

PCSN VII

College of Appeal Procedures

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Inhoud

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1 SCOPE

This document was adopted by the General Assembly of PEFC Netherlands on 24 December 2011. This document was amended by the Board of Directors of PEFC Netherlands on 11 July 2012.

This document contains the procedure for the handling of appeals by the College of Appeal of PEFC Netherlands (hereinafter “College of Appeal”).

2 COMPOSITION OF THE COLLEGE OF APPEAL

- 2.1 There is a College of Appeal, that is charged with giving a binding advisory opinion on appeals filed against decisions or measures of, or on behalf of, the Board of Directors of PEFC Netherlands (hereinafter “the Board”).
- 2.2 The College of Appeal consists of a least three members, of which the chairman and his/her replacement shall have a law degree.
- 2.3 The members of the College of Appeal, and, if needed, a replacement for each, are appointed by the Board for a period of four years. After this period the Board shall provide in the reappointment, based on availability of the member concerned, or appointment of a new member. In the last case the College of Appeal can file a binding nominations. In case the College of Appeal does not file a nominations, the Board shall appoint the new member
- 2.4 The members of the College of Appeal shall have no seat in the Board and shall be completely independent from PEFC Netherlands, apart from their participation in the College of Appeal.
- 2.5 The Board shall establish a appeal procedure in which the possibilities of appeal and the procedure on the handling by the College of Appeal are stated. The Board is allowed to amend the procedures, after a written approval on the amendments by the College of Appeal.
- 2.6 The College of Appeal, including its’ chairman, shall decide according to the rules in the College of Appeal Procedures.
- 2.7 The Board of has adopted the following appeal procedures.

3 POSSIBILITIES OF APPEAL

- 3.1 Decisions by the Board of Directors of PEFC Netherlands concerning the handling of complaints through the Complaints Procedure of PEFC Netherlands can be subject to an appeal at the College of Appeal.
- 3.2 Decisions made by the General Assembly of PEFC Netherlands are not subject to appeal at the College of Appeal

4 FILING AN APPEAL

- 4.1 Any appeals shall be submitted in writing, by registered letter, within 6 weeks after the date of the objected decision. The College of Appeal uses the 'sending approach'.
- 4.2 The appeal letter shall be addressed to the College of Appeal of PEFC Netherlands at: Stichting Raad van Arbitrage voor de Bouw, Postbus 19290, 3501 DG Utrecht, NL.
- 4.3 The appeal letter shall include at least:
- a) date;
 - b) copy of the disputed decision against which the appeal is filed;
 - c) the arguments for the appeal;
 - d) contact details of the appellant.
- 4.4 The College of Appeal shall without delay acknowledge the appellant in writing on the receipt of the letter of appeal.
- 4.5 When the appeal letter does not comply with the conditions in article 5 under 2) and 3), the College of Appeal shall give the appellant, by means of a registered letter, another two weeks, counted from the date of the letter, to adapt the appeal letter. When the appellant fails to adapt the appeal letter within this term, the College of Appeal is entitled to reject the appeal. When the appeal letter has not been dated, the College of Appeal shall use the date of reception of the appeal letter at the Stichting Raad van Arbitrage voor de Bouw.
- 4.6 The appellant accepts, through the filing of the appeal, that the decisions by the College of Appeal are made in the form of a binding advisory opinion.
- 4.7 The appeal does not suspend the function of the disputes decision.
- 4.8 The appeal is handled by a chamber of three persons, to be appointed by the chairman of the College of Appeal.

- 4.9 The chairman of the College of Appeal determines a deposit to be paid by the appellant on an account determined by the chairman. The chairman is entitled to reject the appeal when the deposit has not been paid within two weeks after the request for payment.
- 4.10 When the deposit appears to be insufficient to cover the costs of the appeal, the chairman of the College of appeal can request the appellant for an additional deposit. The chairman is entitled to reject the appeal when the additional deposit has not been paid within two weeks after the request for payment.

5 REQUEST FOR TEMPORARY PROVISION

- 5.1 When an appeal has been filed at the College of Appeal and the appellant suffers or expects disproportional disadvantage through the continued functioning of the disputed decision during the handling of the appeal, the appellant can request, at the chairman of the College of Appeal, for a temporary provision to be made, including a request for complete or partial suspension of the disputed decision.
- 5.2 The request for suspension shall include at least:
- a) copy of the disputed decision;
 - b) the arguments for requesting a temporary provision;
 - c) contact details of the appellant.
- 5.3 The chairman hears the appellant and PEFC Netherlands regarding the request for a temporary provision. Thereafter, the chairman shall decide as soon as possible on the request for a temporary provision, if needed after consultation with the other members of the College of Appeal. The involved parties shall be notified on the decision with shortest notice and in writing at a later time.
- 5.4 The decision by the chairman of the College of Appeal has the nature of a temporary measure that shall be in effect until the College of Appeal has judged in the appeal procedure.

6 PROCEDURE

- 6.1 The chairman of the College of Appeal shall allow PEFC Netherlands to file a defense within four weeks after the appeal letter was received.
- 6.2 Any stakeholder can request at the chairman of the College of Appeal to become appointed as a party in the procedure.
- 6.3 The College of Appeal shall hear all parties, unless all parties have declared not to make use of the right to be heard. The College of Appeal sends all files and documents relating to the appeal to the parties.

- 6.4 The chairman of the College of Appeal decides, on the shortest possible notice, on the location, date and time of the handling of the appeal, taking into account the requirements above and informs the concerned parties hereof in writing.
- 6.5 Parties have the right to be accompanied by a counselor at the hearing
- 6.6 Parties have the right to hear any informants at the hearing, provided the names and contact details of the informants have been provided in writing to the chairman of the College of Appeal and other parties, no later than five days before the date of the hearing.
- 6.7 Parties have the right to have confidential insight in all documents used by PEFC Netherlands to come to its decision.
- 6.8 The College of Appeal has the right to hear informants, consult experts and take any other measures or provisions, including having additional hearings, as deemed necessary for a good judgment.
- 6.9 The College of Appeal shall declare its judgment, on the shortest notice, after the hearing. The judgment shall be sent to the parties. The original shall be filed in the archives of the College of Appeal.

7 CONTENT AND NATURE OF THE JUDGMENT

- 7.1 The College of Appeal shall judge based on reason and fairness. In its judgment the College of Appeal is bound to the signed agreements, adopted regulations and protocols by PEFC Netherlands with respect to the PEFC label.
- 7.2 In its judgment the College of Appeal can:
- a) confirm the disputed decision;
 - b) completely or partially declare the disputed decision unbinding and demand that PEFC Netherlands withdraws or revises the disputed decision, or takes/avoids measures according to the judgment of the College of Appeal.
- 7.3 The College of Appeal decides on the appeal by means of a majority vote. The members of the College of Appeal cannot withhold their vote.
- 7.4 The judgment of the College of Appeal has the nature of a binding advisory opinion.

8 COSTS OF THE APPEAL

- 8.1 The College of Appeal determines the costs of the appeal in the judgment and decides which party shall cover all or part of the total costs. The costs of legal assistance are not subject to refunding.
- 8.2 When the appellant is judged to cover all or part of the above mentioned costs, these will be settled with the deposit. Any remaining deposit will be transferred immediately to an account appointed by the appellant. When the deposit does not cover all of the costs the appellant shall transfer the remaining amount to the account of the College of Appeal within two after sending the judgment.

9 CLOSING ACTS

- 9.1 Parties can file a motivated request at the chairman of the College of Appeal for replacement of any member of the College of Appeal during the handling, if there is a conflict of interest of one of the parties with the concerned member of the College of Appeal. The chairman of the College of Appeal, or his replacement, will decide on the request for replacement and will appoint another member of the College of Appeal for the concerned handling.
- 9.2 The College of Appeal will determine a good order of process, when and as far as this is not covered in this procedure.