

CONSUMER OMBUDSMAN'S OFFICE

RULES OF PROCEDURE

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Contents

SECTION I: Definitions

SECTION II: Handling of consumer disputes by the undertakings

Article 1: Internal service for handling consumer disputes

Article 2: Period and handling of consumer disputes by the undertakings

SECTION III: Consumer Ombudsman's Office

Article 3: Nature of the Consumer Ombudsman's Office

Article 4: Powers of the Consumer Ombudsman's Office

SECTION IV: Handling of consumer disputes by the Consumer Ombudsman's Office

Article 5: Referral to the Consumer Ombudsman's Office

Article 6: Rules and legal provisions on which the Consumer Ombudsman's Office is based

Article 7: Complete application

Article 8: Inadmissibility of the application for alternative dispute resolution

Article 8.1: Mandatory grounds for inadmissibility

Article 8.2: Discretionary grounds for inadmissibility

Article 9: Decision to deal with or refuse to deal with the application for alternative dispute resolution & information of the parties

Article 10: Means for exchanging information

Article 11: Periods

Article 12: Closure of the case

Article 13: Possible recourse to an expert

Article 14: Prerogatives of the Consumer Ombudsman's Office

Article 15: Confidentiality

Article 16: Impartiality

Article 17: Suspension of limitation and prescription periods

Article 18: Suspension of recovery procedures

Article 19: Free service

Article 20: Withdrawal of the complaint

Article 21: Representation

CONSUMER OMBUDSMAN'S OFFICE

SECTION I: Definitions

Consumer: any natural person who is acting for purposes which are outside his trade, business, craft or profession.

Undertaking: any person with an establishment on Belgian territory and who carries out any actions deemed to be commercial, as described in the Commercial Code, and who is therefore deemed to be a "trader".

Consumer dispute: any dispute between a consumer and an undertaking relating to the performance of a sales or service contract or the use of a product.

Qualified entity: any entity, either private or created by a public authority, for alternative dispute resolution for consumer disputes which appears on the list drawn up by the Federal Public Service Economy, SMEs, Self-Employed and Energy and submitted to the European Commission.

SECTION II: Handling of consumer disputes by the undertakings

Article 1: Internal service for handling consumer disputes

In the event of a consumer dispute, the consumer has to, provided that such an organisational structure exists, **submit, in first instance, a complaint directly to the company**. This constitutes a compulsory condition of admissibility for a complaint filed within the Consumer Mediation Service. **Proof of this first contact with the company can be expressed by any legal means.**

Article 2: Period and handling of consumer disputes by the undertakings

The undertaking shall respond to complaints without delay and take due care to seek a satisfactory solution.

If a consumer dispute is not resolved within a reasonable period, the undertaking shall provide the consumer, on its own initiative, with the contact details of the entity responsible for seeking alternative dispute resolution of the said dispute, and also specify whether that entity is a qualified entity.

This information is to be provided on paper or on another durable medium.

If an application relates to a consumer dispute for which no qualified entity is competent, the Consumer Ombudsman's Office shall handle the application.

SECTION III: Consumer Ombudsman's Office

Article 3: Nature of the Consumer Ombudsman's Office

The Consumer Ombudsman's Office is an independent public service with legal personality and with organic autonomy, without prejudice to the powers of supervision and oversight of the Minister in charge.

Article 4: Powers of the Consumer Ombudsman's Office

The Consumer Ombudsman's Office has the following missions:

1° to inform consumers and undertakings of their rights and obligations, in particular about the possibilities of alternative dispute resolution for consumer disputes;

2° to receive any application for alternative dispute resolution of a consumer dispute and, if appropriate, pass it to another qualified entity competent in the matter;

3° to intervene itself in any application for alternative dispute resolution of a consumer dispute for which no other qualified entity has competence.

SECTION IV: Handling of consumer disputes by the Consumer Ombudsman's Office

Article 5: Referral to the Consumer Ombudsman's Office

An application for alternative dispute resolution of a consumer dispute may be submitted to the Consumer Ombudsman's Office at its offices, by letter (North Gate II, Boulevard du Roi Albert II 8 – 1000 Brussels), by fax (02 /808 71 29), by e-mail (contact@consumerombudsman.be) or by completing the form on the website of the Consumer Ombudsman (www.consumerombudsman.be). These applications may be submitted in French, Dutch, German or English. The procedure may be conducted in French, Dutch or German.

Article 6: Rules and legal provisions on which the Consumer Ombudsman's Office is based

As part of its mission, the Ombudsman's Office bases its activities on all the legal provisions applicable in the specific case at issue. The Ombudsman's Office may base its activities on (this is a non-exhaustive list) international treaties, European Directives or Regulations, Belgian legislation (Civil Code, Code of Economic Law, legislation in the industry concerned) and any codes of conduct for specific industries.

Article 7: Complete application

Once the Consumer Ombudsman's Office has all the documents necessary for the examination of the application, it shall inform the parties of the receipt of the complete application and the date of receipt.

If appropriate, the prior request submitted to the internal complaints handling service of the undertaking concerned as well as any actions taken in response to it may be appended to the application for alternative dispute resolution sent to the Consumer Ombudsman's Office.

Failing that, the Ombudsman's Office shall ask the consumer to complete his/her application, using a durable medium.

Article 8: Inadmissibility of the application for alternative dispute resolution

Article 8.1: Mandatory grounds for inadmissibility

The Consumer Ombudsman's Office shall refuse to handle an application for alternative dispute resolution:

- 1° if the complaint is frivolous, vexatious or defamatory;
- 2° if the complaint is anonymous or the other party is not identified or identifiable;
- 3° if the complaint has already been handled by a qualified entity, including if it has refused to handle it for one of the reasons referred to in Article XVI.25, §1, 7° of the Act of 4 April 2014 on the insertion of Volume XVI, "Alternative dispute resolution of consumer disputes" into the Code of Economic Law, with the exception of point (e);
- 4° if the complaint relates to a dispute which is or already has been the subject of judicial proceedings.

Article 8.2: Discretionary grounds for inadmissibility

The Consumer Ombudsman's Office may refuse to handle an application for alternative dispute resolution:

- 1° if the complaint in question has not been submitted beforehand to the undertaking concerned;
- 2° if the complaint in question was submitted to the undertaking concerned more than a year ago;

3° if the handling of the dispute would seriously impair the effective operation of the Consumer Ombudsman's Office.

Article 9: Decision to deal with or refuse to deal with the application for alternative dispute resolution & information of the parties

Within three weeks following receipt of the application, the Consumer Ombudsman's Office shall inform the parties of its decision to deal with or refuse to deal with the application.

In case of refusal, the reasons for the decision shall be given.

If the Ombudsman's Office decides to consider the application, it will also inform the consumer of his/her right to withdraw from the procedure at any stage. It shall also inform the parties that the solution is not binding in nature, that they have the choice as to whether or not to agree to the solution proposed, that this solution does not have legal or technical consequences (unless the parties call on the court to sanction the agreements reached), that the solution may be different from an outcome determined by a court, and that participation in the procedure does not preclude initiating judicial proceedings.

Article 10: Means for exchanging information

The parties may exchange information with the Consumer Ombudsman's Office by electronic means, by post and/or by fax. If the consumer so wishes, he/she may visit the offices of the Consumer Ombudsman's Office in person.

Article 11: Periods

Within 90 calendar days following receipt of the complete application, the Consumer Ombudsman's Office shall notify the outcome of the dispute resolution to the parties, on a durable medium.

In exceptional circumstances, this period may be extended once, for an equivalent period, on condition that the parties are informed of this before the expiry of the initial period, and that this extension is due to the complexity of the dispute.

The parties shall have a reasonable period of 10 days maximum to express their point of view. The same period will apply for taking cognizance and responding to all the documents, arguments and facts put forward by the other party or any request from the Consumer Ombudsman's Office.

Article 12: Closure of the case

If the Consumer Ombudsman's Office has obtained an amicable settlement of the dispute, it closes the case and sends a confirmation to the parties on a durable medium.

If an amicable settlement cannot be reached, the Consumer Ombudsman's Office shall inform the parties on a durable medium and may, at the same time, make a recommendation to the undertaking concerned, with a copy to the applicant.

If the undertaking concerned does not follow this recommendation, it has a period of thirty calendar days to make its position and reasons known to the Consumer Ombudsman's Office and to the consumer.

Article 13: Possible recourse to an expert

If the complexity of the application requires it, the Consumer Ombudsman's Office may seek the assistance of experts.

Article 14: Prerogatives of the Consumer Ombudsman's Office

The Consumer Ombudsman's Office may, in the context of an application submitted to it, inspect on the spot any books, correspondence, reports and, in general, any document and record of the undertaking concerned, which is directly connected with the subject matter of the application. It may request any explanation and information it deems useful from the directors, employees and representatives of the undertaking, and carry out any verification it deems useful for the investigation.

Article 15: Confidentiality

Any information that the Consumer Ombudsman's Office obtains in the context of the alternative dispute resolution of a consumer dispute shall be treated as confidential.

It may only be used in the context of the alternative dispute resolution, with the exception of its processing in connection with the annual report.

Article 16: Impartiality

The members of the Management Committee shall notify the Committee without delay of any circumstances that might affect their independence and impartiality or give rise to a conflict of interests with either party to the dispute they are asked to resolve.

Along the same lines, members of staff who are involved in procedures for alternative dispute resolution of consumer disputes shall inform the Management Committee of any circumstances that might affect their independence and impartiality or give rise to a conflict of interests with either party to the dispute they are asked to resolve.

Article 17: Suspension of limitation and prescription periods

The limitation and prescription periods applicable under general law shall be suspended as from the date of receipt of the complete application.

This suspension shall last until the date when the Consumer Ombudsman's Office notifies the parties:

- of its decision to refuse to deal with the application;
- of the outcome of the amicable settlement.

Article 18: Suspension of recovery procedures

As soon as the undertaking is informed of the receipt by the Consumer Ombudsman's Office of the complete application, it shall suspend any recovery procedure, until notification of the outcome of the application for alternative dispute resolution.

Article 19: Free service

Handling of an application for alternative dispute resolution for a consumer dispute by the Ombudsman's Office shall be free of charge for the consumer.

Article 20: Withdrawal of the complaint

The consumer has the possibility of withdrawing from the procedure at any time. To do so, he/she should inform the Ombudsman's Office on a durable medium.

Article 21: Representation

If the parties so wish, they may arrange to be assisted or represented by a third party. They may also seek independent advice at any time.