
The EU FLEG-T Action Plan, a step forward or backwards?

European NGOs estimate that more than 50% of all tropical timber imports into the EU are illegally sourced, as are over 20% of all imports from boreal forests. Furthermore in several European countries, notably in the Baltics and Eastern Europe, an estimated 50% of all logging is illegal. As the EU has no mechanisms in place to control the timber imports, the EU currently launders large volumes of illegally sourced timber each year. Following pressure from environmental and social NGOs to address this issue, the European Commission adopted in May 2003 an Action Plan on Forest Law Enforcement, Governance and Trade (FLEGT).

The central activity of the Action Plan is to develop voluntary bilateral or regional partnership agreements, with the aim of creating a caucus of the main wood-producing and importing countries. Timber exporting partner countries would then 'license' as 'legal' all timber exports to the EU (or other importing countries joining the caucus). The licensing scheme would initially cover a limited range of products (logs, sawn timber and plywood) and eventually be extended to other categories. In order to implement these voluntary partnership agreements the Commission must draft a regulation that will form the legal basis for a licensing scheme and would allow customs to seize non-licensed timber products.

Obviously this 'licensing scheme' begs a lot of questions such as: 'who decides what is legal?', 'who decides which timber will be licensed as legal or illegal?', 'who decides when and how to award a license for legality?', 'what control mechanisms need to be in place?', 'who will benefit from such a scheme?' Etc.

Furthermore, there is a clear danger that the EU's efforts to curb illegal logging with such a licensing scheme will unwittingly encourage national governments to water-down their existing environmental laws rather than strengthening them. This could lead to weakening existing forest laws, or even to legalising current illegal practices, in order to satisfy the EU and other international markets. All this would certainly undermine local struggles for forest law reform.

Nonetheless, most European NGOs have been cautiously positive about the FLEG-T Action Plan. Why?

Firstly, the Action Plan clearly highlights some of the underlying causes of forest loss by mentioning the challenge to "ensure that actions to address illegal logging, particularly enhanced law enforcement, do not target weak groups, while leaving powerful players unscathed. This requires careful considerations in countries where corrupt elements within the police and judicial services operate in complicity with large-scale illegal business activities". It is therefore the first EU documents that actively promotes policy reform. Furthermore the Action Plan states that "existing forest laws and policies frequently promote large-scale forest operations and may exclude local people from access to forest resources. This inequity breeds resentment and conflict. It also forces local people who depend on forest resources to operate illegally, since they have no choice in the way they meet their basic livelihood needs". It therefore states that forest dependent communities need to become key allies in the drive to reduce illegal logging. Hence, in terms of highlighting the underlying causes of

illegal and unsustainable logging practices and hinting towards possible solutions, this Action Plan is the most progressive EU document on forests to date, thereby opening a door to discuss again issues such as forest law reform, tenure rights and corruption.

Secondly, the Council of the European Union, in its adoption of the Action Plan, showed that it is fully aware of the political nature of the issue, as it called on the European Community and its member states in implementing the Action Plan to:

- strengthen land tenure and access rights especially for marginalized, rural communities and indigenous peoples;
- strengthen effective participation of all stakeholders, notably of non-state actors and indigenous peoples, in policy-making and implementation;
- increase transparency in association with forest exploitation operations, including through the introduction of independent monitoring;
- reduce corruption in association with the award of forest concessions and the harvesting and trade of timber;

The Council thereby paved the way for an implementation of the Action Plan, which could address the underlying causes leading to forest loss such as unclear and unjust tenure rights, corruption, lack of transparency and lack of participation in policy making.

Thirdly, the FLEG-T process has to date created some political space for NGOs from the South, notably Indonesia, Ghana, Brazil, to push for their agenda, including most of the issues listed above.

Fourthly, the Action Plan goes beyond just the FLEG-T licensing scheme and also calls for long overdue due diligence procedures for financial institutions, such as export credit agencies and private banks, as well as asking member states to look into implementing other measures such as money laundering legislation and stolen goods legislation. By doing so the Action Plan has opened a debate for reform of financial institutions and forced member states to look at their own legislation.

So, on the one hand, the FLEG-T Action Plan, including the FLEG-T licensing scheme, has the potential to create opportunities for civil society to push for solutions to highly political issues, such as land rights and tenure rights, transparency, corruption and often much needed forest law reform. On the other hand, the FLEG-T Action Plan has the potential to undermine national and local campaigns for these same issues by e.g. allowing for the adoption of narrow definitions of legality, excluding social and environmental movements in defining legality, and not demanding minimum requirements before entering into a Voluntary Partnership Agreement (VPA).

It is therefore too early to say whether the FLEG-T Action Plan will have a positive or a negative impact. Not in the least because the final texts of the regulation and the negotiation mandate, which details the process of developing a partnership agreement, have not yet been agreed upon and negotiations for partnership agreements have not yet started. What is clear is that some elements of the timber industry are already using the FLEG-T licensing scheme to divert attention away from 'sustainable production' to only 'legal production'. What is also clear is that some NGO coalitions are with success using the opportunities created by the FLEG-T Action Plan to push for solutions to endemic corruption, lack of transparency, and conflicts over tenure rights. What is not clear is whether EU delegations, who will be leading the negotiations for VPAs, will be supportive of their demands. Too often, EU Delegations have used the argument of sovereignty to support the interests of the timber industry over those of local people.

NGOs from Europe and the South have in several joint NGO statements, spelled out in great detail the conditions they believe need to be in place for the FLEG-T licensing scheme to be effective. (see <http://www.fern.org>) It is now up to the EU Member States to see if they are brave enough to accept most of them. If not, NGOs in Europe and the South will rest nothing else than denouncing the FLEG-T licensing scheme and forcing their governments to focus on other measures, some of which are highlighted in the FLEG-T Action Plan, to address the underlying causes of illegal and more importantly unsustainable logging.

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