

Policy for Association complaint by WWF Germany against Holzindustrie Schweighofer

14 October 2016

# Recommendation to the FSC Board of Directors

Impartial Complaints Panel consisting of Leo van der Vlist, Heiko Liedeker & Berty van Hensbergen

FSC shall disassociate from Holzindustrie Schweighofer and all companies controlled by Gerald Schweighofer.

Abbreviations used in text.

ANAF	Anti-Fraud Investigation Agency
APV	Enumeration of Standing Stock for Harvesting
ASI	Accreditation Services International
Aviz	Timber Transport Waybill
CB	Certification Body
CoC	Chain of Custody
CP	Complaints Panel
CW	Controlled Wood
DNA	Anti Corruption Agency
DDS	Due Diligence Systems
EIA	Environmental Investigation Agency
EUTR	European Timber Regulation
FM	Forest Management
FSC	Forest Stewardship Council
HS	Holzindustrie Schweighofer
HS-CM	Holzindustrie Schweighofer Certification Manual
MMAP	Ministry of Environment Water and Forests
PfA	Policy for Association
PEFC	Programme for the Endorsement of Forest Certification
SA	Soil Association
SUMAL	Government Centralized Timber Tracking System

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

i.e. 4,367,123.98

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## 1 Executive Summary

This report presents the complaints panel evaluation of the Policy for Association (PfA) complaint filed with FSC International by WWF Germany against Holzindustrie Schweighofer GmbH (HS). The complaint was filed with FSC International by WWF Germany in November 2015. The complaints panel (CP) was appointed in March 2016, and the formal CP evaluation of the complaint started in April 2016.

The formal PfA complaint filed by WWF Germany was directed at HS GmbH located in Austria (Vienna). The complaint mentioned three affected FSC certificates covering five sites. Since the formal PfA complaint was filed, the FSC certification status of HS has changed significantly. Currently, HS holds two FSC certificates covering ten sites in four countries for the Schweighofer group. (See section 3.2 for further details on its certification status).

The PfA complaint submission is constituted of the following 3 complementary documents:

- Formal PfA complaint submission by WWF Germany to FSC International on November 2015;
- Annex 1 to the PfA complaint submission consisting of a copy of the complaint submitted by WWF Austria to the Austrian Competent Authority in October 2015;
- The report by the Environmental Investigation Agency (EIA) "*Stealing the last forest: Austria's largest timber, company, land rights and corruption in Romania*", published in October 2015. The information contained in the EIA report contains the core of the PfA complaint and the allegations against HS.

The main allegations against HS described in the PfA complaint are:

- HS was involved in the trade in illegal timber in Romania over a long period of time, as well as in the purchase of illegally restituted land;
- HS was involved in the trade of illegal timber, both indirectly by buying illegally harvested timber and directly by failing to follow all regulatory requirements;
- HS is associated with and has financed suppliers with criminal and corrupt backgrounds;
- HS' purchasing strategy actively encourages its suppliers to deliver illegal timber;
- HS has destroyed HCVs as a result of buying timber from National Parks in Romania.

HS has at all times denied the allegations and has offered explanations in support of its denials.

The CP consulted more than 400 documents and conducted a number of stakeholder interviews in order to verify the allegations raised against HS and to reach its conclusions. This included interviews with HS, WWF Germany and EIA amongst others. Some documents that the CP has consulted are sub-judice in Romania and for this reason have not been shared with HS or any other party. There are some cases known to the panel that are sub-judice in Romania for which HS was unwilling to share information with the CP.

HS is a large conglomerate organisation with major interests in the forest sector as well as in real estate and hotels and has a turnover of approximately EUR 1 billion. It has interests in many Eastern European countries as well as in Germany and Austria. The CP considers that all companies in which Gerald Schweighofer has a controlling interest either by way of ownership or by other means are included in the complaint.

The CP has analysed the way in which the organisation may be involved in illegal activities in forestry both directly and on account of actions carried out by its suppliers that it is unable to detect due to an inadequate Due Diligence System (DDS). The CP notes that in order to be considered a violation of the PfA that any illegal activity or failing would have to be systematic and repeated.

The existence of illegal logging and also of corruption and illegality surrounding land restitution has been common knowledge in Romania for many years. During 2015 the Romanian authorities detected almost 100 offences per day related to illegal logging and levied fines in excess of EUR 6.5 million. Analysis of these cases of illegal logging identified by the authorities indicate an average volume in excess of 100 m<sup>3</sup>/case which suggests that these were not all cases of subsistence use of timber.

The legal requirements around forestry in Romania are complex and even small forest owners are expected to comply with 25 laws and almost 100 other legal instruments. The burden of this compliance is significant both for large and small operations. These requirements include the reporting of volumes to the authorities at a number of points in the harvest and transport chain using the computerised SUMAL system.

Responsibility for forest management in Romania falls under the national forest administration known as Romsilva which is an independent body falling under the supervision of the Ministry for Environment, Water and Forests (MMPA). MMPA is responsible for ensuring legal compliance which it does through its control section known which is responsible for the Forest Guard who work on the ground.

Allegations of involvement in illegal timber trade by HS fall into a range of categories.

- Harvesting timber from forests where tenure is not properly allocated.
- Harvesting where harvesting permission is not allocated
- Harvesting in advance of harvest schedule
- Harvesting in contravention of technical specification
- Failure to pay all necessary charges for harvested timber
- Failure to comply with timber transport regulations or procedures
- Failure to comply with timber documentation requirements
- Failure to comply with timber receipt requirements
- Failure to comply with timber purchase or sales requirements
- Failure to carry out due diligence as required by the EUTR

It should be noted that HS does not itself carry out any harvesting since this is all performed by sub-contractors. HS does employ regional field staff who are expected to control the activities of sub-contractors including checking for legal compliance. As a result, HS cannot be directly involved in any illegalities that happen in the forest but are considered to be trading in illegal timber if their sub-contractors and suppliers engage in illegal forestry activities.

Inspection reports from the government and other sources indicate that timber purchased by HS is affected by some level of illegality in all of the above categories. This includes failures to comply with the law carried out directly by HS employees at its mills.

In summary, government inspections carried out in 2014 and 2015 indicate that there were 48 legal failings at HS mills involving over 500,000 m<sup>3</sup> of timber and that many suppliers of HS including some FSC certificate holders had been involved in illegal forest activities. Of the small sample of suppliers and contractors inspected, 56 were found to have legal compliance issues affecting almost 200,000

m<sup>3</sup> of timber. It is known that HS has more than 1000 timber suppliers, but not all these have been inspected.

Government inspectors conclude that HS has created structures for the laundering of illegal timber.

The CP has found that there is clear and convincing evidence that HS has been involved in the trade in illegal timber both by accepting illegal timber into its mills and by its own actions in the mills. The panel has also found that HS has developed a supply system that encourages overharvesting of legally stipulated production levels in order to meet volume demands. In addition, HS has unwisely associated with companies and individuals with strong allegations of illegal and corrupt actions against them and in some cases has pre-financed their forest activities.

The CP is also aware of more recent allegations of illegality and corruption surrounding timber that HS sources from Ukraine for its mills in Romania. These were not investigated by the CP.

Allegations against HS include the fact that some of the land purchased by the HS subsidiary Cascade Empire srl has been the subject of false, corrupt and fraudulent land restitution processes. At least in the case of the 'Three Mountains' the perpetrators of the fraud and corruption have been sentenced to long terms of imprisonment. It should be noted that HS negotiated the purchase of this land six months before the restitution case was complete so that at the time of the price negotiations the land under negotiation was not in any way the property of the eventual vendors. Timber from this land has entered the HS supply chain and is therefore illegal. It is likely that in the future other cases will emerge both on land owned by Cascade Empire and land from which HS was supplied.

HS relies heavily on its recently introduced and independently evaluated DDS to verify the legality of its timber supplies. The CP has identified that the DDS while relatively strong in eliminating illegality from timber that is bought standing by HS, exhibits significant weaknesses where timber is bought from intermediaries. The DDS is overly reliant on documentary evidence without adequately controlling that documents have been legally issued. It is also clear that where purchases are made from intermediaries that there is a breakdown of the Chain of Custody (CoC) which prevents HS from determining the source of the timber it buys. In addition, the DDS does not take into account ancillary sources of information that could help to inform it in relation to illegal activities of its suppliers.

The CP has investigated the possibility that HS has destroyed HCVs in its operations. There is good evidence that HS mills have received timber which has been sourced in and around National Parks. In these cases there will almost certainly have been a risk of destruction of HCVs and the CP believes that some HCVs will have been negatively affected. However, the CP could not find evidence that HCVs have been destroyed as a result of these operations.

In relation to the violation of human rights the CP has confirmed evidence about a single case of assault on an NGO activist that took place at a sawmill gate. The CP does not believe that this is evidence of a systematic abuse of human rights by HS.

Based on the evidence available the CP has concluded that there is clear and convincing evidence that HS has violated the PfA by its involvement in the trade in illegal timber.

As a result, the CP recommends that the FSC board upholds the complaint of WWF Germany and disassociates from the HS group.

## 2 The Complaints Panel

**Mr. Leo van der Vlist**, for the Netherlands Centre for Indigenous Peoples (NCIV), Social Chamber North, organisational member.

Mr van der Vlist is a lawyer by training and has over 25 years of working experience with indigenous peoples worldwide. Leo is Director of the Netherlands Centre for Indigenous Peoples (NCIV) which is a Dutch-based NGO that advocates the rights of indigenous peoples. NCIV is an organizational member of FSC International and Leo is member of the social chamber of the board of FSC Netherlands. He has a long working relationship with several NGO's in Malaysia regarding indigenous peoples' rights and recently worked on assessing complaint mechanisms of six different certification schemes, including FSC. Leo is co-author of FSC's Guidelines on the implementation of the right to Free, Prior and Informed Consent and now works on field-testing these guidelines. Currently he also works on making Centralized National risk Assessments for FSC's Controlled Wood label on category 2: Wood harvested in violation of traditional and human rights for a large number of countries. These risk assessments include labour rights.

**Berty van Hensbergen**, Economic Chamber North, individual member.

Mr. van Hensbergen is currently President of SSC Forestry Group and most of the companies in the Group, including SSC Forestry AB (Consulting), SSC Americas SA (Consulting), SSC Africa Ltd (consulting), SSC Wood Technologies (Small Fair Traded Sawmill in Chile), Wildhorus Ltd (Consulting) and a Director of Viteca SA (Nursery and Teak Plantation) an SSC Joint Venture company. He is a forestry and environmental consultant focusing mainly on responsible forest management including standards development and compliance preparation. In this capacity, Mr. van Hensbergen worked for large and small companies, governments, multilateral and development agencies. He carried out a number of consultancies for NGOs including a report on timber tracking technologies for WWF and legality compliance in Ghana for ITTO. He is the first author of a report on the social impacts of Forest Certification for WWF and an unpublished WWF report on the social responsibilities of large plantation companies. He was formerly Professor of Nature Conservation at the University of Stellenbosch and in this capacity was a member of the environmental committee of Forestry South Africa. He was also the President of the South African Statistical Association in 1997 and served on the Board of the South African Wildlife Management Association from 1990 until 1999. Mr. van Hensbergen was a Complaints Panel Member in the complaints filed by Global Witness against Dalhoff Larsen & Horneman (DLH) and the Vietnam Rubber Group (VRG) also in the complaint by BWI against BILT.

**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 Masters degree in Forest Ecology from the University of Vermont, USA and a Forestry degree from the University in Munich.

### 3 The Complaint

#### 3.1 History of the Complaint

The PfA complaint by WWF Germany against Holzindustrie Schweighofer was filed to FSC International on the 6 November 2015. The complaint was accepted by FSC on the 24 November 2015. The CP was appointed on the 7 March 2016 and the formal CP evaluation began in April 2016.

Due to the very large volume of documents that needed to be reviewed and the interviews that needed to be carried out the complaints panel was only able to complete its task in mid-October 2016 in time for the FSC International Board Meeting in November 2016.

During this period there have been multiple exchanges of email correspondence between FSC and HS, with the aim of gathering evidence for the evaluation, as well as for seeking clarification about various relevant issues.

HS has on multiple occasions, both privately and publicly, denied the allegations.

In addition, Accreditation Services International (ASI) has also investigated one of the certification bodies involved in the issuing of certificates to HS. As a result of the investigation by ASI, the Certification Body (CB) Quality Austria was suspended in May 2016 for FSC CoC certificates worldwide due to identification of major non-compliances with the FSC Accreditation Standards<sup>1</sup>. Shortly after the suspension of QA, the certificate which had been issued to HS by this CB (QA-COC-0073/0) was also suspended.

#### 3.2 Scope of the Complaint

The complaint is directed at the Austrian registered company Holzindustrie Schweighofer GmbH which forms part of the larger Schweighofer Group as is explained in detail in 4.5.1.1 below. The complaint itself mentions three FSC certificates (Table 2 below) covering five sites.

Currently HS holds two FSC certificates and is associated with a third FSC group certificate that is responsible for the management of a small area of forest owned by HS in Romania.

Holzindustrie Schweighofer GmbH holds the FSC certificate ([QA-COC-0073/0](#)) which is a multisite Controlled Wood (CW) and CoC certificate covering nine sites in four countries (Table 1 below). This certificate was issued in January 2016. This certificate is currently suspended (since 22 June 2016) following an audit by ASI of Quality Austria (CB which had issued the certificate) which identified a failure by the CB to meet ASI Accreditation standards.

In addition, the HS group holds an FSC certificate for its land owning subsidiary in Romania, Cascade Empire srl. This certificate ([SA-FM/COC-004420](#)) is a combined forest management (FM) and CoC certificate which covers 13,599 ha of land owned by Cascade Empire and a further 749ha owned by another HS subsidiary Belforest Explorer Srl.

A smaller area of HS owned land is included in a third party FSC group certificate ([GFA-FM/COC-002596](#)) administered by the Association of forest owners and managers of East Transylvania (APAPET). HS contributes about 2% of the total land area included in this certificate. .

It should be noted that if FSC disassociates from HS that the last certificate would not be affected but that HS would be required to withdraw its land from the area covered by the certificate.

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<sup>1</sup> FSC-STD-20-011-V2-0, FSC-STD-20-001-V3-0

Table 1 Different sites included in the certificate of Holzindustrie Schweighofer GmbH (QA-COC-0073/0):

Certificate Code	Certificate Status	CW	License Number	License Status	Organization Name	Site	Country	Issue Date	Expiry Date
QA-COC-0073/0	Suspended	✓	<a href="#">FSC-C128353</a>	✓	Holzindustrie Schweighofer GmbH	✓	Austria	2016-01-01	2020-12-31
QA-COC-0073/0	Suspended	✓	<a href="#">FSC-C128353</a>	✓	Holzindustrie Schweighofer GmbH	✓	Germany	2016-01-01	2020-12-31
QA-COC-0073/0	Suspended	✓	<a href="#">FSC-C128353</a>	✓	Schweighofer Fiber GmbH	✓	Austria	2016-01-01	2020-12-31
QA-COC-0073/0	Suspended	✓	<a href="#">FSC-C128353</a>	✓	Holzindustrie Schweighofer s.r.o	✓	Czech Republic	2016-01-01	2020-12-31
QA-COC-0073/0	Suspended	✓	<a href="#">FSC-C128353</a>	✓	Sc. Holzindustrie Schweighofer s.r.l	✓	Romania	2016-01-01	2020-12-31
QA-COC-0073/0	Suspended	✓	<a href="#">FSC-C128353</a>	✓	Sc. Holzindustrie Schweighofer s.r.l	✓	Romania	2016-01-01	2020-12-31
QA-COC-0073/0	Suspended	✓	<a href="#">FSC-C128353</a>	✓	Sc. Holzindustrie Schweighofer s.r.l	✓	Romania	2016-01-01	2020-12-31
QA-COC-0073/0	Suspended	✓	<a href="#">FSC-C128353</a>	✓	Sc. Holzindustrie Schweighofer BACO s.r.l	✓	Romania	2016-01-01	2020-12-31
QA-COC-0073/0	Suspended	✓	<a href="#">FSC-C128353</a>	✓	Sc. Holzindustrie Schweighofer s.r.l	✓	Romania	2016-01-01	2020-12-31

### 3.3 Substance of the Complaint

The PfA complaint submission is constituted of the following 3 complementary documents:

- The formal PfA complaint<sup>2</sup> filed to FSC International on the 6 November 2015;
- The Annexe to the PfA complaint which consists of a copy of the complaint laid against HS by WWF Austria with the Austrian competent authority in terms of the EUTR dated of 21 October 2015;
- The report by the Environmental Investigation Agency (EIA) “Stealing the last forest: Austria’s largest timber, company, land rights and corruption in Romania” published in October 2015<sup>3</sup>. This report constitutes the core of the PfA complaint against HS, and provides a detailed description of the allegations against the company.

<sup>2</sup> 20- PfA complaint WWF vs. HS

<sup>3</sup> 17 EIA (2015) “Stealing the last forest: Austria’s largest timber, company, land rights and corruption in Romania”, EIA

The PfA complaint alleges that:-

- 1) HS was involved in the trade in illegal timber by:-
  - a. Buying timber that had been illegally harvested
  - b. Illegal activities carried out at its depots and sawmills
  - c. Using timber that was obtained from land that had been illegally sold to an HS subsidiary, Cascade Empire.
  - d. Actively encouraging suppliers to deliver illegal timber by offering bonuses and by agreeing to buy timber that was harvested beyond the legally permitted annual quotas
  - e. Buying timber from suppliers with known criminal and corrupt associations
- 2) HS was involved in the destruction of HCVs by buying timber harvested from national parks.

Although the PfA complaint submitted by WWF Germany did not specify it, the CP, after reviewing the available information provided in the EIA report, decided to extend the scope of its evaluation to one additional unacceptable activity under FSC PfA: the violation of traditional and human rights in forestry operations. The reason why the CP decided to extend the scope of the evaluation to include this additional unacceptable activity was due to the reported attacks by HS' guards at one of their mills on an environmental activist and other additional reported threats.

## 4 Evaluation of the complaint.

### 4.1 Methodology and data collection.

The complaint was evaluated on the basis of documents and interviews with a wide range of stakeholders. Most interviews took place by electronic means, however the interview with Holzindustrie Schweighofer was carried out face to face at the FSC offices in Bonn. Most interviews involved all CP members but a number were carried out with only two members. A member of the FSC Quality Assurance Unit participated in all interviews for the purpose of note taking.

Many documents consulted were in Romanian. Some of these were machine translated using Google Translate or Chrome Translation. Some were interpreted using native Romanian speakers in order to derive the significance of their content while a very small number were formally translated either in their entirety or in part.

### 4.2 Documents and sources (refer to annex for bibliography)

In total the complaints panel reviewed more than three hundred documents:-

Documents consulted included:-

- official government documents
  - laws and regulations
  - court documents including case transcripts
  - documents prepared by official investigative agencies
  - records of meetings of EU agencies
  - company registration records
  - government press releases
  - other government reports
- reports prepared by third parties
  - published reports of NGOs
  - published academic papers

- published reports of multilateral agencies
- unpublished reports of NGOs
- material available on the internet
  - archived newspaper reports
  - information available on NGO webpages
- material provided by the parties
  - responses to CP information requests from HS

The CP also had access to several hours of video material including:-

- Items publicly broadcast in Romania
  - News review programmes concerning illegal logging
  - Broadcast interviews with government ministers
- Items available on the internet
- Items supplied by stakeholders
  - Items not previously broadcast or made available
  - Uncut footage of material previously edited for broadcast

#### 4.3 Stakeholders contacted

Stakeholders contacted included representatives of NGOs, the parties to the complaint, private individuals and representatives of industry associations.

#### 4.4 Impediments to the evaluation

The large number of documents that were in Romanian proved to be a significant impediment to the evaluation. This impacted on the CPs detailed understanding of the situation. A number of translated documents were provided to the CP by the consulted stakeholders. In order to reduce for FSC-IC the high cost of obtaining a second (official) translation, the CP used the available (unofficial) translations provided by stakeholders. However, it is difficult for the complaints panel to be absolutely certain that there is no bias in the translation. In addition, some of the less important documents were translated by the CP using internet translation programs, which may have also caused some inaccuracies to the translations used by the CP in their evaluation.

Similarly, the existence of many documents in Romanian makes it difficult for the FSC board to evaluate the material in its original source condition.

Some documents obtained by the CP which were considered during the evaluation, consisted of unofficial reports by the Romanian Authorities (Such as the Romanian Ministry of the Environment or the Romanian Anticorruption Agency). These reports relate to cases which are currently under investigation by the Romanian Prosecuting authorities. Given the ongoing investigations by the Romanian Prosecutors, the official versions of these reports are not publicly available. However, stakeholders provided the CP with unofficial versions of such reports, which are likely to contain the same information as the official reports, which will only be released once the investigation by the Prosecutors is concluded. These reports were considered by the CP as unofficial versions (and therefore do not have the same weight in the evaluation as other official final reports analysed by the CP). Information obtained from these mentioned reports is highlighted in red in the full report and this information is not included in this public summary.

HS refused to provide the CP with information concerning the activities of Gerald Schweighofer that are not carried out through Holzindustrie Schweighofer GmbH or through the Schweighofer Private Foundation (Schweighofer Privatstiftung). This makes it impossible for the CP to determine if there

may be other FSC certified forests in other countries where Gerald Schweighofer has a controlling interest.

HS refused to provide the panel with information about other cases which are currently under investigation in Romania<sup>4</sup>.

HS claims that most of the information relating to the company's relationship with Mircea Basaraba is known only to Lucian Petre who was the manager handling those issues and who left HS in 2013.<sup>5</sup>

The enormous number of sources related to the complaint has unavoidably delayed the evaluation so that it was not possible for the CP to deal with it in the timeframe prescribed by the procedure for evaluation of PfA complaints<sup>6</sup>.

The CP has had access to a number of video testimonies<sup>7,8,9,10,11</sup> which are publicly available in which third parties have made allegations of illegal actions by HS. The CP has reviewed these testimonies and in most cases has decided that they cannot be considered as clear and convincing evidence of a breach of the PfA for a number of reasons: it was not possible to determine if the events referred to took place before or after the coming into force of the PfA, it was not possible to verify the location of the events, it was not possible to be certain that the timber was supplied to HS or it was not possible to verify the evidence presented due to the anonymity of the source. The CP has therefore only included this evidence in the report where there is a high degree of certainty.

## 4.5 Clear and convincing evidence that organisation has been involved in activities that violate the PfA

### 4.5.1 Background information on Holzindustrie Schweighofer

Schweighofer group is a conglomerate organisation with interests in the forest sector, bioenergy, hotels and real estate<sup>12</sup>. The structure of the group is detailed in 4.5.1.1 below. The approximate turnover of the group was EUR 1 billion in 2015<sup>13,14</sup>. Of this turnover a little over 50% is ascribed to HS activities in Romania.

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<sup>4</sup> 228.6 E-mail from HS to FSC of 26/08/16

<sup>5</sup> 228.7 E mail from HS to FSC of 26/08/16

<sup>6</sup> FSC (2014) FSC-PRO-01-009 V3-0 EN Processing Policy for Association Complaints in the FSC® Certification Scheme.

<sup>7</sup> <https://www.youtube.com/watch?v=9Qq8iPPvWTw> *The truth inside a cubic metre*

<sup>8</sup> <https://vimeo.com/156549262> Timber makes the world go round

<sup>9</sup> <https://www.youtube.com/watch?v=Ai-z6BfU62Q&app=desktop> Video “Clear Cut Crimes - OCCRP documentary”

<sup>10</sup> <https://www.youtube.com/watch?v=LOrscjAiRo&feature=youtu.be> *Magnati de Rumegeș*

<sup>11</sup> <https://www.youtube.com/watch?v=07rXnekD8EA> *Lemn tăiat ilegal pentru HOLZINDUSTRIE SCHWEIGHOFER*

<sup>12</sup> [https://en.wikipedia.org/wiki/Holzindustrie\\_Schweighofer](https://en.wikipedia.org/wiki/Holzindustrie_Schweighofer)

<sup>13</sup> [http://www.ots.at/presseaussendung/OTS\\_20150130\\_OTS0015/schweighofer-gruppe-verstaerkt-management](http://www.ots.at/presseaussendung/OTS_20150130_OTS0015/schweighofer-gruppe-verstaerkt-management)

<sup>14</sup> <http://www.euwid-holz.de/news/rundholzschnittholz/einzelansicht/Artikel/schweighofer-erwartet-fuer-2015-rund-1-mrd-EUR-umsatz.html>

*4.5.1.1 Corporate structure of HS and evidence of responsibility for HS actions.*

Schweighofer Group consists of a number of companies which ultimately fall under the control of Gerald Schweighofer. This control is either exercised by virtue of direct ownership or by the role of Gerald Schweighofer as managing director of these companies.

Information on shareholdings and ownership was obtained from official and unofficial sources in Austria<sup>15,16,17</sup> and other countries<sup>18,19</sup>. This information results in the corporate structure in Austria and Europe shown below.

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<sup>15</sup> Firmen-Compass. References 173.1 – 173.10

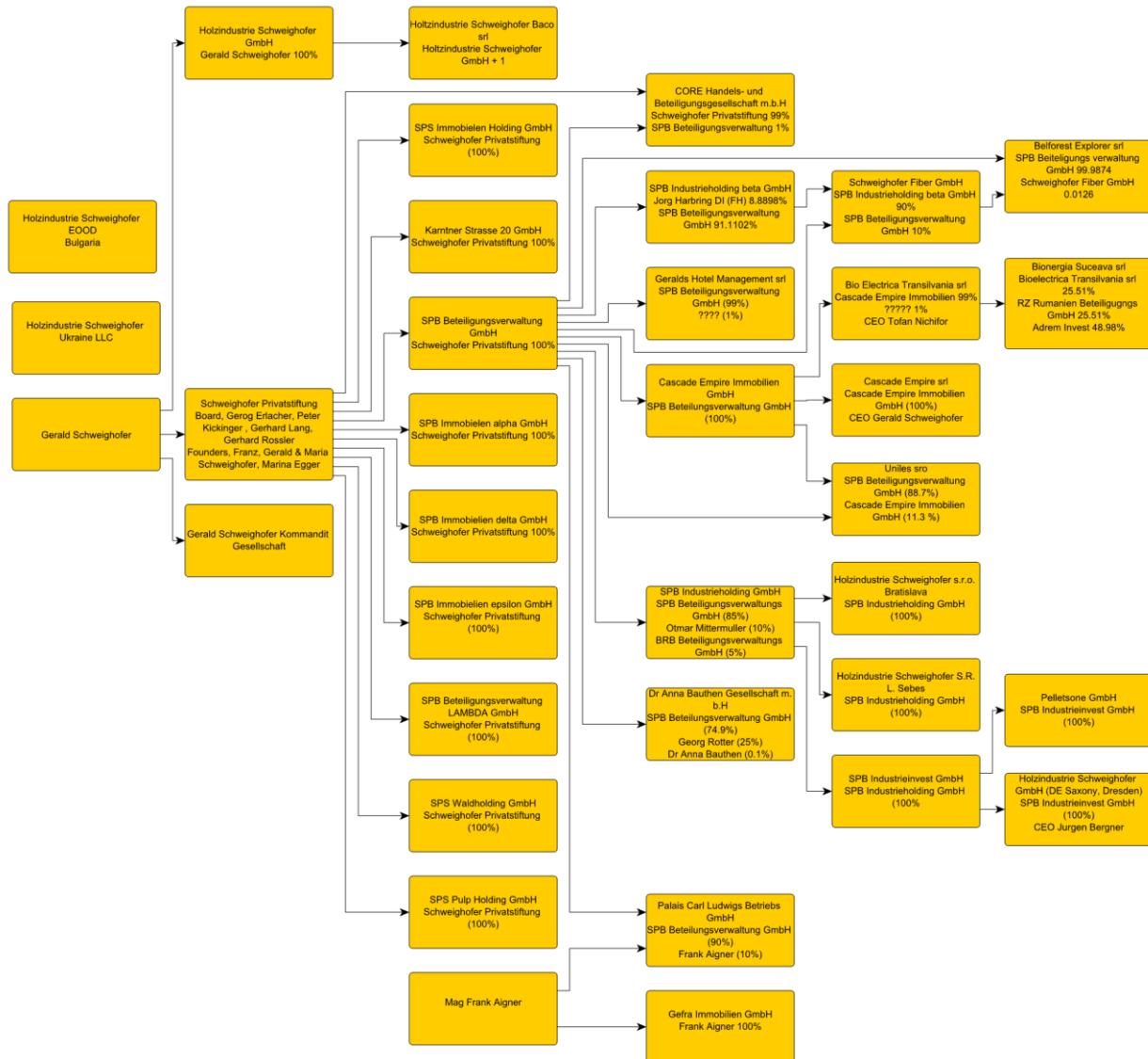
<sup>16</sup> [http://www.firmenabc.at/schweighofer-fiber-gmbh\\_dTr#crefo](http://www.firmenabc.at/schweighofer-fiber-gmbh_dTr#crefo)

<sup>17</sup> [http://www.firmenabc.at/gehra-immobilien-gmbh\\_KRZS#crefo](http://www.firmenabc.at/gehra-immobilien-gmbh_KRZS#crefo)

<sup>18</sup> <http://foaf.sk/firmy/157243> Uniles info

<sup>19</sup> [https://www.emis.com/php/company-profile/RO/Geralds\\_Hotelmanagement\\_SRL\\_ro\\_3171306.html](https://www.emis.com/php/company-profile/RO/Geralds_Hotelmanagement_SRL_ro_3171306.html)

Figure 1 Corporate Structure of Gerald Schweighofer's interests in Austria and Europe (The ownership of Holzindustrie Schweighofer Ukraine LLC and Holzindustrie Schweighofer EOOD could not be determined).



Schweighofer Group is known to have other subsidiaries in a number of other countries e.g Cascade Empire srl<sup>20</sup>, Holzindustrie Schweighofer Baco srl<sup>21</sup> and Bio Electrica Transilvania srl<sup>22</sup> in Romania and Holzindustrie Schweighofer GmbH in Germany. A company known as Schweighofer Holzhandel<sup>23</sup> in Belgium was closed down in 2013 after failing to register annual reports. Gerald Schweighofer's interests are exercised through three different ownership channels, indirectly through the Schweighofer Private Foundation and directly through two companies Holzindustrie Schweighofer GmbH a limited company which is 100% owned by Gerald Schweighofer (and has one subsidiary Holzindustrie Schweighofer Baco Srl in Romania) and Gerald Schweighofer Kommandit Gesellschaft

<sup>20</sup> [https://www.emis.com/php/company-profile/RO/Cascade\\_Empire\\_SRL\\_en\\_3166391.html](https://www.emis.com/php/company-profile/RO/Cascade_Empire_SRL_en_3166391.html)

<sup>21</sup> <http://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapid=81893009>

<sup>22</sup> [https://www.emis.com/php/company-profile/RO/Bio\\_Electrica\\_Transilvania\\_SRL\\_en\\_3171526.html](https://www.emis.com/php/company-profile/RO/Bio_Electrica_Transilvania_SRL_en_3171526.html)

<sup>23</sup> <http://kbopub.economie.fgov.be/kbopub/toonondernemingsps.html?ondernemingsnummer=439096135>

(partnership) an unlimited liability company which has no subsidiaries. Many of the companies within the corporate structure are not involved in forestry or sawmilling but in real estate and hotels. Bioelectrica Transilvania srl also has a minority shareholding in Bioenergy Suceava srl<sup>24</sup>.

The complaint<sup>25</sup> from WWF Germany is against HS groups' Austrian company Holzindustrie Schweighofer GmbH located in Favoriten Strasse 7, 1040, Vienna Austria. This company has one subsidiary and is owned directly by Gerald Schweighofer, it holds no FSC certificates itself. The certificates are held by Holzindustrie Schweighofer S.R.L and S.C. Ocol Silvic Cascade Empire S.R.L and others<sup>26</sup> which are ultimately owned by the Schweighofer Private Foundation but which are controlled by Gerald Schweighofer in his capacity as managing director<sup>27</sup>. For this reason it is considered that the complaint includes all of the companies in the Schweighofer group although it is directed at Holzindustrie Schweighofer GmbH which holds no certificates and is only linked to the other companies by name and by the person of Gerald Schweighofer. The intention of the complainant is also made clear by the list of companies included as certificate holders in the complaint (Table 2 below)

An associate of Gerald Schweighofer, Mr. Frank Aigner is co CEO of SPB Beteiligungsverwaltungs GmbH. Frank Aigner is also part owner of Palais Carl Ludwigs Betriebs GmbH and sole owner of Gefra Immobilien GmbH which trades from the same address as most of the other Schweighofer Companies in Austria.

Gerald Schweighofer has declined to provide the CP with any information about other companies and business interests<sup>28</sup>. Gerald Schweighofer is believed to have interests in real estate in Canada<sup>29</sup>, USA, Austria and possibly Spain<sup>30</sup>.

*Table 2 Extract from PfA Complaint listing certificates and certificate holders affected by the complaint*

**Defendant:** Holzindustrie Schweighofer (HS); Favoritenstraße 7, 1040 Wien, Österreich (following the list of FSC-certificates linked to Holzindustrie Schweighofer):

<a href="#">SA-COC-001806</a>	<a href="#">FSC-C021539</a>	<a href="#">S.C. Holzindustrie Schweighofer BACO S.R.L</a>
<a href="#">SA-COC-002662</a>	<a href="#">FSC-C102005</a>	<a href="#">S.C. HOLZINDUSTRIE SCHWEIGHOFER S.R.L.</a>
<a href="#">SA-COC-002662</a>	<a href="#">FSC-C102005</a>	<a href="#">S.C. HOLZINDUSTRIE SCHWEIGHOFER S.R.L. - SIRET branch</a>
<a href="#">SA-COC-002662</a>	<a href="#">FSC-C102005</a>	<a href="#">S.C. HOLZINDUSTRIE SCHWEIGHOFER S.R.L. - RADAUTI branch</a>
<a href="#">SA-FM/COC-004420</a>	<a href="#">FSC-C120622</a>	<a href="#">S.C. OCOL SILVIC CASCADE EMPIRE S.R.L.</a>

There are maybe other FSC-certificates we do not know.

<sup>24</sup> <http://www.sandrinio.ro/brigada-diverse/noua-centrala-termica-a-sucevei-se-construieste-ilegal>

<sup>25</sup> Note that the way in which HS held its certificates has changed since the time that the complaint against it was made. In January 2016 HS consolidated its CoC CW certificates into a single certificate held by HS GmbH of Vienna but including nine companies/sites in 4 countries

<sup>26</sup> 20- PfA complaint WWF vs. HS

<sup>27</sup> Firmen Compass. Gerald Schweighofer. Document 173.8

<sup>28</sup> 222 HS E-mail to FSC of 23 August 2016

<sup>29</sup> [https://en.wikipedia.org/wiki/Holzindustrie\\_Schweighofer](https://en.wikipedia.org/wiki/Holzindustrie_Schweighofer)

<sup>30</sup> 17 ZS EIA filming of HS (10:33)

#### 4.5.2 Review of evidence that Holzindustrie Schweighofer has been involved in the trade in illegal timber

##### 4.5.2.1 *Background to verification of trading in illegal timber.*

Timber can be considered illegal for a variety of reasons ranging from illegal land tenure to failure to comply with forestry regulations at any point in the supply chain. Timber may be legal at any point in the supply chain until such a failure occurs, but once a failure to comply has occurred the timber is considered illegal at all further points in the supply chain<sup>31</sup>. The PfA<sup>32</sup> (Table 3) refers specifically to illegal harvesting and activities that take place at the harvest site including non-payment of taxes.

*Table 3 Definition of Illegal Logging used in the PfA*

###### Illegal Logging

Harvesting of timber in violation of any laws applicable in that location or jurisdiction including, but not limited to, laws related to the acquisition of harvesting rights from the rightful owner, the harvesting methods used and the payment of all relevant fees and royalties

However, the FSC CW Standard<sup>33</sup> includes illegal actions of many types taking place further down the supply chain. The CP believes that this more complete definition better reflects the intentions of the FSC membership when it comes to protecting the image of FSC. The definition in the PfA states 'not limited to' so that the CP believes that it is free to make this interpretation.

Illegal actions may be carried out directly by the organisation or the organisation may acquire timber which is illegal due to the actions of others further back in the supply chain.

Illegal actions may also relate to failures to meet the obligations of international treaties such as the EUTR. Although many people think that the EUTR is valid only for timber imported into the EU (from tropical countries) in fact it also covers timber that is illegally harvested within the EU<sup>34</sup>. Currently the EUTR is not fully implemented in Romania since although it has appointed a competent authority and has a system of checking in place it has not completed the development of penalties for the EUTR<sup>35</sup>.

<sup>31</sup> FSC (2011) FSC-POL-01-004 V2-0 EN Policy for the Association of Organizations with FSC

<sup>32</sup> FSC (2011) FSC-POL-01-004 V2-0 EN Policy for the Association of Organizations with FSC

<sup>33</sup> FSC (2015) FSC-STD-40-005 V3-0 Requirements for sourcing FSC® controlled wood: Annexe A, Table A

<sup>34</sup> 92. European Commission (2016) Commission notice of 12.2.2016 guidance document for the EU timber regulation. p3

<sup>35</sup> 93. European Commission (2016b) EUTR implementation scoreboard. 280416 p2.

*Table 4 Overview of types of illegalities in timber trade*

Type of Illegality	Executed by Company	Executed by Supplier	FSC CW Definition <sup>36</sup> of legality.	Legal Requirement in Romania
Harvesting in forest where tenure is not properly allocated	Land use, tenure or ownership may be falsely allocated through corruption or by other means. Harvest permits may be obtained illegally.	Land may be falsely allocated and purchased without complete due diligence by the company. Harvest permits may be obtained illegally and timber is purchased without adequate due diligence by the company.	1.1 1.2 1.3 1.4 4.1 4.2 4.3	Ministry of Agriculture and Rural Development's Order 606/30.09.2008 approving Regulations on timing, modalities and deadlines for collection, extraction and transport of wood – Art 4.1 [valid 30.09.2008-20.06.2011] Ministry of Environment and Forests Order 1540/20.06.2011 approving Regulations on timing, modalities and deadlines for collection, extraction and transport of wood – Art 4.1 Law 78/2000 _ 08.05.2000 for prevention, identification and sanctioning acts of corruption
Harvesting where harvest permission is not allocated	Harvesting is carried out outside of scope for which permission has been granted.	Harvesting is carried out outside of scope for which permission has been granted and due diligence system is not capable of detecting this.	1.1	Ministry of Agriculture and Rural Development's Order 606/30.09.2008 approving Regulations on timing, modalities and deadlines for collection, extraction and transport of wood – art 4.(5), Art. 11 and Art 12 m) [valid 30.09.2008-20.06.2011] Ministry of Environment and Forests' Order 1540/20.06.2011 approving Regulations on timing, modalities and deadlines for collection, extraction and transport of wood – Art 5.2 and Art 13 n) Law 171/16.07.2010 for silviculture infringements (Legea contraventiei silvice), Art. 16 a and b Forest Code (Law 46/2008) art 65, art 108.1 Commission Implementing Regulation (EU) on DDS, No. 607/6.07.2012 Ar. 4

<sup>36</sup> FSC (2015) FSC-STD-40-005 V3-0 Requirements for sourcing FSC® controlled wood: Annexe A, Table A

Type of Illegality	Executed by Company	Executed by Supplier	FSC CW Definition <sup>37</sup> of legality.	Legal Requirement in Romania
Harvesting in advance of harvest schedule.	Harvesting is carried out at higher rates than permitted by contract or regulations.	Harvesting at a higher rate than permitted which is not detected by the due diligence system.	1.3 1.4	Ministry of Agriculture and Rural Development Order 606/30.09.2008 approving Regulations on timing, modalities and deadlines for collection, extraction and transport of wood Art.12 m. [valid 30.09.2008-20.06.2011] Ministry of Environment and Forests Order 1540/20.06.2011 approving Regulations on timing, modalities and deadlines for collection, extraction and transport of wood – Art 13 n
Harvesting in contravention of economic, social and environmental technical (contractual and regulatory) harvesting specifications, this may be as a result of either on omission or a commission	Harvesting is carried out which does not comply with such specifications, examples include harvesting in steep sites, transporting through watercourses, failure to leave seed trees, failure to repair environmental damage etc. Salvage harvesting in areas not affected by disease or introduction of disease to induce a salvage harvest.	Harvesting in contravention of such specifications that is not detected by due diligence system.	1.3 3.1 3.2 3.3 3.4 3.5	Ministry of Agriculture and Rural Development Order 606/30.09.2008 approving Regulations on timing, modalities and deadlines for collection, extraction and transport of wood – Art 8.2; Art 12 e); 13.(3); Art.17 [valid 30.09.2008-20.06.2011] Ministry of Environment and Forests Order 1540/20.06.2011 approving Regulations on timing, modalities and deadlines for collection, extraction and transport of wood – Art 13 u) Gov Emergency Ordinance 195_22.12.2005 Art 94i); Art.96 point 11  Forest Code (Law 46/2008) art 65, art 108.1
Failure to comply with employment requirements and health and safety requirements	Failure to provide legally required H&S equipment for forestry work. Negligent management of Health and Safety environment.	Due diligence system not capable of detecting failures carried out by the supplier.	3.4 3.5	

<sup>37</sup> FSC (2015) FSC-STD-40-005 V3-0 Requirements for sourcing FSC® controlled wood: Annexe A, Table A

Type of Illegality	Executed by Company	Executed by Supplier	FSC CW Definition <sup>37</sup> of legality.	Legal Requirement in Romania
	Failure to provide legally required contracts, training, employee registration for social security.			
Failure to pay all necessary charges for timber harvested	Failure to pay all necessary charges for timber harvested- E.g. as a result of fraudulent measurement, failure to declare volumes or due to harvesting outside of permitted scope and/or in compensation for harvesting damages. Charges may be levied by government or tenure holder or both. Use of transfer pricing to avoid local taxation.	Failure to pay charges which is not detected due to failure of due diligence system.	2.1 2.2 2.3 5.3	Covered by general fiscal laws and regulations
Failure to comply with timber transport regulations or procedures.	Failure to comply with timber transport regulations or procedures – E.g. to allow excess volumes of timber to be transported and/or allowing illegal timber to be laundered and/or use of false documents for timber transport.	Timber is transported in contravention of regulations and procedures which is not detected by due diligence system.	5.2 5.3 5.4 5.5	Law 171/16.07.2010 for forestry infringements (Legea contraventiei silvice), Art. 19 n), 21 d) Regulations for Origin, transport and trade of wooden materials, Wood storage and wood processing facilities, approved through Gov Decision 996/27.08.08, Art. 9, 15, 16(1)b. [valid from 01.10.2008 to 07.10.2014] Gov Decision 470/04.06.2014 approving Regulations for Origin, transport and trade of wooden materials, Wood storage and wood processing facilities and Specific Measure for implementation of EU Regulation 955/2010, Art 4 (1), 6(1)(4)

Type of Illegality	Executed by Company	Executed by Supplier	FSC CW Definition <sup>37</sup> of legality.	Legal Requirement in Romania
				<p>Norms approved by Gov. Decision 470/04.06.2014, Art 19 1), 2)</p> <p>Department for Water, Forests and Fishery - Methodology from 08.10.2014 on organising and functioning of SUMAL, the structure and modalities of transmitting the standardised information, Art 31 (2) a), b)</p>
Failure to comply with timber documentation requirements and/or use of false documents.	Timber is inadequately or falsely documented. E.g. to allow excess volumes and/or timber from illegal sources to enter the supply chain.	Deficiencies in timber documentation are not detected by the due diligence system.	5.1 5.4 5.5	<p>Law 171/16.07.2010 for silviculture infringements (Legea contraventiei silvice), Article 19 a), b), d), e), 21 d)</p> <p>Department for Water, Forests and Fishery - Methodology from 08.10.2014 on organising and functioning of SUMAL, the structure and modalities of transmitting the standardised information, Art 31 (2) a), b)</p>
Failure to comply with regulatory timber receipt requirements.  Failure to comply with these requirements makes all timber passing through the point of receipt, unverifiable and therefore has to be considered illegal.	Timber is not properly documented or recorded at the point of receipt making it difficult or impossible to verify origin.		5.1 5.2	<p>Regulations for Origin, transport and trade of wooden materials, Wood storage and wood processing facilities, approved through Gov Decision 996/27.08.08, Art. 15, 16(1)b),c). [valid from 01.10.2008 to 07.10.2014]</p> <p>Gov Decision 470/04.06.2014 approving Regulations for Origin, transport and trade of wooden materials, Wood storage and wood processing facilities and Specific Measure for implementation of EU Regulation 955/2010, Art 4 (1), 6(1)(4)</p>
Failure to comply with regulatory timber purchase or sales requirements	Failure to properly document and record all timber purchased and sold making it difficult or		5.1 5.2 5.3 5.4	Ministry of Agriculture and Rural Development - Methodology from 15.09.2008 on organising and functioning of SUMAL, and Obligations of Companies and Art 17.1 [valid from 23.09.2008 to 20.10.2014]

Type of Illegality	Executed by Company	Executed by Supplier	FSC CW Definition <sup>37</sup> of legality.	Legal Requirement in Romania
	impossible to verify origin or to balance the expected harvest from a site with the actual yield and/or balance stocks held at a site.		5.5	Department for Water, Forests and Fishery - Methodology from 08.10.2014 on organising and functioning of SUMAL, the structure and modalities of transmitting the standardised information, Art 9a), 22, 23
Failure to carry out Due Diligence as required by EUTR	Operators are required by the EUTR to have due diligence systems that are capable of preventing illegal timber of any origin entering the supply chain.		6.1	Gov Decision 470/04.06.2014 approving Regulations for Origin, transport and trade of wooden materials, Wood storage and wood processing facilities and Specific Measure for implementation of EU Regulation 955/2010, Art 4 (1) and 6(1)(2)(4)
Corruption in relation to any of the failures listed above.	Direct or indirect involvement in corruption by means of inducements. Failure to apply due diligence in the detection of corruption.	Corruption in acquisition of any forest right or privilege by use of inducements. Due diligence system does not detect this.		Law 78/2000_08.05.2000 for prevention, identification and sanctioning acts of corruption

#### *4.5.2.2 Basis for complaints panel decision making in relation to allegations of violation of the PfA in terms of the trade in illegal timber.*

The PfA requires that in order for the complaints panel to recommend a disassociation that there is evidence of repeated violations against the PfA.<sup>38</sup> The intent of this is that isolated violations of the PfA that are not indicative of a systematic or systemic non-compliance with FSC's values, should therefore not be used to punish organisations that are genuinely trying to carry out responsible FM or to run ethical businesses.

The range of possible illegal actions in relation to timber trade is highly variable between jurisdictions as reflected in differences in the complexity of forest law and of forest revenue collection systems. In addition some countries deal with such things as timber theft under the forest law while others deal with it under the criminal law. In some countries the forest law is so complex and the regulatory system so weak that it is practically impossible to operate completely legally. It is also not the intention of the PfA to exclude organisations that are trying to meet their legal obligations in the face of a system that make this difficult or impossible.

In order for an illegal action to be considered significant enough for the CP to recommend disassociation the following three things should be true:

- 1) There would need to be repeated violation of the same (or very similar) laws or regulations
- 2) It should be possible for any reasonable organization to comply with the law
- 3) Failure to comply with the law should constitute a significant risk to achieving the forest stewardship objectives of the FSC. (This rules out cases where compliance with a particular law is contrary to FSC objectives for responsible forest management. The FSC should not punish organizations who are trying to operate responsibly in difficult environments).

In addition, the illegal actions should be recent and ongoing and not purely historical. No actions that precede the coming into force of the PfA in July 2009 can be considered at all, unless the impacts are ongoing. In general, the CP has concentrated during the complaint evaluation in analysing the events that have occurred during the last five years. However in cases where the legal processes at a national level required to prove illegality are very slow and are still ongoing, events prior to July 2009 have been taken into account when evaluating later allegations. This has been necessary for those cases which are currently being investigated by the Romanian Prosecutor, as such legal processes take longer than five years.

Finally the CP must consider the weight of the evidence presented and must evaluate this in terms of the independence of the source, the reliability of the source, the quality of the evidence and the degree of corroboration from other sources available.

#### *4.5.2.3 Timber Legality in Romania*

The significance of illegal logging in Romania is demonstrated by the fact that in January 2016 the Romanian President declared illegal logging to be a national security threat<sup>39</sup>.

The existence of significant amounts of illegal logging has been known for many years (since at least 2005<sup>40</sup>) and is believed to have become large scale and systematic since 1990<sup>41</sup>. The same source<sup>42</sup>

<sup>38</sup> FSC (2014) FSC- PRO – 01-009 - V3 Processing complaints against the PfA: Clause 5.21

<sup>39</sup> OCCRP (2016) <https://www.occrp.org/en/daily/4787-romania-illegal-logging-declared-a-threat-to-national-security>

<sup>40</sup> WWF Carpathian Programme (2005). Illegal Logging in Romania. WWF.

<sup>41</sup> WWF Carpathian Programme (2005). Illegal Logging in Romania. WWF. p17

<sup>42</sup> WWF Carpathian Programme (2005). Illegal Logging in Romania. WWF

also commented on the difficulties of estimating the scale of illegal logging since there was little requirement for organisations to maintain volume records.

Greenpeace has been carrying out studies on illegal logging in Romania for a number of years and has published its findings in two reports<sup>43,44</sup>. These reports indicate an increase in the number of forestry offences in each year from 30 per day in 2009 reaching a daily total of 96 offences in 2015. This means that in 2015 there were approximately 35,000 offences recorded and prosecuted. There are clearly further offences which are not detected.

Of these offences recorded in 2015, 32% were considered criminal and were formally prosecuted and a criminal record was issued. The remainder were dealt with administratively and fines totalling 29,673,350 Lei (6,650,000 EUR) were issued<sup>45</sup>.

Romania also operates a system known as Forest Radar by which members of the public may report suspicious timber shipments. During 2015 the public made 19,946 calls to the 112 number for this purpose and of these 16% were found to be unregistered in the legally required SUMAL system.

The size of the individual offences leads to the conclusion that these offences are mostly not related to the subsistence use of small amounts of timber. The volume of the illegal timber traded in the three most affected Romanian counties between 2013 and 2014, as well as the economic damage caused, are shown in the tables below. These counties represent almost 80% of all timber verified as being illegally harvested during the period 2013-2014 being almost 400,000 m<sup>3</sup>/yr.

It is estimated that in the same period a total of 8.8 million m<sup>3</sup><sup>46</sup> of timber was stolen nationwide each year so that the amount apprehended accounts for about 5% of the total illegal harvest.

Table 5 Volume of Illegal Logging 2013-2014 in most affected counties<sup>47</sup>

County	Volume of illegal logging 2013-2014 (m <sup>3</sup> )	Average volume 2013-2014 (m <sup>3</sup> /case)
Cluj	377 455	178
Alba	232 388	249
Maramureş	178 535	130

<sup>43</sup> Greenpeace (2005) Illegal logging in Romania 2013-2014 <https://secured-static.greenpeace.org/romania/Global/romania/paduri/Illegal%20logging%20report%202013-2014.pdf>

<sup>44</sup> 193- Greenpeace (2016)-Illegal logging cases in Romanian forests 2015

<sup>45</sup> 193- Greenpeace (2016)-Illegal logging cases in Romanian forests 2015. P6.

<sup>46</sup> Greenpeace (2005) Illegal logging in Romania 2013-2014 <https://secured-static.greenpeace.org/romania/Global/romania/paduri/Illegal%20logging%20report%202013-2014.pdf> p10

<sup>47</sup> Greenpeace (2005) Illegal logging in Romania 2013-2014 <https://secured-static.greenpeace.org/romania/Global/romania/paduri/Illegal%20logging%20report%202013-2014.pdf> p5

Table 4 Value of damage caused by illegal logging in 2013-2014 in three most affected counties<sup>48</sup>

County	Damage of illegal logging 2013-2014 (RON/Euro)	Average damage 2013-2014 (RON/Euro/case)
Cluj	79 165 257 / 17 863 003	52 742 / 11 900
Alba	65 485 883 / 14 776 362	70 189 / 15 837
Maramureş	37 382 331 / 8 435 022	27 227 / 6 143

The scale of these offences and the volumes involved suggests that these are well organised<sup>49</sup> and well-funded operations.

#### 4.5.2.3.1 Legality Requirements in Romania

The legal framework for forestry and timber trading in Romania is relatively complex. In addition, the regulations are often amended, added to and/or replaced. The law on land restitution is also of relevance since much forest land is the subject of claims from former owners and fraudsters.

The Romanian forestry legal framework consists of a range of Laws, Government Decisions and Ministerial orders. According to Nostra Silva<sup>50</sup> the National Association of Small Forest Owners its members must comply with 25 laws and 97 other legal instruments (it is likely that this excludes laws on import and export of timber and laws covering trading in biomass and energy from timber biomass).

#### Main Laws and Regulations in Forestry and Timber Trading in Romania

- Law 46/2008 (Forest Code) with amendments in 2015
- Ministry of Environment Order no. 1540/2011 regarding the logging periods, harvesting technique, and transport of wood.
- Ministerial Order no. 1798/19.11.2007, completed with Ministerial Order no. 1298/28.04.2011. To ensure environmental protection in Forestry
- Ministerial Order no. 904/2010 includes legislation for establishing and authorization of private and state FMU's.
- Silvicultural Norm 4 (Ministerial Order no. 1565/31.10.2000) gives indications on the assessment of wood volumes.
- Government Decision no. 996/2008 on sourcing, transport and sale of timber
- Law no. 171/2010 Determining penalties in silviculture.
- OUG 85/2006 – related to the assessment of damages produced in and outside the forest area.
- Government Decision no. 1076/2009 regulating the approval of Forest Guarding Rules.
- Minister Order no. 583/15.09.2008 Standing stock evaluation -( APV in Romanian) – must be registered in the SUMAL National system (On-line Wood tracking System)
- Government Decision no. 1174/2006 on sale of timber
- Governmental Decision no. 1898/2010 on sale of timber coming from state FMU's

<sup>48</sup> Greenpeace (2005) Illegal logging in Romania 2013-2014 <https://secured-static.greenpeace.org/romania/Global/romania/paduri/Illegal%20logging%20report%202013-2014.pdf> p5

<sup>49</sup> Greenpeace (2005) Illegal logging in Romania 2013-2014 <https://secured-static.greenpeace.org/romania/Global/romania/paduri/Illegal%20logging%20report%202013-2014.pdf> p10

<sup>50</sup> 244 Nostra Silva (2016) OPEN LETTER TO MR Dacian Ciolos, Prime Minister.-

- Ministerial Order no. 223/1130/2008 on authorization of logging companies authorized by a Commission coordinated by Ministry of Forests and Environment.
- Gov. Order 139/2007 on the management of forests belonging to forest owners associations to be permitted only by authorized FMUs (state or private).
- Law 18/ 1991; Law 1/2000, Law 247/2005 and Law 165/2013 on land restitution.

A more complete list of relevant laws and technical regulations can be found in Annex 7.3.1.

These regulations require that information is provided to the relevant authorities at a number of stages of the process. This information includes both a paper trail based on permits and transport documents and an electronic trail based on registering timber movements in the national timber tracking system known as SUMAL.

#### Structure of the Forest Administration in Romania

Forest administration in Romania<sup>51</sup> falls under the Ministry of Environment Water and Forests (MIMAP), see Figure 2 below. The control is exercised in two ways, by its supervision of the National Forestry Administration known as Romsilva and by its control function exercised through the Forest Guard.

Romsilva is not directly controlled by MMAP but by a board which includes representatives of the ministry amongst others. Romsilva has financial autonomy and directly manages the state owned forest. It is also responsible for forest research, the national forest inventory and performs management of private and community owned forests on a contractual basis.

Romsilva is controlled by an Administrative Council responsible for strategic decisions and a Director General responsible for day to day management.

Romsilva exercises its control through 41 county forest directorates (with the status of legal persona) that are responsible for supervision of all forest districts within the county. The county forest directorates divide their territory into forest districts which are managed by a District Head. The forest districts are responsible for the on the ground implementation of forest management plans on state owned land. In addition, the districts are responsible for the hammer marking of trees to be extracted during harvest on both state owned and private land. They are also responsible for the issue of timber transport documents for private land.

Law enforcement and control in the forest sector falls mainly under MMAP through the Forest Department. The forest department has a Control Section that is responsible for the Forest Guard (Forest Inspectorate) which is tasked with forest law enforcement on both private and public land.

Other law enforcement organisations also have some responsibilities in relation to forestry activities including the police who control timber transport when informed about possible illegal loads, the National Anti-corruption Directorate (DNA) and the customs office amongst others.

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<sup>51</sup> 99- WWF report Illegal Logging in Romania 2005

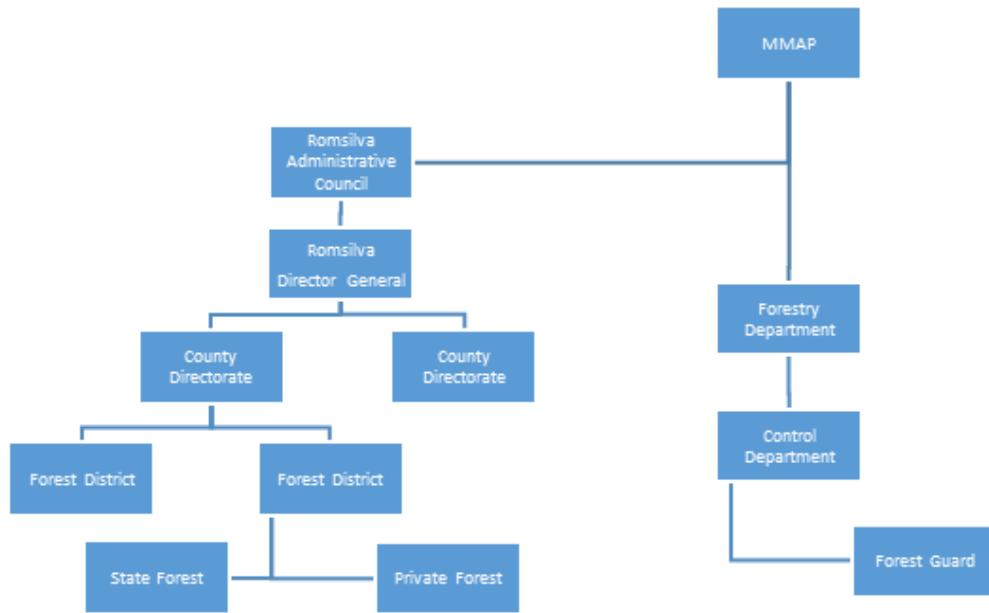


Figure 2 Structure of Forest Administration in Romania

#### *4.5.2.4 Allegations of illegality against Holzindustrie Schweighofer and findings of the Complaints Panel*

The allegations of illegal logging or trading in illegal timber against HS come from a wide range of types including:

- Illegal logging conducted by HS directly;
- Failure by HS to follow regulations
- purchase of illegally logged timber from HS suppliers;
- The purchase of illegal timber from HS suppliers. This is considered to have taken place in two ways: firstly by failing to carry out adequate due diligence and secondly by actively procuring suppliers to carry out illegal activities in order to increase volumes supplied to HS.

These allegations are systematically analysed in greater detail in the sections of the report that follow.

Allegations against HS have come from a number of sources including the report<sup>52</sup> by EIA which forms the basis of the complaint by WWF Germany which references many other sources.

Information from official government sources is considered to have significant weight. Some of the official Governmental sources of information which have been considered by the complaints panel in their evaluation are reports and court records from the Anti-corruption Agency (DNA)<sup>53</sup>, public statements of the Romanian Government<sup>54</sup>, audit reports of the Romanian Government<sup>55</sup> and in compliance reports from the Ministry of Environment, Water and Forests (MMAP)<sup>56, 57</sup>.

##### *4.5.2.4.1 Harvesting in Forests where forest tenure is not properly allocated.*

It is known that HS purchased forest land that was the subject of one or more fraudulent land restitution processes<sup>58</sup>. The perpetrators of some of this fraudulent actions have recently been convicted and imprisoned. In other cases there are allegations that HS purchased timber from areas where others acquired restitution land illegally. These issues are dealt with in detail in section 4.5.3 and 4.5.4 below.

#### **HS' response**

HS has denied that it has improper tenure of any land and that it has used timber harvested from illegally restituted land.

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<sup>52</sup> 17 EIA (2015) "Stealing the last forest: Austria's largest timber, company, land rights and corruption in Romania", EIA

<sup>53</sup> 17 LL DNA (2012) Statement by National Anticorruption Agency. Regarding land restitution and corruption.

<sup>54</sup> 17K MMAP (2015) Press Release concerning inspections of Holtzindutrie Schweighofer from 7 May – 12 June 2015.

<sup>55</sup> 17ZA MMAP (2014) Report on audit of activity Holzindustrie Schweighofer S.R.L. Radauti.

<sup>56</sup> 17C MMAP (2015) Unofficial draft of Government investigation report by the Romanian Ministry of the Environment on Sebes Mill.

<sup>57</sup> 17B MMAP (2015) Unofficial draft of Government investigation report by the Romanian Ministry of the Environment on Radauti Mill.

<sup>58</sup> Public Release no. 255/VIII/3. (March 6, 2014). National Anticorruption Directorate [Press release]. Retrieved from <http://www.pna.ro/faces/comunicat.xhtml?id=4706>

## Conclusions by CP

The complaints panel finds that there is clear and convincing evidence that HS mills received timber from land that had been acquired by HS (Cascade Empire) from illegal restitution processes.

### 4.5.2.4.2 Harvesting where harvesting permission is not allocated.

In 2015 MMAF reported suspicions that a number of suppliers to HS supplied timber from illegal sources<sup>59</sup>.

A number of instances of such activities are public knowledge, for example the supply by Rodank Industries srl of 4,593.74 m<sup>3</sup> of illegal timber to HS was prosecuted by the authorities<sup>60</sup> in 2009. It should be noted that the illegal activities occurred in 2005 but the Romanian legal system is very slow so that confirmation of illegality by prosecution was four years after the event. Furthermore, the case involves Georghe Deaconaseu who is further implicated and was recently convicted and sentenced to prison due to his involvement in the illegal restitution of forest land which was subsequently purchased by Cascade Empire.

The official audit report by the MMAF as a result of the controls conducted at HS operations in Radauti between February and July 2014<sup>61</sup> describes that in 4 out of the 204 harvested units inspected the volume of timber removed exceeded the pre harvest permit by more than 5%. In a further 35 of these units timber continued to be transported from the unit after the stock level of the units had reached zero. This timber therefore is considered to be illegal. The total volume involved was 3827 m<sup>3</sup>. The assessed value of this timber was Lei 725,767 = EUR 160,000.

157 of the consignment notes inspected (which constitute 1% of the total inspected) for timber received by the sawmill failed to state the legal provenance of the timber<sup>62</sup>. The total volume involved was 4,812 m<sup>3</sup> and the assessed value of this timber was 1,142,727 Lei = EUR250,000.

## HS Response<sup>63</sup>

HS is unable to respond to the allegations arising from the inspection reports of May-June 2015 since it does not have access to them.

HS argues that in the case of 4,850 m<sup>3</sup> of saw logs delivered to Raduati without proper legal origin that this refers to the fact that the relevant waybills while carrying an APV number did not carry the six figure plot number as required by the regulations.

The CP believes that HS should have had a system in place to determine if the waybills arriving at its mills carry the correct information since incomplete documentation of timber leads to opportunities for timber laundering.

HS further argues that in the case of 3,850 m<sup>3</sup> of timber reported by the inspectors as being transported from the forest after the stock level had reached zero refers to timber that had been harvested and transported to roadside but could not be extracted due to snow. When roads became

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<sup>59</sup> 17K MMAF (2015) Press Release concerning inspections of HS Schweighofer from 7 May – 12 June 2015.

<sup>60</sup> 231.3 Impact Real (2009) <http://www.impactreal.ro/200912204737/Padurile-din-nordul-judetului-furate-larasi.html>

<sup>61</sup> 17ZA MMAF (2014) Report on audit of activity Holzindustrie Schweighofer S.R.L. Radauti.

<sup>62</sup> 17ZA MMAF (2014) Report on audit of activity Holzindustrie Schweighofer S.R.L. Radauti.

<sup>63</sup> 28- HS counter report responding to EIA

passable HS transported this timber to the mill although the site had already been formally returned to the authorities.

The CP understands that this type of situation may be quite common in Romania but considers that the legal procedures for readmission of such stock must be followed in order to assure integrity of the volume control system of the State.

HS argues that the total amount of timber with irregularities involved is only 1% of the total volume processed by the Raduati mill during this period and therefore negligible. The CP rejects this argument since the volumes involved and their values are large.

The CP also understands that there are significant irregularities that occur due to the failure of government agents to correctly carry out their role in issuing permissions and permits correctly but believes that HS should have systems in place to detect and prevent these occurrences. It is understood that in recent times HS has started to reject improperly documented loads but this does not seem to have happened in the past.

#### **CP Conclusion**

The complaints panel finds that there is clear and convincing evidence that HS sawmills received timber that was not properly documented concerning its source and that in other cases timber was transported from the forest to HS without the proper legal authority.

##### [4.5.2.4.3 Harvesting in advance of harvest schedule.](#)

EIA provided the complaints panel with the full uncut undercover video, which had been filmed by EIA's investigators at HS' premises in Romania, and which constituted a significant part of the evidence provided as part of the references to the EIA report.

In this video undercover recordings of meetings between HS and representatives of EIA, posing as an unscrupulous wood supplier, were shown. In these meetings HS' representatives raised no objections to receiving timber from suppliers which was being harvested at an accelerated rate<sup>64</sup>. It should be noted that the complaints panel has been able to view the original uncut video material in its entirety and is convinced that this has not been edited. Given the system of harvesting permits in place in Romania it is clear that such harvesting would be illegal since this would involve volumes not yet authorised by an APV.

#### **HS Response**

HS has argued that the video evidence on which this is based has been edited and is therefore unreliable. The complaints panel has had the opportunity to view the complete material and is in no doubt that the edited version reflects the true sequence of events.

#### **CP Conclusion**

The CP finds beyond reasonable doubt that HS representatives agreed to accept timber into their mill that had been harvested outside of the permitted schedule.

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<sup>64</sup> An excerpt of this interview can be seen in: Video by Rise Project, Clear Cut Crimes, published on 20 September 2016, (18:06-18:49), retrieved at <https://www.youtube.com/watch?v=Al-z6BfU62Q&app=desktop>

#### 4.5.2.4.4 Harvesting in contravention of technical specification.

Susai Servcom, an FSC certified timber supplier to HS, received a fine by the Romanian Ministry of the Environment for hauling logs through a riverbed at the Retezat National Park<sup>65</sup>. Some of these logs have been tracked to HS Sebes mill<sup>66</sup>.

#### HS Response

HS has argued that it is a wood processing company and does not carry out any logging. It therefore requires that its suppliers comply with all relevant laws and regulations. It argues that it has in place a DDS that includes field inspections to verify compliance.

The CP considers that it is not possible for HS to pass on its responsibilities for ensuring legality to its suppliers in this way. The analysis of the DDS in section 4.5.5 below indicates that this did not adequately address the cases where HS buys timber from intermediaries.

Figure 3 HS sourcing scheme<sup>67</sup> indicating the division of responsibility between HS and its suppliers.

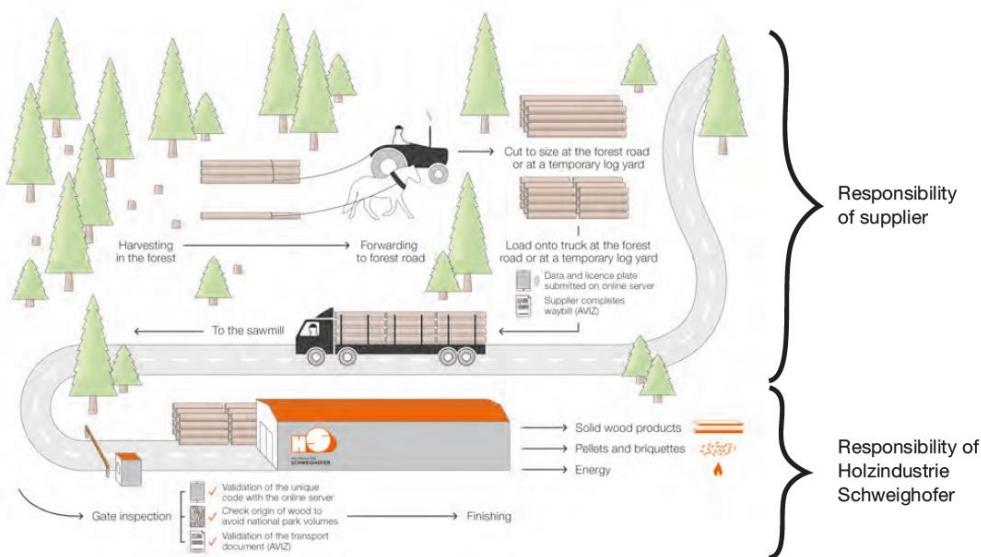


Figure 1 - Scheme of sourcing: Holzindustrie Schweighofer is a wood processing company, not a logging company. Our suppliers are obliged to total compliance with the forest code, the principles of sustainability and all relevant rules and regulations. We not only check all required data at the sawmill gate but also carry out field audits. Holzindustrie Schweighofer also abstains from timber harvested in national parks, which is unique in Romania.

#### CP Conclusion

The complaints panel has clear and convincing evidence that on at least one occasion timber was supplied to HS that contravened technical harvesting regulations.

<sup>65</sup> 162.2 (2014) Letter from General Commissary of the Forest Guard concerning Susai Servcom.

<sup>66</sup> Information provided by an anonymous stakeholder.

<sup>67</sup> 28- HS counter report responding to EIA

#### 4.5.2.4.5 Failure to pay all necessary charges for harvested timber.

Recent evidence has emerged<sup>68</sup> that HS is in arrears by approximately EUR 5.5 million in the payment of a number of forms of taxes in Romania. It is not certain how much of this tax is related to its timber related activities. At least some of this arrears has to do with social insurance contributions.

#### HS' Response

HS has not responded to this recent allegation.

#### CP conclusion

The CP finds that there is insufficient evidence to verify that HS has systematically avoided paying taxes or other charges on timber it has harvested and on volumes it has reported. Issues surrounding the reporting of volumes are dealt with in subsequent sections.

#### 4.5.2.4.6 Failure to comply with timber transport regulation or procedures.

Agent Green, a Romanian Environmental NGO, published a video on the 22 December 2014 suggesting illegal transport on unlicensed truck by a supplier to HS. The registration plates shown in the video clearly correspond to the number provided to the authorities.

The situation was investigated and it was concluded that the timber load was apparently legal but wrongly registered in the SUMAL system to the truck and not the trailer.

The procedure for issuing waybills as set out in Government Decision 996/2008 was not complied with. In particular consignment notes printed specially for HS were then found to have been used by other companies that supplied HS with timber<sup>69</sup>.

There is also evidence that trucks delivering timber contravened the transport regulations in Romania by carrying loads which resulted in the fully loaded truck weighing in excess of the 40 tonnes permitted by law.

#### HS Response

HS has responded to the video of 22 December 2014 by providing evidence which indicates that in this case the load was wrongly allocated to the licence number of the truck and not the trailer.

#### CP Conclusion

The complaints panel finds that there is clear and convincing evidence that HS has acted illegally by supplying waybills for timber transport to third parties.

#### 4.5.2.4.7 Failure to comply with timber documentation requirements.

A number of problems were identified in the way in which data from consignment notes and other sources were entered into the SUMAL system by HS<sup>70</sup>.

<sup>68</sup> <http://www.neuerweg.ro/schweighofer-schuldet-dem-rumanischen-staat-568-millionen-euro/>

<sup>69</sup> 17ZA MMAP (2014) Report on audit of activity Holzindustrie Schweighofer S.R.L. Radauti.

<sup>70</sup> 17ZA MMAP (2014) Report on audit of activity Holzindustrie Schweighofer S.R.L. Radauti.

Some of the issues which were identified were the following:

- wrong entry in records: for the SUMAL thermal power plant and the SUMAL work site in Ipotești, the wood slabs were entered in the statement for the log storage facility. They should have been entered in the statement for the timber storage facility;
- wrong dates entered;
- wrong species entered;
- wrong provenance entered (evaluation report no.);
- wrong quantity entered;
- wrong consignment note serial number and/or number entered;
- the same consignment note was entered twice

There was a similar catalogue of errors found in the way in which consignment notes had been completed<sup>71</sup>.

- failure to state the date and/or time at which the vehicle departed,
- wrongly recording the provenance of the ligneous materials (unit),
- non-certified changes of the dates recorded in the column stating the date and/or time at which the vehicle departed,
- failure to mention, in situations where it was necessary, in the relevant column of the consignment note, the special rectangular marking implement,
- inaccurate recording of varieties,
- failure to record the number of packages for timber;
- failure to comply with the requirement that consignment notes must be filled in using ballpoint pen; in the case of the secondary notes for timber, the notes were filled in using a dot matrix printer

It is also noted that at least until 2013 the contracts<sup>72</sup> between HS and its suppliers did not reject timber that had been improperly documented, instead it levied fines against the suppliers and reserved the right to claim damages Figure 4 Extract from HS supplier contract as per August 2013.(Figure 4 below). It is also clear from this contract that HS seeks to source legal timber and will not accept timber from National Parks.

Figure 4 Extract from HS supplier contract as per August 2013.

**Origin:** The seller is obliged to respect the valid laws regarding the origin and the transport of roundwood. In case of wrong filling in of the documents regarding origin and bookeeping documents, the buyer is reserving the right to request compensations in case that he will encounter any losses caused by these. In case that the origin of the logs proves to be another than the one specyfied by the seller, the buyer retains the right to demand penaltyes of **30 RON/cbm** for the quantity delivered in that month. The seller guarantees the legal sourcing of the roundwood and that he is holding all the necessary approvals and documents according to the lgislation. The origin of the logs is mentioned in the "Stetement on own responsibility" that is part of the present contract. The whole of the custody chain can be identified and in high risk situations can be checked by a third party. In case of suppliers that are part of a certification scheme (F.S.C, P.E.F.C) all the necesary conditions can be asumed to be met. Deliveries of roundwood obtained from National Parks or protected areas will not be accepted.

<sup>71</sup> 17ZA MMAF (2014) Report on audit of activity Holzindustrie Schweighofer S.R.L. Radauti

<sup>72</sup> 208.2- Appendix\_1\_contracttemplate\_HS\_8\_2013

## **HS response**

HS has stated that it is not possible to be 100% accurate given the large number of forms and computerised data they are required to complete and that the errors amount to only a small amount of the volume dealt with by HS.

The CP notes that since the beginning of 2016 HS has in place a system for reporting to the authorities when there are significant differences between the waybill volume and the measured volume on receipt (See Annex 7.3.4). However, in depth analysis of this information leads to the conclusion that the information provided to the authorities is incomplete without the inclusion of the information provided to the suppliers.

The CP is aware of the difficulty of achieving 100% accuracy but some of the errors reported appear to be systematic and result in the false reporting of volumes received.

## **CP Conclusion**

The CP finds that on the balance of probabilities that HS has failed to comply with regulations concerning the documentation of timber during its transport and receipt. The CP also finds that there is clear and convincing evidence that HS has received timber for which the legal documentation requirements are not followed and that in a number of cases significant volumes were delivered to HS which were improperly documented.

### [4.5.2.4.8 Failure to comply with timber receipt requirements.](#)

In its audit of June-July 2014 MMA<sup>73</sup> found that 19 consignment notes had not been entered into the SUMAL system for recording timber movements. The volume concerned in these consignment notes was 710m<sup>3</sup> with a value of 216,934 Lei = EUR 48000.

In the press release by MMA<sup>74</sup> of June 2015 the Ministry draws attention to the following irregularities identified at HS operations which can be considered as non-compliances with the law:

- irregularities in the manner in which ligneous materials were received and recorded;
- ligneous material being received without being reported in SUMAL;
- ligneous material being received with documents which did not clearly indicate its provenance;
- differences between quantities of wood mass recorded on consignment notes and quantities of wood mass received;

Law 171/2010 requires that all wood storage facilities and facilities that process round timber must be fenced off. The MMA<sup>75</sup> inspection of June-July 2014 found that there was no fence between the land belonging to the HS sawmill at Radauti and the land of its sister company Bio Electrica Transilvania srl<sup>75</sup>.

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<sup>73</sup> 17ZA MMA<sup>74</sup> (2014) Report on audit of activity Holzindustrie Schweighofer S.R.L. Radauti

<sup>74</sup> 17K MMA<sup>75</sup> (2015) Press Release concerning inspections of HS Schweighofer from 7 May – 12 June 2015

<sup>75</sup> 17ZA MMA<sup>76</sup> (2014) Report on audit of activity Holzindustrie Schweighofer S.R.L. Radauti

### **HS Response**

HS claims that the 710m<sup>3</sup> which was considered illegal in 2014 due to not being entered in the SUMAL system was a result of typing errors by the operators. HS has not responded to the press release of MMAF of July 2015<sup>76</sup>

The CP is aware of the difficulty of achieving 100% accuracy but some of the errors reported appear to be systematic and result in the false reporting of volumes received. Government inspectors also found that large timber movements between different companies of the HS group were not accounted for at all and clearly false declarations of stocks were made in relation to biomass.

### **CP Conclusion**

The CP finds that there is clear and convincing evidence that HS has failed to receive and store timber according to regulatory requirements.

#### [\*\*4.5.2.4.9 Failure to comply with timber purchase or sales requirements.\*\*](#)

All evidence in this section is taken from the MMAF inspections of 2015 and cannot be made publicly available at this time.

### **HS Response**

HS is unable to respond to these allegations.

### **CP Conclusion**

The CP finds that there is clear and convincing evidence of illegal actions.

#### [\*\*4.5.2.4.10 Failure to carry out adequate due diligence as required by the EUTR.\*\*](#)

A complete evaluation of the effectiveness of the HS Due Diligence system is included as 4.5.5. This section deals only with the evidence related to failures to detect issues related to specific suppliers detected in the MMAF investigations of 2015.

### **Chain of Custody**

Where timber is purchased from intermediaries there is a breakdown of the CoC system<sup>77</sup>. Although timber supplied to HS is accompanied by an APV purporting to show the origin of the timber, this timber is actually a mixture of timber from many sources. A depot manager for Susai Servcom SRL admitted that when timber is received at the depot it is mixed with timber from other sources and timber supplied to HS is simply drawn from this mixture to meet the quality needs of HS. This practice is absolutely normal in the timber industry around the world and it is the way in which intermediaries are able to make their profits. However, in this case since logs are not individually marked with the source it is not possible to be certain that timber purchased from intermediaries is from legal sources or not. At the moment of dispatch from Susai Servcom to HS this mixed timber is matched to a single APV for the purpose of satisfying the input demands of HS.

### **HS Response**

HS is not able to respond to these allegations.

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<sup>76</sup> 17K MMAF (2015) Press Release concerning inspections of HS Schweighofer from 7 May – 12 June 2015

<sup>77</sup> Interview with anonymous stakeholder.

## CP Conclusions

The CP finds that there is clear and convincing evidence that HS has received timber from suppliers that have significant problems with a range of legal compliance issues. The CP notes that of the HS suppliers found to have legal issues almost 20% are FSC certified and therefore should not have required the level of due diligence as for uncertified companies.

### *4.5.2.5 Summary of Investigations of HS Schweighofer by MMAP during 2014 and 2015*

Table 6 below summarises the information from the results of the three inspections by agents of MMAP of HS facilities in Romania.

In this table we have allocated all infringements of the regulations that were carried out by omissions or commissions of HS staff to the company regardless of whether they took place in the mills, the company depots or in the field.

The number of infractions of the regulations and the volumes of timber involved are large and resulted in fines of 267,000 Lei being levied on HS and 251,000 Lei being levied on its suppliers

The volumes of material of all types was large with 522,077 m<sup>3</sup> being affected at HS sites and a further 198,334 m<sup>3</sup> involved at the sites of its suppliers.

It should be noted that not all of the material involved at the HS site is timber since large volume discrepancies as well as classification issues were found in relation to biomass stock management and claims for green certificates. Furthermore, it is likely that some of this timber has been doubly counted since it may have been involved in more than one infraction. For the timber that was found by inspectors to be illegal at HS suppliers not all of this timber was supplied from the forest to HS but most of the balance is said to have been supplied to intermediaries who also supplied HS.

The seriousness of these issues is demonstrated by the fact that the infractions at HS are not being dealt with by administrative means but the dossier has been forwarded to authorities for possible criminal prosecution.

Furthermore, at a meeting of the EUTR monitoring body in December 2015 the *CA of Romania updated the other participants on the checks conducted and the penalties applied in Romania in the Schweighofer<sup>78</sup> case. A sanction of Euro 45,000 was said to have been applied. More than 9,000 m<sup>3</sup> of timber were seized. 22 sanctions were applied to providers in Romania and the procedure was still ongoing to reach all the remaining providers. It is not clear if the fine of EUR 45,000 was related directly to the actions of HS or if these were levied on the suppliers.*

It is also noted that 10 out of the 56 suppliers (almost 20%) found to have problems by the MMAP investigators were FSC certified. In the view of the complaints panel at least in the case of these suppliers HS benefits from the protection of having a relationship with an independently verified partner. It should also be noted that of the fines levied against HS suppliers three FSC suppliers jointly account for 79% of the total.

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<sup>78</sup> 76- Summary record of EUTR FLEGT meeting 2 Dec 2015

On 9 October 2016 there was a television programme on the Channel Antena 3<sup>79</sup> in Romania that dealt with issues around HS. During this programme there was an interview with an anonymous official of MMAP. During this interview when discussing the inspections carried out at HS mills in Sebes and Raduati in 2016 the official used the following language:-

*Official Ministry of Environment: "After several months of investigations in the territory the inspectors have concluded that there is a pathway that "washes wood". In other words, illegally harvested wood, after entering the factory Holz, would be turned into legal timber. And it seems that this group, consisted of forest managers, economic partners, officials and representatives of the Austrian company and of its (i.e. Schweighofer's) representatives in the territory. "*

The start of this language is strongly concordant with the language the CP encountered in the report of the inspection carried out in 2015 and therefore gives the CP confidence that the versions of the reports in their hands are substantially the same as those in the hands of MMAP.

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<sup>79</sup> Video by reporter Andrei Ciurcanu, Magnatii de Rumegus, published on 9 October 2016, (13:49 – 14:12) retrieved at <https://youtu.be/LOrszcjAiRo>

*Table 6 Summary of Results of Investigations of HS and its suppliers by MMAP in 2014 and 2015*

Site and year of Inspection	No of Issues at HS	Timber Volume Involved m <sup>3</sup>	Fines Levied or Recommended Lei/Euro	Compensation for Value of Seized Timber Lei/Euro	No of suppliers inspected	No of Suppliers with Issues	FSC Certificate Holders with Issues	Timber Volume Involved m <sup>3</sup>	Fines Levied or Recommended Lei/Euro
HS Raduati 2014	6	9,384	93,000 20,666	2,084,490 463,220					
HS Raduati 2015	9	284,033			25	13	4	31,113	81,500 18,111
HS Sebes 2015	33	228,656	174,000 38,666	360,952 80,211	unknown	43	6	167,221	169,500 37,666
Total	48	522,073	267,000 59,332	2,445,442 543,431	25	56	10	198,334	251,000 55,777

The volume considered by the authorities to have legal problems account for between 10 and 15% of the total volume sourced by HS during the period covered by the inspections.

#### *4.5.2.6 Allegations of associating with known criminals, corruption and conflict of interest.*

A repeated theme in the network of suppliers to HS is the presence of individuals with known criminal connections, corrupt politicians and individuals with a clear conflict of interest. Some analysts say there is a strong stench of corruption in the Romanian forestry industry that has been triggered by the arrival of foreign companies and the subsidies that encourage them<sup>80</sup>.

Project Rise<sup>81</sup> has presented evidence that many of the leading suppliers of HS in Romania have connections with persons or companies that have engaged in illegal activities in the forest sector and elsewhere.

The most important seller to HS, the Romanian State itself, through “Regia Națională a Pădurilor Romsilva [SA-FM/COC-002829](#)”, whose boss, Adam Crăciunescu, is being brought to court together with (the Bucharest politician) Viorel Hrebenciuc for corruption and support of a criminal group.

Alredia [SGS-COC-009187](#) the second largest supplier of HS has connections to Peter Cernat, recently indicted for fraudulent expenses claims in relation to timber purchases.

Traian Laronesi owner of Frasinul [SGS-COC-009798](#) the third largest supplier of HS has been indicted by the anticorruption agency in relation to corruption in the winning of tenders from Romsilva. The local police chief in Bistreti is also indicted in the same case.

GVC Computers ([listed by SA as GFA-COC-002603 but not in current database](#)) another large supplier of HS is controlled by the brother of Nichifor Tofan who is a director of HS Radauti mill as well as CEO of Bioelectrica Transilvania SRL. There is a clear risk of conflict of interest in this case.

RG Holz [SCS-COC-002548](#) was fined 100,000 Lei in 2011 for transporting 200 m<sup>3</sup> of illegal timber in a train.

Expolvip (Non-FSC certified) is controlled by John Veprecuic prosecuted and sentenced for illegal harvesting of timber.

Suceava Adenis Pard SRL<sup>82</sup> (FSC certificate no longer valid since December 2015) declared revenue to the tax authorities of 7.8 million Lei. However HS asserts in its tax declarations that they paid him a total of 10.6 million Lei not the 6.8 million Lei claimed by Adenis. The proprietor of Adenis, Gabriel Viorel Pardau has produced documents supporting his claim. In this case one of the two companies is attempting to commit a tax fraud. Either HS is overstating expenses or Adenis is understating revenue. It should be noted that if HS believes that Adenis Pard SRL is involved in tax fraud then the supplier should be on the list of excluded suppliers provided by HS; this is not the case.

An article dated 4th April 2006 mentioned that George Deaconesa was removed from his post as Director of the Valcea Forest Department at the end of 2005 for alleged corruption<sup>83</sup>. HS signed a contract on 30 November 2004 with SC Socifarm SRL, the company owned by Gheorghe Deaconesa. The contract states that HS pays to the provider a guarantee of 420,000 Euros and in

<sup>80</sup> Romania – Up in Flames. 30 November 2015 <http://eubioenergy.com/2015/11/30/romania-up-in-flames/>

<sup>81</sup> 17 W RISE PROJECT Schweighofer network Who Cut and How they Won- Rețea Schweighofer - cine a tăiat și cât a câștigat - 28-05-2015

<sup>82</sup> Adenis Pard srl held the FSC certificate [SA-COC-004306](#) until it was terminated in December 2015.

<sup>83</sup> 231.1 Padurile din Valcea, decimate de un sef al Ocolului Silvic Voineasa, 18 April 2006, retrieved at <http://www.curierulnational.ro/Eveniment/2006-04-18/Padurile+din+Valcea,+decimate+de+un+sef+al+Ocolului+Silvic+Voineasa>

return the quantity of timber to be delivered by the provider is 18,000 m<sup>3</sup> of spruce in 6 months, during December 2004 - May 2005<sup>84</sup>. HS maintained close ties with him from 2001<sup>85</sup> until at least 2009<sup>86</sup>. Following his recent conviction of corruption in relation to the sale of land to Cascade Empire, his company Soficarm remains on the list of HS suppliers.

A connection between Schweighofer company and a suspected criminal group involved in illegal land restitution<sup>87</sup> including Viorel Hrebenciuc, Sturdza Paltin Gheorghe, Ioan Adam, Tudor Chiuariu, Ilie Sârbu, Adam Crăciunescu, etc.<sup>88</sup> is revealed through interceptions of court records from the anti-corruption investigation. These court records include taped recordings between the defendants stating that Schweighofer was seeking to purchase the land. The prosecutors indictment shows even amounts of payments in advance expected from Schweighofer company after signing the vesting deed<sup>89, 90</sup>.

A video published by Rise Project on 20 September 2016 shows Vasile Vlad, the head of a local forestry department in the Maramures Mountains. He is trying to protect the forests and was filmed while he took the film crew on the train through the forest. He says: "They [the local mayor's family and their company] sold the wood illegally to Holzindustrie after receiving illegitimate authorization from a private forestry department." [...] He says some logging companies in the area have owners with criminal records. They all still supply timber to Schweighofer. The appointment of a new police chief gave Vlad hope. He says: "The chief of police changed. We worked together only two weeks. In two weeks, the chief and I caught them in the forest. They got scared and left the forest with their machinery." But it soon returned to business as usual. "Then the police didn't want to go on anymore raids with me." And they have reason to be afraid. These are border police chasing illegal loggers in the Maramures mountains two months ago. The loggers had just attacked one of the police officers. They put him in the hospital. Even when they were caught, they confronted the police. [...] Two were arrested. They were Schweighofer contractors and the attack took place next to the company's collection point. The film crew tracked down one of the local gangsters, Gheorge Usciu, a local businessman, who supplied that depot with mafia wood and secretly recorded him telling us how it works with Schweighofer, or Holz as he calls them. We asked him how did Holz operate? He said: "Holz made them start exploiting. The permit would be issued to X or Y or to me. I'd get the permit. I'd handle the exploitation and they would pay me for this service. I'd use my own checks to pay for the wood mass. This was the big move. And they would pay for my wood."

Georghe Usciu is now under investigation by prosecutors for selling illegal wood to Schweighofer"<sup>91</sup>.

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<sup>84</sup> 252.3- Translation - SCHWEIGHOFER cu Deaconesa Gheorghe – Soficarm

<sup>85</sup> Video Magnatii de Rumegus, by Andrei Ciurcanu, published on 9 October 2016, retrieved at <https://youtu.be/LOrszcJAiRo>, 04:20-04:26 minute.

<sup>86</sup> 17 EIA (2015) "Stealing the last forest: Austria's largest timber, company, land rights and corruption in Romania", EIA

<sup>87</sup> Public release no 1450/VIII/3 (October 15, 2014). [Press release]. National Anticorruption Directorate. Retrieved from <http://www.pna.ro/faces/comunicat.xhtml?id=5377>

<sup>88</sup> <http://www.scj.ro/1094/Detalii-dosar?customQuery%5b0%5d.Key=id&customQuery%5b0%5d.Value=100000000295176>

<sup>89</sup> [http://csmc.ro/crima\\_organizata/schweighofer/victor-ponta-ioan-adam.pdf](http://csmc.ro/crima_organizata/schweighofer/victor-ponta-ioan-adam.pdf)

<sup>90</sup> Nostra Silva. Cheap forests, cheap politicians – Chronology and evidence in the Schweighofer file. May 19, 2015. Retrieved from <http://www.nostrasilva.ro/editoriale/paduri-ieftine-politicieni-ieftini-cronologiasi-probele-dosarului-schweighofer/>

<sup>91</sup> Video by Rise Project, Clear Cut Crimes, published on 20 September 2016, (15:08 – 17:27), retrieved at <https://www.youtube.com/watch?v=Ai-z6BfU62Q&app=desktop>

### **HS' response**

In a response to the allegation in the EIA report that Schweighofer's top suppliers are under investigation for illegal activities, HS stated:

"Fact. First of all: Ceasing business with the state or Romsilva is an unrealistic demand, nonetheless.

The Romanian state owns 49% of the forest directly, and 16% via municipalities. RNPRomsilva acts as an administrator for state forests and over a million hectares of other owners. In total, Romsilva manages 66% of Romania's forest area. Ceasing business with a supplier with such a market share would lead to the collapse of the Romanian forest industry.

Down payments are a common business practice. They don't incentivise the supplier to break the law, but enable the acquisition of harvesting equipment and machinery, as the EIA-report explains appropriately. Contrary to other countries, Romania grants very limited subsidies for forest operations because the funds for regional development are managed by the Ministry of Agriculture, but forestry is assigned to the Ministry of Environment. In this regard, the down payments act as equity foundation that is necessary, for instance, to construct basic infrastructure like forest roads.

We stress, though, that suppliers who were convicted for illegal logging lose all contracts with Holzindustrie Schweighofer and are excluded from a further business relationship. We also carry out a multi-step risk assessment procedure that is compulsory for every supplier before signing the contract. Beyond that, we decline to make comments on particular business partners.

There is also a misunderstanding about the role of Romsilva. The state owned forest manager is not, as stated, Holzindustrie Schweighofer's single largest supplier. Harvesting companies usually purchase the volumes from state forests in tenders and we buy from them the saw log assortments"<sup>92</sup>.

### **Conclusions by CP**

The fact that a supplier is a dominant player in the market, such as Romsilva, would not justify a continued relationship in case of (a substantial risk of) criminal activities.

It is clear from the evidence that HS pays advances to numerous companies that supply it with timber<sup>93,94</sup>. HS does not deny this. This is used by the companies to finance their harvesting operations. Many forestry companies do this around the world and it is not usually associated with criminality. Stakeholders maintain that in the case of HS however that these payments are being made directly to companies that are controlled by known criminal groups and that HS is therefore directly financing illegal activities.

**In most of these cases HS did not break the relationship until all uncertainties about the alleged cases had been eliminated as would be expected from a responsible buyer. By continuing relationships with suppliers with suspected or convicted criminals HS accepts a substantial risk of buying illegally harvested timber which constitutes a violation of the FSC PfA.**

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<sup>92</sup> 28- HS counter report responding to EIA, 16 February 2016, p. 12

<sup>93</sup> 17 W RISE PROJECT Schweighofer network Who Cut and How they Won- Rețeaua Schweighofer - cine a tăiat și cât a câștigat - 28-05-2015

<sup>94</sup> 17 EIA (2015) "Stealing the last forest: Austria's largest timber, company, land rights and corruption in Romania",EIA

#### 4.5.2.6.1 Contracts between HS and convicted criminal Mr Mircea Basaraba

The Pitești Court of Justice, through the penal sentence no. 662 from 3 June 2016, gave a final decision to a part of the Puru, Galbenu and Petrimanu mountains file, issuing a decision of conviction of the members of the criminal network whose final beneficiary was Cascade Empire and HS. One of the defendants, Mircea Basaraba was sentenced to 9 years in prison<sup>95</sup>. Mircea Basaraba was an important contact person for HS in this case which is described in more detail in paragraph 4.5.3.2.

In light of the conviction of Mircea Basaraba, the CP requested HS for information about the services provided by this individual to HS.

#### HS Response

As a response to the information request by the CP, HS provided the CP with Contract no 152/26.11.2007 and explains that all the contents have not been realized, hence the contract terminated without effect and Mr. Basaraba did not receive any payments or benefits.

Upon asking HS for more clarifications about some of the services mentioned, HS responds that they are unable to provide this as Mr. Lucian Petre, who was the manager handling these topics, already left their company in 2013. He would probably have the necessary explanations and insights in order to answer properly, but is not available to HS currently. HS will get back to the CP as soon as they have more information regarding this question<sup>96</sup>.

#### Conclusions by CP

**Although it has not been clarified if and to what extend Mr Mircea Basaraba provided services to HS, the correspondence between Mircea Basaraba and Lucian Petre strongly suggests a close relationship and cooperation with mr Basaraba, now a convicted criminal, for a long period of time.**

### 4.5.3 Allegations that Holzindustrie Schweighofer has been involved in the illegal acquisition of land in Romania and findings by the CP

#### 4.5.3.1 *Illegal acquisition of land in Romania*

In 2002, the Schweighofer Group established Cascade Empire SRL, their local forest land procurement division in Romania. According to the Ecoruralis Association in Romania, by the end of 2014 Cascade Empire had purchased a total of 14,299 ha of forestland in eight different counties in Romania: Arges, Covasna, Harghita, Hunedoara, Prahova, Suceava, Valcea and Buzau<sup>97</sup>. According to Schweighofer itself, the group's company Holzindustrie Schweighofer s.r.l., Romania does not possess forest land in Romania. However, Cascade Empire SRL and Belforest Explorer SRL, part of Schweighofer Group own a total of 14,282.11 ha FSC certified forest in Romania. The group's forest are administrated by two different entities S.C. Ocolul silvic Cascade Empire (SA-FM/COC-004420) and minor parts by S.C. Ocolul silvic Gheorgheni SA which are part of "APAPET The Association of the

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<sup>95</sup> The Schweighofer Dragon: First Heads go to Jail for 26 years, Nostra Silva, 04.06.2016, retrieved at <http://www.nostrasilva.ro/evenimente/balaurel-schweighofer-primele-capete-merg-la-inchisoare/>

<sup>96</sup> 228.7- CP Question Nr. 6.msg, email HS to FSC, 26 August 2016.

<sup>97</sup> Land grabbing Fact Sheet No. 6. Romania, Ecoruralis Association, Romania - April 2015 retrieved at: [https://drive.google.com/file/d/0B\\_x-9XeYoYkWdGhIM01OSGtzWnc/view](https://drive.google.com/file/d/0B_x-9XeYoYkWdGhIM01OSGtzWnc/view)

forest owners and managers from the East of Transylvania” and hold a valid FSC certificate under the code GFA-FM/COC-002596.<sup>98</sup>

In several, if not all, cases these forest lands were purchased from private land owners that were able to get land restituted that was appropriated by the State in 1948 under Romania’s communist government. After the fall of the Communist government in 1989, Romania started a process of restitution and restoration of rights over land appropriated by the State in 1948 to the descendants of their original owners.

The EIA report explains that the four laws in Romania that permitted the restitution process have been continuously revised to give away ever-larger areas of Romania’s forests as is demonstrated in Table <sup>99</sup>.

*Table 7 Romania’s Land Restitution Laws*

Law 18/1991:

Allowed restitution of 1 hectare of forest to each legal heir (or 10 hectares per family). This equaled approximately 350,000 ha, or 5% of Romania’s total forest area.

Law 1/2000:

Extended restitution to all community, town, and communal forests, up to 10 hectares for individuals and up to 30 hectares to churches. Private forests then covered about half of the total forest area in Romania.

Law 247/2005:

Further expanded restitution to the entire forest area claimed by former owners, regardless of size and protected area status (excluded under previous laws).

Law 165/2013:

Extended restitution beyond private lands confiscated by the Communist government in 1948. Where conflicting title documents exist for a single plot of land, the claimants can receive a monetary compensation or public lands other than what was originally claimed.<sup>100</sup>

Of particular relevance is Art. 28 of Law no. 1/2000 amended by Law no. 247/2005:

(5) forest areas owned by an association remain undivided common property throughout the existence of the association.

(6) In case of dissolution of associative forms, their forest areas are owned by the state which returns those back into use to the relevant local council.

(8) Members of associative forms cannot alienate their shares to third persons.

Art. 28 of Law no. 1/2000, as amended by Law no. 247/July 2005:

(5) forest areas owned common, according to their nature, remain in undivided ownership throughout their existence.

(6) The members of associative forms are in joint property or tenancy and cannot alienate their shares to third persons.

(7) Land of these associative forms cannot be alienated in any way, in whole or in part.

(8) In case of dissolution of the associative forms, their undivided property in public ownership will pass to local councils in the area where that land is.<sup>101</sup>

<sup>98</sup> 36 HS Statement regarding the complaint filed by WWF Germany against Holzindustrie Schweighofer at Forest Stewardship Council (FSC®), p. 1

<sup>99</sup> EIA report “Stealing the last forest: Austria’s largest timber, company, land rights and corruption in Romania”, October 2015, p. 8-9.

<sup>100</sup> EIA report “Stealing the last forest: Austria’s largest timber, company, land rights and corruption in Romania”, October 2015, p. 8

<sup>101</sup> [Google translation edited by CP] taken from: Disparitii de pe harta retrocedarilor, Curierul National, 20 March 2006 retrieved at <http://www.curierulnational.ro/Eveniment/2006-03-20/Disparitii+de+pe+harta+retrocedarilor>

However, the land restitution process has been subject to various illegalities. The Romanian government auditing agency, the Court of Accounts, has estimated that around 20% of all restitutions of forest land between 1990 and 2012 were illegal<sup>102</sup>. In many cases, the auditors of the Romanian National Court of Accounts found that the claimants did not have legitimate claims to the land – either that their claims were based on forged documents, the land they claimed was actually State land before 1948, or they simply had no documentation whatsoever<sup>103</sup>. The Court of Accounts notes that by 2010, the total amount of land requested by individuals for restitution — 3.4 million hectares — had already exceeded the amount of land that was appropriated by the Communist government in 1948 — 2.8 million hectares<sup>104</sup>. This explains the rationale behind the 2013 law, because it allows for granting of formerly State-owned lands to claimants in cases where their own land claims have already been granted to others, by definition based on unjustified claims. The auditor's report is explicit about the impact of corruption on the restitution process, stating, "Illegal forest restitutions were carried out mainly with abuses of power by local politicians connected to officials and to people close to their circles"<sup>105</sup>.

A recently published article describing how Ikea And Harvard University got tangled in a corrupt Romanian land deal describes that "Romania's forest restitution program has been riddled with corruption and major scandals almost since it started"<sup>106</sup>.

On the Corruption Perceptions Index 2004 Romania belongs to the sixty countries that score less than 3 out of 10, indicating rampant corruption.

Several articles published since June 2004 addressed problems related to the land restitution.

An article published by Amos News on 3 June 2004 reports on a 192,000 ha of forest restitution process moving to the Court of Cassation and Justice in Romania.

An article Published in Jurnalul Romania on 10 September 2004 mentions that the state institutions represented in the county of Voineasa continuously tried to delay the process of returning forests in order to first cut everything on that land. Another issue mentioned was that the head of the forest department of Voineasa, engineer George Diaconeasa, at the time a business associate of Schweighofer, refused to hand over forest land although the association was in possession of the required documents<sup>107</sup>.

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<sup>102</sup> 561.168,84 hectares out of a total of over 3 million hectares are estimated to have been illegally restituted between 1990 and 2012. Romanian Court of Accounts. (2013). Sinteză Raportului de audit privind "Situată patrimonială a fondului forestier din România, în perioada 1990-2012" [Summary Audit Report "State of Romanian Forest Patrimony from 1990-2012"]. Bucharest, p. 16

<sup>103</sup> Romanian Court of Accounts. (2013). Sinteză Raportului de audit privind "Situată patrimonială a fondului forestier din România, în perioada 1990-2012" [Summary Audit Report "State of Romanian Forest Patrimony from 1990-2012"], Bucharest.

<sup>104</sup> Ibid.

<sup>105</sup> Chiriac, M. (2014). Much of Romania's Forest Restitution Deemed Illegal. Balkan Insight. Retrieved from <http://www.balkaninsight.com/en/article/illegalities-hamper-romania-s-forest-restitution-process>

<sup>106</sup> How Ikea And Harvard Got Tangled In A Corrupt Romanian Land Deal, The Huffington Post, 03 March 2016, retrieved at: [http://www.huffingtonpost.com/entry/harvard-ikea-corruption-romania\\_us\\_56d86cbbe4b0000de4039509](http://www.huffingtonpost.com/entry/harvard-ikea-corruption-romania_us_56d86cbbe4b0000de4039509)

<sup>107</sup> Termites destroy forests in Brasov and Valcea, Jurnalul Romania, 10 September 2004. Retrieved at: <http://jurnalul.ro/special-jurnalul/termitele-distrug-padurile-din-brasov-si-valcea-61429.html>

An article published by Curierul National on 20 March 2006, highlights that onerous contracts on land restitution were authenticated, while according to the law (Art. 28 of Law no. 1/2000 amended by Law no. 247/2005) lands claimed by associations cannot be alienated in any way. This article refers to a case in which Cascade Empire" LLC is involved<sup>108</sup>.

An article published by Hot News on 3 April 2006 reports on investigations by the National Anticorruption Department against two former prefects of Bacau, for abuse of office and restitution of illegal land forestry<sup>109</sup>.

In 2006-2007 Nostra Silva, the Association of Forest Owners in Romania filed penal complaints and presented evidence to state authorities regarding illegal retrocession, having as a final beneficiary Cascade Empire LLC<sup>110</sup>.

According to EIA, conversations they had with multiple forest experts have revealed that at least half of the forest land that Schweighofer currently owns is the subject of contested restitutions or where the illegal restitution has been confirmed by Romanian court, while in some cases, Cascade Empire agents were active participants in the illegal restitution process<sup>111</sup>.

The complaint panel was not able to research the legality of all of the forest land that Schweighofer currently owns, but the panel took a close look at the cases presented in the EIA report. The findings of the complaint panel are presented hereafter.

#### *4.5.3.2 Case: Three Mountains*

##### *4.5.3.2.1 Summary of the case*

Between 2006 and 2009, Schweighofer's Cascade Empire SRL purchased over 1,700 hectares of forest near the town of Voineasa<sup>112</sup>. According to prosecutors from the DNA, the restitution of almost 1,000 hectares of this forest, which covers three mountains called Puru, Galbenul and Petrimanul, was illegal as before 1948 these lands were property of the Romanian State<sup>113</sup>. In 2015, four persons, Basarabă Mircea, Petruțian Mihai Dan, Deaconesa Gheorghe and Păduraru Constantin, all closely involved in selling this forest land to Cascade Empire SRL, were convicted by the Court of Valcea for their involvement in this illegal restitution of land<sup>114</sup>. On 3 June 2016, the Pitești Court of Justice issued a final decision of conviction against these four persons in relation to a

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<sup>108</sup> Disparitii de pe harta retrocedarilor, Curierul National, 20 March 2006 retrieved at <http://www.curierulnational.ro/Eveniment/2006-03-20/Disparitii+de+pe+harta+retrocedarilor>

<sup>109</sup> 13,000 hectares of forest illegally returned, published on 3 April 2006 by Hot News, retrieved at <http://www.hotnews.ro/stiri-archiva-1184293-13-000-hectare-padure-retrocedate-ilegal.htm>

<sup>110</sup> Cheap Forests, Cheap Politicians - Chronology and evidence in the Schweighofer file, Nostra Silva, 19 May 2015, retrieved at: <http://www.nostrasilva.ro/editoriale/paduri-ieftine-politicieni-ieftini-cronologia-si-probleme-dosarului-schweighofer/>

<sup>111</sup> 17 EIA report "Stealing the last forest: Austria's largest timber, company, land rights and corruption in Romania", October 2015, p. 12

<sup>112</sup> Forest Stewardship Council. Woodmark Forest Certification Public Report: Ocol Silvic Cascade Empire SRL: SA-FM/COC-004420. (29 May, 2014). Retrieved 9 May, 2015 from <http://info.fsc.org/>

<sup>113</sup> Public Release no. 255/VIII/3. (6 March, 2014). National Anticorruption Directorate [Press release]. Retrieved from <http://www.pna.ro/faces/comunicat.xhtml?id=4706>

<sup>114</sup> The criminal sentence no. 57 of 18 May 2015 delivered by the Court of Valcea, criminal chamber, in case no. 1043/90/2012 [B2 17 ZW.7 Dosar 1043 90 2012 - sentinta penala 57 din 18 mai 2015 - Tribunalul Valcea], retrieved at [http://csmc.ro/crima\\_organizata/Dosar\\_1043\\_90\\_2012\\_sentinta\\_penala\\_57\\_din\\_18\\_mai\\_2015\\_Tribunalul\\_Valcea.pdf](http://csmc.ro/crima_organizata/Dosar_1043_90_2012_sentinta_penala_57_din_18_mai_2015_Tribunalul_Valcea.pdf)

part of this three mountains file<sup>115</sup>. The four defendants were sentenced to 3 to 10 years of imprisonment for illegally obtaining forest land from the three mountains, by intentionally deluding the members of the Vâlcea county Commission in the procedures of restitution of private property right for the lands. They acted as representatives of several natural persons, inheritors, falsely sustaining they have the rights to retrocession of those lands, and in support of their false claims, they presented more false documents<sup>116</sup>.

In 2006, once the courts had approved the restitution, Schweighofer, through Cascade Empire, bought the 1,000 hectares for 1.5 million euros. The overall value of this land and forest at the time of entering possession in 2006 is 17,668,110 Lei, or 4,990,991 Euro, approximately three times the amount paid for these areas<sup>117</sup>. Most of the 1,000 hectares bought by HS currently remain in its possession, and nearly all of it has obtained FSC certification, despite an FSC ban on timber from stolen land<sup>118</sup>. News reports indicate that the courts are exploring legal avenues for restoring this land to the rightful owner, the Romanian State<sup>119,120</sup>.

Email communication obtained by prosecutors show that Schweighofer's Cascade Empire began negotiations with Mircea Basaraba to buy these forests at least in December 2005, six months before the land was officially restituted<sup>121</sup>. One informant explained that from 2004 to 2006 HS was travelling around in Romania and offering amounts of money as they were extremely interested in purchasing land in Romania. Any person who lost land because of the communist regime, had to file a claim for land restitution by 30 November 2005 the latest. During these years, the media in Romania were very vocal about the illegalities related to the land restitution processes. According to this informant Mircea Basaraba acted as an intermediary in this case, as owner of his private company through which he signed the contract with the alleged forest owners and with Cascade Empire. From the documents of the prosecutor in this case the informant knows that Mircea Basaraba received 25% of the benefits from the alleged owners and also got 200 euros per hectare from Cascade Empire for his services, which is an exceptionally high rate<sup>122</sup>.

According to a statement of the Prosecutors at the Pitești Regional Office of the National Anti-Corruption Directorate, dated 9 February 2012; "in breach of his professional duties and in order

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<sup>115</sup> Pitești Court of Justice penal sentence no. 662 from 3 June 2016, retrieved at <http://www.jurisprudenta.com/dosare-procese/2015/1043q90q2012-46/>

<sup>116</sup> This case is described in more detail in the article: The Schweighofer Dragon: First Heads go to Jail for 26 years, Nostra Silva, 04.06.2016, retrieved at <http://www.nostrasilva.ro/evenimente/balaurul-schweighofer-primele-capete-merg-la-inchisoare/> and in the EIA report "Stealing the last forest: Austria's largest timber, company, land rights and corruption in Romania", October 2015, p. 21

<sup>117</sup> Expert witness report. (Expert witness Viorel Gheorghe Marinescu). National Anticorruption Directorate, Territorial Service of Pitești.

<sup>118</sup> Forest Stewardship Council. FSC PRINCIPLES AND CRITERIA: International Guidelines to forest management. Retrieved from <https://ic.fsc.org/principles-and-criteria.34.htm>

<sup>119</sup> Link to Ministry of Justice's website

[http://portal.just.ro/198/SitePages/Dosar.aspx?id\\_dosar=1980000000030185&id\\_inst=198](http://portal.just.ro/198/SitePages/Dosar.aspx?id_dosar=1980000000030185&id_inst=198) (17 O)

**Documented evidence** (public information in the Ministry of Justice's website) 286- Romsilva appears listed on the website (it seems as if it is public information of companies that are being currently investigated by the Authorities).

<sup>120</sup> 17 EIA report "Stealing the last forest: Austria's largest timber, company, land rights and corruption in Romania", October 2015, p. 21

<sup>121</sup> 17M Email dated 11 Dec 2005 from Lucian Petre on behalf of Cascade Empire to Mircea Sasaraba, retrieved at [http://csmc.ro/crima\\_organizata/schweighofer/2005%2012%2011%20-%20email%20CASCADE%20EMPIRE%20-%20Basaraba%20Mircea.pdf](http://csmc.ro/crima_organizata/schweighofer/2005%2012%2011%20-%20email%20CASCADE%20EMPIRE%20-%20Basaraba%20Mircea.pdf)

<sup>122</sup> Interview between CP and anonymous informant

not to protect the interests of the Romanian state during the claim process, between 2005 and 2008, the accused individual Gheorghe Deaconesa entered into an agreement and a service contract with CONSULT TURIST COMPANY SRL, a company represented by Mircea Basarabă, on the basis of which he was to receive the sum of 100 euros per hectare of re-established forest. On 11 November 2005, the accused individual Gheorghe Deaconesa, as head of the Voineasa Forest District, issued, on behalf of the institution of which he was in charge, a letter in which he falsely stated that he did not hold any documents regarding the Romanian state's ownership of the plots of land concerned and that he waived his right to claim them even though he had no authority whatsoever to express a position on this matter”<sup>123</sup>. In a news article of 18 April 2006 it was revealed that George Deaconeseu was removed from his post as Director of the Valcea Forest Department at the end of 2005 for alleged corruption<sup>124</sup>.

#### 4.5.3.2.2 HS' Response

In the statement of HS regarding the complaint filed against HS by WWF Germany, dated 18 March 2016, HS mentions the following about the three mountains case:

*“Schweighofer is not aware that the affected properties were restituted illegally. Rather, the Schweighofer Group is the registered owner of the properties and there are no pending proceedings with respect to the mentioned properties and/or challenges of the proprietorship to date. The timber was therefore not logged under impairment of third party land usage and proprietary rights. Thus, the Schweighofer Group has not violated any obligations of the Timber trade ordinance (EUTR 995/2010-HolzhandelsVO) and/or the Timber trade monitoring act (HolzHÜG). Respective unencumbered cadastral map excerpts are attached as Annexure 9. The two persons mentioned in the EIA report (Mr Deaconesa and Mr Basaraba) were indeed sentenced, but obviously not for a forest sale connected with the Schweighofer Group. The Schweighofer Group has purchased the affected properties from private parties and not from the above-mentioned persons. Neither companies of the Schweighofer Group nor persons acting for the Schweighofer Group were questioned during the hearing against Mr Deaconesa and Mr Basaraba. Furthermore, all property purchases of the Schweighofer Group were and are subjected to an intensive legal due diligence by internationally acting solicitors prior to the conclusion of the purchase agreement”<sup>125</sup>.*

In a meeting between the CP and HS representatives HS provided further clarification regarding their legal due diligence in this case:

*“Whenever the company acquires any land, there is a due diligence which is conducted before the acquisition. HS reviews the existing documentation (even consulting local Authorities) with the aim of making sure that at the time of purchase there is no legal issue pending. This check is conducted by a lawyer. If there is no legal pending issue, the lawyer gives green light and they proceed to buy land.*

*HS confirms that, in relation to the recent investigation by the National Anticorruption Directorate (DNA) and conviction of several individuals, published on the 3<sup>rd</sup> of June, related to the land restitution process of the ‘Three Mountains’, that HS has not been informed nor investigated or*

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<sup>123</sup> Statement of the Prosecutors at the Pitești Regional Office of the National Anti-Corruption Directorate, 9 February 2012, retrieved at: <http://www.pna.ro/comunicat.xhtml?id=2952>

<sup>124</sup> 231.1 Padurile din Valcea, decimate de un sef al Ocolului Silvic Voineasa, 18 April 2006, retrieved at <http://www.curierulnational.ro/Eveniment/2006-04-18/Padurile+din+Valcea,+decimate+de+un+sef+al+Ocolului+Silvic+Voineasa>

<sup>125</sup> 36 HS Statement regarding the complaint filed by WWF Germany against Holzindustrie Schweighofer at Forest Stewardship Council (FSC®), p. 7

*consulted by the Romanian Authorities. The case has been concluded without previously consulting with HS.*

*Earlier, through an order of the local forest police HS was asked to stop operations. Although HS was never told the reason for this order, despite asking for it, HS has stopped harvesting, and doing any other activities according to the order. HS also states that they do not know when this investigation was initiated. The case was appealed and the resolution which has been published in June seems to be the final decision. After the final decision was published, HS stopped all operations in all the affected area.*

*HS mentions that other foreign buyers of land in Romania also have problems with restoration land, such as Prokon, Egger, Ikea, Nordcapital, noble families residing outside Romania, but that there seems to be never a problem with non-foreigners.”<sup>126</sup>*

#### 4.5.3.2.3 Conclusions by the CP

It is true that there are no pending proceedings against Schweighofer with respect to the mentioned properties and/or challenges of the proprietorship to date. However, Mr Deaconesea and Mr Basaraba were clearly sentenced on 3 June 2016 for a forest sale connected with the Schweighofer Group and both had very close ties with the Schweighofer Group between 2005 and 2009. Moreover, an article dated 4 April 2006 mentioned that George Deaconeseu was removed from his post as Director of the Valcea Forest Department at the end of 2005 for alleged corruption.<sup>127</sup> In general, it was known that corruption was rampant in Romania and the media highlighted several problems related to the land restitution process. This raises the question why HS' legal due diligence had not detected that documents had been falsified in this case.

Upon a request by the CP to provide more information regarding the legal due diligence implemented in this case, HS provided an overview of 51 documents for the acquisition of woodland within Petrimanu and Puru mountains, Romania, 2006 – 2008, that were analyzed and reviewed by the lawyers office Gilescu & Partners on 23 June 2016. The analyses points at ‘numerous checks done by the Romanian authorities, before it issues titles for restituted land’.<sup>128</sup> Obviously, this analysis was not performed ‘prior to the conclusion of the purchase agreement’ as stated above by HS. A letter dated 24-08-2006 from Gilescu and Partenerii to HS just confirmed that the sale – purchase contracts for 182 and 194 ha with families Parvulescu and Rocsoreanu were complete and could be signed by representative of SC Cascade Empire SRL, Mr. Lucian Petre.<sup>129</sup> Furthermore, HS provides several of the documents that were required for the purchase.<sup>130</sup>

Upon further requests by the CP if the letter dated 24-08-2006 from Gilescu and Partenerii to HS contained any annexes HS responds that: “*The letter dated 24-08-2006 from Gilescu and Partenerii does not have annexes, but it concludes the review of documents which attest the property of the forest lands, which were the basis for authentication of the sale purchase agreements by the public notary. We mention that every forest acquisition by Cascade Empire was verified by law firms and so*

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<sup>126</sup> M 2.2\_Minutes of Meeting between CP and HS\_Edited by HS\_2016-07-14

<sup>127</sup> 231.1 Padurile din Valcea, decimate de un sef al Ocolului Silvic Voineasa, 18 April 2006, retrieved at <http://www.curierulnational.ro/Eveniment/2006-04-18/Padurile+din+Valcea,+decimate+de+un+sef+al+Ocolului+Silvic+Voineasa>

<sup>128</sup> 175.2-Index by HS

<sup>129</sup> 175.3-1 DD Gilescu 23082006

<sup>130</sup> 175.5 until 175.10

*all relevant documents were legally checked before the particular acquisition.* HS provided the CP with a list of documents reviewed by their lawyers<sup>131</sup>.

Furthermore, HS provided the CP with an email from the law firm dated 14 April 2008 about approving the payment for the transaction in 2008. The law firm states that “regarding the acquisition of the forest located in Valcea, Malaia, they have verified the real estate book excerpts and Cascade Empire SRL is the owner of the forests with the surfaces of 344,7 ha and 111,5 ha.”

In this regard it is relevant to refer to the European Commission Notice of 12.2.2016 titled Guidance Document for the EU Timber Regulation which states that: “The higher the risk of corruption in a specific case, the more it is necessary to get additional evidence to mitigate the risk of illegal timber entering the EU market”<sup>132</sup>. This is further described in section 4.5.5.

**The CP concludes that it is likely that the law firm hired by HS checked if the legally required documents were available prior to the conclusion of the purchase agreement, but there is no evidence that they investigated the reliability and validity of each document, meaning the likelihood of it being falsified or issued unlawfully. In view of the large risk of corruption in Romania at the time of the acquisition, in particular related to the land restitution process, which was common knowledge at the time of these land acquisitions, by doing so, HS accepted a substantial risk that it would purchase illegally restituted land. The more so, since HS should have been aware at the time of the land purchase that one of the persons involved in the land acquisition, George Deaconaseu, was removed from his post as Director of the Valcea Forest Department at the end of 2005 for alleged corruption. Although this happened before the FSC Policy for Association came into force in 2009, and although HS stopped all operations in all the affected area since the conviction of 3 June 2016 was published, the illegal situation continued since the FSC PfA came into force, constituting a substantial risk which still continues until the present. HS' acceptance of this substantial risk without any further due diligence actions, created a high risk of harvesting illegal timber from such lands which would be considered a violation of FSC's PfA. (See conclusion of Section 4.5.3.7.1).**

#### 4.5.3.3 Case: Kendeffy

##### 4.5.3.3.1 Summary of the case

In 2008, Schweighofer purchased 794 hectares which was part of 9,710 hectares of forest from Retezat National Park that was restituted to the heirs of the Kendeffy Family. In an ongoing court case since 2009<sup>133</sup>, The Romanian government prosecutors have challenged this restitution as illegal, referring to legal documents showing that the Kendeffy family land had been legally expropriated in 1921, following a land reform process, and was therefore not eligible for restitution. Since that time, the State was the sole owner of the forest, and Retezat National Park was founded on this land in 1935. These 794 hectares now form a part of HS's FSC certified forest holdings<sup>134</sup>.

According to an article published by the NGO Nostra Silva, the people who benefitted from the retrocession of forest land had been completely expropriated in 1921<sup>135</sup>, for reasons of national utility. Ludovic Kendeffy was compensated for his land with 856.211 gold-crowns, according to the

<sup>131</sup> 228.1- Answer HS to question 1.msg

<sup>132</sup> 92 EU Commission Guidance Document on EUTR C\_2016\_755\_F1\_ACT\_EN\_V6\_P1\_831439, p. 5-7

<sup>133</sup> [http://portal.just.ro/240/SitePages/Dosar.aspx?id\\_dosar=2400000000005418&id\\_inst=240](http://portal.just.ro/240/SitePages/Dosar.aspx?id_dosar=2400000000005418&id_inst=240)

<sup>134</sup> 17 EIA report “Stealing the last forest: Austria's largest timber, company, land rights and corruption in Romania”, October 2015, p. 21-22

<sup>135</sup> [http://csmc.ro/crima\\_organizata/schweighofer/1923%2012%2008%20-%20Comisiunea%20de%20ocol%20pentru%20expropriere%20%20Hateg.pdf](http://csmc.ro/crima_organizata/schweighofer/1923%2012%2008%20-%20Comisiunea%20de%20ocol%20pentru%20expropriere%20%20Hateg.pdf)

decision given on the 12 of July 1933 by the Romanian-Hungarian Court in Paris<sup>136</sup>, with an interest of 4,5% per year, starting the 1 January 1923, as well as 14.843 gold-crowns as compensation and court fees, all amounts fully paid<sup>137</sup> before the communist regime.<sup>138</sup>

The same article describes the connections between HS and the retrocession of the 9,710 hectares of forest land in Retezat to the Kendeffy family. Maria Kendeffy, Austrian citizen, born on the 25 June 1920, domiciled on Burgerspitalgasse Str., 1, Vienna, one of the beneficiaries, founded, in 2007, SC BELFOREST-EXPLORER SRL. The company had a real asset contribution of 7.962.000 lei (over 2.500.000 euros). The manager of the company is another Maria Kendeffy, Belgian citizen, born on the 24 December 1934, domiciled on Montgolfier Str, 12, Woluve-Saint-Pierre, Belgium. On the 3 July 2008, stock is taken over by SPB BETEILIGUNGSVERWALTUNG GMBH, placed on Friedrichstrasse no.10/2, Viena (Quota share in profits / losses: 99.9874 %) and SCHWEIGHOFER LIEGENSCHAFTSVERWALTUNG GESELLSCHAFT GMBH, placed on Friedrichstrasse, nr.10/2, Viena (Quota share in profits / losses: 0.0126%). The latter company was taken over by Schweighofer Fiber, which can be found in the corporate structure overview in figure 1. Mr. Jurgen Wolfgang Bergner, who is one of the representatives of HS interviewed by the CP, was named manager of the company<sup>139</sup>.

#### 4.5.3.3.2 HS' Response

In the statement of HS regarding the complaint filed against HS by WWF Germany, dated 18 March 2016, HS mentions the following about the Kendeffy case:

*"Schweighofer is not aware that the affected property in the Kendeffy Forests was restituted illegally. Rather, the Schweighofer Group is the registered owner of the property and there are no pending proceedings with respect to the challenge of the proprietorship. The timber was therefore not logged under impairment of third party land usage and proprietary rights. Thus, the Schweighofer Group has not violated any obligations of the Timber trade ordinance (EUTR, HolzhandelsVO) and/or the Timber trade monitoring act (HolzHÜG)"<sup>140</sup>.*

In an earlier response on the EIA report, dated 16 February 2016, HS stated:

"All forestland purchases of Cascade Empire went through a careful and detailed legal due diligence performed by international law firms. In this process every acquisition was cleared to be compliant with the legal provisions. To that moment, there is no pending lawsuit concerning any of the real estate property of Holzindustrie Schweighofer or its sister company Cascade Empire"<sup>141</sup>.

#### 4.5.3.3.3 Conclusions by the CP

**The CP concludes that it is likely that the law firm hired by HS checked if the legally required documents were available prior to the conclusion of the purchase agreement, but there is no**

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<sup>136</sup> [http://csmc.ro/crima\\_organizata/schweighofer/1933%2007%2012%20-%20hotararea%20Tribunalului%20arbitral%20din%20%20Paris.pdf](http://csmc.ro/crima_organizata/schweighofer/1933%2007%2012%20-%20hotararea%20Tribunalului%20arbitral%20din%20%20Paris.pdf)

<sup>137</sup> [http://csmc.ro/crima\\_organizata/schweighofer/1941%20-%201944%20-%20cereri%20Kendeffy%20Gavril.pdf](http://csmc.ro/crima_organizata/schweighofer/1941%20-%201944%20-%20cereri%20Kendeffy%20Gavril.pdf)

<sup>138</sup> Nostra Silva. Cheap forests, cheap politicians – Chronology and evidence in the Schweighofer file. May 19, 2015. Retrieved from <http://www.nostrasilva.ro/editoriale/paduri-ieftine-politicieni-ieftini-cronologiasi-probele-dosarului-schweighofer/>

<sup>139</sup> [http://csmc.ro/crima\\_organizata/BELFOREST-EXPLORER%20SRL-%20actionari.pdf](http://csmc.ro/crima_organizata/BELFOREST-EXPLORER%20SRL-%20actionari.pdf)

<sup>140</sup> 36 HS Statement regarding the complaint filed by WWF Germany against Holzindustrie Schweighofer at Forest Stewardship Council (FSC®), p. 7

<sup>141</sup> 28- HS Reply to the Environmental Investigation Agency's allegations, The facts and stories behind a misleading campaign, February 2016, p. 15

**evidence that they investigated the reliability and validity of each document, meaning the likelihood of it being falsified or issued unlawfully. Even though the legality of the purchase is being challenged in court for many years, HS did not indicate that it has performed any additional legal research. Also in view of the large risk of corruption in Romania at the time of the acquisition, in particular related to the land restitution process, which was common knowledge at the time of these land acquisitions, by doing so, HS accepts a substantial risk that it has purchased illegally restituted land. Although the purchase happened before the FSC policy for Association came into force in 2009, the substantial risk of an illegal situation still continues until the present. HS' acceptance of this substantial risk without any further due diligence actions, created a high risk of harvesting illegal timber from such lands which would be considered a violation of FSC's PFA. (See conclusion of Section 4.5.3.7.1).**

#### *4.5.3.4 Case: Site of Schweighofer's Rădăuți Sawmill*

##### *4.5.3.4.1 Summary of the case*

Between 2005 and 2008, Schweighofer purchased about 130 ha of land on the outskirts of the town of Rădăuți in the county of Suceava, through a local businessman named Constantin Gavril Babiuc. On these lands Schweighofer then constructed one of its wood processing plants in Romania which became operational in 2008.

On 23 June 2014 the National Anticorruption Directorate in Romania issued a request and justification for a preventive arrest of three persons: Mr. Babiuc Constantin Gavril, Mr. Barbuda Bogdan-Illarion Costica and Mr. Dimbu Dumitru. The request is justified by accusation of bribery, blackmail, instigation to false testimony, falsification of documents, and other similar acts. Mr. Barbuda Bogdan-Illarion Costica, judge at Radauti county, is accused to have issued 69 court decisions in favor of Mr. Babiuc Constantin Gavril, in relation to the acquisition of 79 land properties summing up 41.59 ha of land, which were sold by Mr. Babiuc Constantin Gavril later on, with a profit of about 4,000,000 Lei. The text alludes that this land was sold to an Austrian company which is active in the forest products industry, which opened a first sawmill at Sebes, Alba county, in 2003.<sup>142</sup> The subsequent indictment of the National Anticorruption Directorate of 3 October 2014 clearly refers to HS.<sup>143</sup>

According to this indictment, in 2004, Mr. Babiuc Constantin Gavril obtained information from the investor (the forest products company), about its interest in investing 100,000,000 Euro in the Suceava county, in the same sector (forest products). This company was going to guide a new facility and an administration center in the village Satu Mare, close to the Radauti municipality. Mr. Babiuc Constantin Gavril had difficulties with 79 properties, with a total area of 41,59 ha, (some of which were "small islands" within the area targeted by the investor) because the property rights over these areas could not be transferred through the notary public way. The reason for this was the fact that the succession rights over these areas had not been defined, there were several co-owners who had not registered their rights into the property registry. The Austrian investor put Mr. Babiuc Constantin Gavril under pressure to solve this situation, under the threat to sanction him with the loss of a significant amount of money [emphasis added, CP]. In this context, Mr. Babiuce Constantin Gavril asked the judge Barbuda Bogdan-Illarion Costica to help him with this situation. The judge accepted

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<sup>142</sup> National Anticorruption Directorate in Romania, request for a preventive arrest, 23 June 2014, retrieved at: [http://csmc.ro/crima\\_organizata/schweighofer/referat-arestare-anonimizat-magistrati-Suceava.pdf](http://csmc.ro/crima_organizata/schweighofer/referat-arestare-anonimizat-magistrati-Suceava.pdf)

<sup>143</sup> 251.2- Translation - DNA - rechizitoriu din 3.10.2014 - fabrica Schweighofer de la Raduti (1) -

to issue 69 court decisions, in breach of existing law, according to a plan developed by these two individuals, and with the complicity of other public servants employed by the Court<sup>144</sup>.

The indictment of 3 October 2014 by the National Anti-Corruption Division is issued against 12 individuals and one company, (including the 3 individuals mentioned above), as well as other public servants, such as judges, a police officer, an attorney, the mayor of Radauti town, and the mayor of another village) in relation to the facts described above<sup>145</sup>. The indictment describes that between May 2005 and December 2007, the defendant Mr. Babiuc Constantin Gavril managed to conceal the illegal nature of the mode of acquisition of these lands, meaning that through a series of deceptive maneuvers he obtained registration at the Land Registry. He had obtained a land area of about 90 hectares through a series of illegal acts in collusion with notaries in the municipality Radauti, (besides the 41.59 ha which he obtained through the forgery of 69 judge decisions). The indictment then mentions that in the same period he managed the sale of these lands, through SC CASCADE EMPIRE SRL (company belonging to the HS holding), to the Austrian company through the notary declared sale-purchase contracts with a profit of about 4,000,000 Lei<sup>146</sup><sup>147</sup>.

There are a lot of details presented in the indictment, e.g. how Mr. Babiuc Constantin Gavril falsified the signatures of the selling parties on sales contracts, resulting in individuals who had passed away long time ago appearing as signatories of sales contracts. It is clarified that the situation of the 41.59 ha has been split from the acquisition of the other 90 ha of land which are subject to a separate penal procedure.

#### 4.5.3.4.2 HS' Response

In a statement regarding the complaint filed by WWF Germany, Schweighofer explains in relation to this case:

"A process against the intermediary is pending. All property purchases were subjected to an intensive legal due diligence by internationally acting solicitors in advance. To that moment there is no pending lawsuit concerning the real estate property of HS or its sister company "Cascade Empire srl." From a corporate and economic point of view it would be pointless to establish a 150 million Euro project on questionable properties<sup>148</sup>.

#### 4.5.3.4.3 Conclusions by the CP

The CP requested HS to provide the CP with information about their legal due diligence with regard to the purchase of 41.59 ha of land which is mentioned in the report of 23 June 2014 by the National Anticorruption Directorate. To this request HS answered that: "As this topic is under a pending

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<sup>144</sup> 251.2- Translation - DNA - rechizitoriu din 3.10.2014 - fabrica Schweighofer de la Raduti (1) -

<sup>145</sup> Indictment of National Anti-Corruption Division, 03 October 2014, retrieved at:

[http://csmc.ro/crima\\_organizata/schweighofer/2014%20-%20octombrie%20-%20DNA%20-%20RECHIZITORIU%20anonimizat%20-%20%20terenurile%20pe%20care%20a%20fost%20construita%20fabrica%20Schweighofer.pdf](http://csmc.ro/crima_organizata/schweighofer/2014%20-%20octombrie%20-%20DNA%20-%20RECHIZITORIU%20anonimizat%20-%20%20terenurile%20pe%20care%20a%20fost%20construita%20fabrica%20Schweighofer.pdf)

<sup>146</sup> Indictment of National Anti-Corruption Division, 03 October 2014, p. 104-105, retrieved at:

[http://csmc.ro/crima\\_organizata/schweighofer/2014%20-%20octombrie%20-%20DNA%20-%20RECHIZITORIU%20anonimizat%20-%20%20terenurile%20pe%20care%20a%20fost%20construita%20fabrica%20Schweighofer.pdf](http://csmc.ro/crima_organizata/schweighofer/2014%20-%20octombrie%20-%20DNA%20-%20RECHIZITORIU%20anonimizat%20-%20%20terenurile%20pe%20care%20a%20fost%20construita%20fabrica%20Schweighofer.pdf)

<sup>147</sup> 251.2- Translation - DNA - rechizitoriu din 3.10.2014 - fabrica Schweighofer de la Raduti (1) -

<sup>148</sup> 36 HS Statement regarding the complaint filed by WWF Germany against Holzindustrie Schweighofer at Forest Stewardship Council (FSC®), p. 7

investigation and there are pending court cases, we have to respect the relevant confidentiality clauses and therefore we cannot provide further information”<sup>149</sup>.

**The CP concludes that it is likely that the law firm hired by HS checked if the legally required documents were available prior to the conclusion of the purchase agreement, but there is no evidence that they investigated the reliability and validity of each document, meaning the likelihood of it being falsified or issued unlawfully. In this case the reports of the National Anti-Corruption Division even state that HS put pressure on a middleman to resolve the fact that succession rights over these areas had not been defined. This means that in this case HS must have been aware before the acquisition that there were problems to obtain the legal titles, but nevertheless HS did not indicate that it has performed any additional legal research. Also in view of the large risk of corruption in Romania at the time of the acquisition, in particular related to the land restitution process, which was common knowledge at the time of these land acquisitions, by doing so, HS accepts a substantial risk that it has purchased illegally restituted land, or in this case may even have been aware that it purchased illegally restituted land. Although the purchase happened before the FSC Policy for Association came into force in 2009, the substantial risk of an illegal situation still continues until the present. HS' acceptance of this substantial risk without any further due diligence actions, created a high risk of harvesting illegal timber from such lands which would be considered a violation of FSC's PfA. (See conclusion of Section 4.5.3.7.1).and the**

#### *4.5.3.5 Case: Ceata Moșnenilor Izvorani – community*

##### *4.5.3.5.1 Summary of the case*

On 25 May 2004, through the sale-purchase contract no. 1758 authenticated by Public Notary Georgeta Fratian, SC CASCADE EMPIRE SRL bought 578 hectares of forest land from the freeholders of the Obstea Izvorani Association for the price of 751.920 EURO. Civil sentence no. 810 of 18 April 2007 ruled by Valenii de Munte Court in file 1526/2006, canceled this sale-purchase contract no. 1758 from 25.05.2004 in accordance with the provisions of paragraphs 5 to 8 of Art. 28 of Law 1/2000 amended by Law 247/2005. According to these provisions forest areas owned as common property remain undivided throughout the existence of the Association and members of the Association forms cannot alienate their own shares to persons outside the Association. Appeal to this civil sentence was possible within 15 days<sup>150</sup>.

An article of Nostra Silva notes that before the appeal, out of the blue an extraordinary gathering was called for changing the leadership of the Association and the trial was dropped at the first hearing. Shortly, the president of the community died and the real reasons of dropping the trial remained unexplained<sup>151</sup>.

##### *4.5.3.5.2 HS' Response*

There is no response known to the CP from HS to this particular case other than their general comment that:

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<sup>149</sup> [228.6] Email of HS to FSC dated August 26, 2016, 2:35 PM titled “CP Question Nr. 5”

<sup>150</sup> Civil sentence no. 810 of 18 April 2007 ruled by Valenii de Munte Court in file 1526/2006, retrieved from [http://csmc.ro/crima\\_organizata/schweighofer/Prahova%20-%20anularea%20contractului%20de%20vanzare%20cumparare%201758%20din%2025%20mai%202004.pdf](http://csmc.ro/crima_organizata/schweighofer/Prahova%20-%20anularea%20contractului%20de%20vanzare%20cumparare%201758%20din%2025%20mai%202004.pdf)

<sup>151</sup> Nostra Silva. Cheap forests, cheap politicians – Chronology and evidence in the Schweighofer file. May 19, 2015. Retrieved from <http://www.nostrasilva.ro/editoriale/paduri-ieftine-politicieni-ieftini-cronologiasi-probele-dosarului-schweighofer/>

*“every forest acquisition by Cascade Empire was verified by law firms and so all relevant documents were legally checked before the particular acquisition”<sup>152</sup>.*

#### 4.5.3.5.3 Assessment by the Complaints Panel

The CP concludes that in this case HS was aware that their land acquisition was legally successfully contested at the Valenii de Munte Court. Only because the community dropped the case in the first hearing of the appeal, HS' ownership of the forest land was restored. However, the legal question whether such a land purchase from an Association was legal had not been conclusively answered. However, HS did not provide any information that it further checked the legality of their land acquisition in this case. The fact that the legality of the sale of the land by Associations (Composesorat) before July 2005 is still under consideration by the Ministry for Environment and Forest also demonstrates that HS never received a conclusive assessment from the government on the legality of such land sales (see also next case).<sup>153</sup> Thereby, HS accepts a substantial risk that it has illegally purchased restituted land from an Association (Composesorat). Although the purchase happened before the FSC Policy for Association came into force in 2009, the substantial risk of an illegal situation still continues until the present. HS' acceptance of this substantial risk without any further due diligence actions, created a high risk of harvesting illegal timber from such lands which would be considered a violation of FSC's PfA. (See conclusion of Section 4.5.3.7.1).

#### 4.5.3.6 Case: Asociatia Composesorala Uricani-Campul lui Neag

##### 4.5.3.6.1 Summary of the case

Cascade Empire SRL bought forest land that includes the Campusel forest from the owners association "Asociatia Composesorala Uricani-Campul lui Neag" in February 2005. At the General Assembly 19.12.2004 the association members (209) approved the sale of the 1378.3404 ha forestland. The sale was made based on a contract signed between Asociatia Composesorala Uricani-Campul lui Neag and Cascade Empire SRL and was registered at the Land Register office and notarised by the Public Notary on 10 February 2005. Before sales of the forestland to Cascade Empire SRL, the land was offered to national forest administration RNP-Romsilva, county branch of Hunedoara.<sup>154</sup>

On 30 November 2015 the Romanian NGO Agent Green has filed a PfA complaint against HS related to this forest area<sup>155</sup>. Upon advice from FSC, Agent Green referred this complaint to the involved certification body Soil Association as the complaint is about an FSC certified area of Oculul Silvic Cascade Empire (OSCE), which is owned by HS. According to Agent Green Cascade Empire has been making the acquisition of forest land located at Campusel – Campu lui Neag area (Hunedoara county, Romania) from the local community of “Composesoratul Campu lui Neag” without respecting the national legislation. Article 28, paragraphs 5, 6 and 7 from law no. 1 / year 2000 were broken. These paragraphs stipulate that forest that is common property of the local communities / associations cannot be sold outside the community in parts or as a whole<sup>156</sup> (similar to the issue in the previous case). The complaint raises other issues too which are not further assessed here.

##### 4.5.3.6.2 HS' Response

There is no response known to the CP from HS to this particular case other than their general comment that:

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<sup>152</sup> [228.1] Email from HS to FSC dated 26 August 2016 1:49 PM

<sup>153</sup> Confidential source

<sup>154</sup> Confidential source

<sup>155</sup> 79- PfA complaint submission Agent Green. Report 30.11.2015

<sup>156</sup> [79] PfA complaint submission Agent Green

*“every forest acquisition by Cascade Empire was verified by law firms and so all relevant documents were legally checked before the particular acquisition”<sup>157</sup>.*

#### 4.5.3.6.3 Conclusions by the CP

In the case Civil sentence no. 810 of 18 April 2007 ruled by Valenii de Munte Court in file 1526/2006 the sale-purchase contract no. 1758 from 25.05.2004 was canceled. This was a contract between SC CASCADE EMPIRE SRL and Obstea Izvorani Composesorat (Association) and it was cancelled by the court in accordance with the provisions of paragraphs 5 to 8 of Art. 28 of Law 1/2000 amended by Law 247/2005. This was also a case where the contract was concluded before Law 247 came into force in July 2005. This also means that since this case HS must have been aware since that court case was concluded that there is a substantial risk that such a land acquisition is regarded as illegal in court. Apparently, the legality of the sale of all land by Associations (Composesorat) before July 2005 is now under consideration by the Ministry, which demonstrates that there is still a substantial risk that such sales will be considered illegal.

**The CP concludes that a legal due diligence by HS should have identified that there is a substantial risk that the land acquisition could be regarded as illegal based on the stipulations of paragraphs 5 to 8 of Art. 28 of Law 1/2000. In particular since the Civil sentence no. 810 of 18 April 2007 ruled by Valenii de Munte Court in file 1526/2006, HS should have further checked the legality of their land acquisition in this case. HS did not provide any further evidence of their legal due diligence that demonstrates that such a legal analysis has been made in such cases. The fact that the legality of the sale of the land by Associations (Composesorat) before July 2005 is still under consideration by the Ministry for Environment and Forest also demonstrates that HS never received a conclusive assessment from the government on the legality of such land sales. Thereby, HS accepts a substantial risk that it has illegally purchased restituted land from an Association (Composesorat). Although the purchase happened before the FSC Policy for Association came into force in 2009, the substantial risk of an illegal situation still continues until the present. HS' acceptance of this substantial risk without any further due diligence actions, created a high risk of harvesting illegal timber from such lands which would be considered a violation of FSC's PfA. (See conclusion of Section 4.5.3.7.1).**

#### 4.5.3.7 Timber harvested by HS from land that was illegally acquired by HS

##### 4.5.3.7.1 Conclusions by the CP

**Regarding the cases described and assessed above in this paragraph 4.5.3 the CP concludes that in the case of the Three Mountains there is clear and convincing evidence that the timber that HS processed from that area is harvested from land that was illegally acquired which makes it illegal timber. In all the other cases described, where court cases are still ongoing or where the question about legality is still under consideration by the Ministry for Environment, HS accepts a substantial risk that it is and has been harvesting timber illegally, which is considered by the CP a violation of the FSC PfA.**

#### 4.5.4 Allegations that Holzindustrie Schweighofer has purchased timber from forest operations located in illegally restituted land in Romania and findings by the CP

In this section the CP describes and assesses three cases in which Holzindustrie Schweighofer has allegedly purchased timber from forest operations located in illegally restituted land in Romania acquired by other parties.

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<sup>157</sup> [228.1] Email from HS to FSC dated 26 August 2016 1:49 PM

#### 4.5.4.1 Case: Borsa

##### 4.5.4.1.1 Summary of the case

EIA investigators had followed a truck loaded with timber coming from alleged illegally restituted forest land that is claimed by a community association in Borșa and filmed it when it was unloaded at a Schweighofer train depot in the small town of Săcel. The CP has been given access by EIA to watch the footage of this filming. At an exit point to this contested forest area, EIA observed piles full of unmarked logs, which EIA claims is in clear violation of Romanian regulations requiring transport marks on all logs over 20 cm in diameter<sup>158</sup>. The main footage is 23 minutes long, in which EIA and other anonymous stakeholders film the loading of these logs on a truck and its unloading into train wagons, at the train station of Sacel. A sign filmed next to the train tracks says “Holzindustrie Schweighofer – Punct de Lucru Sâcel” (“Working Point Sâcel”). The second footage is a 3 minute video of a conversation in Romanian with two anonymous stakeholders, next to the Sacel train station. EIA alleges that in this conversation the anonymous stakeholders confirm that the logs that are being loaded, are then transported to HS' mill in Sebes<sup>159</sup>. According to EIA the community members themselves confirm that all the wood harvested in the area they claim, with very few exceptions, goes to HS<sup>160</sup>.

The contested area where the filmed logs were harvested concerns 17,000 hectares of forest land near the town of Borșa in the far north of Romania, below Maramureș Mountains National Park, adjacent to the Ukrainian border. A community association in Borșa with over 5,000 members claims rights to this forest land and according to EIA national courts have confirmed the community's claim since 2004, and ordered the local municipality to honor the community's land rights<sup>161</sup>. However, according to EIA, for the past ten years, this community has struggled to receive title to their land. Instead, the local Borșa municipal government in 2006 granted over 6,000 hectares of forest to a rival claimant, a group of five individuals including a close relative of the wealthiest person in Romania, a mining magnate named Frank Timiș<sup>162</sup>. Based on personal conversations, EIA states that

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<sup>158</sup> HOTĂRÂRE nr. 470/2014 din 4 iunie 2014 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, 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 [Decision no. 470/2014 approving the norms on the origin, transport, and marketing of timber, systems of timber storage facilities and roundwood processing plants, and enforcement of Regulation (EU) no. 995/2010 of the European Parliament and Council of 20 October 2010 laying down the obligation of operators who place timber and timber products on the wood market]. Official Gazette no. 470/08.10.2014. Annex: Art. 14. - (1) Logs with a diameter at the thinner end higher or equal to 20 cm which are transported from harvesting shall be marked on each piece rectangular footprint device specific to the issuer.”

<sup>159</sup> 17 ZU.2 Transcription of additional footage EIA\_2016-05-30\_Final

<sup>160</sup> 17 EIA report “Stealing the last forest: Austria's largest timber, company, land rights and corruption in Romania”, October 2015, p. 16-17

<sup>161</sup> [207] Civilă Sentință NR. 217/2004 [Civil sentence No. 217/2004]. (April 5, 2004). Court of Aleșd Dossier 769/2003. Retrieved at: <http://www.cdep.ro/interpel/2014/2r1566B.pdf> According to an article by Nostra Silva this sentence became final on 20 December 2004 and irrevocable on June 1, 2005. 7-3=8. Adunarea Pădurilor lui Frank Timiș și Cap de Urs, Nostra Silva, published on 04 October 2016, retrieved at: See: <http://www.nostrasilva.ro/editoriale/7-38-adunarea-padurilor-lui-frank-timis-si-cap-de-urs/>

<sup>162</sup> D.D. Reportaj În Premieră. Codrul, frate cu străinul [The brotherhood of the forest and the foreign businessmen]. (March 23, 2014). Antena 3. Video retrieved from <http://inpremiera.antena3.ro/reportaje/codrul-frate-cu-strainul-1-257.html>. Transcript retrieved from [http://lemn.fordaq.com/fordaq/news/Schweighofer\\_Romsilva\\_paduri\\_moti\\_mobila\\_vanzarepaduri\\_36424.html](http://lemn.fordaq.com/fordaq/news/Schweighofer_Romsilva_paduri_moti_mobila_vanzarepaduri_36424.html); Top 300 Capital: Frank Timis, cel mai bogat roman [Top 300 Capital: Frank Timis, the richest Romanian].

members of the municipal council who approved this claim, in violation of local, regional, and national court decisions, included Romsilva employees and that the town council has granted the remainder of the 17,000 hectares to many other local politicians and businessmen<sup>163</sup>. The CP was unable to verify these statements. EIA states further that over the past decade, as the forest community's case has inched its way through Romania's legal system, these groups have exploited the forest, clear-cutting vast hillsides of spruce<sup>164</sup>. According to EIA, a 2008 study by the European Court of Human Rights found that damage due to clearcutting within these 17,000 hectares had already reached 62 million Euro<sup>165</sup>. However, the CP checked the referenced document but could not verify this statement.

A very recent article published by Nostra Silva describes that the rival claimant Composesoratul Cisla got legal personality in September 2005 after superficial judicial proceedings although the petitioners did not fulfill the essential conditions prescribed by law under penalty of nullity. The same judge, Mariana Simon, who in 2000 granted legal personality to Composesoratul Borsa, now authorized legal personality to the Composesoratul Cisla, even though Composesoratul Borsa, following legal proceedings, obtained on 5 April 2004, a sentence which reconstructs their ownership to 17,000 hectares forest, which sentence became irrevocable on 1 June 2005. The validation of 6,056 ha area (from this area of 17,000 ha.) for Composesoratul Cisla became a "hot topic" at the first Maramures County Commission meeting organized under Law no. 247/2005. According to the minutes recording the deliberations of the meeting of the Maramures County Commission on 29.11.2005, 7 out of 11 members were present in their July meeting, which is confirmed by the presence of 7 signatures at the end of the minutes. Nevertheless, in the minutes of 29.11.2005 of the Maramures County Commission meeting is recorded that in the July meeting 8 members validated the 6,056 ha area for Composesoratul Cisla, with 3 members abstaining from voting. However, if only 7 members were present, only 4 could have voted in favor, which is less than the majority of the entire County Commission, which has 11 members, as required by art. 8 paragraph. (2) of the Rules approved by Government Decision no. 890/2005: "The decisions of county commissions (...) shall be adopted by a majority of their members and shall be recorded in the minutes signed by all participants"<sup>166</sup>. The article shows the minutes of the County Commission and the validation of these 6,056 ha area for Composesoratul Cisla was clearly illegal.

#### 4.5.4.1.2 HS' Response

In a document of HS in reply to the Environmental Investigation Agency's allegations HS states:

"Fact.

The necessity of marking the logs with rectangular hammer depends on the loading place:

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(Oct. 27, 2012). Wall-Street.ro. Retrieved from: <http://www.wall-street.ro/articol/Marketing-PR/139286/frank-timis-cel-mai-bogat-roman.html>

<sup>164</sup> D.D. Reportaj În Premieră. Codrul, frate cu străinul [The brotherhood of the forest and the foreign businessmen]. (March 23, 2014). Antena 3. Video retrieved from <http://inpremiera.antena3.ro/reportaje/codrul-frate-cu-strainul-1-257.html>. Transcript retrieved from [http://lemn.fordaq.com/fordaq/news/Schweighofer\\_Romsilva\\_paduri\\_moti\\_mobila\\_vanzarepaduri\\_36424.html](http://lemn.fordaq.com/fordaq/news/Schweighofer_Romsilva_paduri_moti_mobila_vanzarepaduri_36424.html)

<sup>165</sup> European Court of Human Rights, Third Section. Decision: Application no. 6524/03 Constantin ROTESCU and 440 other applications against Romania. May 13, 2014.

<sup>166</sup> Article by Nostra Silva; 7-3=8. Adunarea Pădurilor lui Frank Timiș și Cap de Urs, Nostra Silva, published on 04 October 2016, retrieved at: <http://www.nostrasilva.ro/editoriale/7-38-adunarea-padurilor-lui-frank-timis-si-cap-de-urs/>

At the logging site: The EIA insinuates that every log with a diameter bigger than 20 cm has to show a transportation stamp. Indeed, those logs need a rectangular stamp if they're transported from the harvesting place. The observed piles full of unmarked logs at an exit point to the logging area however simply have not been stamped at the time of EIA's inspection. This marking is not required until loading on the log truck. The 20 cm-threshold, which is valid for the top diameter, is significant: Our sawmill machinery (profiling technology) requires small-diameter logs. The large majority of the logs we process have a diameter below 20 cm and don't require transportation marks.

At the log yard: The unmarked logs at the log yard and train terminal in Săcel, as explicitly mentioned in the EIA report, can also be easily explained. Most of the logs arrive here in full length, often more than 8 m long – but with only one stamp in cases where the diameter exceeds 20 cm. Those logs are cut to assortments of 3 or 4 m lengths at the log yard. The shortened logs are not required to be stamped in this case even if they exceed a diameter of 20 cm and whether the transport proceeds by train or by truck. This explains why the majority of logs on Holzindustrie Schweighofer's yards don't show any markings. The legality of the harvest is tracked nevertheless, since all in- and outgoing volumes are recorded and have to match. But there might also be another legal explanation.

At the temporary log yard: Sometimes the logs are cut-to-length on so called "temporary log yards" located at the forest road. These temporarily authorised sites are used for sorting and cutting just like described above. In this case 3 or 4 m long logs can exit the forest without the stamp. In- and outgoing volumes are matched just as well as in the above mentioned standard log yard"<sup>167</sup>.

In the interview of the CP with HS representatives HS explains that there are different types of hammer stamps:

- Round hammer stamp → The forest administrator is in possession of this hammer. It is used to mark the trees that will be included in an APV and after the issuing of the permit will be harvested.
- Rectangular hammer stamp → The forest administrator is in possession of this hammer. It is used to mark the border of a clear cut.
- Pentagonal hammer stamp → Used to mark stamps when the tree has been illegally cut.
- Triangular hammer stamp → used by the chief of the forest administrator or by the employees of the Ministry of Environment responsible to perform forest controls. They are used just to mark the trees illegal cut
- Squared hammer stamp → In the possession of the person that does the harvesting. Used for the transportation of logs from the harvesting site to the mill and is applied just on the logs with a top diameter over 20 cm. It is the only hammer which is in the hands of the transport company. For this reason this mark does not indicate that the log is legal. It is only a transportation mark.

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<sup>167</sup> 28- HS Reply to the Environmental Investigation Agency's allegations, The facts and stories behind a misleading campaign, February 2016, p. 11

HS explains that logs need to be marked if their top diameter is larger than 20 cm. The average top diameter at the mill is 22-23 cm. But when logs are cut into several pieces of a specific measurement, there is no need to mark every piece of the log separately.

Regarding the Agent Green video, HS explains that the truck load was mistakenly registered only on the car plate, not on the trailer plate, and it should have been about 50% on each plate. HS agrees to supply the CP with the documentation of this particular truck load<sup>168</sup>.

In the statement of HS regarding the complaint filed by WWF Germany they mention in relation to this case:

“These facts are entirely unknown to HS. In any case, HS is not the initial distributor.”<sup>169</sup>

#### [4.5.4.1.3 Conclusions by the CP](#)

**The response of HS focuses on the illegality of the timber because of the missing stamps. It was not possible for the CP to verify this issue in more detail. However, at least since April 5, 2004 (Civil sentence No. 217/2004) HS could have known that the timber they purchase is coming from contested forest land and this should have been a reason for HS to apply a more stringent due diligence. HS did not provide any evidence that they investigated the risk of illegality of timber purchased from this area. Although the land restitution happened before the FSC policy for Association came into force in 2009, the substantial risk of an illegal situation still continues until the present and the acceptance of this substantial risk by HS without any further due diligence actions, should therefore be considered a violation of FSC's PfA.**

#### [4.5.4.2 Case: Corbu](#)

##### [4.5.4.2.1 Summary of the case](#)

A confidential video from an Environmental NGO provided to the CP, shows a local farmer who told them that the authorities failed to restitute around 3,000 ha of forest back to the Corbu Forest Association, which he represents and now started massive deforestation on that forest land. The farmer mentions they have documents proving that the land belongs to Corbu residents. The farmer said that he had inherited 155 hectares from his grandfather,<sup>170</sup> only 2.5 ha of which had been returned despite his submission of documents, including a land registry excerpt, to the town hall.<sup>171</sup> The farmer states that the forest is now exploited by an Austrian company from Sebes. The farmer takes the investigators into the forest to a tree that was cut but shows no stamp on the stump which according to the investigator means it is illegal. A forester who is cutting trees in that forest tells the investigator that they usually sell it to Schweighofer, based in Sebes and Radauti.<sup>172</sup>

According to EIA, investigators returned to the same area one year later, and found it had been clear-cut, and that many of the remaining stumps lacked visible stamps. The mayor of Corbu, interviewed by investigators, said that the company contracted to exploit the land, SC Dana Group SRL (later confirmed in the registry obtained by investigators), has a contract to provide the timber to HS.<sup>173</sup> Tax records obtained by EIA show that SC Dana Group SRL supplied over 4,500 cubic meters of timber to HS in 2014.<sup>174</sup> However, when investigators asked the mayor about the

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<sup>168</sup> M 2.2\_Minutes of Meeting between CP and HS\_Edited by HS\_2016-07-14

<sup>169</sup> 36 HS Statement regarding the complaint filed by WWF Germany against Holzindustrie Schweighofer at Forest Stewardship Council (FSC®), p. 6

<sup>170</sup> 17- ZR.10 video submitted by confidential source

<sup>171</sup> Local farmer, personal communication, Corbu

<sup>172</sup> 17- ZR.10 video submitted by confidential source

<sup>173</sup> Personal communication

<sup>174</sup> According to EIA analysis of 2014 Romanian tax records

restitution dispute involving the farmer, he stated that the claimants did not have sufficient evidence to make their case and that the claimants' "interest was to get the land and deforest it."<sup>175</sup> Documents filmed at the local forestry office showed that the town hall had itself been granted ownership of the land, and, according to the farmer "take all that is good and what is damaged is left behind to rot.<sup>176</sup> Additionally, investigators noted an unexplained volume discrepancy between the summary of the forest management plan<sup>177</sup> and registry,<sup>178</sup> which listed an allowed volume of 459 m<sup>3</sup>, and the APV (standing wood evaluation),<sup>179</sup> where the allotted volume for extraction had inexplicably increased by 265 m<sup>3</sup>, attributed by local officials as "a mistake by planners" who "didn't read the papers correctly."<sup>180,181</sup>

#### 4.5.4.2.2 HS' Response

In a reply to the Environmental Investigation Agency's allegations HS states that:

- "- The timber of the plot in question (#591216/2013) was bought in a public auction by Dana Grup SRL which subsequently sold the softwood saw logs to Holzindustrie Schweighofer. (HS provides a copy of the transaction document, "Reprimere").
- The forest area was checked in and taken back [from the contractor Dana Grup SRL, CP] by the Forest District and authorities on 2 December 2013 with no findings. After this formal taking back the responsibility for the stumps lies upon the forest ranger.
- If EIA has any proof for wrongdoing, HS invite the NGO to file a complaint at the authorities or to send it to HS so they can forward the documents accordingly"<sup>182</sup>.

In the statement of HS regarding the complaint filed by WWF Germany they declare that:

"These facts are entirely unknown to HS. In any case, HS is not the initial distributor"<sup>183</sup>.

#### 4.5.4.2.3 Conclusions by the CP

There is evidence shown about the claim of the Corbu Forest Association, but the CP was not able to investigate in more detail if these claims were justified. However, from other cases presented in this report is demonstrated that it is not uncommon for authorities to deny land restitution claims which are even recognized by courts. HS recognizes that timber from this land was bought in a public auction by Dana Grup SRL which subsequently sold the softwood saw logs to Holzindustrie Schweighofer. HS claims that the forest area was checked in and taken back by the Forest District and authorities on 2 December 2013 with no findings. HS did not provide any evidence to the CP that they have taken any action to verify the legality of the timber purchased despite being informed about the claim of the farmer on behalf of the Corbu Forest Association. Thereby, HS accepts a

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<sup>175</sup> EIA Report; Personal communication

<sup>176</sup> EIA Report; Personal communication

<sup>177</sup> Extractable volume stated: 724 cubic meters

<sup>178</sup> Extractable volume stated: 459 cubic meters

<sup>179</sup> Extractable volume stated: 459 cubic meters

<sup>180</sup> EIA Report; Personal communication

<sup>181</sup> 17 EIA report "Stealing the last forest: Austria's largest timber, company, land rights and corruption in Romania", October 2015, p. 20

<sup>182</sup> 28- HS Reply to the Environmental Investigation Agency's allegations, The facts and stories behind a misleading campaign, February 2016, p. 15

<sup>183</sup> 36 HS Statement regarding the complaint filed by WWF Germany against Holzindustrie Schweighofer at Forest Stewardship Council (FSC®), p. 7

substantial risk that they have bought illegal timber, without performing any further due diligence actions to verify the risk, and this is considered a violation of FSC's PfA.

#### 4.5.5 Review of the evidence that Holzindustrie Schweighofer had inadequate due diligence procedures in Romania

##### Requirements

Under the Policy for Association (PfA)<sup>184</sup> the FSC “will only allow its association with organizations that are not directly or indirectly involved in the following unacceptable activities: a) Illegal logging or the trade in illegal wood or forest products; b) Violation of traditional and human rights in forestry operations; c) Destruction of high conservation values in forestry operations; d) Significant conversion of forests to plantations or non-forest use; e) Introduction of genetically modified organisms in forestry operations; f) Violation of any of the ILO Core Conventions”.

Any associate of the FSC is aware of the requirements of the PfA and of his/her/its obligations to undertake any and all measures reasonably possible to ensure that activities under his/her/its control do not fall into the five categories of unacceptable activities defined by the FSC in the PfA.

Another important requirement for any corporate entity placing timber and/or timber products on the European market is the EU Timber Regulation (EUTR)<sup>185</sup>. It prohibits placing timber and/or timber products from illegal sources on the European market. The EUTR specifies that operators shall implement a DDS to assess the risk of and undertake appropriate measure to avoid placing timber and/or timber products from illegal sources on the European Market.

More importantly, in guidance to implementation of the EUTR<sup>186</sup> it is specified that:

- “The documentation collected must be assessed as a whole, with traceability throughout the supply chain. All information must be verifiable.”
- “In all cases, the operator must check for example:
  - Whether the different documents are in line with each other and with other information available,
  - What exactly each document proves,
  - On which system (e.g. control by authorities, independent audit, etc.) the document is based,
  - The reliability and validity of each document, meaning the likelihood of it being falsified or issued unlawfully.”
- “In cases where the risk of corruption is not negligible, even official documents issued by authorities cannot be considered reliable.”

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<sup>184</sup> PfA – FSC-POL-01-004 V2-0 EN. Policy for the Association of Organizations with the FSC. 2011

<sup>185</sup> EUTR - REGULATION (EU) 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. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:295:0023:0034:EN:PDF>

<sup>186</sup> 92 EU Commission Guidance Document on EUTR C\_2016\_755\_F1\_ACT\_EN\_V6\_P1\_831439. COMMISSION NOTICE of 12.2.2016. GUIDANCE DOCUMENT FOR THE EU TIMBER REGULATION

- “Operators must be able to evaluate the content and reliability of the documents they collect.”
- “Actors in the supply chain should take reasonable measures to satisfy themselves that such documents are genuine, depending on their assessment of the general situation in the country or region of harvest.”
- “The higher the risk of corruption in a specific case, the more it is necessary to get additional evidence to mitigate the risk of illegal timber entering the EU market”.
- “It is important that an operator that uses its own due diligence system evaluates this system at regular intervals to ensure that those responsible are following the procedures that apply to them and that the desired outcome is being achieved.”

### Systems implemented by HS

HS has compiled the main aspects of its DDS systems in its Certification Manual<sup>187</sup> (HS-CM) and a series of procedures<sup>188,189</sup>, annexes<sup>190,191</sup> and rules<sup>192</sup>. The HS-CM integrates the requirements laws and regulations in Romania<sup>193</sup> with those of the FSC and Programme for Endorsement of Forest Certification (PEFC) certification systems as well as the requirements of the EUTR<sup>194,195,196</sup>. It commits its HS-CM to compliance with all applicable laws and regulations of Romania, with the EUTR as well as with the values and the relevant FSC and PEFC standards and procedures.

The HS-CM details all relevant elements of the Due Diligence System employed by HS and a series of other corporate entities controlled by Mr. Gerald Schweighofer through the Schweighofer Privatstiftung and the SPB Beteiligungsverwaltung GmbH (see also points 3.2 and 4.5.1 ff above). The DDS is implemented de-centrally at each operational site and supervised locally by a dedicated trained professional. Timber purchasing at the sites is responsible for implementation of the procedures of the HS-CM.

The HS-CM differentiates between the following 4 types of materials:

- PEFC-certified timber and timber product
- FSC-certified timber and timber product
- FSC controlled wood timber and timber product
- Other material

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<sup>187</sup> 130.4 Handbuch\_Zertifizierung\_V4. Manual 25.05.2016

<sup>188</sup> 130.2 Procedures. Manual 30.09.2015

<sup>189</sup> 160.2- Scheme\_Timber\_Romania. 27.06.2016

<sup>190</sup> 130.3 Annexes. Manual 30.09.2015

<sup>191</sup> 38- Annex\_1\_Company risk assessment. 25.11.2015

<sup>192</sup> 33- Schweighofer\_Purchasing Rules\_2015. 18.05.2015

<sup>193</sup> governmental decision no. 470/2009 approving the rules on origin, movement and sale of wood materials, the storage space of woody plant material and processed roundwood.

<sup>194</sup> EUTR - REGULATION (EU) 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.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:295:0023:0034:EN:PDF>

<sup>195</sup> EUTR-Guidance\_No\_607-2012\_06-07-2012\_OJ\_L\_2012\_177\_FULL\_EN\_TXT. <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2012:177:FULL&from=DE>

<sup>196</sup> 92 EU Commission Guidance Document on EUTR C\_2016\_755\_F1\_ACT\_EN\_V6\_P1\_831439. 12.02.2016

According to the HS-CM the legal origin of timber and/or timber product has to be proven with associated documentation. This includes identification of suppliers and supplying forest management operations. The internal DDS of HS applies to all supplier and all shipments of timber and/or timber products. It is intended to avoid acquisition of material from questionable sources.

Controlling wood flows in the HS systems is based on a mass balance system (input-output system). The mass balance systems is also used to manage labeling of timber product.

The performance of the HS DDS is evaluated and monitored on a monthly basis, and a monthly performance report is forwarded to the central office in Vienna<sup>197</sup>. The monthly performance report provides summary statistics related to the acquisition from different sources / countries, handling and sale of certified and uncertified timber and/or timber product. An annual audit program based on evaluation of a sample of all forest management units supplying timber and/or timber products to HS is used to evaluate stability of the DDS.

The evaluation of the current HS-CM was complemented with an in-depth analysis of the due diligence procedures of previous years<sup>198,199,200,201,202,203,204,205,206,207</sup>.

#### Allegations against HS regarding their Due Diligence Systems and Findings by the CP

In its report the EIA alleges that “In a country that Schweighofer officials regularly acknowledge has a very high rate of illegal logging and corruption, the company’s officially stated policy is to rely solely on paper documentation provided by suppliers as proof of legality.”<sup>208</sup>.

In its response to the evaluation of the HS DDS by Indufor “EIA calls on Schweighofer to make their sourcing system transparent and verifiable by publicly releasing the harvest information, in the form of the Act de Punere in Valoare (APV) numbers, for all logs it receives in its factories. Only by providing real transparency can the company hope to regain the trust of the public and of its customers.”<sup>209,210</sup>.

An anonymous informant explains a further problem common in Romania, which was also found at SC Susai Servcom SRL – it is common practice for companies to sort timber by quality at the depot which results in mixing of different sources, and subsequently have little or no evidence of the forest origin<sup>211</sup>.

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<sup>197</sup> 130.2 Procedures. Company Certification Report 15.06.2016

<sup>198</sup> 147.2- Handbuch\_PEFC\_COMANESTI\_V01.25.04.2014

<sup>199</sup> 147.3- Handbuch\_PEFC\_Hallein

<sup>200</sup> 147.4- Handbuch\_PEFC\_RADAUTI\_V01. 27.04.2014

<sup>201</sup> 147.5- Handbuch\_PEFC\_SEBES\_V01

<sup>202</sup> 147.6- Handbuch\_PEFC\_SIRET\_V01. 25.04.2014

<sup>203</sup> 147.7- Handbuch\_PEFC\_WIEN

<sup>204</sup> 147.8- Handbuch\_PEFC\_Zentrale\_Stelle\_V01. 27.043.2014

<sup>205</sup> 125.2 Manual\_proceduri\_H\_Schweighofer Baco. 01.12.2012

<sup>206</sup> 182.2- Manual 2011

<sup>207</sup> 182.3- Manual 2012

<sup>208</sup> 17-EIA report. 2015

<sup>209</sup> Papering Over Illegalities: EIA assessment of new Holzindustrie Schweighofer report. Available at:

<http://eia-global.org/blog/papering-over-illegalities-eia-assessment-of-new-holzindustrie-schweighofer>

<sup>210</sup> 97- Response by EIA to Indufor report on HS\_20-04-2016. 20.04.2016

<sup>211</sup> 211- Draft minutes Interview with complaint panel in August. Email & report 05.08.2016

## HS' Response

HS responded to the EIA report by publishing a response<sup>212</sup> to the allegations. In addition HS commissioned a review of its DDS by Indufor<sup>213</sup>. On 9 March 2016 Indufor published its findings<sup>214</sup> and concludes the following:

- *Holzindustrie Schweighofer's internal Due Diligence system (DDS) complements the Romanian statutory control system for forest management and timber tracing, and addresses the requirements of the EU Timber regulation (EUTR). The DDS ensures that wood purchased and delivered to the company's mills has appropriate documentation to demonstrate the legality.*
- *The DDS of Holzindustrie Schweighofer goes far beyond the legal requirements by:*
  - *Accepting no timber from national parks*
  - *Requiring suppliers to comply at the minimum with the FSC Controlled Wood standard*
  - *Assessing the legality risks by each purchase contract.*

*Volumes supplied to Holzindustrie Schweighofer and duly registered in the government information system (SUMAL) cannot include more timber than expressed in the allowable cut of the forest parcels harvested (APV) The SUMAL has automated controls to ensure that transport documents are not issued to a larger timber volume than the APV authorizes to harvest.*

Furthermore, with respect to different types of purchases, Indufor concludes that the HS DDS

- is strongest where HS is purchasing standing trees directly from the forest owner/wood seller with access to (and control of) all relevant documentation.
- When purchasing logs delivered at the roadside controls by HS are almost as good as in the first case.
- When purchasing logs from log yards of independent suppliers and traders, HS takes control of the logs only at the mill and leaves control of harvesting, transport, cutting, sorting to the supplier/trader.

Indufor concludes that when purchasing from suppliers and/or traders HS is highly dependent quality and reliability of suppliers/traders and their respective systems to track and manage wood flows, and that the controlling legality would be significantly easier if suppliers/traders were externally controlled (e.g. independently certified).

This conclusion matches the findings by the evaluation of the complaints panel.

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<sup>212</sup> 28- HS counter report responding to EIA. 2016

<sup>213</sup> Indufor – Indufor Oy, Helsinki, Finland, [www.indufor.fi](http://www.indufor.fi)

<sup>214</sup> 37- HS\_Indufor Communication Report. 09.03.2016

#### Information evaluated by the CP

In addition to the information presented above the CP evaluated the summary statistics provided by HS<sup>215</sup>, several cases where the DDS was applied and a listing of companies which were excluded from the supplier listing<sup>216</sup>.

The CP also analysed the official investigation report by the Ministry of Water, Forests and Environmental Protection, National Environmental Guard, General Commissioner's Office of the HS DDS at the Radauti mills for compliance with the requirements of the EU TR<sup>217</sup>. The evaluation covered timber and timber product from sources in Romania as well as imports from Ukraine. The evaluation found the HS DDS to be compliant with the requirements of the EU TR. In addition it highlighted that the formal status under the EU TR provisions of the HS operation in Radauti changes between "operator" to "trader" depending on the particular conditions under which the acquisition of timber and/or timber product takes place.

In 2014, Suceava county forest police (ITRSV) conducted an investigation of the HS operation in Radauti, near Romania's northern border with Ukraine<sup>218,219</sup>. The ITRSV team identified 9,384 m<sup>3</sup> of timber without proper legality documentation and communications<sup>220,221</sup> on prosecution for non-compliance with the provisions of the EU TR.

#### Conclusion by the CP

**Based on clear and convincing evidence evaluated the CP concludes that the HS DDS has significant substantial room for improvement in – but not limited to - the following areas:**

1. **The HS DDS relies to a large extent on document checks, complemented with some on-site audits. In a range of cases documents collected were not sufficiently authenticated and it seems that questionable and/or misleading and/or false documents entered the DDS.**
2. **Data coming from third parties (e.g. SUMAL, other companies, etc.) are not consistently verified and authenticated.**
3. **Relying on document checks without comprehensive authentication of documents in the DDS to such an extent implies accepting substantial additional risk. This additional risk increases is especially significant in acquisition of timber from independent suppliers and traders. In other words the additional risk increases with the logistical distance of acquisition from the forest. This additional risk related to purchasing from independent supplier/traders is not sufficiently reflected in the DDS.**
4. **No systematic contractual requirement for (independently verified) chain of custody tracking to the forest origin of timber by independent suppliers and traders.**

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<sup>215</sup> 158.2- HS Statistics to FSC panel 22 06 2016

<sup>216</sup> 154.2- List of Non compliant suppliers-Schweighofer. 22.06.2016

<sup>217</sup> 48- Annex\_11\_control report EU TR\_August 2015\_EN. Report 1203 / 27.08.2015

<sup>218</sup> 168.6- Raport control Holzindustrie 2014 RAD\_EN. 28.07.2016

<sup>219</sup> 171.2- Raport control Holzindustrie 2014 RAD\_EN with comments. Report 28.07.2014

<sup>220</sup> 76- Summary record of EU TR FLEGT. Report 02.12.2015

<sup>221</sup> 208.4- Appendix\_3\_Gedächtnisprotokoll\_Telco\_QA-WWF. 16.02.2016

5. **The DDS (esp. the risk assessment) is based on a case by case analysis. It appears to lack the analysis of cumulated risks and how they affect ensuring that only legal timber is acquired and that only timber product from legal sources is placed on the market.**
6. **The DDS (esp. the risk assessment) does not incorporate to the extent possible information on:**
  - a. known criminal action/prosecution/conviction/records;
  - b. known incidents of corruption;
7. **The DDS (esp. the risk assessment) does not incorporate to the extent possible information by:**
  - a. civil society stakeholder;
  - b. public authorities;
  - c. corporate partners / peers;
  - d. independent certification bodies and auditors;
8. **Monthly reports of the HS DDS are forwarded to the central office. However, these monthly reports include only summary statistics of the wood flows in the company. They completely lack information needed to steer the DDS – i.e. indicators on:**
  - a. different types of purchases and associated risks;
  - b. on cumulated risks;
  - c. the performance and stability of the DDS;
9. **In general terms any DDS is a management system optimized to deliver best possible performance towards the desired outcomes. It appears that in case of the DDS of HS substantial focus was placed on compiling and implementing the DDS management system rather than on the actual performance of the DDS. It appears that HS in future needs to steer its DDS based on performance towards avoiding that timber and/or timber product from illegal sources enters its operations.**

**In summary the CP concludes that the HS Due Diligence system is not sufficiently able to ensure compliance in a highly complex regulatory and business environment plagued by high levels of criminal energy, illegal activity and corruption.**

#### 4.5.6 Allegations that Holzindustrie Schweighofer has violated human rights in Romania and findings by the CP

The EIA report mentions that staff from the Romanian NGO Agent Green followed one logging truck to the gates of Schweighofer's mill in Sebeş after they considered that the logs on the truck were cut illegally within Retezat National Park in November 2014. However, at the company's entrance gate, the Agent Green staff was beaten and pepper sprayed by HS guards as he attempted to film the illegal truck load entering the mill.<sup>222</sup>

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<sup>222</sup> 17 EIA report "Stealing the last forest: Austria's largest timber, company, land rights and corruption in Romania", October 2015, p. 23

## HS Response

HS admits the pepper spraying of the Agent Green person at the gate of the mill and classifies this as a stupid action by the personnel of the insourced guarding company clearly acting against the principles and orders of HS<sup>223</sup>.

## Conclusion by the CP

The complaints panel considers any such attack as being serious but it does not believe that this is an indication of a systematic violation of human rights by HS. The complaints panel is also aware that there have been cases of intimidation and threats in relation to illegal land restitution cases in Romania but is not able to definitively link these cases directly to HS.

### 4.5.7 Allegations that Holzindustrie Schweighofer has destroyed high conservation values in Romania and findings by the CP

This section analyses the allegations in relation to:

- HS knowingly accepted timber from national parks (until 2015 at least)
- Trade of timber harvested illegally from natural protected areas
- Forest management by HS compromised / destroyed HCVs

## Background

There are 13 National Parks, 17 Natural Parks, 3 biosphere reserves, 617 nature reserves, 234 nature monuments and 55 scientific reserves found in Romania. In 2007, an area of 13% of the Romanian territory was designated as part of EU Natura 2000 network of protected areas, according to the Habitat and Bird Directives. Harvesting in core areas or sustainable development zones within protected areas is only done with the approval of the Protected Area management team and of the Agency for Environment Protection (ministerial order 1798/2007).

Ministerial Order 3397/2012 is in place and stipulates protection of all old growth forests in Romania with no logging activities in those areas.

All core areas in Natural and National Parks are protected through legislation and no logging activities should be allowed. Despite the existing legislation, the legislation is not always duly applied and therefore the intended protection cannot be assured in all cases.

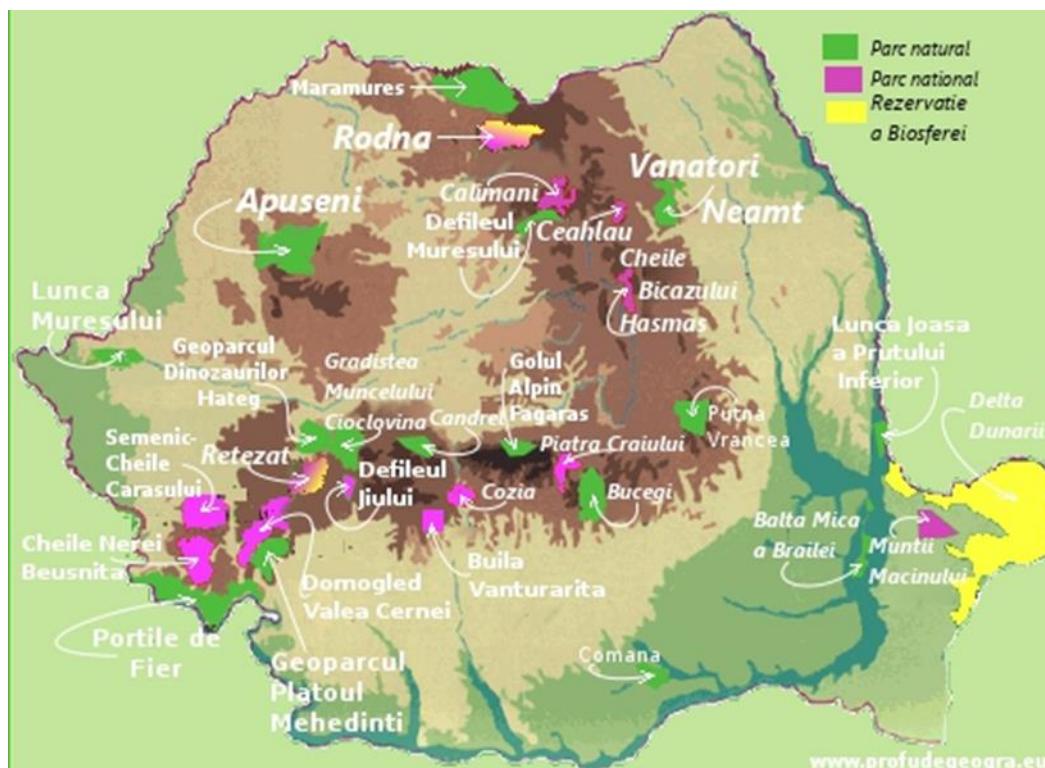
The 17 Natural Parks located in Romania cover an area of 5,492.33 km<sup>2</sup> and are the following:

**Table 8.** Natural Parks located in Romania

#	Name	Area
1	Apuseni	Alba, Bihor, Cluj
2	Brăila Small Puddle	Brăila
3	Bucegi	Brașov, Dâmbovița, Prahova
4	Cefa	Bihor
5	Cindrel	Sibiu
6	Comana	Giurgiu
7	Dumbrava Sibiului	Sibiu
8	Grădiștea Muncelului-Cioclovina	Hunedoara
9	Hațeg Country Dinosaur Geopark	Hunedoara

<sup>223</sup> M 2.2\_ Minutes of Meeting between CP and HS\_Edited by HS\_2016-07-14

<b>10</b>	Iron Gates	Caraș-Severin, Mehedinți
<b>11</b>	Lower Prut Floodplain	Galați
<b>12</b>	Maramureș Mountains	Maramures
<b>13</b>	Mehedinți Plateau Geopark	Gorj, Mehedinți
<b>14</b>	Mureș Floodplain	Arad
<b>15</b>	Putna-Vrancea	Vrancea
<b>16</b>	Upper Mureș Defile	Mureș
<b>17</b>	Vânători-Neamț	Neamt



**Fig. 5.** Map of Natural Parks and other natural protected areas in Romania

The EIA report<sup>224</sup> alleges that HS knowingly accepted wood from national parks until at least in early 2015. According to the report “a company representative admitted doing so to a Romanian environmental activist, who tracked a truck of timber illegally cut in a national park to Schweighofer’s sawmill, and who was later beaten and pepper-sprayed by the company’s guards”.

#### HS' response

Apparently representatives of HS and other entities controlled by HS on different occasions stated that the company would not be sourcing wood from National Parks<sup>225</sup>.

<sup>224</sup> 17 EIA (2015) “Stealing the last forest: Austria’s largest timber, company, land rights and corruption in Romania”, EIA

<sup>225</sup> 211- Draft minutes Interview with complaint panel in August. Email & report 05.08.2016

### Findings by the CP

On at least one occasion in 2014 HS sourced wood from the Retezat National Park<sup>226,227,228</sup>. The forest harvesting activity in Retezat National Park was carried out by SC Susai Servcom SRL. At least part of the timber was later delivered to the HS mill in Sebes<sup>229</sup>.

Apparently a report was produced by the Romanian Scientific Council advising the National Park in 2011 indicating that the management plan for Retezat National Park including the zoning of the National Park Retezat should be revised<sup>230,231,232,233</sup> to better protect and maintain HCVs.

According to the an NGO informant<sup>234,235</sup> the advice by the scientific council was not implemented in national law and the zoning of the National Park not revised before the harvesting of wood for supply to HS took place in 2014. Following an order by Ministry for Environment of 12.10.2011, the logging in this area stopped for some time, but a subsequent order was approved by the Romanian Ministry of the Environment (136/24.2.2014) allowing again the sourcing of about 20.000 m<sup>3</sup> timber from this area.

The order 136/24.2.2014 by the Romanian Ministry of the Environment effectively contradicted the earlier order 3397/2012<sup>236</sup> on the protection of virgin forests. The order 3397/2012 identified all areas included in the Pin Matra Inventory (PMI)<sup>237</sup> as being virgin forest until such a time as a more detailed inventory becomes available. The order 136/24.2.2014 related to the forest Management Plan, but was not a derogation of the order 3397/2012 on the protection of virgin forests, which therefore seemed to remain applicable. Therefore logging activities in the Retezat National Park in compliance with order 136/2014 by the Romanian Ministry of the Environment would however still be in contravention of the order 3397/2012.

This logging was in compliance with the most recent piece of legislation (the order 136/2014 by the Romanian Ministry of the Environment) and the previously approved management plan for the area (OS Retezat, UP III Rau Ses)<sup>238</sup>. It seems that the contradiction between different regulations issued by the Romanian Ministry of Environment is beyond control of HS and that it was acceptable that HS followed the most recent regulation issued by the Romanian Ministry of Environment. In a best case scenario HS would have taken a precautionary approach because of the report published by the scientific council advising the National Park and the fact that the order 3397/2012 was still in effect, and avoided to source timber from the Retezat National Park. Moreover, taking a precautionary approach would have been warranted in view of the fact that in 2016 the Ministerial Order

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<sup>226</sup> 17 A - Video “Retezat forests are burning in Western European fireplaces”, 22nd December 2014 (<https://www.youtube.com/watch?v=H9vgZjMjAmk&feature=youtu.be>)

<sup>227</sup> 211- Draft minutes Interview with complaint panel in August. Email & report 05.08.2016

<sup>228</sup> 168.1-HS clarification about source 42. Email 13.07.2016

<sup>229</sup> 211- Draft minutes Interview with complaint panel in August. Email & report 05.08.2016

<sup>230</sup> 116.1 – Anonymous informant to FSC International further reports. Email 11.05.2016

<sup>231</sup> 116.2 PNR\_rap\_anexe

<sup>232</sup> 116.3 PNR\_rap\_narativ

<sup>233</sup> 116.4 PR\_CS\_APNR\_2011

<sup>234</sup> 17 A - Video “Retezat forests are burning in Western European fireplaces”, 22nd December 2014 (<https://www.youtube.com/watch?v=H9vgZjMjAmk&feature=youtu.be>)

<sup>235</sup> 212.2- 20050806\_hcv\_retezat\_loss. Report 06.08.2016

<sup>236</sup> 227.3- English Translation of Order 3397. Regulation 10.09.2012

<sup>237</sup> 111.2- 2015-12-22\_Virgin\_forest\_Romania\_Summary. April 2005. Romanian Forest Research and Management Institute (ICAS) & Royal Dutch Society for Nature Conservation (KNNV). ISBN: 954-9746-11-9

<sup>238</sup> 211- Draft minutes Interview with complaint panel in August. Email & report 05.08.2016

no.1417<sup>239</sup> was issued which is aimed at comprehensively recognizing, protecting and maintaining virgin and quasi-virgin forests in Romania.

Therefore, under the then valid zoning of the Retezat National park the harvesting of wood is considered permitted and legal. That HS possibly contradicted its own statements in relation to not sourcing from National Parks, does not constitute any act relevant under the PfA.

The contractor which delivered the timber to HS was SC Susai Servcom SRL, an FSC-certified company (SGS-COC-009795; issued 14.03.2013; valid until 13.03.2018). It was later fined for violating environmental regulation by transporting wood through a river<sup>240,241,242,243</sup>. While certainly causing significant damage to the environment and HCVs, there was no indication that the transport of wood through the river resulted in irreversible effect on or destruction of HCVs.

An anonymous informant alleges that SC Susai Servcom SRL is a company which mostly harvests in complex and difficult areas and that these areas usually correspond with the location of national parks and HCVs. At a meeting with an anonymous informant, the manager of SC Susai Servcom SRL apparently complained about the high cost related to harvesting which seems to limit their market share.

Agent Green, an environmental NGO in Romania, submitted a complaint under the PfA to the FSC in relation to the destruction of HCVs at the SC OCOL SILVIC CASCADE EMPIRE SR (OSCE) in late November 2015<sup>244</sup>. This complaint was directed by FSC-IC to the certification body since this dealt with an issue related to standards compliance at a certified FMU. The certification body issued its final response in July 2016.

### **Conclusions by the CP**

**Based on clear and convincing evidence evaluated the CP concludes that HS did receive timber from harvesting in National Parks. However, as far as the CP could establish timber harvesting took place in compliance with current laws and regulations, and valid management plans.**

**Based on clear and convincing evidence evaluated the CP concludes that HS undertook forest management activities in area relevant to the maintenance and protection of HCVs and/or did receive timber harvested in such areas. Forest management activities in area relevant to the maintenance and protection of HCVs most likely had significant effect on and possibly compromised (at least temporarily) HCVs. However, the CP could not establish that HCVs were irreversibly affected or destroyed.**

**In summary the CP concludes that there is no clear and convincing evidence that HS caused, directly or indirectly, the destruction of HCVs, by logging in national parks in Romania.**

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<sup>239</sup> no.1417 issued on 11st of July 2016

<sup>240</sup> 162.2 (2014) Letter from General Commissary of the Forest Guard concerning Susai Servcom.

<sup>241</sup> 214.2- 1199 crp EN. Letter No. 2045/22.12.2014

<sup>242</sup> 41- Annex\_4\_Control report of ITRSV\_EN. Report No. 9237 of 11/12/2014

<sup>243</sup> 42- Annex\_5\_Special report of ministry of Environment\_EN. Report N.118/11.12.2014

<sup>244</sup> 79- PfA complaint submission Agent Green. Report 30.11.2015

#### 4.6 Assessment of counterevidence and counterarguments

The CP understands the problems that HS faces in relation to the difficulty of doing honest business in Romania. The country has a significant reputation for corruption which makes it difficult to verify what is and what is not legal, since paper documents cannot be relied on.

However, the existence of corruption and also of unintentional and intentional maladministration does not mean that a company operating in such an environment can simply wash its hands of the responsibility to verify legality. To the contrary when faced with this situation the EUTR demands that a company takes extraordinary measures to prevent illegal timber entering the supply chain.

For this reason, a company cannot rely on the argument that it is difficult to verify the legality of paperwork and other instruments issued by the authorities and by third parties as an excuse to avoid doing what is necessary to verify legality. The DDS used by HS is deficient in this respect both in relation to timber sourcing and to land acquisition.

In addition, the large number of regulations that need to be complied with in the Romanian forest industry have placed a very high administrative burden (and associated costs) on all parties to the extent that the association of small owners Nostra Silva<sup>245</sup> has formally requested to the Prime Minister that the legal framework for forestry is revised. In addition, it is well known that large quantity and complexity of regulation as well as prescriptive detail are not necessarily advancing compliance with laws and regulations. On the contrary, they could well be creating a smoke screen and complicate / impede effective enforcement.

However, it is the experience of the CP that similar situations have arisen in many countries and this complexity and burden cannot be used as a counterargument.

HS may argue that the vast majority of the illegal actions in timber sourcing and volume administration are committed by third parties over whom they have no control and from whom they purchase timber in good faith. This argument cannot be allowed to stand as a means of distancing a company from illegal activities, particularly in this case where HS has itself provided finance to a number of the organisations from which it purchases timber.

HS has argued that the total amount of illegal timber that has entered its supply chain is a small percentage of the total volume that is used by HS. The CP believes that this cannot be used as a counterargument for two reasons. Firstly, the CP has found that the illegal timber purchased by HS was systematic and symptomatic of the failure of its DDS to eliminate illegal timber from its supply chain. Secondly, this would mean that a very small operation that mistakenly bought a single shipment of illegal timber faced a disproportionate risk on the grounds that this was a very high proportion of its total supply.

The CP also has sympathy with the position in which HS finds itself in respect of the MMAF inspections carried out at the Radauti and Sebes mills during 2015. HS has requested copies of the official reports of the inspection but the government has refused to release these since the case is *sub judice* in Romania (these reports are now being investigated by the Romanian Prosecutor, for their potential involvement in criminal activities. Given the ongoing investigations, the reports are not publicly available). The CP has seen copies of these reports (which it believes to be genuine) but is unable to share these with HS (or with FSC stakeholders) for fear of compromising any subsequent legal exchange between HS and the Romanian State. The government has admitted that these documents exist and in public has stated that they contain information which could lead to a

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<sup>245</sup> 244 Nostra Silva (2016) OPEN LETTER TO MR Dacian Ciolos, Prime Minister.-

criminal prosecution but has only outlined the issues in the broadest of terms. HS therefore finds itself in the position of not being able to defend itself in detail.

The CP has however made an analysis of these reports and has presented in Table 6 a summary of the number of issues and volumes of timber related to HS directly and to HS suppliers. It is understood that at least for the suppliers the infractions leading to illegality have already been sanctioned and it should therefore be possible for HS to have used a DDS to eliminate these from its supply chain. There is no evidence that this has occurred.

The CP is also aware that at least some of the errors in documentation referred to in the MMAP inspection reports of 2014 and 2015 are most likely due to incorrect completion of documents by government agents themselves. Once again the CP cannot accept this as a counterargument since it is necessary for any company on receiving inward goods to verify that the accompanying documents are authentic and have been correctly completed.

The complaints panel is aware that a significant portion of the timber acquired by HS comes with either FSC or FM certificates. If this were to account for the majority of supplier related problems then this could be used as an excuse by HS to justify a reduced due diligence process in these cases. However, although the government investigations into HS suppliers did find problems with some FSC certified suppliers the majority (>75%) of suppliers with problems were not FSC certified. Thus this does not relieve HS of the need to carry out an adequate due diligence.

On the other hand of the suppliers identified by Project Rise as having corrupt or criminal connections which concentrated on the largest suppliers a significant number of these are indeed certified under the FSC system.

The CP is also aware that any company moving into new territories is usually faced with additional difficulties due to having to learn the business environment and to develop adequate responses to ensure effective and efficient compliance of its business. It is well recognized that HS has made substantial positive advances in its conduct of business and in ensuring compliance. Even though the regulatory environment in Romania is highly dynamic (continuously changing), after working in Romania for over 10 years and having been challenged by NGOs to improve its DDS for many years, HS should be expected to have developed adequately effective and efficient compliance systems.

The CP realizes that large prominent corporate entities are often subject to additional attention and scrutiny, and accused for wrongdoing by public authorities, competing businesses and/or civil society actors where lack of compliance goes unnoticed in smaller businesses. Nevertheless, as this is well known, it cannot serve as an excuse for lack of compliance, but requires exemplary performance by large prominent corporate actors, such as HS.

## 5 Recommendations to the FSC board of directors

### 5.1 Conclusions of the complaints panel.

The complaints panel has evaluated the evidence in relation to compliance with the FSC PfA for 3 unacceptable activities: violation of traditional and human rights in forestry operations, destruction of HCVs in forestry operations and illegal logging or the trade in illegal wood or forest products.

In relation to violation of human rights the complaints panel is aware of the attack by security staff contracted by Holzindustrie Schweighofer on an NGO representative. The panel considers any such attack as being serious but it does not believe that this is an indication of a systematic violation of human rights by HS. The complaints panel is also aware that there have been cases of intimidation and threats in relation to illegal land restitution cases in Romania but is not able to definitively link these cases directly to HS.

Therefore, considering the above described, the CP has concluded that there is no clear and convincing evidence of a systematic violation of human rights by HS, and therefore there is no breach by the company of the FSC PfA with regards to this unacceptable activity.

In relation to the destruction of High Conservation Values the complaints panel is aware that timber from national parks and other HCV areas has entered the supply chain of HS and in all likelihood this is ongoing since HS does not have complete traceability of its timber supply. However, the complaints panel is unable to link this directly to the 'destruction' of HCVs. The complaints panel is satisfied that there has certainly been a negative impact on HCVs which is highly undesirable but this does not equate with destruction.

Therefore, the panel has determined that there is no clear and convincing evidence that HS has caused the destruction of HCVs.

In relation to the trade in illegal timber the complaints panel has found variety of clear and convincing evidence that the company has:-

- purchased timber from sources that cannot be defined as legal under the Romanian legislation.
- a DDS that is inadequate to verify if the timber it receives is from legal sources and as a result is compliant with national law. As a result, the company is exposing itself to a substantial risk related to engaging in trade in illegal timber. The DDS developed by the company in order to avoid timber and/or timber products from illegal sources entering HS operations is not sufficiently able to ensure compliance in the highly complex regulatory and business environment in Romania – especially with widespread criminal action / prosecution / conviction / records as well as prevalent incidents of corruption in the sector. Romania suffers from a very high risk of illegality based on the use of fraudulently issued documents of all types as well as a lack of adequate law enforcement in previous years and also long delays in legal action where such action has been taken.
- itself violated several laws and regulations in relation to the way it has transported, received and accounted for its timber.
- sourced timber from lands that it has acquired from cases where fraudulent land restitution has occurred.
- associated with individuals and companies with criminal and corrupt backgrounds, and has not removed such companies from their supply chain or implemented extra measures to

mitigate the additional risks even where these are made public; as would be required from a precautionary approach to avoiding risks of becoming involved in trading in illegal timber.

- developed a culture in which the demand to satisfy the need of the mill for timber has effectively overridden the competing demands for ensuring that timber is legally sourced.
- developed a system of paying bonuses for full delivery of volume authorized for harvesting that encourages suppliers indirectly to source timber above and beyond the volumes available from authorised stands.
- developed a system for timber accounting and reporting that at best can be described as mistake ridden, sloppy and misleading.
- misclassified timber likely in order to benefit from reduced log prices and tax breaks related to bioenergy production.
- the complaints panel is also aware that similar allegations against HS are now emerging from the Ukraine from which HS sources significant volumes of timber to feed the mills it owns in Romania<sup>246</sup>,<sup>247</sup>. The complaints panel has not investigated these allegations in detail.

**Following the above described, the CP concludes based on clear and convincing evidence that HS has violated FSC PfA by being involved systematically and over an extended period of time, directly and indirectly, in the trade of timber which has been harvested and/or handled in violation of existing laws and regulations.**

## 5.2 Impacts of failing to comply with the PfA

The CP believes that there have been a number of important impacts of the illegal activities associated with the timber that has entered the HS supply chain.

Where there has been fraudulent land restitution the properly entitled owners of the land have been deprived of their rights to the land and the value that is connected to those rights. In the case of the three mountains these rights have been independently valued at almost EUR 5 million.

In the case of directly trading in illegal timber the impacts fall into a number of categories, including:-

Some of the illegal timber has simply been stolen from its rightful owners by the act of felling trees in areas for which there is no approved management plan and where the owners have been unable to prevent the theft of their timber. This is likely to be the case for timber stolen from private and from public lands. In such cases the rightful owners have suffered the loss of their trees and will need to bear the cost of forest regeneration without the necessary income to achieve it.

Where timber has been illegally harvested from community land this is likely also to have impacted on their access to firewood and other forest resources.

Some of the illegal timber will almost certainly have been derived from areas of HCV and will have caused significant negative environmental impacts and contributed to the degeneration of the Carpathian Forest. Such impacts will include direct impacts on ecosystems caused by the harvesting activities such as damage to riverine areas and accelerated erosion, they will also include indirect impacts caused by reduction in the extent and condition of habitats important for the maintenance of biodiversity.

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<sup>246</sup> <https://www.kyivpost.com/business/corruption-fuels-illegal-logging-destroying-ukraines-forestland.html>

<sup>247</sup> Interview with anonymous Ukrainian politician.

In a number of cases timber has been harvested without fulfilling the technical requirements designed to reduce bark beetle infestations and this is likely to have a long term impact on adjoining forest areas by rendering them more liable to attack which has negative consequences for forest integrity while at the same time opening up opportunities for earlier harvesting which will unreasonably benefit timber processors by making available areas not normally scheduled for harvesting.

In cases where HS has itself through either omission or commission carried out illegal activities the impacts are likely to have:-

- Facilitated the trade in illegal timber by creating fictitious volumes available for supply and thereby encouraged others to harvest illegally.
- Resulted in rightful owners being underpaid by misclassifying timber as biomass.
- Resulted in HS receiving unjustified payments or avoided taxation on biomass used for energy generation.  
Resulted in HS avoiding taxation by failing to correctly declare financial inputs and outputs.  
(Although the exact nature of the tax arrears is unknown the Romanian Government reported that as of 31/03/2016 HS had tax arrears totalling 25.5 million Lei<sup>248</sup>)

### 5.3 Recommendation to the board

The CP recommends that the FSC disassociates from Holzindustrie Schweighofer and all companies associated with its controlling shareholder Gerald Schweighofer.

### 5.4 Conditions for re-association

- 1) HS shall develop and implement a due diligence and CoC system that addresses the existing risk in Romania and avoids direct and/or indirect involvement of HS in any form of illegality in the timber trade.

At least the following elements (and others that may be considered necessary) will be ensured through the implementation of such systems:

- a. all timber can be traced from the stand in the forest to mill gate including any timber that is purchased from third parties.
- b. all documents that are related to harvest and transport of timber are verified as having been correctly and legally issued by the duly authorised authority. This includes any timber that is bought from third parties. This verification shall include verification that ownership of the land from which the trees are harvested is legally clarified and not disputed, and that the legal owner of the land has subject to FPIC, agreed to the harvesting of the forest. All forest management plans must be confirmed to have been developed in accordance with all legal requirements. Permits for sanitary and salvage harvests must be confirmed as being issued by the correct legal authority and under the correct legal authorisation.
- c. all non-compliances or errors in the completion of paper forms or of information entered into the SUMAL system are detected and eliminated before any timber is allowed to enter any sawmill or HS owned depot.
- d. the movement of all materials between entities inside the HS mills and between mills and associated entities will be correctly accounted for and correctly classified.

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<sup>248</sup> [http://data.gov.ro/dataset/datoriile-catre-bugetul-de-stat/resource/125297c1-78df-4c82-a437-0f6f52aeda86?view\\_id=f89dabf8-5cbe-4091-833e-59f772544709](http://data.gov.ro/dataset/datoriile-catre-bugetul-de-stat/resource/125297c1-78df-4c82-a437-0f6f52aeda86?view_id=f89dabf8-5cbe-4091-833e-59f772544709)

- e. welcomes, receives, integrates and addresses without delay inputs by public, corporate and civil society stakeholders.
  - f. HS avoids doing business with
    - i. any person or company who has been indicted or convicted of any offence related to corruption
    - ii. and for any offence related to illegal timber trading for a period of at least ten years after such a conviction is spent,
    - iii. and permanently for any person convicted of such an offence repeatedly, and/or receiving a prison sentence of more than five years and/or a fine or compensation demand of more than 1 million Lei.
  - g. HS is able to monitor and evaluate its Due Diligence and Chain of Custody (DDS & CoC) systems for the following:
    - i. whether and to what extent the DDS & CoC systems are robust
    - ii. where the DDS & CoC systems are deficient
    - iii. whether the DDS & CoC systems deliver the performance outlined above
  - h. Such system must be audited by an independent entity at least three times and there shall be a period of at least one year between the first and last audit. Such audit shall be planned, coordinated with relevant stakeholders in Romania. A public summary of the results of such audits shall be discussed with relevant stakeholders in Romania.
- 2) HS shall compensate the lawful owners of any land that it has acquired from illegal land restitution by returning such land to them and by compensating them for the value of any trees harvested from the land so as to put them in the same position as if they had always had possession of the land. If the lawful owners cannot be identified or if such land is found to be state land then it shall be returned to the state and the state shall be compensated for the value of any trees removed.
- HS shall in addition do a complete independent review of all land in its possession to verify that such land was indeed lawfully in possession of the vendors at the time of HS purchasing it. If this independent review concludes that HS acquired land from illegal land restitution, e.g. because of involvement of any fraudulent actions, HS shall compensate either the lawful owners or the state in the way explained under point 2 above.
- 3) Since the land from which most illegal timber supplied to HS cannot be identified it is required that HS shall make appropriate environmental and social compensation for the damages it has caused to the Romanian forest and its people as a whole.
- a. HS shall engage with appropriate social NGOs supporting rural people in Romania to determine a system of social support for deprived communities in forested areas in Romania. The nature and extent of this support shall be determined in consultation between a round table of such NGOs and HS and shall be verified by an appropriate third party organisation. Such support shall be for a period of at least ten years and its value should be proportionate to the damages affected by HS.
  - b. HS shall engage with appropriate environmental NGOs to carry out environmental and biodiversity maintenance and/or restoration activities in forests in Romania. The nature and extent of these activities shall be determined in consultation between a round table of such NGOs and HS and shall be verified by an appropriate third party

organisation. Such support shall be for a period of at least ten years and its value should be proportionate to the damages affected by HS.

- 4)** HS shall compensate FSC with the full costs associated with the PfA investigation.

## 7 Annexes

### 7.1 List of sources

#### List of Sources of Information/ References

**Note:** PV indicates documents that are publicly available. NPV indicates confidential documents which are not publicly available.

**Disclaimer:** Please note that some of the documents listed below are registered under more than one reference number, as such documents have been provided by more than one source/stakeholder.

1. Holzindustrie Schweighofer corporate website: (PV)

<https://www.schweighofer.at/en.html>

2. FSC certificate holder database: (PV)

<http://info.fsc.org/certificate.php#result>

3. (NPV)

4. (NPV)

5. (NPV)

6. Video released by the Environmental Investigation Agency (EIA) in April 2015: (PV)

[https://www.youtube.com/watch?v=f\\_oilyq2vTk](https://www.youtube.com/watch?v=f_oilyq2vTk)

7. Report by the National Anticorruption Directorate DNA (Directiei Nationale Anticoruptie), 23 June 2014: <http://media.stiripesurse.ro/uploads/2014/06/referat-arestare-anonimizat-magistrati-Suceava.pdf> “Report by National Anticorruption Directorate DNA” (PV)

- 8a-” (NPV)

8b- (NPV)

9. (NPV)

10. (NPV)

11. (NPV)

12. (NPV)

13. (NPV)

14. (NPV)

15. (NPV)

16. (NPV)

17. EIA report “Stealing the last forest: Austria’s largest timber, company, land rights and corruption in Romania”, October 2015 (\*). “EIA report” (PV)

18. FSC reactive statement, October 2015. “FSC reactive statement” (PV)

19. FSC reactive FAQs, October 2015. “FSC reactive FAQs” (PV)

20. (NPV)

21. Statement by the Romanian Ministry of the Environment on investigations about the HS case, July 2015 “Statement by Romanian Ministry of the Environment” (PV)

22. (NPV)

23. (NPV)

- 24.** (NPV)
- 25.** (NPV)
- 26.** (NPV)
- 27.** (NPV)
- 28.** HS counter-report "Reply to the Environmental Investigation Agency's allegations", HS, February 2016. "*HS counter report responding to EIA*" (PV)
- 29.** (NPV)
- 30.** (NPV)
- 31.** Romanian National Forest Inventory report (Fordaq) "Seing the Forest for more than trees". "*Fordaq report*" (PV)
- 32.** (NPV)
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**166.** Greenpeace report “*Greenpeace vision for the Romanian forests*” published in February 2016. “*20160307\_Forest Vision for Romania\_02\_WEB*” (PV)

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- ii. Certification information related to forest area in Retezat national park (i). “*FSC certificate OS Retezat*” (PV)
- iii. Certification information related to forest area in Retezat national park (ii). “*FSC certificate Susai srl*” (PV)
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- vii. (NPV)
- viii. (NPV)
- ix. (NPV)

**172.** :

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- ii. Document provided by WWF Austria with details on legal status of shareholders (1).  
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- iii. Document provided by WWF Austria with details on legal status of shareholders (2).  
*“Shareholdings 2” (PV)*
- iv. Document provided by WWF Austria with details on legal status of shareholders (3).  
*“Shareholdings 3” (PV)*
- v. Document provided by WWF Austria with details on legal status of shareholders (4).  
*“Shareholdings 4” (PV)*
- vi. Document provided by WWF Austria with details on legal status of shareholders (5).  
*“Shareholdings 5” (PV)*
- vii. Document provided by WWF Austria with details on legal status of shareholders (6).  
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- viii. Document provided by WWF Austria with details on legal status of shareholders (7).  
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**173.** :

- i. (NPV)
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**174.** :

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- ii. Video of an interview from 29 October 2015 of the Romanian Minister of the Environment Grațiela Gavrilescu with Europa FM radio station describing more details from the report on HS Sebes: <http://www.europafm.ro/ministrul-mediului-holzindustrie-schweighofer-a-lucrat-cu-firme-fantoma/>. (PV)
- iii. Video of the Minister of the Environment speaking about HS' new sawmill in Reci, saying that HS did not have authorization to build it.  
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- v. News article "*The suspicions of Schweighofer*" published on the 29 October 2015 on Focus Energetic, related to the interview of the Minister with Europa FM radio station. "*News article related to Schweighofer case*" (PV)  
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**183.** Romanian Government Decision N°470/2014, 4 June 2014 “*Norm on origin, movement and marketing of timber*” (PV)

**184.** Romanian Government Decision N°470/2014, 24 June 2014 “*Norm on origin, movement and marketing of timber*” (PV)

**185.** Romanian Penal Code 28 June 2004, Romanian Parliament. “*Codul penal 2004 original*” (PV)

**186.** Romanian Penal Code 17 July 2009, Romanian Parliament. “*Codul penal 2009 original*” (PV)

**187.** Romanian Penal Code 2004, modified 28 July 2009. “*Codul penal 2004 actualizat*” (PV)

**188.** Law N° 78/2000 on “*Preventing, detecting and punishing corruption*”, 18 May 2000 (amended on 1 February 2014):

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**191.** Order no. 1540/2011 approving the “Instructions on deadlines, terms and periods of collection, removal and transport of wood” by the Ministry of the Environment and Rural Development, effective from June 20, 2011. “*OM 1540 modificari*” (PV)

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- 194.** Amendment OM 669/20.10.2014. 606/2008 Repeal. *“Ord 1540 modificari”* (PV)
- 195.** Law 18/1991 Effective February 20, 1991. Amended January 2016. *“Legea 18\_1991\_actualizata”* (PV)
- 196.** Romanian Land Law 18/1991. *“Legea 18\_1991\_modificari”* (PV)
- 197.** Romanian Land Law 18/1991. Effective 20 February 1991, modified on the 5 January 1998. *“Legea 18\_1991\_original”* (PV)
- 198.** Romanian Law no. 247/2005 regarding the “Reform in property and justice”. *“Legea 247\_2005\_actualizata”* (PV)
- 199.** Amendment to Law no. 304/2004 on judicial organization, published in the Official Gazette of Romania, Part I, no. 576 of 29 June 2004. *“Legea 247\_2005\_actualizata continuare”* (PV)
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- 201.** Methodology regarding the organization and operation SUMAL obligations SUMAL users, and the structure and the way to provide standardized information 08.10.2014. Effective from October 21, 2014. Strengthened on the 26 June 2015. *“Metodologie sumal 08.10.2014 actualizata”*. (PV)
- 202.** Order 837/2014 “Operating data accompanying opinions SUMAL Agent application is made by their issuers, registered in the operating permit”. Amended by Order 916/2015 and Order 927/2014. *“Metodologie sumal 08.10.2014 modificari”* (PV)
- 203.** Methodology regarding the organization and operation of integrated information tracking wood materials (SUMAL) and related obligations of economic operators it 15.09.2008. Effective from 23 September 2008 to 20 October 2014 is repealed and replaced by Order 837/2014 Methodology 2014. By the Ministry of Agriculture and Rural Development. *“Metodologie sumal 2008 original\_nu are modif”* (PV)
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**208.** " (NPV)

**209.** Academy report 2011, about Retezat Natural Park, provided by Agent Green.  
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**210.** (NPV)

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**218.** (NPV)

**219.** " (NPV)

**220.** (NPV)

**221.** (NPV)

**222.** Greenpeace shares with FSC International the "Illegal logging "toolkit" for Romanian citizens to help identify illegal logging developed by Greenpeace" (Romanian) , August 2016: "Tool kit" (PV)

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v. Ministry Order 1417/2006 on Virgin Forest Catalogue (English). "*Ministerial Order No 1417\_11 July 2016 EN*" (PV)

vi. Key sections of the Romanian Forest Code 2008, related to virgin forests (English). "*EN Key sections of Forest Code Virgin Forests*" (PV)

vii. Romanian Forest Code 2008 (Romanian). "*Codul silvic 2008*" (PV)

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- vi. (NPV)
- vii. (NPV)

- 228.** News article published in Romanian press (Curierul National) at the end of 2005 about the illegalities in the restitution process titled “*Valcea forests, decimated by a chief of the Forest Voineasa*”. “*English Translation of News article*” (PV)
- 229.** Agreement contract between Cascade Empire and Belforest. “*CASBEL belforest and cascade empire*”. (PV)
- i. Agreement contract between Cascade Empire and Belforest. “*CASBEL belforest and cascade empire*”. (Romanian) (PV)
  - ii. Agreement contract between Cascade Empire and Belforest. “*CASBEL belforest and cascade empire*”. (English) (PV)

- 230.** Examples of news articles from 2006 and 2009 about Gicu Deaconesa (illegal land restitution) and illegal logging in Romania (timber afterwards sent to Sebes).

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**231.2** <http://www.impactreal.ro/201010037249/Gicu-Deaconesa-amendeaza-ITRSV.html>

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**C41-** Press release informing about changes in the Romanian Forestry Code, 26 September 2014. “*Comunicat de presa AmCham Romania Codul Silvic 26 Septiembre 2014*” (PV)

**C42-** Public report published in September 2014. “*Radarul aurului verde si problema impaduririlor*” (PV)

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**C43-** Public report published in 2011. “*Incepand cu anul 2011 Codul Silvic*” (PV)

**C44-** News article published in October 2014 by Nostra Silva. “*Amanarea codului silvic*” (PV)

<http://www.nostrasilva.ro/comunicate/amanarea-codului-silvic-bucuria-mafiei-lemnului-si-samsarilor-de-paduri/>

**C45-** Legal document dated of March 2015. “*cerere 436rx*” (PV)

**C46-** News article “The fourth State of Romania: Holzindustrie Schweighofer”, published by Nostra Silva in March 2015. “*The Fourth Estate of Romania*” (PV)

**C47-** Resume of Georgeta Gavriloiu. “*Georgeta Gavriloiu Attorney at Law*” (PV)

**C48-** Organigram of Romanian Authorities. “*Organigram*” (PV)

**C49-** News article “Austrian Company Exposed Offering Bonuses for Illegal Romanian Timber”, published by EIA on the 27 April 2015. “*Austrian Company Exposed Offering Bonuses for Illegal Romanian Timber*” (PV)

<http://eia-global.org/news-media/austrian-company-exposed>

**C50-** Video transcript, showing conversation between EIA and HS company representative. “*EIA Video Transcript Excerpt Holzindustrie Schweighofer*” (PV)

**C51-** Legal documents by the Romanian Parliament, 2008. “*i39198*” (PV)

**C52-** News article published in May 2015. “*DEZVALUIRU Documentul din 2008 DOVESTE ca Dan Mihalache*”. (PV)

<http://www.evz.ro/dezvaluiri-documentul-din-2008-care-dovedeste-ca-dan-mihalache-seful-cancelariei-prezidentiale-facea-lobby-pentru-austriecii-de-la-schweighofer-romania-curata-analyzeaza-cum-a-ajuns-iohannis-in-calea-austriecilor-de-la-schweighofer.html>

**C53-** Report by the Romanian Consulte, May 2015. “*cod\_silviv\_mai\_2015*” (PV)

**C54-** Press release by the Romanian President, 24 June 2016. “*Declaratia de presa a Presedintelui*” (PV)

<http://www.presidency.ro/ro/media/agenda-presedintelui/declaratia-de-presa-a-presedintelui-romaniei-domnul-klaus-iohannis1466763350>

**C55-** Legal documents by the Romanian Authorities, March 2015. “*document 2015 05013 20121775*” (PV)

**C56-** Declarations on Facebook by an individual, 14 May 2015. “*Traian Basescu facebook*” (PV)

**C57-** Declarations on Facebook by an individual, 18 May 2015. “*Victor Ponta*” (PV)

**C58-** News article published on the 11 May 2015. “*PNL acuza PSD ca*” (PV)

<http://www.mediafax.ro/politic/pnl-acuza-psd-ca-vrea-sa-scoata-1-2-milioane-de-hectare-de-padure-din-fondul-forestier-gheorghe-tinel-pnl-afacerea-schweighofer-a-intrat-in-romania-ca-o-afacere-a-familiei-lui-ponta-14246166>

**C59-** Legal documents related to the European Parliament, 20 October 2010. “*CELEX 32010R0995*” (PV)

**C60-** News article published by Nostra Silva in May 2015. “*Dispar padurile Romaniei*” (PV)

<http://www.nostrasilva.ro/evenimente/dispar-padurile-romaniei-ne-trec-fiori-reci/>

**C61-** News article published by Nostra Silva on the 18 May 2015. “*Comisia Presidentială pentru analiza padurilor Romaniei*” (PV)

<http://www.nostrasilva.ro/comunicate/comisie-presidentiala-pentru-analiza-padurilor-romaniei/>

## Minutes of Complaint Panel Meetings

**M1 – (NPV)**

**M2.1 – (NPV)**

**M2.2 – (NPV)**

**M2.2 – (NPV)**

**M2.3 – (NPV)**

### Minutes of Stakeholder Interviews

- (NPV)

### 7.3 Other Annexes

#### 7.3.1 List of Laws affecting Forestry<sup>249</sup>

##### Legislation

- Law No. 46 / 2008 – Forest Code
- Law No. 137 / 1995 – Environmental protection law (re-issued)
- Gov. decision 91/2002 for amending Environmental protection law
- Gov. Decision No. 1182/2002 approving management of public environmental information
- Law 426/2001 regarding wastes regime
- Law 214/2002 regarding purchasing, assay, use and marketing of GMOs
- Law 81/1993 for determining compensations for damages to forest areas and game population.
- Law No. 407 / 2006 – Hunting territories and Game management law, re-issued 2002
- Law No. 192/2001 Fishing law
- Law No. 298/2004 to modify Law No. 192/2001 regarding fishing
- Law No. 120/2004 modifying Gov. Decision No 96/1998 regarding silvic regime and national forests administration.
- Law No. 141 / 1999 – approving Gov. Decision No. 96/1998 regarding silvic regime and national forests administration

Law No. 18 / 1991 – Restitution law modified by: Gov. Decision No. 1 from 23th of January 1998; Law No. 54 from 2nd of March 1998; Gov. Decision No. 102 from 27th of June 2001; Law No. 545 from 17th of October 2001.

- Law No. 1 / 2000 – Restitution law complementing Law No. 18/1991 and Law No. 169/1997 modified by: Gov. Decision No. 2 from 4th of January 2001; Gov. Decision No. 102 from 27th of June 2001; Law No. 400 from 17th of June 2002
- Law No. 31 / 2000 – regarding forestry contraventions and fines
- Law No. 1105 / 2003 – approving National Monitoring Program for soil and forest vegetation.
- Law No. 160 / 2004 – modifying annex 2 of Governmental decision No. 1.105/2003 Regarding Regia Nationala a Padurilor – Romsilva reorganisation
- Law No. 161/2004 approving Gov. Decision No. 11/2004 regarding production, marketing and use of reproductive material in forestry.
- Law No. 462/2001 – approving Gov. Decision No. 236/2000 regarding protected areas regime and conservation of natural habitats, flora and fauna;

Gov. Decision No. 41 / 2004 – for establishing Territorial Directorates for Silvic regime and hunting.

- Gov. Decision No. 96 / 1998 – for silvic regime and national forests administration

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<sup>249</sup> <http://fsc.force.com/servlet/servlet.FileDownload?file=00P40000006khJWEAY> Romsilva FM report by Soil Association.

- Gov. decision No. 2/2001 regarding juridical regime of fines
- Gov. decision No. 59 / 2000 – regarding forestry personnel status and Law No. 427/2001 approving the Gov. Decision.
- Gov. Decision No. 427 approving wood transportation and sawmills operation.
- Gov. Decision No. 1105 / 2003 – for Regia Nationala a Padurilor – Romsilva reorganisation
- Gov. Decision No. 155 / 2004 – approving frame of establishing forest shelterbelts
- Gov. decision No. 85 / 2004 – approving marketing of timber
- Order No. 635 / 2002 approving terms, modalities and periods of wood harvesting
- Order No. 71/1999 approving Regulations for producing and use of hammer marks.
- Order No. 225/1997 regarding shape, registration and use of hammer marks

Order No. 727 / 1991 – approving H&S regulations in forestry and game management.

Order No. 322 / 2000 and 647/2001– approving Procedures for harvesting, capturing and/or purchasing and marketing of wild plants and animals – internal market, export and import

- Order No. 499/521 / 2003 approving methodology for establishing and use of amelioration Fund for forest lands.
- Order No. 135/2005 approving Commission for endorsing phyto-sanitary products and methodology for issuing environmental permits
- Gov. Decision No. 1470/2004 approving National Strategy and National Plan for Wastes Management
- Gov. decision 2427/2004 regarding assessment and control of hazardous materials

Technical regulations, rules and norms in forestry:

- Technical regulations for compositions, schemes and forest regeneration technologies;
- Technical regulations for tending operations;
- Technical regulations for forest treatments (felling types);
- Technical regulations for assessing standing wood volumes;
- Technical regulations for forest management planning;
- Technical regulation for forest protection;
- Technical regulations for forest regeneration monitoring;
- Technical regulations for fire control;
- Regulation for enforcement of silvic regime at local and central level
- Regulation for forest protection against illegal activities

Relevant international agreements signed by Romania:

- Law No. 13/1993 –Bern Convention 1979
- Law No. 462/2001 - (include – Habitats and Birds Directives)
- Law No. 58/1994 - Convention on biologic diversity
- Law No. 187/1990 - Paris Convention
- Law No. 5/1991 - RAMSAR Convention
- Law No. 24/1994 - UN Frame Convention regarding climate changes
- Law No. 13/1998 - Bonn Convention
- Law No. 451/2002 - Landscape Convention (in Europe)
- Law No. 69/1994 – CITES
- Law No. 3/2001 - Kyoto protocol