



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 28 September 2005

11962/2/05

REV 2

LIMITE

AGRI 210

FORETS 21

DEVGEN 165

ENV 391

RELEX 435

JUR 361

UD 98

NOTE

from : Council General Secretariat

to : Working Party on Forestry

No. prev. doc. : 16101/04

No. Cion prop. : 11656/04

Subject : Proposal for a Council regulation concerning the establishment of a FLEGT
licensing scheme for imports of timber into the European Community

Delegations will find in Annex a Presidency text of the FLEGT Regulation for discussion at the Forestry Working Party meeting on 30 September 2005.

Presidency text 27 September 2005

Proposal for a

COUNCIL REGULATION

**concerning the establishment of a FLEGT licensing scheme
for imports of timber into the European Community**

SCRUTINY RESERVATION ON THE WHOLE TEXT BY DK, SW AND PT.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133¹ thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) The Council and Parliament welcomed the Communication on an EU Action Plan on for Forest Law Enforcement, Governance and Trade (FLEGT) as a first step to tackle the urgent issue of illegal logging and associated trade (^{2,3})
- (2) The Action Plan puts emphasis on governance reforms and capacity building, supported by actions aimed at developing multilateral co-operation and complementary demand-side measures designed to reduce the consumption of illegally harvested timber and encouraging the wider objective of sustainable forest management in timber producing countries.
- (3) The Action Plan identifies the setting up of a licensing scheme as a measure to ensure only timber products that have been legally produced subject to the national legislation of the producing country enters the EC, and that the licensing scheme should not penalise legitimate trade.

¹ Scrutiny Reservation BE, FR, ES and DK on Article 133 legal base

² OJ C 268, 07/11/2003 P. 0001-0002.

³ Parliament document 7014/04.

- (4) Implementation of the licensing scheme requires that imports of relevant timber products into the territory of the EC be made subject to a system of checks and controls seeking to guarantee the legality of such products.
- (5) To this end the EU will conclude voluntary Partnership Agreements with countries and regional organisations, which place a legally binding obligation on a partner country or regional organisation to implement the licensing scheme, within the schedule stipulated in each Partnership Agreement.
- (6) Under the licensing scheme, specified timber products exported from a partner country and arriving in the EC at any customs point designated for release for free circulation, must be covered by a FLEGT licence issued by the partner country, stating that the timber is been legally-produced in accordance with national laws determined by a partner country and laid down in the respective Partnership Agreement. This will be subject to third party monitoring.¹
- (7) The competent authorities of the Member States should verify each licence prior to releasing the shipment covered by that license for free circulation within the Community.²
- (8) Each Member State should determine the penalties applicable in the event of a breach of this Regulation.
- (9) The licensing scheme will initially cover a limited range of timber products. Where agreed the range of products could be extended to other product categories.
- (10) In order to increase the number of countries included in the FLEGT licensing scheme and the range of products covered by the FLEGT licensing scheme, it is important to revise the annexes promptly when necessary. Those revisions will be done taking into account, in the case of Annex I, when a partner country has notified the Commission, and the Commission has confirmed, that the partner country has established all the controls needed to issue FLEGT licenses for all the products currently listed in Annex II A. In the case of Annex II A, agreement by all Partner Countries and the Commission that action is needed to tackle the illegal trade in a timber product and in the case of Annex II B agreement by a Partner Country and the Commission that action is needed to tackle the illegal trade in a timber product. Such revisions would be implementing measures of a technical nature and their adoption should be entrusted to the Commission in order to simplify and expedite the procedure
- (11) The measures necessary for the implementation of this Regulation are to be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (³)

¹ Scrutiny Reservation DE
² Scrutiny Reservation CLS
³ OJ L 184, 17.7.1999, p.23.

HAS ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER AND DEFINITIONS

Article 1

1. This Regulation establishes a Community system of rules for the import of certain timber products for the purposes of implementing the FLEGT licensing scheme ⁽¹⁾.
2. The licensing scheme shall be implemented through voluntary partnership agreements with timber producing countries.
3. This Regulation applies to the partner countries set out in Annex I and the timber products set out in Annex II.

Article 2

For the purposes of this Regulation the following definitions shall apply:

- (a) 'Forest Law Enforcement, Governance and Trade licensing scheme' (hereinafter 'FLEGT licensing scheme') means the issuing of licenses for timber products for export to the EC from partner countries and its implementation in the EC, in particular its provisions on border controls; ²
- (b) 'partner country' means any state or regional organisation that enters into a FLEGT Partnership Agreement as listed in Annex I;
- (c) 'partnership agreement' means the agreement between the EU and a partner country or regional organisation through which the EU and partner countries 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 enter into a Partnership Agreement on their behalf, in respect of matters governed by the FLEGT licensing scheme as listed in Annex I;

¹ COM(2003) 251

² Scrutiny reservation by CZ and ES on the new proposals

- (e) 'FLEGT licence' means a shipment based or market participant based document of a standard format which is to be forgery-resistant and tamper proof, verifiable, and which refers to a shipment 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) 'market participant' means an actor, private or public, involved in forestry or transformation or trade of forestry products.
- (g) 'licensing authority(ies)' means the authority(ies) designated by a partner country to issue and validate FLEGT licences;
- (g) bis 'competent authority(ies)' means the authority(ies) designated by the EU Member States to verify FLEGT licenses;
- (h) 'timber products' means the products set out in Annex II, to which the FLEGT licensing scheme applies, and which are imported to the EC for commercial purposes as set out in Regulation (2454/93).
- (i) 'legally produced timber' means timber products produced in accordance with national laws determined by a partner country and laid down in the Partnership Agreement(j) 'imports' means the release for free circulation of products within the meaning of Article 79 of Council Regulation (EEC) No. 2913/1992;
- (l) Deleted ¹
- (m) 'shipment' means a shipment of timber products
- (n) 'export' means the physical leaving or taking out from any part of the geographical territory of a partner country to the EC.
- (o) '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 scheme.

¹ Scrutiny reservation by DK linked to deletion of Article 3A

CHAPTER II

LICENSING SCHEME

Article 3

1. This FLEGT Licensing Scheme shall apply only to imports from partner countries.
2. An agreed schedule for implementing the commitments thereby entered into shall be specified in each Partnership Agreement.

[Article 3a]

Deleted¹

Article 4

1. Imports into the Community of timber products exported from partner countries shall be prohibited unless the shipment is covered by a FLEGT licence.²
2. Where systems exist that guarantee the legality and the reliable tracking of the origin of timber products exported from partner countries, such schemes may form the basis of the FLEGT licence. This would be on condition that those schemes have been assessed and approved in accordance with the procedure laid down in Article 12(2), so as to provide the necessary assurance as to the legality of the timber products concerned.
3. Timber products of species listed under Annexes A, B and C of Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein shall be exempt from the requirements set out in Articles 4.1. The Commission shall review this exemption, in accordance with the procedure laid down in Article 12(3), five years after the entry into force of this Regulation.

¹ Scrutiny Reservation against deletion by DK, DE and BE

² Scrutiny Reservation by DK, FI, DE, Estonia, Slovenia, ES, and BE subject to Article 3A deletion

Article 5

1. A FLEGT licence covering each shipment shall be available to the competent authority at the same time as the customs declaration for that shipment is presented for release for free circulation in the Community. The competent authority shall keep a record – in electronic or paper format – of the original FLEGT licence together with the applicable customs declaration. Import of timber products under a FLEGT market participant license will be allowed as long as the market participant's license remains valid.
2. The competent authority shall provide the Commission, or persons or bodies designated by the Commission, with access to the relevant documents and data, in the event that problems arise which impair the effective operation of the FLEGT licensing scheme.
3. The competent authority shall grant access to the relevant documents and data to persons or bodies designated by partner countries responsible for the independent monitoring of the FLEGT licensing scheme save that competent authorities shall not be required to provide any information which they are not permitted to communicate pursuant to national law.
4. The competent authority shall decide on the need for further verification of shipments using a risk-based approach.¹
5. In case of doubt as to the validity of the licence, the competent authority may undertake additional verification and seek further clarification, as laid down in the Partnership Agreement with the exporting country.²
6. It shall be sufficient reason for the customs authorities to suspend release of or detain timber products if there is information available to indicate that the license is not valid. Costs incurred while the verification is completed shall be at the expense of the importer, save where the member states determine otherwise.
7. Each Member State shall determine the penalties to be imposed where the provisions of this Regulation are infringed. Such penalties shall be effective, proportionate and dissuasive.³
8. The Commission shall develop the detailed requirements in respect of this article/regulation, in accordance with the procedure laid down in Article 12(3).⁴

¹ Scrutiny reservation by EL.

² Scrutiny reservation by DE, FR, DK, Slovenia, SW, FI

³ Moved from Article 17 in the previous version

⁴ Scrutiny reservation DK, PT

Article 6

1. If a competent authority establishes that the conditions in Article 4.1 are not fulfilled, it shall proceed in accordance with national legislation in force.
2. The Member States shall notify the Commission of any information suggesting that the provisions of this Regulation are being, or have been, circumvented.

Article 7

1. Member States shall designate the competent authority(ies) for this Regulation and for communication with the Commission.
2. The Commission shall provide all competent authorities of the Member States with the names and other relevant details of the licensing authorities designated by partner countries, authenticated specimens of stamps and signatures attesting that a licence has been legally issued, and any other relevant information received in respect of licences.

Article 8

1. Member States shall be required to submit a yearly report for the preceding year January to December by the end of April of each year which includes the following details:
 - (a) quantities of timber products imported into the Member State under the FLEGT licensing scheme, as per HS Headings specified in Annex II and per each partner country.
 - (b) the number of FLEGT licences received, as per HS Headings specified in Annex II and per each partner country.
 - (c) *Deleted*¹
 - (d) the number of cases where Article 6.1 has been applied.
2. The Commission shall determine the format of this report in order to facilitate monitoring of the working of the FLEGT licensing scheme.

¹ Scrutiny reservations against the deletion by BE and DE linked to deletion of Article 3A

3. The Commission shall prepare a yearly synthesis report by June of each year, based on the information submitted by the Member States for the previous calendar year and disseminated according to Regulation 1049/2001.

CHAPTER III

GENERAL PROVISIONS

Article 9

The Commission shall present to the Council two years after the entering into force of the first Partnership Agreement a report on the implementation of this Regulation, in particular based on the synthesis reports mentioned in Article 8.3 and the reviews of Partnership Agreements. This report shall be accompanied, where appropriate, by proposals for improvement.

Article 10¹

1. The Commission may amend the list of partner countries, and their appointed licensing authorities as set out in Annex I in accordance with the procedure laid down in Article 12(3).
2. The Commission may amend the list of timber products in Annex IIA in accordance with the procedure laid down in Article 12(3). Such amendments shall comprise commodity codes, at four digit heading level or 6 digit subheading level of the 2002 version of Annex I to the Harmonised System Commodity Description and Coding System as amended
3. The Commission may amend the list of timber products to which the FLEGT licensing scheme applies in accordance with the procedure laid down in Article 12(3). Such amendments shall comprise commodity codes, at four digit heading level or 6 digit subheading level of the 2002 version of Annex1 to the Harmonised System Commodity Description and Coding System as amended and shall only apply to that partner country, as set out in Annex IIB

Article 12

1. The Commission shall be assisted by a FLEGT Committee (hereinafter referred to as 'the Committee').
2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

¹ Scrutiny reservation on the whole article by DK, DE, EL, FR, IE, PT, SE, AT.
Reservations by DK and PT against all Comitology references.

³ Scrutiny Reservations by FR, SE

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at three months.

3. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months

4. The Committee shall establish its rules of procedure.³

*Article 15 deleted*¹

*Article 17*²

Article 19

1. This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

It shall be applicable as from the entry into force of the first FLEGT partnership agreement.³

¹ Scrutiny reservation by DK on the deletion of paragraphs 15.1; 15.4 & 15.5

² Scrutiny reservation by DK, DE, ES, SE and Estonia

³ Scrutiny reservation by DK, NL.

2. This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, [...].

For the Council
The President
[...]

Annex I**List of partner countries entered into a FLEGT Partnership Agreement and their duly appointed licensing authorities**

Annex IIA**Products which apply to all Partner Countries in Annex I**

| HS – Heading | Description |
|---------------------|---|
| 4403 | Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared |
| 4406 | Railway or tramway sleepers (cross-ties) of wood. |
| 4407 | Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end-jointed, of a thickness exceeding 6 mm. |
| 4408 | Sheets for veneering (including those obtained by slicing laminated wood), for plywood or for other similar laminated wood and other wood, sawn lengthwise, sliced or peeled, whether or not planed, sanded, spliced or end-jointed, of a thickness not exceeding 6 mm. |
| 4412 | Plywood, veneered panels and similar laminated wood. |

ANNEX IIB**Products which apply to listed Partner Countries only**

| Partner Country | HS – Heading | Description |
|------------------------|---------------------|--------------------|
| | | |
