



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Consultation Procedures Review

Response to Consultation

Information Notice

Reference: ComReg 24/02

Version: Final

Date: 11/01/2024

Content

Section	Page
1 Executive Summary	3
2 Introduction	3
3 Summary and Assessment of submissions	4
4 Next Steps.....	7

1 Executive Summary

- 1.1 ComReg’s current Consultation Procedures have been in place since 2011. ComReg decided that its Consultation Procedures required review and updating and in July 2023 conducted a public consultation on its Consultation Procedures. As part of the consultation submissions were received from interested parties and ComReg considered those submissions. This document provides a response to the consultation and appends the now updated Consultation Procedures which replace the 2011 Consultation Procedures.

2 Introduction

- 2.1 The Commission for Communications Regulation (ComReg) is the statutory body responsible for the regulation of the electronic communications sector (telecommunications, radio communications, broadcasting transmission and premium rate services) and the postal sector.
- 2.2 In many instances, before making a decision, ComReg seeks the views of interested parties by way of a consultation. Sometimes this consultation is required by law and other times ComReg believes it to be good practice to engage in a public consultation. ComReg has published procedures for dealing with such public consultations. The current ComReg Consultation Procedures are set out in ComReg Document 11/34 and have been in place since 6 May 2011.
- 2.3 Since 2011 there have been many legislative developments, in particular the update of the European Electronic Communications Code by Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 and the Directive’s transposition by the European Union (Electronic Communications Code) Regulations 2022 (S.I. No. 444 of 2022).
- 2.4 ComReg decided that the Consultation Procedures should be reviewed so as to ensure that they remain up to date and fit for purpose. Accordingly, ComReg decided to conduct a public consultation on its Consultation Procedures and on 28 July 2023 ComReg published an Information Notice on Consultation Procedures Review, ComReg Document 23/73.
- 2.5 ComReg Document 23/73 set out the proposed updates to the Consultation Procedures in Annex 1 and invited submissions from interested parties. The main updates proposed by ComReg were updating for legislative referencing, updating for reference to the Department of Public Expenditure and Reform’s “Consultation

Principles and Guidance” which was published in 2016 (and updated in 2019) and updating language to reflect ComReg best practice. ComReg received six submissions from interested parties.

3 Summary and Assessment of submissions

3.1 Following publication of the Consultation Procedures Review on 28 July 2023 ComReg received six written submissions. The submissions are published in the Annex to this document. The six submissions were from:

- 1) ALTO
- 2) An Post
- 3) Eir
- 4) Telecommunications Industry Ireland
- 5) Three
- 6) Virgin Media

3.2 ComReg considered all the submissions and all of the points made in the submissions. It is not practical for ComReg to provide commentary on each individual submission and on each individual point made, however, in this document, ComReg summarises some of the main issues from the six submissions. The topics outlined in the following paragraphs raised in the submissions had all previously been addressed and included in the draft Consultation Procedures document 23/73 published on 28th July 2023 but, having considered all of the submissions made, where the issues could have benefitted from some extra clarity of language, some additional text was added.

Consultation Principles

3.3 The submissions suggested that ComReg give consideration to general consultation principles set out in legal instruments and guidance such as European Union law, the European Union (Electronic Communications Code) Regulations 2022 (S.I. No. 444 of 2022), the Department of Public Expenditure and Reform’s “Consultation Principles and Guidance” and best practice.

Response Period

- 3.4 The submissions made a variety of proposals in relation to the response period that should be provided for in the Consultation Procedures. Most of the responses proposed that the standard response period should be greater than the minimum period of 30 days prescribed in Regulation 101 of S.I. 444 of 2022.
- 3.5 Responses urged that consideration be given to extensions of response periods for peak holiday periods such as Christmas, Easter and August, to the possibility of a designated day of the week for submissions and to the use of “working days” rather than “days” in calculating the response period. It was suggested that extended response periods be considered for complex consultations and all responses urged ComReg to give consideration to the overlapping or clustering of consultations and the demands on industry, including administrative burden.

Extension of time

- 3.6 Several responses suggested that a request for an extension of time should preferably be made within 10 days of the consultation period commencing but that a request for an extension of time should also be permitted at any time prior to closure of the consultation period. It was also proposed that any extension of time should apply to all submissions.

Format

- 3.7 Most submissions favoured a standard format and layout for consultations with specific consultation questions listed separately in an Annex. It was also proposed that the request for consultation should be provided in an editable form.

Communications

- 3.8 Some of the submissions suggested that ComReg should have a dedicated web page for consultations. Many submissions suggested that ComReg have clearer scheduling of consultations, flagging proposed consultations in advance, for example in its Action Plan. Some submissions suggested that feedback be provided to respondents at the end of the consultation procedure.

Other Issues

- 3.9 This document only provides a general summary of the submissions. In addition to some of the main issues identified above some of the submissions also referred to issues such as the treatment of confidential information, Regulatory Impact Assessments and suggested that the Consultation Procedures should be tailored to the telecoms sector. It was also suggested that any departures from the Consultation

Procedures by ComReg should be limited and clearly defined and that ComReg should provide a channel for complaint or redress where the Consultation Procedures are not followed by it.

Summary

- 3.10 ComReg appreciates the time and thought put into the submissions by the respondents. On some issues the submissions were in broad agreement and on other issues there were divergent views. ComReg gave consideration to all the submissions and to all of the points made in the submissions. ComReg accepted some of the points made in the submissions and incorporated those suggestions into the updated Consultation Procedures. In updating the Consultation Procedures ComReg has also considered its own internal review and all the information available to it including its legal obligations, guidance and best practice.

4 Next Steps

- 4.1 ComReg published the draft updated Consultation Procedures at Annex 1 of the Consultation Procedures Review, on 28 July 2023, ComReg Document 23/73. In response ComReg received six submissions which it has fully considered. Following the review and consultation ComReg has decided to update its Consultation Procedures and ComReg's updated Consultation Procedures are now contained in Appendix 1 to this document. By way of this Information Notice ComReg has now published the updated Consultation Procedures on its website.
- 4.2 The updated Consultation Procedures take effect from 11 January 2024 and replace ComReg Consultation Procedures Document 11/34 which is revoked from the 11 January 2024.

Appendix 1: Consultation Procedures



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Consultation Procedure Guidelines

Guidelines

Reference: ComReg YY/NN

Date: 11/01/2024

An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation

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

Additional Information

Document No:	[YY/NN]
Date:	11/01/2024

Content

Section	Page
1 Introduction.....	4
1.1 Overview	4
1.2 Purpose and principles of Consultation.....	4
2 Form of Consultation	6
3 Making Submissions	6
3.1 Duration of consultation	6
3.2 Submission of comments	7
4 Consideration of comments.....	8

1 Introduction

1.1 Overview

1. The Commission for Communications Regulation (“ComReg”) is the statutory body responsible for regulating the electronic communications telecommunications, radio communications and broadcasting transmission) and postal sectors¹ in accordance with European Union and national law.
2. Consultations are intended to give an opportunity to interested parties to make representations to ComReg. These procedures supersede and replace ComReg consultation procedure documents 01/09, 03/31 and 11/34a which are hereby revoked.
3. Where ComReg is required to conduct a public consultation in the performance of any regulatory function, it will do so in accordance with these consultation procedures as published on ComReg’s website² and copies are available from ComReg upon request³. These procedures are a general statement of the applicable principles. There may be circumstances where ComReg will be required to depart from these procedures, for example, including but not limited to, specific legislative requirements or where there is an urgent need to implement certain measures.

1.2 Purpose and principles of Consultation

4. The purpose of public consultation is to undertake a systematic process of meaningful engagement with those outside the policy-making process who have a clear interest in a particular policy area, in order to better inform that process. Consultation procedure allows ComReg to gather new ideas or views on proposals, collect evidence and factual data, validate assumptions, clarify the possible impact of the proposal on the wider community, or understand possible unintended consequences.
5. As set out in the *Consultation Principles & Guidance*⁴ published by the Department of Public Expenditure, NDP Delivery and Reform, meaningful citizen participation in the policy-making process helps decision-makers to make better decisions and can lead to improvements in the quality-of-service provision.

¹ Communications Regulation Act 2002 (as amended)

² www.comreg.ie

³ A copy of the procedures shall be made available, upon request, to interested parties at a cost not exceeding the reasonable cost of making a copy or, where appropriate, such cost and the amount of any postage involved.

⁴ Department of Public Expenditure, NDP Delivery and Reform, “Consultation Principles and Guidance” (Last published 21 January 2019).

6. ComReg strives to follow the following three key principles of consultation:
 - i. Consultation with the public must be genuine, meaningful, timely, balanced and with the ultimate objective of leading to better outcomes and greater understanding by all involved of the benefits and consequences of proceeding with particular policy or legislation proposals. Consultation should aim to achieve real engagement and 'real listening' rather than being a pro-forma exercise for bureaucratic purposes. A genuine consultation process ensures that the real-world impact of policy options is considered.
 - ii. Consultation should be targeted at and easily accessible to those with a clear interest in the policy in question. There is no 'one size fits all' approach to consultation. The size, type and scope of the consultative process depends on the proposed policy, the type and scale of the potential impacts of the proposal or decision being taken, the number of people or groups affected by them, and where relevant particular requirements of the child and young people and those who may be marginalised or vulnerable.
 - iii. Systematic efforts should be made to ensure that interested and affected parties have the opportunity to take part in open consultations at all stages of the policy process on significant policy, services and legislative matters: development, implementation, evaluation, and review.
7. ComReg is fully committed to their effective implementation to promote transparent and comprehensive participation in the policy development process. This means that ComReg recognises that there may be a wide range of stakeholders on any particular issue, not just those with a direct pecuniary or other interest.
8. It also means that in addition to the matters in respect of which prior consultation is mandatory, ComReg will give consideration to consult on other appropriate matters, on a case-by-case basis, having regard to factors such as the number of parties who may be affected, whether points of principle are involved as opposed to detailed implementation of an existing measure, and the relative cost impact of the measure on users or operators. ComReg will never publicly consult on individual compliance and enforcement matters, or on matters in respect of which ComReg has no discretion.
9. ComReg is not legally bound by its consultation documents and they do not constitute legal, commercial, financial, technical or other advice and do not set out ComReg's final, definitive position on any particular matter.

2 Form of Consultation

10. Consultation can take a variety of forms to best suit any particular decision-making process. Where ComReg conducts a public consultation, all consultation documents will be made available on its website. E-mail notifications will be sent to parties who have signed up on ComReg's website to receive notifications of publications. Hard copies and other accessible formats of consultation documents will be available from ComReg upon request.
11. Consultation documents will include the closing date for receipt of submissions and a contact point within ComReg. ComReg reserves the right to seek clarification from respondents on the submissions that they have made, as necessary, throughout the consultation process.
12. Prior to a formal public consultation, preliminary discussions with affected parties or representative groups or associations may take place. Such discussions are not a substitute for public consultation, but they may be used by ComReg to inform the consultation and to prepare draft measures and analysis and formulate questions. In deciding to conduct any such preliminary discussions and in engaging in such discussions, ComReg will at all times be mindful of transparency and the equitable treatment of all stakeholders.

3 Making Submissions

3.1 Duration of consultation

3.1.1 Minimum period

13. The amount of time required for a consultation will depend on the specifics of the proposal, its objectives and complexity including the length of the consultation paper, its likely impact, and the diversity and number of interested parties.
14. ComReg will set a reasonable period of time for consultation, so that participants have sufficient time to submit their views. Sufficient time means that all relevant stakeholders have time to become informed, examine the issues, debate/dialogue/consult within their organisations and develop a response.
15. Regulation 101 of the European Electronic Code Regulations (S.I. 444/2022) requires that a consultation, "*except in exceptional circumstances, shall not be shorter than 30 days.*" While accordingly ComReg will not run consultations for periods of less than 30 days unless there are exceptional circumstances, ComReg acknowledges that a period of 30 days often will not be sufficient and should not be selected by default. In setting the period for consultation, ComReg will also have regard to the effective number of working days included in the relevant period

and whether there are public or other holidays as well as the number of ongoing or forthcoming other ComReg consultations.

16. Where a period of less than 30 days is required due to exceptional circumstances, or otherwise, ComReg will, unless it is not possible in the circumstances, allow the minimum period of two weeks recommended by Government Guidance. In all cases where a period of less than 30 days is allowed for consultation, ComReg will give reasons for doing so.
17. All submissions received during the consultation period will be considered by ComReg. Where submissions are made late, whether or not they are taken into account is entirely at ComReg's sole discretion.

3.1.2 Extension

18. In exceptional circumstances, ComReg, at its sole discretion, may extend the period of consultation at its own initiative or at the request of one or more respondents, where adequate and sufficient reasons for the extension request have been provided. A request for extension should be made as soon as a respondent becomes aware of a difficulty arising with the time for submissions and, if possible, within 10 days of the beginning of the consultation period. ComReg will take into account, amongst other things, the amount of time left in the consultation in considering whether to grant the request. ComReg may extend the consultation period for the respondent who requested the extension, or for all respondents, and will take into account the reasons for the request in this regard in order to ensure a fair and equitable treatment of all respondents.
19. Where ComReg decides to extend the period of consultation for all respondents, ComReg will give notice of the extension via its website and via e-mail to those persons who are registered with ComReg to receive notifications.

3.2 Submission of comments

3.2.1 Form

20. Submissions in relation to individual consultations are welcomed from all interested persons, including end-users, manufacturers and providers of services. Each consultation document will contain instructions on how to send submissions to ComReg. ComReg is committed to sustainable work practices and where possible, comments should be provided in writing in electronic format with read/write access, but comments delivered by post, by hand or in other formats will also be accepted.
21. ComReg will at all times seek to ensure that all of its consultations are open, transparent, accessible and fair, and ComReg will take proper consideration of all submissions that are received. However, ComReg will also seek to conduct its

consultations in as efficient and timely a manner as possible and interested parties can assist in this regard by formatting their submissions in a manner which closely follows the format of the consultation and by bringing especially relevant or important points to the fore. Comments and input should therefore be referenced according to the relevant sections and questions in the consultation. Further, while ComReg will consider the full text of all submissions that are received, lengthy submissions should nevertheless include summaries setting out the most relevant and important points. Respondents should set out their reasoning and all supporting information for any views expressed.

3.2.2 Treatment of confidential information

22. It is ComReg's policy to publish all responses in order to make them available for inspection. Where submissions include confidential information, such information should be clearly identified, with the reasons supporting the claim, in accordance with ComReg's Confidentiality Guidelines, the respondent should provide at the same time a non-confidential version of its submission. Claims of confidentiality will be treated in accordance with ComReg's published Confidentiality Guidelines⁵.
23. For more information on how ComReg treats personal data see ComReg's Privacy Notice.⁶

4 Consideration of comments

24. The purpose of public consultations is to allow ComReg to consider the views of interested parties in the context of reaching a decision on particular matters. All views will be considered and account taken of the merits of views expressed. It should, however, be noted that the process is not equivalent to a voting exercise on proposals and ComReg will exercise its judgement having considered the merits of the views expressed. It is not practical for ComReg to provide commentary on each individual submission, however non-confidential versions of each submission will be published.

⁵ See www.comreg.ie

⁶ <https://www.comreg.ie/privacy/>

Annex 1: Submissions

- 1) ALTO
- 2) An Post
- 3) Eir
- 4) Telecommunications Industry Ireland
- 5) Three
- 6) Virgin Media

alto

alternative operators in the communications market

Consultation: Consultation Procedures Review - Ref: 23/73

Submission By ALTO

Date: September 15th 2023

ALTO is pleased to respond to the Consultation: Consultation Procedures Review –
Ref: 23/73

ALTO welcomes this opportunity to comment on this important consultation.

Regulation 101 of the European Union (Electronic Communication Code) Regulations (S.I. No. 444/2022) requires that a consultation, “*except in exceptional circumstances, shall not be shorter than 30 days.*”

Article 23 of Electronic Communications Code (“EECC”) appears to be the source of this national transposition at Regulation 101. Article 23 EECC is usually read with Recital 66 – which reads:

*“It is important that national regulatory and other competent authorities consult all interested parties on proposed decisions, give them **sufficient time to the complexity of the matter** to provide their comments, and **take account of their comments before adopting a final decision**. In order to ensure **that decisions at national level do not have an adverse effect** on the functioning of the internal market or other TFEU objectives, national regulatory authorities should also notify certain draft decisions to the Commission and other national regulatory authorities to give them the opportunity to comment. It is appropriate for competent authorities to consult interested parties in the cases defined in this Directive on **all draft measures which have an effect on trade between Member States.**”*

(Emphasis Added)

ALTO also notes the position in the Department of Public Expenditure, NDP Delivery and Reform, “*Consultation Principles and Guidance*” (Last published 21 January 2019)¹ and requests that ComReg fully consider those and the below extracts in its final decision:

¹ <https://www.gov.ie/pdf/?file=https://assets.gov.ie/5579/140119163201-9e43dea3f4b14d56a705960cb9354c8b.pdf#page=null>

“13. The amount of time required for a consultation will depend on the specifics of the proposal, its objectives and complexity, its likely impact, and the diversity and number of interested parties. **Consultation should not make unreasonable demands of people being consulted or assume that they have unlimited time to devote to the consultation process.**

“14. Consultations should take place over a reasonable period of time, so that participants have sufficient time to submit their views. **Sufficient time should be allowed for all relevant stakeholders to become informed, examine the issues, debate/dialogue/consult within their organizations, and develop a response. Officials should be cognisant of the burden that the whole of government [in our case we could substitute ComReg for government in the context of overlapping consultations] may be placing on stakeholder groups.**” (Emphasis Added)

Recently, the High Court considered the issue of consultation in the case of *Lighthouse Networks Limited v The Minister for Communication, Climate Action and Environment* [2023] IEHC 420², which underpins the importance of stakeholder participation in consultations, particularly where the subject matter might impact the nature of and business of those stakeholders concerned.

ALTO also notes the express provisions of Article 32 of the EEC which proscribes one and two month periods of time for taking steps in the more formal internal market rules. Granted that ComReg would often allow long periods of consultation for more complicated or complex Article 32 Market Review measures or regulations well in advance of the formal EU Commission Article 32 procedures.

² Link: https://www.courts.ie/view/judgments/1289f7c7-b5af-4c6a-9c15-340c56da75a5/71a4c3e5-28b9-4de1-9237-2f58fb5ade48/2023_IEHC_420.pdf/pdf

Preliminary Remarks

ALTO notes that this Consultation was published by ComReg and it ran over a 7-week period from 28 July 2023 to 15 September 2023.

ALTO has a healthy and productive working relationship with ComReg over its twenty-four-year history and it actively supports ComReg initiatives that seek to protect and facilitate EU competition laws. EU Laws built upon four pillars: (1) Antitrust and Cartels; (2) Market Liberalisation; (3) State Aid and Control; and (4) Merger Control. In supporting those initiatives, ALTO tends to address ComReg Consultations – regardless of the ComReg Division addressing a particular matter under consultation and as a matter of course, or as an active function of its role in the market. ALTO is an interlocutor and stakeholder representative group concerned with the process of consultation and the mechanics of that process.

1. Minimum default time period

ALTO notes that ComReg proposes to make the minimum default position on consultations a **30-working day** period. We welcome this alignment with the EECC as a minimum threshold principle. We note that ComReg is not bound by this period and could in theory and in practice allow far longer for responses to consultations.

ALTO submits that where any date or event is appointed or allowed for responses to a ComReg consultation, Saturday, Sunday, Christmas Day, Good Friday and bank holidays should not be reckoned in the computation of such a time period. Working day as a period of time should be expressed to begin on or be reckoned from a particular day, that day shall be deemed to be included in the period and, where a period of time is expressed to end on or be reckoned to a particular day, that day shall be deemed to be included in the period and exclude non-working days.

Furthermore, ALTO submits that in order to support moving from 30 days to 30 working days we suggest that the ComReg Action Plan flags that it proposes to issue consultations 6 – 9 months out or ahead of time. We observe that in the last 12 months the gap between issuing a consultation and the final output from ComReg runs to many multiples of weeks and months considering the consultation period allowed for. Consequently, what ALTO seeks by means of change and updates to the consultation procedure and timing should not and does not materially affect the overall consultation process timelines but will allow for better consideration and quality of input.

2. Defined response day and time

ALTO would welcome the standardisation of submission day and timing being either a Thursday or a Friday in a given calendar week and that response or consultation closure times be either 17:00 or 17:30 hours on the appointed day for responses.

3. Extension of time policy

ALTO proposes that extension of time requests should be received by ComReg at any stage up until the closing date of the particular consultation in question. We agree that preferably extension of time requests should be made within 10-days of the issuing of the consultation – where possible. Where it is not possible to lodge an extension of time request within 10 days of the issue of a particular consultation, the request should be subject to a confidential proportionality review exercise. Issues may arise which are either more complex or challenging for operators or undertakings to address and in those circumstances, it is incumbent on the extension requesting stakeholder to make their case to ComReg for assessment, regardless of the request is made.

4. Extraordinary annual time periods – Article 23 EECC “sufficient time”

ALTO requests that ComReg expressly reserves two periods in each calendar year for additional sufficient time purposes. Those periods are:

1. 1 July to 31 August – 8 weeks (School/Annual holiday period); and
2. 20 December to 5 January – 2 weeks (Christmas period).

ALTO submits and requests that where ComReg issues a consultation that either commences or closes within the above two date ranges, that an 8-week (40 working day) default period should apply. The reason for this is that it will lead to a more orderly ability of stakeholders to address the relevant consultations and to allocate resources around acknowledged vacation periods, with sufficient time. Some ALTO members have expressed the view that ComReg should extend this logic to cater for mid-term and other school vacation periods – we ask that ComReg considers this in addition to the block of logical annual vacation periods set out above.

5. 13D Data Collection exercises / Market Analysis / Quarterly Data Reports (time consideration)

ALTO submits that one issue that is particularly challenging is that of data collection exercises whether scheduled or not, arising at the same time or during consultation periods. ComReg should consider what the organisation is requesting of the industry or a given specific undertaking at a point in time, while considering the response period allowed for a market consultation. The reason for making this point is that the same teams in stakeholder organisations will likely have to deal with the 13D, Market Analysis and Quarterly Data Report requests as well as consultation responses. Often times requests for extensions on given consultations have to be made due to

other resource constraints caused by statutory or regulatory requests in overlapping time periods.

6. Overlapping and clustering of consultations

ALTO submits that where ComReg issues more than one consultation in a given period, and regardless of the ComReg Division issuing that consultation (with postal excluded), that the second and subsequent consultation period(s) will default to either 8 (40 working days) or 12-weeks (60 working days) in duration. The rule being that additional time requirement for each standalone consultation will be required and expected unless the subject matter is identical and simple.

ALTO notes with interest that in the past 12 months there have been clusters of overlapping consultations issued:

- Consultations numbering 3 – issued within 2 days in January 2023;
- Consultations numbering 4 – including one postal in just over 2 weeks in March 2023;
- Consultations numbering 3 – issued in less than a week in June 2023; and
- Consultations numbering 2 – issued in less than a week in September 2023.

This overlapping and clustering phenomenon is within ComReg’s operational control and is incredibly challenging and resource intensive for industry when it does occur. It is also quite apparent that the ComReg staff vacation periods appear to be logical consultation issuing and return from vacation points.

ALTO asks for a new “Extraordinary annual time period” to be considered as is set out above, and the overlapping and clustered pattern of issued consultations in 2023 appears to support this request for procedural and operational change.

ALTO is aware that in the week leading up to this consultation, a number of responses to the spectrum lease procedures also fall due today. Notably, the responses on the competition guidelines were in last Monday, so effectively 3 responses were due the same week.

ALTO submits that internal co-ordination is now a must have feature at Senior Management Team and Commissioner level at ComReg to manage consultation processes properly. That is, considering both consultation issue dates, time periods allowed to respond, and return or consultation closure dates. We propose that ComReg publishes all consultation plans in advance, and has records available to indicate consideration of timings in all three categories issue, period allowed and closure.

7. Consultation / mid-consultation clarifications

ALTO submits that where ComReg deems it appropriate – and in the exercise of their discretion – to seek and answer clarification questions in the middle of an open consultation process, that the period of time allowed for that consultation should be reconsidered and extended as a matter of course. This approach is quite rare and usually indicates more complexity in the subject matter under consideration during the consultation process and period.

8. ComReg Consultation House Style

ALTO requests that all consultations are drafted, and boiler plated in what might be termed '*ComReg Consultation House Style*'. That Consultation House Style already exists to a great extent and should be maintained and augmented.

ALTO requests that all consultations:

1. Have standard instructions at the front of the consultation paper outlining the:
 - (a) stakeholder response instructions;
 - (b) duration – opening and closing working day periods of time;
 - (c) email address assigned for the consultation;
 - (d) individual subject matter expert or email inbox assigned by ComReg to field stakeholder clarification queries;
 - (e) proposed format of the consultation – **views or questions** (where questions refer to the Appendix); and
 - (f) appendices or ancillary or relevant documentation accompanying the consultation including links to the ComReg website and reference numbering.
2. Have all consultation questions set out in-line or in-paragraph or in-section. This is to sign-post the issues to the reader or stakeholder;
3. Have all consultation questions set out (as they currently are for the most part) in a standalone Appendix to all consultation papers. The questions should be in word searchable, standard and editable format (not locked);
4. Where a consultation does not contain consultation questions in the formal sense, and that views are welcomed without a given structure, that this is made clear in the instruction's boilerplate.
5. Have all undertaking/operator impacting redactions checked in advance of issuing consultation papers. An example of visible redactions arose in the

Regulatory Governance Model – RGM, consultation Ref. 17/64, and it was rectified only after publication.

The recent ComReg Consultation paper on: (*“Combatting scam calls and texts”*) on network based interventions to reduce the harm from Nuisance Communications – Ref: 23/52, is an example of a recent consultation paper not issued in compliance with the stakeholder anticipated ComReg Consultation House Style. Question formatting was inconsistent, the four consultation questions were not appended to the back of the consultation paper, and the consultation paper had ancillary documentation which was noted as being available upon request.

9. Regulatory Impact Assessments

ALTO observes that often times Regulatory Impact Assessments are not meaningful in nature and tend to ignore market impacts in the more complex consultations ComReg undertakes. While Regulatory Impact Assessments are important, it is inappropriate to use a *pro forma* Regulatory Impact Assessment in isolation to the issues under consultation. The ComReg Consultation paper on: (*“Combatting scam calls and texts”*) on network-based interventions to reduce the harm from Nuisance Communications – Ref: 23/52 also provides a basis to support this observation. The issues in this recent paper were and remain far more impacting than perhaps ComReg and industry first considered, resulting in a required extension of time and an intermediate set of clarification engagements.

10. Individual exceptional circumstances

ALTO is aware that ComReg recently declined to extend the time to respond to a consultation to a stakeholder where that stakeholder and their regulatory staff had been experiencing both absence through sickness and a bereavement at an overlapping time. ALTO suggests and submits that ComReg should consider individual exceptional circumstances carefully and on case-by-case basis and with the designated division director being placed on notice in conjunction with a responsible Commissioner. A process is required to confidentially handle such issues.

Separately, and thankfully rarely, systems issues can arise where email or connectivity issues mean that a paper or response is received slightly outside the due time. We urge ComReg to adopt a pragmatic approach here, particularly when they are placed on notice of the issue in advance of, or around the time of the deadline for submissions.

Comments on Annex 1: Draft Consultation Procedures

1. Introduction

ALTO suggests that ComReg sets out the Article 32 procedures here in some manner. This is in addition to a statement about ComReg's discretion. Article 32 is nuanced and does form part of the overall consultation process, albeit that it comes later and after the national ComReg consultation processes have closed and been considered.

2. Purpose and principles of Consultation

ALTO generally agrees with this section as drafted but would welcome ComReg's proper consideration of what it can do to facilitate more robust engagements. In that regard, we refer ComReg to ALTO's Preliminary Comments above.

3. Form of Consultation

ALTO has made some suggestions above which we hope will assist ComReg. Our suggestions are not meant to be critical, but constructive. It is acknowledged that there is no one-size-fits-all approach to consultation procedures.

4. Marking Submissions

4.1 Duration of consultation

ALTO has thought carefully about this issue. We propose two long stop periods in the calendar year – to cater for vacations – in addition to a proposed standardisation of day of submission/consultation closure and time, whether 17:00 or 17:30 on a given day – a Thursday or a Friday.

4.1.1. Minimum period

ALTO proposes the following changes in highlight and bold font to the text of the ComReg draft:

“ComReg will set a reasonable period of time for consultation, so that participants have sufficient time to submit their views. **ComReg will consider overlapping consultations, annual vacation periods, and open data requests made to the industry at the time of issuing consultations.** Sufficient time means that all relevant stakeholders have time to become informed, examine the issues, debate/dialogue/consult within their organisations and develop a response.

As a default, a period of 30 **working** days is considered to be the reasonable minimum period for consultation, noting the provisions of Regulation 101 of the European Union (Electronic Communication Code) Regulations (S.I. No. 444/2022) which requires that a consultation, “except in exceptional circumstances, shall not be shorter than 30 days.” Where a shorter **or longer** period is required due to exceptional circumstances, or otherwise **and considering vacation periods**, ComReg will, unless it is not possible in the circumstances, allow the minimum period of two weeks recommended by Government Guidance. In all cases where a period of less than 30 **working** days is allowed for consultation, ComReg will give reasons for doing so.”

4.1.2 Extension

ALTO proposes the following changes highlight and bold font to the text of the ComReg draft:

~~“In exceptional circumstances~~, ComReg, at its sole discretion, may extend the period of consultation at its own initiative or at the request of one or more respondents, where adequate and sufficient reasons for the extension request have been provided. A request for extension should be made **where possible** within 10 days of the beginning of the consultation period. ComReg will take into account the amount of time left in the consultation in considering whether to grant the request. ComReg may extend the consultation period for the respondent who requested the extension in **exceptional circumstances**, or for all respondents, and will take into account the reasons for the request in this regard. Where ComReg decides to extend the period of consultation for all respondents, ComReg will give notice of the extension via its website and via e-mail to those persons who are registered with ComReg to receive notifications. **ComReg shall nominate a Commissioner to receive sensitive exceptional circumstances unilateral extension of time requests.**”

4.2 Submission of comments

ALTO generally agrees with ComReg's intentions and requests to stakeholders. Our suggestions in terms of ComReg's House Style and the form and formatting boilerplate of the consultation papers will assist us and other stakeholders greatly. We request that those suggestions be deployed.

4.2.1 Form

ALTO generally agrees with ComReg's position on the issue of form. Stakeholders should endeavour to make feedback as clear and cogent as possible. Participation in consultation is important to the market.

5. Treatment of confidential information

ALTO generally agrees with ComReg's positions concerning confidentiality and data privacy. We have made a note and given an example of a failed set of redactions. Obviously, this is something that needs to be looked at prior to the issuing of a paper or decision concerning confidential or private information. We trust ComReg has the experience with this to continue or re-build the necessary processes to avoid leaks and breaches.

6. Consideration of comments

In ALTO's case we welcome the position Adopted by ComReg. It is often the case that ALTO cannot submit detailed evidence to support a technical or economic position, whether through appropriateness or just a lack of information. This is of course considering ALTO's own requirements to comply with competition law in that regard. However, we do welcome ComReg's policy of publishing responses to consultation and understand that in some instances feedback on a stakeholder-by-stakeholder basis is not practical.

Conclusion

ALTO welcomes this consultation process and makes the above comments and submissions in order to make what is an industry critical procedure more efficient and bearable for all stakeholders. We specifically call on the Commissioners and Division Directors to internally co-ordinate in a far more structured manner to achieve '*sufficient time*' goals for all stakeholders involved in the process of consultation.

As ComReg is aware, ALTO engages a lot with consultation outputs and procedures so we would like our submissions to be given thorough and due consideration.

ALTO
15th September 2023

Re: An Posts Observations on ComReg's Consultation Procedures Review (ComReg 23/73)

1. Introduction

- 1.1. The Commission for Communications Regulations ("ComReg") has issued a public consultation on its Consultations Procedures, which date to 2011.¹ A review of these procedures is welcomed. An Post is disappointed that ComReg has not taken this opportunity to overhaul such procedures to accord with European best practice. Moreover, An Post is surprised that ComReg proposes the choice removal of items by ComReg in the new proposed procedures.²
- 1.2. It is worth stressing at the outset, that enhancing public engagement³ in relation to regulatory affairs arguably strengthens democratic representation within the State, facilitates input into decision-making and improves transparency, accountability and stakeholder acceptance of policy and budgetary decisions.⁴
- 1.3. Therefore, it is undisputable that stakeholder engagement procedures should promote, develop and implement a coherent and integrated approach to engagement in the decision making process. Unfortunately, An Post does not believe that the proposed procedures go far enough in securing this objective or encompass the core principles as posited by the European Union ("EU")⁵.

2. Ireland's Regulatory Performance

- 2.1. OECD metrics for 2017 ranked the European Union a 3.4 (out of 4) in relation to stakeholder engagement on policy, regulations and initiatives. Ireland, over the same period, scored an aggregate result of 1.7 (out of 4). Meaning

¹ Commission for Communications Regulations, *Information Notice on ComReg Consultation Procedures*, (11/34a, 6th May 2011).

² In this regard, An Post is deeply concerned by requirement to provide responses being removed.

³ Throughout this document the terms stakeholder engagement; public engagement; stakeholder consultation; and public consultation will be used interchangeably. Nothing turns or should be read into the alternating use of these terms and each, for this purpose, is intended to denote the same concept.

⁴ Browne, *The Law of Local Government*, (2nd ed., Round Hall, 2020).

⁵ Commission of the European Communities, *European Governance: A White Paper*, (25th July 2001, Brussels, COM(2001) 428); Commission of the European Communities, *Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission*, (11th December 2002, Brussels, COM(2002) 704 final); Commission Staff Working Document, *Better Regulation Guidelines*, (3rd November 2021, Brussels, SWD(2021) 305 Final).

across core fundamentals such as: (a) Methodology; (b) Oversight; (c) Adoption; and (d) Transparency.⁶

2.2. 2021 OECD statistics on stakeholder engagement in developing subordinate regulation/policy/procedures placed Ireland at the bottom of 36 countries and the European Union when scored across:⁷

- (i) Methodology;
- (ii) Oversight and Quality Control;
- (iii) Systematic Approach; and
- (iv) Transparency.

2.3. An Post firmly echoes the OECD's sentiments that:

[s]takeholder engagement should not be considered a checkbox exercise but be purposefully designed and conducted with adequate time and at minimal cost for the participating stakeholders while avoiding duplication to minimise consultation fatigue.⁸

2.4. Therefore, given a number of proposed changes to the Consultation Procedures, such as the removal of the requirement to provide responses, An Post urges that ComReg take this opportunity, to re-orientate stakeholder engagement towards the best-in-practice approach enumerated by the European Union (detailed below). To ensure effective, appropriate and detailed participation it is fundamentally important "... *that participation opportunities are adequately communicated and that communication is inclusive, accessible and compelling, while also ensuring adequate communication around the result of these engagements.*"⁹

⁶ Organisation for Economic Co-operation and Development, *Better Regulation Practices across the European Union*, (19th March 2019, OECD Publishing, Paris); <https://pai.ie/blog-oecd-report-shows-that-ireland-needs-to-improve-regulatory-performance/>.

⁷ Organisation for Economic Co-operation and Development, *OECD Regulatory Policy Outlook 2021*, (6th October 2021, OECD Publishing, Paris).

⁸ Organisation for Economic Co-operation and Development, *OECD Public Governance Reviews - Strengthening Policy Development in the Public Sector in Ireland*, (11th May 2023, OECD Publishing, Paris) at p.63.

⁹ *Ibid* at p. 63.

3. EU Principles for Stakeholder Engagement/Better Regulation

3.1. Improving public engagement to ensure better governance has been a major concern for the European Commission for over twenty-years.¹⁰ Key to resolving this issue is ensuring that key stakeholders do not feel alienated from the Consultation and Governance process. As noted at the outset, stakeholder engagement underpins democracy and the rule of law across all Member States. In this regard, the White Paper outlined five key principles to ensure better regulation:¹¹

- Openness - Organisations/Institutions should work in a more open manner which includes, amongst other factors, using accessible language which facilitates engagement across all cross sections of society and relevant stakeholders;
- Participation - The quality, relevance and effectiveness of new policies/regulations/procedures is inextricably linked to ensuring wide participation of relevant stakeholders;
- Accountability - Processes and functions need to be transparent while institutions must explain and take responsibility for what it does;
- Effectiveness - All engagement should attempt to be as effective as possible, to ensure this engagement must occur as soon as is reasonably possible to ensure stakeholders have an impact on the formulation of the main aims, methods of delivery, performance, indicators and where appropriate the initial outlines of that policy. Therefore, it must be clear:
 - What issues are being developed;
 - What mechanisms are being used to consult;
 - Who is being consulted and why; and
 - What has influenced decisions in the formulation of policy.
- Coherence - There must be coherence in the approach and purpose to reduce stakeholder frustration, confusion and fatigue. Moreover,

¹⁰ Commission on the European Communities, *European Governance - A White Paper*, (25th July 2001, Brussels, COM(2001) 428).

¹¹ *Ibid.*

Coherence should lead to an understandable procedure which is also fair and transparent. To ensure this is achieved consultation processes should include mechanisms for feedback, evaluation and review.

- 3.2. While each of these individual principles is important they can only be fully realised and successful when adopted through one action/policy/purpose/procedure. An Post argues that these key principles are: (i) not encompassed in the Proposed Consultation Procedures; and (ii) not given their full intended effect in the Proposed Consultation Procedures. This is particularly evident in ComReg's decision to remove the requirement to provide a response(s).
- 3.3. The European Commission has opined in its Better Regulation guidelines that stakeholders should receive adequate and thorough feedback at the end of the consultation activities. It is critical for respondents to know how, and to what extent, their input has been taken into account and to understand why certain suggestions have not been taken up. Providing effective feedback will contribute to the overall transparency of policymaking, enhance its accountability and credibility, and potentially lead to better responses to future consultations.
- 3.4. By including flexibility not to follow the Proposed Consultation Procedures, ComReg risks undermining the entire purpose of such procedures along with the trust and confidence which stakeholders can place in such consultations/engagement. While An Post notes that in certain restricted and exceptional circumstances it may be appropriate not to follow published procedures; these should be limited and clearly defined.
- 3.5. The key features as outlined were subsequently endorsed, in their totality, in a Communication for the Commission.¹² However, it was highlighted in the Communication that these principles represent the minimum standards that should be strived for and adhered to in the view of the European Commission.¹³ When approaching consultations it must be borne in mind, as explicated by the Communication from the Commission:

¹² Commission of the European Communities, *Communication from the Commission - Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission*, (11th December 2002, Brussels, COM(2002) 704 final).

¹³ *Ibid.*

... good consultation serves a dual purpose by helping to improve the quality of the policy outcome and at the same time enhancing the involvement of interested parties and the public at large.¹⁴

3.6. It is apparent that these principles have attained a status as the *locus classicus* for good governance and better regulation. Not only is this evident from the matters outlined above, but this core features were again reiterated by the European Commission, Better Regulation Guidelines.¹⁵ But importantly, as stated in the Better Regulation Guidelines, these principles must be complemented by the following features:¹⁶

- Clarity - All consultation documents should be clear and concise;
- Targeting - It should be ensured that the consultation strategy targets all interested parties so that they have an opportunity to express their opinions;
- Outreach - ensure adequate awareness by adapting communication channels to the needs of all target audiences;
- Sufficient time for participation - As a rule, European Commission, 'calls for evidence', which include public consultations, are published for 12 weeks.¹⁷ Even by ComReg's own admission, the 30 day time limit adopted is merely the minimum prescribed by European Regulation. An Post argues that these minimum requirements merely represent what is necessary to ensure stakeholders are not prejudiced. Instead, An Post suggests that the opportunity should be taken to by ComReg to create a leading approach in line with the European Commission's Guidelines; and
- Publication of Contributions and Results - An Post has already outlined its concerns in ComReg's failure to encompass this in the Proposed Consultation Procedures.

¹⁴ *Ibid* at p.5.

¹⁵ European Commission, *Commission Staff Working Document - Better Regulation Guidelines*, (3rd November 2021, Brussels, SWD(2021) 305 final.

¹⁶ *Ibid* at p.15.

¹⁷ *Ibid*.

4. Conclusion

4.1. An Post welcomes the opportunity to provide feedback on the Proposed Consultation Procedures and remains committed to working with ComReg to develop a leading approach to such consultations.

4.2. An Post looks forward to future engagement with ComReg on the above issues, in particular:

- (i) How ComReg intends to address these concerns;
- (ii) How ComReg will ensure that the minimum key principles are given full effect both in the Proposed Consultation Procedures and ComReg's work more generally moving forward;
- (iii) Why there has been a complete removal of any references to Regulatory Impact Assessment's (RIA's)? RIA's perform an important task in underpinning and supporting engagement, An Post believes it would fly in the face of the EU principles to see such a key part of the toolkit disregarded; impact assessments should be transparent, objective and balanced, as it provides the evidence base for the decision-making.
- (iv) The following should be clear and easily understood:
 - the nature of the problem being addressed;
 - why regulatory action is appropriate;
 - the pros and cons of different courses of action; and
 - who / which entities would be affected.
- (v) While An Post welcomes the express consideration of confidential information, An Post nonetheless requires clarity as to the reasoned basis and purpose of this provision? Moreover, An Post is concerned about the impact such a provision might have on the transparency of the procedure unless clearly defined.
- (vi) In the absence of the above, why ComReg does not feel the need to address these concerns and implement the minimum standards as enumerated above.

eir's Response to ComReg Consultation on Consultation Procedures Review

ComReg Document: ComReg 23/73



15 September 2023

DOCUMENT CONTROL

Document name	eir response to ComReg Consultation 23/73
Document Owner	eir
Status	Non-Confidential

The comments submitted in response to this consultation document are those of Eircom Limited and Meteor Mobile Communications Limited (trading as 'eir' and 'open eir'), collectively referred to as 'eir Group' or 'eir'.

Please note that, for the purposes of the Freedom of Information Act 2014 and the Communications Regulation Act 2002 (as amended) and in the context of the eir Group's general rights and obligations, information supplied by the eir Group to you may contain confidential, commercially sensitive or price sensitive information consisting of financial, commercial, technical or other information, whose disclosure to a third party could result in financial loss to the eir Group, could prejudice the competitive position of the eir Group in the conduct of its business, or could otherwise prejudice the conduct or outcome of contractual or other negotiations to which the eir Group is a party.

Accordingly, you are requested to contact a member of eir Group's Regulatory Strategy Team where there is a request by any party to have access to records which may contain any of the information herein and not to furnish any information before the eir Group has had an opportunity to consider the matter.

Outlined below is eir's response to the questions in ComReg's Consultation 23/73 on its Consultation Procedures Review.

Response to consultation

Response summary

eir welcomes the opportunity to respond to a review of ComReg's consultation procedures. eir considers public consultation of stakeholders as an important channel to participate in policy and regulatory decision making in the sector, and ensure that stakeholder views are taken into account. However, there have been issues with ComReg's approach to consultation in recent years, which have not been resolved in the proposed guidelines.

These issues include:

- lengthy delays to scheduled consultations without explanation;
- overlapping of significant consultations without providing adequate response time;
- delays to market reviews and related consultations;
- delayed outcomes of consultations;
- lack of clarity around extensions granted and rejection of extension requests;
- proposed measures that are not within the legal framework; and
- a failure to conduct fully evidence-based and forward-looking consultations.

ComReg in its responses to consultations rejects evidence-based submissions without providing any evidence for doing so. eir also notes that it has been 12 years since ComReg published updated consultation guidelines.

These issues have resulted in the European Commission vetoing proposals and threatening infringement actions, as well as negatively impacting the transparency, fairness and balance or proportionality of consultations. Despite this, ComReg has failed to take the opportunity to correct its poor approach to consultations in the proposed procedures document. eir considers the proposed amended consultation procedure document is not sufficient as:

- ComReg does not incorporate its legal obligations into the document such as: measures it is required to consult on under S.I. No. 444 of 2022 the European Union [Electronic Communications Code] Regulations 2022 ["EECC Regulations"]; its requirement to conduct evidence-based, forward-looking analysis or considerations of voluntary commitments proposed as part of responses to consultation.

- ComReg's proposals do not fulfil or reflect the three consultation principles it outlines in the procedures document.
- The procedures are not tailored to the telecoms sector or the specific measures that ComReg has to consult on under the EECC Regulations.
- ComReg has not outlined how it will ensure fair and transparent participation in consultations such as through practical elements like adequate response times or fair extension procedures.

To improve the consultation process and ensure it meets legal obligations, in its procedures document ComReg should:

- Provide for a consistent approach to consultation across ComReg, including a default response period of 12 weeks (60 working days). This response period will more fairly recognise the level of effort and resources required to respond to ComReg's consultations, which can run to hundreds of pages of analysis and commentary, allow additional time for holidays where required, and be based on working days.
- Ensure that the process for granting extensions is fair and transparent so if extensions are granted, they are granted to all stakeholders.
- Clearly state its legal obligations regarding consultations in its procedures document, and create a separate tailored consultation procedure document for the telecoms sector.
- Avoid overlaps of deadlines and response periods for significant consultations, and if this is not possible, account for this in a longer response period.
- Revise the current action plan updates and implement monthly targets rather than quarterly so respondents can better plan their resources.
- Run a 12-month rolling calendar consultation plan that is updated monthly and provide reasons for any delays in issuing scheduled consultations.
- Commit to ensuring its proposals and draft measures are evidence-based and forward looking, and in line with its legal obligations.
- Commit to completing market reviews and corresponding consultations within legal timelines.

As there are no specific questions, eir has outlined its view on ComReg's proposed consultation procedures in line with the sections in ComReg's consultation document.

1. Purpose and principles of Consultation

1. eir is of the view that ComReg has not fulfilled its obligations or intentions in its draft proposal as:
 - It is not clear how the three key principles have been implemented in the proposal and ComReg is not clear on the specific measures it has to consult on as specified in the EECC Regulations.
 - The guidelines are not tailored to the telecoms sector so are not fulfilling their purpose.
 - ComReg has not committed to an evidence-based, forward-looking approach to consultations as required under legislation.

Principles not implemented and legal obligations not clear

2. eir considers ComReg's three key principles of consultation to be useful overall. However, it is not clear how the three key principles have been implemented into the proposed consultation procedures. For instance on the first principle, ComReg has not demonstrated how it will ensure "real listening" in its guidelines document, such as outlining how it will analyse submissions or ensure consistency in its approach to evaluating submissions.
3. eir also considers that principle two has not been implemented in the draft procedures. ComReg states "*Consultation should be targeted at and easily accessible to those with a clear interest in the policy in question,*" but continually emphasises the importance of accounting for the impact of policy on wider society rather than industry.
4. eir is concerned that in its procedures ComReg has not clearly defined the instances in which it is required to consult as clearly stated under Regulation 101 (1) and (2) of the EECC regulations. eir notes that ComReg can choose to consult outside of its legal obligations, yet it is essential for transparency in the consultation procedure that ComReg clearly states its legal obligations to consult, rather than using vague statements such as "*...in many instances a public consultation is a legal requirement*"

and part of the steps that ComReg must take before making a decision.”

5. ComReg has also not explained in its procedures document that it will publish the text of the proposed measure, give reasons for it, including which statutory powers gives rise to the measures. These steps are required under Regulation 101 (3) and should be reflected in the ComReg guidelines to ensure consultations meet legal obligations. This is particularly concerning as, for example, in ComReg consultation 23/03 ComReg has proposed a “statement of compliance” obligation that goes beyond the EECC Regulations and would require a special request be made to the European Commission to implement. If ComReg committed to providing the explicit statutory powers that give rise to its propose measures, as it is required to do, it would avoid consulting on measures that go beyond the EECC Regulations.

The proposed guidelines are not tailored to the telecoms sector

6. eir is concerned that ComReg has not tailored its guidelines to the telecoms sector and has amalgamated the telecoms consultation process into this proposal. eir is unclear on why ComReg has combined the consultation process for the telecoms sector and the postal sector as it has not provided reasons for doing so. This is also problematic as there are specific measures under legislation that ComReg must consult on in the telecoms sector that are not relevant to the postal sector.
7. ComReg has also utilised statements in the Government guidelines¹ on consultation without adopting them to provide clear guidelines on consultation in the telecoms sector. For instance, ComReg overlooks the importance of gathering industry views and evidence in consultations as it focuses on “*the possible impact of the proposal on the wider community*”. eir understands that regulatory measures and decisions introduced by ComReg can affect wider society, but as the regulator in the telecoms sector, ComReg needs to also highlight the function of consultations to collect industry views and participation in consultations. eir considers the impact of the majority of measures that will be consulted on, will have a direct and clear impact specifically on industry players and this should be reflected in the guidelines.
8. eir is also concerned that ComReg refers to “policy” in general throughout the consultation document rather than providing guidelines on specific telecoms measures that ComReg has to consult on as set out in Regulation 101 of the EECC Regulations.

¹ <https://www.gov.ie/en/publication/e9b052-consultation-principles-and-guidance/>

9. ComReg does not mention regulatory impact assessments (RIAs) in its procedures which are an important and required part of consultations in the telecoms sector. In fact, the Government guidelines state that care should be taken to ensure legal requirements are complied with when consulting, and the requirement to conduct RIAs in relation to proposals for primary legislation, significant statutory instruments and proposals for EU Directives and significant EU Regulations. ComReg should therefore provide some guidance on how it will conduct RIAs as part of the consultation process in its guidelines to ensure respondents are fully informed on the proposed measures.
10. eir considers that ComReg by not tailoring the procedures document is not fulfilling principle two which states, “*Consultation should be targeted at and easily accessible to those with a clear interest in the policy in question.*”

No consideration for evidenced based, forward-looking approach

11. eir considers that ComReg has not proposed an evidence-based, forward-looking approach to consultations procedures as required by the EECC Regulations under Regulation 49. ComReg has not made a reference to how its consultations procedures will ensure forward-looking regulation or market reviews.
12. In recent years ComReg proposals included in market review consultations have not been forward-looking or evidence-based and have led to the European Commission vetoing a proposed ComReg decision in respect of the FACO market. In response to ComReg consultation 23/03, eir highlighted that ComReg failed to provide evidence for its proposals or take a forward-looking view of the market by including Virgin Media fibre roll-out in its analysis and proposals. ComReg should clearly state in its procedures document, how it will ensure its consultations are evidence-based and forward-looking to avoid further European Commission intervention.
13. In addition, ComReg has not included reference to maximum review periods for market analysis and corresponding consultations in its procedures document. This is problematic as ComReg continually delays market reviews and it has recently delayed the completion of the market review and proposed measures under Consultation 23/03 until Q1 2024, going beyond the five-year maximum market review period. The European Commission has also previously threatened infringement proceedings against Ireland regarding delayed market reviews.

14. ComReg should therefore, incorporate a commitment to meeting market review period timelines in its consultation procedures document.

2. Form of consultations

15. eir notes the procedures document states a contact point within ComReg will be included in the consultation document. However, ComReg has not created a specific single information point through which all current consultations can be accessed as required under Regulation 101 (6).
16. ComReg currently stores its consultations amongst all publications on its website and has not provided any clarity on whether this fulfils the single information point or if there will be changes made to create such an information point. eir considers it would help enhance clarity and transparency of consultations for all stakeholders if a clear, consultation section was developed on the ComReg website.
17. eir also considers ComReg should use a standard layout for consultation documents to ensure transparent and consistent procedures across ComReg. It would be useful to include the submission and contact details at the start of the document, and a list of questions either at the start or end of the document. It would also be helpful to include a list of relevant documents and research papers published as part of the consultation, to make it clear which documents are relevant.
18. To assist with transparency for respondents, ComReg should provide a marked-up document in consultations where changes are proposed to an existing document. ComReg should also ensure to use clear, plain language where possible that is easy to understand, and avoid overly lengthy consultation documents.
19. eir welcomes the opportunity to participate in preliminary discussions with ComReg prior to formal public consultation. However, ComReg should ensure that any discussions are balanced, transparent and inclusive by notifying all operators they are taking place and affording all interested parties the opportunity to engage with ComReg in preliminary discussions.

3. Making Submissions

20. eir considers that ComReg has not set out specific consultation procedures that detail the practical elements of the consultation process, and has proposed a limited approach to consultation procedures that will impact on the effectiveness of the process, as outlined below.

Response period

21. eir considers that ComReg should state the time period it will set for consultations instead of providing a vague statement, “set a reasonable period of time” in its procedures document. eir is basing this proposal on the frequency of extension requests made by eir and industry in recent consultations, which highlight the inadequacy of the short time periods ComReg typically sets for consultation response.
22. If ComReg provided a longer response period at the outset, this would enable more efficient planning and use of stakeholder’s resources to respond to consultations. This would also enhance the transparency of consultation procedures, as the likelihood of extension requests would be lower, and there would be increased consistency in consultation procedures across different sections of ComReg.
23. eir proposes a period of 12 weeks (60 working days) as a default for consultation response, which is in line with the Government guidelines on public consultation, which outlines that a consultation process will ordinarily be expected to vary from 2-12 weeks. Other regulators in Ireland also use a 12-week consultation period as, for instance, the Central Bank of Ireland² provides 12-weeks for consultation response in general, and accounts for extra time in consultations that run over holiday periods in the summer and over Christmas.
24. eir notes that ComReg affords itself long periods of time between consultations, to evaluate response, and it is only fair that interested parties be afforded sufficient time to fully evaluate proposals and make reasoned submissions. Longer default response periods will also enable providers to adequately manage resources, including internal subject experts that have to balance consultation responses with

² <https://www.centralbank.ie/docs/default-source/regulation/industry-market-sectors/credit-unions/cbi-policy-on-consultations.pdf?sfvrsn=4>

day-to-day responsibilities, and the use of external consultants where required.

25. ComReg's procedures are too focused on a scenario in which the consultation period would be less than the minimum 30-days specified in the Regulations. eir is unclear why ComReg references the minimum two-week period for consultation as recommended in the Government guidelines, as the Code and Regulation 101 state that only in "exceptional circumstances" a consultation period may be less than 30 days. Instead, the focus should be on what is considered an exceptional circumstance, rather than considerations of shorter consultation period that may be acceptable. eir acknowledges it may not be possible to specifically define all "exceptional circumstances" but guidance should be provided.
26. eir also highlights that the 30 days set out in the EEC Regulations is a minimum consultation period, "shall not be shorter than 30 days." [emphasis added]. In that regard, the proposal that "As a default, a period of 30 days is considered to be the reasonable minimum period for consultation," does not appear to comply with the language of either the EEC Regulations or Directive 2018/1972 which the Regulations transpose. The Directive states, in Article 23 that national regulatory authorities are required to "give interested parties the opportunity to comment on the draft measure within a reasonable period, having regard to the complexity of the matter, and except in exceptional circumstances, in any event not shorter than 30 days." Recital 66 of the Directive also states that when engaging in consultation, national regulatory authorities give interested parties, "sufficient time to the complexity of the matter to provide their comments and take account of their comments before adopting a final decision." In circumstances where the Directive, and the EEC Regulations both state that, for example a consultation period of 29 days is permissible only in exceptional circumstances, it does not appear to be compliant with this, to propose 30 days as the 'default' period when it is only one day above what is considered an unacceptably short period justifiable only in exceptional circumstances. This is particularly the case taking into account the length of time ComReg requires to assess its own Consultation documents, and the considerable length of those documents.
27. ComReg should also define the consultation period in terms of working days. It would be unreasonable and disproportionate to expect industry to require staff to work outside of the standard working week (Monday to Friday). In addition, ComReg should exclude public holidays from the consultation period, including additional time to cover holidays in consultation periods where required. eir notes that a number of

ComReg consultations and Decisions have been issued shortly before public holidays, which reduces the time available to interested parties. This appears to be contrary to the requirements of the Directive to give parties a 'reasonable period' and 'sufficient' time; this issue can be dealt with by defining consultation periods in terms of working days.

Extension requests

28. eir welcomes the opportunity to request an extension when it is needed. eir has requested extensions in the past for practical reasons such as subject matter expert staff availability and other competing demands.
29. eir considers that ComReg should ensure that its extension granting procedures are transparent and fair, and that any extension should be granted to all stakeholders. eir disagrees with ComReg's proposal that "*ComReg may extend the consultation period for the respondent who requested the extension, or for all respondents,*" as this will not create a transparent process. eir notes the recent irregular granting of an extension in respect of ComReg consultation 23/14 on the customer charter proposal, after the submission date had passed. This meant that some stakeholders had more time to respond to consultation and did not provide for "open, transparent and fair" procedures as ComReg states in its proposed procedures. eir also considers that ComReg should have to provide reasons for denying an extension request.
30. The majority of extension requests made by eir are done so for practical reasons. For instance, staff unavailability or poor scheduling by ComReg like overlapping of significant consultations that have relatively short response periods with other demands such as information requests. This occurred earlier this year in regard to consultations 23/03 and 23/04 which were significant consultations run in parallel. Extension requests were rejected, despite overlap with other consultations response deadlines during the same period (23/02 and 22/109) and information requests. Therefore, if these reasons are clearly presented to ComReg, particularly when a number of operators make extension requests, ComReg should have to provide a reason as to why it does not consider practical reasons an adequate basis to grant an extension. This will ensure participation in consultations is in accordance with ComReg's three principles.

Scheduling and notice periods

31. ComReg has not referred to the scheduling of consultations and publishing its action plan in the procedures document. eir considers that ComReg's current action plan is ineffective as any updates to consultation publishing dates are notified to providers after the delay in publishing has occurred. ComReg should publish monthly updates on deadlines instead of the current quarterly updates, and run the plan on a 12-month rolling basis. ComReg must also provide reasons for any delays in publishing scheduled consultations to ensure transparency in the process.
32. eir would be able to more effectively prioritise and utilise its resources if it was clear on the consultations it can expect to be issued during each year, and if proposed timelines were actually followed by ComReg. eir has already highlighted the significant delay in consultations in recent years, and notes the fact that this consultation was not set out in ComReg's action plan. eir has had to unexpectedly reorganise resources to respond.
33. eir also considers that the longer response periods it has proposed should not delay progress on implementing measures or lead to ComReg failing to meet market review periods. ComReg will need to take a forward-looking approach and build in these longer response periods into its action plan.
34. ComReg should incorporate into its action plan maximum periods for it to respond to consultations and make decisions. eir notes that ComReg is generally slow to make decisions following consultations, as seen in the copper switch off consultation [ComReg consultation ComReg 22/13R]. The draft decision following this consultation was published a year later, despite repeated requests for clarity by industry on this significant issue.
35. Clear scheduling and adequate notice of consultations would provide fair and transparent consultation procedures; consistency in the approach to consultations across ComReg, and ensure stakeholders can fully respond to consultations, fulfilling ComReg's three principles.

No redress or complaints about process

36. eir considers in its procedure document, ComReg should provide a channel for complaints and redress should a consultation not follow published procedures or legal obligations under the EECC Regulations. This would help to ensure

transparency and fairness in the consultation procedure.

37. In addition, ComReg should provide for frequent reviews of the consultation process to ensure it remains in line with legislative obligations, and addresses any issues that operators raise with the procedures during consultations. This would also prevent such a long period occurring again between reviews of the consultation procedures. eir notes the Government guidelines on consultation also recommends regular reviews of the consultation process.

4. Consideration of comments

Evaluation of contributions and outcome

38. eir values the consultation process as an important channel to provide its view and evidence on measures that will impact its commercial decisions and revenues, as well as technological developments that impact all of society. However, ComReg has not outlined in its proposal how it will evaluate responses, meaning it is not clear how eir's responses to consultations will be used. Instead, ComReg appears to be more concerned with keeping the length of submissions short rather than how it will use the evidence and views in these submissions to inform its decisions.
39. eir notes that under Regulation 101(5) ComReg does not have to amend measures after considering any representations it receives. However, eir suggests that ComReg include steps in its procedures document on how it will consider representations to fulfil its principle on "real listening" and consistency in consultation approach across ComReg.
40. eir proposes that ComReg should also outline how it will review proposals for voluntary commitments in response to consultations in its procedure document. Voluntary commitments are an important regulatory tool, in respect of which there is an explicit obligation to publicly consult under Article 79(3) of the Directive. This obligation to consult would appear to be caught by the obligation in Regulation 101(6) and in Article 23(3) to publish the applicable consultation procedures. ComReg should account for these in its procedures to ensure transparency and fulfil its legal obligations. eir notes that ComReg did not account for voluntary commitments in its RFTS-FACO decision which was highlighted by the European Commission.

Telecommunications Industry Ireland submission to ComReg Information Notice 23/73 Consultation Procedures Review

15 September 2023

Telecommunications Industry Ireland (TII) welcomes the opportunity to respond to ComReg Information Notice 23/73 Consultation Procedures Review because this is a systemically important issue. ComReg consultations are run professionally. Therefore, the following suggestions are aimed at further improving ComReg's consultation procedures to help ensure that it gets well evidenced submissions of the highest possible quality.

Annual Action Plan

It is appreciated that the indicative timelines for complex consultations published in the Annual Action Plan can change for a variety of reasons, including for reasons completely outside of ComReg's control. There are however very significant implications for industry when these indicative timelines are deviated from. This is because in the absence of other information companies have based their resource planning on these timelines, including arranging expert resources (internal and external) that are required to provide a comprehensive response to the consultation.

Changed timelines for complex consultations can be particularly problematic when external consultants or scarce internal technical resources are required. This should be borne in mind when ComReg is setting the deadline for such rescheduled consultations.

To help industry cope with changes in timelines for complex consultations it is recommended that ComReg review this aspect of its Annual Action Plan every fortnight. Once it becomes aware of a potential change in the timeframe for a consultation this should be included and highlighted in a different colour so that companies can adjust their resource planning accordingly. This simple change would be of great benefit to resource planning throughout industry.

The Action Plan document contains a significant amount of information on both internal and external action items. It would help industry if the structure of this document was changed to highlight where items refer to consultations/engagements with industry.

Management of Consultations

TII notes a "single information point through which all current consultations can be accessed" is required under Regulation 101 of the European Electronic Communications Code Regulations (S.I. No. 444/2022).

ComReg does an enormous amount of work through its consultations. To make this important aspect of its work more visible and accessible to all stakeholders, new entrants in particular, it is proposed that a web page be created that lists all decisions with status information on all related consultations (e.g. opening and closing dates, any extensions and an indication if it is a full consultation or a pre consultation). This webpage should be updated on a weekly basis.

Where changes are envisaged to an existing document, ComReg should explain the nature of the changes and provide a marked-up document (e.g. as was done in the case of the European Electronic Communications Code revised guidelines).

It should also be possible to register an interest in a consultation and to then receive automated update emails regarding the consultation e.g. granting of an extension.

Consultation Procedures Document

It is suggested that the forthcoming Consultation Procedures Document includes reference to obligations on ComReg such as those measures it is required to consult on under the European Electronic Communications Code Regulations (S.I. No. 444/2022).

Duration of Consultations

- Minimum Period

The minimum duration of consultations should be 30 working days. Up to 60 working days is appropriate for more complex consultations and is in line with the Government guidelines on public consultations which state that consultations can ordinarily be expected to last between 2 and 12 weeks. This is proposed because in such consultations it will be essential to engage external consultants/internal experts so that submissions fully address the complex technical issues under consultation. In addition, companies will be able to adequately manage resources, including internal subject matter experts, who have to balance the work involved in consultations with their day-to-day responsibilities.

Consultation response periods that span August should automatically have 30 working days added to the response period duration. Consultation response periods that span the Christmas/New Year period should automatically have 10 working days added to the response period duration. This is proposed because virtually all ComReg consultations require input from different parts of the responding company in addition to the availability of senior management for review and final approval.

- Default Period

The minimum period should be different to the default period.

Extensions

It should be possible to make a request for an extension to the response period at any time up until closing date but preferably within 10 working days of the launch of the consultation. If an extension is granted, it should be granted to all stakeholders to ensure transparency and fairness.

Deadline for Responses

All consultations should have a standard response deadline of a working Friday. A specific time should not be specified. If the last day of the response period is other than a working Friday, then the response period should extend to the next working Friday.

Overlapping Consultations

If possible, the timing of consultations should be planned to avoid consultation response periods overlapping. When this is not possible the duration of the consultations should take the simultaneous demands on respondents into account.

Format

As generally the practice by ComReg, there should be a standard layout for consultation documents with response instructions in the first section. This would help to ensure transparency and consistency for all ComReg consultations. Where there are specific consultation questions, a list of the text of these should be included in a standalone appendix at the end of the document.

Where there are specific consultation questions, a list of the text of these should also be provided in editable Word format to facilitate their incorporation into responses.

Publication of Submissions

ComReg's current policy is to only publish the non-confidential responses when the final statement is being published. It should consider adopting a similar approach to that adopted by OFCOM whereby non-confidential responses are published much earlier in the process, thereby allowing other stakeholders to review and comment. This has the benefit of leading to further evidence or insights being provided on the topic under consultation.

Conclusion

The members of Telecommunications Industry Ireland look forward to continuing to work constructively with ComReg through its public consultations.

END

**Three Response to ComReg
Consultation Procedures Review
ComReg Document 23/73**

15th September 2023



Three.ie

Contents

1 Summary 3

2 Responses to Consultation Topics 3

 Draft Procedure heading - Purpose and Principles of Consultation 3

 Draft Procedure heading - Form of Consultation 3

 Draft Procedure heading - Duration of Consultations - Minimum Period 4

 Draft Procedure heading - Duration of Consultations – Extensions 6

 Draft Procedure heading - Submission of Comments – Form 6

 Draft Procedure heading - Treatment of Confidential Information 7

 Draft Procedure heading - Consideration of Comments 7

NON-CONFIDENTIAL

1 Summary

Three welcomes the opportunity to comment on the procedures to be used by ComReg when it consults with stakeholders as part of the regulatory process.

An effective consultation process, allows participants to provide properly considered and developed responses, facilitates decision-making, reflects the views of the widest range of stakeholders, and improves the quality of decisions, including by avoiding unforeseen adverse outcomes.

Well informed decisions, based on a range of views and inputs are likely to result in better overall outcomes for consumers, service providers, other stakeholders, and the economy as a whole.

In the light of this Three wishes to make observations on the Draft Consultation Procedures with a view to them being refined in order to allow the most effective engagement by respondents.

Three has structured its comments against each of the headings in the draft procedure.

2 Responses to Consultation Topics

Draft Procedure heading - Purpose and Principles of Consultation

Three notes ComReg's commitment to conforming to the three principles of consultation. Three also notes that while these are expressed in a standalone form in the draft Procedures they are derived from the principles set out in the "Consultation Principles & Guidance" (the Guidance) published by the Department of Public Expenditure, NDP Delivery and Reform (the Department).

In the light of this Three believes that it is appropriate to assess the ComReg draft Procedures for consistency with the entirety of the Guidance published by the Department.

Draft Procedure heading - Form of Consultation

Three notes that ComReg intends to use its website as the primary mechanism for the dissemination of consultation documents. Given the importance of the consultation process, and in order to ensure maximum transparency and engagement, Three believes that ComReg should consider a dedicated section within its website for consultation related documents (including updates, extension notifications, etc). These could be mirrored from the main publications section of the ComReg website. Having such a separate section would differentiate consultations from the general flow of publications on the ComReg website and allow stakeholders to more readily identify and access consultations in a timely manner. Three does not consider the current filter function on the publications section of the ComReg website to offer the same level of transparency or visibility.

In respect of specifying the closing date for submissions, Three suggests that ComReg use a standard layout for consultation documents with the closing date and response instructions in first section.

Draft Procedure heading - Duration of Consultations - Minimum Period

Before making detailed observations on the draft procedures Three believes it is appropriate to set some context for the topic of the minimum period for consultation responses.

Historically the period between the closing date for a Consultation and the date of a ComReg decision is typically multiples of the period given to stakeholders to respond to a consultation.

ComReg's Action Plan sets out proposed timeframes for issuing a number of consultations. Some of the target dates are up to 12 months in the future.

It is clear therefore that the consultation response period makes only a small contribution to the overall elapsed time between ComReg planning a workstream requiring a consultation and this process yielding an output.

Extending default response periods would therefore not affect the overall process of regulation.

Paragraph 14 of the Guidance issued by the Department state:

“13. The amount of time required for a consultation will depend on the specifics of the proposal, its objectives and complexity, its likely impact, and the diversity and number of interested parties. Consultation should not make unreasonable demands of people being consulted or assume that they have unlimited time to devote to the consultation process.

14. Consultations should take place over a reasonable period of time, so that participants have sufficient time to submit their views. Sufficient time should be allowed for all relevant stakeholders to become informed, examine the issues, debate/dialogue/consult within their organizations, and develop a response. Officials should be cognisant of the burden that the whole of government may be placing on stakeholder groups.”

Three believes that the proposed default response period of 30 days (equivalent to just over 4 weeks) is inadequate to allow stakeholders to *“become informed, examine the issues, debate/dialogue/consult within their organizations, and develop a response”*.

In particular, assessing the potential impact of proposed measures on an organisation, developing proposed positions, obtaining internal governance sign-off for these positions and drafting a detailed response cannot reasonably be achieved in the proposed timescales unless normal business activities are impacted, and significant

time is devoted to meeting short timeframes. We believe that both of these effects do not align with the enjoiners in paragraph 13 of the Guidelines that “*Consultation should not make unreasonable demands of people being consulted or assume that they have unlimited time to devote to the consultation process*”.

These impacts would be exacerbated where it is necessary to engage external consultants especially where this might also involve a procurement process.

The fact that Regulation 101 of the European Union (Electronic Communication Code) Regulations (S.I. No. 444/2022) specifies that a consultation, “*except in exceptional circumstances, shall not be shorter than 30 days*” is not sufficient reason, in itself, to set the default period for all consultations at the legal minimum.

In the light of the wider considerations set out above Three believes that the default period should be expressed in working days and should be set at 30 working days for standard consultations and at 60 days for complex consultations. This is to ensure that consultations carried out by ComReg conform to the consultation principles and Guidelines.

As outlined previously, setting the default response periods at these levels would not materially affect the overall end-to-end timescale from initial consultation planning by ComReg to the final output of the process.

In addition Three believes that it is appropriate that ComReg takes account of periods where the availability of stakeholder resources is likely to be impacted by holiday periods. To this end we believe that response periods that span peak holiday periods such as August and Christmas should be automatically extended by 10 working days.

Paragraph 4 of the Guidelines states that “*Officials should be cognisant of the burden that the whole of government may be placing on stakeholder groups.*” In the context of the ComReg Procedures, Three believes that this requires ComReg to be cognisant of the burden that the whole of ComReg may be placing on stakeholder groups.

Filtering on “Consultations” on the Publications section of ComReg’s website returns just over 20 consultations issued in the past 12 months. In November 2022, 3 consultations were issued in just over 2 weeks. In January 2023, 3 consultations were issued over 2 days. In March 2023 4 consultations were issued in just over 2 weeks, in June 2023, 3 consultations were issued in less than a week and in September 2023, 2 consultations were issued in less than a week. Three recognises that not every stakeholder will be affected by every consultation. However, those stakeholders operating in multiple segments (and in the case of communications providers these are also users of the postal sector and are potential stakeholders in these consultations) will have to assess each consultation to determine the extent to which they are impacted and whether or not to respond.

In this regard, where ComReg for operational reasons, chooses to “cluster” issuing consultations it should also extend the default response period to take account of the overlap.

Similarly, Three notes that the closing date for responses to this consultation on the Consultation Procedures Review is the also the closing date for responses to the consultation on the proposed lease of spectrum rights in the 3.6 GHz band from Vodafone Ireland Limited to Imagine Communications Ireland Limited and is 4 days after the closing date specified in ComReg Document 23/78 for submissions on ComReg’s Competition Policies and Guidelines.

Where ComReg, for operational reasons, finds it necessary to issue consultations with response closing dates in near proximity it should extend the deadline for the least time critical consultations to avoid these conflicts.

From a practical point of view it is operationally more efficient for stakeholders to have certainty and predictability over the day of the working week on which responses are due. This would facilitate planning for governance approvals and other logistical activities associated with the actual submission of a response. To this end Three believes that ComReg should designate a specific day of the week for the submission of all consultation responses (subject of course to exceptional circumstances). Three proposes that this be the next working Friday following the expiry of the response period. In the limited cases where the Friday when a response is otherwise due, is not a working day, then the response date should ratchet to the next working Friday.

Draft Procedure heading - Duration of Consultations – Extensions

Setting realistic default response periods should lessen the requirements for request for extensions. However, there may be circumstances where it is both appropriate for a stakeholder to request, and for ComReg to grant an extension to the response period. Three believes that in general it would be good practice that extensions are requested within the first 10 working days following publication of a consultation. It is not possible or prudent to rule out that the need for an extension will only become apparent after this initial period. Therefore, extension requests should be permitted up until the closing date with perhaps a stronger justification for a late request being required.

Draft Procedure heading - Submission of Comments – Form

Three notes ComReg’s request that respondents format their submissions in a manner which closely follows the format of the consultation paper, and that comments and input should be referenced according to the relevant sections and questions in the consultation document.

To facilitate respondents meeting ComReg’s request Three suggests that:

- Where there are specific consultation questions, a list of the text of these should be included in a standalone appendix. These should also be provided in editable Word format to facilitate their incorporation into responses.
- A copy of the Table of Contents for the consultation document and/or the draft document being consulted on should be provided in editable Word format to facilitate the structuring of responses to mirror the structure of those documents in responses.

Draft Procedure heading - Treatment of Confidential Information

Three notes that claims of confidentiality will be treated in accordance with ComReg's published Confidentiality Guidelines and that these are not being consulted on as part of the current process. Three however notes that any consultation process should include provisions relating to the secure transmission and storage of submitted consultations and associated documents, which may contain confidential or sensitive information and/or personal data.

Draft Procedure heading - Consideration of Comments

Three notes ComReg's position as regards the consideration of comments.

-End-



Virgin Media response to:

ComReg's "Consultation Procedures Review" (ComReg 23/73).

Non-Confidential

15 September 2023

Introduction

Virgin Media Ireland Limited (“Virgin Media”) welcomes the opportunity to respond to ComReg’s Consultation Procedures Review (ComReg 23/73).

This response is non-confidential.

Virgin Media response

As set out in the Consultation Procedures Review document (“the consultation”), ComReg is proposing to make some amendments to its consultation procedures. This is being done in the context of the European Union (Electronic Communications Code) Regulations 2022 (S.I. No. 44/2022) commencing, and to ensure that the procedures followed remain fit for purpose.

ComReg is proposing to make 3 main changes to the procedures:

- 1. Legislative referencing has been updated since transposition of the Code and commencement of the relevant Irish legislation (including S.I. No. 444/2022).*
- 2. Updated reference to Guidance documents notably Consultation Principles & Guidance published in 2019 by the Department of Public Expenditure, NDP Delivery and Reform.*
- 3. Updated language to reflect ComReg best practice.¹*

Virgin Media supports these changes, which are procedural in nature, and are being done to keep the documentation and processes up to date with relevant legislation.

That said, Virgin Media considers that ComReg should also take the opportunity to go further in its review by making a broader set of improvements to the consultation processes. This would help to further improve an already good set of processes, and would assist ComReg in meeting the 3 principles (rightly) set out as ambitions for a well-functioning system, namely:

- 1. Consultation with the public must be genuine, meaningful, timely, balanced and with the ultimate objective of leading to better outcomes and greater understanding by all involved of the benefits and consequences of proceeding with particular policy or legislation proposals. Consultation should aim to achieve real engagement and ‘real listening’ rather than being a pro-forma exercise for bureaucratic purposes. A genuine consultation process ensures that the real-world impact of policy options is considered.*
- 2. Consultation should be targeted at and easily accessible to those with a clear interest in the policy in question. There is no ‘one size fits all’ approach to consultation. The size, type and scope of the consultative process depends on the proposed policy, the type and scale of the potential impacts of the proposal or decision being taken, the number of people or groups affected by them, and where relevant particular requirements of the child and young people and those who may be marginalised or vulnerable.*
- 3. Systematic efforts should be made to ensure that interested and affected parties have the opportunity to take part in open consultations at all stages of the policy process on significant policy, services and legislative matters: development, implementation, evaluation, and review.²*

¹ See [ComReg-2373.pdf](#) page 4.

² See [ComReg-2373.pdf](#) page 8.

Virgin Media makes suggestions below as to how ComReg’s consultation procedures could be further improved. Virgin Media requests that ComReg considers these suggestions as part of its review.

Timing

In terms of the time given to respond to a consultation, ComReg rightly says that this “..will depend on the specifics of the proposal, its objectives and complexity, its likely impact, and the diversity and number of interested parties.”³

Virgin Media understands that in considering consultations, ComReg is itself often subject to timescale pressures, and in any event will aim to manage consultation processes in a timely fashion. It is therefore right that consultations are managed such as not to run to overly long timescales, and that clarity from the outset is provided on timescales, including those stipulated for responses.

That said, the need for timeliness also needs to be balanced with the need to allow sufficient time for stakeholders to provide good quality responses to ComReg. This is important since being able to evaluate good quality input from stakeholders, where all major relevant issues are surfaced and evidence is put forward in support of the arguments raised, will increase the chances that ComReg’s final decision(s) will be sound by being based on a good set of available evidence in which stakeholders have been able to put their cases forward adequately. This is consistent with the approach stipulated in the Code, which says: “*The period referred to in paragraph (3) shall have regard to the complexity of the matter and, except in exceptional circumstances, shall not be shorter than 30 days.*”⁴

The concept of a “minimum period” for responding to a consultation is helpful by setting out a minimum timescale needed for stakeholders to be reasonably able to make a good quality and considered response to a consultation. Virgin Media considers that 30 days is reasonable as a minimum period, unless exceptional circumstances existed justifying why a shorter period was warranted.

The issue that Virgin Media has with ComReg’s approach to consultation response timing is that in practice ComReg then appears to erroneously conflate “minimum” with “default” by making 30 days, or 4 weeks (i.e., the minimum period) also the standard / default period of time allowed for a response to a consultation. For example, in the recent ComReg consultation into “*Combatting scam calls and texts*”, ComReg said: “*ComReg invites views from interested parties on all aspects of this Consultation over the next 6 weeks, before 5pm on 28 July 2023. Recognising the breadth of issues covered in this consultation, ComReg has given an additional two weeks over the normal four weeks identified in ComReg’s Consultation Procedures*”⁵ (emphasis added). The problem that arises from this approach is that in many cases ComReg is providing insufficient time for stakeholders to respond adequately to consultations. It is not right to treat 30 days (or 4 weeks for that matter) as the

³ See [ComReg-2373.pdf](#) page 10.

⁴ See [S.I. No. 444/2022 - European Union \(Electronic Communications Code\) Regulations 2022 \(irishstatutebook.ie\)](#) Part 12, sub-section 101(4).

⁵ See [Consultation.pdf \(comreg.ie\)](#) paragraph 1.32.

default timescale where anything above that is somehow exceptional or generous. The time allowed to respond to a consultation should not be aligned with the minimum period but rather should be set based on a proper consideration, on a case-by-case basis, as to what is sufficient to allow a good quality response by stakeholders, all relevant factors considered. Treating 30 days as a default as well as a minimum period is also, in Virgin Media's view, inconsistent with ComReg's professed approach of carefully evaluating the time needed for stakeholders to respond to consultations (see ComReg quote referenced at footnote #3 above).

Virgin Media does not consider that 30 days is a sufficient time to respond to any but the simplest consultations. This timescale will not be sufficient for consultations that have a medium (or higher) level of complexity, or where the responses need access to specialised / technical resources or to material commissioned with third parties. Further consideration should also be given to the timing of when the consultation is happening – for example more time would be needed to respond if the consultation was being produced in the peak summer or winter holiday seasons during which getting access to the resources needed to respond to consultations is problematic or sometimes not possible.

The Combating scam calls and texts consultation referred to above is a case in point. As noted, ComReg originally allowed 6 weeks as a response time, arguing this was reasonable as it gave 2 weeks above the “..normal 4 weeks..” In practice 6 weeks was itself not sufficient because, *inter alia*: (i) the consultation was a complex one which required access to technical expertise and sufficient time to consider the matters raised; and (ii) the consultation was being run in the middle of the summer holiday period and in consequence the people needed to create the stakeholder responses were frequently unavailable. In practice this problem was overcome – following a request by industry via IBEC ComReg accepted that more time was needed and extended the response date from 28 July to the end of August.

ComReg's willingness to take stakeholder feedback and show flexibility was clearly welcome on this occasion, and such flexibility will still be needed in future as it is not always possible to forecast all ends. However, Virgin Media also considers that it should have been possible for ComReg to work out up front that 6 weeks was not sufficient, and in general ComReg should include in its consultation processes a deeper consideration ahead of the consultation being published as to what a reasonable timescale for a consultation response is, based on a consideration of all relevant factors.

ComReg should not adopt 30 days as a default as this is likely to be insufficient for all but the most straight-forward consultations. Virgin Media suggests that ComReg should make clear in the consultation guidance that 30 days is a minimum period, but not a standard or default period.

While it is right that ComReg should carefully consider appropriate timescales on a case-by-case basis, it should also consider providing some guidance on typical timescales associated with different types of consultation. For example, 30 days to 6 weeks for consultations of low complexity, 6-12 weeks for consultations of medium complexity and at least 12 weeks for consultations of high complexity.

To note, Virgin Media's comments as set out above also have relevance to different aspects within the consultation process other than the actual response to the consultation including, for example, stakeholder responses to ComReg information requests. For such requests, it is also right that ComReg gives a proper consideration ahead of publication as to what a reasonable time is for responding to a given request, all relevant factors considered.

Finally, Virgin Media considers that as part of best practice, ComReg should aim to communicate the overall timelines it has in mind for running a consultation process ahead of that process commencing. This could include giving estimated timescales for key events through the consultation process which could include, but would not be limited to:

- timescales during which principal information requests were likely to be published;
- timescales for Call for inputs (if relevant);
- timescales for Consultation publication;
- timescales for publication of draft Final Statement to industry and European Commission (if relevant); and
- timescales for Final Statement.

Producing such a schedule, and regularly updating stakeholders (e.g. fortnightly) in cases of timescales changing (which is likely), would be helpful in a number of ways, including in particular: (i) helping stakeholders identify up front when access to resources would be needed and through this improving the ability to secure such resources and therefore provide high quality responses in a timely manner; and (ii) identifying periods where there were multiple overlapping consultations happening (which could be itself a reason to allow more time if the same stakeholder resources were working simultaneously on different consultation responses).

Transparency

Publication of stakeholder consultation responses

ComReg rightly notes the importance of transparency as part of an effective consultation process. Virgin Media considers that the current process has good levels of transparency, in which ComReg seeks to be even handed in its treatment of stakeholders. Virgin Media considers that there are some small amendments that ComReg could make to current working practices to further improve transparency.

One current practice used by ComReg is that the non-confidential responses that ComReg receives from stakeholders to its consultation(s) are not published until the end of the consultation process, when they are published alongside the Final Statement.

Virgin Media considers that ComReg should re-think this approach, and that it would be better if ComReg were to publish the non-confidential responses simultaneously when it has them (i.e. much earlier in the process since ComReg requires stakeholders to provide it with non-confidential versions of the consultation responses), so that other stakeholders can review and consider responding to those earlier responses within the timescales of consultation process itself.

This suggested approach is one that is used by Ofcom in the UK – and when viewed overall it is helpful to the consultation process. This is because what tends to happen is that stakeholders will quickly review the responses of other stakeholders, and this will often provoke a further input to the regulator (which itself would need to be provided on a non-confidential basis). While this process can produce inputs that are not always particularly additive (e.g., tit-for tat opinion without additional evidence), it frequently also produces deeper and additive analysis on key items and helps to identify which areas are seen by stakeholders as most important. In other words, the process of continued debate serves to increase overall the quality of the evidence that the regulator has available to it to consider and so will assist the regulator in reaching a well-judged conclusion. The downside (from a regulator’s standpoint at least) is more work, and the potential for ongoing tit for tat responses that do not add much value. However, the latter item can be managed fairly easily by maintaining an ultimate cut off for submissions (and it is already the task of the regulator to be discriminating in assessing evidence), while the issue of additional work can also be managed via good planning. The risk of more work should also be considered of secondary importance to the upside of getting a better evidential base for the regulator to consider ahead of making its decision(s). Virgin Media considers that this tweak to current practice would also better support ComReg’s ambition #1 as referenced above.

Should ComReg amend its policy, as recommended above, it would also need to be prepared to allow stakeholders to make further face to face (as well as written) representations to it for them to set out their supplementary views, and for ComReg itself to test its understanding / challenge the same.

Process for managing information requests

When making information requests, ComReg will sometimes issue the information request under Section 13(D) of the Communications Regulations Act 2002, and sometimes it will not.

Virgin Media understands that ComReg is not obligated to issue information requests under Section 13(D) but in any event simply requests that ComReg sets out more clearly what its policy approach is in relation to this question – i.e., in what circumstances will ComReg issue requests under Section 13(D), and in what circumstances will it not.