



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

# Review of Postal Universal Service Provider Designation

Consultation on Step 2 of the Section 17  
designation review and decision in the context  
of the Coronavirus (COVID-19)

Consultation

**Reference:** ComReg 20/49

**Date:** 19/06/2020

**All responses to this consultation should be clearly marked:**

**“Reference: Submission re ComReg 20/49”, and sent by post, e-mail or online at [www.comreg.ie](http://www.comreg.ie) (current consultations) to arrive on or before 5.p.m, 17 July 2020 to:**

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Please note ComReg will publish all respondents’ submissions with the Response to this Consultation, subject to the provisions of ComReg’s guidelines on the treatment of confidential information – ComReg 05/24.

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# Content

Section	Page
1 Introduction	.... 5
2 Assessment of COVID-19 crisis related impacts on the Review/Decision of Postal USP designation	.... 8
2.1 Uncertainty of when COVID-19 pandemic will end.....	8
2.2 Impacts of the pandemic on the economy and on the postal market .....	8
2.3 COVID-19 related impacts on the universal postal service .....	9
2.4 Other indirect COVID-19 related impacts on the universal postal service .....	10
2.5 Assessment’s Preliminary Conclusion .....	11
3 Solutions to fulfilling the USP designation review in light of COVID-19	.. 13

# Annex

<b>Section</b>	<b>Page</b>
Annex: 1 Draft USP Designation Decision Instrument	20
Annex: 2 Legal Basis	21

# 1 Introduction

- 1 Section 17(1) of the Communications Regulation (Postal Services) Act 2011 (“2011 Act”) designated An Post as the sole postal universal service provider (“USP”) for the State until 1 August 2023, subject to USP designation review/decision by the Commission for Communications Regulation (“ComReg”) after the 1 August 2018 under Section 17 of the 2011 Act.
- 2 On 7 April 2020 ComReg published its response to consultation and decision<sup>1</sup> on Step 1 of the section 17 review of the universal postal service provider (USP) designation for the State, in accordance with the Procedures<sup>2</sup> established and maintained by ComReg for this purpose. That decision stated that there is a need for a USP designation at this time in order to safeguard and ensure the provision of the full universal postal service for the entire State, and that ComReg is proceeding to Step 2 of the review.
- 3 ComReg then commenced Step 2 of the review following publication of its decision, that there is a need for a USP designation at this time. In Step 2 of the review ComReg will *review and decide what postal service providers should be designated as USP*. The Procedures for Step 2 state; “*Step 2 of the Postal USP Designation Procedures is designed for ComReg to review and decide which postal service providers(s) [“PSP(s)”] should be designated as USP(s). In this step, ComReg may decide either to designate one USP or more than one USP*”<sup>3</sup>. Also, for a section 17 review ComReg may decide to continue the designation of An Post as USP until 2023.”
- 4 However, the rapid advance and significant impact of the Coronavirus (COVID-19) related crisis in Ireland and worldwide, has caused an unprecedented and unpredictable set of circumstances in the State and is likely to have a detrimental impact on Irelands economy<sup>4</sup>, and indeed economies worldwide<sup>5</sup>. It is ComReg’s view that these circumstances have the potential to seriously and adversely impact on the USP Designation Step 2 review and decision process, as explained below and as such it is proposing not to undertake its review part of Step 2, as set out in its procedures.

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<sup>1</sup> ComReg Document 20/26

<sup>2</sup> As required by the 2011 Act, and following public consultation, in June 2019 ComReg published its Postal USP Designation Procedures (“the Procedures”) (ComReg 19/64a).

<sup>3</sup> Pursuant to section 17(2)(a)(i), section 17(2)(a)(ii) or section 18(1)(b)(i) of the 2011 Act.

<sup>4</sup> See Central Bank’s Quarterly Bulletin No.2 2020 at:

<https://www.centralbank.ie/publication/quarterly-bulletins/quarterly-bulletin-q2-2020>

<sup>5</sup> See European Commission’s Spring 2020 Economic Forecast at:

[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_799](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_799)

- 5 The Irish Government's 'Roadmap for Reopening Society and Business'<sup>6</sup> published on 3 May 2020 currently indicates a potential unwinding of restrictions and a return to some form of normality in August 2020. However, this is dependent on a number of factors and will only come into effect if the National Public Health Emergency Team ("NPHE") confirms that it is right to do so. Therefore, it is unknown at this stage when some form of normality will return to the market and it is possible that this date will be further extended.
- 6 In this context, ComReg has considered the adverse impacts of the COVID-19 crisis in relation to Step 2 of the USP designation review and in respect of any resulting designation decision it will make. This consultation paper is seeking the views of stakeholders on ComReg's proposal not to undertake the review part of Step 2 in accordance with the Procedures and instead to take an alternative Step 2 solution in that regard.
- 7 Prior to the COVID-19 crisis, and as part of the information gathering stage of Step 2 of the review, as set out in the Procedures, ComReg intended to commence Step 2 by requesting preliminary expressions of interest from all PSPs<sup>7</sup> expressing an interest in becoming the designated USP for the state and, also satisfactorily demonstrating their capability of providing that universal postal service. Following receipt of expressions of interest, ComReg then intended to invite full submissions from interested PSPs demonstrating in detail their capacity and capability to continuously and effectively provide the proposed universal postal service(s) in accordance with related legal obligations and to the standards established, for the duration of the designation. ComReg anticipates that submissions would be detailed and comprehensive in nature and therefore it is likely that they would require a significant amount of time and expertise from the PSPs to complete.

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<sup>6</sup> <https://www.gov.ie/en/news/58bc8b-taoiseach-announces-roadmap-for-reopening-society-and-business-and-u/>

<sup>7</sup> 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

- 8 However, for the reasons which are set out in this consultation paper, and in particular to minimise the disruption to PSPs who may wish to be considered for USP designation and are currently providing services in the middle of this crisis, and to grant all PSPs the same opportunity to make their best submission to be considered as future designated USP(s), ComReg is proposing to proceed directly to making its decision to continue An Post's designation under section 17(2)(a)(i) of the 2011 Act until its expiry on 2 August 2023. This will also ensure the least disruption to the provision of the universal postal service in the middle of the current pandemic. Though ComReg at the commencement of this process intended to proceed as per its Step 2 procedures the current prevailing circumstances make this unfeasible and ComReg notes that this deviation is provided to it under section 17(2) of the 2011 Act and the Procedures. Paragraph A 1.4 of the Procedures facilitates deviations from the Procedures if ComReg considers a different approach is warranted and the reasons for the deviation are provided. ComReg believes that the proposed deviation is warranted for the reasons which have been set out in this consultation paper.
- 9 In preparation for the expiry of the proposed continued designation in 2023, in late 2021/early 2022, ComReg will commence a new review of USP designation(s) under section 18 of the 2011 Act. By then it is anticipated that the current COVID-19 crisis will be over, that the economy will have stabilised and there will be more certainty in the postal market. For that USP designation review, and in accordance with the Procedures, ComReg will first consider whether there is still a requirement for a USP designation or whether the postal market will provide the universal postal service without a designation (Step 1). If ComReg decides that there is a requirement for USP designation, ComReg will consider the appropriate designation period, ComReg will then proceed to Step 2 to consider which PSP(s) should be designated as USP(s) for the State for the designation period, to commence immediately following the expiry of An Post's designation on 2 August 2023. The Section 18 USP Designation Review/ Decision process, which will commence in late 2021/early 2022, will give sufficient time for interested PSPs to review their business model post the pandemic period and with more informed knowledge of the postal market in place at that time. Regardless of whichever USP designation decision ComReg makes, ComReg will at all times continue to safeguard and ensure the provision of the universal postal service.

## 2 Assessment of COVID-19 crisis related impacts on the Review/Decision of Postal USP designation

### 2.1 Uncertainty of when COVID-19 pandemic will end

10 There is no certainty of when the COVID-19 global crisis will end in the near future as it depends on how the pandemic unfolds and if there are further waves and how the State reacts to the crisis. The OECD predicts that many countries' economies would recover more slowly than initially expected and it could take at least two years before many countries recover from the shock to their economies.<sup>8</sup>

### 2.2 Impacts of the pandemic on the economy and on the postal market

11 Regarding the COVID-19 crisis the European Commission has stated; *"Given the severity of this unprecedented worldwide shock, it is now quite clear that the EU has entered the deepest economic recession in its history."*<sup>9</sup> The Irish Central Bank's Governor states on 15 April 2020 that the impact of COVID-19 has been swift and severe and it is difficult to assess how severe the final impact will be and when recovery will begin.<sup>10</sup>

12 There has already been a significant impact on the postal market as a result of the COVID-19 pandemic. It has caused a sizeable reduction in letter post volumes mainly due to businesses being closed but conversely a significant increase in the volume of packets and parcels due to the surge in online purchases caused by people staying at home.<sup>11</sup> Some of these letter post volume losses may be long term or even permanent, as given the length of time for the crisis, there is likely to be an acceleration in businesses moving from postal services to e-communications because of further digitisation. The crisis may also be putting PSPs operations networks and resources under pressure when currently providing postal services.

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<sup>8</sup> Irish Times article dated 13 May 2020 at: <https://www.irishtimes.com/business/economy/fiscal-watchdog-says-irish-economy-may-have-contracted-by-21-in-april-1.4252601>

<sup>9</sup> European Commission's Spring 2020 Economic Forecast at: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_799](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_799)

<sup>10</sup> Blog dated 15 April 2020 at: <https://centralbank.ie/news/article/covid-19-the-irish-economy-in-a-global-context>

<sup>11</sup> UPU report dated 25 March 2020 entitled 'Impact of COVID-19 on the Postal Sector' at: <https://spark.adobe.com/page/98VnZbwVKb4W6/>



## 2.3 COVID-19 related impacts on the universal postal service

- 13 According to the Universal Postal Union (UPU)<sup>11</sup>, the UN agency for postal matters, data for the 23 January to 23 March 2020 showed (compared to the previous year's same period) a 15% decrease in the volume of mail, with postal items weighing less than 2 kg seeing the most significant drop (a 16 % decrease in the number of items sent). It is anticipated by ComReg that there may be further declines in mail volumes as the pandemic continues.
- 14 The universal postal service is a subset of the postal services market and relates to the delivery of standard letters, large envelopes, packets, parcels up to 20kg and registered postal packets. In Ireland, approximately 80% of postal transactions are business related and the top 20 large postal service users (e.g. banks, utilities, government) account for the majority of mail sent, mainly bulk letter. Ireland is also a net importer of mail and this specific volume of mail may be negatively impacted by the state of the pandemic crisis in other countries.
- 15 It is difficult therefore at this time to clearly predict what the final impact of the COVID-19 crisis will be on the universal postal service volumes and consequently what universal postal service product volumes will exist to be provided by designated USP(s). However, it is most likely that post the COVID-19 crisis, the universal postal service volumes are likely to be less than what they were at the start of the pandemic, and when this review of the USP designation began last year. Furthermore, as discussed below, the acceleration in these changes may also change postal service users' needs which in turn may have a significant influence on the outcome of the review of the EU Postal Directive<sup>12</sup>.

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<sup>12</sup> The objectives for postal services regulation have been implemented in EU law through the European Postal Services Directive - Directive 97/67/EC. This directive established a regulatory framework for European postal services and was amended by Directive 2002/39/EC and Directive 2008/6/EC.

## 2.4 Other indirect COVID-19 related impacts on the universal postal service

- 16 ComReg notes that there is currently an evaluation underway by the EU Commission as to whether the current Postal Directive is still relevant and fit for its original purpose of ensuring an internal market for postal services while maintaining the universal service for letters and parcels.<sup>13</sup> Notably, this evaluation includes an examination of how users' needs are likely to change in the next 5-10 years. The review of the EU Postal Directive is now likely to take the global impact of the COVID-19 crisis into account and this may result in important changes to the EU legislative framework, and in particular the statutory obligation to collect and deliver postal packets on every working day, a significant contributor to the cost of provision of the universal postal service. This information will be important to PSPs who are interested in becoming the designated USP when they are putting forward submissions.
- 17 ComReg will keep under review if the needs of postal service users change to the extent that it will require a change in the scope of the universal postal service.
- 18 Any lasting impacts of the COVID-19 related crisis in Ireland could also be further compounded by a no deal Brexit. The UK left the EU on 31 January 2020 and a transition period is in place until the 31 December 2020 (subject to any further extension). A "hard Brexit" at the end of the year is now again a real risk.<sup>14</sup> A "hard Brexit" would impact on PSPs services by causing changes and delays, relating to customs inspections and charges, all of which will create extra work for PSPs. Furthermore, a "hard Brexit" would also have a significant impact on the Irish economy and this combined with lasting impacts of the COVID-19 crisis may result in a more severe recession, which in turn could cause an additional decline in mail volumes within the universal postal service following Brexit.

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<sup>13</sup> See: <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/11965-Report-on-the-Application-and-Evaluation-of-the-Postal-Services-Directive>

<sup>14</sup> See: <https://www.rte.ie/news/brexit/2020/0517/1138881-talks-extension-mps-coronavirus/>

- 19 Another possible indirect consequence of the COVID-19 crisis is that it may also accelerate the establishment of different types of service provision in Ireland, in particular cloud infrastructure services. ComReg notes the recent emergence worldwide of some major e-commerce platforms with global ambitions. The development of these eco systems benefit the producers/retailers as well as the consumer as they help the producer/retailer to sell their products at the same time as ensuring consumers receive their deliveries. These platforms contain a mix of technology, retail and supply chain systems, that are backed by technology giants and form strategic alliances with worldwide retail brands. Some of these systems operate on a first-party retail model by taking on inventory ownership from producers/ suppliers, giving them the ability to control product quality and cost efficiencies in its supply chain. The supply chain parts of these eco-systems will use technology to drive efficiencies for example technology using real time information will advise delivery drivers of the most efficient delivery routes on a daily basis. Big steps forward are also anticipated in warehousing using the latest technology to ensure efficiencies in the processing part of the supply chain and further innovation is anticipated in delivery formats with for example sophisticated heavy duty drones being currently trialled to deliver packets and parcels, cutting down on the time and cost of provision of delivery. Indeed, ComReg notes from recent media articles that recently Amazon, one of these global eco systems, has established significant warehousing capacity in Dublin and intends to also put in place its own distribution network.
- 20 It may be that, based on consumer needs and behaviours, these e-commerce logistics powerhouses will further hasten the move away from letter post to e-communications at the same time as growing their e-commerce platforms, and that by 2023 these eco systems may be the more effective and cost efficient PSP models.

## 2.5 Assessment's Preliminary Conclusion

- 21 As a result of the above assessment of the COVID-19 crisis impacts on the postal market in the near term, it is ComReg's preliminary view that it is unfeasible to proceed with the review parts of Step 2 of the USP designation procedures for this particular review at this time as:
- in respect of ComReg requesting submissions, it will not be possible for ComReg to give a clear and definite indication to potential interested PSPs on what universal postal service specifications will exist for the upcoming USP designation period,

- in respect of PSPs who may be interested in being designated as USP(s) making submissions; they may not be in a position to do this due to COVID-19 crisis related changes in workloads, etc, or to make comprehensive submissions for USP designation due to the current unstable and unpredictable economic and social environment impacting on their businesses and which may continue to impact on them for some time, and
- in order for ComReg to review and assess submissions from PSPs as part of the USP designation review process, it will not be feasible for ComReg to make certain regulatory decisions which 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 - as it is uncertain what the universal postal service will be following the COVID-19 crisis;
  - the solution that best meets the reasonable needs of postal service users - as their needs following the COVID-19 crisis are uncertain; and
  - the solution which represents the most efficient and cost-effective way to provide the universal postal service for the State – as it is uncertain and unpredictable what position PSPs will be in financially and operationally following the COVID-19 crisis.

22 ComReg therefore considers that due to the unexpected conditions and combined impacts of COVID-19 as identified above, the current USP designation review would not accord with ComReg's obligation<sup>15</sup> to ensure its USP designation review be considered "*efficient, objective, transparent, non-discriminatory and proportionate*". It may also put at risk ComReg's obligation to ensure the provision of a universal postal service that meets the reasonable needs of postal service users. As such, in the next section ComReg sets out and considers the possible alternative solutions which are available to it at this time for fulfilling Step 2 of the review.

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<sup>15</sup> Section 19(2)(b) of the 2011 Act

### 3 Solutions to fulfilling the USP designation review in light of COVID-19

23 The decision options available to ComReg for Step 2 of the review, pursuant to section 17(2)(a) of the 2011 Act and the Procedures, are;

*“(i) continue the designation of An Post as a universal postal service provider for the duration of the unexpired period [until August 2023] 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”*

24 Step 2 of the review in the Procedures is designed for ComReg to review and decide which postal service providers should be designated as USP(s). Due to the emergence of the COVID-19 crisis and ComReg's assessment of the impacts of the crisis on the postal market as set out in Section 2 in this consultation document, ComReg has considered the following alternative options to fulfilling the USP designation review in light of COVID-19:

- **Option 1:** To proceed now as originally intended for Step 2 and request expressions of interest followed by detailed submissions to be made by interested PSPs, and then to make a decision to designate PSP(s) to provide the universal postal service;
- **Option 2:** To proceed now as originally intended for Step 2 and request expressions of interest followed by detailed submissions to be made by interested PSPs, but allow extra time for responses<sup>16</sup> for both expressions of interest and detailed submission, and then to make a decision to designate PSP(s) to provide the universal postal service;
- **Option 3:** To delay Step 2 of the section 17 review until later this year and then proceed as intended for Step 2 with a designation decision potentially being made during the first half of 2021;

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<sup>16</sup> The extra time will allow interested PSPs to harness their resource expertise to complete the comprehensive submissions

- Option 4:** To not proceed as originally intended for all the stages of Step 2 but instead to deviate and to make a decision under section 17(2)(a)(i) of the 2011 Act (without completing the process of inviting expressions of interest and of submitting comprehensive submissions from interested PSPs) to continue An Post’s designation until August 2023. In this case, ComReg will commence a section 18 review of the USP designation in late 2021/early 2022 in order to make a new USP designation(s)<sup>17</sup> decision in advance of August 2023.

Option 1	Impacts of COVID-19 crisis
<p><b>To proceed now as originally intended for Step 2 - request expressions of interest followed by detailed submissions to be made by interested PSPs and then make a decision to designate PSP(s) to provide the universal postal service</b></p>	<ul style="list-style-type: none"> <li>           PSPs who may be interested in being designated as USP(s) may not be able to make adequate submissions due to the unstable and unpredictable economic and social environment and the unknown impacts of this on the postal market and on their businesses.         </li> <li>           Due to the ongoing COVID-19 crisis and related changes in workloads, etc, interested PSPs may not currently have the necessary and experienced resources freely available at this time to make an expression of interest and/or to make a detailed submission to be considered for USP designation.         </li> <li>           Post the COVID-19 crisis, the universal postal service may have evolved into something very different, making it difficult for ComReg to now set out clearly what the designated USP(s) would be required to provide for the next designation period and for PSPs to make business decisions on making submissions for USP designation for the foreseeable future.         </li> <li>           Issues arising from Brexit separation at end of 2020 may have significant adverse impact on the universal postal service.         </li> <li>           ComReg itself may not be able to properly assess submissions from potential applicants which may require site visits/ face to face meetings, etc during the COVID-19 pandemic and Government measures which are to be in place at least until August 2020.         </li> </ul>

<sup>17</sup> If the decision in Step 1 at that time is that a designation is needed to ensure the provision of the universal postal service

Option 2	Impacts of COVID-19 crisis
<p><b>To proceed now as originally intended for Step 2 but to allow extra time for expressions of interest and detailed submissions to be made by interested PSPs and then make a decision to designate PSP(s) to provide the universal postal service</b></p>	<ul style="list-style-type: none"> <li>• Allowing more time may alleviate the issue of resources for PSPs to make submissions.</li> <li>• All of the other impacts identified in Solution 1 would remain.</li> </ul>

Option 3	Impacts of COVID-19 crisis
<p><b>To delay implementing Step 2 of the section 17 review until later this year and then proceed as intended with a designation decision, potentially expected during the first half of 2021.</b></p>	<ul style="list-style-type: none"> <li>• Although the Government’s road map currently plans for opening up by August 2020, this is subject to the medical advice from the NPHET. At this stage it is unclear if this is a return to normal or if there will still be some restrictions in place at that time. To leave the USP designation review undecided indefinitely is not ideal as it would cause uncertainty for PSPs, including An Post, in making business decisions, financing, etc.</li> <li>• It is unknown at this stage what impact will apply to PSPs operations if the Government decides to keep some restrictions in place for the State for COVID-19 needs.</li> <li>• ComReg and interested PSPs may not know for a while yet what the financial impacts are and what changes will have occurred in the market (in particular to the universal postal service which mainly pertains to letters) in order to make regulatory and business decisions.</li> <li>• The impending legislative changes to the universal postal service at EU level may also be now influenced by the consequences of COVID-19.</li> </ul>



- The section 17 review cannot be left uncompleted indefinitely as under the circumstance there would be a requirement for ComReg to have completed a section 18 review before the expiry in August 2023 of An Post's designation under section 17(1) of the 2011 Act. ComReg would need to allow sufficient time (approx. 18 months) beforehand to have both Steps of the review completed. This review therefore needs to begin in late 2021/early 2022. Any delay to Section 17 review and decision will bring it very close to the commencement of Section 18 review and decision and may seem an unnecessary duplication of work.
- If ComReg's decision is to designate a PSP(s) other than or as well as An Post, in accordance with section 17(2)(a)(ii) of the 2011 Act ComReg can only implement this decision with the Minister's prior consent. The 2011 Act requires the Minister to conduct a consultation in this circumstance.



Option 4	Impacts of COVID-19 crisis
<p><b>To not proceed as intended for Step 2 of this review but instead to deviate and make a decision under section 17(2)(a)(i) of the 2011 Act (without completing the process of inviting expressions of interest and of submitting comprehensive submissions from interested PSPs) to continue An Post’s designation.</b></p> <p><b>In this case, ComReg would plan to commence a section 18 review of the USP designation in late 2021/early 2022 in order to make a new USP designation(s)<sup>18</sup> decision well in advance of August 2023.</b></p>	<ul style="list-style-type: none"> <li>• This deviation from all the stages in Step 2 of the Procedures is allowed in the Procedures and Section 17(2) explicitly provides this alternative solution as a decision option available to ComReg.</li> <li>• In the context of the uncertainty and unpredictability that the Covid-19 crisis has raised it makes sense to ComReg to retain the service provision that is currently in place and has been operating for a long time, until after the crisis.</li> <li>• The section 18 review would commence at end of 2021/start 2022 at which stage it would be expected that the COVID-19 crisis should be over, and PSPs will have the necessary resources available to participate in the review.</li> <li>• This should also allow sufficient time for a COVID-19 national recovery period after which the impact on the State’s economy, and consequently on the postal market will be clearer.</li> <li>• This timeline allows time for ComReg and interested PSPs to have a clearer view of what the universal postal service will have become following COVID-19 (in terms of changes to mail mix, volumes etc.).</li> <li>• The EU Commission will likely have given significant consideration to its 4<sup>th</sup> Postal Directive which may provide clarity on the universal postal service, in particular the statutory obligation to collect and deliver postal packets on every working day, or it may indeed be in place by this time</li> </ul>

<sup>18</sup> If the decision in Step 1 at that time is that a designation is needed to ensure the provision of the universal postal service

- Interested PSPs will also be more certain of their business models and their financial positions post COVID-19 crisis at that time and will be more certain of their ability to scale up to be potential USPs.
- It allows time for a national recovery period when the environmental climate issues may be more advanced (e.g. Electric vehicles on postal networks) and any upcoming changes in EU Legislation around universal postal service specifications should be more clear / enacted in the State which will give more certainty regarding what the universal postal service will be for the impending USP designation period.
- For all potential interested PSPs this option provides them with certainty and sufficient time to plan and prepare for the next review which would commence in late 2021/early 2022 when it is expected that the crisis will be over, and a national recovery plan will be in place.
- Any Brexit issues will have likely been resolved and interested PSP(s) will have clarity on what operations changes will be required
- Allows time for the development of global eco-systems which may be best option at that time to satisfy consumer needs and to efficiently provide the universal postal service in tandem with its provision of e-commerce services
- Provides more certainty for ComReg to make regulatory decision's and to fulfil its statutory obligation to ensure that the universal postal service provided meets the needs of users during this time.

## Preliminary Views

- 25 ComReg proposes to employ Option 4 as this will better ensure ComReg meets its obligation to ensure the provision of the universal postal service for the State which meets the needs of postal service users during this time of disruption caused by COVID-19.
- 26 In these exceptional circumstances it would not be possible for other PSPs to make comprehensive submissions based on the unknown future.
- 27 For the reasons which are set out above, and in order to minimise the disruption caused by COVID-19 and to minimise any disruption to the provision of the universal postal service for the next three year period, in these circumstances, ComReg is proposing to continue An Post's designation until 2023 under section 17(2)(a)(i) of the 2011 Act. In late 2021/early 2022, when it is anticipated that the crisis will have receded and the economy will have stabilised and there is some certainty in the postal market, ComReg will commence a new review of USP designation(s) under section 18 in accordance with the Procedures in order to have a new USP designation in place by August 2023. This should allow all interested PSPs equal opportunity to be considered for USP designation.
- 28 ComReg notes that paragraph A.1.4 of the Procedures provides for deviation from the Procedures where ComReg considers it is warranted, and a significant deviation is clearly identified to the relevant stakeholders along with the reasons for the deviation. ComReg believes that this deviation is warranted due to the significant and long-term consequences caused by COVID-19. By this public consultation ComReg is clearly notifying all relevant stakeholders and it has provided the reasons for the required deviation from the Procedures.

Q. 1 Do you agree or disagree with ComReg's proposed Option 4 as set out above?

Please provide reasons with your answer and any supporting information.

# Annex: 1 Draft USP Designation Decision Instrument

## **PART I – DEFINITIONS AND INTERPRETATION**

1. Terms that are used in this Decision Instrument shall have the same meaning as when they are used in the Communications Regulation (Postal Services) Act 2011 (“**the 2011 Act**”), unless the context otherwise admits or requires.
2. Words in the singular form shall be construed to include the plural and vice versa, unless the context otherwise admits or requires.

## **PART II – STATUTORY FUNCTIONS AND POWERS GIVING RISE TO DECISION**

3. This decision by the Commission is made;
  - a. having had regard to its statutory functions and objectives in relation to postal services, as set out in sections 10 and 12 of the Principal Act;
  - b. in accordance with the procedures established, maintained and published by the Commission pursuant to section 19 of the 2011 Act (ComReg 19/64a) “**the Procedures**”;
  - c. having conducted a public consultation;
  - d. having had regard to the assessment and reasoning set out in XX/XX; and
  - e. having taken account of the representations of interested parties submitted in response to Consultation Document No. XX/XX as set out in Response to Consultation Document No. XX/XX.

## **PART III – DECISION**

4. The Commission decides:
  - a. in accordance with paragraph A1.4 of the Procedures, in the circumstances of the ongoing COVID-19 crisis a different approach is warranted, and for this reason it will deviate from Step 2 of the Procedures for this review of the universal postal service provider (USP) designation for the State; and
  - b. pursuant to section 17(2)(a)(i) of the 2011 Act, to continue the designation of An Post as the USP for the entire State for the duration of the unexpired period of the designation specified in section 17(1) of the 2011 Act.

**GARRETT BLANEY**

**CHAIRPERSON**

**THE COMMISSION FOR COMMUNICATIONS REGULATION**

**THE DAY OF 2020**

## Annex: 2 Legal Basis

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

A 1.1 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 1.2 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 1.3 The European Postal Directive<sup>19</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 1.4 Section 17 "Designation of An Post as universal postal service provider." provides:

*"(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.*

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<sup>19</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.

*(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 1.5 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 1.6 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 1.7 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.”*

# Questions

## Section

## Page

Q. 1 Do you agree or disagree with ComReg’s proposed Option 4 as set out above? .....	19
Please provide reasons with your answer and any supporting information.....	19