

Annex 5.1 Rules of sanction procedure

1 General

Scheme participants, certification bodies and laboratories are involved in the QS scheme on the basis of an agreement concluded with the QS Qualität und Sicherheit GmbH, and obliged to comply with the QS requirements. Violations of the scheme participants, certification bodies or laboratories against this agreement or the QS requirements may be penalised with sanctions within the scope of a sanction procedure.

The sanction board is responsible for penalizing violations. Duties, rights and obligations of the sanction board arise from the memorandum of association of QS and its affiliated companies, the QS scheme manual and the Rules of sanction procedure, all in its currently valid versions.

2 Sanction board

The sanction board is appointed by QS as an independent committee. Its members are nominated by the shareholders of the QS Qualität und Sicherheit GmbH. They should not be employed by the society, the shareholders or any active scheme participants, certification bodies or laboratories within the QS scheme. The members of the sanction board perform their duties in an honorary capacity. The shareholders may decide on expense reimbursement.

Under the chairmanship of a judge, a lawyer and at least one independent expert from the respective supply chain decide if and how violations are penalised. In individual cases, further experts may be invited, previous agreement with the chairman of the sanction board. These experts do not have any voting rights within the sanction board.

The sanction board is competent to make decisions if, at least half of the nominated members within each relevant supply chain participate of the meeting. The decisions of the sanction board are reached per majority vote, recorded in writing and signed by the chairman. In case of equality of votes, the chairperson has the casting vote. The decisions of the sanction board are announced by the chairperson.

The members of the sanction board are obliged to observe strict confidentiality in regard to all matters of which they acquire knowledge in this capacity. This also applies after their period of office as members of the sanction board has ended.

3 Determination of violations

Violations against the contractual agreements and QS requirements may be determined within the scope of independent audits, during the implementation of monitoring programmes, and during the ongoing activities of the QS scheme, among others.

In case of doubt about the compliance of the QS requirements, QS may order clarifying and verifying measures at any time. Any costs arising out of these measures must be borne by the scheme participant, certification body or laboratory, if one or more severe violations against the contractual agreements or the requirements of the QS scheme manual are determined.

The detection of an objective violation against the scheme agreement, the framework agreement or the requirements of the QS scheme justifies the assumption that the necessary diligence, for a participation in the QS scheme, has been disregarded. The scheme participant, certification body or laboratory is free to prove the observance of the necessary diligence during the sanction procedure.

4 Implementation of immediate measures

The QS head office records the determined violations and verifies whether immediate measures must be initiated. In the case of severe violations, QS may immediately block scheme participants, certification bodies and laboratories, until the sanction board has reached a decision, but for no longer than a maximum of six weeks. At the stage agriculture/production the blocking may be imposed until a re-audit has been successfully passed.

The blocking may apply to company locations, divisions or affiliated companies, holdings (production scopes) or products.

QS is authorised to inform the parties involved in the QS scheme about these immediate measures.

5 Initiation of a sanction procedure

Regardless of the implementation of immediate measures, the management board reviews whether a sanction procedure is initiated due to severe violations against the contractual agreements or the requirements of the QS scheme manual. The scheme participant, certification body or laboratory is offered the opportunity to submit a written statement within a given appropriate deadline.

6 Convening of the sanction board

Meetings of the sanction board are convened by QS, in coordination with the chairperson, in writing and with a notice term of two weeks. In urgent cases, the term may be shortened and/or the sanction board may be convened to a meeting by telephone.

7 Sanctions

The sanction board is authorised to penalise violations against the contractual agreements or the requirements of the QS scheme manual. It decides on the imposition of sanctions taking into account the relevant circumstances of every case. The importance of the breached obligation and the severity of the violation are considered for the selection of the corresponding sanction.

Violations of scheme participants may be penalised with the following measures in particular:

- warning,
- increased control frequency,
- contractual penalty,
- temporary blocking (withdrawal of eligibility of delivery) and
- permanent exclusion (recommendation to QS regarding the termination of scheme agreement).

The sanction board may decide or recommend the temporary blocking or permanent exclusion of the QS scheme applied to scheme participants, company locations, divisions or affiliated companies, holdings (production scopes) or products.

Violations of certification bodies and laboratories may be penalised with the following measures in particular:

- warning,
- additional training measures (including eventual additional charges),
- additional supervision measures (including eventual additional charges),
- contractual penalty,
- temporary blocking,
- permanent exclusion (recommendation to QS regarding the termination of framework agreement).

The temporary blocking or the recommendation for permanent exclusion normally applies only in the case of serious violations. This means especially a willfully or grossly negligent injury or endangering of humans, animals, or the environment, or assets of the QS scheme participants, or of the reputation of the QS scheme as a whole, or a willfully or grossly negligent violation of the code of conduct for the QS scheme

in the relationship between QS and scheme participants these are in particular

- the commercialisation of QS products in spite of withdrawal of the eligibility of delivery,
- wilfully misinformation during the registration of the relevant data for the calculation of the QS fees (§ 5 (2) of the scheme agreement),
- the sustained violation against the scheme agreement/scheme manual in spite of warning (§7 (4a) of the scheme agreement).

in the relationship between QS and certification bodies and laboratories these are in particular

- wilfully or grossly negligent violation against the rules of proper auditing, certification, as well as laboratory practice,
- wilfully manipulation or incorrect entry of audit or analysis reports,

- wilfully incomplete execution of audits (e. g. only inspection of documents without plant inspection),
- early announcement to a scheme participant about the conduction of an unannounced audit,
- refusal of compulsory participation in the QS ring test/laboratory performance assessment.

8 Implementation of sanctions

The sanctions and recommendations pronounced by the sanction board are implemented by QS. Scheme participants, certification bodies and laboratories are informed in writing about the decision of the sanction board. QS is authorised to communicate the temporary blocking or permanent exclusion related to the loss of the eligibility of delivery, or the loss of approval/recognition to the parties involved in the QS scheme via the QS database.

QS right to make effective any further claims against the scheme participant, certification body or laboratory remains unaffected.

9 Objections to sanction decisions

An objection to a decision of the sanction board is permitted. It must be justified and directed in writing within 30 days after reception of the written decision to the QS head office

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Lodging an objection with written justification has postponing effect. The decision of the sanction board only becomes effective, if the sanction board confirms its decision within the objection procedure. This does not apply, if the sanction board has decided the immediate implementation of a sanction in exceptional cases. In this case, the defined sanction must be first complied with, regardless of the objection.

Once an objection has been lodged, the sanction board reviews its decision and notifies the scheme participant, certification body or laboratory in writing of the result of this review.

Any further subsequent objection is not permitted. The possibility of taking recourse to ordinary judicial review is not affected.