



# FLEGT Briefing Notes

FOREST LAW ENFORCEMENT, GOVERNANCE AND TRADE

## Market participant-based legality assurance and FLEGT licensing

### Background

The European Union Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan provides for Voluntary Partnership Agreements (VPAs) between timber-producing countries and the European Union. Under VPAs, Partner Countries will implement a licensing scheme that attests to the legality of their timber exports to the EU, and EU border control agencies will allow shipments of timber products from Partner Countries entry to the EU Market only if they are covered by FLEGT licences. In this way EU markets can be assured that products they buy from Partner Countries have been legally produced, thereby reducing commercial and reputational risk.

FLEGT licensing must be based on a **Legality Assurance System (LAS)**<sup>1</sup>, which provides a reliable means to distinguish between legal and illegally produced forest products. These consist of five elements: (1) a definition of legal timber<sup>2</sup>; (2) verification of compliance with the definition<sup>3</sup>; (3) verification of supply chain controls from harvesting to export to ensure that no timber of unknown or illegal origin is included in exported shipments<sup>4</sup>; (4) issuance of licences; and (5) independent monitoring to ensure the LAS is working as intended<sup>5</sup>.

In most cases the verification of legal compliance and supply chain control elements will be operated by **Partner Country government agencies**, or qualified private sector verification organizations (e.g. providers of inspection services) acting on a Partner Country government's behalf. However it is also possible that the LAS may provide for one or both of these elements to be operated by **Verification bodies contracted by market participants** – i.e., any entity operating in timber production in a Partner Country's jurisdiction. The latter are called market participant-based legality assurance controls in this paper. They may operate throughout the supply chain from timber harvesting, through transport and manufacturing to export.



The titles of the eight briefing notes in this series are:

1. What is FLEGT?
2. What is legal timber?
3. A timber legality assurance system
4. Control of the supply chain: Wood tracing systems and chain of custody
5. Legality assurance systems: requirements for verification
6. Voluntary Partnership Agreements (VPA)
7. Guidelines for independent monitoring
8. *Market participant-based legality assurance and FLEGT licensing*

The justification for market participant-based legality assurance and licensing could include the following:

- It acknowledges the fact that many market participants have already established control systems that aim to demonstrate timber legality and/or the sustainable management of forests. In some cases, these control systems are certified by third-party conformity assessment bodies using standards that cover legal compliance and material traceability.
- It aims to avoid increasing unduly the administrative burden that might arise from implementation of the licensing scheme, both for market participants that handle large export volumes and Partner Countries' licensing authorities.

This note is intended to provide guidance for those developing Legality Assurance Systems for EU FLEGT licensing. It describes how government and market participant-based elements of legality assurance systems might work.

### 1 Responsibilities for legality assurance and licensing

The ultimate responsibility for licensing lies with the VPA Partner Government. Under its VPA, each Partner Country will assign a Licensing Authority with the task of issuing FLEGT licences. In all cases, licences will be issued on the basis of evidence of acceptable control systems that assure that the timber covered has been produced in compliance with the legality definition and that unknown or illegally-produced timber has been excluded from its supply chain. Such control systems may be operated by or on behalf of government agencies, or by market participants themselves. Market participant-based and shipment-based licensing could operate concurrently in a Partner Country.



Where a LAS includes market participant-based elements, the Partner Country government, not the EU, will be responsible for approving those elements and ensuring that they remain effective.

The actual structure and mode of operation of each Partner Country's LAS will form a key part of its VPA and will need to be agreed during negotiations with the EU. It is expected that details, including the role of market participants, will vary between Partner Countries depending, for example, on the context of their forest regulation, existing and proposed control systems, the use of electronic export/FLEGT licensing systems and characteristics of their trade.

A condition for the approval of market-participant based licensing systems is that they meet the same level of controls as applied by the licensing authority in its shipment-based licensing procedure.

## 2 Market participant-based legality assurance

Controls operated by market participants should assure compliance with the Partner Country's legality definition, or control of supply chains in order to exclude unknown or illegally-produced timber. These are known as 'internal' controls. Examples include:

- Systems for assuring compliance with forest management and timber harvesting regulations
- Systems for tracking logs from point of harvest to processing facility or export
- Chain of custody systems operating in a processing facility linking inputs with outputs.

Verification that these systems are functioning can be through certification to a recognised external standard that includes relevant principles and criteria, by a qualified body using its own proprietary criteria or through direct verification by the licensing authority. These are known as 'external' controls. Examples include:

- Where a **certification scheme** is used for legality assurance, it must be subject to approval by the Partner Country's Licensing Authority. This will involve ensuring that the standard, the system for accrediting certification bodies, and the assessment systems they use all meet specified criteria.
- Where a **proprietary assurance system**, not covered by a certification scheme is used, the criteria used by the verification body, and their qualifications and assessment procedures, would be subject to similar approval.
- A final option, applicable to the chain of custody, is where the Licensing Authority, or a body operating on its behalf, **directly verifies controls** operated by a market participant.

In each case, criteria and the procedures used by the Licensing Authority for assessing and approving certification schemes, proprietary assurance systems and individual market participant controls would need to be established. These criteria and procedures would form part of the VPA text.

Generally, eligible market participant control systems should include measures to demonstrate compliance with relevant elements of the LAS. An acceptable internal con-

trol system is likely to include the following elements:

- A detailed description of the system that covers all the market participant's relevant activities and, where applicable, those of its suppliers
- Accessible, verifiable records to demonstrate the effective operation of the system
- Definition of qualifications, responsibilities and authorities of personnel who operate the system
- Specification of regular audits of the system, and records of those audits
- Procedures for corrective actions to prevent reoccurrence of non-compliances detected during operational control or audits
- Regular management reviews for assessing the effectiveness of the system and initiating actions for its improvements.

## 3 Licensing

### 3.1 Shipment-based licensing

Shipment-based FLEGT licences would normally be suitable for exporters who ship infrequent consignments, or in situations where existing government controls, such as those needed to assess export duties, are currently applied to consignments at export. To obtain a shipment-based licence, an exporter would need to present evidence to the Partner Country's Licensing Authority that an individual consignment of a product had been produced in accordance with all elements of the country's LAS. This evidence would have to be based on approved controls covering each step in the production process.

A licence applicant could demonstrate the legality of an individual consignment for instance through:

- Presentation of verified information produced by the applicant's internal control system and, where applicable, by the control systems of other participants in the supply chain
- Presentation of information generated by a verification system operated by a government agency or an approved private sector body, operating on the government's behalf

Approved controls would be needed at all stages of the supply chain. Where shipments are of processed products, verification of the effectiveness of these controls would have to be implemented in the forest, at intermediate storage, in processing facilities and at the export port. Verification of log shipments could be confined to the forest, intermediate storage and port stages.

For example, a sawmill operator wishing to export a one-off consignment of sawn timber to the EU might purchase logs from a forest area that held a forest management certificate under a scheme that the licensing authority had approved. To obtain a licence for the shipment, the exporter would also need to present evidence to the licensing authority that no raw material used in its production was from sources other than the certified forest area. Such evidence could be produced either by a government-operated national log tracking system, or by the exporter's own chain of custody system that the licensing authority had approved.





Some alternatives for shipment-based licensing are shown in Figure 1.




Supply chain stage	1) Full government verification	2) Market participant based legality verification with government supply chain controls	3) All market participant-based controls
 Verified legal forest management	Legality checked by government verifiers	Legality verified through certification scheme approved by licensing authority	Legality verified through certification scheme approved by licensing authority
 Verified supply chain	Supply chain covered by national timber tracking system	Supply chain covered by national timber tracking system	Supply chain covered by operator's tracking system verified and approved by licensing authority
 Export consignment checked	Shipment checked by licensing authority	Shipment checked by licensing authority	Shipment checked by licensing authority

Figure 1: Examples of alternatives for shipment-based licensing (shaded cells are market participant-based)

### 3.2 Market participant-based licensing

Market participant-based licences would be issued by the Partner Country's licensing authority on the basis of evidence provided by an exporter that it maintained sufficient controls to ensure that all its exports destined for the EU came from legal sources.

An exporter could demonstrate the presence of such controls for instance through:

- Its internal control system certified under a recognised scheme that had been approved by the Licensing Authority
- Its internal control system assessed and approved directly by the Licensing Authority, or another body operating on its behalf.

In either case, where the exporter relied on upstream supply chain controls, these would need either to be

based on government-operated verification of compliance and material traceability, or approved market participant-based legality assurance controls.

Market participant licensing would allow issuance of FLEGT-licences covering all an exporter's shipments without checks on individual shipments, as long as the exporter, and its relevant suppliers, maintain approved legality assurance controls.

Such authorisation would require regular assessments to ensure that the systems for which approval has been given were still in place and that records of products passing through the system demonstrated that the controls were being effectively used. Market participants would have to advise the licensing authority (or, where relevant, their certification body or verification body) if they had made significant changes to their controls between assessments as





these would normally require re-assessment. Exporters applying market participant-based licensing would have to provide the necessary information to be contained on the FLEGT license for each shipment and would also have to provide records of each shipment to the licensing authority. There are several alternative means by which a market participant could provide evidence of sufficient controls. Some examples are illustrated in Figure 2 and described below:




Supply chain stage	1) Full government verification	2) Market participant-based legality verification with government supply chain controls	3) All market participant-based controls
 <b>Verified legal forest management</b>	Legality checked by government verifiers	Legality verified through certification scheme approved by licensing authority	Legality verified through certification scheme approved by licensing authority
 <b>Verified supply chain</b>	Supply chain covered by national timber tracking system	Supply chain covered by national timber tracking system	Supply chain covered by a chain of custody certification scheme approved by licensing authority
 <b>Licensed market participant</b>	Market participant's control systems checked and approved by licensing authority. All exports to the EU are licensed as long as approval is valid	Market participant's control systems checked and approved by licensing authority. All exports to the EU are licensed as long as approval is valid	Market participant's control systems certified by approved scheme. All exports to the EU are licensed as long as approval is valid

Figure 2: Examples of alternatives for market participant-based licensing (shaded cells are market participant-based)

- 1 Full government verification** – this comprises government-operated legality verification and a national timber tracking system capable of tracing all logs harvested in a country or region back to their forest of origin. An exporter would qualify for market participant-based licensing as long as it could demonstrate that it only used logs that could be traced using the national system.
- 2 Market participant-based legality verification with government supply chain controls** – for example, a sawmill company exporting timber might purchase logs from several forest areas, each of which held forest management certification under an approved scheme, while log movements were controlled by means of a national tracking system. The sawmill company would qualify for market participant-based licensing if it could demonstrate that it only used timber from certified areas, traced through via the national tracking system.
- 3 All control systems market participant-based** – for example, a plywood company with approved certified management systems that covered its forest operations, log transportation, production of plywood and product deliveries to the export port would qualify for market participant-based licensing as long as its logs were not sourced from outside this system, or from

other suppliers whose systems that had not been approved. In this case, maintenance of the validity of each certificate would be sufficient for the company to maintain its market participant status.

## 4 Issuance of licences

FLEGT licences must be issued in the name of the Partner Country's licensing authority to all applicable timber shipments prior to their export to the EU.

The EU FLEGT Regulation requires that a licence covering each shipment from a Partner Country is available to the EU member state's competent authority at the same time as the customs declaration for the shipment. EU border control authorities will verify that shipments are covered by valid licenses prior to authorising release for free circulation in the EU.

For **shipment-based licences**, the Partner Country's Licensing Authority would issue licences to exporters on the basis of evidence of the legality of each individual shipment as demonstrated by the presence of approved controls throughout the supply chain.

It will be important that good information about licensing requirements is available to exporters. This should aim to avoid situations where exporters apply for FLEGT licences for consignments that are ready to ship, only to find that their raw material supplies had not been subject to approved





controls. Retrospective approval in such cases is unlikely to be possible.

For **market participant-based licenses**, there are a number of approaches possible which would have to be detailed and agreed during VPA negotiations. Possible approaches could be:

- The licensing authority could pre-issue standard FLEGT licenses to approved market participants authorising them to complete the necessary details and allocate licenses to individual shipments when required. This could be on pre-numbered forms. The market participant would provide records of each shipment to the licensing authority. This type of system would require stringent controls to ensure that the right to issue licenses was not abused.
- The licensing authority could issue a FLEGT license at the time of export of each shipment, based on presentation by the market participant of evidence of the approved verification of its control system (e.g., its certification to a scheme approved by the licensing authority).

Where a Partner Country's customs authorities have a role in checking FLEGT licences on export, it may be advantageous for them to maintain up-to-date registers of licensed exporters.

The information describing each shipment included on the FLEGT licence would be the same, regardless of whether a license were shipment or market participant based, and procedures for handling shipments and licences at the EU end would be identical for both licence types.

## 5 Actions on system failure

Each VPA will need to include the steps a partner country would take in case of systemic problems with the legality assurance system. The independent monitoring provided for under each VPA will check periodically whether the LAS is working as intended and report any weaknesses or failures detected to the Joint Implementation Committee. The Joint Implementation Committee in turn would be responsible for recommending steps to address failures reported by independent monitoring.

In the case of legality assurance systems where verification in the forest and log tracking is carried out by or on behalf of the partner government, correcting problems

would be the responsibility of the relevant government agency and failure to do so would risk the validity of the entire licensing scheme.

Where a LAS included market participant-based elements, the Licensing Authority through its approval process, would have the primary responsibility for checking whether the controls provided by those elements were being maintained. If checks revealed problems in an element, the Licensing Authority would have to decide, on the basis of the severity of the failure, whether to require corrective action to be taken, or to immediately withdraw its approval of that element.

If the Licensing Authority withdrew its approval of any element in a supply chain, this could risk the validity of all market participant-based licences that depended on that element. The Licensing Authority would therefore need to publish promptly information concerning the suspension or withdrawal of its approval of any legality assurance element. It would also need to suspend future issuance of market participant licences that depended on LAS elements for which its approval had been withdrawn.

For example, withdrawal of the accreditation of a certification body operating an approved scheme should concurrently result in withdrawal of the Licensing Authority's approval of that body. This would affect all certificates issued by that body as well as issuance of FLEGT licences that depended on the certificates it had issued. Failures in the overall operation of a certification scheme, for example through weaknesses in its accreditation procedures, would jeopardise its approval for legality assurance, and hence all certificates that had been issued through the scheme.

Should independent monitoring detect problems in market participant-based elements of a LAS, this could also indicate a failure of the licensing authority's own approval process. Such failure would then need to be addressed promptly to maintain the credibility of all operator-based systems in the Partner Country. The Joint Implementation Committee would be responsible for recommending a course of action if market participant-based elements were failing to meet the requirements agreed in the VPA.

### Endnotes)

- 1 See FLEGT Briefing Note 03 - a timber legality assurance system
- 2 See FLEGT Briefing Note 02 - what is legal timber?
- 3 See FLEGT Briefing Note 05 - legality assurance systems: requirements for verification
- 4 See FLEGT Briefing Note 04 - control of the supply chain
- 5 See FLEGT Briefing Note 07 - guidelines for independent monitoring

