

Regulations Board of Appeal

MPS-ECAS



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Definition:

Interested party: Each private individual or legal entity that has an interest in a decision taken by MPS-ECAS.

The Appeal

- 1a. An interested party can lodge a written Appeal with the Board of Appeal, regarding the granting, not granting or cancellation of a quality statement, or the absence of a clear decision in that regard, as well as in response to other decisions by the Operations Manager MPS-ECAS related to the performance of her task of judging whether or not an applicant or a certificate holder meets the requirements of the Scheme or the standard concerned, after the interested party has informed the Manager Operations MPS-ECAS of a complaint as referred to in article 8.1 of the MPS-ECAS Certification Regulations and Manager Operations ECAS has not decided with regard to the complaint within six weeks after being notified, or if his decision is unsatisfactory to the interested party. In that event, the Appeal needs to be lodged within 30 calendar days after that.
 - b. Lodging an Appeal by the interested party has no suspensive effect regarding the contested decision, nor regarding the financial obligations of the party concerned towards MPS-ECAS, be it that the Board of Appeal can take provisional measures pursuant to article 19 of these Regulations.
 - c. Lodging of the Appeal, the examination thereof and the decision about it should not lead to discriminatory measures by MPS-ECAS against the interested party.
 - d. Without prejudice to their confidentiality agreement towards others, the staff of MPS-ECAS including the Manager Operations, as well as the members of the Committee of experts and, if consulted, external experts are required to give the Board of Appeal the necessary information on request.
2. In addition to the provisions in the present Regulations, the Appeal is subject to the rules related to arbitration in the fourth book of the Dutch Code of Civil Procedure (clauses 1020 to 1073). The following articles are based on the most important of these rules.

The Board of Appeal

- 3a. The Board of Appeal consists of three arbitrators, the chairman of which is/will be appointed by the general meeting of shareholders of MPS-ECAS. Legal expertise in the Board of Appeal is guaranteed by the chairman who possesses the title of 'meester' or 'Master of Laws in Dutch Law'.
- Within fourteen days of receipt of the submitted Appeal, the chairman appoints two arbitrators selected from the most relevant list as referred to in clause 4, in view of the individual and the nature of the complaint. The Board of Appeal is assisted by a secretary, appointed by the chairman.

The address of MPS-ECAS will be used as correspondence address, unless the Board of Appeal decides otherwise in a specific matter.

- b. With the exception of the chairman, the arbitrators will have (had) a position in the agricultural sector and will have to be known with the system of quality assurance that is to be observed by the companies that are working in the agricultural sector, with the quality requirements in relation to their services, products and processes, with the competence requirements that the individuals working in these companies are to meet as well as with methods of inspection and/or examination and the reasonability of the requirements of these methods.
 - c. None of the arbitrators has been involved in any way in the subject of the Appeal or audits and decisions. Arbitrators are no members of the Board of Experts and are not employed by MPS-ECAS or by a company or institution which carries out activities for or on behalf of MPS-ECAS.
4. The following organisations each draw up a list of 3 individuals who can act as arbitrator in the event of a dispute with the a party as mentioned in relation to it, after they have been approached by the Secretary of the Board following the submission of an Appeal:
- LTO: if the dispute involves a Dutch (outdoor) grower. Should the dispute involve a grower from another country than the Netherlands: where possible the relevant coordinating growers' association in the country where the grower is located, or otherwise a representative group of growers in that country;
 - Glastuinbouw Nederland: if the dispute involves a greenhouse grower;
 - VGB or Groentenfruihuis: if the dispute involves a wholesaler;
 - VBW: if the dispute involves a flower retailer;
 - VBN: if the dispute involves a flower auction;
 - CBL: if the dispute involves a retailer;
 - FNLI: if the dispute involves a food products processor;
 - TLN or EVO: if the dispute involves a transport company;
 - VPN: if the dispute involves a composting company;
 - AVAG: if the dispute involves a greenhouse builder;
 - VHG: if the dispute involves an entrepreneur regarding one of the assessment schemes (BRL-en) of Groenkeur foundation.
 - KAVB: if the dispute involves a bulb grower;
 - AGRODIS: if the dispute involves a distributor of crop protection agents.
- Should the interested party not recognise itself in one of the organisations mentioned above, this party is consulted regarding inviting the most fitting organisation to draw up a list with three individuals who could act as arbitrator.
5. When drawing up the lists, the proposing organisations must state the relevant expertise of each proposed arbitrator after their name.

Commencement of the Appeal

The procedure for handling the appeal should at least involve the follow-up and administration of the appeal, including the measurements taken to solve them, while ensuring that all appropriate adjustments and corrective measurements are taken.

- 6a. A case is pending from the date of receipt of a written notification, in which the interested party informs the Chairman of the Board of Appeal of initiating an Appeal.
- b. The notification must include a clear description of the dispute, in which a clear description of the claim is included as well as all of the documents pertaining to it.
- c. Per the same date as the notification of the Chairman, the interested party sends the Manager Operations MPS-ECAS a copy of that notification.
- d. Subsequently, MPS-ECAS is obliged to collect and verify all necessary information to validate the appeal. In case not all of the necessary information to validate the appeal has been submitted, MPS-ECAS has the responsibility to submit the missing information to the Board of Appeal and send copies thereof to the interesting party, at least 10 working days before the session of the Board of Appeal will take place.
- e. In the event of a compromise to present the dispute to the Board of Appeal, the case will be pending from the moment of notification to the Chairman of the existence of such a compromise.
- f. In case a copy of the notification mentioned under b is submitted or when submitting the dispute when a compromise is reached as referred to in section e, all documents relevant to the dispute should also be included as well.
- g. MPS-ECAS is obliged to acknowledge receipt of the notification as expressed in 6a. and 6^e to the interested party within 5 working days and has to send progress reports to the interested party pending the appeal.

Place of the Appeal

- 7a. The place of the Appeal will be in the Netherlands, to be specified in more detail by the Board of Appeal.
- b. The Board of Appeal may hold sessions, deliberate and hear witnesses and experts at any location is deems suitable.

Language of the Appeal

8. The Appeal will be conducted in the Dutch language. If one of the parties is not based in the Netherlands and all the parties agree to conducting the proceedings in English, the Board of Appeal may take a decision to that effect.

Procedure

- 9a. The parties will be treated on equal terms. Each of the parties will be given the opportunity to present and amplify their position verbally at a session of the Board of Appeal.
- the session of the Board of Appeal will take place on a date to be fixed by the parties in consultation, within four weeks after the Appeal has become pending. The session may for good cause be adjourned for a period of up to four weeks. This period may be longer if both parties agree.
 - the session of the Board of Appeal is not public.
 - MPS-ECAS will be given the opportunity to respond to the appellant's appeal. MPS-ECAS needs in all cases to provide the Board of Appeal with an overview of the results of earlier, similar cases of appeal. If MPS-ECAS wants first to react in writing or to present (pieces of) evidence, it shall send that reaction or evidence not later than 5 working days before the date of the session to both the Chairman and the other party;
 - the Board of Appeal will not hear any party in the absence of the opposing party, unless the latter has been given every opportunity to be present. Whether or not this is the case is decided by the Board itself;
 - the arbitrators will not discuss cases with parties to the proceedings or their counsel outside normal procedures.
- b. The parties may appear in the session in person or represented by counsel.
10. A party appearing in the proceedings must invoke the lack of authority of the Board of Appeal based on the absence of a valid arbitration agreement before any defence is presented. This party is required to do so on pain of the lapse of its right to invoke the absence of a valid arbitration agreement later in the arbitration proceedings or before the court.
11. At the request of one of the parties, the Board of Appeal can allow a party to call witnesses or experts. The Board is authorised to appoint one of its members to hear witnesses and experts. The appellant needs to request to hear witnesses when lodging the appeal; MPS-ECAS needs to do this no later than 5 working days before the session, in the way described regarding submission of a written reaction and/or (pieces of) evidence.
- 12a. The Board of Appeal may also, of its own volition, appoint and hear or consult experts and call and hear witnesses.
- b. If the Board of Appeal appoints one or more experts to make a recommendation, it will send a copy of the appointment and the assignment given to the experts to the parties as soon as possible.

- c. The Board of Appeal will send a copy of the expert report to the parties as soon as possible after it is received.
 - d. Upon a request by one of the parties, the experts will be heard at a session of the Board of Appeal. If a party makes such a request, it will inform the Board of Appeal and the opposing party as soon as possible.
 - e. The Board of Appeal will give the parties the opportunity to ask questions and call their own experts.
13. The chairman is authorised to order a provisional examination of witnesses, an expert report or investigation at the relevant location and appoint one or more members to take the necessary action.
14. The Board of Appeal decides on the onus of proof and the assessment of the evidence.
15. The Board of Appeal may, at any stage of the proceedings, order the personal appearance of the parties to provide information or to attempt to reach a settlement.
16. At the first session at which it appears MPS-ECAS is authorised to lodge a claim against the appellant, provided that the claim is based on the agreement on which the appellant's claim is based.

Non-appearance at sessions

17. If, despite being given the opportunity to do so, the appellant fails to submit its claim or amplify it properly without having valid reasons for that failure, the Board of Appeal can pass judgment and thus terminate the proceedings.
18. If MPS-ECAS fails to conduct a defence after having been given ample time to do so, without providing valid reasons for that failure, the Board of Appeal will award the claim, unless it finds the claim unlawful or unfounded. Before rendering judgment, the Board of Appeal may require the appellant to provide proof of one or more of its assertions.

Interim injunction proceedings

- 19a. The Board of Appeal is authorised to render judgment in interim injunction proceedings.
- b. If the circumstances so dictate, the Board of Appeal can, in every proceeding, upon the request of the either or both of the parties, take such decisions or measures with regard to the disputed matters which it deems necessary or desirable.
- c. Decisions taken in accordance with section a. or b. do not diminish the parties' rights and arguments.

Objection

- 20a. An arbitrator's participation can be challenged in the event of justifiable doubt as to his impartiality or independence. The participation of a secretary appointed by the Board of Appeal can also be objected to on the same grounds.
- b. The objecting party will inform the arbitrator in question, the Board of Appeal and its opposite party of the objection, providing grounds. The Board of Appeal may suspend the proceedings from the date on which the notification is received.
- c. Anyone who is requested to act as an arbitrator or secretary who suspects that there may be objections to their participation will inform the chairman in writing, stating the suspected reason for objection. He will send this notification to the parties once he has been appointed.
- d. A party cannot object to an arbitrator who has been appointed by the chairman if that party has already accepted that appointment, unless it became aware of the reason for its objection at a later stage.
- e. If an arbitrator who is the subject of an objection does not withdraw from the proceedings within two weeks of receiving the notification, the validity of the objection will be decided by the president of the district court at the request of either of the parties.

Withdrawal of the Appeal

- 21a. The appellant may withdraw his application for an Appeal, provided this is done immediately after the case has been called.
- b. Once the Board of Appeal has called and commenced the case, an Appeal can only be withdrawn with the explicit cooperation of the opposite party.

End of the Appeal

- 22. Without prejudice to the provisions in clauses 17, 19 and 21, the Appeal ends:
 - upon request by both parties;
 - upon the filing of the final judgment at the registry of the district court within whose district the arbitration was conducted.

Verdict

- 23a. The Board of Appeal will decide within three months (a qualification period) whether the Manager Operations of MPS-ECAS could reasonably have reached his decision according to the rules of Dutch law and in accordance with the present regulations.
- b. If the Board of Appeal decides that the appeal is well-founded, the Board of Appeal can destroy the contested decision or measure in whole or in part. The Board can

provide, that MPS-ECAS withdraws or alters the contested decision or measure, or that MPS-ECAS takes a decision or measure, or acts or abstains from acting, in accordance with the decision taken by the Board of Appeal.

24. In those instances where an ordinary court can impose a penalty, the Board of Appeal is also authorised to do so.
 - 25a. The Board of Appeal decides by majority vote.
 - b. The judgment will state the grounds for the decision, and the judgment will be signed by the arbitrators.
 - c. If an arbitrator refuses to sign, the other arbitrators will state this beneath the judgment signed by them.
 - d. The secretary sends a copy of the judgment to the parties.
 - e. The original of the final judgment will be deposited at the registry of the district court within whose district the Appeal was conducted.
 - f. The judgment will state which party must meet the costs of the Appeal.
26. The judgment of the Board of Appeal will be binding on the parties. The decision by the Board of Appeal cannot be appealed and no greater relief can be granted.
 27. MPS-ECAS will notify the interested party formally about the ending of the treatment process of the appeal and the results obtained. The verdict of the Board of Appeal will be published in anonymous form and without commercially sensitive details on the website of MPS-ECAS (www.ecas.nl)

Costs

28. Before the Court of Appeal is to hear the Appeal, the appellant is to pay 250 euros as an advance to the Appeal Costs. When during proceedings it becomes apparent that the advance does not suffice, the Chairman can decide that the appellant needs to pay an additional advance. The Board of Appeal may suspend the hearing of the case until the appellant has paid the relevant amount. After the conclusion of the case, part of the amount paid can be reimbursed, depending on the appellant having been sentenced to pay the costs of the Appeal and/or these costs are lower than the advance paid. In case the Appeal is withdrawn, the appellant is obligated to pay the costs that the Board of Appeal has already made at the time.
- 29a. A party that provides or has summoned a witness or expert must pay the costs concerned itself.
- b. If the Board of Appeal calls witnesses or experts, the relevant costs will be considered Appeal Costs.

- 30a. Appeal Costs include the costs referred to in clause 28 and 29 (b), in addition to all other costs deemed necessary for the Appeal in the opinion of the Board of Appeal.
- b. With the exception of special cases, at the discretion of the Appeal Committee, the costs of legal assistance will be borne by the party obtaining that legal assistance.
- c. The judgment of the Board of Appeal will include an estimate of the Appeal Costs, including the costs of filing the judgment at the court registry.
- d. The Appeal Costs are charged to the party ruled against, unless the Board of Appeal decides otherwise.

Execution of the judgment

- 31. The judgment can only be executed after the president of the district court, where the original of the final judgment was deposited in accordance with clause 25 (e), has given leave for that execution at the request of one of the parties.
- 32. If parties are of different nationalities, the acknowledgement and execution of the judgment, in deviation of the provisions in clause 31 and pursuant to the New York Convention on Acknowledgement and Execution of Foreign Court Decisions (New York Convention), will be conducted before a court in the country where the party ruled against resides, is established or has assets.