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FORETS 17
DEVGEN 123
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RELEX 326
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Subject: Negotiating Directives for FLEGT Partnership Agreements

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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REV 1**

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NOTE

from : Council Secretariat

to : Delegations

Subject : Negotiating Directives for FLEGT Partnership Agreements

Delegations will find attached a revised version of the FLEGT Negotiating Directives drawn up by the Presidency to be discussed in the Working Party on Forestry on 18-19 July 2005.

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C. ANNEX 1: NEGOTIATING DIRECTIVES FOR FLEGT PARTNERSHIP AGREEMENTS

The Council of the European Union,

Having regard to the proposal from the Commission,

Whereas:

1. The Council and Parliament welcomes the Communication on an EU Action Plan on the Forest Law Enforcement, Governance and Trade (FLEGT) to tackle the urgent issue of illegal logging and associated trade both in its own right and as a contribution to sustainable forest management.
2. The Communication on an EU Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT) states the need for partnership agreements with countries or regional organisations incorporating a licensing scheme as a measure to ensure that only legal timber from those countries enters the EU.
3. Partnership agreements aim to reinforce the capacity of timber-producing countries to prevent the shared problem of illegal logging and trade with the EU in illegally-logged timber products, [whilst taking measures to mitigate such trade to third countries].
4. Under Partnership Agreements, all exports of specified timber products from partner countries and regional organisations to the EU will be accompanied by a unique export licence, which will be granted only if the timber used in those products has been harvested in conformity with relevant national legislation.
5. In preparing for these negotiations, the Commission and Member States recognise that there are different conditions that affect forest governance and law enforcement in partner countries and that partner countries may have different motivations for entering a Partnership Agreements.
6. To better understand these conditions, analysis will be conducted to look at *inter alia*, current forest governance issues, minimizing impacts on poor people, forestry 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 capacity to implement the Partnership Agreements.

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The Council authorises the Commission to open negotiations on FLEGT Partnership Agreements.

I. SUBSTANCE

Purpose and scope of the agreements

1.3 FLEGT Partnership Agreements aim to contribute to timber-producing countries' commitments to promote sustainable forest management by supporting improved forest law enforcement and governance.

1.4 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.

Definitions of terms

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

- a) 'Forest Law Enforcement, Governance and Trade licensing scheme' (hereinafter 'FLEGT licensing scheme') means the issuing of licenses for timber products for export from partner countries or regional organisations and its implementation in the EC, in particular its provisions on border controls;
- b) 'partner country' means any state or regional organisation that signs a FLEGT Partnership Agreement;
- c) 'Partnership Agreement' means the agreement between the EU and a partner country or regional organisation through which the EU and a partner country commit themselves to work together in support of the FLEGT Action Plan and to implement the FLEGT licensing scheme;
- d) 'regional organisation' means an organisation comprised of sovereign states that have transferred competence to that organisation, granting it the capacity to sign an agreement on their behalf, in respect of matters governed by the FLEGT licensing scheme;
- e) 'FLEGT licence' means a document of a standard format which is to be forgery-resistant and tamper proof, verifiable, and which refers to a shipment of timber products as being in compliance with the requirements of the FLEGT licensing scheme, duly issued and validated by a partner country's licensing authority. Systems for issuing, recording and communicating licences may be paper-based or based on electronic means, as appropriate;

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- f) 'third-party monitoring' means a system of monitoring by an organisation that is independent of a partner country's government authorities and its timber industry, which provides assurance that FLEGT licences are issued only for legally-produced timber products;
- g) 'competent authority(ies)' means the authority(ies) designated by the EU Member States to verify FLEGT licenses;
- h) 'licensing authority(ies)' means the authority(ies) designated by a partner country or regional organisation to issue and validate licences;
- i) 'timber products' means those products to which the FLEGT licensing scheme applies, and which are imported to the EU [for commercial purposes]¹;
- j) 'legally-produced timber' means timber products produced in accordance with those national laws determined by a partner country and laid down in the partnership agreement;
- k) 'export' means the physical leaving or taking out of any part of the geographical territory of a partner country or region;
- l) 'imports' means the release for free circulation of products within the meaning of [Article 79 of Council Regulation (EEC) No. 2913/1992]²;
- m) 'shipment' means a consignment of timber products;
- n) 'the Regulation' means the [Proposal for a] Council Regulation concerning the establishment of a FLEGT licensing scheme for imports of timber into the European Community³;
- o) 'Joint Committee' means the committee comprising representatives of a partner country, Member States and the Commission established to facilitate and monitor the implementation of a Partnership Agreement.
- p) ['Market participants' means an actor, private or public, involved in forestry and/or trade of forest products.]⁴
- q) ['Country of origin' means the country where trees, from which timber products derive, have been logged.]⁵

¹ SCRUTINY RESERVE - GERMANY

² SCRUTINY RESERVE - GERMANY

³ [Regulation reference]

⁴ SCRUTINY RESERVATION - FRANCE

⁵ SCRUTINY RESERVE – BELGIUM, DENMARK

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2. Specific Matters To Be Addressed In Partnership Agreements

Social safeguards

[2.1]¹ Partnership Agreements should seek to minimize adverse impacts on poor people. They would do so by developing a better understanding of the livelihoods of affected communities, including those engaged in illegal logging, monitoring the impacts of Partnership Agreements and taking reasonable steps to mitigate adverse impacts.

Stakeholder involvement

2.2 Partnership Agreements should provide for the parties to encourage regular consultations with stakeholders during development and implementation of Partnership Agreements.

2.3 Partnership Agreements should contain elements designed to involve the private sector in efforts to combat illegal logging.

2.4 The requirements imposed by Partnership Agreements should not be unduly burdensome for small-scale producers.

Dialogue

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

- 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.

¹ SCRUTINY RESERVE – BELGIUM

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2.6 To ensure regular and effective dialogue, each Partnership Agreement should provide for the establishment of a joint committee. These would monitor and supervise implementation of the Partnership Agreements and mediate and resolve any conflicts and disputes that arise.

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

Development assistance

[2.8]¹ Partnership Agreements should ensure that, where needed, partner countries are provided with the technical and financial assistance required 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:

- Minimising adverse impacts on poor people, by developing a better understanding of the livelihoods of those engaged in illegal logging, monitoring the impacts of Partnership Agreements and taking reasonable steps to mitigate adverse impacts.
- Helping partner countries to build systems to verify timber has been harvested legally.
- Support partner countries to carry out legislative and regulatory reforms.
- 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.
- Facilitate the engagement of the informal forest industries sector in Partnership Agreements.

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

FLEGT Licensing Scheme

2.9 Partnership Agreements will provide for joint implementation of the FLEGT licensing scheme by the EU and partner countries [as provided for in the Regulation].

¹ SCRUTINY RESERVATION - PORTUGAL

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2.10 Under the FLEGT licensing scheme, import into the EU of any shipment of timber products listed in [paragraph 2.9] [exported from *or* [originating in]¹]² a partner country will be prohibited unless the consignment of timber products is accompanied by a valid FLEGT licence issued by that partner country's licensing authority.

Products covered

[2.11]³ The FLEGT licensing scheme should apply to the products covered in the draft Regulation.

[2.12]⁴ Each Partnership Agreement should provide for a mechanism to change the list of products covered, recognising that any changes will require changes to the Regulation.

Definition of legally-produced timber

2.13 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, 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.

¹ SCRUTINY RESERVATION – SWEDEN

² SCRUTINY RESERVATION – DENMARK

³ SCRUTINY RESERVATION - BELGIUM

⁴ SCRUTINY RESERVATION - BELGIUM

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Licensing authority, verification of legality and licensing

2.14 Partnership Agreements should provide for partner countries to prepare terms of reference for, and assign responsibility to a licensing authority that 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 will be published by the Commission in the Official Journal C series and posted on the Internet.

2.15 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 EU have been legally produced. Such a system may build on existing systems for assuring compliance, including those implemented by the private sector.

2.16 Partnership Agreements should provide for each partner country's licensing authority to maintain and make publicly available clear procedures for issuing licences, including, where applicable, a schedule of fees. The licensing authority should also maintain records of all licences it issues which it will make available for the purposes of third party monitoring and reporting while respecting the confidentiality of exporters' proprietary information.

2.17 Partnership Agreements should describe the technical design of licenses, which should be common to all Partnership Agreements in accordance with the Regulation.

2.18 Exporters [Operators] may apply to the licensing authority for a FLEGT licence to accompany shipments of timber products to the EU. The licensing authority will issue a licence, once satisfied that the timber products for which a licence has been applied have been legally produced.

[2.19]¹ Partnership Agreements could consider the licensing of market participants as an alternative to licensing of individual shipments in the case of companies maintaining chain of custody certification that meets the licensing scheme requirements for reliable verification, especially in the case of companies that export large volumes of timber products to the EU.

[2.20]² 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 EU is accompanied by a duly issued FLEGT licence.

2.21 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 [and to maintain dissuasive and proportional penalties for transgressions of these laws].

¹ SCRUTINY RESERVATION – DENMARK, SPAIN, UK

² SCRUTINY RESERVATION - FINLAND

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Transparency and independent monitoring

2.22 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.

[2.23]¹ In order to ensure credibility each Partnership Agreement should provide for third party monitoring designed to fit the circumstances of individual partner countries. 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.

EU import regime

[2.24]² Partnership Agreements should include provisions pertaining to the Customs controls of the Community that specify that, upon arrival at the point of entry to the EU, the competent authority will confirm that each shipment of applicable timber products is accompanied by a valid FLEGT licence and deny entry to shipments without valid licences.

2.25 Partnership Agreements should provide for EU 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**

Reviews

3.1 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:

- Volumes 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.

[3.2]³ Partnership Agreements should include provisions for regular joint reviews of their effectiveness and impact. The first such review should take place no later than three years after the effective starting date of a Partnership Agreement.

¹ SCRUTINY RESERVATION – FRANCE

² SCRUTINY RESERVATION – DENMARK, FINLAND

³ SCRUTINY RESERVATION - GERMANY

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[3.3]¹ 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.

[3.4]² Regular and exceptional reviews of Partnership Agreements should fall under the responsibility of respective joint committees.

3.5 Where any review identifies serious failures and these have not been rectified 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 affect.

Timing

3.6 [A Partnership Agreement shall enter into force the first day of the month following the date on which the parties have notified each other the completion of the formalities necessary to this effect]³ 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 will not apply.

3.7 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.

3.8 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.

3.9 A FLEGT licensing scheme for a partner country will become operational when the partner country has notified the EC and the EC has confirmed that all mechanisms needed for the scheme's efficient operation have been established.

¹ SCRUTINY RESERVATION - GERMANY

² SCRUTINY RESERVATION - GERMANY

³ SCRUTINY RESERVATION - FRANCE

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Amendments

3.10 Each Partnership Agreement should include provisions for amendments.

[II. THE WORKING METHOD]¹

1.1 The Commission shall negotiate on behalf of the European Community. The Commission shall conduct the negotiations in close consultation with [committees(s) or working party (*to be defined*)].

1.2 To the extent that negotiations cover matters also within the competence of the Member States, the Presidency shall conduct the negotiations on behalf of the Member States on the basis of a negotiating position agreed between the Member States acting within [committees(s) or working party (*to be defined*)] or sur place during the negotiations. Member States shall have the right to attend the negotiating sessions on the matters falling within their competence.

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 EU and potential Partner Countries, 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 This mandate is 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.

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¹ SCRUTINY RESERVATION - GERMANY