

FLEGT LICENSED TIMBER AND EU MEMBER STATE PROCUREMENT POLICIES

Based on the development of the first FLEGT Voluntary Partnership Agreements (VPAs), it is now clear that the agreements deliver much more than legality and sustainability at the forest management unit level. This briefing note explains how the VPAs complement forest certification and can help public procurement policies deliver a wider set of policies aimed at promoting and supporting long term sustainability of forests.

1. PROCUREMENT POLICIES AND THE WIDER POLICY CONTEXT

The public procurement policies of many EU Member States require timber products to come from sustainably managed forests. These policies form part of a wider set of policies at EU and Member State level, all of which are aimed at promoting and supporting the long-term sustainability of forests. Key policy objectives include:

- **Better governance:** ensuring better governance and stopping illegal logging and trade in illegal timber (the aim of the EU Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan and further to the passage of the Illegal Timber Regulation (2010) now a legal requirement for EU Member States);
- **Development:** ensuring that forests contribute to economic growth and poverty reduction (the rationale of most development assistance to the forest sector, commitments by member states to the UN Millennium development goals and an aim of FLEGT);
- **Climate change:** reducing the emissions of carbon from deforestation and forest exploitation and loss (emerging commitments to REDD+ under the United Nations Framework Convention on Climate Change (UNFCCC));
- **Rights of indigenous peoples:** recognising and protecting the rights of the world's indigenous and forest dependent peoples (UN Declaration on the Rights of Indigenous Peoples);
- **Biodiversity:** protection of forests as important pools of biodiversity (commitments under the Convention on Biological Diversity (CBD));
- **Security of supply:** ensuring a sustainable long-term supply of raw materials including timber and biomass (a rapidly growing concern about long-term security of supply of raw materials as competing demands for food and fuel intensify).

Public procurement policies focus specifically on timber markets and their impact on forests. The objective of these policies has therefore been to ensure that purchases of timber products do not

contribute to forest degradation and loss¹, while at the same time providing leadership in timber product markets by setting standards for procurement.

This Briefing Note aims to examine the extent to which FLEGT Voluntary Partnership Agreements (VPAs) (see Box 1) can help deliver the objectives of public procurement policies.

Box 1: FLEGT Voluntary Partnership Agreements (VPAs)

A VPA is a WTO-compatible trade agreement between a producer country and the EU to work together to stop illegal logging. Although voluntary, once agreed VPAs are legally binding on the two parties. VPAs aim to promote policy and legal reform, good governance and transparency, capacity building, improved control, tracking and verification of legal compliance, better capture of revenues and rents, and secure, improved market share.

VPAs incorporate a national legality assurance system that:

- defines what constitutes legal timber;
- verifies compliance with this definition;
- traces products from forest to export;
- licenses exports, to provide assurance to markets;
- independently checks all elements of the system.

In each country, the VPA will take account of the inherent national differences in forest governance issues, forest-related legislation, the nature of forest and land rights, the nature of the timber trade, current forest sector initiatives and national capacity to implement agreements.

In some developing countries, meeting these commitments will require considerable institutional strengthening and capacity building. VPAs will identify areas where there is a need for technical and financial assistance.

For more information on all aspects of FLEGT including VPAs and legality licensing see the EU FLEGT Briefing Note series at: http://ec.europa.eu/development/policies/9interventionareas/environment/forest/forestry_intro_en.cfm

¹ The first public procurement policies for timber emerged in response to public concern about illegal logging and forest loss, particularly in the tropics. As other issues such as conservation of biodiversity, climate change and respect for resource rights have become topical, so the importance of public procurement policies as a tool to respond to a wider range of concerns has been recognised.



2. DELIVERING SUSTAINABILITY THROUGH PUBLIC PROCUREMENT POLICIES

Although the sustainable management of forests is the overall goal, all EU Member States' public timber procurement policies currently recognise both 'legality' and 'sustainability'. In a procurement policy context, legality is currently accepted as a first step towards sustainability.

In order to implement these policies in practice it is necessary to define 'legal' and 'sustainable' forest management. Legality definitions indicate the scope of laws which are relevant². Definitions of sustainability are based on internationally agreed criteria³ for sustainable forest management. In both cases these definitions focus specifically on compliance at the level of the forest management unit (FMU) from which the timber is harvested, with certification of the FMU being widely used as proof of sustainability.

The focus on ensuring compliance at the FMU level works well in countries where the wider national framework delivers the elements of sustainability which cannot be provided at the scale of an individual FMU. However, FMU-level compliance alone may not be sufficient to deliver sustainability in countries where forest sector governance is weak and forests are generally not well managed – a widespread situation particularly in the tropics. There are a number of reasons for this, outlined below.

2.1. SCOPE

Some aspects of sustainability can only be achieved to a limited extent at the scale of an FMU. These include ensuring adequate institutional capacity and good governance, which both require government engagement and capacity; and effective protection of ecosystem functions and biodiversity, which extend beyond an individual FMU and require landscape level management. These aspects of sustainability require a functioning institutional and policy framework at a national level. Where this is not in place, management at the scale of an FMU cannot deliver sustainability in full (see Figure 2.1).

² For instance, in the public procurement policies of the Netherlands, UK, Denmark and Belgium the definition of legality requires that the forest owner/manager holds legal use rights to the forest; and complies with local and national legal requirements (including those relevant to forest management; environment; labour and welfare; health and safety; and other parties' tenure and use rights). In addition all relevant royalties and taxes must be paid and there must be compliance with the requirements of CITES.

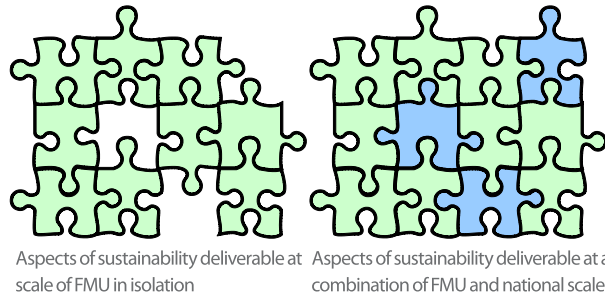


FIGURE 2.1
Schematic representation of implementing sustainability at FMU and national scales.

2.2. IMPACT

Implementing sustainable management at the FMU level can deliver a level of sustainability that goes beyond legal requirements, but in countries where only a small proportion of FMUs implement sustainable management, the overall impact is limited. A process of implementing legal management at a national level as required by VPAs (see Box 1) may not deliver sustainability in full, but can contribute to good governance, development, conservation of biodiversity, mitigation of climate change and recognition of resource rights across a large proportion of the forest sector and so have a very significant overall impact.

Situation in countries with poor governance

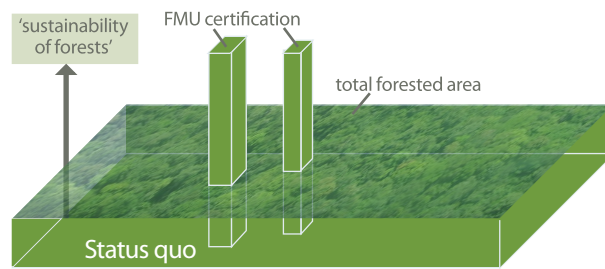
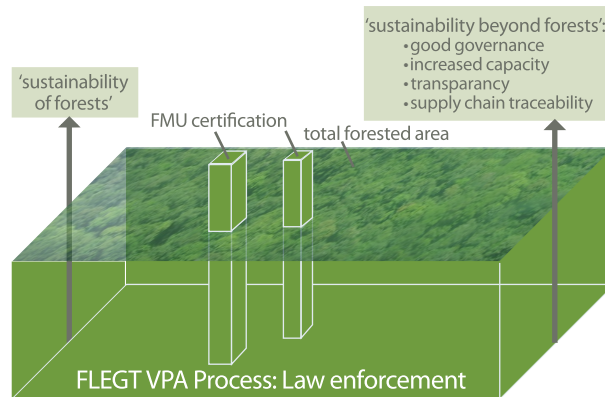


FIGURE 2.2
Schematic representation of the relative impact of implementing sustainable forest management in a few FMUs versus implementing the aspects of sustainability required by a range of laws identified in a VPA at a national level.

VPA Process: Increased sustainability at national level



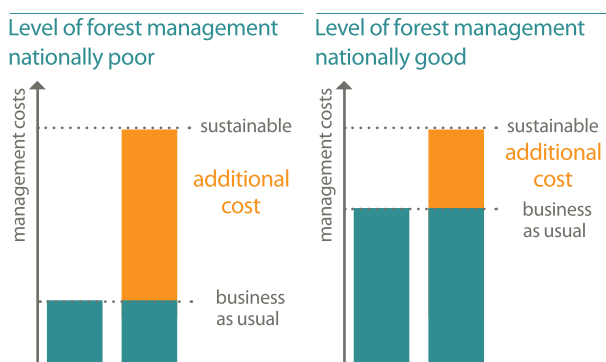
³ The Pan-European Operational Level Guidelines for Sustainable Forest Management, as endorsed by the Lisbon Ministerial Conference on the Protection of Forests in Europe (2–4 June 1998); the UNCED Forest Principles (Rio de Janeiro, June 1992); and the ITTO Criteria and Guidelines for Sustainable Forest Management.

2.3. REDUCING BARRIERS

The costs and challenges of effective FMU-level control and certification are generally much greater where overall forest governance is poor, regulation capacity is limited, stakeholders' rights and priorities conflict or are unclear, and where important forest functions such as the protection of biodiversity are inadequately managed nationally. Furthermore, the incremental costs of implementing sustainable management relative to 'business as usual' are much greater. This provides a major competitive disadvantage for those companies which try to implement sustainable practices and seek certification. As a result, implementation of sustainable forest management at the FMU level is very slow and even where it is achieved may not be maintained in the long term because it is not economically viable. This pattern is widespread in the tropics, where certification is still limited and companies often take years to achieve sustainable management.

FIGURE 2.3

Relative costs of implementing sustainable forest management nationally including good governance, institutions, policy frameworks, planning and enforcement versus countries where this is lacking.



2.4. LEAKAGE

There is growing evidence from other sectors (eg, bioenergy and REDD) that where one area is well-managed within a wider context of inadequate governance and poor management, this frequently leads to leakage or indirect land-use change (ILUC). Bad practices are simply driven from the well-managed area to another area with fewer controls, resulting in no net gain for sustainability. To avoid this, the wider landscape or national context must be considered, as well as the individual management unit⁴.

It is clear that a focus on FMU-level sustainability in isolation may not be the most effective way of supporting sustainability in countries with poor institutions and governance, and that it may be more effective to support improvements in the governance and management of the forest sector as a whole.

3. CONTRIBUTION OF FLEGT VPAs TO SUSTAINABILITY

FLEGT Voluntary Partnership Agreements (VPAs) require the development and implementation of a functioning legal framework, which can deliver important components of sustainable forest management across the whole forest sector, address aspects of sustainable forest management that cannot be achieved at the scale of an individual FMU, and provide a more conducive environment for individual FMUs to implement sustainable practices and seek certification. It may also help to reduce the problems of leakage and indirect land-use change. Recognition of FLEGT licensed timber within public procurement policies can provide an important incentive for countries to engage in a VPA process and sign a VPA agreement.

Some of the specific areas where VPAs and the resulting licensing schemes contribute to sustainability are outlined below.

3.1. PROMOTING GOOD GOVERNANCE OF THE FOREST SECTOR

One of the biggest challenges in many forest countries, particularly in the tropics, is poor governance. This results in a confused and conflicting legal framework, corruption, lack of transparency, unclear forest use rights and inadequate enforcement. In such an environment, it is extremely difficult for an individual forest manager to operate sustainably, for the reasons outlined in Section 2 above.

VPAs help to achieve a functional legal framework. To date, three VPAs have been signed: all have included a legal reform process which has resulted in more secure rights, greater benefit sharing and more government accountability. All of these in turn help to fight corruption.

In implementing the VPAs, the partner countries, with help of the EU and Member States, are building their capacity to regulate and secure SFM, as well as increasing their governance capacity to implement their forest policy and law with greater accountability.

⁴ This issue is currently the focus of considerable attention within the biofuels sector (including woody biomass) where ILUC is a considered a key issue. It is also central to emerging policy within the UNFCCC where forest-related activities under REDD+ will be monitored nationally to avoid leakage.

VPAs tie government performance to trade, and therefore are able to promote changes in institutional behaviour across the sector that help promote responsible forest management. The FLEGT process does this through a number of mechanisms within VPAs including:

- a process for agreeing on the definition and scope of legality and the means to verify legal compliance of all stakeholders: government regulatory agencies, forest management companies, local government agencies and forest owners;
- a commitment to greater transparency of forest sector information, such as permit and concession holdings, fees, management standards and performance, benefit sharing, and harvest information, all of which will improve accountability and sector governance;
- a requirement for inter-agency coordination to ensure verification of compliance with sector regulations and promote the collaboration needed to improve sector governance.

Furthermore, FLEGT achieves a high level of visibility because of the political exposure achieved by a bilateral agreement. The independent audit of the system and on-going involvement of the EU, civil society and other stakeholders maintain this visibility throughout implementation. No other approach to sustainability, including certification, provides this level of scrutiny at a national level.

3.2. DELIVERING GREATER SUSTAINABILITY ACROSS THE FOREST SECTOR

The long-term aim of the FLEGT Action Plan is sustainable forest management. VPAs therefore require that the laws included within the licensing schemes address the three pillars of sustainability – economic, environmental and social objectives⁵.

The VPAs aim to promote sustainable forest management in timber producing countries by supporting improved forest law enforcement and governance⁶. In some countries forest legislation is already based on the premise of sustainable forest management, so better law enforcement will lead to

more sustainable forest management. Where this is not the case the EU Action Plan clearly states that the EU should encourage a review of the legal framework. There is a strong premise that this review should be undertaken through an inclusive multi-stakeholder process.

This process for agreeing the scope of laws to be included, and identifying where reform is required, together with the existing legal framework in countries that have agreed (or are negotiating) a VPA delivers many of the sustainability requirements of Member States' public purchasing policies.

Even where a country's legal requirements are not as far-reaching as the sustainability requirements of public purchasing policies or forest certification schemes, VPAs aim to ensure that they are implemented across the entire national forest sector, so the overall impact on sustainability is substantial.

Furthermore, the process of developing and implementing a licensing scheme may build on or support the processes through which certification standards are developed. In such situations, FLEGT VPA processes will compliment FMU-level forest certification (and vice versa) in delivering the sustainability aims of the EU and its Member States.

FLEGT VPAs establish the foundation for forest sector governance at a national level, forcing all operators and the institutions overseeing the sector to change their behaviour in ways that implementation of sustainability at the FMU-level cannot achieve.

3.3. CLEAR AND TRANSPARENT REQUIREMENTS

Both public purchasing policies and certification schemes require legal compliance as a basic prerequisite for demonstrating sustainability. However, this presents major challenges in countries where the laws are poorly formulated, unclear, inconsistent or inequitable, resulting in uncertainty for both companies and auditors on what constitutes adequate compliance. Resolving these issues is a central element of FLEGT VPA negotiations, which require a review of the legal framework to ensure it is clear, consistent and properly interpreted. This review is incorporated in the bilateral agreement and identifies the principles, criteria, indicators and verifiers agreed between stakeholders for monitoring compliance with the national law.

⁵ FLEGT Briefing Note 02 available at <http://www.euflegt.efi.int/uploads/Briefingnote2.pdf>

⁶ FLEGT Briefing Note 06 available at <http://www.euflegt.efi.int/uploads/Briefingnote6.pdf>

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Non-compliances are not identified by an individual in FLEGT systems (as they are in certification systems) but rather are based on a comprehensive legal and institutional system. Legal inconsistencies are generally clarified before the system becomes operational so it is clear to auditors what evidence is sufficient to demonstrate compliance. FLEGT VPA definitions of legality will greatly facilitate the implementation of certification at an FMU level, as managers and certification systems will be able to refer to a definition of legality that is clear and agreed by all stakeholders.

3.4. MULTI-STAKEHOLDER PROCESSES INCLUDING GOVERNMENTS

One of the major strengths of voluntary certification schemes has been the emergence of multi-stakeholder processes to undertake activities such as the development of national standards. This has led to a paradigm shift in many countries with a wide range of stakeholders gaining access to the discussion on what constitutes sustainable forest management in practice. However, as with other voluntary standards, the engagement of governments is usually limited. This is not always an issue, but can limit access of stakeholder groups to decision-makers within government.

The FLEGT VPA process requires national level stakeholder agreement on the interpretation of contentious areas of forest legislation through

multi-stakeholder processes. In this it can build on the experience provided by certification. However, in the case of FLEGT VPAs, government is central to the process and has the potential to provide a multi-stakeholder platform where the whole range of stakeholders has full access to government decision-making. This creates a strong incentive for active participation in these processes where the results are quickly translated into government commitments and endorsed in an international treaty. Furthermore, this provides a great opportunity to address the inadequacy, inequity and lack of coherence of existing forest policies and regulations.

In Ghana, the FLEGT VPA process has had exactly this impact by creating a new set of relationships and working practices between government and key stakeholders. As a result:

- requirements are geared to the actual governance challenges and stakeholder concerns;
- there is less conflict in the field because agreement has been reached on difficult and confusing issues that have plagued stakeholder interactions in the past;
- for the first time stakeholders have a direct dialogue with other stakeholder groups including government;
- greater ownership of the requirements by stakeholders leads to more realistic expectations and understanding of obligations in the field;
- dialogue results in pressure for more than legal requirements and creates a structure for larger stakeholder concerns to be voiced (e.g. transparency and legal reform).

3.5. INDEPENDENT MONITORING

In countries with poor forest governance the lack of oversight of the forest sector as a whole, and government verification and enforcement activities in particular, creates a challenge for certification schemes. The FLEGT VPAs include a requirement for independent monitoring of the entire legality system through independent, EU-endorsed audits, which should deliver an extremely high level of assurance, making control agencies more accountable by ensuring they are doing their job properly.

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3.6. MANAGEMENT BEYOND THE FMU

In contrast with implementation of sustainability at the FMU level, FLEGT VPAs address a wider range of issues including the processes and rules governing the allocation of forest titles, revenue collection, transport of wood materials within a country, wood import requirements, harvesting and timber processing requirements, and customs procedures for the release of wood for export. All of these are crucial components of sustainability for the forest sector as a whole.

In addition, FLEGT VPAs also support wider improvements such as better verification capacity by government agencies of aspects such as health and safety standards and workers' rights. These may lead to a wider development impact outside the forest sector.

3.7. LONG-TERM IMPACT

The implementation and certification of sustainability at the FMU level is vulnerable to changes of ownership and management. For instance, if a certified FMU area is sold to another forest owner or manager who is not committed to sustainable forest management then sustainability is quickly lost with few or no residual benefits. While it is still too early to be definitive, it is likely that improvements in governance, institutional capacity and forest management made through FLEGT VPAs will be more robust because the entire forest sector is involved.

4. DELIVERY OF WIDER POLICY OBJECTIVES

The FLEGT VPA process aims to promote the long-term sustainability of forests, which should support the delivery of other policy objectives.

Better governance and development: The VPA process supports the enforcement of forest legislation, builds government capacity to regulate and ensure sustainable forest management and improves governance capacity and accountability in implementing forest policy and law. These elements improve governance and support wider development objectives.

Climate change: Since public purchasing policies on timber were first developed, climate change has

been placed firmly on the political agenda. Member States have made commitments to reduce carbon emissions from forest degradation and loss (for example through REDD+ under the UNFCCC). Poor governance in many key rainforest countries is now widely recognised as one of the most significant barriers to achieving a reduction in greenhouse gas emissions from deforestation and forest degradation. FLEGT VPAs have been identified as an effective tool for improving governance and as a result, engaging in a FLEGT VPA negotiation has been made a condition of some bilateral REDD+ agreements.

Rights of indigenous peoples: Legal reforms and scoping exercises in countries that have signed VPAs suggest that the requirement for a multi-stakeholder process means that the rights of indigenous and forest dependent peoples are better recognised and protected.

Biodiversity: The VPA process clarifies and enforces legislation, including that related to the protection of forests and the identification and demarcation of protected areas, an essential component of the conservation of biodiversity. In addition, the process of engaging stakeholders and agreeing the scope of legal compliance develops greater support among stakeholder groups for the enforcement of laws protecting biodiversity, which is particularly important for combating illegal hunting.

Security of supply: It is likely that improved governance achieved through the VPA process will secure an improved long-term supply of timber as rules on inventory, cutting limits and forest recovery are better enforced and illegal logging and clearing are controlled.



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FLEGT VPAs and voluntary certification schemes for FMUs both aim to promote sustainable forest management, but approach it from different angles.

FLEGT and voluntary certification: a summary of synergies

FLEGT VPAs and voluntary certification schemes for FMUs both aim to promote sustainable forest management, but approach it from different angles. In countries with poor forest governance and inadequate legal frameworks the combination of both approaches could be more effective than either in isolation and act as a powerful driver of change.

Voluntary FMU certification continues to maintain pressure on individual companies at a level of detail not addressed by VPAs. The VPAs complement such detail and ensure that all companies must play by the same rules, so that the entire sector and therefore forest landscape is under responsible forest management. Certification provides market recognition through claims and labelling that FLEGT VPAs will not.

FMU-level certification offers experience that may benefit the FLEGT VPA process in several ways, which include:

- providing a working example of good forest management in practice, proving it can be achieved;
- improving understanding at the FMU level of nationally agreed interpretations of legal requirements;
- including multi-stakeholder processes in legal reforms to secure stronger rights for stakeholders, improve understanding, and develop capacity to feed local views into national legal reforms;
- drawing on the experience of the private sector when implementing traceability systems, thereby reducing costs of the roll-out of national systems;
- using FMU certification audits as a means of verification, thus reducing costs, possibly improving quality and reputation through additional third party verification.

FMU certification will likewise benefit significantly from improved governance delivered by the VPA process in several ways, including:

- greater clarity in the interpretation of legal requirements with buy-in from all stakeholders, which also reduces costs of FMU-level consultation;
- national systems of traceability and compliance with legislation required by VPAs should reduce the cost of individual FMU-level and chain of custody certification;
- greater accountability and transparency delivered by the VPA process will ensure more information is available in the public domain, including independent audit reports, government revenue collection and distribution data, and information on contract terms and obligations;
- greater institutional capacity to govern the sector will avoid competition with illegal forestry operations, improve regulation and oversight of forest management, and reduce conflict with stakeholders;
- an enhanced level of law enforcement and government control of forestry activities creates an enabling environment for certification activities.

FMU-level certification and the FLEGT VPA process are mutually reinforcing mainly as a result of the enhanced capacity they generate in the forestry sector. In countries with local certification bodies accredited to international certification schemes, independent auditors with appropriate skills and expertise are likely to be available and will help to build further capacity.

Similar features are needed at both FMU and national levels to implement and control traceability systems for forest products along a supply chain. The knowledge of such traceability systems gained through the development of national certification schemes will benefit the VPA process.

5. CONCLUSIONS AND RECOMMENDATIONS

In countries with poor forest governance, FLEGT VPAs promote sustainable forest management in ways that are different and complementary to the certification schemes and other FMU-level approaches already recognised in Member States' public purchasing policies. Promotion of FLEGT VPAs alongside these other approaches to delivering purchasing policy

requirements at an FMU scale will encourage greater synergy and is likely to substantially improve forest management standards and their application in practice.

This, in turn, can lead to improved quality and cost efficiencies of private schemes and enable greater uptake of sustainable forest management and certification in places where it currently remains very difficult.

December 2010

The production of this briefing note was commissioned by the European Forest Institute's EU FLEGT Facility and funded by the EC, the Netherlands, France and Finland.

This brief is available in French and Spanish on www.proforest.net.

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