[NL] New regulation on compensation for network failures

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The Dutch Minister of Economic Affairs signed a new regulation on 24 October 2016 on a right of compensation for subscribers to public electronic communication services. These comprise subscribers to Internet, television, or telephone networks. Following the new rules, subscribers are entitled to compensation in case of full network failure. The new ministerial regulation follows after revision of the Dutch Telecommunications Act. The “Wet Versterking Telecommunicatiebeleid” (Reinforcement of Telecommunications Policy Act) provides a long-awaited reinforcement of the protection of subscribers.

The new ministerial regulation is meant to strengthen the position of end-users in case of network failures. Customers should be able to rely on the delivery of services that they buy. The minister stated that the bargaining position of consumers and small businesses is too weak to make private arrangements on compensation possible. Only a few service providers already offered compensation voluntarily. This was seen as a reason to implement mandatory compensation. These new rules are not meant to serve as compensation for damages following from the network failure. The compensation should be viewed as a general payment for the unavailability of the service. For compensation of damages, subscribers will have to rely on the general rules of the Dutch Civil Code.

The public electronic communications service provider is obliged to compensate the subscriber in the case of a complete network failure lasting more than 12 hours. This compensation will consist of one thirtieth of the total monthly subscription fee. The amount due rises by another thirtieth of the fee if the failure lasts for more than 24 hours. This amount increases incrementally for every 24 hours that the failure persists. The service provider can also organise alternative means of compensation, such as offering free data in the case of a mobile telephone subscription. However, this is only possible if the subscriber gives his explicit consent. Service providers are free to organise their own system of compensation. This includes the choice between automatic compensation or compensation after a request from the subscriber.

The new rules will commence on 1 July 2017. Until then, electronic communication service providers will have time to implement their systems for compensation or make alternative arrangements with their subscribers.

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Regeling van de Minister van Economische Zaken van 24 oktober 2016, Regeling categorieën niet-automatisch voortrollende vergunningen, Stcrt. 2016, 56649

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Regulation of the Minister of Economic Affairs of 24 October 2016, nr. WJZ/16152571, Regulation categories non-automatic forward-rolling licenses, Stcrt. 2016, 56649

Memorie van Toelichting Wet Versterking Telecommunicatiebeleid, Kamerstukken II 2014/15, 34271, nr. 3

https://zoek.officielebekendmakingen.nl/kst-34271-3

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