

Factsheet Consumer Protection Enforcement Act

The Consumer Protection Enforcement Act (*Wet handhaving consumentenbescherming*) ensures that, alongside consumers, supervisory authorities can enforce that companies/traders act in compliance with rules of consumer law.

Rules of consumer law

Traders that conclude agreements with consumers must comply with a complex set of rules that serve to protect consumers. Almost all of these rules stem from European directives, but are often also laid down in Dutch laws. Aspects covered include, for example:

- Information that needs to be provided to consumers (either before conclusion of the contract or in it);
- The indication of the price;
- Requirements that information must not be misleading and must not contain any misleading omissions (regarding the product's or service's properties, sustainability, etc.);
- Consumers' rights, such as the right to cancel distance or off-premises contracts;
- The ban on agreeing unfair terms with consumers (in general terms and conditions or otherwise).

Enforcement by consumers themselves

The rules above are, in principle, governed by civil law. Accordingly, consumers can lodge a claim with the civil courts if any rules are violated. Depending on the rules in question, consumers can seek repayment, damages, a reduction of their payment obligation, or nullification of a particular provision in the agreement or even of the entire agreement itself. Several consumers can also initiate these proceedings together. In addition, consumer interest organisations, or claim vehicles, can bring a 'collective action' and, for example, try to lodge a claim for repayment or damages for a large group of consumers in legal proceedings.

The Consumer Protection Enforcement Act: also enforcement by supervisory authorities

The Consumer Protection Enforcement Act ensures that, in addition to consumers, supervisory authorities such as the Netherlands Authority for Consumers and Markets (ACM) and the Dutch Authority for the Financial Markets (AFM) can take measures against violations of a whole series of consumer law rules.

If a financial service or activity is involved, the AFM is charged with supervision. For all other products and services, the ACM is the responsible authority.

The ACM and AFM have various powers in that context, including the following:

- **ACM:** concluding an agreement for damages with one or more traders that have violated rules of consumer law, which can be declared binding by the court for anyone who has suffered damage as a result of these violations;
- **ACM:** imposing a binding instruction to comply with the Consumer Protection Enforcement Act;
- **ACM and AFM:** issuing a public warning;
- **ACM and AFM:** imposing an order subject to a penalty;
- **AFM:** imposing an independent order;
- **ACM and AFM:** imposing an administrative penalty (which, depending on the type of violation, can amount to up to EUR 900,000 or 1% to 10% of the turnover);

- **ACM and AFM:** publishing an order (whether or not subject to a penalty), administrative penalty or commitment by a trader to cease a particular violation; and
- **ACM and AFM:** imposing an order to limit, deactivate or block access to an online interface or to display a warning there or to scrap the domain name.

Consumer organisations are designated as interested parties for decisions issued by the ACM and AFM in that connection. This means that they have the right to ask the ACM or AFM to take enforcement measures against a particular company/trader.

Important to operate strategically and carefully

The impact of ACM or AFM enforcement under the Consumer Protection Enforcement Act can be immense. These authorities have the power to impose far-reaching sanctions, which may also be published. In addition, the imposition of sanctions is often preceded by preliminary steps involving information requests or even an unannounced inspection of business premises (dawn raids). In that context, enormous numbers of documents must usually be searched and provided. The information in question may also become public if a sanction is imposed. The publication of sanctions and information can, in turn, prompt consumers to lodge claims themselves or to support claims lodged by consumer organisations.

It is therefore crucial to tackle any possible violations of consumer law carefully, strategically and without delay. Houthoff has extensive experience handling situations of this kind and has been advising companies facing these challenges for many years.

Contact

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