



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

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

Submission to public consultation 22/85

Submission to Consultation

Reference: ComReg 22/103s

Date: 09/12/2022

An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation

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Submission Received from Respondent

Consultation:	22/85
Response to Consultation and Decision:	22/103

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Section

1. An Post

1 An Post

Reference: Submission re ComReg 22/85

To: Postal - Retail Division, Commission for Communications Regulation
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From: ComRegCorrespondence@anpost.ie

Date: 11 November 2022

ComReg Consultation dated 14 October 2022 on

Step 1 of

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

Consultation and Draft Decision Reference: ComReg 22/85

Executive Summary of An Post Response

1. An Post agrees with ComReg's assessment, preliminary conclusion and draft decision that there is a requirement for USP Designation after 1 August 2023.
2. A minimum period of ten years is an appropriate USP designation period(s) post 1 August 2023.

Question 1

Do you agree or disagree with ComReg's assessment and preliminary conclusion as set out above and ComReg's draft decision as set out at Annex 1 of this document that there is a requirement for USP Designation after 1 August 2023? Please document clearly what part(s) you are in agreement or disagreement with by providing a detailed response with supporting information / data where appropriate to support your view.

An Post Response:

The Communications Regulation (Postal Services) Act 2011 as amended ("the 2011 Act") designated An Post as the sole USP for postal services in the State for a period of 12 years from 2 August 2011 to 1 August 2023, subject to review. Prior to the 2011 Act, An Post was also effectively the sole designated USP for the State.

This designation was in fulfilment of the State's obligations pursuant to its accession to the international treaty, i.e. the Convention of the Universal Postal Union (UPU). In this regard, ensuring a universal postal service also constitutes fulfilment of the economic and social co-operation that the State has undertaken to provide in line with its obligations as a UPU signatory.

Throughout that period, An Post has successfully ensured the provision of postal services to all, at affordable prices and to a sufficient level of quality, thereby protecting and fulfilling the needs of postal service users including vulnerable and digitally disadvantaged users, despite the tumult of a pandemic, a range of geopolitical events, huge changes in the EU's political and legal landscape and the ongoing e-substitution over recent years.

While barriers to market entry are low, in the absence of USP designation, postal providers could choose to deliver with less frequency in rural areas, price on a zonal basis or provide lower density access to reflect the greater costs of delivering to rural areas, thereby losing the universality integral to the universal service. While the additional statutory requirements of a designated USP, e.g. quality of service, tariff requirements and financial reporting, render the market less attractive, they safeguard the universal postal service.

An Post is currently the only operator in the State providing all of the required universal postal services in full and as required by legislation.

Evidently, the market alone cannot guarantee the provision of the universal postal service.

It should also be considered that the European Commission's report on the application of the Postal Services Directive, published in November 2021, concluded that the universal postal service should be maintained (albeit with more flexibility at a national level). Further, the *WIK User Needs in the Postal Sector and Evaluation of the Regulatory Framework* report published in March 2021 states at p. 205 that:

"Practically all but one of the Member States rely on designation of a USP to ensure universal services provision. In these countries, the provider of universal services is the incumbent postal service provider".

In conclusion, An Post agrees with ComReg's view at paras. 35 and 36 of the consultation document that

"without a USP designation, the provision of the universal postal service to the required levels of accessibility, quality and affordability would not be ensured by the market"

and that there is consequently no need for a

"more detailed assessment of the market's capability to provide each of the universal postal services in accordance with the affordability, service quality and service access USO requirements or to conduct an assessment of any potential negative impacts on the market if there was to be no designated USP in place for the State".

In line with our submission to ComReg's previous consultation on USP designation in 2020, An Post agrees with ComReg's preliminary conclusion (at para. 37) and its draft Decision (Annex 1) that there is a requirement for USP designation after 1 August 2023 in order to ensure the provision of the universal postal service throughout the State.

Question 2

What do you consider to be appropriate USP designation period(s) post 1 August 2023? Please provide a detailed response with supporting information / data where appropriate to support your view.

An Post Response:

Over the past three years, An Post has been forced to pivot its universal service operations repeatedly, and with little notice, to ameliorate the impact on its users of a range of global developments including the Covid-19 pandemic and attendant restrictions, Brexit, customs rules changes and the war in Ukraine.

Consequently, any long-term strategy planning by a designated USP must attempt to account for both foreseen and unforeseen events. A designation period of at least ten years would support a USP to respond decisively and with agility to challenges as they arise.

Moreover, and as noted by ComReg at para. 43, the 2011 Act requires the designation period to be *"of sufficient duration for the return on investments"*. Standard commercial investment and return calculations are often based on a period of ten years for businesses of An Post's size and scope and where investment is funded through borrowing, access to credit may be predicated on certainty of designation duration.

ComReg posits at para. 43 that An Post would require a shorter period than a new USP on the basis of its *"established network and investments already made"*. In our view, this simply underscores the reality that An Post is uniquely placed to assume a USP designation, a matter for Step 2 of this process, and does not support any argument for a shorter designation period. In fact, it behoves any USP, whether or not the incumbent, to invest in the continuous modernisation, adaptation and improvement of its service in order to ensure its financial sustainability while meeting evolving customer needs.

A USP designation period of more than ten years is in line with the position across Europe, where several countries appear to offer the equivalent of indefinite designation periods (e.g. UK, Germany, Austria, Norway and the Netherlands) or USP designation periods of ten years or more (e.g. France, Spain, Italy, Poland and Finland).

An Post does not accept that a review of the EU Postal Services Directive could or *"should happen within three years after 1 August 2023"* (at para. 44). While the Council of the EU has requested the European Commission to study and make appropriate proposals for the revision of the Directive, the Commission's November 2021 report in the context of any review of the postal framework does not signal an overhaul of the legislative framework, nor does it include recommendations for legislative change. It would be short-sighted to reduce a designation period on the basis of prospective legislative change between 2023-2026, where no proposals have yet been made.

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 event¹.

In order to allow a designated USP sufficient time to plan its universal service provision and invest appropriately in postal infrastructure, a minimum period of ten years is appropriate.

An Post notes that ComReg's preliminary conclusion on any appropriate designation period(s) will be subject to further consultation before any final decision is made (para. 45).

An Post looks forward to working with ComReg as it plans for the continued provision of the universal postal service for all.

¹In France, ARCEP recently approved changes to La Poste's universal service specification from 1 January 2023.