

§ 3 Forestry law [Forstrecht]

I. Introduction to forestry law

1) The special importance of the forest for Germany and the Germans

- Germany - the land of forests
 - one of the most densely forested countries in Europe
 - forests are cultivated (no primeval forests)
 - at the time of the Roman Empire, almost the entire territory was forested
 - forests shrank with development but were largely reforested in the 18th and 19th centuries
 - however, instead of the former mixed forest, *often conifer monocultures* (mainly spruce) were planted, making the forests today vulnerable to the consequences of climate change
- a *prominent role* of the forest, not only economically and ecologically, but also *in German culture, lifestyle and mentality*
 - "the forest" the most common setting in German sagas, legends and fairy tales
 - walking and hiking in the forest a popular leisure activity
 - landscapes without forests often not perceived as attractive

2) German federal law, concretised and supplemented by Land law and in some side aspects by European Union law

- forestry law is national law (not European Union law), but...
 - unlike in agriculture, where there is since 1962 a European Common Agricultural Policy (CAP) and the law is predominantly EU law, there is *no European "Common Forest Policy"* and thus no genuine European forestry law
 - only a Forest Reproductive Material Directive (Directive 1999/105) on the marketing of forest products
 - but there is *forest-related EU law in other fields of law*, mainly environmental, climate protection & energy law
 - see also the *Forest Information System for Europe (FISE)*, a single entry point for data, knowledge and information on forests in Europe, run by the EU's European Environment Agency
- German forestry law is essentially a combination of
 - the Federal Forestry Act [Bundeswaldgesetz] of 1975 (basically a framework law) and
 - concretising and supplementing forestry acts of the Länder
- in addition to forest law, forest owners must also observe far-reaching restrictions under
 - nature conservation law [Naturschutzrecht] (a part of environmental law)
 - soil conservation law [Bodenschutzrecht] (also a part of environmental law)
 - hunting law [Jagdrecht] (a part of special administrative law)

II. The German Federal Forestry Act (FFA) [Bundeswaldgesetz] of 1975

- long title: Act on the Conservation of the Forest and the Promotion of Forestry [Gesetz zur Erhaltung des Waldes und zur Förderung der Forstwirtschaft]
- purpose of the law is (→ cf. sect. 1 FFA)
 - to *conserve the forest* for its various functions
 - to promote forestry
 - and to *strike a balance between the public interests and the private interests of forest owners*
- two attempts to reform the FFA to make German forests more resilient to the consequences of climate change failed in 2023 and 2025
- *functional concept of forest* (cf. sect. 2 FFA and Land forestry acts)
 - includes in principle any ground area planted with forest plants, but *not short-rotation plantations, Christmas tree plantations* (depending on Land law) and areas with smaller groups of trees
 - includes *also* areas connected to and serving the forest and *clear-cut areas*

III. The legal emphasis on the functions of the forest (cf. sect. 1 no. 1 FFA)

- the FFA recognises, emphasises and protects the essential functions of the forest for the society
 - all FFA provisions must be interpreted and applied in such a way that they serve to maintain these functions
 - public bodies must take these functions adequately into account in all planning and measures for public projects (sect. 8)

1) Utility function (economic function) [Nutzfunktion]

- the forest as a supplier of raw materials (in particular wood, game meat)
- *only sustainable utilisation* that preserves the forest is allowed

2) Protective function (ecological function) [Schutzfunktion]

- *habitat function* (the forest as a place to live for numerous plant, fungal and animal species)
- *soil protection function* (against erosion, avalanches, soil infertility)
- *water regulation function* (through water storage and groundwater formation)
- *air purification function* (the forest as a filter for dust, fine dust and gases)
- *temperature equalisation function* (through increased humidity, dew formation)
- *landscape protection function* (to prevent landscape degradation and the spread of wasteland)

3) Recreational function [Erholungsfunktion]

- the forest as a healthy, clean air and oxygen-rich space for walking, hiking, sports, socialising and relaxing (entering for recreational purposes generally permitted, sect. 14 FFA)

IV. Three types of forest ownership (sect. 3 FFA)

- can result in different rights, duties and options of public support under Land law
- state forest [Staatswald]
 - owned by the state
 - usually managed by state forestry administrations or state forestry companies
 - often a role model for sustainable forest management
 - often subject to special regulations, e.g. with regard to public access or utilisation
- corporate forest [Körperschaftswald]
 - owned by public corporations (municipalities, associations of municipalities, churches, universities etc.)
 - communal forests very important for public recreation and tourism, but often also for the local climate and local soil and water protection
- private forest [Privatwald]
 - largest proportion of forest area in Germany
 - often with a predominantly economic function
- the *rights and duties* under the Federal Forest Act are not only aimed at "forest owners" [Waldeigentümer] but at *all "forest holders"* [Waldbesitzer]; this includes authorised forest users who have direct possession of the forest (sect. 4 FFA)

V. The conservation and management of the forest (sect. 9 FFA)

- forest areas may *only be cleared and converted with authorisation* of the forestry authority, who must balance the rights, duties and interests of the forest holder with the public interests
 - exception (under Land law): if a different use of the area has been legally established on the basis of other public law (e.g. urban planning law, infrastructure law)
- authorisation will be refused if the forest is of essential importance for the efficiency of the ecosystem, forestry production or public recreation (sect. 9(1) phrase 3 FFA)
 - according to modern understanding, this is often, if not usually the case
 - often conversion is only authorised on condition of *reforestation of another area* of the same size
 - under certain conditions, the conversion of forest land may require a prior *environmental impact assessment*
 - if authorisation is refused, forest holder can take legal action before the administrative court

- forests require *proper and sustainable management* with regard to their essential functions (sect. 11 FFA)
 - includes comprehensive maintenance, utilisation and, if necessary, reforestation
 - needs to follow the recognised *principles of "good forestry practice"* and take into account the needs of nature and landscape conservation
 - strict requirements are regulated in detail in the forestry acts of the Länder
 - non-compliance will trigger the intervention of the forestry authority
- some Land forestry acts provide for *special rules for protection forests* [Schutzwald] (with important protective function) *and recreational forests* [Erholungswald] (with important recreational function)
 - management rules, special restrictions and duties, duties to tolerate, rules of conduct for forest visitors

VI. Promotion of forestry

- German forestry receives *substantial financial support* from federal and Land funds through a variety of programmes in the fulfilment of a "joint task" [Gemeinschaftsaufgabe] of the Federation and the Länder to improve the agricultural structure (sect. 41 FFA)
- to support forestry by reliable data, every 10 years a large-scale *national forest inventory* [Bundeswaldinventur] covering the entire territory is carried out on a sample basis (sect. 41a FFA)
 - last: 4th Bundeswaldinventur 2022
 - provides comprehensive data, including detailed measurements and descriptions of the state of the forest
 - results are published, with a detailed results database (also in English)
- in addition, the Federal Government and the Land governments publish annually up-to-date *state-of-the-forest reports* [Waldzustandsberichte]
- in some Länder, the forestry authorities plan and coordinate their policies with the instrument of *forestry master plans* [forstliche Rahmenpläne]

VII. Protecting the forests even abroad: the EU Regulation on Deforestation-free Products (EUDR) (Regulation 2023/1115)

- an unconventional approach to support forest conservation worldwide
 - European legislation, but aiming for a global impact
 - forest-protecting law, but not in the field of forestry law but environmental and economic law
 - not a "European Deforestation Regulation" (as often called), but a regulation on deforestation-free products
- an EU regulation (directly binding EU law) with the the purpose to *ensure that the products* the EU citizens consume *do not contribute to deforestation or forest degradation worldwide*
 - applies to products imported into the EU and exported from the EU (e.g. Indonesian palm oil)
 - applies from 30.12.2025 to large & medium enterprises and from 30.06.2026 also to micro & small enterprises
- requires *operators and traders* that trade in cattle, cocoa, coffee, oil palm, rubber, soya and wood, as well as products derived from them (e.g. leather, chocolate, tyres or furniture), *to conduct extensive diligence on the value chain* to ensure that their goods do not result from recent (post 2020) deforestation, forest degradation or breaches of local laws (esp. environmental laws, land-use laws, third-party rights)
 - such goods must not be placed or made available on the market, or exported from the EU, unless these conditions are fulfilled and the goods are covered by a *due diligence statement* submitted electronically to the EUDR Information system (art. 3, 4, 33)
 - the statement includes the declaration that no or only a negligible risk of non-compliance was found (art. 4(1), 5(1))
 - if later information indicates that goods may not comply, the operator or trader must immediately inform the competent authorities in the relevant member states (art. 4(5), 5(1))
 - traders who are only small and medium enterprises (SME) only need to collect certain information and keep it for five years (art. 5(2-4))

- The European Commission has established a list that specifies countries with a particularly high or low risk of deforestation
 - in Southeast Asia, Myanmar is classified a high-risk country, while the Philippines, Laos, Thailand, Vietnam, Singapore, Brunei Darussalam and Timor-Leste (but not Malaysia and Indonesia) are classified low-risk countries
- the EUDR is politically controversial because it
 - practically forces European environmental policies on sovereign third countries
 - it is therefore often criticised by the governments (e.g. in Brazil, Indonesia) but supported or even criticised as too weak by civil society organisations in these countries
 - imposes an *immense bureaucratic burden* on companies (see for illustration the 45 pages Guidance Document published by the European Commission (translation into Bahasa Indonesia available))
 - DISCUSSION: Is the approach of the EUDR appropriate?

YOUR OPINION: _____.

YOUR ARGUMENTS: _____.

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- **update 04.12.2025:** in December 2025, the controversy surrounding the EUDR has triggered plans to postpone the EUDR's application and simplify its implementation