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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10.9.2009
COM(2009) 468 final

2009/0126 (ACC)

Proposal for a

COUNCIL DECISION

on the signature and conclusion of a voluntary partnership agreement between the European Community and the Republic of Ghana on forest law enforcement, governance and trade in timber products into the Community

EXPLANATORY MEMORANDUM

The Action Plan on Forest Law Enforcement, Governance and Trade (FLEGT),¹ endorsed by the Council in 2003², proposes a set of measures that include support for timber producing countries, multilateral collaboration to tackle trade in illegal timber, support for private sector initiatives and also measures to avoid investment in activities that encourage illegal logging. The cornerstone of the Action Plan is the establishment of FLEGT Partnerships between the Community and timber producing countries aimed at stopping illegal logging. In 2005, the Council adopted Regulation (EC) No 2173/2005³ which establishes a licensing scheme and a mechanism to verify the legality of timber imports into the Community.

In December 2005, the Council issued directives instructing the Commission to negotiate partnership agreements with timber producing countries so as to implement the EU Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan and in particular to encourage trade in verified legal timber imports into the Community from such partner countries.⁴ The agreement with Ghana is the first such Partnership Agreement to be negotiated between a producer country and the Community.

The Commission entered into negotiations with Ghana in February 2007. Negotiations proceeded over 18 months and involved four face-to-face sessions and seven technical working level meetings. Throughout the negotiations, the Commission has been assisted in this task by a number of Member States. The Commission has kept the Council updated on progress throughout the period with regular reports to the Working Party on Forests, as well as to EU Heads of Mission and representatives based in Ghana. After each negotiation session the parties held public update meetings to keep stakeholders informed of progress with the talks. In addition, Ghana adopted a participatory approach involving civil society and the private sector in the development of the agreement.

The agreement addresses all the elements contained in the Council negotiating directives. In particular, the Agreement establishes the framework, institutions and systems of the FLEGT licensing scheme. It outlines the supply chain controls, legal compliance framework and independent audit requirements for the system. These are set out in Annexes to the Agreement and provide a detailed description of the structures that will underpin the assurance of legality afforded by the issuance of a FLEGT licence. Ghana developed its definition of applicable legislation through extensive stakeholder consultations. It includes laws and regulations granting rights to harvest, forest management, environmental and labour legislation, fiscal requirements, respect for tenure and use rights of land-owning communities, and other social obligations prescribed in forest related laws, as well as export trade requirements.

The Agreement goes beyond the limited product coverage proposed in Annex II of the FLEGT Regulation (EC) No 2173/2005 to cover trade in all timber products and, in doing so, commits Ghana to building a system that will provide assurance to the Community that all forest products from Ghana are legally produced and contributing positively and sustainably to Ghana's growth.

¹ COM (2003) 251
² OJ C268, 7.11.2003
³ OJ L347, 30.12.2005
⁴ Council restricted document 15102/05

The Agreement makes provision for controls of imports at the Community's borders as established by FLEGT Regulation (EC) No 2173/2005 and its associated Implementing Regulation No 1024/2008. The Agreement includes a description of the Ghana FLEGT licence which adopts the format prescribed in Implementing Regulation (EC) No 1024/2008.

The Agreement establishes the mechanism for dialogue and cooperation on FLEGT with the Community, known as the Joint Monitoring and Review Mechanism. It also establishes principles of stakeholder participation, social safeguards and transparency, for monitoring impacts and reporting.

The Agreement sets out a time frame and the procedures for entry into force of the Agreement and the implementation of the licensing scheme. Since Ghana will upgrade and redesign its regulatory and information management system, introduce more comprehensive supply chain controls, and establish independent verification of legal compliance, the new systems will take several years to develop and test and to build capacity of government, civil society and the private sector for the envisaged tasks. The FLEGT licence scheme is expected to be fully operational by the end of 2010. The licence scheme will be assessed against defined criteria before the EU begins accepting FLEGT licences. The steps and process for this are defined in the Agreement and Annexes.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof in conjunction with Article 300 (2), first subparagraph, and (4) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) In May 2003, the European Commission published an EU Action Plan for Forest Law Enforcement Governance and Trade (FLEGT)⁵ which called for measures to address illegal logging through the development of voluntary partnership agreements with timber producing countries. Council Conclusions on the Action Plan were adopted in October 2003⁶ and Parliament passed a motion in January 2004⁷.
- (2) On 5 December 2005, the Council authorised the Commission to open negotiations on partnership agreements to implement the EU action plan for forest law enforcement governance and trade (FLEGT).
- (3) On 20 December 2005, the Council adopted Council Regulation (EC) No 2173/2005 establishing a FLEGT licensing scheme for imports of timber into the European Community from countries with whom the Community has concluded voluntary Partnership Agreements⁸.
- (4) The negotiations with the Republic of Ghana have been concluded, and the voluntary partnership agreement between the Republic of Ghana and the European Community on forest law enforcement, governance and trade in timber products into the Community (hereinafter referred to as "the Agreement") was initialled on 3 September 2008.
- (5) Therefore it is in the interest of the Community to approve the Agreement,

⁵ COM (2003) 251

⁶ OJ C268, 7.11.2003

⁷ Parliament document 7014/04.

⁸ OJ L347, 30.12.2005

HAS DECIDED AS FOLLOWS:

Article 1

1. The Agreement between the European Community and the Republic of Ghana on forest law enforcement, governance and trade in timber products into the Community is hereby approved on behalf of the Community.
2. The text of the Agreement is attached to this Decision.

Article 2

The Community shall be represented by representatives of the Commission in the Joint Monitoring and Review Mechanism established in this Agreement in accordance with Article 19 thereof.

Article 3

For the purposes of applying Article 26 of the Agreement, the Commission is authorised, in accordance with the procedure laid down in Article 11(3) of Regulation 2173/2005, to conclude the instruments required to amend the Annexes to the Agreement.

Article 4

The President of the Council is hereby authorised to designate the person empowered to sign the Agreement in order to express the consent of the Community to be bound thereby.⁹

Article 5

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels, [...]

For the Council
The President
[...]

⁹ Date of entry into force of Agreement will be published in the Official Journal of the European Union by the Secretary General of the Council