



Forest Stewardship Council®



First Consultation Report on FSC-PRO-10-004 and FSC-PRO-01-009

Summary of comments received on the first revised draft of FSC-PRO-10-004 V2-0 Due Diligence Evaluation for the Association with FSC; and FSC-PRO-01-009 V4-0 Procedure for Evaluating Compliance with the FSC Policy for Association.

Consultation period: 18 October-16 December, 2016

This document provides an overview of the first consultation on the two procedures used to implement FSC-POL-01-004 Policy for the Association of Organizations with FSC (PfA).

1. The PfA Due Diligence Procedure
2. The PfA Evaluation Procedure

It includes:

- An analysis of the number and range of stakeholders who participated in the process
- A summary of the issues raised in the comments
- An indication of how the working group considered and addressed these issues

A compilation of all the comments received, and observations provided for each of them, is available on the [PfA webpage](#) or through the Quality Assurance Unit.

This document follows the requirements of FSC-PRO-01-001 (V 3-0) *The development and revision of FSC normative documents*.

I. The number and range of stakeholders who participated in the process

In total of 31 stakeholders participated:

- 7 stakeholders represented environmental interests
 - All 7 stakeholders were Environmental North members
- 20 stakeholders represented economic/forest industry interests
 - 14 stakeholders were Economic North members
 - 2 stakeholders were Economic South members
 - 4 stakeholders were either non-member certificate holders, members of industry associations, or other companies involved in the forest products industry
- 2 certification bodies
- 2 Network Partners (Global North)

See Annex A for a full list of stakeholder who submitted comments

II. Summary of issues raised and how they were addressed

1. PfA Due Diligence Procedure (DDP)

A. Overall DDP

Background and salient comments: This revision aimed to establish a procedure that could more effectively serve as a PfA screening mechanism than the current 'self declaration form', while at the same time not create undue burden on, or a certification distinctive for, the vast majority of applicant certificate holders and members committed to the values of FSC. Stakeholder comments offered diverging perspectives on whether this was achieved:

- Great to have a more robust DDP and to move towards self-assessment and screening from the current self-declaration.
- The DDP goes too far and is not needed.
 - FSC should focus on what it is meant to do - certification standards - and not try to do all and be all; focus instead on getting more organizations (and more of their affiliates) certified
 - Too much work and cost for a minor issue and for what will have little effect in the end. Huge cost implications.
 - DDP is not necessary and creates another administrative layer to enforce and that will take time and lead to more confusion, as CBs already have to register the names of upcoming certifications and re-certifications on the FSC website.
 - Rather than a new procedure, just integrate relevant parts to the existing certification process, managed by the CB.
- The proposed procedure is not robust enough. It should have:
 - More actively screening
 - More questions to ensure that corporate structures are being properly defined and identified
 - More active stakeholder outreach - just asking for stakeholder input isn't enough and FSC itself needs to do the outreach to stakeholders, experts, risk service providers, etc.
 - It must be robust irrespective of whether it causes disincentives, is resource-intensive, etc.

Working Group recommendation: It is believed that the proper balance was reached, though it is still a struggle to find the most effective and operable risk filters in order to effectively screen applicants without undue burden on the system. Additional, technical, input is requested from stakeholders on how best to achieve this.

B. Application of the DDP to existing certificate holders and members

Background and salient comments: The proposed approach for phasing in implementation of this procedure, as articulated in the draft DDP, was that it would first be applied to applicant organizations. After allowing sufficient time to ‘pilot’ the process, it would then be applied to organizations already associated with FSC (i.e., existing certificate holders and members). This may then still be a staggered approach, starting first with the higher risk/higher complexity associated organizations. Stakeholder comments offered diverging perspectives on whether and how the DDP should be applied to existing associated organizations:

- Apply progressively to applicants and then to certificate holders (CHs) through re-association at later date. If not, it will add to CB costs and other bottlenecks and resource needs.
 - When phased in for existing CHs, only require the disclosure and the self-assessment and not the rest of the screening.
 - When phased in for existing CHs, have a more elaborated set of criteria to exempt certain organizations (for example, annual turnover).
 - Apply during the certification renewal and make that clear in the scope, without the note that there will be a pilot first.
- Apply to everyone for equity reasons.
 - Apply to everyone, though based on risk (complex organizations and high-risk countries first). Make these criteria transparent
 - Apply to everyone and within a 12-month period
 - Apply to everyone, as part of their annual evaluation
- Do not apply to existing CHs, as it would not be practical or worthwhile
 - The risk:reward ratio does not favor this
 - If applied to existing CHs, then it wouldn’t be a ‘screening’
 - There is no need to do this because any issues can be covered as part of the Eval Procedure
 - It isn’t right to apply a procedure retroactively
 - Once the applicant fills out the self-assessment and is a CH, it should not need to be updated every time there is a merger or acquisition. This is not practical
- The reference does not belong as-written in the procedure.

Working Group recommendation: Screening, based on risk, seems necessary for all organizations, and reasonable if phased in properly and after the procedure has been piloted. The intent of this procedure should remain that this procedure is applied to all existing associated organizations, though this should not be decided until after a pilot phase.

C. Self-assessment

Background and salient comments: The revision expands upon the existing self-declaration to require the organization to provide further details on its compliance with the PfA. It is not intended to be a defacto audit/verification of operations not undergoing certification; however, it does aim to assess the existence of the organization’s own due diligence system (and to make it accessible if requested to do so), thereby providing a higher level of screening than the self-declaration form. Specifically, it asks for corporate disclosure (see point D below), as well as an indication that the organization has policies or procedures in places, known, and implemented, to avoid each of the six unacceptable activities. It also includes a few other questions in order to screen out applicants who have already undergone an FSC DDP process, or who may have a history of non-compliance with the PfA, among others. Stakeholders offered opinions on whether there should be a self-assessment at all, and also some recommendations on technical tweaks:

- The self-assessment does not serve a purpose and should be eliminated. The questions are meaningless and don’t reveal anything
- The self-assessment is better than the current self-declaration, though it should require that evidence be provided (and not just policies and procedures exist)

- There needs to be a requirement stated in the PfA itself and/or the procedure to have policies/procedures in place for not violating the PfA, as this question in the self-assessment is currently not tied to a requirement
- Regarding having entities within the organization ‘aware’ of these policies and procedures, is this realistic and how is it demonstrated? Provide guidance of how this is assessed.

Working Group recommendation: The self-assessment is an important part of the procedure and serves to help ensure that the organization has its own due diligence procedures in place to avoid risk of violating the PfA. It further provides a library of information to FSC if ever a case arises. And, for organizations not automatically screened out as low risk, it provides information that can be further reviewed by FSC if necessary. A ‘declaration of commitment’ is missing and needs to be added to the self-assessment or as a separate annex.

D. Affiliated Group disclosure requirements

Background and salient comments: The scope of the PfA covers both associated organizations as well as their affiliated groups. In order to effectively screen applicants for compliance with the PfA, the scope of the DDP should reflect that of the PfA, therefore suggesting that all entities within the applicant’s affiliated group also need to be disclosed in the screening process. Stakeholders expressed mixed views regarding this disclosure requirement. Some of their perspectives extended beyond the DDP itself* and was more a reflection of their concerns with the definition of ‘affiliated group’ within the PfA. DDP-specific comments include:

- Understand the rationale for this, but it will just be outdated quickly since complex organizations change their composition frequently. There is no practical way to keep it updated
- Disclosure requirements are a critical part of this procedure
- Disclosure of just the affiliated group is not enough, and it needs to include minority shareholding or supplier for whom they are a major buyer.
- Disclosure requirements are important and it can be kept updated by having the CB make sure of this during the annual audits.
- Organizations should only be required to disclose entities in the affiliated group with operations in the forestry or forest products sector. This should be clearly stated in the procedure.

Working Group recommendation: Disclosure is an accepted part of a due diligence procedure and should be aligned who is accountable for compliance with the PfA. Affiliated groups should be disclosed, as well as entities where there is managerial control. At this time, suppliers where there is no managerial control should not be included.

* Some stakeholders expressed concern that the definition of “affiliated group” was over-reaching and needed to specifically state that it only applied to entities within the ‘forestry and forest products sector’. Conversely, other stakeholders felt that it may leave gaps, for example minority shareholders, familial relationships, etc. And, other stakeholder expressed confusion about the term and asked for more guidance on its application.

E. Inclusion of suppliers in the disclosure and/or self-assessment

Background and salient comments: One outstanding issue within the PfA is regarding the definition of “accountability” and specifically whether it should include situations where the organization did not have control over the actions of its suppliers yet knowingly purchased from a supplier engaged

in an unacceptable activity. [Note that there is already consensus amongst the PfA WG to extend the definition of “accountability” to include situations where the organization did have control over the actions of its suppliers]. This issue overlaps with the DDP in two ways: 1) if the PfA includes suppliers where there is a controlling relationship with the organization, then such suppliers might also need to be included in the screening process; and 2) if the PfA is extended to include all suppliers, then all the organization’s forest-related supply chains might need to be included in the screening process. Stakeholder comments included:

- No – do not include suppliers
 - Needs to stay within the scope of the PfA (which should not include suppliers where there is no control; control cannot be accurately measured).
 - Supplier requirements could not be applied in a consistent or practical way (defining, proving, applying), would add significant costs, excessive admin tasks, and be an unresolvable burden for FSC,
 - It would be hard to get such information from suppliers (legal impediments, sensitive data).
 - Organizations can be held accountable for setting standards of procurement and requiring its suppliers to meet those, but cannot be accountable for actions of suppliers.
- Yes – include suppliers
 - At least need to look at supplier for illegal harvest/trade (which holds the organization accountable irrespective of how “accountability” is defined)
 - Include suppliers; should have to declare their suppliers. FSC may then need to evaluate some suppliers if they are high risk
 - Expand to include GMOs since some gene complexes are mobile and can be detected far from the target crop.

Working Group recommendation: See above.

F: The screening process and risk-based factors

Background and salient comments: Consistent with the movement in the FSC system towards “risk-based approaches”, the DDP revision aimed to define risk factors for screening out ‘low risk’ applicants and for applying more robust screening on the remaining applicants. Two risk factors were proposed for a screening of ‘low risk’: 1) Applicants (and their affiliated group) not involved in the forest/forest products sector; or 2) Applicants (and their affiliated groups) involved in the forest/forest products sector, yet only in countries with a high CPI index. Stakeholders shared the following perspectives:

- As currently worded, it is confusing and incorrect – it doesn’t specify the operations correctly and also is opposite in terms of CPI
- The proposed risk-based screening (both the type of org and location of operations) work well
- Screening out companies not in the forest/forest products sector
 - Good to screen out companies not in the forest/forest products sector
 - Good to exclude non-forest based subsidiaries, but should include those agricultural companies with a contiguous land base.
 - Printers could be in violation of illegal trade
 - Need more clarity on which operations are exempt
- CPI is good
 - Threshold of 50 is appropriate
 - Expand threshold to 60
- CPI not good
 - It only reflects the corruption of the country and not the forest products sector.
 - CPI doesn't consider the supply chains of companies in low risk countries but with high risk supply chains (important for category a: illegal trade)

- There are companies located in low risk countries that could have problems (for example, Malaysia), and therefore more evaluation is needed.
- CPI is great for forest governance, but not other PfA issues. Include IFLs, HCV way for screening, etc.
- Consider developing a composite index that also looks at human rights, ILO, etc.
- Consider the "Kaufmann Indicators"
- Use CW NRAs instead

Working Group Recommendation: The CPI seems to be an effective risk factor for certain issues with the PfA, and it makes sense to align the threshold with that of CW (50); further, it needs to be added to the actual self-assessment in order to serve as an actual filter in the process. Regarding other risk factors, it still is not which ones will be effective and feasible. It also seems that the risk factors are not aligned with the PfA unless suppliers located in countries at risk of illegal harvest/trade are included. Suggest to add 'deforestation' as a proxy for other risk factors, and also to extend the CPI risk factor to include suppliers. More technical input is needed from stakeholders (and FSC) on how to operationalize a risk-based approach in the FSC system.

G. Stakeholder Consultation

Background and salient comments: As part of the risk-based approach, organizations not automatically screened out as 'low risk' (per the risk factors) would undergo further screening. The primary method for this would be through 'crowdsourcing', whereby stakeholder knowledge regarding whether an applicant was in violation of the PfA would be solicited as part of a stakeholder consultation period. Applicants would be listed on a PfA webpage on a weekly basis, and then stakeholders with substantiated evidence of PfA violations would have 10 days to provide comments. This would create a 'waiting period' (normally not to exceed 20 days) for applicants not screened out as 'low risk', yet would enable a certain level of vetting. Stakeholders perspectives included:

- The stakeholder consultation element is critical, yet not sufficient:
 - Provide more time. This should be published on a monthly basis, and stakeholders should have 30 days to provide comments
 - Use different way of announcing, since stakeholders won't know to go to the website
- The stakeholder consultation element should be eliminated
 - This is redundant and time-consuming, given that certificate holders and members are already listed on the website.
 - For existing CHs, this should be done through the CBs asking for comments
 - The website listing could be a deterrent by giving them a competitive disadvantage
- It is important to emphasize that stakeholders need substantiated evidence, and clearly define what this means. Otherwise, FSC will be flooded with malicious accusations.
- Stakeholders should not receive the self-assessments

Working Group recommendation: It is not practical to add more time for the stakeholder consultation, as 20 days already adds a bottleneck to the certification process, and further, this is not meant to be an audit. Suggest to keep to the timeframes specified in Draft 1. The disclosure should include the name of the applicant and its affiliated group, but not the self-assessment or suppliers. Additional guidance needs to be provided for what constitutes 'substantiated evidence'.

H. FSC evaluation and review

Background and salient comments: As part of the screening process (for applicants not automatically screened out as 'low risk'), and building off the stakeholder consultation, FSC conducts a rapid review of the self-assessment and also reviews any substantiated information provided by stakeholders. This is a necessary step in order to act on whatever comments are

received, while at the same time is not meant to put FSC in the position of auditing applicants. Stakeholder comments included:

- Need to define how long additional review would take in situations where there is any cause for concern
- FSC needs to actively evaluate self-assessments
- It is not clear why FSC's additional information-gathering is confidential. Stakeholders need to know.
- This puts FSC in the position of an auditor and isn't its appropriate role

Working Group recommendation: Considering feasibility and impact, the approach taken for FSC's review seems appropriate, and is not considered an audit. The amount of time will differ case-by-case, and also information could be confidential, so needs to be made available at the discretion of FSC.

2. PfA Evaluation Procedure

A. The principles and general requirements

Background and salient comments: The principles that govern the PfA Evaluation Procedure have not changed substantially from what is in the current procedure, and have in general worked well in its implementation (there was one question directed at stakeholders for feedback on the issue of affected parties "commenting publicly" on the evaluation, which to-date FSC has been challenged to enforce). Stakeholders shared the following perspectives:

- *Substantiated evidence:* Needs better definition and clarification throughout the procedure that complaints and allegations need to be based on it
- *Standard of certainty/clear and convincing evidence:* Concern that this might not be the best approach; other stakeholders asking not to change this
- *Alternative dispute resolution:* This could just increase time and reputational risk, and dilutes the impact of the PfA
- *Presumption of innocence:* Sounds too much like guilty in a court of law
- *Public comment:* FSC doesn't have legal power to insist or enforce a gagging order. Keep as 'should'; there should be some consequence for not following the principles, for example, that the complainant is no longer considered an affected party.

Working Group recommendation: In general, these principles are appropriate and should only be slightly revised for clarity and to meet their intent. A definition will be provided for 'substantiated evidence', and parameters need to be added to when and how alternative dispute resolution is used. For the reasons stated in the stakeholder comments, public commenting should remain a 'should'

B. Initiating an evaluation without a formal stakeholder complaint

Background and salient comments: A main objective of the revision was to expand the scope of the procedure to enable proactive evaluations of possible PfA evaluations. This would be an additional pathway to the existing entry-point, which requires a formal complaint to be filed to initiate an investigation. For the most part, the evaluation process would be the same irrespective of how it was triggered, with few sub-steps to accommodate for having a complainant.

Stakeholders had mixed perspectives on this:

- Only accept allegations (non formal complaints) if from FSC staff/CB/ASI/NP and not through third party reports of other info.

- Overall concern that 'allegations' will be accepted without substantiated evidence; at least need better definition for "allegation"
- Do not initiate an investigation without a formal complaint. This creates a two-tiered system and also the defendant has less rights if there is no formal complaint; Even with an allegation, the defendant should be able to agree to the composition of the panel. Right now, it's just for a formal complaint (where both defendant and complainant agree)
- Great to have proactive evaluations without having to wait for formal complaints

Working Group recommendation: Retain the ability of FSC to be able to initiate an investigation without a formal complaint, though eliminate the two-tiered approach that could change the outcome of an evaluation because of the approach selected.

C. Alternative Dispute Resolution

Background and salient comments: Unlike the current procedure which does not allow the opportunity to attempt to resolve an issue before initiating the full PfA complaints process, this revision aims to promote alternative dispute resolution. This 'dialogue platform' is a key strategic direction for the FSC system, and a solution-oriented and constructive approach is important to reflect in this procedure. Stakeholders had diverse perspectives on this:

- Allowing ADR will promote 'deals between parties' – don't allow ADR
- Consider timeframe for ADR so that it doesn't drag out
- Good to add option of ADR.

Working Group recommendation: Alternative Dispute Resolution should remain a core principle in this procedure; however, it should be recognized that it could be abused if not done appropriately. Therefore, as part of the ADR process, FSC needs to make sure that it is done within a reasonable timeframe and that it meets it does not result in 'back room deals'.

D. Timeframes related to the process

Background and salient comments: The timeframes associated with the various steps in the revised draft procedure have not been significantly changed from what is currently in use; however, some timeframes associated with a formal complaint are different from those associated when there is no formal complaint to trigger the evaluation. There have also been some concerns, particularly within FSC and Complaints Panels, regarding the challenges of realistically meeting timelines. Stakeholders provided the following salient comments:

- Need a timeframe for investigation (3.3.10) so that it is fair and doesn't drag on
- Need a timeframe for how long the affected parties have to agree with the selection of the investigators (3.3.5.b)
- Need a timeframe for evaluation (3.5.11), and that the evaluation panel shall complete its report within 90 days of receipt from the investigation
- With the final review of the evaluation, need to specify business days and consider giving more time (3.5.5)
- Under 3.6.2, need more time than just 14 days, and need to specify if it is business or calendar days.
- Validation of findings: increase to 20 calendar days or 15 business days or 21 business days or at least 10 working days during that period
- Provide more flexibility in the process

Working Group recommendation: In order to conduct an evaluation in a time-effective manner, turnaround times for the complainant/defendant to review reports and composition of investigation/evaluation panel members cannot realistically be expanded. Clarity is, however, needed that the days refer to 'business' and not 'calendar' days. Additional timeframes related to the process need more flexibility, based on the case, and should be decided at the initiation of the investigation, and following certain milestones.

E. Role of investigator(s) and evaluation body

Background and salient comments: The current complaints process utilizes one ad-hoc and chamber-balanced Complaints Panel to conduct both the investigation and the overall evaluation (including making a recommendation to the FSC Board). This has led to multiple inefficiencies in the process, and an objective for this revision was to separate the roles so that an ad-hoc Investigator(s) conducts the investigation and then a permanent, chamber-balanced Evaluation Panel provides oversight and a recommendation to the FSC Board. Stakeholders did not provide substantive comments on this revision, with only some clarifications needed.

F. Probation

Background and salient comments: The current complaints process (and the current PfA itself) suggests that only two decisions can be taken following an evaluation: immediate disassociation or no disassociation. Probation would allow for corrective and preventive actions (or conditions) to be placed on the organization prior to a potential disassociation. Disassociation would then be the consequence if those conditions were not met successfully or timely. This concept of probation has been discussed throughout the PfA revision, and the PfA WG supported inclusion of probation in the PfA, and requested that further consideration be given as part of the Evaluation Procedure revision as to the factors for determining when to impose probation rather than disassociation. Stakeholder comments included:

- Don't allow probation. It goes against the intent of the PfA.
- If anything, make it a suspension, and don't allow use of the trademark
- How will it be monitored? is there independent auditing?
- Align the conditions and factors related to probation with the existing PfA case(s) that have used it.
- A condition should be added that there be regular monitoring for a certain period of time
- Compensation should not be one of the conditions

Working Group recommendation: This issue was discussed in-depth as part of the PfA revision, with consensus to allow probation. It should remain an option, and additional factors will be added that build off lessons learned from its application.

G. Other

- Place minimum timeframe before re-association can happen (1 year)
- Decision-making (3.7) should always go to the FSC BoD and not just the Director General. If it is the DG, then the defendant should be able to submit an appeal to the BoD

Annex A: Stakeholders who submitted comments for the first consultation of FSC-PRO-10-004 and FSC-PRO-01-009

Name	Affiliation	FSC Member
Environmental Interests		
Staff from multiple countries	WWF International	Member Env North
Bill Barclay	Rainforest Action Network	Member Env North
Staff from multiple countries	Greenpeace	Member Env North
Leonie van der Maesen		Member Env North
John Palmer		Member Env North
Heiko Liedeker		Member Env North
Economic/Industry Interests		
Kevin Gallagher, Guy Tremblay, Mike Maxfield	Resolute Forest Products	Member Econ North
Keith Moore	Consultant	Member Econ North
Jeffrey Bradley	AF&PA	
Ross Congo	International Paper	Member Econ North
Pekka Kallio-Mannila	Stora Enso Oyi (SE WSF)	Member Econ North
Deborah Baker	Georgia Pacific	Member Econ North
Karoliina Neimi	Finnish Forest Industries	Member Econ North
Daniela Vilela	IPEF	Member Econ South
Eric Smith	KapStone	
Armi Purhonen	Metsa Group	Member Econ North
Ebba Hansen	Boise Paper	Member Econ North
Jemmy Chayadi	APRIL	
Keith Ley	Eacom Timber	Member Econ North
Mark Heyde	WI DNR	
Heikki Myohanen	Tornador	Member Econ North
Andrew Heald		Member Econ North
Courtney Hall	Anderson Corp	Member Econ North
Nathaliea Granato Loures	Iba	Member Econ South
Chris McDonell	Tembec	Member Econ North
Berty van Hensbergen		Member Econ North
Certification Bodies		
Gabe Bolton	Rainforest Alliance	
Kyle Meister	As his own comments	
Network Partners/FSC staff		
Rosie Teasdale	FSC UK	
Guillaume Dahringer	FSC France	