

Competition and Consumer Policy Section ,
Department of Jobs, Enterprise and Innovation ,
Earlsfort Centre,
Lower Hatch Street ,
Dublin 2.

Date : 11th July 2013.

Consultation on Implementation of Directive 2011/83/EU on Consumer Rights

Dear Sir,

Electric Ireland welcomes the opportunity to respond to the Consultation on Implementation of Directive 2011/83/EU on Consumer Rights. We acknowledge and support the spirit of the proposals as outlined.

One key concern for Electric Ireland as an energy supplier relates to the proposed provision under consultation section 37, 'Discretionary Contracts to be concluded by telephone', covering written acceptance by consumers where the telephone contact is made by the trader. Implicit in this is that the consumer will have to take an action, separate to the sales call, to confirm in writing that they accept the offer made to them in a telephone contact.

In delivering outbound sales campaigns Electric Ireland aims to persuade customers to switch to ourselves by presenting an attractive offer to customers whom we will usually have identified as suitable for such an offer. This is normal practice and an important element in making the competitive energy market in Ireland work. Customers, by and large, expect to be able to conclude such a switch with the minimum of inconvenience and in a one stop contact i.e. with no follow-on actions required of them. We have, as consequence, adopted our processes in order to make this happen.

However, in acknowledging that consent could still be important, consideration could be given to an approach, to achieve the same effect, whereby the trader is required to retain evidence, on a durable medium, and for a reasonable period, of the consumers consent to an offer. This would allow a trader, for example, to present a call recording (rather than a written confirmation) as evidence that a consumer had consented to an offer without any undue pressure.

We have provided responses to all the consultation questions below.

Regards

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ANNEX I QUESTIONS INCLUDED IN CONSULTATION

Q1. Should the implementing Regulations avail of the option to exempt off-premises contracts with a value of less than €50 from the Directive's provisions on consumer information and the right to of the consumer to withdraw from the contract. If not, should there be (a) no threshold or (b) a threshold set at an amount less than €50. If the latter, please state the threshold that should apply in your view.

Response 1

Electric Ireland agrees that the implementing Regulations avail of the option to exempt off-premises contracts with a value of less than €50 from the Directive's provisions on consumer information and the right to of the consumer to withdraw from the contract.

Q2. Should the implementing Regulations exempt on-premises contracts of a day-to-day kind that are performed immediately from the information requirements of Article 5 of the Directive? If not, why not?

Response 2

Electric Ireland agrees that the implementing Regulations exempt on-premises contracts of a day-to-day kind that are performed immediately from the information requirements of Article 5 of the Directive

Q3. Please give details of any mandatory pre-contractual information requirements of which you are aware (other than those indicated in paragraph 29) that apply to on-premises transactions and which require traders to provide information additional to that required by Article 5 of the Consumer Rights Directive.

Response 3

N/A

Q4. Should the implementing Regulations avail of the option to provide for a lighter information regime for off-premises contracts for immediate repair and maintenance work costing less than €200? If not, why not?

Response 4

N/A

Q5. Should the implementing Regulations require the consumer's written consent to the trader's offer and/or the trader's confirmation of that offer on a durable medium?

- 1) In all distance contracts to be concluded by telephone, or
- 2) In distance contracts to be concluded by telephone where the telephone contract leading to the contract was made by the trader, or
- 3) In no distance contracts to be concluded by telephone.

Response 5

Electric Ireland agrees in principle that evidence of a consumers consent to the traders offer could be important. However we believe that a more appropriate approach could be to require traders to retain evidence (not necessarily written) on a durable medium, for a reasonable period, that they have a consumers consent to an offer. This would allow, for example, a trader to present a call recording as reasonable evidence that a consumer had consented to an offer, without any undue pressure.

Q6. Should the implementing Regulations avail of the option to extend the Directive's consumer information provisions to off-premises and distance contracts for social services ? If not, why not?

Response 6

N/A

Q7. Should the implementing Regulations avail of the option to extend the Directive's consumer information provisions to off-premises and distance contracts for healthcare? If not, why not?

Response 7

N/A

Q8. Should the implementing Regulations avail of the option to extend the Directive's consumer information provisions to gambling contracts? If not, why not.

Response 8

N/A

Q 9. Are the proposed rules relating to the cancellation of ancillary contracts clear and fair? Do they need to be supplemented in general or in respect of particular types of ancillary contract? Is requiring the trader party to the ancillary contract to reimburse the consumer the best way to proceed, or should the trader party to the principal contract be responsible for reimbursements

arising from the ancillary contract?

Response 9

Electric Ireland agrees that the rules relating to the cancellation of ancillary contracts are clear and fair. The proposed arrangements as set out seem reasonable in all the circumstances.

Q10. Should the implementing Regulations avail of the option to extend the right of withdrawal to off-premises and distance contracts for social services ? If not, why not.

Response 10

N/A

Q11. Should the implementing Regulations avail of the option to extend the right of withdrawal to off-premises and distance contracts for healthcare? If not, why not.

Response 11

N/A

Q12. Should Article 21 of the Directive on communication by telephone apply to all consumer contracts for goods, services or digital content? If not, what exceptions should apply and why?

Response 12

Electric Ireland accepts the proposed provisions in relation to application of Article 21.

Q13. Should the National Consumer Agency be empowered to apply for a court order in respect of a breach of the Directive's provisions in the District as well as the Circuit Order? If not, why not?

Response 13

Electric Ireland agrees with this proposed provision.

Q14. Should breaches of all of the Directive's provisions other than Articles 18 and 20 on delivery and the passing of risk be subject to criminal law proceedings? If not, which provisions of the Directive are inappropriate for criminal law enforcement and why?

Response 14

Electric Ireland supports an approach based on the promotion of voluntary compliance where possible. We support additional flexibility for the National Consumer Agency in responding to infringements where voluntary compliance is demonstrably not working or is rejected unreasonably by a trader.

Q15. What form should the consumer's right of redress take in cases where he or she seeks to recover payments made to the trader that the trader is obliged to return under the Directive? What form should the trader's right of redress take in the event of a failure by consumers to return goods in accordance with their obligations under the Directive?

Response 15

Electric Ireland supports the proposed provisions in respect of both the consumers and the traders right of redress in the circumstances as described.