
FLEGT Voluntary Partnership Agreement Between **Ghana and the European Union**

Briefing Note

November 2009



Illegal logging has a devastating impact on some of the world's most valuable remaining forests and the people that live in them and rely on the resources they provide.

The European Union's response to tackle illegal logging is set out in the Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan in 2003. The cornerstone of this policy is the FLEGT Voluntary Partnership Agreement (VPA).

WHAT IS A VPA?

The FLEGT Voluntary Partnership Agreement (VPA) is a bilateral agreement between the European Union (EU) and wood exporting countries, which aims to improve forest governance and ensure that the wood imported into the EU has complied with the legal requirements of the partner country.

Although there is no obligation for any country to enter into a VPA with the EU, once agreed they are legally binding on both parties, committing them to trading only in wood products that can be verified as legal. Under these agreements exporting countries develop systems to verify the legality of their timber exports to the EU. The EU supports partner countries to establish or improve systems which verify legal compliance.

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François Reuter*



The Government of Ghana and the European Union have signed the world's first FLEGT Voluntary Partnership Agreement on 20 November 2009.

BACKGROUND

Ghana has approximately 2.6 million hectares of forest reserves dedicated to production, about 500,000 hectares of unreserved forests, as well as an additional 2 million hectares of crop land that also produce timber.

Independent studies estimate the annual timber production of Ghana to be about 3.5 million m³ of round wood, half of which is destined for export markets. The other half is destined for the domestic market which is often not in full compliance with Ghanaian laws and regulations. Revenue from timber exports in 2008, EUR 187 million, makes the forest sector the 4th largest contributor to GDP.

Ghana has a strong reputation for innovation in wood processing and value addition, making products particularly suited for the European market. Consequently, the EU is a valuable market for Ghana, accounting for 43% of the value of total exports and 33% of total volume.

In 2008 the EU imported timber products equivalent of 147 million m³ roundwood equivalent (RWE). 8 million m³ RWE of this are originating from tropical countries and 11 million m³ RWE are estimated illegal. Ghana's share of the EU's tropical timber imports is about 3%.

VPA OBJECTIVES AND PRODUCT SCOPE

The Voluntary Partnership Agreement (VPA) will provide a legal framework and compliance monitoring system aimed at ensuring that all timber imports into the EU from Ghana have been legally acquired, harvested, transported and exported.

Ghana expects that the VPA will help further its governance reforms of the forestry sector, contribute to sustainable forest management, provide conditions that encourage investment in forest restoration and thus improve the resource base, realise the full economic value of forests and ensure that the forest sector contributes to poverty alleviation. Ghana decided to enter into a VPA to demonstrate its commitment to good forest governance, and as a means to maintain access to valued markets and open up new markets. With the VPA Ghana also will promote investment in the sector to ensure the future viability of its industry.

The FLEGT licensing system is scheduled to be operational in December 2010 when the first FLEGT licenses will be issued.

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The Ghana negotiation process is widely hailed as “model” for other countries to follow.

GHANA'S LEGALITY DEFINITION

Ghana's definition of legal timber is framed around seven principles covering the essential elements of forest production and processing. These principles are: (1) source of timber (land ownership), (2) allocation of timber rights, (3) timber harvesting operations, (4) transportation, (5) processing, (6) trade, and (7) fiscal obligations. For each principle criteria, indicators and verifiers have been identified in the VPA to demonstrate compliance. The definition includes environmental and social factors relevant to legal compliance. All criteria, indicators, and verifiers must be met for a shipment to be verified as legally compliant and in order for a FLEGT licence to be issued.

GHANA'S LEGALITY ASSURANCE SYSTEM

Ghana has established a Legality Assurance System (LAS) to monitor, control and verify management and use of Ghana's forest resources to ensure that only legal products are produced, sold and exported from Ghana. The LAS applies to all sources of commercial timber and products produced, processed and/or acquired in Ghana including those for non-EU markets, as well as all timber sold on the domestic market. As a major component of the LAS, a Wood Tracking System will incorporate a traceability control system which will monitor timber, starting in the forest and continuing through the entire production chain. A Timber Validation Department is being established within the Forestry Commission to perform the function of verification against the legal standard for every consignment.

The Timber Industry Development Division of the Forestry Commission is designated as the national licensing authority under the VPA. They will issue FLEGT licenses for the export of timber products to the EU market and export permits for non-EU markets. The EU border control authorities will permit import only if shipments are covered by such a license.

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VPA IMPLEMENTATION STRUCTURES AND ACTORS

A Joint Monitoring and Review Mechanism (JMRRM) composed of representatives of Ghana and EU will be established to facilitate implementation and ensure dialogue on the VPA. The JMRRM will meet at least once a year.

The JMRRM will issue a yearly report, which will, inter alia, provide details on the quantities of timber products exported to the EU, progress in implementing the VPA, actions taken to prevent illegally-produced timber products being exported to non-Community markets or traded on the domestic market and actions taken to prevent imports of illegally-produced timber products.

The VPA also establishes the post of an Independent Monitor to ensure that audits of the entire LAS system are undertaken by a third party. Independent audits will strengthen transparency and promote interactive monitoring to provide responsive solutions. Independent audit reports will be made public.

COMMITMENT TO TRANSPARENCY AND INFORMATION EXCHANGE

Ghana and the EU see transparency and information disclosure as a key element of the VPA, helping to ensure accountability, increase awareness of the requirements and impacts of the VPA and establish the credibility of the systems established under the agreement. The parties will produce annual public reports that review the effectiveness of actions and their impacts, reporting on FLEGT license issuance, volumes of licensed trade, actions taken to prevent circumvention and abuse of the LAS, as well as recording the efforts Ghana has made to be transparent by, inter alia, making publicly available information about harvest rights, areas designated for harvesting, harvesting schedules, timber rights fees and harvest related payments, and information on social responsibility agreements and crop damage compensation awards.

SUPPORTING MEASURES

Successful implementation of the Agreement will require work and investment in a number of crucial areas in addition to the establishment of regulatory systems. Funding to assist Ghana in the implementation of the VPA is provided through a multi-donor Natural Resource and Environmental Governance sector budget support operation, which covers forestry and wildlife, mining and environmental protection. This programme is funded by the United Kingdom, France, the Netherlands, the World Bank and the European Commission.

FREQUENTLY ASKED QUESTIONS

Why has Ghana signed this Agreement?

Ghana recognised that markets in Europe were becoming increasingly concerned with the legal origin of imported timber. As this is a valuable market for Ghana, the government realised that it needed systems in place to respond to this concern. Furthermore, the government sees the VPA as a means to support its sector reform programme and particularly to strengthen its regulatory capacity in order to reduce the revenue loss and environmental degradation that results from illegal logging. With the VPA Ghana also intends to promote investment in the forest sector to ensure future viability of the timber product industry.

How important is the EU as export market for Ghanaian timber?

The EU maintained its position as the leading export market for Ghana's wood products during 2008, accounting for 43% of the total value and 33% of the total volume of timber exports. Key markets included Italy, France, Germany, the United Kingdom, Belgium, Spain, Ireland and the Netherlands.

What is the FLEGT Licensing System established under the Agreement?

The FLEGT Licensing System established by the VPA checks compliance with all aspects of forest-related legislation and monitors and controls legal compliance through the production chain from forest to mill and port, e.g. through an electronic tagging system. Furthermore, it introduces independent verification by a new department to ensure that routine controls are operating effectively, issues licenses for each consignment shipped, and introduces independent monitoring to audit the entire system to

ensure effective functioning. A FLEGT license will be issued only to timber products that have been verified as both legally sourced and legally produced.

What products are covered under the agreement?

The Ghana VPA includes compliance and licensing for all timber and wood product exports and has therefore moved beyond the minimum five product categories outlined in the 2005 EU FLEGT regulation. Product coverage includes sawn timbers, veneers, plywood, flooring and furniture. It is illegal to export logs from Ghana, with the exception of teak logs grown in plantations.

When will Ghana issue the first FLEGT licenses?

As indicated in the implementation schedule of the Agreement, Ghana expects to issue its first FLEGT license by December 2010.

Why did Ghana need to change its existing system for checking legal compliance in timber production?

Under the existing system, the Forestry Commission performs the roles of forest manager, regulator, and monitor. At times, this has led to inadequate coordination and reconciliation of data by the different departments responsible for regulating forestry operations, the timber industry and trade. The absence of an independent oversight agency has meant that the Forestry Commission has not been in a position to issue licenses that are credible to the international market. The reform process initiated under the VPA is designed to overcome these obstacles.

What will change in the framework of the reform process?

The Forestry Commission will devolve greater responsibility for forest management to the private sector (e.g. the preparation of inventories and the drafting of management plans) and in turn, will strengthen their own regulatory role. The Forestry Commission is also developing a comprehensive Legality Assurance System for all timber harvesting. This comprises a wood tracking system to establish legal origin and a system to verify legal compliance.

Aren't VPAs just another form of trade restriction?

On the contrary: VPAs provide opportunities for the Ghanaian timber industry to secure existing markets and to develop new market niches. The introduction of government procurement policies in a number of EU Member States currently restricts acceptance of Ghana's timber products in supplying government contracts in those countries, as these policies often require verification of legality and sometimes certification to a sustainable forest management standard (through schemes such as PEFC or FSC). By entering into a VPA and establishing a FLEGT license assuring the legality of their timber, Ghana will be better placed to respond to changing markets. Furthermore, legislation, currently under debate in European Council and Parliament, to oblige operators placing timber on the EU market to exercise due diligence in sourcing their wood and wood products, will further encourage business to seek verified legal products.

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Will FLEGT-licensed timber attract a price premium in the European market?

It is not yet known how buyers will respond to FLEGT-licensed product as there is currently none available on the market. The European Commission and Ghanaian authorities do not expect there to be significant price premiums. However, it is expected that there would be increased demand particularly from important markets such as those established by the UK, France, Netherlands and Denmark through procurement policies that stipulate that all timber products procured by central government must be verified legal. These policies typically apply to central government contracts which account for between 5% and 25% of total wood consumption, depending on the country. The European Commission and Ghana will encourage all Member States to accept FLEGT licenses as evidence of compliance with public procurement policies.

What else could trigger an increased demand for legally verified timber?

In addition to national policies, the EU is currently developing legislation that will require all importers to exercise due diligence in sourcing wood and wood products from legal supplies and thus to minimize the risk of placing illegal timber on the marketplace. As this draft legislation specifically recognises FLEGT-licensed timber as meeting this requirement, this regulation is expected to increase demand for such product. It is also likely that Ghana's Legality Assurance System will provide evidence of 'due care' in responding to recent amendment to US legislation (Lacey Act) which makes it an offence to trade in illegally harvested timber in US market. Combined these measures should reduce the overall demand for illegal timber in the international market, in which case an increase in the price of tropical hardwoods may be possible.

If timber exports to Europe will soon require a FLEGT license, what will prevent the Ghanaian private sector from simply choosing to export to other markets?

Under the terms of the VPA, Ghana has committed to verifying the legality of all exports, and will issue a FLEGT license for the EU and an export legality certificate for other markets. No export from Ghana will be allowed without either authorisation.

What will happen to timber found to have been harvested in contravention of the laws as set out under Ghana's legality definition?

Illegal timber will be confiscated by the Forestry Commission and sold by court order through public auction. Quantities of such timber entering the system will be closely monitored to ensure that this auctioning process is not used as a loophole by which illegal timber can re-enter the Ghanaian supply chain.

Under the VPA, all timber harvested in Ghana for export to the EU will be verified legal, but what about timber coming from elsewhere that is processed in Ghana for export to the EU?

Ghana is mindful of the need to assure international markets that the integrity of its FLEGT-licensed timber products is not undermined by accusations of laundering of illegally-harvested timber imported from other countries in the region. Therefore Ghana is committed to ensuring that all timber imported for further processing, possesses the requisite documentation attesting to the legality of the consignment. As described above Ghana's Legality Assurance System includes procedures to ensure that timber of illegal or unknown origin does not enter the national supply chain.

The VPA only requires proof of legality. Legal timber is not necessarily sustainable timber. Is this Agreement undermining Ghana's sustainable forest management initiatives?

From the outset, the government of Ghana has clearly stated its intention to achieve sustainable forest management, especially in its permanent forest estate. With this in mind it included a member of the National Working Group on Certification on the FLEGT Steering Committee responsible for preparing proposals for negotiations. A representative of this group will also serve on the multi-stakeholder implementation committee. Ghana has framed the VPA with the goal of achieving sustainability and anticipates that the Agreement will create conditions which encourage more companies to attain certification of sustainable forest management through private schemes.

How does the VPA address issues of sustainable forest management?

The VPA's legality definition and compliance matrix agreed in 2008 focuses on forestry-related laws that provide the foundation for sustained yield timber production following environmental and social safeguard standards for those prescribed areas. The government of Ghana has agreed that this legality definition should be modified once laws are reframed in the next five years, to increase significantly the incentives for communities and landowners to maintain and sustain more forests.

Furthermore, the national legality definition applies to all sources of timber, including trees harvested from land used for agriculture or other non-forest purposes. In these areas, long-term sustainable forest management practices are not relevant. Legal requirements for harvesting in these areas are different from some of those that apply to harvesting from forests, but the Government of Ghana feels that it is important that the regulations and laws that safeguard different stakeholder interests on non-forest lands are also followed and verified.

*Image credit:
François Reuter*



How does the VPA impact forest dependent communities?

Although the current legal framework provides certain rights for communities, weak enforcement of these laws means that these rights are not always respected. A number of laws relating to community rights have been included in the definition of legality and legality compliance matrix agreed under the VPA. These include a landowner's right to refuse permission to undertake commercial logging and a farmer's right to adequate compensation for any damage to crops that results from logging. The legality definition also requires that the Social Responsibility Agreement between concerned communities and a timber contractor must be complied with in order for the timber coming from each concession to receive a FLEGT license. In addition, Ghana has also now embarked on a national process of legal reform that further strengthens the benefits and rights of forest dependent communities.

What happens if there are unforeseen negative impacts on the livelihoods of local communities and indigenous peoples?

Under the terms of the VPA, both parties have committed to developing a better understanding of the livelihoods of such groups, including those engaged in illegal

logging, which builds upon the impact assessment conducted by Ghana in preparation for the VPA. Socioeconomic impacts on these groups will be monitored during the implementation of the VPA and, where necessary, steps will be taken to mitigate any adverse impacts.

Will the VPA address the problem of illegal chainsaw operators and if so, how?

From the outset of negotiations, the government of Ghana and other stakeholders were clear that the scope of the VPA would need to include measures to address the problem of illegal logging to supply the domestic market in addition to export. Consequently, Ghana has committed to apply the Legality Assurance System to all timber harvested in Ghana, whether for domestic or export purposes with the objective of eliminating the illegal timber supply. However, FLEGT licenses will not be issued for market destinations outside the EU. The proposed policy instruments to help realise the objective of eliminating illegal logging from Ghana's forests include a timber procurement policy for verified legal material to be used in government-funded projects and the introduction of teams that can recover left-over timber from recently harvested areas of concessions.

What happens if someone does not comply with the indicators of legal compliance established in the legality definition and compliance matrix?

Once the FLEGT-licensing scheme is operational, any timber that is found not to meet the indicators of legal compliance set out in the legality definition and matrix will not be issued a FLEGT license and will therefore not be allowed into the EU. Evidence of failure to comply with Ghana's legal requirement will be dealt with through Ghana's normal law enforcement procedures. In some cases this will result in seizure of the timber and sale at public auction.

Who pays for the Legality Assurance System?

In addition to its own budget resources Ghana has received some external assistance to support the establishment of the Legality Assurance System. The routine operating costs will be covered by the revenues generated by the system once it is fully operational. Development partners are contributing to this effort through a multi-donor Natural Resource and Environmental Governance sector budget support operation, providing approximately EUR 20 million annually.

How does the VPA strengthen Ghana's sector reform objectives if it simply requires compliance with existing laws?

Although verification of compliance with existing laws is central to the VPA, it also commits Ghana to review and, where necessary, amend laws. The negotiation process drew on the collective wisdom of many stakeholders and has already served to strengthen and further clarify the legal requirement. Furthermore, Ghana is committed to a process which will review and amend forestry laws that have been identified as problematic. This aims to deal with obsolete, disjointed and inconsistent laws and to introduce new laws to provide for implementation of the licensing procedures and to give effect to evolving policies. A two tier reform process is being developed: (1) Changes to areas that do not require extensive legal reform process will be realized through subsidiary legislation and amendments to existing Acts; (2) Changes that will require extensive consultations, involvement of experts and considerable political reflection, including for example issues relating to good governance, stakeholder participation, and increased benefit share for rural communities.



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François Reuter

Revenue from timber exports, EUR 168 million annually, makes the forest sector the 4th largest contributor to GDP. The EU is a valuable market for Ghana, accounting for 43% of the value of total exports.

How will this policy and legal review process be managed?

A cross-functional task team under the guidance of the Legal Department of the Forestry Commission has been set up to lead the legislative reform process. This process has begun with a comprehensive analysis and review of existing legislation, to be followed by consultation and engagement of policy-makers on potential options. Ultimately it is envisioned that it will result in facilitating the measures required for passing Acts of Parliament.

The Ghana VPA process benefited from strong multi-stakeholder input and dialogue. How will stakeholders such as forest dependent communities be involved in implementation?

Ghana's approach to stakeholder consultations and the Government's decision to constitute a multi-stakeholder Steering Committee to provide strategic direction and oversight during the negotiation process set the standard for stakeholder engagement in VPA negotiations. In line with this, the government of Ghana has established a multi-stakeholder VPA implementation committee to oversee the Agreement as it moves forward. This structure will ensure that stakeholders from national to local level remain engaged in the process. The Government will also establish multi-stakeholder working groups on seven key areas of work under the Agreement to provide input and guidance.

What progress has there been since the VPA was initialled in September 2008?

Following the initialling, the Ghanaian Parliament ratified the Agreement in June 2009. Concurrently, Ghana has prepared a draft Implementation Plan that sets out a series of short, medium and long-term actions to be undertaken by the

Government, the private sector and civil society in order to implement the agreement. In July 2009, Ghana signed an agreement with Helveta, a tracking technology company, to provide support to the design and piloting of their Legality Assurance System.

How will the implementation of the Agreement be monitored?

The VPA establishes a Joint Monitoring and Review Mechanism (JMRRM) to facilitate monitoring and review of the VPA. Ghana and the EU will nominate their representatives to this body. The JMRRM will ensure effective implementation of the Agreement through dialogue and exchange of information. It will report annually on progress, on trade volumes of FLEGT-licensed product, and any problems of complaints arising. The VPA establishes an independent monitor to audit the effectiveness of the FLEGT license scheme and the Legality Assurance System that underpins it. The JMRRM will also monitor and report publicly on the impacts of the VPA.

How will the public be updated on progress and challenges with VPA implementation?

The reports and mission Aide Memoires of the Joint Monitoring and Review Mechanism will be made public. They will include details on the quantities of timber products exported to the EU under the licensing scheme, actions taken to prevent illegally-produced timber products being exported to non-EU markets or traded on the domestic market, and progress in the achievement of the time-bound actions in the Agreement.

This information brief has been prepared by European Commission and Ghana officials to inform public about the VPA. *The contents of this brief cannot be taken to reflect the official opinion of the European Union.*

Further information and detail can be found on:
http://ec.europa.eu/development/policies/9interventionareas/environment/forest/forestry_intro_en.cfm

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