



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

# Switching and Number Portability - End-User Compensation Consultation

Consultation

**Reference:** ComReg 23/92  
**Version:** FINAL  
**Date:** 26/09/2023

## Legal Disclaimer

This Consultation is not a binding legal document and also does not contain legal, commercial, financial, technical or other advice. The Commission for Communications Regulation is not bound by it, nor does it necessarily set out the Commission's final or definitive position on particular matters. To the extent that there might be any inconsistency between the contents of this document and the due exercise by it of its functions and powers, and the carrying out by it of its duties and the achievement of relevant objectives under law, such contents are without prejudice to the legal position of the Commission for Communications Regulation. Inappropriate reliance ought not therefore to be placed on the contents of this document.

# Content

Section	Page
1 Executive Summary .....	5
1.1 Background .....	5
1.2 Overview of our proposals and providers in scope.....	6
2 Introduction.....	7
2.1 Background.....	7
2.2 Purpose of this document .....	7
3 Switching and/or Number Portability Specified Failures – End-user compensation .....	8
3.1 Information before and during switching .....	8
3.2 Continuity of service during switching .....	8
3.3 Number Porting .....	8
3.4 Switching and porting processes.....	9
4 Questions .....	11
5 Next Steps.....	12

# Annex

<b>Section</b>	<b>Page</b>
Annex 1: Draft Decision Instrument.....	13
Annex 2: Schedule .....	15
Annex 3: Section 39 of the 2023 Act.....	18
Annex 4: Legal Basis.....	20

## Chapter 1

# 1 Executive Summary

## 1.1 Background

- 1.1 ComReg is the statutory body responsible for the regulation of Electronic Communications Services (“**ECS**”), Electronic Communications Networks (“**ECN**”), associated facilities<sup>1</sup> and the postal sector in Ireland. We have a wide range of responsibilities in the sectors we regulate and operate under Irish and EU legislation in these areas.
- 1.2 The European Union (Electronic Communications Code) Regulations 2022<sup>2</sup> (“**the Code Regulations**”) and the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023<sup>3</sup>, (“**the 2023 Act**”), transpose the European Electronic Communications Code<sup>4</sup> (“**the Code**”) into Irish law.
- 1.3 Article 106(8) of the Code obliges Member States to lay down rules on the compensation of end-users by their providers in an easy and timely manner in the case of the failure of a provider to comply with the obligations laid down in that Article, as well as in the case of delays in, or abuses of, porting and switching processes, and missed service and installation appointments. Section 39 of the 2023 Act is the mechanism by which this is given effect in the State. The specification of failures under section 39(1) is a necessary prerequisite to the implementation of the required rules. In such circumstances, a regulatory impact assessment is not required. Paragraph 1.6 is also relevant here.
- 1.4 Regulation 90 of the Code Regulations contains various rights and obligations to protect end-users when they are porting numbers and/or switching between providers of internet access services (“IAS”).
- 1.5 Section 39 of the 2023 Act empowers ComReg to specify a failure to comply with an obligation under Regulation 90 of the Code Regulations as a “specified failure” which requires payment of compensation to an affected end-user.
- 1.6 ComReg notes that Regulation 25(10) of the Universal Service and Users’ Rights Regulations 2011 (S.I. No. 337 of 2011) already obliged undertakings to compensate

---

<sup>1</sup> Including telecommunications, radiocommunications and broadcasting transmission services

<sup>2</sup> S.I. No. 444/2022 - European Union (Electronic Communications Code) Regulations 2022

<sup>3</sup> Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023

<sup>4</sup> Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code

subscribers in case of delay in porting or abuse of porting by them or on their behalf.

## 1.2 Overview of our proposals and providers in scope

1.7 This consultation sets out ComReg’s proposal to specify failures of providers of internet access services (“IAS”) or number-based interpersonal communications services (“NBICS”), to comply with an obligation under Regulation 90 of the Code Regulations.

Where ComReg specifies failures as provided for under Section 39 of the 2023 Act, the following obligations are engaged –

1. The obligation on the relevant provider to pay compensation to the affected end-user when a specified failure is committed; and
2. The obligation on the provider to prepare and publish a compensation scheme within three months setting out a transparent procedure to obtain compensation and the amount of compensation to be paid.

1.8 This consultation addresses failures to comply with Regulation 90 of the Code Regulations and to delays in, or abuses of, the porting and switching processes. Missed service and installation appointments are outside the scope of this consultation and will be the subject of a separate consultation.

1.9 ComReg invites comments from interested parties to the questions set out at section 4 to this consultation by 5pm on 27 October 2023. The procedure for submitting comments is set out in section 5 of this document.

## Chapter 2

# 2 Introduction

## 2.1 Background

- 2.1 Telecommunications services form an essential part of a consumer's home and business life, covering activities such as remote working, e-Banking, shopping, booking or ordering services.<sup>5</sup> In 2022, 94% of internet users went online daily with 43% using the internet all the time or nearly all the time.<sup>6</sup> Given the reliance now placed upon telecommunications services, it is important they are reliable and work as expected.
- 2.2 One of ComReg's objectives is that end-users can choose and use electronic communications services with confidence.<sup>7</sup> As part of delivering this, an important goal is ensuring that all end-users are supported by clear, accurate and up-to-date information throughout the customer journey and that end-users' rights are upheld by their service provider throughout their journey.
- 2.3 In Q2 2023, 6.5% of all contacts received by ComReg related to issues concerning switching providers by end-users.<sup>8</sup> Such issues included delays in switching, and a loss of number when switching providers. End-users who encounter these problems are likely to experience harm through disruption to their service or by their inability to use the service in a way they had expected to.

## 2.2 Purpose of this document

- 2.4 ComReg proposes, subject to this consultation, that it exercise its powers under Regulation 39 of the 2023 Act to specify a failure of a provider IAS or number-based interpersonal communications services to comply with Regulation 90 of the Code Regulations in the case of switching and/or number portability by an end-user. When a specified failure is committed, providers will be obligated to pay compensation to an affected end-user. Providers will be required to prepare and publish a compensation scheme within three months, setting out a transparent procedure for end-users to obtain compensation and the amount of compensation to be paid.

---

<sup>5</sup> Central Statistics Office, 12 December 2022, Household Digital Consumer Behaviour 2022

<sup>6</sup> Central Statistics Office 21 December 2021, Internet Coverage and Usage in Ireland 2022

<sup>7</sup> ComReg's 2021-2023 Electronic Communications Strategy Statement

<sup>8</sup> ComReg Consumer Care Statistics Report, Q2 2023

## Chapter 3

# 3 Switching and/or Number Portability Specified Failures – End-user compensation

## 3.1 Information before and during switching

- 3.1 When end-users are switching it is incumbent on providers that they set out clearly the steps involved and the expected timeline for completing the switching process. The provision of transparent, accurate and timely information both before and during the switching process will provide greater clarity to end-users on what is to be expected during the process and, in-turn, will increase their confidence in their ability to switch provider.
- 3.2 Regulation 90(1)(a) of the Code Regulations stipulates that providers shall provide the end-user with adequate information both before and during the switching process.

## 3.2 Continuity of service during switching

- 3.3 In the case of switching by an end-user, Regulation 90(1)(a) of the Code Regulations stipulates that providers shall ensure continuity of service, unless not technically feasible.
- 3.4 Regulation 90(1)(b) of the Code Regulations stipulates that during the IAS switching process the receiving provider shall ensure that the activation of the IAS occurs within the shortest possible time period and within the timeframe expressly agreed with the end-user. Regulation 90(1)(b) states that the transferring IAS provider shall continue to provide its service until the receiving provider activates its IAS. The loss of service during the switching process shall not exceed one working day.

## 3.3 Number Porting

- 3.5 When switching providers, an end-user with a number from the national numbering plan has the right, upon request, to retain his or her number independently of the provider providing the service as provided for under Regulation 90(3) of the Code Regulations. Regulation 90(5) of the Code Regulations requires that the provision of number portability by providers must also be free of charge to the end-user.
- 3.6 Regulation 90(4) of the Code Regulations gives end-users the right to port a number



within a minimum of one month after the termination of their contract with a provider, unless that right is renounced by the end-user. Related to this, Regulation 90(4)(b) of the Code Regulations requires providers to maintain a record of the end-user's decision to renounce their right to port their number in accordance with data protection law.

- 3.7 Where an end-user's right is not upheld and this adversely impacts the switching and/or number porting process, ComReg considers this to be an abuse of the switching and/or number porting process as appropriate that gives rise to an entitlement to compensation.
- 3.8 Regulations 90(1)(a) and (b) of the Code Regulations stipulate that the porting of numbers and their subsequent activation shall be carried out within the shortest possible time on the date explicitly agreed with the end-user and the ported number should be activated within one working day from the date agreed with the end-user.

### **3.4 Switching and porting processes**

- 3.9 Transparent and consistent switching and number porting processes will build end-user confidence and support effective competition. Regulations 90(8)(a) and (b) of the Code Regulations provide respectively that both the receiving and transferring providers shall co-operate in good faith and that neither shall delay or abuse the switching or porting processes or port numbers or switch end-users without the end-users' explicit consent.
- 3.10 Regulation 90(8)(a) of the Code Regulations states the receiving provider shall lead the switching and porting processes.
- 3.11 Regulation 90(7)(e) of the Code Regulations provides that providers whose access networks or facilities are used by either the transferring or the receiving provider, or both, shall ensure that there is no loss of service that would delay the switching and porting process.
- 3.12 In the case of a failure of the porting process, Regulation 90(7)(c) of the Code Regulations provides that the transferring provider shall reactivate the number and related services for the end-user until the porting is successful and Regulation 90(7)(d) provides that the transferring provider shall continue to provide its services on the same terms and conditions until the services of the receiving provider are activated.
- 3.13 The transferring provider shall terminate the end-user's contract automatically upon conclusion of the switching process as stipulated under Regulation 90(8)(c) of the Code Regulations.
- 3.14 ComReg draws providers' attention to the obligations contained in section 39 of the

2023 Act and in particular those obligations that are engaged upon ComReg specifying a failure (or failures) pursuant to section 39(1). In particular, providers' attention is drawn to the obligation to publish a compensation scheme within 3 months of such specification (which must contain certain minimum information) and the obligation to pay sufficient compensation to an affected end-user for any specified failure committed. The text of section 39 of the 2023 Act is set out in Annex 1.

- 3.15 While ComReg is empowered under sections 39(7) and 39(11) of the 2023 Act to determine that compensation is paid automatically (without the need for the end-user to make a complaint) and to specify the amount of compensation to be paid in respect of a specified failure, it is not proposed to make such a determination or specification at this time. ComReg will, however, monitor the content of providers' compensation schemes and their implementation and return to these (and any other related) issues as it considers appropriate.
- 3.16 ComReg notes that providers in other Member States, and elsewhere pay compensation to end-users without the need for an end-user to make a complaint or a claim for compensation. For example, in Belgium providers apply €10<sup>9</sup> per day and in the United Kingdom providers apply €10.73 (£9.33)<sup>10</sup> per day automatically to an end-user affected by a loss of service exceeding one working day. ComReg expects that Irish service providers will provide automatic and adequate compensation in the case of this specified failure. Therefore, while ComReg is empowered under sections 39(7) and 39(11) of the 2023 Act to determine that compensation is paid automatically (without the need for the end-user to make a complaint) and to specify the amount of compensation to be paid in respect of a specified failure, it is not considered necessary to make such a determination or specification at this time. ComReg will, however, monitor the content of providers' compensation schemes and their implementation and consider interventions as appropriate.
- 3.17 In terms of the amount of compensation to be paid for a specified failure, ComReg draws providers' attention to section 39(5) of the 2023 Act which requires that compensation is "sufficient" and which sets out a number of factors to be considered in this regard namely the nature and duration of any loss of service experienced and any failure by the provider to keep the end-user informed throughout the process.

---

<sup>9</sup> Source: Cullen International

<sup>10</sup> Ofcom, 'Automatic compensation: What you need to know'. Accessed [online](#).

## Chapter 4

# 4 Questions

- |  |
|--|
| <p>Q. 1 Do you have any comments on ComReg’s reasoning in this consultation?</p> <p>Q. 2 Do you have any comments on the text of the Decision Instrument included at Annex 1 of this consultation?</p> |
|--|

## Chapter 5

# 5 Next Steps

- 5.1 The deadline for receipt of submissions to this consultation paper is 5pm on 27 October 2023, during which time ComReg welcomes written responses on the questions posed in this consultation document.
- 5.2 Responses must be submitted in written form (post or email) to the following address/email and clearly marked “Submission to ComReg 23/92”:
- Retail Policy  
Commission for Communication Regulation  
One Dockland Central  
1 Guild Street  
North Dock  
Dublin 1  
D01 E4XO  
Ireland
- Email: [retailconsult@comreg.ie](mailto:retailconsult@comreg.ie)
- 5.3 To promote further openness and transparency, ComReg will publish all respondents’ submission to this consultation, subject to the provisions of ComReg’s Guidelines on the Treatment of Confidential Information – ComReg 05/24.
- 5.4 Respondents are requested to clearly identify confidential material and provide both a confidential and non-confidential version of their responses.
- 5.5 Respondents are also requested to provide any electronic submissions in an unprotected format so that they can be appended into ComReg’s submissions document for electronic publication.
- 5.6 Once ComReg has considered the responses received to this consultation, ComReg will then issue its decision.

# Annex 1: Draft Decision Instrument

## 1 STATUTORY FUNCTIONS AND POWERS

- 1.1 This Decision and Decision Instrument is made by the Commission for Communications Regulation (“ComReg”) established under section 6 of the Communications Regulation Act 2002 (“the Principal Act”), and is made:
- i. Having regard to the functions and objectives of ComReg as set out in sections 10 and 12 of the Principal Act,
  - ii. Pursuant of the functions and powers conferred upon ComReg by section 39 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023,
  - iii. Pursuant to and having regard to Directive 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications code (Recast),
  - iv. Having regard to European Union (Electronic Communications Code) Regulations 2002 (“S.I. 444 of 2002”),

## 2 DEFINITIONS

- 2.1 In this Decision Instrument, terms used are as defined in the European Communities (Electronic Communications Code) Regulations 2022 (S.I. No. 444 of 2022), and the Communications Regulation Acts 2002 to 2023, unless the context otherwise admits.
- 2.2 References to European legislation, primary legislation or secondary legislation shall be construed as references to that legislation as amended from time to time.
- 2.3 Words in the singular form shall be construed to include the plural and vice versa unless the context otherwise admits or requires.
- 2.4 A reference to a section, clause, or schedule, is a reference to a section, clause or schedule of this Decision Instrument unless the context otherwise admits or requires.
- 2.5 A reference to the “Code Regulations” is a reference to the European Communities (Electronic Communications Code) Regulations 2022, (S.I. No. 444 of 2022).
- 2.6 A reference to “of the 2023 Act” is a reference to the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023.

### 3 SCOPE AND APPLICATION

#### Specified Failures

- 3.1 Under and in accordance with section 39(1) of the 2023 Act, and Regulation 90 of the Code Regulations, a failure by a provider of an internet access services (“IAS”) or number-based interpersonal communications services (“NBICS”) as applicable –
- i. to comply with any obligation provided for in Regulations 90(1), (5), (7), (8) or (11) of the Code Regulations, or
  - ii. to uphold any end-user right provided for in Regulations 90(3) or (4)(a) of the Code Regulations,
- is specified as a failure and is thereby a “specified failure” as referred to in section 39 of the 2023 Act.
- 3.2 The text of Regulation 90 of the Code Regulations is set out in the Schedule to this Decision Instrument.

### 4 STATUTORY POWERS NOT AFFECTED

- 4.1 Nothing in this Decision Instrument shall operate to limit ComReg in the exercise and performance of its statutory powers or duties conferred on it under any primary or secondary legislation (in force prior to or after the Effective Date of this Decision Instrument) from time to time.

### 5 MAINTENANCE OF OBLIGATIONS

- 5.1 If any section or clause 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, that section or clause shall, the extent required, be severed from this Decision Instrument and rendered ineffective as far as possible without modifying the remaining section(s) or clause(s) of this Decision Instrument and shall not in any way affect the validity or enforcement of this Decision Instrument.

### 6 EFFECTIVE DATE AND DURATION

- 6.1 This Decision and Decision Instrument is fully effective from XX/XX, unless otherwise amended by ComReg.

## Annex 2: Schedule

### Regulation 90 of the Code Regulations

#### *Provider switching and number portability*

90. (1) In the case of switching by an end-user between providers of internet access services —

(a) the providers concerned shall provide the end-user with adequate information before and during the switching process and ensure continuity of the internet access service, unless technically not feasible,

(b) the receiving provider shall ensure that the activation of the internet access service occurs within the shortest possible time on the date and within the timeframe expressly agreed with the end-user, and

(c) the transferring provider shall continue to provide its internet access service on the same terms until the receiving provider activates its internet access service.

Loss of service during the switching process shall not exceed one working day.

A provider who fails to comply with this paragraph commits an offence.

(2) The Regulator shall ensure the efficiency and simplicity of the switching process for the end-user and may specify requirements to be complied with by providers in this regard.

(3) An end-user with a number from the national numbering plan has the right, upon request, to retain his or her number independently of the provider providing the service —

(a) in the case of geographic numbers, at a specific location, and

(b) in the case of non-geographic numbers, at any location.

This paragraph does not apply to the porting of numbers between networks providing services at a fixed location and mobile networks. A provider who fails to allow an end-user to retain their number in accordance with this paragraph commits a hybrid offence.

(4) (a) Where an end-user terminates a contract with a provider, the end-user has the right to port a number from the national numbering plan to another provider for a minimum of one month after the date of termination, or such other period as may be agreed with the provider, unless that right is renounced by the end-user.

(b) A record of such renunciation by an end-user shall be maintained by the provider in accordance with data protection law.

(c) A provider who fails to comply with subparagraph (a) commits an offence and is liable on summary conviction to a class A fine.

(5) Pricing among providers related to the provision of number portability as provided for in paragraph (3) shall be cost-oriented and no direct charges shall be applied to end-users.

(6) The Regulator may issue a direction to a provider to ensure compliance by that provider with its obligations under paragraph (5). A provider who fails to comply with a direction issued to him or her commits a hybrid offence.

(7) (a) The porting of numbers and their subsequent activation shall be carried out within the shortest possible time on the date explicitly agreed with the end-user.

(b) In the case where an end-user has concluded an agreement to port a number to a new provider, that number shall be activated within one working day from the date agreed with the end-user.

(c) In the case of failure of the porting process, the transferring provider shall reactivate the number and related services of the end-user until the porting is successful.

(d) The transferring provider shall continue to provide its services on the same terms and conditions until the services of the receiving provider are activated.

(e) Operators whose access networks or facilities are used by either the transferring or the receiving provider, or both, shall ensure that there is no loss of service that would delay the switching and porting process.

Loss of service during the porting process shall not exceed one working day.

A provider who fails to comply with subparagraph (a), (b), (c) or (d) or an operator who fails to comply with subparagraph (e) commits an offence.

(8) (a) The receiving provider shall lead the switching and porting processes set out in paragraphs (1) and (7) and both the receiving and transferring providers shall cooperate in good faith.

(b) The receiving and transferring providers shall not —  
(i) delay or abuse the switching or porting processes, or  
(ii) port numbers or switch end-users without the end-users' explicit consent.

(c) An end-user's contract with the transferring provider shall be terminated automatically upon conclusion of the switching process.

(d) A provider who fails to comply with subparagraph (b)(ii) or (c) commits an offence.

(9) The Regulator may take measures to establish the details of the switching and porting processes, taking into account national provisions on contracts, technical feasibility and the need to maintain continuity of service to the end-user. This shall include, where technically feasible, a requirement for the porting to be completed through over-the-air



provisioning, unless an end-user requests otherwise. A provider who fails to comply with any switching or porting process established by the Regulator commits an offence.

(10) The Regulator shall take appropriate measures to ensure that end-users are adequately informed and are protected throughout the switching and porting processes and not switched to another provider without their consent.

(11) Transferring providers shall refund, upon request, any remaining credit to a consumer using pre-paid services. Such refunds may be subject to a fee only if provided for in the consumer's contract. Any such fee shall be proportionate and commensurate with the actual costs incurred by the transferring provider in offering the refund.

(12) The obligations referred to in this Regulation apply to all providers, and operators whose access networks or facilities are used by providers with a role in facilitating change of provider, including the provider to which the end-user is porting and any wholesale provider with involvement in the process.

## Annex 3: Section 39 of the 2023 Act

### End-user compensation

- (1) The Commission may, for the purposes of this section, specify a failure (referred to in this section as a “specified failure”) of a provider of internet access services or number-based interpersonal communications services (referred to in this section as a “provider”) to comply with an obligation under-
  - (a) A minimum quality-of-service standard, or
  - (b) Regulation 90 of the Code Regulations.
- (2) Where a commits a specified failure the provider shall pay compensation to any end-user affected.
- (3) Where the Commission specifies a failure under *subsection (1)* providers shall, not later than 3 months thereafter, prepare and publish a scheme (in this section referred to as a “compensation scheme”) setting out the compensation that end-users are to be entitled to in respect of the specified failure and a transparent procedure by which compensation shall be paid.
- (4) A compensation scheme shall include at least the following in respect of the specified failure-
  - (a) a user-friendly description of the procedure by which compensation is paid,
  - (b) the amount of compensation that end-users are entitled to,
  - (c) the means by which compensation will be paid, and
  - (d) the time periods within which end users will receive compensation.
- (5) Providers shall ensure that the amount to which end-users are entitled under a compensation scheme is sufficient to compensate them having regard, *inter alia*, to-
  - (a) the nature of any loss of service experienced,
  - (b) the duration of any loss of service experienced, and
  - (c) any failure on the part of the provider to keep the end-user informed throughout the process.
- (6) A provider shall not charge an end-user any fee in connection with the payment of compensation.
- (7) The Commission may determine that providers pay compensation to end-users in respect of a specified failure without the need for an end-user to make a complaint or claim for compensation.

- (8) A compensation scheme shall be published by the provider on its website in a clear and comprehensible format that is easily accessible by end-users and, in particular, by end-users with disabilities and in any other manner as may be specified by the Commission.
- (9) Where a provider prepares a compensation scheme it shall ensure that end-users are informed about the scheme in a user-friendly manner.
- (10) Where a provider prepares a compensation scheme it shall ensure that end-users are informed, in a clear and comprehensible way, that the compensation scheme does not prejudice their right to pursue compensation in respect of a specified failure by other legal means or proceedings.
- (11) The Commission may specify the amount of compensation to be payable in respect of a specified failure.
- (12) Providers shall report to the Commission annually in relation to the operation of this section in such a manner as may be required by the Commission, detailing in particular, in respect of the period to which the report relates-
  - (a) the specified failures in respect of which compensation was paid by the provider,
  - (b) the number of instances of each specified failure in respect of which compensation was paid by the provider,
  - (c) the amount of compensation that was paid in respect of each specified failure by the provider, and
  - (d) the average time taken by the provider to pay compensation to the end-user.
- (13) The Commission may require a provider to submit to an independent audit or review, paid for by the provider, on its compliance with this section.

## Annex 4: Legal Basis

This consultation document is issued:

- Pursuant to the functions and powers conferred upon ComReg by section 39 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023,
- Having regard to ComReg’s functions and objectives as set out in sections 10 and 12 of the Communications Regulation Act 2002,
- Having regard to Directive 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications code (Recast) and in particular Article 106 thereof,
- Having regard to European Union (Electronic Communications Code) Regulations 2002 (“S.I. 444 of 2002”) and in particular Regulation 90 thereof.