

Ombudsman for the Retail – Rules of procedure 27/03/2017

Rules of procedure (Rules)

The Ombudsman for the Retail aims to offer a solution to conflicts involving a retailer and a consumer. These Rules of procedure apply for the resolution of conflicts submitted to the Ombudsman for the Retail (www.ombudsmanducommerce.be).

These Rules of Procedure comply with the regulatory framework applicable in Belgium for the qualifying entities which offer out-of-court settlement of consumer disputes:

- Belgian Code of Economic Law - Book XVI: Out-of-court settlement of consumer disputes
- Royal Decree of 16 February 2015 specifying the conditions which the qualified entity referred to in book XVI of the Belgian Code of Economic Law must meet

Before submitting a request to the Ombudsman for the Retail, the consumer must have tried to resolve the conflict directly with the retailer.

Article 1: Competence of the Ombudsman for the Retail

The Ombudsman for the Retail shall have jurisdiction to deal with disputes between a consumer and a registered retailer regarding the fulfilment of a sales or service contract or the use of a product. The Ombudsman for the Retail does not have jurisdiction to deal with:

- requests concerning compensation for bodily injury;
- requests concerning liability for defective products;
- requests which fall within specific fields for which another qualified entity is competent;
- requests initiated by a retailer or a person acting in a professional capacity.

A retailer is registered when it commits to recognise the jurisdiction of the Ombudsman for the Retail, when it bears the costs of its subscription and when it complies with this procedural regulation. The list of registered retailers is published on the Ombudsman for the Retail's website.

The Ombudsman for the Retail does not have jurisdiction and will declare inadmissible:

- requests that do not fall under its jurisdiction;
- requests that have not previously been submitted to the retailer in question or which were submitted to the retailer over a year ago;
- requests with a value of less than €25, with the exception of non-monetised requests;
- requests for the settlement of a dispute which is or has already been the subject of a legal action;
- requests coming from outside the European Union, Switzerland or Norway;
- anonymous, fanciful, persecutory or defamatory requests;
- requests that would seriously impede its operation.

If the request cannot be accepted, the Secretariat of the Ombudsman for the Retail shall inform the parties within 21 calendar days of its decision to refuse to process the request. Reasons shall be given for a refused request.

Article 2: The consumer's request and the retailer's response

The conciliation request must be detailed and complete, in other words:

- indicate at least the surname, first name, full address, telephone number and email address (except if the consumer asks for the request to be dealt with via post)
- the request must be clearly described and the relevant information required for its processing must be included (receipt, contracts, photos, etc.)
- identify the retailer (the name of the shop and the place of purchase) and indicate when and how the request was initially submitted to the retailer.

Once this information has been sent to the Ombudsman for the Retail, the request is complete. The Secretariat of the Ombudsman for the Retail shall inform the parties when the complete request is received.

The retailer shall respond within 14 calendar days after receiving the complete request. If it cannot provide a response within this time frame, the retailer shall inform the consumer and the Secretariat of the Ombudsman. If the consumer is satisfied with the retailer's response, he/she shall end the procedure.

Article 3: Withdrawal of the request and automatic end of the procedure

The consumer has the possibility to withdraw from the procedure at any time. He/she shall inform the Secretariat of the Ombudsman for the Retail via the electronic platform or by post. If the conciliation request is withdrawn, this shall end the procedure.

Article 4: Nomination of a conciliator

Within 21 days after a complete request is submitted, the Secretariat of the Ombudsman for the Retail shall appoint a conciliator selected from the list of conciliators according to the language in which the dispute is conducted, the nature of the conflict and their availabilities.

The conciliator shall declare without delay to the Secretariat of the Ombudsman for the Retail and to the parties concerned any circumstances likely to affect or to be considered as affecting his/her independence and impartiality or which would give rise to a conflict of interest with either of the parties. Based on this information, the Secretariat of the Ombudsman for the Retail shall remove the conciliator and appoint another. The Ombudsman for the Retail shall inform the parties.

Each of the parties may request the removal of the conciliator and request the appointment of another conciliator by the Secretariat of the Ombudsman for the Retail. This request must be substantiated. This request must be submitted within 24 hours following the appointment of the conciliator.

Article 5: Power and responsibility of the conciliator

In accordance with These Rules of procedure and with the applicable law, the conciliator must conduct the conciliation procedure as he/she sees fit.

The conciliator shall perform his/her duties avoiding any unnecessary delays and expenses, in order to propose a fair and effective conciliation agreement. At any time during the procedure, the conciliator must remain independent and impartial and treat the parties equally.

The conciliator shall take into account the information brought by the parties, the applicable law and any other aspect that he/she considers likely to bring a lasting solution to the dispute. The conciliator shall take into account among others international conventions, European Regulations, Belgian laws (civil code, code of economic law, ...), general terms and condition of the retailer and possible codes of conduct. He/she shall determine the relevance of the facts and allegations submitted by the parties.

Unless the conciliator decides otherwise, the parties shall have a reasonable period of up to 14 calendar days to read and respond to all the documents, arguments and facts put forward by the other party or any request from the conciliator. In the absence of exceptional circumstances, if one of the parties does not comply within the period set by the Regulation or by the conciliator, the conciliator shall draw the conclusions that he/she considers appropriate and where necessary shall propose a conciliation agreement.

Article 6: Conciliation proposal

At the latest 40 calendar days after the matter is referred to him/her, the conciliator shall propose a conciliation agreement. The Ombudsman for the Retail shall inform the parties of the proposal for a conciliation agreement.

In exceptional cases, this period of 40 calendar days may be extended, only once, for a maximum duration of 40 calendar days. The parties shall be informed before the initial period has passed and this extension shall be substantiated.

The conciliation proposal shall be made in writing, substantiated, dated and signed electronically by the conciliator.

The parties shall have 15 calendar days to accept or refuse the proposal of the conciliation agreement. If neither party responds within 15 calendar days, the conciliation proposal shall be considered to be refused. Once the conciliation proposal has been accepted, it shall be binding on the parties. The acceptance of the conciliation proposal by the two parties or its refusal by one of the parties shall end the procedure.

If there is no agreement between the parties on the conciliation proposal, each party shall maintain its right to appeal to the competent courts.

Article 7: Communications and languages

All communications between the parties shall be submitted electronically via the Ombudsman for the Retail's electronic platform. Exceptionally, if the consumer cannot submit his/her request via the Ombudsman for the Retail's electronic platform, he/she may submit his/her request by post using a form that can be downloaded or obtained on written request from the Ombudsman for the Retail. The retailer may also choose to respond by post. The Ombudsman for the Retail's website is www.ombudsmanducommerce.be and the postal address is Avenue Edmond Van Nieuwenhuysse 8, 1160 Auderghem.

The parties are invited to download and keep this procedural regulation before the start of the conciliation procedure.

The parties will receive via email a copy of the solution proposed by the conciliator, and shall be informed of their freedom to accept or refuse the proposal, the legal consequences of accepting the proposal, the possibility that the solution may be different to a legal decision and the fact that participation in the procedure shall not prevent the parties from bringing a legal action.

Conciliation requests may be submitted in French, Dutch or English. The procedure may take place in French, Dutch or English.

Article 8: Confidentiality

The negotiations or any settlement proposals by either of the parties during the procedure are confidential and shall remain confidential at all times. The parties shall abstain from communicating via the press or via social media during the procedure.

The conciliation agreement may only be made public with the consent of the parties or if its disclosure is required pursuant to a legal obligation or if this is required in order to protect or assert a right in the context of legal proceedings.

The Secretariat of the Ombudsman and the conciliators cannot under any circumstances communicate about an individual case that has been submitted to it.

Article 9: Implementation of the conciliation agreement

When a conciliation agreement has been found, the parties shall implement it without delay and at the latest within 30 calendar days following the agreement, unless there is a specific provision to this effect mentioned by the conciliator in the agreement.

If a party fails to comply, application needs to be made to the court for an order of enforcement. The Secretariat of the Ombudsman and the conciliators cannot intervene in the execution of the conciliation agreement.

Article 10: Assistance and representation

If the parties wish, they can be assisted or represented by a third party. They may also seek independent advice at any time. Any consultancy or representation fees shall be paid by the party that would like to seek assistance.

Article 11: Costs

The costs of the proceedings shall be borne by the retailer as part of its registration with the Ombudsman for the Retail. The procedure is free for the consumer.

Article 12: Effect of the procedure on any legal proceedings or recovery procedure

The limitation periods applicable under the ordinary law shall be suspended as of the date the complete request is received. This suspension shall run until the end of the proceedings.

As soon as the retailer is informed that the Ombudsman for the Retail has received the complete request, he/she shall suspend any recovery procedure, until the end of the proceedings.

Article 13: Limitation of the liability

Except in the case of wilful misconduct or gross negligence, neither the conciliator nor the Ombudsman for the Retail shall be responsible for any act or omission in the context of this out-of-court dispute settlement procedure.

These Rules of Procedure can be saved among others in pdf format or can be requested by email or by post.