



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Regulatory Guidance on Title III: End-User Rights of the European Electronic Communications Code

Information Notice

Reference: ComReg 20/111R

Version: Second (20.2)

Date: 23/12/2020

An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation

1 Lárcheantar na nDugaí, Sráid na nGildeanna, BÁC 1, Éire, D01 E4X0.
One Dockland Central, Guild Street, Dublin 1, Ireland, D01 E4X0.
Teil | Tel +353 1 804 9600 Suíomh | Web www.comreg.ie

Additional Information

Document No:	20/111R
Date:	23 December 2020

Revision Control

Revision	Comment	Publication Date
20.1	First edition	10 November, 2020
20.2	Second edition	23 December, 2020

This document is revision controlled.

The revision numbering scheme indicates the year of publication and edition within that year. Thus, for example, “20.1” indicates the first edition within the year 2020, “20.2” would be the second edition of 2020 and “21.1” would be the first edition in 2021, and so on.

The “Publication Date” in the Revision Control indicates the date on which the original and any revised document is added to ComReg’s website, www.comreg.ie

At the time of updating the Guidance, ComReg will explain and describe the changes to any updated versions of the document.

Content

Section	Page
Legal Disclaimer	5
1 Regulatory Guidance on End-User Rights in the European Electronic Communications Code	7
1.1. Introduction and objectives of this Guidance.....	7
1.2. Scope of the Guidance	9
1.3. General aims of the Code	11
1.4. Harmonisation and impact of the Code.....	11
1.5. Overview of End-User Rights	13
1.6. Which ECS are in scope?.....	14
1.6.1. Rationale behind new ECS categories	15
1.6.2. Characteristics of ECS subject to the Code	16
1.6.3. Three categories of ECS.....	16
1.6.4. Which obligations apply?	18
2 Contract Information Requirements	20
2.1 Overview of Article 102 requirements.....	20
2.2 Scope of Article 102.....	21
2.3 Impact of new contract information rules on existing law.....	22
2.4 Article 102 – practical matters.....	22
2.4.1 Provision of contract information on a durable medium.....	22
2.4.2 Meaning of “durable medium” and any exceptions	25
2.5 Contract Summary.....	25
2.5.1 What information must be included in the Contract Summary?	26
2.5.2 Timing for delivery of the Contract Summary	28
2.5.3 Must the Contract Summary be provided on a durable medium and what records must be kept?	30
2.5.4 Provision of the Contract Summary – practical matters.....	31
3 Other End-User Requirements of the Code	33
3.1 Introduction.....	33

3.2	Article 102 (5) – Consumption monitoring and information.....	33
3.2.1	Usage monitoring and control facility and notifications	34
3.2.2	Article 102 (6) – Potential for additional measures relating to consumption 40	
3.2.3	Other monitoring and bill transparency tools.....	40
3.3	Article 103 - Transparency, comparison of offers and publication of information.....	42
3.3.1	Article 103 (1) – Transparency of contracts and offers.....	43
3.3.2	Article 103 (2) – Independent comparison tool.....	46
3.3.3	Article 103 (3) – Criteria for and certification of a comparison tool	48
3.3.4	Article 103 (4) – Public interest information	49
3.4	Article 104 - Quality of service related to IAS and publicly available ICS	51
3.4.1	Article 104 (1) and (2) – Publication of quality of service information	52
3.5	Article 105 - Contract duration and termination.....	56
3.5.1	Article 105 (1) Contract duration and termination.....	57
3.5.2	Article 105 (3) – Automatically prolonged fixed duration contracts: notice of end of contract and best tariff advice/information	59
3.5.3	Article 105 (4) – Contract change notification.....	70
3.5.4	Article 105 (6) – Contract termination and compensation due.....	73
3.6	Article 106 - Switching and number portability	75
3.6.1	Article 106 (1) – Internet Access Switching	75
3.6.2	Article 106 (5) / (6) – Switching and porting processes.....	78
3.6.3	Article 106 (6) – Prepay credit refunds.....	83
3.6.4	Article 106 (8) – Compensation for abuses, delays or failures in the porting / switching processes.....	87
3.7	Article 107 - Bundled offers	88
3.7.1	Article 107 – Definition and application of bundles.....	89
3.7.2	Article 107 (2) - Terminating a bundle due to failure of provider	97
3.7.3	Article 107 (3) – Extending contract of bundle elements	97
4	Appendices.....	99
	Annex 1: Consolidated pre-contractual requirements (by theme).....	100
	Annex 2: Additional Legislative Sources	132

Legal Disclaimer

This document (hereafter the “**Guidance**”) is not a binding legal document and also does not contain legal, commercial, financial, technical or other advice. The Commission for Communications Regulation (“**ComReg**”) will have regard to the Guidance as appropriate when exercising its functions and powers but it is not bound by this Guidance, nor does it necessarily set out the ComReg’s final or definitive position on particular matters.

To the extent that there might be any inconsistency between the contents of this document and the due exercise by ComReg of its functions and powers, and the carrying out by it of its duties and the achievement of relevant objectives under law, such contents are without prejudice to the legal position of ComReg. If there is a conflict between this document and any legal requirements referred to in this document, the latter shall prevail. The authoritative interpretation of the European Electronic Communications Code,^[1] national or any European Union law and any legal duties or obligations arising thereunder are within the remit of the Irish and EU Courts. Inappropriate reliance ought not therefore to be placed on the contents of this document.

In particular, the Guidance does not intend to presuppose the ongoing legislative process for the transposition of the European Electronic Communications Code into Irish law. ComReg reserves the right to update or amend this document and its views therein as appropriate, including to take account of legislative developments, guidance from relevant bodies, advancements in technology, or any other matters which may impact ComReg’s views.

Where this document expresses ComReg’s views regarding future facts and/or circumstances, events that might occur in the future, or actions that ComReg may take, or refrain from taking in the future, such views are those currently held by ComReg, and such views should not be taken as the making of any statement or the adoption of any position amounting to a promise or representation, express or implied as to how it will or might act, or refrain from acting, in respect of the relevant area or activity concerned, nor, in particular, give rise to any expectation or legitimate expectation as to any future action or position of ComReg.

Whilst all reasonable efforts have been made to ensure that the contents of the Guidance are as complete, up-to-date and accurate as possible, no representation is made, nor any warranty given by ComReg, with regard to the accuracy or reasonableness of any matters that may be set out herein, nor does ComReg accept

^[1] Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast).

any responsibility for any loss, consequential loss or damage of any kind that may be claimed by any party in connection with same or with this document, its contents, or any other information or document associated with this document, and ComReg expressly disclaims any liability in these respects.

1 Regulatory Guidance on End-User Rights in the European Electronic Communications Code

1.1. Introduction and objectives of this Guidance

1. The Commission for Communications Regulation (“**ComReg**”) is the statutory body responsible for the regulation of the electronic communications sector (telecommunications, radio-communications and broadcasting transmission). ComReg has a range of functions and objectives in relation to the provision of electronic communications networks, electronic communications services (“ECN” and “ECS” respectively) and associated facilities in accordance with European Union and national legislation.¹
2. This Guidance is issued by ComReg in light of the new [European Electronic Communications Code](#)² (the “**Code**”) which will, once transposed into Irish law, have a significant impact on the electronic communications framework in Ireland and the scope of regulated electronic communications services. The Guidance is intended to give providers of ECS³ to the Irish market an overview of the key retail aspects and end-user rights that will be applicable under the Code. Providers will need to ensure *inter alia* that their contractual terms and conditions comply with the Code and that they provide certain minimum contractual information to consumers⁴ (and where relevant, microenterprises, small enterprises and not-for-profit organisations⁵) prior to entering into contracts.
3. The Guidance also highlights the new definition of ECS created by the Code, which is now comprised of three main categories of ECS, based on a functional approach.⁶

¹ In particular, under sections 10 and 12 of the Communications (Regulation) Act, 2002 (as amended). For the new definitions of ECN and ECS under the Code, see Article 2 of the Code.

² Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast).

³ The term “providers” refers to a provider of any category of ECS under the Code, unless expressly indicated to the contrary or where the context otherwise implies.

⁴ Article 2 (15) of the Code: “Consumer” means any natural person who uses or requests a publicly available electronic communications service for purposes which are outside his or her trade, business, craft or profession”.

⁵ These terms are not defined in the Code however we anticipate they will be defined upon transposition. The terms ‘microenterprise’ and ‘small enterprise’ are likely to align with the definitions of those terms in the Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (which is referred to in Recital 68 of the Code).

⁶ See definitions in Article 2 of the Code. The three categories of ECS are discussed in detail in Section 1.6 “Which ECS are in scope?” of this Guidance.

4. With this in mind, it is important that providers consider the specific service(s) that they offer or provide and ascertain which obligations apply to them, bearing in mind that providers may well provide one or more categories of ECS through the same consumer-facing service, such as a mobile phone subscription and handset, which provides interpersonal communications services (voice, text / SMS etc.) and internet access services.
5. To recap, the main objectives of this Guidance are to:
 - Highlight some of the most important provisions from the perspective of electronic communications retail services, such as the key end-user rights provisions.
 - Assist providers to understand their regulatory obligations under the Code regarding ECS contracts⁷, and more generally, to give practical guidance on the minimum information requirements for ECS contracts and how that information might be provided.
 - Highlight that the Code extends certain rights afforded to consumers of ECS to microenterprises, small enterprises and not-for-profit organisations, unless they have explicitly agreed to waive those rights.⁸
 - Increase awareness of the requirements for ECS contracts⁹ to contribute to a more open, transparent and competitive market.
 - Provide guidance on the end users rights provisions in Articles 102 (5) and (6) and on Articles 103 to 107.
6. ComReg has consulted, where relevant, on the contents of this Guidance with the Competition and Consumer Protection Commission. In some cases, ComReg has included reference in the Guidance to its views of best practice which ComReg believes will be of value to industry when implementing new procedures and setting up technical systems to address the requirements of the Code.
7. ComReg notes the Department of Environment, Climate and Communications (the "Department") recently announced that Ireland's transposition of the Code will be completed by the end of Q1 2021/early Q2 2021. ComReg's Guidance relates to the obligations of providers once the Code is fully effective in Irish law.

In terms of further context, please note the following:

⁷ 'ECS contract' for the purpose of this Guidance means a "contract or any corresponding offer" within the meaning of Article 102 (1) of the Code.

⁸ For example, the rights set out in Articles 102 (2), 105 (2), 105 (7) and 107 (4) of the Code.

⁹ Where ComReg refers to 'ECS contracts' it includes contracts with consumers, microenterprises, small enterprises and not-for-profit organisations, unless otherwise stated.

- ComReg has assumed, for the purposes of this Guidance, that ComReg will be the national regulatory authority (i.e. the 'Regulator') in instances where the Code directly imposes obligations on or gives responsibility to the national regulatory authority. ComReg has not assumed it will have powers in respect of matters within the discretion of the Member State. ComReg awaits implementation of the Irish transposition measures for clarity on the full scope of its powers under the Code.
- ComReg intends to update the Guidance to reflect relevant transposition measures following their enactment into domestic law and as appropriate.
- The contents of this Guidance document are for information and guidance purposes only and are strictly subject to the Legal Disclaimer above, and any views expressed, or conclusions drawn by ComReg in this Guidance may be subject to change upon receipt of relevant guidance or following transposition of the Code.

1.2. Scope of the Guidance

8. The Guidance is structured as follows:

- Sections 1.3 and 1.4 outline the aims of Code, including the level of harmonisation it requires and the national laws that, at the time of writing, remain in place.
- Section 1.5 provides a high-level overview of the key 'End-User Rights' (Title III) provisions in the Code.
- Section 1.6 sets out the three types of ECS subject to regulation under the Code and their key characteristics.
- Section 2 focuses on Article 102 of the Code, which provides for the right to receive certain minimum pre-contractual information and explains the new Contract Summary requirements. This includes a discussion of the key elements of Article 102 and some practical considerations.
- The "*Consolidated Pre-contractual requirements (by theme)*", in Appendix 1 of this Guidance contains ComReg's view of the consolidated minimum ECS contract information requirements (e.g. main characteristics, price, duration etc.), in a thematic, list format. These lists consider the Article 102(1) requirement to provide information required by Annex VIII of the Code and by Articles 5 and 6 of the EU Directive on Consumer Rights (Directive 2011/83/EU),¹⁰ which is implemented in Ireland by the European Union (Consumer Information,

¹⁰ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (the "**Consumer Rights Directive**").

Cancellation and Other Rights) Regulations 2013 (S.I. No. 484 of 2013) (the “**Consumer Information Regulations**”). Section 3 focuses on assisting providers to understand their regulatory obligations under Articles 102 (5) & 6) (consumption monitoring and control), Article 103 (transparency, comparison and publication of offers), Article 104 (quality of service), Article 105 (contract duration and termination), Article 106 (switching and porting) and Article 107 (bundled offers).

- Section 3 further provides some practical guidance on the obligations of providers under those Articles 102 (5) and (6) and Articles 103 to 107, in particular regarding: the provision of facilities to monitor usage, alerts and notifications on consumption limits; independent comparison tools and publication of information on the terms and conditions of offers and quality of service; contract duration and termination including notifications on end of contract and best tariff advice, handset unlocking; IAS switching and prepaid credit refunds; and bundled offers.
9. In light of queries from industry, ComReg has decided to focus the contract-related aspects of the Guidance on the information requirements for ‘distance’ contracts rather than those for ‘on-premises’ contracts, within the meaning of the Consumer Information Regulations.¹¹
10. Providers may also wish to familiarise themselves with the existing ‘*Guidance Note on the Consumer Information Regulations, dated June 2014*’ and regarding contract information requirements, produced by the Department of Jobs, Enterprise and Employment (now the Department of Business, Enterprise and Innovation), available online.¹²

¹¹ Although Schedule 2 information requirements apply to “off-premises” contracts also. Regulation 2 of the Consumer Information Regulations contains the following definitions:

“Distance contract” means “a contract concluded between a trader and a consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, and with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded.”

“Off-premises contract” means each of the following contracts between a trader and a consumer: “(a) a contract concluded in the simultaneous physical presence of the trader and the consumer in a place which is not the business premises of the trader; (b) a contract for which an offer was made by the consumer in the simultaneous physical presence of the trader and the consumer in a place which is not the business premises of the trader; (c) a contract concluded on the business premises of the trader or through any means of distance communication immediately after the consumer was personally and individually addressed in a place which is not the business premises of the trader in the simultaneous physical presence of the trader and the consumer; (d) a contact concluded during an excursion organised by the trader with the aim or effect of promoting and selling goods or services to the consumer.”;

“On -premises contract” means “a contract between a trader and a consumer which is not a distance contract or an off-premises contract”.

¹²<https://dbei.gov.ie/en/Legislation/European-Union-Consumer-Information-Cancellation-and-Other-Rights-Regulations-2013.html>.

1.3. General aims of the Code

11. The Code establishes a harmonised framework in the EU Member States for the regulation of ECN, ECS, associated facilities and services, and certain aspects of terminal equipment (Article 1). The Code was established by means of Directive 2018/1972¹³ in December 2018 and must be transposed into Irish law by 20 December 2020.

12. Article 1 (2) describes the broad aims of the Code as follows:

"(a) [to] implement an internal market in electronic communications networks and services that results in the deployment and take-up of very high capacity networks, sustainable competition, interoperability of electronic communications services, accessibility, security of networks and services and end-user benefits; and

(b) [to] ensure the provision throughout the Union of good quality, affordable, publicly available services through effective competition and choice, to deal with circumstances in which the needs of end-users, including those with disabilities in order to access the services on an equal basis with others, are not satisfactorily met by the market and to lay down the necessary end-user rights."

13. The general objectives of the Code and the stated objectives of the national regulatory authorities are set out in Article 3 of the Code.

1.4. Harmonisation and impact of the Code

14. The Code consolidates and replaces the existing framework of EU directives regulating the electronic communications sector. As of 21 December 2020, the following EU Directives will be repealed: the "Access Directive" (Directive 2002/19), the "Authorisation Directive" (Directive 2002/20/EC), the "Framework Directive" (Directive 2002/21/EC) and the "Universal Service Directive" (Directive 2002/22/EC).¹⁴

15. It is expected that the suite of regulations implemented in Ireland in 2011 to transpose the EU framework of electronic communications directives will be repealed and replaced by new legislation transposing the Code into Irish law. This legislation is required to be transposed by 21 December 2020.

16. In advance of transposition, stakeholders can consult the [Table of Correlation \(Annex XIII\)](#) to see how the provisions of the previous framework directives have been carried over to the new Code.

¹³ Directive 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code, OJ (L 321/36).

¹⁴ Pursuant to Article 125 and Annex XII of the Code.

17. In terms of the 'End-User Rights'¹⁵ provisions, namely Articles 102 to 115, Article 101 (1) of the Code makes it clear that maximum harmonisation is required:

"1. Member States shall not maintain or introduce in their national law end-user protection provisions diverging from Articles 102 to 115, including more, or less, stringent provisions to ensure a different level of protection, unless otherwise provided for in this Title."

18. In terms of ECS consumer contracts, it is important to recognise that the Code is not intended to replace all existing EU or national laws relating to electronic communications and related consumer protections.¹⁶ Recital 258 of the Code clarifies that existing European Union consumer protection laws continue to apply:

"In addition to this Directive, the requirements of existing Union consumer protection law relating to contracts, in particular Council Directive 93/13/EEC ⁽³⁷⁾ [the Unfair Terms Directive] and Directive 2011/83/EU [the Consumer Rights Directive] of the European Parliament and of the Council ⁽³⁸⁾, apply to consumer transactions relating to electronic communications networks and services."

19. Therefore, providers should ensure they are familiar with the legislation that remains in place and that they comply with their ongoing obligations under consumer protection law.

20. At the time of writing, it appears the following pieces of legislation and the obligations they impose on providers will continue to apply following transposition of the Code (subject to any future review of the law or required amendments¹⁷):

- the Consumer Information Regulations ([S.I. No. 484 of 2013](#))

¹⁵ Title III "End-User Rights" covers Articles 98 to 116 of the Code.

¹⁶ Article 1 (3) (a) to (d) states that the Code is without prejudice to "**(a)** obligations imposed by national law in accordance with Union law or by Union law in respect of services provided using electronic communications networks and services"; **(b)** measures taken at Union or national level, in accordance with Union law, to pursue general interest objectives, in particular relating to the protection of personal data and privacy, content regulation and audio-visual policy; **(c)** actions taken by Member States for public order and public security purposes and for defence; and **(d)** Regulations (EU) No 531/2012 and EU 2015/2120 [the Open Internet Access Regulation] and Directive 2014/53/EU."

¹⁷ For instance, future legislative changes to the rights of consumers and obligations of traders are required to be introduced to comply with the EU Enforcement and Modernisation Directive (EU) 2019/2161, which came into force on 7 January 2020 (often referred to as the 'Omnibus Directive'). Member states have until 28 November 2021 to adopt and publish measures to comply with this Directive but will not have to apply those measures until 28 May 2022. Stakeholders may also be aware that the heads of bill are being prepared for the Consumer Rights Bill.

- the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 ([S.I. No. 27 of 1995](#))¹⁸ (the “**Unfair Terms Regulations**”)
- the [Consumer Protection Act, 2007](#) (No. 19 of 2007)
- the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 ([S.I. No. 336 of 2011](#))¹⁹ (the “**E-privacy Regulations**”)
- the [European Union \(Open Internet Access\) Regulations 2019](#) (S.I No 343 of 2019) (the “**Open Internet Access Regulations 2019**”) – which implements certain aspects of the [Open Internet Access Regulation EU/2015/2120](#) relating to ComReg’s powers and penalties.²⁰

21. As noted in the ‘Legal Disclaimer’ above, future legislation to transpose the Code or other EU measures may contain further specifications of consumer rights and protections or related obligations on providers. ComReg awaits details of the specific functions and powers that may be conferred on ComReg in relation to implementation and enforcement of the Code.

1.5. Overview of End-User Rights

22. Articles 102 to 107 of Title III set out the main rights for consumers of ECS, and in some cases for microenterprises, small enterprises and not-for-profit organisations. For example, the Code extends to the latter entities the benefits of consumer rights such as those relating to contract information (including the Contract Summary), maximum contract duration and certain rights associated with bundles.²¹

23. As noted above, ComReg intends, in due course, to issue further guidance on the impact and application of the key end-user rights provisions to be included in Section 3 of this document.

24. The below is a brief overview of the key end-user provisions in the Code:

- **Article 102 (Contract Information Requirements)** – these requirements are discussed in detail in Section 2 and Appendix 1.
- **Article 103 (Transparency, comparison of offers and publication of information)** – specifies requirements relating to the accessibility of contractual information, such as that National Regulatory Authorities

¹⁸ Implementing the ‘Unfair Commercial Practices Directive’ 2005/29/EC of the European Parliament and of the Council of 11 May 2005.

¹⁹ Implementing the ‘Directive on Privacy and Electronic Communications’ 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector.

²⁰ Article 1 (3)(d) provides that the Code is without prejudice to the contents of Regulation EU 2015/2120.

²¹ See Recital 259 and Articles 98, 102 (2), 105 (2) and (7) and 107 (4) of the Code.

(NRAs) should ensure availability of a comparison tool, and should specify obligations regarding the publication of [Annex IX](#) information.

- **Article 104 (Quality of Service)** – provides that NRAs may require providers to publish information on Quality of Service. Where the NRA does so, NRAs must take utmost account of the Board of European Regulators for Electronic Communications ([BEREC](#)) [guidelines](#) published in March 2020.
- **Article 105 (Contract Duration and Renewal)** – specifies that conditions and procedures for contract termination must not act as a disincentive to switching, that minimum contract periods must not be longer than 24 months, and various other conditions relating to termination, including in the event of a contract change or termination during the contract period.
- **Article 106 (Provider switching and number portability)** – sets out rules for facilitating switching between providers of internet access services and for porting numbers. Providers must include information in the contract regarding the end-user's right to seek compensation in the event of a switching issue (pursuant to Article 106 (9) and Annex VIII).
- **Article 107 (Bundled offers)** – provides that obligations in relation to the Contract Summary, transparency, contract duration, termination and switching in the preceding articles apply to all elements of a bundled contract (Article 107 (1)). Where under national or EU law consumers may terminate a contract for non-conformity with the contract or a failure to supply one element of the bundle prior to the end of the contract term, that right applies to all elements of a bundled offer (Article 107 (2)). The right to terminate the contract and to obtain a Contract Summary for bundles also applies to microenterprises, small enterprises and not-for-profit organisations, unless they explicitly waive those rights (Article 107 (4)).

25. The Code also requires that the processing of personal data by ECS, whether as remuneration or otherwise, should comply with the requirements of the General Data Protection Regulation (GDPR)²². Annex VIII of the Code requires providers of IAS and ICS to specify what personal data is processed in relation to the provision of the service (Annex VIII, Part B, (4)).

1.6. Which ECS are in scope?

26. The Code has introduced a new and broader definition of ECS, which is intended to capture both traditional and new or evolving methods of electronic communication services (ECS).

²² Regulation (EU) 2016/679. See Recital 15 of the Code.

27. There are now three categories of ECS: (i) internet access services (IAS); (ii) interpersonal communications services (ICS), distinguishing between 'number-based' and 'number-independent' ICS; and (iii) services consisting wholly or mainly of the conveyance of signals, such as transmission services used for machine-to-machine (M2M) communications and for broadcasting.

1.6.1. Rationale behind new ECS categories

28. The three categories reflect that more and more end-users are choosing to substitute traditional voice telephony, such as text messages (SMS) and traditional voice phone calls, with functionally equivalent over-the-top (OTT) online services such as Voice over IP (VOIP), messaging services and web-based e-mail services.²³ OTTs provide their services in the form of applications running over an internet access service and have traditionally not been subject to the current framework of EU telecom rules, but the new definition of ECS now brings some OTT services within its scope.²⁴
29. ComReg understands that a key tenet of the Code was to improve the trust of end-users of new forms of communications services by creating certainty about their rights and closing gaps in end-user protections. The Code attempts to do this by creating comparable regulatory requirements for a broader group of "functionally comparable" ECS. This reflects the fact that from an end-user's perspective, it is not relevant whether a provider conveys signals itself or whether the communication is delivered via an internet access service (such as VoIP or online messaging).²⁵
30. The Code acknowledges that the three categories of ECS may sometimes overlap. As noted in the Introduction section of this Guidance, this may often be the case where, for example, a mobile phone operator offers an end-user a number-based ICS and also supplies a service that provides access to the internet (an IAS).
31. ComReg has set out below some guidance on interpreting the scope of regulated ECS and the differences between the various categories, however, it is for each provider to obtain their own legal advice on the nature of services that they supply and any associated legal obligations.

²³ See Recital 15 of the Code. See also EU press release on the Code (but note references to numbered Articles of the Code have since changed):

https://ec.europa.eu/information_society/newsroom/image/document/2016-52/executive_summary_2_-_services_40995.pdf

²⁴ Although OTT communications services which made use of telephone numbers have been considered to be subject to the rules of the framework prior to the Code.

²⁵ See further the principles set out in Recital 15 of the Code.

1.6.2. Characteristics of ECS subject to the Code

32. Firstly, Article 2 (4) of the Code specifies that it applies to services that are “normally provided for remuneration via electronic communications networks”.

33. This implies that the Code does not apply to services that are “free”, however, ComReg notes that the concept of a service for ‘remuneration’ is not strictly limited to the provision of ECS in exchange for monetary consideration. Whether or not a service is normally provided for remuneration must be interpreted in accordance with relevant European Union case law and Recital 16 of the Code, which states:

“In line with the case-law of the Court of Justice of the European Union (Court of Justice) on Article 57 TFEU (16), remuneration also exists within the meaning of the TFEU if the service provider is paid by a third party and not by the service recipient. The concept of remuneration should therefore also encompass situations in which the end-user is exposed to advertisements as a condition for gaining access to the service, or situations in which the service provider monetises personal data it has collected in accordance with Regulation (EU) 2016/679.” (emphasis added)

34. Article 2 (4) of the Code also expressly excludes from the scope of regulated ECS “services providing, or exercising editorial control over, content transmitted using electronic communications networks and services”.

1.6.3. Three categories of ECS

a) Internet Access Services (IAS) (“Category 1”)

35. The Code defines “internet access services” by reference to the definition of that term in Article 2 (2) of the Open Internet Access Regulation (EU) 2015/2120, which is in turn defined as, “a publicly available electronic communications service that provides access to the internet, and thereby connectivity to virtually all end points of the internet, irrespective of the network technology and terminal equipment used”.

36. Other requirements which apply to a provider of an IAS, such as safeguarding the openness of the internet and avoiding limitations on the rights of internet users are specified in the Open Internet Access Regulation, which includes contract information requirements specified under Article 4 (1) of the Open Internet Access Regulation.²⁶ Therefore, IAS providers

²⁶ Including, for example, information on internet speeds, quality of service parameters and how any traffic management measures impact on the quality of the service or privacy of personal data. Part B (III) of Annex VIII of the Code encompasses these requirements by cross-reference to Article 4 (1).

should ensure that they comply both with those requirements and the contract information requirements under Article 102 of the Code²⁷.

b) Interpersonal Communications Services (ICS) (“Category 2 (i) & (ii)”)

37. There are two types of ICS (i) number-independent ICS and (ii) number-based ICS. Both types of ICS are services which allow “direct” and “interactive” exchange of information, between a “finite” number of persons, whereby the persons initiating or participating in the communication determine its recipient(s).

38. The definition of ICS and its two sub-categories of ICS are set out below:

- **ICS** - defined by Article 2 (5) of the Code as:

“interpersonal communications service” means a service normally provided for remuneration that enables direct interpersonal and interactive exchange of information via electronic communications networks between a finite number of persons, whereby the persons initiating or participating in the communication determine its recipient(s) and does not include services which enable interpersonal and interactive communication merely as a minor ancillary feature that is intrinsically linked to another service.”

- **Number-based ICS** - defined by Article 2 (6) of the Code as:

“number-based interpersonal communications service” means an interpersonal communications service which connects with publicly assigned numbering resources, namely, a number or numbers in national or international numbering plans, or which enables communication with a number or numbers in national or international numbering plans;”

- **Number-independent ICS** - defined by Article 2 (7) of the Code:

“number-independent interpersonal communications service” means an interpersonal communications service which does not connect with publicly assigned numbering resources, namely, a number or numbers in national or international numbering plans, or which does not enable communication with a number or numbers in national or international numbering plans”.

39. Further important guidance on the meaning and features of ICS can be found in Recital 17 of the Code.

40. It will be necessary for providers of ICS to ascertain which category of ICS they provide, Category 2 (i) or 2 (ii), as the scope of obligations in some cases differs between the two sub-categories. For instance, certain obligations apply to providers supplying “number-based ICS” which do not

²⁷ These requirements are set out in detail in Section 2 and in the Appendix of this Guidance.

apply to “number-independent ICS”, including the obligation to provide information on constraints on access to emergency services or caller location information and on an end-user’s right to have their personal data included or excluded from a directory (see Part B (II) of Annex VIII of the Code and for further guidance on the distinction between these sub-categories of ICS, Recital 18 of the Code).²⁸ ComReg notes, however, that most of the contract information requirements set out in Annex VIII of the Code apply equally to number-based ICS and to number-independent ICS.

c) Services conveying signals, such as transmission services (“Category 3”)

41. These include “transmission services” such as those used for the provision of M2M services and for broadcasting.

42. It will be important for relevant providers to determine if their services consist “wholly or mainly” of signals, such as transmission services for M2M²⁹ services because if a service falls into this category, it will not be subject to certain End-User Rights provisions in the Code, including the contract information requirements of Article 102 and Annex VIII of the Code. ComReg notes that Annex VIII Part A expressly excludes transmission services for M2M services from the scope of its contract information requirements but that it does not explicitly exclude other aspects of Category 3 services, such as transmission services for broadcasting.

1.6.4. Which obligations apply?

43. In order for providers to ascertain which category (or categories) of ECS their services fall into and which specific obligations apply, ComReg encourages providers to in particular carefully review Articles 102 to 107 of the Code and associated annexes and to seek legal advice where necessary.

44. In terms of the information requirements that apply to ECS contracts with consumers (and microenterprises etc), ComReg advises providers to review Article 102 of the Code and to consult the detailed thematic section of this Guidance in the Appendix at Annex 1: “*Consolidated Pre-contractual requirements (by theme)*”. For convenience, ComReg has included some

²⁸ See Recital 18 – “*Interpersonal communications services using numbers from national and international numbering plans connect with publicly assigned numbering resources. Those number-based interpersonal communications services comprise both services to which end-users numbers are assigned for the purpose of ensuring end-to-end connectivity and services enabling end-users to reach persons to whom such numbers have been assigned. The mere use of a number as an identifier should not be considered to be equivalent to the use of a number to connect with publicly assigned numbers and should therefore, in itself, not be considered to be sufficient to qualify a service as a number-based interpersonal communications service...*”

²⁹ Which could include transmission of signals for Internet of Things (IoT) services.

extracts of relevant provisions from the Code and Irish legislation in “*Additional Legislative Sources*” section in the Appendix of the Guidance.

2 Contract Information Requirements

2.1 Overview of Article 102 requirements

45. This section of the Guidance includes a general discussion of the ECS contract information requirements of Article 102 of the Code and related provisions.

46. As noted above, this Guidance is not legally binding and does not constitute legal advice. ComReg may in due course update this document in line with legal, technological or other developments or practical experience of its application.

47. The main requirements of Article 102 are as follows:

- **Article 102 (1)** - imposes an obligation on providers to provide consumers and certain other customers with a minimum set of pre-contractual information in a clear and comprehensible manner on a durable medium (hereafter, the “**Pre-Contractual Information**”).
- **Article 102 (1)** - specifies that the Pre-Contractual Information must, upon request, be provided in an accessible format for end-users with disabilities in accordance with Union law harmonising accessibility requirements for products and services.³⁰
- **Article 102 (3)** - imposes a new obligation to provide consumers with a standardised and easily readable ‘summary’ document, which summarises the key elements of the contract (the “**Contract Summary**”), prior to the conclusion of a binding contract. As this is a summary of the Pre-Contractual Information, the information in the Contract Summary should accurately reflect the Pre-Contractual Information but will obviously be much shorter and must comply with specific requirements in terms of form, content and presentation (see further below).
- **Article 102 (4)** - specifies that both the Pre-Contractual Information and the Contract Summary information will become an “integral part” of the concluded contract, subject to any amendments specifically agreed with the consumer (for example, a new delivery date for terminal equipment)³¹. So, in the normal course and assuming consumer

³⁰ See Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services ([OJ L 151, 7.6.2019, p. 70](#)), which must be transposed by 28 June 2022.

³¹ Article 102 (4) of the Code specifies that: “*The information referred to in paragraphs 1 and 3 shall become an integral part of the contract and shall not be altered unless the contracting parties expressly agree otherwise.*”

agreement, the Pre-Contractual Information and the Contract Summary will, together, constitute the final contract on a durable medium.

- **Article 102 (5)** - sets out rules in relation to offering consumers facilities for monitoring their time and volume consumption levels in terms of usage of contracted services, for example, as against a tariff plan. It requires providers to ensure they notify consumers before consumption limits are reached and when they are fully consumed.
- **Article 102 (6)** – provides that Member States may introduce national laws to require providers to provide additional information to consumers on consumption levels and to temporarily prevent further use of a service in excess of a particular financial or volume limit. ComReg must await transposition of the Code to ascertain the nature of any such powers it may be afforded in this regard.
- **Article 102 (7)** – makes express provision for Member States to introduce further laws to “*address newly emerging issues*” that are “*not regulated by this Article*”. This provision provides a basis for Member States to, as necessary, introduce new legislation or to adapt existing legislation to address issues arising from new forms of communications services and novel or emerging social and technological developments.

2.2 Scope of Article 102

48. As noted above, Article 102 (1) gives an entitlement to two sets of information before a consumer is bound by an ECS contract: (i) the Contract Summary information and (ii) the longer Pre-Contractual Information.

49. The right to information under Article 102 applies to contracts with “*providers of publicly available electronic communication services other than transmission services used for the provision of machine-to-machine services*”. Therefore, Article 102 covers all ECS within Category 1, Category 2 and Category 3 described in Section 1.6 of this document, with the exception of transmission services for M2M services.

50. Article 102 (2) extends the right to receive the Contract Summary and the Pre-Contractual Information for consumers to “*end-users that are microenterprises or small enterprises or not-for-profit organisations*”, unless they explicitly agree to waive the right to that information. Recital 259 of the Code explains the reasons for this are due to the bargaining position of those entities being comparable to that of consumers. Providers should therefore ensure that those entities are not deprived of the opportunity to avail of the end-user rights specifically afforded to them under the Code.³²

³² Providers should note the exemption in Article 98 of the Code, which disapplies the requirements of Title III of the Code, save for Articles 99 and 100, to “microenterprises” who provide only number-

2.3 Impact of new contract information rules on existing law

51. Article 102 and its related Annex VIII introduce some new obligations for ECS contracts. However, Article 102 (1) specifically re-adopts the contract information requirements which were already required under the Consumer Rights Directive, pursuant to Article 5 (*Information requirements for on-premises contracts*) and Article 6 (*Information required for distance and off-premises contracts*).
52. In relation to distance contracts, ComReg notes that Article 6 of the Consumer Rights Directive was implemented into Irish law in particular by Schedule 2 (*Information to be provided prior to conclusion of off-premises contracts and distance contracts*) and that Regulation 10 (*Information requirements for distance contracts*), Regulation 12 (*Provision of confirmation of distance contracts*) and Schedule 3 (*Information concerning the exercise of the right to cancel*) of the Consumer Information Regulations are also relevant. As the Consumer Rights Directive is not repealed by the Code, absent any future changes on foot of other EU directives, EU regulations or national law that may come into force, the Consumer Information Regulations remain applicable.
53. However, the Code stipulates that where there is an overlap in the contract information requirements pursuant to the Consumer Rights Directive and those imposed by the Code, there is no requirement to include duplicate information in contracts. In that context, providers will need to assess any potential overlaps in those information requirements as they relate to the services they offer or supply.³³

2.4 Article 102 – practical matters

2.4.1 Provision of contract information on a durable medium

independent interpersonal communications services. Specific rules for entities seeking to benefit from such an exemption such as required notifications to end-users may be set out in legislation transposing the Code.

³³ Recital 258 states as follows: “*The inclusion of information requirements in this Directive, which might also be required pursuant to Directive 2011/83/EU, should not lead to duplication of the information within pre-contractual and contractual documents. Relevant information provided in respect of this Directive, including any more prescriptive and more detailed informational requirements, should be considered to fulfil the corresponding requirements pursuant to Directive 2011/83/EU.*”

54. Article 102 (1) requires the Pre-Contractual Information for ECS contracts to be provided to consumers on a “durable medium”,³⁴ at a point *before* a consumer is bound by a contract. Article 102 (4) specifies that this information, together with the Contract Summary (discussed further below), will become an integral part of the final contract and cannot be altered unless both parties expressly agree otherwise.

55. Article 102 (1) states,

“The information shall be provided in a clear and comprehensible manner on a durable medium as defined in point (10) of Article 2 of Directive 2011/83/EU or where provision on a durable medium is not feasible, in an easily downloadable document made available by the provider. The provider shall expressly draw the consumer’s attention to the availability of that document and the importance of downloading it for the purposes of documentation, future reference and unchanged reproduction.”

56. ComReg is of the view that in order to meet the requirements of Article 102 (1) of providing the Pre-Contractual Information in a “clear and comprehensible manner”, that it should be provided in one composite durable medium document (although it may have multiple sections / annexes) and that it should be appropriately titled with the words “Contract”.

57. In addition, the Pre-Contractual Information on a durable medium must be personally addressed to the consumer, be capable of being retained for future reference and be in a format that can be reproduced in an unchanged format at a later point in time.

58. Article 2 of the Consumer Rights Directive (2011/83/EU) defines a “durable medium” as:

“Durable medium’ means any instrument which enables the consumer or the trader to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored.”³⁵

³⁴ The definition of ‘durable medium’ in Article 102 remains aligned with the meaning set out in the Consumer Rights Directive and in the Consumer Information Regulations.

³⁵ Recital 23 of the Consumer Rights Directives gives examples of such media: “Durable media should enable the consumer to store the information for as long as it is necessary for him to protect his interests stemming from his relationship with the trader. Such media should include in particular paper, USB sticks, CD-ROMs, DVDs, memory cards or the hard disks of computers as well as e-mails.”

59. That definition is closely reflected in the Consumer Information Regulations which defines a durable medium as:

"durable medium" means any medium, including paper and e-mail, that—

(a) enables its recipients to store information addressed personally to them in a way accessible for future reference for a period of time adequate for the purposes of the information, and

(b) allows the unchanged reproduction of the stored information;"

60. The Code is not prescriptive as to the means of providing contract information and this may be done by means such as online, by text, email or in person. What the Code requires is that all Pre-Contractual Information covered by Articles 5 or 6 of the Consumer Rights Directive and Annex VIII, must be provided on a "durable medium" pre-contract or, by way of exception if that is not feasible, in "an easily downloadable document" (discussed further below).

61. In terms of practical application of what constitutes provision on a durable medium, ComReg is of the view that sending a consumer a link which displays the Pre-Contractual Information required by Article 102 (1) solely on the webpage of a provider's website would not constitute a durable medium.³⁶

62. ComReg notes that under existing consumer law³⁷, where distance contracts are concluded by a medium that allows limited space or time to display the information, providers could give the required pre-contractual information to consumers through different mediums and in two-phases, provided certain requirements were met, i.e. minimum information from Schedule 2 is provided in the same format as the means of distance communication used and the balance of the information can be provided in another "appropriate way", prior to concluding the contract. In a distance SMS-sign up scenario, this could allow an initial SMS to be sent containing the core pre-contract information specified by Regulation 10 (7) (a)³⁸, followed by

³⁶ See for example, Case (C49-11) Content Services, delivered 5 July 2012 by the Court of Justice of the European Union (CJEU) following a reference for a preliminary ruling from Austria. The CJEU considered the definition of durable medium set out in Article 5 (1) of Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts, and the similar definition in the (at the time) draft Consumer Rights Directive 2011/83/EC. The Court held that sending a consumer an email containing hyperlinks to access the applicable contractual terms and conditions via the company's website was not, in this case, sufficient to meet the requirements of a durable medium (see paragraph 31). The judgment is available at:

<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62011CJ0049:EN:HTML>

³⁷ Regulation 10 (7) of the Consumer Information Regulations

³⁸ Regulation 10 (7) (a) of the Consumer Information Regulations, as amended by SI 336 of 2016, specifies that the information in paragraphs (a), (b), (f) to (h), (l) and (s) of Schedule 2 must be

the additional Schedule 2 contract information in an “appropriate way” (such as by a further SMS/email/downloadable PDF). For any distance contract under the Code concluded in this way, the requirements of providing the contract on a durable medium (subject to the exception below) before the consumer is bound would still need to be complied with and the information required by Annex VIII must also be provided.

2.4.2 Meaning of “durable medium” and any exceptions

63. ComReg notes that the Code provides an exception or an alternative to the requirement to provide the Article 102 (1) information on a durable medium, where that was “not feasible”. In such circumstances, providers can provide the information “in an easily downloadable document made available by the provider.” Where a provider gives the Pre-Contractual Information through this means of an easily downloadable document, the Code requires that the provider brings to the consumer’s attention (i) “the availability of that document”; and (ii) “the importance of downloading it for the purposes of documentation, future reference and unchanged reproduction”.³⁹

64. In ComReg’s view, in order to ensure adequate protection for consumers, providers should aim to provide the required Pre-Contractual Information on a durable medium and should adopt a narrow interpretation of instances in which it is “not feasible” to do so. ComReg also notes that Recital 261 of the Code specifies that in addition to the document being easy to download, it should be “easy to open and consult on devices commonly used by consumers”. To ensure this exception does not undermine the purpose of Article 102 (1), ComReg is of the view that providers should, in addition to highlighting the importance of downloading the document and retaining it for future reference, ensure that the means of downloading the document provided to the consumer (such as a hyperlink etc) remains accessible.

2.5 Contract Summary

65. The obligation to provide a Contract Summary is a new requirement imposed by Article 102 (3) of the Code.

66. It is additional to the requirement to provide the Pre-Contractual Information and applies to all ECS contracts within the scope of Article 102 (1), i.e. including on-premises, off-premises and distance contracts, as

included in the limited display means of communication and that the other Schedule 2 information can be provided “in an appropriate way”.

³⁹ Article 102 (1) of the Code states: “The provider shall expressly draw the consumer’s attention to the availability of that document and the importance of downloading it for the purposes of documentation, future reference and unchanged reproduction”.

defined in the Consumer Information Regulations and the Consumer Rights Directive.

67. The Contract Summary is aimed at providing end-users with a clear, concise, transparent and standardised document to facilitate easy comparison between multiple service providers or offers, prior to finalising a contract.
68. Where a consumer requests a Contract Summary for multiple plans from a single provider to consider their options before making a decision, the provider should ensure that they provide a separate Contract Summary for each plan. The European Commission has issued specific and binding requirements as regards the Contract Summary in the Commission [Implementing Regulation Establishing a Template for the Contract Summary](#)⁴⁰ (the “**CIR**”) (discussed further below).
69. As noted earlier, the requirement to provide a Contract Summary also applies to microenterprises, small enterprises and not-for-profit organisations, unless they have explicitly agreed to waive their rights in this respect⁴¹. This requirement also extends to all elements of a bundle of services or bundle of services and terminal equipment that includes at least one internet access service or a publicly available number-based ICS.⁴²
70. The Contract Summary and Pre-Contractual Information both form an integral part of the contract and cannot be changed without the consumer’s express agreement.

2.5.1 What information must be included in the Contract Summary?

71. The main elements of the consumer contract must be included in the Contract Summary. Article 102 (3) specifies that the main elements of the ECS contract must include, at least, the following:

- “(a) the name, address and contact information of the provider and, if different, the contact information for any complaint;*
- “(b) the main characteristics of each service provided;*
- “(c) the respective prices for activating the electronic communications service and for any recurring or consumption-related charges, where the service is provided for direct monetary payment;*

⁴⁰ (EU) 2019/2243. See also at this hyperlink, [Corrigendum](#) to the CIR published on 21 January 2020, which makes minor amendments to the Annex, “Part A – Template” for the contract summary.

⁴¹ Pursuant to Article 102 (2) of the Code

⁴² Pursuant to Article 107 (1).

(d) the duration of the contract and the conditions for its renewal and termination;

(e) the extent to which the products and services are designed for end-users with disabilities;

(f) with respect to internet access services, a summary of the information required pursuant to points (d) and (e) of Article 4 (1) of Regulation (EU) 2015/2120.”

72. The first point to note is that the information specified above is the minimum information to be included in the Contract Summary and is not exhaustive. When developing a Contract Summary in respect of a particular service / bundle of services, it is essential that providers consider the detailed requirements set out in the EU Commission CIR document and the “Corrigendum” to the CIR published in January 2020.

73. The CIR is a binding document and sets out specific requirements in terms of content, form and presentation for the Contract Summary. Providers must use the “Template” for the Contract Summary set out in Part A of the Annex to the CIR and complete the template in accordance with the instructions set out in Part B of that Annex. For example, in terms of content relating to “Price”, in addition to the information required by Article 102 (3) (c) above, the CIR specifies that the following information on price should be provided, where relevant:

“For subscription contracts, the recurring price, inclusive of taxes, per billing period and, if the billing period is other than monthly, also per month shall be included. Any additional fixed prices such as for activating the service, and, where applicable, the price of equipment shall be indicated, as well as any time-limited discounts, where applicable.

Where applicable, consumption-related charges, which will apply after the volumes included in the recurring price have been exceeded, shall be indicated in the contract summary.

Where applicable, information about tariffs for additional services not included in the recurring prices shall be indicated to be available separately.

Where the service is provided without a direct monetary payment but subject to certain obligations on users as a condition of service, that shall be indicated.”⁴³

74. The Contract Summary must also comply with specific accessibility requirements set out in Directive 2019/882 regarding the sale of goods or

⁴³ See CIR, ‘Part B - Instructions for completing the contract summary template’, page 6.

products online to persons with accessibility issues, such as persons with disabilities.⁴⁴ Subject to requirements upon transposition of this Directive, ComReg considers it would be appropriate to provide the Contract Summary in an accessible format for disabled end-users to ensure their access needs are met and in view of the equivalence of access for disabled end-users that is envisaged by the Code.⁴⁵

75. In terms of format, Contract Summary documents are required to adhere to certain page length requirements, for example, for a single service offer it must be no longer than 1 A4 page and for a bundled service, no more than 3 A4 pages. The CIR notes that a longer length could be justified, for example, for reasons of accessibility for consumers with disabilities. ComReg notes that there are also very specific requirements in terms of the headings to be used, the sequencing of information and the size, font and presentation of the text to ensure it is easy for consumers to read and digest. The language used must also be clear and user friendly as Article 2 (4) of the CIR specifies that:

"The contract summary shall be drafted in language that is easily readable and understandable for consumers. The contract summary shall focus on key information that the consumer needs to compare offers and to make an informed decision."

76. The CIR and its Annex are short and concise documents and ComReg encourages providers to consult these documents directly to ensure any proposed Contract Summary will be fit for purpose and will comply with the requirements.

2.5.2 Timing for delivery of the Contract Summary

77. The Contract Summary must be provided free of charge to consumers, *prior* to the conclusion of the contract.

78. This pre-contract timing underpins the objective of the Contract Summary, which is to provide the consumer with a summary of key information and the opportunity to consider and compare offers in advance of entering into a contract (as further set out in Recital 261). ComReg considers that this

⁴⁴ Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services ([OJ L 151, 7.6.2019, p. 70](#)), with a transposition deadline of 28 June 2022.

⁴⁵ See Recitals 297 and 298 and in particular, Article 111 of the Code, which specifies that "*Member States shall ensure that the competent authorities specify requirements to be met by providers of publicly available electronic communications services to ensure that end-users with disabilities (a) have access to electronic communications services, including the related contractual information provided pursuant to Article 102, equivalent to that enjoyed by the majority of end-users; (b) benefit from the choice of undertakings and services available to the majority of end-users*". This is subject to transposition measures.

purpose will be served by providers ensuring that Contract Summary documents are made widely and easily available to consumers before entering into contracts, whether the sign-up or point of sale is conducted in-store or via a telephone or online sales process.

79. ComReg notes that Article 102 (3) provides scope for a limited exception to the principle that the Contract Summary should be provided *prior* to conclusion of the contract, as set out below:

"(3) Providers subject to the obligations under paragraph 1 shall duly complete that contract summary template with the required information and provide the contract summary free of charge to consumers, prior to the conclusion of the contract, including distance contracts. Where, for objective technical reasons, it is impossible to provide the contract summary at that moment, it shall be provided without undue delay thereafter, and the contract shall become effective when the consumer has confirmed his or her agreement after reception of the contract summary." (emphasis added)

80. ComReg understands the above wording to mean that, in exceptional circumstances, the Contract Summary may be provided at a point after the terms of the contract have been agreed (e.g. on the basis of the Pre-Contractual Information provided), so long as the provider does so "without undue delay" and is able to demonstrate there was an "objective technical reason" as to why it was not possible to provide the Contract Summary prior to that point. The circumstances that could constitute an "objective technical reason" for the purposes of Article 102 (3) are not defined in the Code or in the CIR and may be subject to clarification upon transposition into Irish law or within relevant case law at a later date.

81. It seems clear that a failure to provide the Contract Summary prior to conclusion of the contract must be due to an objective technical reason which makes it *"impossible to provide the Contract Summary at that moment"*. In ComReg's view, the use of the word "impossible", indicates that circumstances where it was "more difficult" or "inconvenient" to provide the Contract Summary when required, would not benefit from this exception.

82. Importantly, providers should note that the ECS contract will not be effective or enforceable against the consumer until such time as the consumer (or microenterprise, small enterprise etc) has confirmed his / her agreement to the contract and has received the Contract Summary.

2.5.3 Must the Contract Summary be provided on a durable medium and what records must be kept?

83. Neither Article 102 of the Code nor the CIR specifically state that the Contract Summary must be provided on a “durable medium” (as distinct from the Pre-Contractual Information which Article 102 (1) requires to be provided on a durable medium). Recital 2 of the CIR refers to the Contract Summary information being made available, “*whether printed or available electronically*”. ComReg notes that providers will, however, need to consider how best they can, in practice, create a Contract Summary document which abides by the page length, format, presentation (1 A4 page for standard contracts and 3 A4 pages for bundles) and other requirements of the CIR and Article 102 (3).
84. In considering how to comply with Article 102 (3) and the CIR, given that the contract will not be effective until the consumer (or microenterprise etc) has received the Contract Summary and that the Contract Summary forms an integral part of the contract, providers may need to keep a record to show that the Contract Summary was provided to the consumer and at what point. Providers should also recall that under Regulation 6 (3) of the Consumer Information Regulations,⁴⁶ the burden of proof in relation to compliance with the contract information requirements rests with the trader.
85. In ComReg’s view, good practice would be to retain records of all emails or other means of providing contractual documents to consumers (including the Contract Summary), together with confirmation of the consumer’s agreement to the terms and conditions offered, and any agreed modifications to those terms and conditions. ComReg would expect that where a provider does not typically keep records of all Contract Summary documents issued, that if a contract is ultimately to be entered into with a consumer (or microenterprise etc), that the provider would confirm the consumer had received the Contract Summary for the relevant contract (and if not, ensure to re-issue it) and keep a record of this, prior to finalising the contract with that consumer. ComReg notes that Article 102 does not preclude the provision of the Pre-Contractual Information required by Article 102 (1) and the Contract Summary simultaneously. Where providers issue both sets of information at the same time, ComReg is of the view that providers should clearly identify the nature of each document to consumers to ensure they can distinguish between the Contract Summary and the Pre-Contractual Information on a durable medium.

⁴⁶ Implementing Article 6 (9) of the Consumer Rights Directive

86. In summary, it is a matter for each provider to ensure they take the necessary steps to comply with their obligations and ComReg cannot offer pro-forma guidance on the means of doing so. However, for the reasons set out above, it may be advisable for providers to provide the Contract Summary on a “durable medium” to be able to easily reproduce it and / or to evidence when or how it was provided to a consumer (or microenterprise etc), including for compliance purposes. In addition, as the Contract Summary forms part of the contract, providing it on a durable medium would ensure the customer has a copy that he/she can refer to at a later date. Ultimately, as noted above, the contract will not be effective and enforceable until such time as the Contract Summary has been provided.⁴⁷

2.5.4 Provision of the Contract Summary – practical matters

87. For in-store sales, ComReg envisages that the provision of the Contract Summary would follow a similar process to the current contract sign up process i.e., the Contract Summary can be provided in person to the customer in store for their consideration prior to entering the contract.

88. In the case of telesales by phone, the provider should confirm with the consumer that they have received and considered the Contract Summary, for example, via email or another method during a telesales phone call, prior to concluding the contract. Having sight of the Contract Summary allows the consumer another opportunity to consider the details of the offer that they may have not received, heard or understood on the phone call.

89. In the case of online sales, providers should ensure that the Contract Summary is available before the contract is entered into and can demonstrate that the requirements of the Code and CIR have been met. ComReg also expects providers to inform consumers, in such a way that they understand, that being provided with the Contract Summary does not mean that they are obliged to enter into the contract.

90. The Contract Summary is intended to be a summary of the key Pre-Contractual Information required by Article 102 (1), which represents the terms and conditions offered by the provider. ComReg has considered a situation where the underlying offer may be time limited in accordance with a promotion or other limited offer. In that instance, ComReg would expect providers to advise consumers of the time limit for take up of the offer when the Contract Summary relating to that offer is provided. Of course, should a consumer decide to enter into a contract on the terms outlined in the Contract Summary (and other Pre-Contractual Information) prior to the expiry of the offer, the Contract Summary document provided in connection

⁴⁷ Article 102 (3) of the Code.

with that offer would form an integral part of the contractual terms and conditions, pursuant to Article 102 (4).

91. For further guidance on the Contract Summary, please consult the EU Commission Guidance and Frequently Asked Questions at the following link: <https://ec.europa.eu/digital-single-market/en/news/contract-summary-consumers-electronic-communication-services-eu>

3 Other End-User Requirements of the Code

3.1 Introduction

92. This section of the Guidance is aimed at assisting providers to understand their regulatory obligations under the following articles of the Code:

- a) Article 102 (5) and (6) (monitoring and control of usage facilities and notifications) and Article 115 (additional facilities);
- b) Articles 103 (transparency, comparison and publication of offers);
- c) Article 104 (quality of service);
- d) Article 105 (contract duration and termination);
- e) Article 106 (switching and porting); and
- f) Article 107 (bundled offers).

93. In this section, ComReg has included some general guidance but has focused on the issues which industry has specifically raised and sought guidance on from ComReg. It should be noted that the fact that ComReg has not addressed or given guidance in relation to a particular matter or obligation of providers under the Code, should not be taken to mean the obligation is not important or would not be considered by ComReg in an enforcement context.

3.2 Article 102 (5) – Consumption monitoring and information

94. Section 2 of the Guidance outlined the information requirements for ECS contracts and the obligation to provide a Contract Summary. This section focuses on ComReg's current guidance for implementing the requirements of Article 102 concerning:

- a. Usage monitoring and control facility and notifications;
- b. Additional information and measures relating to consumption;
- c. Other monitoring and bill transparency tools.

3.2.1 Usage monitoring and control facility and notifications

Article 102 (5):

Where internet access services or publicly available interpersonal communications services are billed on the basis of either time or volume consumption, their providers shall offer consumers the facility to monitor and control the usage of each of those services. This facility shall include access to timely information on the level of consumption of services included in a tariff plan. In particular, providers shall notify consumers before any consumption limit, as established by competent authorities in coordination, where relevant, with national regulatory authorities, included in their tariff plan, is reached and when a service included in their tariff plan is fully consumed.

95. End users are often not aware of the cost of their consumption behaviour or have difficulties in estimating their time or data consumption when using ECS. Recital 266 of the Code notes that in order to increase transparency and to allow for better control of communications budget, it is important to provide end users with facilities that enable them to track their consumption in a timely manner.
96. In addition, Recital 266 states that Member States should be able to maintain or introduce provisions on consumption limits protecting end users against “bill-shocks”, including in relation to premium rate services (“PRS”) and other services subject to particular pricing conditions.⁴⁸

Usage monitoring and control facility

97. In pursuit of these objectives, Article 102 (5) of the Code imposes a new requirement to offer consumers⁴⁹ a facility to monitor and control their usage of services. The requirement applies to providers of IAS and publicly available ICS (number-based ICS and number-independent ICS).

⁴⁸ Recital 266 of the Code further states that, “*This allows competent authorities to require information about such prices to be provided prior to providing the service and does not prejudice the possibility of Member States to maintain or introduce general obligations for premium rate services to ensure the effective protection of end-users.*”

⁴⁹ The requirement to offer the facility under Article 102 (5) is limited to “consumers”. However, Article 115 and Annex VI provide a basis for Member States to require providers to make available cost control facilities, which may, subject to the Member State, be extended to other categories of end-users.

98. The facility must be offered where IAS or ICS services are billed either on the basis of time (e.g. calls on a per minute/second basis) or volume (e.g. units of SMS/MMS or data) consumption.
99. ComReg considers that where add-ons to a tariff plan are billed on a time or volume basis, such consumption should also be included in the facility. Similarly, where a consumer contract for IAS or ICS is in fact subject to certain limits such as, prescribed “fair” or “acceptable” usage policies (i.e. “FUP” or “AUP”)⁵⁰ or other caps, ComReg considers these contracts fall within the scope of Article 102 (5) of the Code. ComReg encourages providers to assess their individual offerings and whether such services are or may be, in effect, billed on the basis of time or volume such that the requirements of Article 102 (5) apply to those services. In that context, ComReg is concerned about the practice of advertising packages as “unlimited” when they are not in fact unlimited.⁵¹ Of course, if a service advertised as unlimited was truly unlimited, then there would be no need for any usage monitoring facility or consumption notifications for that service. ComReg will monitor how providers are complying with Article 102 (5) of the Code in practice and provide further guidance as necessary.

Information about the facility

100. As noted in Section 2 of the Guidance, Annex VIII of the Code requires providers of IAS and ICS to provide information on the “*facilities to safeguard bill transparency and monitor the level of consumption*”, as part of the Pre-Contractual Information on price.⁵² That information must be provided in addition to the Pre-Contractual Information on prices of tariff plan(s) and any additional communication units⁵³ and the means of obtaining up-to-date information on all applicable tariffs⁵⁴ - all of which must be provided in a “clear and comprehensible” manner, in a durable medium, prior to concluding the contract.
101. In that context, ComReg is of the view that providers should clearly identify to consumers what monitoring facilities are available, how to access or use them, and where applicable, how a consumer can tailor them to their preferences, as well as ensuring any mechanism for using or opting-in to the

⁵⁰ ComReg has observed that some providers offering “unlimited” tariff plans apply a limit to the usage included in such plans, which is often referred to as an “acceptable” or “fair” usage limit or policy (FUP / AUP). The usage limits often vary by provider and/or by individual tariff plans of a provider and once the FUP / AUP is exceeded, the end user may be impacted by *inter alia* additional surcharges or a suspension or loss of service.

⁵¹ See also paragraph 46 of Section 3.3.1 for guidance on the use of the term “unlimited” in contractual information published to meet the requirements of Article 103, and pre-contractual documentation regulated under Article 102 of the Code.

⁵² Annex VIII, Part B (I) (2) (iii) of the Code.

⁵³ Annex VIII, Part B (I) (2) (i) of the Code.

⁵⁴ Annex VIII, Part B (I) (2) (vii) of the Code.

facility (or discontinuing use or opting-out where applicable) is clear and easily accessible to the consumer.

102. In addition, it may be beneficial to consumers and would increase transparency if providers included information on their websites regarding the various monitoring facilities available and how to access or use them. ComReg notes that a consumer could choose not to take up the offer of the facility or choose not to avail of any notifications offered as part of the facility, depending on their needs (as distinct from any mandated regulatory notifications, discussed further below).

Providing the facility and consumption notifications

103. Providers of IAS and ICS are required to ensure that information in the facility on a consumer's levels of consumption (e.g., how much) of each service(s) in their tariff plan they have used, is provided in a "timely" manner.

104. A number of factors may be relevant to assessing whether the information is timely in any particular scenario. In general, ComReg would consider such information to be "timely" where it is meaningful or effective to allow consumers track their up-to-date or current consumption levels and enable them to control their usage of, and spend on, each service in their tariff plan (e.g. allowance of minutes, texts, data and any add-ons). Access to current usage information that is in real-time or in close to real-time would help ensure maximum value and effectiveness for the consumer, including informing any choices to cease usage and to avoid incurring further costs.

105. Allowing consumers access to this type of facility plays an important role in providing transparent, understandable and up-to-date information to consumers on their current and historic usage. Such facilities and consumption alerts or notifications can also help to off-set potential consumer behavioural tendencies and decision-making biases. This may occur where decisions are too complex and such tendencies or biases can be augmented where consumers are not aware of their true bill spend.⁵⁵

⁵⁵ In ComReg's Reach Omnibus Survey, "ComReg Billing Study", September 2018, it found that: "59% of respondents indicated they would like to receive usage alerts. Of these, 87% would like to receive alerts when they are approaching their usage limits, as opposed to an alert which notified they had spent a certain amount above their standard bill." This study was referenced in ComReg 'Bill Shock Review - Control of Expenditure - Call for Inputs', ComReg Document 19/83, 13 September 2019. At page 14 of that review, ComReg noted: "In the electronic communications services ("ECS") sector, behavioural bias can manifest itself in consumers choosing products and services that may not suit their needs or failing to make switching decisions that would save money. These biases, particularly in combination, may also plausibly be causal factors in, or exacerbate, bill shock."

106. The following are some examples of usage monitoring facilities which providers could consider offering to consumers, in accordance with the requirements of Article 102 (5) of the Code:⁵⁶

- Balance inquiry on usage via free-text or free-call number;
- Self-monitoring facilities such as a personalised online account and / or account via a mobile application;
- Pre-warning consumption / usage alerts, including for example: information on how much time remains before any recurring limits are reset, information on the cost of using the service(s) when a consumer is nearing the monthly (or other period) limits for in-plan or add on allowances, and the price of the additional usage, before the consumer decides to continue using the service and exceed the limits. These are useful tools for informing consumers they are approaching their periodic limits and thereby, if they continue using the service(s), they may incur higher rates. Any such alert should include information on what those rates are, thereby helping consumers to avoid a risk of bill shock;
- Access to alerts at specific consumption levels in-plan chosen by the consumer, and for any "add-on" allowances consumed (e.g. at 75% or 80% of full plan limit). This would give consumers the opportunity to have advance notice of their consumption behaviour and to make informed decisions suitable to their own needs; and
- Access to alerts at specific selected financial limits; it may be beneficial for consumers to have the ability to choose, in advance of incurring costs, from a selection of regular / monthly spend limits, one of which is the full monthly plan cost.

107. ComReg reminds providers that there is no ability to contract out of consumer rights and that Article 102 (5) of the Code makes it mandatory for providers of IAS and ICS billed on the basis of time or volume to offer a monitoring and usage control facility.

108. ComReg considers that the notifications referred to in the last sentence of Article 102 (5) following the words, "*In particular, providers shall notify...*" must be read as being mandatory regulatory notifications ("Regulatory Notifications") which will require providers (of IAS and ICS):

⁵⁶ Stakeholders will be aware that ComReg recently considered ways in which bill shock for consumers might be avoided through cost control facilities and sought input from industry in its document, Bill Shock Review - Control of Expenditure - Call for Inputs, ComReg Document 19/83, 13 September 2019. See also the discussion related to Article 115 additional facilities, in this Section 3.2.3.

- a. To notify consumers before a particular consumption limit, as may be set by the competent authority / NRA is reached (following transposition and subject to such limit being established); and
 - b. To notify consumers when any service in their tariff plan is fully used up (i.e. at 100% usage). ComReg interprets this to mean that a consumer with an allowance of minutes, texts or data in their tariff plan must receive a notification when they use up their allowance for *any one* of the services in their plan.
109. Subject to any indication to the contrary upon transposition of Article 102 (5), ComReg's view is that these are Regulatory Notifications and are distinguishable from the other monitoring of usage and control facilities which providers must offer consumers. Therefore, in the case of the Regulatory Notification at full usage (at (b) above), ComReg understands this notification must be sent to consumers by default, and it is not part of the facility offered. In the case of the Regulatory Notification *before* a particular consumption limit is reached (at (a) above), this would not be mandatory until it is established by ComReg.⁵⁷
110. If these "Regulatory Notifications" were not provided, the purpose of Article 102 (5), read in light of Recital 266, may be eroded. For instance, if the notification at full usage was not provided by default, some consumers could be liable for excess rates or surcharges for continued usage beyond their tariff plan during the billing period and they would not be protected from a risk of bill shock.
111. In line with the objectives set out in Recital 266 and the growing complexity of certain ECS contracts (e.g. increased take up of bundled offers), ComReg considers there is an overwhelming consumer benefit to usage and control facilities and consumption notifications. In particular, they assist consumers to manage their spending by enabling them to make informed decisions, such as to continue to use their service(s) and thus incur out-of-bundle charges, to stop using services, or to take time to consider changing or upgrading their individual tariff plan.
112. ComReg considers that the timing of notifications relating to consumption levels, as well as the form and content of those notifications, are important aspects of consumer protection and ensuring transparency for consumers. Following transposition, ComReg would consider the appropriateness of any consumption limits to be set by ComReg as well as the timing, format and content of any notifications required pursuant to Article 102 (5) of the Code, should ComReg be empowered to do so.

⁵⁷ Article 102 (5) refers to "any consumption limit as established by competent authorities in coordination, where relevant with national regulatory authorities."

Interaction with data protection

113. Some concerns have been raised by industry regarding a potential conflict between providers' obligations under Article 102 (5) of the Code and their obligations under existing data protection law, in particular, how the facility would operate and be in compliance with data protection and privacy laws. ComReg has consulted with the Data Protection Commission (the "DPC") in relation to the concerns raised and ComReg does not believe that implementing the requirements of Article 102 (5) of the Code would raise any data protection or privacy concerns.
114. ComReg considers the above mandated Regulatory Notifications should be sent to consumers by default and should not be subject to any prior opt-in or positive action by a consumer to avail of them. In contrast, any notifications or alerts offered as part of the facility, could depend on the consumer first taking action to access the facility or opting-in to receive voluntary notifications / alerts offered as part of the facility.
115. The Code is enacted without prejudice to other "*general interest objectives, in particular relating to the protection of personal data and privacy.*"⁵⁸ Therefore, when offering and processing data for the purposes of offering consumption monitoring facilities, providers should, as always, be mindful of their obligations under the GDPR, e-Privacy Regulations and any other applicable data protection laws. Good practice in relation to the protection of personal data and privacy could include ensuring *inter alia*, that the consumer is informed of how data is collected and processed, that such processing goes no farther than necessary and that any necessary consent in relation to the sending of direct marketing communications has been obtained. Additionally, ComReg notes that Annex VIII, Part B, (I) (4) requires providers, to include information on what personal data is required before the service will be performed and which data will be collected in the context of the provision of the service, as part of the Pre-Contractual Information required by Article 102 (1) of the Code.
116. Further, in line with ComReg's guidance provided in relation to sending Best Tariff Advice notifications, set out further below, ComReg considers that Regulatory Notifications under Article 102 (5) of the Code should be sent separately to other communications to consumers, and in particular, any material that could be considered direct marketing communications should not be included in or accompany the Regulatory Notification.⁵⁹

⁵⁸ Article 1 (3) (b) of the Code. See also Recital 15 of the Code.

⁵⁹ Direct marketing communications are governed by Regulation 13 of the e-Privacy Regulations, 2013.

3.2.2 Article 102 (6) – Potential for additional measures relating to consumption

Article 102 (6):

Member States may maintain or introduce in their national law provisions requiring providers to provide additional information on the consumption level and temporarily prevent further use of the relevant service in excess of a financial or volume limit determined by the competent authority.

117. Article 102 (6) provides that Member States may introduce national laws to make it mandatory for additional information to be provided to consumers on their consumption levels and to prevent further use of a service in excess of a particular financial or volume limit (to be set by the competent authority).
118. As discussed below, there is also a possibility that providers would be obliged to make available cost control facilities free of charge and /or a facility relating to tariff advice, as part of the Additional Facilities that may be required pursuant to Article 115 and Annex VI of the Code. Requirements for additional facilities would be subject to the discretion of the Member State and further specification by the competent authority / NRA.
119. Overall, ComReg would encourage providers to proactively adopt policies that help improve consumer experiences and enable consumers to establish if they are on the right plan or package that best suits their particular needs.

3.2.3 Other monitoring and bill transparency tools

120. Ensuring adequate bill transparency and providing additional facilities relating to cost control are other ways of assisting consumers to monitor their consumption and spending.
121. Under Article 115 “Provision of Additional Facilities” of the Code,⁶⁰ Member States have the power⁶¹ to allow competent authorities / NRA’s to mandate

⁶⁰ Similar provisions to require the provision of cost monitoring facilities are included in respect of universal services, in Article 88 “Control of Expenditure” of the Code.

⁶¹ Article 115 (3) of the Code provides that: “A Member State may decide to waive the application of paragraph 1 in all or part of its territory if it considers, after taking into account the views of interested parties, that there is sufficient access to those facilities.”

that consumers⁶² of IAS and number-based ICS should have access to certain additional facilities, free of charge. The list of potential additional facilities which Member States can require are set out in Annex VI, Part A and Part B of the Code. Member States can, however, decide not to require all or some of the additional facilities envisaged in Annex VI if the Member State considers, having taken into account the views of interested parties, that there is already sufficient access to those facilities.

122. Where Article 115 is applied, the facilities in Part B of Annex VI (i.e. calling line identification and email forwarding post-contract termination) would be mandated subject to “technical feasibility”.

123. Whether the facilities listed in Part A would be required is subject to assessment by the competent authority / NRA, which may require all or part of the list of additional facilities to be made available, free of charge. The potential additional facilities under Part A include:

- facilities relating to itemised billing to allow verification of charges and to monitor usage and expenditure;
- selective call or premium SMS or MMS barring;
- access to pre-paid services;
- cost control facilities such as free of charge alerts in the case of abnormal or excessive consumption patterns; and
- facility to deactivate third party billing.

124. In addition, ComReg notes that Member States may go beyond the list of facilities contained in Annex VI in order to ensure a higher level of consumer protection. ComReg awaits transposition to determine Ireland’s approach to requiring additional facilities and specific powers it may be afforded to assess the need for these facilities.

125. It should be noted that under the current legal framework, ComReg has imposed requirements on relevant providers to help consumers control their expenditure and to mitigate consumers propensity to incur bill shock, by means of bill transparency measures and other cost control facilities. The measures which ComReg has specified in this area to date include the following obligations on providers:

⁶² Certain “additional facilities” could be extended to other categories of end-users, as determined by the Member State, except for certain facilities which only apply to consumers (i.e. those described at points (c), (d) and (e) of Part A, of Annex VI of the Code).

- To give consumers access to adequate billing information (ComReg Decision D08/13).⁶³
- To provide, free of charge, premium rate SMS and MMS barring facilities (applies to providers who are Mobile Network Operators (MNOs))⁶⁴ and information on those facilities, by no later than 28 January 2019 (ComReg Decision 03/18).

126. Further, in relation to measures to prevent bill shock generally and in a separate context, as providers will be aware, the EU Roaming Regulation (EU) No 531/2012 (as amended) implements measures to ensure roaming mobile customers will receive notifications, in summary, (i) when the financial limit of €61.50 (€50 ex VAT) has been reached (per monthly billing period) (i.e. price cap alert), and (ii) when they have used the applicable fair use volume of data or any usage threshold applied.⁶⁵

3.3 Article 103 - Transparency, comparison of offers and publication of information

127. This section outlines ComReg's current guidance for implementing the requirements of Article 103 concerning:

- d. Transparency of contracts and offers;
- e. Independent comparison tool;
- f. Criteria for and certification of a comparison tool;
- g. Public interest information.

128. One of ComReg's objectives is "*promoting the provision of clear information, in particular requiring transparency of tariffs and conditions for using publicly available electronic communications services*".⁶⁶

129. ComReg considers that transparency is essential to incentivise operator behaviour and help empower end users to make informed choices. In particular, this applies when information gathering is costly or time consuming, and end users may not search for the best option to meet their

⁶³ ComReg Decision D08/13. This decision defined the ways in which all providers authorised to provide electronic communications networks and services must issue bills to consumers. The measures standardised the rules relating to billing applicable to providers to ensure they were consistent and transparent across the industry.

⁶⁴ ComReg Decision D03/18. The objective of this decision was to allow consumers prevent access to premium rate SMS or MMS and to reduce the possibility of bill shock.

⁶⁵ See in particular, Articles 14 and 15 of EU Roaming Regulation (EU) No 531/2012.

⁶⁶ Section 12(1)(c)(ii) and (iv) of the Communications Act 2002-2019 (consolidated).

needs and may instead make quick decisions to avoid information overload⁶⁷, especially when faced with complex choices.⁶⁸ In the ECS sector, behavioural bias including information overload can manifest itself in end users choosing products and services that may not suit their needs, or failing to make switching decisions that would save them money. This can result from the fact that ECS are complex both in a technical sense and in the way they are sometimes provided through contracts that may be difficult for some end users to understand.

130. End users should be able to easily compare the prices of various services offered on the market on the basis of reliable and up-to-date information published on offers and services.⁶⁹

3.3.1 Article 103 (1) – Transparency of contracts and offers

Article 103 (1):

Competent authorities in coordination, where relevant, with national regulatory authorities shall ensure that, where providers of internet access services or publicly available interpersonal communication services make the provision of those services subject to terms and conditions, the information referred to in Annex IX is published in a clear, comprehensive, machine-readable manner and in an accessible format for end-users with disabilities in accordance with Union law harmonising accessibility requirements for products and services, by all such providers, or by the competent authority itself in coordination, where relevant, with the national regulatory authority. Such information shall be updated regularly.

Competent authorities in coordination, where relevant, with national regulatory authorities may specify additional requirements regarding the form in which such information is to be published. That information shall, on request, be supplied to the competent authority and, where relevant, to the national regulatory authority before its publication.

131. Article 103 (1) specifies that, where IAS and publicly available ICS are subject to terms and conditions, the competent authority / NRA must ensure

⁶⁷ Related to avoidance of complex decision making through use of “rules of thumb” or ‘heuristics’.

⁶⁸ The behavioural economic literature has identified behavioural bias as a market failure. It refers to how individuals often act in a non-rational manner, contrary to the expectation on conventional economic models. Such irrational behaviour can lead to people making poor economic choices. See ComReg “Bill Shock – Control of Expenditure -Call for Inputs” document 19/83, 13 September 2019.

⁶⁹ See also Recital 265 of the Code.

that the information set out in Annex IX of the Code is published in a clear, comprehensive, machine readable manner, and in an accessible format for end users with disabilities⁷⁰ by those providers. There is also a requirement to update this information regularly.

132. To comply with the requirements of Article 103 (1) and Annex IX (following specification by ComReg), IAS and ICS providers will need to ensure that they publish up-to-date Annex IX information in a clear and comprehensive manner. This is necessary to empower end users to make informed choices. Recital 265 refers in particular to ensuring greater transparency as regards the information on tariffs, quality of service, conditions on terminal equipment and other relevant information. The full scope of information that an NRA / competent authority may require a provider to publish is set out in [Annex IX of the Code](#).
133. The Code provides that the competent authority / NRA shall decide which Annex IX information is relevant to be published by IAS and ICS providers. In addition, the Code permits the competent authority / NRA to specify additional requirements regarding the form in which the transparency information must be published. ComReg awaits transposition for the detail of powers it may be afforded, however, as the NRA, ComReg expects to be attributed powers to decide what transparency information providers should publish.
134. IAS providers are also reminded of their obligation to publish transparent information on IAS, in accordance with Article 4 (1) of the EU Open Internet Access Regulation.⁷¹
135. Annex IX transparency information requirements could include an obligation to publish minimum contractual information on the "Description of the services offered" (Annex IX, Item 2). ComReg notes that this class of information is further broken down in Annex IX as follows:
- a. *Item 2.1*: Scope of the services offered, and the main characteristics of each services provided, including any minimum levels of quality of service where offered and any restrictions imposed by the provider on the use of terminal equipment supplied; and
 - b. *Item 2.2*: Tariffs of the services offered, including information on communications volumes, (such as restrictions of data usage, number of voice minutes, number of messages) of specific tariff plans and the applicable tariffs for additional telecommunications units,

⁷⁰ Providers should consult Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services.

⁷¹ The last sentence in Article 4 (1) thereof states that "*Providers of internet access services shall publish information referred to in the first subparagraph.*" See also the Irish S.I. No. 343 of 2019 European Union (Open Internet Access) Regulations 2019.

number or services subject to particular pricing conditions, charges for access and maintenance, all types of usage charges, special and targeted tariff schemes and any additional charges, as well as costs with respect to terminal equipment.

136. ComReg notes, therefore, that information requirements under the heading of “Description of services”⁷² can include information on the main characteristics of the service (above at (a), Item 2.1) and information on tariffs of the services offered and what communications volumes are included in the plan (above at (b), Item 2.2). Similar information must also be included in the minimum Pre-Contractual Information to be provided prior to concluding an ECS contract.⁷³ In both cases, the Code expressly requires that information to be “clear” and “comprehensive”.
137. In that context, ComReg is of the view that where providers publish Annex IX information describing the tariffs and communication units included in services as “unlimited” or use this phrase in their contractual terms to describe the nature and tariff of the services offered, that this term could lead to confusion amongst end users if those services are not, in fact, unlimited. ComReg expects therefore that where a provider chooses to offer or publish terms and conditions describing a service as “unlimited”, that for the information to be “clear” and “comprehensive” (Article 103) or “clear and comprehensible” (Article 102), that such a tariff plan would in fact offer unlimited services and would not be subject to any restrictions or usage limits⁷⁴, except for appropriate permitted traffic management measures.⁷⁵ If there are any usage limitations or restrictions on access to services after having exceeded particular limits (e.g. FUP/ AUP), these terms should be described in clear and unambiguous language for the end-user,⁷⁶ and ComReg considers that the word “unlimited” should not be used unless the services are truly unlimited, in all documents subject to the requirements of Article 102 (1) regarding Pre-Contractual Information⁷⁷ and in any context where information is published to comply with Annex IX and Article 103 (1) of the Code.

⁷² In accordance with Annex IX, Item 2, Article 103 (1) transparency requirements.

⁷³ In accordance with Article 102 (1) and Annex VIII of Code.

⁷⁴ ComReg notes however the right of providers to set limits in accordance with the rules for Roam-Like-At-Home, established pursuant to Roaming Regulation (EU) 531/2012 (as amended).

⁷⁵ In accordance with Article 3 of the EU Open Internet Access Regulation (EU) 2015/2120.

⁷⁶ ComReg notes that the Advertising Standards Authority of Ireland (ASAI) is currently considering the use of the term “unlimited” in telecommunications advertising and whether it is appropriate, and it plans to issue guidance on this topic.

⁷⁷ As previously noted, providers of IAS must also publish certain minimum information in IAS contracts such as internet speeds, under Article 4 (1) (d) of the EU Open Internet Access Regulation.

3.3.2 Article 103 (2) – Independent comparison tool

Article 103 (2):

Competent authorities shall, in coordination, where relevant, with national regulatory authorities, ensure that end- users have access free of charge to at least one independent comparison tool which enables them to compare and evaluate different internet access services and publicly available number-based interpersonal communications services, and, where applicable, publicly available number-independent interpersonal communications services, with regard to:

(a) prices and tariffs of services provided against recurring or consumption-based direct monetary payments; and

(b) the quality of service performance, where minimum quality of service is offered, or the undertaking is required to publish such information pursuant to Article 104.

138. An independent, free of charge, comparison tool is required under Article 103 (2) and (3) of the Code to allow end users compare options for different IAS and publicly available number based- ICS.

139. From a policy perspective, independent comparison tools are an important means of ensuring transparency in the ECS market and allowing end users to understand the full scope of offers available, and thereby make informed decisions as regards their needs. With regard to the benefits of independent comparison tools, ComReg notes Recital 267 of the Code which states:

"Independent comparison tools, such as websites, are an effective means for end-users to assess the merits of different providers of internet access services and interpersonal communications services, where provided against recurring or consumption-based direct monetary payments, and to obtain impartial information, in particular by comparing prices, tariffs, and quality parameters in one place."

140. ComReg currently operates an interactive comparison tool called, ComReg "Compare", available at (www.comreg.ie/compare). The Compare facility allows end users to compare the cost and other elements of personal / non-business mobile, home phone (fixed), broadband and bundled services price

plans for IAS and number-based ICS.⁷⁸ Compare offers independent reliable information on prices and tariffs. It offers the opportunity for end users to browse all plans available and to find out the best option to suit their needs, based on their typical usage and desired spend per month. End users can filter results, with a choice of display, based on their usage requirements. For mobile packages, it also allows end users to filter by network, by handset model and contract type (e.g. prepaid, post-paid). It therefore allows end users who are, for example, considering switching provider or looking for a better deal with their existing provider to determine the best package for them based on their individual requirements.

141. ComReg's compare facility is an independent transparency tool, which is available to end users, free of charge, to compare and evaluate different IAS and number based ICS with regard to prices and tariffs of services as required by Article 103 (2) (a); the tool does not currently include minimum quality of service ("QoS") information offered by providers, as required by Article 103 (2) (b), nor any QoS parameters undertakings would be required to publish, following specification of such QoS parameters by the NRA / competent authority under Article 104 (which ComReg could not specify until after transposition⁷⁹).
142. As set out in the ComReg Action Plan 2020/21, ComReg is conducting a review of the compare facility.

⁷⁸ ComReg notes there is scope for such a tool to also include number-independent ICS. This will be a matter for the Department upon transposition. ComReg's Compare tool does not currently include number-independent ICS.

⁷⁹ To date, quality of service (QoS) measurements have been specified by ComReg in relation to universal services, pursuant to Regulation 10 "Quality of service of designated undertakings" of the Universal Service Regulations 2011, see ComReg Decision D02/19. Certain QoS / transparency measures have also been prescribed in relation to equivalence of access and end users with disabilities (discussed in the next section on Article 104 of the Code).

3.3.3 Article 103 (3) – Criteria for and certification of a comparison tool

Article 103 (3):

The comparison tool referred to in paragraph 2 shall:

(a) be operationally independent from the providers of such services, thereby ensuring that those providers are given equal treatment in search results;

(b) clearly disclose the owners and operators of the comparison tool;

(c) set out clear and objective criteria on which the comparison is to be based;

(d) use plain and unambiguous language;

(e) provide accurate and up-to-date information and state the time of the last update;

(f) be open to any provider of internet access services or publicly available interpersonal communications services making available the relevant information, and include a broad range of offers covering a significant part of the market and, where the information presented is not a complete overview of the market, a clear statement to that effect, before displaying results;

(g) provide an effective procedure to report incorrect information;

(h) include the possibility to compare prices, tariffs and quality of service performance between offers available to consumers and, if required by Member States, between those offers and the standard offers publicly available to other end-users.

Comparison tools fulfilling the requirements in points (a) to (h) shall, upon request by the provider of the tool, be certified by competent authorities in coordination, where relevant, with national regulatory authorities.

Third parties shall have a right to use, free of charge and in open data formats, the information published by providers of internet access services or publicly available interpersonal communications services, for the purposes of making available such independent comparison tools.

143. Article 103 (3) of the Code sets out a list of detailed requirements for any independent comparison tool, listed in the text box above at (a) to (h). Article 103 (3) also makes provision for the certification of comparison tools which fulfil those criteria.

144. Any comparison tool must, to meet the requirements of Article 103 (3), set out clear and objective criteria on which the comparison is based, use plain and unambiguous language, and provide accurate and up to date information (which states the time of the last update). Importantly, the tool must also be operationally independent from the providers of the services and the tool should not give any provider preference in search results.
145. ComReg notes that if a tool is created which meets the requirements outlined in Article 103 (3) points (a) to (h), it will be up to the provider of the tool to request certification from the competent authority/NRA, and ComReg expects it would be the regulator for those purposes.

3.3.4 Article 103 (4) – Public interest information

Article 103 (4):

Member States may require that providers of internet access services or publicly available number-based interpersonal communications services, or both, distribute public interest information free of charge to existing and new end-users, where appropriate, by the means that they ordinarily use in their communications with end-users. In such a case, that public interest information shall be provided by the relevant public authorities in a standardised format and shall, inter alia, cover the following topics:

(a) the most common uses of internet access services and publicly available number-based interpersonal communications services to engage in unlawful activities or to disseminate harmful content, in particular where it may prejudice respect for the rights and freedoms of others, including infringements of data protection rights, copyright and related rights, and their legal consequences; and

(b) the means of protection against risks to personal security, privacy and personal data when using internet access services and publicly available number-based interpersonal communications services.

146. Member States are afforded the flexibility to require providers to distribute public interest information, free of charge, to end users where appropriate. Where providers are required to do so, they should communicate this information in the same way as they would ordinarily communicate with their customers. The information must also be communicated in a “standardised” format by providers.

147. The type of information which could be classed as public interest information is set out above in Article 103 (4) and includes information on, for example, uses of IAS and number-based ICS to “engage in unlawful activities or to disseminate harmful content” and information on how end users can protect their personal security, privacy and personal data.
148. It is important that end users have easy access to such information and, for example, that they understand the means by which they can protect their personal data and privacy while using IAS and ICS. In this regard, Recital 269 states that:
- “Such public-interest information should be updated where necessary and should be presented in easily comprehensible formats, as determined by each Member State, and on national public authority websites. Member States should be able to oblige providers of internet access services and publicly available number-based interpersonal communications services to disseminate this standardised information to all of their customers in a manner considered to be appropriate by the national public authorities.”*
149. ComReg would encourage providers to proactively and voluntarily adopt policies in relation to increasing consumer awareness of the most common uses of IAS and ICS to disseminate harmful material or engage in unlawful activities, the legal consequences of such actions and the means by which end users can protect their personal security, privacy and personal data, given the significant social benefit to be gained from increased awareness in this regard. ComReg must await transposition of the Code to ascertain the nature of any powers it may be afforded in relation to Article 103 (4).

3.4 Article 104 - Quality of service related to IAS and publicly available ICS

150. This section outlines ComReg's current guidance for implementing the requirements of Article 104 on publication of quality of service information.

Article 104 (1):

National regulatory authorities in coordination with other competent authorities may require providers of internet access services and of publicly available interpersonal communications services to publish comprehensive, comparable, reliable, user-friendly and up-to-date information for end-users on the quality of their services, to the extent that they control at least some elements of the network either directly or by virtue of a service level agreement to that effect, and on measures taken to ensure equivalence in access for end-users with disabilities. National regulatory authorities in coordination with other competent authorities may also require providers of publicly available interpersonal communication services to inform consumers if the quality of the services they provide depends on any external factors, such as control of signal transmission or network connectivity.

That information shall, on request, be supplied to the national regulatory and, where relevant, to other competent authorities before its publication.

The measures to ensure quality of service shall comply with Regulation (EU) 2015/2120.

Article 104 (2):

National regulatory authorities in coordination with other competent authorities shall specify, taking utmost account of BEREC guidelines, the quality of service parameters to be measured, the applicable measurement methods, and the content, form and manner of the information to be published, including possible quality certification mechanisms. Where appropriate, the parameters, definitions and measurement methods set out in Annex X shall be used.

By 21 June 2020, in order to contribute to a consistent application of this paragraph and of Annex X, BEREC shall, after consulting stakeholders and in close cooperation with the Commission, adopt guidelines detailing the relevant quality of service parameters, including parameters relevant for end-users with disabilities, the applicable measurement methods, the content and format of publication of the information, and quality certification mechanisms.

3.4.1 Article 104 (1) and (2) – Publication of quality of service information

151. Article 104 is broadly a recast of Article 22 of the Universal Service Directive (2002/22/EC), transposed into Irish law by Regulation 15 of the Universal Service Regulations as a basis for requiring transparency and publication of information for end users of ECS on quality of services.
152. Stakeholders will be aware that ComReg has, under the existing legal framework, specified that providers must supply accessibility statements for end-users with disabilities in ComReg Decision D06/15⁸⁰ and other measures to ensure equivalence of access under ComReg Decision D14/52.⁸¹
153. Article 104 (1) of the Code determines that the NRA, ComReg, in coordination with other competent authorities, may require providers of IAS and of publicly available ICS to publish comprehensive, comparable, reliable, user-friendly and up-to-date information for end users on the quality of their services, and on measures taken to ensure equivalence in access for end-users with disabilities.⁸²
154. In particular, Article 104 (1) of the Code allows the NRA to impose requirements to publish quality of service information on:
- A provider of a relevant service (IAS and/or ICS);
 - Where the provider of that service controls at least some elements of the network, either directly or by virtue of an SLA to that effect.
155. Recital 271 of the Code provides that the NRA, in coordination with other competent authorities, should be empowered to monitor the quality of service (“QoS”) and to systematically collect information about the QoS offered by providers of IAS and of publicly available ICS. It also states that such information should be collected on the basis of criteria which allow comparability between providers, and between Member States.

⁸⁰ ComReg Decision D06/15, ComReg document 15/98, ‘Measures for disabled end-users: Requirement for an Accessibility Statement’, dated 1 August 2015. Accessible at: <https://www.comreg.ie/publication/measures-for-disabled-end-users-requirement-for-an-accessibility-statement>. Imposed pursuant to ComReg’s powers under Regulation 17 (1) and Regulation 15 (6) (f) of the Universal Services Regulations.

⁸¹ ComReg Decision 14/52 in relation to Electronic Communications Measures to Ensure Equivalence of Access, specified pursuant to ComReg’s powers under Regulation 15 of the Universal Service Regulations 2011.

⁸² Member States are empowered, under Article 111 of the Code, to ensure that competent authorities can specify requirements to be met by providers of ECS in relation to end-users with disabilities.

156. This standardisation of QoS criteria is achieved by Annex X of the Code and complemented by the BEREC Guidelines.⁸³ The BEREC Guidelines were published in accordance with the Article 104 (2) to contribute to a consistent application of Article 104 and Annex X across Member States and to give guidance and detail on the relevant QoS parameters, including parameters for end users with disabilities, the applicable measurement methods, the content and format of publication of the information and relevant quality certification mechanisms.
157. ComReg would advise providers of IAS / ICS to familiarise themselves with the contents of both Annex X and the BEREC Guidelines. In particular, those providers should be aware that both Annex X and the BEREC Guidelines must be taken into account when publishing information on any minimum levels of QoS offered on IAS / ICS services or when including those details as part of the Pre-Contractual Information for consumers and other specified categories of end users (in accordance with Article 102 and Annex VIII of the Code).⁸⁴
158. In relation to the minimum QoS Pre-Contractual Information, **Annex VIII, Part A (1)**⁸⁵ of the Code requires the following to be included:
- For **providers of ECS** (except transmission services for M2M services):
 - “as part of the main characteristics of each service provided, any minimum levels of quality of service to the extent that those are offered”
 - “Where no minimum levels of quality of service are offered, a statement to this effect shall be made”.
 - For **services other than IAS**:
 - “the specific quality parameters assured”.
159. In addition, for **providers of IAS or ICS, Annex VIII, Part B (I)** of the Code sets out a certain minimum QoS information to be included in the Pre-Contractual Information on the main characteristics of each service, which must be in accordance with the definitions and measurement methods in Annex X:
- For **IAS**, at least:

⁸³ BEREC (2019) *BEREC Guidelines detailing Quality of Service Parameters (2019)*. Available at: https://berec.europa.eu/eng/document_register/subject_matter/berec/regulatory_best_practices/guidelines/8847-berec-guidelines-detailing-quality-of-service-parameters.

⁸⁴ According to Article 102 ECS contracts shall comprise the information set out in Annex VIII. Part (B)(I)(1)(i) refers to certain minimum QoS parameters, which are referenced in Annex X and the BEREC Guidelines.

⁸⁵ Annex VIII information is required to be provided in accordance with Article 102 (1) of the Code.

- latency
 - jitter
 - packet loss
- For **publicly available ICS** (i.e. which exert control over at least some elements of the network or have an SLA to that effect), at least:
- the time for the initial connection⁸⁶
 - failure probability
 - call signalling delays

160. In circumstances where the necessary information, including information on equal access and choice for end users with disabilities, is not made available by providers voluntarily or is not made available to end users in an appropriate, accessible, reliable, comparable and up to date manner, following transposition, ComReg may consider specifying appropriate transparency and QoS measures, taking utmost account of the BEREC Guidelines and Annex X, and following appropriate consultation with industry. In imposing any QoS requirements under Article 104 (2), the NRA can also require providers to inform consumers if the QoS they provide depends on external factors.

161. ComReg will continue to monitor the market as regards QoS and any gaps in relevant information available to end users, including information relating to Non-Technical QoS standards. Currently, ComReg publishes complaints data on a quarterly basis.⁸⁷ This data enables end users (residential and business) to monitor the quality of consumer care handling issues relating to ECS and PRS. The BEREC Guidelines include references to Non-Technical parameters for QoS, including “Response time for operator services” and “Customer Complaints Resolution Time”.⁸⁸ These Non-Technical parameters may be taken into account by ComReg at a future date, in addition to any parameters noted in Annex X, should ComReg advance proposals for publication of QoS parameters as NRA under Article 104 (2) of the Code. Any suggestion to impose Non-Technical QoS parameters would be consulted upon with industry as appropriate.

⁸⁶ ComReg understands this to be the same QoS parameter as “Supply time for initial connection” included in the [ETSI standards](#), at page 19, Table 1, “Summary of QoS parameters”.

⁸⁷ Please see link to last consumer line statistics report - https://www.comreg.ie/?dln_download=comreg-consumer-line-statistics-report-q2-2020.

⁸⁸ Included at page 14, at Table 2, “QoS parameters not set out in the EECC”, of the BEREC Guidelines.

162. In this regard the European Commission (“EC”) recently clarified in its, “Questions and Answers on the EECC⁸⁹” guidance (EC guidance) to Member States the following:

Details of the EC’s response are set out below (please note, the examples and questions put to the EC by the Member State are presented in **bold** and the EC’s responses are presented in *italics*):

Question to EC:

“4.Considering that Article 104 refers only to technical QoS requirements, as previously clarified by the Commission, can we assume from the fact that the EECC does not extend to other types of QoS levels – namely regarding complaints handling procedures, fulfilment of set up or repair appointments, etc. – that MS are at liberty to require service providers to commit to other non-technical QoS requirements?”

Reply:

“4. As previously explained, the addressee of Article 104(1) is a national regulatory authority, which pursuant to the disposition of the said provision may require providers of IAS and publicly available ICS to publish information for end-users on the quality of their services. In accordance with Article 104(2) the QoS parameters to be measured shall be specified by the NRA in coordination with other competent authorities. As Art. 104(2) does not distinguish between technical and non-technical QoS parameters. NRAs are at liberty to specify the type of QoS parameters to be measured themselves, although, where appropriate, they shall follow Annex X and the BEREC guidelines. On the other hand, as explained earlier, MS in turn are not at liberty to require service providers to commit to other non-technical QoS requirements, as otherwise this would exclude the mentioned NRAs’ prerogative.”

EU Open Internet Access Regulation

163. In addition, ComReg would highlight to providers of IAS their obligations to comply with transparency of information and publication requirements set

⁸⁹ European Commission (2020) “Questions and Answers on the EECC”, available at: <https://circabc.europa.eu/ui/group/7da1d333-3dda-4a40-9d7c-0013e0c51c98/library/ec7bf0a3-9ac1-4766-9d0d-e299c493b05b/details> (Note: You must create a CIRCABC account to access.) Please note the disclaimer at the start of the “Questions and Answers on the EECC” document: “This is a rolling document that has not been adopted or endorsed by the European Commission. It is shared with Member States solely for information purposes. Any views expressed therein are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the Commission nor prejudice the Commission or its services. Moreover, the final interpretation of EU law lies with the Court of Justice of the EU.”

out in Article 4 (1) of the Open Internet Access Regulation⁹⁰; these include a requirement to publish information on how traffic management measures applied could impact on the quality of services, the privacy of end users and the protection of their personal data in IAS contracts.

164. Attention is also drawn to the requirements of Article 4 (1)(d) of the EU Open Internet Access Regulation, which provides that contracts for IAS must include,

"a clear and comprehensible explanation of the minimum, normally available, maximum and advertised download and upload speed of the internet access services in the case of fixed networks, or of the estimated maximum and advertised download and upload speed of the internet access services in the case of mobile networks, and how significant deviations from the respective advertised download and upload speeds could impact the exercise of the end-users' rights laid down in Article 3 (1)."

3.5 Article 105 - Contract duration and termination

165. This section outlines ComReg's current guidance for implementing the requirements of Article 105 concerning:

- a. Contract duration and termination;
- b. Automatically prolonged fixed duration contracts - notice of end of contract and best tariff advice/information; and
- c. Contract termination and compensation due.

⁹⁰ Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union. Available at: <http://data.europa.eu/eli/reg/2015/2120/oj>.

3.5.1 Article 105 (1) Contract duration and termination

Article 105 (1) and (2):

(1) Member States shall ensure that conditions and procedures for contract termination do not act as a disincentive to changing service provider and that contracts concluded between consumers and providers of publicly available electronic communications services other than number-independent interpersonal communications services and other than transmission services used for the provision of machine-to-machine services, do not mandate a commitment period longer than 24 months. Member States may adopt or maintain provisions which mandate shorter maximum contractual commitment periods.

This paragraph shall not apply to the duration of an instalment contract where the consumer has agreed in a separate contract to instalment payments exclusively for deployment of a physical connection, in particular to very high capacity networks. An instalment contract for the deployment of a physical connection shall not include terminal equipment, such as a router or modem, and shall not preclude consumers from exercising their rights under this Article.

(2) Paragraph 1 shall also apply to end-users that are microenterprises, small enterprises or not-for-profit organisations, unless they have explicitly agreed to waive those provisions.

166. First, under Article 105 (1), Member States are required to ensure that conditions and procedures for contract termination do not act as a disincentive to changing provider. Recital 273 of the Code refers to enabling consumers to make informed choices and to change provider when it is in their best interest to do so, “*in order to take full advantage of the competitive environment*” and to do so “*without being hindered by legal, technical or practical obstacles, including contractual conditions, procedures and charges*”.⁹¹

167. Second, in pursuit of these objectives, Article 105 (1) stipulates that ECS consumer contracts, other than number-independent ICS and transmission services used for the provision of M2M services, should not exceed a 24-month (2 year) commitment period. Therefore, in line with the requirements of Article 105 (1), providers must not conclude consumer contracts which are

⁹¹ The full text of Recital 273 is set out in the Appendix to this Guidance.

longer than the 24-month time frame. The Code makes express provision for Member States to shorten the 24-month time frame to mandate a shorter maximum contract period and ComReg awaits transposition measures in that regard.

168. Third, Article 105 (1) does not apply to the duration of an instalment contract where the consumer has agreed in a separate contract to instalment payments exclusively for the deployment of a physical connection (in particular for very high capacity networks). Recital 273 of the Code notes that this could include installation of a connection up to or very close to end-user premises, including through demand aggregation schemes, which enable network investors to reduce initial take-up risks (e.g. capital costs).
169. Contracts that are longer than 2 years can be used to facilitate the reimbursement of contributions to such instalment contracts and to support network roll-out. However, Article 105 (1) stipulates that such an instalment contract must not include terminal equipment, such as a router or modem⁹² and importantly, that it “*shall not preclude consumers from exercising their rights under this Article*”.⁹³ In that context, Recital 273 emphasizes that the rights of consumers to switch between providers must not be restricted by reimbursement periods included in instalment contracts for physical connections.
170. Fourth, ComReg notes the rights in Article 105 (1) of the Code apply to consumers and to end users that are microenterprises, small enterprises or not-for-profit organisations, unless they have explicitly agreed to waive those provisions.
171. Finally, providers should be aware that ComReg has taken previous enforcement actions in respect of disincentives to switching and associated information notices have been published.⁹⁴ Providers should note these enforcement actions and seek to avoid imposing conditions and procedures for contract termination that could act as a disincentive to changing provider. For instance, with reference to notice periods, providers must not give the impression that it is not possible for the switching and cancellation process to be entirely gaining-provider-led. This applies both to references in terms and conditions and elsewhere, such as in customer care FAQs. Another example of which ComReg is aware is the current delays in providers complying with requests to unlock handsets when consumers wish to switch. In that regard, providers should also note the contents of Article 105 (6), which require providers to lift any condition on the use of terminal equipment

⁹² Recital 273 of the Code also refers to a “handset” as an example of such terminal equipment.

⁹³ The reference to “this Article” is understood by ComReg to mean all rights under Article 105, not merely those under Article 105 (1) of the Code.

⁹⁴ See ComReg’s latest enforcement actions in relation to [switching](#) and [Regulation 25 \(6\)\(b\)](#) of the Universal Service Regulations (hyperlinked).

on other networks, free of charge, upon payment of compensation due, so that subscribers are not disincentivised from switching. Further consideration of Article 105 (6) is outlined in section 3.5.4 of this Guidance.

3.5.2 Article 105 (3) – Automatically prolonged fixed duration contracts: notice of end of contract and best tariff advice/information

Article 105 (3):

Where a contract or national law provides for automatic prolongation of a fixed duration contract for electronic communications services other than number-independent interpersonal communications services and other than transmission services used for the provision of machine-to-machine services, Member States shall ensure that, after such prolongation, end-users are entitled to terminate the contract at any time with a maximum one-month notice period, as determined by Member States, and without incurring any costs except the charges for receiving the service during the notice period. Before the contract is automatically prolonged, providers shall inform end-users, in a prominent and timely manner and on a durable medium, of the end of the contractual commitment and of the means by which to terminate the contract. In addition, and at the same time, providers shall give end-users best tariff advice relating to their services. Providers shall provide end-users with best tariff information at least annually.

172. Article 105 (3) applies to contracts for ECS, other than number-independent ICS and transmission services for M2M services. It applies to all elements of a bundle, so long as the bundle includes one service that is an IAS or a number-based ICS.
173. However, Article 105 (3) applies only to contracts for a fixed duration / term, which may be automatically prolonged, based on either the terms of the contract itself or pursuant to national law. Where this occurs, end users will have a right to exit such contracts, with a maximum one month's notice; without incurring any costs except the costs of receiving the service during the notice period.
174. The scope of Article 105 (3) seeks to protect all "end-users" and so applies for the benefit of consumers, microenterprises, small enterprises, not-for-profit organisations and other end-users. Therefore, the notifications required under Article 105 (3) must, where applicable, be sent to each of these categories of end users.

175. This section first considers the meaning of the concepts “fixed duration” and “automatically prolonged” in Article 105 (3), followed by the types of notifications that must be sent to end users, and the timing and content of such notifications. The interaction between this sub-article and data protection and privacy matters is also considered.

Contracts in scope of Article 105 (3)

176. The terms “automatic prolongation” and “fixed duration contract” within the meaning of Article 105 (3) are not defined in the Code. However, in respect of when a contract should be considered as “automatically prolonged”, the EC has provided the following guidance:⁹⁵

“Article 105 (3) refers to “automatic prolongation of a fixed duration contract” without specifying the length of the prolongation or the relation to the duration of the initial contract. However, Article 105 (3) is clear in providing that “[...] end-users are entitled to terminate the contract at any time [...]” after a fixed duration contract was “auto prolonged”.

177. The EC guidance provides advice in respect of a specific hypothetical example, which ComReg has included below to assist providers to better understand the practical application of the EC response (the question is in **bold** and the EC reply is in *italics*):

“A consumer is in a 24-month contract for ECS to which Article 105 (3) EECC applies. There is no express provision in national law regarding automatic prolongation of fixed duration contracts. The consumer’s contract does not expressly use the term “automatic prolongation” of the fixed duration upon expiry, but rather provides that on expiry of the 24 months, the contract will continue on the same terms and conditions as before but can be terminated on one month’s notice. If not terminated, the contract will continue indefinitely.

Based on this worked example, please confirm whether the following statements correct:

(A) While the consumer’s contract does continue after the initial 24-month period, because there is no provision in national law providing for “automatic prolongation” and no reference to same in the consumer’s contract, this contract should not be considered as “auto prolonged”.

Reply:

⁹⁵ European Commission (2020) “Questions and Answers on the EECC”.

In our view the contract has a fixed duration (24 months) and it is automatically prolonged (continues on the same terms and conditions), even if the term "automatic prolongation" is not used. The aim of Art 105 (3) is to ensure protection of end-users when contracts of fixed duration are automatically prolonged. The entitlement to terminate the contract at any time with a maximum one-month notice period together with the requirement to provide best tariff information at least annually thus applies after the end of the 24 months.

(B) The consumer is therefore not entitled to the following:

(i) details of the end of the contractual commitment or the means to terminate the contract near the end of the initial 24-month period

Reply:

In our view, as explained above, the contract has a fixed duration, it is automatically prolonged, and Art 105(3) applies. The end-user is thus entitled to, before the end of the initial 24-month period, receive information of the means to terminate and best tariff advice.

(ii) BTA at the end of the initial 24-month period

Reply:

As above, in our view, the contract has an initial 24-month fixed duration and it is automatically prolonged. Art 105(3) requirement on best tariff advice applies before the end of the initial 24-month period.

(iii) BTA at least annually after receiving the BTA referred to in (ii)

[Note: we understand the question is about best tariff information "BTI" (not BTA) at least annually.] As above, in our view, the provider shall provide best tariff information at least annually during the duration of the prolongation."

178. Therefore, Article 105 (3) of the Code applies to contracts which (i) are for a fixed duration / term; and (ii) may be automatically prolonged, based on either the terms of the contract itself, or pursuant to national law.

179. ComReg understands this to mean that Article 105 (3) applies to a contract with a fixed duration, irrespective of the length of the initial fixed term, where at the expiry of the fixed term the contract does not terminate but is instead "automatically" prolonged / continued. Importantly, ComReg notes the EC guidance that a contract could be considered to be "prolonged", irrespective of the length of the prolongation (i.e. it could be rolled-over for another fixed term or an unspecified period). Therefore, all such contracts are subject to the notification requirements outlined below and, may be terminated by the

end-user with a maximum of one month's notice, after the automatic prolongation.⁹⁶

180. To assist providers in understanding the application of Article 105 (3), ComReg has considered some typical types of ECS contracts in the Irish market and whether they fall within or outside the scope of Article 105 (3). This interpretation is based on ComReg's current understanding of the Code and as noted at the outset, may be informed by further clarifications or guidance received:

a. **Fixed duration contracts** – a contract with a fixed term:

- i. A contract for an initial fixed term (i.e. minimum term or commitment period up to 24 months) which, on expiry, continues for any further fixed term (e.g. 6, 12 months etc), would be within scope.
- ii. Whereas, a contract with an initial fixed term (i.e. minimum term or commitment period up to 24 months) but which, by virtue of an automatic prolongation, becomes a contract of indeterminate duration (e.g. an unspecified duration rolling month-to-month contract), would be within scope.

b. **Contracts of indeterminate duration** – these are contracts with no initial fixed term / minimum commitment period, as envisaged by Schedule 2 (h) of the Consumer Information Regulations. ComReg understands these contracts would fall outside the scope of Article 105 (3). ComReg notes, however, that whether a contract is for a "fixed duration" or "indeterminate duration" will depend on the particular terms and conditions of the contract, and to fall within the scope of Article 105 (3) the contract must also be subject to automatic prolongation. To illustrate:

- i. A contract which never had a fixed term or was for an indeterminate duration from the outset, would be outside scope. (Note: If the contract had a fixed term, but after prolongation became an indefinite duration contract, as illustrated (as at (a) (ii) above), then it would be within scope.)

c. **Prepay contracts** – whether they are within scope will depend on the particular terms and conditions of the contract. ComReg notes that a significant proportion of prepay mobile contracts on the Irish ECS market would not have a fixed term that may be automatically

⁹⁶ Or such shorter notification period as may be set out within legislation transposing the Code or ascribed to ComReg to specify. ComReg awaits transposition in that regard.

prolonged, and as such, those prepay contracts are unlikely to fall within scope of Article 105 (3). However, whether a contract is prepay or bill pay is not of itself determinative of whether the contract is subject to Article 105 (3).

In the context of traditional prepay contracts, ComReg notes these contracts usually offer end users flexibility to change provider without incurring any further costs or penalty once the prepaid credit units / time-based credit period expires; the continuation of the contract often depends on the end user taking a positive action such as manually topping-up and the end user can usually walk away from the contract with no termination charges payable. However, whether the means of top-up is manual or occurs via a recurring automatic payment (e.g. direct debit) is not determinative and the contract could be in scope if there is an initial fixed term and the possibility of automatic prolongation (e.g. contract roll over on the same terms and conditions).

Traditional forms of prepay mobile contracts are becoming less common as the ECS market evolves, in particular with the focus on sales of bundled contracts where elements of a bundle may have different contract end dates. Therefore, as stated, ultimately whether a prepay contract is subject to Article 105 (3) will depend on the particular terms of the contract and ComReg will consider this on a case by case basis.

The following are some examples of contracts that could be described as "prepay" but which ComReg considers could fall within the scope of Article 105 (3), depending on their terms and conditions:

- i. A prepay plan where payment is made upfront on a prepay basis for services (e.g. monthly) but there is a fixed term, potentially relating to recouping costs of a mobile handset or other equipment. If the contract can be automatically prolonged upon expiry of the fixed term, it would be within scope.
- ii. A prepay plan for a top-up of time-based credit e.g. advance top up to receive a pre-set volume of communication units or access to "unlimited" services or access to services subject to an FUP or AUP, where the credit expires after typically 28 / 30 days. If there is no fixed term to the contract, then it would be outside scope. However, as noted above, if there is an initial fixed term which can be automatically prolonged (e.g.

possibly by roll over of terms and continuing automatic advance payments), it could be within the scope.

- d. **Sim-only contracts (bill pay or prepay)** – the fact that a contract is sim-only is not determinative of itself. Article 105 (3) would apply if the contract was subject to automatic prolongation after an initial fixed term.
- e. **Bundles** – Article 107 of the Code deals specifically with rights applying to bundles, including when a contract for a bundle may be terminated. ComReg notes that Article 107 (1) provides that the rights in Article 105, including the Article 105 (3) right to exit and notification requirements, apply equally to bundles, provided the bundle comprises at least an IAS or a publicly available number-based ICS.⁹⁷ To fall within scope, the bundled contract would also need to be a fixed duration contract that may be automatically prolonged, in line with Article 105 (3).

181. ComReg’s guidance above is based on a set of hypothetical contract scenarios in the Irish ECS market that were raised by industry, at a high level. ComReg has not considered the precise terms and conditions of any ECS contract and whether they are within scope of Article 105 (3) of the Code. Following transposition, ComReg will monitor provider’s approach to compliance with their obligations under Article 105 (3) on a case by case basis.

Notifications required under Article 105 (3)

182. Notification(s) to be sent to end users on foot of Article 105 (3) of the Code are mandatory Regulatory Notifications.

183. Before the contract is automatically prolonged, providers are required to inform an end user in a prominent, timely manner, and on a durable medium of the following information:

- a. The end date of the fixed term contract and the means by which to terminate the contract (referred to in the Guidance as the “End of Contract notice”); and
- b. At the same time, Best Tariff Advice relating to their services.

⁹⁷ Article 107 (1) of the Code provides that, “If a bundle of services or a bundle of services and terminal equipment offered to a consumer comprises at least an internet access service or a publicly available number-based interpersonal communications service, Article 102 (3), Article 103 (1), Article 105 and Article 106 (1) shall apply to all elements of the bundle including, mutatis mutandis, those not otherwise covered by those provisions.”

184. In addition, after the contract has been prolonged and during the prolonged period of the contract, providers are required to:

- a. Provide end users with Best Tariff Information, at least annually.

185. Therefore, there are two notification requirements regarding best tariffs: (i) "Best Tariff Advice" (BTA) which refers to the information / advice to be provided before the fixed term contract expires; and (ii) "Best Tariff Information" (BTI) which refers to the information to be issued annually, after prolongation of the initial fixed term contract, and irrespective of the duration of its prolongation.

186. In the absence of further guidance to distinguish between information which BTA or which BTI, must include, ComReg considers that the same type of information should be provided in each case and in the next section, ComReg sets out its guidance as to what that could include. The difference between BTA and BTI, as ComReg understands it, relates to the timing of when the information is given to end-users (i.e. BTA is pre-expiry of the fixed term; BTI is annually thereafter).

187. In terms of the scope of contracts for which BTI must be provided, the EC guidance indicated that BTI only applies to fixed term contracts which have been automatically prolonged:

"Article 105(3) is on automatically prolonged fixed duration contracts and the requirement on giving best tariff information at least annually is also related (only) to these contracts. This adds to the obligation on giving best tariff advice before the contract is automatically prolonged."⁹⁸

188. Therefore, ComReg understands that in practice, Article 105 (3) will apply to all contracts in scope⁹⁹ as follows:

(A) Where fixed term contracts will be automatically prolonged **AFTER** Article 105 (3) becomes effective in Irish law, providers must send end users the following:

- End of Contract notice and Best Tariff Advice – before the end of the agreed fixed term.

(B) In addition, where fixed term contracts have been automatically prolonged either **BEFORE or AFTER** Article 105 (3) becomes effective in Irish law, providers must send end users the following:

⁹⁸ European Commission (2020) "Questions and Answers on the EECC."

⁹⁹ Meaning all ECS contracts except those for number-independent ICS or transmission of M2M services, whose terms provide for automatic prolongation of a fixed term.

- Best Tariff Information, at least annually.

What is Best Tariff Advice / Information?

189. In light of the objectives of Article 105 (3), ComReg's initial policy considerations and views on best practice as regards how to provide Best Tariff Advice/ Information are set out below.
190. It is ComReg's view that it would not suffice, for the purposes of such notifications, to simply prompt end users to contact their provider for relevant information prior to the prolongation of their fixed term contract.
191. ComReg is of the view that Best Tariff Advice / Information to end users should present a number of possible service options or different price points tailored to an individual end user's likely needs, having regard to matters such as their typical usage and preferred services. This means the best advice or information that can be provided regarding the provider's current product and service offerings for the particular end user. When deciding what information to include, a provider could consider principles or criteria such as, their customer's usage pattern in a typical period and match this up to what they actually pay, compared to alternative available options. This personalised assessment could take into account services the end user is paying for but not using, or add-ons they could avail of but have not selected in their current plan, to offer an overall cheaper tariff for similar services.
192. For an end user to make an informed choice about whether they are on the best tariff suitable to their needs, this often involves deciding whether to buy separate or bundled services. Purchasing a bundle of services (or a bundle of services and terminal equipment) may offer the end user significant savings but it may also include complex terms and involve paying charges to terminate elements of a bundled contract early. In order to help give end users the confidence to fully consider their options in the market, Best Tariff Advice / Information on a bundled contract could give best tariff options in the context of the end user's particular bundled services (or services and terminal equipment) and, where applicable, any links or dependencies that exist between the different services making up the bundle which could impact their choices. Ultimately, the information given as Best Tariff Advice / Information should benefit the end user. It should enable them to make informed decisions as regards their provider's electronic communications services and products which best meet their needs.

Timing and means of sending regulatory notifications

193. End of Contract Notice and Best Tariff Advice (BTA) under Article 105 (3) of the Code must be provided in a prominent and timely manner and on a durable medium.¹⁰⁰
194. Best Tariff Advice must be sent *before* the fixed term expires, and “at the same time” as the End of Contract notice. This means that before the end of an end user’s initial fixed commitment period and any automatic contract prolongation, providers must send end users their End of Contract notice and their BTA together or at the same time.
195. The Code does not specify precisely what would be considered a “timely” notification under Article 105 (3). ComReg understands that the meaning of “timely” in this context may be specified and / or given further context upon transposition but if it is not, ComReg will consider if further guidance is needed.
196. In relation to the follow-up Best Tariff Information (BTI), this must be sent “at least annually” i.e. once in every 12-month period. The first annual BTI should therefore be sent within 12 months of issuing the notification on End of Contract / Best Tariff Advice, and annually thereafter. ComReg is of the view that best practice would be to send the notification on BTI in the same way as the BTA, and to ensure it is identified as a Regulatory Notification and separate to any marketing material.
197. Industry has queried whether advice/information on best tariffs could be staggered throughout the year. ComReg notes that BTA must be provided before the expiry of the fixed term, and before any auto-prolongation of the contract. The individual end dates of fixed term contracts for a provider’s subscriber base are likely to be staggered throughout the year and the date on which the notification on End of Contract and BTA is required, would be linked to the sign up date / expiry of an individual end user’s contract. To meet relevant obligations providers will need to put in place a system/process to identify the expiry date of the initial fixed term for each relevant ECS contract and to provide the required Regulatory Notifications under Article 105 (3) of the Code in a timely manner (which may be specified on transposition) in advance of expiry. The considerations as regards BTI are different as this is not required to be sent at a specific time but must be provided annually.
198. ComReg also considers that best practice would be to provide Regulatory Notifications in an accessible format for disabled end-users, if they so

¹⁰⁰ The concept and definition of a “durable medium”, as prescribed in the Consumer Rights Directive and implemented into Irish law, is discussed in Section 2 of the Guidance relating to Contract Information Requirements. That same definition applies in this context.

request. This would help to ensure those end user's access needs are met and support the equivalence of access provisions for disabled end-users envisaged by Article 111 of the Code. For example, where appropriate, providers could send a Regulatory Notification using an alternative accessible format or provide an option for end users to request this. ComReg understands that, in practice, providers already offer accessible or alternative formats to certain customers who have registered to receive bills in an alternative format and ComReg suggests a similar approach could be taken to Regulatory Notifications, subject to customer preferences.

Interaction with data protection laws

199. ComReg has engaged with the DPC, to assist in clarifying industry concerns regarding potential data protection and privacy matters relating to notifications required under Article 105 (3) of the Code. ComReg understands providers had a concern that providing Best Tariff Advice/Information to customers would, in certain circumstances, give rise to direct marketing activity that was prohibited or restricted by applicable privacy and data protection rules, especially in respect of customers who had not consented to or had objected to receiving direct marketing communications, under the provisions of the e-Privacy Regulations or the GDPR.¹⁰¹
200. As noted above, ComReg's view is that any notifications made by a provider to comply with Article 105 (3) of the Code, once transposed, will be "Regulatory Notifications" that are mandated for the protection of end users. This type of notification is distinguishable from generic marketing and would not constitute unsolicited direct marketing communications. The obligation to provide Best Tariff Advice/ Information to end users in scope will require a personalised assessment of their contract and information such as individual customer usage and service requirements and, would be mandated by the Code. This means that notifications on Best Tariff Advice / Information must be sent by providers to relevant end users, even where the end user has opted out of receiving marketing information. ComReg observes that in other circumstances, end users who have opted out of receiving marketing information do still receive regulatory information or customer account messages.

¹⁰¹ Regulation 13 of the Privacy and Electronic Communications Regulations, 2011 (SI 336 of 2011) prohibits the sending of unsolicited communications (including telephone calls or calls by automated calling machines or facsimile machines) for the purpose of direct marketing, unless the person has been notified and consented to receiving such communications. There are certain exceptions under Regulation 13 (11) of these regulations, for further information consult the website of the DPC: <https://www.dataprotection.ie/en/organisations/rules-electronic-and-direct-marketing>. Providers should note that under Article 21 of the GDPR, a data subject has the right to object at any time to the use of their personal data for direct marketing, which includes profiling related to such direct marketing, subject to certain limited exceptions.

201. If the data processing undertaken is no more than necessary to provide the Best Tariff Advice/ Information to an individual end user and is necessitated by compliance with the Code, ComReg understands from engagement with the DPC that it would be permitted under applicable data protection law. For further guidance, ComReg draws provider's attention to the requirements of Article 6 of the GDPR which addresses lawful processing of personal data.¹⁰²
202. ComReg, having engaged with the DPC, considers that best practice would be for providers to identify Best Tariff Advice / Information under the banner or heading of 'Regulatory Notification'. ComReg considers that providers should also ensure that marketing material is not included in or accompanying the Regulatory Notification.
203. Additionally, ComReg understands from its engagement with the DPC, that following the issuing of the required Regulatory Notification, no follow up communications should be sent to the end user regarding the matter, unless the end user initiates the follow-on contact and provides consent to such interactions. Following such consent to receiving direct marketing communications (e.g. an "opt-in" to unsolicited direct marketing communications), the customer must be able to choose to cease the interaction (i.e. "opt-out" of receiving direct marketing communications). To prove compliance with the requirements of the e-Privacy Regulations, providers should also keep a record of a person's consent or preference as to receipt of direct marketing communications.¹⁰³
204. In summary, in considering how to comply with the requirement to provide notifications in respect of the End of Contract and Best Tariff Advice/ Information, having engaged with the DPC, ComReg's best practice and guidance for providers is to:
- a. Only issue the Regulatory Notification when legally required to do so;
 - b. Ensure the heading of the notification contains the words "Regulatory Notification";
 - c. Ensure marketing material is separate to and not within or accompanying the Regulatory Notification;

¹⁰² The DPC has issued a guidance entitled "*Commonly Asked Questions about the Basics of Data Protection*", version last updated July 2019 at:

<https://www.dataprotection.ie/sites/default/files/uploads/2019-07/190710%20Data%20Protection%20Basics.pdf>.

¹⁰³ In accordance with Regulation 13 of the e-Privacy Regulations 2011.

- d. Ensure any data processing involved is no more than is necessary to enable the provision of the End of Contract and Best Tariff Advice/Information;
- e. Do not initiate follow up communications unless the end user has requested this and cease any follow up communications when the end user so requests;
- f. Keep a record of the end user's consent or preference as to direct marketing communications, as appropriate.

205. Having engaged with the DPC in relation to the best practice steps outlined above, ComReg hopes that the above guidance will assist providers to comply with their obligations under Article 105 (3) of the Code. If issues arise in respect of implementation, providers should notify ComReg or the DPC so that they may consider any issues.

3.5.3 Article 105 (4) – Contract change notification

Article 105 (4):

End-users shall have the right to terminate their contract without incurring any further costs upon notice of changes in the contractual conditions proposed by the provider of publicly available electronic communications services other than number-independent interpersonal communications services, unless the proposed changes are exclusively to the benefit of the end-user, are of a purely administrative nature and have no negative effect on the end-user, or are directly imposed by Union or national law.

Providers shall notify end-users at least one month in advance of any change in the contractual conditions and shall simultaneously inform them of their right to terminate the contract without incurring any further costs if they do not accept the new conditions. The right to terminate the contract shall be exercisable within one month after notification. Member States may extend that period by up to three months. Member States shall ensure that notification is made in a clear and comprehensible manner on a durable medium.

206. Article 105 (4) stipulates that end users¹⁰⁴ shall have the right to terminate their contract without incurring further costs, upon notice of changes in the contractual conditions proposed by their provider of publicly available ECS, other than number-independent ICS.
207. Article 105 (4) requires that providers shall notify end users at least one month in advance of any change in the contractual conditions (the "Contract Change Notification").
208. Providers are also required to, at the same time, inform end users of their right to terminate the contract, without incurring any further costs, if they do not accept the new conditions. End users can terminate the contract within one month after notification of the proposed contract changes (subject to certain exceptions addressed below). Member States may extend the time period for exercise of the right to terminate by up to three months.
209. The right to terminate upon notice of changes to contractual conditions applies, unless the proposed changes fulfil one of the following criteria:
- a) are exclusively to the benefit of the end user;
 - b) are of a purely administrative nature and have no negative effect on the end user; or
 - c) are directly imposed by European Union or national law.
210. ComReg notes that Recital 275 places the onus on a provider to be able to demonstrate that all contract changes are to the benefit of the end user, and notes that the end user would have a right to exit, even where such changes were "*combined with some beneficial changes*". Whether a change is exclusively to the benefit of the end user, must, according to Recital 275, be assessed "*on the basis of objective criteria*."
211. The exceptions in the Code to the right to terminate the contract following a proposed contract modification represent a change to the existing legal position in relation to contract changes.¹⁰⁵ Currently, providers must notify customers at least one month in advance of any proposed contract change and provide a right to exit the contract, without penalty, where the customer is not happy to accept the proposed changes. Under the current regime, there are no exceptions such as those outlined in the Code to disapply the right to

¹⁰⁴ Where the ECS in question is for transmission services used for M2M services, the right to terminate may only be exercised by end-users that are consumers, microenterprises, small enterprises or not-for-profit organisations, pursuant to Article 105 (7) of the Code.

¹⁰⁵ Under Regulation 14 (4) of the Universal Service Regulations 2011; as further specified by ComReg, pursuant to powers under Regulation 14 (5), in ComReg Decision D13/12, Response to consultation and decision: Contract Change Notifications, ComReg document 12/128, dated 30 November 2012 ("Decision D13/12").

exit where for example, the change is exclusively to the benefit of the end-user.

212. ComReg understands the requirement in Article 105 (4) that “*Providers shall notify end-users of any change in the contractual conditions*” (emphasis added) to mean that providers must issue Contract Change Notifications to affected end users, regardless of whether a right to terminate the contract applies or not (as is the case under ComReg Decision D13/12). Therefore, under the Code, even where the contract change falls within the list of exempted scenarios that do not give rise to a right to exit the contract, the proposed change must still be notified to the end user. This ensures the end user is informed and is able to record the sequence of changes to their contract, and thereby to know the full extent of contractual terms and conditions governing their contract.
213. Article 105 (4) requires all Contract Change Notifications to be made in a clear and comprehensible manner, and on a durable medium.¹⁰⁶
214. ComReg must await transposition of the Code to ascertain powers it may have to specify requirements relating to contract change notifications pursuant to Article 105 (4). In the meantime, ComReg expects providers to continue to meet the requirements set out in ComReg Decision D13/12¹⁰⁷ in respect of ECS contracts when issuing any Contract Change Notifications. Once the Code is effective in Irish law, ComReg expects providers in scope to issue Contract Changes Notifications for any changes to terms and conditions they propose, while advising consumers whether or not the right to terminate arises, given the change(s) proposed and the exceptions outlined in Article 105 (4) of the Code.
215. In light of industry queries regarding data privacy concerns, ComReg would like to highlight the need for providers to refrain from using Contract Change Notifications, which are Regulatory Notifications, as marketing messages. Providers should continue to ensure that Regulatory Notifications are separate to and do not contain any direct marketing information, and that they are in accordance with privacy and data protection laws.

¹⁰⁶ Article 105 (4) states that, “*Member States shall ensure that notification is made in a clear and comprehensible manner on a durable medium.*”

¹⁰⁷ In Decision D13/12, ComReg prescribed the content, timing and format for contract change notifications to ensure a consistent application by industry.

3.5.4 Article 105 (6) – Contract termination and compensation due

Article 105 (6):

Where an end-user has the right to terminate a contract for a publicly available electronic communications service, other than a number-independent interpersonal communications service, before the end of the agreed contract period pursuant to this Directive or to other provisions of Union or national law, no compensation shall be due by the end-user other than for retained subsidised terminal equipment.

Where the end-user chooses to retain terminal equipment bundled at the moment of the contract conclusion, any compensation due shall not exceed its pro rata temporis value as agreed at the moment of the conclusion of the contract or the remaining part of the service fee until the end of the contract, whichever is the smaller.

Member States may determine other methods to calculate the compensation rate, provided that such methods do not result in a level of compensation exceeding that calculated in accordance with the second subparagraph.

The provider shall lift any condition on the use of that terminal equipment on other networks free of charge at a time specified by Member States and at the latest upon payment of the compensation.

216. Article 105 (6) relates to the compensation that is due by an end user,¹⁰⁸ if they choose to retain terminal equipment following the exercise of their right to terminate a contract, before the end of the agreed contract period.

217. It applies to all contracts for a publicly available ECS, other than number-independent ICS, and therefore also applies to IAS contracts where terminal equipment such as modems or routers may be involved. To come within the scope of Article 105 (6), the right to terminate can be based on a provision in the Code (e.g. under Article 105 (3) or (4) or other provisions of European Union law¹⁰⁹) or on a right to terminate under national law.

218. Importantly, any compensation due shall not exceed:

¹⁰⁸ Where the ECS in question is for transmission services used for M2M services, the rights in Article 105 (6) may only be exercised by end-users that are consumers, microenterprises, small enterprises or not-for-profit organisations, pursuant to Article 105 (7) of the Code.

¹⁰⁹ Information requirements regarding termination of IAS contracts are covered by the EU Open Internet Access Regulation 2015/2120.

- (i) its “*pro rata temporis value*” as agreed at the moment of the conclusion of the contract, or
- (ii) the remaining part of the service fee until the end of the contract – whichever is the smaller.

219. Methods to calculate the compensation rate may be decided by Member States and ComReg expects it may be given powers upon transposition of the Code in respect of calculating the compensation due in such cases.

220. In that context, it may be useful to note the EC’s response to a question from Member States on calculating the remaining service fee for a bundle as follows:¹¹⁰

“Question: Assuming «the remaining part of the service fee until the end of the contract» means the monthly price for the provision of the service associated with the equipment multiplied by the number of months until the end of the agreed upon contract duration, does this monthly price encompass every service in a bundle, where the equipment was bought in that context? Please note that currently providers don’t always specify a price for each of the elements in a bundle.

Reply:

*The service fee means the (typically monthly) fee set together with the terminal equipment. Given that Art. 107(1) extends the rights under Art. 105(6) to all elements of the bundle, Article 105(6) does not require the referred service fee to be linked to a specific element in a bundle. It is to be noted, however, that the comparison (“whichever is smaller”) is to be made with the *pro rata temporis value* of the bundled terminal equipment.”*

221. Article 105 (6) also provides that providers must lift any conditions on the use of the terminal equipment on other networks, free of charge, at a time to be specified by the Member State, and at the latest, upon payment of the compensation relating to the retained terminal equipment. This provision protects consumers, for example, from being unable to use locked terminal equipment with a new network provider in the event of switching. Equipment must be unlocked, at the latest, after having paid up any compensation due.

222. In addition, information on any early termination charges due and on conditions relating to terminal equipment, including information on unlocking the terminal equipment and any cost recovery with respect to terminal equipment must be clearly set out upfront to the consumer, at the point of sale, for all ECS contracts (except M2M transmission services), as part of the

¹¹⁰ European Commission (2020) “Questions and Answers on the EECC”.

Pre-Contractual Information.¹¹¹ The inclusion of this information will help to ensure clarity in the contract and, consequently, greater transparency for consumers.

3.6 Article 106 - Switching and number portability

223. In this section, ComReg has focused its current guidance on implementing the requirements of Article 106 concerning:

- a. Switching internet access services (IAS);
- b. Switching and porting processes;
- c. Prepay credit refunds;
- d. Compensation.

3.6.1 Article 106 (1) – Internet Access Switching

Article 106 (1):

In the case of switching between providers of internet access services, the providers concerned shall provide the end-user with adequate information before and during the switching process and ensure continuity of the internet access service, unless technically not feasible. The receiving provider shall ensure that the activation of the internet access service occurs within the shortest possible time on the date and within the timeframe expressly agreed with the end-user. The transferring provider shall continue to provide its internet access service on the same terms until the receiving provider activates its internet access service. Loss of service during the switching process shall not exceed one working day.

National regulatory authorities shall ensure the efficiency and simplicity of the switching process for the end-user.

224. The possibility of switching between providers is considered to be a key driver of effective competition. The availability of transparent, accurate and timely information on switching should increase end user confidence in switching and make them more willing to engage actively in the competitive process.

¹¹¹ As required by Annex VIII, Part (A) (3) (iv) of the Code. Providers are already required to provide similar information under the current legal framework, in accordance with Regulation 14 (2) of the Universal Service Regulations 2011, which requires contracts for ECS to include information on any termination charges due, including any cost recovery with respect to terminal equipment.

In particular, Recital 277 of the Code notes that providers should ensure continuity of service so that end users are able to switch providers without being hindered by a risk of loss of service.

225. In pursuit of these objectives, Article 106 (1) seeks to ensure continuity of service for end users during the IAS switching process by imposing obligations on providers of IAS¹¹² ("IAS providers") in relation to the switching process and continuity of service requirements, and clear timelines for completing the switching process.

Information before and during switching

226. In the case of an end user switching between IAS providers, Article 106 (1) stipulates that IAS providers must provide the end user with adequate information both before and during the switching process.

227. In terms of the "adequate information" that must be provided, it will be incumbent on IAS providers to engage with each other and to consider what constitutes adequate information in relation to the switching processes. The provision of accurate and timely information before and during the switching process will provide end users with greater confidence in terms of their ability to switch IAS provider and empower them to engage with the IAS switching process as developed by industry and the market in general.

228. In addition, the Code mandates that the following information must be provided in line with the requirements of Article 102 (Information Requirements) and Annex VIII prior to concluding a contract with consumers, micro-enterprises, small enterprises and not for profit organisations. These end users must be provided with Pre-Contractual Information relating to: contract duration, any switching charges, compensation and refund arrangements for delay or abuse of switching, information about how to switch, information on how to obtain a refund of prepaid credit when switching, and details of any early termination fees (including handset unlocking costs).¹¹³ Providers may also voluntarily decide to include information on switching in the Contract Summary in the optional section titled "other relevant information".¹¹⁴

229. Providing the above information supports the broader objectives in Recital 273 of the Code of enabling end users to make informed choices in relation

¹¹² As noted in Section 1.6.3 a) of this Guidance, "IAS" are defined by reference to Article 2 of Regulation EU 2015/2120 as "a publicly available electronic communications service that provides access to the internet, and thereby connectivity to virtually all end points of the internet, irrespective of the network technology and terminal equipment used."

¹¹³ See the Annex 1 of this Guidance for detailed contractual information requirements.

¹¹⁴ Recital 17, Commission Implementing Regulation (EU) 2019/2243.

to their services, including switching providers when it is in their best interests to do so.

Continuity of IAS during switching

230. Article 106 (1) requires that IAS providers must ensure continuity of service, unless technically not feasible. In that light, Article 106 (1) requires that during the IAS switching process:

- e. The receiving IAS provider must ensure that the activation of IAS occurs within the shortest possible time on the date and within the timeframe expressly agreed with the end user;
- f. The transferring IAS provider is required to continue to provide its IAS until the receiving IAS provider activates its internet access service;
- g. Loss of service must not exceed one working day.

231. In complying with the requirements of Article 106 (1), ComReg expects processes for IAS switching to be implemented as soon as possible and with minimum delay. This will be necessary to meet IAS providers' obligations to ensure an end user does not have a loss of service lasting longer than the maximum of one working day.

232. These provisions for continuity of IAS are important to avoid obstacles arising which could risk an end user choosing to switch in the first place or from continuing with the switching process. ComReg considers that these provisions help to improve the consumer experience and build confidence among end users in relation to engaging with the switching process, which supports effective competition within competitive markets. ComReg awaits any powers it may be given, following transposition of the Code, to specify requirements to ensure the switching process is efficient and simple for the end user, as appropriate.

3.6.2 Article 106 (5) / (6) – Switching and porting processes

Article 106 (5):

The porting of numbers and their subsequent activation shall be carried out within the shortest possible time on the date explicitly agreed with the end-user. In any case, end-users who have concluded an agreement to port a number to a new provider shall have that number activated within one working day from the date agreed with the end-user. In the case of failure of the porting process, the transferring provider shall reactivate the number and related services of the end-user until the porting is successful. The transferring provider shall continue to provide its services on the same terms and conditions until the services of the receiving provider are activated. In any event, the loss of service during the process of provider switching and the porting of numbers shall not exceed one working day. Operators whose access networks or facilities are used by either the transferring or the receiving provider, or both, shall ensure that there is no loss of service that would delay the switching and porting process.

Article 106 (6) (first and second sub-paragraphs):

The receiving provider shall lead the switching and porting processes set out in paragraphs 1 and 5 and both the receiving and transferring providers shall cooperate in good faith. They shall not delay or abuse the switching and porting processes, nor shall they port numbers or switch end-users without the end-users' explicit consent. The end-users' contracts with the transferring provider shall be terminated automatically upon conclusion of the switching process.

National regulatory authorities may establish the details of the switching and porting processes, taking into account national provisions on contracts, technical feasibility and the need to maintain continuity of service to the end-users. This shall include, where technically feasible, a requirement for the porting to be completed through over-the-air provisioning, unless an end-user requests otherwise. National regulatory authorities shall also take appropriate measures ensuring that end-users are adequately informed and protected throughout the switching and porting processes and are not switched to another provider without their consent.

Porting of numbers

233. Number portability is a key facilitator of consumer choice and effective competition in competitive electronic communications markets. Article 106 (2) establishes that end users of numbers from the national numbering plan have a right to retain their number upon request and free of charge.
234. Under the current regulatory framework end users can request to port their number (whether geographic or non-geographic) and the porting of a number and its subsequent activation must occur within the shortest possible time, on the date expressly agreed with the end user.
235. Article 106 (3) of the Code establishes that where numbers are ported between providers, it must be possible for end users to port their number for a minimum of one month after the termination of their contract, as follows:
- "Where an end-user terminates a contract, Member States shall ensure that the end-user can retain the right to port a number from the national numbering plan to another provider for a minimum of one month after the date of termination, unless that right is renounced by the end-user."*
236. ComReg understands this provision to mean that one month is the minimum time which a provider should offer to an end user to port their number following termination of their contract, unless that right is clearly renounced by the end user. ComReg is of the view that providers would need to expressly seek and receive a renouncement of this right from the end user and that the end user must be provided with information regarding the consequences of a decision to renounce this right. Providers must be able to prove an end user's decision to waive their right to port their number.
237. ComReg is aware the current industry practices allow for more than one month for end users to port their number in such circumstances (i.e. any time within the quarantine period) and ComReg sees no reason why this would not continue. Industry is advised to now review all industry porting processes to ensure they are fully aligned to the Code requirements in general, and Article 106 (3) in particular.
238. Article 106 (5) of the Code provides that in the case of failure of the porting process, the transferring provider shall reactivate the number and related services of the end user until the porting is successful. The transferring provider must continue to provide its services on the same terms and conditions until the services of the receiving provider are activated.
239. Article 106 (5) stipulates that the porting of numbers and their subsequent activation must be carried out within the shortest possible time on the date explicitly agreed with the end user, and in any event, the ported number should be activated within one working day. Article 106 (5) also states that

“operators” whose access networks or facilities are used by either the transferring or the receiving provider, or both, must ensure that there is no loss of service that would delay the switching and porting process. This provision would therefore extend to operators involved in the switching process at a wholesale level.

Switching and porting processes

240. Article 106 (6) establishes that the receiving provider must lead the end user switching process, both in the case of IAS switching under Article 106 (1) and number porting under Article 106 (5).

241. The transferring and receiving providers are required to co-operate in good faith. More specifically, Article 106(6) sets out that providers must not delay or abuse the switching or porting process, nor switch end users or port numbers without the end users’ explicit consent (as discussed further below). ComReg expects the transferring provider to terminate the end users’ contract automatically upon conclusion of the switching process, as required by Article 106 (6).

242. Providers must ensure they follow robust and effective industry processes when switching end-users’ service(s) and that any necessary amendments required to ensure the end-user rights and protections under Article 106 can be upheld, are implemented without delay.

Abuse of the process

243. In terms of what constitutes “abuse” of the switching or porting process, the term “abuse” in Article 106 (6) is not defined in the Code. It is ComReg’s view that any action by either the receiving or transferring provider which would hinder or impede the switching or porting process could be viewed as an abuse of the process.¹¹⁵ This aligns with the EC clarification to Member States on the meaning of the term “abuse”:

“Abuse” as such is not defined in the EECC. In Article 106(6) it is used to refer to the switching and porting processes. “Abuse” can be understood as a wrong use of the said processes, i.e. an action by the receiving or transferring providers that would obstruct or impede the processes. Recital 281 refers to experience in certain Member States that has shown that there is a risk of end-users being switched without having given their consent. The aim is to ensure that end-users are protected throughout the switching process without making the process less attractive for them. The right to port numbers should not be restricted by contractual conditions. Related to

¹¹⁵ Under the existing legal framework, Regulation 25 (10) of the Universal Service Regulations 2011 provides that undertakings must compensate subscribers for abuse of porting “by them or on their behalf”.

switching (though not explicitly on possible abuse) BEREC has published a report in 2019 on the terminating of contracts and switching provider.”

End-users’ explicit consent

244. As noted by the EC, Recital 281 of the Code refers to experience in certain Member States that has shown there is a risk of end users being switched to another provider without their consent. Article 106 (6) clearly prohibits providers from doing so as it states that providers, *“nor shall they port numbers or switch end-users without the end-users’ explicit consent”*.

245. The EC was asked by Member States to clarify whether it is correct to interpret the requirements of Article 106 with respect to explicit consent for switching or porting, as follows (the question is in bold text, followed by the EC response in italics)¹¹⁶:

“We interpret this provision to mean no more than that there is a prohibition on switching or porting without the end-user’s consent. We do not interpret this provision as requiring that two separate consents are obtained, one by the receiving provider and one by the transferring provider, as this would delay the switching and porting processes (i.e. we interpret the provision as allowing one consent, which in practice will be obtained by the receiving provider, to satisfy this requirement).

Reply:

“Article 106(6) refers to the receiving provider and has the wording “nor shall they port numbers or switch end-users without the end-users’ explicit consent” and the interpretation on consent is in line with our view.”

246. ComReg interprets Article 106 (6) to mean that, before engaging in the process by which the number is ported or the end user switched, explicit consent must be obtained from the end user to port or switch. In these circumstances, ComReg understands it would be sufficient for one provider involved in the process to obtain and retain the end users’ consent for the porting or switching to occur. Article 106 (6) establishes that *“the receiving provider shall lead the switching and porting processes set out on paragraph 1 and paragraph 5”* (emphasis added) and, in this light, ComReg considers it would be reasonable for the receiving provider, as the leader of the process, to be responsible for obtaining and retaining the necessary consent of the end user to facilitate ease of switching. ComReg is also of the view that any unnecessary contact with the end user by the transferring provider may constitute a disincentive to switching.

¹¹⁶ European Commission (2020), “Questions and Answers on the EECC”.

247. With respect to the current position on consents obtained for switching or porting end users, ComReg notes that in practice the existing inter-operator process agreed by industry requires the receiving provider to obtain explicit end user consent in the form of a Customer Authorisation Form ("CAF") and to keep a copy of this consent, which may be part of the new contract agreed with the end user. ComReg understands that these CAFs are retained by the receiving provider so that they can be inspected by the transferring provider on demand. In accordance with the requirements of Article 106 (6) explicit consent of the end user must be obtained and as noted above, Article 106 (6) establishes that the receiving provider must lead the end user switching process. Therefore, a copy of end user consent should, as under the current industry process, be obtained by the receiving provider and would be made available to the transferring provider upon request.
248. It is important to retain a copy of the end user's explicit consent both to provide protection for the end user and, in case a dispute arises regarding the switching or porting processes, to ensure the providers are in a position to demonstrate there has been no infringement of the prohibition on porting or switching without an end user's explicit consent, as set out in Article 106 (6) of the Code.
249. ComReg is of the view that in order to meet the obligations that will be imposed following transposition of Article 106, that it is incumbent on industry to review the existing inter-operator and inter-network switching and porting processes to ensure they remain appropriate under the Code and in particular, to develop an appropriate process to cover new requirements in relation to IAS switching.
250. ComReg notes that many of the processes to facilitate porting and switching of fixed and mobile number-based ICS, are already in place and agreed amongst industry. It may be feasible for these current porting and switching processes (e.g., relating to loss notifications, number porting, etc) to be adapted and expanded where necessary to achieve the requirements of the Code as regards switching of IAS. It is essential to ensure a smooth switching process amongst IAS providers, which prioritises the efficiency and simplicity of the process for the end user, in order to meet the objectives of Recital 277 and Article 106 (1) of the Code.
251. ComReg is reflecting on its role under Article 106. Subject to ComReg having the requisite powers following transposition and in light of any particular issues arising, ComReg may consider if it would be appropriate to specify particular requirements relating to the switching and porting process to ensure the efficiency and simplicity of the process for the end user. However, industry engagement to update current switching and porting processes to ensure they are fit for purpose under the Code must progress as a matter of

urgency and, in particular, for IAS providers to engage to develop a robust and effective IAS switching process.

Other elements linked to switching

252. The Code includes a number of other provisions related to switching information and the switching process more generally. These provisions aim to improve the switching process by making it more efficient and easier for end users to be informed and to navigate, and therefore empower the end user and improve their experience, including:

- a. Article 103 (Transparency and Comparison of Offers) – requirements for increased transparency and comparability of information in the ECS market help customers to more easily compare offers between providers and to make informed choices.
- b. Article 104 (Quality of Service) – addresses additional quality of service information requirements on providers to improve transparency of information and comparability of offers overall assisting switching.
- c. Article 105 (Contract Duration) – imposes a requirement that conditions and procedures for contract termination do not act as a disincentive to changing provider.
- d. Article 107 (Bundles) – removes barriers to switching created by bundles.

253. Member States are afforded flexibility in the application of other elements relating to switching, including the promotion of technical processes for switching such as over the air (OTA) provisioning and establishing rules in national law relating to compensation and penalties for abuses, delay or other failures in the switching or porting process.

3.6.3 Article 106 (6) – Prepay credit refunds

Article 106 (6) (third sub-paragraph):

Transferring providers shall refund, upon request, any remaining credit to the consumers using pre-paid services. Refund may be subject to a fee only if provided for in the contract. Any such fee shall be proportionate and commensurate with the actual costs incurred by the transferring provider in offering the refund.

254. Article 106 (6), third subparagraph, requires transferring providers to refund any remaining credit to consumers using pre-paid services, upon request.
255. ComReg notes that this provision applies to consumers only, rather than end users. ComReg is of the view that where a consumer of prepaid services switches provider, upon request, they are entitled to a refund of the money that is available on their pre-paid credit balance.
256. In response to Member States' request to the EC for advice in respect of whether, at the point of transposition, an end user of pre-paid services is entitled to a credit refund on a retrospective basis, the EC has provided the following guidance (the question is in bold text, followed by the EC response in italics)¹¹⁷:

"Are Member States to interpret this provision applying to credit accumulated prior to the transposition of the Code, i.e. if a customer has €20 in credit on their account on 20 December 2020 and seeks to move operator on 1 January 2021, is that customer entitled to receive a refund of the €20 on their account, minus any contractually mandated fee?"

Reply:

"The national measures transposing the EECC will apply from 21 December 2020. The EECC does not include a provision that would limit the applicability of Article 106 only to contracts concluded after this date. Hence, the new rules on provider switching and number portability (Article 106), including provisions on refund on pre-paid services, will apply immediately to all existing electronic communication services contracts which fall in the scope of the Title III."

257. In this light, ComReg understands that the requirement to make prepaid credit refunds available applies not only to contracts entered into and top-up built up after the date Article 106 (6) becomes effective in Irish law, but also to contracts entered into and credit built-up under such contacts prior to that date.
258. ComReg acknowledges that each provider has specific contractual terms in respect of credit usage and carry-over of credit. Therefore, whether an end user has credit or not at the time the switch occurs will depend on the specific facts and their contractual terms. Providers will need to ensure that accurate records of remaining prepay credit due to customers are retained prior to the applicable date and from that date forward.

¹¹⁷ European Commission (2020) "Questions and Answers on the EECC".

259. The Code permits a provider to apply an administration fee for dealing with prepay credit refunds, provided the fee was specified in the contract,¹¹⁸ and it is proportionate, and cost oriented i.e. it reflects the actual costs of dealing with the refund. ComReg is of the view that only in those circumstances is it permissible for providers to apply a fee for dealing with a request for a refund of prepaid credit. ComReg notes that each provider's processes differ. This underscores the importance of ensuring that any processes for claiming refunds and associated fees related to switching are clearly set out upfront at the contract sign up stage. In addition, ComReg considers best practice would be to provide details of any applicable fees to consumers again at the point of switching.
260. ComReg is also of the view that should providers seek to change their contract terms after the Code is effective in Irish law to apply or to increase an administration fee for processing prepay refunds, that this would be a contract change notification and should not prejudice the right of existing subscribers to claim their refund on the basis of the current terms i.e. with no administration fee or the current administration fee.
261. The Code does not provide a role for NRAs to take measures to establish the quantum of any administration fee that may be charged on foot of the refund request, or the way in which the refund is calculated. However, ComReg will monitor compliance in respect of the administration fees and refunds provided in accordance with the relevant contract terms and the requirements of Article 106.
262. ComReg has also engaged with the DPC, to assist in clarifying any industry concerns regarding potential data protection and privacy matters relating to the processing of prepaid credit refund requests under Article 106 (6) of the Code. ComReg is of the view that no difficulty arises for providers in respect of their obligation to refund any remaining credit to such consumers, as any data processing required would be mandated to comply with Article 106(6) of the Code. Further, the entitlement to a credit refund is clearly triggered by the consumer requesting a refund, in circumstances where they are switching to another provider. Therefore, providers can obtain any consent necessary to process this request for data protection purposes from the consumer when dealing with their request. To comply with the requirements of the Code, ComReg expects providers to have in place a system to allow them to verify account holder details (including for end users with disabilities who may need to authorise a person to act on their behalf) to ensure credit refunds are provided to the account holder.
263. ComReg expects providers to provide prepaid customers with details of how their unused credit can be refunded, via a choice of alternative methods

¹¹⁸ Article 102 (1) of the Code and Annex VIII.

including but not limited to cheque, bank draft, money order, or postal order. These details need to be included in the customer's contract that is provided on a durable medium.¹¹⁹ A direct refund to a consumer's bank account / PayPal account may be a reasonable approach in circumstances where a consumer is in agreement with that type of refund method.

264. ComReg is of the view that it may be convenient to subtract the administration charge, if applicable, from any refund due. In the event that a refund due is less than the administrative fee that would be charged, a consumer may not request a refund. However, ComReg considers that even in those circumstances, a provider must inform its customer that the administrative fee will negate their refund in that instance.
265. The processing of refunds and application of any associated administration fees will be a matter for each provider. Providers should, as always, be mindful of their obligations under applicable data protection laws, including the GDPR and e-Privacy Regulations. ComReg's guidance on this matter, having consulted with the DPC, is that providers should delete any personal data obtained for the purposes of processing a refund request as soon as practicable and in any event, within a fixed period of time after the refund process has been successfully completed, or the customer has switched and their right to redress (e.g. to seek a refund or compensation) has expired.
266. In terms of practical application, ComReg understands that the timeframe within which a provider must hold / retain prepay credits for refund is not specified directly in the Code. ComReg will consider this issue further as it arises in practice or any detail to be specified upon transposition. ComReg intends to monitor the level of unclaimed prepaid credit and the application of administration fees.
267. Overall, ComReg considers that the requirement to provide prepay credit refunds in case of switching will have a significant consumer benefit and help to ensure they are not disincentivised from engaging in the switching process. As prepay credit refunds must be completed at the request of the consumer, and any administration fee applied must be in line with their contract and commensurate with the costs incurred by the transferring provider, ComReg believes these provisions will provide the consumer with greater confidence in terms of deciding to switch using the process developed by industry.

¹¹⁹ In accordance with the requirement to detail procedures and charges applicable in the event the consumer switches ECS provider as specified in Annex VIII (A) (3) (ii); Procedures for compensation and refunds in the event of delay or abuse of switching as specified in Annex VIII (A) (3) (ii); The right of pre-paid consumers to carry over any credits or refund of credits in the event of switching as specified in Annex VIII (A) (3) (iii).

3.6.4 Article 106 (8) – Compensation for abuses, delays or failures in the porting / switching processes

Article 106 (8):

Member States shall lay down rules on the compensation of end-users by their providers in an easy and timely manner in the case of the failure of a provider to comply with the obligations laid down in this Article, as well as in the case of delays in, or abuses of, porting and switching processes, and missed service and installation appointments.

268. ComReg notes that under the existing regulatory framework, compensation of end users by their providers is already required for delays in porting or in cases of abuse of the porting process.¹²⁰
269. ComReg considers that any rules on compensation should be proportionate to the delay, inconvenience and costs experienced by the end user as part of the switching process. In line with the objectives of Recital 282, at a minimum, an end user should receive compensation for delays exceeding one working day in activation of service, porting of a number, or loss of service, and where providers miss agreed service or installation appointments relating to porting or switching.
270. Article 106 (9) provides that Member States shall ensure end users are adequately informed about the existence of their rights to compensation under the Article.
271. ComReg must await transposition of the Code to ascertain the nature of any specific rules on compensation that may be laid down in national law, together with any powers ComReg may be afforded to ensure providers provide adequate information to end users on their rights to compensation.

¹²⁰ Regulation 25 (10) of the Universal Service Regulations 2011.

3.7 Article 107 - Bundled offers

272. This section outlines ComReg's current guidance for implementing the requirements of Article 107 concerning:

- Definition and scope of provisions on bundles;
- Terminating a bundle due to failure of provider; and
- Extending a bundled contract.

Article 107:

(1) If a bundle of services or a bundle of services and terminal equipment offered to a consumer comprises at least an internet access service or a publicly available number-based interpersonal communications service, Article 102(3), Article 103(1), Article 105 and Article 106(1) shall apply to all elements of the bundle including, mutatis mutandis, those not otherwise covered by those provisions.

(2) Where the consumer has, under Union law, or national law in accordance with Union law, a right to terminate any element of the bundle as referred to in paragraph 1 before the end of the agreed contract term because of a lack of conformity with the contract or a failure to supply, Member States shall provide that the consumer has the right to terminate the contract with respect to all elements of the bundle.

(3) Any subscription to additional services or terminal equipment provided or distributed by the same provider of internet access services or of publicly available number-based interpersonal communications services shall not extend the original duration of the contract to which such services or terminal equipment are added, unless the consumer expressly agrees otherwise when subscribing to the additional services or terminal equipment.

(4) Paragraphs 1 and 3 shall also apply to end-users that are microenterprises, small enterprises, or not-for-profit organisations, unless they have explicitly agreed to waive all or parts of those provisions.

(5) Member States may also apply paragraph 1 as regards other provisions laid down in this Title.

3.7.1 Article 107 – Definition and application of bundles

273. Article 107 introduces new requirements on providers that supply bundled offers and creates additional end users' rights. These provisions will help facilitate consumers in switching provider more easily and taking up competitive offers for the entire bundle, if it is in their interests to do so.
274. As outlined in Recital 283, bundles are important for competition and have benefits for consumers. On the other hand, as referred to in Recital 283, bundles may make switching more difficult or costly and raise risks of contractual "lock-in". For example, ComReg notes that if there are different services and terminal equipment within a bundle, and end-users are subject to different rules on contract termination, switching or in relation to contractual commitments for terminal equipment, end-users may be "effectively hampered" in switching to competitive offers for the entire bundle or part of it.

Bundled offer requirements

275. Article 107 applies to a "bundle of services" or a "bundle of services and terminal equipment" and applies to contracts for ECS which comprise at least an IAS or a publicly available number-based ICS.
276. It is clear from the wording of Article 107 (1) that end user rights under Article 102 (3), Article 103 (1), Article 105 and Article 106 (1) apply to all elements of the bundle including, "mutatis mutandis", those not otherwise covered by those provisions, as discussed in more detail below.
277. ComReg notes that Article 107 of the Code applies to consumers, rather than end users, save for Article 107 (1) and Article 107 (3) which apply to microenterprises small enterprises, or not-for-profit organisations, unless they have explicitly agreed to waive all or parts of those provisions.¹²¹ ComReg emphasises that waiving these provisions should not be made a condition of signing an ECS contract.

Definition and scope of a "bundle" under Article 107

278. ComReg notes that a bundle is not defined in the Code. However, Recital 283 refers to "bundles comprising at least an IAS or a publicly available number-based ICS, as well as other services, such as publicly available number

¹²¹ The Code, Article 107 (4).

independent ICS, linear broadcasting and machine to machine services, or terminal equipment”.

279. In particular, ComReg notes that Recital 283 states that “For the purposes of this Directive, a bundle should be considered to exist in situations where the elements of the bundle are provided or sold by the same provider under the same or a closely related or linked contract.”
280. A Member State requested advice from the EC on how bundles should be interpreted in the Code, the EC has advised as follows:¹²²

Reply:

“Following Recital 283 and Article 107 EECC, when a provider bundles various ‘services’ or ‘services and terminal equipment’, several essential provisions regarding contract summary information, transparency, contract duration and termination and switching will apply to all the services and terminal equipment included in the bundle (“provided or sold by the same provider”), provided that the bundle includes at least an internet access service or a publicly available number-based interpersonal communication service.

This means that applicability is to all services provided or sold by the same provider under the same or a closely related or linked contract. Recital 283 describes current widespread examples and does not create a limitation to the Article’s wording on its scope. As to the example on energy, please note that electricity and gas are classified as goods, therefore for bundles that include such services Article 107 (1) does not apply. (Directive 2011/83 on consumer rights classifies electricity and gas, as well as water, as goods).”

281. As regards the types of products and services that were intended to be included under Article 107, the EC has clarified that potentially any “service” could fall within the scope of Article 107 of the Code, subject to exceptions of goods, such as energy services¹²³ (e.g. electricity and gas) classified as “goods” under the Consumer Rights Directive (EU 2011/83). The EC also confirmed that Article 107 of the Code applies to bundles consisting of “content services” such as, subscription video on demand (SVOD):

“Article 107 provisions apply if the digital content service is part of a contract provided or sold by the same provider under the same or a closely related or

¹²² European Commission (2020) “Questions and Answers on the EECC.”

¹²³ ComReg expresses no view on the appropriate classification of associated services or management services related to energy or water supplies.

linked contract as an internet access service or a publicly available number-based interpersonal communications service."

282. ComReg also notes that the terms "bundled offers" refers to either a "bundle of services" or a "bundle of services and terminal equipment". The EC clarification was:¹²⁴

"Article 107 is titled "Bundled offers" and Annex IX 2.4 refers to "bundled offers". Article 107 refers to a "bundle of services" and a "bundle of services and terminal equipment"; likewise, Annex VIII refers separately to "bundled services" and "bundles including both services and terminal equipment". All terms refer to the same concept of a bundle, "Bundled offers" can be understood to cover both a "bundle of services" and a "bundle of services and terminal equipment" as referred to in paragraph 1 of Article 107."

283. In this light, ComReg considers that the term bundled offer or service is to be interpreted broadly; it would include any service that is provided or sold by the same provider under the same or a closely related or linked contract, provided the bundle includes at least an IAS or a publicly available number-based ICS. In summary, ComReg's understanding of bundles is as follows:

- a. A bundle includes a "bundle of services" or a "bundle of services and terminal equipment" as referred to in Article 107 (1);
- b. The bundle must include at least an IAS or a publicly available number-based ICS;
- c. A "bundle of services" excludes goods, including electricity, gas, and water which are termed as contracts for goods;
- d. A bundle of services may include digital services or content services;
- e. A bundle which incorporates a service that is not an electronic communications service may be within scope, if it is bundled with at least an IAS or publicly available ICS;
- f. A bundle under Article 107 is one which is provided or sold by the same provider, under the same or a closely related or linked contract.

284. To assist providers to understand what may constitute a bundle (of services or a bundle of services and terminal equipment) provided or sold by the same

¹²⁴ European Commission (2020) "Questions and Answers on the EECC."

provider under the same or a closely related or linked contract, ComReg considers the presence of the following factors is relevant:

- a. Services are offered by the same provider;
- b. There is in effect a single / multiple contract(s) for provision of service;
- c. The terms and conditions of the contract(s) for the services and/or services and terminal equipment are linked or inter-related;
- d. The use of one service is dependent on the use of another service.

285. ComReg notes that bundled services could be offered within one single contract, such as a mobile phone service and a handset; or a contract where a consumer agrees to bundle the original service with an additional service (such as, a handset upgrade, social media, applications or content); or multiple closely related or linked contracts, provided in all cases there is at least one IAS or number-based ICS.

286. ComReg has not at this point considered all aspects of bundles or the particular contract terms of any bundle. As regards assessing whether 'closely related' elements could constitute a bundle within scope of Article 107 of the Code, it would be necessary to take into account the specific contract/s terms and conditions and the exact link/ dependency between them. ComReg is of the view that providers should consider how characteristics of a contract impact upon other elements of the contract or related contracts. For example, the following types of linkages / dependencies may be relevant to assessing whether a contract(s) is a bundle:

- Technical links
- Financial links
- Contractual links

287. To assist providers, ComReg has considered some possible contexts and how such linkages (i.e. technical, financial, contractual) may indicate whether there is a bundle (of services or a bundle of services and terminal equipment) to which Article 107 of the Code applies. This interpretation is based on ComReg's current understanding of the Code and may be subject to change following further clarifications or relevant guidance:

- a. As regards a bundled offer consisting of dependent services, it is ComReg's view that, there could be technical aspects that link the elements of bundled services. For example, due to technical capabilities, it may not be possible to switch an underlying service without also switching other aspects (e.g. content or digital service that cannot be utilised without the specific underlying broadband service).
- b. Another example of a possible technical link could be related to interoperability of services, such that the end-user could not transfer their service/ account (e.g., for Spotify, Google net, My Disney) upon switching providers. In circumstances where the technical linkage cannot be broken, this could indicate the services are in a bundle.
- c. ComReg is of the view that there could also be financial aspects that link elements of a bundle. Such as, a fixed ECS, where the end-user also receives a financial discount on their mobile service; and where termination of the fixed element of the contract may not allow termination of a mobile service or vice versa. Or where termination of the fixed service means that the financial discount on the mobile service is no longer available. ComReg considers the exact linkage / dependency would need to be examined, for example, whether an end user might also still be able to avail of the discount upon termination of the other service;
- d. ComReg considers that there could be particular provider constructs to consider whether the contract(s) contain dependencies, that may mean it is a bundle.

Article 107 applies end-user rights to all elements of a bundle

288. Article 107 (1) and Recital 283 requires providers to extend certain end user rights provisions in the Code to all elements of a bundle (including terminal equipment), such as digital content or digital services, and ECS that are not otherwise directly covered by the scope of those end user rights provisions. The end user rights to be extended to all elements of bundles are those under:

- A. Article 102 (3) - the Contract Summary;
- B. Article 103 (1) - Transparency and publication of information;
- C. Article 105 - Contract duration and Termination; and
- D. Article 106 (1) - IAS switching.

289. Importantly, as noted earlier, the (above) rights applying to “consumers” under Article 107 (1), are extended to end users that are microenterprises, small enterprises or not-for-profit organisations, unless they have explicitly agreed to waive all or parts of those provisions.¹²⁵
290. Article 107 (5) provides flexibility for Member States to extend other provisions of the end-user rights in “Title III” of the Code to bundles. ComReg must await transposition of the Code to ascertain the nature of any such provisions in this regard.
291. Below is a summary of ComReg’s Guidance on Article 102 (3), Article 103 (1), Article 105 and Article 106 (1), which is restated below in the context of bundles. Full details of the requirements of those articles, which apply to all elements of a bundle, can be found throughout ComReg’s Guidance.

A. Contract Summary and other contract information on bundles - Article 102 (3) and Article 102 (1)

292. A Contract Summary must be provided for bundled offers. Some of the requirements under Article 102 (3) in relation to the Contract Summary vary for bundles, for example, in the case of a bundle, the Contract Summary may be a maximum of 3 A4 pages, rather than 1 A4 page.
293. In addition, providers are required to give information to consumers (and other relevant end-users) on the price of individual elements of their bundled offer, to the extent that elements of the bundle are also marketed separately as part of the Pre-Contractual Information¹²⁶. This could include a situation where, for example, a mobile phone service (SMS text/ voice/ data) with recurring billing is sold with a handset, but where the handset is also sold separately and individually, then information needs to be given on the individual price of the handset.
294. Providers are also required, as part of the Pre-Contractual Information on contract duration and renewal, to give information on the conditions of termination of the bundle or of elements of the bundle, as specified in Annex VIII, Part B (3) of the Code.
295. Providers should consult Section 2 and the Consolidated Pre-Contract Requirements section (Annex 1) of the Guidance when implementing contract summary requirements relating to bundles.

¹²⁵ In accordance with Article 107 (4) of the Code.

¹²⁶ As specified in Annex VIII, Part B (2) (v) of the Code.

B. Transparency information on bundles - Article 103 (1)

296. Article 103 (1) specifies that, where IAS and publicly available ICS are subject to terms and conditions, the competent authority/NRA must ensure that [Annex IX](#) information is published. The Annex IX information that providers may be required to publish includes information on the rights related to the termination of bundled offers or elements thereof.
297. While ComReg will need to consider, following transposition, any specifications under Article 103 of the Code, from a policy perspective, ComReg notes that end user detriment can occur when the contractual, technical or financial links between elements of bundles are not clear to end-users. This detriment is more acute when end users are considering making switching decisions. For instance, end users should be appropriately informed of the various links between all elements of a bundle to ensure they are informed and can consider whether to incur termination charges or lose discounts etc.
298. ComReg considers that providers should ensure that contract terms and conditions make clear to end users:
- a. Which elements (services or terminal equipment) are included in the bundle;
 - b. Details of any contractual, financial or technical links between different elements of the bundle; and
 - c. The consequences of switching or termination of a contract, including termination of one element of a bundle where the rest of the bundle services are not terminated i.e. where different elements have different fixed term contract end dates. For example, any termination charges or knock on losses in discounts or changes to the service(s).

C. Bundles and contract duration / renewal - Article 105

299. Article 107 (1) provides that consumers / other relevant end users can avail of rights in Article 105 in the context of a bundle, so long as the bundle comprises at least an IAS or a publicly available number-based ICS.
300. In line with the requirements of Article 105 (1), providers must not conclude consumer contracts for elements of a bundle which are longer than the maximum 24-month time frame. This would appear to apply whether the bundle elements are sold by the same provider in one contract up-front or sold separately but the contracts are linked and constitute a bundle.

301. To fall within scope of Article 105 (3) rights, a bundled contract, or contracts for elements of the bundles which are linked (i.e. by contractual, technical, or financial links), would need to have an initial fixed term and be capable of being automatically prolonged. ComReg understands that where Article 105 (3) applies, an End of Contract notice and Best Tariff Advice must be given to consumers in respect of all elements of the bundle at the same time, even if some elements of the bundle have different contract end dates. This would enable consumers to fully and easily consider the best tariff option available to them, and if they wish, to switch easier. ComReg has given its view that any BTA/BTI provided should be specific and personalised for the end user. Providers should consult section 3.5.2 of the Guidance in relation to implementation of Article 105 (3) of the Code with respect to all elements of the bundle.
302. Article 105 (4) of the Code provides consumers with a right to terminate their contracts, without further costs, upon notice of a proposed change, unless the proposed changes fall within the exceptions listed in Article 105 (4) (e.g. are exclusively to the benefit of the end-user etc). If the right to terminate arises in accordance with Article 105 (4), then that right applies to the entire bundle. Providers should consult section 3.5.3 of the Guidance in relation to applying Article 105 (4) of the Code to bundle.
303. The rights to terminate a contract in accordance with Article 105 (5) of the Code for continued or frequently recurring discrepancies in performance of a service would apply to bundle contracts in scope. Article 105 (5) applies to ECS contracts, other than IAS and number-independent ICS (i.e. it would apply to number-based ICS).
304. The rights under Article 105 (6) of the Code, in relation to payment of compensation due following termination of a contract before the agreed end date and how to calculate compensation due (on a pro rata temporis basis / the remaining part of the service fee) also apply to bundles, “[w]here the end user chooses to retain terminal equipment bundled at the moment of the contract conclusion.”¹²⁷

D. Bundles and switching – Article 106 (1)

305. The provisions under Article 106 (1) aim to facilitate easy switching for consumers and Article 107 ensures these rights for consumers of bundles. Article 106 (1) applies to all elements of the bundle (“*provided or sold by the same provider*”), where the bundle includes at least an IAS or a publicly available number-based ICS. IAS providers must ensure that information on

¹²⁷ Article 105 (6) of the Code, second paragraph.

switching relating to all elements of the bundle is provided and that upon switching, that providers ensure continuity of the IAS elements of the bundle, unless technically not feasible. Providers should consult section 3.6 of the Guidance regarding the details of Article 106.

3.7.2 Article 107 (2) - Terminating a bundle due to failure of provider

Article 107 (2):

Where the consumer has, under Union law, or national law in accordance with Union law, a right to terminate any element of the bundle as referred to in paragraph 1 before the end of the agreed contract term because of a lack of conformity with the contract or a failure to supply, Member States shall provide that the consumer has the right to terminate the contract with respect to all elements of the bundle.

306. Under Article 107 (2) of the Code, if consumers have the right to terminate any element of a bundle before the end of an agreed contract term, due to a "lack of conformity with the contract or a failure to supply," in accordance with European Union or national law, they have the right to terminate the contract with respect to all elements of the bundle. This provision may help to ensure that consumers are "not locked" into a contract for the bundle when issues with one element of the bundle arise.¹²⁸

3.7.3 Article 107 (3) – Extending contract of bundle elements

Article 107 (3):

Any subscription to additional services or terminal equipment provided or distributed by the same provider of internet access services or of publicly available number-based interpersonal communications services shall not extend the original duration of the contract to which such services or terminal equipment are added, unless the consumer expressly agrees otherwise when subscribing to the additional services or terminal equipment.

¹²⁸ See also rights to terminate under Article 105 (5) for discrepancies in performance, which applies to bundles.

307. Recital 283 emphasises the importance of consumers not being “locked-in” to a contract with a provider by means of a “*contractual de facto extension of the initial contract period.*” In pursuit of this objective, Article 107 (3) requires that if a consumer subscribes to an additional service or terminal equipment provided or distributed by the same provider, that this shall not extend the original duration of the contract to which the services or terminal equipment are added.
308. The original contract can only be extended where the consumer “expressly agrees” when they are subscribing to the additional services or terminal equipment. Further, this right is extended to end users that are microenterprises, small enterprises or not-for-profit organisations, unless they have explicitly agreed to waive all or parts of those provisions.¹²⁹
309. ComReg considers that providers must be able to prove any instance where they allege the consumer agreed to extend the original duration of the contract and additional services or terminal equipment were added, or where the other relevant categories of end-users (microenterprises etc) agreed to waive these rights, and would recommend providers keep a record of all such agreements.

¹²⁹ In accordance with Article 107 (4) of the Code.

4 Appendices

Annex 1: Consolidated pre-contractual requirements (by theme)

Approach

In this Appendix ComReg has set out a series of lists, by theme, to indicate the requirements of a consumer¹³⁰ ECS contract having regard to the requirements of Article 102 (1) of the Code.

The focus in this section is on the information requirements for distance contracts and accordingly the requirements of 'Article 6' of the Consumer Rights Directive¹³¹, which are set out in Irish law by Schedule 2 of the Consumer Information Regulations (hereinafter, "Schedule 2"). At the same time, we consider the additional information requirements of Annex VIII of the Code. Annex VIII requirements apply irrespective of whether the contract is concluded on-premises, off-premises or at a distance¹³². Schedule 2 and Annex VIII are the basis of the "Pre-Contractual Information" described in the main body of the Guidance.

To assist providers, ComReg has also included some commentary on aspects of the Consumer Information Regulations and Consumer Rights Directive which relate to the specific themes below (e.g. regarding cooling off rights).

The structure of this section is as follows:

- i. Tables of relevant extracts from Schedule 2 of the Consumer Information Regulations and Annex VIII of the Code – these contains extracts of provisions which relate to the categories or themes of information selected by ComReg.

ComReg has attempted to choose logical themes to facilitate ease of reading and digestion of the information by consumers, however, this of course does not preclude providers from categorising or presenting their contract

¹³⁰ As noted earlier, Article 102 (2) extends the right to receive the Pre-Contractual Information and Contract Summary to end-users that are microenterprises, small enterprises and not-for-profit organisations, unless they explicitly waive those rights. Therefore, while we refer to "consumer" in this section, it should be understood that the same contract information rights will also apply to this wider group of entities. However, the right to information must be read and construed in accordance with other relevant provisions of EU or national law governing the application and scope of particular underlying rights, such as those under the Consumer Rights Directive and Consumer Information Regulations which only apply to "consumers".

¹³¹ Article 102 also requires compliance with contract requirements pursuant to Article 5 (*Information requirements for contracts other than distance or off-premises contracts*) of the Consumer Rights Directive (i.e. on-premises contracts) as applicable, implemented in Irish law by Schedule 1 of the Consumer Information Regulations. Schedule 2 information requirements also apply to "off-premises" contracts.

¹³² As defined in the Consumer Rights Directive and the Consumer Information Regulations (see the definitions included in Section 1.2 of the Guidance).

information under different headings. The overall objective is for ECS contract information to be presented in a clear and comprehensible manner, and for providers to ensure that all aspects of Schedule 2 and Annex VIII information relevant to a particular service are captured in the ECS contract.

- ii. Consolidated lists of information requirements, under each thematic heading, taking account of the extracts from Schedule 2 and Annex VIII. Please note that in these lists:
 - ❖ ComReg has used **grey shading** to indicate requirements arising primarily on foot of Annex VIII
 - ❖ Where it appears that an obligation exists under Schedule 2 that is additional to Annex VIII, ComReg has not used grey shading
 - ❖ While these lists of information requirements are likely to apply to most providers, the application of some requirements depends on the nature of services (and goods) supplied or offered by the provider. For example, in some cases, Annex VIII requirements apply to a narrower category of providers and it may be necessary to have regard to the source of the Annex VIII requirement (see further below).

Annex VIII

Annex VIII is broken into a number of parts: Part A and Part B (I), (II) and (III).

The below is ComReg's understanding of the application of Annex VIII:

1. Part A sets out contract information requirements for all categories of publicly available ECS, other than transmission services used for the provision of M2M services.¹³³
2. Part B (I) includes requirements that are "additional" to those in Part A, for providers of IAS and ICS. It appears to ComReg that in practice, most types of ECS will be either an IAS or ICS and therefore will need to comply with both Part A and Part B (I), and depending on the service, also with Part B (II) and/or B (III). ComReg acknowledges there is some overlap between the information elements covered by Part A and Part B (I) and has attempted to take account of this in the lists of required information under the chosen thematic headings.

¹³³ ComReg notes that this exception does not exclude the full scope of services covered by ECS "Category 3", such as services for the transmission of broadcasting signals. It appears therefore that services falling within that limited sub-section of Category 3 would need to comply with Part A information requirements, but not with Part B requirements, where the ECS in question is provided to a consumer, microenterprise, small enterprise or not-for-profit organisation.

3. Part B (II) includes additional requirements for providers of “number-based ICS” (ECS Category 2 (i)) in relation to emergency calls, location information and directory services.
4. Part B (III) includes additional requirements for providers of IAS (ECS Category 1), who must ensure they also include the contract information specified in Article 4 (1) of the Open Internet Access Regulation (EU 2015/2120).

Overall, providers should consider the scope of Annex VIII and their requirements under existing law and ensure they are clear on which category or categories of ECS their services fall into to fully assess all applicable obligations.

1. Main Characteristics of the service

Relevant legal provisions (extracts)

Schedule 2

INFORMATION TO BE PROVIDED PRIOR TO CONCLUSION OF OFF-PREMISES CONTRACTS AND DISTANCE CONTRACTS

The information to be provided by a trader to the consumer in accordance with Regulation 7 in the case of off-premises contracts, Regulation 8 in the case of off-premises contracts for repairs or maintenance within the scope of that Regulation and Regulation 10 in the case of distance contracts, is as follows:

- (a) the main characteristics of the goods or services, to the extent appropriate to the medium and to the goods or services;

Annex VIII

INFORMATION REQUIREMENTS TO BE PROVIDED IN ACCORDANCE WITH ARTICLE 102 (INFORMATION REQUIREMENTS FOR CONTRACTS)

A. Information requirements for providers of publicly available electronic communications services other than transmission services used for the provision of machine-to-machine services

Providers of publicly available electronic communications services other than transmission services used for the provision of machine-to-machine services shall provide the following information:

(1) as part of the main characteristics of each service provided, any minimum levels of quality of service to the extent that those are offered and, for services other than internet access services, the specific quality parameters assured.

Where no minimum levels of quality of service are offered, a statement to this effect shall be made;

B. Information requirements for providers of internet access services and publicly available interpersonal communications services

I. In addition to the requirements set out in Part A, providers of internet access services and publicly available interpersonal communications services shall provide the following information:

(1) as part of the main characteristics of each service provided:

(i) any minimum level of quality of service to the extent that these are offered, and taking utmost account of the BEREC guidelines adopted in accordance with Art. 104 (2) regarding:

- for internet services: at least latency, jitter, packet loss,
- for publicly available interpersonal communications services, where they exert control at least some elements of the network or have a service level agreement to that effect with undertakings providing access to the network: at least the time for the initial connection, failure probability, call signalling delays in accordance with Annex X; and

(ii) without prejudice to the right of end-users to use terminal equipment of their choice in accordance with Article 3 (1) of Regulation (EU) 2015/2120, any conditions, including fees, imposed by the provider on the use of terminal equipment supplied;

Particulars

1. Customer name, contact details and unique identifier.

Details of Main Characteristics of the service¹³⁴

1. The full name of the plan / service.
2. Details of what services (and goods / equipment) are included in the plan / service / bundle e.g. Landline, Mobile, Broadband, TV.
3. For a TV package, the contract should list TV channels included or if not possible to list all, a description of the type of TV packages included and a direct link to details of where further information can be found as to what channels are included. Details of any other key characteristics must also be included such as multi-room viewing; and whether Number Independent-ICS are included, for example OTT communication services.
4. The name and full details of any automatically applied or purchased add-ons.
5. List of any applicable Quality of Service (QoS) parameters, or a statement that there are none as specified at Annex VIII (A) (1).

¹³⁴ Having regard to Schedule 2 (a), Annex VIII and items listed in the Contract Summary template (Annex to the CIR) as elements of the 'Service(s) and equipment'.

- a. For providers of IAS, list of the QoS parameters specified at Annex VIII (B) (I) (1) (i) (first part) including, at least, latency, jitter, packet loss;
 - b. For providers of ICS who exert some control over some elements of the network or have a service level agreement (SLA) to that effect with undertakings providing access to the network: at least the time for the initial connection, failure probability, call signalling delays in accordance with Annex X.
6. Details of any conditions (including the customers right to use the terminal equipment of their choice) including fees, imposed on the use of terminal equipment such as a handset or other equipment, as required by Annex VIII (B) (I) (1) (ii).

2. Provider Contact Information

Relevant legal provisions (extracts)

Schedule 2

INFORMATION TO BE PROVIDED PRIOR TO CONCLUSION OF OFF-PREMISES CONTRACTS AND DISTANCE CONTRACTS

The information to be provided by a trader to the consumer in accordance with Regulation 7 in the case of off-premises contracts, Regulation 8 in the case of off-premises contracts for repairs or maintenance within the scope of that Regulation and Regulation 10 in the case of distance contracts, is as follows:

.....

- (b) the identity of the trader, including the trader's trading name;
- (c) if the trader is acting on behalf of another trader, the geographical address and identity of that trader;
- (d) the geographical address at which the trader is established, and the trader's telephone number, fax number and e-mail address, where available, to enable the consumer to contact the trader quickly and communicate with the trader efficiently;
- (e) the geographical address of –
 - (i) the place of business of the trader, if different from the address provided in accordance with paragraph (d), and
 - (ii) where the trader acts on behalf of another trader, the place of business of that other trader, if different from the address provided in accordance with paragraph (c),
 to which the consumer can address complaints;

Details of Provider contact information

The contact information required by Schedule 2 (b) to (e) for “traders” under the Consumer Information Regulations and which includes ECS providers is set out above. In particular, ComReg notes the following key items are required:

1. The full registered company name, including trading name of the provider.

2. If the provider is acting on behalf of another trader, the registered company name, including any trading name of that trader.
3. The geographical address of the provider, telephone number and an electronic means of contacting the provider that is quick and efficient for consumers to use as a means of contact.
4. The geographical address of the place of business of the provider, if different from the address already provided.

3. Pricing Information

Relevant legal provisions (extracts)

Schedule 2

INFORMATION TO BE PROVIDED PRIOR TO CONCLUSION OF OFF-PREMISES CONTRACTS AND DISTANCE CONTRACTS

The information to be provided by a trader to the consumer in accordance with Regulation 7 in the case of off-premises contracts, Regulation 8 in the case of off-premises contracts for repairs or maintenance within the scope of that Regulation and Regulation 10 in the case of distance contracts, is as follows:

.....

(f) the total price of goods or service inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated;

(g) where applicable, all additional freight, delivery or postal charges and any other costs or, where those charges cannot reasonably be calculated in advance, the fact that such charges may be payable;

(h) in the case of a contract of indeterminate duration or a contract containing a subscription –

(i) the total costs per billing period, or,

(ii) where such contract is charged at a fixed rate, the total monthly costs, or

(iii) where the total costs cannot reasonably be calculated in advance, the manner in which the price is to be calculated;

(i) the cost of using the means of distance communication used for conclusion of the contract where that cost is calculated other than at the basic rate;

Annex VIII

INFORMATION REQUIREMENTS TO BE PROVIDED IN ACCORDANCE WITH ARTICLE 102 (INFORMATION REQUIREMENTS FOR CONTRACTS)

A. Information requirement for providers of publicly available electronic communications services other than transmission services used for the provision of machine-to-machine services

Providers of publicly available electronic communications services other than transmission services used for the provision of machine-to-machine service shall provide the following information:

.....

(2) as part of the information on price, where and to the extent applicable, the respective prices for activating the electronic communications service and for any recurring or consumption-related charges

B. Information requirements for providers of internet access services and publicly available interpersonal communications services

I. In addition to the requirements set out in Part A, providers of internet access services and publicly available interpersonal communications services shall provide the following information:

.....

(2) As part of the information on price, where and to the extent applicable, the respective prices for activating the electronic communications service and for any recurring or consumption-related charges:

(i) details of specific tariff plan or plans under the contract and, for each such tariff plan the types of services offered, including where applicable, the volumes of communications (such as MB, minutes, messages) included per billing period, and the price for additional communication units;

(ii) in case of tariff plan or plans with a pre-set volume of communications, the possibility for consumers to defer any unused volume from the preceding billing period to the following billing period, where this option is included in the contract;

(iii) facilities to safeguard bill transparency and monitor the level of consumption;

(iv) tariff information regarding any numbers or services subject to particular pricing conditions; with respect to individual categories of services, competent authorities in coordination, where relevant, with

national regulatory authorities may require in addition such information to be provided immediately prior to connecting the call or to connecting to the provider of the service;

(v) for bundled services and bundles including both services and terminal equipment the price of the individual elements of the bundle to the extent they are also marketed separately;

(vi) details and conditions, including fees, of any after-sales service, maintenance, and customer assistance; and

(vii) the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;

Comments on Pricing Information under the Consumer Information Regulations

In accordance with Schedule 2 (f) of the Consumer Information Regulations, in circumstances where the consumer is bound by a contract for a minimum period, the contract provided on a durable medium should state the total cost of the contract to the consumer for the duration of the minimum term contract. If it is not possible to calculate certain charges up-front, the basis of calculating the charges should be included. The value of any discounts and when these will no longer apply should also be made clear to consumers so that they can assess the actual total costs.

In that regard, ComReg notes the EU Guidance on the Consumer Rights Directive 2011/83/EC¹³⁵, which states (at page 25):

"If the product (or one of the products) provided under a contract of indeterminate duration or under a subscription is charged at a fixed rate, information about the total cost per billing period and about the total monthly costs should be provided.

- *For example, Internet or pay-TV subscriptions are typically charged at a fixed rate per month/bi-monthly/quarterly irrespective of usage. Therefore, the monthly cost and, if the billing period is different, the costs per billing period would have to be provided to the consumer who wishes to conclude a subscription online or off-premises.*

¹³⁵ DG JUSTICE GUIDANCE DOCUMENT concerning Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, available at: https://ec.europa.eu/info/sites/info/files/crd_guidance_en_0.pdf

- *If a contract covers or includes a product for which the total cost cannot be calculated in advance, the trader should inform the consumer of the way, in which these variable costs are calculated.*
- *For example, for voice telephony services whose cost depends on actual usage, the trader should refer the consumer to a detailed price list for telephone calls.”*

In circumstances where the consumer is not bound by a minimum term (i.e. a contract of indeterminate duration), the contract provided on a durable medium must state the total cost per month or the cost per billing period, if that differs from the monthly charge, in accordance with Schedule 2 (h).

ComReg also notes the obligations under Annex VIII (Part A (2) & B (I) (2)) which require providers to include as part of the information on price, the prices for activating the electronic communications service and for any recurring or consumption-related charges (where and to the extent applicable).

Details of Pricing Information - applicable fees and charges

1. Where the contract is for a fixed / minimum term: (i) the total price of the goods (e.g. including costs of any equipment such as handsets or modems) and services for the duration of the contract as required in Schedule 2 (f) and (ii) the recurring price per billing period (including any price applicable after the minimum term) as required by Annex VIII (A) (2).
2. Where the contract is of an indeterminate duration, the total costs per billing period (i.e. recurring or consumption related charges) as required in Schedule 2 (h) (i) and by Annex VIII (A) (2).
3. In both contract scenarios at 1 and 2, the prices should reflect all discounted services or products including any time-limited discounts, to fully reflect the requirements of Annex VIII (A) (3) on promotional terms and Annex VIII (B) (I) (2) (i) requiring details of the specific tariff or plan.
4. Consumption-related charges, such as prices for any additional communication units which apply after any pre-set volumes have been exceeded, as required by Annex VIII (A) (2)¹³⁶. It is ComReg’s view that for clarity out of bundle data charges should be stated in GB and in MB, where relevant.

¹³⁶ This could also be set out under the Main Characteristics section above, where the price and volumes of communications (MB, minutes, SMS) included per billing period are listed.

5. Define precisely the volume or quantity of calls, messages and data allowances per billing period, as required by Annex VIII (B) (I) (2) (i)¹³⁷.
6. Details of any Fair Usage Policy or any limitations on consumption of services and details of any Roaming Fair Use Policy.¹³⁸
7. For mobile, the precise Roaming allowances for calls, texts and data to include Roam-Like-At-Home and tariffs for outside of Europe, and any other applicable roaming rates.¹³⁹
8. Any additional fixed prices such as activation of service charges (including any installation fees where they are required for activation), as required by Annex VIII (A) (2).
9. The means of accessing (e.g. a direct weblink) all other applicable rates, charges or fees, such as for maintenance or once off fees, as required by Annex VIII (B) (I) (2) (i) and (vii).
10. In respect of any bundled services (including any bundles with terminal equipment¹⁴⁰), to the extent they are marketed separately, the price of the individual bundle services, as specified in Annex VIII (B) (I) (2) (v).
11. If applicable, the cost of the means of communications used for conclusion of contract that may be charged other than at the basic rate, as required by Schedule (2) (i).
12. Tariff information regarding any numbers¹⁴¹ or services subject to particular pricing conditions, as specified in Annex VIII (B) (I) (2) (iv).
13. The facilities for bill transparency and monitoring levels of consumption, as specified in Annex VIII (B) (I) (2) (iii).
14. Where applicable, details of terms to defer any unused volume or quantity for calls, messages and data allowances, as specified in Annex VIII (B) (I) (2) (ii).

¹³⁷ Out of bundle charges have been included under the “Details on Pricing” section but could also be included here.

¹³⁸ In accordance with the Roaming Regulation (EU) No 531/2012 as amended by Regulation (EU) 2015/2120

¹³⁹ Regulation (EU) No 531/2012 as amended

¹⁴⁰ Note that any fees for the use of terminal equipment supplied by IAS or ICS providers, should be listed as part of the Main Characteristics of the service.

¹⁴¹ Providers should also have regard to ComReg Document 15/136R2

4. Equipment, Service and Warranty Information

Relevant legal provisions (extracts)

Schedule 2

INFORMATION TO BE PROVIDED PRIOR TO CONCLUSION OF OFF-PREMISES CONTRACTS AND DISTANCE CONTRACTS

The information to be provided by a trader to the consumer in accordance with Regulation 7 in the case of off-premises contracts, Regulation 8 in the case of off-premises contracts for repairs or maintenance within the scope of that Regulation and Regulation 10 in the case of distance contracts, is as follows:

.....

(j) the arrangements for payment, delivery, performance, and the time by which the trader undertakes to deliver the goods or perform the service;

(p) in the case of a sales contract, the existence of a legal obligation on the trader to supply goods that are in conformity with the contract;

Annex VIII

INFORMATION REQUIREMENTS TO BE PROVIDED IN ACCORDANCE WITH ARTICLE 102 (INFORMATION REQUIREMENTS FOR CONTRACTS)

B. Information requirements for providers of internet access services and publicly available interpersonal communications services

I. In addition to the requirements set out in Part A, providers of internet access services and publicly available interpersonal communications services shall provide the following information:

(1) as part of the main characteristics of each service provided:

.....

(ii) without prejudice to the right of end-users to use terminal equipment of their choice in accordance with Article 3 (1) of Regulation (EU) 2015/2120, any conditions, including fees, imposed by the provider on the use of terminal equipment supplied;

Details of Equipment, Service and Warranty information

1. Details of the arrangements for payment and expected delivery times for the delivery of goods, such as a mobile handset or modem as required by Schedule 2 (j).¹⁴²
2. Details of the time by which the provider will perform the service (i.e. if equipment is required to be delivered prior to commencement of service, confirm this and any other conditions for performance of the contract to the consumer), as required by Schedule 2 (j).
3. Details of the provider's legal obligation as a trader to provide goods such as modems and or handsets in accordance with the contract (i.e. under Schedule 2 (p) and in accordance with the Sale of Goods and Supply of Services Act 1980 (as amended) and Sale of Goods Act 1893 (as amended)).

¹⁴² Note that fees for use of terminal equipment supplied required by Annex VIII (B) (I) (1) (ii) are captured in the Main Characteristics section.

5. After Sales Customer Services

Relevant legal provisions (extracts)

Schedule 2

INFORMATION TO BE PROVIDED PRIOR TO CONCLUSION OF OFF-PREMISES CONTRACTS AND DISTANCE CONTRACTS

The information to be provided by a trader to the consumer in accordance with Regulation 7 in the case of off-premises contracts, Regulation 8 in the case of off-premises contracts for repairs or maintenance within the scope of that Regulation and Regulation 10 in the case of distance contracts, is as follows:

.....

(q) where applicable, the existence and conditions of after-sale customer assistance, after-sales services and commercial guarantees;

Annex VIII

INFORMATION REQUIREMENTS TO BE PROVIDED IN ACCORDANCE WITH ARTICLE 102 (INFORMATION REQUIREMENTS FOR CONTRACTS)

B. Information requirements for providers of internet access services and publicly available interpersonal communications services

I. In addition to the requirements set out in Part A, providers of internet access services and publicly available interpersonal communications services shall provide the following information:

(2) As part of the information on price, where and to the extent applicable, the respective prices for activating the electronic communications service and for any recurring or consumption-related charges:

.....

(vi) details and conditions, including fees, of any after-sales service, maintenance, and customer assistance;

Details of After Sales Customer Services

1. Contact details, conditions and any fees for after-sales customer assistance or services, including those for dealing with maintenance / fault issues as specified in Schedule 2 (q) and by Annex VIII (B) (I) (2) (vi).
2. Details of any applicable commercial guarantees, as specified by Schedule 2 (q).

6. Cooling off Period

Relevant legal provisions (extracts)

Schedule 2

INFORMATION TO BE PROVIDED PRIOR TO CONCLUSION OF OFF-PREMISES CONTRACTS AND DISTANCE CONTRACTS

The information to be provided by a trader to the consumer in accordance with Regulation 7 in the case of off-premises contracts, Regulation 8 in the case of off-premises contracts for repairs or maintenance within the scope of that Regulation and Regulation 10 in the case of distance contracts, is as follows:

.....

- (l) where a right to cancel exists, the conditions, time limit and procedures for exercising that right in accordance with Regulation 17;
- (m) where applicable, that the consumer will have to bear the cost of returning the goods in case of cancellation of the contract and, in the case of distance contracts, if the goods by their nature cannot normally be returned by post, the cost of returning the goods;
- (n) where the consumer exercises the right to cancel after having made a request in accordance with Regulation 21, that the consumer is liable to pay the trader reasonable costs in accordance with that Regulation;
- (o) where a right to cancel the contract does not apply under Regulation 13, the information that the consumer will not benefit from that right or, where applicable, the circumstances in which the consumer loses the right;

Comments on Cooling off Rights under the Consumer Information Regulations¹⁴³

While the Consumer Information Regulations were not drafted specifically with electronic communications services in mind, they apply to ECS distance and off-premises contracts with consumers which are 'sales contracts'¹⁴⁴ or 'services

¹⁴³ See Part IV (*Application of the Right to Cancel Distance Contracts and Off-Premises Contracts*), Regulations 13 to 22 of the Consumer Information Regulations

¹⁴⁴ Regulation 2 of the Consumer Information Regulations: "*sales contract*" means a contract under which a trader transfers or undertakes to transfer the ownership of goods to a consumer and the consumer pays or undertakes to pay the price thereof, and includes a contract that has as its object both goods and services;

contracts',¹⁴⁵ and under Regulation 13 (1), those contracts benefit from "cooling-off" cancellation rights.

Most contracts for IAS or for ICS would benefit from cooling off rights. For example, it would seem that a fixed or mobile phone contract could fall into the category of a sales contract if it involves the provision of services and goods (i.e. text/voice, plus internet services and supply of a modem or phone handset) or could be a service contract (if no goods are involved). Further, cooling off rights apply to both bill pay and pre-paid distance and off-premises ECS contracts with consumers.

ComReg notes the exception to the application of cooling off rights under Regulation 13 (2) (a)¹⁴⁶ in relation to "service contracts" where the contract has been fully performed. ComReg is of the view that the application of this exception would need to be assessed on a case by case basis and consider the point at which the particular contract is "fully performed". In all cases, reliance on this exception would be dependent on the consumer's express consent to commencement of the contract on those terms and their acknowledgement that *"he or she will lose the right to cancel the contract once the contract has been fully performed by the trader"* (as set out in Regulation 13 (2) (a)).

Regulation 17 of the Consumer Information Regulations sets out rules in relation to the exercise of the right to cancel during the cooling off period.

Regulation 10 (1) (b) provides that consumers should be provided with a model cancellation form in accordance with Part B of Schedule 3 of the Consumer Information Regulations (which may be an online cancellation form or a template written form).

The consumer is not bound to use the model form and the right to cancel may be exercised by the communication of *"any other unequivocal statement setting out his or her decision to cancel the contract"*.¹⁴⁷ This could therefore include a letter, email, webform, mobile phone app submission or telephone call. In ComReg's view,

¹⁴⁵ Regulation 2 of the Consumer Information Regulations: "*service contract*" means a contract, other than a sales contract, under which a trader supplies or undertakes to supply a service to a consumer and the consumer pays or undertakes to pay the price thereof, but excludes contracts for the supply of—

(a) digital content not supplied on a tangible medium,
(b) water, gas or electricity not supplied in a limited volume or set quantity, and
(c) district heating;

¹⁴⁶ Regulation 13 (2) of the Consumer Information Regulations: "*This Part does not apply to any of the following distance contracts and off-premises contracts concluded between a trader and a consumer:*

(a) service contracts, after the service has been fully performed if the performance has begun with—
(i) the consumer's prior express consent, and
(ii) the consumer's acknowledgement that he or she will lose the right to cancel the contract once the contract has been fully performed by the trader;"

¹⁴⁷ In accordance with Regulation 17 (2) and (3) (Exercise of right to cancel) of the Consumer Information Regulations; see also Regulation 10 (2) (Information Requirements for distance contracts), Schedule 2 and Schedule 3.

although not excluded, the exercise of the right to cancel by telephone may be less useful for consumers as a record of an “unequivocal statement” of the exercise of the right to cancel, unless such calls are recorded and easily accessible.¹⁴⁸

If a provider does not supply the cooling off rights information, the cancellation period expires 12 months from the day on which it should have expired; if the provider supplies this information within 12 months of the contract, the cancellation period expires 14 days after that information is provided (in accordance with Regulation 16 (1) and 16 (2) of the Consumer Information Regulations).

Details of Cooling Off Period Rights¹⁴⁹

1. Provide information on consumer’s right to cancel during the cooling off period, the time limit for exercising that right and confirm from what point the cooling off period commences (e.g. from the moment performance of the service of the contract begins or goods are received).
2. The procedures and conditions for exercising the right to cancel should include: (i) a direct weblink to or written copy of the provider’s cancellation form; (ii) information on the cancellation procedures and how a consumer may make an unequivocal statement setting out his/her decision to cancel within the cooling off period.
3. Detail the effects of cancellation.
4. Procedures, conditions and costs of returning the goods in all cancellation circumstances¹⁵⁰.
5. Information and prices regarding any reasonable costs payable in the event of cancellation during the cooling off period. Such charges may include consumption charges, installation charges, activation charges, delivery charges and a means by which consumers may calculate charges¹⁵¹.
6. Detail any instances where the right to cancel the contract during the cooling off period does not apply.

¹⁴⁸ In the event of dispute, Regulation 17 (6) of the Consumer Information Regulations provides that it is for the consumer to demonstrate they have made such an unequivocal statement.

¹⁴⁹ This section summarises the requirements of Schedule 2 (l) to (o)

¹⁵⁰ See further Regulations 19 and 20 of the Consumer Information Regulations

¹⁵¹ See further Regulations 20 and 21 of the Consumer Information Regulations

7. Duration, Renewal and Cancellation of Contract

Relevant legal provisions (extracts)

Schedule 2

INFORMATION TO BE PROVIDED PRIOR TO CONCLUSION OF OFF-PREMISES CONTRACTS AND DISTANCE CONTRACTS

The information to be provided by a trader to the consumer in accordance with Regulation 7 in the case of off-premises contracts, Regulation 8 in the case of off-premises contracts for repairs or maintenance within the scope of that Regulation and Regulation 10 in the case of distance contracts, is as follows:

.....

(s) the duration of the contract where applicable or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating it;

(t) where applicable, the minimum duration of the consumer's obligations under the contract;

Annex VIII

INFORMATION REQUIREMENTS TO BE PROVIDED IN ACCORDANCE WITH ARTICLE 102 (INFORMATION REQUIREMENTS FOR CONTRACTS)

A. Information requirements for providers of publicly available electronic communications services other than transmission services used for the provision of machine-to-machine services

Providers of publicly available electronic communications services other than transmission services used for the provision of machine-to-machine services shall provide the following information:

(3) as part of the information on the duration of the contract and conditions for renewal and termination of the contract, including possible termination fees, to the extent that such conditions apply:

(i) any minimum use or duration required to benefit from promotional terms;

.....

(iv) any fees on early termination of the contract, including information on unlocking terminal equipment and any cost recovery in respect to terminal equipment;

B. Information requirements for providers of internet access services and publicly available interpersonal communications services

I. In addition to the requirements set out in Part A, providers of internet access services and publicly available interpersonal communications services shall provide the following information:

.....

(3) as part of the information on the duration of the contract for bundled services and the conditions for renewal and termination of the contract, where applicable, the conditions of termination of the bundle or the elements thereof;

Article 105 of the Code sets out detailed requirements in relation to contract duration and termination of an ECS contract.¹⁵² Article 107 of the Code deals with additional rights applying to bundles. Providers should familiarise themselves with the operation of those requirements.

Details of Duration, Renewal and Cancellation of Contract

1. The start date and information on the duration of the contract (in days/ months), including any minimum term of the contract as specified in Schedule 2 (s) and (t).
2. Details of any minimum use or duration required to benefit from promotional terms as specified in Annex VIII (A) (3) (i).
3. Information on the main conditions for contract renewal, including any automatic contract roll-over provisions and any terms and conditions for termination of a contract outside the cooling off period, such as at the end of the minimum term, as required by Schedule 2 (s). Any terms and conditions which vary the contract / offer (e.g. by early reactivation of a plan following a top-up) should be clearly communicated to the consumer.
4. Information on conditions relating to early termination, including any fees payable, the unlocking terminal equipment and the cost of recovery of

¹⁵² For example, note the requirements of Article 105 (6) of the Code which specifies that, “6. Where an end-user has the right to terminate a contract for a publicly available electronic communications service, other than a number-independent interpersonal communications service, before the end of the agreed contract period pursuant to this Directive or to other provisions of Union or national law, no compensation shall be due by the end-user other than for retained subsidised terminal equipment.”

terminal equipment (e.g. delivery return costs) as specified in Annex VIII (A) (3) (iv).

5. For bundled services, information on the conditions of renewal and termination of the bundle, and where applicable, for each individual element of the bundle as specified in Annex VIII (B) (I) (3).
6. The process and procedures available to terminate a contract (outside of the cooling off period) as specified in Annex VIII (A) (3). These cancellation processes should, in ComReg's view, be simple, prompt and easy to use and not limited to a telephone number only.

8. Switching

Relevant legal provisions (extracts)

Annex VIII

INFORMATION REQUIREMENTS TO BE PROVIDED IN ACCORDANCE WITH ARTICLE 102 (INFORMATION REQUIREMENTS FOR CONTRACTS)

A. Information requirements for providers of publicly available electronic communications services other than transmission services used for the provision of machine-to-machine services

Providers of publicly available electronic communications services other than transmission services used for the provision of machine-to-machine services shall provide the following information:

(3) As part of the information on the duration of the contract and conditions for renewal and termination of the contract, including possible termination fees, to the extent that such conditions apply:

.....

(ii) any charges related to switching and compensation and refund arrangements for delay or abuse of switching, as well as information about the respective procedures;

(iii) information on the right of consumers using pre-paid services to a refund, upon request, of any remaining credit in the event of switching, as set out in Art. 106 (6);

Article 106 of the Code sets out detailed requirements in relation to switching and number porting and providers should familiarise themselves with those requirements. In particular, the Code seeks to ensure that the terms and conditions of contracts do not constitute a disincentive to switching service providers.

Details of Switching

1. Procedures and charges applicable in the event the consumer switches provider as specified in Annex VIII (A) (3) (ii).
2. Procedures for compensation and refunds in the event of delay or abuse of switching as specified in Annex VIII (A) (3) (ii).
3. The right of pre-paid consumers to carry over any credits or refund of credits in the event of switching as specified in Annex VIII (A) (3) (iii).

9. Deposits and Financial Guarantees

Relevant legal provisions (extracts)

Schedule 2

INFORMATION TO BE PROVIDED PRIOR TO CONCLUSION OF OFF-PREMISES CONTRACTS AND DISTANCE CONTRACTS

The information to be provided by a trader to the consumer in accordance with Regulation 7 in the case of off-premises contracts, Regulation 8 in the case of off-premises contracts for repairs or maintenance within the scope of that Regulation and Regulation 10 in the case of distance contracts, is as follows:

.....

(u) where applicable, the existence and the conditions of deposits or other financial guarantees to be paid or provided by the consumer at the request of the trader;

Details of Deposits and Financial Guarantees

1. The cost and the terms and conditions of a deposit or other financial guarantees, including any terms in relation to refunds of deposits, as specified in Schedule 2 (u).

10. Technical Information

Relevant legal provisions (extracts)

Schedule 2

INFORMATION TO BE PROVIDED PRIOR TO CONCLUSION OF OFF-PREMISES CONTRACTS AND DISTANCE CONTRACTS

The information to be provided by a trader to the consumer in accordance with Regulation 7 in the case of off-premises contracts, Regulation 8 in the case of off-premises contracts for repairs or maintenance within the scope of that Regulation and Regulation 10 in the case of distance contracts, is as follows:

.....

(v) where applicable, the functionality, including applicable technical protection measures of digital content;

(w) where applicable, any relevant interoperability of digital content with hardware and software of which the trader is, or can reasonably be expected to have been, aware.

Annex VIII

INFORMATION REQUIREMENTS TO BE PROVIDED IN ACCORDANCE WITH ARTICLE 102 (INFORMATION REQUIREMENTS FOR CONTRACTS)

A. Information requirements for providers of publicly available electronic communications services other than transmission services used for the provision of machine-to-machine services

Providers of publicly available electronic communications services other than transmission services used for the provision of machine-to-machine services shall provide the following information:

(4) Any compensation and refund arrangements, including, where applicable, explicit reference to the rights of consumers, which apply if contracted levels of quality of service are not met or if the provider responds inadequately to a security incident, threat or vulnerability;

.....

B. Information requirements for providers of internet access services and publicly available interpersonal communications services

II. In addition to the requirements set out in part A and under point I, providers of publicly available number-based interpersonal communications services shall also provide the following information:

- (1) any constraints on access to emergency services or caller location information due to the lack of technical feasibility insofar as the service allows end-users to originate calls to a number in a national or international numbering plan;

.....

III. In addition to the requirements set out in part A and under Point I, providers of internet access services shall also provide the information required pursuant to Article 4 (1) of Regulation (EU) 2015/2120.

Details of Technical Information¹⁵³

1. Information relating to "Functionality" required by Schedule 2 (v) could include:
 - a. The ways in which the digital content can be used, such as in the tracking of consumer behaviour.
 - b. The absence or presence of any technical restrictions, such as protection via Digital Rights Management or region coding e.g. limitations of time or with respect to the device on which a piece of content can be viewed.
2. Information regarding "relevant inter-operability" required by Schedule 2 (w) could include:
 - a. Information regarding the standard hardware and software with which the digital content is compatible, such as the operating system, the necessary version and certain hardware features.
 - b. Information on any operational limitations between different systems (e.g. whether a movie purchased on one platform is viewable on another).
3. Maximum, minimum, normally available and advertised internet download and upload speeds for fixed networks, and estimated maximum and advertised download and upload speeds for mobile networks (pursuant to obligations under section 4 (1) (d) of the Open Internet Access Regulation, and as noted in Annex VIII, (B) (III)) (only applies to IAS)
4. Information on remedies required under Art. 4(1) (e) of the EU Open Internet Access Regulation (only applies to IAS).

¹⁵³ The items relevant to Schedule 2 above have regard to Recital 19 of the Consumer Rights Directive. Note that technical Quality of Service (QoS) information for IAS and for ICS required by Annex VIII (B) (I) (i) is included in the Main Characteristics section.

5. Other transparency information required under Art. 4 (1) (a), (b) and (c) of the Open Internet Access Regulation (only applies to IAS).
6. Any limitations on access to emergency services or caller location identification due to a lack of technical feasibility, as specified in Annex VIII (B) (II) (1) (only applies to number-based ICS).
7. Compensation and refund arrangements which apply if contracted levels of quality of service are not met or if the provider responds inadequately to a security incident, threat or vulnerability, as required by Annex VIII (A) (4).

11. Security Incidents

Relevant legal provisions (extracts)

Annex VIII

INFORMATION REQUIREMENTS TO BE PROVIDED IN ACCORDANCE WITH ARTICLE 102 (INFORMATION REQUIREMENTS FOR CONTRACTS)

A. Information requirements for providers of publicly available electronic communications services other than transmission services used for the provision of machine-to-machine services

Providers of publicly available electronic communications services other than transmission services used for the provision of machine-to-machine services shall provide the following information:

(5) the type of action that might be taken by the provider in reaction to security incidents or threats or vulnerabilities.

Details of Security Incidents

1. Information on the type of action that might be taken by the provider in reaction to security incidents or threats or vulnerabilities, as specified in Annex VIII (A) (5). This could include, for example, any possible service restrictions or impact on quality of services in that event.

12. Data Protection

Relevant legal provisions (extracts)

Annex VIII

INFORMATION REQUIREMENTS TO BE PROVIDED IN ACCORDANCE WITH ARTICLE 102 (INFORMATION REQUIREMENTS FOR CONTRACTS)

B. Information requirements for providers of internet access services and publicly available interpersonal communications services

I. In addition to the requirements set out in Part A, providers of internet access services and publicly available interpersonal communications services shall provide the following information:

(4) without prejudice to Article 13 of the Regulation (EU) 2016/679, information on what personal data shall be provided before the performance of the service or collected in the context in the provision of the service;

.....

II. In addition to the requirements set out in part A and under point I, providers of publicly available number-based interpersonal communications services shall also provide the following information:

.....

(2) the end-user's right to determine whether to include his or her personal data in a directory, and the types of data concerned, in accordance with Article 12 of Directive 2002/58/EC;

Note: Directive 2002/58/EC is the E-Privacy Directive

Details of Data Protection

1. Information on what personal data is collected before the service is provided and how it would be collected / used in the context of providing the service, as specified in Annex VIII (B) (I) (4).¹⁵⁴
2. Information on the right for consumers to decide whether to include his/her personal data in a directory, and the types of personal data collected for this purpose, in accordance with the requirements of the E-privacy Directive, as specified in Annex VIII (B) (II) (2) (only applies to number-based ICS).

¹⁵⁴ See also Recital 15 of the Code and any requirements or legal obligations under the GDPR.

13. Consumers with disabilities

Relevant legal provisions (extracts)

Annex VIII

INFORMATION REQUIREMENTS TO BE PROVIDED IN ACCORDANCE WITH ARTICLE 102 (INFORMATION REQUIREMENTS FOR CONTRACTS)

B. Information requirements for providers of internet access services and publicly available interpersonal communications services

I. In addition to the requirements set out in Part A, providers of internet access services and publicly available interpersonal communications services shall provide the following information:

(5) details on products and services designed for end-users with disabilities and how updates on this information can be obtained;

Details for consumers with disabilities

1. Information on the main products and services for end-users with disabilities shall be included, as specified in Annex VIII (B) (I) (5). This could include, where available, real-time text, total conversation, relay services, accessible emergency communications, specialised equipment, special tariffs and accessible information.¹⁵⁵
2. Details of how consumers with disabilities may obtain up-to-date information on products and services designed for them, as specified in Annex VIII (B) (I) (5).

¹⁵⁵ Additional suggestions of relevant information for this heading are listed in the Contract Summary Commission Implementing Regulation (CIR) document and its Annex.

14. Customer Complaints, Codes of Practices and Alternative Dispute Resolution (ADR)

Relevant legal provisions (extracts)

Schedule 2

INFORMATION TO BE PROVIDED PRIOR TO CONCLUSION OF OFF-PREMISES CONTRACTS AND DISTANCE CONTRACTS

The information to be provided by a trader to the consumer in accordance with Regulation 7 in the case of off-premises contracts, Regulation 8 in the case of off-premises contracts for repairs or maintenance within the scope of that Regulation and Regulation 10 in the case of distance contracts, is as follows:

.....

- (k) where applicable, the trader's complaint handling policy;
- (r) the existence of relevant codes of practice, as defined in section 2 of the Consumer Protection Act 2007 and, where applicable, how copies of such codes can be obtained;
- (x) where applicable, the possibility of having recourse to an out-of-court complaint and redress mechanism to which the trader is subject, and the methods of having access to it.

Annex VIII

INFORMATION REQUIREMENTS TO BE PROVIDED IN ACCORDANCE WITH ARTICLE 102 (INFORMATION REQUIREMENTS FOR CONTRACTS)

B. Information requirements for providers of internet access services and publicly available interpersonal communications services

I. In addition to the requirements set out in Part A, providers of internet access services and publicly available interpersonal communications services shall provide the following information:

- (6) the means of initiating procedures for the resolution of disputes including national and cross-border disputes in accordance with Article 25.

Providers must also comply with ComReg's Decision D04/17¹⁵⁶ which specifies requirements in relation to the form, content and timelines for Codes of Practice.

Details of Customer Complaints, Codes of Practices and Alternative Dispute Resolution (ADR)

1. Reference to and a copy of, or direct weblink to, the trader's Code of Practice for Complaint Handling as specified in Schedule 2 (r).
2. Reference to and the means of accessing (e.g. a direct link) ComReg's Alternative Dispute Resolution procedure and any other applicable out of court complaint and redress mechanisms, as specified in Schedule 2 (r), including any means of resolving cross-border disputes (e.g. via the EU Online Dispute Resolution platform¹⁵⁷) or other means as may be specified in accordance with Article 25 of the Code , as specified in Annex VIII (B) (I) (6)¹⁵⁸.

¹⁵⁶ <https://www.comreg.ie/publication/electronic-communications-complaints-handling-code-practice-response-consultation-decision/>

¹⁵⁷ For further information see: <https://www.eccireland.ie/consumer-rights/online-dispute-resolution-odr/>

¹⁵⁸ Article 25 of the Code specifies that Member States may introduce dispute resolution procedures which extend to, in particular, microenterprises and small enterprises, in respect of which ComReg awaits details following transposition of the Code. See also Recital 68.

Annex 2: Additional Legislative Sources

Index

1. Annex VIII of the Code
2. Schedules 2 and 3 of the Consumer Information Regulations, 2013
3. Certain Recitals of the Code
4. Annex VI¹⁵⁹
5. Annex IX¹⁶⁰
6. Annex X¹⁶¹

¹⁵⁹ Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32018L1972&from=EN#d1e32-197-1>

¹⁶⁰ Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32018L1972&from=EN#d1e32-202-1>

¹⁶¹ Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32018L1972&from=EN#d1e32-203-1>

1 Annex VIII of the Code

ANNEX VIII of the CODE

INFORMATION REQUIREMENTS TO BE PROVIDED IN ACCORDANCE WITH ARTICLE 102 (INFORMATION REQUIREMENTS FOR CONTRACTS)

(emphasis added)

Part A

A. Information requirements for providers of publicly available electronic communications services other than transmission services used for the provision of machine-to-machine services

Providers of publicly available electronic communications services other than transmission services used for the provision of machine-to-machine services shall provide the following information:

(1) as part of the main characteristics of each service provided, any minimum levels of quality of service to the extent that those are offered and, for services other than internet access services, the specific quality parameters assured.

Where no minimum levels of quality of service are offered, a statement to this effect shall be made;

(2) as part of the information on price, where and to the extent applicable, the respective prices for activating the electronic communications service and for any recurring or consumption-related charges;

(3) as part of the information on the duration of the contract and the conditions for renewal and termination of the contract, including possible termination fees, to the extent that such conditions apply:

(i) any minimum use or duration required to benefit from promotional terms;

(ii) any charges related to switching and compensation and refund arrangements for delay or abuse of switching, as well as information about the respective procedures;

- (iii) information on the right of consumers using pre-paid services to a refund, upon request, of any remaining credit in the event of switching, as set out in Article 106(6);
- (iv) any fees due on early termination of the contract, including information on unlocking the terminal equipment and any cost recovery with respect to terminal equipment;
- (4) any compensation and refund arrangements, including, where applicable, explicit reference to rights of consumers, which apply if contracted levels of quality of service are not met or if the provider responds inadequately to a security incident, threat or vulnerability;
- (5) the type of action that might be taken by the provider in reaction to security incidents or threats or vulnerabilities.

PART B

B. Information requirements for providers of internet access services and publicly available interpersonal communications services

I. In addition to the requirements set out in Part A, providers of internet access services and publicly available interpersonal communications services shall provide the following information:

- (1) as part of the main characteristics of each service provided:
 - (i) any minimum levels of quality of service to the extent that these are offered, and taking utmost account of the BEREC guidelines adopted in accordance with Article 104(2) regarding:
 - for internet access services: at least latency, jitter, packet loss,
 - for publicly available interpersonal communications services, where they exert control over at least some elements of the network or have a service level agreement to that effect with undertakings providing access to the network: at least the time for the initial connection, failure probability, call signalling delays in accordance with Annex X; and
 - (ii) without prejudice to the right of end-users to use terminal equipment of their choice in accordance with Article 3(1) of Regulation (EU) 2015/2120, any conditions, including fees, imposed by the provider on the use of terminal equipment supplied;

(2) as part of the information on price, where and to the extent applicable, the respective prices for activating the electronic communications service and for any recurring or consumption-related charges:

(i) details of specific tariff plan or plans under the contract and, for each such tariff plan the types of services offered, including where applicable, the volumes of communications (such as MB, minutes, messages) included per billing period, and the price for additional communication units;

(ii) in the case of tariff plan or plans with a pre-set volume of communications, the possibility for consumers to defer any unused volume from the preceding billing period to the following billing period, where this option is included in the contract;

(iii) facilities to safeguard bill transparency and monitor the level of consumption;

(iv) tariff information regarding any numbers or services subject to particular pricing conditions; with respect to individual categories of services, competent authorities in coordination, where relevant, with national regulatory authorities may require in addition such information to be provided immediately prior to connecting the call or to connecting to the provider of the service;

(v) for bundled services and bundles including both services and terminal equipment the price of the individual elements of the bundle to the extent they are also marketed separately;

(vi) details and conditions, including fees, of any after-sales service, maintenance, and customer assistance; and

(vii) the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;

(3) as part of the information on the duration of the contract for bundled services and the conditions for renewal and termination of the contract, where applicable, the conditions of termination of the bundle or of elements thereof;

(4) without prejudice to Article 13 of the Regulation (EU) 2016/679, information on what personal data shall be provided before the performance of the service or collected in the context of the provision of the service;

(5) details on products and services designed for end-users with disabilities and how updates on this information can be obtained;

(6) the means of initiating procedures for the resolution of disputes including national and cross-border disputes in accordance with Article 25.

II. In addition to the requirements set out in Part A and under Point I, providers of publicly available number-based interpersonal communications services shall also provide the following information:

(1) any constraints on access to emergency services or caller location information due to a lack of technical feasibility insofar as the service allows end-users to originate calls to a number in a national or international numbering plan;

(2) the end-user's right to determine whether to include his or her personal data in a directory, and the types of data concerned, in accordance with Article 12 of Directive 2002/58/EC;

III. In addition to the requirements set out in Part A and under Point I, providers of internet access services shall also provide the information required pursuant to Article 4(1) of Regulation (EU) 2015/2120.

2 Schedule 2 Consumer Information Regulations, 2013 (implementing Article 6 of Directive 2011/83/EC)

SCHEDULE 2 - INFORMATION TO BE PROVIDED PRIOR TO CONCLUSION OF OFF-PREMISES CONTRACTS AND DISTANCE CONTRACTS

- a) the main characteristics of the goods or services, to the extent appropriate to the medium and to the goods or services;
- b) the identity of the trader, including the trader's trading name;
- c) if the trader is acting on behalf of another trader, the geographical address and identity of that trader;
- d) the geographical address at which the trader is established, and the trader's telephone number, fax number and e-mail address, where available, to enable the consumer to contact the trader quickly and communicate with the trader efficiently;
- e) the geographical address of –
 - (i) the place of business of the trader, if different from the address provided in accordance with paragraph (d), and
 - (ii) where the trader acts on behalf of another trader, the geographical address of the place of business of that other trader if different from the address provided in accordance with paragraph (c), the geographical address of –to which the consumer can address complaints;
- f) the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated;
- g) where applicable, all additional freight, delivery or postal charges or, where those charges cannot reasonably be calculated in advance, the fact that such charges may be payable;
- h) in the case of a contract of indeterminate duration or a contract containing a subscription –
 - i. the total costs per billing period, or,

- ii. where such contracts are charged at a fixed rate, the total monthly costs, or
 - iii. where the total costs cannot reasonably be calculated in advance, the manner in which the price is to be calculated;
- i) the cost of using the means of distance communication used for the conclusion of the contract where that cost is calculated other than at the basic rate;
- j) the arrangements for payment, delivery, performance, and the time by which the trader undertakes to deliver the goods or perform the service;
- k) where applicable, the trader's complaint handling policy;
- l) where a right to cancel exists, the conditions, time limit and procedures for exercising that right in accordance with Regulation 17;
- m) where applicable, that the consumer will have to bear the cost of returning the goods in the case of cancellation and, in the case of distance contracts, if the goods by their nature cannot normally be returned by post, the cost of returning the goods;
- n) where the consumer exercises the right to cancel after having made a request in accordance with Regulation 21, that the consumer is liable to pay the trader reasonable costs in accordance with that Regulation;
- o) where a right to cancel the contract does not apply under Regulation 13, the information that the consumer will not benefit from that right or, where applicable, the circumstances in which the consumer loses the right;
- p) in the case of a sales contract, the existence of a legal obligation on the trader to supply goods that are in conformity with the contract;
- q) where applicable, the existence and conditions of after-sale customer assistance, after-sales services and commercial guarantees;
- r) the existence of relevant codes of practice, as defined in section 2 of the Consumer Protection Act 2007 and, where applicable, how copies of such codes can be obtained;
- s) the duration of the contract where applicable or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating it;

t) where applicable, the minimum duration of the consumer's obligations under the contract;

u) where applicable, the existence and the conditions of deposits or other financial guarantees to be paid or provided by the consumer at the request of the trader;

v) where applicable, the functionality, including applicable technical protection measures of digital content;

w) where applicable, any relevant interoperability of digital content with hardware and software of which the trader is, or can reasonably be expected to have been, aware;

x) where applicable, the possibility of having recourse to an out-of-court complaint and redress mechanism to which the trader is subject, and the methods for having access to it.

Schedule 3 Consumer Information Regulations, 2013 (implementing Directive 2011/83/EC)

SCHEDULE 3 - INFORMATION CONCERNING THE EXERCISE OF THE RIGHT TO CANCEL

A. MODEL INSTRUCTIONS FOR CANCELLATION

Right to cancel

You have the right to cancel this contract within 14 days without giving any reason.

The cancellation period will expire after 14 days from the day [See Note 1].

To exercise the right to cancel, you must inform us [see Note 2] of your decision to cancel this contract by an unequivocal statement (e.g. a letter sent

by post, fax or e-mail). You may use the attached cancellation form but it is not obligatory. [see Note 3]

To meet the cancellation deadline, it is sufficient for you to send your communication concerning your exercise of the right to cancel before the cancellation period has expired.

Effects of cancellation

If you cancel this contract, we will reimburse to you all payments received from you, including costs of delivery (with the exception of the supplementary costs resulting from your choice of a type of delivery other than the least expensive type of standard delivery offered by us) without undue delay and in any event not later than 14 days from the day on which we are informed about your decision to cancel this contract. We will carry out such reimbursement using the same means of payment as you used for the initial transaction, unless you have expressly agreed otherwise; in any event, you will not incur any fees as a result of such reimbursement. [See Note 4]

[See Note 5]

[See Note 6]

Notes on instructions for completion:

1. Insert one of the following texts between inverted commas:
 - (a) in the case of a service contract or a contract for the supply of water, gas or electricity not put up for sale in a limited volume or set quantity, of district heating or of digital content not supplied on a tangible medium: "of the conclusion of the contract.";
 - (b) in the case of a sales contract: "on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the goods.";
 - (c) in the case of a contract relating to multiple goods ordered by the consumer in one order and delivered separately: "on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the last of the goods.";
 - (d) in the case of a contract relating to delivery of a good consisting of multiply lots or pieces: "on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the last lot or piece.";

- (e) in the case of a contract for regular delivery of goods during a defined period: "on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the first of the goods."
2. Insert your name, geographical address and, where available, your telephone number, fax number and e-mail address.
 3. If you give the option to the consumer to electronically fill in and submit information about his cancellation of the contract on your website, insert the following: "You can also electronically fill in and submit the model cancellation form or any other unequivocal statement on our website [insert Internet address]. If you use this option, we will communicate to you an acknowledgment of receipt of such a cancellation on a durable medium (e.g. by e-mail) without delay."
 4. In the case of sales contract in which you have not offered to collect the goods in the event of cancellation insert the following: "We may withhold reimbursement until we have received the goods back or you have supplied evidence of having sent back the goods, whichever is earliest."
 5. If the consumer has received goods in connection with the contract:
 - (a) insert:
 - "We will collect the goods"; or
 - "You shall send back the goods or hand them over to us or ... [insert the name and geographical address, where applicable, of the person authorised by you to receive the goods], without undue delay and in any event not later than 14 days from the day on which you communicate your cancellation of the contract to us. The deadline is met if you send back the goods before the period of 14 days has expired.";
 - (b) insert:
 - "We will bear the cost of returning the goods.",
 - "You will bear the direct cost of returning the goods.",
 - If, in a distance contract, you do not offer to bear the cost of returning the goods and the goods, by their nature, cannot normally be returned by post: "You will have to bear the direct cost of returning the goods ... EUR [insert the amount]."; or if the

cost of returning the goods cannot reasonably be calculated in advance: "You will have to bear the direct cost of returning the goods. The cost is estimated at a maximum of approximately ... EUR [insert the amount].", or

- If, in an off-premises contract, the goods, by their nature, cannot normally be returned by post and have been delivered to the consumer's home at the time of the conclusion of the contract: "We will collect the goods at our own expense.", and

(c) insert:

- "You are only liable for any diminished value of the goods resulting from the handling of the goods beyond that necessary to establish their nature, characteristics and functioning".

In the case of a contract for the provision of services or the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, or of district heating, insert the following: "If you requested to begin the performance of services or the supply of water/gas/electricity/district heating [delete where inapplicable] during the cancellation period, you shall pay us an amount which is in proportion to what has been provided until you have communicated to us your cancellation of this contract in comparison with the full coverage of the contract.".

B. MODEL CANCELLATION FORM

[Complete and return this form only if you wish to cancel the contract.]

- To [here the trader's name, geographical address and, where available, his fax number and e-mail address are to be inserted by the trader]:
- I/We [*] hereby give notice that I/We [*] cancel my/our [*] contract of sale of the following goods [*/for the provision of the following service [*],
- Ordered on [*/received on [*/
- Name of consumer(s),
- Address of consumer(s),
- Signature of consumer(s) [only if this form is notified on paper].

- Date

3 Certain recitals of the Code

Recitals referred to in this Guidance are available at the pages outlined in the table below, in the European Electronic Communications Code available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1972&from=EN>

Recital 15	Page 39
Recital 16	Page 39
Recital 17	Page 40
Recital 18	Page 40
Recital 68	Page 49
Recital 258	Page 84
Recital 259	Page 84
Recital 260	Page 85
Recital 261	Page 85
Recital 297	Page 93
Recital 298	Page 93

Revision Control History

Revision	Comment	Publication Date
20.1	First edition	10 November, 2020
20.2	<p>Second edition</p> <p>The first edition has been updated by the second edition as follows:</p> <ul style="list-style-type: none"> • Additional text added to the Introduction regarding the transposition. • Section 1.2. updated for Section 3 inclusion. • Inclusion of Section 3 relating to end user rights from Articles 102 (5) and Articles 103 to Article 107 (and Article 115) • Change from the use of the term “ECS providers” to “providers”, where relevant throughout. • Changes to Annex 1 <ul style="list-style-type: none"> ○ under the heading ‘<i>Details of Main Characteristics of the service</i>’, points 5 and 6 in the first iteration have been moved under the heading ‘<i>Details of Pricing Information - applicable fees and charge</i>’. ○ under the heading ‘<i>Details of Main Characteristics of the service</i>’, point 7 b in the first iteration has been amended to include the relevant information from Annex VIII. ○ under the heading ‘<i>Details of Pricing Information - applicable fees and charge</i>’, point 8 from the first iteration regarding fees for terminal equipment has been removed due to duplication and a cross-reference has instead been inserted to its inclusion in “<i>Details of Main Characteristics of the service</i>”. • Changes to Annex 2 <ul style="list-style-type: none"> ○ The title of ‘<i>Additional Legislative Sources</i>’ has been updated to ‘<i>Annex 2: Additional Legislative Sources</i>’. Under the heading ‘<i>Additional Legislative Sources</i>’ in Annex 	23 December, 2020

	<p>2, references to Annex VI, Annex IX and Annex X have been included, with hyperlinks to the text of each of those Annexes.</p> <ul style="list-style-type: none">○ The text of Recitals 258 – 261 have been removed from Annex 2 and replaced with a table citing Recitals noted throughout the Guidance, with the relevant page number of the Recital in the Code included in hyperlinks.● Slight amendment to paragraph 47.	
--	--	--