



An Coimisiún um  
**Rialáil Cumarsáide**  
Commission for  
**Communications Regulation**

# Postal Universal Service Provider Designation Procedures

## Response to Consultation and Procedures

Response to Consultation

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**An Coimisiún um Rialáil Cumarsáide**  
**Commission for Communications Regulation**

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## Additional Information

Postal USP Designation Procedures	ComReg Document 19/64a
Submissions to Consultation 19/25	ComReg Document 19/64s
Consultation Document	ComReg Document 19/25

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# 1 Introduction

1. The Commission for Communications Regulation ("ComReg") is the national regulatory authority for postal services in the State and its functions and objectives are set out in the Communications Regulation Act 2002, as amended ("the 2002 Act"). In August 2011 the Communications Regulation (Postal Services) Act 2011 ("the 2011 Act") took effect in Ireland. It established a new statutory framework for the regulation of postal services in the State.<sup>1</sup>
2. Under the 2011 Act ComReg is mandated to ensure the provision of the universal postal service for the State. The universal postal service consists of a basic but high quality postal service for users for the collection, sorting, transport and delivery of universal postal service postal packets, at affordable prices irrespective of their geographical location.
3. An Post was directly designated under section 17(1) of the 2011 Act as the sole universal service provider ("USP") for postal services in the State, for a period of 12 years following the passing of the 2011 Act (i.e. from 2 August 2011 – 1 August 2023), subject to designation review/decision by ComReg after 7 years has expired (i.e. after 1 August 2018).<sup>2</sup> This is the first time that ComReg has been required to review the USP designation and to consider whether a USP designation is required and whether it is appropriate to designate An Post or other postal service providers or a combination of these, as USP(s). Designation may be for all or for parts of the universal postal service, for all or for parts of the State.
4. ComReg is responsible for conducting reviews of, and making decisions on, the USP designation(s)<sup>3</sup> for the State.<sup>4</sup> The 2011 Act provides<sup>5</sup> that any such review must be conducted in accordance with procedures established and maintained by ComReg ("the Postal USP Designation Procedures").

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<sup>1</sup> The 2011 Act transposed into Irish law the harmonised EU framework for the regulation of postal services under Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, as amended by Directive No. 2002/39/EC, and Directive No. 2008/6/EC ("the EU Postal Directive").

<sup>2</sup> Prior to the 2011 Act, An Post was also designated as sole USP for the State under the previous regulations, the European Communities (Postal Services) Regulations, 2002 (S.I. No. 616 of 2002). Before that, the Postal and Telecommunications Services Act, 1983 (No. 24 of 1983) gave An Post exclusive privilege in respect of certain postal services in view of its primary purpose of providing a national postal service.

<sup>3</sup> The phrase "USP designation decision" is used in this document to include any decision that no designation of USP is required, any decision to designate a USP or USPs, and any decision to continue the designation of An Post as USP.

<sup>4</sup> Pursuant to section 17 and section 18 of the 2011 Act.

<sup>5</sup> Section 19

5. In March and April 2019 ComReg publically consulted (“Consultation 19/25”)<sup>6</sup> on its draft Postal USP Designation Procedures.
6. ComReg received a comprehensive response to Consultation 19/25 from An Post.<sup>7</sup> ComReg has considered this response in full. In this document ComReg sets out its position in relation to the main points articulated by An Post in its response, however it is not possible to respond to every single individual comment.
7. Having considered An Post’s response in full, ComReg has, where appropriate, made some amendments to the draft Postal USP Designation Procedures. The final Postal USP Designation Procedures are now published in this document (and these can be found in Annex 1) and in a separate document (ComReg document 19/64a) for ease of future reference.

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<sup>6</sup> ‘Postal Universal Service Provider Designation Procedures - Consultation and Draft Procedures’ ComReg Document No. 19/25

<sup>7</sup> An Post’s response is published in ComReg Document No. 19/64s

## 2 Response to Consultation 19/25 on Draft Postal USP Designation Procedures

8. In Consultation 19/25, ComReg sought views on its proposed Postal USP Designation Procedures (which were set out at Annex 1 of the consultation paper) by asking:
9. *“Q. 1 Do you agree or disagree with ComReg’s draft Postal USP Designation Procedures as set out at Annex: 1? Please document clearly what part(s) you are in agreement or disagreement with by providing a detailed response with supporting information / data where appropriate to support your view.”*
10. The key issues raised by An Post in its response<sup>8</sup> to consultation are considered in this section.

### 2.1 General comments made in response to Consultation 19/25

#### An Post’s views

11. An Post’s response to Consultation 19/25 begins with an outline of the *“Governing Legislative and Regulatory Framework”* and in this section An Post states that it is *“entirely cognisant of the range of options available under the EU Postal Directives in terms of USP designation”*, however An Post also makes the following points relating to the options available to ComReg in the context of the Postal USP Designation Procedures;
  - An Post states that *“EU Postal Directives [ ] stipulate that an undertaking is designated as a universal service provider (“USP”) to provide the universal postal service”*;
  - *“..An Post would emphasise that it is also entirely within ComReg’s powers to provide for a mechanism permitting continuation of An Post’s USP designation at this juncture in accordance with Section 17 of the 2011 Act.”* and in its Executive Summary states that *“An Post’s view is... ComReg should, at a minimum, following its review, designate An Post under section 17(1) of the [2011 Act]”* and;

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<sup>8</sup> The full An Post response is published at ComReg Document 19/64s.

- In relation to the decision options available to ComReg, An Post also states in its comments on Step 1 *“In keeping with ComReg’s more general obligations under the 2011 Act, as well as its stated RIA guidelines, it is submitted that ComReg should also consider the extent to which regulatory change may not actually be required or justified at all in these procedures.”*<sup>9</sup>. An Post further states in relation to Step 2 *“that designation of another USP (or part designation) should only occur where the market and other regulatory tools do not provide sufficient protection to consumers or the required guarantee of a universal service can no longer be required.”*
12. An Post makes several references to the fact that it is best placed to provide the universal postal service and also references that ComReg’s objective under the 2002 Act to facilitate competition in the postal sector *“is subject to the objective of Section 12(1)(C)(i), i.e., to ensure provision of the universal service.”*

## ComReg’s position

13. While ComReg agrees with many of An Post’s general points in relation to the universal postal service, as set out under the section *“Governing Legislative and Regulatory Framework”*, ComReg does not agree with An Post’s position on the designation options available to ComReg in the context of the Postal USP Designation Procedures.
14. Firstly, the 2011 Act gives ComReg the responsibility for conducting reviews and making decisions on the USP designations for the State. In line with the EU Postal Directive<sup>10</sup>, the 2011 Act provides ComReg with a number of options following a review of the USP designation which are presented in the legislation as follows:
- (i) that no postal USP designation is required<sup>11</sup>; or
  - (ii) that one or more than one postal service provider be designated as USP(s) for such period as ComReg considers appropriate<sup>12</sup>, or

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<sup>9</sup> An Post’s makes reference to ComReg’s RIA guidelines which is ComReg Document No. 07/56a.

<sup>10</sup> Which gave Member States a number of options for provision of the universal postal service, see Recital 23 of the EU Postal Directive

<sup>11</sup> A decision by ComReg under section 17(2)(b) of the 2011 Act is subject to the prior consent of the Minister for Communications, Climate Action & Environment (“the Minister”).

<sup>12</sup> A decision by ComReg under section 17(2)(a)(ii) of the Act is subject to the prior consent of the Minister.



(iii) that the designation of An Post<sup>13</sup> is continued until 1 August 2023<sup>14</sup> (when making a decision under section 17(2) only).

15. ComReg has drafted the Postal USP Designation Procedures in such a way that equal and full consideration is given to all of the statutory decision options as set out above and this is consistent with the provisions of the 2011 Act. It appears to be An Post's view that ComReg can choose to continue the designation of An Post under section 17 without having fully considered the suitability of the other designation options set down in the legislation, ComReg does not agree with this position. Furthermore, it is important to note that the continuation of An Post's designation under section 17(2)(a)(i) of the 2011 Act is a once-off decision option which, following completion of the first designation review, will not be available for all subsequent reviews and decisions which will be made under section 18 of the 2011 Act. Therefore, the procedures are designed to be applicable to all USP designation reviews and decisions, under section 17 and section 18 of the 2011 Act. ComReg also disagrees with An Post's view that a USP designation is always required. ComReg notes that the 2011 Act provides that ComReg can decide that no USP designation is required (i.e. the option in the EU Postal Directive that the universal postal service is provided by market forces) if it considers this appropriate.
16. In response to An Post's apparent argument that ComReg should not intervene to change the status quo (i.e. An Post as the designated USP) unless there is a justified reason to do so, ComReg notes that it is a requirement of the 2011 Act that ComReg conduct reviews of the USP designation and to consider all of the options provided for within the Act. Giving preference to the designation of the incumbent USP in the manner proposed by An Post is not provided for in the legislation.
17. ComReg is at all times conscious of its obligations to promote the availability of a universal postal service and to ensure that the reasonable needs of postal service users are met and these considerations will underpin any decision made pursuant to the Postal USP Designation Procedures.
18. Thus, in this regard, ComReg considers that the Postal USP Designation Procedures are fully compliant with the 2011 Act and the EU Postal Directive.

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<sup>13</sup> Under section 17(1) of the 2011 Act.

<sup>14</sup> ComReg does not require the prior consent of the Minister for this decision under section 17(2)(a)(i).

## An Post's views

19. An Post in its submission makes reference to national and international legislation, which it considers should be taken into consideration in the Postal USP Designation Procedures.

## ComReg's position

20. ComReg is cognisant of the entire legal framework applicable to postal regulation in Ireland (domestic and international), applicable standards, decision documents and international conventions and government treaties and in particular those aspects relevant to the USP designation and the provision of the universal postal service. ComReg can assure stakeholders that it will fully take all relevant aspects of this framework into account when following the Postal USP Designation Procedures. Any USP designated in the future will be required to be fully aware of and comply with all universal postal service obligations. To the extent that An Post is contending that large sections of legislation should be transcribed into the Postal USP Designation Procedures, ComReg disagrees that this is required and considers that this approach would be both unnecessary (as all of these provisions are easily accessible) and impractical.

## An Post's views

21. An Post emphasises that *"an intervention [in the matter of USP designation] must be subject to the most stringent assessment to ensure compliance with procedural and regulatory requirements in law"* and states on several occasions that the procedures must be *"efficient, objective, transparent, non-discriminatory and proportionate"* so as to comply with the procedural requirements of section 19 of the 2011 Act.
22. An Post relies upon these procedural requirements to support its contentions that the procedures should set out in detail; 1) the information or data which ComReg will require for its review, 2) the grounds and criteria for decision making, and 3) the intended key regulatory requirements to be applied to USPs under the 2011 Act.

## ComReg's position

23. ComReg can assure stakeholders that when following the Postal USP Designation Procedures it will at all times be conscious of its procedural and regulatory requirements in law, including but not limited to the requirements in section 19(2) of the 2011 Act.

24. ComReg disagrees that the procedural requirements identified by An Post necessitate the detailed specifications in the procedures proposed by An Post. The Postal USP Designation Procedures have been deliberately drafted by ComReg in a broad manner in order to accommodate any future changes to legal obligations, market conditions, etc. This has been done in order to “future proof” the Postal USP Designation Procedures. During each individual review, ComReg will set out and consider what is specifically relevant to that review and will inform all postal service providers involved in an objective, transparent, non-discriminatory way. All USPs (including any USP designated in the future) are (and will be) subject to the same universal postal service legal requirements at that time.

### An Post’s views

25. An Post notes that ComReg has reserved the right to deviate from the Postal USP Designation Procedures and submits that *“To deviate in this way would likely be at odds with the stated procedural requirements of Section 19(2)(b) as well as other Irish law and/or EU requirements, unless grounds for any such deviation were clear, justifiable and clearly ascertainable which the Designation Procedures should reflect.”*

### ComReg’s position

26. ComReg notes An Post’s comments with regard to deviation from the Postal USP Designation Procedures. Paragraph A.1.4 of these procedures provides that ComReg reserves the right to deviate from the procedures if it considers that a different approach is warranted. ComReg considers this provision is appropriate so as to allow it sufficient flexibility going forward as it is not possible to foresee all eventualities. However, to reflect An Post’s comment, ComReg will amend the draft USP Designation Procedures to include a statement that confirms any significant deviation from the procedures will, where appropriate, be clearly identified by ComReg to the relevant stakeholders and the reasons for the deviation will be provided.

### An Post’s views

27. An Post submits that *“The designation period should be a minimum of 7 years (as contemplated by the 2011 Act as an appropriate timeframe) to allow for both return on investment and sufficient time for meaningful innovation”*.

## ComReg's position

28. As previously explained, the Postal USP Designation Procedures were deliberately written to allow some flexibility in order to future proof them. The appropriate duration of USP designations could change depending on market circumstances at the time of designation. Also, ComReg notes section 17(1) of the 2011 Act provides that An Post's designation under that section is to expire at latest in 2023, meaning that if An Post were to be designated under section 17(2)(a)(i) the period of designation would have to be less than 7 years. It is therefore appropriate to envisage in the Postal USP Designation Procedures a range of periods of USP designation. Having considered An Post's view ComReg will amend the procedures by extending the potential range for USP designations to between two and seven years.

## An Post's views

29. An Post states *"While the Draft procedures make reference to time periods for designation, they do not make explicit reference to the manner in which the USPs proposed "solution" will ultimately be documented (A1.27)."* An Post proposes that the USP(s) designation(s) should be documented by a contract *"which outlines the service requirements and expectations for the USO"* and outlines some benefits of such an approach at paragraph 2.19 of its response.

## ComReg's position

30. The 2011 Act provides for a statutory process for USP designation and does not envisage a contract between ComReg and a designated USP. As stated in the draft Postal USP Designation Procedures (paragraph A1.35) ComReg will publish its decision on which postal service provider(s) should be designated as USP(s), including all relevant details (paragraph A1.36). However, the obligations on designated USPs are (and will be) set out in the relevant legislation (domestic and international), in ComReg decision documents and in relevant international conventions.

## 2.2 Specific Comments on Step 1 of the Draft Postal USP Designation Procedures

31. Step 1 of the Postal USP Designation Procedures is designed to allow ComReg to review and make a decision on whether or not there is a need for a USP designation.<sup>15</sup>

### A. Information gathering – Step 1

#### An Post's views

32. An Post considers that the Postal USP Designation Procedures should in Step 1 include *“clear and clearly ascertainable classes of information or data (as well as the extent of such data, including any required support or back up documentation/data which can be assessed by ComReg without the need for multiple follow up queries and requests) .... so that the parameters are clear and the process is transparent and efficient.”*. An Post raises this particular point specifically in relation to the possibility of ComReg using its powers under section 13F of the 2002 Act to obtain information from postal service providers. An Post claims that *“unless caution is deployed, these [section 13F information] requests may easily become disproportionate, discriminatory, non-transparent, as well as inefficient as to timing”*.

#### ComReg's position

33. It would not be practical or even possible to include detail of the type proposed by An Post in Step 1 of the Postal USP Designation Procedures. As set out above, the Postal USP Designation Procedures must be sufficiently flexible in order to future proof them and enable ComReg to apply them in different situations that may arise. It is better for ComReg to identify the type of information required at Step 1 when it is following the Postal USP Designation Procedures. The required information will be clearly outlined in the same terms at the same time to all postal service providers and no provider will be at a disadvantage.
34. ComReg notes An Post's comments regarding its use of the information gathering powers granted to it by the 2002 Act. However, as noted by An Post, the 2002 Act has provided ComReg with these information gathering powers explicitly for the purpose of *“(b) making a designation under section 17 or 18...”* and *“(c) conducting a review for any of the purposes of the said section 17 or 18...”*. ComReg is fully conscious of its obligations under section 19(2) of the

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<sup>15</sup> Pursuant to either section 17(2)(b) or section 18(1)(b)(ii) of the 2011 Act.

2011 Act and other procedural requirements and all steps and information requests will be conducted in accordance with the law.

## B. Assessment – Step 1

### An Post's views

35. An Post states that the Postal USP Designation Procedures should “*make clear (i) the purpose of the Step 1 exercise i.e., such purpose being to ascertain whether a universal postal service would not be provided without a USP designation and (ii) the bases on which such assessment will be carried [out]*”. An Post also raises concerns that the overall universal postal service may become destabilised by focussing on one service alone when reviewing each of the services at Step 1 and that ComReg must ensure that the universal postal service is provided in its entirety.

### ComReg's position

36. ComReg has clearly stated in the draft Postal USP Designation Procedures the purpose of Step 1. In particular ComReg notes the title of Step 1 i.e. “*Is there a requirement for a USP Designation?*”. ComReg also considers that the scope of Step 1 is clearly set out and notes in particular A1.18 which provides that “*ComReg will assess the extent to which the market for the provision of postal services is meeting the reasonable needs of postal service users*” and A1.21 “*If ComReg is of the view that any part of the universal postal service would not be provided by the postal market without a designated USP ComReg is required to proceed with its process to designate a USP (or USPs) to provide the entire universal postal service for the State.*” Paragraph A1.20 sets out in broad terms what ComReg will assess as part of Step 1. It is not possible to give more detail of the criteria in procedures of this nature as these procedures must be sufficiently broad so as to ensure they are of use in future situations.
37. The 2011 Act provides that ComReg may decide that no designation of USP is required. ComReg will review each product/service in the universal postal service and decide if the market is sufficiently providing those services and meeting the needs of postal service users. Though this review will focus on each product/service ultimately this will be to inform the decision for the universal postal service in its entirety as stated in the Postal USP Designation Procedures. For absolute clarity, it may take the form of a review of each product/service individually in order to confirm if the entire universal postal service is being provided by the market. ComReg considers that this approach is appropriate and does not agree that it could destabilise the “*overall USO*” as contended by An Post.

## C. ComReg Decision – Step 1

### An Post's views

38. An Post notes that *“following Step 1, ComReg may proceed directly to Step 2 to assess which postal service provider(s) should be designated as USP(s), or in the alternative, conclude that no USP designation is required. The Draft Procedures refer to providing reasons for proceeding with a decision under 17(2)(b) (i.e. no USP designation) but do not provide for giving reasons to proceed directly to Step 2 (A.1.22).”* An Post also submits *“that reasons must also be given for any decision by ComReg not to exercise its powers to make a continued designation under Section 17(2)(a)(i) at the end of Step 1.”*
39. An Post further states that *“The criteria by which ComReg may determine that a USP designation is not required should be clear and articulated in the Draft Procedures and take into account both ComReg’s obligations to postal users under the 2002 Act as well as the government’s obligations under the EU Postal Directives and international treaties.”*

### ComReg's position

40. Having considered An Post's comments, ComReg has amended the Draft Postal USP Designation Procedures to provide for consultation at the end of Step 1. Any consultation will include reasoning for proposed decisions.
41. This ensures that all stakeholders will have a chance to make submissions prior to any decision being made at the end of Step 1. On review, ComReg will amend the procedures wherever it refers to consulting to say ComReg *will* consult as opposed to it *may* consult.
42. However, ComReg does not agree with An Post's submission that *“reasons must also be given for any decision by ComReg not to exercise its powers to make a continued designation under Section 17(2)(a)(i) at the end of Step 1.”* Step 1 of the Postal USP Designation Procedures relates to ComReg's decision on whether there is a need for a USP designation and will not involve a decision in relation to which USP(s) should be designated. At the end of Step 2 ComReg will give reasons for and consult in relation to any proposed USP designation decision (including, where appropriate, the decision to exercise or not exercise its powers pursuant to section 17(2)(a)(i)) and it considers that this is the appropriate time for such consultation.

## 2.2.1 Specific Comments on Step 2 of the Draft Postal USP Designation Procedures

43. Step 2 of the Postal USP Designation Procedures is designed for ComReg to review and decide upon which postal service provider(s) should be designated as USP(s). In this step, ComReg may decide either to designate one USP or more than one USP.<sup>16</sup> Also, following a section 17 review (to be completed following publication of these procedures), ComReg may decide to continue the designation of An Post as USP until 2023.<sup>17</sup>

### A. Information gathering - Step 2

#### An Post's views

44. An Post appears to agree in general with ComReg's approach and in particular *"that extensive information may be required to assess a potential USP's capabilities and compliance with regulatory obligations under the 2011 Act"*. However, An Post considers that *"in order to be transparent, the Draft Procedures will need to clarify the categories of information to be provided in the designation process"* and it provides specific comments on each of the categories outlined by ComReg at A 1.28 of the draft Postal USP Designation Procedures.
45. An Post raises the following points (amongst others);
- In relation to 'Products and Services' – *"Details of any USO products or services provided or to be provided should follow the descriptions and requirements of the applicable legislation in this regard. Unless the extent of any permitted variations are made clear in the Draft Procedures, the approach will not allow for a transparent and non- discriminatory assessment and consideration of all relevant information."*
  - In relation to 'Postal network and resources' - *"Where access to An Post logistics or network may be potentially required, this should be made clear as well as any proposals and/or obligations on An Post for same. This may also be a matter requiring a separate decision and right to make representations. Any applicable UPU requirements or other international standards or norms regarding interoperability must also be factored in."*

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<sup>16</sup> Pursuant to section 17(2)(a)(ii) or section 18(1)(b)(i)

<sup>17</sup> Pursuant to section 17(2)(a)(i)



- In relation to 'Cost efficiencies' - *“There are no benchmarks for cost efficiency or specific cost efficiency expectations prescribed in the 2011 Act. The 2011 Act is also silent as to what level of efficiency gain would be considered appropriate for the industry. As such, any respondent references to unrelated or irrelevant cost efficiency methodologies should be avoided and a reasonably analogous market benchmark should be considered rather than potentially unrealistic or overly optimistic results. Any planned improvements or updates by a current USP should also be taken into account given the importance of the postal service industry generally, as recognised by the SGEI Framework.”*
- In relation to 'Price, Quality of Service, Confidentiality and Security of USO, Annual Projected costing' – *“the information categories (in A 1.28) in relation to [these headings] make no provision as to how such matters are required to be demonstrated. All USPs should be subject to the rigour of the same regulatory requirements under the 2011 Act. The procedures should therefore contain requirements to demonstrate how all of these statutory obligations will be met and assessed.”*
- In relation to 'Financial Standing' – *“In relation to Financial Standing, the reference to financial stability is overly vague as a concept and may undermine ComReg's / the state's obligations vis-à-vis the universal service guarantee unless some criteria for demonstrating this at the outset and on an ongoing basis are also indicated and included.”*
- In relation to 'Draft terms and Conditions' – *“The terms on which the USO may be provided by another USPs are insufficiently clear and do not reflect ComReg's requirements for review, approval and publication as set out in the 2011 Act. In addition, the Draft Procedures make no reference to applicable customer complaint procedures which are another element of consumer protection required by the USO.”*

## ComReg's position

46. As explained above, ComReg designed the Postal USP Designation Procedures to be flexible and future proofed. It would not be practical to specifically reference all of the legal requirements on designated USPs in the Postal USP Designation Procedures. All universal postal service obligations will be applicable to all designated USPs. All applicants, in demonstrating their suitability to be a designated USP, will be expected to have considered all of these obligations as part of their submission. ComReg considers that, in general, the headings and descriptions in the Postal USP Designation Procedures are suitable and sufficiently flexible to allow each applicant to

demonstrate their abilities and expertise in full in their submission. The onus is on each applicant to demonstrate their knowledge of universal postal services and the legislative requirements and how each of these categories would be successfully achieved.

47. Nevertheless, to address An Post's stated concern, ComReg has amended the Postal USP Procedures to make it clear that all postal service providers should fully consider all of the current relevant legislation and universal service requirements prior to making a submission to ComReg for USP designation. ComReg will only consider designating postal service providers as a USP in circumstances where ComReg believes that this provider has sufficient knowledge of the universal postal service requirements and is capable of fulfilling those requirements.
48. ComReg notes An Post's comment that possible future cost-efficiencies should also be taken into account. ComReg will take account of the details and efficacy of any efficiency initiatives contained within each applicant's submission and ComReg does not consider that the Postal USP Designation Procedures require amendment to cater for this.
49. With regard to An Post's point that no reference is made to the customer complaint procedures obligations, ComReg notes that the customer complaint obligations under the 2011 Act apply to all authorised postal service providers and only authorised postal service providers can be designated as USPs. However, to reflect An Post's view and their importance to postal service users, ComReg has amended the Postal USP Designation Procedures to give "Customer complaints procedures" its own heading.

## B. Assessment – Step 2

### An Post's views

50. An Post states in relation to Step 2 of the Draft Postal USP Designation Procedures that *"it is not clear that the continued designation of An Post is contemplated (A.1.26)"* and it further states that *"the grounds on which ComReg may choose not to proceed under Section 17(a)(i)(i.e. continuation of designation of An Post) or ... may proceed to designate more than one USP...should be clarified in the Draft Procedures"*.
51. An Post expresses its concerns that designating different USPs to provide different elements of the universal service and/or to cover different parts of the State could result in "cherry picking". An Post considers that *"..designation of another USP (or part designation) should only occur where the market or other*

*regulatory tools do not provide sufficient protection to consumers or the required guarantee of a universal service can no longer be fulfilled.” An Post notes that “such selectivity would do nothing to foster investment, innovation or efficiency in the universal postal service overall in the long run”.*

52. An Post acknowledges that the 2011 Act provides ComReg with the option to designate one or more USP(s) for parts of the USO or for different regions. However, An Post states; *“In a market where traditional mail volumes are falling, it is important that a [USP] is afforded the necessary flexibility to enable it to generate sufficient revenue over its whole range of services to ensure a financially sustainable universal service overall”.* An Post refers to *“the State’s obligation to guarantee the provision of the USO and the related consumer protection on a nationwide basis”.* An Post also argues that it is common practice in EU member states to designate a single USP. An Post also points to the United Kingdom administration where legislation provides for only 2 circumstances in which a second USP can be designated.

### ComReg’s position

53. As stated above, the 2011 Act does not envisage that preferential consideration should be given to the option to continue with An Post’s designation under section 17(1) of the 2011 Act. Therefore, the Postal USP Designation Procedures provide that this option will be considered at the same time as other relevant options at Step 2. Indeed, An Post acknowledges that *“the purpose of Step 2 is to outline procedures for the continued designation of An Post and/or the selection/designation of a future USP or USPs.”*
54. An Post appears to disagree with the provision in the Postal USP Designation Procedures for the potential designation of more than one USP and has articulated a number of its concerns. ComReg has drafted its Postal USP Designation Procedures in accordance with the 2011 Act which envisages that more than one USP could be designated. An Post’s stated concerns in this regard are noted and these would certainly be taken into account by ComReg if considering the designation of more than one USP. ComReg is, and will be when following the Postal USP Designation Procedures, cognisant of its obligations to ensure the provision of a sustainable universal postal service for the entire State that meets the reasonable needs of postal service users. In assessing any USP designations ComReg will, where appropriate, conduct a RIA which would consider all of the potential impacts of any regulatory measure on all relevant stakeholders.

## C. ComReg Decision – Step 2

### An Post's views

55. An Post states that *“the approach proposed in these draft Designation Procedures should be amended to better incorporate [the principles of transparency, non-discrimination and proportionality]. Moreover the grounds and criteria on which ComReg’s decision will be based are not sufficiently clear and may be unbalanced unless the same obligations and requirements are applied to all designated USPs and are accordingly factored into the assessment criteria.”*

### ComReg’s position

56. ComReg disagrees with An Post’s submission. It considers that the principles of transparency, non-discrimination and proportionality are properly reflected and incorporated in the Postal USP Designation Procedures. ComReg designed the procedures to be transparent, non-discriminatory and proportionate (as stated at paragraph A1.2 of the Postal USP Designation Procedures). ComReg can assure all stakeholders that when following the Postal USP Designation Procedures it will at all times be conscious of its procedural and regulatory requirements in law, including but not limited to the requirements in section 19(2) of the 2011 Act. ComReg does not consider that any amendment is required in this regard.
57. ComReg disagrees that the type of detail suggested by An Post should be included. As explained previously the Postal USP Designation Procedures have been deliberately drafted by ComReg in a broad manner in order to accommodate any future changes to legal obligations, market conditions, etc. This has been done in order to “future proof” the Postal USP Designation Procedures. During each individual review, ComReg will set out and consider what is specifically relevant to that review and will inform all postal service providers involved in an objective, transparent, non-discriminatory way. All USPs (including any USP designated in the future) are (and will be) subject to the same legal requirements.
58. ComReg’s decisions with regard to the designation of the USP(s) will be based on the comprehensiveness and suitability of each postal service provider’s submission and the extent to which it demonstrates the best solution to ensure the provision of the universal postal service covering the entire State in the most efficient and cost-effective way and that meets the reasonable needs of postal service users. It is not possible to outline in advance in the context of general procedures the criteria which ComReg will use to make all future

decisions. Any proposed decision (including detailed reasoning for such a decision) will be consulted on and this will go towards fulfilling all procedural requirements, including those outlined in section 19(2) of the 2011 Act.

### 3 RIA

59. As stated in Consultation 19/25, ComReg has published RIA Guidelines<sup>18</sup>. (Doc 07/56a) (“the Guidelines”), in accordance with a policy direction to ComReg<sup>19</sup>, which state that ComReg will conduct a RIA in any process that may result in the imposition of a regulatory obligation, or the amendment of an existing obligation to a significant degree, or which may otherwise significantly impact on any relevant market or any stakeholders or consumers. However, the Guidelines also note that in certain instances it may not be appropriate to conduct a RIA and, in particular, that a RIA is only considered mandatory or necessary in advance of a decision that could result in the imposition of an actual regulatory measure or obligation, and that where ComReg is merely charged with implementing a statutory obligation then it will assess each case individually and will determine whether a RIA is necessary and justified.
60. In this case, for establishing its Postal USP Designation Procedures, ComReg considers that a RIA is not required as a new regulatory obligation is not being imposed. ComReg is simply elaborating in its proposed Postal USP Designation Procedures on the requirements already mandated by section 17, section 18 and section 19 of the 2011 Act. Therefore, a RIA is not being undertaken on this occasion.
61. ComReg will separately consider if a RIA is required for each of the designation reviews and USP designation decisions it may conduct in the future.

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<sup>18</sup> Which have regard to the RIA Guidelines issued by the Department of An Taoiseach in June 2009

<sup>19</sup> Ministerial Policy Direction made by Dermot Ahern T.D. Minister for Communications, Marine and Natural Resources on 21 February, 2003

# Annex: 1 Postal USP Designation Procedures

## Introduction

- A 1.1 The Commission for Communications Regulation (“ComReg”) has responsibility for conducting reviews of, and making decisions on, the designation of a universal service provider for postal services (“USP”) in the State. Section 19 of the Communications Regulation (Postal Services) Act 2011, as amended (“the 2011 Act”) provides that any such review must be conducted in accordance with procedures established and maintained by ComReg (“the Postal USP Designation Procedures”).
- A 1.2 The purpose of these Postal USP Designation Procedures is to provide information to all stakeholders on how ComReg will conduct reviews (in accordance with section 19 of the 2011 Act) for the purposes of making USP designation decisions (which phrase for the purpose of these procedures includes any decision that no designation of USP is required, or any decision to designate a USP or USPs, or any decision to continue designation of An Post as USP, pursuant to section 17 or section 18 of the 2011 Act). These procedures have regard to ComReg’s functions and objectives relating to postal services<sup>20</sup> and are designed to be efficient, objective, transparent, non-discriminatory and proportionate.
- A 1.3 In conducting reviews of and making USP designation decisions, ComReg will take account of the entire applicable legislative regime and ComReg’s published Regulatory Impact Assessment (“RIA”) Guidelines. ComReg will publically consult prior to making a USP designation decision.
- A 1.4 ComReg fully intends to follow the Postal USP Designation Procedures when conducting a review of and making USP designation decisions. However, ComReg reserves the right to deviate from these procedures if it considers that a different approach is warranted. Any significant deviation from the procedures will, where appropriate, be clearly identified by ComReg to the relevant stakeholders and the reasons for the deviation will be provided.

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<sup>20</sup> In particular ComReg’s function to ensure the provision of a universal postal service that meets the reasonable needs of postal service users (Section 10(1)(ba) of the Communications Regulation Act, 2002, as amended (“the 2002 Act”) ) and its objective in exercising its functions in relation to the provision of postal services to “*promote the development of the postal sector and, in particular, the availability of a universal postal service within, to and from the State at an affordable price for the benefit of all postal service users*” (Section 12(1)(c)(i) of the 2002 Act)

## Interpretation

- A 1.5 Unless the context otherwise suggests, the definitions in the 2011 Act and the Communications Regulation (Universal Postal Service) Regulations 2012 (S.I. No. 280 of 2012), as amended (“USO Regulations”), apply in the Postal USP Designation Procedures.
- A 1.6 “Universal postal service” means the universal postal service as set out in section 16 of the 2011 Act and in the USO Regulations and all other decision documents imposing obligations on a USP under the 2011 Act and all associated international legal requirements.
- A 1.7 “The Minister” means the Minister for Communications, Climate Action and the Environment.
- A 1.8 To the extent that there may be any difference between the Postal USP Designation Procedures and the relevant provisions of the 2011 Act, the 2011 Act takes precedence.

## Designation Periods and Frequency of Designation Reviews

- A 1.9 When making a decision to designate one or more than one USP under section 17(2)(a)(ii) or section 18 of the 2011 Act, ComReg must determine the designation period which it considers appropriate<sup>21</sup>. This period should be of sufficient duration to ensure return on investments.
- A 1.10 ComReg considers that, in general, a period of between two years and seven years is an appropriate designation period. However, for each designation ComReg will set the appropriate designation period based on the information it has before it and the particular circumstances at the time.
- A 1.11 ComReg will aim to conduct and complete a new USP designation review well in advance of the expiry of each designation period, having regard to; the required time to fully conduct a review and make a USP designation decision, any changes which may be required to regulatory requirements, and the need to provide sufficient time for newly designated USP(s) to prepare for provision of the universal postal service. However, it may be necessary to carry out a designation review in a shorter period than anticipated, depending on the circumstances.

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<sup>21</sup> Section 18(4) of the 2011 Act



- A 1.12 In circumstances where ComReg decides that no designation is required, ComReg will review that decision at appropriate intervals.
- A 1.13 Subsequent to making a USP designation decision, during the designation/non-designation period ComReg will keep the USP designation / non-designation) under review and it may take appropriate action to ensure continuance of the universal postal service should circumstances arise that ComReg considers might threaten the provision of the universal postal service.

## Step 1 - Is there a requirement for a USP Designation?

- A 1.14 Step 1 of the procedures is designed to allow ComReg to review and make a decision on whether or not there is a need for a USP designation.<sup>22</sup>

### A. Information gathering

- A 1.15 ComReg will write to all postal service providers to request detailed information on their existing postal products and services.<sup>23</sup>
- A 1.16 ComReg will identify what postal service providers are operating in the State<sup>24</sup> and which postal services are being provided in the State.
- A 1.17 ComReg will gather information on the reasonable needs of postal service users.

### B. Assessment

- A 1.18 ComReg will consider the information gathered.
- A 1.19 ComReg will assess the extent to which the market for the provision of postal services is meeting the reasonable needs of postal service users.<sup>25</sup>
- A 1.20 ComReg will review and assess whether each of the universal postal services required by section 16 of the 2011 Act would be provided by the market without a USP designation.
- A 1.21 This assessment will include, but is not limited to:

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<sup>22</sup> Pursuant to either section 17(2)(b) or section 18(1)(b)(ii) of the 2011 Act.

<sup>23</sup> Where appropriate, ComReg may exercise its information gathering powers under section 13F(1) of the 2002 Act in order to obtain the required information from any postal service provider.

<sup>24</sup> As listed on the Register of Authorised Postal Service Providers published on [www.comreg.ie](http://www.comreg.ie).

<sup>25</sup> As required by section 19(2)(a) of the 2011 Act.

- a) an assessment of the postal products and services provided by the current designated USP(s) (if any USP is designated) and other postal service providers to ascertain the markets' capability to provide the universal postal service for the entire State and to the required levels of accessibility, quality and affordability, and
- b) an assessment of any potential negative impacts on the postal market resulting from not designating a USP or USPs, including the possible actions which may be taken by the current USP(s) if no designation is applied.

A 1.22 If ComReg is of the view that any part of the universal postal service would not be provided by the postal market without a designated USP ComReg is required to proceed with its process to assess which postal service provider(s) should be designated as USP(s) for the period decided by ComReg to ensure provision of the entire universal postal service for the State (i.e. proceed to Step 2).

### C. ComReg Decision

- A 1.23 Following the above assessment, ComReg will either make a decision that no USP designation is required (pursuant to either section 17(2)(b) or section 18(1)(b)(ii) of the 2011 Act (as appropriate)) or make a decision that a USP designation is required (i.e. to proceed to Step 2 of the procedures). A consultation will be completed prior to any decision.
- A 1.24 If ComReg proposes to make a decision under section 17(2)(b) of the 2011 Act that no USP designation is required, ComReg must, prior to making that decision, obtain the consent of the Minister whose decision to consent, or to refuse consent, must be provided within 4 months of the date on which ComReg seeks consent.<sup>26</sup> If the Minister does not consent the designation of An Post will continue until 2023. If the Minister consents ComReg will proceed to issue its final decision.
- A 1.25 ComReg will publish its decision which, at a minimum, will include:
- ComReg's reasoning for its decision; and
  - The date on which the prior USP designation ceases to be effective and when the no USP designation commences (where appropriate).

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<sup>26</sup> Following consultation with such persons as the Minister considers appropriate as per section 17(3) of the 2011 Act.

## Step 2 - Which Postal Service Provider(s) should be designated as USP(s)?

A 1.26 Step 2 of the Postal USP Designation Procedures is designed for ComReg to review and decide which postal service provider(s) should be designated as USP(s). In this step, ComReg may decide either to designate one USP or more than one USP.<sup>27</sup> Also, for a section 17 review ComReg may decide to continue the designation of An Post as USP until 2023.

### A. Information gathering

A 1.27 If ComReg decides that USP designation is required it will then invite submissions from postal service providers<sup>28</sup> who are interested in being considered as the designated USP(s) in the State, and capable of providing all or part of the universal postal service for the upcoming designation period.<sup>29</sup>

A 1.28 These submissions should contain proposals for the efficient provision of all of the universal postal service for the entire State and/or for the efficient provision of different parts of the universal postal service for the entire State and/or for the efficient provision of all aspects of the universal postal service for any part or parts of the State.

A 1.29 All postal service providers interested in being considered for designation as a USP will be required to demonstrate in their submission their capacity and capability to provide the universal postal service. Postal service providers should note that all designated USPs will be subject to the universal postal service statutory requirements (including under the 2011 Act) and should therefore fully consider these requirements before making their submission. Postal service providers in their submission should, where appropriate, provide details of past performance (in the provision of the universal postal service or in the provision of postal services or in equivalent services). In addition, postal service providers should provide details of their proposed solution, which should include at a minimum the following:

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<sup>27</sup> Pursuant to section 17(2)(a)(i), section 17(2)(a)(ii) or section 18(1)(b)(i) of the 2011 Act

<sup>28</sup> Under section 17 or section 18 of the 2011 Act ComReg may choose to designate one or more than one postal service provider(s) as USP(s). Entities not yet authorised as a postal service provider may seek designation as USP, however only postal service providers authorised by ComReg under section 38 of the 2011 Act can be designated.

<sup>29</sup> For the section 17 review the continuation of An Post's designation will be considered at the same time and as part of ComReg's consideration of which postal service providers should be designated.

- **Products and Services** - Full details of the universal postal service or part of the universal postal service (including proposed products and services) which the postal service provider proposes to provide. A completed ComReg Document 12/81n form<sup>30</sup> will also be required as part of the submission for each of the universal postal services proposed to be provided;
- **Postal Network and Resources** - Full details of the proposed postal network, including systems and resources, which it intends to implement and operate (including an appropriate Business Continuity Plan that demonstrates how the continuity of the universal postal service will be ensured during periods of disruption). These details should demonstrate the postal service provider's capability to continuously provide the universal postal service and should include the necessary access and delivery arrangements for all postal service users.<sup>31</sup> These details should also demonstrate how the geographic location of the addresses marked on the postal packets will be identified to ensure correct delivery of the postal packet to the addressee. Details of the customer service facilities that will be provided, sufficient for dealing with universal postal service users' needs, should also be demonstrated. Where it is proposed that there be more than one postal service provider providing the universal postal service as part of the same solution, the inter-operator arrangements of that joint solution that will be put in place should be specified;
- **Cost-efficiencies** – Full details demonstrating how the service will be provided in a cost efficient manner, including details of operations management processes that will continuously oversee cost efficiency. As dedicated parcels networks and letters networks have distinct differences, submissions from postal service providers that currently operate a predominantly parcels network or a predominantly letters network must provide evidence demonstrating how their network will be operated to efficiently provide the service which they don't currently predominantly provide (if applicable);
- **Price** – Full details demonstrating that the postal service provider will meet the tariff requirements in section 28 of the 2011 Act;

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<sup>30</sup> 'Notification and Declaration Form - Intention to provide a postal service under section 38 of the Communications Regulation (Postal Services) Act 2011'

<sup>31</sup> At the time of publication in ComReg Document 03/50. These requirements may change over time.

- **Quality of Service** – Full details demonstrating that the postal service provider will meet the requirement for the universal postal service to be provided to the specified quality levels<sup>32</sup>;
- **Confidentiality and Security** – Full details demonstrating that the postal service provider will have sufficient protections for confidentiality of correspondence and security of the network. This will include for the transport of dangerous goods, etc. if applicable<sup>33</sup>;
- **Draft Terms & Conditions** – a draft version of the proposed terms and conditions of the universal postal service<sup>34</sup> to be approved by ComReg under section 23 of the 2011 Act<sup>35</sup>;
- **Customer Complaints Procedures** – the proposed code of practice for customer complaints and the proposed dispute resolution procedures in accordance with the 2011 Act<sup>36</sup>;
- **Annual projected costing of provision of services** - evidence demonstrating the projected costs of providing the proposed universal postal services and how the proposed pricing and efficiencies will ensure that these costs will be covered; and
- **Financial standing** – evidence demonstrating that the postal service provider is in a stable financial position and capable of ensuring continued provision of the universal postal service proposed for the entire designation period.

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<sup>32</sup> At the time of publication in ComReg Document 15/126 which provides for a quality standard of 94% for next day delivery and 99.5% for delivery within three days of posting for single piece priority mail within the State. These requirements may change over time.

<sup>33</sup> Article 5(1) of Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, as amended by Directive No. 2002/39/EC, and Directive No. 2008/6/EC.

<sup>34</sup> At the time of publication, ComReg's recommendations for drafting terms and conditions of the universal postal service are set out in ComReg Document 14/24a. These requirements may change over time.

<sup>35</sup> This approval process does not apply in the case of the continuation of An Post under section 17(2)(a)(i).

<sup>36</sup> At the time of publication, the requirements for all postal service providers are set out in ComReg Documents 14/06 and 15/07a. These requirements may change over time.

A 1.30 ComReg may also request information<sup>37</sup>, including information in relation to the above details, from postal service providers that have not made submissions to be considered for USP designation but in ComReg's view may be capable of providing all or part of the universal postal service for the upcoming designation period.

A 1.31 ComReg may request further information<sup>38</sup> from applicant postal service providers. ComReg may contact postal service providers to discuss their submissions and proposed solutions and other potential options ComReg may consider with a view to identifying the best solution for provision of the universal postal service for the upcoming designation period.

## B. Assessment

A 1.32 ComReg will review and assess the submissions and all information it has gathered from postal service providers as part of its designation review process and all other relevant information in its possession. ComReg's assessment will be based upon;

- the solution which will best ensure the provision of the universal postal service covering the entire State with the least market distortion;
- the solution that best meets the reasonable needs of postal service users; and
- the solution which represents the most efficient and cost-effective way to provide the universal postal service for the State.

## C. ComReg Decision

A 1.33 Following the above assessment, and following a consultation on a draft decision, ComReg will make its final decision pursuant to section 17(2)(a)(i), section 17(2)(a)(ii) or section 18(1)(b)(i) of the 2011 Act.

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<sup>37</sup> In this regard, ComReg may exercise its information gathering powers under section 13F(1) of the 2002 Act.

<sup>38</sup> In this regard, ComReg may exercise its information gathering powers under section 13F(1) of the 2002 Act.

- A 1.34 If ComReg proposes to make a decision under section 17(2)(a)(ii) that one or more than one postal service provider should be designated, ComReg must, prior to making that decision, obtain the consent of the Minister whose decision to consent, or to refuse consent<sup>39</sup>, must be provided within a 4 month period of the date on which ComReg seeks consent.<sup>40</sup> If the Minister does not consent the designation of An Post will continue until 2023. If the Minister consents ComReg will proceed to issue its final decision.
- A 1.35 ComReg may make a decision to designate one or more than one postal service provider. This may include postal service providers who have not asked to be considered for USP designation, where considered appropriate.
- A 1.36 ComReg will publish its decision which will include (where appropriate):
- ComReg's reasoning for its decision on the choice of postal service provider(s) for USP designation(s);
  - the parts of the universal postal service to be provided by the designated USP(s);
  - the part or parts of the State for which the designated USP(s) must provide the relevant part of the universal service;
  - the date by which the designated USP(s) must submit its final set of terms and conditions of its universal postal service for approval by ComReg under section 23 of the 2011 Act; and
  - the effective date of the new designation(s)<sup>41</sup>, subject to approval of the universal postal service terms and conditions.

### Step 3 - Notification of Decisions

- A 1.37 In accordance with its obligations under section 20 of the 2011 Act, ComReg will notify the Minister and the European Commission of decisions under section 17 or section 18 of the 2011 Act and will publish notice of decisions in the Iris Oifigiúil.

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<sup>39</sup> Following consultation with such persons as the Minister considers appropriate as per section 17(3) of the 2011 Act.

<sup>40</sup> For a decision made under section 17(2)(a)(i) to continue An Post's designation or under section 18(1)(b)(i) to designate one or more postal service providers, there is no requirement for ComReg to seek the prior consent of the Minister.

<sup>41</sup> New designations of USP become effective 14 days after the designated USP(s) universal postal service terms and conditions are approved by ComReg under section 23(2)(a) of the 2011 Act. The prior USP designation will cease to have effect on the date that the new designation decision takes effect.

## Annex: 2 Legal Basis

### ComReg's functions and objectives relating to the postal sector

A 1.38 ComReg's statutory functions in relation to the postal sector are set out in section 10(1) of the Communications Regulation Act 2002, as amended, ("the 2002 Act") and are as follows:

*"(ba) to ensure the provision of a universal postal service that meets the reasonable needs of postal service users,*

*(c) to monitor and ensure compliance by postal service providers with the obligations imposed on them by or under the Communications Regulation Acts 2002 to 2011 in relation to the provision of postal services."*

A 1.39 ComReg's statutory objectives, in exercising the above functions, are set out in section 12(1)(c) of the 2002 Act, and are as follows:

*"(i) to promote the development of the postal sector and, in particular, the availability of a universal postal service within, to and from the State at an affordable price for the benefit of all postal service users,*

*(ii) to promote the interests of postal service users within the Community, and*

*(iii) subject to subparagraph (i), to facilitate the development of competition and innovation in the market for postal service provision".*

A 1.40 The European Postal Directive<sup>42</sup> and national legislation have set down the requirements for a "universal service" which guarantees, one clearance and one delivery to the home or premises of every natural or legal person every working day, even in remote or sparsely populated areas.

### Designation of An Post as USP

A 1.41 Section 17 "Designation of An Post as universal postal service provider." provides:

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<sup>42</sup> Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service as amended by Directive No. 2002/39/EC of 10 June, 2002, and Directive No. 2008/6/EC of 20 February, 2008, of the European Parliament and of the Council.



*“(1) Subject to subsection (2), An Post is designated as the universal postal service provider for a period of 12 years beginning on the passing of this Act.*

*(2) After the expiration of 7 years after the passing of this Act, and following a review under section 19 by the Commission of the designation of An Post under subsection (1), the Commission may—*

*(a) decide to—*

*(i) continue the designation of An Post as a universal postal service provider for the duration of the unexpired period of the designation specified in subsection (1), or*

*(ii) with the prior consent of the Minister, designate one or more than one postal service provider as a universal postal service provider for such period, subject to section 18 (4), as the Commission considers appropriate,*

*or*

*(b) with the prior consent of the Minister, decide that no such designation is required.*

*(3) Where the Commission proposes to make a decision under subsection (2)(a)(ii) or (b), as the case may be, the Minister, following consultation with such persons as he or she considers appropriate having regard to the proposal concerned, shall give notice in writing to the Commission of his or her decision to consent, or to refuse consent, within 4 months of the date on which the Commission seeks consent.*

*(4) When giving or refusing consent in relation to a proposal by the Commission to make a decision under subsection (2)(a)(ii) or (b), as the case may be, the Minister shall require to be satisfied as to whether or not the Commission’s proposal ensures the provision of a universal postal service.*

*(5) Where the Minister refuses consent to a proposal by the Commission to make a decision under subsection (2)(a)(ii) or (b), as the case may be, the designation of An Post shall continue for the duration of the unexpired period of the designation specified in subsection (1).*

*(6) Where, with the prior consent of the Minister, the Commission makes a decision under subsection (2)(a)(ii), the designation of An Post under subsection (1) shall cease to have effect on the date on which that decision takes effect.*

*(7) Where, with the prior consent of the Minister, the Commission makes a decision under subsection (2)(b), the designation of An Post under subsection (1) shall cease to have effect on the date of that decision.”*

## Designation of USPs - General

A 1.42 Section 18 “Designation of universal postal service providers – general provisions.” provides:

*“(1) Before the end of the period for which the designation of An Post is continued under subsection (2)(a)(i) or (5) of section 17 or, as the case may be, before the end of the period for which a universal postal service provider is designated under subsection (2)(a)(ii) of that section or, in a case where a universal postal service provider is designated under this section, before the end of the period for which the provider is so designated, the Commission—*

*(a) shall conduct a review of the designation, and*

*(b) may with effect from the expiry of that period—*

*(i) decide to designate one or more than one postal service provider as a universal postal service provider for such period, subject to subsection (4), as the Commission considers appropriate, or*

*(ii) decide that no such designation is required.*

*(2) Where the Commission makes a decision—*

*(a) with the prior consent of the Minister, under section 17 (2)(b), or*

*(b) under subsection (1)(b)(ii),*

*it shall, at such intervals as it considers appropriate, conduct a review under section 19 for the purpose of deciding whether a designation of one or more than one postal service provider as a universal postal service provider is required and may decide that—*

*(i) no such designation is required for the time being, or*

*(ii) such designation is required for such period, subject to subsection (4), as the Commission considers appropriate,*

*and this section applies to a decision made under subparagraph (i) or (ii), as the case may be, as it applies to a decision made under subparagraph (i) or (ii) of subsection (1)(b).*

*(3) The Commission may determine that different universal postal service providers, the subject of a designation made by the Commission under section 17 (2)(a)(ii) or this section, shall provide different parts of the universal postal service or provide that service in respect of all or any part or parts of the State, or both, having regard to the need to ensure that there is no duplication of the obligations imposed on each universal postal service provider so designated.*

*(4) The designation of a universal postal service provider by the Commission under section 17 (2)(a)(ii) or this section—*

*(a) shall be for such period as the Commission considers appropriate, having regard to the need to ensure that the designation is of sufficient duration for the return on investments,*

*(b) shall take effect 14 days after the date on which notice of approval of the terms and conditions of its universal postal service provision is published under section 23 (2)(a), and*

*(c) shall cease to have effect—*

*(i) on the date on which the designation of a universal postal service provider takes effect under paragraph (b), or*

*(ii) on the date on which the Commission decides that no such designation is required.”*

## **USP Designation Reviews**

A 1.43 Section 19 “Review by Commission” provides:

*“(1) A review by the Commission for the purposes of section 17 or 18 shall, subject to subsection (2), be conducted in accordance with such procedures as may be established and maintained by the Commission having regard to its functions and objectives under the Communications Regulation Acts 2002 to 2011 relating to postal services, in particular the need to ensure the provision of a universal postal service and compliance with the requirements specified in section 18.*

*(2) The procedures referred to in subsection (1) shall—*

*(a) make provision for the carrying out of an assessment of the extent to which the market for the provision of postal services in the State is meeting the reasonable needs of postal service users,*

*(b) be such as the Commission considers to be efficient, objective, transparent, non-discriminatory and proportionate, and*

*(c) be published by the Commission.”*

## **Notification of USP Designation**

A 1.44 Section 20 “Notification of designation” provides:

*“(1) The continuance of the designation of An Post under subsection (2)(a)(i) or (5) of section 17 or, as the case may be, the designation of a universal postal service provider under subsection (2)(a)(ii) of that section, or the designation of a universal postal service provider under section 18, shall be in writing, and the Commission shall—*

*(a) publish notice of the such continuance or designation in Iris Oifigiúil and in such other manner as it considers appropriate, and*

*(b) notify in writing—*

*(i) the European Commission of such continuance or the identity of any universal postal service provider so designated, and*

*(ii) the Minister of the identity of any universal postal service provider so designated.*

*(2) Where the Commission makes a decision under section 17 (2)(b) or subsection (1)(b)(ii) or (2)(i) of section 18, as the case may be, that no designation is required, it shall—*

*(a) publish notice of such a decision in Iris Oifigiúil and in such other manner as it considers appropriate, and*

*(b) notify in writing the Minister and the European Commission.”*