

Summary of SWG-FLEGT ASIA Technical Meeting on the Public Disclosure of Information Annex

30 July, 2021 – Zoom meeting

Director of Forest Economics Office, Royal Forest Department (RFD) (Mr Tanongsak Nontapa): Welcomed the participants and provided opening remarks, explaining the importance of the Annex on the Public Disclosure of Information (PDI Annex) in supporting good governance, by ensuring access to information and increasing transparency. The PDI Annex is being developed in line with the Voluntary Partnership Agreement and will describe the information that must be made available; the agencies that will make the information available; and how the information can be accessed.

FLEGT Asia Focal Point for Thailand (Dr Alexander Hinrichs): Thanked Dir. Nontapa for his welcome and commended the PDI Annex Sub-Working Group (SWG) on the work that has been completed. The PDI Annex is now well-developed and can probably be finalized in a relatively short period. FLEGT Asia's comments are mostly 'higher-level', aimed at getting a better understanding of the challenges that government agencies may face when the PDI Annex is implemented. We would also like to get a better understanding of the process that was used to develop the PDI Annex and discuss possible inconsistencies between the Legality Definition Annex (LD) and the PDI Annex. At the end of the meeting, we hope to agree on the next steps of the revision process, which will include us sharing detailed comments on the PDI Annex. We also propose to have further meetings with Ms. Pawinee Udommai (LD and PDI consultant) to discuss how the LD and PDI Annexes can be aligned.

Leader of PDI Annex SWG (Mr Sittiporn Rodprisom, RECOFTC): Thanked Dir. Nontapa and Dr Hinrichs and proceeded to discuss comments submitted by FLEGT Asia before the meeting. Comments are addressed section by section.

FLEGT Asia Comments on Section 2 - Legal basis on public disclosure of information of Thailand

Note: *For brevity and clarity a summary is provided of what the Director of the RFD Service Center said about access to information over the course of the meeting.*

Director of RFD Service Center (Mr Bundit Wongsenanuruk): Provided an explanation of the Official Information Act and related processes, in response to FLEGT Asia's written comments. He explained that the RFD has 24 Service Center (SC) branches at the provincial and central level, at which complaints can be submitted and information requested. Other ministries and agencies also have their own dedicated SCs. Complaints and requests can be submitted by post, email, fax, phone call, or during an in-person visit. It is important to have different channels to submit complaints and requests, because older generations do not always know how to use new technologies, such as email or apps. In some cases, a specific type of information will need to be requested through a dedicated channel. For example, a request for information about a legal proceeding will need to be submitted in writing, or the person would need to personally visit the RFD SC. Also, some information needs to be requested using a specific form. The SC can respond to inquiries immediately or relay the inquiries to relevant departments / ministries / agencies.

A complaint or request can be submitted at any of the service centers and it will be forwarded to the relevant office/s. Officials at the RFD SC will coordinate with other relevant

departments / ministries / agencies, depending upon the nature of the complaint. In addition to responding to complaints and requests submitted by the public, the RFD SC also responds to requests for information regarding forestry issues submitted by parliament and cabinet, and coordinates with civil society organisations (CSOs).

The RFD SC makes information on forestry issues available to the public in accordance with the Official Information Act (OIA). Most information is publicly available in one form or another – often on the RFD SC website – but there are exceptions. Information is divided into four categories: 1. Information that needs to be publicly announced and published on the Government Gazette; 2. Information for public inspection; 3. Information on request (not for general disclosure), generally, requests are approved if they are justified on the grounds to protect individual/public interests, requests would be denied if they are made repetitively without justification; 4. Prohibited information, not for disclosure because it relates to the monarchy, or has security or international relations implications, or can interfere with the ongoing legal proceedings. Where prohibited information is mixed with information that should be made publicly available – such as business sensitive information mixed in with the general findings of an environmental impact assessment – the prohibited information will be redacted (“blacked-out”) and the other information will be made available.

Referring to information in category 3, information request will be first assessed by the SC. If the SC sees that there may be prohibited information, a request for review will be sent to the RFD Information Committee (RFD-IC). The RFD-IC is comprised of the Directors of all the Offices within the RFD and is headed by the RFD Director. Decisions taken by the RFD-IC are final, though people who have had their requests for information denied may submit appeals to the Official Information Commission (OIC) – a high-level board led by the Office of the Prime Minister and made up of representatives of the various government ministries and agencies. If the OIC rejects the appeal, the person submitting the request may make a final appeal to the courts, as specified on the Administrative Practice Act B.E. 2539. The RFD-IC seldom denies requests for information, with only approximately 10 such cases annually. Vice versa, people can also submit a case requesting the government not to disclose the information.

The RFD SC is under pressure to perform and respond to complaints and requests submitted by the public. For the RFD SC to meet one of its key performance indicators, it must achieve an 80% response rate for requests for information and receipts of complaints.

RFD Service Center (Mr Thanawath Pongkerd): There was a case where RFD denied a request for a forest reserve map; the request was made for the purpose to monitor RFD’s forest survey. The requestor then appealed to the *Committee of Inquiry on Public Disclosure, Public Administration and Law Enforcement*. After the deliberation, the Committee of Inquiry ordered RFD to disclose the information to the requestor immediately. Regulation specifies that the Committee of Inquiry must reach a resolution within 60 days. Decisions that reached beyond 60 days are considered final.

FLEGT Asia Comments on Section 3 - List of Information to be made public

Leader of SWG on PDI Annex: Agreed to include a brief explanation about the role of stakeholders in the development of the Annex and the list of information that will be made available.

FLEGT Asia Comments on Section 3.1 - VPA-specific information

FLEGT Asia (Mr Bjorn Dupong): Requested to use the same level of detail for “VPA-specific information” as with the next section 3.2 on “Information on Thailand’s forest and timber sector”. To this end, FLEGT Asia recommended to only keep the headings for 1), 2) and 3) and remove the bullets.

PDI Annex Consultant (Ms Pawinee Udommai): Acknowledged comment and requested FLEGT Asia to share the edited version of the PDI annex, so that the SWG can revise the text.

FLEGT Asia Comments on Section 4 - Mechanisms by which the information can be accessed

FLEGT Asia Focal Point: Asked if there is any specific information that the SWG wants to make public, but which is currently unavailable? Is the SWG happy with the amount of information that is made available by the government?

Director of RFD Service Center: Reiterated the ways in which information is made available and can be requested (*see Dir. Wongsenanuruk’s summarised comments above*).

Leader of SWG on PDI Annex: Provided his reflections as a Thai citizen – people have broad access to information, but there are sometimes issues about getting it in a timely manner and it is not always clear which channel needs to be used to request information. Improvements could be made in this area, but it should not be too big of a burden to state agencies. A new mechanism could be developed to benefit both citizens and state agencies. In TH there is a guideline / manual about accessing information, which can be used to inform people about how to access the information they are interested in.

PDI Annex Consultant: Gave an opinion from her experience working with the stakeholders seeing that the discretion of the government before disclosing the information is favored by business owners due to a concern about business information privacy.

FLEGT Asia Focal Point: Asked if what is described in the Annex is already in place, or will administrative changes be required for the Annex to be implemented?

Thai-EU FLEGT Secretariat Office (Ms Panjit Tansom): Confirmed that the descriptions in the annex are based on the existing law and regulations. The SWG will organize a workshop inviting state agencies listed on the Annex to confirm that indeed the current practices are implemented in accordance with the regulations.

Leader of SWG on PDI Annex: Further explained that the workshop will bring together all the stakeholders so that the Annex and processes can be explained. This will provide an opportunity to get feedback from stakeholders, and to raise awareness at the agency level about legal obligations and future informational demands from the public. Where necessary, the annex will be updated to address any issue identified in the SWG meeting. Due to the pandemic the workshop will be held online, which will hopefully lead to high attendance.

FLEGT Asia Focal Point: Summarising the discussion on Section 4, he commended the SWG on the idea of the proposed workshop, observing that it will provide an excellent opportunity for stakeholders to discuss issues. FLEGT Asia will gladly provide advice on best practices in preparation for the proposed meeting. It is especially important that all stakeholders mentioned in the Annex should be informed about the workshop, so that they are given an opportunity to provide comments and feedback.

It is clear that the Annex describes the existing legal system, but the workshop may lead to some changes, depending on the outcome of discussions. However, it is more likely that the main challenges will be linked to implementation.

FLEGT Asia Comments on Section 5 - Mechanism on public disclosure of information

Comments / questions were substantively answered by Dir. Wongsenanuruk (see Dir. Wongsenanuruk's summarised comments above).

FLEGT Asia Focal Point: Observed that Thailand has a well-structured and developed system in place. It is important that CSOs know about the system and how information can be accessed. The proposed SWG workshop will be very helpful in this respect, providing an opportunity to raise awareness.

FLEGT Asia Comments on Appendix 1 – Information to be made public and responsible bodies (Tables 1 & 2)

Leader of SWG on PDI Annex: Explained that the SWG would revisit Appendix 1 to ensure that the tables are accurate and asked if FLEGT Asia had any further reflections.

FLEGT Asia (Mr Bjorn Dupong): Commented that it is important that tables 1 and 2 in the PDI Annex accurately reflect the information that should be made available under the law and the VPA.

FLEGT Asia Focal Point: Asked stakeholders to reflect upon whether they are happy with the information listed in the PDI Annex, and with the information that is currently available.

PDI Annex Consultant: Explained that the SWG would wait to receive more detailed comments from FLEGT Asia before proceeding to address the issues raised in the comments.

FLEGT Asia Comments on Appendix 2 – Dissemination channels of relevant State agencies

Leader of SWG on PDI Annex: Acknowledged FLEGT Asia's comments and agreed to review Appendix 2.

FLEGT Asia Comments on Comparison of Annex II (LD) and Annex IX (Public Disclosure)

Leader of SWG on PDI Annex: Asked FLEGT Asia to reflect on the comment regarding the discrepancies between the documents listed in the Legality Definition and what is listed in the PDI Annex.

FLEGT Asia Focal Point: Explained that not all documents listed in the Legality Definition need to be listed in the PDI Annex, but the SWG should be clear about what will and what will not be disclosed to the public (for example, personal or sensitive business information). There may also be documents listed in the Legality Definition that are part of a process and not needed for disclosure as long as the final process document is made available. The

SWG should reflect on what is listed in Legality Definition and whether and how this might be covered under the PDI Annex.

PDI Annex Consultant: Explained why some documents are not listed: documents under the Forest Industry Organization (FIO) in which the SWG will have to conclude with the FIO first before including them to the list; and self-declaration (SD) document, which is not necessarily kept at RFD, RFD will have the SD copy only when export certificate (18/2) is requested, if the export certificate is not requested, SD will be with the timber buyers or processing mills.

Initially, there was a concern on business information privacy amongst stakeholders; thus, some documents related to the business are not specified. However, the SWG has recently found an order from the OIC that all places of businesses must display documents that are required to be publicly disclosed. The SWG will discuss this OIC's decision and see whether descriptions of these documents need to be revised.

Concluding Remarks and Next Steps

FLEGT Asia Focal Point: Agreed to send the minutes from the meeting in the following week, together with more detailed comments on the PDI Annex for consideration by the SWG. He also agreed to provide advice on designing the proposed workshop to discuss the PDI Annex and to send comments on the Supply Chain Controls on Private Lands Concept Paper by COB on Monday, 2 August. He explained that FLEGT Asia would wait to hear from the SWG on Public Lands before sending comments on the Supply Chain Controls on Public Lands.

The edited draft, which takes FLEGT Asia's comments and results of the workshop into account, will be deliberated at the Sixth Joint Expert Meeting and Fourth Negotiation with a possibility to be set aside.

Attachment:

1. Participant list

Participant list

1. Mr. Alexander Hinrichs Head of Asia Regional Office, European Forest Institute - FLEGT & REDD Unit
2. Mr. Mr. Peter Aldinger Forest Governance & Timber Legality Assurance Expert, European Forest Institute - FLEGT & REDD Unit
3. Mr. Björn Dupong Forest Governance Expert, European Forest Institute - FLEGT & REDD Unit
4. Ms. Somrudee Nicrowattanayingyong FLEGT Facilitator to Thailand, EU FLEGT Asia Programme
5. Mr. Tanongsak Nontapa Director of the Forest Economics Bureau, RFD
6. Mr. Boonsuthee Jeerawongpanich Director of the Forest Standards Division, RFD
7. Mr. Sermyot Chamnankha Director of the Forest Economy Division, RFD
8. Mr. Sittiporn Rodprisom Project Officer of the V4MF, RECOFTC
9. Ms. Warangkana Rattanarat Programme Director for Thailand, RECOFTC
10. Mr. Nirut Buapha Natural Resources and Environment Network Esan coopertor
11. Mr. Soontorn Rakrong Secretary of Rubber Farmer Association
12. Mr. Suvit Tonghom Member of Network of Rubber Tappers
13. Ms. Apiradee Jitprarop Legal Officer, Legal Group, RFD
14. Mr. Montree Nuchanong Director of Forest Industries Permission Division, RFD
15. Mr. Methanee Seemuntara Forestry Technical Officer, Forest Certification Division, RFD
16. Mr. Praphanphong Khongsrirot Director, Information Technology & Communication, RFD
17. Mr. Pakin Kornthanakit Information Technology & Communication, RFD
18. Ms. Patsita Thitalertwong Forestry scholars operating, Forest Land Management Division, RFD
19. Ms. Yingluck Patiphanthewa Honorary Advisor of the Private Forest Plantation Cooperative Limited
20. Mr. Amornpong Hirunwong Board member of the Fast-Growing Tree Business Association
21. Ms. Panjit Tansom Consultant, Thai-EU FLEGT Secretariat Office
22. Ms. Tippayarat Limsaisuk Operation Associate, Thai-EU FLEGT Secretariat Office
23. Ms. Supada Kongnakorn Project Assistant, Thai-EU FLEGT Secretariat Office

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| 24. | Ms. Pitinan Wongmakluekao | Forestry Officer, Forest Standards Division, RFD |
| 25. | Ms. Nongnut Saejia | Forestry Technical Officer Professional Level, Forest Standards Division, RFD |
| 26. | Ms. Pawinee Udommai | Consultant – Annex Drafting |
| 27. | Mr. Jhongsathit Aungvitayatorn | FAORAP, The Food and Agriculture Organization |
| 28. | Mr. Bundit Wongsenanuruk | Director of RFD Service Center |
| 29. | Mr. Thanawath Pongkerd | RFD Service Center |