



SMK COMPLAINTS PROCEDURE

Section 1 – Introduction

Article 1:

Definitions

1.1. The following terms have the stated meaning in this Complaints Procedure:

Stakeholder	:	the person whose interest is directly affected by a decision made by the Foundation or the procedures followed to reach that decision. In the case of a legal entity, its interests are considered to include the general and collective interests which it represents according to the objectives under its articles of association and the actual activities it pursues in particular;
Certification scheme	:	set of criteria, research methods, and certification procedures, intended for the certification of products or services or business processes, established by a Panel of Experts;
Certification system	:	the set of rules and procedures applied for certification by the Foundation or other legal entities;
Panel of Experts	:	a body of experts referred to in article 17 of the Articles of Association;
Director	:	the director of the Foundation according to the Articles of Association;
Management Board:		the management board of the Foundation according to the Articles of Association;
Complaint	:	a substantiated written complaint by a stakeholder concerning a matter referred to in Article 2;
Complaints Committee	:	the committee that investigates complained lodged to the Foundation, as referred to in article 18 of the Articles of Association;
Complainant	:	the person lodging a complaint;
Supervisory Board	:	the Foundation's supervisory board;
Procedure	:	the complaints procedure for SMK in its respective version, being the regulations referred to in article 18.4 of the Articles of Association;
Secretary	:	the secretary referred to in article 18 herein;
Articles of Association	:	the articles of association of the Foundation in their respective version;
Foundation	:	Stichting Milieukeur, registered in The Hague;
TPAC	:	the Timber Procurement Assessment Committee (TPAC).

- 1.2. Unless otherwise stated or intended:
- a. any reference to a term or word in the singular also includes a reference to the plural form of this term or word, and vice versa;
 - b. any reference to an article refers to the articles under this Procedure.

Section 2 – Complaints

Article 2: Decisions and decision-making procedures that may be subject to complaints

The Foundation shall deal with complaints concerning decisions made by and the procedures to reach those decisions followed by a Panel of Experts, TPAC, or the Management Board, for example:

- a decision establishing, extending, terminating, deactivating, or revising a certification scheme/criteria;
- a decision rejecting a request to develop or adapt criteria;
- a decision to discontinue criteria development or not to establish a certification scheme/criteria;
- a decision authorising a certification system to undergo the procedure for testing against the Dutch purchasing criteria for wood;
- a decision on the conformity of a certification system with the Dutch purchasing criteria for wood;
- a decision by the Management Board concerning agreements for granting licences to certification bodies and trade and retail chains;
- other decisions implementing the certification systems managed by the Foundation, including business agreements and the application of general terms and conditions of certification.

No complaints may be made under this Procedure about decisions on testing for the EU Ecolabel, as this is covered by the EU Ecolabel Regulation, which includes a separate dispute settlement procedure.

Section 3 – Submitting a complaint

Article 3: Lodging a complaint

- 3.1. A stakeholder may submit a complaint to the Foundation within six weeks of a decision being published, pursuant to article 2.
- The complaint may be submitted in writing by email to klacht@smk.nl with 'Complaint' in the subject line. The date of receipt is the date on which the Foundation receives the complaint.

- 3.2. The complaint must contain:
- a. the name of the complainant, their postal address, their e-mail address, and a telephone number on which the complainant can be reached;
 - b. a clear description of the decision referred to in article 2 to which the complaint relates;
 - c. a description of the complaint;
 - d. all relevant reports and copies of documents that are relevant to considering the complaint.
- 3.3. By submitting a complaint, the complainant agrees to the provisions of this Procedure.
- 3.4. The Foundation shall confirm receipt to the complainant within seven (7) days of receipt and include information on the processing period of the complaint, attaching a copy of this Procedure.
- 3.5. A complaint will only be dealt with once the Foundation has established that the complaint complies with the requirements laid down in article 3.2. If the complaint is found not to comply with article 3.2, the Foundation may set a deadline for the complainant to rectify this.

Article 4: Settling the complaint in advance

The Foundation may choose to seek a solution satisfactory to the complainant in the first instance, before the complaint is dealt with by the Complaints Committee. The complainant is not obliged to cooperate with this. If a solution satisfactory to the complainant is found, the complainant has the option of withdrawing the complaint.

Article 5: Processing fee

Without prejudice to the provisions of article 3.5, the Foundation may only deal with a complaint once the complainant has paid the complaint processing fee, set annually by the Management Board [*currently: €250.00*], to the Foundation. This fee is non-refundable.

Section 4 – Complaint processing by the Complaints Committee

Article 6: Processing the complaint

A complaint as referred to in article 2 will be dealt with by the Complaints Committee.

Article 7: Lack of competence/admissibility

- 7.1. The Complaints Committee may rule that it does not consider itself competent to assess the complaint or that the complaint is inadmissible.

- 7.2. The Complaints Committee may declare a complaint inadmissible if:
- a. the complainant has already lodged a complaint under this Procedure with regard to the same matter to which the new complaint relates;
 - b. more than six (6) weeks have passed between the publication of the decision to which the complaint relates and the date of receipt of the complaint by the Foundation;
 - c. the complainant has no direct interest in the matter to which the complaint relates;
 - d. the complaint does not relate to a decision or decision-making procedure referred to in article 2.
 - e. the complaint has already been settled per article 4.
- 7.3. Before deciding on the competence or admissibility, the Complaints Committee may give the complainant the opportunity to explain their complaint in more detail, within a reasonable period of no more than two (2) weeks. The four (4) months referred to in article 10.1 will then be extended by the period determined by the Complaints Committee, as referred to in the previous sentence.
- 7.4. The Complaints Committee shall inform the complainant in writing if it is not competent to assess the complaint or that the complaint is inadmissible, explaining the reason for this. The complainant may not appeal against a decision by the Complaints Committee declaring itself not competent or the complaint inadmissible. In such case, the complainant is free to initiate legal proceedings.

Article 8: Injunctive relief

The complainant is entitled to submit a request, in accordance with Section 5, for injunctive relief relating to the decision to which the complaint relates.

Article 9: Hearing the complainant

- 9.1. The Complaints Committee shall give the following persons the opportunity to be heard in person in connection with the complaint:
- a. the complainant
 - b. other stakeholders involved in the decision to which the complaint relates, in which case:
 - i. the stakeholder is any party mentioned in the relevant decision and/or the complaint;
 - ii. the Foundation may also invite such stakeholders;
 - c. the Management Board, the Panel of Experts, or TPAC – whichever made the decision to which the complaint relates.
- 9.2. The Complaints Committee:
- a. sets the date and place of the hearing;
 - b. shall inform the persons referred to in article 9.1 of the date and place of the hearing within a period of two (2) weeks;

- c. shall provide a copy of the complainant and accompanying documents to the persons referred to in article 9.1 at least five (5) days before the date of the hearing.
- 9.3. The persons referred to in article 9.1 will be heard in each other's presence, unless it is likely that this will prevent the complaint from being handled carefully or unless facts or circumstances known to be confidential are likely to be brought up during the hearing.
- 9.4. If the persons referred to in article 9.1 are heard separately, each of them will be informed of the proceedings of the hearing that took place without their presence, unless there are significant grounds to maintain confidentiality of this. Minutes will be drawn up of the hearing.
- 9.5. The persons referred to in article 9.1 may submit further documents to the Foundation up to two (2) weeks before the hearing.
- 9.6. The Complaints Committee may consult witnesses, experts, and make all the necessary arrangements for reaching an informed decision. The persons referred to in article 9.1 may request witnesses and experts to be heard; this request must be made in writing no later than two (2) weeks before the hearing.
- 9.7. The persons referred to in article 9.1 have the right to be represented or assisted at the hearing by an advisor.
- 9.8. The Complaints Committee may decide not to hold a hearing, to provide further documents, or to present witnesses and experts if:
 - a. the complaint is deemed to be inadmissible;
 - b. the persons referred to in article 9.1 have declared that they do not wish to exercise the right to a hearing, to submit further documents, or to present witnesses or experts;
 - c. the complaint is fully resolved without prejudice to other stakeholders' interests;
 - d. the urgency of the complaint does not allow for this.

Article 10: Ruling on the complaint

- 10.1. The Complaints Committee will issue a written decision on the complaint within four (4) months of the Foundation receiving the fee referred to in article 4, subject to any extension of that period by no more than two (2) months in exceptional circumstances.
- 10.2. The Complaints Committee shall assess the complaint with reason and fairness. It is bound by the Articles of Association, the rules of procedure for the Panel of Experts, the TPAC regulations, the regulations under this Procedure, the general terms and conditions of certification, the procedure for developing and managing certification schemes, and other regulations of the Foundation that have been laid down in accordance with the Foundation's Articles of Association and/or regulations.
- 10.3. The written decision issued by the Complaints Committee must contain:
 - a. the findings of the investigation into the complaint;

- b. the ruling on the complaint;
 - c. any conclusions that the Complaints Committee may draw from the complaint. If the complaint is deemed to be justified, in whole or part, the relevant Panel of Experts, TPAC, or the Director is requested to review the decision on the complaint. If the complaint is deemed not to be justified, the complainant is free to initiate legal proceedings.
- 10.4. The decision by the Complaints Committee will be signed by the committee chair.
- 10.5. The original version of the decision will be held on file in the Director's archive for at least five years.
- 10.6. The Secretary will send a copy of the decision to the complainant and those involved in the hearing within one (1) week of the decision being issued. The Foundation will then publish the ruling on its website within one (1) week.

Article 11: Complaints register

The Foundation shall record any decision on a complaint in the complaints register. A description of the complaint and the measures taken as a result of the decision will also be included.

Section 5 – Injunctive relief

Article 12: Injunctive relief

The submission of a complaint does not automatically suspend the decision, as referred to in article 2, that the complaint concerns.

Article 13: Submitting a request for injunctive relief

- 13.1. When submitting a complaint, the complainant may also request injunctive relief if they are or fear that they are disproportionately affected by the continuing effect of the decision or while the complaint is being considered. Injunctive relief entails the whole or partial suspension of the decision in question.
- 13.2. The provisions of article 3 apply mutatis mutandis to the submission of a request for injunctive relief, provided that:
- a. the subject line states 'Request for injunctive relief';
 - b. the request refers to the complaint lodged by the applicant for injunctive relief;
 - c. the request contains the reason for which the applicant fears they are disproportionately affected.

13.3. A request for injunctive relief will be handled by the Complaints Committee.

Article 14: Ruling on a request for injunctive relief

14.1. The Complaints Committee shall rule on a request for injunctive relief as possible.

14.2. Injunctive relief ceases to apply in any event as soon as:

- a. the complaint has been withdrawn; or
- b. the Complaints Committee has ruled on the complaint in accordance with article 10, unless a later date has been specified in the decision.

Section 6 – Composition of the Complaints Committee

Article 15: Complaints Committee – General

15.1. The Complaints Committee consists of three (3) members and one (1) deputy member appointed by the Management Board, with the prior approval of the Supervisory Board, in accordance with the quality requirements referred to in article 16.

15.2. The term of the members of the Complaints Committee may not exceed five (5) years.

A member of the Complaints Committee may be reappointed to the same position no more than once, for a new period of no more than five (5) years.

15.3. A member's position on the Complaints Committee ends as soon as the member:

- a. dies;
- b. is declared bankrupt, applies for suspension of payments, or requests the application of the debt relief scheme provided for in the Bankruptcy Act (*Faillissementswet*), or an equivalent legal arrangement applicable to the member under another jurisdiction abroad;
- c. enters into receivership or otherwise loses the free management of their assets;
- d. no longer complies with the provisions of article 16;
- e. has held the position for five years (subject to reappointment);
- f. voluntary resigns;
- g. is dismissed by the Management Board after the prior approval of the Supervisory Board, whether at the request of one or more other members of the Complaints Committee or not. Prior to a member of the Complaints Committee being dismissed, any open complaint procedures must be completed and the member concerned must be given the opportunity to defend themselves.

15.4. If a member of the Complaints Committee resigns under article 15.3(e) or (f), the member may retain their position to assess a complaint brought before their resignation on which the Complaints Committee has yet to reach a decision; this is at the Director's discretion and subject to consultation with the Chair of the Complaints Committee as necessary.

Article 16: Complaints Committee – Quality requirements for members

- 16.1. The Complaints Committee consists of individual persons of irreproachable conduct.
- 16.2. Members of the Complaints Committee cannot be appointed or reappointed if they are:
 - a. a member of a body of the Foundation, a Panel of Experts, or the TPAC;
 - b. an employee of the Foundation; and/or
 - c. unable to provide a reference of their irreproachable conduct upon appointment/reappointment.
- 16.3. The Chair of the Complaints Committee must:
 - a. hold a Master’s degree in law;
 - b. be a current or former member of the judiciary or have knowledge and experience (expertise) with jurisdiction or handling complaints and appeals.

The other members of the Complaints Committee must have specific knowledge and experience (expertise) deemed desirable to properly assessment complaints and decisions on them. Given the nature of the Foundation’s activities, such knowledge and experience relates to sustainability and certification.

Article 17: Complaints Committee – Handling a complaint

- 17.1. In the absence of a member of the Complaints Committee, the Director, in consultation with the other members of the committee, is authorised to temporarily substitute the member concerned.
- 17.2. The members of the Complaints Committee may carry out their duties independently, impartially, and as they see fit. They do not accept instructions from any other persons or entities regarding the performance of their duties.
- 17.3. The Complaints Committee reaches its decisions by a majority of votes. If the vote is tied, the Chair has the deciding vote.

Article 18: Complaints Committee – Secretary

- 18.1. The Complaints Committee is assisted in its activities by a Secretary, appointed by the Director.
- 18.2. Articles 15.2, 15.3, 15.4, 16.1, 16.3(a), 17.1, 17.2, and 20 apply to the Secretary mutatis mutandis.
- 18.3. The Secretary is not a member of the Complaints Committee and their input is advisory only.

Section 7 – Other

Article 19: Costs

- 19.1. If the complainant is unsuccessful, the Complaints Committee may, order the complainant to pay the actual costs of processing a request for injunctive relief or a complaint by the Complaints Committee. Actual costs include:
- a. the costs of engaging the Complaints Committee, the Secretary, and any support;
 - b. the costs of engaging the relevant Panel of Experts or TPAC;
 - c. the hire of the hearing room;
 - d. the costs of any witnesses and/or experts referred to in article 9.6.
- 19.2. With regard to the costs of engaging the Complaints Committee referred to in Article 19.1(a), the following applies:
- a. The costs of engaging the Complaints Committee and the corresponding fees are based on the *Verordening vergoedingen aan leden van de raad, het dagelijks bestuur en de commissies van de Sociaal-Economische Raad* (SER regulations) and the corresponding decision; these SER regulations set a fixed amount per meeting or hearing as a starting point. In accordance with this SER regulations:
 - i. for meetings or hearings lasting less than one hour, the attendance fee is fifty (50) percent of the standard allowance;
 - ii. for meetings or hearings lasting longer than three (3) hours, the attendance fee is one hundred and fifty percent (150) percent of the standard allowance;
 - iii. the chair receives one hundred and twenty-five (125) percent of the fee received by the other members.

In addition, each member receives travel and subsistence expenses, in accordance with the abovementioned SER regulations.
 - b. In addition to the standard allowance for the attendance fee referred to in point (a), the Chair and other members receive one (1) standard fee for the preparation of a meeting or hearing to which paragraph (a) applies.
 - c. For the purpose of controlling costs, meetings and hearings may be held only after consultation with the Director.
- 19.3. The complainant cannot be ordered to pay:
- a. the costs of legal assistance;
 - b. the costs incurred by the Foundation other than those referred to in article 19.1(a) to (d);
 - c. the costs incurred by persons referred to in article 9.1(a) and (b).

Article 20: Confidentiality

- 20.1. The members of the Complaints Committee are obliged to maintain confidentiality of all matters that they experience or gain knowledge of in connection with the performance of their duties concerning the person, the company/organisation, or the personal or business circumstances of the complainant.
- 20.2. Article 20.1 also applies to institutions and persons belonging to or working for them who are involved in the handling of the complaint.

Article 21: Correspondence and communication

- 21.1. Written communications to and from the Foundation – including the submission of a complaint and relevant documents – must be sent by email to/from stakeholders using the address provided for that purpose: klacht@smk.nl.
- 21.2. If a complaint, related document, or a request for injunctive relief is sent in a language other than Dutch and the Complaints Committee believes a translation is required to process it properly, the applicant shall arrange for an official translation.
- 21.3. Once the Foundation receives a complaint or request for injunctive relief, it shall notify the institution of the Foundation that made the decision subject to the complaint/request as soon as possible.

Article 22: Breach of a procedural requirement

If a complaint is lodged against a decision that has been made in breach of a procedural requirement, the decision may still be upheld by the Complaints Committee if it is found that the stakeholders have not been disadvantaged by it.

Article 23: Fair trial and good governance

In applying the provisions of this Procedure, the Complaints Committee abides by the general principles of a fair trial and good governance.

Article 24: Exclusion of liability

The Foundation, the Director, the members of the Complaints Committee, the members of a Panel of Experts or TPAC, the Secretary, and any persons employed by the Foundation are not liable for damage of any kind or extent incurred by a complainant or a third party as a result of a complaint lodged under this Procedure.

Article 25: Unforeseen cases

In cases not provided for under this Procedure (including the interpretation of the provisions hereunder), the Complaints Committee shall reach a decision. It is also authorised to explain and supplement the rules of this Procedure where necessary, provided that the Chair of the Complaints Committee so rules at the hearing.

There is no appeal against this.