



**Subject:** Revision of the *Policy for the Association of Organizations with FSC®* (FSC-POL-01-004), second 60-day public consultation

## 1. The Forest Stewardship Council (FSC) *Policy for Association* and its role in the FSC system

The *Policy for the Association of Organizations with FSC* (FSC-POL-01-004), or *FSC Policy for Association (PfA)*, is an expression of the values shared by the organizations associated with FSC. It defines six unacceptable activities that associated organizations and their affiliated groups commit to avoid in both certified and non-certified operations. This policy serves as a risk management tool for FSC, protecting the credibility and reputation of the FSC brand, and of all the organizations associated with it.

## 2. What are unacceptable activities?

The unacceptable activities in the latest draft of the revised *FSC Policy for Association* are:

- a) illegal harvesting or trade in forest products
- b) violation of traditional or human rights within the forestry or forest products sector
- c) violation of any of the International Labor Organization (ILO) core conventions within the forestry or forest products sector
- d) significant damage to high conservation values in forests
- e) significant conversion of forests to plantations or non-forest use
- f) use of genetically modified trees for purposes other than research or field trials, in accordance with the policy *FSC Interpretation on GMOs FSC-POL-30-602*.

The scope of application for these six activities (which are similar in scope to those in the FSC controlled wood standard) is defined as the *forestry and forest products sector*. This is because the mission and corresponding reputation of the FSC brand is connected to responsible forest management, and its sphere of influence is strongly linked to this sector.

In some situations, an organization may be damaging the integrity of the FSC system in ways that are outside the scope of the PfA. In these cases FSC reserves the right – after due process – to cancel trademark license, membership and other agreements.



### 3. What does 'outside the scope of the certificate' mean?

The term 'outside the scope of the certificate' was a point of confusion in the first public consultation. To clarify, it means that the unacceptable activity or activities occurred in operations that were either not certified, or that were not covered under the requirements of a chain of custody certificate. It **does not** refer to activities outside the forestry and forest products sector, or to any unacceptable activities apart from the six categories of unacceptable activities from the policy elements section of FSC-POL-01-004, listed above.

The reason why the PfA and the PfA complaints processes address situations '**outside** the scope of the certificate' is because a normal dispute resolution process – with the certification body – already exists to address situations **within** the certified operation. However, to respond to stakeholder requests to expand the application of the PfA complaints process to areas that are certified, the PfA revision process includes the recommendations that:

- if a certificate has been terminated through the normal dispute resolution process with the certification body, a PfA complaint against the same organization can subsequently be lodged. In this way, the PfA can be used as a successional tool.
- the certification body accreditation standard (FSC-STD-20-001) be revised so that violation of those of its criteria which overlap with the PfA unacceptable activities defined in the PfA, leads to automatic suspension.

### 4. Why was the term 'affiliated group' introduced?

A distinctive element of the PfA is that it applies to both the organization holding a contractual agreement with FSC, and to all legal entities which that organization controls or is controlled by. The first draft of the revised PfA released for public consultation attempted to define the term 'organization' to encompass all this. However, this was confusing, both because all other FSC normative documents have a different definition for organization, and because the concept of control was not well-captured in the draft definition.

This second draft of the PfA takes a different approach by proposing the following definition of the entities affected by the PfA through their sphere of influence/control:

An 'affiliated group' is "the totality of legal entities to which an associated organization is affiliated in a corporate relationship in which either party controls the performance of the other (e.g. parent or sister company, subsidiary, joint venture etc.)".



## 5. Why was the term ‘associated organization’ introduced?

This second draft also proposes the term ‘associated organization’ to refer to the single legal entity that holds an agreement with FSC **and** that falls within the scope of the PfA policy: members, certificate holders, and certification bodies.

This new term is being proposed because not all organizations holding agreements with FSC are bound by the PfA. Examples include organizations with license agreements for promotional purposes only, or who have network partner, cooperative, service, or other agreements. This has been a point of confusion in the existing version of the PfA, and this change intends to make it unambiguous.

It is being recommended that this policy should not apply to organizations that hold license agreements for use of the FSC label for promotional purposes only, and who are not also members or certificate holders. This is due, in part, to legal and procedural issues with their contracts, and also because there are other available means for terminating trademark license agreements if the organization is found to be engaged in activities that damage the reputation of FSC.

## 6. Why does ‘control’ replace ‘direct/indirect involvement’? *[Note that this concept of control was introduced in the first draft for public consultation and only minor revisions have been made in this second draft]*

The current PfA does not adequately identify how to determine ‘involvement’ as it relates to whether an associated organization or its affiliated group is responsible for the occurrence of the unacceptable activity. Until now, ‘indirect involvement’ has been determined by using a 51 percent ownership threshold as a proxy, and this has been particularly challenging.

The revision aims to allow for an evaluation of **accountability** and **control** between organizations. It also expands the scope of accountability to include situations where an associated organization or its affiliated group is in control of unacceptable activities implemented by a supplier or third party. This is an expansion of the existing scope of the PfA, in which ‘indirect involvement’ was limited to majority shareholding in a company, and necessary for meeting the intent of the PfA.

The explanatory notes attempt to provide some examples of how the concept of control can be applied. Additional clarity was provided in this draft regarding the 50 percent ownership threshold: control can exist under any percentage of ownership, because actual control of activities, rather than percentages, is the deciding factor. However, control will be deemed to exist if there is 50 percent ownership or more.

Given the complexity of the governing structures of conglomerates in many parts of the world, there is not one formula or algorithm that can be applied in all cases, and decisions related to control will at times require case-by-case analysis.



## 7. Are organizations accountable for the actions of their suppliers?

If the associated organization or affiliated group controlled the actions of its suppliers then, yes, they are accountable for those actions. However, it is being recommended that, in the absence of control, there is no accountability and therefore no breach of the PfA.

The working group was not able to reach consensus on what happens in a situation where the associated organization or affiliated group is aware of the unacceptable activities of a supplier, but continues to source forest products from them. The text provided in the draft policy therefore represents the majority perspective. A final decision will be taken after this second consultation (see *PfA Group Meeting #3 Report* for the rationale provided for and against expanding accountability to include all supplier actions).

## 8. What is the status of the *Due Diligence Evaluation* and the 'proactive PfA evaluation'?

Two procedural documents are used at different stages of implementing the PfA:

- i. Organizations seeking to associate with FSC are screened for their compliance with the PfA, in accordance with the *Due Diligence Evaluation for the Association with FSC* (FSC-PRO-10-004). Currently, this is an internal procedure requiring the applicant to fill out a 'self declaration form'.

The first public consultation included a discussion document on possible revisions to this procedure to enable a more robust, risk-based screening process. Based on the input received, a technical expert committee will now be established to further develop the due diligence procedure, which is expected to begin in January 2016. More details on the composition of the technical committee, the workplan, and other information will be shared with stakeholders as available. Development of the due diligence procedure will continue to include opportunities for formal and informal stakeholder engagement.

In the meantime, it is expected that the user-friendly guidance being developed as a companion document to the revised FSC PfA will help applicant organizations to better understand the commitments that they must agree to uphold when seeking to associate with FSC, and that the self-declaration forms are signed accordingly.

- ii. If a potential violation of the PfA is brought to the attention of the FSC secretariat, then the *Processing 'Policy for Association' Complaints in the FSC Certification Scheme* (FSC-PRO-01-009) is applied. Currently, an evaluation of a potential violation is procedurally regulated only if a stakeholder files a complaint.



The discussion document provided in the first consultation described a new mechanism for proactively evaluating allegations of PfA violations as a means of improving efficiencies in the complaints process and of addressing problems before reputational damage is caused.

After careful consideration of how this 'proactive PfA evaluation' might work, and in recognition of the other lessons learned in applying the PfA complaints procedure, it is now being recommended that the procedure undergo a more comprehensive revision. If approved by the FSC Board of Directors, the PfA working group will serve as a chamber-balanced oversight body for the revision of the PfA complaints procedure. It will follow the normal procedures for revising FSC normative documents including stakeholder consultation and other opportunities for stakeholder engagement.

## **9. What are the consequences of breaching the PfA?**

There are currently only two options for deciding the outcome of complaints that the PfA has been breached: either immediate disassociation (with relevant timelines and conditions for re-association), or no disassociation or any other implications. There is no provision that foresees corrective or preventive actions from the defendant prior to a potential disassociation, or after a disassociation if conditions are not successfully met.

An alternative option is now being proposed: 'probation' (defined as 'conditional association' in the first public consultation), which would allow for changes to take place that avert disassociation, offering organizations the opportunity to demonstrate that they want, for authentic reasons, to stay associated with FSC. The reason behind this is, in brief: a) the FSC Board technically already has the authority to do this yet there needs to be more specificity on how this would be used in the procedure; b) this option will allow organizations to maintain association while putting immediate measures in place to correct and prevent further unacceptable activities from occurring; c) the decision to place an organization on probation rather than disassociation would be guided by specific factors, and specific conditions would also be placed on the organization that would need to be met during the probation period.

On this third point, the following is being recommended:

### **1. Factors determining when probation, rather than disassociation, should be granted:**

- first-time violation
- how long the organization was involved in the unacceptable activity, and whether it has stopped doing it
- cause of the unacceptable activity (systemic or oversight)
- number of unacceptable activities violated
- clarity on whether accountability for the unacceptable activity can be established
- timespan over which the conditions can be met
- reputational damage already done.



2. Conditions placed on the organization that must be met during the probation period:

- compensation plan for damages and impacts
- short-term and time-bound action plan for resolving the issues that led to the violation
- improved due diligence to ensure future preventative actions
- suspension of trademark use
- transparency in the decision to grant probation rather than disassociation
- others, as decided by the PfA complaints panel

**10. Cross-walk of key changes in the draft PfA**

Theme	Key changes: draft 1	Key changes: draft 2	Rationale for changes
Purpose of PfA	Detail added to purpose, intent, and application.	Clarification provided on issues raised by stakeholders: violations do not need to be systematic; all efforts do not have to be exhausted before a complaint can be filed; evidence needs to be substantiated.	Better frame the policy as a commitment of shared values.  Clarify the purpose and application of the policy and complaints procedure.
To whom the policy applies	Clarification that all organizations holding a contract with FSC are held to this policy.  Definition of 'organization' to clarify that it includes the totality of legal entities affiliated with the applicant organization.	Revision: the policy does not apply to all organizations holding a contract with FSC, and further defining the applicable organizations as 'associated organizations'.  Reframing 'organization' as 'affiliated group', adding 'sphere of control' to the definition.  Description of how to address reputational damage that falls outside the scope of the PfA.	Clarify terms so that they are easily understood and accurately capture purpose of the policy.
Where does the policy apply?	Clarification that this policy can implemented on activities 'outside the scope of an FSC certificate'.  Provision that the PfA can be used as a successional tool – to file a complaint once a certificate has been terminated.	Meaning of 'outside the scope of the certificate' clarified.  Recommendation to revise the certification body accreditation standard.	Clarify terms.  Address stakeholder concern of not being able to file a PfA complaint if the violation is



			within the scope of the certificate.
Intent to engage in an unacceptable activity	Clarification that unacceptable activity(ies) must have occurred or be occurring to fall under the PfA. Intent to commit an unacceptable activity does not constitute a breach, though it may trigger other actions by FSC.	No substantive change.	Clarify elements that have led to confusion and misinterpretation.
Accountability and control	The terms 'direct involvement' and 'indirect involvement' were revised to focus on actual accountability and control over the occurrence of the unacceptable activity or activities.	No change in technical requirements, but some clarifying language provided.  The working group does not agree on whether accountability should be expanded to include full responsibility for the supply chain.	Strengthen focus on actual accountability and control, rather than ownership thresholds.
The six unacceptable activities	<p>a) Illegal <b>harvesting</b> or trade in <del>illegal wood or</del> forest products</p> <p>b) Violation of traditional and human rights in <del>forestry operations</del></p> <p>c) Violation of any of the ILO Core Conventions</p> <p>d) <del>Destruction of</del> <b>Significant damage to</b> high conservation values in <del>forestry operations</del> <b>forests</b></p> <p>e) Significant conversion of forests to plantations or non-forest use.</p> <p>Conversion is considered significant in any case of:</p> <ul style="list-style-type: none"> <li>• Conversion of High Conservation Value Forests</li> <li>• Conversion of more than 10% of the forest</li> </ul>	<p>a) No change</p> <p>b) Added "in forestry and forest products sector"; changed 'and' to 'or'</p> <p>c) Added "in forestry and forest products sector"</p> <p>d) Category stayed the same; definition of 'damage' expanded to include threats</p> <p>e) Minor non-substantive changes</p> <p>f) Revised to focus on what can be allowed (research and field trials) rather than what is not allowed (commercialization)</p>	<p>Revise to align with other FSC standards, particularly the controlled wood standard.</p> <p>a) Revised to reflect the definition of 'illegal logging' in the existing policy.</p> <p>b) Alignment with what FSC is associated with (forests) and what it can effectively influence and enforce. It also now directly responds to the key concern with the existing policy that this activity did not cover actions that occur within a chain of custody operation</p> <p>c) As b, for consistency.</p> <p>d) Alignment with definition in the controlled wood standard.</p>



	<p>areas under the organization's <b>control and responsibility within a national jurisdiction</b> in the past 5 years</p> <ul style="list-style-type: none"> <li>Conversion of more than 10,000 ha of forests under the organization's <b>control and responsibility within a national jurisdiction</b> in the past 5 years</li> </ul> <p>Explanatory Note also revised to indicate that the above numerical and percentage thresholds serve as triggers for considering the conversion to be 'significant'.</p> <p>f) <del>Introduction of genetically modified organisms trees in forestry operations for commercial purposes</del> <b>Planting and growing of genetically modified organisms trees in forestry operations for commercial purposes</b></p>		<p>e) Revised with aim of addressing on-the-ground, spatial impacts. The thresholds have been left the same for now and may be addressed by an FSC technical group handling issues related to conversion.</p> <p>f) Revised because it is not always clear at the point of planting/growing whether commercialization will take place. Aimed at aligning the PfA with the existing GMO policy. The intent remains to prohibit commercialization of GM trees. Additional guidance on field trials may be provided later.</p>
Consequences of a breach	Addition of option to allow for 'conditional association' as an alternative to disassociation in cases where appropriate. NOTE: the working group did not reach consensus on this proposal and is seeking stakeholder input during this consultation.	Change of 'conditional association' to 'probation', and the addition of specific factors to consider when selecting this option, and conditions that need to be met during the probation period.	Need for additional option in cases where warranted.
Due diligence procedure	Discussion draft on proposal for a more robust, risk-based due diligence procedure.	Addition of update that a technical body is being established to further develop the due diligence procedure.	The current self-declaration form is not sufficient for screening all applicant organizations.
Proactive PfA evaluation	Discussion draft on proposal to add a mechanism to the PfA complaints procedure so that possible violations can be evaluated without needing a	Recommendation that a more comprehensive revision of the PfA complaints procedure be initiated.	Need for efficiencies in how possible violations are evaluated; a 'proactive



	complaint to be filed.		evaluation' will aid this, yet other revisions to the PfA complaints procedure are also needed.
Definitions		Disassociation, forest, plantation, human rights, traditional rights	