

STATUTORY INSTRUMENT

S.I. No. 616 of 2002

European Communities (Postal Services) Regulations 2002

(Pn.12615)

**Made by the Minister for
Communications, Marine
and Natural Resources**

I, Dermot Ahern, Minister for Communications, Marine and Natural Resources, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive No. 97/67/EC of the European Parliament and of the Council of 15 December 1997¹ as amended by Directive No. 2002/39/EC of the European Parliament and of the Council of 10 June 2002², hereby make the following regulations:

Citation

1. These Regulations may be cited as European Communities (Postal Services) Regulations 2002.

Interpretation

2. (1) In these Regulations -

“access points” means physical facilities, including letter boxes provided for the public either on the public highway or at the premises of the universal service provider, where postal items may be deposited with the public postal network by customers;

“Act of 1983” means Postal and Telecommunications Services Act 1983 (No. 24 of 1983);

“clearance” means the operation of collecting postal items deposited at access points;

¹ OJ No. L15, 21.1.98, 9.14

² OJ No. L176, 5.7.02, p. 21

“Commission” means Commission of the European Communities;

“cross-border mail” means mail to or from another Member State or from or to a third country;

“data protection” includes personal data protection, the confidentiality of information transmitted or shared, and protection of privacy;

“direct mail” means a communication consisting solely of advertising, marketing or publicity material and comprising an identical message, except for the addressee's name, address and identifying number as well as other modifications which do not alter the nature of the message, which is sent to a significant number of addressees, to be conveyed and delivered at the address indicated by the sender on the item itself or on its wrapping and includes cross-border as well as domestic mail, but does not include bills, invoices, financial statements or other non-identical messages and communications combining direct mail with other items within the same wrapping;

“Directive” means Directive No. 97/67/EC of the European Parliament and of the Council of 15 December 1997¹ as amended by Directive No. 2002/39/EC of the European Parliament and of the Council of 10 June 2002²;

“distribution” means the process from sorting at the distribution centre to delivery of postal items to their addressees;

¹ OJ No. L 15, 21-01. 98, p. 14

² OJ No. L 176, 05.07.02, p. 21

“document exchange” means provision of means, including the supply of ad hoc premises as well as transportation by a third party, allowing self-delivery by mutual exchange of postal items between users subscribing to this service;

“essential requirements” means general non-economic reasons which can induce the State to impose conditions on the supply of postal services such as the confidentiality of correspondence, security of the network as regards the transport of dangerous goods and, where justified, data protection, environmental protection and regional planning;

“insured item” means a service insuring the postal item up to the value declared by the sender in the event of loss, theft or damage;

“item of correspondence” means a communication in written form on any kind of physical medium to be conveyed and delivered at the address indicated by the sender on the item itself or on its wrapping but does not include books, catalogues, newspapers and periodicals;

“Member State” means Member State of the European Communities;

“Minister” means Minister for Communications, Marine and Natural Resources;

“postal item” means an item addressed in the final form in which it is to be carried by the universal service provider and in addition to an item of correspondence, such an item also includes a book, catalogue, newspaper, periodical and postal package containing merchandise with or without commercial value;

“postal services” means services involving the clearance, sorting, transport and delivery of postal items;

“public postal network” means the system of organisation and resources of all kinds used by the universal service provider for the purposes in particular of:

- (a) the clearance of postal items covered by a universal service obligation from access points throughout the State,
- (b) the routing and handling of those items from the postal network access point to the distribution centre, and
- (c) the distribution to the addresses shown on items;

“registered item” means a service providing a flat-rate guarantee against risks of loss, theft or damage and supplying the sender, where appropriate upon request, with proof of the handing in of the postal item or of its delivery to the addressee;

“Regulations of 2000” means European Communities (Postal Services) Regulations 2000 (S.I. No. 310 of 2000);

“Regulator” means Commission for Communications Regulation;

“sender” means a natural or legal person responsible for originating postal items;

“terminal dues” means the remuneration of universal service providers for the distribution of incoming cross-border mail comprising postal items from another Member State or from a third country;

“universal service” shall be construed in accordance with Regulation 4(1);

“universal service provider” means the public or private entity providing a universal postal service or parts thereof within the State, the identity of which has been notified to the Commission in accordance with Article 4 of the Directive and designated under Regulation 4(2);

“users” means any natural or legal person benefiting from universal service provision as a sender or an addressee;

“VAT” means value- added tax;

“working day” means a day which is not a Saturday, Sunday or a public holiday within the meaning of the Organisation of Working Time Act 1997 (No. 20 of 1997).

(2) A word or expression that is used in the Regulations and is also used in the Directive has, unless the contrary intention appears, the same meaning in these Regulations that it has in the Directive.

- (3) In these Regulations, unless otherwise indicated -
- (a) a reference to a Regulation or a Schedule is a reference to a Regulation of, or a Schedule to, these Regulations, and
 - (b) a reference to a paragraph or subparagraph is a reference to a paragraph or subparagraph of the provision in which the reference occurs.

National Regulatory Authority

3. (1) The Regulator is designated as the national regulatory authority for the postal sector.

(2) The Regulator shall, from time to time, decide that which constitutes a significant number of addresses in relation to direct mail and shall publish his or her decision in *Iris Oifigiúil*.

Universal Service

4. (1) (a) Users at all points in the State shall enjoy the right to a universal service (“universal service”) involving the permanent provision of a postal service of a specified quality and, subject to Regulation 9(1), at affordable prices for all users.

- (b) The Regulator, after consultation with interested parties, shall issue directions to a universal service provider -
 - (i) in respect of the quality of the postal service to be provided, and
 - (ii) to ensure that the density of the points of contact and of access points takes account of the needs of users.
 - (c) The Regulator shall publish details of any directions under subparagraph (b) in *Iris Oifigiúil*.
- (2)
- (a) An Post is designated as a universal service provider for the purpose of the Directive and these Regulations with the obligation to provide a universal service.
 - (b) Subject to Regulation 8(1), the Minister may designate one or more additional postal service providers or other persons as a universal service provider having an obligation to provide all or part of a universal service.
 - (c) The Minister may withdraw or amend any designation made under subparagraph (a) or (b) provided that, prior to the commencement of any such withdrawal, the Minister has designated at least one other postal service provider or other person, as the case may be, under this

paragraph in respect of the service concerned in the geographic area of the State affected by such withdrawal.

- (3) (a) A universal service provider shall guarantee, on every working day and not less than 5 days a week, save in circumstances or geographical conditions deemed exceptional by the Regulator, as a minimum:
 - (i) one clearance, and
 - (ii) one delivery to the home or premises of every natural or legal person or, by way of derogation, under conditions at the discretion of the Regulator, one delivery to appropriate installations.
 - (b) The Regulator may issue directions to a universal service provider, after consultation with interested parties, for the purpose of ensuring compliance by the provider with its obligations under subparagraph (a) and with the requirements set out in Regulation 5.
 - (c) The Regulator shall communicate any exception or derogation granted in accordance with subparagraph (a) to the Commission and to all national regulatory authorities in the other Member States.
- (4) Universal service shall include the following minimum facilities:

- (a) the clearance, sorting, transport and distribution of postal items up to 2 kilogrammes;
- (b) the clearance, sorting, transport and distribution of postal packages up to 20 kilogrammes;
- (c) services for registered items; and
- (d) services for insured items within the State and to and from all countries which as signatories to the Convention of the Universal Postal Union declare their willingness to admit such items whether reciprocally or in one direction only.

(5) The minimum and maximum dimensions for the postal items in question shall be those laid down in the 1994 Seoul Convention and the Agreement concerning Postal Parcels adopted by the Universal Postal Union.

(6) The universal service shall cover both national and cross-border services.

(7) Section 64 of the Act of 1983 does not apply to a postal service which is not part of the universal service.

Requirements of Universal Service

5. A universal service provider shall meet the following requirements with respect to provision of the universal service:

- (a) the service shall guarantee compliance with the essential requirements,
- (b) an identical service shall be offered to users under comparable conditions,
- (c) the service shall be made available without any form of discrimination whatsoever, especially without discrimination arising from political, religious or ideological considerations,
- (d) the service shall not be interrupted or stopped except in cases of *force majeure*, and
- (e) the service shall evolve in response to the technical, economic and social environment and to the needs of users.

Information on Universal Service

6. (1) A universal service provider shall provide users with regular, detailed and up to date information on the particular features of the universal service, with special reference to the general conditions of access to the service, as well as to prices and quality standard levels.

(2) Information referred to in paragraph (1) shall be published at least annually by the universal service provider concerned in a manner determined by the Regulator.

References in such information to technical standards will be references to those standards published in the Official Journal of the European Community as drawn up by the European Committee for Standardisation (CEN).

Postal Service Authorisations

7. (1) From 1 January 2004, a postal service provider (other than a universal service provider) with an annual turnover of more than €500,000, exclusive of VAT, shall apply to the Regulator for an authorisation (“postal service authorisation”) to provide a postal service.

(2) Where the Regulator is satisfied that that an applicant under paragraph (1) can provide a postal service, the Regulator shall grant the applicant a postal service authorisation where the applicant gives the Regulator a written declaration that the postal services provided by the applicant do not infringe the reserved area.

(3) The holder of a postal service authorisation shall draw up procedures to deal with incorrectly delivered mail within, and the security and confidentiality of, the postal service provided by the holder.

(4) The Regulator may withdraw a postal service authorisation where it considers the holder has failed to comply with this Regulation or the written declaration under paragraph (2).

(5) Whenever the Regulator proposes to refuse to grant or withdraw a postal service authorisation, the Regulator shall notify in writing the applicant or holder, as the case may be, of the proposal, and of the reasons therefor, and shall, if any representations are

made by or on behalf of the applicant or holder, as the case may be, within 28 days after the date of such notice, consider the representations.

(6) Whenever the Regulator, having considered the representations (if any) that may have been made by or on behalf of the applicant or holder under paragraph (5), decides to refuse to grant or withdraw, as the case may be, the postal service authorisation, the Regulator shall notify in writing the applicant or holder, as the case may be, and the applicant or holder, may, within 28 days after the date of such notice, appeal to the High Court against such refusal.

(7) Where the holder of a postal service authorisation makes an appeal under paragraph (6) against a decision of the Regulator to withdraw the authorisation, the decision of the Regulator shall stand suspended until the determination or withdrawal of the appeal.

(8) On the hearing of an appeal under paragraph (6) in relation to the decision of the Regulator to refuse to grant or withdraw a postal service authorisation, the Court may either confirm the decision, allow the appeal or make any other order it considers appropriate. If the appeal is allowed in the case of a refusal to grant a postal service authorisation, the Regulator shall grant the authorisation.

(9) The decision of the High Court on an appeal under paragraph (6) shall be final save that, by leave of that Court, an appeal on a specified question of law shall lie to the Supreme Court.

(10) A postal service provider (other than a universal service provider) with an annual turnover of more than €500,000, exclusive of VAT, who fails to comply with paragraph (1) or who provides a postal service having been refused a postal service authorisation or had a postal service authorisation withdrawn under this Regulation is guilty of an offence and is liable on summary conviction to a fine not exceeding €3,000.

(11) An offence under paragraph (10) may be prosecuted by the Regulator.

Reserved Services

8. (1) The following services shall be reserved for An Post as a universal service provider, namely -

(a) the clearance, sorting, transport and delivery of items of domestic correspondence, cross-border correspondence and direct mail, whether by accelerated delivery or not, within both of the following weight and price limits -

(i) the weight limit shall be -

(I) from 1 January 2003, 100 grams, and

(II) from 1 January 2006, 50 grams,

(ii) these weight limits do not apply -

(I) from 1 January 2003, if the price is equal to or more than, three times, and

(II) from 1 January 2006, if the price is equal to or more than two and a half times,

the public tariff for an item of correspondence in the first weight step of the fastest category,

(b) the free postal service for blind and partially sighted persons operated by An Post from time to time,

(c) until 1 January 2004, outgoing cross-border correspondence within the same weight and price limits referred to in paragraph(a).

(2) Document exchange is not reserved.

(3) The High Court may, on the application of An Post, make an order prohibiting the provision by any person of any service reserved to An Post under paragraph (1), and may give such other direction or make such other order in relation to the matter as the Court considers appropriate.

(4) Section 70 of the Act of 1983 is amended by substituting for subsection (2) (inserted by Regulation 4 of the Regulations of 2000) the following:

“(2) The company shall not increase any charge under a scheme under this section relating to a postal service reserved for the company under Regulation 8 of the European Communities (Postal Services) Regulations 2002 (S.I. No. 616 of 2002) without the concurrence of the Commission for Communications Regulation.”.

Tariff Principles and Transparency of Accounts

9. (1) The tariffs for each of the services provided by a universal service provider which form part of its universal service shall comply with the following principles:

- (a) prices must be affordable and must be such that all users have access to the services provided;
- (b) prices must be geared to costs;
- (c) comply with any uniform tariff decided by the Regulator under paragraph (2),
- (d) the application of a uniform tariff shall not exclude the right of An Post to conclude individual agreements on prices with customers, and
- (e) tariffs must be transparent and non-discriminatory.

(2) The Regulator may, with the consent of the Minister, decide that a uniform tariff for a service provided by a universal service provider shall be applied throughout the State.

(3) Whenever a universal service provider applies special tariffs, for example for services for businesses, bulk mailers or consolidators of mail from different customers, the provider shall apply the principles of transparency and non-discrimination with regard both to the tariffs and to the associated conditions. The tariffs shall take account of the avoided costs, as compared to the standard service covering the complete range of features offered for the clearance, transport, sorting and delivery of individual postal items, and together with the associated conditions, shall apply equally both as between different third parties and as between third parties and universal service providers supplying equivalent services. Any such tariffs shall also be available to private customers who post under similar conditions.

(4) The terminal dues arrangements entered into by An Post do not constitute special tariffs.

(5) Cross subsidisation of universal services outside the reserved sector out of revenues from services in the reserved sector is permitted only to the extent to which it is shown to be strictly necessary to fulfil specific universal service obligations imposed in the competitive area, in accordance with rules adopted to this effect by the Regulator. The Regulator shall inform the Commission of any such rules adopted by it.

(6) Where the Regulator is of the opinion that a universal service provider is not complying with the principles laid down in this Regulation, the Regulator may, after

consultation with the Minister and in the case of paragraph (1)(c) with the consent of the Minister, issue directions to the provider for the purposes of satisfying the requirements specified in this Regulation.

Agreements on Terminal Dues

10. (1) In order to ensure the cross-border provision of the universal service, a universal service provider shall arrange in its agreements on terminal dues for intra-Community cross-border mail that the following principles are respected:

- (a) terminal dues shall be fixed in relation to the costs of processing and delivering incoming cross-border mail,
- (b) levels of remuneration shall be related to the quality of service achieved, and
- (c) terminal dues shall be transparent and non-discriminatory.

(2) The Regulator may issue directions to a universal service provider, after consultation with interested parties, for the purpose of ensuring compliance by the provider with the principles set out in paragraph (1).

(3) The implementation of the principles set out in paragraph (1) may include transitional arrangements, designed to avoid undue disruption on postal markets or unfavourable implications for economic providers of postal services, provided there is

agreement between the operators of origin and receipt. Such arrangements shall, however, be restricted to the minimum required to achieve these objectives.

Accounting

11. (1) The accounting procedures of a universal service provider shall be conducted in accordance with this Regulation.

(2) In accordance with directions laid down by the Regulator, a universal service provider shall keep separate accounts within its accounting systems, for each of the services within the reserved sector on the one hand and the non-reserved sector on the other. The accounts for the non-reserved sector shall clearly distinguish between services which are part of the universal service and services which are not. Such internal accounting systems shall operate on the basis of consistently applied and objectively justifiable cost accounting principles.

(3) The accounting system referred to in paragraph (2) shall, without prejudice to paragraph (4), allocate costs to each of the reserved and to the non-reserved services respectively in the following manner:

- (a) costs which can be directly assigned to a particular service shall be so assigned;
- (b) common costs, that is costs that cannot be directly assigned to a particular service, shall be allocated as follows:

- (i) whenever possible, common costs shall be allocated on the basis of direct analysis of the origin of the costs themselves;
- (ii) when direct analysis is not possible, common cost categories shall be allocated on the basis of an indirect linkage to another cost category or group of cost categories for which a direct assignment or allocation is possible; the indirect linkage shall be based on comparable cost structures;
- (iii) when neither direct nor indirect measures of cost allocation can be found, the cost category shall be allocated on the basis of a general allocator computed by using the ratio of all expenses directly or indirectly assigned or allocated, on the one hand, to each of the reserved services and, on the other hand, to the other services.

(4) Other cost accounting systems may be applied only if they are compatible with paragraph (2) and have been approved in advance in writing by the Regulator. The Regulator shall inform the Commission prior to their application.

(5) A universal service provider shall comply with one of the cost accounting systems described in paragraphs (2) and (3) which shall be verified by auditors engaged by the provider and shall publish a statement to that effect in its annual report.

(6) The Regulator shall keep available, to an adequate level of detail, information on the cost accounting systems applied by a universal service provider and shall submit such information to the Commission on its request.

(7) On request from the Regulator or the Commission, detailed accounting information arising from these systems shall be made available in confidence to the Regulator and to the Commission by a universal service provider.

Quality of Service

12. (1) Quality-of-service standards in relation to the universal service, paying attention in particular, to routing times and to the regularity and reliability of services, shall be set and published from time to time by the Regulator, having taken into account the views of interested parties, in the case of national services.

(2) The quality standards for intra-Community cross-border mail are set out in the Schedule.

(3) Compliance with quality-of-service standards by a universal service provider shall be monitored by the Regulator under standardised conditions to be specified in accordance with the procedure laid down in Article 21 of the Directive. A report on the results of the monitoring exercise shall be published by the Regulator at least once a year.

Adoption of Quality Standards

13. (1) The Regulator shall lay down quality standards for domestic mail which are compatible with those laid down for intra-Community cross-border services.

(2) The Regulator shall notify the Commission of the quality standards which have been adopted under this Regulation.

(3) The Regulator shall monitor the performance by a universal service provider of the universal service in accordance with the quality standards for domestic mail.

(4) Where the Regulator is of the opinion that a universal service provider's performance levels do not meet or have not met the required standards laid down under paragraph (1), the Regulator shall ensure that the provider takes corrective action where necessary.

Exemptions from Quality Standards

14. (1) Exemptions from the quality standards for intra-Community cross-border services may be determined by the Regulator where exceptional situations relating to infrastructure or geography so require. Such exemptions shall be notified to the Commission by the Regulator.

(2) The Regulator may give directions to a universal service provider to take corrective action where necessary when quality standards for intra-Community cross-border services which form part of the universal service are not being met.

Complaints and Dispute Resolution

15. (1) A universal service provider and a postal service provider with an annual turnover of €500,000, exclusive of VAT, shall, in accordance with guidelines laid down by the Regulator in consultation with the provider, draw up transparent, simple and inexpensive procedures for dealing with users complaints, particularly in cases involving loss, theft, damage or non-compliance with service quality standards (including procedures for determining where responsibility lies in cases where more than one operator is involved). These procedures shall enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement or compensation or both.

(2) A universal service provider shall publish, together with its annual report, on the monitoring of its performance, information on the number of complaints and the manner in which they have been dealt.

(3) Any guidelines laid down or procedures drawn up under Regulation 17 of the Regulations of 2000, which are in force immediately before the making of these Regulations, are deemed to have been laid down or drawn up under this Regulation.

Consultation with Interested Parties

16. (1) The Regulator shall take into account the views of interested parties, including representatives of postal service providers, users, consumers and manufacturers in relation to

his or her functions under these Regulations in accordance with procedures drawn up by the Regulator for that purpose.

(2) The Regulator shall publish a reference to the procedures referred to in paragraph (1) in the *Iris Oifigiúil*.

Regulator to monitor compliance with Regulations

17. (1) It is a function of the Regulator to monitor compliance with Regulations 4(3)(a), 4(4), 5, 7, (9)1, 10(1), 11, and 12.

(2) The Regulator shall, where appropriate, and after consultation with the Minister, establish controls and specific procedures to ensure that the reserved services are respected.

(3) A universal service provider shall furnish the Regulator with any such information as the Regulator may reasonably require for the purposes of his or her functions under these Regulations or the Directive.

Directions and Compliance Order

18. (1) A direction issued by the Regulator under these Regulations shall be in writing, state the reasons on which it is based and be addressed to the universal service provider concerned, and, as soon as practicable, be delivered by hand or by registered or certified post to the registered address of the provider and shall be deemed to have been delivered as of the date so delivered.

(2) Where the Regulator is of the opinion that a universal service provider has not complied with a direction issued by the Regulator under these Regulations, the Regulator may apply to the High Court for an order to direct the provider to comply with the direction. The Court may make such order as it sees fit.

Revocation

19. The European Communities (Postal Services) Regulations 2000 (S.I. No. 310 of 2000) are revoked.

SCHEDULE

Regulation 12(2)

Quality standards for intra-Community cross-border mail

The quality standards for intra-Community cross-border mail in the State are to be established in relation to the time limit for routing measured from end to end (*) for postal items of the fastest standard category according to the formula $D+n$, where D represents the date of deposit (**) and n the number of working days which elapse between that date and that of delivery to the addressee.

Quality standards for intra-Community cross-border mail

| Time limit | Objective |
|------------|--------------|
| D +3 | 85% of items |
| D +5 | 97% of items |

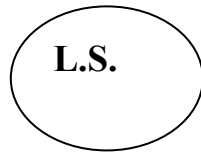
The standards must be achieved not only for the entirety of intra-Community traffic but also for each of the bilateral flows between the State and another Member State.

(*) End-to-end routing is measured from the access point to the network to the point of delivery to the addressee.

(**) the date of deposit to be taken into account shall be the same day as that on which the item is deposited, provided that deposit occurs before the last collection time notified from the access point to the network in question. When deposit takes place after this time limit, the date of deposit to be taken into consideration will be that of the collection on the following working day.

GIVEN under my Official Seal,

19th December 2002.



Dermot Ahern

Minister for Communications,

Marine and Natural Resources

EXPLANATORY NOTE

(This note is not a part of the Instrument and does not purport to be a legal interpretation)

The purpose of these Regulations is to give legal effect to European Parliament and Council Directive 97/67/EC of 15 December, 1997 as amended by European Parliament and Council Directive 2002/39/EC of 10 June, 2002 on common rules for the development of the internal market of the Community postal services and the improvement of quality of service.

The purpose of Directive 97/67/EC and Directive 2002/39/EC is to provide for regulation of the postal sector, and to guarantee the provision of a universal postal service of specified quality at affordable prices to all users.

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Office, Sun Alliance House, Molesworth Street, Dublin 2.

Price € 3.81

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