

Position Paper

**To** The Dutch House of Representatives' Standing Committee on Finance  
**From** The Netherlands Authority for Consumers and Markets (ACM)  
**Regarding** Roundtable discussion on cryptocurrencies and ICOs  
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## Introduction

The Netherlands Authority for Consumers and Markets (ACM) is an independent regulator that creates opportunities and options for businesses and consumers. ACM is charged with consumer protection, competition oversight, and sector-specific regulation (such as the energy and telecom sectors). The goal is to ensure a level playing field with companies that follow the rules, and to have well-informed consumers who will exercise their rights, and who are protected when they are unable to do so.

Cryptocurrencies are at the center of attention among businesses, consumers, and governments, both at home and abroad. Cryptocurrencies are based on an innovative technological development, and offer new opportunities on the market for financial services and products, including a new method of attracting investments by businesses, known as "Initial Coin Offering". ACM welcomes innovations that increase opportunities and options for consumers, and which increase competition. In its role as regulator, ACM keeps a close watch on these developments.

As with any innovation, there are positive expectations but also points of attention. For instance, consumers and other investors may incur significant financial risks when investing in cryptocurrencies. Additionally, cryptocurrencies and ICOs can be used for money laundering, racketeering, and fraudulent practices. There are also questions about the impact of cryptocurrencies on the stability of the financial sector.

The purpose of this position paper is to provide a brief overview of the relevant regulatory tasks and powers that were granted to ACM for the benefit of consumer protection. This overview will show that ACM is only able to tackle some of the societal problems that cryptocurrencies and ICOs can cause.

## Consumer protection

### General

Oversight of undertakings that offer products or services to consumers has been laid down in the Dutch Act on Enforcement of Consumer Protection (Whc). The Whc has been drawn up in such a way that ACM is the consumer protection authority for all areas except those areas for which a different regulator has been designated in the Whc. For instance, the Dutch Authority for the Financial Markets (AFM) has been designated as the regulator for financial products within the meaning of the Dutch Act on Financial Oversight (Wft). ACM has established cooperation protocols with AFM and with other regulators.

Under the Whc and thereto-related regulations, ACM oversees, for instance, whether undertakings comply with various information requirements. The goal of these requirements is to ensure that consumers are fully and correctly informed in a timely manner about the features of a product or service before entering into an agreement with an undertaking. Also, ACM enforces, for example, the rules that stipulate that undertakings should not mislead or aggressively approach consumers. ACM

has different enforcement instruments at its disposal, such as formal warnings, orders subject to periodic penalty payments, and fines.

On the other hand, ACM fulfils its tasks by supporting consumers. On the website of consumer information portal ConsuWijzer, ACM educates consumers about their rights, and it provides advice about how to exercise those rights.

Based on reports from consumers to ConsuWijzer, tip-offs and requests from fellow regulators (domestic and international), and based on its own studies, ACM decides what consumer issues to prioritize. In that process, ACM also determines what regulatory tool it will use. ACM could put more emphasis on enforcement if consumers experienced difficulties in preventing the inconveniences caused by an undertaking's behavior. Conversely, ACM could put more emphasis on warnings if consumers, by adopting a critical attitude, were able to make their own assessments about whether or not to deal with a particular undertaking.

## **Cryptocurrencies and ICOs**

Cryptocurrencies and ICOs strongly resemble existing financial products, and can be perceived as such by consumers and other investors. Based on the Ministry of Finance's response to previous parliamentary questions, and the educational information provided by AFM regarding investing in cryptocurrencies and ICOs, it has emerged that some of these issues fall under AFM's regulation. AFM is the authority that assesses these, and is the one best able to do so.

If a certain type of cryptocurrency or ICO does not fall under AFM's regulation, it could fall under ACM's regulation under the Whc. In that case, ACM only has the power to take actions for the protection of consumers when conducting transactions with undertakings. Other investors in cryptocurrencies and ICOs fall outside the protection that ACM can offer. In case a certain type of cryptocurrency or ICO falls under the definition of a pyramid scheme, it falls under the jurisdiction of the Netherlands Gaming Authority (Ksa). Furthermore, ACM is not the regulator for cases involving racketeering or money laundering.

In its oversight of financial products and services, the AFM has tools that enable ex-ante regulation. One such example is the requirement to provide an AFM-approved prospectus when offering securities. ACM does not have any such ex-ante tools for regulating cryptocurrencies and ICOs. ACM can only assess ex-post whether the information the undertaking provided to consumers prior to the agreement was insufficient or misleading.

## **In conclusion**

Since there are different types of cryptocurrencies and ICOs, oversight thereof is not clear-cut. Discussions about this issue are underway between the Ministry of Finance, the AFM and ACM. The current regulatory framework may not perfectly dovetail (from a legal perspective) with the phenomena of cryptocurrencies and ICOs, and, as a result, the way regulators deal with issues regarding cryptocurrencies and ICOs is suboptimal. A relevant question in this context is what regulator should be responsible for the enforcement of consumer protection with regard to cryptocurrencies and ICOs, considering the nature of the product and the regulatory tools available. In its capacity as regulator, ACM would gladly contribute to the debate about whether new or additional regulation is required or desirable.