nevertheless, in order to succeed with such proposal the SEIU would necessitate substantive extensions in its competencies and staffing.



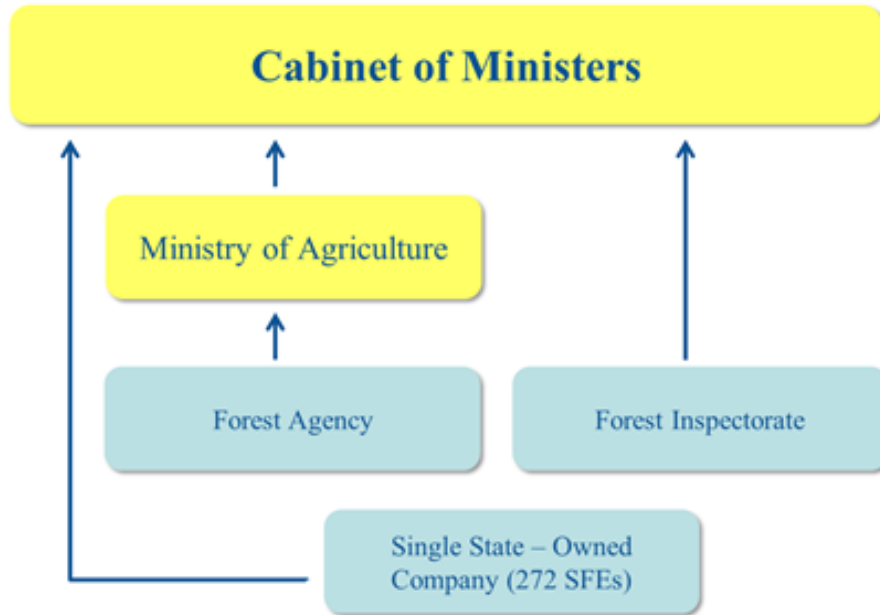
Option No. 3



Institutions	Functions			
	Forest Policy	Forest monitoring	Control	Forest Management
Ministry of Agriculture	•			
Forest Agency		•		
Forest Inspectorate			•	
Single State-Owned Company				•



Option No. 4



Institutions	Functions			
	Forest Policy	Forest monitoring	Control	Forest Management
Ministry of Agriculture	•			
Forest Agency		•		
Forest Inspectorate			•	
Single State-Owned Company				•

Option No. 3 and No. 4 are very similar in their outset only differing with regard to subordination of the Forest Inspectorate to be established.

Forest Policy

The MoAPFU is fully responsible for the development, preparation and adoption of forest related regulations and for all strategic documents at the national level. The option would necessitate that certain forest policy related functions that currently reside with the MoENRU are transferred to MoAPFU, notably approval of forest management plans and policies relating to control and inspection of forests. Moreover, functions that are at present practically fulfilled by SFRAU would need to be taken up by a reinforced forest administration in MoAPFU.

Forest monitoring

Forest monitoring is organised within the framework of a uniform service, which to a great extent includes the tasks of the current SFRAU. The SFRAU would continue to fulfil its forest monitoring



tasks which would be consolidated from specialised forest enterprises, including strategic forest management planning from Ukrderzhlisproekt as well as monitoring of timber tracking and sales from LIAC. The SFRAU would also maintain its function of issuing felling licences.

Forest Control

It is proposed to create a new institution which would perform exclusively the tasks of control in the forests. The newly established Forest Inspectorate would possess all the competencies necessary to exert effective control over all forests of Ukraine. The new body would be in charge of inspecting forests, including the single forest enterprise and other forest users, and to impose sanctions for violations of the law. It would also have the competence to control the SFRAU and in cases of wrongly or illegally issued felling licences sanction the SFRAU as well.

This model also envisages that existing forest control and inspection tasks are transferred away from SEIU to the newly established Forest Inspectorate.

Forest Management

Forest management is carried out within the framework of a uniform company, which includes all companies functioning within SFRAU.

Pros and Cons

Option 3 and Option 4 are very similar. In both options, all principles as to the division of tasks per individual institutions are taken into consideration. The MoAPFU is fully responsible for development of forest policy as already stated in the first two options.

The main difference between option 3 and option 4 is re. the institution to which Forest Inspectorate reports. In the case of option 3 Forest Inspectorate reports to the MoAPFU which is in this case responsible for two key forestry institutions. In option 4, Forest Inspectorate reports to the Cabinet of Ministers directly, which acknowledges its greater political importance and independence from outside interference.

A large advantage of this model is that the new Forest Inspectorate would be built from scratch, which would mean having good opportunity to hire new honest and willing to work people not associated with corruption.

Nevertheless, the task would require vast additional resources. In addition to the existing staff at SFRAU which would remain in charge of issuing felling licences, there would be a need to recruit a large number of additional staff.

As regards felling licences it is acknowledged that these will not be issued directly by the inspectors, but issuance will continue with the SFRAU, which relatively weakens the effectiveness of the control system. On the other hand, the fact that the two tasks would be placed in separate institutions would allow for cross-control of licence issuance by the new Forest Inspectorate.



CONCLUSIONS

The EU TAIEX mission identified that the underlining cause for a number of issues that the forest sector of Ukraine faces are the numerous weaknesses of the institutional structures of forest governance in Ukraine.

In order to tackle issues linked to sustainable forest management, illegal logging and illegal timber trade a robust system of forest control is to be built up. The EU TAIEX provided a number of recommendations for enhancement of the control system. The issue of how felling licences are being issued needs fundamental reform. Fragmentation of forest policy and legislation development also necessitates being addressed and proposals for reform are on the table.

The EU TAIEX mission put a great emphasis on analysing institutional structures of policy-making, control and monitoring. However, field that necessitates further work is the rationalisation of forest management and the forest enterprises active in the sector. The currently fragmented situation needs to be addressed, however, there are a number of options on how such state-dominated sector could be restructured.

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