



**GREENPEACE**



## **PRINCIPLES FOR FLEGT PARTNERSHIP AGREEMENTS**

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### **Introduction**

In May 2003 the European Commission presented an EU Action Plan on Forest Law Enforcement, Governance and Trade<sup>1</sup> which included a proposal for a licensing scheme aimed at preventing the import into the EU of illegally logged timber. In July 2004, the Commission presented a draft regulation<sup>2</sup> that establishes the import regime and provides for partnership agreements with exporting countries within which national licensing systems will be developed and implemented. Partnership agreements will be negotiated by the Commission on the basis of a mandate given to it by the Council.

Partnership agreements and licensing systems need to be based on common principles in order to ensure credibility and a level playing field for partner countries. However, the draft regulation does not provide any detail with regard to: the laws that will come within the scope of the definition of legality; the procedures for verifying that timber has been produced in compliance with those laws; for monitoring of the partnership agreements and the licensing scheme; the process of negotiating partnership agreements; or the process of developing licensing systems and the verification procedures that will underpin them. Instead, the approach that is being taken by the EU is to establish a general framework by means of the Regulation whereas most of the detail that will determine the effectiveness of partnership agreements and of the licensing system in particular will be developed on the basis of the Commission's negotiating mandate.

Thus, most of the detail that will determine the effectiveness of partnership agreements and of the licensing system in particular will be developed on the basis of the Commission's negotiating mandate. It is essential, therefore, that the mandate establishes the basic principles that should be included in all partnership agreements, as well as in the Regulation.

This paper sets out the principles that FERN, Greenpeace and WWF consider to be essential.

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<sup>1</sup> Communication from the Commission to the Council and the European Parliament. Forest Law Enforcement, Governance and Trade (FLEGT). Proposal for an EU Action Plan. 21.5.2003 COM (2003) 251 Final.

<sup>2</sup> Draft Council Regulation concerning the establishment of a voluntary FLEGT licensing scheme for imports of timber into the European Community; 20.7.2004; Com(2004)515 final

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## 1. The Main Principles

- **Partnership agreements must commit producer countries to a time-bound action programme** that will tackle the weaknesses in forest sector governance and that will lead ultimately to Sustainable Forest Management (SFM). The EU's continued acceptance of FLEGT licences must be tied to satisfactory progress by partner countries towards implementing the action programme.
- Weaknesses and injustices in a partner country's laws must be identified and proposals for change developed in a process that involves all stakeholders. Transparency and participation in legislative reform are conditions for good governance. **The Commission's negotiating mandate must specify that the programme of activities set out in a partnership agreement will include as the first step a participatory review of all the partner country's forest related laws (including human rights law, customary law etc) to identify weaknesses and injustices.** The review should conclude with proposals for changes to address identified weaknesses and injustices.
- Independent verification of legality prior to the issuing of a licence and independent monitoring of the licensing system are fundamental to the success of the scheme. **The Commission must ensure that both the verification and the monitoring procedures adopted by all partner countries are effective and transparent.** Criteria for effective verification and monitoring must therefore be written into the Commission's negotiating mandate. Independent spot checks by civil society groups should be part of the process.
- Partnership agreements must be developed through a full stakeholder process. Therefore it is essential that partnership agreements are developed through a process of broad engagement with non-state actors and favourable towards community forestry and are aimed at creating public accountability and transparency in forest management. **The negotiating mandate should lay out clear conditions for the process of developing partnership agreements and should make adoption of partnership agreements conditional on the support of a representative range of non-state actors.**
- Licensing only of products destined for the EU increases the likelihood of resuming exports of illegal forest products to the EU, in particular by laundering through third countries. This will limit the impact and legitimacy of the scheme. **Mandatory licensing of all exports to all destinations should be a pre-condition of a partnership agreement.**

**The main principles are further elaborated in the following three sections:**

1. principles governing the content of partnership agreements in relation to forest management;
2. principles governing the design and implementation of licensing;
3. principles governing the process of developing and implementing partnership agreements.

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## **2. Principles for the content of partnership agreements in relation to forest management**

### **A partnership agreement is a component of a national forestry programme**

Partnership agreements should place action against illegal logging in the context of a partner country's broader programme for achieving sustainable forest management. Actions set out in the partnership agreement should be complementary to other actions being taken by the partner country and the connections to other actions should be clearly set out.

### **A partnership agreement must include a time-bound programme of activities and milestones**

Partnership agreements should commit the producer country to a programme of activities and milestones aimed at achieving improvements in forest sector governance that will lead ultimately to sustainable forest management. As specified by the Council in its Conclusions on the FLEGT Action Plan these improvements should include: strengthening land tenure and access rights especially for marginalized, rural communities and indigenous peoples; strengthening effective participation of all stakeholders - notably of non-state actors and indigenous peoples - in policy-making and implementation; increasing transparency in association with forest exploitation operations; and reducing corruption in association with the award of forest concessions and the harvesting and trade of timber.

### **Existing laws to be reviewed in a transparent, participatory process**

Existing laws of partner countries may be unfair, their coverage may be inadequate when compared to even basic principles of responsible forest management and they may be ambiguous or may conflict with one another, making enforcement and verification of compliance difficult and in some cases impossible. Licensing should not begin until existing laws have been reviewed in a transparent process open to all stakeholders, gaps identified, ambiguity and verifiability noted. Thus, review of legislation followed by proposals for reform and enactment of amendments should be the first step in the programme specified in a partnership agreement.

### **The development of a legality definition or basic principles of responsible forest management**

Laws in partner countries may provide incomplete coverage, may be unjust, or may be ambiguous. Without a clear description of legality the door will be open to different sets of laws being used as the basis for licensing in different countries, or to licensing being based on unjust laws such as the death penalty proposed for illegal loggers by the Indonesian government. A lack of a clear description would also lead to the creation of an uneven playing field on which partner countries that base licensing on a narrow set of laws will have an unfair advantage over those that apply a wider set.

The Commission's negotiating mandate must therefore establish baseline criteria that will be used to assess whether timber has been produced legally. The criteria should express basic principles of responsible forest management that must be provided for in a partner country's laws and supported by effective enforcement mechanisms. In this way the EU will fulfill its responsibilities to its citizens for ensuring that their consumption of forest products does not cause environmental or social harm and the producer country will fulfill its responsibility for protecting the rights and values of its citizens against potentially negative impacts of EU rules.

The criteria should be informed by the requirements of schemes with a similar focus - for example, the SGS Verification of Legal Timber scheme -, and the principles developed by an Indonesian multi-

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stakeholder group<sup>3</sup> in a project run jointly by the Indonesian and UK governments – and should be developed in a transparent process open to all stakeholders.

**Suggestion for what constitutes a basic level of responsible forest management.**

A partner country's laws should provide for the following:

- Allocation of forest to timber production.** A transparent process for allocating forest to production that includes a strategic social and environmental assessment and the prior informed consent of forest dependent communities.
- Land Tenure and Use Rights.** Clear definition of the legal status of, and tenure rights to the territories in which harvesting takes place. A fair and transparent process for awarding user rights that includes safeguards for protecting customary rights.
- Forest management plan.** A requirement for a forest management plan to be prepared in a prescribed manner, to be subject to an environmental and social assessment, and to approval by a government body before forest operations begin.
- Compliance with the forest management plan.** Monitoring of forestry operations by a government body and suspension of rights in the event of deviation from the forest management plan.
- Community Relations.** A requirement for forest management enterprises to have procedures for consulting with local communities during the preparation of the forest management plan and before starting operations likely to have a significant impact, and for resolving disagreements.
- Workers Rights.** A requirement for forest management enterprises to have safeguards in place that protect the health and well-being of its workforce including contractors and for the implementation of safeguards to be monitored by a government body.

### 3. Principles for the content of partnership agreements in relation to licensing scheme

#### Licensing to apply to all exports

Licensing only of products destined for the EU increases the likelihood of resuming exports of illegal forest products to the EU, in particular by laundering through third countries. This will limit the impact and legitimacy of the scheme. Mandatory licensing of all exports should be a pre-condition of a partnership agreement.

#### EU's acceptance of licences conditional on satisfactory progress with action programme

There must be provision for the Community to suspend recognition of a licence if the producer country is not making sufficient progress towards the milestones set out in the partnership agreement.

#### Prescribed chain of custody system procedures

Partner countries should lay down standardised procedures that all operators in export supply chains are required to follow. The procedures should conform to international best practice, for example the standards of the FSC or equivalent.

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<sup>3</sup> Indonesian Definition of legality is available at: <http://www.illegal-logging.info/papers/Z%20Introduction%20and%20Principles.htm#Principles>. A report evaluating the process: Colchester, M. (for The Nature Conservancy) 2004. *Strengthening the Social Component of a Standard for Legality of Wood Origin and Production in Indonesia*

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### **The tracking system to be applied to all material destined for export**

Licensing must apply to all exports to prevent “laundering” of illegal timber through non-partner countries. Partner countries must therefore make mandatory for all exporters the chain of custody systems that provide the evidence for verifying legality.

### **Licenses to be issued by a separate body**

The licensing body might be a government body but should be a separate entity, removed from the influence of government forestry authority and forest management bodies; or it might be a private body, though independent of industry interests, authorized by the government to issue licences on its behalf.

### **Licensing body to actively check**

The issuing of a license should not be simply a matter of checking that a chain of custody certificate for the consignment exists (or that the owner of the consignment at the time of export clearance has a verified chain of custody system in place if verification is of the system rather than of individual consignments) and adding a signature. The licensing authority should be provided with evidence of legality or should check for evidence of illegality that might justify detention of the consignment until further checks have been made.

### **Verification by an independent body**

The body that verifies legal compliance and security of the chain of custody should be independent of the government, separate from the licensing authority and should have no commercial involvement in the forest products trade except as a verification body. The partnership agreement should specify the procedures that will be used to verify compliance with the specified set of laws and to verify the security of the chain of custody.

### **Customs to do final paper check and physical check**

Customs clearance is the final check in the partner country’s system. In addition to checking documentation of legality (export permit and, possibly, a copy of the verification statement), customs authorities need to have powers to carry out physical inspections of goods and to search vessels and detain them if there is suspicion of illegality.

### **Verification body and customs to count**

It is essential that the verification body should be allowed to carry out, either jointly with the customs authorities or independently, a tally counting of the actual shipments at the time of loading logs or timber bundles onto the ships.

### **Civil society monitoring**

A system of monitoring by independent organisations with civil society involvement has proven important to ensure that procedures for verifying legality and chain of custody are being implemented properly and to check for illegal timber that goes undetected by the licensing system. Civil society monitoring organisations need to have access to data and premises so that they can carry out their functions effectively.

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## 4. Principles for the process of developing and implementing partnership agreements

### **Negotiated in a transparent manner with stakeholder participation.**

Partnership agreements are aimed at achieving improvements in governance and good governance provides for stakeholder participation in the development of policy and instruments of policy. Furthermore, the success or failure of a partnership agreement depends in part on the support of stakeholders and their involvement in its implementation.

The negotiating mandate should lay down a clear process for stakeholder consultation in the development of partnership agreements and a threshold for minimum participation by different stakeholder groups - notably local people - before an agreement can be concluded. This is to ensure no partnership agreement can be concluded where civil society organisations cannot freely participate in public discussions.

### **Be aimed at creating public accountability and transparency**

Lack of transparency and accountability are serious problems in the forestry sector in many producer countries, North and South, which is clearly shown in the fact that many timber producing countries including Cameroon, Indonesia and Burma feature in the top ten of Transparency International Corruption Index 2003<sup>4</sup>. In these countries industrial logging, embodied in the concession system as it currently functions, is one of the main drivers of illegal logging. Increasing transparency and eliminating corruption are major first hurdles to take. Support should be made conditional of producer countries providing all relevant information such as legislation, concession maps, details of concession companies, cutting licenses, transport permits etc.

### **Subject to regular monitoring and review.**

Progress towards partnership agreement milestones and the effectiveness of licensing and other measures that are implemented under partnership agreements must be monitored to ensure that partner countries are on course to fulfil their commitments. Information about the implementation of each partnership agreement should be made publicly available in order that all stakeholders can help ensure that progress is satisfactory and that measures are effective. A report on the progress that is being made under each partnership agreement should be prepared annually. The report should include an assessment of the impacts of the actions that have been taken and should identify reasons for poor or better than expected progress so that lessons can be learned by the Community and the partner country concerned, other partner countries and potential partner countries. The report should be made publicly available.

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<sup>4</sup> see [www.transparency.org/pressreleases\\_archive/2003/dnld/cpi2003.pressrelease.en.doc](http://www.transparency.org/pressreleases_archive/2003/dnld/cpi2003.pressrelease.en.doc)