



EC Forest Platform briefing

Illegal logging: what's in the European Commission's FLEGT Action Plan

Introduction

As a result of the growing international concern about illegal logging, the European Commission has developed an Action Plan on Forest Law Enforcement and Trade (FLEGT)¹. The Action Plan was sent to the Council² and the European Parliament in May 2003 and the Council adopted its Conclusions³ on 13 October 2003.

The aim of the action plan is to ensure legality in the forest sector. However, the Commission does note that its wider objective is sustainable forest management. The Action Plan recognizes the seriousness and complexity of the issue and that the EU as a major consumer of timber products should direct demand towards only legally harvested timber. Last but not least, the Commission recognizes that law enforcement – without changing unjust laws – can make the situation worse for poor people.

What does the Action Plan say?

1. Support to timber-producing countries: section 4.1

The challenge is to ensure that actions to address illegal logging, particularly enhanced law enforcement, do not target weak groups, such as the rural poor, while leaving powerful actors untouched. Existing legislation often promotes large-scale forest operations and may exclude local people from access to forest resources. This inequity breeds resentment and conflict. This can force forest people to operate illegally but given the correct incentives, forest-dependent communities can become key allies.

The Commission suggests that donors, including the EC and Member States, can give greater weight to initiatives that provide support to community-based forest management. If the lessons from these schemes can be translated into national laws and policies then work with partner governments can ensure that underlying causes of illegal logging such as land tenure and access to forest resources, encourage local participation in the fight against illegal logging.

In countries where forest law enforcement is weak, reliable systems, which distinguish legal from illegal production, will be essential to provide credible guarantees to the

¹ http://europa.eu.int/comm/development/body/theme/FLEGT_en.pdf#zoom=100

² The Council is the main legislative and decision-making institution in the European Union. The Council represents the national governments of the Member States.

³ http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/c_268/c_26820031107en00010002.pdf

market that timber has been legally harvested. A range of technologies can help monitor harvesting operations and track timber from point of harvest, through processing mills, ports and final markets. Development of these systems will be supported by EC forest development cooperation.

The Commission believes that donors can also encourage greater transparency of information within the forest sector. Transparency includes accurate information on concession location and ownership, forest condition, information on laws and regulations translated into languages accessible to the general public. Forest laws may be outdated, top-down and so complex that complying with them becomes a burden and therefore encourages illegal logging.

Partner governments need donor support to implement governance reforms, for example in judiciary, the police and the military. In many countries corruption and lack of accountability in these institutions encourage illegal exploitation of natural resources.

To respond to the issues outlined above the Commission will integrate support into the EC's Country and Regional development co-operation in countries where forests are a national priority. In this framework, combating illegal logging is also a priority for the 2002/2003 programming of the Tropical Forest Budget Line⁴.

2. Trade in timber: section 4.2

The EU in addition to pursuing multilateral co-operation, aims to immediately conclude bilateral or regional **FLEGT partnership agreements**. The aim is to create a caucus of the main wood-producing and importing countries.

The FLEGT partnership agreements would initially cover a limited range of solid products and eventually be extended to other categories. The partnerships would be based on a means of verifying that timber imports from third countries, were harvested in conformity with national legislation in the country where the wood was logged. The Commission will draft a Regulation⁵ to implement the scheme. The Regulation will define the products covered; describe the license required to verify legality; specify the mandate of supervisory bodies and indicate which countries are covered. Participating countries will nominate their competent authorities.

The licensing system must be effective, reliable, and publicly verifiable and must not penalize legitimate business. Some elements will be common to each agreement:

- A commitment to ensure that laws are consistent, enforceable and supportive of sustainable forest management;
- The development of technical and administrative systems to monitor logging operations and track timber from the point of harvest to the market;
- The set-up of checks and balances into the tracking and licensing system, including appointment of independent monitor.

⁴ See at <http://www.europa.eu.int/comm/europeaid/cgi/frame12.pl>

⁵ There are two types of EU Law: a Regulation and a Directive. The difference between the two is that a regulation is directly implemented by all Member States, while a directive has first to be transposed into national law.

The EU will seek to develop regional FLEGT partnerships in order to implement coherent and efficient trade measures within interregional frameworks.

In order to implement the above, the Commission will enter into a first phase of discussion with interested countries. This will include broad stakeholder participation. In parallel, the Commission will seek a mandate from the Council to negotiate partnerships.

In addition to the partnership agreements the Commission also proposes to review the options for further legislation to control imports of illegally harvested timber into the EU. It will report back on the feasibility of such legislation to the Council (Member States) during 2004. An impact study will be carried out on the effects of such legislation. The Commission also proposes to conduct consultation with forest sector stakeholders on the options for and the impact of further legislation.

3. Public Procurement: Section 4.3

The EU Directives (legislation) on public procurement is being reviewed and amended. The Commission will draft a handbook on Green Procurement to show how it is possible to take legally harvest timber and its products into account under the directives; The Commission will also raise awareness in member states on how they can address illegal logging under public procurement.

4. Private Sector Initiatives: Section 4.4

The Commission intends to draw the lessons from corporate social responsibility. It will also promote the adoption of good codes of conduct. The Commission will support the development of forest monitoring by the private sector in developing countries and encourage active private sector participation, including technical and financial assistance to ensure legality throughout the supply chain.

5. Financing and Investment: Section 4.5

Large-scale capital investments in the forest sector, such as pulp and paper mills, can have a high risk attached to them if they have not ensured legal and sustainable supplies of timber over the long-term. Banks and financial institutions should assess the risks attached to the social and environmental factors, which could have an impact on the viability of their investments.

The Commission will encourage that social and environmental aspects are taken into account when banks and financial institutions adopt good and effective procedures to be carried out from project conception throughout the project's life cycle. The Commission will also foster the development of specific procedures for environmental and social due diligence for Export Credit Agencies, the European Investment Bank and the Cotonou Investment Facility.

6. Existing Legislative Instruments

The EU money laundering legislation criminalizes the laundering of proceeds of serious offences (sentence of one year imprisonment or more). The Commission will establish to what extent the existing legislation applies to forest sector crimes and will encourage member states to designate illegal logging as a crime for the purpose of money laundering. When appropriate development cooperation assistance will be provided to strengthen developing countries capacity? to deal with forest related money laundering.

The 1973 Convention on Trade in Endangered Species (CITES) has an important role to play in controlling the trade of endangered tree species. The Commission will work to address the weaknesses in the permit system, which regulates trade in species listed in the appendixes of the Convention.

Stolen goods legislation may also be applicable in some cases and could allow member states to deal with illegal harvest. As bribery and corruption are virtually synonymous with illegally logging, the OECD Convention on Bribery and Corruption is also relevant.

7. Coordination and Programming: section 5

A coordinated mechanism will be established within the European Commission to:

- Implement the FLEGT Action Plan;
- Provide technical inputs for the partnership agreements;
- Develop a detailed and co-ordinated work plan for the FLEGT Action Plan with EU member states;
- Support a process of consultation with the major forest sector stakeholders and other relevant parties on FLEGT.

Conclusion

This EU action plan is a big way forward for the European Commission and a positive step towards tackling the problem of illegal logging. However, the Action Plan fails to fully acknowledge the global nature of illegal logging, occurring in accession countries (an estimated 50% in Estonia) and Canada, as much as in Russia and not only in tropical countries. While the Commission lists a number of different action points, none is sufficiently concrete to give clear guidance to the EU member states. Furthermore, by listing 'options' alone, the Commission presents no clear strategy, which one would expect in an Action Plan. The Commission fails to ensure that these initiatives will adequately address forest crimes.

More on NGOs view at www.fern.org under trade section.

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