

## FSC® GUIDANCE DOCUMENT

### Guidance for Panels evaluating complaints under the Policy for Association

FSC-GUI-01-004 (V2-0) EN



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<b>Contact:</b>	FSC Quality Assurance Unit
<b>E-mail for comments:</b>	<a href="mailto:dispute.resolution@fsc.org">dispute.resolution@fsc.org</a>

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## Introduction

FSC developed the “*Policy for the Association of Organizations with FSC*” (FSC-POL-01-004) to avoid being associated with organizations or individuals involved in unacceptable activities that could harm FSC’s reputation and ultimately the ability to deliver on its mission. Through a due diligence process, FSC tries to avoid becoming associated with these organizations even before entering into a formal agreement.

The Policy for Association also allows any stakeholder to file a complaint against organizations or individuals allegedly involved in unacceptable forestry-related activities. Such complaints will be evaluated according to FSC’s Dispute Resolution Procedures.

This guidance is designed to support nominated Complaints Panel members to objectively, efficiently and consistently evaluate a complaint. It complements the *FSC Procedure for processing Formal Complaints (FSC-PRO-01-009)* by providing evaluation criteria and detailed information on applying the procedure.

Please send any comments or suggestions regarding this document to:

FSC – Quality Assurance Unit  
Charles-de-Gaulle Str. 5  
53113 Bonn, Germany

Phone: +49-228-367-66-0  
Fax: +49-228-367-66-30  
E-Mail: [dispute.resolution@fsc.org](mailto:dispute.resolution@fsc.org)

## **A Scope**

This document provides guidance to Complaints Panel members in evaluating complaints lodged against *FSC-POL-01-004 Policy for the Association of Organizations with FSC* (hereinafter: "Policy for Association").

## **B Effective date**

This Guidance becomes effective upon approval on 04 June 2013.

## **C References**

The following referenced documents are indispensable for the application of this document. For undated references, the latest edition of the referenced document (including any amendments) applies.

*FSC-POL-01-004 Policy for the Association of Organizations with FSC*

*FSC-STD-01-005 FSC Dispute Resolution System*

*FSC-PRO-01-009 Processing Formal Complaints in the FSC Certification Scheme*

## **D Terms and definitions**

For the purposes of this document, 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*, *FSC-STD-01-005 FSC Dispute Resolution System* and *FSC-PRO-01-009 Processing Formal Complaints in the FSC Certification Scheme* apply.

## **1 General principle**

- 1.1 The Complaints Panel shall operate according to the process as described in FSC-PRO-01-009, in particular as specified in Section 4.

## **2 Guidance in operations and decision making**

- 2.1 The Complaints Panel shall evaluate the complaint and make recommendations to the FSC Board of Directors. The Complaints Panel shall not act as a mediator between the Parties.
- 2.2 The Complaints Panel is charged with the responsibility to review any relevant due diligence process, certification reports, the filed complaint and the evidence presented to support it. The Complaints Panel shall contact the complainant, the defendant and other organization(s) and individual(s) able to contribute to fact finding to request relevant information and hear their position.
- 2.3 The Complaints Panel should be concerned with the safety of interviewees when conducting stakeholder interviews. Vulnerable groups should be approached with the utmost care and their identity should be treated with utmost confidentiality when deemed necessary.
- 2.4 Information by third parties should be verified, and where this is not possible, it should be noted. Verification could be through field visits, cross-checking of information through different sources, aerial photographs, etc.
- 2.5 The standard of certainty “clear and convincing evidence” shall be used as the minimum threshold by Complaints Panels evaluating complaints under the Policy for Association. This standard is met when the certainty of the violation of the Policy for Association by the direct or indirect involvement of the defendant is substantially more probable to be true than not (see Annex 3).
- Note: The standard of certainty “clear and convincing evidence” was approved by the FSC Board of Directors at their 62<sup>nd</sup> Meeting in March 2013.
- 2.6 The Complaints Panel shall evaluate all aspects of the complaint that were accepted by FSC. It is entirely within the discretion of the Complaints Panel whether to evaluate aspects of the complaint that were rejected by FSC.
- 2.7 The Complaints Panel shall base the evaluation of the complaint on compliance with the Policy for Association only. Compliance of the defendant with any other FSC certification requirements is outside the scope of the evaluation.
- 2.8 If the evidence reviewed or collected does indicate a direct or indirect involvement of the defendant in an unacceptable activity, the defendant shall be requested to comment on the findings in writing and to explain its involvement.
- 2.9 A recommendation to disassociate from an organization / individual should normally only be taken for organizations and individuals with repeated instances of violations against the Policy for Association rather than in cases of isolated incidents.
- 2.10 Evidence of deliberate attempts to conceal violations shall be grounds for consideration of disassociation.
- 2.11 Flexibility should be built into the decision-making process, i.e. timelines and conditions for rectifying violations should be proposed by the Complaints Panel, taking into account the seriousness of the violation.

### **3 Guidance in writing evaluation reports**

- 3.1 Reports shall be objective, comprehensive, properly sourced, and conclusions shall be reached in a transparent manner based on the discovered results and facts.

#### **Full Complaints Panel report**

- 3.2 The following elements should be included in the report:
- 3.2.1 An executive summary;
  - 3.2.2 Introduction of the Complaints Panel members and their mandate;
  - 3.2.3 A summary of the complaint and a clear chronology of causative events that led to an infringement of the Policy for Association;
  - 3.2.4 An explanation of the methodology of the evaluation;
  - 3.2.5 The data collection techniques used such as interviews, field visits, collation of documents, expert assessments, etc;
  - 3.2.6 A list of stakeholders interviewed together with a short rationale;
  - 3.2.7 A bibliography of all documents and sources consulted as well as an annex with all documents that are not publicly available;
  - 3.2.8 A description of any impediment to the evaluation;
  - 3.2.9 If alternative explanatory models are provided (e.g. by the defendant), a demonstration that these are likely not true or not relevant;
  - 3.2.10 A demonstration that the evidence in support of the Complaints Panel recommendation is clear and convincing;
  - 3.2.11 A recommendation to the FSC Board of Directors on whether FSC should disassociate from or maintain its association with the defendant. If a disassociation is recommended, the Complaints Panel should recommend a timeline and conditions for re-association with FSC.

#### **Public summary of the Complaints Panel report**

- 3.3 The public summary should include:
- 3.3.1 The mandate and the names of the Complaints Panel members;
  - 3.3.2 A brief account of the complaint;
  - 3.3.3 A brief description of the evaluation methodology;
  - 3.3.4 A brief description of the range of stakeholders interviewed (without mentioning names);
  - 3.3.5 A brief description of the range of documents and sources consulted during the evaluation;
  - 3.3.6 A brief demonstration that the evidence in support of the Complaints Panel recommendation is clear and convincing;
  - 3.3.7 A recommendation to the FSC Board of Directors on whether FSC should disassociate from or maintain its association with the defendant. In case of a disassociation, the timeline and conditions for re-association should be mentioned in the public summary.

## **Annex 1 Template Complaints Panel report**

### Cover page

Header: xxx complaint against xxx

[Insert date]

Title: Recommendation to the FSC Board of Directors

Subtitle: Impartial Complaints Panel consisting of [name of complaints panel member],  
[name of complaints panel member] and [name of complaints panel member.]

Main: FSC [shall disassociate from xxx] [shall maintain its association with xxx]

### Table of contents

#### Body of evaluation report:

1. Executive summary
2. The Complaints Panel
3. The Complaint
4. Evaluation of the complaint
  - 4.1 Methodology and data collection
  - 4.2 Documents and sources (description, refer to annex for bibliography)
  - 4.3 Stakeholders interviewed (description, refer to annex for list)
  - 4.4 Impediments to the evaluation
  - 4.5 Clear and convincing evidence for [disassociating with XXX] [maintaining the association with XXX]
  - 4.6 Assessment of counterevidence and counterarguments
5. Recommendation(s) to the FSC Board of Directors [insert timeline and conditions for re-association if applicable]

### Annexes

- Reports of field trips
- List of stakeholders interviewed
- Bibliography of documents and sources
- Documents not publicly available
- Any other annexes

## **Annex 2 Template public summary of the Complaints Panel report**

Header: xxx complaint against xxx

[insert date]

Title: Public summary of the Complaints Panel report

Subtitle: Impartial Complaints Panel consisting of [name of complaints panel member],  
[name of complaints panel member] and [name of complaints panel member.]

1. The Complaints Panel
2. The Complaint
3. Evaluation of the complaint
4. Clear and convincing evidence for [disassociating with XXX] [maintaining the association with XXX]
5. Recommendation(s) to the FSC Board of Directors [insert timeline and conditions for re-association if applicable]

## Annex 3 Standard of certainty

### What is a standard of certainty?

The standard of certainty is the degree of certainty applied to determine whether an allegation is defensible or not. Setting a standard of certainty is crucial – without a standard of certainty, it is not possible to evaluate the fairness and rationality of a decision.

In the context of FSC, the standard of certainty is a threshold that complaints panels should consider when evaluating a PfA complaint to determine whether the defendant is responsible for a violation of the PfA and therefore, whether FSC should disassociate from the defendant.

Instead of the legal term “standard of proof”, **the term “standard of certainty” is used in the FSC dispute resolution system.** The FSC dispute resolution system is an alternative to the conventional legal system. The FSC rules are agreed upon by the FSC Members and do not necessarily follow the principles of the common or the civil law. The term standard of proof is therefore not transferable to the context of FSC.

### 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 and is the required threshold for action under the precautionary principle. To meet this standard, the evidence available to the Panel would be more likely to be true than not.
- Clear and convincing evidence. This standard is higher than the preponderance of evidence. To meet this standard, the evidence available to the Panel must be substantially more probable to be true than not. In other words, the Panel would have a firm conviction or belief that the defendant is responsible for a violation of the PfA.
- Beyond reasonable doubt. Proof beyond a reasonable doubt is proof of such a convincing character that the Panel would have no reasonable doubt in believing that the defendant is responsible for a violation of the PfA. However, it does not mean an absolute certainty and that no doubt is possible as to the defendant’s guilt.

### Standards of certainty on a probability scale

