

On grounds of the Decision of the Romanian Parliament no. 93/2017 regarding the appointment of the president of the National Authority for Management and Regulation in Communications,

On grounds of the provisions of Article 6 paragraph (2) letter d), Article 10 paragraph (2) indents 25 and 26, Article 11 paragraph (1) and Article 12 paragraphs (1) and (3) of the Government Emergency Ordinance no. 22/2009 on the establishment of the National Authority for Management and Regulation in Communications, approved by Law no. 113/2010, with the subsequent amendments and completions, as well as of Article 9 paragraphs (3), (4) and (5), Article 10 paragraphs (1), (2), (3) and (5), Article 11, Article 12 paragraphs (1) and (4), Article 13 paragraph (1), Article 14, Article 16 paragraph (1), (3), (4) and (6), Articles 17 to 20, Article 22, Article 23, Article 24 paragraph (1), Article 29, Article 30 paragraph (3), Article 31 paragraph (1) and (2), Article 33 paragraph (4) and of Article 37 paragraphs (2) - (4) of the Government Emergency Ordinance no. 13/2013 on postal services, approved with amendments and completions by Law no. 187/2013, with the subsequent amendments and completions,

having regard to the Order of the Minister of Communications and Information Society no. 641/2019 approving the Policy and strategy paper on the universal service implementation in the postal sector,

## **THE PRESIDENT OF THE NATIONAL AUTHORITY FOR MANAGEMENT AND REGULATION IN COMMUNICATIONS**

issues the present:

### **DECISION regarding the conditions and the procedure for designating the universal service providers in the postal sector**

#### **CHAPTER 1 – General provisions**

**Art. 1.** – (1) The present Decision regulates the conditions and procedure for designating postal service providers as universal service providers, as they are defined in Article 2 indent 24 of the Government Emergency Ordinance no. 13/2013 on postal services, approved with amendments and completions by Law no. 187/2013, with the subsequent amendments and completions, as well as the

mechanism for financing the net cost determined by the provision of services within the scope of the universal service.

(2) Within the text of the present decision, the relevant definitions under Article 2 of the Government Emergency Ordinance no. 13/2013 and item 1.1. of Annex no. 1 to the Decision of the President of the National Authority for Management and Regulation in Communications no. 313/2017 on the general authorisation regime for the provision of postal services shall apply.

**Art. 2.** – Only the postal service providers that are authorised to provide the services within the scope of universal service for which they are to be designated under the general authorisation regime and that ensure the fulfilment of the conditions under the Government Emergency Ordinance no. 13/2013 for the provision of postal services within scope of the universal service may be designated as universal service providers.

**Art. 3.** – (1) The National Authority for Management and Regulation in Communications, hereinafter ANCOM, shall designate a postal service provider as a universal service provider in the postal service sector , upon request or *ex officio*, for the provision of one or more services within the scope of the universal service as they are defined in the Government Emergency Ordinance no. 13/2013 and in the secondary legislation elaborated by ANCOM, on the entire Romanian territory or only on part of it, so as to ensure coverage of the entire territory.

(2) Universal service providers shall be designated for a sufficiently long period to ensure the economic viability of the services provided, but no more than 10 years.

(3) In duly justified cases, ANCOM may grant at most a one-year extension of the designation period, without exceeding the maximum period of 10 years referred to in paragraph (2).

(4) When designating two or more universal service providers competing on the same markets within the postal sector, ANCOM shall ensure that no competitive disadvantage is created to any of these providers, pursuing the principle of balance in terms of profitability of the provision of postal services between the area where each of them will provide the services for which they have been designated and the area or areas that has/have been established for the other competing universal service providers, and taking into account the competitive advantages enjoyed by each universal service provider.

(5) In enforcing the provisions under the present decision, ANCOM shall pursue the objectives provided for in Article 48 paragraph (2) of the Government Emergency Ordinance no. 13/2013 and shall

act in view of limiting the possible negative effects that the provision of services within the scope of universal service may have on competition, as well as of safeguarding the users' interests.

## **CHAPTER II – Designation upon request**

**Art. 4.** – (1) Any provider of postal services within the scope of universal service which intends to be designated as a universal service provider shall send a request notifying its intention to ANCOM headquarters, in the format provided in the annex to the present decision.

(2) The term for sending the request mentioned in paragraph (1) by a service provider is 30 days from the date ANCOM publishes, on its own website, a notice on its intention to designate as universal service provider/s one or several providers of postal services within the scope of universal service.

(3) The notice mentioned in paragraph (2) shall include, at least, the services within the scope of universal service for which the designation of the universal service providers is intended and the designation period. If ANCOM intends to designate several universal service providers for different geographical areas, the notice referred to in paragraph (2) shall include the defined geographical areas.

(4) The request shall be sent together with the other necessary documents only in one of the following ways:

- a) by submission, upon signature, in person or through a representative of the requester;
- b) by mail;
- c) in electronic format that has, attached or logically associated, an extended electronic signature based upon a qualified certificate that has not been invalidated or revoked at the respective moment, generated using a secured device for creating electronic signatures.

(5) The date of transmission shall be considered, as applicable, the date the request was registered with the general registry of ANCOM correspondence, the date of confirmation of receipt of the documents at ANCOM headquarters through an Advice of delivery postal service, or the date of confirmation of receipt of the document in electronic form.

(6) A requester may submit a request for the designation under the conditions of this Article if it fulfils the following conditions of participation:

- a) it is a postal service provider authorised under the general authorisation regime;
- b) it is authorised to provide the services within the scope of the universal service for which it requests the designation.

**Art. 5.** – (1) The request for the designation as a universal service provider shall include the following information:

- a) the requester's identification data;
- b) the services within the scope of universal service for which the designation is requested;
- c) the geographical area for which the designation is requested, if ANCOM intends to designate several universal service providers for different geographical areas.

(2) The following documents, which are part of the designation request, shall be annexed to the request for the designation as a universal service provider:

- a) certificate issued by the Trade Registry Office certifying that no procedure of voluntary or judicial dissolution and no dissolution procedure following bankruptcy has been initiated;
- b) copies of the annual financial statements submitted to the competent bodies, for the past 3 years, or for the whole period since the establishment of the company, where it has submitted less than 3 annual financial statements to the competent bodies, according to the legislation in effect;
- c) detailed description of the quality requirements whose fulfilment is guaranteed by the requester, as well as a description of the measures required for the fulfilment of the respective requirements;
- d) financial proposal in which the requester will detail the estimation of the maximum value of the annual net cost for providing postal services within the scope of universal service for which the designation is requested, for the entire designation period;
- e) a list of the locations of all the staffed/unstaffed access and contact points in the postal network operated by the requester or by other providers of postal services with whom the requester has concluded contracts for this purpose, which the applicant guarantees to use for providing the postal services within the scope of universal service for which the designation is requested;
- f) the tables provided for in Annexes no. 2 and 3 to the present decision, completed accordingly.

(3) The information under paragraph (2) letter c) shall include, at least, the rules for the distribution of the domestic postal items within the scope of the universal service, of the fastest standard category, the quality objectives established for the distribution rules, the annual percentage of complaints regarding the provision of services calculated for each of the 3 years prior to the designation procedure, or for each year since its establishment, respectively, if the requester has less than 3 years of experience in providing the postal services for which it has requested the designation. The annual percentage of complaints is calculated as the ratio between the volume of postal items reported as not

delivered, destroyed or damaged, which constitute the provision of postal services within the scope of the universal service for which the designation is requested, and the total volume of postal items which constitute the provision of postal services within the scope of the universal service.

**Art. 6.** - (1) Within 15 days from the date the notice under Article 4 paragraph (2) is published, the president of ANCOM shall set up, by decision, an evaluation committee to analyse the requests for the designation as a universal service provider.

(2) The evaluation committee provided under paragraph (1) shall consist of specialists in the economic, technical and legal fields and shall have the following attributions:

a) check the fulfilment of the format conditions of the requests for the designation as a universal service provider, provided under Article 5;

b) check the fulfilment of the participation conditions under Article 4 paragraph (6), the capacity of the requester to comply with the obligations regarding the provision of services within the scope of universal service, provided in the Government Emergency Ordinance no. 13/2013, as well as the requester's financial proposal;

c) draw up the draft decision designating the universal service provider.

(3) The evaluation committee may require that requesters provide any additional documents, information or explanations for assessing the requests, also indicating the level of detail and the term for submitting these documents.

**Art. 7.** – (1) In view of establishing the winning offer/offers, the evaluation committee shall analyse the capacity of the requesters to comply with the obligations regarding the provision of services within the scope of universal service, laid down in the Government Emergency Ordinance no. 13/2013, as well as the requesters' financial proposal, considering the following:

a) the degree of coverage of the national territory or of the geographical area for which the designation is requested, respectively, guaranteed by the requesters;

b) the technical and economic capacity of the requesters;

c) the estimated maximum net cost incurred by the provision of postal services within the scope of the universal service for which the designation is requested, as specified in the financial proposal submitted by the requesters.

(2) In order to evaluate the criteria provided in paragraph (1) letter a), the evaluation commission shall consider - scoring accordingly - the following elements:

a) the number of basic administrative-territorial units (communes or cities) at the national level or in the geographical area for which the designation is requested, respectively, covered by at least one fixed, staffed access or contact point, where postal items that are subject to the postal services within the scope of the universal service for which the designation is requested may be presented or delivered. For this element, the score shall be calculated as follows:

- up to 50% coverage of basic ATUs (communes or cities) = 0 points;
- coverage between 50% and 75% of basic ATUs (communes or cities) = 10 points;
- over 75% coverage of basic ATUs (communes or cities) = 15 points.

b) the number of localities at the national level or in the geographical area for which the designation is requested, as the case may be, covered by at least one unstaffed access point. For this element, the score shall be calculated as follows:

- up to 50% coverage of localities = 0 points;
- coverage between 50% and 75% of localities = 10 points;
- over 75% coverage of localities = 15 points.

(3) In order to evaluate the criteria provided in paragraph (1) letter (b), the evaluation commission shall consider - scoring accordingly - the following elements:

a) experience in providing the postal services for which the designation is requested:

- Experience of maximum 3 years in providing the postal services for which the designation is requested = 0 points;
- Experience between 3 and 5 years in providing the postal services for which the designation is requested = 10 points;
- Experience of minimum 5 years in providing the postal services for which the designation is requested = 15 points.

b) the total number of items that have been subject to the postal services provided during the last 3 years prior to the designation procedure or during the entire period since establishment, if the requester's experience in providing the postal services for which the designation is requested is less than 3 years:

- highest total number of postal items = 15 points;
- any other total number of postal items = the total number of postal items provided by the requester n/the highest total number of postal items x 15 points.

c) the average of the annual percentage of grounded complaints regarding the provision of services registered in the last 3 years prior to the designation procedure, respectively during the entire

period since its establishment, if the requester has less than 3 years of experience in providing the postal services for which the designation is requested. The annual percentage of complaints is calculated as the ratio between the volume of postal items reported as not delivered, destroyed or damaged, which are subject to the provision of postal services within the scope of the universal service for which the designation is requested, and the total volume of postal items subject to the provision of postal services within the scope of the universal service:

- The lowest average of the annual percentage of grounded complaints = 10 points;
- Another average of the annual percentage of grounded complaints = the lowest average of the annual percentage of grounded complaints/the average of the annual percentages of grounded complaints registered by the requester  $n \times 10$  points.

d) turnover from the provision of postal services:

- Turnover from the provision of postal services of up to EUR 1,000,000, registered in the last financial year for which the requester submitted financial statements to the competent bodies = 0 points;
- Turnover from the provision of postal services between EUR 1,000,001 and EUR 5,000,000, registered in the last financial year for which the requester submitted financial statements to the competent bodies = 10 points;
- Turnover from the provision of postal services of at least EUR 5,000,001, registered in the last financial year for which the requester submitted financial statements to the competent bodies = 15 points.

e) general solvency:

- General solvency below 100% (assets/debts ratio), registered in the last financial year for which it submitted financial statements to the competent bodies = 0 points;
- General solvency between 100% and 150% (assets/debts ratio), registered in the last financial year for which it submitted financial statements to the competent bodies = 5 points;
- General solvency between 151% and 200% (assets/debts ratio), registered in the last financial year for which it submitted financial statements to the competent bodies = 10 points;
- General solvency of at least 201% (assets/debts ratio), registered in the last financial year for which it submitted financial statements to the competent bodies = 15 points.

(4) In assessing the criteria provided in paragraph (1) letter (c), the evaluation commission will award the following scores:

- lowest estimated total net cost = 100 points;

- another estimated total net cost = lowest estimated total net cost/estimated total net cost of the requester  $n \times 100$ .

(5) The total technical-economic score shall result from summing up the total scores calculated according to paragraphs (2) and (3).

(6) Requesters with a total technical-economic score of up to and including 40 points may not be designated as winners.

(7) The total score granted to each request for designation shall be calculated using the following formula:

$S_{\text{total}} = S_{\text{financial}} \times 50\% + S_{\text{technical-economic}} \times 50\%$ , where:

$S_{\text{financial}}$  = the financial score calculated according to paragraph (4);

$S_{\text{technical-economic}}$  = the technical-economic score calculated according to paragraph (5);

(8) In order to establish the winning request or requests, as the case may be, the evaluation commission shall calculate the score taking into account, when appropriate, the requests submitted for the same geographical area and/or for the same postal services.

(9) The evaluation commission shall declare as winner the postal service provider whose request meets the condition provided for in paragraph (6) and, at the same time, gathers the highest score resulting from the formula specified in paragraph (7).

**Art.8.** – The evaluation commission may reject a request for the designation as a universal service provider in the following cases:

a) the request for the designation as a universal service provider does not fulfil the format conditions under Article 5;

b) the request for the designation as a universal service provider has not been submitted within the term provided in Article 4 paragraph (2);

c) the requester does not fulfil at least one of the participation conditions provided in Article 4 paragraph (6);

d) the additional documents, information or explanations required by the evaluation committee for assessing the requests for the designation as a universal service provider have not been submitted within the indicated term or do not respect the requirements or level of detail referred to in Article 6 paragraph (3).

**Art. 9.** – (1) The term for assessing the requests for the designation as a universal service provider is 90 days from the date the notice under Article 4 paragraph (2) is published.



(2) If, according to the provisions of Article 6 paragraph (3), a requester is required to provide additional documents, information or explanations, the term under paragraph (1) shall be suspended until these are received, or until the expiry of the term for their submission, established by the evaluation committee.

(3) ANCOM shall simultaneously send all requesters a notification on the outcome of the designation procedure.

(4) Requesters who did not have a winning bid shall be informed of the reasons for the rejection of their offers or the reasons that led to the designation of other bids as winners.

**Art.10.** - (1) The interested persons may challenge the outcome of the designation, within 2 working days after receiving the notification referred to in Article 9 paragraph (3). The appeal shall be done in writing and submitted to the ANCOM headquarters by a representative of the requester, upon signature, or sent by registered mail with confirmation of receipt.

(2) Within 10 working days after the submission of the appeals, a commission appointed by decision of the President of ANCOM under the conditions laid down in Article 6, consisting of other members than those who were part of the initial commission, shall settle the appeals and conclude a statement of facts, approved by the president of ANCOM. The result shall be communicated in writing to the objectors.

(3) Based on the results of the designation procedure, the evaluation commission or the commission responsible for settling the appeals, respectively, shall draft the decision on the designation of the universal service provider and shall submit it for approval to the president of ANCOM.

### **CHAPTER III – Designation *ex officio***

**Art. 11.** – ANCOM shall be able to designate the universal service providers *ex officio*, in the following cases:

a) if none of the providers of postal services within the scope of universal service have submitted a request for the designation as a universal service provider within the term provided in Article 4 paragraph (2);

b) if none of the providers of postal services within the scope of universal service, which submitted a request for the designation as a universal service provider within the term provided in Article 4 paragraph (2), has been designated as a universal service provider following the procedure described in Chapter II;

c) if, following the procedure described in Chapter II, no provider was designated as a universal service provider for all the postal services within the scope of universal service for which ANCOM intended to designate universal service providers, or for the whole country territory.

**Art. 12.** – (1) The designation *ex officio* shall be made by decision of the President of ANCOM, based on the proposals of the evaluation commission provided in Article 6, in compliance with the consultation procedure under Article 49 of the Government Emergency Ordinance no.13/2013.

(2) The evaluation commission shall propose the designation of the universal service provider based on one or several of the criteria provided in Article 7 paragraph (1), as well as based on other relevant criteria, if required, observing the principles of efficiency, objectivity, transparency and non-discrimination.

(3) The proposals of the evaluation commission shall include the name of the provider of postal services within the scope of universal service proposed to be designated as a universal service provider, the services within the scope of universal services for which the designation is proposed, the geographical areas for which the designation is proposed, the reasons for which the designation *ex officio* is necessary, as well as other data to be comprised in the designation decision.

#### **CHAPTER IV – The decision on the designation as a universal service provider**

**Art. 13.** – (1) The decision on the designation as a universal service provider shall grant the universal service provider specific rights and obligations, additional to those under the general authorisation regime.

(2) The decision on the designation of the universal service provider shall include at least the following information:

- a) the services for which the universal service provider was designated;
- b) the designation period;
- c) the geographical area for which it was designated as universal service provider;
- d) the right to carry out international relations as a universal service provider and to conclude operational agreements in this capacity;
- e) the right to use the specific international forms, provided in the international agreements in which Romania is a party;

f) the right to benefit from the amounts or advantages of any nature to which it is entitled on grounds of the compensation mechanism of the costs incurred by the provision of postal services within the scope of universal service, under the conditions established in Chapter V;

g) the right to apply special tariffs for all users and integrators, under transparent and non-discriminatory conditions for both the actual tariffs and the conditions associated with them;

h) the right to set up positions and hire employees with individual employment contracts for a fixed duration, during the rest periods of employees who occupy single positions, in the case of localities where the provider does not have other employees with the same qualifications;

i) the obligation to ensure at least one clearance from each access point and at least one delivery to the indicated address, every working day, no less than 5 days a week, in each locality where it ensures the services within the scope of universal service which it must provide, except in circumstances or geographical conditions deemed exceptional by ANCOM or in cases where ANCOM establishes the delivery to suitable installations, under determined conditions, including upon a proposal from the universal service provider;

j) the obligation to ensure a single fixed staffed access and contact point where the postal items, which are subject to the postal services within the scope of universal service it must provide, can be presented or delivered, in each administrative-territorial unit (commune or cities) from the geographic area for which it was designated, within maximum 6 months from the date the designation decision takes effect;

k) the obligation to ensure at least one unstaffed access point in every locality from the geographic area for which it was designated, within maximum 6 months from the date the designation decision comes into force;

l) the obligation to comply with the specific conditions for the delivery of the postal items which are subject to a service included in the scope of the universal service, as established by ANCOM;

m) the obligation to comply with the essential requirements, including the rules regarding the security of the public postal network it operates;

n) the obligation to provide identical services to users who are in comparable conditions;

o) the obligation to provide available services to all users, without any discrimination, particularly of political, religious or ideological nature;

p) the obligation to continuously provide the services, except in cases of force majeure;

r) the obligation to ensure the continuous development of services in line with the technical, economic and social requirements, and to pursue adapting the services to the users' needs;

s) the obligation to ensure access for disabled persons to the services within the scope of the universal service it must provide, under equivalent conditions to those offered to other users, in compliance with the rules adopted by ANCOM;

ș) the obligation to make available to users, integrators and providers of postal services, on a regular basis, detailed and updated information on the characteristics of the services within the scope of the universal service that it provides, particularly regarding the general access conditions to these services, as well as the tariffs and minimum quality requirements for these services;

t) the obligation to ensure access to users, integrators and providers of postal services to the public postal network it operates, under transparent, objective and non-discriminatory conditions;

ț) the obligation to ensure access for other providers to the postal services within the scope of the universal service it must provide and to the infrastructure elements of the public postal network it operates, to the extent required for the provision of its own postal services, under transparent, proportionate and non-discriminatory conditions;

u) the obligation to charge, for the services included within the scope of universal service for which it was designated as a universal service provider, affordable tariffs, irrespective of the geographical area, transparent, non-discriminatory and cost-oriented, which would stimulate the provision of an efficient universal service, except for domestic and cross-border items for blind people that are provided free of charge, as well as for other categories of postal items whose gratuity is stipulated in the international agreements to which Romania is a party or is established by Government decision;

v) the obligation to set tariffs, for the services within the scope of universal service it must provide, in compliance with the price caps and the control formulae used for modifying the tariffs of such services, if ANCOM imposes this obligation;

w) the obligation to set tariffs, for the services within the scope of universal service it must provide, in compliance with the methods for establishing or modifying such tariffs, considering also the specific characteristics of these services, if ANCOM imposes this obligation;

x) the obligation to set tariffs, for the services within the scope of universal service it must provide, in compliance with the principles of establishing individual tariffs for these services, if ANCOM imposes this obligation;

y) the obligation to submit to ANCOM, for approval, the tariffs charged for the services within the scope of universal service it must provide, before the date of imposing one or more of the measures provided in letters v) and w), as well as any modification thereof;

z) the obligation to inform the public of the tariffs applied for the provision of the services within the scope of universal service it must provide, as well as any changes of these tariffs, at least 30 days prior to them taking effect, under the conditions established by the regulatory authority;

aa) the obligation to practice, on the entire national territory or geographic area for which it was designated as universal service provider, a uniform level of the tariffs charged for the services within the scope of universal service it must provide;

ab) the obligation to submit to ANCOM, for approval, the criteria and conditions under which the special tariffs mentioned under letter g) are applied, as well as any modifications or completions thereto;

ac) the obligation to comply with the principles provided in Article 19 of the Government Emergency Ordinance no. 13/2013 when concluding the agreements on the terminal fees for the postal items sent from the territory of a Member State of the European Union to an address located on Romania's territory;

ad) the obligation to keep separate accounts within its internal accounting system, by applying, unitarily, the principles regarding the elaboration of the separate accounting system and the requirements regarding the preparation and transmission of the separate financial statements, according to the conditions established by ANCOM;

ae) the obligation to establish and submit to the regulatory authority, for approval, the rules applicable to the postal services within the scope of universal service it must provide, within the term set by the designation decision and while complying with any minimum mandatory rules established by ANCOM;

af) the obligation to cumulatively comply with the following conditions:

- to ensure the delivery to the addressees, in maximum two working days from the submission at the access points of domestic correspondence items within the scope of universal service, from the fastest standard category, of 85% of the total number of these postal items;

- to ensure the delivery to the addressees, in maximum four working days from the submission at the access points of domestic correspondence items within the scope of universal service, from the fastest standard category, of 97% of the total number of these postal items;

ag) the obligation related to the preparation and publication of the annual reports regarding the compliance with the minimum quality requirements stipulated in letter af), in the conditions established by ANCOM under the designation decision and under the decision regarding the conditions and the procedure for evaluating the compliance with the said requirements;

ah) the obligation to comply with the minimum quality requirements, other than those

imposed on the universal service provider in letter af), as well as the obligation of preparing and transmitting to ANCOM an annual report on the compliance with these requirements;

ai) the obligation to publish the information on the statistics regarding the complaints addressed to the universal service provider and on how these were settled;

aj) the obligation to submit for approval to ANCOM the framework-agreement based on which the universal service provider carries out its relationships with the users;

ak) other relevant rights and obligations regarding the provision of postal services within the scope of universal service for which it was designated as a universal service provider.

(3) The provisions of paragraph (2) letters g), u) - z), aa) and ab) are not applicable to the service provided in Article 8 paragraph (3) letter f<sup>1</sup>) of the Government Emergency Ordinance no. 13/2013.

## **CHAPTER V – Mechanism for financing the universal service obligations**

**Art. 14.** – (1) If, on the basis of the universal service provider's calculation of the net cost of the provision of services within the scope of universal service, ANCOM finds that the provision of these services represents an unfair burden on the universal service provider, the regulatory authority shall decide to compensate the net cost of the provision of the services for which the universal service provider was designated, upon its request.

(2) The net cost of the universal service obligations shall be calculated as the difference between the net cost borne by the universal service provider as a result of the universal service obligations and the net cost of the same postal service provider, if it would have operated without the universal service obligations.

(3) The net cost of providing postal services within the scope of universal service represents an unfair burden if the level of profitability of the average employed capital registered from the provision of services within the scope of the universal service, as a result of fulfilling the legal obligations, is below the weighted average cost of capital established by ANCOM.

(4) In calculating the net cost, all relevant elements shall be taken into consideration, including the intangible benefits and the commercial advantages which the postal service provider accrues as a result of its designation as a universal service provider, the entitlement to a reasonable profit and incentives for cost efficiency.

(5) The losses due to imposing tariffs for the services within the scope of universal service, that are not cost-oriented, shall not be compensated, except for the losses related to the following categories of postal items:

a) postal items for which the regulatory authority imposed on the universal service provider the practice of non cost-oriented tariffs, in accordance with Article 16 paragraph (2) of the Government Emergency Ordinance no. 13/2013;

b) domestic and cross-border items for blind people which are provided free of charge;

c) other categories of postal items whose gratuity is stipulated in the international agreements to which Romania is a party or is established by Government decision.

(6) The net cost calculation shall be based upon the following:

a) the elements of the services within the scope of universal service which can only be provided at a loss or under conditions outside of normal commercial standards;

b) costs determined by specific users or groups of users who, taking into account the cost of providing a certain category of service, the revenue generated and the tariffs imposed by the universal service provider, can only be served at a loss or under cost conditions outside of normal commercial standards.

(7) The universal service provider shall calculate the net cost of the provision of services within the scope of universal service according to a methodology established through the designation decision by of the president of ANCOM.

(8) The request referred to in paragraph (1) shall be transmitted on an annual basis, until the 14<sup>th</sup> of August of the financial year following the one for which the compensation is requested, alongside the statement on the costs, revenues and capital employed in relation to the provision of services within the scope of the universal service, under the conditions set out by ANCOM.

(9) ANCOM shall decide on the compensation of the net cost and, where appropriate, on the amount to be compensated for each universal service provider, within 160 days from receiving a request for compensation of the correct and comprehensive net costs, under the terms of the present Article.

(10) If the universal service provider does not transmit all the documents and information under the conditions described in paragraph (8), the universal service provider shall be informed by ANCOM thereon, and the term provided in paragraph (9) shall be suspended from the date a request for completion is communicated to the universal service provider, until the date of receipt of these completions by ANCOM.

(11) The universal service provider has the obligation to respond to the request for completion provided in paragraph (10) within maximum 5 days from the date it is communicated.

(12) If the universal service provider is designated upon request, the maximum amount to be compensated shall be established as the minimum value resulted from the value of the net cost that could be compensated until the reasonable level of profitability of the employed capital (WACC) recorded from the provision of services within the scope of universal service has been reached, the amount requested by the universal service provider in the compensation request and the amount presented in the financial proposal that was part of the request for the designation as a universal service provider.

(13) If the universal service provider is designated *ex officio*, the maximum amount to be compensated shall be established as the minimum value resulted from the value of the net cost that could be compensated until the reasonable level of profitability of the employed capital (WACC) recorded from the provision of services within the scope of universal service has been reached, and the amount requested by the universal service provider in the compensation request.

**Art. 15.** - (1) The net cost of the provision of services within the scope of universal service shall be compensated from the sources and under the conditions set by the provisions of Article 23 of Government Emergency Ordinance no.13/2013, in compliance with the procedures and terms therein.

(2) Where two or several universal service providers are to be designated, the total amount necessary for financing the universal service shall be established on an annual basis by summing up the amounts to be compensated for all the universal service providers, calculated according to the provisions of the present decision.

(3) The persons who have the obligation to pay the contribution under Article 23 paragraph (6) of Government Emergency Ordinance no. 13/2013 are those who had the capacity of postal service provider during the year for which the contribution is owed, the capacity remaining at the date of establishing the contribution.

(4) In view of determining the amount of the individual contributions, ANCOM shall use the information obtained from Annex no. 2, "*Financial data related to the activity of the universal service provider*", submitted by each provider according to the provisions of the Decision of the president of ANCOM no. 314/2017 regarding the reporting of statistical data by the postal service providers.

(5) If the providers referred to in paragraph (3) do not communicate the information referred to in paragraph (4), the entire turnover of the year for which the contribution is owed shall be considered when determining the amount of the individual contributions.



(6) In the case of the providers whose capacity has ceased as a result of a merger, the contribution shall be borne by the absorbing or by the newly established companies, as the case may be.

(7) Where several universal service providers are designated, the amount of the contribution that each universal service provider must pay is calculated as the positive difference between the value of the contribution owed by each one in accordance with the provisions of Article 23 paragraph (6) of Government Emergency Ordinance no. 13/2013 and the value to be compensated for each, according to Article 14, for the same period. If the amount to be compensated is greater than or at least equal to the amount of the contribution owed by the universal service provider in accordance with the provisions of Article 23 paragraph (6) of Government Emergency Ordinance no. 13/2013, the value to be compensated shall be diminished by the amount of the contribution owed by the universal service provider.

## **CHAPTER VI – Special Provisions**

**Art. 16.** – The capacity of universal service provider may be withdrawn, by Decision of the president of ANCOM, if the universal service provider's right to provide postal services within the scope of universal service under the conditions provided in the general authorisation was revoked or suspended.

**Art. 17.** – (1) The capacity of universal service provider shall cease in the following cases:

a) upon dissolution of the universal service provider, except in the cases of merger or division where the provision of postal services within the scope of universal service for which it was designated is transferred to other persons;

b) following the initiation of the insolvency procedure against the universal service provider, in compliance with Law no. 85/2014 on insolvency prevention and insolvency procedures;

c) at the expiry date of the designation period;

d) following the withdrawal of this capacity by ANCOM under the conditions provided in Article 16.

(2) In the cases of fusion or division referred to in paragraph (1) letter a), the person taking over the activity of provision of postal services within the scope of universal service for which the universal

service provider was designated shall have the obligations and rights established in the decision on the designation of the universal service provider.

**Art. 18.** – Annexes 1-3 are an integral part of the present decision.

**Art. 19.** – (1) The present decision shall be published in the Romanian Official Journal, Part I, and shall come into force on the publication date.

(2) At the date the present decision takes effect, the Decision of the President of the National Authority for Management and Regulation in Communications no. 541/2013 on the conditions and procedure for the designation of the universal service providers in the field of postal services, published in the Romanian Official Journal, Part I, no. 554 of 2 September 2013, with the subsequent amendments and completions, shall be repealed.

**PRESIDENT,  
SORIN MIHAI GRINDEANU**

Bucharest, 24 September 2019

No. 934

**ANNEX no. 1****REQUEST**  
**for the designation as a universal service provider****A. Information required for identifying and efficiently communicating with the requester:**

<b>Name of the requester:</b>																																		
<input type="text"/>																																		
<b>Headquarters/Domicile of the requester:</b>																																		
Street:															No.					Building					Entrance					Apt.				
<input type="text"/>															<input type="text"/>					<input type="text"/>					<input type="text"/>					<input type="text"/>				
Locality:																																		
<input type="text"/>																																		
County/Sector:															Phone:										Fax:									
<input type="text"/>															<input type="text"/>										<input type="text"/>									
E-mail:																														Website:				
<input type="text"/>																														<input type="text"/>				
<b>The requester is entered into the Trade Register:</b>																																		
County/Sector															Unique registration code:																			
<input type="text"/>															<input type="text"/>																			
<b>Legal representative of the requester – identification information and contact data:</b>																																		
Surname:															First-name:																			
<input type="text"/>															<input type="text"/>																			
National identification number:																																		
<input type="text"/>																																		
Street:															No.					Building					Entrance					Apt.				
<input type="text"/>															<input type="text"/>					<input type="text"/>					<input type="text"/>					<input type="text"/>				
Locality:																																		
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County/Sector:	Phone:	Fax:
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E-mail:	<div style="border: 1px solid black; width: 100%; height: 15px;"></div>	
<b>Mailing address of the requester:</b>		
Street:	No.	Building Entrance Apt.
<div style="border: 1px solid black; width: 100%; height: 15px;"></div>	<div style="border: 1px solid black; width: 100%; height: 15px;"></div>	<div style="border: 1px solid black; width: 100%; height: 15px;"></div>
Locality:		
<div style="border: 1px solid black; width: 100%; height: 15px;"></div>		
County/Sector:	Phone:	Fax:
<div style="border: 1px solid black; width: 100%; height: 15px;"></div>	<div style="border: 1px solid black; width: 100%; height: 15px;"></div>	<div style="border: 1px solid black; width: 100%; height: 15px;"></div>
<b>Requester's contact person :</b>		
Surname:	First-name:	
<div style="border: 1px solid black; width: 100%; height: 15px;"></div>	<div style="border: 1px solid black; width: 100%; height: 15px;"></div>	
Phone:	Fax:	E-mail:
<div style="border: 1px solid black; width: 100%; height: 15px;"></div>	<div style="border: 1px solid black; width: 100%; height: 15px;"></div>	<div style="border: 1px solid black; width: 100%; height: 15px;"></div>

**B. Description of the postal services the requester intends to provide as a universal service provider:**

- ☐ B.1. Clearance, sorting, transport and delivery of domestic and cross-border postal items up to including 2 kg:
- ☐ B.1.1 items of correspondence, except for bulk mail items;
  - ☐ B.1.2. printed matter items, except for bulk mail items;
  - ☐ B.1.3. small packages<sup>1</sup>, as they are defined in the Universal Postal Convention and in the Letter post regulation, except for bulk small packages;
- ☐ B.2. Clearance, sorting, transport and delivery of domestic and cross-border items for blind people;

<sup>1</sup> For this postal service, the request for the designation as a universal service provider can only be carried out by the National Company *Posta Română* S.A., as this service is provided by the latter is its capacity as body responsible for fulfilling the obligations resulting from the ratification by Romania of the Universal Postal Union Convention. For the other postal service providers, this service is included under point B.3.

- ☐ B.3. Clearance, sorting, transport and delivery of domestic and cross-border postal parcels up to including 10 kg, except for bulk postal parcels;
- ☐ B.4. Distribution of postal parcels between 10 and including 20 kg sent from outside Romania to an address located on Romanian territory;
- ☐ B.5. Service for registered postal items dealing with domestic and cross-border postal items up to including 2 kg, consisting of:
- ☐ B.5.1 items of correspondence, except for bulk mail items;
  - ☐ B.5.2. printed matter items, except for bulk mail items;
  - ☐ B.5.3. small packages<sup>2</sup>, as they are defined in the Universal Postal Convention and in the Letter post regulation, except for bulk small packages;
- ☐ B.6. Service for insured items dealing with:
- ☐ B.6.1 Domestic and cross-border postal items up to including 2 kg, consisting of:
    - ☐ B.6.1.1 items of correspondence, except for bulk mail items;
    - ☐ B.6.1.2. printed matter items, except for bulk mail items;
    - ☐ B.6.1.3. small packages<sup>3</sup>, as they are defined in the Universal Postal Convention and in the Letter post regulation, except for bulk small packages;
  - ☐ B.6.2. Domestic and cross-border postal parcels up to including 10 kg, except for bulk postal parcels;
  - ☐ B.6.3. Postal parcels between 10 and including 20 kg sent from outside Romania to an address located on Romanian territory.
- ☐ B.7. service for the distribution of coupons for the payment of social protection rights and of the information documents issued by the National House of Public Pensions to the beneficiaries' homes, if they opted for payment to their debit account or to their card account, irrespective of the number of items making the object of this service.

**C. Area or areas for which the designation is requested, as applicable.**

**D. The applicant shall annex to the present designation request the following information and documents:**

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<sup>2</sup> For this postal service, the request for the designation as a universal service provider can only be carried out by the National Company *Posta Română* S.A., as this service is provided by the latter is its capacity as body responsible for fulfilling the obligations resulting from the ratification by Romania of the Convention of the Universal Postal Union.

<sup>3</sup> For this postal service, the request for the designation as a universal service provider can only be carried out by the National Company *Posta Română* S.A., as this service is provided by the latter is its capacity as body responsible for fulfilling the obligations resulting from the ratification by Romania of the Convention of the Universal Postal Union. For the other postal service providers, this service is included under point B.6.2.

- ☐ certificate issued by the Trade Registry Office certifying that no procedure of voluntary dissolution and no dissolution procedure following bankruptcy has been initiated;
- ☐ copies of the annual financial statements for the past 3 years submitted to the competent bodies these are registered with, according to the legislation in force, or for the whole period since the establishment of the company, should it have less than 3 annual financial statements submitted to the competent bodies, according to the legislation in force;
- ☐ the detailed description of the quality requirements whose fulfilment is guaranteed by the requester, as well as the description of the measures required for the fulfilment of the respective requirements (at least, the rules on the distribution of the domestic postal items within the scope of universal service, of the fastest standard category, the quality objectives established for the distribution rules, the annual percentage of grounded complaints regarding the provision of services calculated for each of the 3 years prior to the designation procedure, or for each year since its establishment, respectively, if the requester has less than 3 years of experience in providing the postal services for which the designation is requested. The annual percentage of complaints is calculated as a ratio between the volume of postal items reported as not delivered, destroyed or damaged, which make the object of the provision of postal services within the scope of universal service for which the designation is requested, and the total volume of postal items subject to the provision of postal services within the scope of universal service);
- ☐ the financial proposal in which the requester will present a detailed estimate of the maximum annual net cost incurred by the provision of the postal services within the scope of universal service for which the designation is requested, for each year of the designation period;
- ☐ a list of the locations of all the staffed fixed access and contact points, as well as a list of the locations of the unstaffed access points in the requester's own postal network or operated by the requester or by other providers of postal services with whom the requester has concluded contracts therefor, which the requester guarantees to use for providing the postal services within the scope of universal service for which the designation is requested.

**E.** The undersigned, ....., legal representative of the requester, declares on own responsibility, fully aware of the provisions under Article 326 of the Penal Code on false statements, that all the data and information within the present request and enclosed documents are accurate and comprehensive.

Signature of the legal representative of the requester

.....

## ANNEX no.2

### THE MAXIMUM ANNUAL VALUE OF THE NET COST OF THE PROVISION OF THE SERVICES WITHIN THE SCOPE OF UNIVERSAL SERVICE AS SPECIFIED IN THE DETAILED FINACIAL PROPOSAL

Year	Maximum net estimated cost (RON)
Year 1	
Year 2	
Year 3	
...	
Year n  (where n = the designation period provided in the notice referred to in Article 4 paragraph (2))	
TOTAL = year 1 – year n	

**ANNEX no. 3****INFORMATION NECESSARY FOR DETERMINING THE SCORE CORRESPONDING TO THE CRITERIA REGARDING THE DEGREE OF TERRITORIAL COVERAGE, RESPECTIVELY THE TECHNICAL AND ECONOMIC CAPACITY**

<b>No.</b>	<b>Criteria</b>	<b>Requested Information</b>
1.	The number of basic administrative-territorial units (communes or cities) at the national level or in the geographical area for which the designation is requested, respectively, covered by at least one fixed staffed access or contact point, where postal items that are subject to the postal services within the scope of universal service for which the designation is requested, may be presented or delivered.	Number of basic ATUs (communes or cities)
2.	The number of localities at the national level or, in the geographical area for which the designation is requested, respectively, covered by at least one unstaffed access point	Number of localities
3.	Previous experience in providing the postal services for which the designation is requested	Number of years
4.	The total number of items that have been subject to the postal services provided during the last 3 years prior to the designation procedure or for the entire period since its establishment, if the requester has less than 3-year experience in providing the postal services for which the designation is requested	Number of postal items
5.	The annual percentage of grounded complaints regarding the provision of services calculated for each of the 3 years prior to the designation procedure, or for each year since its establishment, respectively, if the requester has less than 3 years of experience in providing the postal services for which the designation is requested (the annual percentage of complaints is calculated as a ratio between the volume of postal items reported as not delivered, destroyed or damaged, which are subject to the provision of postal services within the scope of universal service for which the designation is requested, and the total volume of postal items subject to the provision of postal services within the scope of universal service)	Annual percentage of complaints Year 1..... Year 2..... Year 3.....
6.	Turnover from the provision of postal services	... EUR
7.	General solvency in the last financial year for which it submitted financial statements to the competent bodies (assets/debts ratio)	... %