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The integration of voluntary schemes into the Organisation Classification System of VNTLAS

Policy Brief

Central Argument

This policy brief makes the argument that the certification status of an organization (i.e. company) should be an important determinant of the “risk” categorization of the organization in the emerging Viet Nam Timber Legality Assurance System (VNTLAS). In other words, whether an organisation has a “forest management” (FM) and/or “chain of custody certificate” (CoC) from an international voluntary certification or legality verification scheme (recognized by the emerging VNTLAS) should be an important factor in its categorization in the Organization Classification System (OCS). Such an integration of voluntary schemes into the OCS would contribute to pre-empt a potential overburden of the verification system; focus verification efforts in-line with the risk-based approach; mitigate duplication of financial and bureaucratic burdens on organisations; contribute to reduce the risk of rent-seeking (i.e. corruption); increase the robustness of the VNTLAS; and promote the adoption of sustainable forest management – in line with Vietnam’s policy goals.

Background

As part of the Voluntary Partnership Agreement (VPA) on Forest Law Enforcement, Governance and Trade (FLEGT) signed between the European Union (EU)

and Viet Nam in October 2018, Viet Nam has committed to establish an Organisation Classification System (OCS) as an integral part of the VNTLAS. The VPA provides an opening for the integration of voluntary schemes into the OCS, however, the form of integration is not yet defined. The VPA states: “*Viet Nam shall consider how voluntary certification schemes, voluntary due diligence and chain-of-custody systems recognized under VNTLAS can be integrated into the OCS methodology.*” (Annex V, Section 5.2).

The Organisation Classification System

Purpose: The stated purpose of the OCS is to “(i) assess the risk level of all Organisations under VNTLAS with regard to their compliance with VNTLAS requirements in order to apply appropriate verification measures in an effective, efficient and timely manner; (ii) assess the legal compliance of Organisations with respect to static and dynamic verifiers as specified in the [Legality Definition] LD; and (iii) to reduce administrative procedures and to facilitate the production and business activities of organisations and to encourage Organisations to comply with the law.” (Annex V, Section 5.1).

Scope: As per the VPA, the OCS shall apply to all “Organisations” in the VNTLAS supply chain, meaning

“forestry companies, state forest enterprises, protection forest management boards, special-use forest management boards, and cooperatives and enterprises involved at any stage of the supply chain and that have business registration” (Annex V, Section 2.2.1). The OCS is to be managed by the central Forest Protection Department (FPD).

Classification criteria: Organisations are classified based on the following criteria (Annex V, Section 5.2):

- *Compliance with dynamic supply chain control verifiers to ensure that only legal timber enters the supply chain (as defined in Section 4.1);*
- *Fulfilment of supply chain control declaration and reporting requirements (as described in Section 6.5);*
- *Compliance with static verifiers (as defined in Section 4.1);*
- *Record of violations (as described in Section 11).*

Risk classification categories: As per the VPA, Organisations will be classified into two risk categories (Annex V, Section 5.2):

- *“Category 1” (compliant): Organisations that meet the criteria; and*
- *“Category 2” (non-compliant): Organisations that do not fully meet the criteria or newly established Organisations.*

Table 2. Minimum criteria and risk categories in the OCS (Source: Annex V, Section 5.2)

Criteria	Category 1	Category 2
<i>Compliance with dynamic / supply chain control verifiers to ensure that only legal timber enters the supply chain</i>	<i>Fully compliant</i>	<i>Any non-compliance</i>
<i>Fulfilment of supply chain declaration and reporting requirements</i>	<i>Fully compliant</i>	<i>Failure to submit declarations and reports according to legal requirements</i>
<i>Compliance with static verifiers</i>	<i>Fully compliant</i>	<i>Non-compliance</i>
<i>Record of violations and sanctions</i>	<i>No record of violations or sanctions</i>	<i>Any record of violations or sanctions</i>
<i>Other criteria</i>		<i>Newly established organisations</i>

Implications of classification categories: There are mainly three types of implications of an organisation’s

categorisation for the organisation itself and the verification authorities:

(i) *Implications for export procedures* (Annex V, Section 7.1):

- *Submission of timber export dossier to FPD:* Category 1 organisations do not need to submit timber export dossiers to FPD for approval, but submit them directly to Customs or to the FLEGT licensing agency – in the case of EU exports (i.e. “self-certified timber export dossier”). Category 2 organisations must submit an original copy of the Timber Export Dossier to the local FPD for approval before submission to customs / FLEGT licensing agency (i.e. “certification of timber export dossier by local FPD”).
- *Documentary checks by FPD:* Category 1 organisations face no further documentary checks by FPD prior to export. In the case of Category 2 organisations, the local FPD checks the completeness of the legality of all documents of the timber export dossier as well as the violations database. FPD shall temporarily reject to certify the timber export dossier until any non-compliance in the record of violations has been resolved.
- *Physical check by FPD:* Category 1 organisations face no additional physical checks. Category 2 organisations face physical checks by local FPD on a *minimum* of 20% of volume of each shipment of the organisation.

(ii) *Implications for the frequency in assessment of legal compliance of organisations by FPD* (Annex V; Appendix 2 Supply Chain Control): All organisations are regularly assessed in the context of the OCS categorization. However, the frequency of OCS assessments is determined based on the organisation risk category. Category 1 are assessed every two years; Category 2 are assessed every year.

(iii) *Implications for documentary archiving by FPD along the supply-chain* (Annex V; Appendix 2 Supply Chain Control): In several instances, the VPA foresees a differentiation in the required archiving by local FPD along “critical control points” of the supply chain depending on whether the organization is of Category 1 or 2. Specifically, archiving is not required at certain instances for Category 1 organisations, and the number of documents is less for Category 1 organisations at certain instances. For example, for timber entering the supply chain from planted production forests the FPD only archives documents of Category 2 organisations (incl. map of harvesting, harvest permit, packing list, etc.). During transportation, processing and trade, FPD must

archive invoices and packing lists of Category 2 organisations, but not of Category 1 organisations.

Voluntary certification and legality verification schemes

The VPA provides a definition of voluntary certification schemes (Annex V, Section 2.3): “A *voluntary certification scheme* is a market-based non-regulatory mechanism subject to third party evaluation.”

Internationally, a further distinction is generally made between “*forest certification schemes*” which intend to demonstrate adherence to sustainable or responsible forest management practices (often exceeding legal requirements) (e.g. FSC and PEFC), and “*timber legality verification schemes*” which only intend to provide assurance of adherence to legal requirements (e.g. LegalSource Standard by NEPCo).¹ We use the term “*voluntary scheme*” to encompass both of these types.

Moreover, it is also important to realize that forest certification and timber legality verification schemes generally include two sets of standards: (i) “*forest management standards*” set the requirements for forest management (FM); and (ii) “*chain of custody standards*” (CoC) define the traceability requirements of timber within a point in the supply chain including sourcing, processing, trading, and distribution where progress to the next stage of the supply chain involves a change of product ownership.

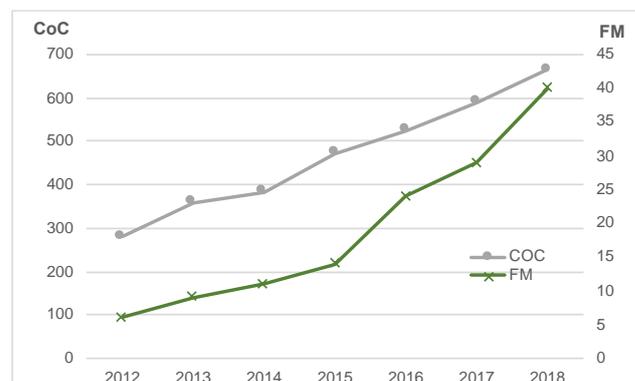
Finally, the largest international certification schemes (PEFC and FSC) make a distinction between “*certified*” timber and “*controlled wood*” (CW) / “*controlled sources*”. Certified timber is produced through the application of “*sustainable forest management*” practices as per the schemes’ standards; controlled wood, on the other hand, is material from “*acceptable sources*” meeting specific requirements (including that it not be harvested illegally, originate from forest conversion or from management practices that threaten high conservation value forests). Controlled wood / sources can be mixed with certified timber and sold with “*mixed*” claim or label.

Voluntary schemes in Viet Nam

The number of companies certified by voluntary schemes is growing rapidly in Viet Nam. The predominant scheme is FSC (PEFC and legality verification schemes are not yet applied in Viet Nam). Today there are 665 processors with valid FSC CoC

certificates, and an additional 40 forest companies with combined FM/CoC certification. (There are no companies with only FM or with FM/CW certification). This represents an annual growth rate of > 20% in certifications since 2012. Certification is primarily driven by the need to meet international market demand for certified products.

Figure 1. Number of valid FSC CoC and FM certificates in Viet Nam (December of each year)



Source: <https://ic.fsc.org/en/facts-and-figures>

Voluntary schemes and FLEGT

There are important differences between voluntary schemes and FLEGT VPAs. Foremost is the fact that VPAs are intended to improve the governance in the forest sector of a nation, whereas certification schemes are only specific to the operations of companies. It is also important to realize that certification generally guarantees the legality of the timber source, but not the legality of the operations of the processors.² Moreover, certifications allow for “corrective actions” without the suspension of certifications.³ Finally, companies may be certified for only part of their operations (c.f. scope of certificate); processors may therefore deal with both certified and non-certified timber by segregating these two types.

Notwithstanding these differences, voluntary schemes play a role in FLEGT. The EU FLEGT documentation makes at least three references to the use of certifications to demonstrate timber legality.

- The EU FLEGT Action Plan (2003) makes explicit reference to private certification as “a means of proof of compliance with environmental requirements” and as “increasing the likelihood”

¹ GIZ Consultancy Report “Integration of voluntary certification and legality verification schemes in VNTLAS: Scheme overview, Methodology Proposal and Assessment results” (April 2016).

² FM certifications require forest operations to comply with Laws. However the focus of CoC certification is on the measures taken to

ensure that the timber is of legal source. In other words, the compliance of processors to tax, business, labor laws, etc. is not ensured by their certification.

³ A phased approach is also possible as part of the VPAs, but was not chosen by Viet Nam.

of timber legality for public procurements (Article 4.3).⁴

- As per the EU Timber Regulations (EUTR), “certification or other third party verified schemes that include verification of compliance with applicable legislation may be used in the risk assessment” (Clause 19) for the purpose of due diligence (Article 6). In other words, voluntary certifications can be used to minimize the risk of bringing illegal timber on the market.
- Finally, as per the EU FLEGT Briefing Notes – which were designed to provide useful orientations for the negotiations of VPAs – “market-based participants” may operate VPA control systems. The examples given include the verification of the legality of forest management “through certification schemes approved by [the] licensing authority” (FLEGT Briefing Note #8 “Market participant-based legality assurance and licensing”).

The extent of recognition of voluntary schemes by VPAs can vary: There are theoretically various degrees of recognition of voluntary schemes as part of VPAs, including:

- *Full recognition:* In this theoretical case voluntary forest certification and legality verification schemes would be recognized as fulfilling the TLAS legality and supply chain control requirements. This could be either operator or product-based. Honduras has been discussing this option.
- *Partial recognition:* In this theoretical case, verification of some TLAS requirements would be performed through voluntary certification systems (e.g. forest management). Issuance of FLEGT license could require additional verification or checks. This is foreseen in the VPAs of Congo and Cameroon.
- *Supporting risk-based verification:* In the case of Viet Nam, it is foreseen that voluntary schemes serve to demonstrate the legal origin of timber in the country of harvest (i.e. meet the requirement for additional documentation timber imports based on risk level). Moreover, the VPA also provides an opening for certification to lead to a reduction in the intensity of verification for organisations through the integration of voluntary schemes in the OCS (to be defined).

Options for the integration of voluntary schemes into the OCS

As mentioned previously, the VPA provides an opportunity for the integration of voluntary certification schemes into the OCS, however, the form of integration is not yet determined (Annex V, Section 5.2).

One can define at least three theoretical options of integration of certification into the OCS, which we will call “strong,” “medium” and “weak.” In describing these optional forms we consider “certified organizations” to be companies that hold a “forest management” and/or “chain of custody” certificate issued by a scheme recognized by VNTLAS (as per Annex V, Section 2.3) which encompasses *the entire scope of their operations* (i.e. organizations that hold certificates for only part of their operations would not be considered “certified organisations” for the purpose of their risk categorization in the OCS).

- *“Strong” integration:* Certified organisations would be placed in “Category 1: (compliant)” of the OCS. The possibility of downgrading an organisation into “Category 2 (non-compliant)” by a designated relevant authority would of course exist.
- *“Medium” integration:* Certified organisations would be considered to meet the Criteria #1 of the OCS (*Compliance with dynamic / supply chain control verifiers to ensure that only legal timber enters the supply chain*) AND Criteria #3 (*Compliance with static verifiers*). These would still be assessed against compliance with Criteria #2 (*Fulfilment of supply chain declaration and reporting requirements*) and Criteria #4 (*Record of violations and sanctions*).
- *“Weak” integration:* Certified organisations would be considered to meet only Criteria #1 or #3 of the OCS.

Rationale for the “strong” integration of voluntary schemes into the OCS

This policy brief makes the argument that the certification status of an organization should be an important determinant of the categorization of the organization in the OCS. The rationale for such a “strong” integration of international voluntary certification and legality verification schemes into the OCS includes the reasons listed below. A “medium” or

⁴ “Schemes that certify sustainable forest management cover environmental considerations and other issues including, usually, the legality of harvesting of the timber. Certification of sustainable forest management can therefore act as a means of proof of

compliance with these environmental requirements and increase the likelihood that the public authority is being supplied with legally harvested timber.”

even “weak” integration of voluntary schemes into the OCS would still have similar benefits (compared to no integration), but arguably less than a “strong” integration:

To pre-empt a potential overburden of the verification system: It is important to recall that the OCS applies to all enterprises involved in the supply chain, including various types of importers, forest companies, management boards, traders, processors, furniture producers, sellers, exporters, etc. As per the description of the OCS in the VPA, organisations that are not “fully compliant” with any of the static or dynamic verifiers would be placed into Category 2. This is likely to represent tens of thousands of organisations⁵. A complete analysis of the implication of assessing thousands of organisations against verifiers, and performing physical checks of 20% of tens of thousands of shipments, has not yet been performed. However, there is a risk that verification authorities will be inundated; this puts the success of the VPA implementation at risk.

To focus verification efforts in-line with the risk-based approach: The main forest certification schemes (e.g. PEFC and FSC) and legality verification schemes (e.g. LegalSource Standard by NEPCo) are specifically designed to provide evidence to support claims of legality of timber as per the regulations in the country of origin in relation to the Lacey Act, EU Timber Regulation (EUTR), Australian Illegal Logging Prohibition Bill, etc. As such, certified companies are subject to audits by independent certifying bodies to assess their compliance with legal regulations⁶. By classifying these certified forest companies and processors into the lower risk category of the OCS (i.e. Category 1), verification authorities would be able to focus limited resources towards the verification of organisations at greater risk of illegal timber trade, notably non-certified companies. Such a categorization is in-line with the risk-based approach of the VNTLAS.

To mitigate the burden on organisations: A major risk of the VPA implementation is an increase in costs of doing business, in the form of staff to complete administrative procedures for OCS assessments, storage costs while awaiting clearance of timber export dossiers, etc.⁷ A stated objective of the OCS is to “*reduce administrative procedures and to facilitate the production and business activities of organisations.*” Indeed, there is a consensus among all stakeholders that the VPA implementation should strive to reduce the burden on organisations as much

as possible, while still maintaining the required legality assurance. One way to do this is to place organisations holding an international certification into Category 1 in the OCS. This is justified because these organisations are required to demonstrate the legality of their operations (in the case of FM certification) and the measures taken by them to ensure that they deal only with timber that is legally sourced (in the case of CoC certification). This would give pro-active organizations the opportunity to respond to a variety of market requirements (e.g. for sustainable or legal timber) without the cumulative bureaucratic requirements of certification and verification. As explained above, the export procedures for Category 1 organisations are simplified (i.e. no further physical or documentary checks by local FPD) and the frequency of assessment of legal compliance is reduced.

To reduce the risk of rent seeking: As indicated by the policy impact assessment of the VPA, the VNTLAS creates opportunities for rent seeking by verification officials. Examples include: the payment of an informal fee to officials for the approval of the timber export dossier (irrespective of whether the dossier is in order or not); and the payment of an informal fee for a favourable OCS categorization (irrespective of the actual level of compliance). The risk of rent seeking is particularly acute because of the large stakes for organisations: the approval / non-approval by local FPDs of a timber export dossier has substantial cost implications for exporters; the level of categorization in the OCS implies substantial benefits to organisations. Viet Nam has arguably made progress addressing corruption in the forest sector, but the problem still persists (and is the justification for several of the instruments of the VPA, including the independent evaluation, the internal inspection and complaints mechanism, stakeholder involvement in the monitoring of the agreement, etc.). Integrating the results of certification in the organisation categorization in the OCS is one way to stem rent seeking. This is not to say that agents of Certification Bodies are less corruptible, but rather that the checks and balances certification can contribute to the OCS would limit the power for arbitrary decision-making by one or a handful of individuals.

To increase the robustness of the VNTLAS: The VNTLAS will be subject to independent evaluation. A key question will be: in how far does the VNTLAS assure the legality of the timber in the supply chains? One way to increase the robustness of the entire timber legality assurance system is to mobilize the

⁵ Wood processing enterprises alone number ca. 4,500. The numbers of importers, traders, exporters, etc. was not readily available. In addition there are some 24,000 households involved in wood industry/handicrafts, a proportion of these households will likely meet the threshold requiring to be registered and treated as an organization under the OCS.

⁶ GIZ Consultancy Report “Integration of voluntary certification and legality verification schemes in VNTLAS: Scheme overview, Methodology Proposal and Assessment results” (April 2016).

⁷ See: VNFOREST’s Policy Impact Assessment of the VPA (20017).

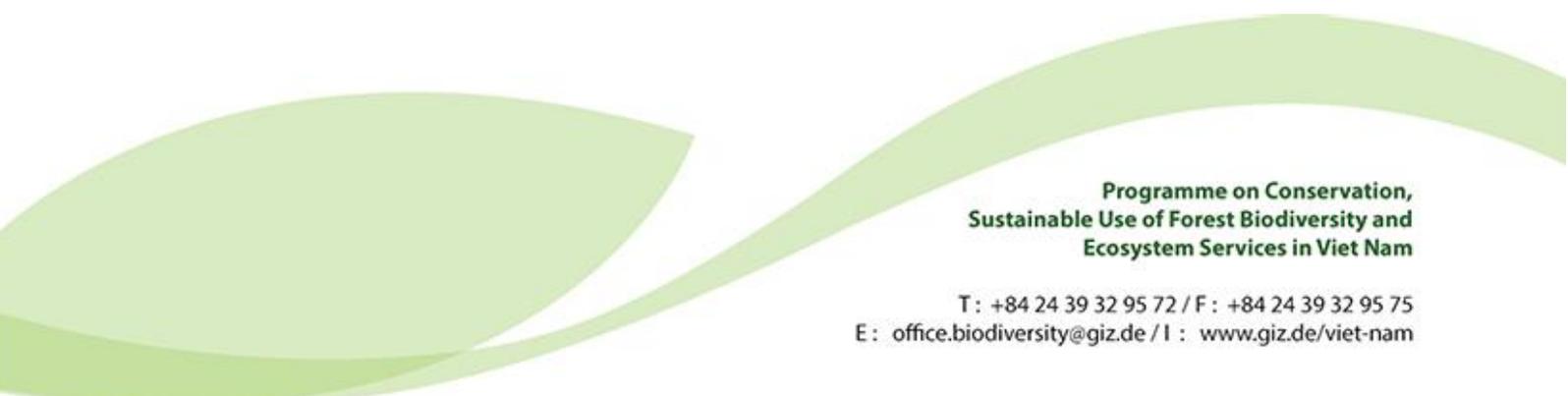
strengths and experiences of certification schemes and certification bodies. These schemes cannot replace verification by national authorities, but the complementary involvement of the procedures and institutions of voluntary schemes will contribute to the strength the overall system. The VPA at present arguably doesn't create many incentives for organisations to become certified; a strong integration of voluntary schemes into the OCS could provide this incentive. Conversely, the integration of certification into the OCS would also likely increase the robustness of certification. Indeed, recognition of certification will require more transparency and accountability of CBs; both members of the JIC (the EU and Viet Nam) could have a better oversight of certification through the periodic evaluations.

To promote sustainable forest management:

Finally, but not least, by making certification an important factor in the categorization of organisations within the OCS, Viet Nam would be promoting the adoption of sustainable forest management practices. The sustainable management of forests goes beyond timber legality, and implies the respect of additional environmental and social aspects, including the protection of high value conservation areas (in the case of natural forests) or native ecosystems (in the case of plantations), erosion control, conflict management with local communities, etc. The sustainable management of forests is a stated policy goal of Viet Nam; integrating certifications into the OCS would create the incentive for organisations to advance this goal.

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Disclaimer: *The views and opinions expressed in this article are those of the authors and do not necessarily reflect the official policy or position of BMZ, MARD, VNFOREST or GIZ. The author acknowledges the presentations on the topic of the integration of certifications into VPAs by Bruno Cammaert (FAO) and Sebastian Schrader (former EFI).*



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