



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

# Postal Universal Service Provider Designation Procedures

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

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## Additional Information

Response to Consultation	ComReg Document 19/64

## Introduction

- A 1.1 The Commission for Communications Regulation (“ComReg”) has responsibility for conducting reviews of, and making decisions on, the designation of a universal service provider for postal services (“USP”) in the State. Section 19 of the Communications Regulation (Postal Services) Act 2011, as amended (“the 2011 Act”) provides that any such review must be conducted in accordance with procedures established and maintained by ComReg (“the Postal USP Designation Procedures”).
- A 1.2 The purpose of these Postal USP Designation Procedures is to provide information to all stakeholders on how ComReg will conduct reviews (in accordance with section 19 of the 2011 Act) for the purposes of making USP designation decisions (which phrase for the purpose of these procedures includes any decision that no designation of USP is required, or any decision to designate a USP or USPs, or any decision to continue designation of An Post as USP, pursuant to section 17 or section 18 of the 2011 Act). These procedures have regard to ComReg’s functions and objectives relating to postal services<sup>1</sup> and are designed to be efficient, objective, transparent, non-discriminatory and proportionate.
- A 1.3 In conducting reviews of and making USP designation decisions, ComReg will take account of the entire applicable legislative regime and ComReg’s published Regulatory Impact Assessment (“RIA”) Guidelines. ComReg will publically consult prior to making a USP designation decision.
- A 1.4 ComReg fully intends to follow the Postal USP Designation Procedures when conducting a review of and making USP designation decisions. However, ComReg reserves the right to deviate from these procedures if it considers that a different approach is warranted. Any significant deviation from the procedures will, where appropriate, be clearly identified by ComReg to the relevant stakeholders and the reasons for the deviation will be provided.

## Interpretation

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

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

## Designation Periods and Frequency of Designation Reviews

- A 1.9 When making a decision to designate one or more than one USP under section 17(2)(a)(ii) or section 18 of the 2011 Act, ComReg must determine the designation period which it considers appropriate<sup>2</sup>. This period should be of sufficient duration to ensure return on investments.
- A 1.10 ComReg considers that, in general, a period of between two years and seven years is an appropriate designation period. However, for each designation ComReg will set the appropriate designation period based on the information it has before it and the particular circumstances at the time.
- A 1.11 ComReg will aim to conduct and complete a new USP designation review well in advance of the expiry of each designation period, having regard to; the required time to fully conduct a review and make a USP designation decision, any changes which may be required to regulatory requirements, and the need to provide sufficient time for newly designated USP(s) to prepare for provision of the universal postal service. However, it may be necessary to carry out a designation review in a shorter period than anticipated, depending on the circumstances.
- A 1.12 In circumstances where ComReg decides that no designation is required, ComReg will review that decision at appropriate intervals.

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<sup>2</sup> Section 18(4) of the 2011 Act

- A 1.13 Subsequent to making a USP designation decision, during the designation/non-designation period ComReg will keep the USP designation / non-designation) under review and it may take appropriate action to ensure continuance of the universal postal service should circumstances arise that ComReg considers might threaten the provision of the universal postal service.

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

- A 1.14 Step 1 of the procedures is designed to allow ComReg to review and make a decision on whether or not there is a need for a USP designation.<sup>3</sup>

### A. Information gathering

- A 1.15 ComReg will write to all postal service providers to request detailed information on their existing postal products and services.<sup>4</sup>
- A 1.16 ComReg will identify what postal service providers are operating in the State<sup>5</sup> and which postal services are being provided in the State.
- A 1.17 ComReg will gather information on the reasonable needs of postal service users.

### B. Assessment

- A 1.18 ComReg will consider the information gathered.
- A 1.19 ComReg will assess the extent to which the market for the provision of postal services is meeting the reasonable needs of postal service users.<sup>6</sup>
- A 1.20 ComReg will review and assess whether each of the universal postal services required by section 16 of the 2011 Act would be provided by the market without a USP designation.
- A 1.21 This assessment will include, but is not limited to:

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

<sup>4</sup> Where appropriate, ComReg may exercise its information gathering powers under section 13F(1) of the 2002 Act in order to obtain the required information from any postal service provider.

<sup>5</sup> As listed on the Register of Authorised Postal Service Providers published on [www.comreg.ie](http://www.comreg.ie).

<sup>6</sup> As required by section 19(2)(a) of the 2011 Act.

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

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

### C. ComReg Decision

- A 1.23 Following the above assessment, ComReg will either make a decision that no USP designation is required (pursuant to either section 17(2)(b) or section 18(1)(b)(ii) of the 2011 Act (as appropriate)) or make a decision that a USP designation is required (i.e. to proceed to Step 2 of the procedures). A consultation will be completed prior to any decision.
- A 1.24 If ComReg proposes to make a decision under section 17(2)(b) of the 2011 Act that no USP designation is required, ComReg must, prior to making that decision, obtain the consent of the Minister whose decision to consent, or to refuse consent, must be provided within 4 months of the date on which ComReg seeks consent.<sup>7</sup> If the Minister does not consent the designation of An Post will continue until 2023. If the Minister consents ComReg will proceed to issue its final decision.
- A 1.25 ComReg will publish its decision which, at a minimum, will include:
- ComReg's reasoning for its decision; and
  - The date on which the prior USP designation ceases to be effective and when the no USP designation commences (where appropriate).

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<sup>7</sup> Following consultation with such persons as the Minister considers appropriate as per section 17(3) of the 2011 Act.

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

A 1.26 Step 2 of the Postal USP Designation Procedures is designed for ComReg to review and decide which postal service provider(s) should be designated as USP(s). In this step, ComReg may decide either to designate one USP or more than one USP.<sup>8</sup> Also, for a section 17 review ComReg may decide to continue the designation of An Post as USP until 2023.

### A. Information gathering

A 1.27 If ComReg decides that USP designation is required it will then invite submissions from postal service providers<sup>9</sup> who are interested in being considered as the designated USP(s) in the State, and capable of providing all or part of the universal postal service for the upcoming designation period.<sup>10</sup>

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

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

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<sup>8</sup> Pursuant to section 17(2)(a)(i), section 17(2)(a)(ii) or section 18(1)(b)(i) of the 2011 Act

<sup>9</sup> Under section 17 or section 18 of the 2011 Act ComReg may choose to designate one or more than one postal service provider(s) as USP(s). Entities not yet authorised as a postal service provider may seek designation as USP, however only postal service providers authorised by ComReg under section 38 of the 2011 Act can be designated.

<sup>10</sup> For the section 17 review the continuation of An Post's designation will be considered at the same time and as part of ComReg's consideration of which postal service providers should be designated.

- **Products and Services** - Full details of the universal postal service or part of the universal postal service (including proposed products and services) which the postal service provider proposes to provide. A completed ComReg Document 12/81n form<sup>11</sup> will also be required as part of the submission for each of the universal postal services proposed to be provided;
- **Postal Network and Resources** - Full details of the proposed postal network, including systems and resources, which it intends to implement and operate (including an appropriate Business Continuity Plan that demonstrates how the continuity of the universal postal service will be ensured during periods of disruption). These details should demonstrate the postal service provider's capability to continuously provide the universal postal service and should include the necessary access and delivery arrangements for all postal service users.<sup>12</sup> These details should also demonstrate how the geographic location of the addresses marked on the postal packets will be identified to ensure correct delivery of the postal packet to the addressee. Details of the customer service facilities that will be provided, sufficient for dealing with universal postal service users' needs, should also be demonstrated. Where it is proposed that there be more than one postal service provider providing the universal postal service as part of the same solution, the inter-operator arrangements of that joint solution that will be put in place should be specified;
- **Cost-efficiencies** – Full details demonstrating how the service will be provided in a cost efficient manner, including details of operations management processes that will continuously oversee cost efficiency. As dedicated parcels networks and letters networks have distinct differences, submissions from postal service providers that currently operate a predominantly parcels network or a predominantly letters network must provide evidence demonstrating how their network will be operated to efficiently provide the service which they don't currently predominantly provide (if applicable);
- **Price** – Full details demonstrating that the postal service provider will meet the tariff requirements in section 28 of the 2011 Act;

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<sup>11</sup> 'Notification and Declaration Form - Intention to provide a postal service under section 38 of the Communications Regulation (Postal Services) Act 2011'

<sup>12</sup> At the time of publication in ComReg Document 03/50. These requirements may change over time.



- **Quality of Service** – Full details demonstrating that the postal service provider will meet the requirement for the universal postal service to be provided to the specified quality levels<sup>13</sup>;
- **Confidentiality and Security** – Full details demonstrating that the postal service provider will have sufficient protections for confidentiality of correspondence and security of the network. This will include for the transport of dangerous goods, etc. if applicable<sup>14</sup>;
- **Draft Terms & Conditions** – a draft version of the proposed terms and conditions of the universal postal service<sup>15</sup> to be approved by ComReg under section 23 of the 2011 Act<sup>16</sup>;
- **Customer Complaints Procedures** – the proposed code of practice for customer complaints and the proposed dispute resolution procedures<sup>17</sup> in accordance with the 2011 Act;
- **Annual projected costing of provision of services** - evidence demonstrating the projected costs of providing the proposed universal postal services and how the proposed pricing and efficiencies will ensure that these costs will be covered; and
- **Financial standing** – evidence demonstrating that the postal service provider is in a stable financial position and capable of ensuring continued provision of the universal postal service proposed for the entire designation period.

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<sup>13</sup> At the time of publication in ComReg Document 15/126 which provides for a quality standard of 94% for next day delivery and 99.5% for delivery within three days of posting for single piece priority mail within the State. These requirements may change over time.

<sup>14</sup> Article 5(1) of Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, as amended by Directive No. 2002/39/EC, and Directive No. 2008/6/EC.

<sup>15</sup> At the time of publication, ComReg's recommendations for drafting terms and conditions of the universal postal service are set out in ComReg Document 14/24a. These requirements may change over time.

<sup>16</sup> This approval process does not apply in the case of the continuation of An Post under section 17(2)(a)(i).

<sup>17</sup> At the time of publication, the requirements for all postal service providers are set out in ComReg Documents 14/06 and 15/07a. These requirements may change over time.

- A 1.30 ComReg may also request information<sup>18</sup>, including information in relation to the above details, from postal service providers that have not made submissions to be considered for USP designation but in ComReg's view may be capable of providing all or part of the universal postal service for the upcoming designation period.
- A 1.31 ComReg may request further information<sup>19</sup> from applicant postal service providers. ComReg may contact postal service providers to discuss their submissions and proposed solutions and other potential options ComReg may consider with a view to identifying the best solution for provision of the universal postal service for the upcoming designation period.

## B. Assessment

- A 1.32 ComReg will review and assess the submissions and all information it has gathered from postal service providers as part of its designation review process and all other relevant information in its possession. ComReg's assessment will be based upon;
- the solution which will best ensure the provision of the universal postal service covering the entire State with the least market distortion;
  - the solution that best meets the reasonable needs of postal service users; and
  - the solution which represents the most efficient and cost-effective way to provide the universal postal service for the State.

## C. ComReg Decision

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

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<sup>18</sup> In this regard, ComReg may exercise its information gathering powers under section 13F(1) of the 2002 Act.

<sup>19</sup> In this regard, ComReg may exercise its information gathering powers under section 13F(1) of the 2002 Act.

- A 1.34 If ComReg proposes to make a decision under section 17(2)(a)(ii) that one or more than one postal service provider should be designated, ComReg must, prior to making that decision, obtain the consent of the Minister whose decision to consent, or to refuse consent<sup>20</sup>, must be provided within a 4 month period of the date on which ComReg seeks consent.<sup>21</sup> If the Minister does not consent the designation of An Post will continue until 2023. If the Minister consents ComReg will proceed to issue its final decision.
- A 1.35 ComReg may make a decision to designate one or more than one postal service provider. This may include postal service providers who have not asked to be considered for USP designation, where considered appropriate.
- A 1.36 ComReg will publish its decision which will include (where appropriate):
- ComReg's reasoning for its decision on the choice of postal service provider(s) for USP designation(s);
  - the parts of the universal postal service to be provided by the designated USP(s);
  - the part or parts of the State for which the designated USP(s) must provide the relevant part of the universal service;
  - the date by which the designated USP(s) must submit its final set of terms and conditions of its universal postal service for approval by ComReg under section 23 of the 2011 Act; and
  - the effective date of the new designation(s)<sup>22</sup>, subject to approval of the universal postal service terms and conditions.

### Step 3 - Notification of Decisions

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

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<sup>20</sup> Following consultation with such persons as the Minister considers appropriate as per section 17(3) of the 2011 Act.

<sup>21</sup> For a decision made under section 17(2)(a)(i) to continue An Post's designation or under section 18(1)(b)(i) to designate one or more postal service providers, there is no requirement for ComReg to seek the prior consent of the Minister.

<sup>22</sup>New designations of USP become effective 14 days after the designated USP(s) universal postal service terms and conditions are approved by ComReg under section 23(2)(a) of the 2011 Act. The prior USP designation will cease to have effect on the date that the new designation decision takes effect.

# Annex: 1 Legal Basis

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

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

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

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

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

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

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

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

A 1.40 The European Postal Directive<sup>23</sup> and national legislation have set down the requirements for a "universal service" which guarantees, one clearance and one delivery to the home or premises of every natural or legal person every working day, even in remote or sparsely populated areas.

## Designation of An Post as USP

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

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<sup>23</sup> Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service as amended by Directive No. 2002/39/EC of 10 June, 2002, and Directive No. 2008/6/EC of 20 February, 2008, of the European Parliament and of the Council.

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

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

*(a) decide to—*

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

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

*or*

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

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

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

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

*(6) Where, with the prior consent of the Minister, the Commission makes a decision under subsection (2)(a)(ii), the designation of An Post under*

*subsection (1) shall cease to have effect on the date on which that decision takes effect.*

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

## Designation of USPs - General

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*(c) shall cease to have effect—*

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

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

## USP Designation Reviews

A 1.43 Section 19 “Review by Commission” provides:

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

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

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

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

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

## Notification of USP Designation

A 1.44 Section 20 “Notification of designation” provides:

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

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

*(b) notify in writing—*

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

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

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

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

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