

**Telecommunications and Internet Federation**  
**Submission to Consultation on Proposed Early Transposition**  
**by Ireland of Articles 19 and 22 of Directive 2011/83/EU on**  
**Consumer Rights**

9 November 2012

**Introduction**

The Telecommunications and Internet Federation (TIF) welcomes the opportunity provided by this public consultation to comment on the proposed early transposition by Ireland of Articles 19 and 22 of Directive 2011/83/EU on Consumer Rights. TIF appreciates the extension by the Department of Jobs, Enterprise and Innovation of the deadline for submissions to the consultation.

**Telecommunications and Internet Federation**

TIF is the representative body for the electronic communications industry in Ireland and is affiliated to the Irish Business and Employers Confederation (IBEC). It represents companies involved in broadcasting, cable, fixed, fixed wireless, internet, mobile, outsourcing, satellite and wireless internet service provision. Our industry has invested €2.5 billion in the nation's communications infrastructure over the last five years.

**Difficulties caused by early implementation**

TIF supports the objective of Articles 19 and 22 of the Directive on Consumer Rights but has serious concerns regarding the proposed transposition of Article 19 in particular one year before the date required by European law. The Directive itself requires end 2013 adoption and provides a further six month period prior to the requirement for enforcement by mid 2014. This notice period has been put in place by the EU authorities because they understand the complexity of the task companies face in reviewing billing arrangements, payment acceptance methods, IT systems and accounting procedures to ensure compliance. There is no objective reason why Ireland should accelerate the transposition of Article 19 by one year and no justification is advanced in the Department's consultation paper.

It has become apparent during the extended consultation period that certain companies will face significant additional costs and operational challenges due to the proposed early implementation by Ireland of Article 19. These costs and challenges are due to the extremely short notice of the proposed early implementation from an operational and planning perspective.

Depending on the configuration of a company's IT system the implications of the directive could be extremely significant. All IT projects are planned long in advance, particularly when significant resources are required or where the project has other IT ramifications. The proposed end 2012 transposition of Article 19 will make this impossible.

Best practice in both public and private sector organisations would not countenance the implementation of a systems and operational change of this sort at such short notice. This

can be readily ascertained by informal consultations with the management of the IT units of organisations serving large numbers of consumers. The holding of the public consultation does not equate to adequate notice because by definition the outcome of any consultation can not be predicted. Furthermore the timeframe is unclear because nothing is said in the consultation paper about when it is envisaged that a commencement order for the Statutory Instrument is to be signed by the Minister.

TIF urges a reconsideration of the proposed timeframe of end 2012 transposition of Article 19 in view of the above issues. To avoid creating difficulties for business that were never intended by the legislators involved in framing this directive TIF recommends that Ireland align with the dates for transposition and enforcement in the directive, namely end 2013 and mid 2014.

### **Fees in respect of the use of a given means of payment**

At Question 4 the question is posed as to for what sectors should the headline price quoted to the consumer be required to include any fees for using a particular payment method.

This approach will work well in sectors where payment is made in advance e.g. on line purchase of an airline ticket. TIF member companies generally bill customers after the service has been provided. A practical issue is that such companies will not necessarily know the payment method the customer will decide to use. In some cases customers change the payment method they use from bill to bill. In these instances it will be impossible to quote a fully inclusive price.

TIF recommends that the approach should be that the headline price should include any fees for using a particular payment method in the incidence of (a) an on line sale and (b) where the payment method is known in advance i.e. where a direct debit arrangement is in place.

### **Costs allowable for the purposes of Article 19**

TIF supports the principle that only costs arising directly from the use of a given means of payment should be taken into account in determining the cost borne by the trader for the purposes of Article 19. Such costs should be defined to include fraud losses or penalties imposed by card companies. The rationale for this is that such costs arise from the acceptance of cards as a payment method. These costs would not arise if payment by card was not accepted; ipso facto they form part of the costs arising from the acceptance of cards by the business in question as a payment method and so should be taken into account in computing the costs associated with this payment method.

It is of note that the UK's Department of Business, Innovation and Skills has indicated that 'losses through payment fraud' form part of the cost base allowed in calculating the costs associated with a payment method. TIF encourages the Irish authorities to follow this precedent for the reasons outlined above.

Costs allowable for the purposes of Article 19 should incorporate the full range of direct and indirect costs including for instance:

- Handling costs associated with accepting payment by cash or cheque

- Processing costs associated with accepting payment by cheque
- Merchant service charges
- Fees payable to card companies and payment processors
- Relevant IT related costs
- Fraud related costs as detailed above

An average cost per transaction should be applicable. It should be noted that deriving such costs will be a detailed and time consuming management accounting exercise.

### **Deposits**

Many TIF members routinely seek deposits from new customers as a security against bad debts. Some companies waive the requirement for a deposit where the customer pays by direct debit because they find that such customers perform better in terms of bad debts. Deposits are also on occasion sought from customers with a poor track record regarding bad debts. Deposits are refunded provided all outstanding accounts have been settled.

From the circumstances in which deposits are sought it is clear that the purpose is credit control where there is evidence of credit risk. The consultation paper states that if deposits are sought from customers who pay other than by direct debit that such deposits are a fee in respect of the use of a given method of payment. TIF is of the view that this is not the case and urges a reconsideration of this point to take account of the reality relating to deposits.

### **Regulatory Impact Assessment**

Article 19 has not been subject to the European Commission's regulatory impact assessment procedure. It is understood that the Department of Jobs, Enterprise and Innovation intends to conduct a regulatory impact assessment. TIF urges that this assessment focus on the practical issues associated with transposition by Ireland of Article 19 in particular and also address the other issues raised above.

### **Conclusion**

TIF supports the implementation by Ireland of the Directive on Consumer Rights but has serious concerns regarding the proposed end 2012 transposition of Article 19. This is because of the operational challenge and additional costs faced by certain companies resulting from early implementation. TIF urges transposition at end 2013 in line with the requirements of the directive. If this is not acceptable it is recommended that a notice period of no less than 6 months be provided from the date of transposition.

### **Further information**

For further information please contact:  
Telecommunications and Internet Federation  
84-86 Lower Baggot Street  
Dublin 2  
01-6051528  
tif@ibec.ie