

Thailand LD version 15.07.16 – Comments and Proposals from the EU FLEGT Facility

EU FLEGT Facility (EFI) version: 12.08.16

1. Overall feedback

The current draft LD is a major step forward in the VPA process and of excellent quality. It provides a suitable basis for a formal exchange with the EU side.

The modular structure (operator 1-7) seems to be well-adapted to the complexity of Thailand's supply chains and should allow the LD to evolve as the VPA process advances, and also to accommodate future developments in the legislative framework. In combination with the gap/issue papers the document covers all thematic areas according to EU expectations. The description of verification processes contains extremely relevant information to start working on several building blocks of the TLAS Annex.

2. Instructions to use this document

The present comments are structured in sections that should be used in different ways:

- Section 3 (Ideas for further improvements) provides suggestions on LD structure as well as on verification mechanisms that apply to all seven LD modules. These comments reflect key issues that should be clarified ahead of possible negotiations in November 2016. They should be the focus of further work.
- Based on these comments, section 4 (Next steps) suggests some follow up activities that can be envisaged to further improve the LD and help designing the overall TLAS.
- Annex 1 (Detailed Comments) provides more detailed reflections on the level of indicators and verifiers. Given our limited understanding of the Thai legal framework, they should be taken as guiding questions rather than appeals for further work. Over the coming months, the AHWG should gradually assess their relevance before incorporating relevant comments in a new version, or clarify specific issues during field testing.

3. Ideas for further improvement

Structure

- 1) Currently several different verifiers are listed under a single number. We recommend to list them separately, each with an individual number. The last column should then describe "Verifier issued by", "verification process conducted by" and "verification frequency" per individual verifier.
- 2) The numbering of Criteria is consistent across all seven LD modules (operators 1-7). Yet, the indicators for each of these criteria are then numbered chronologically. Consider reviewing the numbering in a similar way as the criteria. We recommend to number all P, C, I and V chronologically in each LD module, and to add a code for the applicable operator in the LD (e.g. O1-C1.3., O1-I1.3.1, O1-V1.3.1.1)
- 3) It may be more practical to discard the LD module 6 (Transport Operators) and integrate the PCIV related to transport into all other LD modules. Systematic legality verification of transport operators may be extremely heavy, as those operators may transport any kind of goods without necessarily owning them. This should be further evaluated during field testing of the LD.

Verification process

- 4) The section "description verification process" for each indicator mostly describes (1) how a verifier is produced, and then adds details on (2) how the verifier is checked. Both are important, but TLAS development will essentially draw on information about (2) how the verifier is checked. In some few

cases (e.g. I3.4.1) the description only specifies how a verifier is obtained but not how the existence of a verifiers is verified. We recommend amending this missing information where available. In the event that the process is not yet 100% clear, it should be clarified during field testing of the draft LD.

- 5) Some verification frequencies are listed as “ad-hoc”, other frequencies are systematic (e.g. per shipment or annually). For the indicators with “ad-hoc” verification, it will be required to find practical ways to enable systematic verification and documentation of compliance (see the options identified in option paper 2 - verification mechanisms). It is possible to combine different approaches (for example systematic verification for operators >10 employees, and self-declaration with risk based sampling for smallholders, etc.)

This reflection could be further developed during field testing of the Legality Definition.

- 6) Under the heading “Verification Process Conducted by”, we note that sometimes several different competence officers from different agencies can verify compliance of verifiers. In these cases, it is required to clarify who is/are the main agency responsible for documenting the verification result, as a basis for FLEGT licensing. It can also be useful to consistently describe who is responsible within the involved agency.

4. Proposed next steps:

- **As soon as possible:** Complete the draft gap/issue papers and consider to share it with the EC for detailed information on the national process (not as a paper for negotiations).
- **19-23 September 2016: FLEGT Facility (EFI) Mission to Thailand**

As proposed by RFD, the Facility would be available to conduct a mission to Thailand in the week of 19 September. Proposed agenda items include:

- (i) Discussion and clarification of the LD comments shared by the Facility with RFD and the AHWG
- (ii) “Mini-field test” of one or two selected modules or a number of selected criteria (to be identified before the September mission):

Objectives: (1) Advance reflections on further improvements to the LD; (2) Clarify workability of verifiers and verification procedures, (3) Prepare more comprehensive field testing of the complete LD including elements raised in the gap/issue papers.

Methodology: Site visit to operators and government agencies in one location in Thailand (near Bangkok?); collect verifiers and confirm/refine the verification mechanism described in the LD; reflect on practical verification and documentation mechanisms under TLAS and FLEGT licensing scheme.

Timing: 2-3 days near Bangkok or in Southern Thailand.

Outputs: (1) Example of a fully developed LD module or selected criteria; (2) Notes on potential verification mechanisms; (3) Concept note for detailed LD field testing;

- (iii) Clarification of next steps ahead of a potential negotiation session this year;

- **October-December 2016 (depending on contracting):** Mobilise a consultancy to (i) complete field testing of the LD, (ii) advance reflection on option papers (in particular topic 2: verification mechanisms) and (iii) develop a draft outline of the TLAS Annex.

Before the end 2016 (subject to Cabinet decision and availability): VPA negotiations

Annex 1: Detailed comments on the LD

Principle I: Operator Legality (including Land)

C1.1: Operator's right to access land

7) Operator 1; Indicator 1.1.1; "Land use permit"

The "description of verification process" refers to "compliance with permit condition monitoring". What is the nature of these conditions? Can you provide examples? If permit conditions are common and/or refer to important management conditions (such as specific environmental or social obligations, in particular if checked in the field), consider adding a new indicator on "compliance with permission conditions".

8) Operator 3, Indicator 1.1.1; "Land use deed/lease"

The section "description of verification process" states that "*the existence of a valid land use permit (held by the operator) is verified by a Competence Officer prior to the Competence Officer issuing the operator a Harvesting Permit*". How does this work for unrestricted species, which don't require a harvesting permit?

Consider including a reference to the gap/issue paper #4.

9) Operator 4: Principle 1 is not listed for Import Operators.

Do importers need to be registered Are there no registration requirements (similar to export/trade operators 7)? If so, this could be the first indicator. And are there any rules that certain timber cannot be imported? And is there any inspection procedure that could already be described for import clearance?

10) Operator 5, Indicator 1.2.1: "An operator transforms a timber from a plantation on a registered plantation"

The current wording of the indicator does not describe a requirement. Possible improvement: "Operators transforming plantation timber on a registered plantation hold the necessary permits." Then list two verifiers: 1.2.1.1 "Registrar of plantations Transformation of Timber Permit" and 1.2.1.2: "Plantations manufacturing permit"

C1.2: Operator's obligations in relation to possession, processing, and trade of timber.

11) Operator 7, Indicator 1.2.2: "A Licensed Trader has issued a Confirmation Letter of Transformed Timber/ Transformed Rubber Timber or Timber Products for every shipment of timber and retained stub of same".

This indicator seems to be most relevant to traceability. In particular, the V1.2.2.2 "Transformed Timber Account/ product account" may fit better under Principle 2. (See comment 14 below)

12) Operators 5 and 7: Consider referencing gap/issue paper #9 here.

Principle II: Sourcing and transportation of timber

13) All Operators, criteria 2.1, 2.2 and 2.3: Traceability

The criteria 2.1, 2.2 and 2.3 seem to be designed to describe traceability requirements. However, the indicators listed under the criteria also describe other legal requirements (i.e. harvesting procedures).

Consider keeping only traceability related requirements in 2.2 and 2.3 (e.g. reporting/marketing obligations)" and move the requirements related to the process of obtaining a harvesting permit to

3.1.1 - this would also deal with the duplication of 2.2 and 3.1. (see comment 24 below). Example of a possible revision:

Operator 1, criterion 2.3, indicator 2.3.1: "An operator has complied with RFD procedures for asking a logging permit."

The verifier(s) 2.3.1.1 and the "description of the verification process" refer to verification of the logging permit after it has been issued, but they do not allow to verify whether the procedures have been followed to obtain the logging permit. Possible improvement:

- (i) *Reformulate indicator 2.3.1: "An operator has complied with traceability requirements consistent with the harvesting permit". Consider adding a verifier documenting the verification result of the consistency with the harvesting permit (e.g. log list, account of timber, etc.). For example, the modules for operators 2 and 3 list additional verifiers such as "account of timber" and "transport certificate" under the same indicator.*
- (ii) *Move the original requirement "An operator has complied with (...) procedures for asking a logging permit" to indicator 3.1.1 under criteria 3.1. Also move the verifiers 2.3.1.1 (Permits) under 3.1.1.*

14) We recommend referencing the gap/issue paper #7 in the matrix or in a footnote

C2.1: Operator's right to import

15) Operator 4: There is no mentioning of CITES. Could be added under C.2.1?

C2.2: Traceability (Plantation)

16) Operator 1, Indicator 2.2.1; "Verification Process Conducted by"

The text simply refers to "competence officer" without describing who is the competence officer (i.e. government agency). This information needs to be added.

17) Operator 3, Indicator 2.2.1: Compliance with Plantation Act procedures for harvesting timber on plantations

Please clarify whether the indicator and its verifier(s) V2.2.1.1 (i.e. Acknowledged certificate) are mandatory for all operators or does it concern only voluntary registration under the plantation act? If this is voluntary (for unrestricted species and species listed in the Plantation Act Annex for example), it needs to be specified in the indicator, and a reference should be added to Gap/issue paper #4.

18) Operators 6, Indicator 2.2.1: A person transporting timber outside of the plantation from which it was sourced has ensured that the timber is stamped with the seal of the Licensed Entrepreneur. The transport operator must also be in possession of the Plantation Timber Register which records the transfer of the timber to the transferee.

The indicator describes two requirements. It seems that the main requirement is the Plantation timber register, and the verification process simply ensures that the stamp is consistent with the information of the plantation timber register. Consider reformulating or dividing the indicator.

C2.3: Traceability (Non-plantation)

19) Operator 5, Verifier 2.3.1.1: "Permitted operator always enter the timber account truly and currently"

This verifier reads like an indicator. Verifiers should be documents or other pieces of evidence that allow the competence officer to verify compliance with an indicator. In this case, “timber account” alone would be a more suitable verifier. The original wording of the verifier could be integrated in the indicator 2.3.1.

20) Operator 5 and 7, Indicator 2.3.1: “Compliance with Timber register”

Do these reporting requirement really only apply to non-plantation timber or rather to their entire timber stock? How to distinguish this in processed timber, which may be potentially mixed in complex products? Reference to gap/issue paper 3.

21) Operator 2, Verifier(s) 2.3.1.1: “Logging written permit in reserved forest”

This LD module for operators 2 is about public land other than forest reserves. Consider deleting this verifier, since it seems irrelevant.

22) Operator 2, Verifier(s) 2.3.2.1: “Transportation certificate, Letter from provincial governor”

- (i) There is no similar transport-related verifier for restricted species for restricted species (verifier 2.3.1.1) and for operators 1 and 3 – what is the reason for this?
- (ii) What is the letter from provincial governor about? Equivalent to a harvesting permit? If this is the case, consider moving it to criterion 3.1. Also add a description of the verification process related to the letter from the provincial governor.

Principle III: Operator’s Forest Management, Environment and Harvesting Obligations and Practices

23) The principle III currently covers Forest Management, Harvesting and Environmental aspects and is quite comprehensive and mix all types of operators, not only forest management and harvesting. It could be considered to split this Principle in two:

- (i) One Principle dealing with forest management (current C3.1, 3.2, 3.3 and 3.4)
- (ii) One principle dealing with environmental obligations (current C3.5, 3.6 and 3.7)

C.3.1: Right to harvest

24) Operators 1-3, Criteria 3.1-3.3: all indicators: A person harvesting timber holds a permit/certificate

See comment 14) above. Consider the following:

- (i) Under P2, describe traceability requirements more clearly. This could build on the “account of timber” or equivalent document for non-plantations.
- (ii) Under P3, describe any requirements related to “compliance with procedures to obtain a permit/certificate” where applicable. Also move the verifiers of the type “permit/certificate” under these indicators.

C.3.4: Chainsaw regulation:

25) All operators: We recommend referencing the gap/issue paper #13 in the matrix or in a footnote

26) All operators, indicator I3.4.1: 1. A person possessing a chainsaw from 1 horsepower with a bar length 12 inches or over 2. A person possessing a chainsaw from 1 horsepower 3. A person possessing 12 inches or over has complied with RFD chainsaw licensing requirements.

The indicators 3.4.1 are difficult to read. Consider moving the technical details (*in italics*) on the chainsaw and related permit types to the verifier level

27) All operators, Verifier V3.4.1.1, description of “verification frequency”

Is this ad-hoc verification or part of regular checks, for example when checking the operator legality upon at harvesting permit or renewal of processing permits? Ensure consistency across the LD modules. (see the next comment below)

28) All operators, Indicator I3.4.1, “description of verification process”

The text describes how each saw needs to be registered, but not how the registration is verified in the field when doing field inspections. It may not be needed to have the registration procedure at all included if checks occur. The text should ideally describe how the existence of chain saw permits are verified (see the previous comment above)

C.3.5: Ecosystem Management (including soil, watershed area, etc.) for plantations

29) Operator 1, Indicator I3.5.1: An operator complies with RFD reporting requirements.

Is the purpose of the indicator only to verify whether reporting requirements have been met, or rather to verify that the operator complies with environmental requirements? Please clarify the exact reporting requirements on environmental compliance covered by for the verifier 3.5.1.1 (forest/plantation performance report). Are they related to the permit conditions (see comment 9, C1.1)? How does a competent officer determine whether the report meets the “requirements standards”?

Consider reformulating the indicator to bring this out more clearly.

30) Operator 1, Indicator 3.5.2: A plantation established on Reserve Forest land after 2005 has been planted on land determined by the RFD to be Degraded Land in accordance with the requirements of the rule of RFD.

Does this requirement and the verification process (land inspection and audit report) apply to all plantation areas, or are there e.g. streamlined procedures for small plantations (e.g. in community areas)?

The “verification process” also refers to a “ministerial announcement”, which could be included as an additional verifier.

31) Operator 1, Indicator 3.5.3: Additional requirements;

The verifier reads like an indicator. Consider reformulating the indicator to describe the “additional requirement(s)” more clearly, and keep only documents/evidence as verifier (e.g. “investment plan”)

Move the legal reference contained in the verifier to the column “legal references”.

32) Operator 3, Criterion 3.5: The criterion is currently empty. Consider including a reference to gap/issue paper #5.

C.3.6: Hazardous substances

33) Operator 5: Hazardous substances possession permit and reporting

This criterion currently only appears in the Operators 5 matrix. However, hazardous substances such as fertilisers or pesticides are also frequently used in plantation forestry. Please clarify whether any of these substances may also be subject to permit or reporting requirements.

C.3.7: Effluent and emission

34) Operator 5: Indicator 3.7.2: Environmental Impact Assessment.

This indicator does not fully fit under the criteria, as EIA may go beyond effluent and emissions. Possible solutions could be to (i) rename the criterion on “environmental impact mitigation”, or (ii) move the indicator under criterion C3.5 “ecosystem management”.

Principle IV: Operator’s workplace and Social Obligations (including Worker’s Rights, Health, Safety & Welfare)

C.4.1: Worker’s rights

35) Operator 1: Indicator 4.1.1: Agreement on employment conditions (FIO only)

Is there any monitoring of the respect of this agreement? If so, compliance with the agreement could be included in the LD as an additional indicator.

36) Operators 1-3, 5: Indicator 4.1.1/2: Labour protection act and reporting compliance

The description of the verification process states that “the (...) officer verifies that the report has been submitted”. Is there no verification whether the report and operator comply with the labour act requirements? Consider adding this information in the description of the verification process.

37) Operators 1-3, 5: Indicator 4.1.2/3: Any complaints against operators processed according to law

The current verifier “order issued by inspector of labour” only applies in case there has been an issue. Is there any register that would allow to verify quickly and systematically whether there is any pending complaint? If so, consider using this register as a verifier in addition to the order.

38) Operators 1-3, 5: Indicator 4.1.3/4: Any cases lodged with the labour court processed according to law

The current verifier “Labour court decision” does only apply in case there has been an issue. Is there any register that would allow to verify quickly and systematically whether there is any open case lodged with the labour court? If so, consider using this register as a verifier in addition to the labour court decision.

C.4.3: Alien Workers

39) Operator 5, I4.3.1: An operator has complied with the requirements of the Alien Working Act.

Currently this indicator appears only under in the LD matrix for operator 5 (Transformation). Don't these alien labour requirements also apply to other operators (i.e. 1-3)?

C.4.3: Workplace Health and Safety

40) Operator 5, Indicator 4.4.1: Documentation of OSH(E) compliance

Don't these Health and Safety requirements also apply to the operators 1-3 (companies >10 employees for example)?

41) Operator 5, Verifier 4.4.1.1: OSHE Document or report signed by a licensed person.

Who a licensed person? This is not clear from the description.

It seems that the report also includes compliance information on environmental requirements. Can you clarify what are those requirements? If they are relevant, the same verifier could be used under a new criterion and/or indicator in Principle 3.

C.4.5: Road safety

42) Operator 6, verifier 4.5.1: Transport Operator license

The “verification frequency” says “per shipment”. Under TLAS, shouldn’t this verifier rather be verified “per annum” or similar? To be refined during the LD field testing.

43) Operator 6, verifier 4.5.2: Driver’s license

Under TLAS, the systematic verification and documentation of this verifier may be very difficult and heavy. This is a typical verifier other VPA countries have opted to exclude it from the LD, also because it is not directly related to timber legality.

Principle V: Operator’s Tax, Fee and other payment obligations

44) All operators C5.1.

This number is missing in the LD. Consider readjusting the numbering.

C.5.2: Operator’s obligations: Forest sector royalties and other payments (Non-plantation)

45) Operator 1: Indicator 5.2.1: Royalties and forest maintenance fees

The “description of verification process” states that fees are calculated and paid differently for unrestricted species (“prescribed rate”, paid “before harvest”) and restricted species (“per volume of timber”, paid after harvest?). How is the fee rate for unrestricted species calculated?

46) Operator 2: Indicator 5.2.1: Royalties and forest maintenance fees

The “description of verification process” indicate fees only for restricted species. Don’t these fees also apply for unrestricted species? Please clarify.