

**eircom Group**

**Response on behalf of eircom Group to the  
Department of Jobs, Enterprise and Innovation:**

**Consultation on Article 19 (Fees For The  
Use of Means of Payment) and Article 22  
(Additional Payments) of Directive  
2011/83/EU on Consumer Rights**



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## **EXECUTIVE SUMMARY**

eircom Group is pleased to have the opportunity to respond to this important consultation on Consumer Rights.

eircom Group comprises eircom Ltd and Meteor, hereinafter “eircom”. eircom is the largest supplier of fixed line and mobile telecommunications, and internet services in Ireland. We provide a wide range of retail services to our consumer, business and corporate customers. Across our services we have approximately 2 million customers. We offer our customers a variety of bill payment methods, including electronic payments, cash and cheque.

The Consumer Rights Directive (2011/83/EU) represents another important step to implement EU wide consumer protection controls. This consultation process focuses solely on the transposition of Articles 19 and 22, which the Minister for Jobs, Enterprise and Innovation, has decided must be transposed into Irish Law by the end of 2012. We look forward to responding to any consultation on the transposition of the remaining Articles.

In general eircom agrees with the proposals on the transposition of Articles 19 and 22. The proposals will put in place important measures to protect consumer from excessive charges, while at the same time allowing companies to fully recover their legitimate costs. The proposals will provide certainty and assurances to consumers when making purchasing decisions.

The scope of Articles 19 and 22 is broad and captures all sectors. However the consultation discussion chiefly concentrates on the procurement of tickets for airlines, ferries and events, which do not reflect the realities in other sectors. Implementing the proposals across all sectors will create difficulties and deserve further consideration and review.

There are matters of concern which we address in the responses to the questions:

1. eircom bills its customers after service has been provided but before customers choose the payment methods. It is not possible therefore to include the payment charges in ‘headline’ price as proposed.
2. eircom uses security deposits as a means of mitigating credit risks and not as a charge for certain payment methods.
3. All direct and indirect costs (including bad debt and fraud) should be allowable in payment charges.

In responding to the consultation, we do not answer questions seeking data relating to payment charges as they are outside of our own industry.

## **Response to Consultation Questions**

### **What are Fees ‘In respect Of The Use Of A Given Means Of Payment’?**

**Q4. Should consideration be given to adopting a provision similar to Article 23(1) of the Air Services Regulation for sea carriers and/or other sectors. If so, which other sectors should be covered? If the provision should not be extended in this way, why not?**

The proposal that the ‘headline’ price include payment charges be applied to all sectors does have merit. However there are practical issues.

In the case of online booking the payment method is apparent at the time of purchase, it must be either a debit or a credit card. This model does not transfer to sectors, such as utilities, that bill customers after the service has been consumed. The bills are issued at a point in time that is distinct from when payment is made. The practical effect is that the billing party may not know the payment option that the customer will choose. There are exceptions when customers have chosen in advance to pay by direct debit. However many customers vary their payment methods from one bill to the next choosing from; over the counter payments in banks and post offices, posting cheques and paying at bank ATMs.

eircom would therefore disagree with the proposal as outlined. An alternative however would be to modify the proposal so that when the payment method is known, at the point of sale (online bookings) or known in advance (direct debit) for utility bills, the headline price may include the appropriate payment charge. The proposal should not be enforced for other payment methods where consumers can exercise a choice.

In general this issue should be considered further to assess the impact in different sectors.

### **Fees that Exceed the Cost Borne by the Trader**

**Q8. Do you agree 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. If not, what other costs should be taken into account in your view?**

All costs that relate to a particular method should be allowable when setting the relevant charge.

The costs directly borne by the company are clearly identifiable. These can include, as noted in paragraph 63 for credit or debit card payment, merchant service charge, any additional charges for chargebacks or other transactions, fees to payment services intermediaries, IT and other equipment costs directly relating to the processing of card payments, as well as such operating costs as can be shown to result directly from the processing of these payments.

Likewise other payment methods attract costs of a specific nature. Over the counter cash payments in banks or post offices incur transaction and handling charges that reflect the very manual nature of the transactions. Similarly cheque payments have unique transaction costs that include cheque clearance and other handling charges. As noted in our response to Question 4 it is not possible to apply these charges in advance as the billing party will not know the payment option that the customer will choose.

Costs associated with fraud and bad debt should be permitted for inclusion. Certain payment methods, such as direct debit, are more likely to ensure that payments are received. Whereas cash and cheque payments may suffer delays as customers 'long finger' payments or forget to settle their bills, creating credit management overheads. Card payments have the potential to suffer fraud as noted in the consultation.

It is clear that each payment method has a set of direct and indirect costs that should be permitted in the calculation of payment charges.

At pages 34/35 the consultation document asserts that the use of a security deposit for customers that do not pay by direct debit is "*a fee in respect of the use of a given means of payment*". This practice is employed by eircom as a means of mitigating a credit risk, which is based on experience and should not be characterised as a charge on a payment method. The deposit is required of new customers and customers that have had a poor payment record. The deposit is returned after one year once a good payment record is established. In general the payments of customers that pay by direct debit are more reliable.

## **Scope of Articles 19 and 22**

**Q11. Should Article 19 and/or Article 22 be applied to all of the sectors excluded from the scope of the Consumer Rights Directive other than financial services? If not, why not?**

Yes, in the interests of consistent consumer protection, subject to the comments in the preceding responses.

**Q12. Should off-premises transactions below €50 be subject to Articles 19 and 22. If not, why not?**

Yes, again in the interests of consistent consumer protection. These transactions may be more prone to have charges applied due to their low value.

### **Enforcement of Articles 19 and 22**

**Q13. Should Article 19 and/or Article 22 be subject to both criminal and civil enforcement? If not, why not?**

**Q14. Should the National Consumer Agency be empowered to apply for prohibition orders in respect of breaches of Articles 19 and 22 in the District Court as well as the Circuit Court? If not, why not?**

**Q15. Should consumers be given a private right of redress for payment charges in breach of Article 19 and additional payments in breach of Article 22. If not, why not?**

**Q16. Should a reversal of the burden of proof along the lines proposed in paragraphs 81-82 apply in civil and criminal proceedings involving breaches of Articles 19 and 22? If not, why not?**

eircom supports the proposed enforcement measures outlined in the consultation at Section VII (referred to in Questions 13 to 16) and considers that the proposed measures are reasonable and proportionate.

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