

# Operational tools under forest law in the context of heavy forest calamities

Folie 1

The applicable forest law of Germany and Baden-Württemberg is not able to prevent storms and other heavy natural calamities in the forest. However, it can attempt to limit the negative consequences for affected forest owners.

## I. Instruments concerning market regulatory laws:

Arrangements concerning the timber market

## II. Measures in the context of public consultancy and assistance for communal and private forest owners:

Measures to support forest owners in the context of damage rehabilitation

## III. Measures concerning administrative and supervisory forest law regulations:

Vis-à-vis forest owner, who violate certain obligations in the framework of regular forest management

# I. Instruments concerning market regulatory laws:

Folie 2

## Impact compensation law related to particular forest hazards

### - Forstschäden-Ausgleichsgesetz (forest damage compensation law) –

National law offering the option to limit wood harvesting activities throughout Germany and across all forms of property. Thereby, the negative impacts of an excessive calamity timber supply on the market can be minimized and temporarily limited.

### Pre-Conditions:

1. **Promulgation** normally at the initiative of affected federal states at the Federal Assembly
2. **Forecast** of considerable and super-regional disturbances of the timber market caused by abnormal timber harvesting
3. As a result of one or multiple **particular hazard events**

### Legal courses of action:

1. Limiting the **timber harvest** related to particular groups of timber for a certain period
2. Limiting the **import of timber**
3. **Tax reliefs** for forest holdings

# 1. Application Procedure

One or multiple federal states affected by forest damages fill out an application at the Federal Assembly. This application relates to the commencement of an act that allows the limitation of the regular timber harvest for individual timber groups or types. The act relates to the **Federal Ministry of Food and Agriculture** which is responsible for issues related to forestry.

- **Timber species (Spruce, Pine, Beech, Oak)** or
- **Type of woods** (e.g. stem wood, industrial wood)

## 2. Disturbances of the timber market

The act can come into force if a harvesting limitation is necessary. Thereby, **considerable and supra-regional disturbances of the timber market** can be avoided.

### Definition:

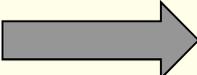
A **considerable and supra-regional disturbances of the timber market** can be expected if the salvage felling reaches:

- a **minimum of 25%** for all groups of timber species or a **minimum of 40%** for specific groups of timber species of the conventional felling on national level **or**
- a **minimum of 45%** across all groups of timber species or a **minimum of 75%** for a single group and at the same time
- a **minimum of 20%, respectively 30%**, across all or for a single group of timber species.

### 3. Timber harvesting-limiting disturbances

#### Other terms:

- Windblow and windthrow
- Snow- and ice- breakage,
- Infestation with fungi
- Insect
- Other damages (no respect of the reason)



## Legal instruments for action

The Federal Ministry can reduce the allowed regular annual cut for all forest enterprises in Germany (or in some regions) in order to compensate for the excess supply by a decree according to the “Forest Damage Compensation Law”

**Example:** After Storm Lothar the cut was reduced:

Reduction in all states (except for Baden-Württemberg):

→ Norway spruce (with Silver and Douglas fir) and Beech -25 %

Baden-Württemberg: - 40 %

- **This reduction can be decreed in the year of the disaster and for one more year**
- If this reduction on the national level is not effective enough, the import of round timber and timber products (first processing sector) can be limited, as long as it is compatible with EU-regulations
- **Tax reliefs are possible (non taxed reserve funds)**

## Decrees based on the Forest Damage Compensation Law

After the Storm “Lothar” Baden-Württemberg and Bavaria made a proposal to remit a decree based on the Forest Damage Compensation Law.

**As 30 Mio. m<sup>3</sup> were about 60 % of the regular annual cut in Germany**, the threshold values were reached-

- Reduction of the cut in Germany and in Baden-Württemberg (see above)
- Tax reliefs. The taxation of all timber coming from unplanned felling is reduced to 25% of the normal tax.
- The effects on the timber prices were limited. Prices decreased by up to 39%.
- **The effectiveness of this instrument can be questioned.**  
**However there seems to be some kind of psychological effect that indicates that solidarity is needed.**

## II. State Forest Act: Regulations related to different kinds of state service offers

- The **State Forest Act** encloses a multitude of service offers for **communal** (mostly forests owned by the municipalities) and **private forests**.
- A very specific and important structural component is the so-called „**Unity Forest Administration**“ which is responsible for all ownership types.
- This structure is related to the pattern of **forest ownership** in Baden-Württemberg:
- **Communal Forests**: 38%; 1102 municipalities; owning 530,000 ha (approximately 500 ha on average)
- **Private Forests**: 37%, 510.000 ha  
260,000 Forest owners → 2 ha size of the average private forest estate.
- **State Forest**; 24% 333,000 ha
- **Forests of different ownership types show regionally an intense spatial mixture**

## Example: Damages in different ownership types, Lothar 2000

- Communal forest **12 million m<sup>3</sup>**
- Private Forests **10 million m<sup>3</sup>** (Results of the Accountancy network 5-200 ha)
- On average the two- to threefold rate of the normal cut.
- In private forests approximately the fourfold rate.

## II. State Forest Act: Regulations related to service offers for communal forests

### 1. Communal Forests

2. According to § 47 State Forest Act the State Forest Administration(SFA) is responsible for the operative management in communal forests, as a legal task. This service is free of charge.

3. **Definition of operative management:** planning, preparation, management and control of all operative processes in the forests.

4. The individual municipality can request that the so-called economical management (especially timber sales) are executed by the State Forest Administration as well. These services are charged moderately.

### 5. **Consequence:**

At present the SFA manages most part of the communal forests  
**(1080 out of 1102)**

Roughly 60 % of the timber is sold by the SFA as well.

## II. Forest law regulation related to the advisory service and mentoring offered to communal forest owners

- This governmental function is realized by the **lower public forest authorities**. Since 2005 these agencies are incorporated in the 44 rural and urban districts.
- This solution is the direct **consequence of the entanglement of public and communal forest** as well as of the sizes of the single properties.
- The implementation of the technical management (Betriebsvollzug) is carried out by qualified public and communal forest officers within specially constituted communal or mixed communal/public **forest districts**.
- As a basic principle this service is **free of charge** for the communes. However, financial contributions have to be paid for the forest district service and the economic administration.
- Even in the case of severe damages, this arrangement ensures a **comprehensive assistance** for communal forest owners. Among others, this assistance includes the documentation of the damages, the processing of the calamity timber, as well as the marketing. If necessary, the single steps can be organized across holdings and by qualified forest officers.

## II. Forest law regulation related to the advisory service and mentoring offered to private forest owners Folie 12

### 2. Private forest

**Foundation: § 55 Federal State Forest Law i.V. with the Private Forest Act**

**Content:** State offers include **consultancy, mentoring and technical support**, which can be accessed by **all private forest owners**.

- These offers have to be requested by the private forest owners. It is conducted on a contractual basis and not automatically enforced by the law. The function is realized by the **lower public forest authorities** through their **forest officials**, as well as by the **regional forest management** in form of **unit forestry offices**.
- Details about these assistance measures are described in the **Private Forest Act** released under the Federal State Forest Law.

## II. Forest law regulation related to the advisory service and mentoring offered to private forest owners

### ➤ Consultancy

The advisory service is **free of charge**. It is meant to support the forest owner in managing its forest properly and in accordance to legal guidelines, as well as in safeguarding the infrastructural benefits of the forest.

To this belong among others:

Advisory service for forestry measures such as forest regeneration

Advisory service for timber marketing

Assistance for joint materials procurement

## II. Forest law regulation related to the advisory service and mentoring offered to private forest owners

### ➤ Mentoring

Private forest owners are **liable to pay costs** for the mentoring service offered by the forest authorities due to the economic interest involved.

Depending on the particular contract, the mentoring includes **technical forest management** in the form of **advisory opinions** (Forsteinrichtung) and yearly operating plans,

**services provided** by forest officers such as

**marking**, timber registration, instruction and monitoring of harvesting companies, **marketing**

Depending on the particular holding size, mentoring can occur **case by case basis** or **permanently**. It is important to notice that in both communal and private forests it is a **full-service offer**, meant to secure a proper management . This is particularly true for small private forest holdings.

## II. Forest law regulation related to the advisory service and mentoring offered to private forest owners

### ➤ Technical support

Due to fragmented forest structures and small holding sizes, several forest owners of Baden-Württemberg are incapable of managing their forests by themselves.

That is where **technical support** comes into play:

Personnel and machines belonging to the federal state can be used for forest operations. It is also possible to convey labor from e.g. the communal forest or to offer support during the search for qualified contractors.

## II. Forest law regulation related to the advisory service and mentoring offered to forest owners Folie 16

- Results of the regulations of Baden-Württemberg using the example of the storm “Lothar”
  - Governmental support and aid for small forest holdings
  - Individual support without reimbursement
  - Watered wood storage places are opened for timber from communal and private forests
  - Communal and private forest owners were very satisfied concerning the range of services and mentoring offered by the public forest authorities related to the storm
  - Good contact and confidence in the respective forest officials

## II. Forest law regulation related to the advisory service and mentoring offered to forest owners Folie 17

### ➤ Advantages of the regulations of Baden-Württemberg using the example of the storm “Lothar”

- Handling of storm damages according to priorities and goals (e.g. valuable hardwood before mass assortments, preferential processing of stand prone to bark beetle)
- **Central planning and decentralized implementation within the single forest agencies**
- Operation of forest workers and contractors in communal and private forests across forest districts, regions and states
- Centralized timber marketing across forest holdings

**Further examples:** Storm damages in the administrative district of Freudenstadt with around 300,000 cubic meters

**Using central supply agreements the federal agency was able to achieve good prices with distance selling.**

## II. Forest law regulation related to the advisory service and mentoring offered to forest owners

### Two statements from a contemporary point of view:

- The full service offer provided by public forest enterprises is still offering great advantages when it comes to the mentoring of communal and private forest - as well and overall in the case of calamities. However, it is unclear if the comprehensive mentoring offer which is based on the Federal Forest Law of Baden-Württemberg can be maintained in the future. The reason for that are problems with the **law on competition**.
- The Federal Trade Commission considers preparatory services such as timber harvesting and processing as a part of the timber marketing. In the case that essential components of the timber marketing have to be abandoned by the public service, this would have impacts on the mentoring and support offered during large calamities as well. At least the bundled timber marketing, currently organized by the federal forest agencies, would not be possible any more.

### III. Measures related to administrative and forest regulatory law:

- According to **§ 67 of the Federal State Forest Law** the federal state is acting as a **sovereign supervisor** of corporate and private forests.

It is the obligation of the federal state to control whether or not forest owner comply with their duties in accordance with the Federal State Forest Law. Otherwise, these laws have to be enforced using regulatory measures. This is relevant in the case of calamities, as well.

The legal instrument related to this enforcement is laid down in **§68 of the Federal State Forest Law** .

- 1. Level:** Forest owners are officially informed by the forest agency about the shortcomings in reference to the correct management methods.
- 2. Level:** A regulation is issued and addressed to the forest owner including the request to re-establish a certain proper condition .  
(If necessary this request can be enforced by law)

## III. Measures related to administrative and forest regulatory law:

### What obligations does this concern?

#### ➤ **Basic obligations of forest owners**

In reference to the Federal State Forest Law, forest owners are obliged to manage the forest according to its purpose sustainably, carefully, orderly, and knowledgeably (sentences further concretized in the Federal State Forest Law).

#### ➤ **Particular obligations**, that might affect forest owners in the case of calamities:

**§ 14 Federal State Forest Law:** Obligation to prevent the forest from considerable hazards and damages by ... animalistic and herbal pests in the context of a careful management  
(**Keywords: Removal of fertile material favoring bark beetles in storm damaged stands**)

**§ 17 Federal State Forest Law :** Reforestation of cleared or partly cleared woodland areas within 3 years from the storm or bark beetle event.

### III. Measures related to administrative and forest regulatory law:

- **§ 18 Federal State Forest Law: Authority** for preventive measures against natural events. By this means forest authorities are authorized to command **preventive forest protection measures**. This could e.g. relate to certain thinning measures within stands prone to storm damages. It could also include measures against soil erosion or landslides at escarpments.
- **§ 27 Federal State Forest Law:** neighbor obligations, neighbor protection

In addition to private rights and obligations this regulation imposes a particular public law obligations on forest neighbors – to respect one another when managing their forests.

It is the obligation of the forest agency to supervise and – in the case that this is necessary – to enforce this neighbor obligations. Apart from this, a violation of this obligation can lead to damage claims in the framework of the civil law. This is the case because special forestry protection laws, as defined by the law of tort, are concerned in this instance.

### III. Measures related to administrative and forest regulatory law:

#### Experiences from the storm „Lothar“:

- It has not been documented which (if any) forest regulatory measures have been used by the responsible forest authorities in the case of the storm „Lothar“
- However, in the framework of regulative law, the presented regulatory instruments generally offer possibilities to take action against forest owners in the case of violations of duty.

**Thank you very much for your  
attention!**