



An Roinn Post, Fiontar agus Nuálaíochta
Department of Jobs, Enterprise and Innovation

Consultation on Proposed EU Directive on Certain Aspects Concerning Consumer Contracts for the Supply of Digital Content [COM (2015) 634]

The European Commission recently published a proposal for a Directive on Certain Aspects Concerning Consumer Contracts for the Supply of Digital Content. The proposed Directive which forms part of the Commission's Digital Single Market Strategy can be accessed at:

<https://ec.europa.eu/transparency/regdoc/rep/1/2015/EN/1-2015-634-EN-F1-1.PDF>

The Impact Assessment for the proposal can be accessed at:

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=SWD%3A2015%3A274%3AREV1>

A related legislative proposal on consumer contracts for online and other distance sales of goods has also been published by the Commission as part of the Digital Single Market Strategy. As the current EU Presidency has decided to focus for now on the digital content proposal, views will be sought on the online and distance sales proposal at a later stage.

The proposed Directive defines digital content as –

- data produced and supplied in digital form whether on a tangible medium such as a CD or DVD or through downloads or streaming, for example video, audio, apps, digital games and other software;
- services allowing the creation, processing, or storage of data in digital form provided by consumers or the sharing of, and other interaction with, data in digital form provided by other users, for example cloud and social media contracts.

The Directive lays down certain requirements concerning digital content contracts, in particular provisions on the conformity of digital content with the contract, remedies where digital content does not conform with the contract and rules on the exercise of those remedies, along with provisions on the modification of digital content supplied over a period of time and the right of consumers to terminate contracts of more than 12 months, or of indeterminate, duration. The proposal includes a full harmonisation clause which provides that Member States shall not maintain or introduce provisions in national legislation that diverge from those in the Directive.

Part 3 of the Draft Scheme of the Consumer Rights Bill issued for consultation by the Department in May 2015 contains proposals on digital content which overlap with those in the European Commission proposal; the draft Scheme can be accessed at:

<https://www.djei.ie/en/Consultations/Consultation-on-the-Scheme-of-a-proposed-Consumer-Rights-Bill.html>

As the Commission's intention to publish its proposal was announced only in May 2015 shortly before the publication of the draft Scheme, its provisions could not have been taken into account by the Department in framing the provisions of the Scheme. A number of amendments have been made to the digital content provisions of the draft Scheme in the light of the Commission proposal in advance of the submission of the Scheme to Government. If the proposed Directive is adopted during the drafting of the Bill, further changes will be made to the relevant provisions of the Bill if these are necessary to comply with the provisions of the Directive.

If you have any queries about the consultation, you may contact the Department's Competition and Consumer Policy section by email at conspol@djei.ie or by phone at (01) 6312652. Responses to the consultation should be returned by e-mail with Consultation on Proposed EU Directive on Certain Aspects Concerning Contracts for the Supply of Digital Content in the subject line to conspol@djei.ie or by post to Competition and Consumer Policy Section, Department of Jobs, Enterprise and Innovation, Earlsfort Centre, Lower Hatch Street, Dublin 2 by **close of business on Friday, 15th April 2016**.

Respondents should be aware that responses to this consultation will be published on the Department of Jobs, Enterprise & Innovation website. Any material contained in submissions to the consultation which respondents do not wish to be made public in this way should be clearly identified as confidential in the submission. Respondents should also be aware that submissions may be disclosed by the Department in response to requests under the Freedom of Information Act 2014. Any information that is regarded as commercially sensitive should be clearly identified in submissions and the reason for its sensitivity stated. In the event of a request under the Freedom of Information Acts, the Department will consult with respondents about information identified as commercially sensitive before making a decision on a freedom of information request.