



Joint Monitoring and Review Mechanism of the Ghana-EU FLEGT Voluntary Partnership Agreement

Aide Memoire

Technical Session of the Joint Monitoring and Review Mechanism
Accra, 22nd November, 2017

Introduction

1. A technical session of the Joint Monitoring and Review Mechanism¹ (JMRM) to facilitate the implementation of the Forest Law Enforcement Governance and Trade (FLEGT) Voluntary Partnership Agreement (VPA) between Ghana and the European Union (EU) took place in Accra on 22nd November, 2017. The session was co-Chaired by Ghana and the EU. The Ghana Delegation was led by Musah Abu-Juam, Technical Director at the Ministry for Lands and Natural Resources (MLNR). The EU Delegation was led by Benoist Bazin, Team Leader for Infrastructure and Sustainable Development Section.
2. The Ghana team included representation from the MLNR, the Forestry Commission (FC), Civil Society and the Private Sector. The EU team included representation from the EU Delegation, European Commission, UK Department for International Development (DFID) and experts from the European Forest Institute (EFI) EU FLEGT Facility. A participant list is attached as Annex I to this aide memoire.
3. The session discussed progress on key aspects of the VPA implementation. The following sections provide a summary of the discussions and decisions in relation to each of the areas concerned.

Legal Reform

4. The EU congratulated Ghana on the passing of the Timber Resources and Legality Licensing Legislative Instrument (LI) 2254 on November 3rd, 2017. The passing of this LI marks the achievement of a significant milestone in the VPA process. It clarifies the requirement to allocate all timber rights through transparent and accountable processes. It places legal obligations on the Government to make pertinent sector information publicly available, and also requires that all permit types includes the negotiation of Social Responsibility Agreements that deliver direct benefits to communities. The approval of the LI also cleared the way for the finalisation of the proposed annex changes as it enabled the inclusion of the legal reference in the relevant text.

Amending the VPA Annexes

¹ The purpose of the JMRM is described in Article 19 of the VPA



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5. On the proposed amendments to the VPA annexes, Ghana clarified that subsequent to the draft changes shared with the EU in October 2016, there were additional edits made to that document. One such edit was to clarify in Annex II, the requirements for legal compliance for timber coming from three distinct categories of plantations, and to reflect in Annex V, how compliance with these procedures will be monitored. A further edit was to include the appropriate legal reference for the Timber Resources and Legality Licensing LI.
6. Ghana described the process that they had followed for finalising these amendments, which included the constitution of technical teams who prepared drafts that were taken through a series of iterative stakeholder consultations before finally being approved by their Multi-Stakeholder Implementation Committee. Ghana also clarified their intention to carry out a final 'consistency check' on the amended text before formally submitting the document to the EU not later than Friday, December 1st, 2017. To support this submission, Ghana confirmed that it would include a cover note to clearly document the amendment process thus far, set out the rationale for the changes, detail the process followed for building stakeholder consensus, and describe Ghana's legal process for approving the amendments.
7. With reference to Annex VIII that sets out the implementation schedule for the agreement, it was suggested that it would not serve a useful purpose to update the timelines indicated in the schedule, and that this annex could be deleted. An alternative to this would be to indicate that this annex is now redundant.
8. The EU clarified that on receipt of the formal submission, they would need to do a 'read through' before being in a position to formalise its position with regards to the JMRM recommendation that these changes be put through the respective internal approval processes. On the question of the timeframe for this step, the EU indicated that it may take up to three months from receipt of Ghana's formal submission, which would mean a formal recommendation for approval of these amendments not being possible before February 2018. However, being mindful of the urgency, the EU confirmed that it would work to complete this process within a much shorter timeframe if possible. It was agreed that to facilitate this 'read through' process, a video conference between the Parties should be convened to allow the EU Delegation and their colleagues in Brussels to seek any clarifications that might be required on the draft amended text.
9. As previously indicated, the EU again confirmed that once the JMRM formally recommended that these amendments be put through the respective approval processes, this step would take between 4-6 months on the EU side.

Conversion of extant leases

10. Legal arguments over the requirement to pay the Timber Rights Fee (TRF) has been a stumbling block to the conversion of extant leases to TUCs. With the approval of LI 2254, comes the provision for a one-off payment of TRF. As extant leases that have not been converted to TUCs will not be able to obtain a FLEGT license, it is important that this conversion process now moves as swiftly as possible.

11. Ghana confirmed that in anticipation of the approval of the LI, a joint Forestry Commission-private sector committee was established to agree the process and procedures to guide this conversion. The Forestry Commission have already prepared a proposal for how this conversion process will be managed and the basis on which the TRF payment should be calculated. This proposal will be discussed within the joint FC-private sector committee in the first week of December. Once consensus has been reached, the FC will be in a position to publish the procedures and process for this conversion.
12. In relation to the timeframe for the conversion process, Ghana confirmed that the private sector had six months from the approval of the LI (November 3rd, 2017) to apply to have their leases converted, and that they expect operators to apply immediately to launch this process. Ghana also emphasised that any company wishing to obtain a FLEGT license, would have to convert their extant leases.

Status of the GhLAS rollout

13. On the status of the rollout of the Ghana Legality Assurance System (GhLAS), Ghana advised that the final 17 forest districts that had yet to be covered by the system at the time of the technical JMRM in June 2017, had now been provided with the necessary equipment and were working with the electronic Wood Tracking System (WTS), signifying that the rollout is now complete.
14. The connectivity challenges that had slowed down the uploading of 'backlog data' from the paper-based to the electronic system, had been overcome by temporarily moving the Forestry Commission's server hosting out of the FC to a commercial data centre. As a result, 65% of the backlog data had now been uploaded onto the system, compared to just 30% reported in June 2017.
15. With the signing in November 2017 of the DFID-funded contract to address the IT and power supply challenges, the connectivity challenges will also be addressed in the medium to long term. Consequently, all forest districts have now been instructed to work with the GhLAS by December 4th, 2017. As a means to assess the effectiveness of this migration to the electronic system, effective January 1st 2018, Ghana will begin to generate 'mock licenses' along with all export permits. The generation of these mock licenses will assure Ghana of the extent to which the new systems are being applied.

Initial observations from a shipment test

16. To test the licensing procedures and processes in advance of the final joint assessment, Ghana had sought the support of the EU FLEGT Facility to carry out a shipment test for 'mock licenses'. This test took place in October, sending shipments with licenses to be cleared by the Competent Authorities (CAs) in the Netherlands, Germany and Spain. The objective of this test was to assess the suitability of Ghana's procedures, with emphasis on format of Ghana's license, and also to have findings to inform the final joint assessment of the GhLAS.

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17. Before sharing initial observations on the outcome of the test, it was confirmed that as there was still active dialogue between Ghana and two of the countries covered by the exercise, the test was still deemed to be ongoing. A more comprehensive report will be possible once the consultant hired by the EU FLEGT Facility to support the test, has had time to interview both the FC and the relevant EU CAs on the experience. A first draft of this report is expected before the end of December 2017.
18. The first observation, was that data backlog issues for one of the two companies included in the test, meant that it was not possible to issue mock licenses, as the system could not reconcile timber volumes throughout the supply chain. These 'back logs' occur in situations where data that was originally captured through the paper-based system has not been uploaded on to the electronic system. While it was disappointing to have to drop one of the companies from the test, the fact that the system could not be overridden, should be regarded as a positive observation, as it demonstrates a strong internal control mechanism.
19. There were a number of comments from the respective CAs on the licenses that they received. Some of these were able to be rectified by the FC immediately, while others will require software updates and will therefore take two to three months to complete as they will need to be effected under a new contract with the service provider. In relation to these queries by the CAs, it also became evident through the test that Ghana will need to develop clear protocols for receiving and responding to communication on the authenticity and validity of FLEGT licenses, to ensure that shipments do not experience delays arising from slow response times.
20. A particularly positive observation arising from the test was that there were no inconsistencies reported between the shipment description and the transport documents, as Ghana only issues licenses once the packing of the container is complete and it has been sealed by customs. This consistency in description has been welcomed by the CAs who recognise that challenges in this area would have generated delays in the clearance of shipments once licensing became operational.
21. In conclusion, Ghana emphasised how valuable they had found the exercise in assisting them to identify issues that they needed to address in their licensing procedures and format, and expressed thanks to the CAs who had made time to cooperate with them in running the exercise and providing such useful feedback.

Independent Monitor

22. Ghana confirmed that the MLNR had just received a draft report of the third audit carried out by the Independent Monitor (IM) and had not yet reviewed the report.
23. Although the contract end date for the IM is May 2018, this contract also indicates a number of audit interventions to be carried out within the timeframe of the contract. As there is still provision for one further audit, an extension to the timeframe of this contract will need to be negotiated. The timing of the final audit will also form part of the negotiation between the service provider and the Ministry in the coming weeks.

Launching of the Joint Assessment

24. Ghana indicated that from January 1st 2018, it will be ready for the joint assessment, with systems functioning in all districts, data backlog cleared and full operational capacity established. The EU welcomed the update on progress but at the same time cautioned that this assessment would be a crucial milestone and that it was important for Ghana to be confident that the system is functioning effectively before mobilising the assessment team.
25. Taking into consideration EFI's advice that it would take at least 3 months to mobilise the assessment team, guided by the Parties, they agreed to launch their procurement process immediately. This was done with the caveat that procuring the services of the consultants did not mean their automatic mobilisation at the earliest opportunity. It was clarified that a decision on when to mobilise should be taken after further reflection from Ghana, the outcome of which will be shared either at a formal JMRM in February 2018, or through a further exchange at the technical level.

Rosewood

26. In response to concerns raised by the EU about the large volumes of Rosewood being harvested in the north of the country, as reported by both international and national press, Ghana assured the EU that they shared these concerns. They indicated that the Minister of Lands and Natural Resources had held an initial meeting with representatives of national Non-Governmental Organisations, following their petition to him on the matter and that he had committed to discussing further with them to put in place measures to strengthen regulation of this resource.
27. Ghana emphasised that with the approval of LI 2254, Rosewood was now clearly identified as a timber species and was subject to harvesting restrictions under CITES Appendix II. They also confirmed that any timber harvested for export, regardless of the destination, would need to demonstrate legal compliance to obtain a FLEGT license.

Domestic Market update

28. In relation to the public procurement policy on timber, Ghana indicated that due to a change of Government, there would need for significant investment in raising awareness on both the rationale for and content of the policy, to see progress on this issue. This would need to be done with individuals in Cabinet, in the Parliamentary Select Committee on Lands and Forests, and in the various other Ministries, Departments and Agencies. In the coming months, the Ministry will work to secure funds to support this outreach.
29. On efforts to secure access to legal sources of timber to supply the domestic market, Ghana indicated that there were currently discussions underway with concession holders, to consider allowing the time that they are permitted to work in each compartment, to be extended from two to three years. This would allow the concession holder adequate time to remove the portion of yield that they are interested in removing and also have time to negotiate with artisanal millers to reach agreement on the sale of the remainder of their yield.

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30. It was agreed that it would be important to show real progress in being able to address the illegal chainsawing that supplies both domestic and regional markets as this remains an important objective of the VPA.

Transparency

31. With the approval of LI2254 and the work underway to develop a public portal, there have been significant developments in transparency since the technical session of the JMRRM in June 2017.
32. Ghana shared that through a close collaboration between Civic Response and the Forestry Commission, a public portal into the electronic Wood Tracking System (WTS) was being developed with support from the EU FAO FLEGT Programme. This 'Legality Transparency Portal' makes available 'live' information on the transparency obligations enshrined in LI 2254. Its objective is to help to address due diligence concerns, provide access to information to support independent forest monitoring, enable interested parties to submit requests for further information, and facilitates the tracking of concerns raised by stakeholders related to legal compliance.
33. A working version of this portal has recently been shared with the FC and consultations are currently being held to ensure that the information being shared meets the range of obligations set out in LI 2254. It is expected that the portal will be launched by the end of December 2017.
34. Beyond the 'Legality Transparency Portal', civil society also shared information on the development of a database of Social Responsibility Agreements, to which this portal will be linked. This database, funded by a grant from the DFID Forest Governance Markets and Climate programme to FERN, is being developed in collaboration with the Resource Management Support Centre of the Forestry Commission. It will assist both in the monitoring of compliance with obligations under the VPA and in the impact of the VPA on local livelihoods.

Reporting on regional trade

35. To safeguard the credibility of their FLEGT license, in 2016 Ghana strengthened their protocols for dealing with imported timber. Although there have been discussions with countries such as Cameroon regarding a possible MoU for the export of logs to Ghana, these discussions have not progressed to the point of being able to facilitate imports.
36. The EU stressed that for the credibility of Ghana's FLEGT license, the application of the import protocols would be critical as would the ability to show clear understanding and reconciliation of trade data from various sources. To illustrate, the FC report on imports is restricted to information on logs, lumber and fitches and does not record imports of other finished wood products such as furniture or paper.
37. In the context of this discussion, it was agreed that it would also be important for Ghana to develop a clear understanding of regional trade flows. Given the EU FAO FLEGT Programme's interest in supporting work on VPA impact monitoring, work of this nature is something that they may be able to provide support to.

Timelines and Milestones

38. For the purposes of identifying opportunities for joint communications, a set of milestones towards licensings had previously been identified. The most recent milestone to be achieved, was the approval of LI 2254. The communication that was planned around this event included the distribution of a 'friendly email' and the issue of a press release.
39. It was agreed that while it was important to keep stakeholders informed of developments in progress towards licensing, lessons had been learned from setting dates for particular milestones that might later need to be revised. It was agreed that for the timelines related to licensing, it would be important to only name a date when the Parties can be confident of the timeframe. In this regard, it was also noted that until the final joint assessment report has been submitted, it will not be possible to gauge a suitable date for licensing to commence.
40. The Parties also acknowledged that as Ghana gets closer to licensing, it will be important to ensure that adequate notice is given to the market, CAs and others, to ensure that they are able to make the necessary preparations to receive FLEGT licenses from Ghana. On Ghana's part, this will require putting a plan in place that enables proactive engagement with these stakeholders.

Annual Reporting

41. It was agreed that it would be important to have all annual reporting obligations up to date by February 2018.

Date of the next JMRM


42. It was agreed to tentatively schedule a formal meeting of the JMRM for February 2018.

Signed: 

Musah Abu-Juam

Ministry of Lands and Natural Resources

Date: 27/11/2017

Signed: 

Benoist Bazin

EU Delegation to Ghana

Date: 27/11/2017

Annex I: List of Participants to the JMRM Technical Session

No	Name	Organization
GoG Delegation		
1	Mr. Musah Abu Juam	MLNR
2	Dr. Ben Donkor	Forestry Commission
3	Mr. Edward Obiaw	Forestry Commission
4	Mr. Chris Beeko	Forestry Commission
5	Dr. Richard Gyimah	Forestry Commission
6	Mr. Samuel Nketiah	Tropenbos International Ghana – Civil Society
7	Mr. Albert Katako	Forest Watch Ghana - Civil Society
8	Mr. Alex K Dadzie	Ghana Timber Industry
EU Delegation		
No	Name	Organization
1	Ms. Julia Falconer	DFID
2	Ms. Clare Brogan	FLEGT FACILITATOR
3	Mr. Andrew Haywood	EFI
4	Mr. Morne van der Linde	EFI
5	Mr. Benoist Bazin	EU Delegation to Ghana
6	Mr. Christopher Ackon	EU Delegation to Ghana
Joined via Video Conference		
7	Ms. Maria Pachta	European Commission
8	Ms. Aurelie Godefroy	European Commission
9	Mr. Patrice Moussy	European Commission

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