



Forest Stewardship Council®



Public Consultation Report

FSC-PRO-01-009 Version 4 Draft 5

*Processing FSC Policy for Association
Complaints*



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Introduction

This report provides the responses to the public consultation of FSC-PRO-01-009 Version 4 Draft 5 *Processing FSC Policy for Association Complaints*. The consultation period ran from 27 May – 26 July 2020.¹ FSC received 53 responses and 554 comments.

The report presents a summary of key stakeholder feedback received during this consultation and the FSC commitments on each topic. The individual comments are presented at the end of this document (page 20). For reasons of confidentiality, the names of respondents by comment are omitted in this report. Some comments appear more than once because identical comments were sent by more than one stakeholder.

All the comments were analyzed and considered by Technical Working Group, while respecting technical feasibility and alignment with the FSC mission and strategic planning. The following is a summary of the key topics identified in the consultation.

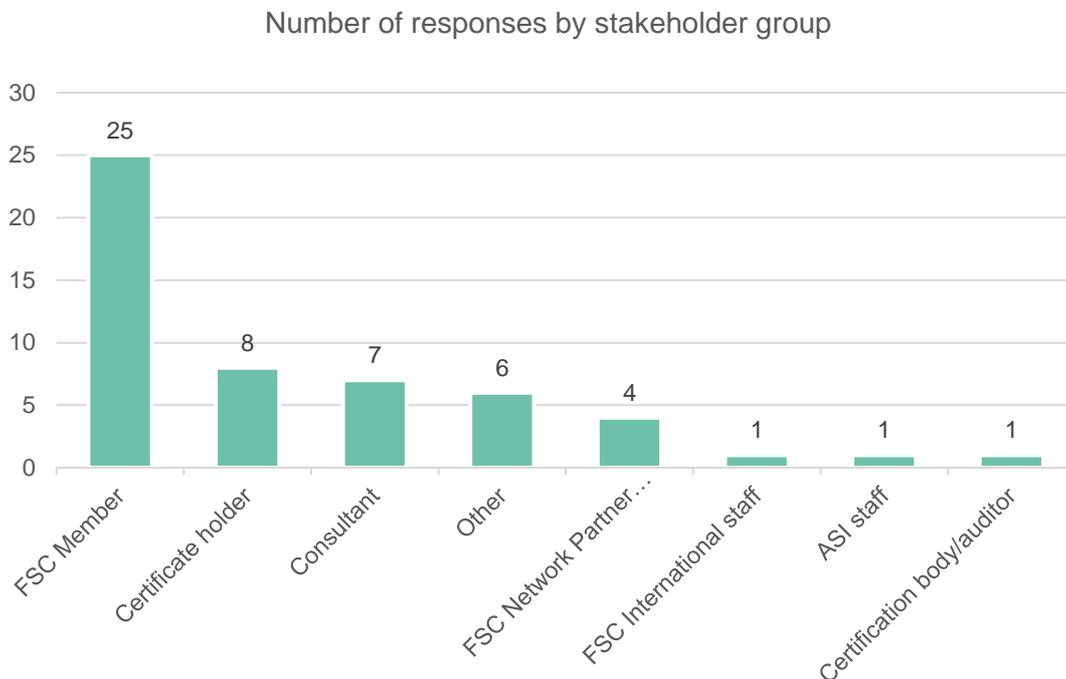
Processing FSC Policy for Association Complaints is used to process complaints about violations of the *FSC Policy for Association* and define the consequences for organizations or individuals when violations are confirmed.

We are really grateful to all respondents for your detailed and insightful feedback. Your input was invaluable in getting us to the final draft of this procedure.

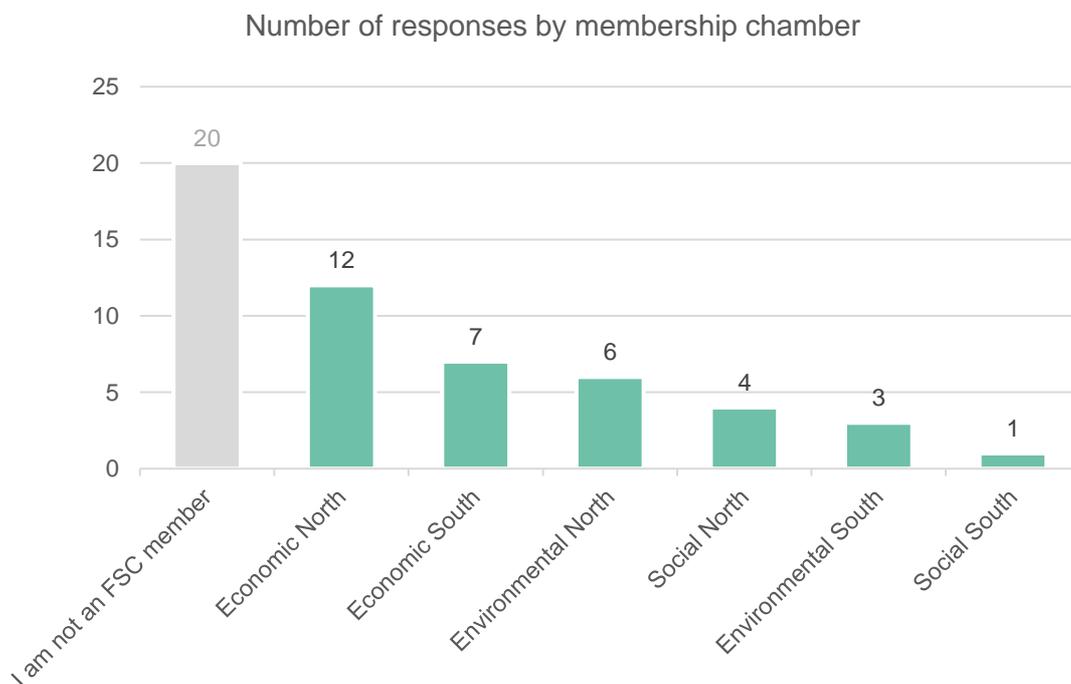
¹ Responses made after this date were also accepted.

Who responded to the consultation?

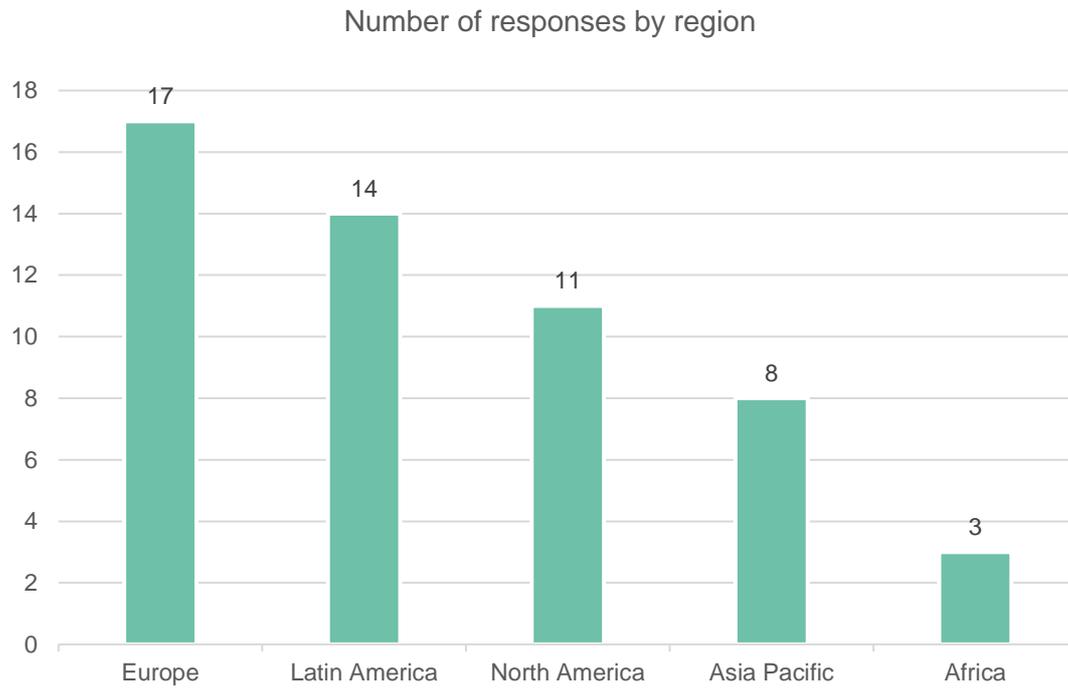
There were **53** responses to the consultation. **FSC members** were the largest respondent group:



Of the members who responded, most were from the **Economic chamber**. There were more responses from the **North** sub-chambers than South for all chambers:



Most respondents were from **Europe**, with Latin America a close second:



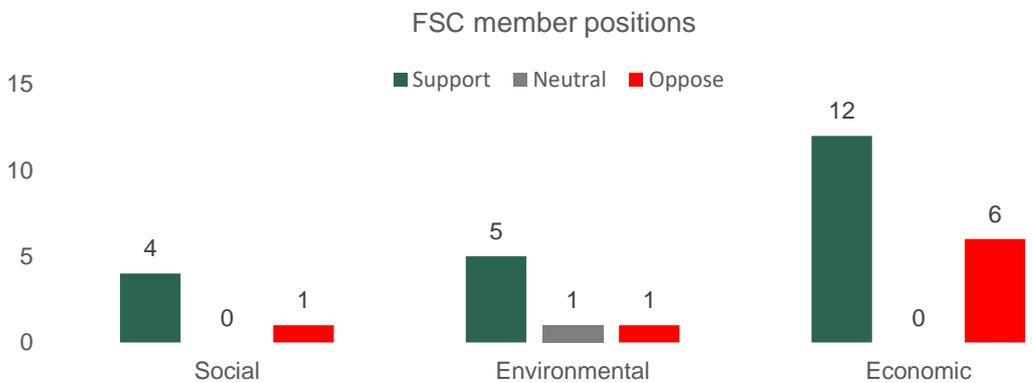
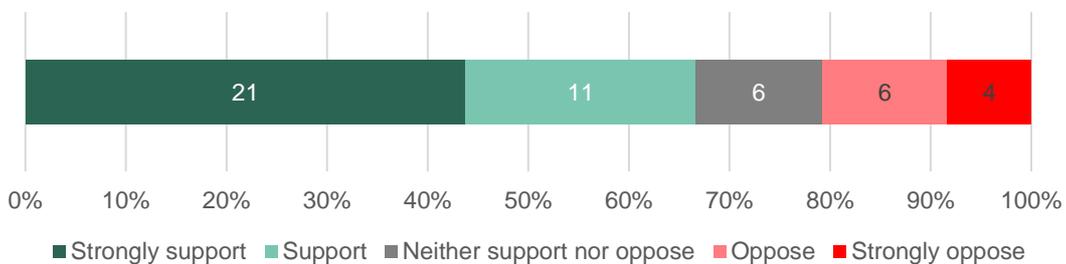
Response summaries by topic

This section summarizes the consultation responses to the main changes proposed in the revised procedure and how the feedback has been considered by the Technical Working Group in the final draft.

1. Opening a case without a complaint

67% of respondents (32 respondents, including 4 Social, 5 Environmental and 12 Economic members) **supported** the proposal that FSC can initiate evaluation of potential Policy for Association violations without a complaint.

Do you support the proposal that FSC can initiate evaluation of potential Policy for Association violations without a formal complaint? - 48 responses



Those who supported the proposal stated that FSC should not rely on others to initiate action to protect FSC’s reputation and thought that the proposal would increase incentives for compliance with the Policy for Association, support FSC to act faster to protect its reputation and allow whistleblowers and affected stakeholders to submit information to FSC.

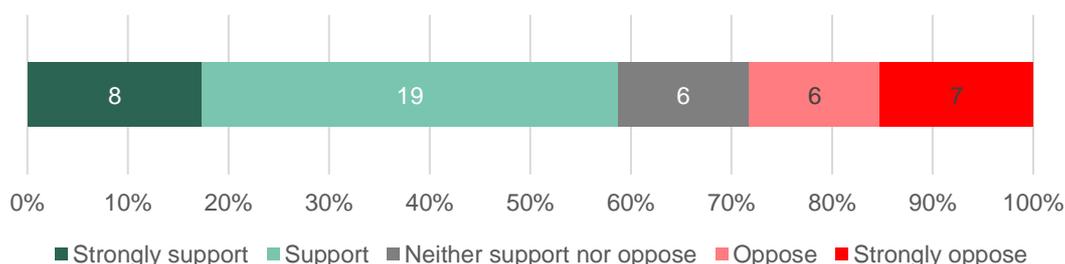
The **21%** (10 respondents, including 1 Social, 1 Environmental and 6 Economic members) who **opposed** the proposal stated that there should only be one mechanism by which FSC can accept complaints and thought that the proposal would discourage submission of well-evidenced complaints and increase the number of cases received.

In the final draft, it was further clarified that the process is essentially the same for cases initiated with or without a complainant. Parts of the procedure that specify actions related to the complainant (for example, informing the complainant that a complaint is accepted) would therefore not apply. The threshold of evidence is the same, only the channel of receiving it is different. It was considered essential to allow this path for opening a new process. An example from the past would be a situation where FSC Network Partner has learnt of possible violations through local public records, but there is no external complaint submitted to FSC on the case. This also provides an avenue for receiving information from stakeholders that are not interested in taking the role of the complainant in the process.

2. Taking decisions without an FSC investigation

59% of respondents (27 respondents, including 4 Social, 3 Environmental and 7 Economic members) **supported** the proposal to allow FSC to move directly to decision making without further investigation if sufficient evidence is already available.

Do you support the proposal to allow FSC to move directly to decision making without further investigation if sufficient evidence is already available? (Clause 2.10) - 46 responses



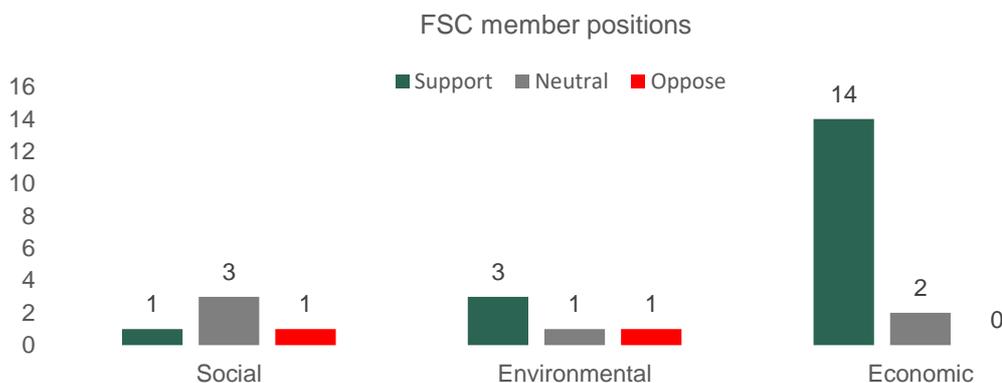
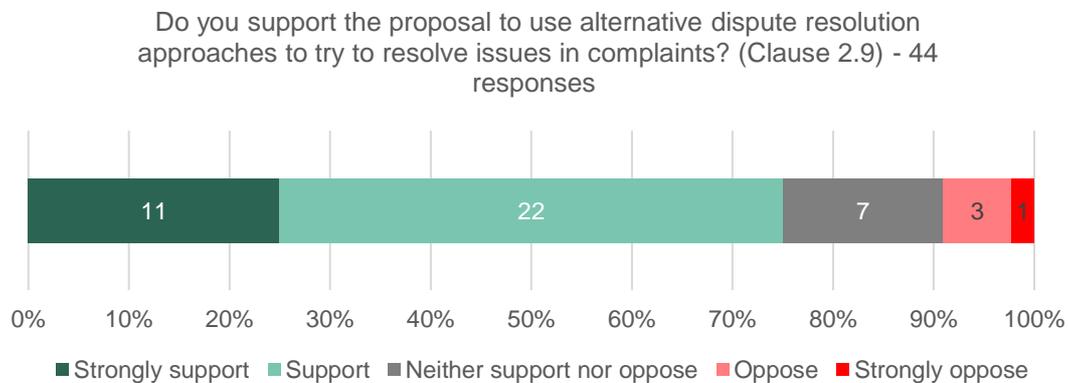
Those who supported thought that the proposal would support quick action and free up resources for other issues.

The **28%** (13 respondents, including 1 Environmental and 9 Economic members) who **opposed** the proposal stated that the defendant has to be offered the chance for a fair process and be able to respond to allegations and thought that unfounded allegations might result in disassociation.

In the final draft, it was further clarified that the process still would include possibility for the defendant to respond to allegations and information presented, as in any other complaint process.

3. Introducing alternative dispute resolution approaches

75% of respondents (33 respondents, including 1 Social, 3 Environmental and 14 Economic members) **supported** the proposal to use alternative dispute resolution approaches to try and resolve issues in complaints.



Those who supported the proposal thought that alternative dispute resolution approaches would provide an efficient way to solve smaller issues, bring about a positive outcome without the need for investigation and provide important background information in case an investigation is needed.

The **9%** (4 respondents, including 1 Social and 1 Environmental member) who **opposed** the proposal thought that alternative dispute resolution approaches would replace stronger sanctions for dealing with violations, allow the FSC Secretariat or Board of Directors to promote alternative dispute resolution approaches for political

purposes, disadvantage affected stakeholders against companies with significantly more resources and be unable to address severe violations. There were also concerns about whether parties will be forced to do for example mediation.

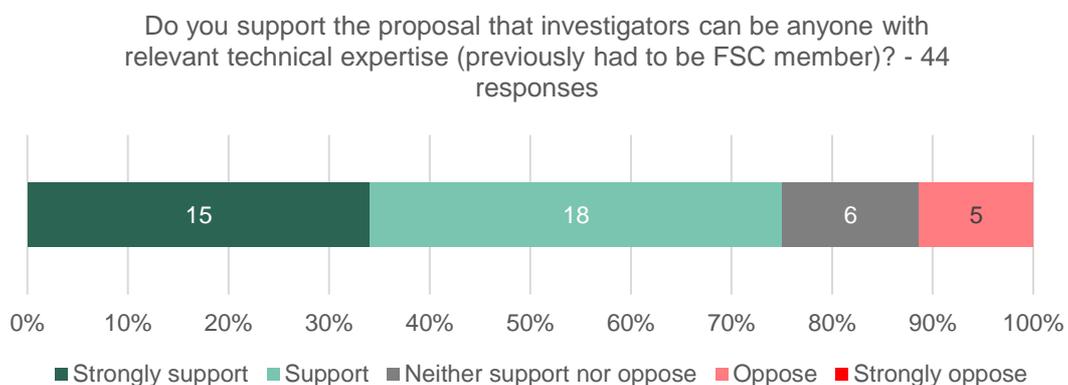
FSC will explain in a separate FAQ concerning this procedure that according to the procedure, affected stakeholders, complainants and defendants decide on whether to enter into an alternative dispute resolution process. They will agree on the purpose, principles, scope and structure of the process. They will also decide whether to abandon the process if it is not working. No one will be forced to participate in an alternative dispute resolution process as this would be considered counterproductive.

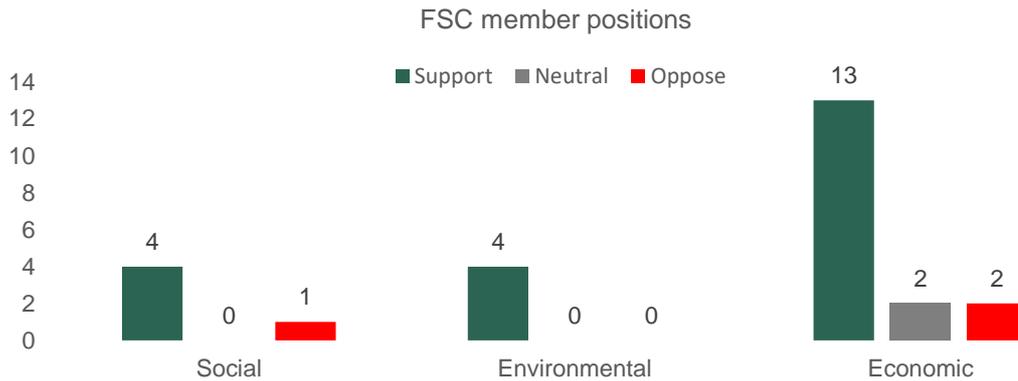
There were also requests to be more specific about what the processes would entail in detail. The procedure is kept flexible to allow the most suitable approaches and the best possible outcomes as each case is different and the most suitable approach should not be predetermined.

However, in the final draft, it was further clarified that FSC would support parties to identify alternative dispute resolution professionals and take a role in monitoring the process and outcomes.

4. Changing the requirement that investigators have to be FSC members

75% of respondents (33 respondents, including 4 Social, 4 Environmental and 13 Economic members) **supported** the proposal that investigators can be anyone with relevant technical expertise, a change from the previous requirement that investigators had to be FSC members.





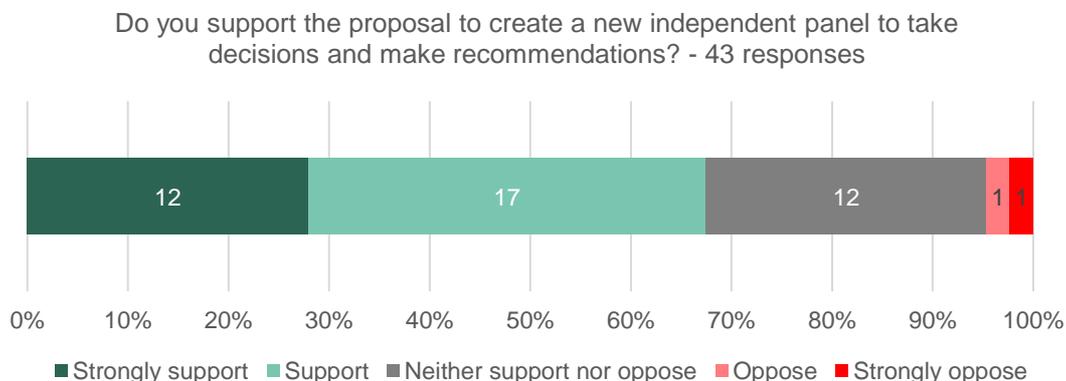
Those who supported thought the proposal would provide the most appropriate investigators for the case and allow for greater independence from FSC.

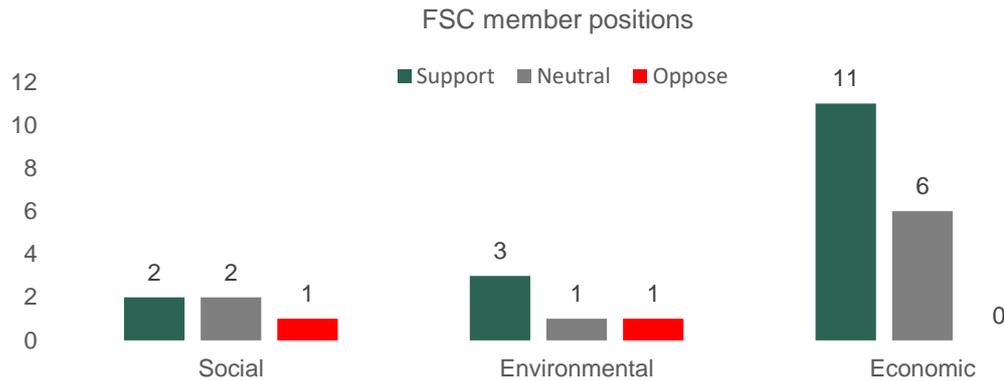
The **11%** (5 respondents, including 1 Social and 2 Economic members) who opposed thought the proposal would increase FSC's reliance on third parties leading to increased costs and stated that technical investigations may miss the bigger picture versus a panel approach.

The proposal received wide stakeholder support. It was not considered as cost increasing factor to use external investigators, provided that also previously used membership complaint panels have been financially compensated for their work. Widening the pool of potential experts will in fact alleviate price negotiations. In the final draft, to respond to questions concerning independence it was clarified that membership of FSC is not considered a conflict of interest for investigators and that FSC and ASI staff are ineligible for selection as investigators.

5. Creating an independent panel to take decisions on cases

67% of respondents (29 respondents, including 2 Social, 3 Environmental and 11 Economic members) **supported** the proposal to create a new independent panel to take decisions and make recommendations.





Those who supported thought that the proposal would help with fair and conflict free decision making, improve the credibility of the decision, acknowledge the unique nature of every case and be resource efficient.

The **5%** (2 respondents: 1 Social and 1 Environmental member) who opposed stated that the proposal requires the creation of a separate panel and that the final decision should be with the FSC Board of Directors.

In the final draft, it was clarified that membership of FSC is not considered a conflict of interest for decision panel members and that FSC and ASI staff are ineligible for selection as decision panel members. According to the proposal, FSC Board of Directors have a role in assigning the pool of decision panel candidates, and in taking any disassociation decisions. The proposal overall was seen to have gained wide stakeholder support.

6. Introducing additional measures to respond to violations of the Policy for Association

A specific question was not presented about introducing a possibility to decide to maintain association with temporary conditions, as this idea had already been extensively consulted earlier. However, **9%** of respondents (5 respondents: 2 Social and 3 Environmental members) stated that disassociation should be the only response to violations of the Policy for Association and **opposed** the introduction of measures such as maintaining association with conditions. In addition, **13%** of respondents (7 respondents, including 2 Social and 2 Environmental members) **opposed** the description of disassociation as a “last resort” as was written in the Objective of the procedure:

“Disassociation will be considered as a measure of last resort against organizations and their affiliated groups that are found to be in violation of the FSC Policy for Association.”

The respondents state that disassociation is a crucial measure to protect the reputation of FSC, certificate holders and members and the only option in the face of serious violations.

Presenting alternative ways of finding solutions to situations for optimal impact on the ground, is considered crucial to allow for a possibility to drive immediate improvements and remedy, instead of only using a drastic measure of banning an

organization from the FSC system. The criteria presented in the procedure serves to assess the severity and possibilities of fast tracking in each case, and still allows the use of disassociation if deemed necessary. In the final draft, it was clarified that FSC, as part of its commitment to finding solutions to issues arising from unacceptable activities, will assess multiple options to improve organizational performance, facilitate remedy and protect FSC's reputation. The description of disassociation as a "last resort" was replaced with the description that disassociation is the most severe measure FSC may use to clarify that this still is an available option.

7. The different process for complaints that overlap with certification requirements

9% of respondents (5 respondents: 2 Social and 3 Environmental members) also stated concerns about the proposal that the procedure will not be used to process complaints that overlap with certification requirements (Scope):

"Complaints against an organization related to the six unacceptable activities of the FSC Policy for Association that overlap with certification requirements shall follow the ordinary route for dispute resolution defined in respective certification requirements and FSC-PRO-01-008 Processing Complaints in the FSC Certification Scheme. The complaints will be processed according to dispute resolution procedures of the certificate holder, the certification body and/or Assurance Services International."

The respondents stated that it is very challenging for affected stakeholders to access the procedures of certification bodies and ASI and onerous to go through these processes, that affected stakeholders may not wish to involve certification bodies or ASI, that there is conflict of interest in asking a certification body to address a noncompliance that they have overlooked or judged unimportant, that ASI can only call for redress of certification body performance, not the negative impacts of a certificate holder and that the complaint procedures of certification bodies and ASI cannot or are unlikely to deliver remedy for affected stakeholders.

There were not changes made to the draft based on this comment. The concerns will be addressed in an FAQ to be published at the of the publication, explaining that as the organization that sets the requirements for FSC-certified operations, FSC doesn't have a role in deciding whether those requirements are being met. This is an important part of a commitment to remain independent from decisions to award or revoke FSC certificates.

Complaints about FSC-certified operations can be made to the operations themselves or to the certification bodies who check whether FSC requirements are being met. These mechanisms provide a space for issues to be raised and acted on. FSC will support anyone who contacts us to find the correct way to make a complaint.

8. Language and format requirements for making a complaint

15% of respondents (8 respondents, including 2 Social and 3 Environmental members) also expressed a request that clause 2.7

“The complainant shall complete the complaint form on FSC website in either English or Spanish. Only complaints that provide all required information in the form shall be accepted.”

needed to be changed on the basis that the complaint filing requirements could exclude affected stakeholders from making a complaint.

In the final draft, the clause has been modified to include that “Affected parties with limited resources may seek FSC’s assistance with translation or use of an alternative submission channel” to increase accessibility for affected parties.

9. Record-keeping

Maintaining case records for seven years was considered too short by 9% of respondents (5 respondents, including 3 Environmental members and 1 Economic member), especially in the context of ending disassociation processes, and they proposed extending or keeping records permanently for learning purposes.

In the final draft, the clause was modified to state that records would be kept for ten years after disassociation is ended, also following legal advice on compliance with the EU General Data Protection Regulation

All responses by document section

Objective and Scope

A. Objective

This procedure is used to process complaints about violations of the FSC Policy for Association, as well as to define the consequences to the associated organization and their affiliated groups when a violation is found to have occurred.

Disassociation will be considered as a measure of last resort against organizations and their affiliated groups that are found to be in violation of the FSC Policy for Association. The procedure also allows FSC to impose measures to redress operations of associated organizations depending on the gravity of the violations and when deemed necessary to preserve FSC's reputation.

B. Scope

This procedure is applied to organizations associated with FSC (i.e., members, certificate holders and certification bodies) and to their affiliated groups.

An evaluation according to this procedure may be initiated by FSC upon presentation of substantial information that the associated organization (or its affiliated group) may be in violation of the FSC Policy for Association. This may occur through a formal complaint lodged by a stakeholder or by other means, as further detailed in Clause 2.3 below.

This procedure is only used to evaluate possible violations to the FSC Policy for Association. Complaints against an organization related to the six unacceptable activities of the FSC Policy for Association that overlap with certification requirements shall follow the ordinary route for dispute resolution defined in respective certification requirements and FSC-PRO-01-008 Processing Complaints in the FSC Certification Scheme. The complaints will be processed according to dispute resolution procedures of the certificate holder, the certification body and/or Assurance Services International.

Responses:

- Do you have any comments on the objective or scope of the procedure?

<p>In Scope it says that you can't make a PfA complaint unless you have first tried to get redress through CB and ASI. This is far too onerous for forest peoples. It remains incomprehensible why CBs must be approached first. The communities' concern is with the impact of The Organization. Besides there is an obvious conflict of interest in asking a CB to address a non-compliance that they have overlooked or judged unimportant. Our experience of ASI is not that good either. Our experience is that ASI buried / lost our complaint against a CB so it was never processed. But even if ASI did act on a complaint about a CB they can only then call for redress of the CB's performance, when the problem is the failure of The Organization, over which they have no jurisdiction. It is thus unacceptable to ask communities suffering violations of their rights to waste time on two procedures that cannot or are unlikely to deliver remedy. Tex referred to: 'This procedure is only used to evaluate possible violations to the FSC Policy for Association. Complaints* against an organization related to the six unacceptable activities of the FSC Policy for Association that overlap with certification requirements shall follow the ordinary route for dispute resolution defined in respective certification requirements and FSC-PRO-01-008 Processing Complaints in the FSC Certification Scheme. The complaints* will be processed according to dispute resolution procedures of the certificate holder, the certification body and/or Assurance Services International.'</p>
<p>Objective: Disassociation should not be a last resort, it should rather be procedural and not a political process where decisions are made through judgements (and biases) of the international board. PfA violations should automatically result in disassociation. And the procedure should not bend or offer exception in response to legal threats/SLAPPs against FSC. Scope: for PfA complaints it makes no sense to and is incorrect to require filing a complaint first with the CB and then with ASI. This should be deleted. The reasons for this is that the elements in the PfA are extremely serious and requirement immediate and strong intervention to protect FSC's brand and name, and in many cases the breaches to the PfA are not related to a FSC certified FMU. Also for local communities and IPs, having to engage with a CB and the ASI is extremely onerous and would in effect exclude them from any complaints.</p>
<p>The procedure should be open to evaluate ANY possible violation of the FSC PfA. FSC should take this responsibility if called upon. There may be situations where complainant, e.g. a community, does not wish to involve the CB or ASI. This means that also in case of possible violations of FSC PfA by Certificate Holders, the procedure must provide a route immediately to the expert panel. After that point, it is still possible in to provide for making the choice to follow the "ordinary route" through CB and/or ASI or not! Crucial in this sense is the term "overlap". "Overlap with certification requirements" should be defined properly, and depending on circumstances and/or severness of the possible violations, it should still be possible to enter this procedure directly.</p>
<p>to the scope: what is the use of this revision if the six unacceptable activities: a) Illegal logging or the trade in illegal wood or forest products b) Violation of traditional and human rights in forestry operations c) Destruction of high conservation values in forestry operations d) Significant conversion of forests to plantations or non-forest use e) Introduction of genetically modified organisms in forestry operations f) Violation of any of the ILO Core Conventions¹ that are responsible for 90% if not more of the recent disassociation are excluded from any possible outcome of this revision?</p>
<p>OBJECTIVE Would disassociation always be a "last resort"? There could be cases where this is the only option. Propose adding "In some circumstances, disassociation may be considered the only appropriate outcome" SCOPE Will the scope of the PfA be reconsidered, e.g. to include promotional licence holders?</p>
<p>OBJECTIVE Would disassociation always be a "last resort"? There could be cases where this is the only option. Propose adding "In some circumstances, disassociation may be considered the only appropriate outcome" SCOPE Will the scope of the PfA be reconsidered, e.g. to include promotional licence holders? What about participants or doners for ecosystem services?</p>

<p>Disassociation should not be the "last resort" (i.e. after trying all possible alternative ways) in case of major violations of the FSC Policy for Association. Disassociation is the way FSC protect its integrity and credibility from dubious operators.</p>
<p>On the Objective: WWF disagrees with the Objective that "Disassociation* will be considered as a measure of last resort against organizations and their affiliated groups* that are found to be in violation of the FSC Policy for Association." WWF thinks that Disassociation shall be the priority consequence for all companies found to be in violations of the FSC PfA. Disassociation is crucial to protect the brand and reputation of not only FSC but also thousands of FSC certificate holders and members including WWF from the risk of being linked with companies involved in unacceptable activities and even supporting them. WWF agrees that "The procedure also allows FSC to impose measures to redress operations of associated organizations depending on the gravity of the violations and when deemed necessary to preserve FSC's reputation", however, this should be clearly communicated and form part of the disassociation process. Looking at how recent complaint cases have been handled, we recommend that the procedure has the objective to ensure that FSC conducts an independent panel investigation swiftly after receiving a complaint, judge whether there was violation or not, and if so, immediately disassociate with the organizations and their affiliated groups. On the Scope: "This procedure is only used to evaluate possible violations to the FSC Policy for Association. Complaints* against an organization related to the six unacceptable activities of the FSC Policy for Association that overlap with certification requirements shall follow the ordinary route for dispute resolution defined in respective certification requirements and FSC-PRO-01-008 Processing Complaints in the FSC Certification Scheme. The complaints* will be processed according to dispute resolution procedures of the certificate holder, the certification body and/or Assurance Services International.": We disagree that this procedure requires complainants to first try to get redress the issues through CB because they have conflict of interests. Affected Parties must be able to raise a PfA complaint directly to the FSC complaint procedure. We recommend, instead, to require CBs to check compliance with the PfA during certification audits (e.g. CoC), so that more issues are covered within the current audit system as proper due diligence. For instance, the scope of certification (particularly CoC) should be expanded, for example if a mill is found to have managed illegal material, for example. This is not checked at the moment.</p>
<p>To narrow the scope to be specific to evaluating complaints of FSC PFA would help FSC in focusing the process and decisions. We support the inclusion of the associated organization's affiliated group as subject of the evaluation of a PFA complaint. However, we note that the definition of 'affiliated group' is not described in FSC PFA FSC-POL-01-004 as prescribed in terms and definitions of this procedure. FSC PFA refers to the terms 'direct involvement' and 'indirect involvement'.</p>
<p>To narrow the scope to be specific to evaluating complaints of FSC PFA would help FSC in focusing the process and decisions. We support the inclusion of the associated organization's affiliated group as subject of the evaluation of a PFA complaint. However, we note that the definition of 'affiliated group' is not described in FSC PFA FSC-POL-01-004.</p>
<p>clear objective and description of scope. I underline the necessity for absolute clarity at this point, to avoid mis-use or muddling of the PfA. Much of FSC's challenges with the PfA can be attributed to mis-interpretation of this policy, or its purpose and scope.</p>
<p>There is a need to define who are stakeholders because many complaints are raised by organisations that have no commitment to FSC and use FSC as an instrument to further their own interests. On the other hand, it would be risky to deny any legitimate organisation the right to complain if genuine violations are observed. If serious violations are verified, disassociation should not be delayed and to say it is a measure of last resort is not good enough. There should be no option of probation - it is no real remedy but just postponing the decision to disassociate.</p>

<p>A Policy for Association complaint has the potential to significantly affect the associated organizations reputation and brand by the mere fact an investigation is occurring. When an investigation finds the organization has not committed any violations of the Policy for Association, the objective should also be to ensure no damage to the reputation of the associated organization occurs.</p>
<p>No further comments. It seems that everything needs to be done to speed up the formal complaints process (substantiated) and resolve them properly.</p>
<p>It is a good thing that the objective has been included. However, it does not state clearly enough for what purpose or why the complaint is resolved. I do not agree that disassociation is considered a measure of last resort. Serious violations to the PfA should lead to disassociation, but there is always the concern that how the 'severity' of a violation is judged is unclear; therefore the way should not be opened so easily to other alternatives such as "association with related temporary conditions" (so-called "probation"), and it should not allow for "exceptions" that can, in general, be freely "interpreted" and cause confusion, as well as making it possible for other companies and organizations to also think that they can choose/demand such exceptions, and most importantly, as a result, not to respect the rights or FSC Principles and Criteria. Revise the Spanish version in which "violation" has been translated as "infraction", which is not the same; nor is it really appropriate to say that a violation is "discovered". With regard to the scope, it would seem to be correct; however, there have been a lot of "complaints" about the Dispute Resolution procedures, so that it is difficult to say that what is suggested in the proposal is appropriate. Furthermore, the wording needs to be revised; it is not clear either in English or in Spanish.</p>
<p>To make it more simple to read, the six activities that overlap with the certification requirements should be specified, so that the "Scope" is clearer. Therefore, paragraph 3 should be very specific with regard to the "six activities" of the Policy for Association that are not included in this procedure.</p>
<p>Should be "to process suspicions and complaints about violations"....</p>
<p>I think this is positive, the addition of substantial information is good. However this may cause concern among some stakeholders</p>
<p>It's clear.</p>
<p>I am happy with this.</p>

Principles and General Requirements

1.1 In the spirit of the FSC system, and following the “lowest level principle”, stakeholders should first attempt to resolve potential FSC Policy for Association violations through dialogue and/or mediation and to engage in all reasonable efforts to address concerns.

NOTE: Before initiating an evaluation according to this procedure, FSC will first assess whether the potential violation can be addressed through alternative dispute resolution techniques within a reasonable time, and to the satisfaction of FSC and affected stakeholders. Dialogue with the parties with the aim of resolving the issue through less formal means, is a cornerstone of this procedure and is promoted at multiple steps in this process and whenever possible.

1.2 The principles of fair treatment and inclusivity are followed. Throughout the process, FSC will provide the parties with opportunities to supply evidence and counterevidence, stating their position and commenting on conclusions.

1.3 The parties and FSC should refrain from commenting publicly on the situation and actions being taken by FSC until such time as defined in this procedure. The parties may be expected to sign a Non-Disclosure Agreement (NDA) in relation to any confidential information produced during the investigation.

1.4 The parties shall cooperate in the process.

1.5 All entities involved in investigating, evaluating and decision-making shall be free of any conflict of interest.

1.6 The associated organization may voluntarily terminate its association with FSC at any time. However, FSC has the discretion to continue the investigation and evaluation process.

1.7 The complainant may withdraw the formal complaint voluntarily at any time. However, if there is substantial information of a possible violation, FSC has the discretion to continue the investigation and evaluation process.

Responses:

- **Do you have any comments on the principles and general requirements of the procedure?**

There is not enough detail of what an Alternative Dispute Resolution procedure entails. Given that one of the main objectives of the revision of this procedure is to improve scope for remedy there is not enough detail about how ‘alternative dispute resolution’ will be achieved and resourced. All that we have in the document are these two texts: ‘Alternative dispute resolution (ADR): Resolving disputes and agreeing on

corrective measures without engaging in the formal complaint* process, through methods such as negotiation and mediation*.' 'Mediation: An attempt to settle a dispute through active participation of an independent third-party that aids parties* to agree on a fair outcome.' There needs to be a whole section on what such ADR could entail and what FSC will do to facilitate it. Will FSC or the organization pay for ADR? Will FSC or another entity oversee ADR to ensure fairplay? In case bilateral dialogues or negotiations make no progress, who will select or provide mediators? Who will pay for them? Who will accredit them? How long will ADR processes be assisted and what happens if they fail to result in acceptable remedy or agreement? Etc Although we support the general idea of encouraging dispute resolution and remedy, until these essential matters are clarified it is not reasonable to ask the membership to endorse this new policy. Re 1.3: there is a major problem with the requirement to sign an NDA and refrain from public comment to move the process forwards when communities' main, even only, leverage comes from publicity, transparency and exposure. 1.3 does not 'level the playing field' but may muzzle complainants. Re 1.5: Indeed there should be no conflict of interest which is why CBs which are paid direct by The Organisation should not be asked to address complaints about the performance of The Organisation. Likewise ASI which is wholly owned by FSC lacks independence. This is why there needs to be an independent body in FSC to handle all complaints.

With reference to the previous comments on the Scope: it is not only a matter of lowest level principle, but it is the principle of FSC taking responsibility itself in case of severe forms of violations of FSC's PfA. I agree with preferable dialogue and mediation, but also it has to be recognized that in some cases complainants can be in an vulnerable position, not able to go the low level route themselves.

I would like to suggest including an additional statement under this section, as a foundational principle: that this policy is FSC's policy, and FSC asserts full ownership of the implementation (and evaluation processes) of the policy. clarification: I am seeking a clear "ownership" clause here, that the PfA is not a policy for other parties to use as a tool, or weapon, but is a policy that protects FSC's purpose, integrity and membership, and CHs.

What is missing here is the requirements on the defendant. it is stated that the stakeholder should first attemptetc, but there is no mentioning of any obligation of the defendant to respond to those first attempt.

There is no definition of "lowest level principle" in the document. And it's a bit clunky without one.

Would the "lowest level principle" principle and the need to attempt to resolve through dialogue apply to complaints raised by FSC?

1.1 We need to make allowance for cases where stakeholders may be placed at risk if their identity is made known to the defendant. For this reason there must be discretion in application of this.

1.1. It is very good that possible violations of the policy for association can be solved without opening a formal process, but through mediation. However, according to "mediation" definition (Mediation: An attempt to settle a dispute through active participation of an independent third party that aids parties * to agree on a fair outcome.), this process involve costs, and it would be necessary to define who would pay for this . Moreover , how would the defining process to choose this third mediating parties be, in order to guarantee its suitability and impartiality 1.2. Regarding the opportunities to provide evidence, mentioned in item 1.2. it is important to clarify that they are "equal" to the parties. 1.3. The expression, "until such time" needs to be better clarified, as, along the procedure, it seems to suggest that information can be disclosed as soon as the FSC accepts the complaint and initiates the investigation process, which could cause irreparable damage to organizations that may end up being "acquitted" . See item 2.13 1.6. There seems to be no legal basis for FSC to investigate someone with whom it has no more relationship, and to whom, therefore, it could not guarantee the full right to defense, since the investigated would no longer be committed to sending defense documents and evidences . Thus, FSC would incur partial investigations. Moreover , what would be the penalty applied to a

disassociated organization? An alternative would be to forward the complaint to local legal authorities (by national offices, where another issue is the risk of non-impartiality about deciding when to continue or not the investigation after voluntary disassociation, as these criteria are not defined in the procedure. 1.7. It is necessary to better clarify what would be the criteria adopted to make a decision about whether to continue or not an investigation. This would avoid allegations of persecution or personal interests in protecting, or attacking, a particular organization.

Need to provide clarity on how the process & decision making would be should FSC choose to independently initiate an evaluation (2.3). Need to provide clarity regarding the timeline throughout the process - it seems to be of a case-to-case basis given FSC's response shall be based on the severity of the issues and the risk to FSC's reputation (2.5). Suggest FSC to provide a matrix to guide response timelines according to the severity of issues and risk to FSC's reputation, indicating how FSC prioritizes their responses to the lodged complaints.

If FSC becomes aware of violations of the PfA from serious sources, the organization can initiate an investigation on its own. What about cases where a dialogue is not expedient because of the seriousness of violations to PfA? To protect FSC's reputation it can be obvious to directly start an investigation towards possible disassociation. At 1.6. Also FSC needs the ability to suspend the TM agreement, by short notice, during an investigation, if there are convincing evidences, that a defendant is not cooperating with FSC and the investigators or if they try to slow the whole process by procedural tricks and also if the violation of PfA is still ongoing.

When it is about to illegal logging or other illegal activities, threatening human and/or traditional rights etc., the "open communication and inclusivity" principle may be in contradiction to detect, uncover and determine the fraud as this may lead to concealing by the defendant. Sometimes undercover investigation is necessary to convict the defendant. Police has to do this sometimes. This seems to be impossible by the principles of this procedure.

1.1) there are violations that are difficult to be resolved through dialogue and/or mediation. If an environmental defender is murdered, or if the company cleared extensive area of intact forests, or in other similar serious cases, mediation makes no sense: there is only space for disassociation and a serious roadmap. Furthermore, the duty to resolve through dialogue and/or mediation involving first the certification bodies and ASI are very onerous to affected local communities and would result in a mere obstacle to apply the Association Policy, with a consequent repetitional risk for FSC. Alternative dispute resolution may be proposed as a parallel process, but not to delay disassociation for serious offence. And communities should have the right to decide whether the alternative dispute resolution is appropriate. NOTE) 1.3) NDA requirement not only weakens transparency, but also gives extra power to the corporations with can exert pressure on FSC while being "safe" from public criticism. It also take to local communities and indigenous peoples the only way they have to defend their stances.

I think this is good

It is positive that FSC presents alternatives, so that issues are solved through mediation and dialogue. However: 1. We disagree that FSC should take alternative dispute resolution approaches like dialogue and/or mediation instead of engaging in the formal complaint process. Once a Complainant file a formal complaint, then FSC should simply engage in the formal complaint process. 2. Depending on the violations, dialogues and/or mediation may be required but they should not be alternatives to disassociation, but as a part of a reassociation roadmap. Please also see our comments below on Clause 2.9 on this. 3. Remedies for the violations identified need to be requested by FSC as a condition for re-association as a part of the Generic Reassociation Roadmap. There should be procedures/processes defined to ensure remedy is delivered. 4. If the alternative dispute resolution instead of a formal complaint process is the cornerstone of this procedure (as written in NOTE of Clause 1.1), then we do not agree with the whole procedure. 5. Alternative solutions need to be accompanied by clear and

<p>measurable plan and KPIs, by transparent monitoring and publication of progress to remedy the PfA violations. 6. The investigation findings need to be discussed with defendant and complainant. When alternative measures are recommended, these should be agreed also by affected stakeholders and also a panel (who is composed by experts on the topic, affected stakeholders may agree on a solution that is not ideal, particular in rural areas) and the final decision needs to be made public together with the investigation report. We agree with Clause 1.2 that "Throughout the process, FSC will provide the parties* with opportunities to supply evidence and counterevidence, stating their position and commenting on conclusions" but this should happen as a part of the current formal complaint process. It is not clear to us why the Complaints Panel in the existing procedure is removed and replaced with other bodies in this procedure?</p>
<p>Some comment: 1.3: The language used in 1.3 could be stronger on the NDA requirement. It is hard to imagine case where an NDA would not be required as due diligence. It could be reworded: "...The parties* shall sign a Non-Disclosure Agreement (NDA) in relation to any confidential information produced during the investigation." 1.4: The word cooperate could defined in the context. It would also be beneficial to add a sentence to explicitly state a potential sanction here: "... Lack of cooperation or willful deceit by intentional submission of false and/or concealment of information needed for the process will lead to the removal of the parties involved in the process."</p>
<p>When it comes to major fundamental violations, such as illegal actions, threatening traditional rights and so on. The open communication and inclusivity principles may be in contradiction to uncover the fraud, as this may lead to concealment through the defendant. Why it important to carry out also undercover investigations. This seems to be impossible by the current principles Also see comments on 2.3 on "Substantial Information"</p>
<p>1.1. It is very good that possible violations of the policy for association can be solved without opening a formal process, but through mediation. However, according to "mediation" definition (Mediation: An attempt to settle a dispute through active participation of an independent third-party that aids parties * to agree on a fair outcome.), this process involve costs, and it would be necessary to define who would pay for this. Moreover, how would the defining process to choose this third mediating parties be, in order to guarantee its suitability and impartiality? 1.2. Regarding the opportunities to provide evidence, mentioned in item 1.2. it is important to clarify that they are "equal" to the parties. 1.3. The expression, "until such time" needs to be better clarified, as, along the procedure, it seems to suggest that information can be disclosed as soon as the FSC accepts the complaint and initiates the investigation process, which could cause irreparable damage to organizations that may end up being "acquitted". See item 2.13 1.6. There seems to be no legal basis for FSC to investigate someone with whom it has no more relationship, and to whom, therefore, it could not guarantee the full right to defense, since the investigated would no longer be committed to sending defense documents and evidences. Thus, FSC would incur partial investigations. Moreover, what would be the penalty applied to a disassociated organization? An alternative would be to forward the complaint to local legal authorities (by national offices, where available). Another issue is the risk of non-impartiality about deciding when to continue or not the investigation after voluntary disassociation, as these criteria are not defined in the procedure. 1.7. It is necessary to better clarify what would be the criteria adopted to make a decision about whether to continue or not an investigation. This would avoid allegations of persecution or personal interests in protecting, or attacking, a particular organization.</p>
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<p>process, which could cause irreparable damage to organizations that may end up being “acquitted”. See item 2.13 1.6. There seems to be no legal basis for FSC to investigate someone with whom it has no more relationship, and to whom, therefore, it could not guarantee the full right to defense, since the investigated would no longer be committed to sending defense documents and evidences. Thus, FSC would incur partial investigations. Moreover, what would be the penalty applied to a disassociated organization? An alternative would be to forward the complaint to local legal authorities (by national offices, where available). Another issue is the risk of non-impartiality about deciding when to continue or not the investigation after voluntary disassociation, as these criteria are not defined in the procedure. 1.7. It is necessary to better clarify what would be the criteria adopted to make a decision about whether to continue or not an investigation. This would avoid allegations of persecution or personal interests in protecting, or attacking, a particular organization.</p>
<p>They meet the standard of reasonableness. Though 1.7 could go further for some of the systemic violations where it would be in the best interest of the reputation of FSC to pursue an investigation and evaluation.</p>
<p>Great! 1.1 Stakeholders, is it only the stakeholders or also the defendant to stive for the lowest level? It is a responsibility for both parties. Language: Sometimes it is "the parties", sometimes "defendant and complainant" and has the same meaning, why not take away the parties? 1.5 take away "any" - doesn't make it stronger. 1.7 "At any time" can also be taken out.</p>
<p>1.1 From an internal point of view, how is the "lowest level principle" documented and shared across the organization? For example, how could the involved parties learn about trends of locally solved complaints? of best practices? Standardized data on LLP should be of great support for preventive actions and for strategic decision making.</p>
<p>1.2. objectivity should be added, i.e. The principle of objectivity, fair treatment and inclusivity are followed.</p>
<p>1.3 The parties* and FSC...*SHALL NOT SHOULD*...refrain from commenting publicly on the situation and actions being taken by FSC until such time as defined in this procedure.</p>
<p>1.2. objectivity should be added, i.e. the principle of objectivity, fair treatment and inclusivity are followed.</p>
<p>1.2. objectivity should be added, i.e. The principle of objectivity, fair treatment and inclusivity are followed.</p>
<p>1.1 - We support the mediation option as a first attempt for solving a potential violation, but it would certainly imply costs. Who would cover the mediation costs? How would be the process for defining a mediator? Please, keep in mind that the mediator has to be really impartial and both parties should agree on who would take this role. 1.2 - Make clearer that the parties have EQUAL opportunity o supply evidence. 1.3 - We recommend that the clause is more specific about the time by when the parties can publically comment on the situation. The expression "until such time as defined in this procedure" is not clear. It can be understood that the parties can comment publically by the time when FSC accepts the complaint (see 2.13). We do not agree with it. Publicly comments shall be only made when the final decision is taken by the Decision Panel. Any comment before this can provoke serious damage to the reputation of not guilty organizations. 1.6. There seems to be no legal basis for an investigation against organizations or individuals who do not hold any formal relationship with FSC. That is, FSC cannot investigate someone who is not a member or CH (associated). Moreover, what would be the penalty applied to an organization or individual who is not a member anymore? Please, avoid using the expression "at the discretion" because it is too subjective.</p>
<p>In section 1.3, change "should refrain from commenting publicly" to "shall refrain." An organization's reputation could by harmed unjustifiably simply by an accusation that turns out to be unfounded. In section 1.3, change "may be expected to sign a NDA" to "shall be expected." It is imperative that confidential information be protected. Section 1 of the draft 4 version contained a section on the principle of presumption of</p>

innocence, which has now been removed in the draft 5. The reason was not addressed in the crosswalk document. This is an important principle that should be highlighted in this context. Please put it back in.
1.3-It is a good suggestion. But stakeholder as well as FSC should be able to differentiate what is being / have been disclosed prior to and after signing NDA. Imagine a situation in which before stakeholder approaches FSC, it has already released in public damaging information about related certificate holder. So, it has to declare before signing of NDA, what is already disclosed, so that FSC can ensure that NDA clauses are being followed.
No. Agree.
The associated organization should have its own procedure for resolving possible violations to the FSC Policy for Association, including the alternative dispute resolution; the certification body should ensure that this procedure exists, the stakeholders are aware of it and it is used in the case of violations.
Some of the principles are appropriate, however, some need to be clarified, included and amended. -It is appropriate to attempt to resolve disputes before resorting to more “formal” processes, but there is no way, as already mentioned in another point, “dialogue” or “negotiation” with the parties or “mediation” can entail a lack of respect for rights, nor ignore the FPIC application when indigenous population and local communities are the ones affected, and/or that reach agreements or acceptance under some kind of intimidation or patronising persuasion. The latter is related to the fact that this alternative dispute resolution leaves out remedy and the sanctions that the defendant should adopt. –I repeat the need to respect the FPIC right and that it is applied in the process. – It is unclear how FSC is going to monitor so that the process follows the appropriate course and that fairness, impartiality and inclusion are ensured (1.2). In regard to this point, this procedure should be easy for the affected parties to access, and so it should consider their situation in terms of language, Internet access, ability to fill in forms, and remain flexible on certain aspects when accepting the “complaint”. –The not commenting publicly and confidentiality provision should be revised (1.3); analyse whether this is not encroaching on the rights of the affected parties. -1.6. should be amended. FSC should continue the investigation and evaluation. This is fundamental for the issue of remedy, not only for the affected parties (whom FSC should respect and show respect to), but for FSC itself. –At the same time the statement in point 1.7. is supported. It is related to the need for FSC to safeguard its integrity. –Given that Cat 2 refers to the violation of human and traditional rights, workers, along with indigenous population and communities, should also be considered affected stakeholders but also the workers. –FSC should assume responsibility by ensuring remedy for the social and environmental damage caused. This is important to show the integrity of its certification system and the validity of its Principles and Criteria.
Principle that the first step for FSC response to complaints against PfA is always via dialogue and mediation (an informal process). (1.1). L. This does not apply for Australia. The Governmental logging agencies in Western Australia Forest Products Commission should never have had an CW certificate. All complaints are ignored. In Victoria, the case of FSC membership of VicForests; complaints since 2008 – 2020 were ignored. NSW Forestry with a CW certificate logging and converting in native forests gets the blessing of FSC. Complaints ignored.
<ol style="list-style-type: none"> 1. Remedies for PfA violations identified need to be requested by FSC as a condition for re-association as a part of the Generic Reassociation Roadmap. There should be procedures/processes defined to ensure remedy is delivered. FSC should develop a stand-alone Conversion Restoration, Restitution and Remedy for Social Harm standard and for re-association to only occur once an audit shows the organization is operating in full compliance with the standard. 2. If an ‘Alternative Dispute Resolution’ procedure is proposed, this should not prevent disassociation by FSC. Details of the procedure must be provided beyond the text outlined in the current draft, which is insufficient, and must align with international best practice. Communities

must have the right to decide via an FPIC process if such a process is appropriate for their case, and if the process is not working they must have the right to decide to end it.

3. The procedure needs to specify that the Complaints Panel as defined in the current procedure FSC-PRO-01-009 (V3-0) is independent of FSC. Investigations into allegations should be conducted without delay and in a fair manner, by independent and professional parties with relevant experience and free of any conflicts of interest. The procedure should also clarify that the recommendations made by the independent Complaints Panels should be respected by FSC, in particular the FSC international board.

4. Other external processes may inform the investigations (court cases etc), but not delay them (otherwise it is enough to hire a lawyer to indefinitely postpone any disassociation). The process must be designed to address non-compliance with the P & C & I and not just the law. Suspension of a complaint to await a court decision would only be acceptable in cases where a PfA complaint was only about illegality.

5. Affected parties must be able to raise a PfA complaint directly to the FSC complaint procedure. It is too onerous to require communities suffering to raise complaints with CB's or ASI. CB's and ASI can not offer a credible non-judicial complaints process, especially as they have obvious conflicts of interest as the non-compliance may have been overlooked or judged unimportant by their staff, or in the case of ASI be out of their jurisdiction which is restricted to redress resulting from the CB's performance.

6. Affected parties' rights to communicate publicly must be protected. Gag orders, requirements to sign NDAs or any agreements to refrain from public comment are not acceptable conditions to place on communities, especially when communities' main, even only, leverage comes from publicity, transparency and exposure of the impacts caused by the FSC certified organization. Zero tolerance to violence, intimidation, criminalization of grievance raisers must be demonstrated by disassociation/suspension when cases are reported on publicly, or directly to the FSC. Also, given PfA complaints can take several years to come to a decision and the PfA issues may be extremely serious and even life threatening, it is neither fair nor possible to limit the affected parties from taking other routes (than FSC) to have the issues addressed.

7. Prevention of PfA breaches prior to a TM licence or certificate being issued, or pro-active investigations is a priority. The FSC must not wait for a complaint. FSC must have the ability to deal with PfA requirements at either a pre-conditional phase prior to the issuing of a FSC TM licence or certificate, or pre-emptively based on information from stakeholders or published material.

8. Similarly, a proper procedure of due diligence prior to accepting FSC membership is also a priority to ensure no involvement in PfA breaches by FSC members.

9. The procedure must be accessible for affected parties. The FSC must accept complaints submitted in the languages used in all regions that it operates and must be flexible in how details of complaints and violations are submitted, especially given limited access to online forms for affected parties. FSC should also make sure that the investigation findings and other materials from FSC to the Complaints are written in languages which they can understand.

10. Basic principles of justice that information must be shared with both parties equally must be upheld. The FSC must support shared values, and not be designed mainly to support companies by providing them with full reports that are not shared with affected parties, or published in the interest of transparency.

11. Concerns in respect to the current ownership loopholes must be addressed and definitions accepted by CSOs such as the Accountability Framework Initiatives definition of corporate group should be applied.

12. When harm has been caused by an FSC certified operation but this has not been remedied within three years of public information about the harm being available to the FSC, then the FSC should assume responsibility for providing remedy.

Initiating an Evaluation

2.1 An evaluation of a potential violation to the FSC Policy for Association is initiated through the submission of a formal stakeholder complaint, accompanied by substantial information about allegations made.

2.2 Any stakeholder may submit a formal complaint.

2.3 In exceptional cases, FSC may independently initiate an evaluation if substantial information is brought to the attention of FSC through other means.

2.4 The process for evaluating whether the organization is in violation of the FSC Policy for Association is effectively the same irrespective of which of the above pathways (Clause 2.1 or 2.3) are used to initiate the process, with additional sub-steps defined in situations where there is a complainant involved in the process (i.e., when a formal stakeholder complaint has been lodged).

2.5 The scale and timing of FSC's response to allegations of violation of the FSC Policy for Association shall be based on the severity of the issues and the risk to FSC's reputation.

Notification and Receipt

2.6 FSC shall be notified and provided with substantial information that the associated organization or its affiliated group may be in violation of the FSC Policy for Association.

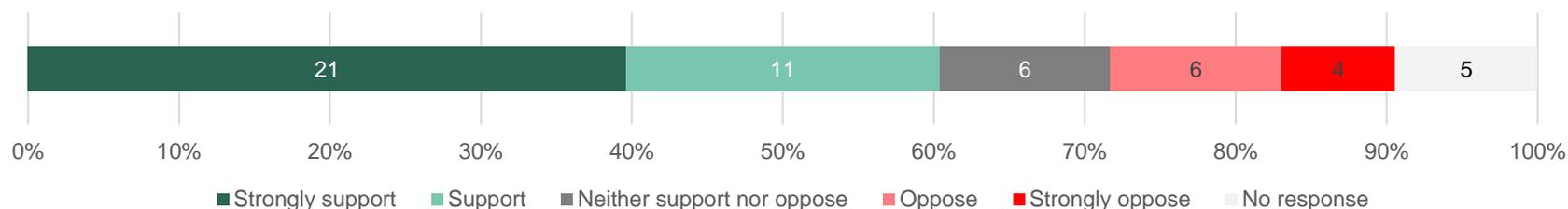
2.7 The complainant shall complete the complaint form on FSC website in either English or Spanish. Only complaints that provide all required information in the form shall be accepted.

2.8 Receipt of the complaint shall be acknowledged within ten (10) business days.

Responses:

- **Do you support the proposal that FSC can initiate evaluation of potential Policy for Association violations without a formal complaint?**
- **Please briefly explain your rationale.**

Do you support the proposal that FSC can initiate evaluation of potential Policy for Association violations without a formal complaint?



Strongly oppose	I only oppose point 2.7. The other points I agree with. FSC should take measures (translations) and facilitations, so that any complaint could be filed in the language of the region where FSC affiliates are active.
Strongly oppose	There should be only one mechanism, FSC should direct any information provider to this mechanism that needs to remain open and transparent. Having alternate methods is not considered of value if the complaint mechanism is well define and managed.
Strongly oppose	In order to ensure transparency and that the prescribed process is followed, there must be a formal complaint before any action is initiated.
Strongly oppose	this can lead to an increase in cases to be investigated, even if without evidence, causing loss of resources and time to investigate fake news and attempts to damage the reputation of organizations.
Oppose	I think that every complaint should be properly substantiated, whether through objective documents as well as witnesses deserving of trust from FSC. One informal allegation can be duly contested and possibly refuted by the defendant, but this latter may suffer serious social, moral and/or economic damage.
Oppose	As it is, we oppose. Although this facility helps to reduce bureaucracy for submitting complaints, the way it is written can raise the volume of complaints once it makes very simple to create doubts about the conduct of companies. It would also discourage other people from opening formal complaints , as it would be easier to use FSC as a means to this end. To valid this method, a clear explanation of what are the exceptional cases in which FSC could open an independent investigation is needed.
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Oppose	Although item 2.3 reduces the bureaucracy of submitting a formal complaint, it may also increase the number of investigations. Too easy processes can lead to the banalization of the action of presenting information of potential violations to FSC. It would also discourage the opening of formal complaints, which is the preferred way for presenting a potential violation. To keep the option presented at item 2.3, the procedure has to be precise on what are "exceptional cases".
Neither support nor oppose	
Neither support nor oppose	It is right that FSC may independently initiate an evaluation, as FSC reputation is on stake. That the scale of timing is based on the severity of the issues seems however unclear. There is the need of criteria to asses that "severity" otherwise it may become matter of in-transparent 'political' negotiations . Furthermore, language is a key issue (see below)
Neither support nor oppose	
Support	If there is an apparent clear violation which comes to FSC's notice, by whatever means, it would be neglectful to ignore this and the result could be damaging to FSC's image.
Support	
Support	Initiating an evaluation of potential PFA violations without a formal complaint would increase the pressure for the associated organizations in maintaining its compliance to FSC PFA. Consequently, it decreases the risk of FSC's reputation being harmed by violations of the associated organizations. To valid this method, a clear explanation of what are the exceptional cases in which FSC could open an independent investigation is needed.
Support	Complaints need to be formalized. Complaints lodged need to include evidence.
Support	Yes, it will be more inclusive and provide further opportunities to uproot violations.
Support	If there is a query, even if there is no formal complaint, the most appropriate move is to follow it up in order to strengthen the relationship or failing this, to delete it.

Support	FSC should have distribution mechanisms between the Policy for Association stakeholders, as well as the current facilities for reporting violations to this Policy for Association.
Support	-
Support	
Support	
Support	
Support	
Strongly support	
Strongly support	PfA is FSC's Policy, and enforcing adherence should not depend on complaints initiated by other parties.
Strongly support	Violations of the PfA are a threat to the credibility of FSC.
Strongly support	FSC needs to be able to address issues without outside direction to do so. That's a no brainer.
Strongly support	FSC may become aware of potential violations, e.g. from stakeholders who wish to remain anonymous (or who do not wish to raise a Policy for Association complaint themselves) or from media reports. There must be a mechanism by which FSC can initiate an evaluation.
Strongly support	There are likely to be occasions when FSC obtains information through direct observation, news articles, scientific reports, certification audit reports, links with other organisations, parties not interested in raising a formal complaint etc. that a violation has occurred. The organisation has a duty to protect itself from reputational risk which it could not do if it could not initiate its own investigations.
Strongly support	FSC must look after its credibility and integrity, and mainly make sure that its Principles and Criteria are respected, specifically those related to the rights and integrity of indigenous population, communities, workers and other vulnerable groups. Ignoring or losing information received in regard to violations to the PfA would demonstrate inefficiency and a lack of coherence with its principles and mission. This lack of attention to complaints or disputes has resulted in the loss of FSC credibility and even the withdrawal of membership and support for the organization by important stakeholders.
Strongly support	FSC may become aware of potential violations, e.g. from stakeholders who wish to remain anonymous (or who do not wish to raise a Policy for Association complaint themselves) or from media reports. There must be a mechanism by which FSC can initiate an evaluation.
Strongly support	Otherwise whistleblowing is not possible.
Strongly support	I think this is good because this means that FSC can respond regardless of whether there is a formal complaint or not.
Strongly support	FSC cannot only rely on others to complain. Some organizations may have concerns or fear, so FSC should start the process also in these cases.

Strongly support	Otherwise whistleblowing is not possible
Strongly support	
Strongly support	Like the Whistleblower Protection Legislation, there definitely needs to be a mechanism to protect the individuals who witness violations in the field and want to see violations stopped, while maintaining their anonymity due to the possibility of retaliation. By providing a mechanism for informal information submissions, workers, local residents and other individuals are empowered (this is especially important for Indigenous peoples) to support sustainable eco conservation and protection efforts.
Strongly support	If FSC through other means finds out a violation it is an obligation to find out what is going on. This still have to be violations of greater importance. I would propose to take away "in exceptional cases" from 2.3
Strongly support	For various reasons there is plenty of information that never makes its way to a complaint.If critical concepts like "substantial information", "credible sources" are well developed, credible information on violations of PfA could be considered for a complaint.
Strongly support	It is a matter of our/FSC's credibility and FSC should have right to initiate evaluation of potential violation, without waiting for any complain, to limit the damage to its credibility
Strongly support	
Strongly support	Yes, as the governing body, FSC should have the power to initiate an evaluation.
Strongly support	It is a proactive way of FSC to keep its reputation. As many information are provided in many channels, and not many stakeholders also familiar with FSC procedures.
Strongly support	Clause 2.3 is essential as in some cases communities, IPs or local affected parties do not have voice or the ability to file a complaint, and secondly it is in the interests of FSC to move quickly to address potential threats to FSC's brand and name.

• **Do you have any further comments on this section?**

2.5. The scale and timing of FSC's response to allegations of violation of the FSC Policy for Association should not differ according to the severity of the issue. It is important that all claims have the same quality level of responses, and that a maximum deadline is set for them. For organizations under investigation, delays on responses because their case is less serious for FSC could make irreparable damage to their reputation. Therefore, regardless of the content of the complaint, all must have a maximum deadline to be answered.
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<p>organizations under investigation, delays on responses because their case is less serious for FSC could make irreparable damage to their reputation. Therefore, regardless of the content of the complaint, all must have a maximum deadline to be answered.</p>
<p>2.5. The scale and timing of FSC's response should always be the same regardless of the severity of the issue. All allegations need to be addressed the same way. Furthermore, it is very important to define deadlines for each step of the process. Delays on responses because a given case is considered as less serious could pose irreparable reputation damage to the organizations under investigation.</p>
<p>It is mentioned that the definition of stakeholder has been deleted; its definition is relevant so that initiating the evaluation in point 2.2 is well understood, it is important to know who can or cannot submit formal complaints. The cases in which FSC could initiate an evaluation should be set out, as mentioned in point 2.3, it is just to focus on the role that FSC should have.</p>
<p>2.7) Local communities should have the right to fill a complaint in their native language. If the company (and consequently FSC) operates in a country, they should be able to deal with the local language (or ready to do translations). otherwise their relevant voice would be excluded (a positive example: the consultation on APP Roadmap to terminating disassociation has been held in English and Indonesian).</p>
<p>Need to define "stakeholder".</p>
<p>2.5 It would be good to be transparent about the risk categories, criteria and timelines for the parties to understand the timeliness that would potentially apply to the process. In this section, it would be good to include a requirement providing FSC the right to reject a complaint. It could read like this: "At any point in the process, FSC can withdraw a complainant for the process if there is compelling evidence that the complaint is frivolous, malicious, trivial or generated to gain competitive advantage."</p>
<p>- 2.2: The new procedure should aim at complaints that are justified while at the same time having structures in place to avoid non-reasonable and non-justifiable complaints. This could be done, for example, by including a requirement that membership support has to be showed in cases where the complaint comes out of the FSC membership OR by introducing a deposit that the complainant have to pay and what it would get back in case the complaint is justified. - 2.5: force majeure situations should be added to make it clear that there might be situations where the normal timetable of complaint procedure do not apply, as we have witnessed with COVID-19.</p>
<p>- 2.2: The new procedure should aim at complaints that are justified while at the same time having structures in place to avoid non-reasonable and non-justifiable complaints. This could be done, for example, by including a requirement that membership support has to be showed in cases where the complaint comes out of the FSC membership OR by introducing a deposit that the complainant have to pay and what it would get back in case the complaint is justified. - 2.5: force majeure situations should be added to make it clear that there might be situations where the normal timetable of complaint procedure does not apply, as we have witnessed with COVID-19.</p>
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<p>The language in 2.5 gives too much discretion to the FSC to decide for itself what is important and to delay addressing complaints that others may consider urgent. Re 2.7 It is not acceptable that forest peoples cannot submit in their own or even national languages. If FSC can't handle complaints in national languages eg Bahasa Indonesia then it should not operate there. Provision must also be made for communities which lack access to the web to submit complaints by other means.</p>

<p>2.3 - for such "exceptional cases", it may be clearer to differentiate between what can be two separate ways such an investigation can occur: that FSC may initiate an evaluation is info is brought to its attention... OR, FSC may independently initiate an evaluation based on its own information gathering. this then feeds better into 2.4</p>
<p>2.5 The scale and timing of FSC's response to allegations* of violation of the FSC Policy for Association shall be based on the severity of the issues and the risk to FSC's reputation. who is making that assessment and how can one appeal that assessment?</p>
<p>How is a case initiated by FSC (e.g. by an FSC Network Partner)? Is this also through the online form?</p>
<p>The information that the members have in relation to violations to the PfA and the disassociation processes is very restricted, but we, most of the members, and especially those from the social and environmental chamber consider that the mistakes committed in this scope cast doubt on FSC credibility.</p>
<p>adding 2.7. to fill in a complaint should be also allowed at other common world languages like France, Portuguese, Chinese, Italian, Russian and German. How is a case initiated by FSC (e.g. by an FSC Network Partner)? Can a chamber of an independent NP can also rise an complaint?</p>
<p>2.1 / 2.3. (2.6., also 1.7.). Substantial information is raising a very high bar for initiating a FSC-internal investigations, in particular for NGOs or single persons e.g. journalists acting as whistleblowers/ complainants. Replace "Substantial information" by "sufficient suspicion" so that the bar is lowered to a reasonable investigation by the whistleblower/ complainant, in particular for whistleblowers/ complainant from high risk or developing countries. 2.3. Delete "exceptional cases". Should be possible anytimes without definition and decision of an exceptional case. 2.5. Please add: First response must not exceed one month.</p>
<p>As stated, the substantial information request may be problematic for some stakeholders, however I believe this is the correct way for FSC to proceed</p>
<p>We want to see the procedure to set a clear timeline for FSC to initiate and terminate investigations and a requirement for FSC to maintain timely public communication about the timing and any delays and reasons, as well as the findings. Clause 2.3. All cases regarding complaint in dissociation policy issues should get same treatment. So, they should not be exceptional cases. Clause 2.5 How do the criteria and indicators determine the severity of the issue and the risk to the FSC's reputation? Clause 2.7 writes "The complainant* shall complete the complaint form on FSC website in either English or Spanish." We suggest FSC to consider options for people who cannot use these languages how they can get help (FSC Offices in various countries should be able to help translate?). Clause 2.8 writes "Receipt of the complaint* shall be acknowledged within ten (10) business days." We suggest this is publicly done at FSC website.</p>
<p>2.3 not only in "expectional cases" This should be able at any time. 2.1; 2.3; 2.6. substantial information is rising a very high bare for initiating an investigation, in particular for donation-based NGOs, journalist or single persons. We propose to delete the term substantial information and replace and redefine it. Sufficient suspicious should be adequate so that the bare to initiate an investigation for whistleblower/complainants is lower or even achievable (in particular in developping countries, e.g. pigmies). 2.5. it shall not exceed one month</p>
<p>2.2 agreed. 2.3 agreed. This should include FSC's own due diligence to identify violations. Prevention of PfA breaches prior to a TM licence or certificate being issued, or pro-active investigations is also a priority. The FSC must not wait for a complaint. FSC must have the ability to deal with PfA requirements at either a pre-conditional phase prior to the issuing of a FSC TM licence or certificate, or pre-emptively based on information from stakeholders or published material. 10. Similarly, a proper procedure of due diligence prior to accepting FSC membership is also a priority to ensure no involvement in PfA breaches by FSC members. 2.7 is strongly opposed. The procedure must be accessible for</p>

<p>affected parties. The FSC must accept complaints submitted in the languages used in all regions that it operates and must be flexible in how details of complaints and violations are submitted, especially given limited access to online forms for affected parties. FSC should also make sure that the investigation findings and other materials from FSC to the Complainants are written in languages which they can understand.</p>
<p>2.6 To me it is confusing to mix "defendant" and here "associated organisation". It is understandable but could be made clearer to possibly use the same term throughout the text for the same "actor". In 2.6 it is clear the FSC shall be notified, in 2.7 The complainant shall complete something and in 2.8 Someone (FSC?) shall acknowledge. It would be good to use the same language construction in the whole text. A proposal is to state what the complainant shall do in 2.6 and 2.7 and what FSC shall do in 2.8.</p>
<p>If FSC independently initiates evaluation, process of notification etc may also be indicated</p>
<p>Given that (in my personal experience), stakeholders may not have computers, internet access, etc.; I would like to think that potentially affected individuals would have alternate means for lodging a complaint. Only Spanish or English complaints may also be a problem, given the number of plantation initiatives in SE Asia, Indonesia, Africa etc. that have and will work towards FSC certification.</p>
<p>Clause 2.7 - Given the emphasis on formalisation of the complaints, it is surprising that the model complaint form was not attached. As RAN points out (its points 7 and 11) it is likely, and has been historically so, that stakeholders materially affected by violation of the PfA will include people and communities who will not be able to access or understand FSC online requirements and procedures, and a more flexible approach should be allowed, not just in the mediation/negotiation outline sketchily for alternative dispute resolution (clause 1.1) but also in mainline complaints.</p>
<p>I agree with RAN's point 11 on acceptability of local languages and the need to provide for costs of 2-way translations and interpretations. This matter was raised years ago in the Diamond Raya case in Indonesia; surely the Secretariat has not forgotten?</p>
<p>Threshold for accepting complaints (2.4.) This is not clear to me.</p>
<p>2.5 needs to be procedural and further clarity is needed on what would constitute a severe risk - needs to be clearly linked to Annex 3. Otherwise this gives too much discretion to the FSC to decide for itself what is important and to delay addressing complaints. 2.7 It is not acceptable that local communities and IPs cannot submit in their own or even national languages. Provision must also be made for communities which lack access to the web to submit complaints by other means.</p>

Resolution or Initiation of Evaluation

2.9 Where appropriate, FSC shall contact the parties with the aim of promoting dialogue between the parties and to resolve the situation without initiating a full investigation. Mediation or other forms of facilitated dialogue may take place, if accepted by the defendant and the affected parties. FSC shall not act as a mediator.

2.10 In case the substantial information provided by the complainant is regarded as sufficient, such as final conclusions of legal proceedings, FSC may decide to move directly to decision making without establishing an additional investigation process. In case there is an ongoing investigation by authorities, or any other active official process related to the allegations, FSC shall wait for the completion of such process before launching an investigation.

2.11 If the complaint cannot be resolved through alternative dispute resolution techniques to the satisfaction of FSC, the complaint may be accepted provided that:

- I. all required information in the complaint submission form is provided;
- II. there is substantial information to warrant a full evaluation; and
- III. the complaint falls within the scope of the FSC Policy for Association.

2.12 The decision to accept or reject the complaint shall be communicated to the complainant and defendant.

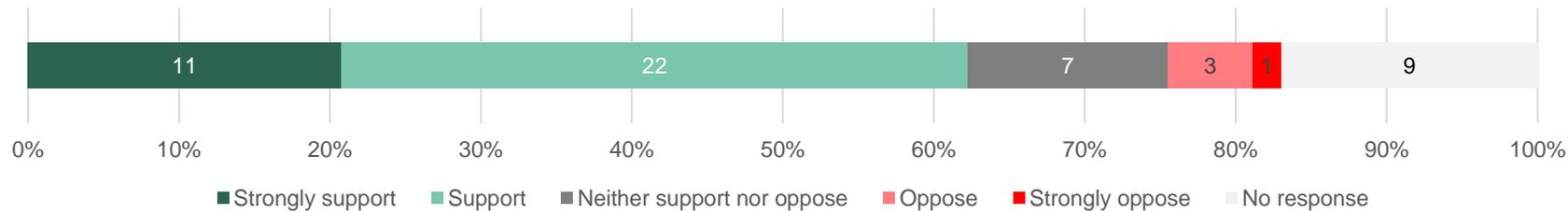
2.13 If the complaint is accepted, a public announcement shall be made.

2.14 Upon the decision to initiate an investigation, a timeline shall be developed by FSC for each step in the process.

Responses:

- **Do you support the proposal to use alternative dispute resolution approaches to try to resolve issues in complaints? (Clause 2.9)**
- **Please briefly explain your rationale.**

Do you support the proposal to use alternative dispute resolution approaches to try to resolve issues in complaints? (Clause 2.9)



Strongly oppose	Strongly oppose alternative dispute resolution approaches replacing immediate disassociation and suspension of organizations violating PfA. Remedies for the violations identified need to be requested by FSC as a condition for re-association as a part of the Generic Reassociation Roadmap. There should be procedures/processes defined to ensure remedy is delivered. One proposal submitted by Rainforest Action Network in response to the Conversion Remedy Procedure is for the FSC to develop a stand-alone Conversion Restoration, Restitution and Remedy for Social Harm standard and for re-association to only occur once an audit shows the organization is operating in full compliance with the standard. If an 'Alternative Dispute Resolution' procedure is proposed, this should not prevent disassociation by FSC. Details of the procedure must be provided beyond the text outlined in the current draft, which is insufficient, and must align with international best practice. Communities must have the right to decide if such a process is appropriate for their case, and if the process is not working they must have the right to decide to end it.
Oppose	I should say that I oppose it as the question is too general. Although it may be appropriate to use alternative approaches, you cannot approve something that you don't know. What is suggested in this procedure is incomplete, it should be revised and include the necessary details to ensure that the principles referred to are taken into account. The most important: 1. these alternative approaches should not involve companies impinging in any way on the rights of the affected stakeholders, and they shall not ignore the need to resort to FPIC to reach an agreement. 2. They should not mean that it is an alternative to disassociation or that the decision on disassociation is postponed. 3. FSC shall not in any way act as mediator, this could be argued as evident, however the probation cases give this impression and, in the facts, it turns out that FSC is taking the side of the defendant. 4. It should be ensured that the affected stakeholders (indigenous population, communities and workers) have genuinely accepted this alternative process and can suspend it they consider that it is not being done in the appropriate way. 5. The role of mediator is not very clear; apart from the fact that it is not clear who chooses it and what their profile would

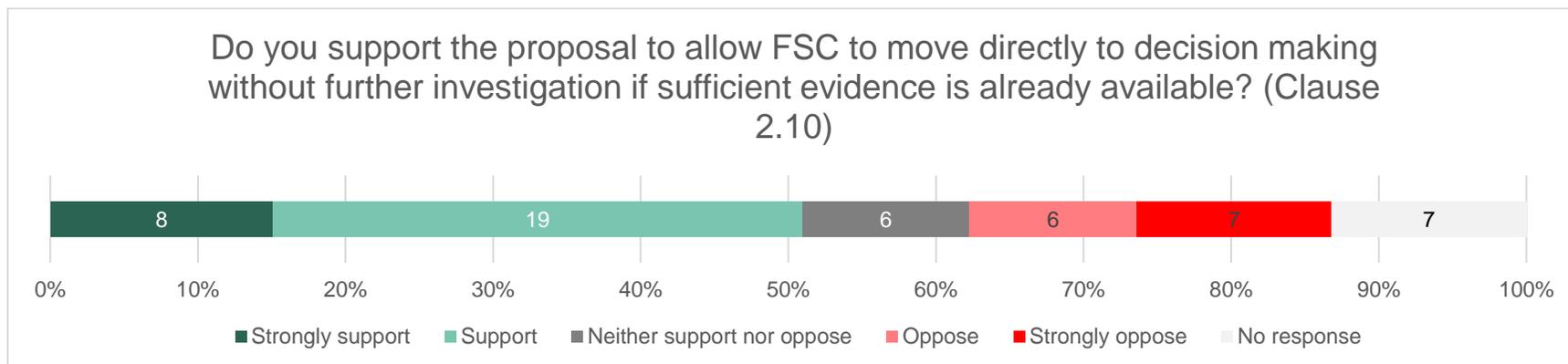
	be, it is not explicit what it would do and what its responsibilities are. It is not understood why the requirement of conducting at least one simplified FPIC (with the respective protocol) is not suggested; this would give the process credibility.
Oppose	Opposition is related to 3 specific items: 2.9 It is not clear the "where appropriate". If it becomes a procedure, this would discourage affected communities by involving them in endless "dialogue" they know would bring nowhere. 2.10 the decision to eventually "move directly" should be done by an independent body, and based on facts. Being FSC based on multistakeholder governance system, its board carries inside specific interests of its member - and this is right, but it may lead to decision based on 'politics' instead of on facts. Also important on this point, is the a loophole that can be used to block any investigation: " In case there is an ongoing investigation by authorities, or any other active official process related to the allegations*", FSC shall wait for the completion of such process before launching an investigation." Any company can be able to start some official process, and make sure that it last forever, thus avoiding any dis-association!!! 2.11) As noted already the requirement of trying first alternative dispute resolution (that may already failed in the past) risk to discourage local communities or other stakeholders with little resources.
Oppose	Although ADR is one way to solve complaint it can only be implemented limited to the case that linked to light violation, not the one that has severe violations involve. Beside, FSC as certification body works for ensuring credibility and quality of business legal entity should rely on responsible, and accountable process.
Neither support nor oppose	See comment above: there needs to be much more detail about ADR and how it will be enabled.
Neither support nor oppose	I do not understand why FSC can not act as mediator?
Neither support nor oppose	This could be the quickest and most cost-effective way of dealing with a complaint. However it should not be used as a means to postpone the decision to disassociate. 2.10 needs to be revised as investigation by authorities is not the reason for launching an investigation, it relates to decision-making.
Neither support nor oppose	Why wait for investigations by "authorities" to begin? What is the definition of an authority? What do you do when it becomes clear that the authority is in cahoots with the defendant? I can see waiting for the completion of an investigation, but even launching it? Seems like a potential loophole that an actual bad actor can exploit.
Neither support nor oppose	It is important to have clarity about when FSC may act and in what way as it is clearly stated that it shall not act as mediator, therefore there should be an independent third party that can do it?
Neither support nor oppose	
Neither support nor oppose	
Neither support nor oppose	2.9: agree. 2.10 Agree with FSC moving quickly if sufficient information has been provided. However, the second part of the clause would potentially allow FSC to suspend a complaint until any legal proceedings have been

	completed. This should only be related to legal issues that pertain to legal issues in the disassociation case. 2.11 It should not be the sole discretion of FSC to decide if alternative dispute resolution is suitable or not. Communities too have the right to decide that such a process is not working and decide to end it.
Support	In my opinion, citing the parties seeking a consensus solution via correct mediation will avoid wasting time and money on exhaustive investigations when it is discovered that they are not necessary.
Support	Support in the sense that it may result in a positive outcome, whilst avoiding the need for a full investigation. However, the means of the complainant to participate should be considered and this clause should not become a barrier to progressing complaints
Support	Despite supporting the use of alternative dispute resolution methods, some fundamental clarifications are necessary. Once it is determined that FSC should not act as a mediator and, according to the glossary, the mediator is a third party, it is essential to be pointed out in this procedure who will bear the costs of mediation and who will select the mediator, in order to avoid purposeful directions and conflicts of interest.
Support	Support in the sense that it may result in a positive outcome, whilst avoiding the need for a full investigation. However, the means of the complainant to participate should be considered and this clause should not become a barrier to progressing complaints.
Support	However, please take into account (see section 1.1): When it is about to illegal logging or other illegal activities, threatening human and/or traditional rights etc., the "open communication and inclusivity" principle may be in contradiction to detect, uncover and determine the fraud as this may lead to concealing by the defendant. Sometimes undercover investigation is necessary to convict the defendant. Police has to do this sometimes. This seems to be impossible by the principles of this procedure.
Support	In some contexts/circumstances, alternative dispute resolution approaches could be more effective and rational, but this has to be properly reported and made public, also if alternative measures are chosen, these should be justified technically, in details, giving other members (or a panel) the opportunity to provide comments. Neither the complainant nor the defendant should be forced to go for an alternative resolution approach.
Support	From my perspective, it is an efficient way to solve the smaller issues. It also helps scoping the potential issues in case of an investigation.
Support	When it comes to major fundamental violations, such as illegal actions, threatening traditional rights and so on. The open communication and inclusivity principles may be in contradiction to uncover the fraud, as this may lead to concealment through the defendant. Why it is important to carry out also undercover investigations. This seems to be impossible by the current principles.
Support	Despite supporting the use of alternative dispute resolution methods, some fundamental clarifications are necessary. Once it is determined that FSC should not act as a mediator and, according to the glossary, the mediator is a third party, it is essential to be pointed out in this procedure who will bear the costs of mediation and who will select the mediator, in order to avoid purposeful directions and conflicts of interest.

Support	Attempting to find a solution for resolution is always the first step, as it is a signal to the defendant that their actions are not consistent with agreed upon principles and objectives.
Support	It is a good approach but our experience in Sweden is that it is difficult to solve disputes this way. Be careful when it is huge difference in resources between the parties.
Support	I would support the idea of resolving the situation without a full investigation as long as it is clearly established on what situations this would apply. Also, how and who makes this determination of "appropriateness".
Support	-
Support	
Support	
Support	We support the use of alternative dispute resolution approaches, but it is very important to define who will bear the costs of mediation and how will the mediator be selected.
Support	
Support	
Support	Whilst I think mediation / dialogue makes sense to quicken resolution, it opens the door for corruption other means for dealing with the issue. I believe FSC should consider an investigation of complaints should be conducted regardless. I'm aware that this would be problematic, as this goes against the spirit of trying to reconcile without significant due diligence / time expenditure by FSC. But potential for corruption should be considered and addressed (if not done so by some other means).
Support	
Support	
Support	
Strongly support	
Strongly support	But only if there is genuine remedy for the affected stakeholders. that would include that in the definitions the term remedy is defined as Remedy: a means of legal reparation and or compensation for all affected stakeholders.
Strongly support	There must be an option for an affected party not to engage in dialogue if there is risk involved to that party.
Strongly support	We strongly support the use of alternative dispute resolution (e.g. dialogue, mediation) as we see how these approaches can bring the complaint evaluation process faster. It demonstrates the principles of fairness and inclusivity. However, we suggest more clarity to be provided on the alternative dispute resolution approaches, such as: i) the process to select a mediator; ii) what is considered as 'within a reasonable time'; iii) decision maker for this approach - would it be with FSC BOD or decision-making panel or else?
Strongly support	This is an ethical way for FSC to deal with concerns at this level
Strongly support	It is the most appropriate, there are no radical positions.

Strongly support	We strongly support the use of alternative dispute resolution (e.g. dialogue, mediation) as we see how these approaches can bring the complaint evaluation process faster. It demonstrates the principles of fair and inclusivity. However, we suggest more clarity to be provided on the alternative dispute resolution approaches, such as: i) the process to select a mediator; ii) what is considered as 'within a reasonable time'; iii) decision maker for this approach - would it be with FSC BOD or decision-making panel or else?
Strongly support	Complaints on alleged violations to the Policy for Association should be reviewed and resolved locally, before moving up to higher levels.
Strongly support	
Strongly support	It will reduce process time as well as work load, and will also put sufficient pressure on violators to take corrective action
Strongly support	

- **Do you support the proposal to allow FSC to move directly to decision making without further investigation if sufficient evidence is already available? (Clause 2.10)**
- **Please briefly explain your rationale.**



Strongly oppose	- We can't support the current proposal since it would make it possible to move to decision-making without hearing the defendant's view and without making a proper investigation if the allegations are right or not. The defendant has to be offered a chance for a fair process.
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Strongly oppose	- We can't support the current proposal since it would make it possible to move to decision-making without hearing the defendant's view and without making a proper investigation if the allegations are right or not. The defendant has to be offered a chance for a fair process.
Strongly oppose	Organization should have the opportunity to be informed and to address the complaint and supply any evidence. Solid judgement can't be made while receiving only one source of information.
Strongly oppose	The current proposal cannot be supported because it would be possible to make extensive decisions without hearing the accused party and/or without making an appropriate investigations on the allegations. The accused party/defendant must have a right to a fair process.
Strongly oppose	Section 2.10 is very dangerous. It sets up the possibility that an organization could be judged a guilty without having the opportunity to present its side of the story and to defend itself. No matter how overwhelming the evidence appears to be, the organization must always have the opportunity to respond before judgment is made. Delete this section.
Strongly oppose	In many cases, evidences may not be relevant for related case, still can be produced to be seen as sufficient for the case. Investigation should be resorted to in all the cases
Strongly oppose	An organization associated to FSC should have always at least the right to give they version of facts.
Oppose	I think this should be a two tiered structure. A simple report outlining the evidence, if it is considered to be sufficient. And a full investigation when warranted. Skipping the investigative step completely opens FSC to charges of "railroading" the defendant.
Oppose	An investigation should be carried out in all cases, at least to reiterate the soundness that the substantial information is appropriate.
Oppose	
Oppose	It is difficult to image sufficient evidence being provided without investigation, unless an 'open-and-shut violation is obvious.
Oppose	I understand the presence of sufficient evidence may help in making decision. However, for the sake of fairness and justice for the parties involved, I think FSC should at least having its own investigation to generate decision.
Oppose	I think that the defendant should have an opportunity to provide a defence. Especially in countries where the strength of law cannot be trusted (corruption)
Neither support nor oppose	2.10 seems to allow FSC to suspend a complaint until any legal proceedings have been completed. This is to misunderstand the whole purpose of voluntary certification standards which is to make up for the current deficiencies in law and governance. The DR process is designed to address non-compliance with the P&C&I and not just the law. Suspension of a complaint to await a court decision would only be acceptable in cases where a PfA complaint was only about illegality. 2.11 It should not be the sole discretion of FSC to decide if alternative dispute resolution is suitable or not. Communities too have the right to decide that such a process is not working and decide to end it.

Neither support nor oppose	The information provided by the complainant, if duly substantiated, covered all the legal precepts, it should exempt FSC from the investigation. The key lies in the evaluation of the submitted evidence
Neither support nor oppose	FSC should have a solid foundation to be able to move directly to decision making without further investigation while keeping the principle of fairness and inclusivity. Current proposal allow this move only 'In case the substantiated information provided by the complainant is regarded as sufficient (2.10)'. We suggest the definitions of substantial information and sufficient to be more concise, and to consider using a set of criteria to determine substantial information. Please also provide clarity with regards to the difference between substantial information and substantiated information. We also suggest for FSC to move directly to decision making only when there are legal proceedings. In the case where an investigation process has already been carried out and completed, or is in progress, by legal authorities, there is no need for FSC to install an investigation process.
Neither support nor oppose	While I fully support the approach by FSC, I think there is a need to clarify this. Many entities attempt to tarnish the image of organisations through provision of "evidence" of non-compliance. However, where this is investigated it is found that the evidence has been manipulated. FSC needs to ensure that it cannot be misled by "manipulated evidence".
Neither support nor oppose	If with regards to a decision to disassociate due to clear evidence of violation, then we support because this will save time and resource and protect FSC from reputational risks. If with regards to a decision not to disassociate, then we would question the decision depending on the violations alleged and the evidence used by FSC, for example, if the complaint is about illegal practices but official legal proceedings judge that there was no illegal activity. We should point out that legal proceedings in high risk countries, where the complaints are originating, are not conducted in a fair, just and robust manner and may legalize illegal activities. Also, FSC P&C and PfA are both beyond legality. In either cases, it will be good to clarify who from FSC is in this process: BoD?, Director?, Dispute Resolution Manager? Or the Panel?. How is the complainant involved in this decision making?
Support	
Support	If "sufficient" evidence is available then, by definition, this should be "sufficient" to take this forward.
Support	There is no need for FSC to install an investigation process when it has already been carried out and completed, or is in progress, by legal authorities.
Support	Support in principle, meanwhile this could accelerate the disassociation process, reduce costs and immediately deal with remedy actions. However, there is no understanding as to why it has been included in point 2.10 that FSC cannot initiate an investigation due to there being an "investigation by authorities, or any other active official process", first of all because it is now known whether these processes follow a correct, equitable and fair procedure, and if all the aspects that FSC should look at to settle these cases are being taken into consideration; therefore, that is not acceptable and should be deleted or revised, in other words, these investigations could be used as a further source of information. This along with the respective correction should be inserted into another point.

Support	support the aim to use such such information to speed-up the whole process
Support	Good addition, but official legal processes may take years, thus "FSC shall wait" to be replaced by "FSC could wait"
Support	I support this decision that will increase efficiency in certain cases. However, it might be a dangerous path for FSC to take, especially in countries where the rule of law do not apply correctly.
Support	Depending by the Country official investigations can take years. In the case of serious allegations, it should be decided in advance whether a separate investigation will be conducted by FSC. The "shall" should be replaced by "could"
Support	Of course, if there is evidence why not act?
Support	There is no need for FSC to install an investigation process when it has already been carried out and completed, or is in progress, by legal authorities.
Support	There is no need for FSC to install an investigation process when it has already been carried out and completed, or is in progress, by legal authorities.
Support	I would support it if "sufficient evidence", is clearly outlined.
Support	If there is sufficient evidence (rule of certainty), the decision should be taken immediately.
Support	Additional investigations are not necessary when the organization is proven guilty by a legal authority. All other situations need a complete investigation.
Support	
Strongly support	
Strongly support	It has been a feature of dealing with complaints, whatever the weight of evidence, in a time-consuming and costly process which sometimes seems never ending! If a serious violation is verified, this should result in immediate disassociation.
Strongly support	time-consuming and costly investigations when there is sufficient evidence available is not needed.
Strongly support	The second part of clause 2.10 which states that FSC 'shall' wait for the conclusion of such process should be modified. The 'shall' must be converted to a 'should' and then a time limit should be placed on the duration of such official processes. In the case of BILT official processes had been going on for many years with multiple appeals at all levels. I would suggest a time limit of one year from the receipt of the complaint before an independent FSC investigation is launched.

Strongly support	Because if the substantial information holds evidences of major violations, the further investigation is superfluous.
Strongly support	FSC members and certificate holders violating PfA should automatically result in disassociation. Disassociation of FSC members and certificate holders violating PfA is key to the credibility of FSC. Decisions to disassociate should be procedural and not a political process by the FSC international board. The procedure should not offer exceptions in response to legal threats/SLAPPs against the FSC organization.
Strongly support	Systemic or long term violations that have the supporting evidence need to be dealt with swiftly, especially when other methods of resolution are evident, and have not been successful.
Strongly support	If there is sufficient evidence it's better to finalise the case and have time for other complaints.

- **Do you have any further comments on this section?**

There needs to be a consultation and / or study done by FSC into ADR so we can learn the lessons from outside FSC on what works in other sectors/ business environments. Let's not re-invent the wheel.
A better explanation of how "FSC may decide" is needed. At what level?
Measures should be taken to avoid receiving complaints or half-baked allegations due to political reasons or influenced by third parties with not very transparent interests. It is important to manage the process with total confidentiality so as to avoid premature dissemination on the Internet or media which can confuse society.
There needs to be some assessment of the costs involved which FSC has to incur. In some cases, a request for a financial contribution from the complainant may help reduce frivolous complaints although FSC should always have the option of continuing if the complaint is substantially justified. Any request to make a financial contribution should never disqualify any legitimate organisation from complaining.
2.11 If the complaint* cannot be resolved through alternative dispute resolution* techniques to the satisfaction of FSC, the complaint* may be accepted provided that: I. all required information in the complaint* submission form is provided; II. there is substantial information* to warrant a full evaluation; and III. the complaint* falls within the scope of the FSC Policy for Association. In general, this section gives a certificate holder and/or CB more rights to the certificate than the stakeholders. It should be the certificate holder and or CB that can demonstrate their commitment to the values and principles of FSC not like here the otherway around.
Support the transparency provided under 2.13
2.12. Once established that "The decision to accept or reject the complaint shall be communicated to the complainant and defendant", FSC must stipulate a deadline for doing this 2.13 A public announcement on the acceptance of a complaint is valid, based on FSC principles of inclusion and democracy. However, this is a risky measure, as the announcement will be made before the company's guilt or innocence is defined. Thus, it is essential to determine content and limits for this announcement, in order to clarify that it should not contain any details about the focus and evidences of the investigative process, under penalty of unfairly damage companies' image. It is also important to restrict the publicity that the complainant can give on the topic. This is a very critical point in the procedure and needs to be much more detailed. 2.14.

Regarding the investigation timeline established by FSC, it is important to submit it to consensus with the parties, since the longer the company remains "under investigation", bigger will be the damage on its reputation.
2.11.I The complaints form should appear as an annex in this procedure
2.13 A public announcement on the acceptance of a complaint is valid, based on FSC principles of inclusion and democracy. However, this is a risky measure, as the announcement will be made before the company's guilt or innocence is defined. Thus, it is essential to determine content and limits for this announcement, in order to clarify that it should not contain any details about the focus and evidences of the investigative process, under penalty of unfairly damage companies' image. It is also important to restrict the publicity that the complainant can give on the topic. This is a very critical point in the procedure and needs to be much more detailed.
even if a court trail finds the defendant not guilty they can still violate FSCs PfA! It must be clear that waiting for a trail provides relevant insights for the investigation towards PfA but FSCs independent investigation is still needed. A timeline for the end of trail must be available. In some countries a formal court trail takes its time over yours. There must be a clear time frame how long FSC will wait until it will start an investigation without waiting for the completion of such trails. For example a maximum of two years is appropriate. At countries with high corrupted legal system FSC still does its own investigation, this should depend on the Corruption Perceptions Index (CPI) of Transparency International.
Pls, see above, about 2.9, 2.10 and 2.11
Regarding Clause 2.12 and 2.13, WWF recommends FSC to also publish its decision to reject the complaint and provide rationale and documentation. We recommend FSC to come up with more details of ADRs that FSC support, learning from real case examples, best practices etc. and clearly define FSC's role and how to incorporate the ADR requirements within the Generic Reassociation Roadmap or any other relevant procedure.
The dialogue process could be better defined with, for example, the need for the mediator to be free of COI and to be appointed by FSC at FSC's discretion (adding an approval process from parties at this stage might not be efficient).
2.12. Once established that "The decision to accept or reject the complaint shall be communicated to the complainant and defendant", FSC must stipulate a deadline for doing this. 2.13 A public announcement on the acceptance of a complaint is valid, based on FSC principles of inclusion and democracy. However, this is a risky measure, as the announcement will be made before the company's guilt or innocence is defined. Thus, it is essential to determine content and limits for this announcement, in order to clarify that it should not contain any details about the focus and evidences of the investigative process, under penalty of unfairly damage companies' image. It is also important to restrict the publicity that the complainant can give on the topic. This is a very critical point in the procedure and needs to be much more detailed. 2.14. Regarding the investigation timeline established by FSC, it is important to submit it to consensus with the parties, since the longer the company remains "under investigation", bigger will be the damage on its reputation.
2.12. Once established that "The decision to accept or reject the complaint shall be communicated to the complainant and defendant", FSC must stipulate a deadline for doing this. 2.13 A public announcement on the acceptance of a complaint is valid, based on FSC principles of inclusion and democracy. However, this is a risky measure, as the announcement will be made before the company's guilt or innocence is defined. Thus, it is essential to determine content and limits for this announcement, in order to clarify that it should not contain any details about the focus and evidences of the investigative process, under penalty of unfairly damage companies' image. It is also important to restrict the publicity that the complainant can give on the topic. This is a very critical point in the procedure and needs to be much more detailed. 2.14.

Regarding the investigation timeline established by FSC, it is important to submit it to consensus with the parties, since the longer the company remains "under investigation", bigger will be the damage on its reputation.
- 2.11: Satisfaction of FSC is not enough, the text should read: If the complaint cannot be resolved through alternative dispute resolution techniques to the satisfaction of FSC, complainant and defendant... - 2.13: Public announcement should be made on FSC website.
- 2.11: Satisfaction of FSC is not enough, the text should read: If the complaint cannot be resolved through alternative dispute resolution techniques to the satisfaction of FSC, complainant and defendant... - 2.13: Public announcement should be made on FSC website.
2.11 It is a bit arrogant that only FSC's satisfaction is enough. The text should say e.g.: If the complaint cannot be resolved through alternative dispute resolution processes to the satisfaction of FSC, the complainant and the defendant... 2.13 It should be stated clearly that the public announcement is made on FSC website.
2.12 - Please, define a deadline for each step of the process. How much time FSC have to accept or reject a complaint? How long can FSC take to inform this decision to the parties? 2.13 - Although a public announcement on the acceptance of a complaint ensures transparency, it can be risky because the organization has been still not proven guilty. Therefore, it is important to be very precise on the content of this announcement to avoid as much as possible any reputational damage for organizations. It is a matter of etic, once the investigation is still not completed. This announcement shall be simple in terms of details and shall be made by e-mail only to members (not on FSC's website). This point is critical and needs a careful treatment. 2.14 - The timeline needs to be agreed upon by the parties. The longer the organization remains under investigation, the bigger the reputational damage.
Should a public announcement be made after a complaint is accepted or after a decision of guilt has been made. What if the defendant is not guilty. Their reputation could be at risk even if they have done nothing against the policy of association.
Clause 2.10 - FSC absolutely should not wait for finalization of legal processes unless the case is solely about illegality (RAN point 6). In some countries, no penalty on conviction can be imposed until after the finalisation of all appeals in law courts, and this can take years and decades, meaning that poor people in particular may never see implementation of legal justice.
Clause 2.14 – FSC should set timelines to ensure that no party can drag out the solution of the complaint process

Investigation

3.1 An investigator (or team of investigators) shall be assigned by FSC, to conduct an in-depth investigation of the alleged violation(s). Depending on the case, the investigator(s) may be composed of an expert consultant or a team of consultants. See Annex 2 for the Investigator Terms of Reference.

3.2 The role of the investigator(s) is to gather, examine and analyze evidence as to whether the organization is in violation of the FSC Policy for Association, evaluating all aspects of the issue through diverse means. The investigator(s) shall:

- a) Review all relevant information gathered through certification reports, the formal complaint submission, and any other evidence provided and/or available.
- b) Contact the parties to request additional information (if needed) and to ascertain understanding their perspectives.
- c) Contact third parties, as necessary. Interviews are conducted with consideration of interviewee safety, particularly to vulnerable groups.
- d) Verify all information, as possible, through field visits, cross-checking of information, technical or scientific review, GIS data, and other means.
- e) Maintain ongoing communication with FSC, providing updates to designated FSC staff.

NOTE: The role of the investigator(s) is not to act as a mediator.

3.3 If new information arises during the investigation that was not part of the original complaint yet points to a possible violation of the FSC Policy for Association, FSC may include it in the investigation.

3.4 The complainant and defendant shall be requested to agree with the selection of the investigator(s) and shall be given maximum of 10 (ten) business days to respond. An objection shall be based on valid reasons, such as conflict of interest.

3.5 FSC shall make the final decision on any objection by the complainant or defendant. If the objection is honored, another investigator is selected.

3.6 FSC may also seek advice from the decision panel (see chapter 4 and Annex 2) in selecting the investigator(s).

3.7 The scale of the investigation shall be based on the complexity of and potential risk presented by the case.

3.8 The investigator(s) shall develop an investigation report that describes the findings of the investigation.

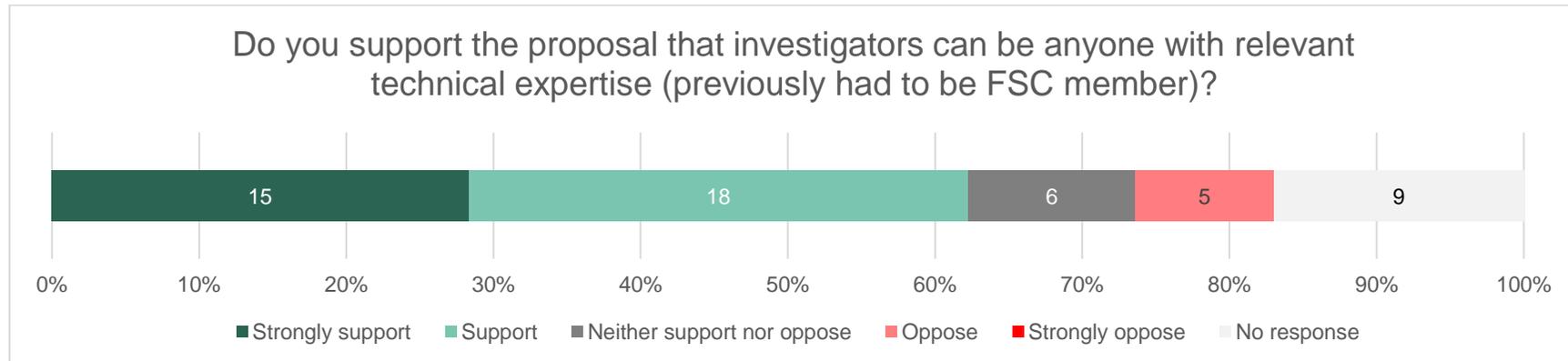
3.9 The investigator(s) may recommend in the report that FSC seek resolution of the issue with the parties without moving to decision-making.

Verification of Findings

3.10 The defendant shall be provided with a copy of the investigation report and the complainant with a summary of the report, with confidential information removed, at the discretion of FSC. They are given a maximum of 10 (ten) business days to provide a response to the findings. They shall keep this report confidential.

Responses:

- Do you support the proposal that investigators can be anyone with relevant technical expertise (previously had to be FSC member)?
- Please briefly explain your rationale.



Oppose	Investigators must be independent. In principle, there should be maximum transparency and the report of the investigators should be available for both complainant and defendant in full. Only in exceptional circumstances some confidential information could be stripped.
Oppose	FSC has been creating documents with the recurring need to “hire third parties (consultants)”, increasing costs and complexities. We consider to be valid an evaluation about the possibility of FSC itself assumes this investigator responsibility.

Oppose	opposition limited to point 3.10: 3.10) the defendant (i.e. the company supposedly violating the FSC rules) has the right to review the full investigation report, while the complainant would receive just a summary. This is an unfair treatment giving preference to (likely unscrupulous) companies over affected stakeholders, which are often already disadvantaged towards the company.
Oppose	FSC has been creating documents with the recurring need to "hire third parties (consultants)", increasing costs and complexities. We consider to be valid an evaluation about the possibility of FSC itself assumes this investigator responsibility.
Oppose	Please, make an analysis to check if FSC itself could take the investigator's role. FSC has been demanding third parties (consultants) involvement in several standards, which increases costs and complexity.
Neither support nor oppose	It is important that for these cases an external FSC investigator is named, that the conflicts of interest are specified in the best possible way, which should be demonstrable.
Neither support nor oppose	Investigator need to be independent not only technical expert. Sometimes technical investigation ignore the bigger picture. Panel approach more benefits.
Neither support nor oppose	This question is ambiguous. Does it mean that investigators are not from the organization? or only past FSC members can be investigators? What exactly do you mean with "anyone with relevant expertise"? staff? consultants? past members only?
Neither support nor oppose	
Neither support nor oppose	I agree with the relevant technical expertise, but believe the need to select from FSC members or previous members will limit the field.
Neither support nor oppose	Having an investigator from FSC/previous FSC member could be an easiness as they might be familiarized with system within FSC, however, other individual with strong relevant technical expertise outside previous FSC member can also be a good source to help with the process/investigation.
Support	
Support	The most important point is to know the suitability of the investigator. If that aspect has been covered, there would be no drawbacks.
Support	By limiting ourselves to members with relevant expertise, there is a risk that we rely on the same individuals or do not have enough individuals to meet the criteria
Support	We should not exclude FSC members from being selected as investigators where they have relevant expertise.
Support	Undertaking an investigation requires significant amount of time and effort. As such, to engage independent investigators to review, evaluate and verify information related to the lodged complaint would enable FSC to achieve the objectives of creating a procedure that is faster and cost sustainable.
Support	it make sense to have the best available experts as investigator no matter if they are members.
Support	Such an investigation is very difficult, and we need investigators who are independent, without a conflict of interest. Often, may be hard to find appropriate investigator within FSC Members.

Support	Yes, this will provide the opportunity for FSC to find the most meaningful investigators for situation.
Support	Undertaking an investigation requires significant amount of time and efforts. as such, to engage independent investigators to review, evaluate and verify information related to the lodged complaint would enable FSC's to achieve the objectives of creating a procedure that is faster and cost sustainable.
Support	As long as they are familiar with the scope, policies, and procedures, and have the relative level of expertise. It can also be beneficial as the could be viewed as more of an independent investigator, rather than one who has a bias for the FSC organization specifically.
Support	There are places, including countries, where there are no FSC members but they do have consultants with technical experience, with no conflicts of interest and technical independence, who could conduct the investigations (3.2) and give FSC the necessary evidence (rule of certainty) to proceed.
Support	
Support	
Support	In my opinion, it could be anyone with the technical knowledge, as long as they are not a stakeholder.
Support	
Support	
Support	
Support	Too limiting - need rather simply people with the relevant expertise and experience.
Strongly support	relevant expertise must always take precedence over a candidate's chosen affiliations! see comment below I support the inclusion of a specific clause that states this explicitly.
Strongly support	Relevant expertise is clearly required and this is not necessarily available within the membership, especially if fraud/corruption is involved. (Note: there may be instances where allegations are of actions which are not specified in the PfA as violations, including corruption, and so the PfA itself needs to be revised).
Strongly support	if for instance there is an allegation of violation of the ILO core conventions, the ILO can provide technical support because they have the expertise on this that except for the unions no other FSC member has.
Strongly support	Absolutely, FSC has to have access to the best person(s) for the job, regardless of their membership.
Strongly support	It is pertinent and positive that the investigator and the members of the investigation team are not necessarily members of FSC, but they should know what FSC is as well as having the necessary experience and expertise.
Strongly support	Expertise is more important than being member.
Strongly support	The key should be technical expertise in the relevant field
Strongly support	support on this issue is welcomed
Strongly support	This could avoid bias.

Strongly support	The procedure needs to specify that the Complaints Panel as defined in the current procedure FSC-PRO-01-009 (V3-0) is independent of FSC. Investigations into allegations should be conducted without delay and in a fair manner, by independent and professional parties with relevant experience and free of any conflicts of interest. The procedure should also clarify that the recommendations made by the independent Complaints Panels should be respected by FSC, in particular the FSC international board. Other external processes may inform the investigations (court cases etc), but not delay them (otherwise it is enough to hire a lawyer to indefinitely postpone any disassociation). The process must be designed to address non-compliance with the P & C & I and not just the law. Suspension of a complaint to await a court decision would only be acceptable in cases where a PfA complaint was only about illegality.
Strongly support	It should be someone good at investigations and doing the job!
Strongly support	- Objectivity and professionalism are the key prerequisites for a credible complaint process and it should not matter whether these are provided by FSC members or non-members. In addition to additional expertise, non-members can also have less FSC-related interests and more objective and neutral view on complaints, so their use is well-justified in the new rules. - In addition of Conflict of interest also independence more broadly should be required from the investigator. 3.4. should be amended to cover this, i.e. An objection shall be based on valid reasons, such as conflict of interest and neutrality with regard to the case at hand.
Strongly support	- Objectivity and professionalism are the key prerequisites for a credible complaint process and it should not matter whether these are provided by FSC members or non-members. In addition to additional expertise, non-members can also have less FSC-related interests and more objective and neutral view on complaints, so their use is well-justified in the new rules. - In addition of Conflict of interest also independence more broadly should be required from the investigator. 3.4. should be amended to cover this, i.e. An objection shall be based on valid reasons, such as conflict of interest and neutrality with regard to the case at hand.
Strongly support	We support strongly that investigators can be either FSC members or non-members. The key qualifications are objectivity and professionalism. In addition to additional expertise, non-members can also have less FSC-related interests and more objective and neutral view on complaints, so their use is well-justified in the new rules. - In addition of Conflict of interest also independence more broadly should be required from the investigator. 3.4. should be amended to cover this, i.e. An objection shall be based on valid reasons, such as conflict of interest and neutrality with regard to the case at hand.
Strongly support	Good competence may be available even if the person is not a FSC member

• **Do you have any further comments on this section?**

3.10 Why should the defendant be privileged in 3.10 with sight of the full report but not the communities' whose rights have been violated? This is contrary to basic principles of justice that information must be shared with both parties equally. Is FSC designed mainly to support companies or does it support 'shared values'? The current 3.10 suggests an inherent bias in FSC thinking.

3.8: the investigator shall "prepare"... not "develop" (editorial comment) 3.9: this is a very suggestive clause - I understand its pertinence, but to include it in a Policy document undermines its strength.
3.10 The defendant* shall be provided with a copy of the investigation report and the complainant* with a summary of the report, with confidential information removed, at the discretion of FSC. They are given a maximum of 10 (ten) business days to provide a response to the findings. They shall keep this report confidential. if complainant is committed to confidentiality why is he not provided with the full report as well? again an inequality of "arms" putting the stakeholder at a severe disadvantage. the complainant has the right to have acces to the same information as the defendant
3.11 perhaps we should clarify what we mean by concealing of evidence and specifically include witness tampering or witness intimidation in a definition or guidance.
3.2.b. To contact the parties should not be optional, but mandatory. Especially regarding the accused, it must be kept informed and have guaranteed the right to present evidence for his defense. 3.7. Since any investigation has the potential to damage comp any's image, we disagree that it's scale may vary according to case "complexity". The investigative process should always follow the same rite, especially because this procedure does not define any criteria to differentiate complexities. Regardless of the apparent complexity of the investigation, it should always be complete and conclusive. 3.8. This item refers to the investigator's obligations and, therefore, could be allocated in item 3.2.
3.3. Ratifying in case information emerges that was not part of the original complaint should be taken into account. 3.4 A justification for objecting to the investigator should be lack of knowledge and expertise in social issues. 3.5 Clarify who and/or what FSC channel decides on the objection. Furthermore, FSC should have clear and appropriate criteria to exercise its "discretion". 3.9 It should be clarified as it is confusing; it should be understood that investigators can only give recommendations. 3.10 It is not justified or acceptable that the full investigation report is only given to the defendant and not to the complainant. The latter is entitled to be familiar with the full report, and in case the complainant (as often happens) is not a member of the community, indigenou population, workers' association, it is absolutely necessary that they have access to the full form. Certain "confidential information" is mentioned here at the discretion of FSC; this could cause mistrust and even be interpreted in a distorted way by the complainant, which should be avoided. 3.11 It is correct, but keeping 3:10 as it is would very likely encourage this evidence to be hidden.
3.7 We agree that the scale of investigation depends on the case complexity and potential risk. Therefore its crucial for FSC to at least provide a matrix of guidance on respond timeline based on the severity of the issue; providing clariy and transparency to all stakeholders about how this procedure is implemented
The selection of the investigators has to be made or approved by a chamber balanced group (possible BOD). It must be made transparent how investigators are chosen by FSC.
3.4. In case of whistleblowing investigation prior to an open/ official complaint mechanism (see comment point 1.1), the investigator shall be only agreed by FSC and complainant (as the defendant does not know about the investigation) General: There should be a transparent database opened by FSC to register/ apply for being investigation expert.
Fully agree on 3.11
The Complaint Panel as defined in the existing procedure has worked well so far and we don't see the need to exchange that with Investigation and Decision Panel as in this draft. It is not clear at which point of the process the panel is appointed, but this would remove a lot of discretionary risks. Is it at any time a complaint is received by a complainant (2.1) or when FSC considers whether starting an investigation (2.3)? 3.4 - We do

<p>not think that the Defendant should be requested to agree with the selection of investigators. They should be requested to comment. 3.6: Suggestion: change “seek advice” by “SHALL seek advice” 3.9. WWF does not support this clause as it may lead to subjectivity in handing cases. There should be a decision, whether there was a violation or not, and if yes, disassociation is the only consequence. 3.10: Suggestion: extend time for comments from 10 to 20 days. In fact, in some cases this may require considerable internal consultations. We recommend an additional Clause that: The investigation report should be published in full, without disclosing confidential information or information which could harm stakeholders.</p>
<p>3.4. In case of whistleblowing investigation prior to an open/ official complaint mechanism (see comment point 1.1), the investigator shall be only agreed by FSC and complainant (as the defendant does not know about the investigation)</p>
<p>3.2.b. To contact the parties should not be optional, but mandatory. Especially regarding the accused, it must be kept informed and have guaranteed the right to present evidence for his defense. 3.7. Since any investigation has the potential to damage company's image, we disagree that it's scale may vary according to case "complexity". The investigative process should always follow the same rite, especially because this procedure does not define any criteria to differentiate complexities. Regardless of the apparent complexity of the investigation, it should always be complete and conclusive. 3.8. This item refers to the investigator's obligations and, therefore, could be allocated in item 3.2.</p>
<p>Also 3.3 (see comment on questions 1) that if new information arises FSC "shall" include it in the investigation. Shows that due diligence is being done, rather than discretionary avoidance.</p>
<p>3.11 Organization, should be associated organization or even better defendant.</p>
<p>It is not clear if an investigator is someone from within FSC or would this be an outsourced service. Suggest to clarify this point.</p>
<p>- 3.10: There is no reference in the document to the right of the defendant to see the original complaint. This should be added.</p>
<p>3.11 Should read differently : “Deliberate attempts by the organization, the complainant, a stakeholder, or any other relevant party to conceal, misrepresent, or falsify evidence related to the violation under investigation is grounds for immediate dropping of the complaint, stopping of the evaluation, and coming to a decision to maintain or grant association, or to disassociate.”</p>
<p>- 3.10: There is no reference in the document to the right of the defendant to see the original complaint. This should be added.</p>
<p>3.10 The defendant should always have the right to see the original complaint (respecting confidential information). This view should be added.</p>
<p>3.2.b - A contact with the parties should be mandatory, not optional. In especial the defendant needs to have the chance to present its perspective and submit evidence. 3.7 - The investigation shall be the same for any case (that is why this procedure exists!). Furthermore, the procedure has not a definition of criteria for complexity to guide this decision. 3.8 - This information should be placed on item 3.2 since it is about the investigator's responsibility.</p>
<p>Section 3.10 - We do not agree that confidential information is removed solely at the discretion of FSC. If disclosed, the parties should have signed a confidentiality agreement first. Add: “Confidential information shall not be disclosed unless the appropriate parties have first signed a confidentiality agreement.” Section 3.11 - As worded, it is only the organization that is held accountable, and only for concealing evidence. This section should be expanded so that deliberate attempts by any relevant party to the investigation to conceal, misrepresent, or falsify evidence should be grounds for consideration of dropping the complaint, stopping the evaluation, maintaining or granting association, or disassociation. Reword the entire section to read: “Deliberate attempts by the organization, the complainant, a stakeholder, or any other relevant party to</p>

conceal, misrepresent, or falsify evidence related to the violation under investigation is grounds for immediate dropping of the complaint, stopping of the evaluation, and coming to a decision to maintain or grant association, or to disassociate."
Similar to previous comment, some stakeholders cannot respond in 10 days. Some allowance for people that don't have computers or speak English / Spanish should be made. People whose rights / land issues, etc. are violated have a reasonably high chance of being rural and potentially disconnected from modern technology. These are people that rely on natural resources, should be protected, and should have a clear path to lodging complaints.
section 3.3, should read "shall include it in the investigation." rather than "may" include it in the investigation.
<p>Clause 3.3 – expanded scopes should be communicated to all parties.</p> <p>Clauses 3.4, 4.2 and 4.3 – use the same kind of language for allowable challenge to Investigator and Decision Panel.</p> <p>Clauses 3.7 and 3.8 – time deadlines should be agreed at an early stage in the complaints process.</p> <p>Clause 3.9 – the meaning is not clear.</p>
<p>New approach with investigators - inputs to their role and TOR (section 3). An expert consultant or team will depend on the situation.</p> <p>Verification of findings – the complainant does not received the full investigation report, only a summary, whereas the defendant does (3.1)</p> <p>Withholding information from investigations is only a consideration of disassociation, not a threshold for immediate disassociation (3.11): Why not?</p>
Not clear who drafts and who makes the decision on the TOR or scope of an investigation into a complaint. This needs to be transparent to the complainant. 3.10 Why should the defendant be privileged in 3.10 with sight of the full report but not the complainant or the communities' whose rights have been violated? This is contrary to basic principles of justice that information must be shared with both parties equally. Is FSC designed mainly to support companies or does it support 'shared values'? The current 3.10 suggests an inherent bias in FSC thinking.

Decision Making

4.1 FSC shall form a decision panel for each case that is investigated or for which sufficient information allowing decision making is provided by the complaint (see clause 2.10). See Annex 2 section B. Decision Panel for Terms of Reference.

4.2 The composition of the decision panel shall be presented to the complainant and the defendant for consultation with regards to conflict of interest.

4.3 The complainant and defendant shall have the right to object to the selection of a decision panel participant, if there is a perceived conflict of interest. They are given a maximum of 10 (ten) business days, after notification of the decision panel participants, to raise an objection.

4.4 FSC shall make the final decision on any objection by the complainant or defendant. If the objection is honored, another panel candidate is called to join the panel.

4.5 The panel will evaluate the case based on the provided information, investigation report(s) and any response provided by the defendant, and take decisions on

- a) maintaining association without conditions, or
- b) maintaining association with related temporary conditions.

4.6 In case the panel evaluates that FSC should resolve to disassociate from the organization, the panel shall recommend to the FSC Board of Directors

- a) a decision to disassociate and
- b) main conditions to fulfil to end disassociation.

4.7 The standard of certainty “clear and convincing evidence” should be used as the threshold for making decisions on whether there is a violation of the FSC Policy for Association justifying disassociation. This standard is met when the certainty of the violation is substantially more probable to be true than not (see Annex 1).

NOTE: See Annex 3 for guidance on determining the recommended action.

4.8 The final decision shall be binding for all parties involved and may not be appealed.

Communication of the Decision

4.9 FSC shall communicate the decision to the parties.

4.10 A public announcement shall be made by FSC for any decision taken by the decision panel or FSC Board of Directors concerning cases initiated by formal complaint.

4.11 For evaluations initiated by FSC, a public announcement shall be made if the decision is taken to disassociate from the organization or to assign temporary conditions or sanctions.

4.12 The announcement and a summary of the investigation report shall be published on the FSC website.

Temporary Conditions and Sanctions or Disassociation

4.13 In case of setting temporary conditions and sanctions:

- a) The organization shall be required to implement the conditions within the timeframe specified in the decision.
- b) Achievement of these conditions will be monitored by an independent third party, appointed by FSC; deviations shall be reported to FSC.
- c) The decision to disassociate may be taken if the conditions are not satisfactorily fulfilled within the stated timeframe.

4.14 In case of disassociation:

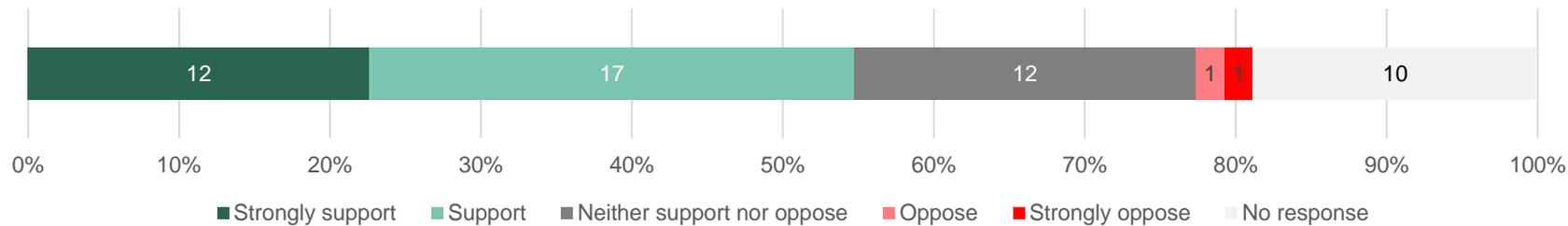
- a) Action to terminate the contractual relationship shall normally be taken within 30 days after public communication of the decision.
- b) The disassociated organization interested in ending disassociation with FSC shall request to enter into a process for ending the disassociation.

NOTE: See Annex 4 for a general description of the process for ending disassociation, including pre-conditions that must be fulfilled in order to initiate the process.

Responses:

- **Do you support the proposal to create a new independent panel to take decisions and make recommendations?**
- **Please briefly explain your rationale.**

Do you support the proposal to create a new independent panel to take decisions and make recommendations?



Strongly oppose	why a separate body to make a decision on maintaining associations let the board or a committee of the board make all the decisions not only to disassociate. again the "right to be associated" is not stronger for a company whether it is a certificate holder or CB than for any other member. favoritism of corporates will be the downfall of FSC
Oppose	The idea of independent panel may be a good one. However, WWF thinks the final decision shall still be made by the BoD. WWF also thinks that there is no need for a new "Investigation and Decision Panels" to be developed as suggested by this draft procedure. Based on our experience and information, we think that the current form of Complaint Panel as defined by FSC-PRO-01-009 (V3-0) works well. To make the procedure more robust, we suggest that: 1. The procedure needs to specify that the Complaints Panel as defined in the current procedure FSC-PRO-01-009 (V3-0) is independent of FSC. 2. Investigations into allegations should be conducted without delay and in a fair manner, by independent and professional parties with relevant experience and free of any conflicts of interest. 3. The procedure should also clarify that the recommendations made by the independent Complaints Panels and its findings and recommendations based on facts should be properly considered by FSC, in particular the FSC International Board, in taking a final decision. As we answered to the previous question, we recommend FSC to publish the full investigation report by the Complaint Panel including the Panel recommendations, irrespective there were different opinions or discordances between the Panel findings and recommendations and the final BoD decisions. If there are differences, then the BoD should take the responsibility to clearly explain the rationale. 4.1.3: Suggestion: the time frame should not exceed 12 months.
Neither support nor oppose	Until and unless I know what ADR will entail I don't feel I can support this policy

Neither support nor oppose	The panel must be independent. It must be better stated that the Board of Directors normally will follow the recommendations of the independent panel. If otherwise, then the Board must provide a statement and explanation to FSC' s membership why.
Neither support nor oppose	This is good in principle. It is going to depend on the strength of your panel members though. If you get panel members that don't have the time or interest in truly reviewing the issue, or come into the process with a preformed opinion, then the panel will do more harm than good. Because it is a pro bono position, you have a greater risk of cultural warriors joining to press their viewpoint rather than getting to the bottom of the actual situation. I suggest creating a stipend at a minimum. The reputation of FSC is no time to be a cheapskate.
Neither support nor oppose	Is an additional panel not too much effort, who would decide instead?
Neither support nor oppose	
Neither support nor oppose	Not sure of the rationale behind this decision, and have no personal relatable reference point to make a decision on this point, other than speculation. Though possibly could add additional credibility to FSC by removing organizational bias.
Neither support nor oppose	Would it not be good to have a panel working for some years and getting experienced? Giving them the possibility to request specialists in a certain area to be co-opted.
Neither support nor oppose	- Strongly support the proposal to establish a pool of experts and the selection of an independent panel from them on case by case basis. - Strongly oppose the proposed right of the expert panel to make decisions. The decision to maintain association is also an important decision and the current proposal to shift that decision to the panel is problematic. Since the panel is an independent expert organ it should provide the information for an informed decision to be possible, but it should not be involved in decision making on maintaining association. The panel should have the role of making recommendations to the Board of Directors but should not make decisions itself.
Neither support nor oppose	- Strongly support the proposal to establish a pool of experts and the selection of an independent panel from them on case by case basis. - Strongly oppose the proposed right of the expert panel to make decisions. The decision to maintain association is also an important decision and the current proposal to shift that decision to the panel is problematic. Since the panel is an independent expert organ it should provide the information for an informed decision to be possible, but it should not be involved in decision making on maintaining association. The panel should have the role of making recommendations to the Board of Directors but should not make decisions itself.
Neither support nor oppose	
Neither support nor oppose	
Neither support nor oppose	Agree with the principle of an independent panel. Should be clear that members of FSC staff or boards should not be able to be on decision panels. A clause should be added that the FSC International Board shall accept the recommendation of the independent panel on disassociation in all cases except then there has been a procedural

	error or 'mis-carriage of justice', or extreme circumstances that prevent FSC from doing so. The power of the Board to overturn a decision of the independent panel should be limited. Regarding clause 4.5, the panel should only be able to make a decision on maintaining association if the PfA has not been breached. We cannot have decisions such as the initial Schweighofer one and the Korindo breaching the procedure.
Support	Transparency is clearly covered in point 4.3.
Support	If there is a "pre-selected" .pool of decision panel participants, with appropriate expertise, as proposed in Annex 2 this approach could expedite the process. .
Support	It is not clear if the decision panel will be composed of FSC members or of non FSC experts or a mixture of these. Are FSC members excluded?
Support	No Comments
Support	We support the use of an independent decision making panel and its responsibility for taking decisions on the PFA complaint. To shift the decision making from FSC to independent panel would allow FSC to be resource efficient while maintaining the process of evaluating PFA complaint to be fast especially noting that while the decision panel is formed when a case is investigated, there would already be a pool of panel candidates to select from.
Support	
Support	Undertaking an investigation requires significant amount of time and efforts. as such, to engage independent investigators to review, evaluate and verify information related to the lodged complaint would enable FSC's to achieve the objectives of creating a procedure that is faster and cost sustainable.
Support	The procedure needs to specify that the Complaints Panel as defined in the current procedure FSC-PRO-01-009 (V3-0) is independent of FSC. Investigations into allegations should be conducted without delay and in a fair manner, by independent and professional parties with relevant experience and free of any conflicts of interest. The procedure should also clarify that the recommendations made by the independent Complaints Panels should be respected by FSC, in particular the FSC international board. 4.5 Strongly disagree. This approach to maintain association of organizations that have violated he PfA is not acceptable. This approach has recently been trialed in an extremely unsuccessful way. For example, FSC's handling of the complaint raised against the Korindo Group, which risks setting a troubling precedent where normal procedure to disassociate when evidence proved violations had occurred, was not followed. The decision to maintain association of the Korindo Group on the basis of an assessment that an informal process could secure improvement and remedy is inconsistent with FSC procedures, and remains questionable given Korindo's public statements deny any need to remedy communities, and its litigation efforts against a number of organisations scrutinising the company's operations. Another approach is to delay investigations. This is also not supported. In the Djarum case, the decision not to appoint a formal complaints panel and now delay of any investigation at all results in a further deterioration of the credibility of the FSC system. 4.6 Agree on a). b. should not be designed only on a case by case basis. RAN is proposing

	that FSC should develop a stand-alone Conversion Restoration, Restitution and Remedy for Social Harm standard and for re-association to only occur once an audit shows the organization is operating in full compliance with the standard in addition to any case specific remedy or corrective actions identified via dialogue with affected parties. 4.7 disagree. 4.8 agreed. 4.9 agreed 5.0 agree
Support	
Support	I think it helps FSC to produce a fair and 'conflict of interest free' decision
Support	
Support	
Strongly support	
Strongly support	This would give an impression of objective neutrality.
Strongly support	Support is given to the existence of the panel but not necessarily what is proposed on decision-making.
Strongly support	
Strongly support	I think this is the right approach, I am just concerned whether FSC will be able to do this where the decision panel are voluntary. I like the concept of "clear and convincing evidence"
Strongly support	
Strongly support	This is a good way to improve the credibility of the process.
Strongly support	To be more impartial, it is better to have less direct relationship. The problem is that everything generates costs.
Strongly support	
Strongly support	Each case is generally unique in the context of the associated organization, therefore an independent panel that is not prejudiced and biased is required to make decisions and recommendations.
Strongly support	It has to be a case to case, industry to industry and region to region basis
Strongly support	
	The reports by the decision panels should be public. The decision panel or the dispute resolution team should be able to decide - based on facts - about disassociation or other conditions, based on point 4.7.* However, the

	decision should be appealed if key proven facts has not been taken into account. * this because the board, as it should, represent interests (and in some cases, may represent particular interests)
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- **Do you have any further comments on this section?**

The deadline for the complainant and defendant to raise an objection set at 10 days seems short for the defendant who is at a temporary disadvantage compared to the complainant. I reckon unify it at 20 days
Be careful with clause 4.5 as probation should no be an option in the case of serious verified violations. In fact, in my view probation should not be included as a supposed pathway to a remedy, it's more a means to postpone a decision and allow companies to continue as before. again remedy for the affected stakeholders is missing
4.5b), 4.11 and 4.13 Would the conditions always be temporary in nature?
4.6 Having separated out the investigative role and the decision making role it seems possible that some important information may fall through the cracks. The investigator(s) are not required to make any recommendations on conditions for re-association and are only required to provide evidence for violation and not specifically on the impacts of the violation. Without information on the impacts of the violation the decision panel will not be in a position to make equitable decisions regarding compensation and redress. 4.12 I also believe that more than just a summary of the report should be published. I am of course aware of problems arising from the threat of litigation but as far as I am aware this has occurred in a very limited number of cases
4.3. We suggest the unification of items 4.2 and 4.3, as the secon done is a repetition of the first, but more detailed. 4.5.b. We ask for clarification about the reasons why the conditions are “temporary” temporary”. Our understanding is that such conditions are precisely what corrects and guarantees the non recurrence of the com pany in violation of the association policy and, therefore, once removed, will lead to repetition of the problem. 4.8. We disagree on the impossibility of appealing the final decision, a fundamental resource of any democratic trial process. 4.12. We agree with the publication of the investigative result on FSC website, however, we believe that the publication of a summary gives exaggerated and unnecessary exposure to the investigated companies, making too difficult for them to resume its reputation and ente r on reassociation process. To ensure transparency, the detailed summary should be restricted to members and upon request. Otherwise, the risk of misuse of this report is increased. 4.13.a. About the mentioned timeframe, this procedure does not establish who is responsible for its creation. We suggest its inclusion in item 4.5.b, as an attribution of the decision panel, and in agreement with the organization. 4.13.b. The monitoring of the fulfillment of the conditions imposed by the decision panel could be carried out by the FSC itself. Since it is a process monitoring, there is no need to include a third party. This procedure already has too many third parties: mediation, investigation and monitoring of conditions
Asking just one question on the establishment of the panel is very limiting, and can even look like deviating attention from the most important points, such as, e.g., the point Temporary Conditions or Disassociation. 4.3 Objection by members of the panel should not just be supported by there being a conflict of interest, but also in failing to include a professional in the scope of social issues, and with knowledge of the context. 4.4. Same comment for 3.5. 4.5 It should not have this maintaining “association with related temporary conditions” if the violations are considered serious (for Cat 3, 4 and 5); and should simply not be accepted in the case of violations or social damage. So-called “probation” is very difficult to accept, as it is perceived as a deferment of the disassociation decision due to political criteria, threats, weakness, immediate economic factors, etc., and not really as a way of encouraging rectification and remedy. 4.6 It should be ensured in some way that the Board of

<p>Directors respects and follows the panel's recommendation with regard to disassociation; this, seemingly, does not always happen, and the process loses credibility as well as time and possibly costs; the Board of Directors should not take the decision on disassociation as there are also members who may have a conflict of interest. 4.8 This merits greater analysis, meanwhile the possibility of appeal cannot be restricted. It is wise to contemplate that possibility and for that reason to set out exact conditions in which it shall be included in the event that the defendant is the person who appeals, the costs that this appeal involves should be covered by the defendant.</p>
<p>4.8. We disagree on the impossibility of appealing the final decision, a fundamental resource of any democratic trial process. 4.12. We agree with the publication of the investigative result on FSC website, however, we believe that the publication of a summary gives exaggerated and unnecessary exposure to the investigated companies, making too difficult for them to resume its reputation and enter on reassociation process. To ensure transparency, the detailed summary should be restricted to members and upon request. Otherwise, the risk of misuse of this report is increased. 4.13.a. About the mentioned timeframe, this procedure does not establish who is responsible for its creation. We suggest its inclusion in item 4.5.b, as an attribution of the decision panel, and in agreement with the organization. 4.13.b. The monitoring of the fulfillment of the conditions imposed by the decision panel could be carried out by the investigator appointed to this case. This would remove additional time required to select and do conflict of interest check of new investigator as well as for the investigator to gain understanding of the background of such conditions to be monitored.</p>
<p>such a panel needs to have a chamber balanced backup. So the members didn't have to be members by a chamber but they need to be nominated/approved by a chamber.</p>
<p>The decision panel candidates should be transparent and open to application (not only picking by FSC). Pro-bono activity is a barrier for independent experts or NGOs and supports activities of lobbyist or industry. Should be reasonable paid work. Also, to make bribery unattractive.</p>
<p>Disassociation should apply to all branches of the company (and full disclosure of beneficial owners should be the first step before association - you need to know whom you are associating with). We have seen disassociated holdings still holding FSC certificates via controlled companies.</p>
<p>We want to see the procedure to set a clear timeline for FSC to initiate and terminate investigations and make a decision; to maintain timely public communication about the timing and any delay and reasons of why.</p>
<p>4.7 Considering the importance of this requirement, it would be good to change the "should" by a "shall". If not, it would be good to describe the situations allowing for different thresholds.</p>
<p>Independence of the Decision Panel shall be ensured. For example, it shall not be composed solely of representatives of the business section. This could cause more harm by understating issues. That the decision panel is on pro-bono voluntary basis could attract especially persons from the Business section</p>
<p>4.3. We suggest the unification of items 4.2 and 4.3, as the second one is a repetition of the first, but more detailed. 4.5.b. We ask for clarification about the reasons why the conditions are "temporary". Our understanding is that such conditions are precisely what corrects and guarantees the non-recurrence of the company in violation of the association policy and, therefore, once removed, will lead to repetition of the problem. 4.8. We disagree on the impossibility of appealing the final decision, a fundamental resource of any democratic trial process. 4.12. We agree with the publication of the investigative result on FSC website, however, we believe that the publication of a summary gives exaggerated and unnecessary exposure to the investigated companies, making too difficult for them to resume its reputation and enter on reassociation process. To ensure transparency, the detailed summary should be restricted to members and upon request. Otherwise, the risk of misuse of</p>

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<p>Finally, for FSC to implement such a credible procedure, we also recommend FSC to: 1. Ensure sufficient capacity of the Dispute Resolution Program team at the Secretariat, and the independent Complaint Panel appointed to handle PfA complaints, and give them a mandate to properly deal with complaints, proactive investigations and formulate decisions on disassociations where violations of the PfA are verified. 2. Ensure there is a robust mechanism to deal with threats of lawsuit from companies that were found to have violated the PfA and need to be disassociated, including considering establishing a ‘fighting fund’ to defend FSC’s brand and credibility.</p>
<p>4.3 Change they to complainant and defendant. It is short notice with 10 days if the complaint is raced by a group of people/ organisation which in remote areas, with bad internet and operating mainly in other languages than English.</p>
<p>4.7 The standard of certainty "clear and convincing evidence" SHALL...not SHOULD.</p>
<p>We support the idea of establishing a pool of experts and the selection of an independent panel from them on case by case basis. In addition, the qualification of an expert to be chosen to a case should be transparent and the selection should aim at neutrality and balance of different views. - We strongly feel that the panel of experts should not be a decision-making body in FSC. The panel of experts is an independent organ and should provide information to base an informed decision on. It could give recommendation to FSC but the decisions should always be made within FSC, by the the Board of Directors.</p>
<p>4.3 - Merge item 4.2 and 4.3 to avoid repetition 4.8 - Any trial process in a democratic context encompasses the possibility of appealing to a decision. 4.12 - Although we agree that the investigation results shall be communicated, we do not think the investigation summary should be made available. This exposure is unnecessary and can make it even more difficult for the company to recover its reputation after a process for ending dissociation. In order to ensure transparency and reduce the chances of misuse, the summary of the investigation can be made available upon request. 4.13.a - Who is in charge of setting the timeframe? The Decision Panel could be responsible for setting it together with the organization. 4.13.b - FSC itself could follow-up on the implementation of the conditions. A monitoring process does not require an independent third-party. Third parties cost money, reduce it to situations when it is really necessary.</p>

<p>Section 4.5 & 4.6 - Change these to indicate that decisions involving maintaining association with related temporary conditions or decisions involving disassociation must be unanimous among the panel members. Section 4.7 - Change this section to indicate that either the standards of "clear and convincing evidence" or "beyond reasonable doubt" shall be used, and that the standard of "preponderance of evidence" shall not be used.</p>
<p>It is not clear which body takes the final decision on maintaining association or disassociation as article 4.6 mentions that the decision panel recommends to the FSC Board of Directors. Article 4.10 provides the possibility that the decision panel takes the decision. The role of the FSC Board of Directors in decision making should be made more explicit. The complainant and defendant have the opportunity to comment on the investigation report (article 3.1), but only the response provided by the defendant is considered in the decision making process (article 4.5)? Article 4.5 lacks the option: c) disassociation.</p>
<p>I do not think that any part of the investigation or decision should be publically available if the finding was not to disassociate as the complaint was deemed to be unfounded.</p>
<p>Clauses 4.5 and 4.6 – combine these clauses, provide for further investigation, 4.6 (b) to include timeline for remediation of faults; see my point 1.8 above. Add provision for lesson-learning and its publication. Clause 4.7 and Annex 1 – agreed that the standard of certainty should be ‘clear and convincing evidence’, as FSC is a voluntary scheme and this is not an investigation into alleged criminality. Clause 4.10 – the Decision Panel advises the Board which endorses the recommendation and takes the final decision. Clause 4.10 should reiterate a prohibition on political considerations. Clause 4.11 – not clearly differentiated from clause 4.10. Clause 4.13 (c) - change ‘may’ to ‘must’. Let-outs and discretionary conditionalities make FSC Procedures unclear and unreliable.</p>
<p>Decision making – communication: I believe that the complainants should receive a full report of the decisions. They have put in all their (poor) resources and often personal commitments years on end. Their fight is against rich companies and in the case of Australia the Government. Also they may suffer from repercussions.</p>

Record-keeping

5.1 FSC shall maintain all relevant incoming and outgoing correspondence, reports, decisions, action plans and other information in electronic and/or hard copy for a minimum period of ten (10) years.

Responses:

- **Do you have any comments on this section?**

FSC should institutionalize learning and accessibility of knowledge about all PfA cases.
Presumably the record keeping will comply with GDPR
Important point. I would recommend that this is extended and that the information is permanently archived and made available to researchers after a suitably long period. I would recommend that all material is made available after 30 years and that this is included in the non-disclosure agreement.
It should be included either here or in the subheading referring to the investigation, the investigators may not use information on the case for other purposes, except with the prior authorization of FSC and the parties.
support!
The length of period depends on the deadline FSC gives the disassociated organization/affiliate groups to enter the reassociation process. Would they allow them to come back and request for entering the reassociation process 10 years after disassociation? 20 years? 30 years?
Everything is becoming increasingly complex.
Agreed
My thought is a lot of record keeping needs to be kept in perpetuity, like a cold case file. Especially when I think in terms of BC's old growth forests, and the fact that we've had extensive clear cutting happening for likely 15 years, but it wasn't really front and centre in everyone's scope, but it has come to the point that it's alarming suddenly, but it hasn't been sudden, it's ongoing, and has reached the point of no return so if there were files or any type of information needed for any type of litigation against the provincial government, we as indigenous people would like to have access to that in order to hold the responsible parties accountable. So yes, a minimum 10 years, but as a governing body, is the responsibility to maintain relevant record keeping, an "in perpetuity" requirement?
As much as possible, I think all records should be digitized. Further, all information should be hosted on a centralized app / platform.
A copy of this information should also be in the files of the investigated associated organization.
Clause 5.1 – records should be kept intact and accessible for 25 years, not 10. It is unfortunately clear that FSC's institutional memory has not been organised to make prior experience available to aid solution of new PfA cases, hence some repetition of kinds of cases.

10 years too short

Standard of Certainty

The standard of certainty is the degree of certainty applied to determine whether an allegation is defensible or not. In the context of the FSC Policy for Association, the standard of certainty is a threshold that the investigator(s) and decision panel consider when evaluating allegations to determine whether an organization is in violation of FSC Policy for Association, and therefore whether disassociation or temporary conditions and sanctions should be considered.

Overview of Standards of Certainty

The following is an overview of commonly used standards of certainty:

Preponderance of evidence

This standard is based on a balance of probabilities. The evidence available would be more likely to be true than not.

Clear and convincing evidence

This standard is higher than the preponderance of evidence. The evidence available must be substantially more probable to be true than not. There must be a firm conviction or belief that the organization is accountable for a violation of the FSC Policy for Association.

Beyond reasonable doubt

There must be proof of such a convincing character that there is no reasonable doubt in believing that the organization is accountable for a violation of the FSC Policy for Association. However, it does not mean an absolute certainty or no doubt.

With respect to the FSC Policy for Association, 'clear and convincing evidence' should be used as the standard of certainty in making decisions to disassociate from an organization.

Responses:

- **Do you have any comments on the standard of certainty used to guide decision making?**

Annex 1: clear & convincing evidence is not very clearly or convincingly articulated. I disagree with this 2nd tier can be easily differentiated from "beyond reasonable doubt".... I feel the 3 levels are a) preponderance of evidence - Beyond reasonable doubt - clear and convincing evidence! I further question the need for this Annex 1 - in my opinion, this only opens the topic up for debate and controversy.

Agree.

This is important if for no other reason than avoiding subsequent legal action from a disassociated organisation. But FSC should never give in to legal threats.
yes, that allegations have to clear and convincing evidence is bad for the reputation of FSC preponderance of the evidence is enough. again the CH or CB must demonstrate their commitment So there lays the burden of proof
You should make sure that the parties perfectly understand the concept and what it has tried to explain in the annex, and that it can be applied. It is obvious that the evidence should be clear and convincing to make a decision; it is not explicit or clarifies terms that may lead to subjectivity, e.g., conviction, belief. We would recommend revising the wording (as well as the drafting of "Beyond reasonable doubt")
We agree with the use of clear and convincing evidence as the threshold for making decisions (as stipulated in 4.7) with a caveat that FSC should review the description of clear and convincing evidence, in particular of the words 'firm conviction or belief'. In addition, the use of word 'believing' in the definition of beyond reasonable doubt should be re-considered.
Sounds reasonable (and also implemented for false claims already). It this based on international standards? (If yes, please quote, if not, should be).
I like this, with the one concern around "manipulated evidence", I think FSC still needs to ensure the veracity of evidence provided to ensure the "fair treatment" criterion.
It seems fair. However, who decides about certainty? FSC Dispute Resolution? FSC Director? BoD? or Panel?
Clear and concise.
Where does it comes from. Is this based on international standards? Please mention origin
Good, this asset is our scale.
We agree with the use of clear and convincing evidence as the threshold for making decisions (as stipulated in 4.7) with a caveat that FSC should review the description of clear and convincing evidence, in particular of the words 'firm conviction or belief'. In addition, the use of word 'believing' in the definition of beyond reasonable doubt should be re-considered.
The standard of certainty is not acceptable. Proof must include verbal or written accounts of violations from affected parties.
They meet legal standards.
Preponderance is a difficult word which probably many will have problem with.
I liked this overview. Very clear and well developed!
should we not include weightage of repeat violation in balance of probabilities?

Terms of Reference of the Investigator and Decision Panel

A. Investigator

1. The investigator(s) are assigned by FSC on an ad-hoc basis to investigate the case.
2. Depending on the case, the investigator(s) may be composed of an expert consultant or a team of consultants. This is determined considering factors such as:
 - a) level of complexity of the case;
 - b) technical expertise required;
 - c) language;
 - d) regional/local knowledge needed.'
3. The investigator(s) shall be free of any conflicts of interest related to the case.
4. The investigator(s) shall sign and adhere to a confidentiality agreement.

B. Decision Panel

1. FSC shall have a pool of six to nine preselected decision panel candidates, selected based on expertise in dispute handling and areas of unacceptable activities.
2. The decision panel candidates shall be appointed by the FSC Board of Directors to serve for a three-year term, with possible renewal for an additional term.
3. For each case, three candidates are called to serve as a decision panel by FSC, based on allegations presented and the candidate's area of expertise.
4. The working language of the panel shall be English.
5. Selected panel participants shall be free of any conflicts of interest related to the case.
6. The panel participants shall sign a non-disclosure agreement and adhere to strict confidentiality.

7. The complainant and defendant shall have the right to object to the decision panel participant, if there is a perceived conflict of interest. They are given maximum of 10 (ten) business days, after notification of the decision panel participants, to raise an objection.
8. FSC shall make the final decision on any objection by the complainant or defendant. If the objection is honored, another panel candidate is called to participate the panel.
9. The participation in a decision panel is on pro-bono voluntary basis only.

Responses:

- **Do you have any comments on the terms of reference for investigators?**

Annex 2: ToR for Investigator: should the relationship with FSC of the potential candidate be stipulated? using FSC members is often a point of contention, since this can be considered a conflict of interest? either way, I feel it is worth clarify this under selection criteria.
Same comment as in decision making section: If you get panel members that don't have the time or interest in truly reviewing the issue, or come into the process with a preformed opinion, then the panel will do more harm than good. Because it is a pro bono position, you have a greater risk of cultural warriors joining to press their viewpoint rather than getting to the bottom of the actual situation. I suggest creating a stipend at a minimum, and recommend an hourly rate like you have for investigators. The reputation of FSC is no time to be a cheapskate.
They are terms of reference for the selection of the investigator and not terms of reference for the work of the investigator. There should be terms of reference for the work of the investigator also. These should be general terms of reference that specify the exact scope of the investigation to be carried out. They should include not only the investigation of the evidence but also the impacts of the PfA violations both on the defendant and on affected parties including the environment.
It is necessary to clarify in this procedure how the process for defining "qualified researchers" will take place. This has to be a very transparent and democratic process, avoiding to privilege specific groups. We suggest calls for application process, with clear and public criteria, to form a bank of trusted consultants, from which investigators would be assigned to cases according to the adherence among the case content and their skills. Moreover, it is important to involve the Board in the process, as it has a cameral balance
- Specify the need to be a professional in social sciences and know the social context, and also have knowledge and sensitivity on gender issues. Include it in b) or in another subparagraph. –Include the right of the complainant and the defendant to object to the investigator or investigation team members.
It would significantly improve FSC's transparency to its stakeholders when essential information related to evaluation of PFA complaints are made publicly available, in particular for any elements within the process that are independent from FSC. In this case, it would be the independent investigators and the independent decisions panels. In our view, the proposed Annex 2 is a mix of TOR and criteria to select independent investigator. A TOR of the investigators should at least describe: (i) objective; (ii) scope; (iii) references and (iv) method. In

addition, we suggest FSC to provide high-level contents or structure of the investigation reports, both the full and summary. Such disclosure would improve transparency of the process to stakeholders.
It could once again reiterate that both parties should agree with the appointment of the investigator, and the investigator can be contested by the parties.
Clarify payment?
7) ten business days is a reasonable timeframe, but it is too tight for villagers in remote communities
We are more in favor of keeping the Complaint Panel as is in the existing procedure. Just make sure that the procedure requires the BoD to respect its findings and recommendations and make the final decision making process transparent.
It is necessary to clarify in this procedure how the process for defining “qualified researchers” will take place. This has to be a very transparent and democratic process, avoiding to privilege specific groups. We suggest calls for application process, with clear and public criteria, to form a bank of trusted consultants, from which investigators would be assigned to cases according to the adherence among the case content and their skills. Moreover, it is important to involve the Board in the process, as it has a cameral balance.
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Looks reasonable.
I suggest to explain in more detail how would you ensure the investigator's impartiality of lack of conflict of interest with a given case.
The investigation could be made by FSC itself. Otherwise, please consider forming a bank of investigators based on an application process guided by Terms of Reference. The investigators could be selected from this bank according to the skills and local/regional knowledge required for each case. The parties need to agree with the investigator assigned to their case.
We should keep decision panel also region based, for proper appreciation of findings and decisions to be taken
it is not clear how FSC will identify expert Investigators and Decision Panel members. My guess is that a common approach with other ISEAL members could be efficient and cost-effective.
Ensure there is knowledge or experience in the social field as a requirement for at least one of the investigators for a case.

- **Do you have any comments on the terms of reference for decision panel members?**

Decision Panel: Clause 5 & 6 should refer to panel Members, and not participants (editorial comment). I also presume that these eligibility as Candidates will exclude (or include) FSC members? this needs to be stated.
Based on whatever communities from Latin American countries cause the conflict between the parties, even if the language of the working panel is English, the translation should be provided in time and form to the parties in dispute, ensuring that the translation is not open to double interpretation. Therefore I suggest that the 20-day deadline to submit objections is passed. Point 9: The term "pro bono", although clarified in the text, is not usual in Argentina's forestry sector. Perhaps this clarification is more specific in legal terms. I suggest it is stated as "Ad honorem".
do not go there, they can only decide to maintain the association or recommend to disassociate
If the complainants and defendants can object to decision panel members based on perceived conflict of interest and given that candidates may not always be available, a pool of six seems too few.
They are terms of reference only for the selection of the panel and not for the work of the panel. There should be terms of reference for the work of the panel in particular where it comes to determining requirements for re-association which must be based on restitution or compensation for damages caused by the violation.
As mentioned above, it is important to define a "call for application" process for candidates to the decision panel. Any selection process based only on "indication" is dangerous and partial. As requested for investigators, it is important for members of the decision panel to have regional / local knowledge as well. Items 7 and 8 are not compatible with the Terms of Reference and are already presented in items 4.3 and 4.4. We suggest its exclusion in this section.
4. Why demand that the working language is English if the case is submitted in Spanish-speaking countries (Spain, Latin America)? 9. If this continues to be pro-bono work, how does FSC ensure efficient and effective compliance of its work? How can it maintain this roster of members for three years without any remuneration?
Comments are similar for TOR for investigators and decision panels. In addition, we view that the proposal is a mix of TOR and criteria to select independent decision panel. A TOR of the decision panel should at least describe: (i) objective; (ii) scope; (iii) roles and responsibilities; (iv) governance
See section 4: The decision panel candidates should be transparent and open to application (not only picking by FSC). Pro-bono activity is a barrier for independent experts or NGOs and supports activities of lobbyist or industry. Should be reasonable paid work. Also, to make bribery unattractive.
I am just concerned about FSC being able to always fill decision panels where this is done on a voluntary basis.
We are more in favor of keeping the Complaint Panel as is in the current procedure. Just make sure that the procedure requires the BoD to respect its findings and recommendations and make the final decision making process transparent.
Independence of the Decision Panel shall be ensured. For example, it shall not be composed solely of representatives of the business section. This could cause more harm by understate issues. That the decision Panel is on pro-bono voluntary basis could attract especially persons from the business section
As mentioned above, it is important to define a "call for application" process for candidates to the decision panel. Any selection process based only on "indication" is dangerous and partial. As requested for investigators, it is important for members of the decision panel to have regional /

local knowledge as well. Items 7 and 8 are not compatible with the Terms of Reference and are already presented in items 4.3 and 4.4. We suggest its exclusion in this section.
It would significantly improve FSC's transparency to its stakeholders when essential information related to evaluation of PFA complaints are made publicly available, in particular for any elements within the process that are independent from FSC. In this case, it would be the independent investigators and the independent decisions panels. It is important for members of the decision panel to have regional / local knowledge as well. In our view, the proposed Annex 2 is a mix of TOR and criteria to select independent decision panel. A TOR of the decision panel should at least describe: (i) objective; (ii) scope; (iii) roles and responsibilities; (iv) governance.
Looks reasonable.
B 2 Says 3+3 years and 4.2 says a new panel for each case. better to have it for three years. B3 says three candidates? I think it is better to have a group which works together for a period of time. That makes it easier to refer to use the experience from other cases.
This is a great opportunity to be real inclusive and democratic in the election of a Decision Panel,
5.: Add also neutrality related to the case and to the defendant, i.e. in addition of Conflict of interest also independence more broadly should be required from the expert panel.
There should be a statement that the Decision Panel need to reach a unanimous decision.
- 5.: Add also neutrality related to the case and to the defendant, i.e. in addition of Conflict of interest also independence more broadly should be required from the expert panel.
5. Neutrality related to the case and to the defendant and the complainant should be added, i.e. in addition of Conflict of interest also independence more broadly should be required from the expert panel.
Please, consider forming a bank of members for the Decision Panels based on an application process guided by Terms of Reference. The Board of Directors should them select the Decision Panel from this bank, according to the skills and local/regional knowledge required for each case. Any selection based only on indication is partial. Furthermore, the parties need to agree with the Decision Panel assigned to their case. Please, exclude items 7 and 8, since they do not fit into Terms of Reference and are already covered on clauses 4.3 and 4.4.
Should be clear that members of FSC staff or boards should not be able to be on decision panels.

Guidance for Determining the Consequence of a Violation to the FSC Policy for Association

The following guidance is used to determine whether to issue temporary conditions and sanctions to the organization or to disassociate from the organization.

In order to maintain association, the following three factors must be met:

1. No significant remaining reputational risk to FSC
2. The unacceptable activity has stopped occurring
3. No risk of material originating from operations directly violating the FSC Policy for Association entering into FSC products

If the above are met, then the following factors shall be considered in weighing the decision to maintain association with conditions:

Factor	Supports maintaining, if
a) Frequency of occurring violations for the associated organization or any entity within the affiliated group	first-time instead of repeated violations
b) Time dimension regarding how long the organization was involved in the unacceptable activity	short term instead of long term
c) Timeline in progressing in implementation of the conditions	the main conditions are reachable within short time (e.g. 12 months) instead of over long period of time
d) Cause of the unacceptable activity	oversight instead of systemic
e) Number of unacceptable activities violated	one or few instead of many
f) Degree of social or environmental damage committed	minimal instead of severe
g) Means of control of the organization regarding the unacceptable activity	low available means of control instead of high
h) Reputational damage already done	minimal instead of severe

i) The likelihood of the organization to re-engage in the event of a disassociation decision and thereby the likelihood of whether a disassociation decision would lead to positive impacts on the ground	low instead of high
j) The potential and capability of the organization to drive positive impacts in a given sector or region with FSC	high instead of low

NOTE: FSC may decide to suspend the Trademark License Agreement of the organization until conditions set are met, in cases of maintaining association with temporary conditions.

Guiding Principles for Conditions Placed on Organizations

The conditions placed on an organization are based on the violations that occurred with respect to the FSC Policy for Association as well as other trust-building measures. They include:

- a) Remedy (both social and environmental) to address damages and impacts of past violations.
- b) Improved due diligence and quality management systems to prevent future violations of the FSC Policy for Association from occurring.
- c) Transparency in reporting implementation of conditions and demonstrated stakeholder engagement in the process.
- d) Independent verification of implementation of the conditions
- e) Other trust-building measures, such as actions towards conformance with the organization's own policy commitments.
- f) Other, as decided by the decision panel or the FSC Board of Directors.

Responses:

- **Do you have any comments on the guidance on conditions and sanctions for Policy for Association violations?**

Guiding principles, clause (f): FSC BoD suffices as the final decision making body - not necessary to mention the decision panel
Under (a), this should depend on the serious of the violation, not just that it's the first time (previous violations anyway may have occurred without outside knowledge of this). Under (g), care must be taken that this does not provide an excuse not to remedy a violation. This is particularly so when companies argue that they have no control over suppliers, usually said to be numerous, and therefore cannot act to rectify the situation. In these cases the option is to change the source of material or otherwise apply due diligence along the supply chain to apply pressure on those who are are providing, for example, timber from illegally harvested sources.
Should the three factors be re-ordered with "The unacceptable activity has stopped occurring" being the top one?

It is not clear who will be responsible for this guidance. Is it to be the board or the panel? The panel will have had no direct contact with the defendant and will therefore not be in a position to evaluate the trustworthiness of the defendant.
Regarding de note mentioning that FSC may decide to suspend the Trademark License Agreement, we believe it is more consistent to assign this decision to the decision panel, and taking into account the weight factors in the table above. What does exactly means “other trust building measures” presented on “Guiding Principles for Conditions Placed on Organizations” and in Annex 4? The item “d) Independent verification of implementation of the conditions”, also referred to in item 4.13.b, is not sufficiently clear. It is important to clarify how these checks will be made and how often. As a suggestion, item 4.13.b could explain that the timeframe would be prepared by the decision panel and establish the moments for such checks.
-It should be revised. Among the factors for maintaining association, it does not include remedy or acceptance/agreement of the affected stakeholders. –Several facts that have been included to weigh the decision to maintain association with conditions denote a lack of knowledge of social issues and are unacceptable. It concerns social damage to or impact on human beings! You would also have to ask yourself if it has validity in the environmental scope. a) Frequency? How can you talk of "repetition" and not of social damage? b) Time dimension: long or short term? d) Reason for damage? How much does that matter if the damage has already been caused? g) The argument of not having control over providers, who are numerous in some cases, should not be accepted as an excuse to avoid responsibility of remedy; the companies should have the capacity to apply due diligence in the supply chain. There are errors in how conditions in the “Supports maintaining, if” column are expressed, e.g., j) The potential and capability of the organization to drive positive impacts, should be under?? Note. FSC should (not may) suspend the Registered Trademark License Agreements.
Suggest FSC to be more specific on the thresholds, e.g. what considered as 'long term', 'short term', 'few (causes)'. Regarding de note mentioning that FSC may decide to suspend the Trademark License Agreement, we believe it is more consistent to assign this decision to the decision panel, and taking into account the weight factors in the table above What does exactly means “other trust-building measures” presented on “Guiding Principles for Conditions Placed on Organizations” and in Annex 4? The item “d) Independent verification of implementation of the conditions”, also referred to in item 4.13.b, is not sufficiently clear. It is important to clarify how these checks will be made and how often. As a suggestion, item 4.13.b could explain that the timeframe would be prepared by the decision panel and establish the moments for such checks.
In the case of the time dimension, it should set out the time or span of time for the short- and long-term case
Should the three factors be re-ordered with "The unacceptable activity has stopped occurring" being the top one?
No I think this is good
FSC should profoundly guide the association with temporary conditions and be firm on the implementation of those conditions, to avoid making life too easy for organizations violating PfA. Even in the case of association with temporary conditions, the organization shall receive proportionate sanctions in addition to corrective measures to be implemented.
"The unacceptable activity has stopped occurring" should be the top one
Regarding de note mentioning that FSC may decide to suspend the Trademark License Agreement, we believe it is more consistent to assign this decision to the decision panel, and taking into account the weight factors in the table above. What does exactly means “other trust-building measures” presented on “Guiding Principles for Conditions Placed on Organizations” and in Annex 4? The item “d) Independent

<p>verification of implementation of the conditions”, also referred to in item 4.13.b, is not sufficiently clear. It is important to clarify how these checks will be made and how often. As a suggestion, item 4.13.b could explain that the timeframe would be prepared by the decision panel and establish the moments for such checks.</p>
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<p>Strongly opposed to Annex 3 and the overall shift in approach to maintain association for any organizations that have violated the PfA. PfA violations should automatically result in disassociation. Disassociation of FSC members and certificate holders violating PfA is key to the credibility of FSC. Decisions to disassociate should be procedural and not a political process by the FSC international board. The procedure should not offer exceptions in response to legal threats/SLAPPs against the FSC organization or for first time offenders.</p>
<p>Additional factor: f) and potential for future damage from the activity. ie. future flooding in rainy season, future mud slides in a future heavy rainfall which may not occur within a year of a violation, but may be seen in year 2 or 3 if no remediation work has been done.</p>
<p>If this text is a guidance it is better to use "may" or "should" and not "shall". This is in line with the Verbal forms for expression of provisions.</p>
<p>Well explained!</p>
<p>- This guidance only refers to decision on whether to issue temporary conditions and sanctions or to disassociate from the organization. There should also be clear criteria illustrating the cases where the organization can maintain association without conditions. - In order to maintain association, additional fourth factor should be added to illustrate the commitment from the organization's side to conform with PfA in general and to avoid the organization becoming a reputational burden to FSC in the future, i.e. The organization demonstrates a top management commitment towards complying with the FSC Policy for Association. - Point 1 can also include cases where the organization has stopped the unacceptable activity, but the bad reputation of the organization still continues in public even though the corrective measures are taken. Such cases should not count here, and it should be formulated clearly in point 1. - It is positive that the new rules try to define more clearly the factors affecting the decision on whether to maintain association with conditions or to disassociate. However, the proposed table with factors is only directional and does not provide clear numerical criteria against which one(s) of these criteria the decisions should be taken. For example, does all factors need to be supportive for maintaining in order to maintain association or is it enough that one or more of them are supportive for maintaining and if yes which one etc.? There should be clearer rules based on which the decision to maintain association with conditions or to disassociate can be taken. Such rules already exist, e.g. in FM auditing standard for non-conformities and the needed amount for them that leads to suspension. - h) Reputational damage must be based on verified violation and its severity and not on the extent of the public debate.</p>
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The decision on suspending the Trademark License Agreement needs to be made by the Decision Panel taking into account factors on the table (see note below the table). Guiding Principles for Conditions Placed on Organizations: item d) - how and how often the verification will be made? The verifications need to be specified in the timetable. Align this information with the one of item 4.13.b; item e) - what does exactly means "other trust-building measures"?

I find subsection i) confusing. I am not sure what it is referring to. Likelihood of the organization to reengage in unacceptable behavior??

, factor 2 – stopped and not re-started (cf. case of APP in Indonesia).

factor g – I am doubtful about this conditionality. It appears to say that if the CH cannot exert influential and effective control over the affiliated group, then FSC should allow continued Association, not matter how serious was the violation of the PfA. If that is not the meaning, please explain.

factor l – this also I could not understand clearly. It appears to say that if Disassociation has a low likelihood of positive impacts in a MU, then the violation and Association should be allowed to continue. If that is not the meaning, please explain.

please explain the NOTE underneath the boxed table. Again it looks like poorly defined conditionality.

condition (f) – the Board should have no power to vary or add to the conditions agreed by the Decision Panel. To allow such power would be to open a door to the alleged politicking at Board level.

As per above, disassociation should be procedural, and thus these thresholds are critical. Under point g) it should read 'High available means of control rather than low'.

Ending a Disassociation

A disassociated organization may request to start a process to end disassociation by expressing interest to FSC. As part of the process to end disassociation, an organization specific roadmap towards ending the disassociation status of an organization is developed. A roadmap is a framework and plan, based on requirements on how to remedy, correct and prevent reoccurrence of previously identified violations of the FSC Policy for Association. It also includes other trust-building measures. The roadmap may be complemented by detailed, case-specific action plans, performance measures and reporting requirements associated with each of the conditions. Disassociation can be lifted only upon agreed completion of the conditions specified in the roadmap.

Prerequisites for Initiating the Process for Ending Disassociation

Prior to entering into a formalized engagement with FSC through an agreed roadmap, the disassociated organization needs to meet certain preconditions. The following high-level indicators have been identified as critical thresholds for determining the readiness of a disassociated organization for a roadmap process:

1. The disassociated organization demonstrates a top management commitment towards complying with the FSC Policy for Association.
2. The disassociated organization has adopted a set of relevant initiatives (policies, protocols, codes of conduct, etc.) abandoning previous business practices and adopting (more) responsible practices.
3. The disassociated organization has commenced with credible steps towards implementation of new policies, including communication of the general elements of a roadmap to be developed with relevant staff, and in a transparent manner involving relevant stakeholders.
4. Issues of concern for FSC that should constitute the roadmap elements have been identified so that relevant targets for the organization's actions and performance can be comprehensively defined.
5. The roadmap's targeted end points are reachable by the organization within a foreseeable period of time and can be independently verified.
6. The organization commits to reimbursing the costs of investigation process and to compensating the costs of the process of ending disassociation.

Process of Ending Disassociation:

Step	By
1. Indication of readiness and interest of ending disassociation	Organization
2. Assessment and decision to start a process of ending disassociation	FSC
3. Development of the roadmap requirements based on FSC guidance document	Independent third party with organization
4. Approval of the roadmap	FSC
5. Implementation of the requirements	Organization
6. Verification of the targets reached	Independent third party
7. Ending disassociation	FSC Board of Directors

Responses:

- Do you have any comments on the description of the process to end a disassociation?

Last sentence, intro to Annex 4: Dissociation can be lifted only upon completion of the agreed conditions specified in the roadmap (editorial comment) - the way it is stated now means something quite different! it should not be when we agree it is completed, but when what we agreed is completed! Prerequisites (Item 2): consider more clarity around what adopting more responsible practices involves. a newly adopted practice may be an actual improvement on previous practice, but "how much more" can be challenged. a challenge is also NGOs and pressure groups that refuse to accept "more responsible practices"... I don't have answers, just acknowledging that this is a challenge.

Agree.

Re: points 5 and 6 - the road map should not be open-ended so that the case goes on interminably with cost implications. If no solution is achievable within a reasonable time period e.g. a year, then the process should be terminated.

Although the preamble of the annex includes the word remedy, this is not repeated in the six points of the process. There is no mention of compensation or restitution other than to pay the FSC costs.

Until item 3, our understanding was that the Organization would have developed a roadmap and would be implementing it. However, item 3 mentions the communication of general elements of a roadmap “to be developed”. This passage confused the understanding. Moreover, how could the organization communicate elements that are still to be defined? Item 6. What about companies with no interest or conditions of ending disassociation , how will the refunds work? The table above, item 3, mentions the need for a third party in the development of the roadmap requirements, however, it does not clarify who would select this third part. Also, just as when verifying the achievement of the road map objectives, the involvement of a third party should also be optional here, which is not stated in the procedure. This item on “Prerequisites for Initiating the Process for Ending Disassociation” is quite confusing. The “Process of Ending Disassociation” table would help a lot if its items corresponded to those in the previous section, however, they are not matching and therefore add to the confusion.

Prerequisites for Initiating the Process for Ending Disassociation. They are quite weak. Furthermore, it is not acceptable that the condition remedy has been met or is being met to the satisfaction of the affected stakeholders and FSC is not covered at all. The time assigned on the roadmap to comply with all the requirements should be assigned properly, without causing key actions to be postponed and processes prolonged unnecessarily. Damage remedy should be clearly set out, with the respective times and specific actions. Independent confirmation of compliance with the requirements is essential. The establishment of a proper roadmap would be facilitated with the existence of the Standard for Restoration, Restitution and Remedy for social damage, which has been proposed to set out the conversion remedy.

Scope of this procedure stipulates that 'this procedure is applied to organizations associated with FSC...'. As such, to include the description of ending disassociation in point 4.14 (b) and in Annex 4 does not match the scope; would suggest FSC to change the scope. Until item 3, our understanding was that the Organization would have developed a roadmap and would be implementing it. However, item 3 mentions the communication of general elements of a roadmap “to be developed”. This passage confused the understanding. Moreover, how could the organization communicate elements that are still to be defined? The table above, item 3, mentions the need for a third party in the development of the roadmap requirements, however, it does not clarify who would select this third part. Also, just as when verifying the achievement of the road map objectives, the involvement of a third party should also be optional here, which is not stated in the procedure. This item on “Prerequisites for Initiating the Process for Ending Disassociation” is quite confusing. The “Process of Ending Disassociation” table would help a lot if its items corresponded.

the complainant should be part of the working group who defines the conditions to end disassociation

Full disclosure of corporate structure (including controlled companies at level of beneficiary shareholders) should be a pre-condition too (actually, it should be a pre-condition for association)

No comment, this looks ok
The process of ending disassociation is clear, the main challenge may happen in the implementation, as from our experience some steps take a lot of time, often due to misunderstanding or bad faith of certain parties.
6.: If FSC wants organizations to pay for the cost, the requirement should be added in the main body of the standard with clear requirement language (use of shall).
Until item 3, our understanding was that the Organization would have developed a roadmap and would be implementing it. However, item 3 mentions the communication of general elements of a roadmap "to be developed". This passage confused the understanding. Moreover, how could the organization communicate elements that are still to be defined? Item 6. What about companies with no interest or conditions of ending disassociation, how will the refunds work? The table above, item 3, mentions the need for a third party in the development of the roadmap requirements, however, it does not clarify who would select this third part. Also, just as when verifying the achievement of the road map objectives, the involvement of a third party should also be optional here, which is not stated in the procedure. This item on "Prerequisites for Initiating the Process for Ending Disassociation" is quite confusing. The "Process of Ending Disassociation" table would help a lot if its items corresponded to those in the previous section, however, they are not matching and, therefore, add to the confusion.
Scope of this procedure stipulates that 'this procedure is applied to organizations associated with FSC...'. As such, to include the description of ending disassociation in point 4.14 (b) and in Annex 4 does not match the scope; would suggest FSC to change the scope.
Use disassociated organization everywhere not only organization. In the box the text to step 3 is confusing "Independant third party with organization". I suppose the organization can in some cases make a roadmap themselves but in other cases needs someone else?!
Do you plan to have historical data of companies that have been disassociated and then reinserted in the system? Is there a limit of time for a company to implement the road map for ending disassociation?
- points 4 and 5 already refer to the roadmap itself and are actions that should be done under the roadmap process. It doesn't seem to be justified to include them as precondition for beginning the roadmap process with FSC.
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Prerequisites for Initiating the Process for Ending Disassociation - these items are very confusing! Item 3) - how could the organization communicate elements of a road map still to be defined?; Item 6) - How would the refund work for organizations that are not interested in ending disassociation? Process of Ending Disassociation - the steps do not match with the information on the prerequisites. Step 3) - Who would define the third-party responsible for developing the roadmap?; Step 6) monitoring does not need an independent third party. FSC could do so.

Where/How in the process of Ending Disassociation that other related parties could follow, provide input or oversee the process?

Indicator 2 – add 'sufficient to avoid repetition of PfA faults'; Indicator 3 – should include an agreed timeline and audited progress Indicators; Indicator 6 – 'compensating the costs of the process' could be interpreted to mean that The Organization can simply pay money to someone else to carry out all the restoration/remediation/restitution work, which should surely be undertaken directly by the violating Organization.

The case of disassociation: I do not know of any case that deserves a change of their status. These Malaysian companies eg APP and APRIL having totally destroyed thousands of ha of peatlands and tropical rainforests in Sumatra and Kalimantan (Borneo) that can never be restored, should never have been even close to FSC. In Australia, where Government logging agencies have destroyed the last remaining forests should never have been CW certified. This destruction of the ecosystems can never be restored.

Terms and definitions

For the purposes of this procedure, the terms and definitions given in FSC-POL-01-004 Policy for the Association of Organizations with FSC, FSC-STD-01-002 FSC Glossary of Terms and the following apply:

Allegation: A statement of belief that some wrong or harm has occurred.

Alternative dispute resolution (ADR): Resolving disputes and agreeing on corrective measures without engaging in the formal complaint process, through methods such as negotiation and mediation.

Affiliated Group: 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, holding company, joint venture, etc.) as described in Policy for Association FSC-POL-01-004.

Association (Associated Organization): An association with FSC is formally established through any of the following contractual relationships: FSC membership agreement; FSC certificate holder license agreement; FSC certification body license agreement.

Complaint (formal complaint): A formal allegation against a party based on substantiated information and submitted using an FSC template for Policy for Association complaints.

Complainant: An individual or organization filing a formal complaint.

Decision panel: A panel of three participants called to evaluate, decide and in case of disassociation, to recommend a decision on Policy for Association complaint cases. The pool of candidates is pre-selected, and participants are called based on the characteristics of the complaint and expertise of the candidates. See Annex 2 for further details.

Defendant: A person or organization against whom a complaint has been filed.

Disassociation: The termination of all existing contractual relationships (member and license) between FSC and the associated organization (and its affiliated group). Disassociation also prevents entry into any new contractual relationships with FSC.

Dialogue: An interaction focusing on increasing understanding, looking into deeper issues instead of positions and exploring options, followed with discussion with an aim on agreeing on the right way to proceed.

Ending a disassociation: Ending a disassociation implies that the disassociated organization has met the conditions to be eligible to apply for association with FSC again, if it wishes to do so. It does not mean that any previous contractual relationships are automatically resumed, or that any certificates are reinstated.

Investigator(s): One or more persons established on an ad hoc basis for the purpose of investigating possible violations to the FSC Policy for Association.

Mediation: An attempt to settle a dispute through active participation of an independent third-party that aids parties to agree on a fair outcome.

Parties: The entities directly involved in the investigation, including the entity that filed the complaint (i.e., the complainant) and the entity against which the complaint is filed (i.e., the defendant)

Substantial information: Credible information provided by third parties and/ or gathered through independent research obtained from reliable/renowned sources which constitutes a solid piece of evidence to be considered in an investigation. Substantial information may include any of the following forms so long as the evidence meets the criteria required in this definition: scientific reports, technical analysis, certification reports, corroborated news articles, official reports and/ or announcements by governmental authorities, legal analysis, Geographic Information System information (boundary coordinates, satellite change mapping), videos or footage, images, independent interviews, affidavits and declarations, meeting minutes, and corporate/organizational information.

Responses:

- **Do you have any comments on the terms and definitions used in this procedure?**

Ending a disassociation: why is the term "implies" used in this definition? Section E is Terms and Definitions, and this word can easily be made clearer... is it an ending or not? Have conditions been met or not? Professionally, I object to the use of the word "implies" in this context.

Investigator(s): The definition can be strengthened and made clearer: it is not investigating possible violations of the PfA - it is assessing and verifying a submitted complaint in its entirety in a neutral, technically sound and professional manner. a question: substantiated versus substantial information: the text under Complaint uses "substantiated information", and later, there is a definition for "substantial information". Is there a difference, and should it be described under Section E?

Amend: Allegation: Substantiated and admissible statement that a mistake or damage has occurred.

(Acusación: Expresión sustanciada y admisible de que ha sucedido una equivocación o daño.)

Definition of "stakeholder" missing. This could be an FSC member or an organisation which can show a commitment to FSC in some other way rather than an unrelated organisation which seeks to use FSC for its own agenda. Still, this should not be used to disqualify genuine complaints.

add remedy to the terms and definitions Remedy: a means of legal reparation and or compensation for all affected stakeholders.
add "lowest level principle" and "authorities"
Decision panel: It is important to give balance and representation to the panel, ensuring that the three participants represent environmental, economic and social interests. Moreover, regarding the definition that the three participants will be selected based on the characteristics of the complaint, it is important to explain what these decision characteristics are.
The definitions are generally appropriate; however, care should be taken in their application. For example, Dialogue: it means that there should be dialogue on positions; the dialogue may not replace a FPIC process. Disassociation: revise the translation into Spanish, "prevent" is not to avoid but to "impede", and the difference is important in this context. Affiliated groups: Take into account that the PfA is under review and one of the problems that this policy has lies in the definition or the approach on control. Substantial information: It should include the testimony of people affected and not just sworn statements. Mediation: It can be positive having a mediator; however it is not clear who appoints them or what profile this person should have. "Mediation" cannot replace a FPIC process. Remember that FPIC is a right that can be demanded by the affected stakeholder if considered relevant. Decision panel: Definition unclear. Revise. Put an end to the disassociation. The final clarification is very important: It does not mean... Alternative dispute resolution. The definition may be good but the way in which the concept is being interpreted is not appropriate. Furthermore, it alludes to the term or concept of "negotiation" that should also be defined due to its importance in this context. Complainant: It should be better defined. It does not say anything with regard to whether the complainant (as generally happens) is an organization or institution that has no direct relationship or is part of the organization or affected community. There is no understanding as to why certain definitions have been deleted: i. stakeholder: it is absolutely necessary, as stakeholders submit complaints and they act in the processes; ii. certificate removal; iii. certificate suspension.
(Las definiciones son en general apropiadas; sin embargo se deberá tener cuidado en su aplicación. Por ejemplo: Dialogo, se supone que sí se debería dialogar sobre posturas; el diálogo no podrá sustituir a un proceso FPIC. Disociación: revisar traducción al español "prevent" no es evitar, sino impedir, y en este contexto la diferencia es importante. Grupo de afiliados. Tomar en cuenta que la PfA está en revisión, y uno de los problemas que esta política tiene radica en la definición o enfoque sobre el control. Información sustancial. Debería incluir el testimonio de las personas afectadas y no solo las declaraciones juradas. Mediación. Puede ser positivo tener un mediador; sin embargo no está claro quien lo designa, ni que perfil debe tener esta persona. La "mediación" tampoco podrá sustituir un proceso FPIC. Tener presente que FPIC es un derecho que puede ser exigido por la parte afectada si así se lo considera pertinente. Panel de decisión: definición poco clara. Revisar. Poner fin a la disociación. La aclaración final es muy importante: No significa... Resolución alternativa de Controversias. La definición puede estar bien, pero la forma en la que se está interpretando el concepto no es apropiada. Además hace alusión al término o concepto de "negociación" que debe ser también definido, por su importancia en este contexto. Querellante: Se debe definir mejor. No se dice nada con respecto a que el querellante (como sucede por lo general) es una organización o institución que no tiene relación directa o es parte de la organización o comunidad afectada. No se entiende por qué se han eliminado ciertas definiciones: i. actor social: es absolutamente necesario, en tanto son actores sociales quienes presentan las quejas, e intervienen en los procesos; ii. retiro de certificado; iii. suspensión de certificado.)
The procedure introduces the terms 'stakeholders', 'affected stakeholders' and 'affected parties' - none of them are defined in the terms and definitions. Also suggest to limit the terms to avoid confusion. We suggest the definition of substantial information to be more concise, given that the decision to initiate an evaluation without complaint would rely solely on substantial information. Suggest to FSC to consider introducing a set

of criteria to determine substantial information. Decision panel: regarding the definition that the three participants will be selected based on the characteristics of the complaint, it is important to explain what these decision characteristics are, as this would be guidance for stakeholders to ensure that the decision panel is balance.
As it is repeated in the text and is relevant, "independent third parties" needs to be defined or specified for mediation and "Stakeholder" processes and should not have been deleted.
(Debido a que se repite en el texto y tiene relevancia es necesario definir o explicitar "terceros independientes" para los procesos de mediación y "Actor Social" no debiera haber sido eliminado.)
Sufficient suspicion to be defined (see comment section 2)
Include definition of affected stakeholders in the Procedure, this is included in the FSC IGI, but it would be worth to have the definition here to avoid confusion.
substantial information is rising a very high bare for initiating an investigation, in particular for donation-based NGOs, journalist or single persons. We propose to delete the term substantial information and replace and redefine it. "Sufficient suspicious" should be adequate so that the bare to initiate an investigation for whistleblower/complainants is lower or even achievable. "Sufficient suspicious" to be defined
Decision panel: It is important to give balance and representation to the panel, ensuring that the three participants represent environmental, economic and social interests. Moreover, regarding the definition that the three participants will be selected based on the characteristics of the complaint, it is important to explain what these decision characteristics are.
The procedure introduces the terms 'stakeholders'; 'affected stakeholders' and 'affected parties' - none of them are defined in the terms and definitions. Also suggest to limit the terms to avoid confusion. Decision panel: It is important to give balance and representation to the panel, ensuring that the three participants represent environmental, economic and social interests. Moreover, regarding the definition that the three participants will be selected based on the characteristics of the complaint, it is important to explain what these decision characteristics are.
Affiliated group: Concerns in respect to the current ownership loopholes must be addressed and definitions accepted by CSOs such as the Accountability Framework Initiatives definition of corporate group should be applied.
Affiliated group should also include non-arms length party.
No! On terms. Complaint, text in brackets (formal complaint) is not needed just confusing as there are no informal complaints. It is used somewhere in the text as well.
See previous comments of suggestions for descriptions of terms.
- Association: Is this definition extensive enough? What about those organizations using FSC logo for promotional purposes without being a member, certificate holder or certification body, for example?
- Association: Is this definition extensive enough? What about those organizations using FSC logo for promotional purposes without being a member, certificate holder or certification body, for example?
Association: is the definition/scope broad enough for this purpose? How about organizations without being a member using FSC logo for promotional purposes?

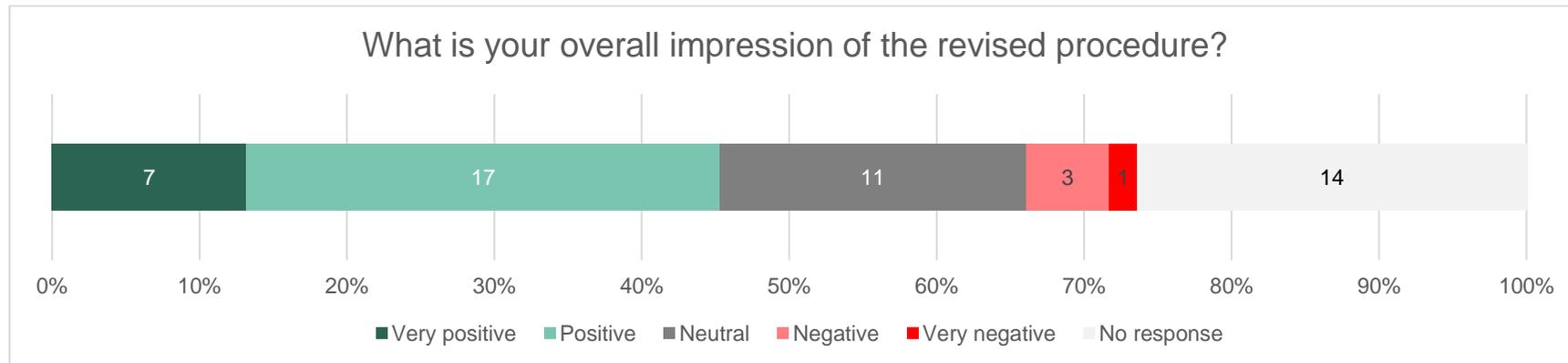
Decision panel - please, make sure the environmental, social, and economic interests are equally represented in the decision panel. What characteristics of the complaint will base the definition of the Decision Panel?

Need to ensure that 'Substantial Information' including information provided by local communities, IPs and workers.

General

Responses:

- What is your overall impression of the revised procedure?
- Please briefly explain your rationale.



Very negative	
Negative	There are many good elements in this procedure, but it still lacks important points, and that is why I indicate negative. I have tried to comment on things that still need improvement. PfA is crucial for FSC's credibility!
Negative	An overhaul of the PfA procedure is overdue and also the PfA itself. My main criticism is that a failure to act immediately to disassociate in the case of verified violations could cause serious damage to the credibility of FSC. I also am concerned that if a road map to reassociation is not time bound, there would be no real timetable for restitution and remedies for social and environmental harm. As well, the cost of this would be unsustainable for FSC.
Negative	The procedure proposal is not ready to be accepted. Several arguments have already been put forward for this assertion. This is a fundamental instrument for safeguarding FSC's integrity and credibility, and accordingly, it should be ensured that the principles and requirements are appropriately, rigorously and sufficiently included for this purpose. These complaint or claim evaluation processes are costly, however, reducing requirements to reduce costs cannot be allowed to jeopardize the success of these processes and FSC's reputation and credibility, therefore who covers these costs should be analysed and specified. -FSC should make the necessary efforts to increase the capacity of the Secretariat to respond efficiently to these

	complaints processes. – The disassociation decision insists on being delayed when the evidence is substantial, the only thing driving it is to tarnish FSC’s image and credibility.
Neutral	There is a lot that needs clarifying before I feel this policy should be supported
Neutral	I don't know what kind of effect this shall have now the majority of the assassination cases are excluded from this process
Neutral	I believe that the process related aspects are good. However I am very concerned that issues relating to redress (compensation, remediation) do not receive enough emphasis.
Neutral	The procedure has fundamental points to be clarified
Neutral	
Neutral	We agree the main intention/spirit of the current version is to make the procedure more practical and applicable in various contexts across the globe. However, we disagree with some of the revisions in this procedure, as they may be a serious setback for protection of the reputation of FSC and its missions and suggest FSC. There should be less discretion and more clarity about decision making processes and transparency of these, which is still weak.
Neutral	The issue of process complexity.
Neutral	The procedure has fundamental points to be clarified.
Neutral	
Neutral	
Neutral	I don't see the revised procedure allows and gives space for public (other related party) participation whether to give input or oversee the process.
Neutral	Has a number of elements that strengthen and a number that would weaken, including those that would disadvantage and discourage complainants. Need to see the weaknesses resolved before support for the policy.
Positive	
Positive	
Positive	Seems reasonably well thought out. Few tweaks recommended.
Positive	
Positive	Introducing the alternative dispute resolution approaches as well as the clearer guidance on temporary conditions & sanctions make the procedure to be leaning towards remedy and correction rather than being punitive. Specifying the scope of procedure to be only for PFA-related complaint, along with the adoption of 'substantiated information' as one of criteria to accept a lodged complaint would help FSC to filter and scope out the complaints hence more targeted actions would be generated.
Positive	alternative measures to work with complaints rising PfA violations is an important step and helps FSC to end the expectation, that every complaint ends up with disassociation.

Positive	Good development, still too weak and open to be effective against criminal, illegal, human rights abusing, corruption etc. practices.
Positive	I think this is a positive step forward for FSC
Positive	
Positive	when it comes to major fundamental violations, such as illegal actions, threatening traditional rights and so on. The open communication and inclusivity principles may be in contradiction to uncover the fraud, as this may lead to concealment through the defendant. Why it important to carry out also undercover investigations. This seems to be impossible by the current principles.
Positive	Introducing the alternative dispute resolution approaches as well as the clearer guidance on temporary conditions & sanctions make the procedure to be leaning towards remedy and correction rather than being punitive. Specifying the scope of procedure to be only for PFA-related complaint, along with the adoption of 'substantiated information' as one of criteria to accept a lodged complaint would help FSC to filter and scope out the complaints hence more targeted actions would be generated.
Positive	- The revised procedure includes many positive aspects and improvements to the current complaint procedure, i.e. it tries to define the complaint process more accurately, introduces alternative dispute resolution approaches, places more weight on professional and conflict of interest -free process with an option to external experts, introduces criteria to decide on whether to maintain association with conditions or to disassociate and all this in an easy to read format. - Regardless of the positive steps taken, there is still a need for further improvements, especially on: - avoiding unjustified complaints, - the right of the defendant to see the original complaint, - the right of the defendant to have a fair process and to be heard (if decision-making without investigation is allowed), - the division of roles between the panel and the Board of Directors and the related accountabilities, i.e. the expert panel should make recommendations to the Board of Directors but should not make decisions itself. - the lack of criteria for maintaining decision without conditions and the lack of clear measurable criteria to determine when to maintain association with conditions or to disassociate, - the need to guarantee the neutrality of the investigator and the expert panel (in addition to the proposed guarantee that they are free from traditional conflict of interests). - the need to define more clearly what reputational damage means and when it is justified
Positive	- The revised procedure includes many positive aspects and improvements to the current complaint procedure, i.e. it tries to define the complaint process more accurately, introduces alternative dispute resolution approaches, places more weight on professional and conflict of interest -free process with an option to external experts, introduces criteria to decide on whether to maintain association with conditions or to disassociate and all this in an easy to read format. - Regardless of the positive steps taken, there is still a need for further improvements, especially on: - avoiding unjustified complaints, - the right of the defendant to see the original complaint, - the right of the defendant to have a fair process and to be heard (if decision-making without investigation is allowed), - the division of roles between the panel and the Board of Directors and the related accountabilities, i.e. the expert panel should make recommendations to the Board of Directors but should not make decisions itself. - the lack of criteria for deciding to maintain association without conditions and the lack of clear measurable criteria to determine when to maintain association with conditions or to disassociate, - the need to guarantee the neutrality of the

	investigator and the expert panel (in addition to the proposed guarantee that they are free from traditional conflict of interests). - the need to define more clearly what reputational damage means and when it is justified
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Positive	
Positive	
Positive	
Very positive	The document is well structured with clear requirements and processes. It will likely make the complaints handling process more efficient. However, this might mean that FSC will have to allocate more resources to the handling of initial evaluations and mediation.
Very positive	It's thorough and fair.
Very positive	Great job to simplify text and procedure!
Very positive	It has a logical sequence and shows a solid thinking process.
Very positive	It is more objective and gives scope to organizations to monitor and improve their working, to avoid any incidence of violations
Very positive	
Very positive	
	Some key improvements, but also a number of changes that undermine the procedure effectiveness, as well as the policy implementation.

- **Do you have any final general comments on the Procedure for Processing FSC Policy for Association Complaints?**

Rainforest Action Network has critical concerns with the draft revised Procedure for Processing Policy for Association Complaints in the FSC Certification Scheme (FSC-PRO-01-009). We do not support its adoption by the FSC as doing so will be a questionable action that will result in FSC losing more of its credibility amongst NGOs and buyers alike. FSC members and buyers rely on FSC certificates as the most reliable proof of sustainable forestry products based on compliance with FSC standards and PfA. The adoption of this procedure will undermine the credibility of all FSC certified products and organizations. A credible procedure would align with the following principles and address the flaws identified in the current proposal: 1. Disassociation of FSC members and certificate holders violating PfA is key to the credibility of FSC. Decisions to disassociate should be procedural and not a political process by the FSC international board. The procedure should not offer exceptions in response to legal threats/SLAPPs against the FSC organization. 2. PfA violations should automatically result in disassociation. 3. Remedies for the violations identified need to be requested by FSC as a condition for re-association as a part of the Generic Reassociation Roadmap. There should be procedures/processes defined to ensure remedy is delivered. One proposal submitted by Rainforest Action Network in response to the Conversion Remedy Procedure is for the FSC to develop a stand-alone Conversion Restoration, Restitution and Remedy for Social Harm standard and for re-association to only occur once an audit shows the organization is operating in full compliance with the standard. 4. If an 'Alternative Dispute Resolution' procedure is proposed, this should not prevent disassociation by FSC. Details of the procedure must be provided beyond the text outlined in the current draft, which is insufficient, and must align with international best practice. Communities must have the right to decide if such a process is appropriate for their case, and if the process is not working they must have the right to decide to end it. 5. The procedure needs to specify that the Complaints Panel as defined in the current procedure FSC-PRO-01-009 (V3-0) is independent of FSC. Investigations into allegations should be conducted without delay and in a fair manner, by independent and professional parties with relevant experience and free of any conflicts of interest. The procedure should also clarify that the recommendations made by the independent Complaints Panels should be respected by FSC, in particular the FSC international board. 6. Other external processes may inform the investigations (court cases etc), but not delay them (otherwise it is enough to hire a lawyer to indefinitely postpone any disassociation). The process must be designed to address non-compliance with the P & C & I and not just the law. Suspension of a complaint to await a court decision would only be acceptable in cases where a PfA complaint was only about illegality. 7. Affected parties must be able to raise a PfA complaint directly to the FSC complaint procedure. It is too onerous to require communities suffering to raise complaints with CB's or ASI. CB's and ASI can not offer a credible non-judicial complaints process, especially as they have obvious conflicts of interest as the non-compliance may have been overlooked or judged unimportant by their staff, or in the case of ASI be out of their jurisdiction which is restricted to redress resulting from the CB's performance. 8. Affected parties' rights to communicate publicly must be protected. Gag orders, requirements to sign NDAs or any agreements to refrain from public comment are not acceptable conditions to place on communities, especially when communities' main, even only, leverage comes from publicity, transparency and exposure of the impacts caused by the FSC certified organization. Zero tolerance to violence, intimidation, criminalization of grievance raisers must be demonstrated by disassociation/suspension when cases are reported on publicly, or directly to the FSC. 9. Prevention of PfA breaches prior to a TM licence or certificate being issued, or pro-active investigations is a priority. The FSC must not wait for a complaint. FSC must have the ability to deal with PfA requirements at either a pre-conditional phase prior to the issuing of a FSC TM licence or certificate, or pre-emptively based on information from stakeholders or published material. 10. Similarly, a proper procedure of due diligence prior to accepting FSC membership is also a priority to ensure no involvement in PfA breaches by FSC members. 11. The procedure must be accessible for affected parties. The FSC must accept complaints submitted in the languages used in all regions that it operates and must be flexible in how details of complaints and violations are submitted, especially given limited access to online forms for affected parties. FSC should also make sure that the investigation findings and other materials from FSC to

the Complaints are written in languages which they can understand. 12. Basic principles of justice that information must be shared with both parties equally must be upheld. The FSC must support shared values, and not be designed mainly to support companies by providing them with full reports that are not shared with affected parties, or published in the interest of transparency. 13. Concerns in respect to the current ownership loopholes must be addressed and definitions accepted by CSOs such as the Accountability Framework Initiatives definition of corporate group should be applied. 14. 12. When harm has been caused by an FSC certified operation but this has not been remedied within three years of public information about the harm being available to the FSC, then the FSC should assume responsibility for providing remedy. In conclusion, the draft revised Procedure for Processing Policy for Association Complaints in the FSC Certification Scheme should not be adopted. The FSC should review the procedure to align with the principles above and the lessons learnt from case examples that have shown how the FSC's decisive actions to disassociate organizations found in violation of the PfA, followed by engagement after disassociating them, has delivered meaningful outcomes to ensure remedies for the identified violations whilst upholding the credibility of the FSC, such as: - Danzer: disassociated for serious human rights abuses. Danzer then sold the concession in DRC to avoid it's responsibilities. FSC pursued Danzer to ensure they completed the required reparation with the communities even though they did not own the concession any more. Disassociation was the right course of action and FSC retained leverage over Danzer post disassociation - Schweighofer Group: disassociated after found guilty of trading in illegal wood and wood from HCV destruction. Board initially put the company on 'probation' rather than dissociation immediately as recommended by the complaints panel. Public outcry led the board to change the decision to dissociation. Following this a 'Conditions Framework' was consulted on and agreed as the frame for the company to come back to FSC. After disassociation FSC retained influence over the company and the company wanted to come back to FSC. These cases are in stark contrast to FSC's handling of the complaint raised against the Korindo Group, which risks setting a troubling precedent where normal procedure is not followed. The decision to maintain association of the Korindo Group on the basis of an assessment that an informal process could secure improvement and remedy is inconsistent with FSC procedures, and remains questionable given Korindo's public statements deny any need to remedy communities, and its litigation efforts against a number of organisations scrutinising the company's operations. In the Djarum case, the decision not to appoint a formal complaints panel and now delay of any investigation at all results in a further deterioration of the credibility of the FSC system. We have to point out that FSC made these decisions on both cases without respecting the currently active procedure (FSC-PRO-01-009 (V3-0) EN) but implementing the draft procedure which has not been yet agreed to by the stakeholders and FSC itself. We find this unacceptable. Finally, for FSC to implement such a credible procedure, we also recommend FSC to: 1. Ensure sufficient capacity of the Dispute Resolution Program team at the Secretariat, and the independent Complaint Panel appointed to handle PfA complaints, and give them a mandate to properly deal with complaints, proactive investigations and formulate decisions on disassociations where violations of the PfA are verified. 2. Ensure there is a robust mechanism to deal with threats of lawsuit from companies that were found to have violated the PfA and need to be disassociated, including considering establishing a 'fighting fund' to defend FSC's brand and credibility.

The current procedure with PfA complaints is black and white: in or out. The proposed procedure encourages ADR without making clear what that will entail. This is too loose. There also needs to be clarity about what happens while ADR is attempted. Options are: 1. Business continues as usual - this is obviously not acceptable. It will incentivise companies to string out ADR without resolution for as long as possible. 2. The Organisation is disassociated and can only re-associate once ADR has been adjudged successful - this raises the question what 'jurisdiction' does FSC have over the ADR while The Organization is disassociated. 3. The Organization's association and certificates are suspended while the ADR is underway. This is the option we favour as it will incentivise speedy DR and yet gives FSC continued 'jurisdiction' over the process.

Protection from legal threats should be better incorporated. Accessibility to this complaint procedure should be improved. Provisions to prevent (legal) delays should be included. The scope needs improvement. Thanks.
The document is clear, comprehensible and surpasses the previous one.
My only additional comments are that assessments of the likely financial cost to FSC of the procedure as well as the reputational and legal risks should be done before getting involved in a process which is hard to terminate. The likelihood of a successful outcome should also be taken into account. This applies more to an interminable road map such as experienced in South East Asia. Also legal threats to pursue damages against FSC by companies which violate the P & C should not be given into to avoid disassociation, rather an appropriate insurance should be taken out to cover this eventuality.
Why all the italicization? It's distracting. People can understand the concept of terms and definitions without italicization and asterisks.
It would be preferable if the consultation on the procedure was taking place alongside the consultation on the Policy
-In addition to previous comments, the procedure does not say anything at all about the legal risks that FSC may face and how to deal with and resolve them, or how to deal with a firm rejection and oppose threats and persecution to which those who defend the rights of the affected parties may be subjected. Furthermore, such legal threats and claims should be immediate cause for disassociation, and not the other way around. There are currently international instruments that have been established for the defence of environmental defenders and rights; FSC should take them into consideration and include the relevant regulations in its regulatory framework -In order to act in a proactive manner and avoid potential problems of PfA violation, FSC should establish a better vetting procedure or due diligence for the organizations and companies that apply to become members. -It is not clear whether consideration has been given to the fact that the Policy for Association is being revised and that, as per lived experiences, other controversial activities should be included that have not yet been considered.
It must be clear, that there are still many cases where disassociation is the only comprehensible decision. Guidance are needed for cases if a defendant is trying to delay the whole investigation. There is a needed for sanctions if parties are not cooperating, especially if they still have the ability to use FSC trademark.
As general comments, it is very important to emphasize two important points (1) Need to demonstrate that there is no conflict of interests in appointing the investigator, and it should be valid for both parties.(2) There should always be an investigation to ensure the veracity of the processes.
This is a PfA related proposal from a WWF working group , I participate in (see also comments of WWF Germany): PfA enforcement mechanisms are weak and FSC's capacity + ability to investigate PfA breaches should be increased Situation: The burden of evidence for taking action under the PfA is currently very high. In addition, the current system of CoC audits where CBs only have to check if a signed commitment to abide by the PfA is on file is totally incapable of detecting violations of the PfA, which means that the responsibility to identify them rests entirely on outside stakeholders like NGOs. And even when violations are reported, FSC does not have sufficient sufficient capacity, tools or processes to investigate them. For example, WWF's charcoal investigations in 2017-18 revealed several potential PfA violations. One CH sold some FSC-certified products and in parallel traded potentially illegal charcoal from Nigeria for many years, even mixing it into FSC-labeled bags. Due to inadequate staffing at FSC, it was not investigated at all. In another case, an Austrian CH, Schweighofer, was caught trading illegal Romanian wood, an obvious violation of the PfA, but FSC was very slow to investigate and it is not clear that this would have happened at all if it weren't for negative media reporting and NGO pressure. Proposal: FSC should lower the threshold of evidence necessary to

<p>takeredesign and streamline the process for taking action under the PfA, such as suspending a trademark license. FSC and ASI must also expand their tools and build their capacity so that PfA breaches/ suspicions/ complaints can be efficiently and thoroughly investigated and resolved. In addition, section 1.3 of the CoC standard should be strengthened so that auditors have the right to do check on uncertified material to determine check if the PfA is potentially being implemented/ violated, e.g. by asking questions about uncertified material that seems suspicious.</p>
<p>WWF recommends FSC not to adopt this version and revise this with a group of experts on this matter to make sure that the updated procedure is robust to protect the reputation of FSC and its members and certified companies but also result in remedies. The revision should make a good use of lessons learned from previous and existing complaints cases. The CoC standard should be strengthened so that auditors have the right to do check on uncertified material to determine check if the PfA is potentially being implemented/violated, e.g. by asking questions about uncertified material that seems suspicious.</p>
<p>We demand that FSC better ensures that the PfA is followed, not just by a self declaration but also to verify the compliance by standard audits that also through other FSC tools. i.e. FSC shall arrange own investigations and unannounced audits. To delegate these tasks to NGOs seems inappropriate and even especially for normal sized NGOs and individuals</p>
<p>The procedure has fundamental points to be clarified.</p>
<p>No but looking forward for ahndling the other dispute resolution documents in the same way!</p>
<p>It is a good process. I think you could enhance it by providing details and explanations on some critical aspects I mentioned on my comments. Great work!</p>
<p>Regional context in implementing the procedure needs to be kept in mind. An alien to management practices/regions should not be entrusted to investigate or decide the dissociation.</p>
<p>I am a bit surprised that FSC is still using V3.0 in which I was involved developing when working for QAU. The current version is a real improvement based on the experiences of managing PfA complaints over the past years and I sincerely hope it will make the process lighter and the life of the FSC dispute resolution team a bit easier. Good luck. Rob Ukkerman.</p>
<p>General points</p> <ul style="list-style-type: none"> • I support the 14 points made by the Rainforest Action Network (RAN), dated 24 July 2020. • I recognise that this draft 5 of V4-0 is some improvement over V3-0, as well and clearly summarised in revision cross-walk document dated 27 May 2020. However, given that this is a controversial subject which has caused much bad publicity for FSC, it is surprising and disappointing that FSC has chosen to continue with procedural rules instead of starting with a re-think and some lesson-learning from the years of experience. FSC should use a FSC Discussion Paper to state clearly what it is trying to achieve through the Policy for Association (PfA) with its six categories of unacceptable activities by entities affiliated to an applicant or FSC Certificate Holder (CH); what it has learned from previous controversies; what are the levers which it can use to encourage or force conformity to FSC requirements; what it cannot achieve especially with conglomerate entities with complex patterns of ownership and managerial control, where the FSC CH may be only a minor player in a much greater enterprise. • As stated in RAN's point 1, FSC should state very clearly that its actions in relation to the PfA are procedural and that the PfA is not a political process. FSC should remind stakeholder and all parties that the FSC certification is voluntary, and therefore both sides (FSC itself

and the CH and its affiliated entities) can dissociate at any time. There is therefore no justification for a CH or affiliated entity to issue legal threats or SLAPPs against FSC. FSC should state clearly how it will respond to legal threats or SLAPPs in relation to the PfA.

- FSC international Board and Secretariat should issue a public statement that it will not modify the final recommendations of the PfA decision panel, for political or any other reason. The Board and Secretariat may, however, engage with the decision panel on technical grounds prior to issuing a definitive decision on a PfA case. Rumours circulating in the ENGO world about political interference with PfA processes by the Board and/or Secretariat are highly damaging to the FSC reputation; in relation to the Korindo case.
- The FSC Discussion Paper proposed at 1.2 above should show what lessons have been learned also from ISO, ISEAL, trade associations and Advertising Standards Agencies, which are familiar with members trying to stretch the limits of the permissible.
- The FSC Discussion Paper should examine and draw lessons for each of the six PfA categories, using information from the FSC archives on management of complaints and disputes. Surely it is likely that operational procedures for management of complaints will need to vary according to the PfA category, because the nature of the evidence? FSC must appreciate that some stakeholders may have very different social standards and business customs from regulated Western European commerce, for example, in relation to standards of truthfulness and in the importance given to family relations and community history (feuds and traditions).
- D5 properly notes, in paragraph 3 under Scope, that disputes under certification requirements are dealt with under FSC-PRO-01-008 'Processing complaints in the FSC certification scheme'. However, it is surprising that D5 does not seem to have tried to learn from the large volume of positive and negative experience in handling complaints in the certification scheme, given that (1) Gerrit Marais of SGS Qualifor is a member of the TWG for D5 and is one of FSC's most experienced auditors, and (2) the greatest volume of complaints is about auditor performance, as shown in the last two years in the German ARTE documentary video and the complaints against the Schweighofer Group and auditor performance in the Ukraine. Surely lessons can also be drawn from cases where a CAB has invested huge efforts to resolve complaints, way beyond 'the call of duty'? – I am thinking especially of Rainforest Alliance and Forestal Venano in Peru.
- It is essential that the procedures under the PfA and in relation to FSC Conversion are harmonized. At the policy level, this is a requirement specified in Motion 7/2017 for a holistic policy on Conversion to cover all aspects of the FSC scheme where Conversion is mentioned. RAN (its point 3) has drawn attention to the potential value of a common approach to restoration/compensation/restitution/remedy.
- In Annex 2, section A (Investigator) and B (Decision Panel) need to require evidence of formal training and qualification in forensic investigation. Hence volunteers will not be enough. FSC will probably need to hire police-trained or AML-trained people. Such expertise, and access to all required documentation, could have greatly shortened some previous PfA cases where FSC volunteers simply did not have the expertise to identify, locate and analyse the necessary evidence. Other skills to be listed in Annex 2 should be those mentioned in section 4 of the 'Terms of reference for the TWG to revise the procedures for dispute handling in FSC', November 2019. The Some FSC social chamber members also wish for inclusion of people with experience of resolving social issues and the required application of FPIC; I agree when the complaint involves social issues.

Process matters

- D5 carries no date of issue, nor does it provide dates from previous versions of FSC-PRO-01-009 in the section on 'version history'.

- Although some definitions have been added in section E, this D5 should be treated as a legal instrument and, like all FSC normative framework documents, should be vetted by a qualified staff editor or on-call editor for legal English. The grammar is incorrect or not clear in some places. The phrase 'objection is honoured' should be replaced by 'objection is accepted'. Phrases concerning risk to, or preservation of, FSC reputation should be clarified by reference to the Board's document on FSC whole-enterprise risk management (no FSC document code, I believe seen by the Board at BM 79 in November 2018, so presumably in the Board's archive). Definitions should include – affidavits and declarations (should they be notarized?), confidential information, conflict of interest (and how this should be assessed, given the frequent allegations especially at Board level).
- A decision flow chart would be helpful to avoid the confusing language in clause 1.1, to show implementation of clause 2.4 and to show the difference between main and alternative dispute procedures in clause 2.11.

My main concern is that the TWG does not appear to have tested D5 against FSC's records of past PfA cases. In other words, if the proposed D5 Procedure had been in operation, how would these cases have been managed more efficiently and effectively?

My remarks are based on my involvement since 1995 in Australia and Malaysia/Sumatra.

The FSC has suffered significant risk in reputation.

Personally, I have left not stone unturned to warn the Director General of the situation in Australia.

Complaints filed by local groups have been ignored.

I have participated in all consultations PfA; complains filed ASI, in the meantime, the situation in Australia is deteriorating.

The situation is so serious that many FSC members have left or are considering leaving.