

## TPAC advice to the State Secretary for Infrastructure and Water Management

In response to observations and complaints concerning the Malaysian Timber Certification System (MTCS)

06-10-2023

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### Abbreviations

#### **Organisations**

- AB Accreditation Body
- CB Certification Body
- CH Certificate Holder (certified company or organisation)
- MTCC Malaysian Timber Certification Council
- MTCS Malaysian Timber Certification Scheme
- PEFC Programme for the Endorsement of Forest Certification
- TPAC Timber Procurement Assessment Committee
- TPAS Timber Procurement Assessment System

#### **Terms**

- CAR Corrective Action Required = NC Non-Conformity (relative to the relevant criteria)
- CoC Chain of Custody
- DAM Development, Application and Management of certification systems
- FMU Forest Management Unit (N.B. a Certificate Holder has one or more certified FMUs)
- FPIC Free, Prior and Informed Consent (N.B. this can refer both to the process of achieving consent and the consent achieved)
- PEM Procedure on Endorsement of certification systems by a Meta-system
- SFM Sustainable Forest Management
- SLAPP Strategic Lawsuit Against Public Participation

## I Brief

The State Secretary for Infrastructure and Water Management (I&W) has received various observations to indicate that the Malaysian Timber Certification System (MTCS) does not comply with the Dutch procurement criteria for timber.

In response to these observations, including complaints from NGOs submitted to the Malaysian Timber Certification Council (MTCC) and the Programme for the Endorsement of Forest Certification (PEFC), the State Secretary has requested that TPAC carry out a fact-finding analysis of how the MTCS operates. The commissioning letter, with annexes, has been appended as Annex 1. The main focus of the brief involved hearing the reaction of PEFC and MTCS to the observations and complaints received. The aim of this analysis is to provide advice on potential follow-up steps to be taken. These could involve further investigation of the irregularities identified, possibly as part of a field visit.

In addition, based on the results of the analysis, the State Secretary may wish to consider whether adaptations concerning the approval of PEFC/MTCS within the Dutch procurement policy may be desirable, possibly on a temporary basis, pending the results of any further investigation.

## II Approach and background

### Preparation and collection of information

- Classification of the observations and complaints: observations received by the Ministry; complaints from NGOs submitted during an audit conducted by FORM International on behalf of PEFC; and complaints from NGOs submitted to MTCC and/or PEFC.  
What is the content of the complaint(s), by and to whom were they submitted and on which date?  
Initial assessment to identify which TPAS principles and criteria the observations and complaints relate to.
- Drafting and submission of relevant questions to PEFC and MTCC:  
Were the complaints processed in accordance with the complaints procedures?  
What is the current status of complaint processing?  
What is the current situation in the certified Forest Management Unit to which the complaint relates?

In an effort to answer these questions, TPAC studied documents and put questions to PEFC and MTCC, asking that they be answered in writing before the scheduled meetings. PEFC agreed to this, also on behalf of MTCC. TPAC had digital consultations with PEFC, including one verbal online meeting. After this verbal online meeting, PEFC provided additional information, also on behalf of MTCC. This exploratory research was slightly impeded by the delayed response from PEFC/MTCC, which stated that it was unable to comment on many of the points. PEFC argued that it was only able to provide a generalised response to customer-specific questions in order to avoid encroaching on the responsibility of the organisations formally responsible for processing the complaints, such as MTCC, the Certification Bodies and the Accreditation Body. In response to numerous questions relating to specific practical examples, PEFC and MTCC replied that they should be put to the CBs. The digital and verbal consultation with PEFC was carefully documented, along with the source or sources for each information component.

Originally, there were plans also to communicate directly with MTCC, digitally and verbally online. Despite this, communications with MTCC were limited to sending a series of written questions via PEFC. In response to that, MTCC emailed a response to TPAC to just one question.

Following the discussion with PEFC, MTCC stated that it was unable to provide any further information than that already provided by PEFC. MTCC failed to respond to TPAC's repeated request for a verbal consultation without providing any reasons for this. The proposed meeting ultimately never took place.

In light of this, an announcement made by **personal data**, would appear to be of relevance. In the online meeting with TPAC, he pointed out that, during a conversation with **personal data**, also attended by **personal data**, **personal data** said that Dutch interference with the Malaysian certification system is inappropriate. **personal data** has also made it clear on several occasions that he would like to see the observations currently being investigated by TPAC submitted to further investigation during a (joint) mission to Malaysia.

In view of the time and budget available, it was not possible to provide the submitters of complaints with feedback on the information received from PEFC.

#### Classifying the information obtained

The findings in Chapter 4 have been based on the written and verbal information received directly from NGOs and PEFC by the State Secretary and/or TPAC. TPAC has also consulted publicly available information (press releases, official reports, etc.) relating to relevant matters in the context of the complaints procedure.

#### Analysing information obtained and drawing preliminary conclusions

For each complaint made, an assessment has been made as to whether it involved – and still does – actions that are not in accordance with relevant TPAS criteria:

- concerning sustainable forest management (SFM), and/or
- concerning procedures for conflict resolution (SFM, DAM and PEM).

#### Summarising conclusions and compiling advice

The commissioning letter provides guidance with regard to the content of the advice to be provided.

### III Context

#### Forest management in Malaysia

Malaysia is made up of three federal territories, Peninsular Malaysia, Sarawak and Sabah, and is a federation of 13 states, 11 of which are on the peninsula. The forest on Peninsular Malaysia is divided into Permanent Reserved Forests that must be maintained as such and State Forest Lands, forests that can be given an alternative designation.

The state governments are responsible for forest policy. In each state, they are simultaneously the forest owner and forest manager. On Peninsular Malaysia, the entire surface area of permanent forest in each state has MTCS certification as a single forest unit.

The state government is therefore the Certificate Holder. On Sabah and Sarawak, the state governments issue logging concessions. Each concession on Sabah or Sarawak corresponds in size to a certified management unit. The concession holder is also the Certificate Holder. A Certificate Holder has one or more certified Forest Management Units.

#### Assessment of certification system

The Malaysian Timber Certification System (MTCS) is Malaysia's national certification system for sustainable forest management. Timber originating from MTCS-certified forests is marketed via the PEFC Chain of Custody (CoC) and issued with the PEFC logo. PEFC stands for: *Programme for the*

#### *Endorsement of Forest Certification.*

PEFC has been approving MTCS since 2009. The most recent approval was in May 2021, based on the study conducted by FORM International.

The responsible Dutch Minister or State Secretary has accepted timber with the PEFC certificate/logo since 2010, initially with the exception of timber originating from Malaysia. In 2016, the then State Secretary also admitted timber from Malaysia under certain conditions. In 2020, the State Secretary accepted PEFC International, together with all the underlying systems, including MTCS.

#### TPAC: Advice issued

In October 2010, partly as a result of observations and complaints from NGOs, TPAC reached the judgement that MTCS did not fully conform to the Dutch procurement criteria for sustainably produced timber, TPAS. In practice, it appeared that the management was failing to conform with the TPAS requirement concerning:

- *Use rights of indigenous peoples*, the principle of free, prior and informed consent (FPIC) appeared not to apply to the whole traditional use area.
- *Conversion*, there was no clear limit on the permitted size.
- *Maps* were of inadequate quality and not available to stakeholders.

In November 2010, agreements were reached at ministerial level between the Netherlands and Malaysia intended to resolve the non-conformities identified within a two-year period.

At the State Secretary's request, TPAC issued two reports on the status of developments. In August 2013, TPAC concluded that *forest management criteria and implementation instructions had been improved, but issues remained unresolved in practice.*

In October 2015, TPAC reported that *the unresolved items concerning conversion and indigenous peoples had been resolved in large measure on paper, but the information available did not allow this conclusion to be extended to the situation in practice.*

In her letter dated 25 January 2016 to the House of Representatives, the State Secretary then announced her intention to request that TPAC carry out a field study in Malaysia.

Negotiations about this between the Ministry and Malaysia ultimately resulted in an official fact-finding mission lasting only three days, in which TPAC also participated.

#### Outcome of mission to Malaysia

In her communications with Malaysia, the State Secretary made it clear what the purpose of the mission was.

*The question the visit should find an answer to is 'Does the MTCS system sufficiently safeguard that the TPAS criteria are met in the SFM practice in Malaysia, including the outstanding issues on **conversion, indigenous people and the availability of maps?**'.*

The mission had conversations with government officials, MTCS representatives, Certification Bodies and NGOs. In view of the brief time available for the mission, there was just a single field visit, to a forest area in the vicinity of Kuala Lumpur selected by MTCS.

TPAC did not have an opportunity to visit several locations and hold intensive discussions with local stakeholders in order to gain a more comprehensive picture. As a result, observations of how MTCS operates in practice remained limited to a single location selected by MTCS.

The mission compiled the following recommendations and conclusions.

### **General**

The normative documents, *MC&I 2012* and the *Guidelines for the Interpretation of Requirements in MC&I 2014* conform to the TPAS forest management criteria relating to indigenous peoples, conversion and maps.

### **Indigenous peoples**

TPAC was unable to establish whether the customary rights of indigenous communities have been infringed by the conversion of MTCS-certified forests. TPAC recommends drawing the attention of MTCS to that point and to the importance of ensuring that indigenous communities are informed about the existence and application of the *Guidelines for Interpretation of Requirements in MC&I 2014*.

### **Conversion**

The ability of stakeholders to form an impression of the extent of conversion is impaired by the frequency of de-gazetting (the removal of forest from the MTCS-certified forest area) and gazetting (the addition of state forest lands to the MTCS-certified forest area), and by lack of clarity as to the phase of the procedure that these processes have reached. Despite the fact that de-gazetting it sometimes partly offset by gazetting and the conversion area therefore remains within the 5% limit, there is still a risk that the quality of forest will be degraded.

### **Maps**

At the district office visited, there are informative maps of various scales depending on the purpose of the map. In principle, any individual or institution can submit a request for access to relevant maps or ask to be provided with map materials, but this access is seriously curtailed by the procedures and criteria applied by the Forestry Department.

The Forestry Department would be well advised to make public the criteria it applies for approving or rejecting requests. It is also desirable that relevant map material is made available for consultation not only in the Forestry Department's offices, but also in the vicinity of the village communities.

### **Overall conclusion**

In the light of the above, TPAC ultimately concluded that the prevailing picture was that issues concerning MTCS had been resolved to a sufficient extent. However, TPAC did not have an opportunity to visit several locations and hold intensive discussions with local stakeholders in order to gain a more comprehensive picture. For this reason, TPAC was unable to determine whether the impression it had gained was a reasonable reflection of general practice in MTCS-certified forests.

### **State Secretary decision 2016**

In her letter to the House of Representatives of 22 December 2016, the State Secretary wrote the following: *The TPAC report confirms my impression that MTCS has also implemented major improvements in practice and the issues have been resolved to a sufficient extent. I am therefore deciding to recognise MTCS as a certification system for sustainable forest management within the framework of the sustainable procurement policy of the Government of the Netherlands.*

### **Further complaints from NGOs**

In 2021 and 2022, NGOs and representatives of the indigenous population made further complaints to MTCS and PEFC and to the State Secretary of I&W as the government official responsible for timber procurement policy in the Netherlands.

## IV Findings, analysis and conclusions.

In this chapter, TPAC sets out the facts that resulted from the investigation process described in Chapter 2. This concerns the information received by TPAC regarding the complaints submitted to PEFC, MTCS, the Certification Body or the forest manager and regarding the problems brought directly to the State Secretary's attention by NGOs.

### Complaints submitted to the PEFC/MTCS system

TPAC and the State Secretary are aware of four documents containing submitted complaints. On 17 and 24 May 2021, the NGOs KERUAN and Gerenai Community Rights Action Committee (GCRAC) sent two identical letters outlining four complaints to the MTCS Council.

The NGOs Save Rivers, The Borneo Initiative and The Bruno Manser Fonds submitted a document of complaints to FORM International during an NGO consultation. In September 2021, FORM International conducted an audit, commissioned by PEFC, regarding a change to MTCS standards. The complaints document, entitled '*Complaints from the ground regarding the implementation of the Malaysian Timber Certification Scheme (MTCS) in Sarawak, Malaysia*' describes complaints that match those submitted by KERUAN and GCRAC.

The fourth document concerns a complaint submitted to PEFC on 15 October 2021 by The Borneo Project, The Bruno Manser Fonds and GCRAC concerning the behaviour of the MTCC Dispute Resolution Committee.

### Stakeholder consultation by FORM

The reassessment report drawn up by FORM on behalf of PEFC with regard to the revision of the MTCS standard relative to the PEFC benchmark includes various contributions from stakeholders. Some of these are related to other observations they received (complaints about practice, and about the contribution of Orang Asli and local stakeholders).

### Observations brought directly to the State Secretary's attention

- Letter from **personal data** (8 December 2021),  
Subject: MTCS certification.
- Presentation by SAVE Rivers, KERUAN, Bruno Manser Fonds, (Ministry of I&W, 12 May 2022),  
Title: Reasons to suspend the Dutch endorsement of the Malaysian Timber Certification Scheme.
- Both Ends letter (22 April 2022),  
Subject: MTCS certification and the toleration of infringement of indigenous land rights and intimidation of indigenous organisations and their representatives in Malaysia and the Dutch government's role.

For further details of the complaints and observations and the handling of the complaints, see Annex 2.

In it, TPAC has included a table outlining the following for the subject of each complaint submitted or observation received: nature of the complaint; TPAS criteria that apply to the subject of the complaint, information received concerning the handling of the complaint and its current status; analysis of the information obtained and a subsidiary conclusion.

Based on the information obtained, TPAC has listed below the subjects about which they now have sufficient certainty and issues about which they still have reasonable doubt. For further details on each subject, see the relevant table in Annex 2.



Certainty that the situation in practice is not in conflict with TPAS criteria:

- Pending the lawsuit against the NGOs, the processing of complaints concerning the practice of Gerenai and Ravenscourt was continued by the appropriate party, the Certification Body (Annex 2: A.5b).
- MTCS does not suspend certificates. That is the mandate of Certification Bodies and in conformity with TPAS (Annex 2: B.3).
- Certification Bodies are paid by Certificate Holders, which is customary practice and not in conflict with TPAS (Annex 2: B.3).
- The non-conformities that FORM International included in the audit report were followed up on and completed by PEFC before the new MTCS standard for responsible forest management was approved (Annex: D.3).

Certainty that the practice is not in conflict with TPAS criteria:

PEFC and MTCS do not impose requirements for the availability of maps to stakeholders. The observations received describe situations in which the publicly available information is said to be inadequate. (Annex 2: A.7 – availability of maps (SFM C 2.4) In many cases, maps do not match the markings in the field, making it difficult to determine in practice where an area belongs to (within or outside the certified unit).

N.B: the impact of this situation on the assessment of PEFC/MTCS cannot be determined at this stage because it has not yet been possible to assess the extent to which the necessary public information is lacking.

There is reasonable doubt about the following subjects:

- Compliance with the social aspects of sustainability (FPIC, transparency, use rights, complaint handling). Are PEFC/MTCS sufficiently able to dispel the concerns expressed? Are the problems highlighted part of a non-conformity relative to the TPAS standard? (Annex 2: A.3.b / E.1 / E.2 – with regard to social sustainability (SFM C 2.1 to 2.6))
- Compliance in terms of the protection of ecological values in the TPAS criteria. Can the problems highlighted be sufficiently dispelled or rectified or is there a structural non-conformity relative to the TPAS standard? (Annex 2: A.9 – ecological values (SFM C 4.1))
- During ongoing objections to forest management, works do not appear to have been suspended or needed to be suspended. If this is confirmed, this is in breach of TPAS. (Annex 2: A.6 – free, prior and informed consent (SFM C 2.3) and handling of disputes (SFM C 2.5))
- Based on the example of MTCS (FMU Johor), it appears that MTCS interprets the 5% limit for conversion more generously than TPAC does based on the TPAS criterion. (Annex 2: A.7 – conversion (SFM C 4.3))  
N.B: the impact of this difference in interpretation on the assessment of PEFC/MTCS cannot be determined at this stage because it was not yet possible to assess the extent to which conversion exceeds the 5% limit.
- The complaint handling process by PEFC/MTCS. Details of which body does what and when they do it are lacking. It is also not known how the submitters of the complaints view the course of events and whether they are satisfied with the result of the complaint processing. (Annex 2: A.4 / E.1 / E.2 / E.4 – disputes and complaints mechanism (SFM C 2.5 and DAM C 3.3; C 3.5, DAM 1.6), and system integrity (DAM C 2.2d))
- The question of whether stakeholders had the opportunity to contribute in an effective and meaningful way to the development of the standard. Was the access to compensation referred to generally applicable and were all stakeholders able to make effective use of it?

(Annex II: D.2 – Standard development (DAM C 1.4))

- Effective change to the 20-day maximum period in the MTCS complaints procedure. This resulted in a PEFC non-conformity with regard to MTCS, this has not yet been resolved and no proof has been provided that PEFC is supervising the follow-up to this. (Annex 2: E.3 – complaints mechanism (DAM C 3.5), and system integrity (DAM C 2.2d))

Finally: stakeholders are reporting a **SLAPP** (Annex 2 Table A, 5a). TPAC has not investigated whether this actually involves a SLAPP. The submission of a SLAPP, or the prohibition of such, is not a subject within the existing TPAS system. However, the use of this legal procedure can negatively impact the submission of complaints in view of the intimidating effect that a SLAPP or the threat of it can cause.

## Conclusions

The conclusions that can be drawn on the basis of the findings and analyses conducted relate to the need for further investigation of certain subjects in order to be able to provide evidence for (or against) PEFC/MTCS's compliance with TPAS requirements.

The relevant subjects are summarised thematically below and are as follows: Social sustainability, Ecological sustainability and System operation.

Annex 2 provides further details of the subjects that, in TPAC's view, require further investigation and why.

### 1. Social sustainability (TPAS principle 2):

- FPIC (TPAS C 2.3). Including consultation of stakeholders on ownership/use rights of the local population/communities. Identifying objects of cultural and traditional value (C 2.6).
- Availability of maps (C2.4). Maps with precise, accurate, relevant and recent information concerning the boundaries of the certified management unit, ecological and cultural aspects and management measures are essential.
- Certificate Holder's dispute mechanism, for example concerning the suspension of activities (C2.5).

### 2. Ecological sustainability (SFM principle 2), themes:

- Protection of ecological values (C 4.1). Further investigation is required of the observations concerning the failure to respect initiatives to protect indigenous peoples, and the lack of clarity reported with regard to the status of High Conservation Values.
- Conversion (C 4.3). In most certification systems a limit of 5% of the surface area of a Forest Management Unit would appear to be generally accepted. This is also in line with the TPAS SFM criterion 4.3. TPAC has the impression that the way in which MTCS applies this limit in practice is resulting in areas being converted that exceed 5% of the originally certified area.  
However, TPAC does not yet have sufficient understanding of the implications for the certified forest area or the sustainable management of the source where the timber with PEFC logo originates. The lack of informative maps also impedes transparency in this case.

### 3. System operation:

- Input of indigenous peoples to standard development (DAM C 1.4).
- Complaint handling: the observations relating to the handling of complaints also concern the follow-up by: Certificate Holders (SFM C2.5): MTCS (DAM C 3.3 and 3.5) and PEFC



(PEM 1.16). How do PEFC and MTCS, in cooperation with the Certification Bodies, Accreditation Body and Certificate Holder, ensure that complaints are handled in the right place, in accordance with the procedures and within a reasonable period?

- Accusations of defamation (whether or not labelled as SLAPP), in order to determine whether this causes pressure to be placed on FPIC and complaints are not submitted or submitted in fewer numbers where this is said to be happening.

The above subjects raise questions and concerns about the reliability of the PEFC system and the underlying MTCS system. It is unclear to TPAC to what extent PEFC and MTCS have effective provisions and procedures for **identifying and mitigating structural irregularities**, such as repeated complaints. Irregularities of this kind may be an indication of system failure. The TPAS criterion DAM 2.2.d is potentially compromised by this.

## V Advice

TPAC has completed its fact-finding. Unfortunately, direct communications with MTCC were limited to a single email referring to the information that PEFC provided. Liaising with submitters of complaints in local communities in the light of a meeting with PEFC/MTCC was not part of this brief. This means that in addition to recent reports, PEFC is the most important source of the information obtained. As the overview presented above shows, clarity has been achieved on a limited number of issues. It has also been determined that reasonable doubt exists as to whether the handling of several regularly repeated complaints are in compliance with the TPAS criteria. This doubt is partly fuelled by the non-conformities that NGOs have again reported in their most recent letter of 17 July 2023 to SIRIM, the Certification Body that conducts conformity audits and issues MTCS certifications. This primarily concerns issues relating to FPIC, the quality and availability of maps, conversion and complaint handling.

This raises the question of the extent to which PEFC and MTCC have effective provisions and procedures for identifying and mitigating structural irregularities, such as repeated complaints. This is all about safeguarding the integrity of the system. In response to questions about this, PEFC repeatedly referred to the distribution of responsibilities between the different entities that make up the system, i.e. MTCC, the Certification Body, the Certificate Holder and the Accreditation Body. This does not diminish the fact that a buyer of certified timber needs to be able to trust that a PEFC logo means that all of the underlying systems meet all of the quality requirements and that this responsibility cannot be shifted onto parties into which a buyer of certified timber has absolutely no insight.

However, as the system manager, PEFC has given no indication that it or any other entity plays an overarching and monitoring role. This attitude is at odds with the fact that PEFC has ultimate responsibility for permitting country systems such as MTCS that make it possible to trade in timber with the PEFC label.

There now appear to be several opportunities open to the State Secretary to take action in the light of the remaining doubt of the operation of MTCS in practice and its supervision by PEFC.

### 1. Benefit of the doubt

The opportunity exists of giving MTCS the benefit of the doubt despite the repeated complaints and to therefore take no further action. However, taking this option will seriously undermine any confidence that timber procurement policy is being taken seriously. It could potentially also lead to legal procedures resulting from failure to meet established TPAS principles and criteria, as has happened in the past.

## **2. Investigation by PEFC based on most recent letter of complaint from NGOs**

TPAC has reasonable doubt as to whether the handling of several regularly repeated complaints are in compliance with the TPAS criteria. TPAC has no evidence of this itself, but bases this on the non-conformities that the NGOs have been highlighting for a long period, and most recently in their letter to SIRIM of 17 July 2023.

TPAC proposes that the Ministry of I&W requests that PEFC investigates the non-conformities identified on the ground and reports to TPAC on which non-conformities have actually been identified and then ensures that MTCC has put right the non-conformities identified in forest management within a three-month period and brought them back in line with its own standards.

The Ministry of I&W will consult TPAC with regard to the content of its request to PEFC and request that TPAC arranges for at least two observers to be present during the field study by PEFC.

TPAC will check with the NGOs whether the PEFC's reporting about the non-conformities identified reflect the NGOs' own findings. Verification that MTCS is acting in practice in accordance with its own standards is done via reports from PEFC. TPAC will also ask the NGOs whether the complaints have been satisfactorily resolved by MTCC. TPAC will make agreements with both parties, PEFC and the NGOs, prior to the study by PEFC.

Pending completion of this process, the Government of the Netherlands will continue to accept the PEFC logo as a symbol of sustainably produced timber even if it originates from Malaysia. In the event that the study fails to provide TPAC with convincing evidence that the non-conformities have been resolved, the acceptance of timber with a PEFC/MTCS logo could be subject to temporary suspension.

## **3. Further investigation by TPAC**

The Ministry commissions TPAC to conduct further investigations, including field research in order to obtain additional information concerning the complaints. However, the success of these further investigations will be subject to meeting several conditions, such as:

- MTCC cooperating to a sufficient extent as to enable other parties (such as NGOs, auditors and representatives of local communities) to be approached and their cooperation enlisted.
- Obtaining additional information from sources to be selected by TPAC who were not able to be heard (to a sufficient extent) during this fact-finding process, such as MTCC, Certification Bodies and the submitters of complaints.
- The field study will need to have sufficient opportunities to collect information in several places, to visit sufficient numbers of bodies and speak to representatives of indigenous and local groups and NGOs.

On several occasions, PEFC has proposed conducting a joint field study with TPAC. TPAC understands the benefits of this. PEFC can encourage cooperation from MTCC and a simultaneous observation will increase the chance of commonly-accepted facts for the discussion between TPAC and PEFC.

Regardless of whether TPAC is present on the field study or not, TPAC will report its findings to PEFC. In the event that irregularities are actually found, TPAC advises the Ministry of I&W to ask that PEFC ensures that MTCC has put right the non-conformities in forest management identified within a period of three months and brought them back in line with its own standards.

Verification that MTCS is acting in accordance with its own standards in practice will be provided by means of reports from PEFC to TPAC. TPAC will also ask the NGOs whether the complaints have been satisfactorily resolved by MTCC. TPAC will make agreements about this with both parties, PEFC and the NGOs, prior to this process.

Pending completion of this process, the Government of the Netherlands will continue to accept the PEFC logo as a symbol of sustainably produced timber even if it originates from Malaysia. In the event that the study fails to provide TPAC with convincing evidence that the non-conformities have been resolved, the acceptance of timber with a PEFC/MTCS logo could be subject to temporary suspension.

#### 4. Suspension or rejection

Temporary suspension of acceptance of timber with PEFC/MTCS logo until proof has been provided that problems have actually been resolved. Consideration should also be given to the extent to which any such decision is also a reflection of the competence of PEFC. PEFC has, after all, completely accepted MTCS as a national certification system under the PEFC logo as a meta-system.

#### **Advice**

Taking everything into account, TPAC is currently recommending option 2 (investigation by PEFC) as the most responsible choice in view of PEFC International's primary responsibility for the affiliated country system MTCS. This will not only ensure that the information required is gathered, but also provide an opportunity to have a positive influence on the quality and reliability of PEFC and MTCS. Of course, the actual outcome of this process cannot be anticipated at this stage.



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**personal data**

**Ons kenmerk**

**proper functioning o**

Datum 22 november 2022

Betreft Opdrachtbrief 'Informerend gesprek PEFC door TPAC'

**proper functioning of the State**

Geachte **personal data**,

Naar aanleiding van uw offerte van 8 november jl. met kenmerk

**proper functioning of the State** bericht ik u als volgt.

Ik verleen u opdracht tot uitvoering van werkzaamheden in het kader van  
'Informerend gesprek PEFC door TPAC'.

De uitvoering van de werkzaamheden vangt aan na ontvangst van de  
opdrachtbrief en de op te leveren producten/diensten dienen uiterlijk op 1 mei  
2023 opgeleverd te worden.

Indien wegens onvoorziene omstandigheden het eindproduct dan nog niet is  
opgeleverd, heeft IenW de optie om de overeenkomst budgetneutraal te  
verlengen.

De uitvoering van deze opdracht geschiedt op basis van vaste prijs. De door mij te  
betalen vergoeding op basis van vaste prijs bedraagt maximaal € 48.000,00  
exclusief BTW, respectievelijk € 58.080,00 inclusief 21% BTW.

Bovengenoemd bedrag is als volgt opgebouwd:

Omschrijving	Prijs
1. Bestudering aard van de klachten en onregelmatigheden, contacten met NGO's, 15 tekortkomingen volgens audit, en vergelijking met eerdere onregelmatigheden, te verwerken in gespreksnotitie	€ 19.500,00
2. Planning gesprekken met PEFC en MTCS en voorbespreking	€ 3.500,00
3. Gesprek met PEFC (via Zoom) en nabespreking	€ 4.800,00
4. Gesprek met MTCC (via Zoom) en nabespreking	€ 4.800,00

5. Verslagleggingsgesprekken, verificatie van statements bij indieners van klachten en andere bronnen	€ 2.700,00
6. Opstellen en bespreken concept conclusie	€ 4.400,00
7. Rapportage aan Ministerie met conclusies inzake noodzaak vervolgonderzoek	€ 4.100,00
8. Projectmanagement	€ 4.200,00
<b>Totaal exclusief BTW</b>	<b>€ 48.000,00</b>

**Bestuurskern**  
Dir Duurzame Leefomg & Circ  
Economie  
Circulaire Economie

Het BTW-identificatienummer van het Ministerie van IenW is: **proper functioning of the State**

Opdrachtgever stuurt en betaalt op basis van de opgeleverde producten/diensten. Er vindt geen directe aansturing door opdrachtgever plaats.

### Controlemiddelen

#### *Voortgangsbesprekingen*

Na elke fase wordt er een voortgangsgesprek gevoerd met de projectverantwoordelijke. In een voortgangsbespreking wordt in ieder geval ingegaan op de stand van zaken, eventueel al bereikte resultaten en de consequenties hiervan voor de planning van het verdere verloop van de opdracht en overige relevante zaken, zoals knelpunten. Van deze besprekingen worden notulen gemaakt.

Deze opdracht wordt begeleid door **personal data**.

### (e-)Facturatie

Voor deze opdracht geldt een verplichting tot e-facturatie. Deze eis volgt uit de Algemene Rijksinkoopvoorwaarden (ARVODI, ARIV of ARBIT). Voor meer informatie over e-facturering verwijs ik u naar de volgende website <https://www.lo-gius.nl/diensten/e-factureren/> of <https://www.helpdesk-efactureren.nl/e-facturen-versturen>

Uw facturen kunt u indienen als e-factuur met als **verplichte** gegevens:

- Referentie: **proper functioning of the State** (SAP bestelnummer);
- Naam prestatieverklaarder: **personal data** ;
- Een duidelijke omschrijving van de levering of dienst.

Voor de adressering van de e-factuur maakt u gebruik van onderstaand **Overheidsidentificatienummer (OIN\*)**: **proper functioning of the State**

In de E-Factuur moeten de onderstaande adresgegevens van het ministerie worden opgenomen:

Ministerie van Infrastructuur en Waterstaat

**proper functioning of the State**

Postbus 20906

2500 EX Den Haag

Op de website van IenW treft u onze [factuurvereisten](#) aan. E-facturen die ingediend worden zonder de hierboven vermelde vereisten worden niet in behandeling genomen en zullen retour gestuurd worden.

Mocht u nog niet over de mogelijkheid tot E-facturatie beschikken dan dient u de factuur met de verplichte gegevens in pdf digitaal in bij het Ministerie van IenW via het e-mailadres **proper functioning of the State**

**Bestuurskern**  
Dir Duurzame Leefomg & Circ  
Economie  
Circulaire Economie

Betaling door IenW geschiedt na oplevering en acceptatie van de opgeleverde producten/diensten. Bewijsstukken van de opgeleverde producten/diensten dienen aangeleverd te zijn bij IenW.

Door middel van deze brief gunnen wij de onderhavige overheidsopdracht definitief, waardoor een onherroepelijke overeenkomst tussen u en de Staat (het ministerie van Infrastructuur en Waterstaat) tot stand komt. De navolgende documenten vormen gezamenlijk de overeenkomst. Voor zover deze documenten met elkaar in tegenspraak zijn, prevaleert het eerder genoemde document boven het later genoemde document:

1. de opdrachtbrief;
2. de offerteaanvraag, inclusief bijlagen;
3. de ARVODI-2018 met uitzondering van **proper functioning of the st**
4. uw offerte.

De toepasselijkheid van (eventuele) in uw offerte opgenomen andere algemene en bijzondere voorwaarden worden hierbij uitdrukkelijk van de hand gewezen.

Indien u niet akkoord bent met de inhoud van deze overeenkomst, dient u mij dit schriftelijk onder vermelding van bovengenoemd bestelnummer en redenen te berichten binnen twee weken na ontvangst van deze overeenkomst. U richt uw reactie aan: **proper functioning of the State**

Hoogachtend,

NAMENS DE STAAT DER NEDERLANDEN  
DE STAATSSECRETARIS VAN INFRASTRUCTUUR EN WATERSTAAT,  
namens deze,  
**personal data**

**personal data**



## **Annex 2: Detailed list of findings**

(06-10-2023)

### **Introduction**

#### **The following documents are the sources of the complaints and observations:**

A: Letter:	personal data	concerns regarding MTCS	- to Ministry
B: Presentation:	Bruno Manser Fonds <i>et al</i>	concerns regarding MTCS	- to Ministry
C: Letter:	Both Ends	concerns regarding MTCS	- to Ministry
D: Audit report:	FORM International	concerns [regarding] MTCS standard revision	- for PEFC
E: Complaint:	Bruno Manser Fonds <i>et al</i>	complaints regarding 2 FMUs & MTCS	- to PEFC and MTCS

These are addressed in turn in this Annex II.

#### **The following sources were used in preparing this information:**

##### Exchange of information with PEFC/MTCS

- Chronology of follow-up to complaints to Gerenai and Ravenscourt (Feb 2023 and update May 2023)
- Questions put to PEFC by TPAC (in preparation for the meeting)
- Questions put to MTCS by TPAC (in preparation for the meeting – *this meeting was cancelled*)
- Written response from PEFC
- Verbal response from the meeting between PEFC and TPAC
- Written answer from MTCS
- Additional written answers from PEFC/MTCS

##### Other sources

- Malaysian National Audit Department report
- TPAS criteria
- TPAC assessment of PEFC, April 2022

In this Annex II, the first column includes a systematic presentation of the complaints and observations received. The second column shows the TPAS criteria that apply, together with the most important information from communications with PEFC. The third column of the tables includes an analysis of the significance of the information received and conclusions are drawn on each subject.

**Table A: Letter from personal data – addressed to the Ministry I&W (8 Dec. 2021)**

<span style="background-color: #f8d7da;">personal data</span> Letter - Ministry I&W 8 Dec. 2021		
	Findings	Analysis and conclusion
<b>Observations in the letter from <span style="background-color: #f8d7da;">personal data</span></b>	-Relevant TPAS criteria -Description of the situation (information received)	-Analysis of the situation -Conclusion as to whether or not further investigation is necessary, with an explanation of the purpose of any further investigation and details of the party/parties (currently) considered most likely to be able to provide this information.
<b>1: Request to Minister to suspend recognition of MTCS</b> because – the new standard MC&I 2020 has not been assessed by TPAC, – earlier agreed points for improvement have not been monitored.	<b>1:</b> <u>TPAS criteria:</u> – Not relevant Explanation: This is a procedural question put to the Ministry. MTCS has been approved as part of PEFC International’s approval and no longer as a separate system. TPAC had advised the Ministry to monitor MTCS, but the Ministry did not take action in response.	<b>1:</b> <u>Analysis/Conclusion:</u> Not up to TPAC to respond to this.
<b>2: Unclear how non-compliances</b> - which had led to the suspension of the certificate of <b>Kedah – have been resolved.</b>	<b>2:</b> <u>TPAS criteria:</u> DAM C 4.1. The certification bodies are accredited on the basis of the requirements and guidelines in ISO 17021 ‘Conformity Assessment - Requirements for Bodies Providing Audit and Certification of Management Systems’ and/or ISO Guide 65 (EN 45011) ‘General Requirements for Bodies Operating Product Certification Systems’ and preferably on the basis of specific supplemental requirements for performance of conformity assessments according to the standards for sustainable forest management and the chain of custody.  <u>Findings:</u> - Written explanation from PEFC stating that the non-conformities that resulted in suspension have been remedied and that this was the subject of an EIA (Environmental Impact Assessment).	<b>2:</b> <u>Analysis:</u> -No verification material was provided (such as an audit report, communication with stakeholders) to demonstrate how the non-conformities were closed and whether the current situation is adequate. -This is the only complaint that directly concerns meeting the accreditation requirements of the certification body, the substantive advice provided on other points is to monitor the processing of non-conformities, which will also cover this subject.  <u>Conclusion:</u>

	<p>- PEFC/MTCS states that any detailed questions about the remedying of non-conformities should be put to the Certification Body.</p>	<p>-It is not necessary to pursue further questions for this specific case.  <b>-Follow-up investigation: not necessary</b></p>
<p>3a:  <b>-Reference to complaints</b> of Save Rivers, Borneo Initiative and Bruno Manser Fonds against Samling regarding FMUs: Ravenscourt and Gerenai.</p>	<p>3a:  <i>(See Table E: complaint from Bruno Manser Fonds et al (Save Rivers, Borneo Initiative, Bruno Manser Fonds))</i></p>	<p>3a:  <i>(See Table E: response to complaint from Save Rivers, Borneo Initiative, Bruno Manser Fonds)</i></p>
<p>3b  <b>-Observation</b> by <b>personal data</b>: user and <b>customary rights are not being protected</b> e.g. rights of Temiar Orang Asli (Kampung Cunex Boundary) in Perak Peninsular.</p>	<p><u>3b.</u>  <b>TPAS criterion:</b>  <div style="border: 1px solid black; padding: 5px;"> <p>SFM C 2.3. The local population and indigenous peoples have a say in forest management on the basis of free and informed consent, and hold the right to grant or withhold permission and, if relevant, receive compensation where their property/use rights are at stake.</p> <p><i>Guidance: Free and informed consent is interpreted in the sense that the activity will not be undertaken before the relevant consent is given.</i></p> <p><i>Guidance: The local population and indigenous peoples can only prevent activities through withholding their consent where their property/use rights are at stake</i></p> </div> <p><u>Findings:</u>  No additional information has been received with regard to Perak.  PEFC/MTCS states that questions of this kind should be put to the Certification Body.</p> </p>	<p><u>3b</u>  <u>Analysis:</u>  -No additional information concerning the example from Perak that would disprove or confirm this observation has been received.</p> <p><u>Conclusion:</u>  <b>-Reasonable doubt</b>, concerning the application of <u>FPIC</u>.  <b>-Follow-up investigation: necessary</b>  -Sources to be consulted: NGOs, CB, community reps.</p> <p><i>(N.B.: This example is in line with other cases where there are claims that use rights have not been sufficiently guaranteed.)</i></p>
<p><b>4 Observation</b> by <b>personal data</b>: Submitters of the complaints got stuck in the malfunctioning complaint procedure of MTCS.</p>	<p>4:  <b>TPAS criteria:</b>  <div style="border: 1px solid black; padding: 5px;"> <p>DAM C 2.2. The distribution of the responsibilities, authorities, and tasks among the entities, comprising an organisational and/or functional part of the certification system, and the procedures to be followed are clear and publicly available. The certification system comprises at least rules for the following functions:</p> <ol style="list-style-type: none"> <li>standard development;</li> <li>certification;</li> <li>accreditation;</li> </ol> </div> </p>	<p>4:  <u>Analysis:</u>  -Unclear to what extent this is a structural problem and what concrete measures PEFC/MTCS has taken in response; are submitters of complaints being directed to the right contact person and their complaints being effectively dealt with?</p> <p><u>Conclusion:</u></p>

	<p>d. supervision of proper performance of tasks and compliance with the rules;</p> <p>e. objection and appeal handling;</p> <p>f. design and use of logos and labels.</p> <p><u>Findings:</u> In the meeting, PEFC stated that it is taking an active/more active role in terms of supporting submitters of complaints. In the case of this complaint, PEFC is ensuring that the complaint is submitted to the body responsible and that this complaint is being followed up. TPAC has no documentation or other information to verify any of this.</p>	<p>-<b>Reasonable doubt</b> remains as to whether there is proper and timely <u>complaint handling</u>;</p> <p>-<b>Follow-up investigation: necessary</b></p> <p>-Sources to be consulted: stakeholders, PEFC and MTCS.</p>
<p>5a: <b>Disagreement with the launch of a SLAPP</b> (Strategic Lawsuit Against Public Participation) by <b>Samling</b> against SAVE Rivers.</p>	<p>5: <u>TPAS criterion:</u> No direct requirement.</p> <p><u>Findings:</u> -NGOs are calling the complaint submitted a SLAPP because of defamation. -PEFC itself has not used the term SLAPP. PEFC has responded verbally that anyone is at liberty to pursue a lawsuit. -The accusation of defamation was made by Samling.in response to the submission of a complaint against it.</p>	<p>5a: <u>Analysis:</u> -PEFC, MTCS and TPAS standards do not include any requirements concerning SLAPP. -The effect of a SLAPP could potentially undermine effective handling of disputes (SFM C 2.5 dispute resolution mechanism), because stakeholders are deterred from expressing criticism or submitting a complaint. This also applies to the input during the process leading up to FPIC (SFM C 2.3).</p> <div style="border: 1px solid black; padding: 5px;"> <p>C 2.5. Adequate mechanisms are in place for resolving disputes regarding forest management, property/usage rights, work conditions, or social services. <i>Guidance: In case of a conflict of significant dimension, the FMU will not be certified.</i></p> </div> <div style="border: 1px solid black; padding: 5px;"> <p>C 2.3. The local population and indigenous peoples have a say in forest management on the basis of free and informed consent, and hold the right to grant or withhold permission and, if relevant, receive compensation where their property/use rights are at stake.</p> </div> <p>-No assessment has been made as to whether this is an example of a SLAPP.</p> <p><u>Conclusion:</u> -<b>Clarity</b>, because there are no TPAS requirements that relate to SLAPP.</p>

		<p><b>-Follow-up investigation: necessary</b>, to determine whether the accusation of defamation (whether or not referred to as a SLAPP) causes pressure to be placed on FPIC and complaints are not submitted or submitted in fewer numbers where this is said to be happening.</p> <p><i>(N.B.: there is an international trend aimed at preventing SLAPP and developing anti-SLAPP legislation (see, for example, Wikipedia) in order to prevent illegitimate use of legal procedures.)</i></p>
<p><b>5b: Disagreement with suspension of complaints procedure.</b></p>	<p><b>5b:</b> <u>TPAS criterion:</u></p> <div style="border: 1px solid black; padding: 5px;"> <p>SFM C 2.5. Adequate mechanisms are in place for resolving disputes regarding forest management, property/usage rights, work conditions, or social services. <i>Guidance: In case of a conflict of significant dimension, the FMU will not be certified.</i></p> </div> <p><u>Findings:</u> The fact that the complaint procedure was supposedly suspended is disputed by PEFC. Evidence:</p> <ul style="list-style-type: none"> <li>- letter to stakeholders stating that the complaint is being followed up on (Ref: letter from PEFC - 12 November 2021)</li> <li>- proof of follow-up in audit reports referring to non-conformities concerning the subject of the complaints (Ref: Public Summary audit report Ravenscourt (20 May 2022) – see also E)</li> </ul>	<p><b>5b:</b> <u>Analysis:</u></p> <ul style="list-style-type: none"> <li>-The observation from stakeholders that, pending the lawsuit, the complaints are not being followed up by MTCS was refuted by PEFC. (and therefore complies with TPAS SFM C 2.5).</li> </ul> <p><i>(See Table E: the substantive follow-up to complaints)</i></p> <p><u>Conclusion:</u></p> <ul style="list-style-type: none"> <li>-<b>Clarity</b>, with regard to the handling of this <u>complaint</u>: although it remains unclear whether the complaints procedure was temporarily suspended.</li> </ul> <p><b>-Follow-up investigation: not necessary</b></p>
<p><b>6: Observation:</b> starting logging operations during a running complaints procedure is <b>violation of principles of FPIC</b>. Three parties have submitted a <b>complaint with PEFC</b>, October 2021. They request PEFC to suspend recognition of MTCS until the case has been resolved and Samling temporarily stops logging. PEFC responded in November 2021 that it would wait for the handling of the complaints with the complaint procedure of MTCS.</p>	<p><b>6:</b> <u>TPAS criterion:</u></p> <div style="border: 1px solid black; padding: 5px;"> <p>SFM C 2.5. Adequate mechanisms are in place for resolving disputes regarding forest management, property/usage rights, work conditions, or social services. <i>Guidance: In case of a conflict of significant dimension, the FMU will not be certified.</i></p> </div> <p><u>Findings:</u></p> <ul style="list-style-type: none"> <li>-Written response from PEFC: PEFC and MTCS have requirements to guarantee FPIC.</li> </ul>	<p><b>6:</b> <u>Analysis:</u></p> <ul style="list-style-type: none"> <li>-The observation from stakeholders that work has to be suspended during ongoing complaints was not disproved in the responses from PEFC/MTCS.</li> <li>-No insight was provided as to whether, in this or other cases, the certificate holder has to cease activities if there are complaints about these activities (PEFC/MTCS refer to certification body to look into specific cases).</li> <li>-PEFC's response does not provide cause for any additional doubt about compliance with TPAS: PEFC</li> </ul>

	<p>PEFC makes the general comment that in countries like Malaysia, the judicial decision must be respected (see below).</p> <div> <p><u>Additional responses from PEFC (15-5-2023):</u></p> <p>In cases where legal, customary and traditional rights are disputed, PEFC ST 1003 6.3.2.1 requires that “[w]here the extent of rights is not yet resolved, or is in dispute, there are processes for just and fair resolution,” such as through juridical proceedings.</p> <p>PEFC ST 1003 6.3.2.1 further specifies that “[i]n such cases forest managers shall, in the interim, provide meaningful opportunities for parties to be engaged in forest management decisions whilst respecting the processes and roles and responsibilities laid out in the policies and laws where the certification takes place.”</p> <p>This means that free, prior and informed consent is required within the established framework of legal, customary and traditional rights. If these rights are disputed, there needs to be a process for resolution, which in countries like Malaysia is offered through its legal system, which needs to be respected.</p> </div>	<p>states that when there are disputes in Malaysia, the process can involve judicial decisions, arguing that these must be respected.</p> <p>This is at odds with the principles of FPIC. It is quite possible that something is permitted legally but that the parties with use rights have not given any free, prior, informed consent for it. There have been cases that have statutory and judicial approval but are not implemented because of a lack of FPIC with all the relevant parties. The application of FPIC is an essential part of a sustainable approach to certification.</p> <p>-This question concerns the suspension of works pending a dispute. The response appears to indicate that with a judicial decision that approves logging there is no need to suspend activities when a dispute has developed.</p> <p><u>Conclusion:</u></p> <p><b>-Reasonable doubt</b>, with regard to <u>complaint handling</u>: specifically with regard to the assessment of the complaint, in this case, the request to suspend work that is the subject of disputes.</p> <p><b>-Follow-up investigation: necessary</b></p> <p>-Sources to be consulted: CBs, NGOs, community representatives.</p>
<p><b>7: Observation: MTCS offers insufficient protection against conversion/deforestation</b></p> <p>e.g. Pahang Peninsular, conversion to palm oil plantations, YP Olio.</p> <p>Unclear whether the 5% maximum conversion is permitted per year or cumulatively over the years since 1 July 2011.</p> <p>Converted areas and planned conversion areas are not clear on maps.</p>	<p>7:</p> <p><u>TPAS criterion:</u></p> <p><b>-SFM C 4.3</b></p> <div> <p>C 4.3. Conversion of forests in the FMU to other types of land use, including timber plantations, shall not occur unless in justified exceptional circumstances.</p> <p><i>Guidance: Exceptional circumstances are for example natural disasters. In addition conversion can take place if the area to be converted is insignificant, if it enables clear long-term conservation benefits, or if it is based on undisputed governmental decisions.</i></p> </div>	<p>7:</p> <p><u>Analysis:</u></p> <p>-An example was given of the permitted area of deforestation being exceeded (i.e. up to 5%), after which the organisation was suspended. As a result of making changes to the boundaries of the FMU, the deforested area is located outside the current FMU. This is why the organisation was able to obtain a certificate again.</p>



	<p><i>Guidance: The forest manager of a plantation should aspire to make clear how the plantation helps in relieving pressure from natural forests; for instance when the plantation is established on degraded land instead of by conversion of natural forest.</i></p> <p><u>Findings:</u>          -PEFC/MTCS refers to criteria that address this subject.          The following explanation was also provided:</p> <p><u>Written response from PEFC:</u>  <u>Question from TPAC:</u>          How is the 5% limitation for conversions interpreted?  <u>Answer from PEFC/MTCS:</u>  <i>5% conversion is interpreted in relation to the total area of the certified Forest Management Unit (FMU) as defined in the certificate and by extension the forest management plan and/or timber.</i></p> <p><u>Question from TPAC:</u>          Could you explain the status of Johor FMU?  <u>Answer from PEFC/MTCS:</u>  <i>Johor FMU was initially audited and certified by SGS Malaysia Sdn Bhd. A recertification audit conducted by SGS in 2015 found that the Johor State Government has degazetted and/or converted a total of 9.082% of natural forests in the FMU. This led to the suspension and termination of the certificate for Johor FMU.          (Ed: 2014 public summary report shows 321,841.06 ha was certified)          Johor FMU was certified under SIRIM QAS International Sdn Bhd with a new scope of certification limited to 285,292.87 ha on 3 July 2020 after the exclusion of the forest plantation area, dam and quarry. This is due to matters related to the Johor State Government policies. The SIRIM QAS audit team has verified and confirmed that the audit scope for forest management certification during the Stage 2 audit on 2-6 February 2020 only consists of natural forest areas that were gazetted as Permanent Reserve Forest (PRF).</i></p> <p>-Changes to boundaries only occur if a higher authority decides that the original certified forest (or part of it)</p>	<p>-PEFC has explained that it is indeed possible that changes to the boundary of the certified FMU have resulted in the area that was previously deforested now being outside the boundaries and therefore not being counted in the calculation by PEFC/MTCS.</p> <p><u>Explanation by TPAC</u>          -The certified FMU (Forest Management Unit) is the area covered by the certificate.          -An organisation can opt not to certify all of the forest under its management. The uncertified forest can be subjected to unlimited deforestation. No indication was provided as to whether there are limitations with regard to changing the boundary between certified and uncertified forest and it is not clear what impact the excised area has on the calculation of the maximum limit of 5% deforestation.</p> <p><u>Conclusion:</u>  <b>-Reasonable doubt;</b> with regard to <u>conversion</u>:          Deforestation can exceed 5%. The question is whether this is happening on a structural basis. Additional information is needed for this.  <b>-Follow-up investigation: necessary</b>          -Sources to be consulted: CBs and/or CHs.</p>
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	<p>involved is to be given an alternative designated use (e.g. palm oil or dam/reservoir for hydroelectric power plant).</p> <p><u>Additional evidence from the Malaysian National Audit Department (2023)</u></p> <p>-It has been asserted that there is a lack of clarity with regard to the recording of the Forest Management Unit by the state of Selangor as a result of “gazetting” and “degazetting” of areas within the state’s Forest Management Unit.</p> <p>(source: <a href="https://lkan.audit.gov.my/laporan/manage/1597">https://lkan.audit.gov.my/laporan/manage/1597</a> title: LAPORAN KETUA AUDIT NEGARA - AUDITAN KHAS PENGURUSAN HUTAN DAN IMPAK KEPADA ALAM)</p> <div> <p>Explanation of terms:</p> <p>-Gazetting: the allocation of an area to a forest reserve.</p> <p>-Degazetting: the removal of an area from a forest reserve.</p> </div>	
<p><b>8: Observation: Availability of maps</b> with relevant information, e.g. conversion, user rights, HCV, <b>is a problem</b>. Although in Johor maps with relevant information are available, in other FMUs the information on maps lack relevant details.</p>	<p>8:</p> <p><u>TPAS criteria:</u></p> <p>-SFM C 2.4 and C 8.3 (maps)</p> <div> <p>C 2.4. The forest management plan and accompanying maps, relevant monitoring results and information about the forest management measures to be applied are publicly available, except for strictly confidential business information.</p> </div> <div> <p><u>Assessment of PEFC by TPAC 2022:</u></p> <p>Criterion: C 2.4</p> <p>Score: Partially addressed</p> <p>Justification: Public availability of maps and of monitoring results is not specifically mentioned.”</p> </div> <p><u>Findings:</u></p> <p>-MTCS standard (MC&amp;I SFM 1/2020) does not state that maps must be part of the publicly available information:</p> <div> <p>Indicator 7.4.1</p> </div>	<p>8:</p> <p><u>Analysis:</u></p> <p>-Stakeholders indicate that, in the field, the delineation of the FMU is not always clear and that the boundaries are not clear on the map and/or do not correspond with reality.</p> <p>-There are observations that maps are not being made sufficiently available. This is not a PEFC non-conformity, but is a non-conformity in terms of the TPAS.</p> <p>-PEFC and MTCS have no specific requirement that maps must be publicly available.</p> <p>-Stakeholders [say that] neither PEFC, nor MTCS have reported any outstanding complaints about this.</p> <p>-TPAC has received no substantive additional information concerning problems caused by the lack of sufficient informative map material.</p>

	<p>"A summary of the primary elements of the forest management plan as prepared and implemented under Indicator 7.1.1 shall be made publicly available."</p> <p>Indicator 7.1.1 Availability and implementation of forest management plan including consideration of risks and opportunities concerning compliance with the requirements of the standard."</p>	<p><u>Conclusion:</u> -<b>Certainty</b>, the PEFC and MTCS standards, unlike TPAC's, do not require maps with relevant information to be available and present for stakeholders. -<b>Follow-up investigation: necessary;</b> -Sources to be consulted: CBs, NGOs, community reps.</p> <p><i>N.B.:</i> -It is not yet possible to determine the impact of the situation on the assessment of PEFC/MTCS because the extent to which the necessary public information is lacking could not be assessed. -This subject is related to the observations concerning FPIC and conversion and the information required for that purpose, such as maps.</p>
	<p><u>Additional written responses from PEFC (May 2023)</u> <u>Question from TPAC:</u> What provisions does MTCC make concerning the availability of maps? <u>Answer from PEFC/MTCS:</u> The standard contains requirements for forest managers to possess maps of the certified forest area. Auditors accept the maps provided by the forest manager so long as they contain the crucial information e.g. title, orientation, legend, coordinate grid/number, scale, and published date, required for its purpose.</p> <p>As a scheme operator, MTCC engages with stakeholders involved in forest management and strives to push the boundaries of good forest management practices. The latest in information technology related to geographical information systems (GIS) is shared and forest managers are encouraged to adopt the latest practices.</p> <p>-Additional information from Malaysian National Audit Department report (2023): There is often no clear indication in the field of where the boundaries of Forest Management Units are. (source: <a href="https://lkan.audit.gov.my/laporan/manage/1597">https://lkan.audit.gov.my/laporan/manage/1597</a> title: LAPORAN KETUA AUDIT NEGARA - AUDITAN KHAS PENGURUSAN HUTAN DAN IMPAK KEPADA ALAM)</p>	
<p>9: <b>Concerns about protection</b> of biodiversity: -a Kedah: HCV area dropped from 14.000 to 2 ha. CB had no questions about this enormous difference.</p>	<p>9: <u>TPAS criterion:</u> SFM C 4.1</p>	<p>9: <u>Analysis:</u></p>

<p>- b Pahang: Virgin Jungle Reserves (VJR) seems not fully protected.</p>	<p>C 4.1. Objects of high ecological value and representative areas of forest types that occur within the Forest Management Unit are identified, inventoried and protected.  <i>Guidance: 5% is considered to be a relevant proportion.</i></p> <p><u>Findings:</u>  There was no substantive investigation of the questions put about this case. PEFC/MTCS has indicated that the certification body (CB) should answer these specific cases.</p>	<p>-At this stage, TPAC is unable to comment on these subjects. There is no verifiable evidence to confirm or disprove these observations.</p> <p><u>Conclusion:</u>  <b>-Reasonable doubt;</b> with regard to <u>ecology</u>: In the event that these kinds of cases occur on a structural basis, TPAC's current assessment of PEFC/MTCS on this criteria would be lower (SFM C 4.1)).  <b>-Follow-up investigation: necessary</b>  -Sources to be consulted: CBs, CH, NGOs, community reps.)</p>
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**Table B: Presentation by Bruno Manser Fonds *et al* - to Ministry**

<u>SAVE Rivers, KERUAN, Penan community, Bruno Manser Fonds - Presentation for Ministry of I&amp;M 12 May 2022</u>		
	<b>Findings</b>	<b>Analysis and conclusion</b>
<b>Content of the observations (summarised)</b>	-Relevant TPAS criteria -Description of the situation (information received)	-Analysis of the situation -Conclusion as to whether or not further investigation is necessary, with an explanation of the purpose of any further investigation and details of the party/parties (currently) considered most likely to be able to provide this information.
<b>1: Reference to complaint against two Samling certified FMUs:</b> Ravenscourt and Gerenai. <u>Native Customary Rights</u> to land are not met in practice (200 court cases, no FPIC) no proper representation (not elected, no woman/youth)	1: <i>See E (complaints from Bruno Manser Fonds et al – which have been followed up by PEFC, MTCS and certification body SIRIM)</i>	1: (See Table E)
<b>2: Observation: Transparency is insufficient</b> regarding <u>maps</u> , customary land rights are, villages, catchment areas are not indicated (example: Gerenai map). <u>SEIA</u> (social environmental impact assessment) is not easily available.	2: <i>See E (complaints from Bruno Manser Fonds et al – which have been followed up by PEFC, MTCS and certification body SIRIM)</i>	2: (See Table E)
<b>3. Observation: Flaws in the complaint mechanism</b> - MTCC only made their complaints procedure available online after our complaints to Samling (logging company), SIRIM (certification body) and MTCC and PEFC International.	3: <i>See E (complaints from Bruno Manser Fonds et al – which have been followed up by PEFC, MTCS and certification body SIRIM)</i>	3: (See Table E)
- An ongoing Dispute Resolution Process (DRP) by MTCC is put on hold because of Samling's lawsuit against SAVE Rivers in May 2021	<i>See E (complaints from Bruno Manser Fonds et al – which have been followed up by PEFC, MTCS and certification body SIRIM)</i>	3: (See Table E)
- Timber from Gerenai and Ravenscourt FMU is being sold under MTCS while DPR is stalled.	-See A.6 (observation from <u>personal data</u> regarding the continuation of work during complaints)	3: (See Table A.6)

- MTCC has no means according to MTCS to suspend certificates	(TPAS criterion: not applicable) Response from PEFC: -Certification bodies have a duty to check and where necessary suspend certificates. If there are complaints about this, these are handled by the accreditation body (in accordance with ILO principles).	3: <u>Analysis and conclusion:</u> - <b>Certainty:</b> This situation is customary in practice and not at odds with TPAS.
- SIRIM is directly paid by the logging company in Sarawak	(TPAS criterion: not applicable) Explanation by TPAC: -Certificate holders pay the certification body (in advance) to carry out the audit visits. This is in line with ISO requirements.	3: <u>Analysis and conclusion:</u> - <b>Certainty:</b> this situation is customary in practice and not at odds with TPAS.
4. <b>Disagreement</b> that it is allowed to start a Strategic Law Public Participation ( <b>SLAPP</b> ) to silence stakeholders.	4: <i>See A.5a (Letter from <span style="background-color: #cccccc;">personal data</span>)</i>	4: <i>See Table A.5a (Letter from <span style="background-color: #cccccc;">personal data</span>)</i>
5. <b>Observation</b> that <b>forest conversion</b> has an unclear time line for the allowance of 5% conversion. From Gerenai FMU ¼ was excised. It is unclear how this has affected the certificate.	5: <i>See A.6 (Letter from <span style="background-color: #cccccc;">personal data</span>)</i>	5: <i>See Table A.6 (Letter from <span style="background-color: #cccccc;">personal data</span>)</i>



**Table C: Observations from Both Ends - to Ministry**

Both ends Letter to Ministry I&W 22 April 2022		
	<b>Findings</b>	<b>Analysis and conclusion</b>
<b>Content of the observations (summarised)</b>	<ul style="list-style-type: none"> <li>-Relevant TPAS criteria</li> <li>-Description of the situation</li> </ul>	<ul style="list-style-type: none"> <li>-Analysis of the situation</li> <li>-Conclusion as to whether or not further investigation is necessary, with an explanation of the purpose of any further investigation and details of the party/parties (currently) considered most likely to be able to provide this information.</li> </ul>
<p><b>1: Reference to the points 1, 2 and 3 from the presentation of SAVE Rivers</b></p> <p><b>2: Opinion</b> that Samling should <b>withdraw the SLAPP</b></p> <p><b>3: Advice to Minister to suspend recognition of MTCS</b> because the new standard MC&amp;I 2020 has not been assessed by TPAC, earlier agreed points for improvement have not been monitored</p>	<p><i>1: See E: complaint from Bruno Manser Fonds et al</i></p> <p><i>2: See previous text about SLAPP</i></p> <p><i>3: See A.1 (Letter from <span style="background-color: #f0f0f0;">personal data</span>)</i></p> <ul style="list-style-type: none"> <li>-TPAS criterion: not relevant</li> <li>-Explanation: This is a procedural question put to the Ministry.</li> </ul> <p><i>MTCS has been approved as part of PEFC International's approval and no longer as a separate system.</i></p> <p><i>TPAC had advised the Ministry to monitor MTCS, but the Ministry did not take action in response.</i></p>	<p><i>1: See Table E:</i></p> <p><i>2: See Table A.5.a:</i></p> <p><i>3: See Table A.1:</i></p> <p><u>Analysis/Conclusion (all points):</u> Not up to TPAC to respond to this.</p>

**Table D: Re-assessment report of MTCS by FORM**

This source was cited in one of the observations from stakeholders. In this process, stakeholders submitted complaints about:

- (1) The practice of MTCS (which does not comply with the applicable standard).
- (2) Input from indigenous peoples is said to be inadequate (*including availability of compensation to enable participation in the stakeholder process*).
- (3) TPAC has investigated whether and how the outstanding non-conformities in FORM's report have been followed up.

These three subjects were put to PEFC, who responded. The information received for each subject is listed below.

Re-assessment report of MTCS by FORM		
	Findings	Analysis and Conclusion
<b>Content of the observations included in the re-assessment report by FORM International (summarised)</b>	-Relevant TPAS criteria -Description of the situation	-Analysis of the situation -Conclusion as to whether or not further investigation is necessary, with an explanation of the purpose of any further investigation and details of the party/parties (currently) considered most likely to be able to provide this information.
(1): The certified companies' practice does not comply with the existing MTCS standard	<p><u>1:</u> <u>TPAS criterion:</u> -Cannot be further specified</p> <p><u>Findings</u> -FORM replied that complaints are not handled by the reassessment process, but via the responsible certification body.</p> <p>-Response from PEFC: During the process, FORM indicated that complaints about the practice should be addressed to the certification bodies, which also happened, in addition to the submission of the complaint to PEFC and MTCS.</p> <p><i>(N.B.: the complaint was submitted to PEFC/MTCS and SIRIM (certification body), see Table E: for the follow-up to this complaint)</i></p>	<p><u>1:</u> <u>Analysis:</u> -The reassessment relates to the process of standard revision. -The complaints about the practice are part of different processes (see separate analysis by TPAC of the handling of complaints), and the fact that the FORM assessment did not include these points was not a non-conformity.</p> <p><i>(N.B.: observations concerning the follow-up of complaints by the certification body are handled in Table E.)</i></p> <p><u>Conclusion:</u> -FORM acted properly. <b>-Follow-up investigation: not necessary</b></p>

<p>(2) Stakeholders, mainly indigenous peoples, have not been sufficiently facilitated to enable them to give effective input in the process of revising the Malaysian SFM standard.</p>	<p><u>2:</u> <u>TPAS criterion:</u> -DAM C 1.4</p> <div data-bbox="808 288 1400 443" style="border: 1px solid black; padding: 5px;"> <p>DAM C 1.4. The development of the standard takes place with input of the relevant stakeholders. Potential limitations for certain groups such as indigenous peoples and small forest owners to contribute directly are taken into account.</p> </div> <p><u>Findings:</u> -Response from PEFC: FORM points out that resources were available to compensate for expenses. The fact that objections were submitted also shows that the consultation was effective in reaching out to parties not previously included on the list of stakeholders. Evidence: Written answer in the FORM report.</p>	<p><u>2:</u> <u>Analysis:</u> -PEFC refutes this situation stating that resources were available. -There is no verifiable evidence present so it is not known whether relevant stakeholders were actually able to make use of the available compensation and whether they were helped to participate in the process of standard revision and whether the practice is therefore compliant with the PEFC standard,</p> <p><u>Conclusion:</u> -<b>Reasonable doubt</b>, about the effectiveness of stakeholders' input with restrictions on participating (<u>standard development</u>). <b>Follow-up investigation: necessary</b> -Sources to be consulted: PEFC, Orang Asli representatives involved.</p>
<p>(3) The report provides no insight into whether and how the 15 minor non-conformities were followed up before acceptance of the new version of the MTCS standard for sustainable forest management.</p>	<p><u>3:</u> <u>TPAS criterion:</u> -DAM C 1.1.</p> <div data-bbox="808 879 1400 1078" style="border: 1px solid black; padding: 5px;"> <p>DAM C 1.1. The development process of the standard fulfils the requirements established in the ISEAL 'Code of Good Practice for Setting Social and Environmental Standards', the ISO Guide 59 'Code of Good Practice for Standardisation' or equivalent requirements. The development process and application of the standard at least fulfil the following criteria: 1.2. through 1.10.; 2.1. and 2.2.; 3.3. through 3.6. of this assessment table.</p> </div> <p><u>Findings</u> -Response from PEFC: The non-conformities have been closed by PEFC, based on changes to the MTCS standard text. Evidence: overview of closure of FORM non-conformities by PEFC; amended MTCS standard texts.</p>	<p><u>3:</u> <u>Analysis:</u> The open non-conformities in the report were closed before approval of the MTCS standard revision.</p> <p><u>Conclusion:</u> -<b>Clarity</b>, with regard to standard revision: The open non-conformities in the reassessment were closed by MTCS before PEFC approved the standard. -<b>Follow-up investigation: not necessary</b></p>

## **E: Complaints to MTCS and PEFC by KERUAN, GCRAC, SAVE Rivers, The Borneo Project, Bruno Manser Fonds**

Four complaints were addressed:

- 1- Gerenai FMU (4 topics) (same as Ravenscourt)
- 2- Ravenscourt FMU (4 topics) (same as Gerenai)
- 3- MTCS complaint procedures (20-day period)
- 4- MTCC Dispute Resolution Committee refuses to continue the dispute resolution process.

### ***E.1 Gerenai FMU (4 topics)***

#### **Chronology of Gerenai complaint handling**

<b>What</b>	<b>When</b>	<b>Explanation</b>
-Certified	12-4-2020	
-Keruan and GCRAC Complaint Letter to SIRIM	(22 June 2020)	Complaint from GCRAC to Sirim concerning Gerenai (About implementation of FPIC, consultation with local communities – less detailed than the complaint letter of 11 May 2021 sent to MTCC)
-SIRIM response letter to GCRAC	(9 October 2020)	Response to the complaint: -Explanation of the stakeholder consultation done in previous audits, and -Explanation that consultation is a continuous process and non-conformities can be presented again. <i>(N.B. TGPAC: in 2021, non-conformities were presented again – see Pub Sum 2021)</i>
-Keruan and GCRAC Complaint Letter to MTCC	(11 May 2021)	Letter of complaint on behalf of GCRAC addressed to MTCS concerning Gerenai, Contains the four points that are discussed below (this is more specific than the first complaint).
-MTCC requests response from SIRIM	(31 May 2021)	Letter from MTCS (CEO) to the certification body of Ravenscourt and Gerenai to respond to the complaint from Keruan and GCRAC (submitters of the complaint) (with deadline)
-SIRIM letter to MTCC	(13 July 2021 to MTCC) (sent to Keruan/GCRAC on 16 July 2021)	Explanation of how complaint will be followed up (during surveillance audit)
-MTCC response letter to Keruan	(7 August 2021)	MTCC (Dispute Resolution Committee) responds: -Complaint must be followed up by CB

		-Pending the Samling lawsuit, MTCS will not go into any detail on the specific content, but will explain the general (complaints) process
-MTCC public response on website	(13 August 2021)	
-Bruno Manser Fund <i>et al</i> , Complaint Letter to PEFC regarding MTCC	(25 October 2021)	Complaint letter from Bruno Manser Fonds, The Borneo Project, GCRAC concerning Gerenai, addressed to PEFC. Same topics as the letter from Keruan
-PEFC response letter	(12 November 2021)	Response from PEFC (CEO): that MTCC and the CB are handling this complaint and PEFC is awaiting completion of this process
- <u>Public summary report 24 June 2022 of</u> -audit on 29 Nov – 3 Dec. <u>2021</u> ; (including NC Verification Audit; Date 25 – 27 May 2022) -publication of <i>Public Summ.</i> 24 June 2022		Overview of major and minor non-conformities. Major non-conformities have been closed (explanation was provided) Minor non-conformities that had lapsed became major and were also closed Minor non-conformities that had not lapsed were verified by means of the audit
2022 audit report is not available.		

<b>TABLE E.1: Complaint from GCRAC and Bruno Manser Fonds <i>et al</i> to PEFC and MTCS concerning <i>Gerenai FMU</i></b>		
	<b>Findings</b>	<b>Analysis and conclusion</b>
<b>Content of the complaint</b>	-Relevant TPAS criterion - description of the situation	-Analysis of the situation -Conclusion as to whether or not further investigation is necessary, with an explanation of the purpose of any further investigation and details of the party/parties (currently) considered most likely to be able to provide this information.
	<u>Handling (the same for all four points):</u> <ul style="list-style-type: none"> <li>Complaints addressed to: MTCS (11 May 2021) and PEFC (25 October 2021) Contents: four points (as described in this table below)</li> <li>Response from MTCS (7 August 2021) and PEFC (12 November 2021):</li> </ul>	<u>Analysis (the same for all four points):</u> <ul style="list-style-type: none"> <li>-Based on the available information, it is not possible to assess the complaints procedure of PEFC/MTCS because the points below are unclear.</li> <li>Reaction of stakeholders to response from MTCS/PEFC and to the conclusions of the audit report.</li> </ul>

	<p>The complaint is being processed by SIMIR (the certification body responsible)</p> <ul style="list-style-type: none"><li>Audits were conducted (27-3-2022 and 3-12-2022)</li></ul> <p>Explanation from PEFC:</p> <ul style="list-style-type: none"><li>The field visit was postponed because of COVID and the complaint processing took longer than usual.</li></ul> <p><u>Result/status of the practice (situation in the field):</u></p> <ul style="list-style-type: none"><li>The complaints were processed and followed up by the certification body which resulted in non-conformities being identified relating to these complaint subjects.</li></ul>	<ul style="list-style-type: none"><li>How and when SIRIM/MTSC/PEFC communicated the results of the audit with the stakeholders.</li><li>What the stakeholders’ response to the conclusions of the audit report is.</li><li>On what basis non-conformities have been closed (28-5-2022); and which are still open; and have the non-conformities been permanently closed?</li><li>What is the current status of complaints (who will still be communicating about the status of these complaints and when)?</li></ul> <p><u>Conclusion:</u></p> <p><b>-Reasonable doubt;</b> with regard to:</p> <ul style="list-style-type: none"><li><u>FPIC,</u></li><li><u>ecology,</u></li><li><u>maps,</u></li><li><u>complaint handling</u></li><li><u>system integrity</u></li></ul> <p><b>-Certainty:</b> this observation confirms that <u>maps</u> do not need to be made <u>public</u>.</p> <p><b>-Follow-up investigation: necessary</b> for all subjects.</p> <p>Sources: CBs, NGOs,</p>		
<p>1: Lack of transparency: The Social Impact Assessment (SIA) and Environmental Impact Assessment (EIA) of Ravenscourt FMU/Gerenai FMU were not available to the public or local communities. (TPAC SFM P2)</p>	<p><u>-TPAS criterion:</u> SFM Principle 2 (C 2.2-6) Concerning the social aspects of sustainability</p> <table><tr><td><p>SFM C 2.2.</p><p>Effective communication with, and consultation and participation of stakeholders take place regarding the management of the forests.</p><p><i>Guidance: A plan and reports on how and when communication with stakeholders takes place are considered to be indicators of effective communication.</i></p></td></tr><tr><td><p>SFM C 2.3.</p><p>The local population and indigenous peoples have a say in forest management on the basis of free and informed consent, and hold the right to grant or withhold permission and, if relevant, receive compensation where their property/use rights are at stake.</p></td></tr></table>	<p>SFM C 2.2.</p> <p>Effective communication with, and consultation and participation of stakeholders take place regarding the management of the forests.</p> <p><i>Guidance: A plan and reports on how and when communication with stakeholders takes place are considered to be indicators of effective communication.</i></p>	<p>SFM C 2.3.</p> <p>The local population and indigenous peoples have a say in forest management on the basis of free and informed consent, and hold the right to grant or withhold permission and, if relevant, receive compensation where their property/use rights are at stake.</p>	<p>See analysis, first row.</p> <p><i>N.B.: In order to judge whether all complaints were assessed by the certification body during the audits, as indicated by PEFC, the most recent audit report was consulted. For Ravenscourt (see Table E.2), TPAC was able to ascertain that each of the four complaint subjects feature in a non-conformity in the audit report. Since the most recent audit report for Gerenai is not yet available, this analysis was not conducted. (This has no impact on the current conclusions.)</i></p>
<p>SFM C 2.2.</p> <p>Effective communication with, and consultation and participation of stakeholders take place regarding the management of the forests.</p> <p><i>Guidance: A plan and reports on how and when communication with stakeholders takes place are considered to be indicators of effective communication.</i></p>				
<p>SFM C 2.3.</p> <p>The local population and indigenous peoples have a say in forest management on the basis of free and informed consent, and hold the right to grant or withhold permission and, if relevant, receive compensation where their property/use rights are at stake.</p>				



	<p><i>Guidance: Free and informed consent is interpreted in the sense that the activity will not be undertaken before the relevant consent is given.</i></p> <p><i>Guidance: The local population and indigenous peoples can only prevent activities through withholding their consent where their property/use rights are at stake.</i></p> <p>SFM C 2.4.</p> <p>The forest management plan and accompanying maps, relevant monitoring results and information about the forest management measures to be applied are publicly available, except for strictly confidential business information.</p> <p><i>Guidance: Public availability implies that if stakeholders should have limited access to certain media, the management plan is dispersed through other channels. Depending on the level of detail in the management plan, the full plan or a summary should be available.</i></p> <p><i>Guidance: Wherever practical and necessary, information on the forest management can also be communicated to the people in the forest through in situ markings or information displays.</i></p> <p>SMF C 2.5.</p> <p>Adequate mechanisms are in place for resolving disputes regarding forest management, property/usage rights, work conditions, or social services.</p> <p><i>Guidance: In case of a conflict of significant dimension, the FMU will not be certified.</i></p> <p>SFM C 2.6.</p> <p>Objects of cultural and traditional economic value are identified and inventoried in consultation with the stakeholders and are respected.</p>	
<p>2: Failure to obtain free, prior and informed consent: Samling is not properly/openly consulting communities within Ravenscourt FMU/Gerenai FMU as most of the Penans/Kenyah are not aware that their community are within an MTCS certified area. (TPAC SFM P2)</p>	<p><u>TPAS criterion:</u></p> <p>SFM C 2.1-2</p> <p>SFM C 2.1.</p> <p>The legal status of the management of the Forest Management Unit and claims of the local population, including indigenous peoples, in the property/tenure or use rights regarding the forest management unit or a portion thereof have been inventoried and are respected.</p> <p>SFM C 2.2.</p> <p>Effective communication with, and consultation and participation of stakeholders take place regarding the management of the forests.</p>	See analysis, first row.

	<p><i>Guidance: A plan and reports on how and when communication with stakeholders takes place are considered to be indicators of effective communication.</i></p>	
<p>3: Disregard of community dependence on forest resources: The public summary provided by Samling on Ravenscourt FMU/Gerenai FMU indicates either a lack of proper research or blatant falsehoods regarding community use of forest products. (TPAC SFM P2)</p>	<p><u>TPAS criterion:</u> SFM C 2.1- 2 (see above)</p>	See analysis, first row.
<p>4: Disregard of community initiatives for forest conservation: The community's right to control forest management on their lands has not been granted. (TPAC SFM P2 and P4)</p>	<p><u>TPAS criterion:</u> SFM C 4.1</p> <p>SFM C 4.1. Objects of high ecological value and representative areas of forest types that occur within the Forest Management Unit are identified, inventoried and protected. <i>Guidance: 5% is considered to be a relevant proportion.</i></p>	See analysis, first row.
<p><u>Additional point of investigation by TPAC:</u> To what extent is the complaint-handling process clear: when is something being processed and with whom, are the deadlines clear, or any conclusions clear?</p>	<p><u>TPAS criterion:</u> DAM C2.2.d and e with regard to the effectiveness of the SIRIM/MTCS complaints procedure</p> <p>DAM C 2.2 C 2.2. The distribution of the responsibilities, authorities, and tasks among the entities, comprising an organisational and/or functional part of the certification system, and the procedures to be followed are clear and publicly available. The certification system comprises at least rules for the following functions:</p> <ol style="list-style-type: none"> <li>standard development;</li> <li>certification;</li> <li>accreditation;</li> <li>supervision of proper performance of tasks and compliance with the rules;</li> <li>objection and appeal handling;</li> <li>design and use of logos and labels.</li> </ol> <p>DAM 3.3/3.5 clear complaints process (who processes what, and are reasonable deadlines applied?)</p> <p>DAM C 3.3.</p>	

	<div> <p>Objection and appeal procedures are publicly available and clearly indicate the entity a stakeholder must turn to in the event of an objection or appeal against the operation of a particular entity or against a decision made by a particular entity.</p> </div> <div> <p>DAM C 3.5.</p> <p>Objection and appeal procedures contain clear and reasonable deadlines for handling of the objection or appeal.</p> </div> <div> <p>-PEM C.1.16 concerning the effectiveness of the PEFC complaints procedure</p> </div> <div> <p>PEM 1.16.</p> <p>Objection and appeal procedures are publicly available and clearly indicate the entity a stakeholder must turn to. The procedure also indicates clear time schedules.</p> </div>	
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**E.2: Ravenscourt FMU (4 topics) (same as for Gerenai)**

**Chronology:**

<b>What</b>	<b>When</b>	<b>Explanation</b>
-Certified	(4 June 2018 )	
-Keruan Complaint Letter to MTCC	(10 May 2021)	Letter of complaint on behalf of Keruan addressed to MTCS concerning Ravenscourt
-MTCC requests response from SIRIM	(31 May 2021)	Letter from MTCS (CEO) to the certification body of Ravenscourt and Gerenai to respond to the complaint from Keruan and GCRC (submitters of the complaint) (with deadline)
-SIRIM letter to MTCC	(13 July 2021 to MTCC) (sent to Keruan/GCRC on 16 July 2021)	Explanation of how complaint will be followed up (during surveillance audit)
-MTCC response letter to Keruan	(7 August 2021)	MTCC (Dispute Resolution Committee) responds: -Complaint must be followed up by CB -Pending the Samling lawsuit, MTCS will not go into any detail on the specific content, but will explain the general (complaints) process.
-MTCC public response on website	(13 August 2021)	
-Major NCRs closed	(16 February 2022)	<i>See Public Summary below</i>
-Public Summary	(20 May 2022)*	Audits: 8-13 November 2021 – -Summary with non-conformities for 2021 + justification of how major non-conformities were closed (minors will be closed during next audit) -Non-conformities for 2021 (explanation as to why it was possible to close them)

<p><b>TABLE E.2 Complaint from Keruan and Bruno Manser Fonds <i>et al</i> – for the attention of Ravenscourt</b></p> <p><i>(N.B.: considerable overlap with Table E.1, see references)</i></p>		
<p><b>Content of the complaint</b></p>	<p><b>Findings</b></p> <p>-Relevant TPAS criterion - description of the situation</p>	<p><b>Analysis and conclusion</b></p> <p>-Analysis of the situation -Conclusion as to whether or not further investigation is necessary, with an explanation of the purpose of any further investigation and details of the party/parties (currently) considered most likely to be able to provide this information.</p>
	<p><u>Handling (the same for all points):</u></p> <ul style="list-style-type: none"> <li>Complaints addressed to: MTCS (11 May 2021) and PEFC (25 October 2021) Contents: Four points listed below</li> <li>Response from MTCS (7 August 2021) and PEFC (12 November 2021): The complaint is being processed by SIMIR (the certification body responsible)</li> <li>Audits have been conducted</li> <li>The four complaint topics (see below) relate to non-conformities in the audit report. (see analysis of the non-conformities in the analysis column for each complaint)</li> </ul> <p>Explanation from PEFC:</p> <ul style="list-style-type: none"> <li>The field visit was postponed because of COVID and the complaint processing took longer than usual.</li> </ul> <p>Result/status of the practice (situation in the field):</p> <ul style="list-style-type: none"> <li>The complaints were processed and followed up by the certification body which resulted in non-conformities.</li> </ul>	<p><u>See Table E.1</u></p>

1: Lack of transparency: The Social Impact Assessment (SIA) and Environmental Impact Assessment (EIA) of Ravenscourt FMU/Gerenai FMU were not available to the public or local communities. (TPAC SFM P2)	<u>See Table E.1</u>	1 <u>Analysis: The complaint was handled by the CB and resulted in the audit to</u> Major CAR and minor CAR (corrective action requests) Non-conformity corresponds with the subject of the complaint
2: Failure to obtain free, prior and informed consent: Samling is not properly/openly consulting communities within Ravenscourt FMU/Gerenai FMU as most of the Penans/Kenyah are not aware that their community are within an MTCS certified area. (TPAC SFM P2)	<u>See Table E.1</u>	2. <u>Analysis: The complaint was handled by the CB and resulted in the audit to</u> Major CAR Non-conformity corresponds with the subject of the complaint
3: Disregard of community dependence on forest resources: The public summary provided by Samling on Ravenscourt FMU/Gerenai FMU indicates either a lack of proper research or blatant falsehoods regarding community use of forest products. (TPAC SFM P2)	<u>See Table E.1</u>	3. <u>Analysis: The complaint was handled by the CB and resulted in the audit to</u> CARs (major and minor) related to insufficient consultation Non-conformity corresponds with the subject of the complaint
4: Disregard of community initiatives for forest conservation: The community's right to control forest management on their lands has not been granted. (TPAC SFM P2 and P4)	<u>See Table E.1</u>	4. <u>Analysis: The complaint was handled by the CB and resulted in the audit to</u> CARs (major and minor) related to insufficient consultation Non-conformity corresponds with the subject of the complaint
<u>Additional subject of investigation by TPAC:</u> -Clarity during the process: when is something being processed and by whom, are the deadlines clear, or any conclusions clear?	<u>See Table E.1</u>	

**Table E.3: MTCS complaint procedures (20-day period)**

<p><b>Complaint from Bruno Manser Fonds et al to PEFC and MTCS</b> 3: 20-day response period in MTCS complaints procedure</p>		
	<b>Findings</b>	<b>Analysis and conclusion</b>
<p><b>Content of the complaint</b></p>	<p>-Relevant TPAS criterion -Description of the situation</p>	<p>-Analysis of the situation -Conclusion as to whether or not further investigation is necessary, with an explanation of the purpose of any further investigation and details of the party/parties (currently) considered most likely to be able to provide this information.</p>
<p>It is not reasonable that the MTCS complaints procedure states that a response must be provided within 20 days.</p>	<p>TPAS criteria:</p> <ul style="list-style-type: none"> <li>• Directly relevant: SFM C2.5 / DAM C3.5</li> <li>• Indirectly relevant: DAM C 2.2.d and e.</li> </ul> <div data-bbox="808 735 1453 914" style="border: 1px solid black; padding: 5px;"> <p>SMF C 2.5. Adequate mechanisms are in place for resolving disputes regarding forest management, property/usage rights, work conditions, or social services. <i>Guidance: In case of a conflict of significant dimension, the FMU will not be certified.</i></p> </div> <div data-bbox="808 951 1453 1046" style="border: 1px solid black; padding: 5px;"> <p>DAM C 3.5. Objection and appeal procedures contain clear and reasonable deadlines for handling of the objection or appeal.</p> </div> <div data-bbox="808 1086 1453 1361" style="border: 1px solid black; padding: 5px;"> <p>DAM C 2.2 C 2.2. The distribution of the responsibilities, authorities, and tasks among the entities, comprising an organisational and/or functional part of the certification system, and the procedures to be followed are clear and publicly available. The certification system comprises at least rules for the following functions:</p> <ol style="list-style-type: none"> <li>standard development;</li> <li>certification;</li> <li>accreditation;</li> </ol> </div>	<p><u>Analysis:</u> -Complaint is being processed and has resulted in an internal non-conformity by PEFC, addressed to MTCS. This is an appropriate solution. -It is not clear how PEFC is monitoring the closure of the NC and what deadline applies for this</p> <p><u>Conclusion</u> -<b>Reasonable doubt;</b> with regard to <u>system integrity</u>. -<b>Follow-up investigation: necessary</b> -Source to be consulted: PEFC</p>

	<p>d. supervision of proper performance of tasks and compliance with the rules;</p> <p>e. objection and appeal handling;</p> <p>f. design and use of logos and labels.</p> <p><u>Findings:</u></p> <p><u>Processing:</u></p> <ul style="list-style-type: none"> <li>Complaint received by PEFC (Complaint Letter to PEFC regarding MTCC (25 October 2021) <u>Contents:</u> a 20-day deadline for complaints in the MTCS procedure is not acceptable</li> <li>Response from PEFC (PEFC response letter (12 November 2021)) <u>Contents:</u> complaint was declared admissible. NC issued to MTCS to revise this deadline</li> <li>Additional information from PEFC as provided to TPAC: -20 days is not applied in practice. -PEFC is monitoring processing.</li> </ul> <p><u>Results</u></p> <ul style="list-style-type: none"> <li>Status of the complaint: Unknown (being processed or closed?)</li> <li>Current situation: The MTCS procedure has not yet been changed. Follow-up to complaint is being monitored by PEFC</li> </ul> <p><u>Unknown:</u></p> <ul style="list-style-type: none"> <li>Stakeholders' response to information from PEFC</li> <li>Deadline for the non-conformity</li> <li>Current status of the complaint</li> <li>Whether and when PEFC will provide the submitters of the complaint with additional information.</li> </ul>	
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**Table E.4: MTCC Dispute Resolution Committee refuses to continue the dispute resolution process.**

Complaint from Bruno Manser Fonds et al to PEFC and MTCS 4: complaint handling		
	<b>Findings</b>	<b>Analysis and conclusion</b>
<b>Content of the complaint</b>	<ul style="list-style-type: none"> <li>-Relevant TPAS criterion (if relevant)</li> <li>-Description of the situation</li> </ul>	<ul style="list-style-type: none"> <li>-Analysis of the situation</li> <li>-Conclusion as to whether or not further investigation is necessary, with an explanation of the purpose of any further investigation and details of the party/parties (currently) considered most likely to be able to provide this information.</li> </ul>
According to NGOs, MTCC has not followed up the processing of the complaints concerning Gerenai and Ravenscourt.	<p><u>TPAS criteria:</u></p> <ul style="list-style-type: none"> <li>• Directly relevant: SFM C2.5</li> <li>• Indirectly relevant: DAM C 2.2.d and e.</li> </ul> <div style="border: 1px solid black; padding: 5px;"> <p>SMF C 2.5.</p> <p>Adequate mechanisms are in place for resolving disputes regarding forest management, property/usage rights, work conditions, or social services.</p> <p><i>Guidance: In case of a conflict of significant dimension, the FMU will not be certified.</i></p> </div> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>DAM C 2.2</p> <p>C 2.2. The distribution of the responsibilities, authorities, and tasks among the entities, comprising an organisational and/or functional part of the certification system, and the procedures to be followed are clear and publicly available. The certification system comprises at least rules for the following functions:</p> <ol style="list-style-type: none"> <li>standard development;</li> <li>certification;</li> <li>accreditation;</li> <li>supervision of proper performance of tasks and compliance with the rules;</li> <li>objection and appeal handling;</li> <li>design and use of logos and labels.</li> </ol> </div>	<p><u>Analysis:</u></p> <ul style="list-style-type: none"> <li>-There has been substantive follow-up on this point: it was followed up by the relevant body (CB) as is clear from the non-conformities for Gerenai and Ravenscourt. The observation that the complaint is not been processed is unfounded.</li> <li>-There is no clarity as to whether the PEFC complaint-processing procedure is itself adequate because the response of NGOs and PEFC is unknown (DAM C 2.2.d and C 2.2.e).</li> </ul> <p><u>Conclusion</u></p> <ul style="list-style-type: none"> <li>-<b>Reasonable doubt;</b> with regard to <u>complaint processing</u>.</li> <li>-<b>Follow-up investigation: necessary</b></li> <li>-Sources to be consulted: stakeholders and PEFC.</li> </ul>

	<p><u>Findings:</u></p> <p><u>Processing of complaint:</u></p> <ul style="list-style-type: none"> <li>Complaint from Bruno Manser Fonds et al. submitted to PEFC (2021-10-25) Contents: request to follow-up on MTCS response, NGOs understood that complaints about Gerenai and Ravenscourt will not be investigated pending the Samling lawsuit against the NGOs.</li> <li>Response from PEFC (2021-11-12 to BMF) Contents: complaint is in fact being followed up by certification body.</li> </ul> <p><u>Result</u></p> <ul style="list-style-type: none"> <li>Status unclear: complaint handling has not been suspended (the complaints are being followed up by the CB despite the ongoing lawsuit).</li> <li>Current situation: There has been substantive follow-up to the complaints.</li> </ul> <p><u>Unknown:</u></p> <ul style="list-style-type: none"> <li>It is unclear whether the complaints would have been followed up by the certification body if no complaints had been submitted to PEFC/MTCS.</li> <li>It is not clear what the NGOs think about the processing.</li> </ul>	
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