

# OV-05

Ver 0.1

## Sanctions and appeal procedure





## DOCUMENT HISTORY

Version and date of approval	Reason for revision	Revision scope	Ultimate date for application
0.1 21/10/2016	New lay-out	Entire document	21/10/2016
	Modification of the designation (logo and standard)	Entire document	



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# OV 05 : Sanctions and appeal procedures

## 1. Definitions

### Article 1

§1. For application of the present document, is meant by:

- a. OVOCOM: l'ASBL OVOCOM VZW;
- b. Commission : The committee for dispute settlements, as referred to in Article 5;
- c. Commission Secretary : a member of the Secretariat or the Executive Committee of OVOCOM;
- d. OCI: Certification and/or inspection body

§2. Time-limits stated in the sanction and appeal procedure, are the applicable time-limits, unless explicitly mentioned otherwise.

Days, mentioned in these agreements refer to calendar days, unless explicitly mentioned otherwise.

Date of decision, or receipt date of decision, is not included in the time-limit. However, the last day is always included in the time-limit. The postmark on the registered letter, shall serve as proof. A registered letter should, at the latest, be sent on the last day of the time-limit.

## 2. Chapter 2 : Dispute Settlements between an OCI and a company for non-compliance with the FCA Certification Regulation, on the part of the company.

### 2.1. Section 1 : Kind of disputes handled by the Committee

#### Article 2

If the company no longer complies with one or more requirements, included in the FCA certification regulation, the OCI must impose sanctions in proportion to the gravity of the facts. The following sanctions may be imposed:

- 1) To issue a warning with a deadline, allowing the company to remedy all nonconformities in a verifiable way. If the company did not remedy the nonconformities within the imposed timeframe, another sanction will be imposed. During a period of 12 months, and for an identical nonconformity, the warning may only be issued once as a sanction.
- 2) Or by suspending the certificate until all nonconformities are remedied in a verifiable manner.
- 3) Or by not granting an extension of the certificate.
- 4) Or by cancelling the certificate with immediate effect.

#### Article 3

From the date of cancellation, or non-renewal, of the certificate, and for a period of one year, the company can no longer submit an application to obtain a certificate for the unit and activity, in question.

#### *Article 4*

Prior to imposing a sanction, the OCI must first invite the company concerned in order to be heard and to give him the opportunity to Present a Defense. The decision must be substantiated. The company shall be notified of the decision by means of a registered letter. To this end, the OCI shall elaborate its own procedure for a Dispute Settlement. The appeal procedure as provided in the Regulation in question, is incorporated, as an Annex, in its own procedure for Dispute Settlement.

The company may appeal to the Committee against a decision taken by the OCI, imposing a sanction within the meaning of Article 2. The appeal may be suspended, except in the event of gravitating facts. In this case and within 3 days, the OCI shall notify, by means of a registered letter, the President of the Committee, regarding the decision and sanction. The President shall render his decision within 3 working days following the preliminary hearing of the company concerned.

The appeal may relate to content and form. The Committee shall decide on the merits of the case. The Committee may either cancel the appeal, confirm the appeal, or reduce or increase the severity of the sanction.

#### *Article 5*

1. The Dispute Settlement Committee is located at the OVOCOM headquarters.
2. The Committee is composed of 5 members belonging to the Board of Directors. These persons have no connection whatsoever with the OCI, other than the one resulting from the present Regulation. In case there is a link between a member of the Committee and the OCI, the member is required to let it be known, and must be replaced by another Member of the Board of Directors, appointed by the President of the Committee or, in case the President is prevented, by the oldest Member in age.
3. During each session, the President of the Committee is elected by a majority of votes by Committee members that are present.
4. In order to render a valid verdict as regards the appeal, a minimum of 4 members are required.
5. The Committee Secretary is responsible for preparing the minutes of the meeting, as well as for the follow up of handled disputes. The Committee Secretary is not a member of the Committee.
6. The Committee members as well as their Secretary are bound by the oath of secrecy.

## **2.2. Introduction and admissibility of the appeal**

#### *Article 6*

An appeal may be submitted to the Committee, by means of a registered letter, within thirty days from the receipt date of the decision, and this under penalty of inadmissibility as referred to in Article 2.

#### *Article 7*

An application shall be deemed admissible, if submitted on the basis of form 1.0, and accompanied by the necessary supporting documents.

#### *Article 8*

Within fifteen days from the receipt date of the appeal, the Committee Secretary shall examine its admissibility.

If the latter considers the data which he has received as insufficient, he shall request the company to complete their application. Under penalty of inadmissibility, the company has 15 days to provide the missing data.

#### *Article 9*

Within twenty one days following the receipt date of the full appeal, the Committee Secretary shall:

1. Notify the company as regards the admissibility of its appeal ;
2. Send the OCI, through means of a registered letter, a copy of the documents and of the notification of admissibility.

#### *Article 10*

The OCI has 15 days to communicate its position. Within that period the OCI shall sent its arguments in writing to the Committee by means of a registered letter. At the same time the Secretary will sent a copy to the company concerned.

That time period is explicitly mentioned in the registered letter.

Once the Secretary has received all documents within the prescribed period, a copy of the entire file shall be forwarded to the Committee members.

### **2.3. Treatment of the appeal and communication of the decision**

#### *Article 11*

Within 35 days following the notification of admissibility, the company and/or its representatives will be invited to appear before the Committee. The file may be accessed at the OVOCOM Headquarters during five working days prior to the meeting. To this end, the company will make an appointment, at least 1 working day, with the Committee Secretary. As per own request, the Committee may hear, within the presence of the company concerned, witnesses and experts.

The Secretary shall draw up the minutes of the meeting.

#### *Article 12*

As soon as the debates are concluded, the Committee shall take the matter under advisement and shall make a decision within 30 days.”

#### *Article 13*

Any costs will be borne by the losing party.

### **3. Settlement of dispute between Ovocom and the OCI**

#### **3.1. Type of disputes handled by the Board Directors**

#### *Article 14*

If, based on its own investigation or through the receiving of a complaint, OVOCOM is made aware of the fact that an OCI does not comply, whether in part or completely, with the convention, including FCA certification as well as the advice by the Advisory Committee, the Board may impose the following sanctions in proportion to the seriousness of the facts:

- 1) Issue a warning with a deadline, allowing the OCI to remedy any nonconformities in a verifiable way. If the OCI, has not remedied the nonconformities within the deadline, another sanction shall be imposed. During a period of 12 months, and for a similar nonconformity, the warning may be issued only once as a sanction.
- 2) To suspend the agreement, so that the OCI is no longer able to perform its activities during the suspension period, until all nonconformities are remedied.
- 3) By not granting a renewal of the agreement with the OCI in question, so that the OCI is no longer able to perform its activities.
- 4) To terminate the contract at short notice, so that subsequently the OCI will no longer continue to operate.
- 5) To terminate the agreement with immediate effect, so that the OCI in question must immediately stop its activities.

For each of these sanctions, the Board of Directors may decide to make their decision known by posting it on the OVOCOM website and/or through any other means of communication.

#### *Article 15*

§1. The Board of Directors must first hear the OCI in question and/or its representatives. To this end, the Board of Directors shall, by means of a registered letter, invite the OCI 15 days prior to the hearing. The file may be consulted at the OVOCOM Headquarters during the 5 working days preceding the hearing. To this end the OCI will make an appointment of at least one working day in advance. The OCI in question may put forward his defense either orally or in writing.

The Board of Directors may decide to seek the advice from the Consultative Council. To this end the Board of Directors shall send the file to the Consultative Council. The advice given by the Consultative

Council shall be provided in writing. The OCI shall receive a copy by registered mail. If the advice was requested after hearing the OCI in question, the latter has a period of 15 days from the date of receipt of the advice, before making a request to be heard again. Where appropriate, the OCI in question shall be heard again before closing the debates.

Following the debates the Board of Directors shall take the matter under advisement and shall set a date for the verdict. The decision shall be motivated and the verdict shall be sent by means of a registered letter to the OCI in question. The OVOCOM Secretary shall also receive a copy of the verdict.

§2. Any dispute, whether due to non-compliance with the agreement between OVOCOM and OCI and/or from an advice originating from the Consultative Council, may be the subject of an appeal with the OVOCOM Board of Directors.

### **3.2. Introduction and treatment of the appeal**

#### *Article 16*

In the event of very serious facts, the President of the Board of Directors, has the power to decide, to suspend with immediate effect, the agreement with the relevant OCI, so that the latter is obliged to cease all its activities at once. To this end, the President must first hear the OCI in question within a period of 3 working days after he has been made aware of the facts. The President shall make a decision within 3 working days following the hearing.

If the President proceeds with a suspension, the case must be dealt with on the merits by the Board of Directors, within 90 days. In the absence of an affirmative decision on the part of the Board of Directors, the suspension shall lapse ipso jure (under operation of law). The suspension cannot be extended for the same facts.

If, for whatever reason the President is prevented, the decision may be taken by the Vice President, if one has been appointed. In the absence of a designated vice-president, the decision may be taken by the oldest Member of the Board of Directors.

#### *Article 17*

In case an OCI, either temporarily or permanently, is required to cease its activities, another OCI shall take over the intermediate audit of companies having obtained their FCA certification from the OCI in question. The taking over of the audit activities shall continue until the repeat audit and under the same financial conditions. The company is free to choose its own certification body from the list of OCI's approved by OVOCOM.

### **3.3. Communication of the decision**

#### *Article 18*

If the dispute relates to the accreditation procedure, it may within 3 months be introduced for arbitration with the accreditation body (depending on the case, BELCERT or foreign accreditation body



affiliated with the "Multilateral Agreement (MLA of the « European Cooperation for Accreditation (EA) »). In the meantime, everything is being done in order to guarantee the continuation of the certification operation.

### **3.4. Sanctions**

#### *Article 19*

In case of non-payment of the OVOCOM contributions, the President shall declare the certification body concerned, to be in default. The President may, orally or in writing, delegate this power to another Member of the Board of Directors or to a staff member. In case of non-payment within 14 days following the formal default notice, a legal interest shall be payable together with a lump sum of €15,00 – for administrative costs. Starting from the notice of default and until full payment, the OCI in question shall be prohibited from granting the use of the collective logo any further. The OCI may be summoned by OVOCOM to a penalty payment before the Competent Courts without first running through the procedures laid down in this regulation. If OVOCOM wants to impose, due to non-payment, a sanction as stated in Article 14, these procedures shall apply.

## **4. Settlement of a dispute between Ovocom and the auditor (OCI)**

### **4.1. Type of disputes handled by the Executive Committee of Ovocom**

#### *Article 20*

Any dispute relating to exams organized by OVOCOM (see OVC-02: Examination Regulations) shall be settled and arbitrated by the Executive Committee of OVOCOM.

### **4.2. Introduction and treatment of the appeal**

#### *Article 21*

The auditor (OCI) may introduce a motivated appeal with the Executive Committee of OVOCOM by means of a registered letter within 30 days following receipt of the contested decision. The post stamp shall serve as proof. If he wishes to be heard by the Executive Committee of OVOCOM, it should have been explicitly mentioned in the appeal.

The appeal, as well as the time limit for the appeal is suspensive.

#### *Article 22*

Within 15 days following receipt of the appeal, the OVOCOM Secretary shall examine the admissibility of the appeal.

#### *Article 23*

If the Secretary considers the information to be insufficient, he/she may request the auditor to complete the request. Under penalty of inadmissibility, the auditor has 15 days to provide the missing information.

#### *Article 24*

§1. Within 21 days following receipt of the completed request, the Secretary shall proceed as follows:

§2. The date of the hearing shall be communicated to the Auditor in question by means of a registered letter, at least 15 days prior to the hearing. During the 5 working days preceding the hearing, the Audit in Question may consult his dossier at the OVOCOM Headquarters. To this end an appointment of at least one working day in advance should be made. The Auditor concerned may present his defense either orally or in writing .

Other persons may be heard. The hearing shall take place in the presence of the Auditor concerned, or, at least, after the latter has been duly invited to attend 5 days in advance, unless the Auditor agrees to a shorter time period.

### **4.3. Communication of the decision**

#### *Article 25*

After the debates, the Executive Committee shall take the matter under advisement and shall set a date for the verdict. The decision shall be motivated and communicated by means of a registered letter to the parties involved, within 15 days following the verdict.

#### *Article 26*

Any costs will be borne by the losing party.

## **5. OVOCOM shall act as an intermediary aiming at the settlement of disputes between an OCI and a Company.**

### **5.1. Nature of disputes in which OVOCOM may, upon request, act as an intermediary**

#### *Article 27*

The relationship between an OCI and a company are governed by the agreement which binds them. OVOCOM is not a party to this convention. Therefore, OVOCOM, is not involved in any ongoing disputes between an OCI and a company, with the exception of the following 2 cases:

- 1° Penalties as provided for in article 2 of this regulation; and
- 2° If both parties are in agreement to charge OVOCOM with the mediation task.

### **5.2. Introduction and handling of the request**

#### *Article 28*

The Company or OCI may introduce a request to the OVOCOM Secretary either by phone, letter, email or fax. The request should preferably be communicated via form 1.0. If the request is communicated orally, the minimum information duly completed on the form, shall be communicated.

### *Article 29*

Within fifteen days following receipt of the complaint, the OVOCOM Secretary shall contact the Company or OCI (initiator of the complaint).

If the information provided by the initiator of the complaint is deemed insufficient, the latter shall be requested to complete the complaint by letter, fax or email. The procedure, provided in this chapter, shall be suspended until the initiator of the complaint has provided the requested additional information.

### *Article 30*

Upon receipt of all the additional information as referred to in Article 29, and/or if the information that has been provided is considered to be sufficient, the OVOCOM Secretary:

1. Shall send an acknowledgment of receipt per letter, fax or email to the initiator of the request;
2. Shall hear the different parties present, and shall propose the mediation by OVCOM;
3. If necessary, he shall confirm the mediation, by letter, fax or email, to the different parties present.

### *Article 31*

On the condition that all parties concerned are in agreement, the request shall be handled by the OVOCOM Secretary, who in turn will provide possible leads in view of finding a solution.

The proposal shall be submitted for approval to at least one member of the Executive Committee.

Once approved, the proposal shall be sent, by letter, fax or email, to the different parties present.

## **5.3. End of mediation**

### *Article 32*

The OVOCOM mediation shall be terminated in the following cases:

1. The parties present have settled the dispute amicably, whether or not by following the OVOCOM proposal or;
2. The OCI or the company have decided to take the case before one or other judicial authority or;
3. The OVOCOM Secretary believes that no significant progress has been made with a reasonable time period, and that the mediation has failed.

The Secretary shall communicate the end of the mediation either by letter, fax or email, to the different parties concerned.

OVOCOM shall keep the secret nature of all information obtained during the mediation. Only nameless statistics may be communicated to the Executive Committee, in view of an evaluation.

## **6. The communication of a complaint from a company over another company, and relating to the application of the FCA Code**

### *Article 33*

Any complaint from a company, over another company, and relating exclusively to the FCA Code, may be communicated by letter, email or fax, to the OVOCOM Secretary. The complaint should preferably be introduced by means of Form 1.0. Even if the request is communicated orally, the minimum data, to be included on the form, must be communicated.

### *Article 34*

Within 15 days following receipt of the complaint, the OVOCOM Secretary shall verify whether the complaint actually results from the application of the FCA-Code.

If the complaint does indeed relate to a breach of the FCA Code, it shall be forwarded to the OCI in question, who in first instance is competent to investigate whether a breach has been committed, and whether a sanction should be imposed.

### *Article 35*

The company, who lodged the complaint, shall be notified either by mail, fax or email, that the complaint has been transmitted to the OCI concerned. This ends the OVOCOM mediation, except in the event of a possible appeal against the sanction, as is stipulated in Articles 2 up and till 13.

**7. Form 1.0 relating to the introduction of an appeal against a decision or a complaint in the context of the application of the FCA Code**

Introduced by :

- The Litigation Commission <sup>(1)</sup> (art 6 – OVL-02) (registered mail)
- The OVOCOM Board of Directors <sup>(1)</sup> (art 15 – OVL-02) (registered mail)
- The OVOCOM Executive Committee <sup>(1)</sup> (art 21 – OVL-02) (registered mail)
- The permanent OVOCOM Secretary <sup>(1)</sup> (art 28 et 33 – OVL-02) (by letter, telephone, fax or email)

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1000 Bruxelles - Brussel	Fax : +32(0)2-514.05.29
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**1. Identification of the author of the request**

Name (or denomination or social reason (if legal person)) <sup>(2)</sup> : .....

Number of FCA certificate<sup>(3)</sup> : .....

Adress <sup>(2)</sup> of Registered Office or domicile

Street : ..... No..... Box.....

.....

Postal code : ..... Location : .....

Country : .....

Tel.: .....

Fax<sup>(3)</sup> : ..... Email<sup>(3)</sup> : .....@.....

Contact person <sup>(2)</sup>

Name : ..... First

name : .....

Function : .....

.....

**2. Object of the complaint or appeal, and references of the contested decision**

Nature of the decision <sup>(1)</sup> : .....

Decision of / / taken <sup>(1)</sup> by .....



Object of the complaint <sup>(1)</sup> or of appeal <sup>(1)</sup> :  
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**3. Identification of the counterparty <sup>(4)</sup>**

Name or denomination or trade name :  
.....

Number of FCA  
certificate<sup>(3)</sup> :.....

Address of Registered Office or domicile

Street : .....Number. .... Box  
.....

Postal code: .....Location : ..... Country :  
.....

Tel. : .....Fax : ..... E-mail :  
.....@.....

**4. What is the importance for the person who has submitted the request<sup>(2)</sup>**

**Proof :**  
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**5. Means developed <sup>(2)</sup>**

**In law and in fact**

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## 6. Propositions <sup>(3)</sup>

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**Date :** ..... **Name(s) :** .....

**Signature(s) :**

- (1) : Delete unnecessary information
- (2) : Mandatory mention
- (3) : As far as applicable
- (4) : Complete as much as possible