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## DECLASSIFICATION

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Subject: Adoption of a Council Decision authorising the Commission to open negotiations for partnership agreements to implement the EU action plan for forest law enforcement, governance and trade (FLEGT)

## COMMON GUIDELINES

**Consultation deadline: 7 December 2005**

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Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

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**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 5th December 2005**

**15102/05**

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## **NOTE**

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Subject : Adoption of a Council Decision authorising the Commission to open negotiations for partnership agreements to implement the EU action plan for forest law enforcement, governance and trade (FLEGT)

## **COMMON GUIDELINES**

**Consultation deadline: 7 December 2005**

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Delegations will find attached the final version of the Decision for adoption by the Council together with the FLEGT Regulation (doc. 13660/05).

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ANNEX

## COUNCIL DECISION

### Authorising the Commission to open negotiations on FLEGT Partnership agreements

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

The Council authorises the Commission to open negotiations on behalf of the European Community with regard to matters within the Community's field of competence, FLEGT Partnership agreements.

The Commission shall conduct these negotiations on behalf of the European Community in consultation with the special committee appointed by the Council, in accordance with the negotiating directives set out below in annex.

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## I. SUBSTANCE

### 1. Context and Definitions

#### Purpose and scope of the agreements

- 1.1 FLEGT Partnership Agreements aim to contribute to timber-producing countries' commitments to promote sustainable forest management by supporting improved forest law enforcement and governance. This covers governance reforms and capacity building supported by actions aimed at developing multilateral co-operation and complementary demand side measures. These are designed to achieve the ultimate elimination of illegally produced timber from a partner country's international and domestic trade and includes the FLEGT licensing scheme for the trade between partner countries and the Community.
- 1.2 By entering into a Partnership Agreement, a state or a regional organisation consents to be legally bound to the obligations therein, including any obligations relating to the establishment and implementation of the FLEGT licensing scheme in accordance with the timing stipulated in the FLEGT Partnership Agreement.

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## Definitions of terms

1.3 The following definitions should apply to the FLEGT Partnership Agreements:

1. "Forest Law Enforcement, Governance and Trade licensing scheme" (hereinafter referred to as "FLEGT licensing scheme") means the issuing of licences for timber products for export to the Community from partner countries and its implementation in the Community, in particular in Community provisions on border controls;
2. "partner country" means any state or regional organisation that enters into a Partnership Agreement and, for the purpose of the Regulation, is listed in Annex I of Council Regulation (EC) No...../2005;
3. "Partnership Agreement" means an agreement between the Community and a partner country by which the Community and that partner country undertake to work together in support of the FLEGT Action Plan and to implement the FLEGT licensing scheme;
4. "regional organisation" means an organisation consisting of sovereign states that have transferred competence to that organisation, granting it the capacity to enter into a Partnership Agreement on their behalf, in respect of matters governed by the FLEGT licensing scheme;
5. "FLEGT licence" means a shipment based or market participant based document of a standard format which is to be forgery-resistant tamper proof and verifiable, and which refers to a shipment as being in compliance with the requirements of the FLEGT licensing scheme, duly issued and validated by

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a partner country's licensing authority. Systems for issuing, recording and communicating licences may be paper-based or based on electronic means, as appropriate;

6. "third-party monitoring" means a system through which an organisation that is independent of a partner country's government authorities and its forest and timber sector monitors and reports on the operation of the FLEGT licensing scheme;
7. "competent authority(ies)" means the authority(ies) designated by the Community Member States to verify FLEGT licenses;
8. "licensing authority(ies)" means the authority(ies) designated by a partner country to issue and validate FLEGT licences;
9. "timber products" means those products to which the FLEGT licensing scheme applies, and which when imported into the Community, cannot be qualified as "goods of a non-commercial nature" as defined in point 6 of Article 1 of Commission Regulation (EEC) 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code<sup>1</sup>.
10. "legally-produced timber" means timber products produced from domestic timber that was legally harvested or timber that was legally imported into a partner country in accordance with national laws determined by that partner country as set out in the Partnership Agreement;

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<sup>1</sup> OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 883/2005 (OJ L 148, 11.6.2005, p. 5)

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11. "export" means the physical leaving or taking out of timber products from any part of the geographical territory of a partner country to bring them into the Community;
12. "imports" means the release for free circulation of timber products within the meaning of Article 79 of Regulation (EEC) No. 2913/1992 of 12 October establishing the Community Customs Code<sup>1</sup>
13. "shipment" means a shipment of timber products;
14. "the Regulation" means Council Regulation (EC) No. /2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community;
15. "Joint Implementation Committee" means the committee consisting of representatives of a partner country, Member States and the Commission established to facilitate and monitor the implementation of a Partnership Agreement.
16. "Market participant" means an actor, private or public, involved in forestry, or transformation or trade of timber products.

## 2. Specific Matters To Be Addressed In Partnership Agreements

### Conditions in Partner Countries

- 2.1 Partnership Agreements should recognise that different conditions affect forest governance and law enforcement in partner countries. Understanding of these conditions needs to take account of current forest governance issues,

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<sup>1</sup> OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 648/2005 of the European Parliament and of the Council (OJ L 117,4.5.2005, p.13).

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minimizing impacts on poor people, forest laws and other forest-related legislation and corresponding sanctions, the nature of the timber trade, current public and private sector initiatives (including National Forest Programmes and environmental management systems) and capacity to implement Partnership Agreements.

## Social safeguards

- 2.2 Partnership Agreements should seek to minimize adverse impacts on local communities and poor people. They should do so by developing a thorough understanding of the livelihoods of affected indigenous and local communities, including those engaged in illegal logging; monitoring the impacts of Partnership Agreements and taking reasonable steps to mitigate adverse impacts.

## Stakeholder involvement

- 2.3 Partnership Agreements should provide for the parties to encourage regular consultations with stakeholders during development and implementation of Partnership Agreements.
- 2.4 Partnership Agreements should contain elements designed to involve the private sector in efforts to combat illegal logging.
- 2.5 The requirements imposed by Partnership Agreements should not be unduly burdensome for small-scale producers.

## Dialogue

- 2.6 Each Partnership Agreement should provide for dialogue to facilitate implementation and encourage reform. The objectives of the dialogue are to:



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- Ensure the Partnership Agreements encompass matters relating to good governance, and serve to initiate governance reform in the forest sector.
- Ensure smooth operation of the Partnership Agreement.
- Raise matters of concern arising in relation to the operation of the Partnership Agreement.
- Promote progress towards sustainable forest management.

2.7 To ensure regular and effective dialogue, each Partnership Agreement should provide for the establishment of a Joint Implementation Committee. This will monitor and supervise implementation of the Partnership Agreements and mediate and resolve any conflicts and disputes that arise.

2.8 Dialogue should also take place within agreed and existing frameworks, where such frameworks exist.

## Development assistance

2.9 Partnership Agreements should identify areas in which there is a need for technical and financial assistance in order to implement each Partnership Agreement. Partner countries should be encouraged to mainstream issues related to FLEGT in poverty reduction strategies. Assistance should be focused on promoting legality in the forest sector, as a step towards achieving SFM and in particular be directed towards:

- Promoting just and equitable solutions to the illegal logging problem that minimise adverse impacts on indigenous and local communities.
- Helping partner countries to build systems to verify timber has been harvested legally.
- Supporting partner countries to carry out legislative and regulatory reforms, including the environmental sector where needed.

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- Promoting transparency of information.
- Capacity building for partner country governments and civil society.
- Support for strengthening existing institutions and institution building where needed.
- Promoting policy reform.
- Facilitating the engagement of the forest industries sector in Partnership Agreements, including the informal sector.

The programming of this assistance to support Partnership Agreements should be subject to the normal procedures for programming Community and Member States' assistance.

## FLEGT Licensing Scheme

2.10 Partnership Agreements should provide for joint implementation of the FLEGT licensing scheme by the Community and partner countries.

2.11 Under the FLEGT licensing scheme, import into the Community of any shipment of timber products listed in paragraph 2.12 exported from a partner country will be prohibited unless the consignment of timber products is covered by a valid FLEGT licence issued by that partner country's licensing authority. The licensing scheme will aim not to impede legitimate trade.

## Products covered

2.12 The FLEGT licensing scheme should apply to the products covered in the Regulation.

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2.13 Each Partnership Agreement should provide for a mechanism to add to or amend the list of products covered, recognising that any changes will require changes to Annexes II or III of the Regulation. This should include the opportunity for partner countries, through the Joint Implementation Committee, to propose additional products that they would like to include in the FLEGT licensing scheme. These products could be included only for the partner country concerned and that partner country could subsequently suggest to the Joint Implementation Committee that these are removed. These products will need to be listed by their four or six-digit HS code.

## Definition of legally-produced timber

2.14 A Partnership Agreement should provide for defining legally-produced timber based on existing laws of the partner country which reflect the three pillars of sustainable forest management. The definition must be unambiguous, objectively verifiable and operationally workable, and as a minimum include those laws of the partner country that cover:

- Granting of legal rights to harvest the timber within legally gazetted boundaries.
- Compliance with legal requirements regarding forest management, including compliance with relevant environmental and labour legislation.
- Compliance with legal requirements concerning taxes, importation, royalties and fees directly related to timber harvesting and harvest rights.
- Respect for other parties' legal tenure or use rights to land and other resources that may be affected by timber harvest rights, where such other rights exist.
- Compliance with legal requirements for trade and Customs procedures

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## Licensing authorities, verification of legality and licensing

- 2.15 Partnership Agreements should provide for partner countries to prepare terms of reference for, and assign responsibility to licensing authorities which will verify that timber products have been legally produced, validate those findings and issue licenses. Each partner country should supply information to the Commission that identifies its licensing authority. This information should be published by the Commission in the Official Journal C series and posted on the Internet.
- 2.16 Partnership Agreements should provide for each partner country to establish a system for verifying compliance with the requirements of its definition of legally produced timber. This should include appropriate checks of forest operations and also at points along the production chain from harvesting to export, so as to provide assurance that timber products destined for export to the Community have been legally produced. Such a system may build on existing systems for assuring compliance, including those implemented by the private sector.
- 2.17 Partnership Agreements should provide for each partner country's licensing authorities to maintain and make publicly available clear procedures for issuing licences, including, where applicable, a schedule of fees. The licensing authorities should also maintain records of all licences it issues which it should make available for the purposes of third party monitoring and reporting while respecting the confidentiality of exporters' proprietary information. These records should include the quantities covered and, where possible, proportions of the quantities derived from timber imported into the partner country.
- 2.18 Partnership Agreements should describe the technical design of licenses, which should be common to all Partnership Agreements in accordance with the Regulation.

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- 2.19 As an alternative to the licensing of individual shipments, Partnership Agreements shall consider the licensing of market participants that maintain systems that guarantee the legality and the reliable tracking of timber products and that meet all the requirements of the licensing scheme
- 2.20 Market participants may apply to the licensing authorities for a FLEGT licence to accompany individual shipments of timber products to the Community. The licensing authorities should issue a licence, once satisfied that the timber products for which a licence has been applied have been legally produced.
- 2.21 Partnership Agreements should provide for appropriate checks by each partner country to ensure that each shipment of legally-produced timber products, to be exported to the Community is covered by a duly issued FLEGT licence. Partnership Agreements should also encourage partner countries to verify the legality of timber products exported to non-Community markets and also carry out checks to ensure the legality of timber sold on domestic markets.
- 2.22 Partnership Agreements should provide for partner countries to determine the need for and, where necessary, agree to amend or enact appropriate laws or regulations to implement and enforce the FLEGT licensing scheme, including proportionate penalties for transgressions of these laws.

### Transparency and independent monitoring

- 2.23 Each Partnership Agreement should provide for controls that assure sufficient transparency to discourage the use of discretionary and unaccountable executive powers over the issuance of FLEGT licences.
- 2.24 In order to ensure credibility each Partnership Agreement should provide for third party monitoring designed to fit the circumstances of individual partner countries.

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There should be a transparent process for appointing third party monitors. Their activities should also be transparent and guided by clear rules and procedures, including on release of information to the public.

## Community import regime

- 2.25 Partnership Agreements should include provisions pertaining to the border controls of the Community that specify that, upon arrival at the Community Customs point, the competent authority will confirm that each shipment of applicable timber products is covered by a valid FLEGT licence and deny entry for free circulation to shipments not covered by valid licences.
- 2.26 Partnership Agreements should provide for competent authorities to seek further information from a partner country's licensing authorities if doubt arises as to the validity of any licence.

## 3. **Administrative Matters**

### Joint Implementation Committee

- 3.1 A Joint Implementation Committee should be established for each Partnership Agreement to act as a formal body for regular and effective communication. Representation should be balanced between the partner country and the Community/Member States and any changes to its composition should be agreed by consensus among its members.
- 3.2 Each Joint Implementation Committee should be responsible for the following issues:
- deciding on the timing of the effectiveness of the licensing scheme;
  - monitoring the overall progress of implementation of the Partnership Agreement and approving the annual report;

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- ensuring that the dialogue is been conducted regularly and in an effective manner;
- reviewing all reports from the Independent Monitor and all complaints about the operation of the licensing scheme and taking action where appropriate;
- mediating and working to resolve any conflicts and disputes and agreeing on further actions; and,
- taking responsibility for the regular and exceptional reviews of the Partnership Agreement.

## Reviews

3.3 Each Partnership Agreement should provide for the yearly publication of a report to facilitate implementation and monitoring of the Partnership Agreement, including the setting up of the FLEGT licensing scheme. The report should include, *inter alia*, the following details:

- Quantities of timber products exported to the Community under the FLEGT licensing scheme, according to the relevant HS Headings.
- The number of FLEGT licences issued by the partner country or region.
- A progress report on achievement of the objectives and time bound actions in the Partnership Agreement and matters relating to the implementation of the Partnership Agreement.
- Action to eliminate illegal timber exported to non-Community markets and the domestic market.

3.4 Partnership Agreements should include provisions for regular joint reviews of their effectiveness and impact. The first such review should take place no later than two years after the entry into force of a Partnership Agreement.

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- 3.5 A Partnership Agreement should provide for exceptional reviews where there are credible indications of significant non-compliance with its terms. Such reviews should be carried out with the consent of the partner country and in an analytical, expert and impartial manner.
- 3.6 Where any review identifies serious failures, and these have not been rectified after due consultation between the parties and within a mutually agreed period, there should be a provision for suspending a Partnership Agreement until those failures have been rectified. Suspension of the Partnership Agreement would result in that partner country being removed from Annex I of the FLEGT Regulation and the country would revert to non-partner country status with immediate effect.

### Timing

- 3.7 A Partnership Agreement shall enter into force the first day of the month following the date on which the parties have notified each other of the completion of the formalities necessary to this effect and shall remain in force until either party informs the other of their intention to withdraw, through formal diplomatic channels, and with advance notice of one year. In the case of suspension, this timeframe should not apply.
- 3.8 Each Partnership Agreement should specify a period during which the FLEGT licensing scheme will be developed and a date at which the scheme will become fully operational.
- 3.9 A key component of each Partnership Agreement should be a detailed plan that sets out clearly defined time-bound actions for improving forest sector governance and implementing the licensing scheme, and describes mechanisms to evaluate the plan's progress.



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3.10 The FLEGT licensing scheme for a partner country should become operational when the partner country has notified the Community and the Community has confirmed that all mechanisms needed for the scheme's efficient operation have been established.

### Amendments

3.11 Each Partnership Agreement should include provisions for amendments.

## II. THE WORKING METHOD

- 1.1 The Commission shall negotiate on behalf of the European Community. The Commission shall conduct the negotiations in close consultation with the special committee designated by the Council.
- 1.2 The Commission and the Member States should cooperate closely during the negotiation process, in view of the need to aim for unity in the international representation of the European Community and taking into account that the Member States will be represented by the Presidency, as appropriate, in the negotiations.
- 1.3 The Commission and the Presidency shall keep the Council regularly informed of progress in the negotiations. They shall report to the Council on the outcome of the negotiations and, where appropriate, on any problem that may arise during the negotiations.
- 1.4 Should a serious difficulty arise, owing to a disagreement between the Community and its Member States on the one hand, and potential partner countries on the other hand, or to the need to take a new approach which departs from the negotiating directives, the matter shall be referred to the Council.
- 1.5 These Negotiating Directives are without prejudice to the question of the respective powers of the Community and the Member States for the eventual signature and conclusion of the FLEGT Partnership Agreements.