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Technical contributions for the vietnam flegt licensing scheme and Regulations



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Authors

Jussi Lounasvuori

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On behalf of the

German Federal Ministry for Economic Cooperation and Development (BMZ)

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1. CONTEXT

The Voluntary Partnership Agreement (VPA) between Viet Nam and the European Union (EU) lays down a set of requirements for the FLEGT licensing process and FLEGT licenses. The Annex IV to the VPA specifies, among others, the following provisions:

- Any export shipment of timber products that is included in Annex I of the VPA from Viet Nam for the EU market is required to have a FLEGT licence. The EU shall accept such shipments from Viet Nam for import into the Union only if they are covered by FLEGT licences.
- FLEGT licences are issued by the competent Vietnamese Licensing Authority (CITES Management Authority) to shipments of legally produced timber products to be exported for the EU market. The legality of shipments shall be verified in accordance with the criteria and procedures laid down in the VPA. The Licensing Authority issues a single original FLEGT Licence to the licence applicant, who shall send it to the importer in the EU. The FLEGT licences shall be issued before customs clearance in Viet Nam.
- The FLEGT licence are issued to a single shipment of a single exporter and for a single point of entry into the EU. The same FLEGT licence should not be declared to more than one customs office in the EU.
- A FLEGT licence may be in paper or electronic form. The licence format shall be made available by the FLEGT Licensing Authority in English and Vietnamese, and the filled information shall be provided in English. Both paper-based and electronic licences shall contain all information as specified in the format of FLEGT license and related notes and guidance.
- For complex shipments for which it may not be possible to include all required information in the actual FLEGT license, an authorized attachment including qualitative and quantitative information related to the description of the shipment, must be added to the licence.

The processes of handling and validating FLEGT licenses and releasing the products for free circulation in the EU are described in Annex III of the VPA.

The VPA states that the detailed requirements and procedures for issuance, extension of the validity, withdrawal, replacement and management of FLEGT licences shall be regulated in national legislation that will be developed after signing of the agreement. The VPA further states that the FLEGT licensing procedures shall be made public.

2. OBJECTIVE

Aligned with by the Terms of Reference (TOR) for this consultancy assignment, this report provides technical contributions for the development of legislation that lays down the Vietnam FLEGT licensing scheme. The focus is on licensing related procedures and functional specifications of the information management system that Viet Nam will set up for the national FLEGT licensing scheme.

The procedures and functional specifications are written in a manner that enables their effortless use as inputs for development of necessary (i) legislation; (ii) guidelines for exporters / government agencies involved, and (iii) TOR for setting up an on-line licensing system / information management system.

3. FLEGT LICENSING PROCEDURES AND FUNCTIONALITIES

3.1 OVERVIEW AND SCOPE

FLEGT licenses are issued to shipments of timber products that have been produced in compliance with all relevant requirements of the Timber Legality Assurance System (TLAS) of the VPA partner country. More specifically, the exporter and the suppliers that are involved in the production of the export consignment have been verified to comply with the Legality Definition(s) and the supply chain has been verified to contain exclusively legal timber.

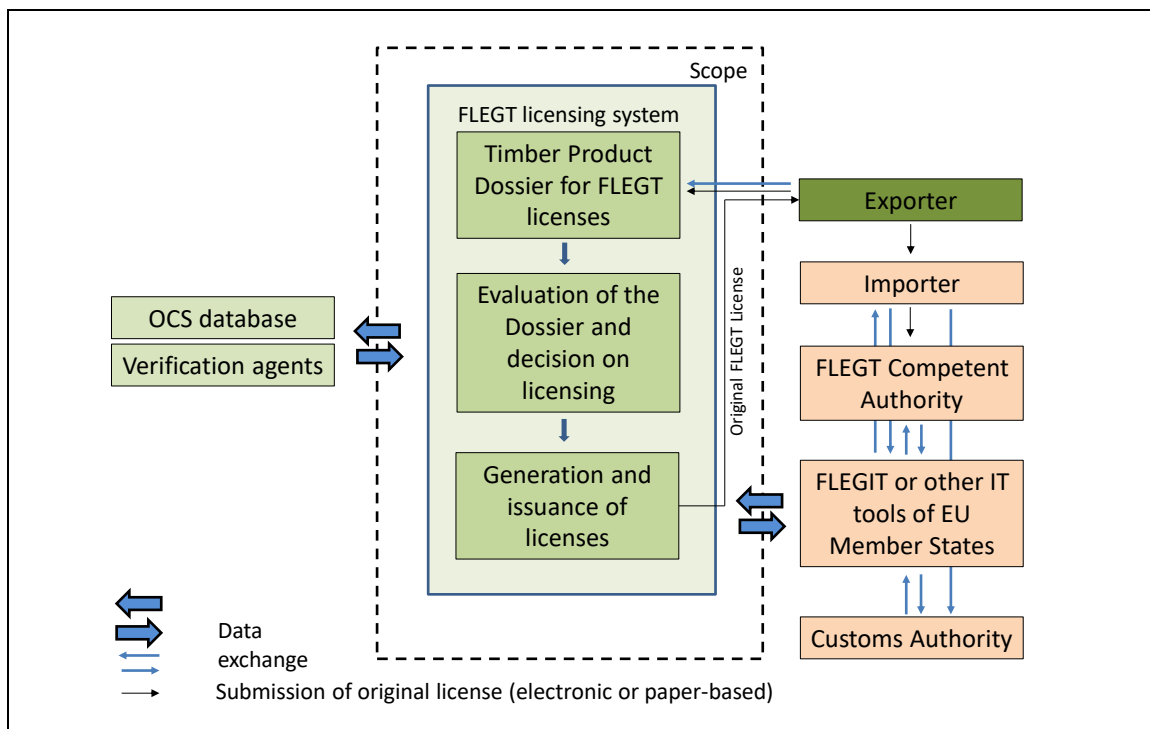
In the case of Viet Nam, the FLEGT Licensing Scheme is defined to include functionalities to (i) apply for FLEGT licenses, (ii) evaluate the applications for making decision on eligibility to a license, (iii) generation and issuance of licenses and (iv) submission of paper-based and electronic licenses by the exporter to the EU and exchange of information between the Viet Nam Licensing Authority and the FLEGT Competent Authorities of the EU Member States (Figure 1).

According to the VPA the evaluation of applications for FLEGT licenses is based information on legal compliance received from (a) the exporter that submits a *Timber Product Dossier for FLEGT Licensing* to the Licensing Authority and (b) different verification agencies that have recorded the compliance information in the database of the *Organizations Classification System (OCS)*. The database of the OCS is considered to be a sound source of information to demonstrate compliance of the *static verifiers*¹. However, the VPA is not unambiguous on how the integrity of the timber supply chain by each export shipment (*dynamic verifiers*²) should be verified. It is expected that the national legislation that will be developed for the implementation of the VPA specifies this verification function.

¹ For legal compliance of establishment and operations of organisations and household

² For legal compliance of timber origin and timber in circulation at each stage of the supply chain

Figure 1 Overview of FLEGT licensing system



The FLEGT licensing system is expected to function in an electronic environment with an option for exporters to submit *Timber Product Dossier for FLEGT Licensing* also in hardcopies. Consequently, the system is expected to include mechanisms that enable informing the exporters on the licensing decision in hardcopies.

This paper covers the core functionalities of the FLEGT licensing system in Vietnam (dotted line in Figure 1). In addition, the paper identifies options on how the FLEGT Licensing Authority can be assured that the export products have been made of legal timber.

3.2 SUBMISSION OF TIMBER PRODUCT DOSSIER FOR FLEGT LICENSING

VPA Annex IV, Chapter 5.1: “The Licensing Authority shall establish systems to receive both hard-copy and electronic licence registrations in order to respond to the capacity and location of export operators.”

VPA Annex IV, Chapter 5.2: “The content of the Timber Product Dossier for FLEGT licensing, including any specific requirements for samples and demonstration products, shall be specified in the regulation on FLEGT licensing to be issued by the Government of Viet Nam after signing of the Agreement.”

The exporter may submit either paper-based or electronic *Timber Product Dossiers for FLEGT Licensing* to the FLEGT Licensing Authority. The dossier consists of the following document:

1. FLEGT licence application

The application contains the information that is specified in the FLEGT license format (VPA Annex IV, Appendix 1, Template 1) and, where necessary, the form of the authorized attachment (VPA Annex IV, Appendix 1, Template 2³)

2. Sales contract
3. Packing list
4. Invoice (as regulated by Ministry of Finance)
5. Additional documents

The VPA does not specify these additional documents. VPA Annex V, Appendix 2 provides a framework for collection of supply chain data (dynamic verifiers) and forwarding these data sets to the subsequent operators in the supply chain.

The additional documents establishing the 5th part of the *Timber Product Dossier for FLEGT Licensing* needs to be laid down in the national legislation on FLEGT licensing. The level of details of these additional documents depends on the solution that Viet Nam will take for the verification of legality of timber in the supply chain. Two baseline options that can provide high level of assurance on legality have been identified:

- a) The exporter submits a comprehensive set of packing lists and invoices to the Licensing Authority as outlined in VPA Annex V, Appendix 2, Table 2. If this option is preferred, quantitative reconciliation of timber products in the supply chain must be carried out in the context of the evaluation of applications for FLEGT licenses.
- b) The exporter submits (i) only the packing list of the export consignment and (ii) gives names of the timber sources and suppliers involved in the supply chain to the Licensing Authority. It is expected in this option that the suppliers have uploaded (or submitted by other means) quantitative data on produced, purchased, processed and sold timber into a national system for controlling the supply chain (traceability system), and these datasets are subject to systematic evaluation by the verification agencies.

The additional documents of the *Timber Product Dossier for FLEGT Licensing* and related verification of the timber supply chain are further discussed in the report section 3.3.

3.3 EVALUATION OF TIMBER PRODUCT DOSSIER FOR FLEGT LICENSING AND DECISION ON FLEGT LICENSING

Once the *Timber Product Dossier for FLEGT Licensing* has been lodged at the FLEGT Licensing Authority, the Authority to evaluate the dossier and make the decision on licensing. The **evaluation step** contains the following tasks, including a recommended additional task that is not addressed in the VPA Annex IV:

1. Checking the completeness of the Dossier i.e. it covers all required documents and that they contain all necessary information
2. Consultation of the OCS database for checking the exporter and the suppliers involved are in compliance with the VNTLAS requirements (Category 1). In case the exporter and/or any suppliers are classified in Category 2, then additional verification is needed (Ref. Task 4)

³ If all required information cannot be included in Template 1 of Appendix 1 of VPA Annex IV

3. Verification of the timber supply chain associated with the export shipment

VPA Annex V, Section 7.1: “Timber is subject to verification at every stage of the supply chain prior to exporting. At the exporting stage, exporters (Organisations and Households) shall prepare and submit the Timber Export Dossier. The VPA Annex V, Appendix 2, Tables 1-6 provide guidelines on management of information on timber sources and timber circulation in VNTLAS.”

Aligned with in the report section 3.2, two options are recommended for the evaluation of the supply chain associated with export shipment:

- *The Licensing Authority or a verification agent evaluates the integrity of the supply chain based on the Timber Export Dossier that exporter has submitted to the Authority. This option requires allocation of human resources to the Licensing Authority or verification agencies and development of practical tools for carrying out the evaluation work, in particular reconciliation of quantitative information between and within stages of the supply chain. The reconciliation includes control of recovery rates at timber processing factories.*
 - *The verification agencies evaluate the integrity of the supply chain based on (a) the data that the exporter has uploaded (or otherwise submitted) to a national traceability system and (b) information on the suppliers involved in the timber supply chain, which the exporter has submitted the Licensing Authority. A two-way communication link between the Licensing Authority and the verification agencies is necessary for effective exchange of information.*
4. Additional verification of export documents and physical checks of shipment, if the exporter and/or any suppliers are classified in Category 2 of the OCS. Physical checks target a minimum of 20% of volume of each shipment of the exporter.

The **decision-making step** bases itself on the outcomes of the previous evaluation step. In case the exporter and the associated suppliers and the export products are deemed compliant with the relevant VNTLAS requirements, the Licensing Authority shall issue the FLEGT licence for the shipment. In case of non-compliances with the relevant VNTLAS requirements, the Licensing Authority shall reject the FLEGT licence application for the shipment and shall take actions in line with applicable legislation, if violations of law have been detected.

3.4 GENERATION AND ISSUANCE OF FLEGT LICENSES

VPA Annex IV, Chapter 3.1: “The Licensing Authority issues a single original FLEGT Licence to the licence applicant...”

VPA Annex IV, Chapter 4.3: “The CITES Management Authority of Viet Nam shall issue CITES permit for shipments into EU containing only timber that is subject to the provisions of CITES or products containing such timber. These timber products shall be exempted from obtaining a FLEGT licence.”

VPA Annex IV, Chapter 1.5: “A FLEGT licence may be in paper or electronic form.”

VPA Annex IV, Chapter 3.4: “The Licensing Authority shall retain for its records and for possible future verification of licences issued an electronic copy of each FLEGT licence.”

A new license

The VPA is very specific regarding the format of FLEGT licenses (The format is standardized in the *FLEGT Regulation (2173/2005)*). It contains contain 18 information cells as defined in the VPA Annex IV, Appendix 1, Template 1. For complex products, the

license may have an authorized attachment as defined in the VPA Annex IV, Appendix 1, Template 2. The paper-based licenses shall

- be standard size of A4
- be completed in typescript or by computerised means
- be stamped by the Licensing Authority (an embossment or perforation may be substituted for the Licensing Authority stamp)
- be tamper-proof to ensure the authenticity of the FLEGT licence and to record the quantity allocated in such a way as to make it impossible to insert figures or references
- not contain any erasures or alterations, unless those erasures or alterations have been authenticated by the stamp and signature of the Licensing Authority

A license can be valid a maximum period of six months. The date of expiry shall be indicated on the licence.

Extension of validity of a license

After the date of expiry of the licence, the validity of the licence may be extended once for a period of a maximum of two months by the FLEGT Licensing authority based on a written request (together with explanations) by the exporter. If the request for extension has been approved, the Licensing authority inserts and validates the new expiry date in the license.

Withdrawal of a license

The FLEGT Licensing Authority can withdraw a license, if the exporter has been detected to violate the law after issuance of a FLEGT licence, a license has not been used prior to its expiry date or an exporter has returned a license.

Replacement of a license

If a license has been lost, stolen or destroyed, or it contains mistakes, the Licensing Authority can replace such a license based on an application by the exporter or its authorized representative. The exporter or its authorized representative shall provide explanations for the loss, theft or destruction.

The replaced original license and any copies for the EU Customs Authority shall contain the information included in the original license including the original license number and date of issue of the replaced license. The replacement shall bear the endorsement "Replacement Licence".

In the event that the lost or stolen licence is retrieved, it shall not be used and must be returned to the Licensing Authority. For licences containing mistakes by the Licensing authority, the FLEGT Licensing Authority shall withdraw the FLEGT Licence and issue a corrected licence, which shall be authenticated by the stamped endorsement "Duplicate" and forwarded to the competent authority.

Re-application

A new FLEGT licence shall be requested by the exporter whenever there is a change in the timber product, HS code, species, or number of units, as well as any deviation in the weight and/or volume of the shipment by more than 10% in comparison with the FLEGT licence.

3.5 COMMUNICATION WITH EU

VPA Annex IV, Chapter 3.1: "The Licensing Authority issues a single original FLEGT Licence to the licence applicant, who shall send it to the importer."

VPA Annex IV, Chapter 3.3: “Electronic copies of the FLEGT Licence will also be provided to the relevant EU Customs Authority and the EU FLEGT Competent Authority.”

VPA Annex IV, Chapter 8: “The Licensing Authority is responsible to respond to any questions of the EU Competent Authorities, as well as other authorities of Viet Nam, if there is doubt concerning the authenticity and validity of any licence, and provide additional information and clarification as requested.”

FLEGT licenses are submitted to the EU in two ways: (i) the exporter submits the original license to the importer and (ii) the license information system of Viet Nam sends an electronic copy to the FLEGIT or another information management system of the EU Member States. The information management systems in the EU will be developed to enable distribution of electronic copies of the FLEGT license to the FLEGT Competent Authorities and the Customs Authorities.

In addition, the Licensing Authority informs the concerned EU Competent Authority of extended validity, withdrawal, or replacement of a FLEGT Licence. This information will also be submitted electronically from the FLEGT licensing system of Viet Nam to the corresponding information management system in the EU.

In the event that the FLEGT Competent Authorities have questions on the FLEGT licenses issued in Viet Nam, they submit their inquiries to the FLEGT License Authority through the information management systems. The FLEGT Licensing Authority responds to the inquiries.

The FLEGT Competent Authorities will be granted rights to access the FLEGT licensing system of Viet Nam for checking the licenses issued to a specific EU Member States.

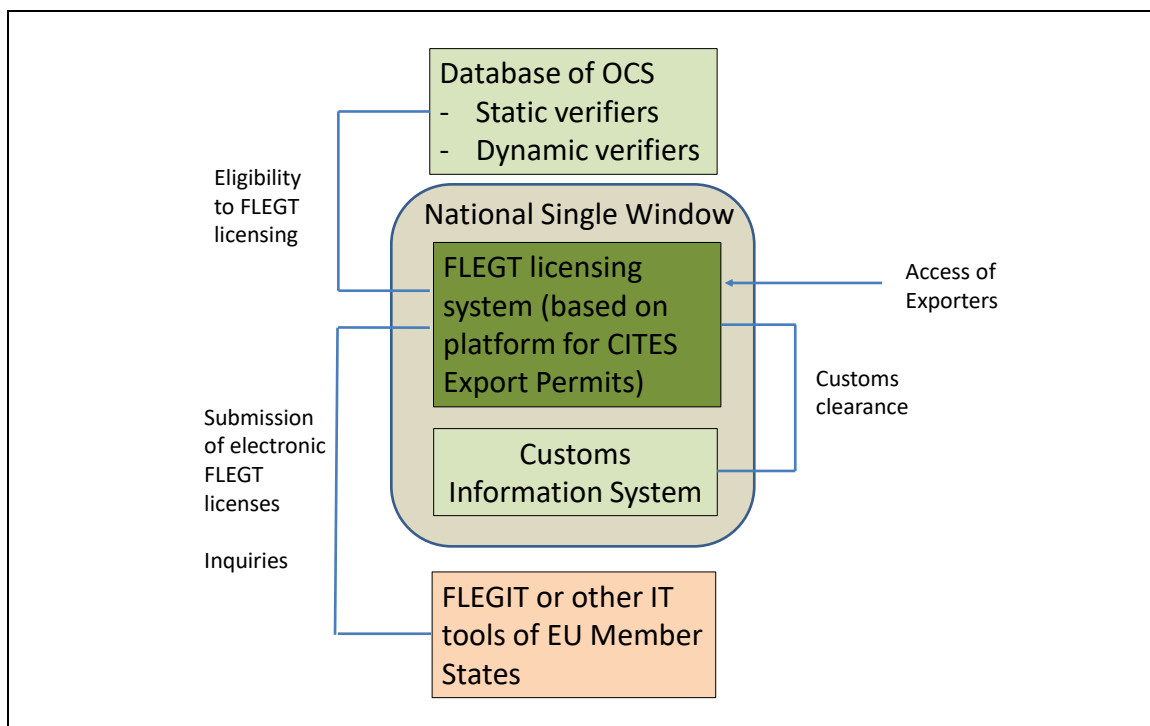
4. INFORMATION MANAGEMENT SYSTEMS

4.1 INTERACTIONS AND CONNECTIVITY

VPA Annex IV, Chapter 5.1: “The FLEGT licensing system will be progressively linked to the National Single Window system of Viet Nam as conditions allow for development of the systems.”

The information management system for FLEGT licensing is envisioned to draw on the system used for issuing CITES Export Permits. The CITES export permitting is already linked to the National Single Window system of Vietnam, which facilitates electronic applications for CITES export permits and communication with the Customs Information System.

Figure 2 IT Platforms



The FLEGT licensing system will be linked to the database of the OCS for checking the eligibility of applications for FLEGT licenses. International communication links are needed for submission of electronic FLEGT licenses to the EU (importers and FLEGT Competent Authorities and Customs Authorities of the EU Member States).

4.2 SUBMISSION OF TIMBER PRODUCT DOSSIER FOR FLEGT LICENSING⁴

⁴ Including the process of re-application

The information management system for FLEGT Licensing will be designed to include a user interface for the submission of *Timber Product Dossier for FLEGT Licensing*. The interface will have the following functions:

- Registration of exporters
- Entering the license information (as defined in VPA Annex IV, Appendix 1, Template 1 and Template 2) into the system
- Submission of copies of sales contracts, packing lists, invoices and additional documents
- Notification of receipt of the *Timber Product Dossier for FLEGT Licensing*

The user interface will be an internet-based application. In addition to a desktop application there might also be needs for mobile applications.

4.3 SUBMISSION OF REQUESTS FOR EXTENSION OF LICENSE VALIDITY OR APPLICATION FOR REPLACEMENT OF LICENSES

The user interface for exporters will include functionalities to submit requests for extension of license validity and applications for replacement of licenses. The interface will enable submission of the information on the original license and attributes of the extension or replacement as well as include space for providing explanations for the extension or replacement.

4.4 EVALUATION OF TIMBER PRODUCT DOSSIER FOR FLEGT LICENSING AND DECISION ON FLEGT LICENSING

The FLEGT licensing system will be designed to include the following functionalities and interactions with other systems based on which the Authority can make the decision on FLEGT licensing:

- User interface for officers to enter data on *Timber Product Dossier for FLEGT Licensing* into the FLEGT licensing system for cases when the exporter submits a paper-based dossier to the FLEGT Licensing Authority
- Notification of officers on receipt of a *Timber Product Dossier for FLEGT Licensing*, request for extension of a license validity and application for a replacement
- Recording results of completeness evaluation of the *Timber Product Dossier for FLEGT Licensing*
- Communication with the database of OCS for checking the classification category of the exporter and its timber suppliers
- Verification of the timber supply chain associated with the export shipment. The IT solution depends on how the evaluation of the timber supply chain will be integrated in the licensing process. At this point two options are foreseen:
 - o The FLEGT licensing system evaluates and reconciles timber quantities between and within stages of the supply chain (based on the information included in *Timber Product Dossier for FLEGT Licensing*)
 - o A traceability system of verification agencies evaluates and reconciles timber quantities between and within stages of the supply chain. Based on the information included in *Timber Product Dossier for FLEGT Licensing*, the FLEGT

licensing system electronically informs the traceability system (and verification agencies) of the operators and supply chains that are subject to the evaluation. The traceability system (and/or verification agencies) reports back to the FLEGT licensing system on the results of the evaluation.

- An interface for the verification agencies to report on the results of additional verification (document checks and physical inspections of export products) for the cases when the exporter and/or any suppliers are classified in Category 2 of the OCS
- Compiling the results from (i) completeness evaluation of the *Timber Product Dossier for FLEGT Licensing*, (ii) the classification category in the OCS, (iii) verification of timber supply chain and (iv) additional verification. Green light for generation of FLEGT license will be given only if the above evaluations/verifications demonstrate compliance with the relevant requirements of the VNTLAS.
- Notification of the exporter on the results of the evaluation/verification

The FLEGT licensing system will be designed to include functionalities to keep records and prepare reports on the submitted *Timber Product Dossier for FLEGT Licensing*, and results of their evaluation process. The system functionalities will be designed to distinguish between approved and rejected *Timber Product Dossier for FLEGT Licensing*.

4.5 GENERATION AND TRANSFER OF FLEGT LICENSES

VPA Annex IV, Chapter 3.4: “A system shall be in place to ensure that the electronic database and the copies of the licences therein archived shall have legal value in accordance with provisions of the Law on E-transactions No. 51/2005/QH11.”

The FLEGT licensing system electronically generates the FLEGT licenses based on the approved application of the exporters. With regard to the original license, the system prepares either a paper-based or an electronic license, whereas the copies of license are always electronic.

The FLEGT licensing system will have functionalities to keep records and prepare reports on issuance of licenses, extension of validity of licenses withdrawal of license and replacement of licenses.

The FLEGT licensing system will have functionalities to submit electronic licenses (originals or copies) to the (i) exporter, (ii) Customs Authorities of Viet Nam and (iii) FLEGT or other information management systems of the EU Member States. The security, safety and confidentiality of storage of information and electronic transactions shall comply with the the Law on E-transactions No. 51/2005/QH11.

5. ISSUES

It is in general expected that the FLEGT Licensing Authority decides on the eligibility to licensing based on verified information made available on (1) the legality of exporter and its suppliers and (2) the legality of timber used to produce the export shipment. The country of harvesting needs also be identified in the FLEGT license (boxes 12 and 13) or in the authorized attachment of the license. Since Viet Nam is a major importer of timber, diverse sources of timber set challenges for the management of supply chain related information.

The VPA provides a sound basis for the development of most elements of the national FLEGT Licensing Scheme. However, the verification of the timber supply chain of individual export shipments is not plainly laid down in the VPA Annex IV on FLEGT Licensing Scheme. This report suggests two options for producing the necessary supply chain related information. These options largely draw on provisions of the VPA Annex V⁵.

The VPA recognizes the need for intensified legality verification for exports, if the operators are classified in the category 2 of the OCS. The concept of additional verification is welcomed to manage the legality risks, especially further investigation of the *Timber Product Dossier for Exports* but allocation of resources for intensive inspection of export products (20%), which can detect mismatches between the license information and physical products, is hardly an effective measure for ensuring that only legal timber has entered the supply chain. It is therefore suggested that the management of legality risks has a stronger focus on the integrity of the timber supply chain.

The decision on FLEGT licensing and issuance of FLEGT licenses should be a fast process, which does not cause unnecessary, time-consuming obstacles for the business transactions of exporters. The Licensing Authority needs to decide on hundreds of licenses every day, which means that the information on legal compliance should quickly be extracted from functioning information management systems containing up-to-date datasets rather than collected such compliance data case by case. The plans for setting up a database for the OCS is considered useful tool for licensing purposes but the management of supply chain information based on reports compiled and reconciled by the Forest Protection Authorities may not enable fast verification processes. These reports could be replaced by an electronic database for supply chain controls (i.e. a traceability system), which can quickly assess whether the quantities of timber from legal sources have been adequate for the production of the export shipment and no unverified timber has entered the supply chain.

⁵ Management of information on timber sources and timber circulation in VNTLAS, and requirement of operators to periodically report on timber supplies to the Forest Protection Agencies / compilation and reconciliation of supply chain report by Forest protection Agencies

Programme on Conservation, Sustainable Use of
Forest Biodiversity and Ecosystem Services in Viet Nam

Unit 021, 2nd Floor, Coco Building
14 Thuy Khue Str., Tay Ho District, Hanoi, Viet Nam

T: +84 24 39 32 95 72

E: office.biodiversity@giz.de

I: www.giz.de/viet-nam

<https://snrd-asia.org/conservation-and-sustainable-use-of-biodiversity-and-ecosystem-services-of-forests-in-vietnam/>

