



Council of the
European Union

077730/EU XXV. GP
Eingelangt am 25/09/15

Brussels, 25 September 2015
(OR. en)

10229/2/05
REV 2 DCL 1

AGRI 166
FORETS 17
DEVGEN 123
ENV 300
RELEX 326
JUR 267
UD 77

DECLASSIFICATION

of document:	10229/2/05 REV 2 RESTREINT UE
dated:	13 September 2005
new status:	Public

Subject:	Negotiating Directives for FLEGT Partnership Agreements
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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.

RESTREINT UE



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NOTE

from : Council Secretariat

to : Delegations

Subject : Negotiating Directives for FLEGT Partnership Agreements

Delegations will find attached a revised text of the FLEGT Negotiating Directives drawn up by the Presidency for the Working Party on Forestry on 16 September 2005.

C. ANNEX 1: NEGOTIATING DIRECTIVES FOR FLEGT PARTNERSHIP AGREEMENTS

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. This covers assurance of legality to achieve the ultimate elimination of illegally logged timber from a partner country's international and domestic trade and includes the FLEGT licensing scheme for the trade between partner countries and the EU.

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 EU, in particular its provisions on border controls;

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- b) 'partner country' means any state or regional organisation that signs a FLEGT Partnership Agreement [and, for the purpose of the Regulation, is listed in Annex 1 of EC Regulation [DOC NUMBER];
- 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;
- f) 'third-party monitoring' means a system through which an organisation independent of a partner country government authorities and its forest and timber sector monitors and reports on the operation of the FLEGT licensing system.;
- g) 'competent authority(ies)' means the authority(ies) designated by the EU Member States to verify FLEGT licences;
- h) 'licensing authority(ies)' means the authority(ies) designated by a partner country or regional organisation to issue and validate FLEGT licences;
- i) 'timber products' means those products to which the FLEGT licensing scheme applies, and which are imported to the EU for commercial purposes; as set out in Customs Code Implementing Regulation (2454/93).
- 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;

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- l) 'imports' means the release for free circulation of products within the meaning of Article 79 of Council Regulation (EEC) No. 2913/1992;
- 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 Community;
- o) 'Joint Implementation 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, or transformation or trade of forest products.
- q) ¹

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, 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 the Partnership Agreements.

¹ RESERVE – BELGIUM, DENMARK, COMMISSION, AUSTRIA – dependant on outcome of Regulation Article 3A discussion

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Social safeguards

[2.2]¹ 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:

- 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 – on definition of social safeguards

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2.7 To ensure regular and effective dialogue, each Partnership Agreement should provide for the establishment of a Joint Implementation Committee. These would 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.
- 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 will be subject to the normal procedures for programming EC and Member States' assistance.

FLEGT Licensing Scheme

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

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2.11 Under the FLEGT licensing scheme, import into the EU of any shipment of timber products listed in paragraph 2.12 exported from¹ 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

Products covered

[2.12]² The FLEGT licensing scheme should apply to the products covered in the Regulation.

[2.13]³ 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 the Annex to the Regulation. This will 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 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.

¹ RESERVATION – SWEDEN, DENMARK, AUSTRIA, FINLAND, BELGIUM, GERMANY, SPAIN, GREECE, PORTUGAL, CYPRUS – exporting from/originating in. Links to Article 3A of the Regulation.

² RESERVATION – BELGIUM – product list

³ SCRUTINY RESERVATION – BELGIUM, PORTUGAL, SWEDEN, DENMARK, FINLAND, GREECE

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- 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.

Licensing authority, verification of legality and licensing

2.15 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.

2.16 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 EU 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 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.

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

2.19 Market Participants may apply to the licensing authority for a FLEGT licence to accompany individual 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.

[2.20]¹¹ As an alternative to the licensing of individual shipments, Partnership Agreements could

¹ SCRUTINY RESERVATION – DENMARK, SPAIN, – variation of chain of custody

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consider the licensing of market participants that maintain chain of custody certification or operate verification systems that meet all the requirements of the licensing scheme.

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 EU is covered by a duly issued FLEGT licence. Partnership Agreements should also encourage partner countries to verify the legality of and issue FLEGT licenses for timber products exported to non-EU 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 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. 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.

¹ SCRUTINY RESERVATION – FRANCE – definition of verification

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EU import regime

[2.25]¹ Partnership Agreements should include provisions pertaining to the border 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 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 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**

Joint Implementation Committee

3.1 A Joint Implementation Committee will be established for each Partnership Agreement to act as a formal body for regular and effective communication. Representation will be balanced between the Partner Country and the EC/Member States and any changes to its composition will be agreed by consensus among its members.

3.2 Each Joint Implementation Committee will 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;
- ensuring that the dialogue is been conducted regularly and in an effective manner;
- receiving 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.

¹ SCRUTINY RESERVATION – DENMARK – accompanied/covered

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.
- Progress in eliminating illegal timber exported to non-EU markets and the domestic market.

[3.2]¹ 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.

3.3 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.

3.5 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.

¹ SCRUTINY RESERVATION – GERMANY – on paras 3.2, 3.3 and 3.4

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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]¹ 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.²

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 The 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.

Amendments

3.10 Each Partnership Agreement should include provisions for amendments.

¹ RESERVATION – FRANCE, PORTUGAL, DENMARK – need legal clarity on timing,

² RESERVATION – PORTUGAL, DENMARK

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THIS IS STILL BEING DISCUSSED BY THE LEGAL SERVICES, SO REMAINS IN SQUARE BRACKETS.

[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.

¹ RESERVATION – GERMANY, COMMISSION – new proposal on working methods