



Consumer
Mediation Service



Consumer Mediation Service

RULES OF PROCEDURE FOR INDIVIDUAL DISPUTES



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I. The Consumer Mediation Service

1. Definitions

- a. **Consumer:** any natural person acting for purposes which do not fall within the scope of their commercial, industrial, craft or self-employed activity.
- b. **Company:** any natural or legal person pursuing an economic purpose on a long-term basis, including its associations. Each of the following organisations is considered to be a company:
 - any natural person who pursues a professional activity in a self-employed capacity;
 - any legal entity;
 - any other organisation without legal personality.

Notwithstanding the aforementioned, the following are not companies:

- any organisation without legal personality which does not pursue a distribution purpose and which does not actually make a distribution to its members or to persons who have a decisive influence on the policy of the organisation;
 - any legal person governed by public law which does not offer goods or services in a market;
 - the federal state, regions, communities, provinces, emergency zones, pre-zones, Brussels and its suburbs, municipalities, multi-municipal areas, intra-municipal territorial bodies, the French Community Commission, the Flemish Community Commission, the Joint Community Commission and the public social action centres.
- c. **Consumer dispute:** any dispute arising between a consumer and a company relating to the performance of a sales or service contract or the use of a product.
 - d. **Qualified entity:** any private entity or entity created by a public authority which carries out the out-of-court settlement of consumer disputes and which appears on the list that the Federal Public Service "SMEs, Middle Classes, and Energy" draws up and communicates to the European Commission.
 - e. **Cross-border dispute:** a contractual dispute arising from a sales or service contract in which the consumer, at the time they order the goods or services, are resident in a Member State other than that in which the trader is established.

2. Legal personality

The Consumer Mediation Service is an autonomous public service with legal personality and organic autonomy, without prejudice to the powers of supervision and control of the Minister to whom it reports.

The Consumer Mediation Service was created by the law of 4 April 2014 inserting Book XVI, "Out-of-court settlement of consumer disputes" in the Code of Economic Law, published in the Belgian Gazette on 12 May 2014.

Since 14 July 2015, the Consumer Mediation Service has been recognised as a qualified entity by the FPS Economy.



3. Competence

a. Legal mission

The Consumer Mediation Service is responsible for the following tasks:

- 1 to inform consumers and companies about their rights and obligations, in particular about the possibilities of out-of-court settlement of consumer disputes;
- 2 to receive any request for out-of-court settlement of a consumer dispute and, where appropriate, to forward it to another qualified entity competent in the matter;
- 3 to intervene itself in any request for out-of-court settlement of a consumer dispute for which no other qualified entity is competent.

b. Territorial competence

The Consumer Mediation Service is competent for residual consumer disputes between a consumer and a company established in Belgium.

The Consumer Mediation Service is also competent to deal with cross-border consumer disputes between foreign consumers and companies established in Belgium.

A dispute between a consumer and a foreign company that is active in Belgium but does not have an establishment (with an establishment unit number registered with the Crossroads Bank for Enterprises) does not fall within the competence of the Consumer Mediation Service.

c. Material competence

The Consumer Mediation Service is only competent for consumer disputes for which no other qualified entity is competent. FPS Economy publishes on its website the [list of entities](#) that it considers qualified to deal with requests for out-of-court settlement of consumer disputes on the basis of quality criteria defined in Book XVI of the Code of Economic Law (hereinafter referred to as : CEL) and set out in the Royal Decree of 16 February 2015 specifying the conditions under which the qualified entity referred to in Book XVI of the Code of Economic Law (hereinafter: RD 2015) must satisfy.



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II. Case processing

1. Referral to the Consumer Mediation Service

A request for out-of-court settlement of a consumer dispute may be submitted to the Consumer Mediation Service on the spot, by letter (North Gate II, Boulevard du Roi Albert II 8 box 1 - 1000 Brussels), by fax (02 / 808 71 29), by e-mail (contact@mediationconsommateur.be) or by completing the form available on the website of the Consumer Mediation Service (www.mediationconsommateur.be). These applications can be submitted in French, Dutch, German or English.

2. Language of the proceedings

The official language of the procedure is French, Dutch or German.

3. Rules and legal provisions on which the Consumer Mediation Service can rely in carrying out its tasks

Within the framework of its mission, the Consumer Mediation Service bases itself on all legal provisions applicable to the particular case being dealt with. In a non-exhaustive way, the Consumer Mediation Service can base itself on international treaties, European directives or regulations, Belgian legislation (Civil Code, Code of Economic Law, legislation of the sector concerned, ...) and codes of conduct for particular sectors.

The Consumer Mediation Service complies with the legislation and regulations in force, but in the event of disputes concerning the interpretation or application of legislation or regulations, the Consumer Mediation Service always takes into account, during the time of mediation, the principle of reasonableness and proportionality on the basis of which a solution to the dispute can be obtained.

4. Complete application

To be taken into consideration, an application must contain at least the following elements:

- name, address and contact details of the consumer and the company concerned;
- a concise and clear statement of the facts;
- where appropriate, the supporting documents for the case;
- a statement that the consumer has already tried to resolve the dispute.

As soon as the application is complete, the CMS will confirm the date of receipt of the application to both parties.



5. Admissibility of the claim

The Consumer Mediation Service deals with all complete cases, unless the case is inadmissible. There are mandatory and optional grounds for inadmissibility:

a. Mandatory causes of inadmissibility

The Consumer Mediation Service refuses to deal with a request for out-of-court settlement:

- when the complaint is frivolous, vexatious or defamatory;
- when the complaint is anonymous or the other party is not identified or identifiable;
- when the complaint has already been dealt with by a qualified entity, including if it has refused to deal with it on one of the grounds referred to in Article XVI.25, § 1, 7°, of the law of 4 April 2014 inserting Book XVI, "Out-of-court settlement of consumer disputes" in the Code of Economic Law, with the exception of point (e);
- when the complaint concerns the settlement of a dispute which is or has already been the subject of legal proceedings.

b. Optional causes of inadmissibility

The Consumer Mediation Service may refuse to deal with a request for out-of-court settlement:

- when the complaint in question has been lodged with the company concerned for more than a year;
- when the handling of the dispute would seriously hinder the effective operation of the Consumer Mediation Service.

6. Deadlines

Within three weeks of receiving the request, the Consumer Mediation Service will inform the parties of its decision to continue or refuse to process the request. In the event of refusal, the reason for the decision will be given.

The parties have a period of 10 working days to respond to a communication from the Consumer Mediation Service in connection with their case.

Within 90 calendar days following receipt of the complete application, the Consumer Mediation Service will inform the parties of the outcome of the dispute on a durable medium. Exceptionally and due to the complexity of the dispute, this period may be extended once for an equivalent length of time. The parties will be informed before the expiry of the initial deadline.



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7. Procedure

a. Transmission of points of view

Once the case is complete, it is sent in writing to the company with a request for an opinion and possibly a proposal for a solution. The parties may exchange information electronically or by post.

b. Mediation

When the views of the parties are known, a solution to the dispute will be actively sought.

c. Closure

The parties are informed in writing or on another durable medium of the outcome of the proceedings within the period provided for by law (see point 6).

If no amicable settlement can be reached, the CMS may make a recommendation that is not binding on the parties.

If a company does not follow the recommendation, it has 30 calendar days to communicate its reasoned position to the Consumer Mediation Service and the other party. Failure to do so may result in a fine of up to 25,000 euros (art. XV.125 CEL).

8. Withdrawal of the complaint and freedom of the parties

The parties may withdraw at any time during the proceedings. A solution proposed by the Consumer Mediation Service is not binding and the parties are free to accept it or not. The proposed solution may differ from a court decision.

Participation in the procedure at the Consumer Mediation Service does not preclude legal action. If action is brought in the course of the proceedings, the case will be declared inadmissible on the basis of Art. XVI.16 §2,4° CEL.

The parties will also be informed in each case by means of a durable medium.

9. Representation

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

10. Free of charge

The processing of a request for out-of-court settlement of a consumer dispute by the Mediation Service is free of charge for a consumer.

Companies pay a contribution per calendar year from the fifth case closed (see below).



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11. Suspension

a. Limitation periods

Limitation periods under general law are suspended from the date of receipt of the complete application. The suspension lasts until the day on which the Consumer Mediation Service informs the parties:

- that the processing of the case is refused;
- or, of the result of the amicable settlement.

b. Collection procedures

As soon as the company is informed that the Consumer Mediation Service has received the complete application, it suspends all collection procedures until it is notified of the outcome of the out-of-court settlement application.

12. Impartiality

The members of the Management Committee will inform the Committee of any circumstances that affect or are likely to affect their independence or impartiality or give rise to a conflict of interest with either party to a procedure for the out-of-court settlement of a consumer dispute for which they are responsible.

In the same way, staff members who are involved in out-of-court settlement procedures for consumer disputes will inform the Management Committee without delay of any circumstances that could affect or be considered to affect their independence and impartiality or give rise to a conflict of interest with either party to an out-of-court settlement procedure for a consumer dispute in which they are involved.

When the circumstances referred to in Article XVI.26 CEL arise, the Consumer Mediation Service ensures that:

1. another natural person is responsible within the Consumer Mediation Service for the out-of-court settlement of the dispute;
2. or, if this is not possible, the Consumer Mediation Service proposes to the parties to submit the dispute to another entity qualified to deal with it;
3. or, if it proves impossible to submit the dispute to another qualified entity, this impossibility will be brought to the attention of the parties who may oppose the continuation of the proceedings by the natural person in the circumstances described.

13. Recourse to an expert

The Consumer Mediation Service can be assisted by experts.

When the nature of the case so requires, the Consumer Mediation Service may cooperate with other qualified entities, acting within the framework of their respective competences.

The parties are always informed of the use of experts and can object to it.



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14. Prerogatives

The Consumer Mediation Service may, in the context of a request made to it, examine on the spot the books, correspondence, reports and, in general, any documents and writings of the company concerned which are directly related to the subject of the request. It may request any useful explanation and information from the directors, agents and employees of the company, and carry out any verification that is relevant for the purposes of the investigation.

15. Confidentiality

All information that the Consumer Mediation Service obtains in the context of an out-of-court settlement of a consumer dispute is treated confidentially.

It may only be used for the out-of-court settlement of disputes, with the exception of processing it for the annual report but without mentioning the names and addresses of consumers.



III. Contributions from companies

1. Legal basis

In order to fulfil its missions, the Consumer Mediation Service is financed by contributions from companies involved in the out-of-court settlement of a consumer dispute for which no other qualified entity is competent and which is not manifestly unfounded (Art. XVI.11. § 1, 2° CEL).

The amount of the contributions was set by the Royal Decree of 1 March 2018 regulating the financing of the Consumer Mediation Service.

2. Amounts of contributions

From 1 January 2018, the contribution is set at:

- €100 per request from the fifth request for out-of-court settlement of a consumer dispute dealt with;
- €200 per request from the twentieth request for out-of-court settlement of a consumer dispute dealt with.

These amounts are adjusted on 1 January of each year to the evolution of the consumer price index on the basis of the index for the month of December. The benchmark index is that of December 2017.

3. Cases concerned

The cases to be taken into consideration are those that the Consumer Mediation Service closes in the course of a calendar year by an amicable settlement or by a recommendation.

4. Complaints

The Consumer Mediation Service sends a quarterly request for payment to the companies concerned. Companies pay the amount requested within 30 days of receipt of the request.

If a company does not make payment within 30 days, the Consumer Mediation Service is entitled to charge a surcharge to compensate for the additional costs incurred as a result of late payment. The amount of the indemnity is €25 per debt per unpaid quarter.

The Consumer Mediation Service is also entitled to charge late payment interest at the legal rate from the end of the thirty-day period. Such interest will be calculated in proportion to the number of calendar days of lateness.