



Forest Stewardship Council®



**Synopsis consultation results for FSC Advice
Note on addressing deliberate false claims and
FSC procedure on Calculating financial penalty /
compensation fee and processing evidence for
Blocked organizations.**



Consultation results summary

53 stakeholders provided feedback on the FSC Advice Note on addressing deliberate false claims (ADVICE-40-004-18) and the FSC procedure on Calculating financial penalty / compensation fee and processing evidence for Blocked organizations (FSC-PRO-10-003).

Users participated in the consultation 53

Type of participants



Overall impression by type of participants

	Very positive		Quite positive		Neutral		Quite negative		Very negative	
	Advice note	Procedure	Advice note	Procedure	Advice note	Procedure	Advice note	Procedure	Advice note	Procedure
ASI staff	2	2								
Certificate holder	2	1	2	2	3	1	1		1	2
Certification body/auditor			3	3	2	1	1	3	2	3
Consultant			2	1				2	1	1
FSC International staff	1	1	1							
FSC Member	2	1	1	1	4	1	2	4	1	2
FSC Network Partner staff	1		3	3	1		1	1		
Other			1	2	1		2	1	2	3

Overall impression

	%	Advice Note	Procedure
Very positive	15		10
Quite positive	25		23
Neutral	21		6
Quite negative	13		21
Very negative	13		21
No response		12	19

Overview of results for the Advice Note

Below is a summary of key topics stakeholders and members provided feedback on, together with PSU, Legal, and SCIP responses on how these comments were addressed.

Stakeholder feedback	PSU, Legal and SCIP Comments
<p>Some users do not agree with the definition/requirement surrounding that the evidence needs to be clear and convincing (Terms and definitions).</p>	<p>The requirement of “clear and convincing” evidence has been part of the FSC Normative Framework long before the Advice Note on false claims has been introduced. This is the threshold required by FSC in order to ensure that the facts are being substantiated before making any decision that affects the FSC certificate holder.</p> <p>“Clear and convincing “evidence shall be supported by documents, facts, other information, or records, either quantitative or qualitative, that can be verified through analysis, observation, measurement, and other means of research (See Graphic 1).</p>
<p>The advice should be explicit and only refer to <i>deliberate</i> false claims and Clause 1.6 (FSC-STD-40-004) already deals with non-conforming products (Clause 1.1).</p> <p>Procedures for non-conforming products are processed (FSC-STD-40-004 V3-0, 1.6), the Advice Note should only be for deliberate false claims. This causes a lot of work for all parties involved if the Advice Note includes unintentional or negligent false claims, there is no added value for the system.</p>	<p>It is almost impossible to prove with clear and convincing evidence the intention of a FSC certificate holder making false claims. To avoid situations where all FSC certificate holders making false claims would invoke a negligent false claim and FSC will struggle to provide substantial evidence to prove the intention in order to protect the FSC certification scheme, FSC has introduced the Section in Advice Note which is supposed to protect FSC from FSC certificate holders that still repeat the due diligence mistake three times even after the non-conformity has been resolved and closed each time.</p> <p>Whereas mistakes with eligible products are still possible and would fall into the category of inaccurate claims and are addressed under FSC-STD-40-004, FSC took actions to protect the integrity of the FSC Scheme and businesses of diligent certificate holders from wrongly labeling not eligible products.</p> <p><i>For example: If a certificate holder received a false claim by another certificate holder and is unaware that the product is a non-conforming product /a false claim, then the certificate holder who received the material should not have the Advice Note applied but Clause 1.6 in FSC-STD-40-004.</i></p> <p><i>If a certified holder received a false claim by another certificate holder and is aware that the product is non-conforming product/a false claim and continues to pass on the false claims to customers, then the certificate holder the Advice Note is applied.</i></p>

Separation of roles between FSC and ASI (Clause 1.2).

Participants believe there should be clearer of the separation of roles between FSC and ASI.

The roles and responsibilities between FSC and ASI are defined in the FSC Normative Framework, regarding the Advice Note and managing false claims continue following the same principles.

Many participants do not agree with ‘false claims with negligence’ requirement as it is seen as unfair and unrealistic for Certificate holders and it should be removed. (Clause 2.1 ii).

There is support for a strict approach for organizations that make deliberate fraudulent claims. However, the requirement sets negligence (or the misinterpretation of requirements) at the same level as an organization making a deliberate false claim.

Example: A paper merchant has one thousand different articles with FSC attributes in his product range. Now one paper or even only a paper specification is changed by the supplier without or with an insufficient announcement. The paper merchant issues hundreds or thousands of invoices with FSC claims every day. Thus, it may easily happen that false claims are made.

Organizations that make false claims through negligence already must carry out corrective actions and Clause 1.6 (FSC-STD-40-004) already covers non-conforming products. The Advice Note is for deliberate false claims and should remain focused on that.

We have updated the Advice Note to address scenarios which may be deemed as ‘unfair’ for organizations when false claims are identified (i.e. where multiple false claims are present but are linked to a single source and for situations where false claims were received or unessentially passed on)

NOTE: An incident with a false claim is linked to a root cause and multiple incidents of false claims may originate from the same root cause. In all such cases, these instances of false claims (which would normally trigger a single non-conformity in an assessment) count as one false claim event for the purpose of this Advice Note.

NOTE: Clause 2.1 does not apply to certificate holders where they have received or unintentionally passed on false claims. In such a scenario Clause 1.6 of FSC-STD-40-004 applies

Clause 1.6 (FSC-STD-40-004) refers to requirements for non-conforming products but does not cater for situations where claims were made through negligence – the Advice Note provides additional requirements to address this.

In addition, the example provided by stakeholders is a misinterpretation of the Advice Note. This wouldn’t be considered a false claim. It’s an inaccurate claim.

“A false claim is different from an inaccurate claim, in which a product, that is eligible to be sold as FSC certified, is sold with the wrong claim.”

The blockage period is seen as too long, users would like this to be shortened (Clause 4.1).

Users would like to see the blockage duration to be shortened as it could cause a lot of reputation and financial damage to the organization.

FSC had to consider creating rules that could be reasonably applicable for variety of different situations and different products. In the example of calendar producer, where the major sales are in November and December, blockage in January for a 10 month does not create any deterrent effect on the company.

It is unclear what the consequences of false claims within multi-sites and group certificates (Clause 2.1.1).

The fact that Multisite and COC Group Certificates only sign one TLA must be considered. It is unclear if the processes and consequences apply to the group member or participating site that made the false claim. It should be clear that the term Organization applies to the level of the

We added the following NOTE to clarify the consequences of false claims within multi-site and group certificates.

NOTE: If a false claim is made by a group member or participating site then this Advice Note applies to that specific group member or participating site and not to the Central Office. However, if false claims are made by multiple group members or

participating site and NOT on the level of the group entity (Central office).

participating sites then this Advice Note applies to each individual member/site who made the false claim. In addition, the requirements of FSC-STD-40-003 (Clause 4.2, and Annex 2 – Clause 1.2 and Clause 2) also apply.

Organizations should be compensated and reimbursed by FSC for the duration of their blockage if wrongly accused (Clause 3.1).

If the organization can prove that the false claim is incorrect, and its reputation and financial situation were damaged during the blockage period. The Advice Note and procedure should consider compensation or reimbursing the organization.

At FSC decisions on false claims are made applying multiple eye principle. The possibility of wrong accusation is barely impossible. To eliminate those few cases the procedure of contesting the decision was introduced in the Section 6 of the procedure. Despite this, FSC certificate holder can always approach the court of arbitration to enforce its civil claims.

The blockage process is not clear to participants, it is understood that the organization is prohibited from carrying out any processes or production (Clause 4.2).

Clause 4.2 is interpreted that the organizations cannot and must stop from carrying out any production, not just FSC-related procedures during the blockage period.

We added an example to add clarity to this Clause.

3.2 For the duration of the blockage, the blocked organization shall not carry out any processes or activities that are included within the scope of their FSC certification (e.g. trading, processing, manufacture, labelling, storage, and/or transport). For example, selling FSC-certified products with FSC claims or labelling products as FSC certified.

Participants want to know what the compensation fee is used for (Clause 5.2).

Not clear which organization will be the beneficiary and how the received compensation fees will be used.

FSC is a non-for-profit organization, as for this legal status the income collected by FSC must be and is used only for the non-profit purposes of FSC and cannot be distributed to its members or stakeholders. the budget collected with compensation fees is used for projects to ensure the integrity of FSC system.

Overview of results for the procedure

Below is a summary of key topics stakeholders and members provided feedback on, together with PSU, Legal, and SCIP responses on how these comments were addressed.

Stakeholder feedback	PSU, Legal and SCIP Comments
<p>Divisions of roles between ASI and FSC are not clear and FSC owns the whole process.</p> <p>FSC controls the whole process from the identification of the initial false claim, the decision making, and receiving the penalty or fee.</p>	<p>The roles and responsibilities between FSC and ASI are defined in the FSC Normative Framework and in regard to the Advice Note and managing false claims continue following the same principles. FSC, as well, as a private scheme owner must have safeguards in place to ensure trust in the system and to be able to take measures where necessary.</p>
<p>The calculation of the fee is complicated; it is not clear or transparent.</p> <p>No rational or explanation about the flat rate (600 USD). (Section 3)</p> <p>Not clear how the Market value is calculated or the definition (Section 4)</p>	<p>Like the laws must be abstract enough to be applicable to different cases, FSC had to consider creating rules that could be reasonably applicable for variety of different products, different intensity of false claims and economical power of FSC certificate holder.</p> <p>The flat rate was the result of the deep analysis of an appropriate financial sanction, which would put FSC certificate holder in a position where committing a false claim combined with a risk of paying a financial penalty is less profitable than committing any false claims.</p> <p>The formula and coefficients are all described till smallest detail. It is extremely transparent.</p>
<p>No appeals process is available (Section 8).</p> <p>The lack of an appeals process is seen as unfair, as an alternative provide a longer timeline to contest.</p>	<p>Available are Section 6 in the procedure and court of arbitration agreed in TLA.</p>