

## Schweighofer case - Additional Information

### Rationale for the FSC BoD decision of 'probation'

*December 2016*

FSC acknowledges that there is a need to provide further clarification and background in relation to the recent decision by the FSC BoD to place the Schweighofer Group under 'probation'.

This document aims to address this need and overcome certain misconceptions raised by stakeholders.

#### **What was the main reason why FSC BoD has not decided on a disassociation? What is FSC's intention by placing the Schweighofer Group under 'probation'?**

The **main reason behind FSC's rationale not to disassociate** from the Schweighofer Group **is to achieve positive change in the Romanian forest sector.**

- The decision for 'probation' is the most effective way to ensure that the Schweighofer Group engages in actions to fully address and end its involvement in illegal logging and timber trade.
- FSC considers that the Schweighofer Group has a greater chance for achieving change with probation than by disassociation.
- Once out of the FSC system, there would be a good chance of the company not re-engaging with FSC, or taking much longer in doing so.
- FSC considers that all relevant players must be involved to achieve the positive change needed in the Romanian forestry and timber sector. This includes the Schweighofer Group.
- FSC stresses that the intent of its Policy for Association is to achieve impacts on the ground rather than issue primarily punitive measures. (A 'punitive measure' refers to FSC's decision to disassociate from an organization based on an identified breach of the policy. This punitive measure can cause significant negative impacts for the organization).

#### **How are currently produced FSC-certified products safeguarded from illegality in Romania?**

The Schweighofer Group currently holds one valid FSC chain of custody certificate for a processing site in Romania. Apart from FSC certified material, this certificate allows Schweighofer to purchase/source FSC Controlled Wood only from organizations that have already controlled the material, but not from non-certified suppliers using a risk assessment, as it is not included in its certificate scope.

FSC concludes that these restrictions sufficiently safeguard the production of FSC-products in terms of not constituting a significantly higher risk for irregularities in Schweighofer products compared to other, certified or non-certified sources in Romania.



The concern over illegally logged or traded material in Schweighofer products mainly refers to non-certified product streams and sourcing material based on risk assessments.

For further information about the Schweighofer Group's FSC certification status, please read questions 6-8 of our Frequently Asked Questions on the case [here](#).

### Why is the decision by the FSC BoD not contradictory with the recommendation by the complaints panel?

It should be clarified that the **role by the FSC BoD and the complaints panel**, in Policy for Association (PfA) evaluations, is **somewhat different**.

The **complaints panel had not considered a 'probation' recommendation, as such an option is not explicitly described in the relevant procedure** (see clause 6.3.11 in FSC-PRO-01-009). The panel members have, however, recently expressed their support for the decision taken by the FSC BoD (see next Q&A below).

Instead, the complaints panel verified the allegations against the Schweighofer Group and, based on the likelihood that the PfA had been violated, recommended disassociation.

The role of the FSC BoD as the decision making body on the case is then to judge about how to best achieve the intended outcomes of a disassociation recommendation. In other words, whether the indicators for positive change proposed by the complaints panel are more likely to be reached through a disassociation process and a hoped for re-engagement by the disassociated organization – or through a probation period and a conditioned engagement by the then still associated organization. The board had considered the latter to be case in consideration of the following circumstances:

- **Overall country situation:** how widespread the illegalities in the Romanian forest sector are, and how complex it might be for a company to operate within legality given the difficult environment.
- **The scope of the findings:** Are the identified failures something specific to the company, or is there a systemic issue in the sector, and this company is just one (outstanding) example?
- **Recent changes:** Have there been any recent improvements in the company's operations that might show that the company is willing and able to actively and effectively address the identified shortcomings and failures?
- **Market influence:** Is the Schweighofer Group a stakeholder that can bring more improvements to the Romanian forestry and timber trade industry as part of the FSC certification system?
- **Need for strengthening FSC certification:** To what extent does the case show that there may be a need to further strengthen FSC certification in Romania, and that addressing the issues at a company level may not be enough to solve the wider problems?

- **Type of evidence used by the complaints panel in the evaluation:** Were all the reports considered by the complaints panel official, or where other sources of evidence also considered in the evaluation?

### Support by the complaints panel of the FSC BoD decision on ‘probation’

The three complaint panel members have recently expressed their support of the decision taken by the FSC BoD to place the Schweighofer Group under ‘probation’:

*‘The **complaint’s panel understands and supports the BoD decision of putting the Schweighofer group under ‘probation’**. It feels that it is in line with FSC’s principles and values and in the spirit of the recommendation of the complaints panel. It is a measure that we agree could lead to positive improvements in the forestry sector in Romania.*

*With this decision FSC is in a better position to influence the complex situation of the Romanian forestry sector and to support responsible management of the country’s globally important native forest. FSC’s presence in Romania will be key to achieve this.*

*The public admission by the Schweighofer Group that it has failed to maintain the standards required by the FSC through its involvement in illegal logging is an important first step in this process.’*

### Overall situation in the Romanian forestry sector - the identified irregularities and Illegalities go beyond Schweighofer’s operations

As a result of the complaints panel evaluation it was concluded that there are **widespread illegality issues in the forestry sector in Romania**.

There are significant failures in Romania’s governance systems due to the high level of corruption, which lead to a **high risk** of illegalities occurring in the timber trade sector, and other risks for FSC certified supplies to operate in violation of the FSC Policy for Association.

These findings show that the **systemic issues related to legality and sustainability** in the Romanian forest sector, are much beyond the Schweighofer Group.

The **Schweighofer Group is one (very prominent) example** of a company involved in wrongdoings in the forestry sector in Romania, **out of many** other.

The Schweighofer Group can play an important role as part of the solution to these issues, given its market relevance in the country and region.

A decision to disassociate from the Schweighofer Group would have not contributed in to find solutions to these country level issues.

The decision of ‘probation’ considers the broader country situation, beyond the findings in relation to one specific company. By putting the Schweighofer Group under ‘probation’ FSC intends to promote

the company to drive improvements, much beyond its own operations, but in the overall situation of the forestry sector in the country.

The widespread legality and sustainability issues identified in the Romanian forest sector, also point to the need for FSC to strengthen its systems to ensure compliance by FSC certificate holders with laws and regulations in Romania and with FSC's requirements.

### **Why are improvements in the Romanian forestry sector more likely to happen if the Schweighofer Group remains within the FSC system?**

With 40% of Romania's total softwood production, the Schweighofer Group has a dominant presence in the Romanian market for forest products. This provides the company with strong **market power and influence over the industry**.

This influence in the Romanian forest sector, if used wisely and in good faith, could lead to very significant positive changes in the sector.

If the Schweighofer Group achieves effective improvement of its operations, this would **'raise the bar'** in the forestry sector in Romania and FSC expects other companies to follow the example and improve their operations in the same way.

Probation will cause the development a stakeholder dialogue in Romania with the direct involvement of the Schweighofer Group.

FSC considers that the dialogue among Romanian forestry sector stakeholders is much needed in order to find long term solutions to the serious issues identified in relation to the legality and sustainability of this sector.

There is a high chance that with disassociation and after having the company face all the negative impacts of it, Schweighofer would no longer be interested to make meaningful efforts to improve its operations. This would ultimately not achieve the improvement in the Romanian forestry sector that FSC ultimately is striving for.

### **What are the consequences for the Schweighofer Group of being under 'probation'?**

#### **'Probation' has clear consequences for the Schweighofer Group**

- This decision puts the Schweighofer Group under **very tight and strict deadlines** by which the group shall demonstrate its commitments towards FSC's values and undertake the necessary steps to improve its operations.
- The **consequences of not doing so** have been clearly stated by FSC: If by the February 2017 FSC board meeting the Schweighofer Group has not presented FSC with sufficient evidence demonstrating that these conditions have been satisfactorily met, the FSC board will immediately decide for **FSC to disassociate** from the Schweighofer Group.

- The decision for ‘probation’ also has **immediate consequences on the efforts and resources that need to be invested by the company in the improvement of its operations**. The company needs to invest considerable efforts from now until February to develop a corrective action plan, and will need to invest further increased resources from February onwards, to ensure that the action plan is implemented adequately.

### **What actions are expected by the Schweighofer Group by February 2017? What can be expected from the company from February onwards?**

By February 2017 the Schweighofer Group must present FSC with evidence demonstrating that the below pre-conditions set by the FSC BoD have been satisfactorily met. (These ‘pre-conditions’ will have to be met in order for the company to qualify for continued probation.)

- **By the next February 2017 board meeting the Schweighofer Group must meet the following conditions:**
  - 1. Publicly declare their responsibility for certain irregularities in their supply chains and their commitment to address relevant shortcomings** in collaboration with civil society organizations.
  - 2. Demonstrate that it is engaged in a transparent and constructive dialogue with environmental and social stakeholders about a clear plan of corrective action** built on the recommendations of the complaints panel. This plan shall address both the significant shortcomings still existing in their operations as well as the major impacts on forests and people that irregularities in their operations have caused.
  - 3. Present a preliminary plan of corrective action** to the FSC board for approval.
- If the Schweighofer Group successfully meets the above conditions by February 2017, then the ‘probation’ period will be prolonged for a time period determined by the point in time when the complaints panel’s recommended conditions are sufficiently addressed.
- During the months from **February to May 2017**, the Schweighofer Group will initiate the implementation of the corrective actions and measures as defined in the action plan presented to the FSC BoD in February 2017. It is likely that by the time of the May 2017 BoD meeting, a first set of actions will have to be implemented by Schweighofer in order not to face the lifting of the probation and disassociation as a consequence.
- From **February 2017 onwards** the Schweighofer Group shall submit to FSC monthly progress reports, providing a description and the background evidence, to demonstrate the efforts invested in the development and implementation of the action plan.



**What are exactly the wrongdoings that the Schweighofer Group will have to address in order to remain within the FSC system?**

**The exact wrongdoings that the Schweighofer Group must address in order to remain within the FSC system are explained in detail in the conditions established by the complaints panel:**

- 1.** The Schweighofer Group shall **develop and implement a due diligence and CoC system that addresses the existing risk in Romania** and strictly avoids direct and/or indirect involvement of the Schweighofer Group in any form of illegality in the timber trade.

At least the following elements (and others that may be considered necessary) will be ensured through the implementation of such systems:

- a.** All timber can be traced from the stand in the forest to mill gate including any timber that is purchased from third parties.
- b.** All documents that are related to harvest and transport of timber are verified as having been correctly and legally issued by the duly authorized authority. This includes any timber that is bought from third parties. This verification shall include verification that ownership of the land from which the trees are harvested is legally clarified and not disputed, and that the legal owner of the land has subject to FPIC, agreed to the harvesting of the forest. All forest management plans must be confirmed to have been developed in accordance with all legal requirements. Permits for sanitary and salvage harvests must be confirmed as being issued by the correct legal authority and under the correct legal authorization.
- c.** All non-compliances or errors in the completion of paper forms or of information entered into the SUMAL system are detected and eliminated before any timber is allowed to enter any sawmill or the Schweighofer Group owned depot.
- d.** The movement of all materials between entities inside the Schweighofer Group mills and between mills and associated entities will be correctly accounted for and correctly classified.
- e.** Welcomes, receives, integrates and addresses without delay inputs by public, corporate and civil society stakeholders.
- f.** The Schweighofer Group avoids doing business with
  - i.** any person or company who has been indicted or convicted of any offence related to corruption
  - ii.** and for any offence related to illegal timber trading for a period of at least ten years after such a conviction is spent
  - iii.** and permanently for any person convicted of such an offence repeatedly, and/or receiving a prison sentence of more than five years and/or a fine or compensation demand of more than 1 million Lei
- g.** The Schweighofer Group is able to monitor and evaluate its Due Diligence and Chain of Custody (DDS and CoC) systems for the following:
  - i.** whether and to what extent the DDS and CoC systems are robust

- ii. where the DDS and COC systems are deficient
    - iii. whether the DDS and COC systems deliver the performance outlined above
  - h. Such system must be audited by an independent entity at least three times and there shall be a period of at least one year between the first and last audit. Such audit shall be planned, coordinated with relevant stakeholders in Romania. A public summary of the results of such audits shall be discussed with relevant stakeholders in Romania.
2. The Schweighofer Group shall **compensate the lawful owners of any land that it has acquired from illegal land restitution** by returning such land to them and by compensating them for the value of any trees harvested from the land so as to put them in the same position as if they had always had possession of the land. If the lawful owners cannot be identified or if such land is found to be state land then it shall be returned to the state and the state shall be compensated for the value of any trees removed.
- The Schweighofer Group shall in addition do a complete independent review of all land in its possession to verify that such land was indeed lawfully in possession of the vendors at the time of SG purchasing it. If this independent review concludes that the Schweighofer Group acquired land from illegal land restitution, e.g. because of involvement of any fraudulent actions, the Schweighofer Group shall compensate either the lawful owners or the state in the way explained under point 2 above.
3. Since the land from which most illegal timber supplied to the Schweighofer Group cannot be identified it is required that the Schweighofer Group shall **make appropriate environmental and social compensation for the damages it caused to the Romanian forest and its people** as a whole.
- a. SG shall **engage with appropriate social NGOs supporting rural people in Romania to determine a system of social support for deprived communities in forested areas in Romania**. The nature and extent of this support shall be determined in consultation between a round table of such NGOs and the Schweighofer Group and shall be verified by an appropriate third party organization. Such support shall be for a period of at least ten years and its value should be proportionate to the damages affected by the Schweighofer Group.
  - b. The Schweighofer Group shall **engage with appropriate environmental NGOs to carry out environmental and biodiversity maintenance and/or restoration activities in forests in Romania**. The nature and extent of these activities shall be determined in consultation between a round table for such NGSO and the Schweighofer Group and shall be verified by an appropriate third party organization. Such support shall be for a period of at least ten years and its value should be proportionate to the damages affected by the Schweighofer Group.
4. The Schweighofer Group shall compensate FSC with the full costs associated with the PfA investigation.



## **FSC's role in monitoring of the development, implementation and verification of the corrective action plan by the Schweighofer Group**

**FSC will closely monitor the progress made by the Schweighofer Group on its fulfillment of the conditions.**

- From today until the end of January 2017, deadline for the submission of the preliminary action plan to FSC, FSC will be closely monitor the progress made by the Schweighofer Group in the fulfillment of the conditions.
- If the conditions are met, from February to May 2017, FSC will closely monitor the company's implementation of the action plan, as well as review and verify the monthly progress reports to be submitted by the company.

## **Strengthening of the FSC certification system in Romania**

### **Increasing resources**

In 2016 FSC identified Romania as an important country to strategically invest into in the near future. As a first step of this strategic investment in Romania, FSC decided to establish a presence in the country, by initiating the recruitment of a Project Coordinator for FSC activities in Romania.

### **Strengthening of FSC certification Standards and systems**

FSC is in the process of strengthening its certification systems in Romania, to address the risks associated to the timber trade and harvesting in the country.

FSC is currently leading two processes, with the aim of making FSC certification system more robust in the country: establishing a national forest management standard and implementing the Controlled Wood National Risk Assessment process.

FSC also expects the new transaction verification requirements in the new version of the Chain of Custody Standard to address some of the weaknesses identified in this investigation around the implementation of weak due diligence systems being used across the industry in Romania.

FSC will continue to develop its certification system in the country as needed, aiming to address the existing risks in the sector.

## **What will happen if the Schweighofer Group does not satisfactorily implement the requested conditions? How would FSC safeguard its reputation in such case?**

If the Schweighofer Group does not fulfill the conditions by the February deadline, the decision by FSC BoD to disassociate will be the measure taken by FSC to safeguard its reputation and to comply with its rules.



A future disassociation does not cast any doubt over FSC. On the contrary, it reaffirms the commitment that FSC tries first to be inclusive and seeks change through identifying the problem and engaging with companies. If it has to take objective punitive measures to safeguard its credibility as a certification scheme, it will.

### **What level of certainty does ‘clear and convincing evidence’ demonstrate? What does this concept mean?**

Clear and convincing evidence means that the evidence available to the complaints panel must be substantially more probable to be true than not. (See “Processing Policy for Association Complaints in the FSC Certification Scheme” FSC-PRO-01-009)

In other words, ‘Clear and convincing evidence’ means that an advanced level of certainty has been reached but it is not the highest possible one and not the one that is usually applied in jurisdiction which is ‘beyond reasonable doubt’.

### **The Schweighofer Group has an advanced due diligence system in place which puts it in a good position to implement further improvements**

The complaints panel concluded that Schweighofer Group’s Due Diligence Systems (DDS) is inadequate and not sufficiently able to ensure compliance in the highly complex regulatory and business environment in Romania. However, the complaints panel also acknowledged that the Schweighofer Group’s DDS is relatively advanced. The panel also found that the Schweighofer Group has undertaken considerable steps in recent years to improve its DDS.

The FSC BoD considered that these recent improvements in the Schweighofer Group’s DDS would put the company in a position where its capable and in good shape to implement further improvements to its systems, to live up to the conditions and standards required by FSC.

The finding that there had been recent improvements in the company’s DDS was considered by the FSC BoD a factor in favor of the decision of ‘probation’.

By deciding on ‘probation’ the BoD aimed to **encourage and promote further improvements of the company’s DDS**, some of which had already started to take place, to some extent.

Given the company’s market relevance, an improvement in the Schweighofer Group’s DDS, could have an impact way beyond its company’s operations, influencing the entire forestry and timber processing sector in Romania.

### **Ongoing dialogue between Romanian NGOs and the Schweighofer Group**

The Schweighofer Group has initiated a dialogue with the relevant stakeholders in Romania, in the context of the conditions requested by FSC.



For example, Agent Green, a local Romanian environmental NGO, is currently engaged in an ongoing dialogue with the Schweighofer Group, regarding the company's avoidance of sourcing wood from virgin forests and national parks.

FSC expects that the Schweighofer Group will continue and strengthen this dialogue with stakeholders, and that this communication will provide the company with valuable input on how to address the shortcomings identified in its operations.

### The broader definition of 'illegal' used by the complaints panel

The complaints panel has been strict with the definition of 'illegal' used in the evaluation, as they have used a much broader definition of the term than the one commonly used.

'Illegal logging' is usually defined as: *Harvesting of timber in violation of any laws applicable in that location or jurisdiction including, but not limited to, laws related to the acquisition of harvesting rights from the rightful owner, the harvesting methods used and the payment of all relevant fees and royalties.*

However, the FSC Controlled Wood Standard includes illegal actions of many types taking place further down the supply chain. The complaints panel believes that the definition included in the FSC Controlled Wood standard is a much more complete definition, which better reflects the intentions of the FSC membership when it comes to protecting the image of FSC. For this reason the complaints panel decided to use this broader definition of 'illegal' in their complaint evaluation.

Further details regarding the broader definition of 'illegal' used by the complaints panel, are provided in the public version of the Complaints Panel Evaluation report on section 4.5.2 (pg. 17-18).

**By using this broad definition of 'illegal', activities which have been defined by the complaints panel as 'illegal' following this definition, may not be considered as such, under the more commonly used definition of the concept.**

This broader use of the term 'illegal' by the panel needs to be considered, when interpreting the conclusions of the evaluation.

### Use of informal sources of evidence in the complaints panel evaluation

It should be noted that some of the evidences which the complaints panel based its conclusions on were informal sources.

These informal sources of evidence (such as draft reports, unofficial websites and media publications) used in the evaluation were not given the same weight as other official sources (such as official reports by the Romanian authorities). Although these informal sources of evidence were just one part of the multiple other sources reviewed and analyzed by the complaints panel, their use added some level of uncertainty to the evaluation. This level of uncertainty related to the use of informal sources was considered by the FSC BoD as a factor in favor for 'probation'.