



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Postal Universal Service Provider Designation(s) after 1 August 2023

Response to Consultation and Decision on
Step 2: Which postal service provider(s)
should be designated and for what
duration(s)?

**Response to Consultation and
Decision**

Reference: ComReg 23/53,
Decision D03/23

Date: 15/06/2023

An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation

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1 Executive Summary

1. An Post's designation as the universal postal service provider ("USP") will expire on 1 August 2023¹. ComReg has decided² that a new provider should be designated starting from 2 August 2023.
2. The universal postal service provides daily clearance and delivery of postal items (largely letters) to everyone in the State. It ensures that universal postal services are accessible, affordable, and of sufficient quality for all, particularly vulnerable and digitally excluded users.
3. ComReg invited potential providers to submit their interest in being designated as USP, with submission requirements already established in "the Procedures."³ An Post was the only respondent, offering to provide the entire universal postal service for the entire State.
4. ComReg conducted a public consultation on whether An Post should be designated as USP and for how long. An Post was the only respondent and agreed to be designated as USP.
5. An Post disagreed with ComReg's proposed designation period of a maximum of 5 years and suggested 12 years to match the previous designation period⁴. Having considered a number of factors, ComReg has decided to designate An Post as USP for 6 years (2 August 2023 – 1 August 2029). ComReg considers this duration to be appropriate:
 - having regard to the forecast investment information provided by An Post in its submission to be USP, this duration is sufficient for the return on investments in the universal postal service;
 - given the rapidly changing postal sector and the prospective legislative and regulatory changes to the universal postal service which are expected in this period.

¹ Communications Regulation (Postal Services) Act 2011 as amended ("the Postal Act")

² ComReg Document No. 22/103, D09/22

³ ComReg Document No. 19/64a, established after public consultation

⁴ The Postal Act designated An Post for 12 years, subject to ComReg review after 7 years

2 Introduction

6. ComReg is the national regulatory authority for postal services in the State and its functions and objectives are set out in the Communications Regulation Act 2002, as amended (“the 2002 Act”).
7. Under the Communications Regulation (Postal Services) Act 2011 as amended (“the Postal Act”), ComReg is mandated to ensure the provision of a universal postal service in the State that meets the reasonable needs of postal service users.
8. The universal postal service obligation (“USO”) consists of a basic but high-quality postal service for all postal service users at affordable prices irrespective of where they are located in the State. The USO means that on every working day there is at least one clearance and one delivery of postal items (largely letters) to the home or premises of every person in the State. The USO is a form of protection for postal service users, in particular vulnerable users and those that are digitally excluded. The USO was prescribed for all EU Member States by the EU Postal Directive⁵ recognising that postal services are an essential instrument of communication and trade. The Postal Act transposed the EU Postal Directive in Ireland.
9. The USP provides the USO required by the Postal Act and ComReg’s Regulations⁶. Section 17(1) of the Postal Act designated An Post as the sole USP for universal postal services in the State, for a period of 12 years following the passing of the Postal Act (i.e. from 2 August 2011 – 1 August 2023), subject to designation review/decision by ComReg after the expiry of 7 years.⁷ Following public consultations⁸, ComReg made a decision⁹ to continue the designation of An Post as the USP for the entire State for the duration of the unexpired period of the designation specified in section 17(1) of the Postal Act, that is to 1 August 2023.
10. In October 2022, by public consultation¹⁰, ComReg commenced the review of the USP Designation after 1 August 2023 and whether there is a requirement for designated USP(s).

⁵ The harmonised EU framework for the regulation of postal services under Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, as amended by Directive No. 2002/39/EC, and Directive No. 2008/6/EC (“the EU Postal Directive”). The Postal Act transposed the EU Postal Directive for the State.

⁶ The universal postal services as defined by section 16 of the Postal Act and as specified by the Communications Regulation (Universal Postal Service) Regulations 2012 made by ComReg pursuant to section 16(9) of the Postal Act (“USO Regulations”)

⁷ Prior to the Postal Act, An Post was also designated as sole USP for the State under the previous regulations, the European Communities (Postal Services) Regulations, 2002 (S.I. No. 616 of 2002). Before that, the Postal and Telecommunications Services Act, 1983 (No. 24 of 1983) gave An Post exclusive privilege in respect of certain postal services in view of its primary purpose of providing a national postal service.

⁸ ComReg Document Nos. 19/125 and 20/49

⁹ ComReg Decision D13/20, ComReg Document No. 20/131

¹⁰ ComReg Document No. 22/85

11. As required by section 19 of the Postal Act, the review of the USP Designation after 1 August 2023 is in accordance with procedures established and maintained by ComReg, “the Procedures”¹¹. The Procedures set out two main steps for USP designation reviews which are summarised as follows:

- **Step 1 – Is there a requirement for a USP designation?**

This Step 1 is complete and in December 2022, following a public consultation, ComReg made the decision¹² that a USP Designation is required after 1 August 2023.

- **If Yes at Step 1: Step 2 – Which PSP(s) should be designated as USP(s)?**

As ComReg made a ‘Yes’ decision at Step 1, ComReg at the same time invited submissions from PSP(s) interested to be USP¹³. There was one submission, from An Post, interested to be USP after 1 August 2023. An Post submitted it would be USP for the entire State and for the entire universal postal service. ComReg made its assessment on this submission¹⁴. This document is the decision on this Step 2 and sets out ComReg’s decision on An Post as the designated USP on and from 2 August 2023.

12. This Step 2 decision is as follows:

- Chapter 3 sets out ComReg’s decision on USP designation on and from 2 August 2023
- Chapter 4 sets out ComReg’s decision on the appropriate designation period duration on and from 2 August 2023
- Chapter 5 sets out the Regulatory Impact Assessment
- Annex 1 is the Decision
- Annex 2 summarises the response to public consultation 23/26 and ComReg's position.

¹¹ ComReg Document No. 19/64a

¹² ComReg Document No. 22/103, D09/22

¹³ ComReg Document No. 22/103a

¹⁴ ComReg Document No. 23/26

3 Decision on USP designation

13. An Post submitted its interest to be designated USP after 1 August 2023 for the entire State and for the entire universal postal service. An Post's submission was published (with redactions for confidential information) in ComReg Document No. 23/26a¹⁵. ComReg assessed that submission and detail on that assessment by ComReg was provided in ComReg Document No. 23/26¹⁶.
14. Following completion of its assessment, ComReg's preliminary view for public consultation was to designate An Post as USP on and from 2 August 2023¹⁷. There was one response to consultation, An Post, who agreed with ComReg's preliminary view to designate it.
15. Having assessed the submission by An Post, and having considered the response to consultation together with other relevant evidence, ComReg's decision is to designate An Post as USP on and from 2 August 2023 to provide the entire universal postal service for the entire State as:
 - Only An Post submitted interest to be USP; there was no submissions from other postal service provider(s) and therefore no competitive process to be designated. ComReg's reasoning for its decision on the choice of An Post as USP is based on the assessment by ComReg of An Post's submission, other relevant information, and that An Post was the only submission to be USP;
 - An Post will provide the entire universal postal service for the entire State. An Post is currently the only postal service provider in the State providing all of the required universal postal services in full and which has the network to do so. There is currently no other authorised postal service provider capable of providing the universal postal service, in whole or in part. Therefore, An Post as designated USP will ensure the provision of the universal postal service covering the entire State with the least market distortion;
 - An Post has been the USP up until now (1 August 2023) and has demonstrated its capability to provide all of the universal postal service for the entire State and to meet the reasonable needs of postal service users.
16. The effective date of the new designation will be on and from 2 August 2023, subject to ComReg's approval of the universal postal service terms and conditions (with or without amendment) and publication of the notice of this approval.

¹⁵ <https://www.comreg.ie/media/2023/03/ComReg-2326a.pdf>

¹⁶ <https://www.comreg.ie/media/2023/03/ComReg-2326.pdf>

¹⁷ ComReg Document No. 23/26

4 Duration period of the USP designation

17. The Procedures state that the USP designation period can be somewhere between 2 and 7 years.
18. As noted in the public consultation, ComReg considers that there are a number of factors to consider for an appropriate designation period.
19. The key factor is the statutory requirement that the period of designation is of sufficient duration for the return on investments. In its submission to be USP, An Post provided information on its proposed future investments ✂ [REDACTED] ✂.
20. The information provided by An Post shows that these future investments are largely for [REDACTED] ✂.
21. The investment information provided by An Post in its submission to be USP shows that the proposed investment for the universal postal service is:
- (1) Relatively ✂ [REDACTED] ✂
 - (2) To be recovered by ✂ [REDACTED] ✂.
22. Having regard to the foregoing information provided by An Post, ComReg considers the duration of the designation can be in the range of 3-5 years proposed in the consultation; however, ComReg also considers other factors. As set out in the public consultation, other factors include:
- the planned review of the EU Postal Directive
 - possible changes to postal services by An Post
 - likely changes to universal postal service by ComReg.
23. An Post has proposed a duration of 12 years, to match the previous designation period which was 12 years subject to ComReg review after 7 years. However, the information provided by An Post on its proposed investments in the universal postal service show that the duration of the designation can be lower than 12 years for the return on investments in the universal postal service and can be within the range of 3 to 5 years proposed in the consultation.
24. Having regard to the information provided by An Post in its submission to be USP, in particular the information on investments in the universal postal service, and having considered other factors, ComReg's decision is that a

designation duration of 6 years, from 2 August 2023 to 1 August 2029, is considered to be appropriate. This duration is also considered appropriate given the rapidly changing postal sector and the prospective legislative and regulatory changes to the universal postal service which are expected in this period. These changes could mean other postal service provider(s) may be capable in the future to be designated as USP, in particular for part of the universal postal service.

5 Regulatory Impact Assessment

25. A Regulatory Impact Assessment (“RIA”) is a structured approach to the identification and assessment of available regulatory options to meet the policy issue, including the likely impact of the regulatory options on different stakeholders. Based on this assessment, the RIA concludes with the choice of the best option to meet the policy issues. This best option should be the most effective and least burdensome regulatory option – it should be appropriate, effective, proportionate, and justified.
26. ComReg’s approach to the RIA is set out in the “Guidelines on ComReg’s Approach to Regulatory Impact Assessment” published in August 2007¹⁸ and has regard to the RIA Guidelines issued by the Department of An Taoiseach in June 2009 (“the Department’s RIA Guidelines”), adopted under the Government’s Better Regulation programme.
27. The guidelines set out, amongst other things, the circumstances in which ComReg considers that a RIA is appropriate. In summary, ComReg indicated that it would generally conduct a RIA in any process that might result in the imposition of a regulatory obligation, or the amendment of existing regulatory obligations to a significant degree, or which might otherwise significantly impact on any relevant market or on any stakeholders or consumers.

Steps involved

28. In assessing the available regulatory options, ComReg’s approach to RIA follows five steps as follows:
- Step 1: describe the policy issue and identify the objectives
 - Step 2: identify and describe the regulatory options
 - Step 3: determine the impacts on stakeholders
 - Step 4: determine the impacts on competition
 - Step 5: assess the impacts and choose the best option.

Step 1: Describe the policy issue and identify the objectives

29. The policy issue and objective is the designation of universal postal service provider(s) under section 18 of the Postal Act. This is required as the current designation of a universal postal service provider expires on 1 August 2023¹⁹ and because ComReg has decided that a new designation is required²⁰ to provide the universal postal service²¹.

¹⁸ ComReg document 07/56a

¹⁹ Section 17 of the Postal Act

²⁰ ComReg Document No. 22/103

²¹ The universal postal service is set by the Postal Act and as required by the Postal Act, further specified by ComReg periodically.

Step 2: Identify and describe the regulatory options

30. The policy issue entails two policy choices (1) Who to designate and (2) What designation duration:

Option 1: Who to designate?

- Option 1A: to designate An Post as the universal postal service provider on and from 2 August 2023

OR

- Option 1B: to not to designate An Post, but to designate other postal service provider(s).

Option 2: What designation duration?

- Option 2A: to designate for 6 years

OR

- Option 2B: to designate for another duration.

Steps 3 & 4 & 5: Determine the impacts on stakeholders and competition, assess the impacts and choose the best option

31. With regard to Option 1: Who to designate?

- Option 1A maintains An Post as designated universal postal service provider. An Post has been the designated universal postal service provider since the Postal Act came into effect. An Post was the only postal service provider to make a submission to be designated as universal postal service provider.
- Option 1B would mean that An Post is no longer designated universal postal service provider. ComReg has decided a designation is needed. This would mean that ComReg would have to designate other postal service provider(s) to be universal postal service provider(s). However, no other postal service provider(s) has submitted to be designated as universal postal service provider. Furthermore, ComReg considers that at this time no other postal service provider could provide the entire current universal postal service for the entire State.

Option 1: Who to designate?	Impact on stakeholders	Impact on competition
Option 1A: to designate An Post as the universal postal service provider on and from 2 August 2023	An Post is the current designated universal postal service provider, so this option is the status quo. An Post has the network and the resources to provide the universal postal service. This continues An Post's provision of the universal postal service for postal service users as is. An Post has submitted to be designated so this option meets the ask of An Post.	No impact on competition, the universal postal service does not face effective competition.
Option 1B: to not to designate An Post, but to designate other postal service provider(s)	To designate other postal service provider(s) instead of An Post could, at this time, mean that there is a risk that postal service users could not avail of entire universal postal service across the entire State as currently no other postal service provider offers this. No postal service provider(s) has submitted to be designated, there would be impacts on postal service provider(s) if ComReg decided to designate such postal service provider(s).	No impact on competition, the universal postal service does not face effective competition.

32. Having regard to the impacts assessed above, and the reasons presented in this document, the conclusion of this RIA is that Option 1A to designate An Post as the universal postal service provider on and from 2 August 2023 is best as it is the most effective and least burdensome regulatory option.

33. With regard to Option 2: What designation duration, Option 1A means that An Post exclusively provides the entire universal postal service for the entire State for the duration of the designation.

- Option 2A is to designate for 6 years.

- Option 2B would be a designation duration different to Option 2A; for example, An Post's proposal of 12 years.

Option 2: What designation duration?	Impact on stakeholders	Impact on competition
Option 2A: designate for 6 years	Continues the designation of An Post to the benefit of postal service users. According to information provided by An Post, ComReg considers that the 6 year duration is sufficient for An Post's return on investments in the universal postal service. The period of the duration enables ComReg to consider prospective legislative and regulatory changes anticipated in the next few years which will likely change the universal postal service and thereby may facilitate additional / other universal postal service provider(s) in the future.	No impact on competition, the universal postal service does not face effective competition. It is considered that this duration enables other postal service provider(s) to be in a position to be able to submit to be designated universal postal service provider, particularly in part, should there be the expected legislative / regulatory changes to the universal postal service during the duration period.
Option 2B: to designate for another duration	According to information provided by An Post, An Post does not need a longer duration to recover the costs of investments on the universal postal service. As there is only one designated universal postal service provider this means that provider exclusively provides the entire universal postal service for the entire State for the duration of the designation. It is considered reasonable for the duration to not be longer than necessary so as to consider market circumstances and likely legislative / regulatory changes for the next designation decisions.	No impact on competition, the universal postal service does not face effective competition. It is considered that a duration longer than 6 years is not appropriate as ComReg anticipates that there will be legislative / regulatory changes to the universal postal service that could enable other postal service provider(s) to be in a position to be able to submit for the next designation decisions to be designated universal postal service provider, particularly in part, given the likely legislative / regulatory changes to the universal postal service.

34. Having regard to the impacts assessed above, and the reasons presented in this document, the conclusion of this RIA is that Option 2A designate for 6 years (2 August 2023 – 1 August 2029) is best as it is the most effective and least burdensome regulatory option. ComReg considers this duration is appropriate.

Annex: 1 Step 2: Decision

1. STATUTORY FUNCTIONS AND POWERS

1.1 This Decision and Decision Instrument is hereby made by The Commission for Communications Regulation (“ComReg”) established under section 6 of the Communications Regulation Act 2002 (as amended”) (“the Act”), for the purposes of deciding to designate a Universal Postal Service Provider in the State on and from 2 August 2023.

1.2 This Decision and Decision Instrument is made:

- (i) Pursuant to and having had regard to its statutory functions and objectives in relation to postal services, as set out in sections 10 and 12 of the Act;
- (ii) Pursuant to and having had regard to sections 18 and Section 19 of the Communications Regulation (Postal Services) Act 2011 (“the 2011 Act”);
- (iii) Having complied with the procedures established and published by ComReg pursuant to section 19 of the 2011 Act in ComReg Document No. 19/64a;
- (iv) Having had regard to the assessment set out in ComReg Document No. 23/26 and reasoning set out in ComReg Document No. 23/53, Decision D03/23.

2. DEFINITIONS AND INTERPRETATION

- 2 Terms that are used in this Decision Instrument shall have the same meaning as when they are used in the Act or the 2011 Act unless the context otherwise admits or requires.
- 3 Words in the singular form shall be construed to include the plural and vice versa, unless the context otherwise admits or requires.
- 4 “Effective Date” means the date specified in section 7.3 of this Decision Instrument.
- 5 “The Procedures” means the Procedures established and published by ComReg Document No. 19/64a entitled ‘Postal Universal Service Provider Designation Procedures’.
- 6 “Universal Postal Service Provider designation” means a designation under section 18 of the 2011 Act.

3. UNIVERSAL POSTAL SERVICE PROVIDER DESIGNATION DECISION

7 ComReg decides:

- 7.1 that in accordance with Step 2 of the Procedures that An Post is designated as universal postal service provider for the entire universal postal service and for the entire State subject to the provisions of Section 18(4) of 2011 Act for a period of 6 years with effect from 2 August 2023;
- 7.2 this designation duration period is appropriate, having regard to the need to ensure that the designation is of sufficient duration for the return on investments;
- 7.3 For the designation to take effect from 2 August 2023, An Post to submit, by 23 June 2023, its terms and conditions for the universal postal service effective from 2 August 2023 under Section 23(1)(a) of the 2011 Act for approval by ComReg, with or without amendment. When approved by ComReg with or without amendment, An Post then shall publish as required by Sections 23(2) and 23(3) of the 2011 Act:
 - (a) ComReg's notice of approval of the terms and conditions for the universal postal service effective from 2 August 2023,
 - (b) the approved terms and conditions of the universal postal service effective from 2 August 2023, and
 - (c) the charges made by it in respect of the universal postal service provision, on its website before 19 July 2023.
- 7.4 Effective Date: this decision is effective 14 days after the date of publication of notice of approval of the terms and conditions in accordance with Section 18(4) of the 2011 Act and shall remain in full force until 1 August 2029 unless otherwise amended by ComReg.

4. CONTINUATION OF COMREG DECISIONS

- 8 All other decisions imposed by ComReg in relation to universal postal service obligations, which were immediately in force prior to the effective date of this Decision and Decision Instrument, shall continue to have full force and effect.

5. MAINTENANCE OF OBLIGATIONS AND SEVERANCE

- 9 If any Section(s), Clause(s) or provision(s), or portion(s) contained in this Decision Instrument is found to be invalid or prohibited by the Constitution, by any other law or judged by a court to be unlawful, void or unenforceable, then that Section(s), Clause(s) or provision(s), or portion(s) thereof shall, to the extent required, be severed from this Decision Instrument, and rendered ineffective, but as far as possible without modifying the remaining Section(s), Clause(s) or provision(s), or portion(s) thereof and shall not in any way affect the validity or enforcement of this Decision Instrument or other Decision Instruments.

**GARRETT BLANEY
COMMISSIONER
THE COMMISSION FOR COMMUNICATIONS REGULATION
THE 15 OF JUNE 2023**

Annex: 2 Summary of Response to Consultation 23/26

A 1.1 There was one response (An Post) received to Consultation 23/26²². The following summarises the response to Consultation 23/26 and ComReg's position.

Q. 1 Do you agree or disagree with ComReg's assessment and preliminary view as set out above and ComReg's draft decision as set out at Annex 1 to designate An Post on and from 2 August 2023? Please document clearly what part(s) you are in agreement or disagreement with by providing a detailed response with supporting information / data.

Summary of Response to Q1

A 1.2 An Post agrees with ComReg's assessment, preliminary view and draft decision to designate An Post.

ComReg's position

A 1.3 ComReg notes An Post agreement with its assessment, preliminary view and draft decision to designate An Post on and from 2 August 2023. ComReg's decision is to designate An Post on and from 2 August 2023.

Q. 2 Do you agree or disagree with ComReg's preliminary view that the designation will be for a minimum of 3 years and a maximum of up to 5 years? Please provide a detailed response with supporting information / data where appropriate to support your view.

Summary of Response to Q2

A 1.4 An Post disagrees with ComReg's preliminary view that the designation will be for a minimum of three years and a maximum of up to five years.

A 1.5 An Post *"suggests a period of twelve years, in line with the previous designation under the 2011 Postal Act"*.

A 1.6 An Post believes *"a USP designation period of more than ten years to be fully in line with the position across Europe"*.

A 1.7 An Post notes that ComReg's Procedures state that a USP designation period can be somewhere between two to seven years. An Post states that *"the Procedures do not have a statutory footing. The statutory requirement is that the designation period is of sufficient duration for the return on investments."*

²² Published as ComReg Document No. 23/53s

A 1.8 According to An Post, *“while changes emanating from a review of the Postal Services Directive at EU-level and a modernisation of the universal postal service specification domestically may alter the nature of the universal service provision, the designation should be sufficiently flexible to accommodate any such changes”*. An Post states that *“in the absence of EU legislative change, postal providers across the EU have been adapting universal service provision to meet evolving user needs in any event”*. An Post *“believes it would be inappropriate to base a reduced designation period on the basis of prospective but uncertain legislative change.”*

ComReg’s position

A 1.9 ComReg notes the statutory requirement on the designation duration is that it is of sufficient duration for the return on investments. An Post in its submission to be USP provided information on its forecast investments. Based on this information provided by An Post, ComReg considers that the duration in the Decision is sufficient for the return on investments for the universal postal service.

A 1.10 ComReg’s Procedures, which were set after public consultation, noted that 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. Given the information before ComReg and the particular circumstances at this time, ComReg consider the duration in the Decision is appropriate. The previous designation duration of 12 years, subject to ComReg review after 7 years, referred to by An Post in support of its suggestion of 12 years duration has no relevance for this designation duration.

A 1.11 The international comparison referred to by An Post has no relevance for designation duration. Notwithstanding, ComReg notes an error with Germany by An Post as Germany has no designated USP.

Q. 3 Do you agree or disagree with ComReg’s draft Regulatory Impact Assessment? Please provide a detailed response with supporting information / data where appropriate to support your view.

Summary of Response to Q3

A 1.12 An Post agrees with the policy decision to designate An Post as USP.

A 1.13 An Post does not agree with the assessment as to an impact on An Post of a shorter designation period. An Post states that a shorter designation period cannot be justified by reference to changes to the postal regulatory framework which are not the subject of any proposals and may not occur.

ComReg's position

A 1.14 ComReg notes An Post agreement with the Regulatory Impact Assessment to designate An Post on and from 2 August 2023.

A 1.15 With regard to the designation duration, An Post does not disagree with the assessment approach but disagrees with the duration that was proposed in the consultation. Since the consultation, ComReg has changed the duration to be a period of 6 years, not between 3 to 5 years.

A 1.16 ComReg notes the statutory requirement on the designation duration is that it is of sufficient duration for the return on investments. An Post in its submission to be USP provided information on its forecast investments. Based on this information provided by An Post in its submission to be USP, ComReg considers that the duration of 6 years is sufficient for the return on investments for the universal postal service.