

Policy for Association complaint by WWF Germany against Holzindustrie Schweighofer

20 September 2017

Investigation of additional information against the Schweighofer Group

Report to the FSC Board of Directors

Public Version

of the

Independent report by Heiko Liedeker and Laura Bouriaud

This document presents the report on the independent expert investigation of additional information against Holzindustrie Schweighofer and all companies controlled by Gerald Schweighofer.

Abbreviations used in text.

| | |
|-----------------|-------------------------------------------------------------------------------------------------------|
| ANAF | Agenția Națională de Administrare Fiscală (National Agency of Fiscal Administration, Romania) |
| APV | Act de Punere în Valoare (Enumeration of Standing Stock for Harvesting) |
| ASI | Accreditation Services International GmbH, Bonn, Germany |
| ASRO | Asociația de Standardizare din România (National Office of Standardization, Romania) |
| Aviz | Timber Transport Waybill, Romania |
| BRML | Biroul Roman De Metrologie Legală, Romania (National Office for Calibration, Romania) |
| CAB | Conformity Assessment Body |
| CB | Certification Body |
| CCPM | Corpul de Control al Primului-Ministru (Prime Minister's Corp of Control, Romania) |
| CoC | Chain of Custody |
| IP | Investigation Panel |
| CW | Controlled Wood |
| DNA | Direcția Națională Anticorupție (National Anti-Corruption Agency, Romania) |
| DDS | Due Diligence Systems |
| EIA | Environmental Investigation Agency |
| EUTR | European Timber Regulation, EU, Brussels, Belgium |
| FM | Forest Management |
| ITRSV | Inspectoratele Teritoriale de Regim Silvic si de Vânătoare (Forest Inspectorates, Romania) |
| FSC | Forest Stewardship Council A.C., Oaxaca, Mexico |
| FSC GD | FSC Global Development GmbH, Bonn, Germany |
| FSC IC | FSC International Center gGmbH, Bonn, Germany |
| FSC PSU | FSC Policy and Standards Unit, FSC International Center GmbH, Bonn, Germany |
| FSC QAU | FSC Quality Assurance Unit, FSC Global Development GmbH, Bonn, Germany |
| FSC Secretariat | Collective offices and staff of FSC A.C., FSC International Center gGmbH, FSC Global Development GmbH |
| GF | Gărzile Forestiere (Forest Guards, Romania) |

| | |
|----------|---------------------------------------------------------------------------------------------------------------------------------|
| HFA | Holzforschung Austria - Österreichischen Gesellschaft für Holzforschung, Vienna, Austria |
| HS | Holzindustrie Schweighofer – all entities controlled by Mr. Gerald Schweighofer individually and collectively |
| HS-CM | Holzindustrie Schweighofer Certification Manual |
| MMAP | Ministerul Mediului, Apelor și Pădurilor (Ministry of Environment, Water and Forests, Romania) |
| MAP | Ministerul Apelor și Pădurilor (Ministry of Water and Forests, Romania) |
| OAP | Ordinul Arhitecților din România (Chamber of Architects, Romania) |
| PfA | FSC Policy for Association |
| PEFC | Programme for the Endorsement of Forest Certification, Geneva, Switzerland |
| ROMSILVA | Regia Națională a Pădurilor Romsilva (Romanian State Forest Enterprise), Bucharest, Romania |
| SA | Soil Association |
| SUMAL | Sistem informațional integrat de urmărire a materialelor lemnoase (Governmental Centralized Timber Tracking System, Romania) |

Numbering format used in text follows the English standard with commas as separators for thousands and a point for the decimal break.

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1 Introduction

This document presents a report on the investigation and analysis of additional information brought forward by WWF Germany against the Schweighofer Group (HS).

The additional information was brought to the attention of the FSC International in January 2017. Mr. Heiko Liedeker a member of the former Complaints Panel and independent expert was engaged by FSC to evaluate the plausibility of the additional information, and whether their in-depth investigation is justified. A report detailing the plausibility analysis and recommending an in-depth investigation was submitted to the FSC Board of Directors on 8 February 2017.

In March 2017 the FSC engaged an independent expert investigation panel (IP) (see point 2 below) to conduct an in-depth investigation of the additional information against HS. The investigation started with an inception workshop at the FSC offices in Bonn, Germany on 20-21 March 2017.

On 21 April 2017 a progress report on the in-depth investigation of the additional information against Holzindustrie Schweighofer (HS) was submitted to the FSC Board of Directors. The progress report was intended for information and internal use of the FSC and the FSC Board of Directors in advance of the meeting of the FSC Board of Directors in May 2017.

The draft final investigation report was completed on 22 June 2017. The draft final investigation report was compiled in 2 versions – 1 full version which includes all information and references and 1 one public version in which some of the text and references were anonymized to protect the integrity of some of the informants consulted.

The public version of the draft final report was forwarded to the parties to the complaint for comment and input on 27 June 2017. The response by the parties to the complaint were received by 11 August 2017. The IP was asked by FSC on 22 August 2017 to do a factual check of the response by the parties to the complaint and conclude the investigation with the information available.

The comments provided by the parties to the complaint were reviewed by the independent experts of the IP. The response of the IP to the comments by the parties is detailed in section 6. In addition the main body of the report has been adapted in some places based on the comments by the parties.

This report presents the final findings and conclusions of the expert investigation of the additional information brought forward against HS by WWF Germany.

2 The Independent Experts

Heiko Liedeker, Environmental Chamber North, individual member.

Mr. Heiko Liedeker is currently managing the Leading Standards GmbH, a consultancy firm providing strategic advice on social, environmental and economic compliance, standard setting, verification and governance, as well as conflict communication and moderation. Until mid-2015 he served as the Head of the EU FLEGT & REDD+ Facilities at the offices of the European Forest Institute (EFI) in Barcelona, Spain. The Unit provided support to the EU's implementation of FLEGT and REDD+ in partner countries around the world. Between 2001 and 2008 Mr. Liedeker was Executive Director of the Forest Stewardship Council. He led the FSC through comprehensive restructuring and repositioning to being one of the leading social and environmental standard setting and certification systems worldwide. Before joining the FSC, he served Chairman of the WWF's European Forest Team and member of WWF's Global Forest Advisory Group. In the early 90's, he advised different public authorities, universities and ministries of the Kingdom of Saudi Arabia on implementation of environmental information systems. Mr. Liedeker holds a Master's degree in Forest Ecology from the University of Vermont, USA and a Forestry degree from the Ludwig-Maximilians University in Munich, Germany.

Laura Bouriaud, Professor of Forestry, University Stefan cel Mare, Suceava, Romania.

Graduated in Forestry and in Juridical Sciences, Laura Bouriaud has 25 years' experience in teaching forest and environmental law and in studying forest sector governance. She published eight books and more than 70 papers on these topics, and lead as project manager six research grants since 2008. Professor Bouriaud is recognized in the international scientific community for her expertise on forestry in Eastern European countries, especially for the analysis of forest property rights systems and the illegal logging phenomenon. She serves as a member in the Regional Advisory Group of European Forest Institute's Regional Office (EFICEEC-EFISSEE), in the Regional Advisory Commission for Strategy Development of the North-Eastern Region in Romania and in the Romanian National Council for Ethics in Research. Professor Laura Bouriaud contributes extensive expert knowledge and experience on illegal logging issues in Eastern European countries and Russia. She has been cooperating continuously with NGOs in Romania (WWF, ProPark Foundation, Heifer, Romania). During the year 2016, she has acted as advisor to the state secretary for forests.

3 The complaint

3.1 History of the complaint and additional information

The complaint under the FSC Policy for Association (PfA) by WWF Germany against Holzindustrie Schweighofer (HS) was filed to FSC International on the 6 November 2015. The complaint was accepted by FSC on the 24 November 2015. The Complaints Panel (CP) was appointed on the 7 March 2016 and the formal evaluation began in April 2016. The CP completed its task in mid-October 2016 in time for the FSC International Board Meeting in November 2016. In November 2016 the FSC Board of Directors evaluated the report by the CP and decided a series of measures to be implemented by HS.

The investigation of the PfA complaint by WWF Germany against HS proved to be rather complex and resource consuming. The CP therefore focused its evaluation on the most prominent allegations against HS to be able to process the complaint and conclude its recommendations to the FSC Board of Directors within a reasonable time.

In December 2016 additional information against HS began to emerge. A series of documents and personal discussions with different stakeholders involved led to a meeting with constituents in Romania. At this meeting additional information was brought forward, discussed in some detail and substantiated with some preliminary evidence. The meeting in Iasi, Romania was held between 1 and 3 February 2017. It was chaired by Ms. Amparo Arellano Gil of FSC and attended by Mr. Heiko Liedeker, a member of the former Complaints Panel and independent expert, and constituents who brought forward the additional information against HS – namely anonymous-001 of WWF Germany, anonymous-002 of anonymous-016, and anonymous-003, an informant who identified himself to the FSC and the independent expert.

The independent expert, Mr. Heiko Liedeker evaluated the plausibility of the additional information, and whether further in-depth investigation by FSC was justified. The information brought forward during the meeting in Romania against HS was not evaluated before as part of the formal investigation by the CP in 2016. A report detailing the plausibility analysis and recommending an in-depth investigation was submitted to the FSC Board of Directors on 8 February 2017. The FSC Board of Directors agreed at their meeting in February 2017 that FSC shall further investigate the additional information presented against HS.

In March 2017 the FSC engaged Ms. Laura Bouriaud and Mr. Heiko Liedeker to serve as an independent expert investigation panel (IP) (see point 2 above) to conduct an in-depth investigation of the additional information brought forward against HS. The investigation started with an inception workshop at the FSC offices in Bonn, Germany on 20-21 March 2017. On 21 April 2017 a progress report on the in-depth investigation of the additional information against Holzindustrie Schweighofer (HS) was submitted to the FSC Board of Directors. The progress report was intended for information and internal use of the FSC and the FSC Board of Directors in advance of the meeting of the FSC Board of Directors in May 2017.

The public version of the draft final report was forwarded to the parties to the complaint for comment and input on 27 June 2017. The response by the parties to the complaint were received by 11 August 2017.

This report presents the final findings and conclusions of the expert investigation of the additional information brought forward against HS by WWF Germany.

3.2 Methodology of the investigation

3.2.1 Overall approach

The investigation focused exclusively on the information brought to the attention of the FSC in 2017 and the related aspects of HS' conduct of business. It proceeded in the following iterative steps:

- (1) reviewing the evidences provided together with the additional information provided;
- (2) researching and analyzing Romanian legislation and regulation relevant in relation to the issues of timber measurement, standardization, calibration, energy subsidies and environmental permits for Reci mill construction (list provided in section 7);
- (3) contacting authorities in Romania to obtain official opinion and confirmation on some of the issues investigated;
- (4) interviewing stakeholders concerned;
- (5) analyzing the correspondence between HS and relevant authorities, including the information HS provided to the IP in response to the specific questions about their measurement and classification system for roundwood;
- (6) analyzing the response by HS to the plausibility analysis of the additional information brought forward against HS submitted to FSC Board of Directors on 8 February 2017;
- (7) screening publicly available sources for relevant associated information, e.g. extensive NGO reports and/or information releases; controlling reports or information releases by authorities about investigations launched against HS.

3.2.2 Analysis of Romanian legislation and regulation

The analysis of the Romanian legislation (detailed list provided in section 6 below) focused on the following categories of laws and regulations:

- (1) Laws and regulations on standardization to clarify the status of the Romanian standards, and the specific standards and regulations on timber measurements and classification which are relevant to this investigation;
- (2) Laws and regulations on calibration and metrology to address the issue of calibration of the electronic measurement instruments (calipers) used in HS' mills in Radauti and Sebes;
- (3) Laws, regulations and customary approaches in the forestry sector that may contain specific rules for timber measurement and classification relevant to roundwood trade and reception in the mills;
- (4) Laws and regulations about environmental impact assessment in relation to the construction and operation of HS' mills.

3.2.3 Analysis of relevant international and European legislation and relevant legislation in other European countries

The analysis of international and European legislation (detailed list provided in section 6 below) and relevant legislation in other European countries focused on the following categories of laws and regulations:

- (1) Laws and regulations on standardization;
- (2) Laws and regulations on calibration and metrology;
- (3) Laws, regulations and customary approaches in the forestry sector related to timber measurement and classification relevant to roundwood trade and reception in the mills;
- (4) Laws, regulations and customary approaches related to roundwood trade;
- (5) Laws and regulations relevant to the construction of industrial facilities.

3.2.4 Contact to Romanian authorities seeking official information and confirmation

The following Romanian authorities were contacted for clarification, official information and confirmation:

- (1) the Ministry of Water and Forests (MAP) with a letter dated 4 April 2017¹, seeking to clarify the official position of forest authorities on the use of the electronic measurement instruments (calipers) and the voluntary/compulsory character of the Romanian standard STAS 5150-73 for timber measurement and classification;
- (2) the National Office for Calibration (Biroul National de Metrologie Legală – BRML) with a letter dated 4 April 2017², to confirm the fact that the electronic instruments (calipers) for measuring roundwood were not subject to compulsory calibration by the authorities for the period 2000 to 2013;
- (3) the National Office for Standardization (ASRO) with a letter dated 4 April 2017³, to confirm the voluntary or compulsory character of the Romanian standard STAS 5150-73 for timber measurement and classification.

The formal period for official response is 30 days. The formal requests and responses received are further elaborated in the text below.

3.2.5 Interviews with controlling authorities and timber suppliers seeking clarification on measurement and classification of roundwood in trade

To clarify some aspects of timber measurement system several stakeholders were interviewed - namely one employee of the controlling authorities (Forest Guard) and eight (current or former) Romanian timber suppliers to HS. The full contact details of the stakeholders interviewed were disclosed to the FSC but need to remain confidential otherwise. The stakeholders interviewed presented a range of experiences on trading with HS, as provided below:

- (1) anonymous-004, HS employee;
- (2) anonymous-005, former employee of HS competitor, HS supplier;
- (3) anonymous-006, Neamt county, forest harvesting micro firm; occasional roundwood supplier to HS;

¹ 441.3_FSC letter to Ministry_Schweighofer investigation_April 2017_EN

² 441.2_FSC letter to BRML_Schweighofer investigation_April 2017_EN

³ 441.1_FSC letter to ASRO_Schweighofer investigation_April 2017_EN

- (4) anonymous-007, Neamt county, owner of a small harvesting and processing firm; roundwood supplier to HS over a longer period;
- (5) anonymous-008, Suceava county, transport agent micro-firm, occasional transport of roundwood to HS;
- (6) anonymous-009, Sibiu county, former employee of a large harvesting firm, now working as a forest manager;
- (7) anonymous-010, Suceava county, owner of a small harvesting and processing firm, former roundwood supplier to HS;
- (8) anonymous-011, Suceava county, owner of a small harvesting firm, roundwood supplier to HS;
- (9) anonymous-012, Neamt county, former employee (managing contracts) of a competitor to HS;
- (10) anonymous-013, Suceava county, harvesting and processing firm; former roundwood supplier to HS;
- (11) Ms. Erika Stanciu, former State Secretary for forests at the Ministry of Environment, Water and Forests (MAP);
- (12) Prof. Dr. Marian Dragoi, Stefan cel Mare University of Suceava, Romania.

The selection of the informants was based on random sampling seeking to obtain a broad range of individual experiences in timber supply to HS.

3.2.6 Screening publicly available sources for relevant associated information

The following relevant publicly available resources were identified and analyzed for relevant associated information:

- (1) Report on controlling the activity of Holzindustry Schweighofer S.R.L Radauti for the period 01.02.2014 – 18.07.2014 (*Raport privind controlul activității S.C. HOLZINDUSTRIE SCHWEIGHOFER S.R.L., Rădăuți, perioada 01.02.2014 – 18.07.2014*); The Ministry of Environment and Climate Change (*Ministerul Mediului și Schimbărilor Climatice*), ITRSV Suceava, 2014;
- (2) Annual Report of Prime Minister's Corps of Control (*Corpul de Control al Primului Ministru*) (CCPM), 2015. The Prime Minister's Corps of Control investigated in year 2015 the allegations on violation of authorizations and permits legally required in relation to the construction of HS mills (http://gov.ro/fisiere/comunicate_fisiere/Raport_activitate_CCPM_2015.pdf);
- (3) Press release on 30 July 2015 by Ministry of Environment, Water and Forests (MMAF) following an investigation undertaken in HS mills and at its suppliers during the period of 7 May 2015-12 June 2015, and forwarding of the investigation reports to the Prosecutor's Office at the High Court of Cassation and Justice (Parchetul de pe langa Inalta Curte de Casatie si Justitie) (http://www.mmediu.ro/app/webroot/uploads/files/2015-07-30_CP_controale_paduri.pdf).

3.2.7 Structure of the reporting

This report presents the analysis, findings, conclusions and recommendations of the in-depth investigation of additional information brought forward against Holzindustrie Schweighofer (HS). The report follows the same structuring and numbering used in previous reports.

The different aspects of information brought forward against HS earlier this year and uncovered during the investigation are listed in sub-chapters under chapter 3.3. Each sub-chapter is structured in the following 3 different parts – (1) **Information received** – which summarizes the information brought forward against HS; (2) **Relevant findings** – which summarizes the investigation including the review of relevant legislation and regulation; (3) **Interpretation and conclusions** – which summarizes the interpretation of the findings and conclusions.

At the end of the report section 6 was added with the IP's review and analyses of the comments and input provided by the parties to the investigation in response to the public version of the draft final investigation report. A section 7 was included with a listing of relevant legislation and regulation reviewed and section 8 provides a catalogue of the references reviewed.

The report is intended for information and internal use of the FSC and the FSC Board of Directors in advance of the next meeting of the FSC Board of Directors.

3.2.8 Confidentiality of the report and protecting the integrity of informants

The full identities and affiliations of the parties to the complaint, their respective supporters and all informants referenced in this report are strictly confidential and known only to the members of the IP as well as the staff of the FSC QAU and their supervisors. All names and affiliations of informant and supporters to the parties to the complaint and were anonymized (i.e. replaced with a reference to "anonymous-000").

The full report on investigating the information brought forward against HS is strictly confidential and intended for disclosure to and use by the FSC Secretariat and the FSC Board of Directors exclusively. It contains all references to informants including their names and affiliations. In some cases, especially when this is specifically requested by the individuals providing information, names and/or affiliations of informants were abbreviated. Moreover, the full version of the final investigation report includes some references to documents which were received under terms of confidentiality (i.e. replaced with a reference to "confidential-000").

The public version of the full report on investigating the information brought forward against HS is intended for consultation with the parties to the complaint. It is shared with the parties to the complaint under terms of confidentiality. Upon advice by the FSC QAU section 4, section 5.3, section 9 and the annexes 1, 2a, 2b and 3 of the full version of this investigation report were removed from the public version of this report.

3.2.9 Consultation of the parties to the complaint on the draft final investigation report

The public version of the draft final report was forwarded to the parties to the complaint for comment and input on 27 June 2017. The response by the parties to the complaint were received by 11 August 2017. The IP was asked by FSC on 22 August 2017 to do a factual check of the response by the parties to the complaint and conclude the investigation with the information available.

The comments were reviewed by the independent experts of the IP. The response of the IP to the comments by the parties is detailed in section 6. In addition the main body of the report has been adapted in some places based on the comments by the parties.

3.3 Additional information received and investigated

The additional information brought forward against HS refers to the measurement and classification of wood by HS^{4, 5, 6, 7, 8, 9, 10, 11, 12, 13} allegedly in breach of legislation in Romania, and therefore possibly in breach of the FSC PfA.

The following information related to alleged irregularities and illegalities in the systems and methods for timber (spruce and fir roundwood) measurement and classification used by HS were brought forward by WWF Germany to FSC.

3.3.1 Use of electronic devices for timber measurement

Information received

FSC was informed that HS used electronic devices^{5,6,7,8} to measure timber upon delivery to its facilities. These electronic measurements were allegedly used to calculate timber volumes, which were then used for accounting purposes (e.g. compensation of suppliers and transport agents, reporting to the Romanian authorities and taxation, etc.). HS allegedly used electronic measurement of timber since 2001 until at least year 2014 in Romania. It was questioned whether the use of electronic instruments (calipers) for measuring roundwood was compliant with legislation and regulation in Romania.

Relevant findings

The Romanian standard STAS 5170-73 (*“Standard for roundwood, softwood and hardwood, for industrial use, construction, measuring and storage”*) specifies in clause 2.3.1.4 the rule for diameter measurement on roundwood¹⁴ as follows *“To measure the diameter one uses the forest caliper, the*

⁴ 403.1 EUTR Complaint by WWF

⁵ 403.2 WWF Information on Measurement issue

⁶ personal communication with informants at a meeting in Iasi, Romania on 1 to 3 February 2017

⁷ 404. Background info by ENGO 2017-01-27

⁸ 405. ENGO report_ The Austrian method_ July 2015

⁹ 408. WWF Summary of issue and points for discussion_draft

¹⁰ 412. HS timber quality classification procedure

¹¹ 428. 6 3_Quality classes_09

¹² 419. limba germana Ian 04

¹³ 420. limba romana Iunie 06

¹⁴ Romanian standard STAS 5170-73, clause 2.3.1.4 – *“Masurarea marimii diametrului se face cu clupa forestiera, citirea efectuandu-se cu clupa in in pozitia de masurare pe piesa. Observatie: In cazul pieselor la care diametrul depaseste posibilitatea de masurare a clupeii forestiere, se poate masura circumferinta la jumatatea lungimii piesei, cu ajutorul unei rulete special gradate incat sa se citeasca direct marimea diametrului.”*

size being indicated in the measuring position of the caliper. Observation: in the case of large size logs that could not be measured anymore with the caliper, one may measure the diameter using a special tape indicating directly the diameter size.”. This Standard is the only valid regulation in Romania relating to timber measurements. Clause 2.3.1.4 refers to the use of a caliper - not a hand caliper, and the use of a tape measure when use of a caliper is not possible (large size logs). It does not indicate specifically that in Romania roundwood diameters have to be measured with manual methods (calipers) exclusively.

Electronic instruments (calipers) for measuring roundwood are not referred to in the Romanian standard STAS 5170-73. The fact that electronic instruments (calipers) for measuring roundwood are not referred to in the respective Romanian standards cannot be interpreted that such instruments were not allowed by law. On the contrary, as in most jurisdictions, the fact that certain elements are not regulated is an indication that their use is permitted.

Furthermore, since the year 1998, according to the Governmental Ordinance on the national standardization activity in Romania nr. 39 from 1998 (approved by the Law no. 355/2002: LEGE nr. 355 din 6 iunie 2002 pentru aprobarea Ordonanței Guvernului nr. 39/1998 privind activitatea de standardizare națională în România), Romanian standards have voluntary character.

The Romanian standard STAS 5170-73 was established in 1973 and remained valid until 23 December 2013, when it was replaced by the standard SR 13569:2013/C91:2015¹⁵. Since 2013, the Romanian standard SR 13569:2013/C91:2015 applies. Its application is voluntary.

The Law no. 163 of 24 June 2015 on national standardization¹⁶ (Legea nr. 163 din 24 iunie 2015 privind standardizarea națională), which replaced the Law 355/2002 specifies in article 6 that Romanian standards have voluntary character, unless a governmental regulation establishes otherwise. It continues to specify in article 6, paragraph 2 (art. 6, al. 2)¹⁶ the following: *“The application of a Romanian standard may become mandatory, in whole or in part, throughout the territory, at a district or local level, only by means of a regulation, if public considerations, the protection of life, health and safety of individuals, the environment and consumer interests make such a measure necessary.”.*

The National Office of Standardization (ASRO)¹⁷ confirmed verbally that the Romanian standard STAS 5150-73 has been voluntary since 1998. In fact STAS 5170-73 was used consistently for measuring timber in trade between buyers and suppliers only during the communist time and prior to timber industry privatization in the mid-1990s. Particularly after it became voluntary in 1998, the STAS 5150-73 was not anymore used consistently for measuring timber in trade.

No evidence has been identified that the use of electronic instruments (calipers) for roundwood measurement was not acceptable before it was regulated in 2013.

A definitive statement has been requested by the IP from the Ministry of Water and Forests (MAP) on the use of electronic instruments (calipers) for roundwood measurement and on the status of the

¹⁵ Romanian standard SR 13569:2013/C91:2015 (Lemn rotund și alte sortimente de material lemnos. Metode de măsurare - Roundwood and other assortments of timber materials. Methods for measurement)

¹⁶ Legea nr. 163 din 24 iunie 2015 privind standardizarea națională - Law no. 163 of 24 June 2015 on national standardization; article 6 2nd paragraph (art. 6, al. 2) – *“Aplicarea unui standard roman poate deveni obligatorie, in totalitate sau in parte, pe intreg teritoriul, pe plan zonal sau pe plan local, numai printr-o reglementare, in cazul in care considerente de ordin public, de protectie a vietii, a sanatatii si a securitatii persoanelor fizice, a mediului si a intereselor consumatorilor fac necesara o astfel de masura.”.*

¹⁷ Telephone conversation with ASRO, Ms. Mariana Craciun on 6 April 2017

Romanian standard STAS 5170-73 during the period 2002-2013, and whether the Romanian standard STAS 5170-73 has been specified as compulsory in any governmental regulation.

The State Secretary of the Ministry of Water and Forests (MAP) replied in a letter dated 9 May 2017 (ref. no. 1747/1S/09.05.2017)¹⁸ that central public authority for forestry has enacted norms for implementation of the forest regime (forest management systems). The MAP detailed more specifically that during the period of 2002 – 2013, in relation to measurement of roundwood at the time of removal from the harvesting site for the purpose of selling and transporting, the STAS 5170-73 continued to be effective and used. This was particularly relevant for completion of the required documentation accompanying roundwood during transport (e.g. aviz insotire).

The MAP continues to state in its response letter that according to Governmental Ordinance no. 39/1998 on national standardization activity in Romania "the Romanian standards remain valid until their amendment or cancellation by the association", but that the MAP is not competent to comment on the use / internal use of electronic measurement systems by economic operators, and/or whether the STAS 5170-73 has become voluntary in nature within 180 days of the Governmental Ordinance no. 39/1998, Monitorul Oficial no. 43/30.01.1998 entering into force.

The Romanian standard STAS 5170-73 of 1973 was replaced in 2013 with the standard SR 13569:2013/C91:2015. In clause 4.3.1 it specifies *"the diameter is to be measured with a calibrated instrument (forestry caliper, tape with special marks, or automatic systems) with a maximum measuring error of 1 cm"*. As indicated in the text the standard specifically mentions and foresees the use of automated systems (e.g. electronic measuring instruments / calipers).

The standard SR 13569:2013/C91:2015 specifies in clause 4.4.2 *"... Any modification of the measurement rules according to this standards should be mentioned. The modifications should be subject to an agreement amongst the interested parties"*. Thus, modification of measurements subject to agreement between the parties involved is explicitly foreseen in this currently valid Romanian standard for measuring roundwood.

This underlines the voluntary nature of the standards in favor of private agreement between the parties involved. As HS specified the relevant aspects of roundwood measurement in its contracts with suppliers it is reasonable to assume that modification of the provisions of the relevant Romanian standards were agreed between the contracting partners.

Interpretation and conclusions

The National Office of Standardization (ASRO)¹⁷ confirmed that the Romanian standard STAS 5150-73 has been voluntary since 1998, and that the STAS 5150-73 was not anymore used consistently for measuring timber in trade.

The State Secretary of the Ministry of Water and Forests (MAP) replied that during the period of 2002 – 2013, in relation to measurement of roundwood at the time of removal from the harvesting site for the purpose of selling and transporting, the STAS 5170-73 continued to be effective and used. This was particularly relevant for completion of the required documentation accompanying roundwood during transport (e.g. aviz insotire). The response by the MAP could be interpreted as the Ministry having regulated that the Romanian standard STAS 5170-73 is to be used for

¹⁸ 431.2 Ministry_Water_Forests_response_letter_RO

measurement of timber and roundwood before removal from the harvesting site – i.e. that the STAS 5170-73 is compulsory for this particular use.

Based on investigation and analysis of relevant legislation and regulation in Romania, and based on the official responses from the National Office of Standardization (ASRO) and the Ministry of Water and Forests (MAP) there is evidence that the Romanian standard STAS 5170-73 and the subsequent standard SR 13569:2013/C91:2015 were voluntary in nature for all uses except possibly the measurement of timber and roundwood before removal from the harvesting site. No evidence has been identified that the use of electronic instruments (calipers) for roundwood measurement in trade was violating any legislation or regulation in Romania.

Based on the evidence reviewed it is therefore concluded the use of electronic instruments (calipers) for the measurement of roundwood upon receipt at the mill did not violate any legislation or regulation in Romania. It is furthermore concluded that the conduct of business of HS as it concerns the use of electronic instruments (calipers) for the measurement of roundwood upon receipt at the mill did not indicate a violation of legislation or regulation in Romania.

3.3.2 Violations of the Romanian law on calibration (law 178/2003)

Information received

It was informed that HS may have violated the legislation on calibration of measurement devices in Romania^{5,6,7,8,19}. It is alleged that the Romanian law on calibration of measurement devices¹⁹ stipulates that calibration of measuring devices used in trade has to be approved by the Romanian National Office for Calibration (BRML).

Relevant findings

The law 178/2003¹⁹ is approving governmental ordinance no. 104/1999 amending and supplementing governmental ordinance no. 20/1992 on metrology (calibration). The updated version of governmental ordinance 20/1992 is still in force and specifies that measuring devices used in trading are subject to legal calibration control (*article 3 paragraph 1 control metrologic legal*) to be undertaken by the National Office for Calibration (*article 5*). However, law 178/2003 specifies that only measurement instruments which are listed in the *Official List* established by the National Office for Calibration (BRML) are subject to legal calibration control (*article 15*). The BRML was established in 2002 by Governmental Ordinance 193/2002.

Based on Government Ordinance 20/1999, modified by Governmental Ordinance 104/1999, and by the law 178/2003, and on the Governmental Decision 264/2006²⁰ which establishes the conditions for marketing and commissioning measurement instruments, and Governmental Decision 711/2015²¹ which establishes the conditions for placing measuring instruments on the market, the

¹⁹ Legea nr. 178/2003 privind aprobarea Ordonanței Guvernului nr. 104/1999 pentru modificarea și completarea prevederilor Ordonanței Guvernului nr. 20/1992 privind activitatea de metrologie.

²⁰ Hotărare nr. 264 din 22 februarie 2006 privind stabilirea condițiilor de introducere pe piață și de punere în funcțiune a mijloacelor de măsurare.

²¹ Hotărare nr. 711 din 26 august 2015 privind stabilirea condițiilor pentru punerea la dispoziție pe piață a mijloacelor de măsurare.

BRML elaborates and publishes *Official Lists* of measuring instruments which are subject to compulsory calibration.

There are the following relevant legal acts and corresponding lists:

1. In 2001, the BRML Order 144/2001 established the *Official List* of measuring instruments subject to mandatory metrological control of the state (L.O. - 2001 of 08.27.2001)²². Effective as of 6 September 2001, Art. 5 specifies that the measurement instruments on the *Official Lists* are subject to compulsory calibration by public authorities if they are used in fields of public interests (e.g. commercial transactions; official determination of the stocks based on measurements, etc.). The hand caliper for measuring roundwood diameter was listed in position 11, with a requirement for compulsory periodic calibration every 3 years. There are no other instruments for wood measurements detailed in the *Official List*.
2. In 2004, the BRML Order 27/2004 established the revised *Official List* of measuring instruments subject to legal metrological (calibration) control by the state (L.O. – 2004)²³. The hand caliper for measuring roundwood diameter is no longer listed for compulsory calibration. There are no other instruments for wood measurements detailed in the *Official List*.
3. In 2010, the BRML Order 48/2010 established the revised *Official List* of measuring instruments subject to legal metrological (calibration) control by the state (L.O. – 2010)²⁴. The hand caliper for measuring roundwood diameter is not listed for compulsory calibration. There are no other instruments for wood measurements present in the list.
4. In 2011, the BRML launched a public discussion for modifying the *Official List*. For the first time it included electronic instruments (calipers) for timber measurement.
5. In 2012, by Order 148/2012, the BRML approved and published the revised *Official List* of measuring instruments subject to legal metrological (calibration) control by the state (L.O. – 2012)²⁵. The *Official List* became effective as of 29 November 2012. Electronic instruments (calipers) for measuring roundwood (position L3) were included in the *Official List*. The control modalities were specified as follows: approval of the model (AM), initial calibration (VI) and periodic calibration (VP), with a requirement for compulsory periodic calibration every 2 years. The hand caliper for measuring roundwood diameter was not listed for compulsory calibration.

For electronic instruments (calipers) for measuring roundwood a special exception was listed. Electronic instruments (calipers) already in use when the BRML Order 148/2012 became effective (i.e. on 29 November 2012) could be presented for periodic calibration within one year without having to pass the approval of the model (AM) or the initial calibration (VI).

²² Ordin nr. 144/2001, Biroul Român de Metrologie Legală – BRML. Lista oficială a mijloacelor de măsurare supuse obligatoriu controlului metrologic al statului L.O. - 2001 din 27.08.2001.

²³ Ordin nr. 27/2004 pentru aprobarea Listei oficiale a mijloacelor de măsurare supuse controlului metrologic legal L.O. – 2004.

²⁴ Ordin nr. 48/2010 pentru aprobarea Listei oficiale a mijloacelor de măsurare supuse controlului metrologic legal L.O. – 2010.

²⁵ Ordin nr. 148/2012 pentru aprobarea Listei oficiale a mijloacelor de măsurare supuse controlului metrologic legal L.O. – 2012.

On 22 November 2013, HS requested periodic calibration (VP) by the authorities of their electronic instruments (calipers) for measuring roundwood at their operations in Sebes and Raudati.

6. In 2013, by BRML Order 485/2013, the BRML approved and published the norm NML 082-13 for legal calibration of *"Electronic equipment for measuring round wood"*²⁶. The norm NML 082-13 became effective as of 13 November 2013. According to this Norm, the maximal error admitted while measuring roundwood diameter is ± 2.5 mm, and ± 5 cm for measuring roundwood length under 5 m. In clause 3.4.2, the norm specifies *"The equipment in the configuration provided to the user carries out the determination of the cross-sectional diameter and, if appropriate, measurement of the length of roundwood, in accordance with its technical documentation"*. The norm does not include any technical detail on how the diameter of roundwood is to be determined.
7. In 2014, the legal frameworks in Romania were further complemented by Governmental Decision 470/2014²⁷, approving rules on wood origin, circulation and selling, on wood storage spaces, on roundwood processing installations, and on certain measures implementing the EU Regulation No. 995/2010 of 20 October 2010 (EUTR)²⁸ laying down the obligations of operators who place timber and timber products on the market.

HS informed the relevant authorities in Romania about their intent of using electronic instruments (calipers) for measuring roundwood when acquiring the environmental permits for constructing their operations Sebes and Radauti²⁹.

In June 2010, HS contacted the BRML and requested advice on whether their electronic instruments (calipers) for measuring roundwood needed to be registered and/or calibrated⁸. On 24 June 2010, the BRML informed HS that electronic instruments (calipers) for measuring roundwood are not subject to official calibration if they are not included in the *Official List* of measuring instruments⁸ subject to legal metrological (calibration) control by the state.

On 22 November 2013, in time to comply with BRML Order 148/2012 (see point 5. above), HS requested periodic calibration (VP) by the authorities of their electronic instruments (calipers) for measuring roundwood at their operations in Sebes and Raudati.

Furthermore, HS informed^{30,31}, that it requested an independent third party (Holzforschung Austria - HFA) on a biannual basis to verify the accuracy of measurements performed by using the electronic equipment (calipers). HFA's audits³¹ were carried out in 2008 at Sebes³², in 2009 at Radauti³³, in

²⁶ BRML Order 485/2013, approving Norma de metrologie legală NML 082-13 *"Echipamente electronice pentru măsurarea lemnului rotund"* - Norm NML 082-13 for legal calibration of "Electronic equipment for measuring round wood")

²⁷ Governmental Decision 470/2014 (Hotărârea de Guvern) published in the Official Gazette, Part I No 426 of 10 June 2014. G.D. no. 470/2014 entered into force on 8th October 2014.

²⁸ EUTR – EU Regulation No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market.

²⁹ confidential-001 - 429.2 20170327_Additional questions_Final

³⁰ confidential-002 - 428.1 HS to FSC counterargument to plausibility analysis

³¹ confidential-003 - 428.2a HS-FSC-Measurement_final_PV_final

³² 428.9 5a_080404_SEB_HFA

³³ 428.10 5b_090115_RAD_HFA

2010 at Sebes³⁴ and Radauti³⁵, in 2012 at Sebes³⁶, and in 2014 at Sebes³⁷ and Radauti³⁸. As no regulations for specific tolerances on calibration were available in Romania until 2013, HFA used as a proxy and tested against the relevant Austrian standards³⁹. In all cases HFA concluded that the electronic measurement instruments (calipers) used by HS functioned within acceptable tolerances.

After the BRML Order 148/2012 (see point 5 above) became effective, the required calibration of electronic instruments (calipers) for measuring roundwood was undertaken by the Romanian governmental authority (BRML) in year 2013⁴⁰ and year 2015⁴¹. In addition to the governmental control, HS continued independent verification by HFA of the electronic measurement instruments (calipers).

The National Office for Calibration (BRML) and Ministry of Water and Forests (MAP) were contacted with a letter dated 4 April 2017², seeking to clarify the official position of forest authorities on the use of the electronic measurement instruments (calipers) and the voluntary/compulsory character of the Romanian standard STAS 5150-73 for timber measurement and classification.

The National Office for Calibration (BRML) responded in a letter dated 18 April 2017⁴², that:

- (1) electronic instruments (calipers) for timber measurement are subject to compulsory metrological (calibration) control only after 29 November 2012, after the *Official List* LO-2012 of instruments for which calibration by the BRML is compulsory became effective;
- (2) for the period of 1 January 2012 to 29 November 2012 the electronic instruments for timber measurements (calipers) were not subject to legal calibration control as these electronic instruments were not included in the *Official List* of the instruments which are subject to legal metrological (calibration) control by the state;
- (3) according to the art 26 of the Governmental Ordinance 20/1992 about the calibration, approved and modified by the Law 11/1994 with the other successive modifications, producers, who import and use electronic instruments for timber measurements are entirely liable for the quality of the measurement instruments which are not subject to legal calibration control.

Therefore, this letter from BRML confirms the findings detailed above- i.e. no legal metrological (calibration) control by the state was available and/or needed until 29 November 2012 because electronic instruments (calipers) for measuring roundwood were not included in the *Official Lists*; and the users of the electronic measurement instruments (calipers) were deemed fully responsible and liable for the quality of their instruments.

³⁴ 428.11 5c_100423_SEB_HFA

³⁵ 428.12 5d_100428_RAD_HFA

³⁶ 428.13 5e_121122_SEB_HFA

³⁷ 428.15 5g_141113_SEB_HFA

³⁸ 428.14 5f_141112_RAD_HFA

³⁹ Ordinance of the Austrian Federal Office for Metrology and Surveying of 9.8.1984, with the calibration regulations for electronic roundwood measuring systems, as well as the amendments of 14.12.1991; and approval for electronic roundwood measuring systems GZ 2182/2000, approval for electronic roundwood measuring systems 1650/2005, and approval for electronic roundwood measuring systems 3031/2012.

⁴⁰ 428.16 6a_131215_SEB_BRML; 428.17 6b_131216_RAD_BRML; 429.3 1a_131215_SEB_BRML; 429.3 1b_131216_RAD_BRML

⁴¹ 428.18 6c_151124_SEB_BRML; 428.19 6d_151126_RAD_BRML; 429.3 1c_151124_SEB_BRML; 429.3 1d_151126_RAD_BRML

⁴² 440.1_official_response_by_BRML_RO; 440.2_official_response_by_BRML_EN

Interpretation and conclusions

Even though calibration of measuring instruments has been regulated by law in Romania prior to HS establishing its operations, the authority responsible (BRML) (Order 148/2012) included electronic instruments (calipers) for roundwood measurement only in 2012 in the *Official List* of instruments which are subject to periodic compulsory metrological control (calibration). After this order became effective HS requested calibration of its electronic instruments (calipers) for roundwood measurement. Since 2008, prior to the order becoming effective, HS has already been engaging Holzforschung Austria (HFA) to periodically verify the accuracy of roundwood measurements performed by using the electronic measurement instruments (calipers).

It is important to note that in their response the BRML underlines that “producers, who import and use electronic instruments for timber measurements are entirely liable for the quality of the measurement instruments which are not subject to legal calibration control”. Apparently the respective public authority (BRML) considers the use of such instruments including in commercial transactions to be under the exclusive responsibility of the parties involved. This is not uncommon throughout the EU, where governmental comprehensive control (regulation) is mostly focused on protection the interests of the public (i.e. consumers), but where the conduct of commercial transactions between business partners is left to a large extent up to the agreement between the parties involved. In this particular case the measurement of roundwood is subject to agreement between the businesses partners involved, with the business partners being liable for the quality of such measurement. This is handled in similar manor in Germany and Austria.

Based on the analysis of the relevant legislation and regulation in Romania, no evidence has been identified that HS was violating legal and/or regulatory requirements in Romania.

Based on the evidence reviewed it is therefore concluded that the lack of metrological (calibration) by the state of electronic instruments (calipers) for the measurement of roundwood did not violate any legislation or regulation in Romania. It is furthermore concluded that the conduct of business of HS as it concerns the calibration of electronic instruments (calipers) for the measurement of roundwood did not indicate a violation of legislation or regulation in Romania. It is furthermore concluded that HS complied with the legal requirement for metrological (calibration) control of its electronic instruments (calipers) for measuring roundwood as soon as it was legally required and within the timeframe legally foreseen. And it is concluded that well (app. 5 years) in advance of relevant governmental regulation in Romania, HS voluntarily engaged an independent third party (HFA) on a biannual basis to control/verify the accuracy of measurements performed by using the electronic equipment (calipers) against the respective standards legally prescribed in Austria.

3.3.3 Information to BRML on use of electronic measurement instruments

Information received

It was informed that HS may have misinformed the public authority responsible for calibration of measurement instruments in Romania (BRML)^{6,7,8}. Allegedly HS informed the public authority responsible for calibration in Romania in 2011 that electronic measurements of roundwood are similar to manual measurements as specified in the Romanian standards STAS 5170-73 and that no difference exists between electronic measurement and manual measurement of timber^{6,7,8,43}.

⁴³ Letter of 29.09.2011 by HS informing BRML – paragraph 3 translated from Romanian “*Electronic measurements are based on the same principles of volume determination of the timber as the classical [conventional] measurement – i.e.*”

It is further informed that while manual diameter measurements are taken in the middle of a log, the electronic measurement instruments seek the smallest diameter within 20 cm of the middle of the log, and that therefore manual diameter measurements are consistently lower than electronic measurements⁸.

Relevant findings

In 2012, the forest research institute in Baden-Württemberg, Germany together with the University of Freiburg, Germany analyzed and concluded that substantial differences (app. 3%) exist between electronic and manual timber measurement⁴⁴. According to the informants attending the meeting in Iasi, Romania, HS themselves found volumes of timber from external sources based on electronic measurement to be around 10% lower than based on manual measurement^{5,6}. Volumes of timber from HS' own log yards were based on electronic measurement app. 7% lower than based on manual measurement^{5,6}. It is reasonable to assume that electronic timber measurement results consistently show lower timber volumes than manual measurement. This was also confirmed by the interviews with HS suppliers⁴⁵.

The information provided by HS to BRML on the 29 September 2011 stating that electronic measurements are consistent with the Romanian standard STAS 5170-73, clause 2.4, needs to be considered misleading. According to HS' own statement²⁹, HS was following the Austrian rules for timber measurement (Österreichische Holzhandelsusancen – ÖHU)⁴⁶ rather than the Romanian standard STAS 5170-73.

On the information regarding manual diameter measurements are taken in the middle of a log, while electronic measurements seek the smallest diameter within 20 cm of the middle of the log, it must be said that seeking the smallest diameter within 20 cm of the middle of the log is used to avoid measuring diameters on knots or across branch stumps. The same rule applies in manual measurement. Nevertheless, it is reasonable to assume that electronic diameter measurements are on average slightly lower than manual measurements.

In this context it must be mentioned that manual measurement can deviate for a whole variety of reasons including human error, especially when measured in the forest. The electronic measurement of log diameters, length and volumes is certainly more reliable and consistent.

Interpretation and conclusions

The findings above indicate that electronic measurement results consistently show lower roundwood volumes than manual measurement. However, it needs to be stressed that such difference in volumes can be the result of a broad variety of causes – from accidental or intentional inaccurate manual measurement to accidental or intentional manipulation of electronic measurement instruments. It is questionable whether the causes for differences between electronic measurement and manual measurement can be independently established beyond reasonable doubt and whether

measurement of the average diameter and length which are used according to the STAS 5170-73 (appended), chapter 2.4 to determine the volume. The only difference is the fact that, in classical methods, the two measurements are taken manually and in our case electronically, as described in the appendix attached."

⁴⁴ 417. Artikel_Vergleich_Messmethoden

⁴⁵ 433_Transcript_9_interviews_HS_suppliers

⁴⁶ 418. Holzmessung_Forst-Holz-Papier_2007 - Österreichischen Holzhandelsusancen (ÖHU)

these are related to the conduct of business by HS, and it is most likely beyond the scope and resources of this investigation to do so.

In this context it is also important to consider the response by BRML (see chapter 3.3.2. point (3) above) which stipulates that the *“the users of the electronic measurement instruments (calipers) were deemed fully responsible and liable for the quality of their instruments”*. In this context the clarification by BRML needs to be interpreted as the business parties being mutually responsible for agreement on all aspects of their conduct of business transactions – which includes provisions for measurement of roundwood and possible correction of measurement error.

Based on analysis of the communication between HS and BRML as well as the relevant legislation and regulation in Romania, there is evidence that HS misinformed BRML in relation to their use of electronic instruments (calipers) for measuring roundwood – in particular, that no difference exists between electronic measurement and manual measurement). However, no indication has been identified that this misinformation affected the work of the BRML, and/or that the communication by HS lead to compromising legal and/or regulatory provisions in Romania. This interpretation is supported by the fact, that the BRML in year 2011 launched a public discussion for modifying the *Official List* of measurement instruments which are subject to compulsory calibration by public authorities, and that in year 2012 by Order 148/2012, the BRML approved and published the revised *Official List* which included electronic instruments (calipers) for measuring roundwood (see chapter 3.2.2. points 4. and 5. above). There is therefore considerable evidence that BRML recognized the importance of and proceeded with its regulatory work with respect to electronic instruments (calipers) for roundwood measurement, and no indication that the misinformation by HS to the BRML had any relevant impact on the regulatory work of the BRML.

Various explanations may be possible for the fact that the authorities in Romania, namely BRML, only in year 2012 established legally binding regulation with respect to metrological (calibration) control of electronic instruments (calipers) for roundwood measurement. It is questionable whether the causes for timing of governmental regulation by BRML can be independently established beyond reasonable doubt and whether these are related to the conduct of business by HS, and it is most likely beyond the scope and resources of this investigation to do so.

Based on the evidence reviewed it is therefore concluded that the misinformation by HS to BRML did not negatively impact and/or impeded the regulatory work of the BRML with respect to metrological (calibration) control of electronic instruments (calipers) for roundwood measurement.

3.3.4 Use of the Austrian rules for timber classification and measurement

Information received

It was alleged that HS used different elements of the Austrian rules for timber measurement and classification^{8,9,10,11,29,30,31}, instead of the Romanian rules, for their operations in Romania. There is

documented evidence^{23,47,48,49,50,51,52,53} that HS contractually obliged its suppliers to accept different elements of the Austrian timber measurement rules over an extended period of time. Allegedly the use of the Austrian rules for timber measurement and classification results in possibly underestimating volume and quality of timber and it was suggested that it may not have been permitted in Romania. Therefore, such contractual obligation may have obliged suppliers to accept underestimating volume and quality of timber.

Relevant findings

The Romanian standard STAS 5170-73 was established in 1973 and remained valid until 23 December 2013, when it was replaced by the standard SR 13569:2013/C91:2015. Since 2013, the Romanian standard SR 13569:2013/C91:2015 applies. Its application has voluntary character.

The Law no. 163 of 24 June 2015 on national standardization (Legea nr. 163 din 24 iunie 2015 privind standardizarea națională), which replaced the Law 355/2002 specifies in article 6 that Romanian standards have voluntary character, unless a governmental regulation establishes otherwise.

The National Office of Standardization (ASRO)¹⁷ confirmed verbally that the Romanian standard STAS 5150-73 has been voluntary since 1998. In fact STAS 5170-73 was used consistently for measuring timber in trade between buyers and suppliers only during the communist time and prior to timber industry privatization in the mid-1990s.

The EU Directive 68/69 for the intra-European approximation of laws in terms of roundwood scaling and grading was aimed at aligning within EU member states the national regulation rules for timber measurement and classification. It was suspended on 31.12.2008⁵⁴. Between years 2000 and 2008, Romania has adopted special criteria for measuring and classifying roundwood for external trade (Governmental Decision 1090/2000 for approving criteria of measuring, classifying and marking roundwood), effectively preparing for EU accession. The quality classes for roundwood were different from other technical norms in force. It is important to note that neither the EU Directive nor other norms in Romania specified a requirement for obligatory use of particular rules for timber measurement and classification in trade.

HS confirmed that it used measurement rules which were largely based on Austrian standards *Österreichische Holzhandelsusancen* and *ÖNORM L 1021*⁵⁵. The use of the Austrian rules for timber measurement (*Österreichische Holzhandelsusancen – ÖHU*)^{39,46,55} is considered a customary rule

⁴⁷ 428.5 2_HS_supplier-contracts_2009-2017

⁴⁸ 410.2 contract 2007 - contract between HS and supplier

⁴⁹ 410.3 contract 2008 - contract between HS and supplier

⁵⁰ 410.4 contract 2012 - contract between HS and supplier

⁵¹ 410.7 contract 2013 - contract between HS and supplier

⁵² 410.9 Roundwood purchasing contract_Eng - contract between HS and supplier

⁵³ 410.10 Musterkontrakt - contract between HS and supplier

⁵⁴ 421. Sauter

⁵⁵ ÖNORM L1021 – August 2013 und Neuauflage 2015 – regulates the measurement of Roundwood at mill gate – integrated in the Austrian rules for timber classification and measurement (*Österreichischen Holzhandelsusancen (ÖHU)*) – see also reference 38.

under Austrian corporate code of law. They are valid for timber trade in Austria, unless other relevant details are specified in contractual agreements. Their use can therefore be considered voluntary under Austrian law.

EU Regulation no. 1025/2012 on European Standardization⁵⁶ in article 2 defines that a “*standard means a technical specification, adopted by a recognized standardization body, for repeated or continuous application, with which compliance is not compulsory, (...)*”. The EU regulation is a further indication that the standards for roundwood measurement and classification in Romania are voluntary in nature.

Furthermore, it is understood, that suppliers have the possibility of being present during measurement and classification of roundwood at the mill and checking whether measurement and classification meets their own expectations⁵⁷.

Interpretation and conclusions

Analysis of the Austrian standards (*Österreichische Holzhandelsusancen* and *ÖNORM L 1021*)^{39,46,55} as well as the relevant legislation and regulation in Romania and in the EU⁵⁶, yielded no evidence that the rules used by HS for measuring and classifying roundwood compromised any legislation and/or regulation in Romania, Austria or the EU. This underlines the voluntary nature of the Romanian and/or Austrian standards in favor of private agreement between the parties involved in timber trade. As HS specified the relevant aspects of roundwood measurement in its contracts with suppliers it is reasonable to assume that rules for measuring and classifying roundwood were agreed between the contracting partners. This was also confirmed by the interviews with HS suppliers⁴⁵.

Based on the evidence reviewed it is therefore concluded that the use of (parts of) the Austrian standards for measuring and classifying roundwood by HS did not violate any legislation or regulation in Romania related to this specific aspect investigated.

3.3.5 Violation of the Romanian provisions for timber measurement (STAS 5170-73 and SR13569/C91:2013)

The following points 3.3.5.1, 3.3.5.2. and 3.3.5.3 refer to the alleged non-compliance with the Romanian standard STAS 5170-73.

It was already detailed in point 3.3.1 above that the Romanian standard STAS 5170-73 and the subsequent standard SR 13569:2013/C91:2015 were voluntary in nature. It is therefore concluded that compliance with the Romanian standard STAS 5170-73 was not required by law and/or regulation in Romania, and that the aspects considered under points 3.3.5.1, 3.3.5.2. and 3.3.5.3 are subject to private contractual agreement between HS and its suppliers. The Romanian standard STAS 5170-73 of 1973 was replaced in 2013 with the standard SR13569/C91:2013. In clause 4.4.2 it specifies “... *Any modification of the measurement rules according to this standards should be*

⁵⁶ Regulation (EU) no 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council, published in Official Journal of the European Union no. L 316 of 14.11.2012.

⁵⁷ 430. transcript_interview_HIS_former_employee_May 2017

mentioned. The modifications should be subject of an agreement amongst the interested parties". Thus modification of measurements subject to agreement between the parties involved is explicitly foreseen in this currently valid Romanian standard for measuring roundwood. This underlines the voluntary nature of the standard in favor of private agreement between the parties involved in timber trade. As HS specified the relevant aspects of roundwood measurement in its contracts with suppliers (see above) it is reasonable to assume that modification of the provisions of the Romanian standard SR13569/C91:2013 were agreed between the interested parties (contracting partners).

Only the **"Information received"** and the **"Relevant findings"** are detailed for each of the aspects addressed under sub-points 3.3.5.1, 3.3.5.2. and 3.3.5.3. The section on **"Interpretation and conclusions"** is detailed for point 3.3.5 summarizing interpretation and conclusions for sub-points 3.3.5.1, 3.3.5.2. and 3.3.5.3.

3.3.5.1 Rounding of timber measurements (STAS 5170-73, point 2.3.1.6)

Information received

It was suggested that HS did not comply with the provisions of the Romanian standard STAS 5170-73, clause 2.3.1.6⁵⁸, namely the provisions for rounding measurements to full centimeters^{6,7,8,9,10}, and that this resulted in significantly underestimating timber measurements and timber volumes. It was informed that HS consistently rounded all fractions of centimeter to the next lower full centimeter^{6,7,8,9}. It was furthermore alleged that HS did not inform its suppliers, contractors and/or relevant Romanian authorities correctly about this^{6,7,8,9,10}.

Relevant findings

The Romanian standard STAS 5170-73 stipulates in clause 2.3.1.6⁵⁸ that measurements of timber shall be rounded to full centimeters with fractions smaller than or equal to 0.5 cm shall be rounded to the next lower full centimeter, and fractions larger than 0.5 cm shall be rounded to the next higher full centimeter.

The Romanian standards STAS 5170-73 of 1973 and SR13569/C91:2013 of 2013 are voluntary in nature. Standard SR13569/C91:2013 foresees explicitly that modification of measurement rules is subject to agreement between the parties involved. This underlines the voluntary nature of the standard in favor of private agreement between the parties involved in timber trade.

Moreover, HS indicated in their contracts with suppliers^{47,48,49,50,51,52,53,57} that roundwood measurements were rounded downward to the next full centimeter. Roundwood suppliers to HS were therefore aware of the rounding of diameter measurements. This was also confirmed by the interviews with HS suppliers⁴⁵.

⁵⁸ Romanian standard STAS 5170-73, clause 2.3.1.6 - *"The value of the diameter is being expressed in whole cm and it will be rounded downwards for fractions up to 0.5 cm (inclusive) and rounded up for fractions from 0.5 cm."*

3.3.5.2 Deductions for bark of timber (STAS 5170-73, point 2.3.1.1)

Information received

It was suggested that HS did not comply with the provisions of the Romanian standard STAS 5170-73, clause 2.3.1.1⁵⁹, and clause 2.3.1.2⁶⁰, namely the provisions for deduction of bark on roundwood diameters, and that this resulted in significantly underestimating timber measurements and timber volumes. It is furthermore alleged that HS did not inform its suppliers, contractors and/or relevant Romanian authorities correctly about this. It is alleged that HS, deducted 1 cm for bark on logs with diameters of 29 cm or less and 2 cm for bark on logs with diameters of 30 cm or more.

Relevant findings

The Romanian standard STAS 5170-73 stipulates in clauses 2.3.1.1⁵⁹ and 2.3.1.2⁶⁰ that the real thickness of the bark shall be deducted from roundwood diameters. The Romanian standard SR 13569:2013/C91:2015¹⁵ refined the regulations as follows *“In the case of measuring the diameter with bark, this value should be converted to the diameter without bark, by using one of the methods: (1) The diameter value will be reduced with twice the thickness of the bark, estimated in the place of the measurement. In the case of doubts regarding the bark thickness, it will be measured at the place of diameter measurement; or (2) A bark coefficient, mentioned in written and agreed between the seller and buyer will be used; or (3) A bark coefficient, as published in the tables for bark thickness or in the classification rules published in the country of supply, will be agreed upon and accepted by both parties.”*.

Since the real thickness of bark varies from log to log, the rules practiced in Romania until 2015 stipulated that 1 cm was deducted for bark for logs with a diameter smaller than or equal to 40 cm, and 2 cm were deducted for bark for logs with a diameter larger than 40 cm.

In year 2015 the Ministry of Environment, Water and Forestry (MMAF) released the order 1323/2015 approving dendrometrical methods to measure the volume of timber for conversion and values necessary for calculating the volume of timber conversion. While this ministerial order is only relevant for measuring roundwood in the forest immediately before and/or after harvesting, but not for trade of timber within the industry, it addresses the modality of bark measurement as mentioned in the standard SR 13569:2013/C91:2015.

3.3.5.3 Overmeasure of timber (STAS 5170-73)

Information received

It was suggested that HS did not comply with the provisions of the Romanian standard STAS 5170-73, clause 2.3.2.2⁶¹, namely the provisions for overmeasure^{5,6,7,8}, and that this resulted in

⁵⁹ Romanian standard STAS 5170-73, clause 2.3.1.1 - *“For logs with a length up to 8 m, the diameter is measured from the half of the log (for logs without bark, where no defect in the log have been identified). The value is calculated as the average of two perpendicular intersections in the middle of the log.”*

⁶⁰ Romanian standard STAS 5170-73, clause 2.3.1.2 - *“In those cases when the logs are measured with bark, the real thickness of the bark should be subtracted”*.

⁶¹ Romanian standard STAS 5170-73, clause 2.3.2.2 - *“Lungimea se masoara intre capetele piesei, pe lungimea cea mai scurta. Supralungimea acordata unor sortimente, conform standardelor respective ca si lungimea partii olarite nu se iau in considerare.”*

significantly underestimating timber measurements and timber volumes. There is documented evidence^{5,8,47,48,49,50,51,52,53,57} that HS contractually obliged its suppliers to accept and deliver 10 cm overmeasure on logs of 3 m or 4 m length. Overmeasure is not counted for accounting purposes.

Relevant findings

The Romanian standard STAS 5170-73, clause 2.3.2.2 stipulates *“The length is measured between the ends of the piece, on the shortest length. The excess of the range, according to the respective standards, is not taken into account.”*⁶¹. Compliance with STAS 5170-73 is not compulsory. No other compulsory regulation in Romania specifying the technical details in relation to overmeasure of roundwood has been identified.

The new Romanian standard SR13569/C91:2013¹⁵, which replaced the standard STAS 5170-73 sets out measuring the length in clause 4.2 *“the length is the shortest distance between the two ends of a piece”* and in clause 2.2.1 *“the length of the roundwood is measured on the surface of the piece, with manual or automatic measurement instruments adapted and calibrated to achieve a maximum measuring error of 1 cm”*.

More importantly it notes in clause 4.4.2 *“for determining the real volume of the wood pieces one may use informatics programs (softwares) that have to comply with the rules of this standard. Any modification of the measurement rules according to this standards should be mentioned. The modifications should be subject of an agreement amongst the interested parties”*.

Thus modification of measurement rules subject to agreement between the parties involved is explicitly foreseen in this currently valid Romanian standard for measuring roundwood. This underlines the voluntary nature of the standard in favor of private agreement between the parties involved. As HS specified the relevant aspects of roundwood measurement in its contracts with suppliers it is reasonable to assume that modification of the provisions of the Romanian standard SR13569/C91:2013 were agreed between the contracting partners.

3.3.5.4 Reduction of length of roundwood

Information received

It was suggested that HS did not comply with the provisions of the Romanian standards STAS 5170-73 and SR13569/C91:2013, when it reduced the length of roundwood due to a lack of overmeasure^{5,6,8}. More specifically, it was informed that HS reduced the length of roundwood to the next lower category, if the overmeasure specified in the contract was not delivered. Overmeasure was contractually specified to be at least 10 cm and at most 25 cm. A log of 4.05 m did not have the required overmeasure of 10 cm and was reduced to the next lower category and counted / registered as a log of 3 m.

Relevant findings

The Romanian standards STAS 5170-73 and SR13569/C91:2013, are voluntary in nature. Their provisions may be superseded by private contractual agreement. As HS included the relevant modalities for roundwood measurement and classification in its contracts^{47,48,49,50,51,52,53,57}, it is reasonable to assume that roundwood suppliers agreed to the modalities for roundwood measurement and classification.

Interpretation and conclusions

The Romanian standards STAS 5170-73 of 1973 and SR13569/C91:2013 of 2013 are voluntary in nature and as such supporting private agreement between the parties involved in timber trade.

The HS contracts with suppliers^{47,48,49,50,51,52,53}, at least until year 2014 explicitly mention the following:

- 1) "The seller is accepting the buyers electronic measurement system, which he declares that he knows."⁶²; and
- 2) "**Measurement:** is done by an electronic installation and the results are registered. The results can be presented to the seller upon request. The measurement and sorting will be done in the log yard of the buyer by qualified personnel according to the quality norms of SC Holzindustrie Schweighofer SRL. The base of the measurement calculation is the middle of the log. The measurement made in the log yard is recognized as invoicing base. The seller gets the measurement results on a report, which contains the delivered volume and quality piece by piece. The electronic measurement is done in steps of 1 centimeter after debarking, and the rounding is done to the smallest measured value. If the overlength is below 5 cm, the length will be reduced with 1m."⁶³.

This shows that suppliers to HS explicitly agreed to measurement and classification of roundwood according to the HS rules upon reception at the HS facilities as the basis for pricing, invoicing and payment. This is compliant with the provisions of the Romanian standard SR13569/C91:2013¹⁵, clause 4.4.2 which specifies "... Any modification of the measurement rules according to this standards should be mentioned. The modifications should be subject of an agreement amongst the interested parties". Thus modification of measurements subject to agreement between the parties involved is explicitly foreseen in this currently valid Romanian standard for measuring roundwood.

As HS specified (most of) the relevant aspects of roundwood measurement and classification in its contracts with suppliers it is reasonable to assume that interested parties (i.e. contracting parties; roundwood suppliers) were aware of the modification of the provisions for roundwood measurement and classification, and that such modifications were agreed between the interested parties (i.e. contracting parties). This is also confirmed by the interviews with HS suppliers, service providers and a competitor⁴⁵. The interviews consistently confirmed that all were aware of (modifications to) the rules for roundwood measurement and classification, and of the use of electronic instruments for measuring roundwood. Moreover, the persons interviewed while being aware that volumes registered at receipt of the roundwood at the HS mill were consistently lower the volumes measured in the forest, did not seem to consider these differences to be significant and/or prohibitive. Some suppliers interviewed noted that HS paid higher price and was more reliable than some of HS' competitors, which – in their opinion – compensated for possible underestimation of volume and quality of the roundwood delivered to HS.

⁶² 428.5 2_HS_supplier-contracts_2009-2017 – "... Vanzătorul accepta sistemul de măsurare electronică al cumpărătorului, pe care declară că îl cunoaște. ..."

⁶³ 428.5 2_HS_supplier-contracts_2009-2017 – "... Masuratoarea este realizată de o instalație electronică iar rezultatele sunt înregistrate pentru a putea fi prezentate la cererea expeditorului. Masuratoarea și sortarea vor fi efectuate la intrarea în fabrica cumpărătorului de către personalul calificat după normele de calitate S.C.Holzindustrie Schweighofer S.R.L. Baza de calcul a măsurătorii este mijlocul busteanului. Masuratoarea efectuată în fabrică va fi recunoscută ca baza de facturare. Vanzatorul va primi măsurătorile pe o listă care va conține cantitatea și calitatea livrată bucată cu bucată. Măsurarea electronică se efectuează din cm în cm după decojire iar rotunjirea se face la valoarea inferioară a intervalului de măsurare. Dacă supralungimea este sub 5 cm se reduce 1 m. ..."

No evidence has been identified that HS violated any legislation and/or regulation in Romania in relation to these specific aspects investigated.

Based on the evidence reviewed it is therefore concluded that interested parties (i.e. contracting parties) were aware of and agreed to modification of the provisions for roundwood measurement and classification by HS, and that the conduct of business by HS did not violate any legislation or regulation in Romania related to these specific aspects investigated.

Moreover, reducing the length of roundwood to logs which do not have the contractually required overmeasure to the next lower category is practice which is not uncommon in various countries (e.g. Austria, Germany, Romania, etc.) in Europe.

3.3.6 Difference in roundwood measurement and estimation of roundwood volume

Information received

It was informed that substantial differences existed between measurement of standing timber in the forest, of roundwood at the harvesting site, of roundwood along the supply chain and of roundwood upon reception at HS facilities^{5,6,7,8,9}. It was suggested that the measurement approaches and systems used by HS cause such differences in measurement and have an undue part in underestimating roundwood volume. It was also suggested that this underestimating of roundwood volume de-facto results in avoiding correct payment of roundwood to forest owners, suppliers and service providers^{5,6,7,8,9}. It was furthermore suggested that the incorrect payment of roundwood de-facto results in lowering tax payments to the Romanian state (see also section 3.3.7).

Relevant findings

It is well known that measurement of roundwood under practical conditions varies substantially based on (a) the location of measurement, (b) the instruments/techniques used for measurement, (c) the calculations used to convert measurements to wood volume, and (d) the purpose for which volume is measured.

- a) Measurement of wood volume takes places as inventory of standing timber, as measurement of roundwood during and/or after harvesting, as roundwood in transactions between suppliers and buyers. Measurement of wood volume at each of these different locations is associated with different purposes. The locations and purposes of volume measurement significantly influence the instruments/techniques used for measurement and the calculations used for conversion to wood volume.
- b) Different instruments/techniques are used for measurement of wood according to locations and purposes of measurement. It is well known that different instruments/techniques used for measurement of wood result in different measurements^{44,54}. Such differences between different measurement instruments/techniques can be very substantial. It was identified that volume differences between measurement according to the standards used in Austria and the standards used in Germany were app. 3%⁵⁴. Between different electronic measurement techniques differences in resulting volume of up to 10% were identified⁵⁴. Moreover each instrument/technique used has particular sources and ranges for error – i.e. error in measurement can result from objective deficiencies associated with particular instruments/techniques and/or from deficient application of particular instruments/techniques either through negligence or intent.

- c) Depending on the location of measurement, the measurement instruments/techniques used and the purpose of wood measurement, different calculations are used for conversion of measurements to wood volume. As trees grow in various irregular forms and shapes it is well established that different approaches for calculation of wood volume are only approximations of the wood volume which are more or less accurate. It is important to note that errors introduced in measurement taken in 2 dimensions (e.g. hand caliper, electronic caliper, etc.) have a geometric effects on error when converted to volume. Errors introduced in 3 dimensional measurement of wood have a linear effect on calculation of volume.
- d) The purpose of measurement of wood volume varies from inventory of standing timber and harvested roundwood, compensation of service providers (e.g. harvesting contractors, transport contractors, etc.) to calculation of prices in transactions between suppliers and buyers. As measurements of wood volumes can vary significantly, it is for the parties concerned to agree and select the measurement location, instruments/techniques and calculations appropriate for the particular purposes.

A forest owner inventorying his/her stand of standing timber for planning purposes will probably be content with a more or less accurate approximation of wood volume and quality – even though there are applications of measurement existing where a forest owner benefits from overestimating wood volume (e.g. sale of entire forests) and other applications where he/she benefits from underestimating wood volume (e.g. tax purposes). A contractor providing harvesting and/or transport services is likely interested to use measurement instruments/techniques which result in overestimating the roundwood handled, as this is the basis for his/her compensation. A state authority controlling that wood harvested and transported is correctly documented and tracked is probably aiming to use measurement instruments/techniques which are relatively simple and which can be applied and controlled under practically every condition allowing effective documentation and controls throughout their territory – while the accuracy of the actual volume may be less important. Suppliers and buyers of wood need to use measurement instruments/techniques which result in wood volumes that both parties can agree to use for pricing and invoicing.

It is obvious that different purposes determine to a very significant extent the measurement instruments/techniques and calculation approaches used by different parties, and that these purposes have a significant effect on the accuracy of measurement and whether such measurement is effectively overestimating or underestimating real wood volume. It is also recognized and known that different measurements of roundwood in Romania differ and that the measurements taken by HS upon receipt of roundwood at the mills is lower than the measurement of roundwood in the forest⁵⁷. Professionals interviewed noted this difference to be 5-7% and could be as high as or even in excess of 15%^{5,6,57}.

Ministerial Order 1323/2015 by the Ministry of Environment, Water and Forestry (MMAF) *“approving dendrometrical methods to measure the volume of wood for selling and values necessary for calculating the volume of wood for selling”* (Ordin nr. 1323 din 31 august 2015 privind aprobarea metodelor dendrometrice pentru evaluarea volumului de lemn destinat valorificării și valorile necesare calculului volumului de lemn destinat valorificării) foresees 11 different methods of measuring timber and calculating volume for different purposes in relation to commercial transactions.

Furthermore, the Governmental Order no. 2526 of 30 December 2016⁶⁴ for the completion of the Methodology on the organization and operation of the SUMAL, the obligations of SUMAL users, as well as the structure and manner of transmitting standardized information, approved by the Order of the Minister for Water, Forests and Fisheries no. 837/2014 specifies as follows in article 37/1 point (2) *“When calculating the volume of round wood inventoried under the conditions of par. (1) lit. a) and b) the following tolerances are allowed: (a) $\pm 2\%$ of the total volume in the case of inventory of more than 100 pieces; (b) $\pm 3\%$ of the total volume in the case of inventory of a number of pieces ranging from 50 to 100 pieces; (c) $\pm 4\%$ of the total volume when inventorying a number of pieces smaller than 50 pieces.”* Thus the Romanian government recognizes that within manual measurement of wood for the purpose of documentation in the SUMAL, deviations of up to 4% in timber volume calculated are acceptable.

Furthermore, Mr. Victor Giurgiu, Professor at the University of Suceava highlighted already in 1979 that the *“standard error of volume calculation based upon measuring the middle section of logs is $\pm 8-10\%$, but the maximum errors can reach up to $\pm 20-25\%$ of the volume of a piece. This conclusion is particularly important for practice because it shows that the volume of a small number of parts [logs] is determined with very high errors. The middle section [measurement] process provides satisfactory results only when a large number of parts [logs] are cubed (Giurgiu, 1979)”*. This research and its practical relevance was referred to in a reference no. 165 654 by the Ministry of Environment, Water and Forest, Cabinet Secretary of State, approved Ms. Erika Stanciu, State Secretary⁶⁵. The research of V. Giurgiu and the reference by the Ministry of Environment, Water and Forest clearly shows that it is well known and recognized that significant difference exist in calculation of timber volume based on different measurements. These differences may be most significant when volume calculations are based on measurement of only a small number of pieces of timber.

The above means for the case of HS that the parties involved at different stages between inventorying standing timber, harvesting of timber in the forest and reception of roundwood at HS' facilities need to agree on locations, instruments/techniques, calculations and purposes of measurement of wood volume. This is also explicitly foreseen in Romanian legislation and regulation^{15,17,18,42} (see also sections 3.3.2; 3.3.3; 3.3.5 above). The same is also foreseen in relevant standards, industry agreements, legislation and regulation in other European countries – e.g. Austrian^{46,54,55}; Germany^{44,54,66,67}; etc.)

The differences in wood volume between different measurements/calculations taken at different stages between inventory and harvesting of timber in the forest and reception of roundwood at buyer's facilities (e.g. log yard, saw mill, etc.) are normally absorbed by either the seller or the buyer or both. In other words if the forest owner (e.g. ROMSILVA) measures a certain volume of standing timber, then a different volume upon harvest and lastly agrees in a contract with a sawmill (e.g. HS) that electronic measurement upon receipt at the mill is the basis for pricing and payment, the forest

⁶⁴ ORDIN nr. 2526 din 30 decembrie 2016 pentru completarea Metodologiei privind organizarea și funcționarea SUMAL, obligațiile utilizatorilor SUMAL, precum și structura și modalitatea de transmitere a informațiilor standardizate, aprobată prin Ordinul ministrului delegat pentru ape, păduri și piscicultura nr. 837/2014; Governmental Order no. 2526 of 30 December 2016 for the completion of the Methodology on the organization and operation of the SUMAL, the obligations of SUMAL users, as well as the structure and manner of transmitting standardized information, approved by the Order of the Minister for Water, Forests and Fisheries no. 837/2014;

⁶⁵ reference no. 165 654 by the Ministry of Environment, Water and Forest, Cabinet Secretary of State, approved Ms. Erika Stanciu, State Secretary; 444.Referat_modificare_OM_837

⁶⁶ 422. Volumenmessung_Rahmenvereinbarung_RVR_D

⁶⁷ 450_Rahmenvereinbarung_Weksvermessung-DFWR_VDS_RVWV_050114

owner is responsible for absorbing the differences between measurements. Vice versa – if it is agreed that the basis for pricing and payment is the measurement of standing timber (e.g. in auctions of harvesting licenses), then the differences in measurement are absorbed by the buyer (e.g. forest contractor, HS).

In summary, it is important to note that unless legislation(s) and/or regulation(s) are violated, it is considered legitimate for different parties in the value chain to use measurement locations, instruments/techniques and calculations of volume which serve their particular purposes best. If a party in the value chain considers particular locations and/or instruments/techniques for timber/wood measurement and/or certain calculations of wood volume not appropriate, said party is free to reject the use of such measurement details and/or challenge it in a court of law.

Interpretation and conclusions

It is concluded based on the information and evidence reviewed in relation to differences in roundwood measurement and estimation of roundwood volume that such differences commonly occur in timber measurement, and that there are various aspects which cause such difference, and that such differences are well known and accepted in forestry and timber trade not only in Romania but throughout the industry. It is common that differences between different measurements are absorbed by the parties involved in the trade chain – from forest owners, through service providers to manufacturers of wood products.

It is also concluded based on the different aspects investigated and detailed in this section 3.3.6 that differences between measurement of roundwood in the forest and at different points in the supply chain are well known and a reality in forest products trade around the world, and that the roundwood measurement and classification systems used by HS led to results which differed significantly from other measurements along the value chain, but that no indication was identified that the roundwood measurement and classification systems used by HS led to results which were not known and/or not accepted by the contracting parties involved.

It needs to be said at this point that with sufficient criminal intent it is possible that various parties along the value chain collaborate to commit fraud through deficient measurement of wood volume. Whether this happened in case of HS in Romania would need an investigation that is considered beyond the scope and resources of this investigation (e.g. access to documentation, competence of experts, human and financial resources available, etc.).

The IP is aware that official investigations of HS business are currently ongoing^{57,68}, and that these investigations are not related to timber measurement and/or manipulation thereof. As the IP has not been presented with or identified any concrete substantiated evidence in relation to this aspect, the elaborations in this chapter 3.3.6 are not intended to suggest criminal investigation.

3.3.7 Evasion of payment for roundwood received and associated taxes

Information received

It was suggested that the use of electronic instruments (calipers) for roundwood measurement and by modifying the rules for measurement and classification of roundwood effectively lowered

⁶⁸ communication by Ms. Erika Stanciu, former State Secretary for Forests.

(underestimated) the volume of roundwood purchased by HS, and that this effectively resulted in lack of payment for the roundwood to suppliers as well as associated taxes to the Romanian state^{5,6,8}.

Relevant findings

As already detailed above, the Romanian standards STAS 5170-73 and SR13569/C91:2013, are voluntary in nature. Their provisions may be superseded by private contractual agreement. As HS included (most of) the relevant modalities for roundwood measurement and classification in its contracts^{47,48,49,50,51,52,53}, it is reasonable to assume that roundwood suppliers agreed to the modalities for roundwood measurement and classification. Therefore it is also reasonable to assume that suppliers of timber, including the Romanian state were compensated as contractually agreed.

As in other countries in the EU, business taxes are calculated based on the value of goods and services sold minus the value of goods and services purchased – i.e. the value added by the business.

Upon request by the IP, Prof. Dr. Marian Dragoi of the University of Suceava⁶⁹ confirmed that this also applies in Romania and that direct and indirect taxes are to be paid by any business in Romania based on the value added by the business (i.e. the value of the goods (e.g. sawn timber) and services (e.g. shipping of finished product) sold minus the values of goods (e.g. roundwood) and services (e.g. roundwood transport) purchased). It was also confirmed that taxes are not due in relation to the value of good (e.g. roundwood) and services (e.g. roundwood transport) purchased. And it was confirmed that tax calculations and taxes are usually based on the value of goods and services, but not on their respective volume. For the financial authorities in Romania (and any other European country) it is therefore important that the value of any business transaction (i.e. purchase or sale) is declared correctly but it is not relevant which volume of wood was transacted for a particular value.

Thus, even if suppliers to HS issued formal invoices only for part of roundwood shipments delivered and if they indeed received part of the payment without proper invoices, it is important to note that this probably constitutes an illegal act by the supplier not by HS. As such doing effectively lowers the revenues of the supplier before calculating and declaring taxes. For HS, such doing effectively reduces the cost which can be deducted from HS' revenues before calculating and declaring taxes – thus, it would de-facto increase HS' taxable income and the taxes to be declared and paid to the Romanian state.

Interpretation and conclusions

Based on the above and in relation to the concrete case of HS, taxes had to be calculated based on the value of the goods (e.g. sawn timber) and services (e.g. shipping of finished product) sold by HS minus the value of goods (e.g. roundwood) and services (e.g. roundwood transport) of purchased by HS. Underestimating the volume of roundwood purchased would have resulted in less deductions from the value of goods and services sold and therefore would have resulted in higher taxes rather than lower taxes.

This investigation did not include research or analysis of any information and/or evidence related to declaration of goods and services sold by HS, to associated tax calculations or tax payments by HS to

⁶⁹ personal communication Prof. Dr. Marian Dragoi, Stefan Cel Mare University of Suceava, Romania, on 10 April 2017 - the Romanian system for corporate taxes is based on: (1) direct taxes 16% of profit; (2) indirect taxes 19% of value added

the Romanian State. Such evaluation would likely exceed the competence of the investigation panel, as well as the scope and resources of this investigation.

Lastly, for the benefit of comprehensive interpretation, it should be noted that underestimating the values of goods (e.g. roundwood) and services (e.g. roundwood transport) purchased by HS, would first and foremost benefit the suppliers and providers, including ROMSILVA⁷⁰ which sold the goods and services to HS. The basis for taxation of suppliers and providers, including ROMSILVA is the value of goods and services they sold to HS. It is therefore reasonable to assume that underestimating volumes of wood purchased by HS would benefit HS' suppliers and providers, including ROMSILVA more than it would benefit HS itself.

Based on the information and evidence reviewed it is therefore concluded that interested parties (i.e. contracting parties) were aware of and agreed to the modalities for roundwood measurement and classification. Therefore it is also reasonable to conclude that suppliers of timber, including ROMSILVA were compensated as contractually agreed, and that this particular aspect of the conduct of business by HS did not violate any legislation or regulation in Romania.

It is furthermore concluded that the modalities for roundwood measurement and classification may well have led to underestimating the volume of roundwood purchased by HS, but that this does not automatically result in miscalculation of taxes and that there is no indication that this led to miscalculation and/or evasion of tax payment by HS.

3.3.8 Receipt of subsidies for energy production

Information received

It was informed that HS has been receiving subsidies from the Romanian Government for the production of energy from biomass, even though a significant portion of the bark it manages does not come from roundwood sourced in Romania, but is a by-product imported roundwood. It is therefore questioned whether HS should have received subsidies based only on the bark from roundwood which originated in Romania or based on all bark used^{6,7}.

Relevant findings

The law no. 220 of 27 October 2008 established the *“System for promoting the production of energy from renewable sources”*⁷¹. Article 3 (6) specifies *“The promotion system for electricity produced from renewable energy sources established by this law DOES NOT apply in the case of (a) electricity from industrial and / or municipal waste purchased from abroad, regardless of the installed capacity of the power plant.”*⁷².

⁷⁰ **ROMSILVA** Romanian state-owned enterprise responsible for protection, preservation and development of publicly owned forests of the Romanian state, and the management of hunting and fishing grounds. Romsilva owns and manages 4,000,000 hectares (9,900,000 acres) of forests which represents 65% of all forests in the country. The company has its headquarters in Bucharest, Romania.

⁷¹ LEGE nr. 220 din 27 octombrie 2008 pentru stabilirea sistemului de promovare a producerii energiei din surse regenerabile de energie.

⁷² LEGE nr. 220 din 27 octombrie 2008, Article 3 (6) Nu se aplică sistemul de promovare a producerii energiei electrice din surse regenerabile de energie stabilit prin prezenta lege pentru: (a) energia electrică produsă din deșeuri industriale și/sau municipale achiziționate din import, indiferent de puterea instalată a centralei electrice.

Since year 2008 the governmental and legal position in relation to production of energy from biomass has evolved as follows:

- 27 October 2008 - 12 October 2011: Subsidies shall not be paid for energy produced from industrial waste with import origin. It is important to note that the timber originated abroad and was imported, not the bark, and that therefore the bark does not qualify here as “industrial waste” produced abroad. The regulation refers to the import of “industrial waste”, but not to “waste (produced in Romania) from imported products”. Therefore it was legal to request subsidies for energy produced using biomass (bark) from imported timber;
- 12 October 2011- 6 June 2015: Subsidies shall not be paid for electric energy produced from biomass purchased from abroad. It is important to note that the bark was produced in Romania, and therefore qualifies as a Romanian by-product – i.e. the timber was imported, not the bark. Article 3 would only apply if the bark was purchased directly from abroad. This interpretation was confirmed by Court Decision 4140/2.05.2015, p. 11 in the case of the company Egger versus the Ministry of Environment, Water and Forests (MMAP) in relation to bark used to produce energy during the period 17 March 2015 - 6 June 2015⁷³.
- after 6 June 2015: Subsidies could be paid for any form of biomass purchased from abroad.
- 28 July 2016: Replacing Order 1341/2012, Governmental Order no. 1534 of 28 July 2016 details the “*procedure for issuing certificates of origin for biomass from forestry and related industries and used in the production of electricity from renewable energy sources*”⁷⁴. Article 1 specifies “(1) For the purposes of this procedure, the biomass from forestry and related industries, for which the certificates of origin can be issued shall mean: (a) the biodegradable fraction of products resulting from primary and secondary processing of the wood on the Romanian territory - bark, sawdust, chips from machining, tops, shavings from profiling lines, scrap wood, scraps resulting from processing or recycling timber and / or wood products, including from imports, which do not fall in the category of timber according to legal provisions and also timber downgraded in its own premises as a result of the technological process of wood processing; (b) wood chips derived only from the categories listed in subparagraph a).”⁷⁵.

Interpretation and conclusions

The Romanian legislation and regulation as well as decisions of the courts of Romania related to promoting the production of energy from renewable resources especially as it relates to HS’ operations was analyzed. As the bark and other residue used by HS for energy production is the result of roundwood processing in Romania and not imported for energy production, it is reasonable

⁷³ Hotărâre 285/2016 02.02.2016 (Decision) - http://portal.just.ro/2/SitePages/Dosar.aspx?id_dosar=200000000326923&id_inst=2

⁷⁴ ORDIN nr. 1534 din 28 iulie 2016 privind aprobarea *Procedurii de emitere a certificatelor de origine pentru biomasa provenită din silvicultură și industriile conexe și utilizată în producerea de energie electrică din surse regenerabile de energie*.

⁷⁵ Governmental Order no. 1534, Article 1 (1) În sensul prezentei proceduri, prin biomasa provenită din silvicultură și industriile conexe, pentru care se emit certificate de origine, se înțelege: (a) fracțiunea biodegradabilă a produselor rezultate din prelucrarea primară și secundară pe teritoriul României a lemnului - coajă, rumeguș, aşchii rezultate din prelucrare, capete, tocătură din liniile de profilare, resturi de lemn, rezultate în urma prelucrării sau reciclării materialului lemnos și/sau a produselor din lemn, inclusiv din import, care nu se încadrează în categoria materialelor lemnoase, conform prevederilor legale în vigoare, precum și material lemnos clasat în incinta proprie ca urmare a procesului tehnologic de prelucrare a materialului lemnos; (b) tocătură de lemn, provenită numai din categoriile cuprinse la lit. a).

to assume that the interpretations detailed above apply. No evidence has been identified that HS violated legislation and/or regulation in Romania in relation to this particular aspect investigated.

It is therefore concluded that the conduct of business of HS as it concerns receipt of subsidies from the Romanian government for the use of bark for energy production did not indicate a violation of legislation or regulation in Romania.

3.3.9 Construction of the Sawmill in Reci

Information received

HS has been constructing a sawmill operation in Reci, Romania subject to compliance with all relevant Romanian legislation and regulation. It is suggested that HS may not have had the required permits and/or all parts thereof and that the architects engaged in the construction project in RECI were not qualified to project the Reci building^{6,8,76,77,78,79,80}.

Relevant findings

Thus, the Governmental Decision 918/2002⁸¹ *“establishing the framework procedure for environmental impact assessment and approving the list of public or private projects subject to this procedure”*, and Governmental Decision 1213/2006⁸² *“establishing the framework procedure for environmental impact assessment for certain public and private projects”*, and Governmental Decision 445/2009⁸³ *“on the assessment of the impact of certain public and private projects on the environment”* determine the list of projects which are subject to compulsory environmental impact assessment. From the forest sector, only pulp and paper mills were listed in all the successive governmental decisions.

Urban planning for Reci facility was approved by decision of the local administration - Hotararea 36/11.11.2013⁸⁴.

The environmental approval (aviz de mediu) issues by the Environmental Authority of the County of Covasna on 9 September 2013 (Aviz de mediu nr 1/09.09.2013)⁸⁵, clearly specified the project objective as: *“for constructing a sawmill and timber processing facility”*.

⁷⁶ 427.1 anonymous-002 to FSC providing Reci evidence

⁷⁷ 427.2 expertiza CR-raspunsuri

⁷⁸ 427.3 EN Summary of the report about Reci allegations

⁷⁹ 426.1 RO ruling of Romanian Chamber of Architects against planners of HS factory in RECI.pdf

⁸⁰ 426.2 EN Summary of RO ruling of Romanian Chamber of Architects against planners of HS RECI factory

⁸¹ Hotarare nr. 918 din 22 august 2002 privind stabilirea procedurii-cadru de evaluare a impactului asupra mediului și pentru aprobarea listei proiectelor publice sau private supuse acestei proceduri.

⁸² Hotarare nr. 1213 din 6 septembrie 2006 privind stabilirea procedurii-cadru de evaluare a impactului asupra mediului pentru anumite proiecte publice și private.

⁸³ Hotarare nr. 445 din 8 aprilie 2009 privind evaluarea impactului anumitor proiecte publice și private asupra mediului.

⁸⁴ 429.7.2a_Rec_urban_planning_2013

⁸⁵ 429.8 2b_REC_Aviz_Mediu_2013

On 20 November 2013, HS requested the Environmental Authority of the County of Covasna to decide about the obligation (whether or not) to provide an environmental impact assessment. The Environmental Authority of the County of Covasna decided (according to the legislation as detailed in the section above), that building a sawmill and timber processing plant is not subject to provision of an environmental impact assessment⁸⁶, but reminded the firm that it has to respect the terms and conditions set up in the environmental approval issued by the Environmental Authority of the County of Covasna (Aviz de mediu 1/09.09.2013)⁸⁵.

In 2015, HS requested the environmental authorization (autorizatie de mediu) from the Authority of the County of Covasna, and in 2016 HS requested revision of the environmental authorization. HS obtained the environmental authorization nr. 66 of 7 August 2015 with a revision of 21 January 2016 (Autorizatie de Mediu, nr 66, 07.08.2015, Revizuita in data 21.01.2016)⁸⁷.

It is important to note, that HS obtained the environmental approval in 2013 (Aviz de mediu nr 1/09.09.2013)⁸⁵, and that HS obtained environmental authorization in 2015/2016 (Autorizatie de Mediu, nr 66, 07.08.2015, Revizuita in data 21.01.2016)⁸⁷.

According to Governmental ordinance 195/2005 on environmental protection⁸⁸, article 2, point 13.a the environmental approval (aviz de mediu) is required at the time of approval of the urban planning⁸⁹. Article 2, point 9 specifies that the environmental authorization (autorizatie de mediu) is required at the time of the launching the project⁹⁰.

The references provided above suggest that HS complied with all administrative steps required for developing the facilities in Reci. As this is shown clearly in the environmental approval and environmental authorization that the firm intended to construct production facilities (i.e. all relevant equipment, substances, buildings are mentioned in detail). There is no evidence that part of the construction was not declared.

The decision by the national disciplinary commission of the Romanian Chamber of Architects, dated 29 March 2016^{79,80}, against planners of the HS facility in Reci confirmed the fact that the architects responsible for planning the Reci facility were not qualified for such a project^{79,80}. However, the document by Romanian Chamber of Architects states on page 3 that the contract for projecting the facility was signed only by the director (who was qualified) and not by the chief architect “*proving*

⁸⁶ 429.9 2c_REC_Decizie_Mediu_2013.pdf

⁸⁷ 429.10 2d_REC_Autorizatia_de_meniu_2016.pdf

⁸⁸ Ordonanta de urgenta nr. 195 din 22 decembrie 2005 privind protecția mediului - Governmental ordinance 195 of 22 December 2005 on environmental protection - approved by the law 265/2005 with subsequent modifications

⁸⁹ Governmental ordinance 195/2005 on environmental protection (Ordonanta de urgenta nr. 195 din 22 decembrie 2005 privind protecția mediului, approved by the law 265/2005 with subsequent modifications) article 2, point 13.a “actul administrativ emis de autoritatea competentă pentru protecția mediului, care confirmă integrarea aspectelor privind protecția mediului în planul sau programul supus adoptării” – Translation “the administrative act issued by the competent authority for environmental protection confirming the integration of environmental issues into the plan or program subject to adoption”

⁹⁰ Governmental ordinance 195/2005 on environmental protection (Ordonanta de urgenta nr. 195 din 22 decembrie 2005 privind protecția mediului, approved by the law 265/2005 with subsequent modifications) article 2, point 9 “actul administrativ emis de autoritatea competentă pentru protecția mediului, prin care sunt stabilite condițiile și/sau parametrii de funcționare al unei activități existente sau al unei activități noi cu posibil impact semnificativ asupra mediului, obligatoriu la punerea în funcțiune” – Translation “the administrative act issued by the competent authority for environmental protection setting out the conditions and / or operating parameters of an existing activity or a new activity with possible significant environmental impact, mandatory for commissioning.”

the intent to mislead the client”⁹¹. It concluded furthermore that compromising the professional rules by the planner resulted in damages to both, the client and public interests (page 4)⁹². The Romanian Chamber of Architects was aware of and considered the expert evaluation compiled by Mr. Alexandru Belinschi⁹³ (Bucharest, Romania) in 2015.

The Prime Minister’s Corps of Control (*Corpul de Control al Primului Ministru*) (CCPM) investigated in year 2015 the allegations on violation of authorizations and permits legally required in relation to the construction of HS mills⁹⁴. After controlling some public institutions, namely agencies for environmental protection, agencies for water management, county commissariats of the environmental guards and county inspectorates for construction in the counties where HS mills are located, the Corps of Control delivered a *“Information Note about the issuing of advices, authorizations and approvals needed for the building and functioning of HS mills”*⁹⁵ (Note 671/I.L./14.07.2015). The information note was sent to the Ministry of Environment, Water and Forests (MMAF), the National Administration “Romanian Waters” and the Prefect’s Institution of the counties of Alba, Bacau, Covasna and Suceava.

The annual report by the Prime Minister’s Corps of Control is organized in 2 sections. Section a), starting on page 3 lists “controls with criminal relevance” and section b), starting on page 21 lists “control acts with findings on administrative deficiencies”. While it was not possible to obtain a copy of the note issued by the Prime Minister’s Corps of Control, it is important to note that the reference to the note related to HS was listed in section b). This is itself may be indicative of the fact that the findings of the Prime Minister’s Corps of Control had no criminal relevance but pointed to administrative deficiencies.

HS informed²⁹ the IP that the necessary legal permits and authorizations as provided for by the Romanian law in regards to urban planning and environmental impact were obtained for the

⁹¹ page 3 of 426.1 RO ruling of Romanian Chamber of Architects against planners of HS factory in RECI: “Domnul arhitect Nemeth Csaba Iosif a incheiat un contract cu Beneficiarul, fara a-l preveni pe acesta cu privire la imposibilitatea oferiiri serviciilor pe care proiectarea unui astfel de obiectiv le impune, contractul fiind semnat doar de catre domnia sa ca director, nu si de seful de proiect (care ar fi trebuit sa fie arhitect), dovedind astfel intentia de a induce in eroare clientul”. Translation: “The architect Nemeth Csaba Joseph concluded a contract with the client in spite of not being able to offer the services that the design of such an object require. That the contract was signed only by his director as the director, but not by the project manager (who should have been an architect), proved the intent to mislead the client”.

⁹² page 4 of 426.1 RO ruling of Romanian Chamber of Architects against planners of HS factory in RECI: “Prin elaborarea deficitara a proiectului, atat in faza de avizare, autorizare, dar si in ceea ce priveste verificarea proiectului, sotii Nemeth au incalcat atat interesele investitorului, dar si interesul public, proiectul nefiind verificat corespunzator asupra categoriei de importanta a acestuia la toate cerintele de calitate cerute de Legea nr 10/1995 a calitatii in constructii, neavand astfel certificata protejarea comunitatii, vecinatatilor si a mediului inconjurator.”. Translation: “Due to the poor design of the project, both during the approval, authorization and verification of the project, the Nemeth spouse compromised both the interests of the investor and the public interest, and the project was not adequately verified in relation to all requirements and according to its importance. Quality required by Law no. 10/1995 on quality in construction, but not certifying the protection of the community, neighborhoods and the environment.”.

⁹³ expert assessment by Mr. Alexandru Belinschi of construction permit for the sawmill construction at Reci; 425.1 RO-expert evaluation RO construction permit HS factory RECI; 425.2 EN Summary of RO expert evaluation No. 1 concerning HS factory in RECI

⁹⁴ Annual Report 2015; Prime Ministers Corps of Control (*Corpul de Control al Primului Ministru*); http://gov.ro/fisiere/comunicate_fisiere/Raport_activitate_CCPM_2015.pdf, 442_ Raport_activitate_CCPM_2015.

⁹⁵ Nota 671/I.L./14.07.2015 - Nota de informare cu privire la emiterea avizelor, autorizațiilor și aprobărilor necesare pentru construirea și funcționarea fabricilor de prelucrare a lemnului aparținând societății Holzindustrie Schweighofer S.R.L. sau altor societăți la care aceasta deține minim 90% din titlurile de participare; Note 671 / I.L / 14.07.2015 - Information notice concerning the issuing of approvals, authorizations and approvals required for the construction and operation of woodworking plants belonging to Holzindustrie Schweighofer S.R.L. or other companies in which it holds at least 90% of the units.

development and operation of the Reci sawmill. All the permits and authorizations^{84,85,86,87} are legally valid and in full effect, and none of them has been suspended or annulled.

Interpretation and conclusions

The Prime Minister's Corps of Control (*Corpul de Control al Primului Ministru*) investigation in year 2015 of the allegations on violation of authorizations and permits legally required in relation to the construction of HS mills resulted in the issuing of an information note. It was not possible to obtain a copy of the note itself, but the fact that it was listed in the annual report in section b) suggests that it had no criminal relevance but pointed to administrative deficiencies.

In relation to allegations on the use of unqualified architect to draw the plans for the facilities at Reci, the decision of the Romanian National Chamber of Architects concludes that HS did not act intentionally.

It is therefore concluded that no indication was identified that HS did not follow legislation and regulation in Romania, especially as it relates to the legal permits and authorizations necessary for development and operation of their facilities at Reci.

5 Conclusions and recommendations

It needs to be emphasized that the FSC in general and its Policy for Association (PfA) in particular focus on a distinct but limited scope of work. The IP on behalf of the FSC has worked within the mandate of FSC and the PfA and with the resources available.

The IP is confident that the investigation of information and evidence, its analyses and interpretation were comprehensive, appropriate in detail, fact-based, without prejudice and impartial. The conclusions drawn and recommendations suggested are appropriate to the mandate prescribed by the FSC and its PfA.

On several occasion in this report (e.g. sections 3.3.3, 3.3.6, 3.3.7; 3.3.8; 3.3.9) the IP concluded that further investigations may be possible but that such investigation would go beyond the mandate, competence and/or resources of the FSC and its PfA. Moreover, the IP is aware that currently investigations by public authorities (e.g. National Anti-Corruption Agency (DNA), Romania) of HS' conduct of business may be ongoing^{57,68}. It is therefore possible that further investigations with different scope may in the future yield further insights in relation to this case.

5.1 Conclusions

This section summarizes the interpretations and conclusions already detailed above in relation to the aspects investigated.

It is concluded that based on the information and evidence reviewed, the analysis conducted, and the interpretation and conclusions drawn in relation to the different aspects detailed in sections 3.3.1; 3.3.2; 3.3.3; 3.3.4; 3.3.5; 3.3.8; 3.3.9 that no indication was identified that HS did not follow legislation and regulation in Romania, especially as it relates to standards for measuring and classifying roundwood, to the use and calibration of electronic instruments (calipers) for measuring roundwood, to the use of Austrian rules for timber classification and measurement, the receipt of governmental subsidies for energy production and the development, construction and operation of their facilities at Reci.

It is also concluded based on the information and evidence reviewed in relation to the different aspects detailed in section 3.3.7 that differences between measurement of roundwood in the forest and at different points in the supply chain are well known and a reality in forest products trade around the world, and that no indication was identified that the roundwood measurement and classification systems used by HS led to results which were not known and/or accepted by the contracting parties involved.

It is furthermore concluded based on the information and evidence reviewed, the analysis conducted, and the interpretation and conclusions drawn in relation to the different aspects detailed in section 3.3.6 that the modalities for roundwood measurement and classification may well have led to underestimating the volume of roundwood purchased by HS, but that this did not automatically result in miscalculation of taxes and that there is no indication that this led to miscalculation and/or evasion of tax payment by HS.

The analysis conducted, and the interpretation and conclusions drawn in relation to the different aspects detailed individually in sections 3.3.1; 3.3.2; 3.3.3; 3.3.4; 3.3.5; 3.3.6; 3.3.7; 3.3.8; 3.3.9 as well as the conclusions summarized in this section above, suggest that significant differences exist

between important stakeholders and HS in the interpretation of HS' conduct of business, especially as it concerns compliance with legislation and regulation in Romania.

Based on the evidence reviewed in section 3.3.3 it is that HS misinformed the BRML but that this the misinformation did not negatively impact and/or impeded the regulatory work of the BRML with respect to metrological (calibration) control of electronic instruments (calipers) for roundwood measurement.

The allegations on violation of authorizations and permits legally required in relation to the construction of HS mills in Reci are reviewed in detail in section 3.3.9. The IP bases its conclusions on (1) the expert evaluation compiled by Mr. Alexandru Belinschi⁹³ in 2015; (2) the report and decision of Romanian National Chamber of Architects^{79,80} in 2016; and (3) the annual report 2015 by the Prime Minister's Corps of Control (*Corpul de Control al Primului Ministru - CCPM*)^{94,95}. The decision of the Romanian National Chamber of Architects concludes that HS did not act intentionally. The report by the CCPM resulted in issuing an information note. It was not possible to obtain a copy of the note itself, but the fact that it was listed in the annual report in section b) suggests that it had no criminal relevance but pointed to administrative deficiencies. The IP therefore concluded that no indication was identified that HS intentionally did not follow legislation and regulation in Romania in relation to the development and operation of their facilities at Reci.

It is important that these differences in understanding and interpretation of HS conduct of business are overcome, to facilitate constructive engagement in future.

An aspect which likely led to and certainly intensified the differences in interpretation is the way stakeholders and HS communicated their particular findings, understanding and interpretation of the situation in Romania. HS, as well as stakeholders communicated about each other rather than with each other. Communication was used over an extended period of time as tool to "combat each other" rather than engage with each other in joint initiatives to develop solution to overcoming existing problems.

In summary based on the information and evidence reviewed, the analysis conducted, and the interpretation and conclusions drawn by the Investigation Panel (IP) between March and September 2017 as detailed in this report, that no indications of further violations of the FSC PfA by HS were identified.

5.2 Recommendations

Based on the investigation and analysis detailed in this report and the conclusions above no conditions and the following recommendations are suggested:

- 1) All parties involved should make dedicated conscious efforts to change the communication between HS and its stakeholders from a confrontational approaches to constructive engagement.
- 2) HS should constructively engage in a broad range of transparency efforts to facilitate comprehensive insights in its conduct of business.
- 3) HS should integrate closely the requirements and procedures for measuring, classifying, and documenting roundwood with its due diligence systems to facilitate comprehensive transparency, especially as it concerns traceability of roundwood to the origin and through the supply chain.

6 Response by the Parties to the Complaint

This section details, analyzes and responds to the comments provided by the parties to the complaint to the public version the draft final report

After initial review of the comments provided by the parties the FSC concluded that some comments were based on misunderstanding, that some comments were repeating argument already analyzed by the IP, and that no new evidence was presented, and that the comments provided by the parties do not warrant further detailed investigation.

The IP was asked by FSC on 22 August 2017 to do a factual check of the response by the parties to the complaint and conclude the investigation with the information available. The following 3 sub-sections (6.1; 6.2; 6.3) respond to the main comments provided by the parties to the complaint based on the information available.

6.1 Response by Holzindustrie Schweighofer (HS)

HS responded in a letter to FSC, dated 11 July 2017, to the public version of the draft final report. HS raises 2 main point in their comments.

6.1.1 Comment on chapter 3.3.3. – Information to BRML on use of electronic measurement instruments

In relation to chapter 3.3.3 of this report HS commented that their information to the public authority responsible for calibration in Romania (BRML) in 2011 was referring only to certain aspects of the measurements systems used (i.e. volume calculation) and therefore not misleading.

HS requested ***‘Considering the above, we would kindly ask the Panel to remove from the final version of the Report the references pointing to HS having provided intentionally misleading information to BRML.’***

The IP reviewed the comment by HS and concluded that the information in the letter to BRML was rather general – i.e. not specifically referring to volume calculation – and that it may have therefore been misleading. The IP does not consider it necessary to reword its findings and conclusions in chapter 3.3.3.

In relation to the request by HS, the IP points out that it has not drawn any conclusion or made any suggestion in chapter 3.3.3 whether the misinformation by HS was intentional or accidental.

Therefore, the IP concludes that the assessment and conclusions presented in chapter 3.3.3 are sustained.

6.1.2 Comment on chapter 3.3.6. - Difference in roundwood measurement and estimation of roundwood volume

In relation to chapter 3.3.6 HS considers that the wording in the final paragraph suggests a criminal investigation on whether *‘parties along the value chain collaborate to commit fraud through deficient measurement of wood volume.’*

HS requested ***‘Considering the arguments presented above, we would kindly ask the Panel to remove the reference on the need for further investigations by the criminal law enforcement authorities from the final version of the Report as such statement is superficial, not grounded and not justifiable.’***

The IP reviewed the comment by HS and points out that it has not found any concrete evidence that parties along the value chain collaborated to commit fraud through deficient measurement of wood.

It is therefore concluded that the wording in the final paragraph of chapter 3.3.6 is a factually correct statement and that it does not suggest any criminal investigation of this aspect. However, to provide best possible clarity, the IP added an explanatory sentence in the final paragraph of chapter 3.3.6 and adapted the wording slightly.

6.2 Response by WWF Austria (WWF-A/anonymous-018)

WWF-Austria (WWF-A) responded in a letter to FSC, dated 8 August 2017, in German language to the public version of the draft final investigation report. WWF-A commissioned an analysis of the public version of the draft final investigation report by anonymous-018, a lawyer registered in Austria. The analysis by the Austrian lawyer refers mainly to 1 aspect of the draft final investigation report.

In point 2 of the response by WWF-A/anonymous-018, anonymous-018 seems to suggest that the draft final investigation report ‘is contradicting itself in relation to essential questions and making unsuitable statements’. However, anonymous-018 elaborates this only in relation to the following.

Point 3 of the response by WWF-A/anonymous-018 refers under the heading “*Key findings of the report*” to 3 statements supposedly made in the draft investigation report, namely:

- (1) The **first reference under point 3** reads “*Invoices were only issued for some of the deliveries (page 32).*”. It seems to refer to paragraph 5 on page 33 of this report⁹⁶.
- (2) The **second reference under point 3** reads “*HS paid without invoice (page 32).*”. No such statement is contained in the draft investigation report, and/or any similar statement which could possibly have been misunderstood in this way by anonymous -018. It is unclear which text anonymous-18 refers to with his **second reference**.
- (3) The **third reference under point 3** reads “*This investigation did not include research or analysis of any information and/or evidence related to declaration of goods and services sold by HS, to associated tax calculations or tax payments by HS to the Romanian State. (page 31)*” It seems to refer to paragraph 7 on page 33 of this report⁹⁷.

Point 4 of the response by WWF-A/anonymous-018 refers under the heading “*Main conclusions of the report*” to 3 statements supposedly made in the draft investigation report, namely:

- (4) The **first reference under point 4** reads “*The purchase of wood without invoice would possibly be illegal for suppliers and not for HS (page 32)*”. It seems to refer to paragraph 5 on page 33 of this report⁹⁸.

⁹⁶ the original text on page 33, paragraph 5 of this report reads: “*Thus, even if suppliers to HS issued formal invoices only for part of roundwood shipments delivered and if they indeed received part of the payment without proper invoices, it is important to note that this probably constitutes an illegal act by the supplier not by HS.*”

⁹⁷ the original text on page 33, paragraph 7 of this report reads: “*This investigation did not include research or analysis of any information and/or evidence related to declaration of goods and services sold by HS, to associated tax calculations or tax payments by HS to the Romanian State. Such evaluation would likely exceed the competence of the investigation panel, as well as the scope and resources of this investigation.*”

⁹⁸ the original text on page 33, paragraph 5 of this report reads: “*Thus, even if suppliers to HS issued formal invoices only for part of roundwood shipments delivered and if they indeed received part of the payment without proper invoices, it is important to note that this probably constitutes an illegal act by the supplier not by HS.*”

- (5) The **second reference under point 4** reads *“The declaration of smaller amounts of wood would mean lower tax deductions and therefore result in higher taxes (page 32)”*. It seems to refer to paragraph 6 on page 33 of this report⁹⁹.
- (6) The **third reference under point 4** reads *“The actions of HS have a lower declaration of the wood volume but this does not automatically lead to a miscalculation of taxes there is no indication that this resulted in an incorrect calculation or tax evasion by HS (page 38)2)”*. It seems to refer to paragraph 7 on page 42 of this report¹⁰⁰.

The statements in draft investigation report are either conditional and/or hypothetical and were used by the investigation panel to illustrate possible scenarios. They were not statements of fact as proposed by anonymous-018. The panel currently does not have any evidence resulting from this investigation suggesting that HS has traded timber without proper invoices. As the statements are conditional and/or hypothetical the IP does not state or suggest that there has been evidence found indicating that HS has traded timber without proper invoicing.

Points 3 and 4 of the response by WWF-A/anonymous-018 are obviously the result of anonymous-018 misunderstanding conditional and/or hypothetical statements by the IP as a statement of fact and misinterpreting the findings presented in this report.

The IP did not receive and/or identify in its investigation any evidence which would be sufficient to justify an initial suspicion according to the elaborations in point 5, 6, 7 of the response by WWF-A/anonymous-018.

Because of the above (i.e. no indication of timber trading without proper invoicing) the panel states in paragraph 7 on page 33 in chapter 3.3.7 (Evasion of payment for roundwood received and associated taxes) of this report that *“This investigation did not include research or analysis of any information and/or evidence related to declaration of goods and services sold by HS, to associated tax calculations or tax payments by HS to the Romanian State. Such evaluation would likely exceed the competence of the investigation panel, as well as the scope and resources of this investigation.”*. This statement is intended to highlight that the investigation panel, because of the lack of concrete factual evidence sufficient to justify an initial suspicion, concluded not to have reason to further investigate these matters.

In point 5, 6, 7 of the response by WWF-A/anonymous-018, anonymous-018 is correct in his analysis and suggestions in relation to tax evasion and money laundering. However, the basis for the elaborations of anonymous-018 as detailed in his points 3 and 4 is the misunderstanding of conditional and/or hypothetical illustrative statements by the IP. Therefore, the elaborations by anonymous-018 in points 5, 6 and 7 are correct in general terms but have no bearing on this case.

⁹⁹ the original text on page 33, paragraph 6 of this report reads: *“Underestimating the volume of roundwood purchased would have resulted in less deductions from the value of goods and services sold and therefore would have resulted in higher taxes rather than lower taxes.”*

¹⁰⁰ the original text on page 42, paragraph 7 of this report reads: *“It is furthermore concluded based on the information and evidence reviewed, the analysis conducted, and the interpretation and conclusions drawn in relation to the different aspects detailed in section 3.3.6 that the modalities for roundwood measurement and classification may well have led to underestimating the volume of roundwood purchased by HS, but that this did not automatically result in miscalculation of taxes and that there is no indication that this led to miscalculation and/or evasion of tax payment by HS.”*

It is therefore concluded that the inferences of anonymous-018 in point 8 (*Summary*)¹⁰¹ of the response by WWF-A/anonymous-018 are not correct. As there is no indication that timber purchases without proper invoices happened, the IP determined that the analysis was correct and that further investigation into this aspect of tax evasion and/or money laundering is not warranted.

Therefore, the IP concludes that the assessment and conclusions presented in this report are sustained.

6.3 Response by WWF Germany (WWF-D/anonymous-017)

WWF-D forwarded by email to FSC on 11 August 2017 an analysis of and response to the public version of the draft final report by the anonymous-002 and anonymous-015 of anonymous-016. Anonymous-015 is a lawyer in Romania.

6.3.1 Comment 1. Regarding the objectivity of the experts

WWF-D/anonymous-017 refer to the fact that the University Stefan cel Mare of Suceava, Romania, which employs the services of the independent expert, Ms. Laura Bouriaud, has obtained material support from HS. WWF-D/anonymous-017 concludes that therefore Ms. Laura Bouriaud may be subject to a conflict of interest.

Mr. Heiko Liedeker in coordination with the FSC QAU reviewed the possibility for conflict of interest of Ms. Laura Bouriaud. The affiliation of Ms. Laura Bouriaud with the University of Suceava, Romania was transparently known to the parties involved in the complaint and to the FSC when Ms. Laura Bouriaud was engaged as an independent expert in the Investigation Panel (IP).

Based on the following:

- (1) as Ms. Laura Bouriaud is competent and experienced in forestry related issues as well as legislation and regulation in Romania, other European countries and the EU;
- (2) as the affiliation of Ms. Laura Bouriaud with the University of Suceava, Romania was transparently known from the beginning;

¹⁰¹ the response by WWF-A/anonymous-018 states "8. Summary

The conclusions of the report are not supported by the findings. The execution of commodity purchases in large quantities without respective receipts and without records in accounting suggest an abundance of aspects of initial suspicion. None of these aspects of initial suspicion was investigated or even discussed.

The report states "No investigations or analyses concerning the declaration of goods or services relating to tax calculations or tax payments" were undertaken (page 31) [now page 33]. Contrary to this statement the text continuously and the conclusions manifestly indicate that there had been no evidence or initial suspicion of tax evasion or lowering duties (page 38) [now page 42].

The tax-related conclusions are partly absurd. The view of the report, that the purchase of goods without invoice would be unlawful only for the supplier and not for the buyer (page 32) [now page 33] is incorrect in multiple respects.

The view of the report that the reporting of lower amounts of goods purchased would be disadvantageous for the buyer (page 32) [now page 33] is incorrect. This type of business leads to raising unreported earnings and to using it for criminal purposes, such as bribery of officials. Especially in view of the background of several enterprises operating in several countries can in this way in particular the import turnover tax [import VAT], but also other duties be lowered. The purchase of goods on a large scale without invoice indicates preparing activities.

The report is to be renewed from the very basis and to be reviewed with appropriate expertise particularly with regard to aspects of tax legislation and criminal law."

- (3) as Ms. Laura Bouriaud was expert advisor to the State Secretary for Forests, Ms. Erika Stanciu, and in this positions she was well recognized for her support to public efforts against illegal logging and opposing the use of roundwood for energy production because of the potential ecologic consequences;
- (4) as there is no indication that any relevant information was biased, manipulated and/or omitted by Ms. Laura Bouriaud;
- (5) as Ms. Laura Bouriaud is not the only expert on the IP;
- (6) as the parties to the complaint were informed about the experts engaged by the FSC for this investigation;
- (7) as no concerns were raised by the parties to the complaint about Ms. Laura Bouriaud's experience, competence, affiliation and/or impartiality when she was engaged by FSC,

it is concluded that the work of Ms. Laura Bouriaud has not been subject to conflict of interest, and that the engagement of Ms. Laura Bouriaud in the IP was justified. It should be noted that Ms. Laura Bouriaud abstained from input to the analysis and conclusion of this chapter 6.3.1.

The response by WWF-D/anonymous-017 refers in point 1 to the involvement of a Mr. Costantin Eugen Uricec in this investigation. Mr. Costantin Eugen Uricec has not been consulted for information of engaged in this investigation.

The response letter by BRML is signed by Mr. Ioan Scurtu⁴². The response by the Ministry of Water and Forests is signed by the State Secretary for Forests, Mr. Istrate Steţco¹⁸, the Romanian authority responsible for forestry. The verbal communication with ASRO was held with Ms. Mariana Craciun¹⁷. The orders emitted by BRML were signed in the period 2010-2015 by the General Director, Mr. Fanel Iacobescu. In fact Mr. Costantin Eugen Uricec is not known to the members of the IP or the FSC QAU.

It is therefore concluded that based on the review above, the conclusion by WWF-D/anonymous-017 that *"Therefore, the draft report of FSC in its present form is to be considered biased."*, is not sustained. The IP concludes that the assessment and conclusions presented in this report are not revised.

6.3.2 Comment 2. Regarding the legislation used by the experts

WWF-D/anonymous-017 refer to the fact that *'valuable and very important information was neglected by the experts.'* WWF-D/anonymous-017 continue in their response to list a number of laws which in their opinion are relevant to different aspects of this report.

6.3.2.1 Law no. 278/2013¹⁰² on industrial emission

The IP reviewed the law no. 278/2013 on industrial emission. It was added to the list of laws reviewed in the report. The law no. 278/2013 on industrial emission foresees exceptions in article 28 point 2, point a) for "installations where combustion products are used for direct heating, drying or any other treatment applied to objects or materials;" and in article 28 point 2, point j) for "installations using as solid fuels any solid or liquid waste, with the exception of the wastes referred

¹⁰² Legea Nr. 278/2013 din 24 October 2013 privind emisiile industriale; Law No. 278/2013 of 24 October 2013 on industrial emissions.

to in art. 3 point bb), point bb2).”. How the law no. 278/2013 is interpreted in the context of the power plant at Reci and whether it applies, and whether the exceptions referenced above apply can only be determined by the competent authorities in Romania. The competent authorities responsible for the environmental protection are mainly the following: (I) the Ministry of Environment – as the core central authority for environment protection; (II) the National Agency for Environment Protection; (III) the county environmental protection agencies and (IV) the Environmental National Guard for control.

The IP concludes that it is the responsibility of the respective competent authority in Romania to determine whether the application of law no. 278/2013 was correct and whether the formal authorizations and legal permits remain valid, are deficient, require updating or are terminated retroactively. The IP constitutes that there is currently no indication that HS took action to actively avoid or compromise the application of law no. 278/2013 to the construction of HS sawmill at Reci and/or violated the legality requirements of the FSC PfA. Therefore, the IP concludes that the assessment and conclusions presented in this report are sustained.

6.3.2.2 Law no. 350/2001 on Territorial and Urban Planning (“Urban Planning Law”)¹⁰³ and Law no. 50/1991 on the authorization of construction works (“Construction Law”)¹⁰⁴

The laws relevant for Reci construction – i.e. law no. 350/2001 on Territorial and Urban Planning (“Urban Planning Law”) and law no. 50/1991 on the authorization of construction works (“Construction Law”) - were comprehensively addressed in the report and decision by the Romanian Chamber of the Architects^{79,80} which is referenced in this report above. Furthermore the Prime Minister’s Corp of Control (CCPM)^{94,95} investigated the case of the sawmill construction at Reci and considered the report by the Romanian Chamber of Architects. The IP follows the conclusions of the Romanian Chamber of Architects and the Prime Minister’s Corp of Control (see also chapter 6.3.6 below). Therefore, the IP concludes that the assessment and conclusions presented in this report are sustained.

6.3.2.3 Law no. 11/1991¹⁰⁵ on unfair competition, as amended and completed by Law No. 298/2001, Law No. 255/2013 and Government Ordinance No. 12/2014 (the “Unfair Competition Law”)

The law no. 11/1991 with its amendments and in line with different EU/EC regulations addresses concentration in markets – i.e. identifies if mergers between different corporate entities lead to undue concentration (an overly dominating position of the resulting business entity) in the market

¹⁰³ Legea Nr. 350/2001 privind amenajarea teritoriului si urbanismul cu modificările si completările ulterioare - versiune consolidata neoficiala realizata in cadrul Directiei Generale Dezvoltare Teritoriala a Ministerului Dezvoltarii Regionale si Locuintei; Law No. 350/2001 on spatial planning and urban planning and Government Ordinance no. 69/2004 supplementing article 38 of Law no. 350/2001 (approved by Law no. 464/2004)

¹⁰⁴ Legea Nr. 50/1991 privind autorizarea executării lucrărilor de constructii; Law No. 50/1991 authorizing the execution of construction works (republished), Law no. 52/2006 amending and supplementing Law no. 50/1991, Order no. 1430/2005 approving the Detailed Rules implementing Law no. 50/1991 authorizing the execution of construction works, Annex to Order 1430/2005 with Detailed Rule (Rectification of 30 October 2005) and Order of the Minister of Public Works and Spatial Planning no. 91/1991 approving the forms, the authorization procedure and the content of the documentations provided by Law no. 50/1991

¹⁰⁵ Legea nr. 11/1991 din 29 ianuarie 1991 privind combaterea concurenței neloiale; Law no. 11/1991 of 29 January 1991 on unfair competition, as amended and completed by Law No. 298/2001, Law No. 255/2013 and Government Ordinance No. 12/2014 (the “Unfair Competition Law”); <http://www.lexex.ro/Legea-11-1991-1894.aspx>

and therefore to unfair competition between different business entities. The competent authority in Romania is the Romanian Competition Council¹⁰⁶, an autonomous administrative authority in the competition field, mainly responsible for the enforcement of the Competition Law and the relevant secondary legislation.

The IP is aware that the Competition Council investigated potential agreements among large timber processing plants in Romania around the end of February 2016, but without any further conclusion or allegation¹⁰⁷. As there are other rather large actors in the timber market in Romania, and as the market position of HS has not yet been challenged and as the IP is not aware of any investigation by the respective competent authority into undue concentration in the market, the IP considers it unlikely that the market position of HS is indeed leading to undue concentration. Furthermore, the Forest Code modified in 2015 sets strict limits against excessive development of timber processing plants, by limiting the quantity of assortments that may be purchased in the Romanian timber market by a single firm or group of firms.

The IP concludes that it is beyond the scope of this investigation to evaluate whether HS this in a dominating market position, and if so whether it is abusing this dominating market position, and if so whether such abuse is relevant under criminal law, and whether this would be relevant in the context of the FSC Policy for Association (FSC PfA). The IP considers this question beyond the scope of the FSC Policy for Association. The issue is to be clarified by the competent authorities in Romania and in the EU. Therefore, the IP concludes that the assessment and conclusions presented in this report are sustained.

6.3.2.4 Law no. 245/2004¹⁰⁸ on general product safety

The law no. 245/2004 sets out general aspects of and requirements for product safety. Article 2(a) of this law specifies that this law relates to products intended for use by consumers¹⁰⁹ and in article 2 (b) that it is intended to specify product safety¹¹⁰.

The IP concludes that this law is primarily intended to protect consumers in business to consumer relationships (article 2(a)), but that it has only limited applicability in business to business

¹⁰⁶ Consiliul Concurenței România; Romanian Competition Council; <http://www.consiliulconcurentei.ro/en/about-us.html>

¹⁰⁷ <http://www.consiliulconcurentei.ro/ro/documente-oficiale/concurenta/investigatii.html>

¹⁰⁸ Legea nr. 245/2004 din 9 iunie 2004 privind securitatea generală a produselor; Law no. 245/2004 din 9 June 2004 on general product safety; <http://www.legex.ro/Legea-245-2004-86772.aspx>

¹⁰⁹ Law no. 245/2004 on general product safety; Art. 2. (a) **'product' means any good known as a product, which, including in the context of a supply of services, is intended for consumers or is, in foreseeable conditions, likely to be used by consumers even if not intended and supplied; or made available in the course of a commercial activity for consideration or free of charge, whether new, used or reconditioned.** Exemption from the application of this law is the use of second-hand products which are supplied as antiques or as products to be repaired or reconditioned prior to their use only if the supplier clearly informs the person to whom the product is supplied about the need for such repair; or refurbishment;

¹¹⁰ Law no. 245/2004 on general product safety; Art. 2. (b) **"safe product" means any product which, under normal or reasonably foreseeable conditions of use, including durability and, where applicable, commissioning, installation and maintenance, presents no risks or only minimal risks compatible with the use of the product and considered as acceptable and appropriate to a high level of consumer health and safety protection,** taking into account in particular: 1. the characteristics of the product, mainly composition, packaging, assembly conditions and, where appropriate, assembly and maintenance; 2. the effect on other products if its use with other products can be reasonably foreseeable; 3. the presentation of the product, its labeling, any warnings and instructions for its use and disposal, and any other information or information relating to the product; 4. the categories of consumers at risk when using the product, particularly children and the elderly.

relationships. Furthermore, article 2 (b) of law no. 245/2004 specifies product safety to refer primarily to protection of health and safety of consumers.

As HS is not trading with consumers but with suppliers and customers in business to business relationships, law no. 245/2004 is not applicable in the context of this investigation. Furthermore, it refers primarily to health and safety of products produced and placed on the market, but not to production installations and/or processes (see also below in chapter 6.3.3. *Comment 3. The applicability of the national standards on the measurements of the timber in Romania. The legality of the contractual clauses of the contract*).

The difference between consumer-to-business and business-to-business relationships is further elaborated in chapter 6.3.2.6 (law no. 363/2007).

Therefore, the IP concludes that the assessment and conclusions presented in this report are sustained.

6.3.2.5 *The Civil Code*¹¹¹

WWF-D/anonymous-017 refers in the list of laws which in their opinion are relevant to different aspects of this report to the Civil Code. The Civil code of Romania is quite extensive and the reference by WWF-D/anonymous-017 is therefore a rather general suggestion. The IP is of the opinion that the provisions of Romanian and EU law and regulation most relevant to this case were reviewed comprehensively. Unless more specific reference to particular provisions of the civil code of Romania deemed relevant to this case are provided by WWF-D/anonymous-017, the IP concludes that the review of provisions of Romanian and EU law and regulation was comprehensive, and that the assessment and conclusions presented in this report are sustained.

6.3.2.6 *Law no. 363/2007*¹¹² *on combating unfair commercial practices between businesses and consumers ("Consumption Code")*

The law no. 363/2007 is harmonizing Romanian legal provisions provision with EU consumer law. It refers exclusively to relations between businesses and consumers, but not to business to business relationship. Pursuant to law no. 363/2007, a consumer is defined as any natural person or group of natural persons organized in associations who perform activities other than commercial, industrial, manufacturing, artisan or liberal ones. Such liberal activities include the ones performed by lawyers, doctors or translators. An average consumer is defined as a person who is reasonably well-informed, attentive and prudent according to prevalent social, cultural and linguistic factors.

As consumers are most often less knowledgeable and/or less experienced than businesses in trade of products and services, it is in the EU and in EU member countries deemed necessary to protect consumers against unfair practices by businesses. This special protection of consumers is reflected in legal provisions related to various aspects of life – e.g. food safety, rental agreements, product quality, product claims, product warranty, etc.

¹¹¹ The Civil Code of Romania (Codul civil al României, commonly referred to as Noul Cod Civil – the New Civil Code, officially Law no. 287/2009 on the Civil Code) is the basic source of civil law in Romania.

¹¹² Legea nr. 363/2007 privind combaterea practicilor incorecte ale comerciantilor in relatia cu consumatorii si armonizarea reglementarilor cu legislatia europeana privind protectia consumatorilor; Law No 363/2007 on combating unfair commercial practices between businesses and consumers and harmonising provision with EU consumer law (Monitorul Oficial al României, Part I, No 899 of 28 December 2007), as subsequently amended and supplemented.

This is very different in business to business relations. In the EU and EU member countries any party acting as a business with other businesses is deemed knowledgeable and experienced in trade of products and services, and not needing special protection against unfair practices. In business to business relationships the EU and EU member countries in general take a position to interfere with and/or regulate such relationships as little as possible. Business parties are expected to regulate their own interests as far as possible in contractual agreements.

The IP therefore concludes that the law 363/2007 is not relevant for the relationship between HS and its suppliers or customers, because their suppliers and customers are businesses and are acting as such. Any entity entering into a business relationship with HS is fully responsible for accepting the terms of business and/or the consequences thereof. The IP therefore concludes that the investigation, analysis and argument in this report regarding the relationship between HS and its suppliers and customers is correct and sustained.

6.3.2.7 Art. 244¹¹³ of the Criminal Code on Misrepresentation

Article 244 of the Criminal Code of Romania refer to misrepresentation. The reference by WWF-D/anonymous-017 to article 244 of the criminal code is a rather general suggestion, as it is not clear to which incident, case and/or aspect of HS' conduct of business WWF-D/anonymous-017 refers in particular. In relation to this chapter see also the elaborations in chapters 6.3.3, 6.3.4 and 6.3.5.

Especially with respect to the information provided in relation to measurement of wood (see chapters 3.3.1 – 3.3.7 above); in relation to receipt of subsidies for energy production (see chapters 3.3.8 above); and/or in relation to the construction of the HS sawmill at Reci (see chapters 3.3.9), the IP reviewed and analyzed whether there are indications of misrepresentation as referred to in article 244 of the criminal code. Based on the information reviewed and analyzed in this report and considering the instruments and resources available for the investigation presented in this report, the IP concludes that, no indication of actions by HS relevant under article 244 of the criminal code were identified.

6.3.3 Comment 3. The applicability of the national standards on the measurements of the timber in Romania. The legality of the contractual clauses of the contract.

WWF-D/anonymous-017 state in their response that *“the experts are completely disregarding The Law no 245/2004 regarding the general security of products, art 3: “a product (in our case electronic installation for timber measurement) will be considered to be safe according to the national provisions of the national law when in the absence of the Community provisions governing the product in question, it complies with the national regulations in Romania, established in accordance with the principles of free movements of products and market services and which formulates the health and safety requirements that the product must meet in order to be marketed”.*

¹¹³ Art. 244 of the Criminal Code of Romania: “ART. 244 – Misrepresentation; (1) Misrepresenting false facts as being true, or of true facts as being false, in order to obtain undue material gains for oneself or for another, and if material damages have been caused, shall be punishable by no less than 6 months and no more than 3 years of imprisonment. (2) Misrepresentation committed by using false names or capacities or other fraudulent means shall be punishable by no less than 1 and no more than 5 years of imprisonment. If the fraudulent means is in itself an offense, the rules for multiple offenses shall apply. (3) Reconciliation removes criminal liability.”

As detailed in chapter 6.3.2.4 above, the law no. 245/2004¹⁰⁸ in article 2 specifies that this law relates to products intended for use by consumers¹⁰⁹ and that it is intended to specify product safety¹¹⁰ where product safety refers primarily to protection of health and safety of consumers.

The IP concludes that this law has only very limited applicability in business to business relationships. As HS is not trading with consumers but with suppliers and customers in business to business relationships, law no. 245/2004 is not applicable in the context of this investigation.

WWF-D/anonymous-017 continues to argue that *“the use of such an electronic facility was not safe according to the national legislation because the installation disregarded the national legislation regarding the measurement of timber. Since the national regulation standard STAS 5170-73 was legal and applied, as the Environmental Minister stated, all the way from harvesting site to the buyers’ facility, modifying the method of measurement fundamentally creates instability and confusion on the internal market. Such confusion is illegal according to the Law 245/2004 that is obliging both the seller and the buyer to apply the national regulations ensuring the uniformity and predictability of the market”*.

The IP concludes that law no. 245/2004 refers primarily to health and safety of products produced and placed on the market, but not to production installations and/or processes (see also above in chapter 6.3.2.4 *Law no. 245/2004 on general product safety*). Furthermore, as outlined in section 3.3.1, 3.3.2, 3.3.3, 3.3.4 and 3.3.5 the Romanian standard STAS 5170-73¹⁴ and the subsequent standard SR 13569:2013/C91:2015¹⁵ are voluntary in nature, and it is therefore concluded that compliance with the Romanian standard STAS 5170-73 is not required by law and/or regulation in Romania. The Romanian standard SR13569/C91:2013¹⁵ in clause 4.4.2 specifies *“... Any modification of the measurement rules according to this standards should be mentioned. The modifications should be subject of an agreement amongst the interested parties”*. Thus modification of measurements subject to agreement between the business parties involved is explicitly foreseen in this currently valid Romanian standard for measuring roundwood.

Based on the analysis above and the review of this aspect of the response by WWF-D/anonymous-017 in this chapter, the IP concludes that law no. 245/2004¹⁰⁸ does not apply to business-to-business relationships between HS and its suppliers and customers, and that law 245/2004 does not refer to production installations (including electronic instruments for timber management) and production processes (including timber measurement rules), but to the protection of health and safety of products intended for use by consumers.

Based on review of this aspect of the response provided by WWF-D/anonymous-017 and the elaboration above, the IP concludes that the assessment and conclusions presented in this report are sustained.

WWF-D/anonymous-017 continues their response by referring to law no. 11/1991¹⁰⁵ on unfair competition, as amended and completed by Law No. 298/2001, Law No. 255/2013 and Government Ordinance No. 12/2014 (the “Unfair Competition Law. As detailed and argued in chapter 6.3.3.1 the law no. 11/1991 with its amendments and in line with different EU/EC regulations addresses concentration in markets – i.e. identifies if mergers between different corporate entities lead to undue concentration (an overly dominating position of the resulting business entity) in the market and therefore to unfair competition between different business entities. Therefore the IP concludes that the articles 1 and 2 of law no. 11/1991¹⁰⁵ referenced in the response by WWF-D/anonymous-017 do not apply to the use of certain production installations (including electronic instruments for

timber management) and production processes (including timber measurement rules) by HS and/or to the contractual relationship between HS and its business partners.

In response to the argument brought forward by WWF-D/anonymous-017 referring to law no. 11/1991¹⁰⁵ on unfair competition, section 3.3.6 above was updated.

Based on the above the IP furthermore concludes that the information provided by HS and their contracts with suppliers reflect the use of certain production installations (including electronic instruments for timber management) and production processes (including timber measurement rules), and that further information was readily available. Some suppliers chose to be present when timber was received in the mill and measured by HS and supervised the process⁵⁷.

The IP therefore concludes that the use of certain production installations (including electronic instruments for timber management) and production processes (including timber measurement rules) was compliant with legal provisions in Romania and that suppliers in business-to-business relationship with HS had due access to relevant information about production installations and production processes used in commercial transactions with HS.

Based on review of this aspect of the response provided by WWF-D/anonymous-017 and the elaboration above, the IP concludes that the assessment and conclusions presented in this report are sustained.

6.3.4 Comment 4. Regarding the contract legality – the legislation applicable to the contract

WWF-D/anonymous-017 state in their response that *“Several timber producers complained about the measurement measures used by this company, not understanding how they are selling 10% less would then harvested.”* and continues with and concludes with *“Translation of key statement of Mr. Balc Calin: ‘I am sure that HS [the company] was stealing when measuring [the logs]. But it is hard to grasp. I had measured [by hand caliper] several times the volume at the loading place [“rampa”], and I deducted the bark; I made strict [precise] measurements. But the volume [of the same logs] measured at the factory of HS was 3-4-5 cubic meters less. I believe that they were stealing when measuring the diameters.”*

The IP recognizes the information and argument provided and understands that suppliers may not have been satisfied with the outcome of their business relation to HS. However, the IP is also aware the suppliers to HS entered into the business relation with HS by choice (i.e. their own free will). As outlined above in section 6.4.4.1 (Law no. 363/2007¹¹² on combating unfair commercial practices between businesses and consumers (“Consumption Code”)) the EU and/or EU member countries special protection of consumers in their relations with businesses is deemed necessary. But this special protection does not refer to business-to-business relationships. On the contrary, in legal terms anybody acting as a business is deemed competent and fully responsible for the outcomes of business relations. The IP therefore concludes that, while suppliers of HS may have been dissatisfied with the outcome of their business relations, they nevertheless entered into business relations with HS by choice (or their own free will) and are fully responsible for the outcome of said business relationship with HS.

WWF-D/anonymous-017 state in their response that *“... that the law chosen is clearly the Romanian law as clearly stated in the contract.”* and *“There is no provision of the contract that the Austrian law would be applicable to any part of the contract, therefore the practice of SC Holzindustrie Schweighofer SRL to apply the Austrian rules for timber measurements is illegal.”*

The IP reviewed the argument presented and concludes as already detailed in sections 3.3.1, 3.3.2, 3.3.3, 3.3.4, 3.3.5, and again in section 6.3.3 the Romanian standard STAS 5170-73¹⁴ and the subsequent standard SR 13569:2013/C91:2015¹⁵ are voluntary in nature, and it is therefore concluded that compliance with the Romanian standard STAS 5170-73¹⁴ is not required by law and/or regulation in Romania. The Romanian standard SR13569/C91:2013¹⁵ in clause 4.4.2 specifies *"... Any modification of the measurement rules according to this standards should be mentioned. The modifications should be subject of an agreement amongst the interested parties"*. Thus, the modification of measurements including utilizing some of the rules used in Austria for timber measurement and classification is explicitly foreseen in this currently valid Romanian standard for measuring roundwood, and are subject to agreement between the respective business parties involved.

Based on review of this comment 4 of the response provided by WWF-D/anonymous-017, the investigation presented in this report, and the elaboration in this chapter above, the IP concludes that the assessment and conclusions presented in this report are sustained.

6.3.5 Comment 5. Regarding the contract legality – error in negotium

WWF-D/anonymous-017 refers their response to the Civil Code of Romania Article 1207 as follows: *"Establishing a discretionary and occult method of measuring, without this method being explicitly described and accepted by the other party is error in negotium (art 1207 para 2 pct 2), as the contract does not have a determinable nor licit object of the obligation assumed by the buyer. Such an error is sanctioned by absolute nullity. Such nullity can be invoked by any interested party, regardless of the time it occurred since the violation of the law and affects the entire contract – the contract is null and void as it never existed."*

The IP reviewed the response and argument brought forward by WWF-D/anonymous-017 and especially whether this could de-facto constitute an 'error in negotio'. The IP concludes that 'any interested party' refers primarily to the parties involved in said business transaction, but not necessarily to external third parties. Whether a due court of law in Romania would accept a claim to 'error in negotio' by an external third party not involved in said business transaction and to what effect is highly questionable. Any party involved in said business transaction (interested party) could seek recourse at a due court of law in Romania under the Romanian civil code claiming 'error in negotio'. In view of the evidence presented, especially:

- the contracts between HS and its supplies and the detail contained therein;
- the possibility of suppliers receiving further information from HS;
- the possibility for suppliers to be present during, and to supervise measurement and classification of timber at the HS facility; and
- the fact that some suppliers chose to ask for additional information from HS;
- the fact that some suppliers chose to be present and supervise when timber received in the mill was measured and classified by HS⁵⁷,

it is questionable whether a due court of law in Romania would sustain a claim to 'error in negotio' and indeed nullify the contract between HS and a supplier. The IP is not aware whether any supplier of HS sought recourse at a due court of law of Romania claiming 'error in negotio', and if so what the outcome was.

However, based on the evidence reviewed and the analysis above, and judging from the interpretation of law in general, and in view of the possibilities provided by HS to understand the contractual terms including the instruments and rules for timber measurement and classification, and taking into account that contract conditions and measurement procedures, including differences in measurement results, were generally known and discussed not only amongst HS suppliers but throughout timber suppliers in Romania, the IP considers it highly likely that a claim to '*error in negotio*' is not sustained and that the contracts between HS and its supplies are not annulled because of '*error in negotio*' but remain valid.

6.3.6 Comment 6. Regarding Reci Sawmill and Electric Power Plant (60 MW)

WWF-D/anonymous-017 refers to the fact that '*The experts are diminishing the importance and the gravity of the illegalities mentioned in the initial complaint, analyzing only the competence of the architects to sign the urban and construction documentations.*'. WWF-D/anonymous-017 continues to point to the fact that '*The experts completely disregarded all other problems identified by Mr. Belinschi in his report. They were not mentioned or analysed, and no indication regarding the reasons were not provided.*'.

The IP is aware of and reviewed the expert evaluation compiled by Mr. Alexandru Belinschi⁹³ (Bucharest, Romania) in 2015 concerning legal aspects of the issuing of the construction permit No. 220 for HS sawmill in Reci on Dec. 24. 2013 by the president of the County Council of Covasna. Mr. Belinschi in his analysis recommended withdrawal of the construction permit of the HS sawmill. The report by Mr. Belinschi does not accuse at any time the beneficiary (i.e. HS) of wrong doing. He pointed out irregularities in relation to the performance of the architects, including the missing documents, missing signatures or stamps, etc.

All the aspects alleged in relation to authorizing the construction of the sawmill and power plant in Reci plant were reviewed. The report by Mr. Belinschi⁹³ triggered the review and decision by the Romanian Chamber of the Architects^{79,80}, in parallel with the investigation by the Premier Minister Corp of Control^{94,95}. Considering the evidence and the conclusions of different experts and authorities in Romania, it appears that the architects and, the public authorities in charge of verifying the documentation did not properly execute their responsibilities, and that the authorization for the construction of the sawmill and/or power plant in Reci was issued without proper and complete documentation. However, the Chamber of the Architects, after studying in detail the evidence, concludes that the client (HS) has been misled. The Premier Minister Corp of Control signals "administrative deficiencies". Based on analysis of the different experts and authorities in Romania, there is until now no direct or indirect evidence suggesting that the deficient work of the architects and/or of the public authorities was intentionally induced by HS. Currently, there is no indication that the public authorities responsible, have or will withdraw the authorization for the construction of the sawmill and/or require HS to revise existing and/or establish new documentation.

A central element in the review and evaluation by the IP relates to the fact that the Prime Minister's Corp of Control (CCPM)^{94,95} investigated in detail the allegations on violation of authorizations and permits legally required in relation to the construction of the HS sawmill at Reci including the reports by the Romanian Chamber of Architects^{79,80} and by Mr. Belinschi⁹³, and a range of other information. In its annual report 2015⁹³ the conclusions by the CCPM suggests that the case of the sawmill construction at Reci had no criminal relevance but pointed to administrative deficiencies.

The IP understands that the CCPM is a competent authority at the highest possible level, which is independent, which is not subject to local politics and/or conflict of interest, and which is equipped with the broadest scope of legal instruments.

As the CCPM is far better equipped and more knowledgeable of national and local conditions in Romania than the parties to the complaint, the FSC and/or IP, the IP chose to follow the conclusions of the CCPM.

The extent and gravity of the deficiencies, and whether the formal authorizations and legal permits for the construction of the HS sawmill and/or power plant at Reci remain valid, require updating or are terminated retroactively has to be determined by the respective authorities in Romania.

The IP concludes that this case has been investigated in detail by the CCPM. As this investigation did not result in further investigation(s) and/or charge(s) against HS, the IP is satisfied that there is currently no indication that HS' actions with respect to construction of HS sawmill and/or power plant at Reci were relevant in relation to and/or compromising the legality requirements of the FSC PfA.

Based on review of the response provided by WWF-D/anonymous-017 and the elaboration above, the IP concludes that the assessment and conclusions presented in this report are sustained.

7 List of legislation and regulation reviewed

7.1 List of legislation and regulation on standardization and on timber measurement

Romanian standard STAS 5170-73 for round, soft- and hard wood for industrial use, construction, measuring and storage, in force until 23.12.2013.

Lege nr. 20 din 13 decembrie 1984 privind tipizarea și standardizarea produselor, construcțiilor și tehnologiilor, normarea tehnica a consumurilor materiale și energetice, ridicarea calității - Law 20/1984 about the standardization - in force until the year 2000 (cancelled by the Law 120/2000).

Governmental Ordinance nr. 39/1998 on the national standardization activity in Romania, approved by the Law nr. 355/2002 (Lege nr. 355 din 6 iunie 2002 pentru aprobarea Ordonanței Guvernului nr. 39/1998 privind activitatea de standardizare națională în România), in force until the year 2015.

Lege nr. 355 din 6 iunie 2002 pentru aprobarea Ordonanței Guvernului nr. 39/1998 privind activitatea de standardizare națională în România - Law no. 355/2002 of June 6, 2002 for the approval of Government Ordinance no. 39/1998 regarding the national standardization activity in Romania.

Legea 163/2015 privind standardizarea națională - Law nr. 163/2015 on the national standardization activity - which replaced the Law 355/2002.

Romanian standard SR 13569:2013/C91:2015, Round wood and other assortments of timber materials. Methods for measurement (Lemn rotund și alte sortimente de material lemnos. Metode de măsurare), currently in force.

Ministerial Order 1323/2015 on the evaluation of the timber volume for selling, Anexes 1 to 24 about the methods allowed for timber selling from the forests (Anexele nr. 1—24 la Ordinul ministrului mediului, apelor și pădurilor nr. 1.323/2015 privind aprobarea metodelor dendrometrice pentru evaluarea volumului de lemn destinat valorificării și valorile necesare calculului volumului de lemn destinat valorificării), in force.

7.2 List of legislation and regulation on calibration

Government Ordinance 20/1992 on metrology (calibration), in force

Governmental Decision 193/2002 on the organization of the National Office for Calibration (Hotarare nr. 193/2002 privind organizarea și funcționarea Biroului Român de Metrologie Legală), in force

Law 178/2003 is approving Governmental Ordinance 104/1999 amending and supplementing Government Ordinance no. 20/1992 on metrology (calibration), in force

BRML Order 144/2001 establishing the official list of measuring instruments subject to mandatory metrological control of the state (L.O. - 2001) (Biroul Român de Metrologie Legală – BRML. Lista oficială 2001 a mijloacelor de măsurare supuse obligatoriu controlului metrologic al statului).

BRML Order 27/2004 establishing the revised official list of measuring instruments subject to legal metrological control by the state (L.O. – 2004) (Biroul Român de Metrologie Legală – BRML. Lista oficială 2004 a mijloacelor de măsurare supuse obligatoriu controlului metrologic al statului).

Hotarare nr. 264 din 22 februarie 2006 privind stabilirea condițiilor de introducere pe piață și de punere în funcțiune a mijloacelor de măsurare - Governmental Decision 264/2006 on introducing on the market and putting in use measurement instruments - in force 2006-2015

BRML Order 48/2010 establishing the revised official list of measuring instruments subject to legal metrological control by the state (L.O. – 2010) (Biroul Român de Metrologie Legală – BRML. Lista oficială 2010 a mijloacelor de măsurare supuse obligatoriu controlului metrologic al statului).

BRML Order 148/2012 establishing the revised official list of measuring instruments subject to legal metrological control by the state (L.O. – 2012) (Biroul Român de Metrologie Legală – BRML. Lista oficială 2012 a mijloacelor de măsurare supuse obligatoriu controlului metrologic al statului).

BRML Order 485/2013 approving the norm NML 082-13 for legal calibration of "Electronic equipment for measuring roundwood" (Norma de metrologie legală NML 082-13 "Echipamente electronice pentru măsurarea lemnului rotund), in force since 13.11.2013

Norma de metrologie legală NML 082-13 "Echipamente electronice pentru măsurarea lemnului rotund - Norm NML 082-13 for legal calibration of "Electronic equipment for measuring roundwood"

Hotarare nr. 711 din 26 august 2015 privind stabilirea condițiilor pentru punerea la dispoziție pe piață a mijloacelor de măsurare - Governmental Decision 711/2015 on establishing the conditions for introducing on the market of the measuring instruments - currently in force

7.3 List of legislation and regulation from forest sector that may contain specific rules for the timber measurement at the reception in the mills

Ministerial Order 1651/2000 for approving the Technical Norms of the estimation of the volume of wood for selling (Norme tehnice privind evaluarea volumului de lemn destinat comercializării)

Governmental Decision 1090/2000 for approving Criteria of measuring, classifying and marking the roundwood, in view of preparing the EU accession, in force for the period 2000-2008

Governmental Decision 427/2004 on the norms about wood materials transportation and the control of the wood material transportation and of the sawmills (Hotararea de Guvern 470/2004 privind aprobarea Normelor din 23 martie 2004 privind circulația materialelor lemnoase și controlul circulației acestora și al instalațiilor de transformat lemn rotund), in force for the period 2004-2008

Law 46/2008 Forest Code, amended 20 April 2012.

Governmental Decision 996/2008 on the norms on the origin, the transportation, the moving and the trading of wood materials, on the regime of storing places and on the regime of the sawmills (Hotarare nr. 996 din 27 august 2008 pentru aprobarea Normelor referitoare la proveniența, circulația și comercializarea materialelor lemnoase, la regimul spațiilor de depozitare a materialelor lemnoase și al instalațiilor de prelucrat lemn rotund), in force for the period 2008-2014

Governmental Decision 470/2014, approving rules on wood origin, circulation and selling, on wood storage spaces, on roundwood processing installations, and on certain measures implementing the EU Regulation No. 995/2010 of 20 October 2010 (EUTR) laying down the obligations of operators who place timber and timber products on the market (Hotararea de Guvern 470/2014 de aprobare a normelor din 4 iunie 2014 referitoare la proveniența, circulația și comercializarea materialelor lemnoase, la regimul spațiilor de depozitare a materialelor lemnoase și al instalațiilor de prelucrat lemn rotund, precum și a unor măsuri de aplicare a Regulamentului (UE) nr. 995/2010 al Parlamentului European și al Consiliului din 20 octombrie 2010 de stabilire a obligațiilor ce revin

operatorilor care introduc pe piață lemn și produse din lemn), in force until 21.10.2017 (at that day, it will be replaced by the Governmental Decision 1004/2016)

Ministerial Order 1323/2015 of the Ministry of Environment, Water and Forestry (MMAP) approving dendrometrical methods to measure the volume of wood for selling and values necessary for calculating the volume of wood for selling (Ordin nr. 1323 din 31 august 2015 privind aprobarea metodelor dendrometrice pentru evaluarea volumului de lemn destinat valorificării și valorile necesare calculului volumului de lemn destinat valorificării)

ORDIN nr. 2526 din 30 decembrie 2016 pentru completarea Metodologiei privind organizarea și funcționarea SUMAL, obligațiile utilizatorilor SUMAL, precum și structura și modalitatea de transmitere a informațiilor standardizate, aprobată prin Ordinul ministrului delegat pentru ape, păduri și piscicultura nr. 837/2014; Governmental Order no. 2526 of 30 December 2016 for the completion of the Methodology on the organization and operation of the SUMAL, the obligations of SUMAL users, as well as the structure and manner of transmitting standardized information, approved by the Order of the Minister for Water, Forests and Fisheries no. 837/2014

reference no. 165 654 by the Ministry of Environment, Water and Forest, Cabinet Secretary of State, approved Ms. Erika Stanciu, State Secretary; 444.Referat_modificare_OM_837

7.4 List of other legislation and regulation possibly relevant for the case

Legea nr. 11/1991 din 29 ianuarie 1991 privind combaterea concurenței neloiale; Law no. 11/1991 of 29 January 1991 on unfair competition, as amended and completed by Law No. 298/2001, Law No. 255/2013 and Government Ordinance No. 12/2014 (the “Unfair Competition Law”); <http://www.legex.ro/Legea-11-1991-1894.aspx>.

Legea nr. 245/2004 din 9 iunie 2004 privind securitatea generală a produselor; Law no. 245/2004 din 9 June 2004 on general product safety; <http://www.legex.ro/Legea-245-2004-86772.aspx>.

Civil Code of Romania (Codul civil al României, commonly referred to as Noul Cod Civil – the New Civil Code, officially Law no. 287/2009 on the Civil Code) is the basic source of civil law in Romania.

Legea nr. 363/2007 privind combaterea practicilor incorecte ale comercianților în relația cu consumatorii și armonizarea reglementărilor cu legislația europeană privind protecția consumatorilor; Law No 363/2007 on combating unfair commercial practices between businesses and consumers and harmonising provision with EU consumer law (Monitorul Oficial al României, Part I, No 899 of 28 December 2007), as subsequently amended and supplemented.

Art. 244 of the Criminal Code of Romania: “ART. 244 – Misrepresentation; (1) Misrepresenting false facts as being true, or of true facts as being false, in order to obtain undue material gains for oneself or for another, and if material damages have been caused, shall be punishable by no less than 6 months and no more than 3 years of imprisonment. (2) Misrepresentation committed by using false names or capacities or other fraudulent means shall be punishable by no less than 1 and no more than 5 years of imprisonment. If the fraudulent means is in itself an offense, the rules for multiple offenses shall apply. (3) Reconciliation removes criminal liability.”.

7.5 List of legislation and regulation relevant to energy production

Law 220/2008 establishing the system for promoting energy from renewable sources, Republished (Lege nr. 220 din 27 octombrie 2008 pentru stabilirea sistemului de promovare a producerii energiei

din surse regenerabile de energie, republicata), in force, with modifications done by the Law 122/2015

Ministerial Order 1341/2012 approving the Procedure for issuing certificates of origin for the biomass from forestry and related industries (Ordin nr. 1341 din 3 mai 2012 privind aprobarea Procedurii de emitere a certificatelor de origine pentru biomasa provenită din silvicultură și industriile conexe), in force 2012-2016

Legea Nr. 278/2013 din 24 October 2013 privind emisiile industriale; Law No. 278/2013 of 24 October 2013 on industrial emissions.

Ministerial Order 1534/2016 approving the Procedure for issuing certificates of origin for biomass from forestry and related industries and used in the production of electricity from renewable energy sources (Ordin 1534/2016 privind aprobarea Procedurii de emitere a certificatelor de origine pentru biomasa provenită din silvicultură și industriile conexe și utilizată în producerea de energie electrică din surse regenerabile de energie) (this Order is replacing the previous Order 1341/2012), in force

Court Decision 285/2016 on the Case 4140/2.05.2015 Egger versus Ministry of Environment, Water and Forests, for the bark used to produce energy in the period 17.03.2015-6.06.2015 (Hotărâre 285/02.02.2016),

http://portal.just.ro/2/SitePages/Dosar.aspx?id_dosar=200000000326923&id_inst=2

7.6 List of legislation and regulation relevant to sawmill construction at Reci

Legea Nr. 50/1991 privind autorizarea executării lucrărilor de construcții; Law No. 50/1991 authorizing the execution of construction works (republished), Law no. 52/2006 amending and supplementing Law no. 50/1991, Order no. 1430/2005 approving the Detailed Rules implementing Law no. 50/1991 authorizing the execution of construction works, Annex to Order 1430/2005 with Detailed Rule (Rectification of 30 October 2005) and Order of the Minister of Public Works and Spatial Planning no. 91/1991 approving the forms, the authorization procedure and the content of the documentations provided by Law no. 50/1991.

Legea Nr. 350/2001 privind amenajarea teritoriului și urbanismul cu modificările și completările ulterioare - versiune consolidată neoficială realizată în cadrul Direcției Generale Dezvoltare Teritorială a Ministerului Dezvoltării Regionale și Locuinței; Law No. 350/2001 on spatial planning and urban planning and Government Ordinance no. 69/2004 supplementing article 38 of Law no. 350/2001 (approved by Law no. 464/2004).

Hotărâre nr. 918 din 22 august 2002 privind stabilirea procedurii-cadru de evaluare a impactului asupra mediului și pentru aprobarea listei proiectelor publice sau private supuse acestei proceduri - Governmental Decision 918/2002 on the procedure for the environmental impact assessment and the approving of the list of the public or private projects subject to this procedure - in force 2002-2006.

Ordonanța de urgență nr. 195 din 22 decembrie 2005 privind protecția mediului - Governmental Ordinance 195/2005 on environmental protection - approved by the Law 265/2005.

Hotărâre nr. 1213 din 6 septembrie 2006 privind stabilirea procedurii-cadru de evaluare a impactului asupra mediului pentru anumite proiecte publice și private - Governmental Decision 1213/2006 on the establishing the framework-procedure for environmental impact assessment - in force 2006-2009.

Hotarare 445 din 8 aprilie 2009 privind evaluarea impactului anumitor proiecte publice și private asupra mediului - Governmental Decision 445/2009 on the environmental impact assessment for some public or private projects.

Urban planning approval for Reci facility by the local administration - Hotararea 36/11.11.2013 .

Environmental approval (aviz de mediu) issues by the Environmental Authority of the County of Covasna on 9 September 2013 (Aviz de mediu nr 1/09.09.2013).

Environmental authorization nr. 66 of 7 August 2015 with a revision of 21 January 2016 (Autorizatie de Mediu, nr 66, 07.08.2015, Revizuita in data 21.01.2016).

Annual Report 2015; Prime Ministers Corps of Control (Corpul de Control al Primului Ministru); http://gov.ro/fisiere/comunicate_fisiere/Raport_activitate_CCPM_2015.pdf. 442_Raport_activitate_CCPM_2015.

Nota 671/I.L./14.07.2015 - Nota de informare cu privire la emiterea avizelor, autorizațiilor și aprobărilor necesare pentru construirea și funcționarea fabricilor de prelucrare a lemnului aparținând societății Holzindustrie Schweighofer S.R.L. sau altor societăți la care aceasta deține minim 90% din titlurile de participare; Note 671 / I.L. / 14.07.2015 - Information notice concerning the issuing of approvals, authorizations and approvals required for the construction and operation of woodworking.

7.7 List of relevant EU legislation

The following EU legislation was reviewed:

The EU Directive 68/69 for the intra-European approximation of laws in terms of roundwood scaling and grading was aimed at aligning within EU member states the national regulation rules for timber measurement and classification. It was suspended on 31.12.2008 (see references in 421. Sauter).

EU Regulation No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (EUTR).

EU Regulation no 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council, published in Official Journal of the European Union no. L 316 of 14.11.2012.

7.8 List of relevant legislation in other European countries

The following legislation of other European countries was reviewed:

Holzmessung_Forst-Holz-Papier_2007 - Österreichischen Holzhandelsusancen (ÖHU).

Ordinance of the Austrian Federal Office for Metrology and Surveying of 9.8.1984, with the calibration regulations for electronic roundwood measuring systems, as well as the amendments of 14.12.1991; and approval for electronic roundwood measuring systems GZ 2182/2000, approval for electronic roundwood measuring systems 1650/2005, and approval for electronic roundwood measuring systems 3031/2012.

ÖNORM L1021 – August 2013 und Neuauflage 2015 – regulates the measurement of Roundwood at mill gate – integrated in the Austrian rules for timber classification and measurement (Österreichischen Holzhandelsusancen (ÖHU)).

Framework agreement on roundwood trade in Germany (RVR) between the German Forst Council and the German Timber Council; 1st edition 2014; 11 December 2014 - Rahmenvereinbarung für den Rohholzhandel in Deutschland (RVR) des Deutschen Forstwirtschaftsrates e.V. und des Deutschen Holzwirtschaftsrates e.V.; 1. Auflage 2014; 11. Dezember 2014.

Framework agreement on wood measurement at mills between the German Forst Council and the German Association for Sawmill and Timber Industries of 14 January 2005 - Rahmenvereinbarung für die Werksvermessung von Stammholz des Deutschen Forstwirtschaftsrates e.V. und des Verbandes der Deutschen Säge- und Holzindustrie e.V. [Version 2005-01-14].

8 References

8.1 References CITED

1. 441.3_FSC letter to Ministry_Schweighofer investigation_April 2017_EN
2. 441.2_FSC letter to BRML_Schweighofer investigation_April 2017_EN
3. 441.1_FSC letter to ASRO_Schweighofer investigation_April 2017_EN
4. 403.1 EUTR Complaint by WWF
5. 403.2 WWF Information on Measurement issue
6. personal communication with informants at a meeting in Iasi, Romania on 1 to 3 February 2017
7. 404. Background info by ENGO 2017-01-27
8. 405. ENGO report_ The Austrian method_ July 2015
9. 408.WWF Summary of issue and points for discussion_draft
10. 412. HS timber quality classification procedure
11. 428.6 3_Quality classes_09
12. 419. limba germana Ian 04
13. 420. limba romana Iunie 06
14. Romanian standard STAS 5170-73, clause 2.3.1.4 – “Masurarea marimii diametrului se face cu clupa forestiera, citirea efectuandu-se cu clupa in in pozitia de masurare pe piesa. Observatie: In cazul pieselor la care diametrul depaseste posibilitatea de masurare a clupeii forestiere, se poate masura circumferinta la jumatatea lungimii piesei, cu ajutorul unei rulete special gradate incat sa se citeasca direct marimea diametrului.”.
15. Romanian standard SR 13569:2013/C91:2015 (Lemn rotund și alte sortimente de material lemnos. Metode de măsurare - Roundwood and other assortments of timber materials. Methods for measurement).
16. Legea nr. 163 din 24 iunie 2015 privind standardizarea națională - Law no. 163 of 24 June 2015 on national standardization; article 6 2nd paragraph (art. 6, al. 2) – “Aplicarea unui standard roman poate deveni obligatorie, in totalitate sau in parte, pe intreg teritoriul, pe plan zonal sau pe plan local, numai printr-o reglementare, in cazul in care considerente de ordin public, de protectie a vietii, a sanatatii si a securitatii persoanelor fizice, a mediului si a intereselor consumatorilor fac necesara o astfel de masura.”.
17. Telephone conversation with ASRO, Ms. Mariana Craciun on 6 April 2017
18. 431.2 Ministry_Water_Forests_response_letter_RO
19. Legea nr. 178/2003 privind aprobarea Ordonanței Guvernului nr. 104/1999 pentru modificarea și completarea prevederilor Ordonanței Guvernului nr. 20/1992 privind activitatea de metrologie.
20. Hotarare nr. 264 din 22 februarie 2006 privind stabilirea condițiilor de introducere pe piață și de punere în funcțiune a mijloacelor de măsurare.

21. Hotarare nr. 711 din 26 august 2015 privind stabilirea condițiilor pentru punerea la dispoziție pe piață a mijloacelor de măsurare.
22. Ordin nr. 144/2001, Biroul Român de Metrologie Legală – BRML. Lista oficială a mijloacelor de măsurare supuse obligatoriu controlului metrologic al statului L.O. - 2001 din 27.08.2001. Text publicat în M.Of. al României.
23. Ordin nr. 27/2004 pentru aprobarea Listei oficiale a mijloacelor de măsurare supuse controlului metrologic legal L.O. – 2004.
24. Ordin nr. 48/2010 pentru aprobarea Listei oficiale a mijloacelor de măsurare supuse controlului metrologic legal L.O. – 2010.
25. Ordinul nr. 148/2012 pentru aprobarea Listei oficiale a mijloacelor de măsurare supuse controlului metrologic legal L.O. – 2012.
26. BRML Order 485/2013, approving Norma de metrologie legală NML 082-13 "Echipamente electronice pentru măsurarea lemnului rotund" - Norm NML 082-13 for legal calibration of "Electronic equipment for measuring round wood").
27. Governmental order 470/2014 published in the Official Gazette, Part I No 426 of 10 June 2014. G.D.no. 470/2014 entered into force on 8th October 2014.
28. EUTR – EU Regulation No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market.
29. confidential-001
30. confidential-002
31. confidential-003
32. 428.9 5a_080404_SEB_HFA
33. 428.10 5b_090115_RAD_HFA
34. 428.11 5c_100423_SEB_HFA
35. 428.12 5d_100428_RAD_HFA
36. 428.13 5e_121122_SEB_HFA
37. 428.15 5g_141113_SEB_HFA
38. 428.14 5f_141112_RAD_HFA
39. Ordinance of the Austrian Federal Office for Metrology and Surveying of 9.8.1984, with the calibration regulations for electronic roundwood measuring systems, as well as the amendments of 14.12.1991; and approval for electronic roundwood measuring systems GZ 2182/2000, approval for electronic roundwood measuring systems 1650/2005, and approval for electronic roundwood measuring systems 3031/2012. (Verordnung des Bundesamtes für Eich- und Vermessungswesen vom 9.8.1984, mit den Eichvorschriften für elektronische Rundholzmessanlagen, sowie die Änderungen vom 14.12.1991; und Zulassung für elektronische Rundholzmessanlagen GZ 2182/2000, Zulassung für elektronische Rundholzmessanlagen 1650/2005, und Zulassung für elektronische Rundholzmessanlagen 3031/2012.).

40. 428.16 6a_131215_SEB_BRM; 428.17 6b_131216_RAD_BRM; 429.3 1a_131215_SEB_BRM; 429.4 1b_131216_RAD_BRM
41. 428.18 6c_151124_SEB_BRM; 428.19 6d_151126_RAD_BRM; 429.5 1c_151124_SEB_BRM; 429.6 1d_151126_RAD_BRM
42. 440.1_official_response_by_BRML_RO; 440.2_official_response_by_BRML_EN
43. Letter of 29.09.2011 by HS informing BRML – paragraph 3 translated from Romanian
“Electronic measurements are based on the same principles of volume determination of the timber as the classical [conventional] measurement – i.e. measurement of the average diameter and length which are used according to the STAS 5170-73 (appended), chapter 2.4 to determine the volume. The only difference is the fact that, in classical methods, the two measurements are taken manually and in our case electronically, as described in the appendix attached.”.
44. 417. Artikel_Vergleich_Messmethoden
45. 433_Transcript_9_interviews_HS_suppliers
46. 418 Holzmessung_Forst-Holz-Papier_2007 - Österreichischen Holzhandelsusancen (ÖHU)
47. 428.5 2_HS_supplier-contracts_2009-2017
48. 410.2 contract 2007 - contract between HS and supplier
49. 410.3 contract 2008 - contract between HS and supplier
50. 410.4 contract 2012 - contract between HS and supplier
51. 410.7 contract 2013 - contract between HS and supplier
52. 410.9 Roundwood purchasing contract_Eng - contract between HS and supplier
53. 410.10 Musterkontrakt - contract between HS and supplier
54. 421 Sauter
55. ÖNORM L1021 – August 2013 und Neuauflage 2015 – regulates the measurement of Roundwood at mill gate – integrated in the Austrian rules for timber classification and measurement (Österreichischen Holzhandelsusancen (ÖHU)) – see also reference 26.
56. Regulation (EU) no 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council, published in Official Journal of the European Union no. L 316 of 14.11.2012.
57. 430. transcript_interview_HIS_former_employee_May 2017
58. Romanian standard STAS 5170-73, clause 2.3.1.6
59. Romanian standard STAS 5170-73, clause 2.3.1.1
60. Romanian standard STAS 5170-73, clause 2.3.1.2
61. Romanian standard STAS 5170-73, clause 2.3.2.2

62. 428.5 2_HS_supplier-contracts_2009-2017 – “... Vanzătorul accepta sistemul de măsurare electronică al cumpărătorului, pe care declară că îl cunoaște. ...”
63. 428.5 2_HS_supplier-contracts_2009-2017 – “... Masuratoarea este realizată de o instalație electronică iar rezultatele sunt înregistrate pentru a putea fi prezentate la cererea expeditorului. Masuratoarea și sortarea vor fi efectuate la intrarea în fabrică cumpărătorului de către personalul calificat după normele de calitate S.C.Holzindustrie Schweighofer S.R.L. Baza de calcul a măsurătorii este mijlocul busteanului. Masuratoarea efectuată în fabrică va fi recunoscută ca bază de facturare. Vanzătorul va primi măsurătorile pe o listă care va conține cantitatea și calitatea livrată bucata cu bucata. Măsurarea electronică se efectuează din cm în cm după decojire iar rotunjirea se face la valoarea inferioară a intervalului de măsurare. Dacă supralungimea este sub 5 cm se reduce 1 m. ...”
64. ORDIN nr. 2526 din 30 decembrie 2016 pentru completarea Metodologiei privind organizarea și funcționarea SUMAL, obligațiile utilizatorilor SUMAL, precum și structura și modalitatea de transmitere a informațiilor standardizate, aprobată prin Ordinul ministrului delegat pentru ape, păduri și piscicultură nr. 837/2014; Government Order no. 2526 of 30 December 2016 for the completion of the Methodology on the organization and operation of the SUMAL, the obligations of SUMAL users, as well as the structure and manner of transmitting standardized information, approved by the Order of the Minister for Water, Forests and Fisheries no. 837/2014;
65. reference no. 165 654 by the Ministry of Environment, Water and Forest, Cabinet Secretary of State, approved Ms. Erika Stanciu, State Secretary; 444.Referat_modificare_OM_837
66. 422. Volumenmessung_Rahmenvereinbarung_RVR_D: Framework agreement on roundwood trade in Germany (RVR) between the German Forst Council and the German Timber Council; 1st edition 2014; 11 December 2014 - Rahmenvereinbarung für den Rohholzhandel in Deutschland (RVR) des Deutschen Forstwirtschaftsrates e.V. und des Deutschen Holzwirtschaftsrates e.V.; 1. Auflage 2014; 11. Dezember 2014.
67. 450_Rahmenvereinbarung_Werksvermessung-DFWR_VDS_RVWV_050114: Framework agreement on wood measurement at mills between the German Forst Council and the German Association for Sawmill and Timber Industries of 14 January 2005 - Rahmenvereinbarung für die Werksvermessung von Stammholz des Deutschen Forstwirtschaftsrates e.V. und des Verbandes der Deutschen Säge- und Holzindustrie e.V. [Version 2005-01-14].
68. communication by Ms. Erika Stanciu, former State Secretary for Forests.
69. personal communication Prof. Dr. Marian Dragoi, Ștefan Cel Mare University of Suceava, Romania, on 10 April 2017 - the Romanian system for corporate taxes is based on: (1) direct taxes 16% of profit; (2) indirect taxes 19% of value added.
70. ROMSILVA Romanian state-owned enterprise responsible for the protection, preservation and development of publicly owned forests of the Romanian state, and the management of hunting and fishing grounds. Romsilva owns and manages 4,000,000 hectares (9,900,000 acres) of forests which represents 65% of all forests in the country. The company has its headquarters in Bucharest.
71. LEGE nr. 220 din 27 octombrie 2008 pentru stabilirea sistemului de promovare a producerii energiei din surse regenerabile de energie.

72. LEGE nr. 220 din 27 octombrie 2008, Article 3 (6) Nu se aplică sistemul de promovare a producerii energiei electrice din surse regenerabile de energie stabilit prin prezenta lege pentru: (a) energia electrică produsă din deșeuri industriale și/sau municipale achiziționate din import, indiferent de puterea instalată a centralei electrice.
73. Hotărâre 285/2016 02.02.2016 (Decision) - http://portal.just.ro/2/SitePages/Dosar.aspx?id_dosar=200000000326923&id_inst=2
74. Ordin nr. 1534 din 28 iulie 2016 privind aprobarea Procedurii de emitere a certificatelor de origine pentru biomasa provenită din silvicultură și industriile conexe și utilizată în producerea de energie electrică din surse regenerabile de energie.
75. Governmental Order no. 1534, Article 1 (1) În sensul prezentei proceduri, prin biomasa provenită din silvicultură și industriile conexe, pentru care se emit certificate de origine, se înțelege: (a) fracțiunea biodegradabilă a produselor rezultate din prelucrarea primară și secundară pe teritoriul României a lemnului - coajă, rumeguș, aşchii rezultate din prelucrare, capete, tocătură din liniile de profilare, resturi de lemn, rezultate în urma prelucrării sau reciclării materialului lemnos și/sau a produselor din lemn, inclusiv din import, care nu se încadrează în categoria materialelor lemnoase, conform prevederilor legale în vigoare, precum și material lemnos declasat în incinta proprie ca urmare a procesului tehnologic de prelucrare a materialului lemnos; (b) tocătură de lemn, provenită numai din categoriile cuprinse la lit. a).
76. 427.1 anonymous-002 to FSC providing Reci evidence
77. 427.2 expertiza CR-raspunsuri
78. 427.3 EN Summary of the report about Reci allegations
79. 426.1 RO ruling of Romanian Chamber of Architects against planners of HS factory in RECI.pdf
80. 426.2 EN Summary of RO ruling of Romanian Chamber of Architects against planners of HS RECI factory.
81. Hotarare nr.918 din 22 august 2002 privind stabilirea procedurii-cadru de evaluare a impactului asupra mediului și pentru aprobarea listei proiectelor publice sau private supuse acestei procedure.
82. Hotarare nr. 1213 din 6 septembrie 2006 privind stabilirea procedurii-cadru de evaluare a impactului asupra mediului pentru anumite proiecte publice și private.
83. Hotarare nr. 445 din 8 aprilie 2009 privind evaluarea impactului anumitor proiecte publice și private asupra mediului.
84. 429.7 2a_REC-urban-plannig_2013 - Decision no 36/11.11.2013 issued by the Reci City Council approving the Urban Zone Planning.
85. 429.8 2b_REC_Aviz_Mediu_2013 - the Environmental Permit no. 1/09.09.2013 issued by the National Environment Protection Agency through the Covasna Environment Protection Agency.
86. 429.9 2c_REC_Decizie_Mediu_2013 - - the Framing Decision no. 76/12.12.2013 issued by the National Environment Protection Agency through the Covasna Environment Protection Agency.

87. 429.10 2d_REC_Autorizatia_de_mediu_2016 - the Environmental Authorisation no. 66/07.08.2015 (revised on 21.01.2016) issued by the National Environment Protection Agency through the Covasna Environment Protection Agency.
88. Ordonanta de urgenta nr. 195 din 22 decembrie 2005 privind protecția mediului - Governmental ordinance 195 of 22 December 2005 on environmental protection - approved by the law 265/2005 with subsequent modifications.
89. Governmental ordinance 195/2005 on environmental protection (Ordonanta de urgenta nr. 195 din 22 decembrie 2005 privind protecția mediului, approved by the law 265/2005 with subsequent modifications) article 2, point 13.a “actul administrativ emis de autoritatea competentă pentru protecția mediului, care confirmă integrarea aspectelor privind protecția mediului în planul sau programul supus adoptării” – Translation “the administrative act issued by the competent authority for environmental protection confirming the integration of environmental issues into the plan or program subject to adoption”.
90. Governmental ordinance 195/2005 on environmental protection (Ordonanta de urgenta nr. 195 din 22 decembrie 2005 privind protecția mediului, approved by the law 265/2005 with subsequent modifications) article 2, point 9 “actul administrativ emis de autoritatea competentă pentru protecția mediului, prin care sunt stabilite condițiile și/sau parametrii de funcționare al unei activități existente sau al unei activități noi cu posibil impact semnificativ asupra mediului, obligatoriu la punerea în funcțiune ” – Translation “the administrative act issued by the competent authority for environmental protection setting out the conditions and / or operating parameters of an existing activity or a new activity with possible significant environmental impact, mandatory for commissioning.”
91. Page 3 of 426.1 RO ruling of Romanian Chamber of Architects against planners of HS factory in RECI: “Domnul arhitect Nemeth Csaba Iosif a incheiat un contract cu Beneficiarul, fara a-l preveni pe acesta cu privire la imposibilitatea oferirii serviciilor pe care proiectarea unui astfel de obiectiv le impune, contractul fiind semnat doar de catre domnia sa ca director, nu și de șeful de proiect (care ar fi trebuit sa fie arhitect), dovedind astfel intentia de a induce in eroare clientul”. Translation: “The architect Nemeth Csaba Joseph concluded a contract with the client in spite of not being able to offer the services that the design of such an object require. That the contract was signed only by his director as the director, but not by the project manager (who should have been an architect), proved the intent to mislead the client”.
92. Page 4 of 426.1 RO ruling of Romanian Chamber of Architects against planners of HS factory in RECI: “Prin elaborarea deficitara a proiectului, atat in faza de avizare, autorizare, dar si in ceea ce priveste verificarea proiectului, sotii Nemeth au incalcat atat interesele investitorului, dar si interesul public, proiectul nefiind verificat corespunzator asupra categoriei de importanta a acestuia la toate cerintele de calitate cerute de Legea nr 10/1995 a calitatii in constructii, neavand astfel certificata protejarea comunitatii, vecinatatilor si a mediului inconjurator.”. Translation: “Due to the poor design of the project, both during the approval, authorization and verification of the project, the Nemeth spouse compromised both the interests of the investor and the public interest, and the project was not adequately verified in relation to all requirements and according to its importance. Quality required by Law no. 10/1995 on quality in construction, but not certifying the protection of the community, neighborhoods and the environment.”.

93. expert assessment by Mr. Alexandru Belinschi of construction permit for the sawmill construction at Reci; 425.1 RO-expert evaluation RO construction permit HS factory RECI; 425.2 EN Summary of RO expert evaluation No. 1 concerning HS factory in RECI
94. 442_ Raport_activitate_CCPM_2015. Annual Report 2015; Prime Minister's Corps of Control (Corpul de Control al Primului Ministru); (http://gov.ro/fisiere/comunicate_fisiere/Raport_activitate_CCPM_2015.pdf).
95. Nota 671/I.L./14.07.2015 - Nota de informare cu privire la emiterea avizelor, autorizațiilor și aprobărilor necesare pentru construirea și funcționarea fabricilor de prelucrare a lemnului aparținând societății Holzindustrie Schweighofer S.R.L. sau altor societăți la care aceasta deține minim 90% din titlurile de participare.
96. the original text on page 33, paragraph 5 of this report reads: "Thus, even if suppliers to HS issued formal invoices only for part of roundwood shipments delivered and if they indeed received part of the payment without proper invoices, it is important to note that this probably constitutes an illegal act by the supplier not by HS."
97. the original text on page 33, paragraph 7 of this report reads: "This investigation did not include research or analysis of any information and/or evidence related to declaration of goods and services sold by HS, to associated tax calculations or tax payments by HS to the Romanian State. Such evaluation would likely exceed the competence of the investigation panel, as well as the scope and resources of this investigation."
98. the original text on page 33, paragraph 5 of this report reads: "Thus, even if suppliers to HS issued formal invoices only for part of roundwood shipments delivered and if they indeed received part of the payment without proper invoices, it is important to note that this probably constitutes an illegal act by the supplier not by HS."
99. the original text on page 33, paragraph 6 of this report reads: "Underestimating the volume of roundwood purchased would have resulted in less deductions from the value of goods and services sold and therefore would have resulted in higher taxes rather than lower taxes."
100. the original text on page 42, paragraph 7 of this report reads: "It is furthermore concluded based on the information and evidence reviewed, the analysis conducted, and the interpretation and conclusions drawn in relation to the different aspects detailed in section 3.3.6 that the modalities for roundwood measurement and classification may well have led to underestimating the volume of roundwood purchased by HS, but that this did not automatically result in miscalculation of taxes and that there is no indication that this led to miscalculation and/or evasion of tax payment by HS."
101. the response by WWF-A/anonymus-018 states "8. Summary

The conclusions of the report are not supported by the findings. The execution of commodity purchases in large quantities without respective receipts and without records in accounting suggest an abundance of aspects of initial suspicion. None of these aspects of initial suspicion was investigated or even discussed.

The report states "No investigations or analyses concerning the declaration of goods or services relating to tax calculations or tax payments" were undertaken (page 31) [now page 33]. Contrary to this statement the text continuously and the conclusions manifestly indicate that there had been no evidence or initial suspicion of tax evasion or lowering duties (page 38) [now page 42].

The tax-related conclusions are partly absurd. The view of the report, that the purchase of goods without invoice would be unlawful only for the supplier and not for the buyer (page 32) [now page 33] is incorrect in multiple respects.

The view of the report that the reporting of lower amounts of goods purchased would be disadvantageous for the buyer (page 32) [now page 33] is incorrect. This type of business leads to raising unreported earnings and to using it for criminal purposes, such as bribery of officials. Especially in view of the background of several enterprises operating in several countries can in this way in particular the import turnover tax [import VAT], but also other duties be lowered. The purchase of goods on a large scale without invoice indicates preparing activities.

The report is to be renewed from the very basis and to be reviewed with appropriate expertise particularly with regard to aspects of tax legislation and criminal law.”

102. Legea Nr. 278/2013 din 24 October 2013 privind emisiile industriale; Law No. 278/2013 of 24 October 2013 on industrial emissions.
103. Legea Nr. 350/2001 privind amenajarea teritoriului si urbanismul cu modificările si completările ulterioare - versiune consolidata neoficiala realizata in cadrul Directiei Generale Dezvoltare Teritoriala a Ministerului Dezvoltarii Regionale si Locuintei; Law No. 350/2001 on spatial planning and urban planning and Government Ordinance no. 69/2004 supplementing article 38 of Law no. 350/2001 (approved by Law no. 464/2004).
104. Legea Nr. 50/1991 privind autorizarea executării lucrărilor de constructii; Law No. 50/1991 authorizing the execution of construction works (republished), Law no. 52/2006 amending and supplementing Law no. 50/1991, Order no. 1430/2005 approving the Detailed Rules implementing Law no. 50/1991 authorizing the execution of construction works, Annex to Order 1430/2005 with Detailed Rule (Rectification of 30 October 2005) and Order of the Minister of Public Works and Spatial Planning no. 91/1991 approving the forms, the authorization procedure and the content of the documentations provided by Law no. 50/1991.
105. Legea nr. 11/1991 din 29 ianuarie 1991 privind combaterea concurenței neloiale; Law no. 11/1991 of 29 January 1991 on unfair competition, as amended and completed by Law No. 298/2001, Law No. 255/2013 and Government Ordinance No. 12/2014 (the “Unfair Competition Law”); <http://www.lexex.ro/Legea-11-1991-1894.aspx>
106. Consiliul Concurenței Romania; Romanian Competition Council; <http://www.consiliulconcurenței.ro/en/about-us.html>
107. <http://www.consiliulconcurenței.ro/ro/documente-oficiale/concurenta/investigatii.html>
108. Legea nr. 245/2004 din 9 iunie 2004 privind securitatea generala a produselor; Law no. 245/2004 din of 9 June 2004 on general product safety; <http://www.lexex.ro/Legea-245-2004-86772.aspx>
109. Law no. 245/2004 on general product safety; Art. 2. (a) 'product' means any good known as a product, which, including in the context of a supply of services, is intended for consumers or is, in foreseeable conditions, likely to be used by consumers even if not intended and supplied; or made available in the course of a commercial activity for consideration or free of charge, whether new, used or reconditioned. Exemption from the application of this law is the use of second-hand products which are supplied as antiques or as products to be repaired or

reconditioned prior to their use only if the supplier clearly informs the person to whom the product is supplied about the need for such repair; or refurbishment;

110. Law no. 245/2004 on general product safety; Art. 2. (b) "safe product" means any product which, under normal or reasonably foreseeable conditions of use, including durability and, where applicable, commissioning, installation and maintenance, presents no risks or only minimal risks compatible with the use of the product and considered as acceptable and appropriate to a high level of consumer health and safety protection, taking into account in particular: 1. the characteristics of the product, mainly composition, packaging, assembly conditions and, where appropriate, assembly and maintenance; 2. the effect on other products if its use with other products can be reasonably foreseeable; 3. the presentation of the product, its labeling, any warnings and instructions for its use and disposal, and any other information or information relating to the product; 4. the categories of consumers at risk when using the product, particularly children and the elderly.
111. The Civil Code of Romania (Codul civil al României, commonly referred to as Noul Cod Civil – the New Civil Code, officially Law no. 287/2009 on the Civil Code) is the basic source of civil law in Romania.
112. Legea nr. 363/2007 privind combaterea practicilor incorecte ale comerciantilor in relatia cu consumatorii si armonizarea reglementarilor cu legislatia europeana privind protectia consumatorilor; Law No 363/2007 on combating unfair commercial practices between businesses and consumers and harmonising provision with EU consumer law (Monitorul Oficial al României, Part I, No 899 of 28 December 2007), as subsequently amended and supplemented;
113. Art. 244 of the Criminal Code of Romania: "ART. 244 – Misrepresentation; (1) Misrepresenting false facts as being true, or of true facts as being false, in order to obtain undue material gains for oneself or for another, and if material damages have been caused, shall be punishable by no less than 6 months and no more than 3 years of imprisonment. (2) Misrepresentation committed by using false names or capacities or other fraudulent means shall be punishable by no less than 1 and no more than 5 years of imprisonment. If the fraudulent means is in itself an offense, the rules for multiple offenses shall apply. (3) Reconciliation removes criminal liability."

8.2 References NOT CITED

- 401. 2017-01-16 new evidence concerning HS
- 402. 2017-01-06 WWF Germany to HL
- 402.1. Measurement Procedure_Schweighofer Sebes
- 402.2. Table of timber measurements
- 403. 2017-01-27 WWF Germany to FSC
- 403.3 Schweighofer Measurement Procedure
- 403.4 Table of timber measurements by WWF
- 409. hks_Holzklassensortierung_-rlp
- 410.1 10 Jahresvertrag + Addendum
- 410.5 Contract Cadru 2015
- 410.6 Intelegere contract 10ani
- 410.8 Neuer Vertrag HS
- 411.1 Invoice 12.11.2013
- 411.2 factura holzindustrie bravocom
- 411.3 Prokon Hit Timber SRL - ER 2013-11851
- 411.4 Prokon Hit Timber SRL - ER 2014-8899
- 411.5 Factura 3LKW 16.9.
- 411.6 Factura 3LKW 20.9.
- 413. Overview on timber volumes_2013
- 414. Overview on timber volumes_2014
- 415. Overview of timber volumes_Sep 2013
- 416. Overview of timber volumes_Sep 6_2013
- 423. Feasibility analysis of new information_against_Holzindustrie_Schweighofer
- 424. Summary_Plausibility analysis_Holzindustrie_Schweighofer
- 428.7 4a_091225_Protocol
- 428.8 4b_130831_Protocol
- 428.20 7a_Type-approval_AT
- 428.21 7b_Type-approval_CH
- 428.22 7c_Type-approval_DE
- 428.23 7d_Type-approval_SE