



Provision of information in the consumer energy market

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1 Introduction

What is the background of this document?

By bringing together the different branches of oversight as well as the different regulatory powers, the creation of ACM has led to a more efficient and uniform system of consumer protection. This has also affected the regulation of the energy sector. In recent years, the energy market has changed considerably, and the positions and roles of government, market participants and consumers vis-à-vis each other have been clarified. This division of roles has been laid down in several European and national laws and regulations. Responsibility over enforcing compliance with these laws and regulations lies, to a large extent, with ACM.

This document was written in order to help anyone that supplies energy *to consumers*, possibly with related services and/or products, understand the rules with regard to consumer protection, which ACM oversees. These rules are fragmented across various laws, and may vary depending on the roles certain providers have on the energy market such as licensed suppliers, resellers (meaning intermediaries who work together with energy suppliers holding a license for supplying natural gas and/or electricity) or comparison search engines. The rules may also vary depending on the method of sale, for example over the internet, the phone or door-to-door.

With this document, ACM wishes to provide an overview of the rules that apply to the provision of information when offering and supplying energy to consumers, and to explain what they mean according to ACM, thereby clarifying what providers need to comply with. This document had been widely consulted with the energy sector before it was finalized.

This document outlines the practices that ACM supports with regard to, among other aspects, advertising, customer recruitment, supply, contracts, and complaint-handling. By communicating the practices it supports, ACM aims to ensure that compliance with the regulations among providers is increased. In this document, ACM defines providers as providers of products and services related to the supply of energy to consumers. Consumers are natural persons that do not act in the capacity of someone practicing a profession or running a business. ACM's definition ties in with the definition of consumers as laid down in the Dutch Civil Code. The group of suppliers is not limited to licensed suppliers of natural gas and electricity. It also includes all businesses that are not licensed suppliers themselves, but that offer consumers the option of receiving an offer for a supply agreement through them, such as resellers, price-comparison websites, energy-switching initiatives, and other intermediaries. In this document, the term "providers" thus refers to all of these parties. If specific rules apply to a specific group of providers, this will be explicitly mentioned.

What information does this document contain?

This document is an explanation – tailored to the energy sector – of the applicable laws and regulations with regard to the provision of information by providers to consumers. It is not an exhaustive legal analysis of all laws and regulations. With this document, ACM presents its view on how the regulations should be applied by providers in order to create true transparency for



consumers on this market. The starting point is creating transparency throughout the entire process of offer, signing the contract, billing, and the termination of the contract. In addition, ACM provides providers with an example of a concrete application of transparent practices when making energy offers in the form of so-called "personalized offers".

What does ACM aim to achieve?

In random checks, ACM has observed that, among many providers, the current degree of compliance with the regulations regarding the provision of information is insufficient. ACM wishes to realize increased compliance with the existing consumer rules in the energy sector, and with the rules regarding the provision of information in particular.

ACM wishes to have a healthy consumer energy market with clear options for consumers, and to have a level playing field with room for good entrepreneurship and innovation: to have a market in which consumers are given easy-to-understand, easy-to-compare, and consistent information so that they are able to make a choice that suits their situation and preferences. In a market with well-informed consumers, their behavior may lead to self-correction by the market, and will enforcement activities by ACM be needed less often.

The "2010 Guidelines on the provision of information by energy suppliers to consumers" will subsequently be repealed by a separate decision.



2 Overview of applicable laws and regulations

Legal basis for regulation

ACM has been charged with, among other tasks, the enforcement of compliance by businesses with the Dutch Electricity Act 1998, the Dutch Gas Act, and with the consumer protection provisions in the Dutch Act on Enforcement of Consumer Protection. The most important tasks herein are dealing with collective violations of consumer law (mostly laid down in the Dutch Civil Code (BW)) and raising awareness among consumers about their rights and obligations. ACM does these by using its different powers to investigate violations and to enforce compliance with the law. At the same time, ACM gives consumers practical advice about their rights and obligations via its consumer information portal ConsuWijzer.

A complete overview of the regulations that ACM enforces can be found on the website www.acm.nl. In this document, a number of aspects are explained that are particularly relevant in light of the provision of information and transparency in the energy sector.

Legislation

Regulations with regard to consumer protection can be found in several laws. In this explanation, the following acts in particular apply:

- Dutch Electricity Act 1998: chapter 8, § 1b and c (consumer protection);
- Dutch Gas Act: chapter 5, § 5.2a (metering device requirements, invoicing and provision of information) § 5.3a (consumer protection);
- Provisions concerning unfair commercial practices: Sections 6:193a-193j BW (Directive 2005/29/EC);
- Provisions concerning agreements between traders and consumers: Sections 6:230g et seq. BW (Directive 2011/83/EC);
- Provisions concerning unfair terms: Sections 6:231-247 BW (Directive 93/13/EC);
- Provisions concerning electronic commerce: Sections 3:15a-f, 6:227a-c BW (Directive 2000/31/EC).

Dutch Advertising Code

Any advertising must comply with the rules laid down in the Dutch Advertising Code, next to any other statutory rules. Depending on the advertising method chosen by the provider, the Dutch Code for unaddressed advertising, door-to-door sampling and direct advertising (CBR), the Code for advertising through email ("Code email") or the Code for Telemarketing (CTM) may be of relevance.

Self-regulation

Within the framework of self-regulation, the energy sector has made arrangements, which have been laid down in voluntary agreements or codes of conduct. This document may, with regard to the



provision of information to consumers, serve as the basis for the contents of self-regulation on this subject.

3 Information for consumers on the energy market

With this document, as stated in the introduction, ACM targets a wider range of providers than just the gas and electricity suppliers holding a license. With this document, ACM focuses on all providers, who offer an energy supply contract *to consumers*, including those with related services and/or products.

ACM lists the rules with which providers are to comply below. With such compliance, consumers are able, on the basis of the information that must be provided to them, to make a well-informed decision about taking out a contract. With regard to energy offers, consumers need to have sufficient information in order to be able to decide whether or not they want to take out a supply contract with the provider in question. Therefore, ACM presents the general consumer protection rules, which have been applied to the information provided to consumers in the energy market.

For the sake of clarity, this explanation has been divided into three sections.

- First, the principles for fair commercial practices are discussed (section 3.1)
- Second, the various sales methods are discussed, which providers can use to draw consumers' attention to their products, and the various statutory requirements that are applicable thereto. These will be detailed per method (section 3.2)
- Finally, the topics of offers, price, contracts, personalized offers, invoice and termination or renewals are discussed. These rules apply to all of these topics, regardless of which sales channel is chosen (section 3.3).

3.1 General explanation

Unfair commercial practices: misleading information and omission

A commercial practice of a provider cannot be unfair. This has been stipulated in the Dutch Unfair Commercial Practices Act (OHP), which has been laid down in part 3A of Book 6 of the Dutch Civil Code (BW). Unfair practices include misleading and aggressive commercial practices.

Commercial practices refer to any activities that are directly connected to the promotion, sale or supply of a product or service to consumers. Under the law, this definition also includes advertising and marketing (section 6:193a, paragraph 1, sub-paragraph d BW). A commercial practice is therefore a broad concept, as it also includes information on a provider's website and communication with individual consumers.

Misleading commercial practices



The creation of confusion with regard to products, trademarks, branding or other distinctive characteristics of competitors is a misleading commercial practice (section 6:193c, paragraph 2, subparagraph a BW). This also applies – subject to conditions – to the failure by the provider to fulfil obligations that are set out in a code of conduct (section 6:193c, paragraph 2, sub-paragraph b BW). Furthermore, it is, in all circumstances, misleading to claim to be bound by a code of conduct and claim to act accordingly, when this is not the case (Section 6:193g, sub-paragraph a BW).

Misleading information

The Dutch Unfair Practices Act (OHP) says that a commercial practice is misleading if information is provided that is factually incorrect or that misleads or may mislead the average consumer, whether because of the general presentation of the information or not (Section 6:193c, paragraph 1 BW). In addition, the act also lists specific aspects about which no misleading information can be given. Some of these aspects are outlined below.

- *The existence or nature of the product:* providers, for example, are not allowed to give an incorrect impression of the nature of a product. This is important in the case of products such as energy, which consists of several variables. Consumers need to be able to form an opinion, on the basis of the information provided to them, about what they are offered, and they need to have enough information to be able to make a purchasing decision.
- *Main characteristics:* providers may not provide incorrect or misleading information about the main characteristics of the product. Such characteristics include: availability, benefits, risks, type, composition, customer service and complaint-handling, supply, suitability for use, amount, specification or results and essential characteristics of tests and checks performed on the product.
- *The capacity, characteristics and rights of the trader or their intermediary:* the provider must be clear about matters such as identity, capital, qualifications, status, recognition, affiliation, connections and so on. This means, for example, that providers may not pretend to have a particular certification label or recognition, when this is not the case. This also means that a reseller must be clear about their role as a reseller, and the fact that the supply contract is not concluded with the reseller, but with a licensed supplier.
- *Pricing:* the provider must be clear about the price or the method used to calculate the price or the existence of any specific price advantages. This is discussed in further detail in section 3.3.2.

Misleading omission

Furthermore, it is misleading to omit essential information, which consumers need in order to be able to make a decision. This is referred to in the law as a misleading omission. Similarly, withholding essential information or providing essential information in an obscure, unintelligible or ambiguous manner or providing essential information late or too late is considered misleading. Essential information must therefore be provided *before* the agreement is concluded. This means that the party



making the offer must provide such essential information, as consumers make a purchasing decision based on such information. The definition of essential information is provided later in this section.

With regard to the clear and intelligible manner of providing essential information, as mentioned above, the following will apply in any case. The applicable conditions must, in any case, be in Dutch, and formulated in such a way that consumers may reasonably be considered, after examination of these conditions, to be familiar with the rights and obligations of the consumer and the supplier that arise from them. These conditions may not include any stipulations that are or may be unduly onerous for the consumer (see the so-called black and grey lists of Sections 6:236 and 6:237 Bw).

Essential information

A concrete transposition of the aforementioned rules into energy offers means that ACM assumes that providers provide at least the following information to consumers:

- The identity of the provider, its trade name and geographical address;
- If the provider is not also the supplier, the provider is required to state the identity and geographical address of the supplier taking responsibility for the supply as well;
- The name of the license holder, if this is different from the trade name;
- The duration of the contract;
- A description of what will be supplied (natural gas and/or electricity);
- Information about the type of gas and/or electricity (e.g. "green" or "brown") and the generation source of the energy that will be supplied, if such is relevant to the recommendation and the choice the consumer would make;
- Terms and conditions applicable to the special offer concerned or special conditions that significantly sets the offered contract apart;
- Information about pricing: whether there is a fixed or a variable price; for how long the price is fixed or what the options for the supplier are to adjust the prices and conditions during the contract period;
- Information about the tariff levels as set out in section 3.3.2;
- The payment options (at least two) that consumers have, including any costs that may be associated;
- Customer service and complaint-handling, and whom consumers may contact with questions;
- The conditions under which the contract may be terminated by the consumer or the supplier, including the notice that, in the event of a premature termination, if the supplier charges a termination fee, the consumer has to pay a termination fee, as well as an overview of the required termination fee or fees;
- If general terms and conditions apply to the contract, a notice that such is the case, and where consumers may find them.

The information above must be provided before a contract can be concluded or *before* the consumer places an order. Moreover, this information, insofar as such is not already evident from context, needs to be provided in a clear, intelligible and unambiguous manner.



3.2 Explanation regarding various sales channels

The provisions for contracts between traders and consumers (Sections 6:230g et seqq. Bw) relate to all contracts concluded between traders and consumers either a) at a distance, b) off-premises or c) otherwise. More specifically, the rules relate to consumer information about selling on the premises, distance-selling (for example over the internet and telephone), and off-premises (for example, door-to-door selling). These rules are also applicable to contracts for energy supply.

3.2.1 On-premises contracts

Providers on the consumer market for energy are to provide information on the premises in a clear and intelligible manner, in any case on the following aspects: the main characteristics of the service or product to be supplied, the identity of the provider, the total price, the payment method, supply, compliance, the time period within which the provider commits to providing the service or supplying the product, the policy with regard to the handling of complaints, and the duration of the contract (Section 6:230l Bw). These obligations thus partially overlap with the aforementioned rules set out in the Dutch Unfair Commercial Practices Act. A compact description can be found in the enclosed schematic overview.

Most energy providers do not sell their products on-premises, but approach consumers in a different manner, namely at a distance or off-premises.

3.2.2 Distance contracts (online sales and telemarketing) and off-premises contracts

In Section 6:230m et seqq. Bw, several information obligations have been laid down on providers that wish to conclude contracts at a distance or off-premises. Providers provide consumers, in a clear and intelligible manner, before the contract is concluded, at least the following information:

- The main characteristics of the product or service to the extent such is applicable, referring in any case to information about the type of natural gas and/or electricity (for example “green” or “brown”) and the generation source of the energy that is to be supplied, if such is relevant to the recommendation and the choice the consumer would make;
- Its identity, such as its trading name;
- The geographical address of the location, telephone number and email address, as well as – if applicable – the geographical address of the location and the identity of the supplier taking on the actual supply of energy.
- The total price including all components (see section 3.3.2);



- The method of payment, supply, implementation, the time period within which the provider commits to providing the service or supplying the product, the policy with regard to the handling of complaints;
- If separate costs are charged for calling the provider and these costs are not equal to the basic tariff, information must be provided about the level of these costs (see the Universal Service and End User Regulations). This applies to costs for other types of communication as well;
- The time that the consumer has to think it over (also referred to in the energy sector as “cooling-off period”);
- How, within which period and under what circumstances the contract may be cancelled, as well as a standard form for annulment;
- The cases in which the consumer is to compensate for the costs of natural gas or electricity supply carried out at the request of the consumer before the end of the cooling-off period;
- The existence of relevant codes of conduct;
- The duration of the contract and the conditions for the termination of the contract;
- The minimum duration of the obligations of the consumer;
- Insofar such is applicable, the existence of and the conditions for deposits or other financial guarantees that the consumer is to pay at the request of the provider;
- The option of alternative dispute resolution.

This information is an integral part of the distance contract or off-premises contract, and will not be modified, unless the parties explicitly agree otherwise in the contract (Article 6:230n, paragraph 2 BW). The burden of proof for the correct and timely provision of the information stated in this section lies with the provider (Article 6:230n, paragraph 4 BW). With regard to the distance contract, sufficient information is to be provided to the consumer in a manner suitable to the methods used for communication at a distance.

Right of withdrawal

The consumer may cancel a distance contract or off-premises contract without giving any reason within a period of fourteen days. In the case of contracts for the supply of natural gas and/or electricity, this is fourteen days from the date the contract is concluded (Article 6:230o, paragraph 1, sub-paragraph c BW). Compliance with the contract within the cooling-off period will not take place only after the consumer has explicitly requested such (Article 6:230v, paragraph 8 BW). Moreover, this statement (request for supply within the cooling-off period) must be issued in writing on a durable data carrier (Article 6:230t, paragraph 3 BW). In the non-exhaustive list of examples of durable data carriers, the guideline mentions paper, USB sticks, CD-ROMs, DVDs, memory cards, hard disks of computers and emails. For new data carriers, it must be assessed whether this new data carrier guarantees that the consumer, in the same manner as is the case with a data carrier on paper, gains possession of the required information, so that the consumer, whenever appropriate, may invoke his rights.



Even if the consumer has requested compliance with the contract within the cooling-off period, he retains the right of withdrawal. If, in that case, the consumer cancels the contract within fourteen days, he may be charged costs for the period in which natural gas and/or electricity was supplied to him. In order to be able to charge these costs, the following criteria must also be met in addition to the requirement that the consumer must have explicitly requested the start of the supply within the cooling-off period. The supplier must have informed the consumer, before concluding the contract, about:

- The duration of the contract;
- How the consumer may make take advantage of the cooling-off period;
- The compensation the consumer is to pay for the energy he has used before cancelling the contract;

The consumer will not be required to pay any compensation if the supply of natural gas and/or electricity started within the cooling-off period, while he had not explicitly requested this (Article 6:230s, paragraph 5 BW).

If the provider fails to provide information or provides insufficient or incorrect information about how the contract may be cancelled; the period within which this may be done and the applicable conditions, and/or failed to provide the standard form or does so incorrectly, the cooling-off period will be extended by the time passed since the starting day of the cooling-off period, until the moment when all missing information is provided to the consumer in the manner prescribed. The cooling-off period may be extended by twelve months at the most. Moreover, the omission, withholding of information or unclear, unintelligible, ambiguous or untimely provision of information may result in a misleading commercial practice (omission). This is the case, for example, with the failure to inform the consumer about the right of withdrawal or cancellation.

Online: what extra information?

Additional obligations apply to providers concluding contracts online. Sections 3:15d and 3:25e BW are a transposition of the Directive on electronic commerce (Directive 2000/31/EC). The provisions in these sections are relevant to providers offering their services or products online. Section 3:15d, paragraph 1 BW lists the information the online provider must provide:

- The identity of the business: this refers to the name of the business as registered with the Dutch Chamber of Commerce (KvK).
- The geographical address: this is the address where the economic activities are performed, that is to say, the address from where the business is managed. This is usually – but not necessarily – the address of the establishment as registered at the KvK. Please note: stating a post-office box alone is not sufficient.
- the contact details of the business: providers must in any case give an email address and, in addition, provide another method for customers to contact them directly, such as a telephone number. If the provider cannot be reached easily, such must be clearly stated on the website.
- The registration number at the KvK and VAT identification number.



- Insofar an activity is subject to a licensing scheme: the details of the competent regulatory authority. Suppliers of energy to consumers must thus have obtained a license from ACM to supply.

The general rule is that the information about a business must be easy to find on the website.

Therefore, it is not sufficient to hide this information “somewhere on the website”. The law imposes requirements for the way in which information is to be provided: the information must be easily, directly and permanently available. The information may be placed at the top or bottom of every page of the website or may be made available, for example, via a link on every page. In the latter case, the name of the link must make it clear that it leads to the information about the business. Such a name may be, for example, “contact details” or “about us”. Moreover, the link must be easy for the website visitor to find.

If the provider advertises on the internet, such advertising must meet a number of requirements (Section 3:15e BW). It must be clear that it is advertising, and the one that advertises must state its identity. In addition, the advertising, if it includes promotional offers, competitions or games, must contain a clear and unambiguous statement about the nature and terms and conditions of this offer or participation.

Contracts concluded online require to have the information referred to in Section 6:230m, paragraph 1, sub-paragraph a, e, o and p BW to be presented in a prominent manner and directly before the consumer places his order (Section 6:230v, paragraph 2 BW). This requirement concerns information about the main characteristics of the product or service, the total price and all additional costs, the duration of the contract and the conditions for the termination of a contract and the minimum duration of the obligations of the consumer. Moreover, it must be made clear to the consumer at what point he enters into an obligation to pay, for example by using the term “order with obligation to pay” or a button stating the same information. Websites on which products or services are offered by the provider should indicate clearly and easy-to-read no later than at the beginning of the ordering process whether any restrictions apply for the supply and what means of payment are accepted (Section 6:230v, paragraph 4, BW).

Online: information about the establishment of the contract

Before a contract is concluded electronically, a provider must provide information in a clear, intelligible and unambiguous manner about how the contract is established (Section 6:227b BW). This mainly concerns information about – in short – what actions are needed in order to establish the contract; whether or not the contract will be archived; how the consumer can be notified of unwanted actions (possible mistakes), and how he can correct them before the contract is established; the languages in which the contract may be concluded, and the codes of conduct to which the service provider is subject, and how the consumer may consult them.

Pursuant to Section 6:227c, paragraph 1 BW, the service provider should not only provide information (as mentioned above), but also make available to the consumer appropriate, effective



and accessible means to identify and correct any actions not requested by him (such as mistakes) before accepting the contract.

Online: confirmation of the contract

The provider will provide, within a reasonable time period after the conclusion of the contract, to the consumer on a durable data carrier a confirmation of the contract. Within a reasonable time period means at least before the service is carried out or when it is delivered. The confirmation of the contract includes, at least, the required information referred to at the beginning of this section, insofar as the provider has not already provided this information on a durable data carrier before the conclusion of the contract (Section 6:230v BW).

Off-premises sales

If a provider concludes an off-premises contract (for example at the door), additional obligations apply as well. First, there are rules with regard to the form and content of the information and the data carrier on which the information is provided (Section 6:230t BW). The information must be legible, and use clear, comprehensible language. Second, the information must, in principle, be provided to the consumer on paper. Only if the consumer gives his consent to the use of a durable data carrier, such as email, the provider may use such. Finally, the provider must provide to the consumer a copy of the signed contract or a confirmation of the contract.

Pursuant to the Unfair Commercial Practices Act, certain commercial practices are considered aggressive regardless of the circumstances. The act expressly mentions ignoring the request of the consumer to leave his home or the request not to return (Section 6:139i, sub-paragraph b BW).

Telemarketing

A number of additional obligations also apply to telemarketing sales with regard to the supply (on a regular basis) of natural gas and electricity. It must be sufficiently clear to the customer that the phone call is made for commercial purposes, namely aimed at concluding a distance contract (Section 6:230v, paragraph 6 BW). This section contains another important rule: the contract resulting from the telemarketing conversation is to be concluded in writing. In practice, this standard will be met when the provider draws up an offer for signing a contract in writing, and sends this to the consumer. The consumer will have to accept this offer in order to establish the final contract, which is usually evident from signing the written contract. A provider may also send an email with the contract, to which the consumer then gives his consent via email. After signing the contract, the consumer will likewise have a cooling-off period of fourteen days, as set out above. A contract in which an existing contract between parties is extended or renewed is exempt from this requirement.

As with online contracts, the provider must provide, within a reasonable time period after the conclusion of the distance contract, to the consumer on a durable data carrier a confirmation of the contract. Within a reasonable time period is, in any case, before the service is carried out or when the service is delivered. The confirmation of the contract includes at least the mandatory information



referred to at the beginning of this section, insofar as the provider has not already provided this information on a durable data carrier before the conclusion of the contract (Section 6:230v BW).

Pursuant to the Unfair Commercial Practices Act, certain commercial practices are considered aggressive regardless of the circumstances. Expressly stated in the act is: making persistent and unwanted solicitations by telephone, fax, email or other remote media (Section 6:139i, sub-paragraph c BW).

Consumers who wish not to be contacted by telephone with, amongst other things, energy offers, may register in the Dutch Do-Not-Call Registry. Providers who make use of telemarketing are required to consult this registry, and may not contact registered consumers by telephone, unless it concerns so-called "warm contacts" (i.e. consumers whose contact information was obtained by the provider as part of the sale of its own product, and whose contact information may therefore be used for commercial purposes with regard to similar products or services of the same provider). In each telephone conversation, the existence of this registry must be actively pointed out to the consumer, and the opportunity must be offered to register immediately and free of charge. In addition, the consumer must be given the opportunity to file an objection to the further use of his contact information by the provider.

3.3 Explanations per theme

3.3.1 Offer

The offer (or estimate) and the final contract are closely linked. The contract results from accepting the offer, and it has to correspond with the offer, as well. If a consumer requests an estimate, for example through a website, the provider can make the consumer an offer. The provider is not permitted to send the consumer, in response to his request for an estimate, a contract in which it is stated that he is bound by the contract if he does not respond within a certain time period. If a provider sends an estimate to a consumer digitally or in writing, it is considered an offer, and no contract has been established. The offer may, however, state that it will be open for explicit acceptance by the consumer for a certain number of days, and that the offer will expire after this period. In other words: the consumer must actively accept the offer in order to establish a contract; tacit acceptance or a form of opt-out are not possible. It is thus not permitted to send a contract to the consumer stating that he can get out of it within fourteen days, as, in that case, the contract is not established by means of explicit acceptance by the consumer.

The information the provider is required to give in the offer is mentioned above in section 3.2 where the various sales channels are discussed. It is important that the consumer have sufficient information about what he is offered, so that he can compare this offer with that of other providers. The latter certainly also applies to the price.



If a consumer accepts an offer from a new supplier, he is entitled to a time period to think the matter over, which is also referred to as the “cooling-off period” (see also section 3.3.2 “right to withdrawal”). A cooling-off period of fourteen days is mandated by law. Consumers who switch suppliers are also entitled to a statutory cancellation period of one month, at the most. In the energy sector, what happens in practice is that, when a contract is concluded with a consumer, the supplier does not terminate the contract with the previous supplier until after the cooling-off period of fourteen days has expired. In that case, the cancellation period of one month, at the most, begins after the cooling-off period of fourteen days, and it will thus take up to six weeks before the consumer has switched to the new supplier. ACM is of the opinion that, in this case, the provider must actively inform the consumer about the fact that the contract with the previous supplier will not be terminated until after the cooling-off period. In addition, the provider must state that the new contract will thus be effective after six weeks. If the consumer wishes to complete the switch within four weeks, the provider must facilitate this.

3.3.2 Price

Pursuant to the Dutch Unfair Commercial Practices Act, the provider may not give the consumer any misleading information about the price, including the taxes that will be levied, or about the method that is used to calculate the price, nor may any essential information be omitted or provided in an unclear, unintelligible or ambiguous manner or provided late (see Sections 6:193c, paragraph 1, subparagraph d BW; 6:193d BW and 6:193e, sub-paragraph c BW). With regard to an offer on the consumer market for energy, too, it must be clear to the consumer what price he must pay, and he must be able to compare this price with the price he would pay with a different provider.

The total price for the supply of natural gas and electricity consists of several cost components, some of which are consumption-based, while others are not. In order to be able to give the consumer essential information about the price, these different cost components must be provided.

With regard to the non-consumption-based component, such as the fixed supply costs and grid operation costs, the consumer must be informed in advance about the level of these costs.

With regard to the consumption-based component (depending on the actual energy consumption of the consumer), it is impossible to determine precisely how much the consumer will be ultimately charged, as this depends on his specific consumption. If the price cannot be calculated in advance, the price calculation method must be clearly communicated. For energy offers, this means that the supply tariff must be stated per unit of energy supplied (kWh or m³). Any taxes and surcharges must be included in this tariff. If applicable, the feed-in tariffs must be stated in the same manner.

ACM considers it important that the consumer is able to compare offers, and it is therefore necessary that it is clear to the consumer what he needs to pay approximately. According to ACM, linking the offer to the most recent available consumption statement of that consumer gives the clearest



indication of the expected annual costs. This is discussed in further detail in section 3.3.3 about the personalized offer.

In addition to what is noted above about prices, *providers* must ensure, pursuant to Section 95m, paragraph 2 of the Electricity Act 1998 and Section 52b, paragraph 2 of the Dutch Gas Act, that end users may, at all times, obtain transparent information about the applicable tariffs and conditions for the supply and transmission of electricity and natural gas. By this, ACM means clear, complete, unambiguous, up-to-date and correct information about, at least, the aforementioned cost components; both the non-consumption-based component (such as fixed supply costs and grid operation costs) and the consumption-based component (in the form of the supply tariff per unit of energy supplied (kWh or m³) including taxes and surcharges as well as the feed-in tariffs).

According to ACM, the fact that providers must ensure that end users may, at all times, obtain transparent information about the applicable terms and conditions means, moreover, that a provider:

- Keeps information permanently and easily accessible on the websites used by or on behalf of it;
- Provides the information – in writing if so desired – at the request of the consumer;
- Provides the tariffs used in the past, which apply or may still apply to the consumer based on the supply contract – in writing, if so desired – at the request of the consumer.

Price changes

The price of energy supplies depends on, among other things, world market prices of natural gas and other fuels. However, not all increases in price may be passed on to the consumer. Only statutory increases in price, such as an increase in the VAT rate, may be passed on.

In the case of fixed energy tariffs, the tariffs are fixed during the term of the contract. In the case of variable energy tariffs, the price of supply may vary during the term of the contract. Unilateral price changes are not necessarily prohibited, but the consumer must be able to anticipate them. This means that the supplier must state in the terms and conditions how it deals with price changes.

When the consumer enters into a contract, the provider must, in the first place, explicitly draw his attention to the fact that it is stated in the general terms and conditions that price changes may occur. The provision in the conditions must clearly state what rights the consumer has in the event of a price change (not resulting from a statutory increase). If a price change is indeed going to take place, the consumer must be informed of this fact personally and well in advance. A reference to the website, on which the tariffs can be found, is not sufficient. In addition, he must be offered the right to terminate the contract if it concerns a permanent contract. If it concerns a fixed-term contract with a variable tariff, moreover, the supplier must clearly state how frequently the variable tariffs may change.

3.3.3 Personalized offer

It has been discussed above what information obligations a provider is required to meet in order to make an offer to the consumer correctly. In this section, ACM provides a guideline using the so-



called personalized offer. With this, ACM offers a method with which the provider can, in any case, apply the rules correctly.

In ACM's view, a personalized offer under said conditions will meet the information requirements concerning the price as set out in various legal provisions with regard to the offering of products on the consumer energy market. Regardless of the sales channel selected by the provider, following the personalized offer will ensure that the consumer obtains, in any case, the required information, and, in addition, the provider will meet the requirement of transparency and will provide easy-to-compare information.

Personalized offers are concrete offers that providers make that apply to the consumer's personal situation. This means that the provider makes an offer to the consumer using the individual starting situation of that specific consumer. The provider must take into account the possibility that a consumer generates energy himself.

When determining the personal starting situation, the provider uses the consumer's postal code and house number in order to be able to tailor the offer to the regional components that apply to the consumer, and to take into account the type of meter available at the service address. Furthermore, historical consumption data is used to project the expected consumption of the consumer. The consumer must be able to provide his most recent available consumption data (for example the most recent annual energy bill), so that the offer can be tailored to his actual energy consumption.

Providers are required to make demonstrably as much effort as possible to get the consumer to enter their most recent available consumption and their address details, and providers are also required to use this information as well. Only if it is impossible for the provider to find out the consumer's details and the consumer cannot or does not want to find out these details, then the provider will provide as accurately as possible a projection of the consumption of this specific consumer. The consumer will see what the projected consumption is that is used for the calculation of their annual amount, and the consumer must be able to see the source or method of calculation. If a provider projects the consumption based on characteristics entered by the consumer, it is important that this leads to a figure that is indicative of that consumer's consumption pattern, and one that is easy to compare. The offer is thus based on a single tariff, while the consumer can also have a double tariff meter and thus desire a double tariff. This will be clearly explained.

The personalized offer contains at least the annual amount. This amount includes any unavoidable taxes and surcharges. The offer thus includes all total costs.

With regard to multi-year contracts in which the total costs change during the term of the contract (for example because of loyalty rebates), the provider will clearly state what discounts apply. Moreover, the provider must explain clearly and intelligibly how the discount affects the annual amount shown, enabling the consumer to make a comparison with other offers. If a provider offers a consumer an "introductory discount", the thereto-related conditions must be known in advance. In other words, it



must be clear to the consumer under what conditions they actually receive this “introductory discount” and therefore also in what cases (if applicable) he could miss out on it.

The elements presented in the offer are easily deducible or recognizable in the contract concluded later on the basis of the offer and acceptance and the invoice to be received later, so that the consumer can check for themselves whether they got what he had agreed on. The consumer will in any case be provided with the offer and the fixed-cost components as well as the supply tariffs per unit (kWh or m³) including taxes and surcharges in the contract, so that they can compare the offer with the contract established after acceptance of the offer. If the consumer generates energy themselves, and thus possibly feed energy into the grid, it must also be stated how the balance is calculated, and at what tariff any feeding (into the grid) will be compensated. Ultimately, the consumer will be able to see the cost calculation based on the energy actually supplied in the information that is included in the personalized offer based on which they entered into the contract.

With regard to transparency and comparability, ACM aims to emphasize the following. In their commercial practices, providers use various terms, such as estimated monthly payment, instalment payment or advance payment. If the monthly payment can deviate from the actual advance payment, the provider must state so. After all, the consumer will compare the estimated monthly payment with their current advance payment, and might base their decision on this. The terms (words) used by the providers should be clear and harmonized in order to increase comparability of the offers for consumers.

In addition to this method of how to make an offer clearly, it must also be clear whom the consumer is dealing with, and whether this is the one with whom the consumer will ultimately conclude a contract. A reseller must therefore make clear with whom the consumer is concluding a contract, and on what conditions. In addition, it must be clear to the consumer how to reach the other party, and how and with whom to file a complaint during the duration of the contract.

3.3.4 The contract

In the contract, the provider clearly states the date on which the contract was concluded, as well as the date on which the supply as agreed will begin and end.

In practice, the confirmed dates on which the supply, as agreed, will begin and end are sometimes only stated in the confirmation of the contract. This is also true for the advance payment, if applicable. This information may not be definitively known at the time the offer is made. If the definitive information is made available to the consumer only in the confirmation of the contract, the consumer must be informed about this in the offer, and explicitly agree to this.

Contracts are concluded for a fixed period or an indefinite period. In principle, freedom of contract applies when drawing up a contract. In that context, it should be noted that that, at least, the model contract must be offered (Section 95na of the Electricity Act 1998 and Section 52ca of the Dutch Gas



Act). This is a standard contract for an indefinite period at a variable tariff, and has been drawn up by ACM

Already when concluding the contract, the provider must inform the consumer about what will happen when the contract expires. This is to say, the provider must, when signing the contract, inform the consumer clearly and explicitly about what will happen when the contract expires, and what the new situation will be like. This must be laid down in the contract. The provider must therefore include in the contract the date when the term of the contract begins and the date when it ends. If the tariffs change after the term of the contract, the provider must explain the tariff changes at the time of signing the contract, and the consumer must explicitly agree to this. The provider is required to inform the consumer of the new tariffs in person and well before the contract expires. A reference to the website, on which the tariffs can be found, is not sufficient. The provider may also make the consumer a different offer.

Finally, it is important that the provider gets its money, and it must therefore also be clearly agreed on how and whom the consumer pays. If the provider is a reseller, it must be clear to the consumer whether they need to pay the reseller or the supplier, and to whom he can make a payment, thereby discharging them from their obligations.

3.3.5 Billing

Traditionally, an estimated amount is paid monthly in advance for the supply of energy: this is the instalment payment. At the end of the year or when the contract is terminated, whichever comes first, the annual energy bill or the final energy bill is drawn up. This annual or final bill, sent by the provider, must tie in, in a verifiable manner, with the originally accepted offer and the actual consumption.

The bill, too, must be clear and easy-to-understand to the consumer. That is why ACM believes it is important that the terminology and cost components used in the bill match the accepted offer and the contract. In other words: the consumer should be able to look at the offer, the contract and the invoice and easily check whether the invoice matches what was originally agreed upon. This means that the invoice should clearly show:

- The period that the bill in question concerns;
- The total consumption (in kWh and/or m³);
- The electricity or gas tariff at which the energy was supplied. This must match the tariffs stated in the contract, and they must include any interim tariff changes. These tariffs must include taxes and surcharges (such as VAT, energy taxes, etc.);
- The amounts consumed at what tariffs. It is important here that the relevant tariffs from the accepted offer can be deduced (this also applies to cases of interim tariff changes);
- The fixed costs, such as fixed supply costs and grid operation costs;
- The energy tax rebate;
- The total costs of the energy consumption in the period in question;



- The total amount that the customer will receive or needs to pay after deduction of the instalment payments so far, and what instalments have been included in this calculation.

In the event that the consumer generates energy themselves (for example with solar panels), and possibly feeds energy into the grid, the invoice must also clearly include how much energy has been fed into the grid, and what that means for that consumer's energy consumption.

The basic principle here is that the energy bill should reflect the information about the annual costs, at least in the way described above. In addition to that, the detailed breakdown of the cost items on the bill must be available to consumers, should they wish to have this. The supplier may choose to send the detailed breakdown along with the bill.

It does not matter who sends the bill to the consumer. Resellers, too, can do the billing. In that case, the supplier is responsible for the accuracy of the bill. If the reseller is the one sending the bill, the bill must be just as clear, and the consumer must be able to check it against the accepted offer as laid down in the contract.

When it comes to payment, it must be made clear in advance whom the consumer pays, thereby discharging them of their obligations, and what payment method may be used. The provider may charge a fee for the use of a particular payment method. It is, however, prohibited to charge more for a payment method than the costs of the provider's use thereof (Section 6:230k, paragraph 1 BW).

In the event of a switch, the consumer will receive a final energy bill. Pursuant to the Ministerial Regulation on end-users and monitoring of the Electricity Act 1998 and Dutch Gas Act, the consumer must receive this bill within six weeks. With regard to the annual energy bill, a period of eight weeks applies, that is to say, the consumer will receive this bill within eight weeks after the end of the year or the contract.

3.3.6 Termination or renewal of the contract

Termination

The termination of energy supply contracts has been specifically set out in Section 95m, paragraph 7 of the Electricity Act 1998 and Section 52b, paragraph 7 of the Dutch Gas Act. These sections stipulate that all supply contracts may be terminated with a notice of thirty days. An energy supply contract for an indefinite period may be terminated any time of the month with a notice of thirty days (Section 95m, paragraph 7 of the Electricity Act 1998 and Section 52b, paragraph 7 of the Dutch Gas Act). No fee will be charged for the termination of a contract for an indefinite period (paragraphs 8 of both sections). When concluding the contract, it must be clear to the consumer what the conditions of the contract are and under what conditions the consumer may get out of this contract and switch to another contract.

Renewal



A contract for a fixed term between the provider and the consumer may not, after the agreed supply period expires, be automatically renewed and converted into a contract for a fixed period. Consumers are always allowed to terminate automatically renewed contracts any month, and the notice period may not be longer than one month. It is not permitted to prescribe the moment of termination in the contract. Consumers may terminate the contract at the end of a month, but also on the tenth day of a month. In that case, the contract ends on the tenth of the next month. Consumers may also terminate the contract during the fixed term of the contract in order to prevent an automatic renewal. A timely termination of the contract takes effect immediately after the end of the fixed term.

Termination fee

The consumer may be charged a termination fee for the termination of a *fixed-term* contract. ACM has set reasonable termination fees in the Guidelines on Reasonable Termination Fees for Energy Suppliers. These guidelines also elaborate on the reasonableness of possible conditions in the contract for compensation of welcome gifts. In ACM's view, professional etiquette requires new providers to draw the consumer's attention to the fact that the previous or current provider may charge a termination fee for the termination of the previous contract. Failure to point out these possible additional costs is, in ACM's view, a misleading omission. This information is necessary for the consumer to be able to make a well-informed purchasing decision. In addition, the new provider is required to inform the switching consumer about the terms applicable to the switch to a new provider (see section 3.3.1).

3.3.7 Electricity disclosure

Pursuant to the Electricity Act 1998, energy suppliers are under the obligation to inform their end-users about the composition of the electricity they supplied in the previous calendar year. They do so by means of three electricity disclosure statements set out below.

Electricity disclosure per electricity product

In the bill or in a supplement to the invoice, the energy supplier explains to the consumer what the share (percentage) of each source of energy was that the supplier has used for the supply to the end-user in question, and what the environmental consequences of the electricity production using these particular sources of energy were.

Electricity disclosure for the entire supply company

The supplier will state:

1. each year, on its website for end-users, the electricity generation data of the electricity supplied by the supplier to its end-users in the previous calendar year, and;
2. a) at the latest in the period between the 1st of May of each calendar year and the 1st of May of the following year, in the bill or in a supplement and in the promotional material, the electricity generation data of the electricity supplied by the supplier to its end-users prior to this period, or;



- b) in the bill or in a supplement, the electricity generation data of the electricity supplied by the supplier to its end-users in the period to which the invoice relates.

Electricity disclosure for the entire parent group

If the energy supplier is part of a group within the meaning of Section 2:24b BW, the electricity generation data of the group as a whole will be communicated to the end-user in the bill, as well as in any promotional material addressed to the end-user.

Suppliers are therefore required to make multiple electricity disclosure statements. The electricity supplied must be expressed in kilowatt hours, broken down by sources of energy, indicating the share (in percentages) of each source of energy in the total energy mix. The different generation sources that must be identified are coal, natural gas, nuclear energy, and renewable energy sources: wind, solar energy, hydropower, biomass and other renewable energy sources. In addition, the percentage of electricity supplied from an unidentified generation source must be presented, broken down by imported electricity and other kinds of electricity.

On electricity disclosure statement, the environmental impact must be presented in terms of carbon dioxide emissions and radioactive waste resulting from the production of energy using various energy sources, caused by the total energy mix used by the supplier in the previous year, with the exception of "unknown". The statement may present this information directly or refer to a source where such information is available to everyone.