



FLEGT Briefing Notes

FOREST LAW ENFORCEMENT, GOVERNANCE AND TRADE

Guidelines for Independent Monitoring

Background

The EU's Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan sets out a range of actions to tackle problems of poor forest governance and weak law enforcement that give rise to illegal logging in a number of timber-producing countries and the associated trade in illegally-logged timber products.

The centrepiece of the Action Plan is the formation of voluntary bilateral agreements between the EU and timber-producing countries. These Voluntary Partnership Agreements (VPAs) aim to support governance reform and strengthen enforcement activities in the timber-producing countries (Partner Countries), while setting up a licensing scheme that will ensure that only legally-produced timber products are exported to the EU.

FLEGT licences, covering all exports of timber products listed in a VPA, will be issued by the Partner Country's authorities under national FLEGT Licensing Schemes and on the basis of a Legality Assurance System (LAS) that will include the following components (see Figure 1):

- A definition of legally-produced timber that describes the laws that must be complied with in order for a licence to be issued and the checks that need to be made to determine compliance (See Briefing Note 2);
- A system to track timber from forest operations to export that excludes timber from unknown or illegal

The titles of the six 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*

sources from the supply chain (See Briefing Note 4);

- A system to verify compliance with all elements of the legality definition and control of the supply chain (See Briefing Note 5);
- Licensing of timber products for export, on an approved market participant or individual shipment basis;
- Independent monitoring to provide assurance to all interested parties that the system is working as planned and maintain its credibility.

The EU's competent authorities¹ will only permit entry to timber products from a Partner Country included in its VPA if they are covered by a FLEGT licence.

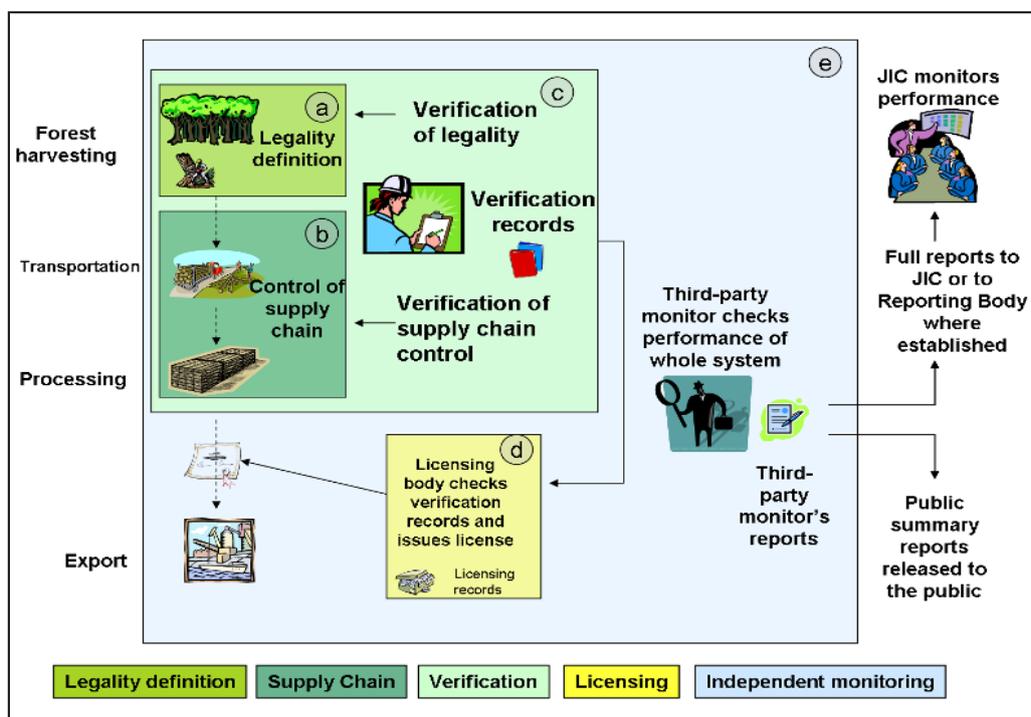


Figure 1. Schematic representation of the five components of a Legality Assurance System: a) Legality in the forest, b) Control of supply chain, c) Verification of forest and supply chain, d) Issuance of licenses, e) Independent monitoring of the system.



The Independent Monitoring component, is a function that is independent of a Partner Country's government forest sector regulatory bodies. It aims to provide credibility to the FLEGT licensing scheme by checking that all aspects of a Partner Country's LAS are operating as intended.

This Briefing Note provides guidance on the elements for effective independent monitoring, set out as a set of principles and criteria. The following terms are used:

The Joint Implementation Committee (JIC) is a committee established for each VPA made up of representatives of the Partner Country, the European Commission and Member States. Its role is to facilitate and monitor the implementation of the VPA, and to mediate and resolve any conflicts and disputes that arise.

The Legality Assurance System (LAS) is the system for assuring that timber or timber products exported from the Partner Country to the EU have been produced in compliance with relevant national legislation. It comprises (i) a definition of legally-produced timber; (ii) a system to verify compliance with the definition; (iii) a system to trace timber products from a forest to point of export; (iv) licensing of exports to attest to their legality; and (v) independent monitoring of all components.

The Third-Party Monitor is a non-political body, possessing the necessary skills and systems to ensure its independence and objectivity, which monitors implementation of the LAS by: (i) checking all its aspects using best auditing practice; (ii) identifying non-compliances and system failures; and (iii) reporting its findings to the JIC.

The Reporting Body may be established by the JIC as a subsidiary body for day-to-day work. It: (i) examines and validates the findings of the Third-Party Monitor before their public release; (ii) identifies corrective actions where appropriate and checks whether such actions are taken; and (iii) responds to complaints concerning implementation of the LAS. The authority for this function is the JIC but, in most cases, the day-to-day activities may be undertaken by a sub-committee or advisory panel convened by and working for the JIC.

The Reporting Body would comprise individuals with relevant expertise from a representative range of interest groups. It may have decision-making responsibilities or have only a consultative role, with all decision-making powers retained by the JIC. Where no sub-committee or advisory panel is established, the Reporting Body responsibilities would be retained by the JIC.

A Conformity Assessment Body is an organisation that is competent in determining whether a product, system, process or a person's competence etc. meets a defined specification. It demonstrates its competence by adhering to relevant standards, in particular relevant ISO/IEC normative documents², preferably by seeking accreditation against those standards.

A corrective action is an action taken by an actor in the LAS to correct non-compliances or system failures identified by the Third-Party Monitor.

1 Institutional arrangements

P1.1 Designation of authority: The Partner Country Government formally authorises the independent monitoring function and allows it to operate in an effective and transparent way.

C1.1.1 The Partner Country Government provides the Third-Party Monitor with a formal mandate to access the people, documents and sites necessary to carry out its function.

C1.1.2 The Partner Country Government ensures that the conditions necessary for the effective operation of the Third Party Monitor are in place.

C1.1.3 The Partner Country Government ensures that adequate funding³ and resources are available to allow full functioning of independent monitoring.

P1.2 Independence from other elements of the LAS: There is a clear separation between organisations and individuals that are involved in management or regulation of the forest resource and those involved in Independent Monitoring.

C1.2.1 Organisations and individuals with a direct role in the operation of the LAS or with a commercial interest in the forestry sector are not involved in any aspect of independent monitoring.

C1.2.2 The Third-Party Monitor has no commercial or institutional relationship with any organisation involved in the operation of the LAS or whose activities are subject to monitoring.

P1.3 Appointment of the Third-Party Monitor: There is a transparent mechanism for the appointment of the Third-Party Monitor and clear, publicly-available rules regarding its operation.

C1.3.1 The terms of reference for the Third-Party Monitor are approved by the JIC and made public prior to the selection process for the Third-Party Monitor.

C1.3.2 There are clear guidelines for engaging the Third-Party Monitor, which include an appropriate selection procedure that is open to all qualified domestic and international applicants and ensures transparency and value for money.

C1.3.3 The Third-Party Monitor's contract or agreement with the Partner Country Government provides for:

- freedom from interference in the operation of the Third-Party Monitor's activities;
- access, within the limitations prescribed by national legislation, to government and company information relating to the operation of the LAS;
- access to the forest estate and timber transport, storage, processing and export facilities that are relevant to the operation of the LAS;
- payment of the Third-Party Monitor's fees or costs based on the work undertaken regardless of the nature of its findings; and
- safeguards concerning the protection and use of commercially-confidential information.



P1.4 Establishment of complaints mechanism: There is a mechanism established for handling complaints and disputes that arise from independent monitoring. This is adequate to deal with any complaints about the operation of the licensing scheme⁴.

C1.4.1 The complaints mechanism is approved by the JIC. It includes principles to guide reporting about complaints and actions taken to address them;

C1.4.2 The complaints mechanism includes a mechanism for taking further actions, such as forwarding allegations of LAS failure to the Third-Party Monitor to investigate and monitoring the outcomes of the investigation⁵.

2 Third-Party Monitor

P2.1 Organisational and technical requirements: The Third-Party Monitor is an organisation that is independent of other components of the Legality Assurance System and operates in accordance with a documented management structure, policies and procedures that meet internationally-accepted best practice.

C2.1.1 The Third-Party Monitor is subject to external audits by a body which meets the requirements of ISO 17011 or equivalent⁶. These audits verify:

- that the Third-Party Monitor operates in accordance with the requirements of ISO Guides 62, 65, 66 or equivalent; and
- that it is qualified to offer assessment services covering the forest sector and forest products supply chains.

Typically, to meet these requirements the Third-Party Monitor would be an organisation that is accredited as a conformity assessment body to offer services in these fields.



C2.1.2 The Third-Party Monitor should have:

- at least five years experience of assessing forest management and chain of custody verification; and
- performed assessments of forest management and supply chain verification, preferably in countries with forest sector characteristics similar to those of the Partner Country

C2.1.3 Where the Third-Party Monitor's principal headquarters are not in the Partner Country, it should offer its services in a joint venture with a domestic organisation with relevant experience

C2.1.4 The JIC should establish minimum technical and experience requirements for the Third Party Monitor, taking the forest sector conditions and governance challenges in the Partner Country into account.

P2.2 Monitoring methodology: The Third-Party Monitor's methodology is evidence-based and carried out at minimum specified intervals⁷.

C2.2.1 There is a documented monitoring methodology which includes adequate checks of documentation, operating records and operations of all parties in the LAS.

C2.2.2 Monitoring is carried out at regular intervals and there is provision for unannounced monitoring. The frequency and intensity of monitoring should be proportional to the risk of non-compliance.

C2.2.3 Monitoring activities seek and consider input from a range of stakeholder groups including forest owners and managers, processors, buyers, central and regional governments, academics, conservation organisations, NGOs, workers, forest users, indigenous groups and communities.

P2.3 Scope of monitoring: The Third-Party Monitor operates according to terms of reference that clearly specify what has to be monitored and which cover all agreed requirements for the issuance of FLEGT licenses.

C2.3.1 Monitoring determines whether the LAS is operating according to the requirements for the issuance of FLEGT licenses. It includes:

- Checking all elements of the LAS - including legal compliance in forest management, supply chain integrity, verification activities and issuance of licenses;
- Identifying and documenting non-compliance with LAS requirements; and
- Assessing the effectiveness of corrective actions taken to address non-compliance.

C2.3.2 For the purposes of cross checking and monitoring the FLEGT licensing scheme, the Third-Party Monitor may have access to relevant documents and data concerning imports from the Partner Country into the EU. However EU Member States' competent authorities may withhold information which they are not permitted to communicate subject to their respective national laws⁸.

P2.4 Reporting requirements: The Third-Party Monitor reports regularly to the Reporting Body on the integrity of the legality assurance scheme, including non-compliances, as well as its assessment of corrective actions taken to ad-



dress them.

C2.4.1 The Third-Party Monitor has documented procedures for the preparation of reports which specify their contents⁹ and timing. Typically, two reports are delivered each reporting period:

- a full report for consideration by the Reporting Body, containing all relevant information on the monitoring programme and findings; and
- a public summary report based on the full report and covering, as a minimum, a summary of key findings, non-compliances identified and concerns of stakeholders.

C2.4.2 The Third-Party Monitor may make additional reports to the Reporting Body outside the regular reporting framework, for instance where serious infringements are detected.

C2.4.3 The Third-Party Monitor takes into account the Reporting Body's recommendations on amendments to the report pertaining to substantiating evidence, clarifying facts, justifying conclusions, and improving objectivity. However, the Third-Party Monitor determines the final content of the reports.

3 The Reporting Body

P3.1 Structure and mode of operation: The structure of the Reporting Body, including its relationship to the JIC, is clearly documented and publicly available.

C3.1.1 There are guidelines setting out the Reporting Body's functions and how it relates to the Partner Country Government, the Third-Party Monitor and the JIC. Where applicable, these cover routine reporting and feedback between the JIC and the Reporting Body, and dealing with exceptional circumstances.

C3.1.2 The Reporting Body and its members shall act objectively and should reject any political, commercial, financial and other pressures that could compromise their impartiality.

C3.1.3 The Reporting Body identifies, describes and documents any relationship its members may have with bodies and individuals involved in the forest sector to determine the potential for conflict of interest. Any potential conflicts identified, and the actions taken to mitigate them, are made public.

C3.1.4 The Reporting Body does not include individuals who are directly involved in the implementation of the LAS.

P3.2 Roles and responsibilities: There are clearly documented, publicly-available terms of reference setting out the Reporting Body's roles and responsibilities.

C3.2.1 The Reporting Body receives and promptly reviews and comments as appropriate on the Third-Party Monitor's reports. This includes:

- reviewing and approving the full reports and where necessary recommending clarification of facts and improving objectivity; and

- reviewing and approving the public summary reports, where necessary recommending clarification of facts or greater objectivity, prior to release into the public domain, as well as monitoring their publication¹⁰.

C3.2.2 Where necessary, the Reporting Body communicates, via an agreed structure, to relevant actors in the LAS any recommendations arising from the Third-Party Monitor's reports.

C3.2.3 The Reporting Body has an accessible and functioning mechanism for receiving complaints and other input from any interested party and passing these on to appropriate body dealing with complaints and disputes. This includes mechanisms for:

- receiving and considering input from stakeholder groups where appropriate and
- making public a summary of information on complaints and actions taken to address them.

(Endnotes)

1 As defined in Council Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme.

2 See Appendix 1

3 In most cases it is likely that development assistance will cover some elements of Independent Monitoring.

4 Each VPA will include agreement on dispute resolution mechanisms. This will need to be reflected in the TORs for the reporting body and JIC.

5 Handling of complaints and disputes is likely to vary between partner countries. The responsibilities can be given for example to a sub-committee of the JIC or a separate dispute settlement body. In any case, a focal point needs to be determined to receive complaints and communicate to the wider public.

6 See Appendix 1 for an explanation of the key elements of relevant ISO Guides and Standards.

7 Depending on the complexity of the LAS, it is expected that regular checks of the whole system should be undertaken at intervals of at least every 12 months and will generally be more frequent in the early stages of implementation of a LAS.

8 Art 5(3); Council Regulation (EC) No 2173/2005 of 20 December 2005 states that: "The competent authority shall grant access to the relevant documents and data to persons or bodies designated by partner countries or regional organisations responsible for the independent monitoring of the FLEGT licensing scheme".

9 The format and content of reports and the level of detail contained within them should be identified within the terms of reference for the Third-Party Monitor.

10 The JIC will establish a procedure to follow for cases where the Reporting Body cannot reach a consensus.





Appendix 1: Key elements of ISO Guides 62, 65, ISO 17021, and 17011

The International Organisation for Standardisation (ISO) has almost 70 years of experience in the world of standards and verification. It is a network of over 140 countries' national standards institutes. It has produced over 14,000 standards which are precise technical documents defining items' specifications etc. ISO has also developed guidance to help the development of verification, inspection and certification. Two key themes provide guidance for conformity assessment bodies (CAB) (Guides 62, 65 and 66) and accreditation bodies (ISO 17011).

Guides 62, 65, 66 and ISO 17021 – these set out the requirements for how CABs operate. Guide 62 deals with quality systems, Guide 65 deals with product/performance systems and Guide 66 deals with environmental management systems. ISO 17021:2006 replaces Guides 62 and 66, which can be applied during a transition period. The Guides/standard include a great deal of overlap but key requirements are:

1. Organisation - General requirements including: non-discrimination towards certification applicants, no impediments or inhibitions to access to certification, services to be made available to all applicants, no undue financial or other conditions

Detailed requirements including: impartiality, separation of responsibility for certification decision and certification evaluation, freedom from commercial or financial pressure that may influence decisions, ensuring that the activities of related bodies do not affect confidentiality, objectivity and impartiality, not give advice or provide consultancy services to the applicant as to the methods of dealing with matters which are barriers to the certification requested

2. Quality system - Requirement to document and operate an effective quality system appropriate for the type, range and volume of the work performed. The quality management system to include, among other things, the procedures for the recruitment, selection and training of certification body personnel and monitoring of their performances, procedures for handling non-conformities and for assuring the effectiveness of any corrective and preventive actions taken, procedures for implementing the certification/registration process, including conditions for issue, retention and withdrawal of certification documents, surveillance and reassessment procedures, procedures for dealing with appeals, complaints and disputes

3. Conditions for certification - Including requirements to: specify conditions for granting, maintaining and extending certification and the conditions under which certification maybe withdrawn or suspended; document and make available on request procedures for certification assessments, surveillance and reassessment, and identifying non-conformities and the need for corrective action

4. Personnel competence - Including requirements to: define minimum relevant criteria for the competence of certification body personnel; maintain information on the relevant qualifications, training and experience of accreditation body personnel; define minimum relevant criteria for competence of auditors and technical experts; have a procedure for selecting auditors and technical experts on the basis of their competence, training, qualifications and experience; ensure that the skills of the audit team are relevant and appropriate

Guide 17011 - Accreditation is the internationally-accepted basis for confirming that CABs are credible, independent and operating properly. Accreditation prevents any organisation simply deciding to become a CAB whatever their experience or ability. Accreditation aims to ensure that all CABs operate above a certain level and that there is consistency between the approaches and, most importantly, the results, of different CABs. Bodies that are signatories to the **International Accreditation Forum's Multilateral Recognition Agreement** for the accreditation of conformity assessment bodies registering quality management systems, environmental management systems or product conformity assessment bodies will be recognised as meeting the requirements of ISO 17011. Key requirements are:

1. Organisation – detailed requirements on the duties, responsibilities and authorities of personnel who could affect the quality of the accreditation, non-discriminatory policies and procedures, arrangements to safeguard the confidentiality of the information. The accreditation body's activities shall not be presented as linked with consultancy.





2. Management – use of a management system appropriate to the type, range and volume of accreditation work performed, procedures for document and record control, procedures for the identification and management of nonconformities in its own operations and to identify improvements and preventive actions, internal audits to verify conformance to the requirements of ISO 17011 and that the management system is implemented and maintained, procedures for dealing with complaints.

3. Human resources – maintenance of a sufficient competent personnel with the education, training, technical knowledge, skills and experience necessary for the type, range and volume of accreditation work performed.

4. Accreditation process - detailed procedures for the assessment and accreditation processes, including arrange-

ments for granting, maintaining, extending, reducing, suspending and withdrawing accreditation. The requirements for accreditation, including technical requirements specific to each field of accreditation, information about the fees, a description of the rights and obligations of CABs, procedures for lodging and handling complaints and appeals.

There are international arrangements that provide for mutual recognition between national accreditation bodies; for example, the International Accreditation Forum. Signatories to the IAF MLA are subject to regular multinational peer evaluations. The purpose of these routine on-site evaluations is to verify the signatories' continuing conformity with ISO/IEC 17011 and applicable guidance documents. These peer evaluations ensure consistent, harmonised accreditation practices.

