

# **PUBLIC CONSULTATION REPORT**

**Additional questions related to Policy for Association  
March - May 2022**

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**Title:** Public Consultation Report: Additional questions related to Policy for Association March - May 2022

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## Introduction

This report provides the responses to the two questions concerning FSC-POL-01-004 Version 3 Draft 4 *Policy for Association* (PfA) that were included in the public consultation of FSC-PRO-01-007 Version 1 Draft 1 *FSC Remedy Framework*. The consultation ran from 11 March to 10 May 2022. Sixty-nine consultation respondents submitted comments to PfA questions via the FSC Public Consultation Platform while several respondents provided comments via emails.

This report has been prepared in accordance with Clause 5.12 of FSC-PRO-01-001 V3-1 *Development and Revision of FSC Normative Documents Procedure* and presents a summary and analysis of stakeholder feedback on the two PfA questions received during the public consultation.

FSC would like to thank members and stakeholders for their participation in the public consultation. The suggestions and comments are of great importance to the development of the PfA final draft.

## Background information

FSC-POL-01-004 *Policy for Association* is an expression of the values shared by organizations associated with FSC. It defines unacceptable activities that associated individuals and organizations and their corporate group commit to avoid in both certified and non-certified operations.

Since the last revision of the Policy for Association in 2011, the FSC community has witnessed what works well and what does not work so well. In this time, expectations on issues like deforestation and corporate responsibility towards environmental and social factors have changed. It was identified that PfA was no longer fit for its purpose. Inconsistencies in its application and a continuous need for case-by-case interpretations of requirements for maintaining association with FSC and its alignment with developments in the wider FSC system triggered the revisions of the PfA.

Based on the extensive progress already made by a working group of FSC members in 2014 – 2017, a technical working group was set up to complete the revision work between February 2021 and July 2022. After the first two public consultations, the technical working group finalized the draft having reached consensus on the main aspects of the PfA.

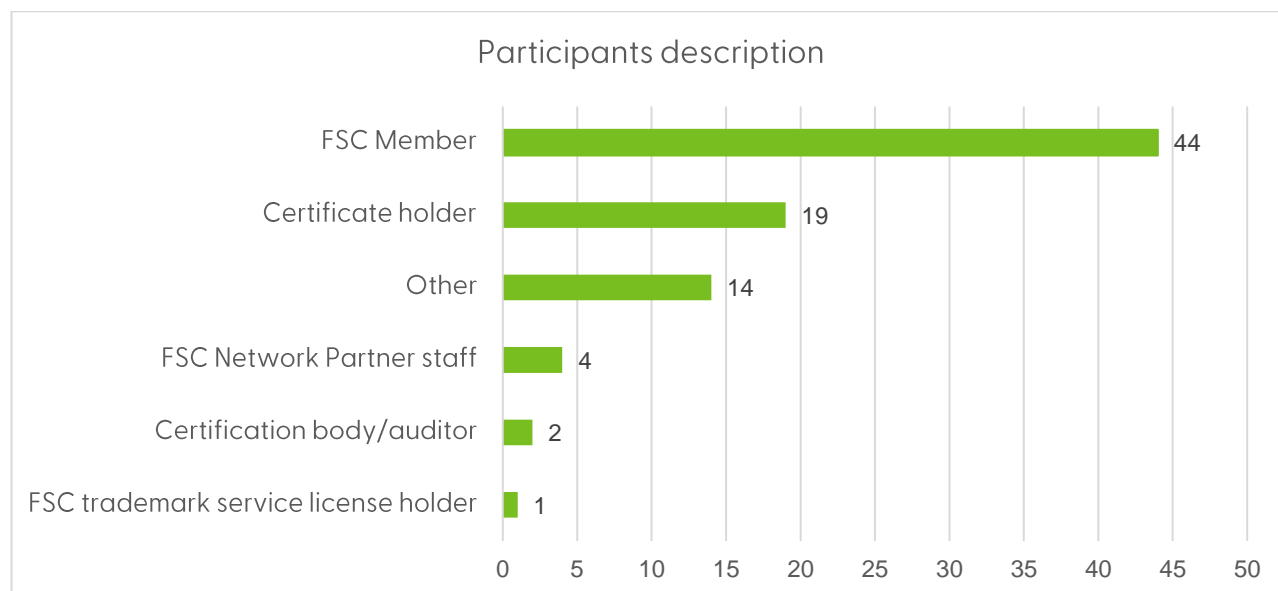
At the same time, there was also an ongoing process to address the issue of conversion and remedy of related past harm. As the result of this process, FSC-POL-01-007 *Policy to Address Conversion* (PAC) was developed, with a mechanism to remedy harm caused by past conversion. The latter was merged with a development process addressing remedy of other unacceptable activities defined in the Policy for Association, a new procedure, the *Remedy Framework*, was created to include both of these aspects. During the process to complete the policies and to ensure seamless alignment between them, new questions were raised around conversion threshold alignment, possibilities of association with FSC after conversion in the future and retroactive application of revised PfA for new joiners to the system. Questions covering these aspects were included in the joined consultation focusing on the *Remedy Framework* March – May 2022. The latest drafts of PfA and PAC were published as background documents for the consultation.

## Public consultation participation overview

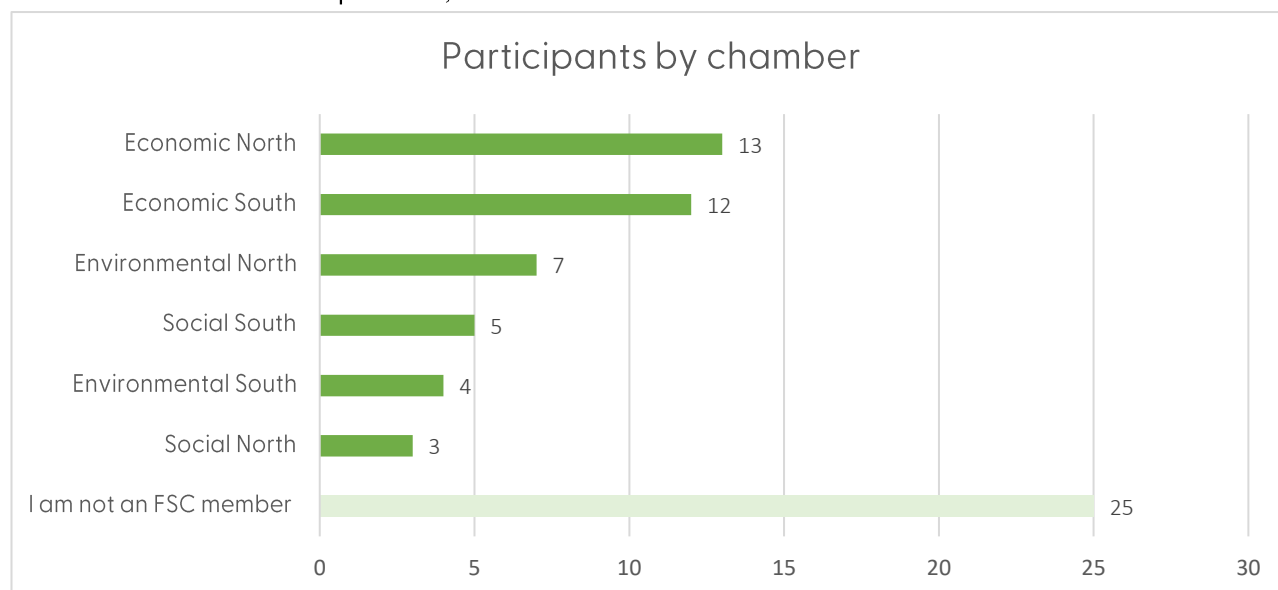
There were 69 respondents to the PfA questions in the public consultation.

44 members participated in PfA questions and constituted 64% of the respondents.

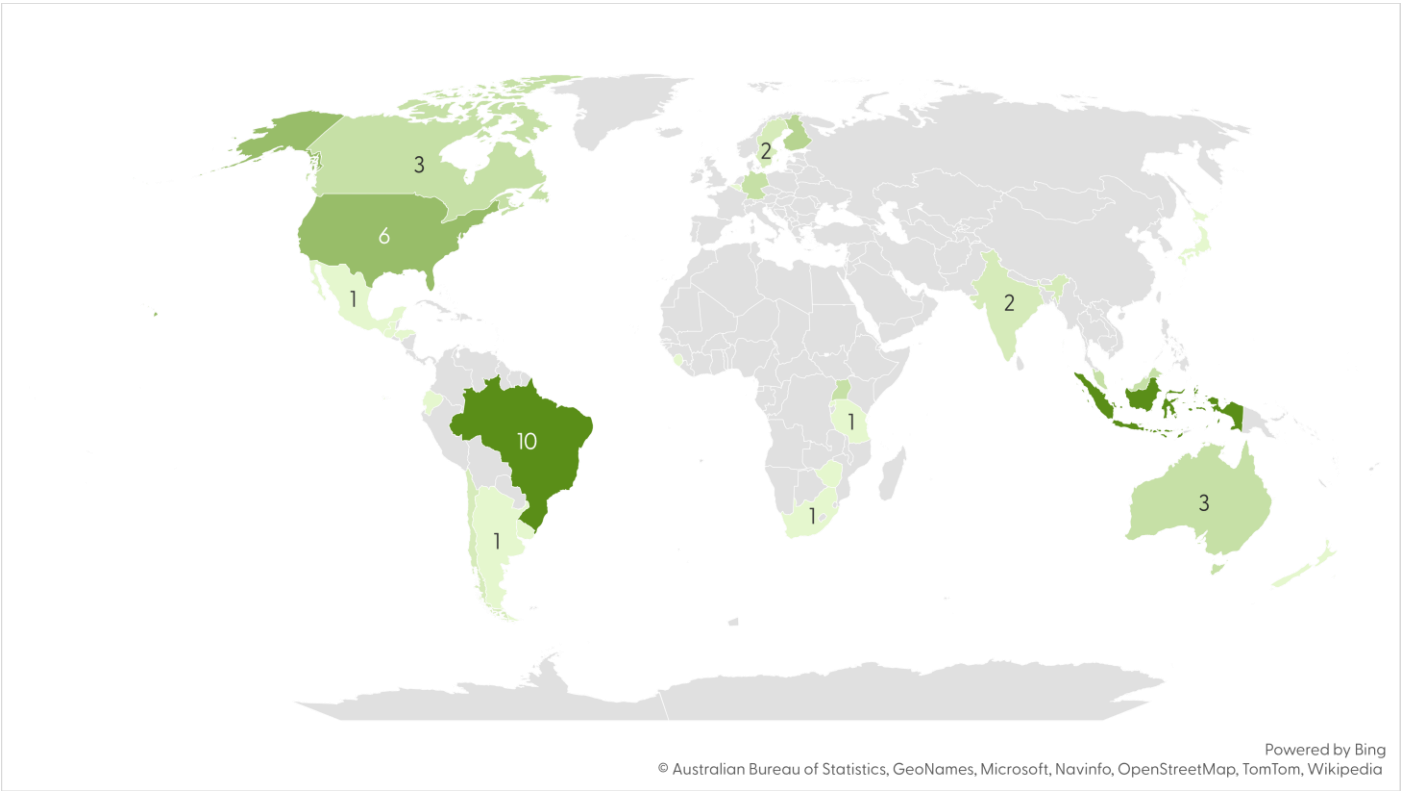
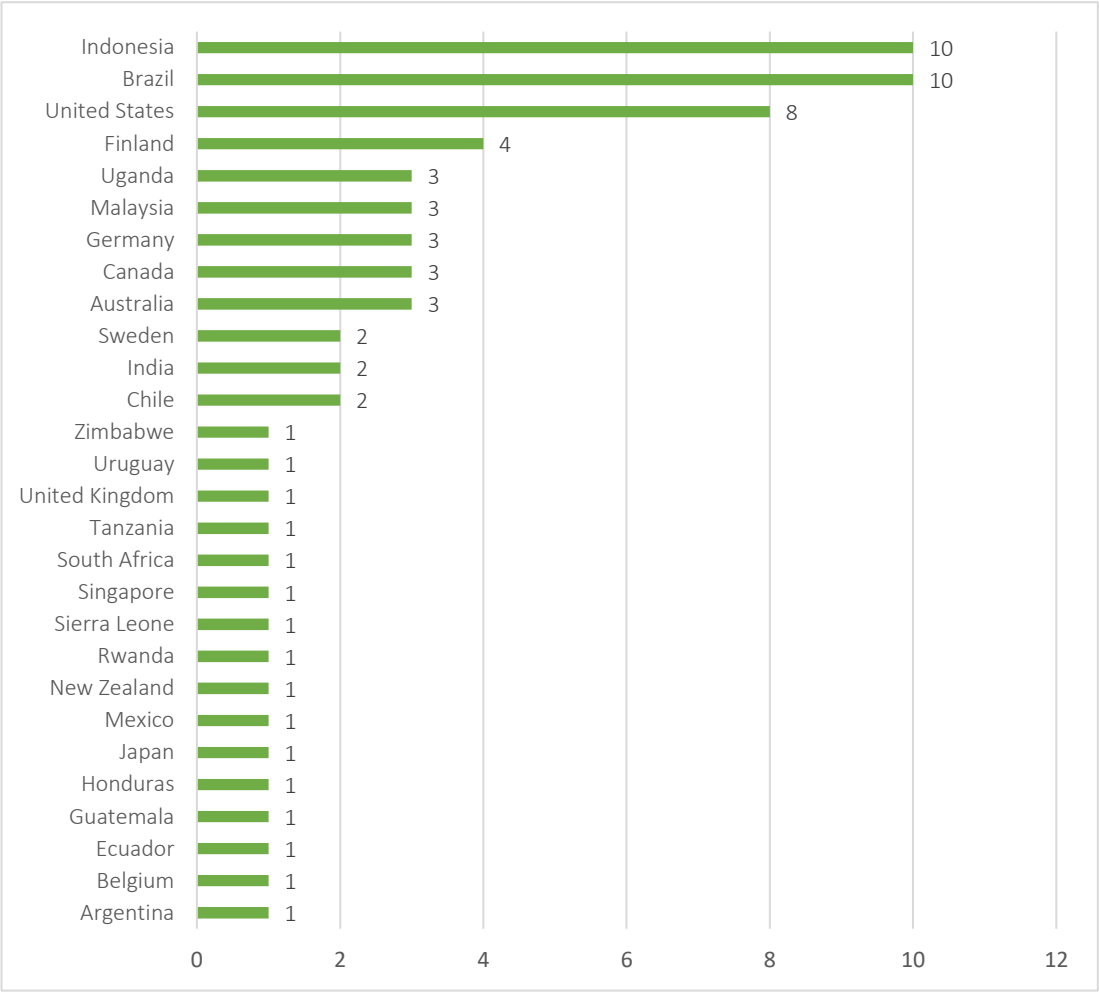
It was possible for the consultation participants to choose several options, best describing them.



Of the members who responded, most were from the **Economic chamber**:



The top 3 countries by number of respondents were **Brazil, Indonesia and the USA:**



## Response summaries by topic

This section summarizes the consultation responses to the two questions in the public consultation, the assessment of the feedback by the Technical Working Group (TWG) and the final conclusion in the approved draft.

### 1. Conversion threshold and possibility to associate

The Policy for Association defines conversion as an unacceptable activity for the entire corporate group associated with FSC. Violation of this policy could result in the corporate group being disassociated from FSC.

According to the Policy to Address Conversion proposal, land converted after December 2020 will not be eligible for FSC certification.

The Policy for Association TWG has considered a range of options regarding the consequences of engagement in conversion after the effective date of the revised Policy for Association in terms of associating with FSC. The thresholds for association have also been considered, together with proposed remedy requirements.

The alternatives considered for conversion taking place within the corporate group in the future are as follows:

	Association allowed after remedy and operational improvements according to Remedy Framework	No association allowed for the corporate group, no remedy, or improvements possible
Significant conversion used for association threshold (10% on forest or 10.000ha on corporate level, and other considerations)	<b>A)</b> Significant conversion used as threshold for corporate group. Violations would require full remedy and operational improvements before association with FSC could be considered.	<b>B)</b> Significant conversion used as threshold for corporate group. Violation anywhere in the group would exclude the corporate group from FSC permanently.
Association and certification threshold is identical (minimal conversion up to 5% allowed)	<b>C)</b> Minimal conversion used as threshold for corporate group. Violations would require full remedy before association with FSC could be considered.	<b>D)</b> Minimal conversion used as threshold for corporate group. Violation anywhere in the group would exclude the corporate group from FSC permanently.

The TWG proposed Option A: Use threshold of 10% of FMU or 10.000 ha on corporate level, full remedy and operational improvements required before association with FSC could be considered.

The rationale behind this decision:

- The PfA operates on a corporate level where activities and consequences are always considered applicable for the entire corporate group. The most severe outcome is disassociation, which would impact all entities in the group.
- It is reasonable that a system that operates on a wider scope and with such severe consequences should not operate on the same thresholds as decisions to certify defined operations. However, the threshold is set so that it is not excessively different from certification requirements to avoid any conversion of extensive scale.
- Possibility for correction through remedy and restoration should be preferred over closing doors permanently.
- Permanent disassociation is not a feasible option based on the legal assessment, which requires possibility to self-correct and allowing access when specified criteria is met. Fixed cooling-off period could be of limited value when aiming to allow for remedy and improvements. Disassociation will automatically result in a period of not being able to join FSC, in proportion to the violations and actions required by the organizations to fulfill the FSC Remedy Framework requirements
- The remedy requirements will ensure that no organization would be able to return to FSC without full remedy and fundamental changes in their systems.

## Consultation responses

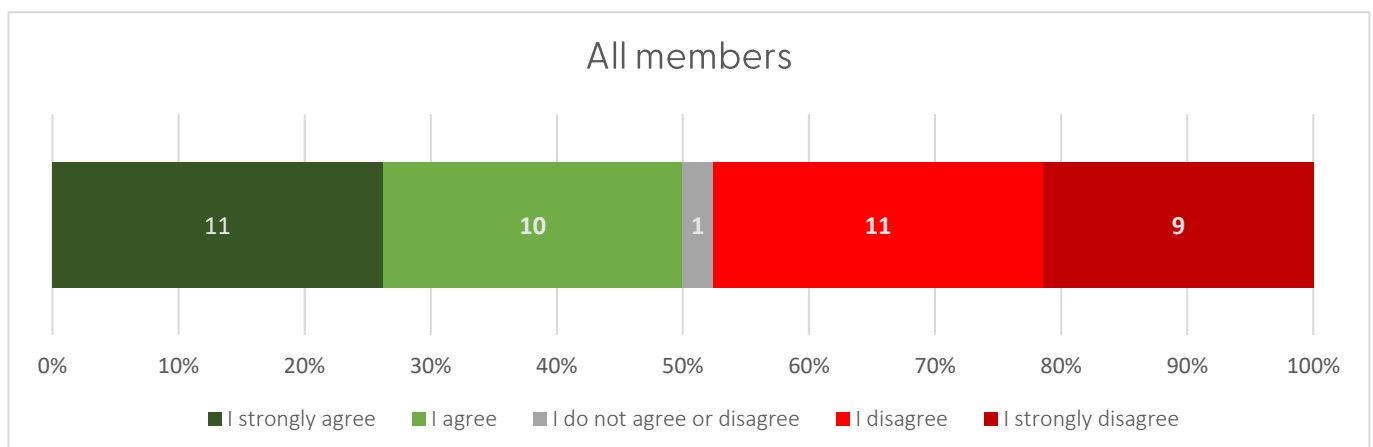
58% of the respondents and 50% of members supported the proposal, however, there was a strong division between North (oppose) and South (support).

In total 65 out of 69 respondents participated in this question. 42 respondents were members. General quantitative results are as below:

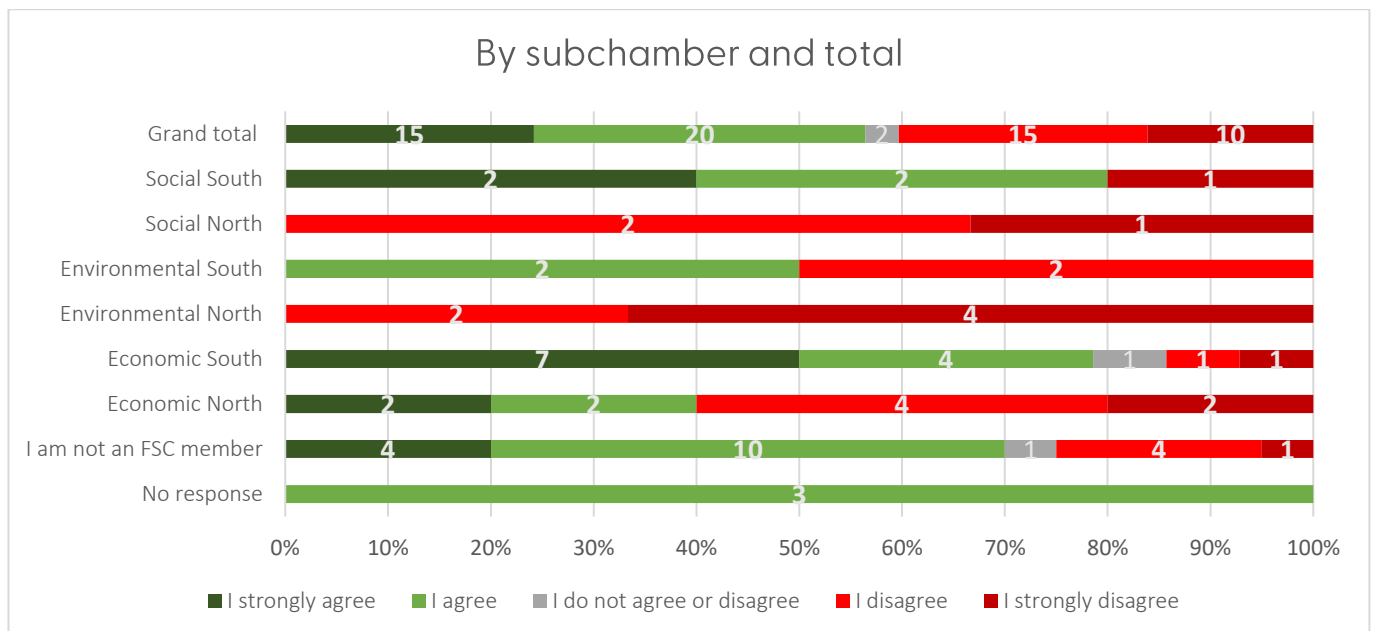
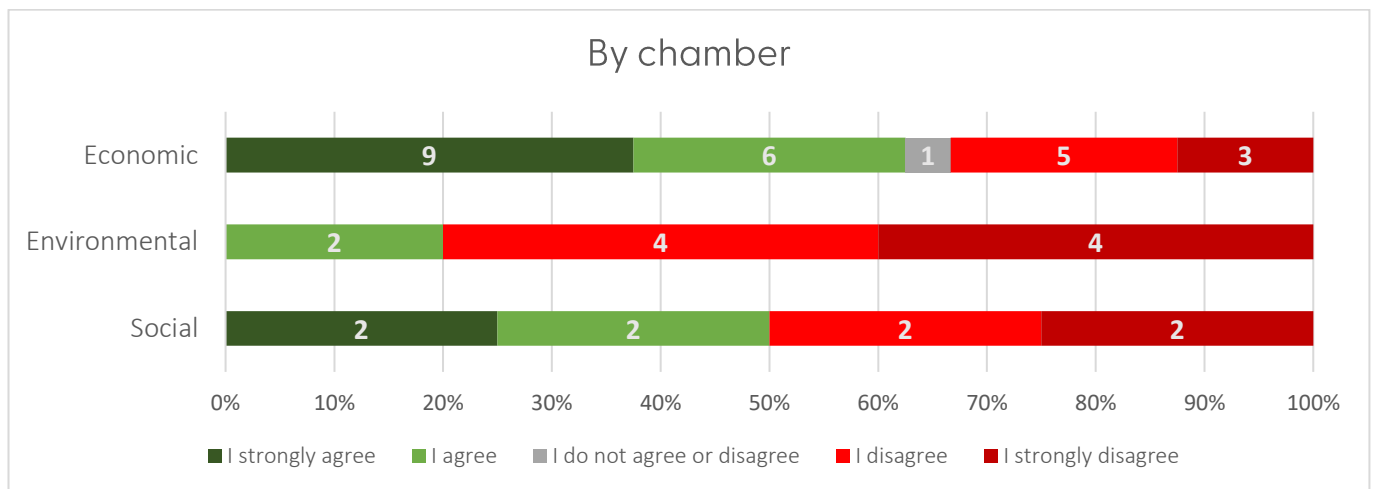
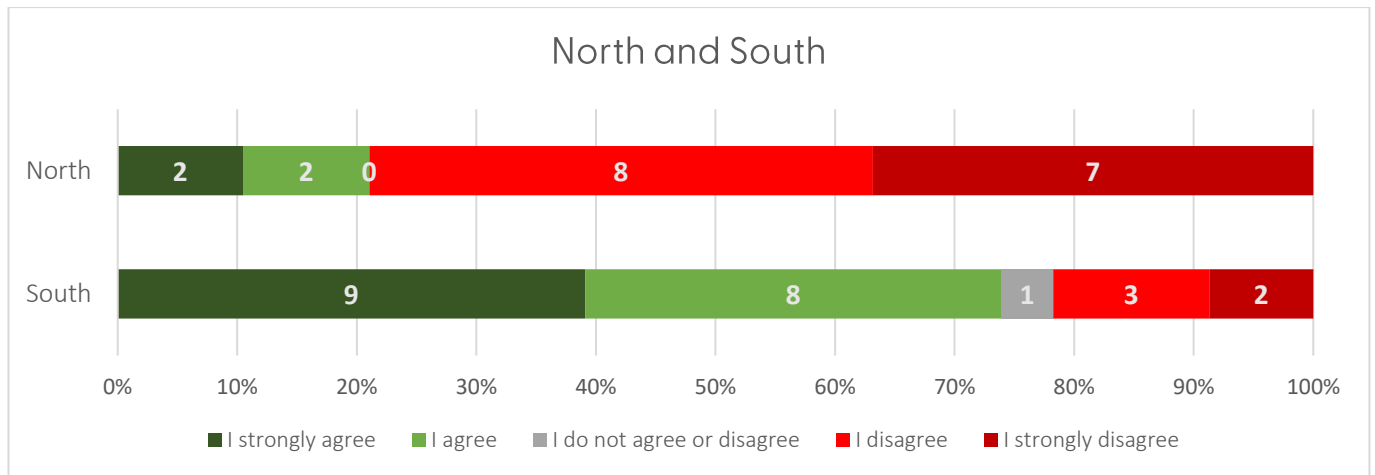
Support: 38

Oppose: 25

Neutral: 2







Proposal summary	TWG assessment	Conclusion of topic
<p>1. Organizations involved in conversion should neither be able to become certified nor associate with FSC. The risks for FSC credibility (e.g. for deforestation-free products because of threshold) and brand are too high. There should be a permanent disassociation for those who continue to violate after December 2020.</p> <p>Compromise: setting a long conversion-free period before association would become possible, for example 10 years.</p>	<p>There is a waiting period of 5 years for certifying a previously converted land in the PAC, and it was assessed whether the same approach should be used for all unacceptable activities. TWG concluded that such fixed waiting period could act as disincentive for starting remedy activities and in some cases, such as human rights violations, immediate remedy is essential. The waiting period may result in the lack of timely remedy and corrective measures.</p> <p>From technical viewpoint, establishing a point in time where unacceptable activity has credibly stopped to trigger the start of the waiting period, might not be easy to determine for all unacceptable activities. A permanent disassociation, without a possibility to rejoin the FSC system, would have a similar impact and furthermore, would take away the possibility for self-correcting and as such, could not be introduced by FSC.</p>	<p>There is no fixed waiting period after violation of the PfA included in the final version of the policy. It is expected that the robust remedy and operational improvement process required by the Remedy Framework will result in a period of not being associated with FSC while this takes place.</p>
<p>2. FSC must adhere to one definition of conversion throughout the entire normative framework and remove the use of the significant conversion threshold (or the term itself). Conversion should be treated as a binary concept, whereby conversion either has occurred or it has not.</p>	<p>The activity of conversion was already aligned with the PAC, and the definitions adopted. The proposed threshold was in fact very close to the one known as the 'minimal conversion' tolerated. The TWG emphasized the need to have a criteria and system to identify conversion that is systemic in nature and recommended using the proposed threshold for 'significant conversion'.</p>	<p>In the final draft, the conversion of natural forest cover is aligned with the one in PAC in all respects, and the specific threshold for association was not included. It was further concluded that additional work on implementation will be needed to establish criteria to determine when forest conversion – or any other unacceptable activity – is considered a PfA violation.</p>

## 2. Applying revised Policy for Association for new associates

Revised requirements typically apply to any future operations, rather than those in the past. However, there are also situations where rules could be considered to capture the past events. Changing rules retroactively for those who are already part of the FSC system was not considered in this context for complexities that such approach would present but applying them for those that are not yet part of the system and therefore not under any current FSC requirements, was considered as an alternative.

The following options for applying the revised PfA for activities in the past were put for consultation:

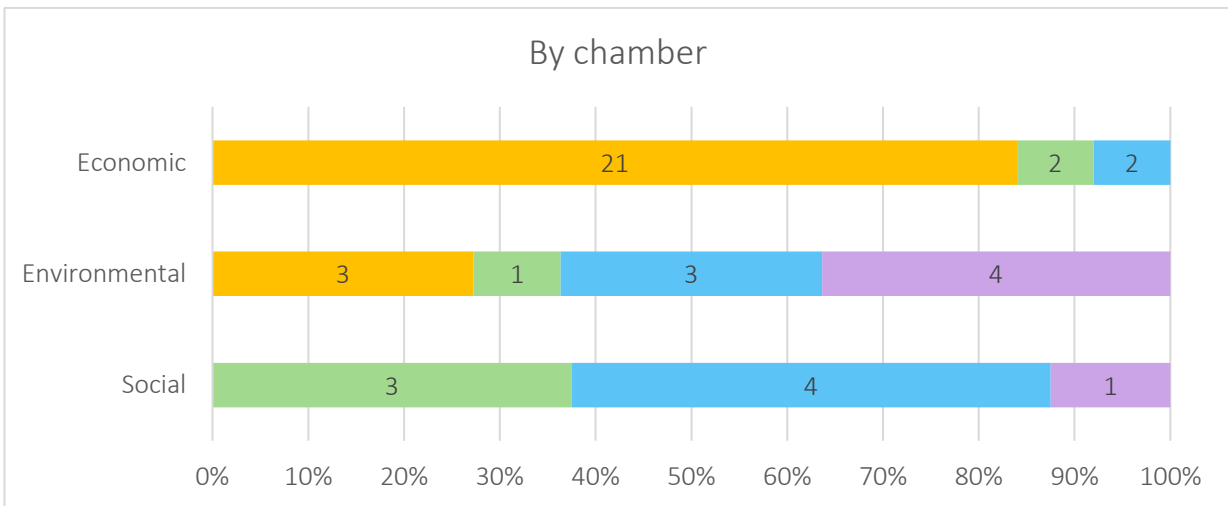
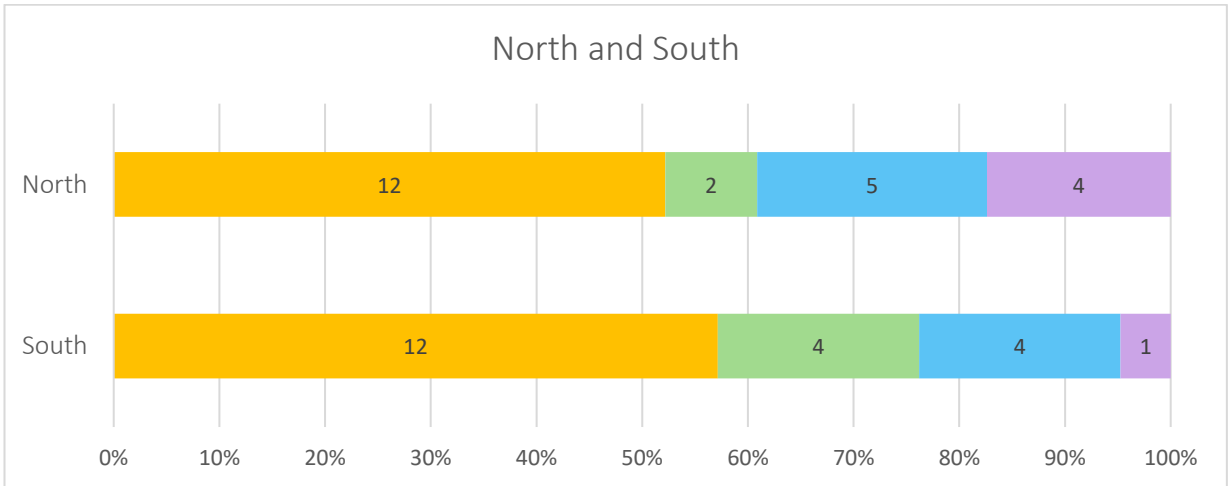
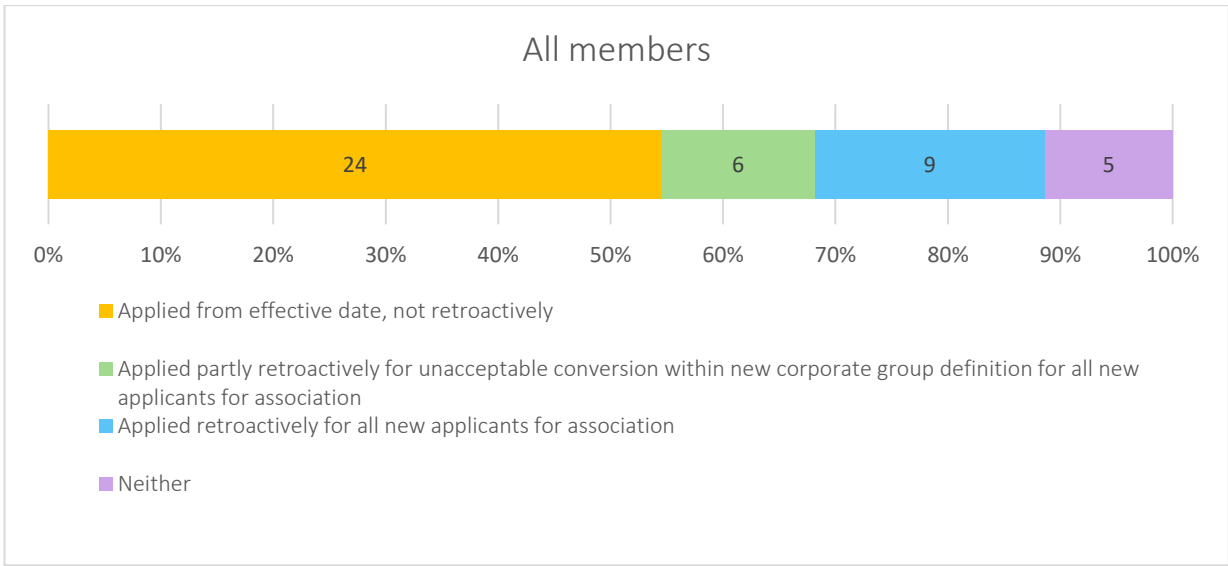
	A) Applied from effective date, not retroactively	B) Applied retroactively for all new applicants for association	C) Applied partly retroactively for unacceptable conversion within the new corporate group definition for all new applicants for association
For already associated	Stricter rules apply for future.	Stricter rules apply for future.  With the change in the scope, part of the corporate group could be now also considered "new", so that different requirements apply in different parts of the corporate group.	Stricter rules apply for future.  Part of the corporate group could be now also considered "new" but only in terms of one unacceptable activity. Within one group both the group definition and the unacceptable activities would vary and form several combinations.
For new applicants for association	Stricter rules apply for future.	Requirements change retroactively and are stricter than for those already associated.  The definition of corporate group might also include entities that are already associated, so that different requirements apply in different parts of the corporate group.	Part of the requirements change retroactively  Part of the corporate group could now also be considered "new" but only in terms of one unacceptable activity. Within one group both the group definition and the unacceptable activities would vary and form several combinations.
For FSC system	Simple, in line with introducing new requirements in FSC	Adds complexity  Introduces new way of applying revised requirements in FSC	Adds complexity  Introduces new way of applying revised requirements in FSC

## Consultation responses

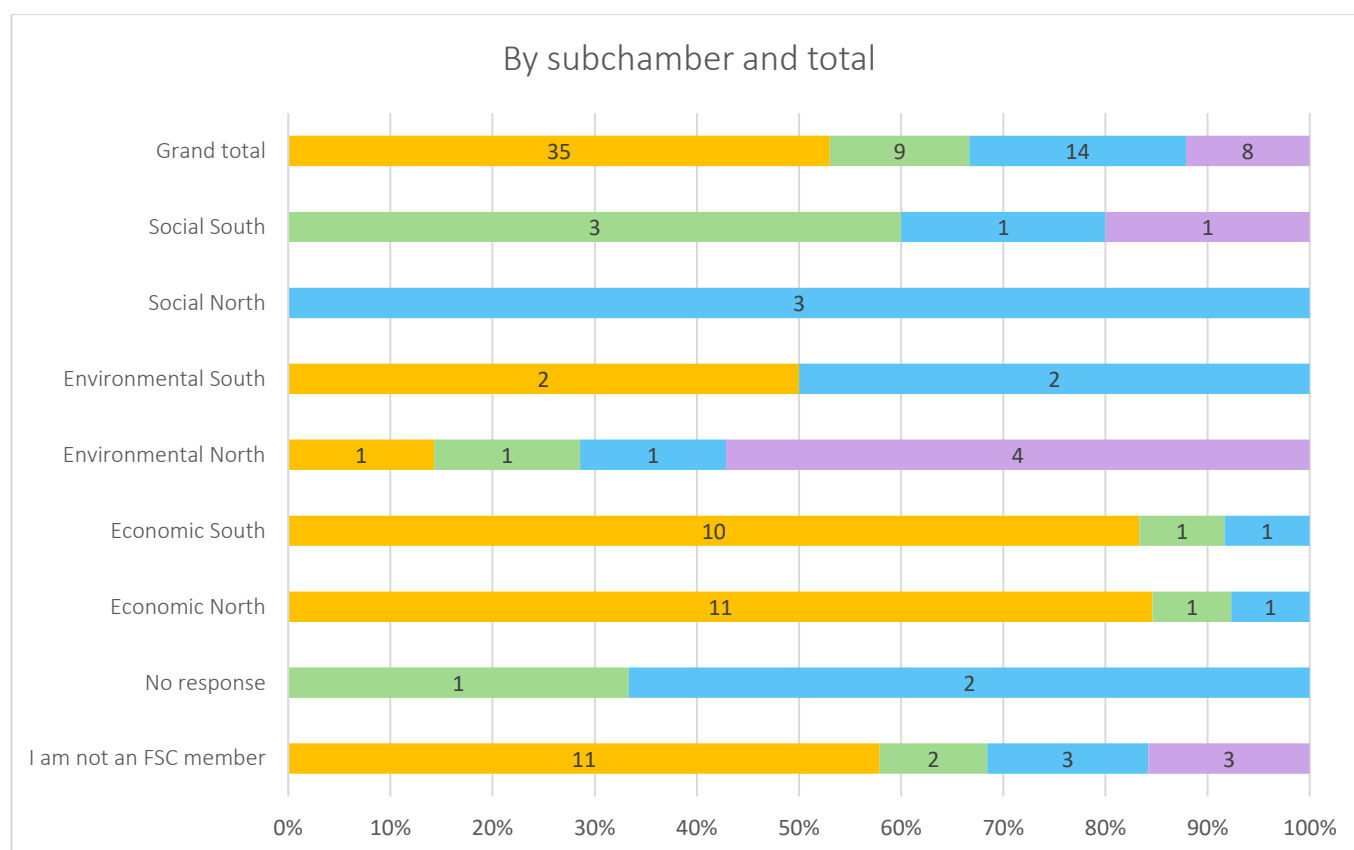
General quantitative results are:

- Option A 'Applied from effective date, not retroactively' was supported by 53% of the respondents (56% of members).
- Option B 'Applied retroactively for all new applicants for association' was supported by 21% of the respondents (21% of members).
- Option C 'Applied partly retroactively for unacceptable conversion within new corporate group definition for all new applicants for association' was supported by 14% of the respondents (14% of members).
- 12% of the respondents (9% of members) did not choose any option.

In total, 66 respondents participated in this question. 43 respondents were members.







## Summary of comments

Proposal summary	TWG assessment	Conclusion of topic
1. No retroactivity to ensure equal treatment and to reduce uncertainty and legal risks when changing past rules and agreements.	This is in line with TWG original assessment that retroactivity would potentially create complexities and uncertainty to the system, considering that there is already a PfA in place to cover unacceptable activities of the past.	The issue of retroactivity was debated in numerous TWG and membership meetings. In the end, no retroactivity was introduced to the PfA version 3. However, it was recognized that there could be a need to ensure wider scope of remedy in cases with particularly high magnitude of harm caused in the past by disassociated organizations. Instead of introducing a generic mechanism in the revised version of the PfA, this issue will be addressed in the Remedy Framework as part of Trust Building measures. The PfA V3-0 will be effective and used to assess unacceptable activities taking place from January 1,
2. Apply to new joiners retroactively but do not extend the restriction to join to the whole group.	The PfA operates in the group level. Limiting the consequences of unacceptable activities to part of the group would not be in line with the general approach. New joiners will already have to ensure that they have not been involved in the unacceptable activities in the past in line with PfA V2-0 before effective date of the V3-0 of the policy, in the same	

	way the currently associated organizations have done.	2023, onward. The previous version, 2-0, will remain effective for any violations before that time.
3. Apply retroactively to all new joiners and already associated organizations. This has to include disassociated organizations.	Changing the rules retroactively would create uncertainty about the stability of requirements and agreements and complexities in enforcing such changes particularly for already associated organizations.	

### 3. Other comments

Proposal summary	TWG assessment	Conclusion of topic
1. Develop a methodology, based on the Accountability Framework initiative (AFi) definition of a corporate group for fairly evaluating evidence of common control.	The definition of a corporate group in PfA is aligned with the definition in Afi. Development of a methodology would be considered as part of the implementation rather than the policy revision and will become relevant at a later point. Even with a defined process, a strong element of case-by-case assessment is expected to be the most suitable approach allowing for further development and improvements to be made over time.	The development of any methodologies will be addressed during the implementation phase of the policy.



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