

**ANALYSIS AND DECISION ON THE PRIOR DISCLOSURE, TO
USERS AND ANACOM, OF THE CLOSURE OR REDUCTION IN
WORKING HOURS OF POSTAL ESTABLISHMENTS**

ANACOM

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Contents

| | |
|---|-----------|
| 1. Introduction | 1 |
| 2. CTT's prior hearing report on the provisions of paragraph 3 of the determination of 10.01.2019 | 3 |
| 2.1. Framework | 3 |
| 2.2. Comments on the contribution received | 4 |
| 2.2.1. Determination to CTT of prior information to users and ANACOM in case of the closure or reduction in opening hours of postal establishments (post offices or postal services offices) | 4 |
| 2.2.2. Matters not subject to prior hearing | 8 |
| 2.2.2.1. Recommendation to CTT to communicate with local authorities in the event of the closure or reduction in working hours of postal establishments; and prior agreement with local authorities in the event of closure of all the post offices in a given municipality | 8 |
| 2.3. Conclusion | 9 |
| 3. Determination | 10 |

1. Introduction

By determination of 10.01.2019, the Board of Directors of the National Communications Authority (ANACOM) decided to initiate a review procedure of the targets for postal network density and minimum services provided, to be complied with by CTT – Correios de Portugal – (CTT), pursuant to Base XV of the Bases of the Concession of the Universal Postal Service (UPS)¹.

In this, it was concluded that a set of exceptional circumstances existed that justified the review of the targets for postal network density and minimum services provided established in ANACOM's Decision of 15.09.2017 (hereinafter “Targets established on 15.09.2017”).

To this end, CTT would have to present a proposal which complements the density targets concerning postal establishments and other points of access to the postal network allocated to the concession and targets for minimum services provided, taking into account the specific reference framework set out in paragraph 1 of the decision of 10.01.2019. This reference framework has been submitted to public consultation, pursuant to Article 9, paragraph 2 point h) of ANACOM's Statutes² (cf. paragraph 8 of the decision).

It was also decided to submit for prior hearing by CTT, under the scope of Articles 121 and 122 of the Code of Administrative Procedure (CPA) the draft decision requiring the prior hearing, to users and to ANACOM, of the closure or reduction in opening hours of postal establishments (cf. paragraph 3 and paragraph 7 of the decision).

The deadline for CTT to submit the proposal that complements the targets for postal network density and minimum services provided defined in the determination of 15.09.2017 and to give their opinion within the scope of the prior hearing procedure was set at 20 working days, with CTT having been notified of ANACOM's decision on 10.01.2019. The same deadline was also set for responding to the public consultation, and ANACOM also published the decision on its Internet website.

Following CTT's request, ANACOM, through its determination of 06.02.2019, decided to extend, for an additional period of 10 working days, these deadlines³, partially granting the

¹ See <https://www.anacom.pt/render.jsp?contentId=1466756>.

² Approved by Decree-Law No. 39/2015 of 16 March.

³ See <https://www.anacom.pt/render.jsp?contentId=1468051>.

submitted request, which thus ended on 21.02.2019. CTT, by communication of 21.02.2019, submitted to this Authority, within the deadline, a proposal that complements the “Targets established on 15.09.2017”, as well as its statement on the draft decision which required the prior disclosure, to users and to ANACOM, of the closure or reduction in opening hours of postal establishments.

The following sections of this document present the following:

- Section 2: CTT’s prior hearing report on the provisions of paragraph 3 of the determination of 10.01.2019
- Section 3: Determination of ANACOM on the prior disclosure, to users and ANACOM, of the closure or reduction in working hours of postal establishments.

The prior hearing report contains reference to CTT's statement on the provisions of paragraph 3 of the determination of 10.01.2019 and an overall assessment by that Authority on this, which does not, however, preclude consultation of the contribution in question.

The matter submitted for public consultation and the analysis of the CTT proposal that complements the “Targets established on 15.09.2017” are considered in an independent document, including the reference to the contributions received in the context of the public consultation and ANACOM's assessment of the same, the analysis of the CTT proposal and the decision of this Authority on the proposal for the revision of the “Targets established on 15.09.2017”, submitted by CTT on 21.02.2019.

2. CTT's prior hearing report on the provisions of paragraph 3 of the determination of 10.01.2019

2.1. Framework

The determination of 10.01.2019 establishes the following, in paragraph 3:

"3. Determines to CTT that in the event of the closure or reduction in opening hours of postal establishments (post offices or postal services offices):

- a) inform users and ANACOM about the changes which it is proposed to implement, with a minimum advanced notice of 20 working days regarding the date on which they are expected to take effect;*
- b) the information to users envisaged in the previous point should be ensured through a notice (announcement) posted on the entrance door of the postal establishment in question, in a conspicuous place (even when the postal establishment is closed), and should include, as a minimum:*
 - i. in the case of the closure of postal establishments: indication of the last day on which the establishment in question will be operating and the two closest postal establishments which provide at least the concessionary services which are ensured in the postal establishment which is closing, along with the respective addresses and opening hours;*
 - ii. in the case of a reduction in working hours: information on the new opening hours and the date from which this comes into effect;*
- c) the information on how to comply with the provisions in point b) above should contain information to be sent to ANACOM under the terms of point a)."*

As provided for in paragraph 7 of the same determination, the above provision was submitted to the prior hearing of CTT, under the scope of articles 121 to 122 of the CPA.

As part of the prior hearing procedure, CTT's contribution was received within the set deadline.

2.2. Comments on the contribution received

2.2.1. Determination to CTT of prior information to users and ANACOM in case of the closure or reduction in opening hours of postal establishments (post offices or postal services offices)

a. CTT Position

CTT considers that the provisions in point 3 of the determination of 10.01.2019, which establishes CTT's obligation to inform users and ANACOM about the changes it proposes to implement in the event of the closure or reduction in opening hours of postal establishments, violates the Bases of the Concession and the concession agreement. CTT considers that the historical development of the Contract Agreement has been gradually modifying the limited action of the concessionaire, with the current version placing under the purview of CTT the decision to open and close postal establishments without the need for prior notice. The provisions in paragraph 3 of the determination of 10.01.2019 would imply a return to the wording of the 2006 Concession Agreement which was explicitly modified and changed in the 2013 revision. CTT notes that clause 15 of the Concession Agreement only gives ANACOM competence to approve or set targets for postal network density and the minimum services provided.

In addition, CTT emphasises that no post office was closed without having been replaced by a postal services office at a nearby location, which does not imply a significant change in behaviour for users, and therefore does not justify the need for prior notice of 20 days.

It is also considered that the factors mentioned in point 3 of the determination do not concern postal density issues, but rather distinct questions concerning the provision of the UPS and should not be equated with density issues.

b. Position taken by ANACOM

Under the terms of the determination of 10.01.2019, ANACOM recognises that, as established in paragraph 3 of Base XX of the Bases of the Concession⁴, CTT has the responsibility for (i) the opening and closing of postal establishments; and (ii) changes to the working hours of postal establishments, taking into consideration the needs of the

⁴ This rule is also provided for in paragraph 3 of clause 20 of the Concession Agreement.

service and levels of demand, while respecting the targets for postal network density and minimum services provided established under the terms of Base XV, with the concessionaire having a certain amount of freedom in the choice of the means to be used to ensure the provision of the concessionary services, while being bound to allocate to the concession the set of human and material resources necessary for the provision of the UPS.

Nevertheless, it should be noted that the qualification invoked by ANACOM for that provided for in paragraph 3 of the decision is not Base XV of the Concession, but rather points f) and g) of paragraph 1 of clause VIII of the Concession and paragraph number 2 of article 11, point c) of paragraph 1 of article 37 and article 45 all from the Postal Law.

In fact, it follows from the Bases of the Concession that it is the obligation of the concessionaire "To suitably publicize (...) and regularly supply users with information on the general access and use conditions for the services provided (...)" and also "Provide and send to ANACOM information and statistical data considered necessary by it to monitor activities carried out under the scope of the concession (...)"⁵.

It follows from the Postal Law that "The universal service providers should suitably publicise and regularly supply users and postal service providers with accurate and up-to-date information on the characteristics of the universal service offered, namely about the general conditions of access and use of the service, prices and levels of quality"⁶ and that "(...) obligations of the postal services providers involve (...) suitably publicising, particularly on its Internet website, and regularly supplying users with up-to-date and accurate information on the characteristics of the services provided, namely about the general conditions of access and use of the services provided in national territory".⁷ Article 45 of the same law also establishes, in particular, the obligation to provide information by all postal service providers to ANACOM, within the scope of their activity with a view, in particular, to verifying compliance with the legal and regulatory provisions and decisions taken under its scope.

In this context, the determination to inform users and ANACOM in cases of closure or reduction in opening hours of postal, in advance (cf. Paragraph 3 of the determination of 10.01.2019) does not seek to limit the freedom conferred upon CTT, by the Concession Agreement, to be able to carry out the management which it considers suitable for the

⁵ Respectively in points f) and g) of paragraph 1 of Base VIII of the Concession Agreement.

⁶ Paragraph 2 of article 11 of the Postal Law.

⁷ Point c) of paragraph 1 of article 37 of the Postal Law.

network of postal establishments, particularly the opening and closing of these, as well as the opening hours practised. Nor is it intended to approve, on a case-by-case basis, the closure of postal establishments or the alteration of schedules or services. The sole primary objective of such a determination is rather the need to ensure appropriate publicity of important information for users of the postal services, in order to effectively ensure that users are properly and timely informed about the places and times where their postal services needs can be met.

As mentioned above, the provision of information to users is clearly foreseen within the current legal framework, reflecting the concern with the establishment of conditions which contribute to guaranteeing the suitable provision of postal services to users, aiming to meet their needs.

Likewise, the provision of that same information to ANACOM is suitably enabled in the Bases of the Concession and in the Postal Law, and its importance in the context of the supervision and inspection activities undertaken by this Authority should be noted.

In view of the above, it is considered that the determination contained in paragraph 3 of the decision of 10.01.2019 does not violate the Bases of the Concession and the Concession Agreement, contrary to what is claimed by CTT, but rather takes into full consideration the provisions within the existing legal framework, as mentioned above, seeking to establish conditions which ensure the satisfaction of the needs of postal service users and the protection of their interests, within the scope of the powers and competences conferred upon this Authority

It should further be noted that without prejudice to the closure of post offices being eventually accompanied by their replacement by a postal services office at a nearby location, this can still have an impact on the way users are used to utilising postal services. It is also, therefore, justifiable, in these cases for the prior availability of important information so that users are not prevented from satisfying their postal services needs or are surprised by changes with an impact on the forms of access to the aforementioned services.

Similarly, not only in the case of the closure of postal establishments is such information important, and it should also be ensured in the case of a reduction in the working hours of

the establishments, as provided for in paragraph 3 of the determination of 10.01.2019, given the impact that this can also have on normal access and use of postal services.

The definition of a period of 20 working days to carry out this prior communication seems reasonable and proportional, enabling most users, even those that do not access the postal establishments in question as frequently, to be aware of the expected changes in time and adopt the necessary steps to ensure that their postal service needs are met.

In this context, of note also are the proposals made by some entities within the context of public consultation regarding the reference framework established in paragraph 1 of the determination of 10.01.2019, of extending the aforementioned period (without prejudice to this matter not falling directly within the scope of the consultation in question), with this Authority being of the opinion that the defined period, of 20 working days, is considered appropriate in view of the objectives mentioned above, which it is sought to achieve.

In addition to the above, it should be noted that paragraph 3 of the determination of 10.01.2019 states that this obligation will enter into force immediately.

Although not an aspect mentioned by CTT in its statement, ANACOM, anticipating any ongoing procedure by CTT which may imply the closure or reduction in the working hours of postal establishments in the short term, in particular, within a period counting from notification of the final decision about this matter being less than the aforementioned 20 working days, it understands, as a question of proportionality, that this obligation for prior dissemination should apply to the closure or reduction in working hours of postal establishments which take place from 01.06.2019, inclusively.

Since this amendment favours CTT, it is exempt from a prior hearing of CTT, pursuant to the provisions in point f) of paragraph no. 1 of article 124 of the CPA.

2.2.2. Matters not subject to prior hearing

2.2.2.1. Recommendation to CTT to communicate with local authorities in the event of the closure or reduction in working hours of postal establishments; and prior agreement with local authorities in the event of closure of all the post offices in a given municipality

a. CTT Position

CTT hereby informs that its current practice involves local authorities in the search for a solution that will ensure the suitable satisfaction of the postal service needs of local populations and companies, so its position is that the recommendation in point 6 of ANACOM's determination of 10.01.2019 is not necessary.

b. Position taken by ANACOM

As mentioned in the determination of 10.01.2019, ANACOM considers it very important that there is a prior understanding of CTT with local authorities, in order to facilitate the implementation of intended changes (closure of all post offices in a given municipality and, whenever applicable, their replacement by postal services offices) and preventing any difficulties in the use of postal services by users in general.

Even when a prior understanding is not possible, it is still important that CTT seeks, as mentioned, to involve local authorities in the search for solutions which enable the postal services needs of local populations and companies to be suitably satisfied.

Nevertheless, some local authorities have communicated to ANACOM⁸ that the process of involvement initiated by CTT with a view to establishing a postal services office managed by them, replacing a post office being closed, has not permitted nor permits, in their cases, appropriate and lengthy assessment of the conditions proposed, taking into account that, according to these local authorities, they are often constrained by the very short deadline set by CTT (cases of only a few working days have been reported). There were also local authorities that informed ANACOM that involvement with CTT would not have allowed them

⁸ Particularly in the context of meetings held between ANACOM and representatives of the municipalities that make up the Intermunicipal Communities.

to minimise the impact of the closure of the last post office in the municipality and its replacement by a postal services office.

In this context, although CTT is not obliged, under the legal framework in force, to have an understanding with local authorities, it is ANACOM's understanding (an understanding which it maintains) that the recommendation presented in paragraph 6 of the determination of 10.01.2019 with a view to stimulating CTT's understanding with the aforementioned entities is justifiable.

Also in this context, it should be noted that in the public consultation on the reference framework provided for in paragraph 1 of the determination of 10.01.2019, and without prejudice to this matter not directly falling within the scope of the consultation in question, certain entities showed themselves to be in favour of making it obligatory for any closure of a post office only to be authorized following a specific request submitted by the concessionaire after consultation with local entities possibly affected by this. While ANACOM recognises that such a possibility does not have any foundation within the current legal framework, which does not foresee the need for CTT to submit a prior request to any entity within the scope of decisions taken in this regard, it is understood that such a request contributes, nevertheless, to justifying the importance of the recommendation in question.

2.3. Conclusion

ANACOM has registered the position of CTT regarding paragraph 3 of the determination of 10.01.2019, with it being the case that, in the light of the views presented above, reasons have not been identified to introduce amendments, on this specific point, within the scope of the final decision to be adopted on this matter, except regarding the date of entry into force of this obligation – which will now be applied on the closure or reduction of the opening hours of postal establishments which take place from the 01.06.2019, inclusively –, and it is considered important to guarantee to users suitable communication of any envisaged alterations, related to the closure or changing in opening hours of postal establishments, with the necessary advance notice to allow for an adjustment to their normal use, in order to guarantee that, at any and all moments, their postal service usage needs are ensured.

3. Determination

Given the statement submitted by CTT at the prior hearing regarding that provided for in paragraph 3 of the determination of 10.01.2019, ANACOM cannot find reasons to justify changing the sense of the decision contained in paragraph 3 of the determination identified above, regarding the implementation measures related to the provision of information to users of the postal service and to ANACOM regarding the closure or changing of the opening hours of postal establishments, with the exception of the date of entry into force of this obligation, which will be applied to the closure or reduction in the working hours of postal establishments which occur from the 01.06.2019, inclusively, and not immediately as was the result of the determination of 10.01.2019.

It should be noted, in particular, that the provision of prior information to users in the case of the closure or reduction in working hours of postal establishments will contribute to ensuring the suitable provision of postal services to users, and the provision of that same information to ANACOM, also in advance, will allow a closer monitoring of such measures by this Authority, within the scope of its competencies of supervision and inspection of the sector. Notwithstanding the statement received regarding this matter, it is concluded that the specification of the deadline of 20 working days to carry out this prior communication, envisaged in the determination of 10.01.2019, is considered as reasonable and proportionate, allowing the necessary advance notice to enable an adjustment in their normal use of the postal services by users, in order to guarantee that, at any and all moments, their needs regarding use of the postal services are ensured.

Considering the foregoing, ANACOM's Board of Directors, in pursuance of the terms of reference provided for in points b), h) and i) of paragraph 1 of article 8 of its Statutes, approved by Decree-Law No. 39/2015, of 16 March, in the exercise of the powers conferred by points a), f) and o) of paragraph 1 and points b) and h) of paragraph 2, both of article 9 of the same Statutes, in pursuance and observation of the objectives and principles enshrined in points b) and c) of paragraph 1 and points a) to d) of paragraph 2, both of article 2 of Law No. 17/2012, of 26 April (Postal Law, in its current wording), and seeking to ensure suitable compliance with the obligations provided for in points f) and g) of paragraph 1 of Base VIII and points f) and g) of paragraph 1 of clause 8, as well as under the scope of paragraph 2 of article 11, of point c) of paragraph 1 of article 37, and of article 45, all of the Postal Law, hereby determines:

1. Determines to CTT that in the event of the closure or reduction in opening hours of postal establishments (post offices or postal services offices):
 - a. inform users and ANACOM about the changes which it is proposed to implement, with a minimum advanced notice of 20 working days regarding the date on which they are expected to take effect;
 - b. the information to users envisaged in the previous point should be ensured through a notice (announcement) posted on the entrance door of the postal establishment in question, in a conspicuous place (even when the postal establishment is closed), and should include, as a minimum:
 - i. in the case of the closure of postal establishments: indication of the last day on which the establishment in question will be operating and the two closest postal establishments which provide at least the concessionary services which are ensured in the postal establishment which is closing, along with the respective addresses and opening hours;
 - ii. in the case of a reduction in working hours: information on the new opening hours and the date from which this comes into effect;
 - c. the information on how to comply with the provisions in point b) above should contain information to be sent to ANACOM under the terms of point a).
2. That the obligation set out in paragraph 1 applies to the closure or reduction in opening hours of postal establishments occurring on or after 01.06.2019.
3. CTT is dispensed from the prior hearing on the provisions of paragraph 2, pursuant to point f) of paragraph 1 of article 124 of the Code of Administrative Procedure.

Lisbon, 24 April 2019.