

**UPC Ireland response to the Department of Jobs, Enterprise and Innovation
consultation on the Consumer Rights Directive 2011/83/EU**

UPC is Ireland's leading triple play provider of tv, broadband and phone services. Through its fibre powered network, UPC offers over 1 million services to over 540.000 customers throughout the country.

UPC welcomes the opportunity to submit its views on the proposed transposition of EU Directive 2011/83/EU and has limited its commentary to consultation questions that are of relevance to the UPC business.

General observations

Right of Withdrawal

Article 16 of the Directive provides for exceptions to the right of withdrawal in respect of distance and off-premises contracts. These exceptions are listed in Article 9 to 15 of the Directive. UPC notes the provisions of Article 14(4)(a)(i) of the Directive and believes the following needs to be addressed in the Regulations:

- (i) "Audiovisual media Services" as defined in Directive 2010/13/EC (Audiovisual Media Services Directive) should be excluded from the Regulations, or where the Department believes this not to be possible based on transposition obligations, these services should be specifically excluded from the definition of digital content. Audiovisual media services including on-demand services cannot be the subject of a right of withdrawal, particularly in the context of pay-per-view television and transactional video on-demand where consumers have chosen to purchase content at a point in time (e.g. immediate viewing or within a particular timeframe (e.g. within 48 hours).
- (ii) Article 14(4)(a)(i) places a disproportionate burden on traders providing services who have failed to comply with the information points under (h) or (j) of Article 6(1). The Directive extends the period of withdrawal by 12 months from the end



of the initial withdrawal period (which is 14 days) where traders fail to provide this information. This combined with transposition of Article 14(4)(a)(i) would result in traders like UPC being unfairly penalised and prevented from claiming compensation for services provided and consumed during the withdrawal period. UPC believes that this provision should be amended so that traders are compensated for services that have been provided at the customer's request up to and for the duration of the withdrawal period in question. The Regulations should ensure wording to this effect appears in the final draft of the Regulations to ensure such an anomaly does not arise.

UPC responses to specific questions in the consultation paper

Question 1: 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 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.

UPC agrees that the Regulations should avail of the option to exempt off-premises contracts with values of less than €50 and in addition, the right of the consumer to withdraw from the contract should they so choose. UPC respectfully suggests that the text of the Regulations when finalised, should make it clear that "*the less than*" €50 figure is the consideration payable by the consumer over the term of the contract rather than any upfront payment payable by the customer.

Question 5: 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.

UPC supports the Department's position not to impose the 'written consent' obligation in cases where contact has been initiated by the consumer.

As the Department may be aware, the telecommunications sector is intensely competitive which means that Irish consumers, of their own accord, regularly switch from one provider to another. To impose an obligation in such instances risks slowing down the ease with which consumers can freely choose to switch providers and obtain services at a price point that best suits their needs. It should be noted however that in all instances, consumers that avail of services on offer by telecommunications providers such as UPC, get as a matter of course, written confirmation of the services they have procured. Given this, imposing an additional requirement of obtaining 'written consent' where consumers themselves have initiated contact with the trader would seem disproportionate and unnecessary.

With respect to the telecommunications sector, where a contract has been concluded over the phone further to initial contact having been made by the service provider, a call recording may sometimes be available. Should the Department decide that consent requirements are to be imposed on all distance contracts concluded by telephone, then the call recording should be sufficient to demonstrate consumer consent and the definition of "*durable medium*" should be extended to include call recordings.

More generally, UPC would draw the Department's attention to Article 7(1) where the information to be provided under Article 6(1) must be provided to the consumer on paper or if the consumer agrees, on another durable medium. UPC believes that in transposing this Article into Irish law provisions should be included so that where a consumer can receive information via a durable medium (e.g. where the consumer has ordered online and provided the trader with their email address) then in that instance, the telecommunications provider should be free to provide the information referred to in Article 6(1) via email without having to obtain the consumer's express consent to do so.

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