Commission Decision (EU) 2019/115 of 10 July 2018 on the measures SA.37977 (2016/C) (ex 2016/NN) implemented by Spain for Sociedad Estatal de Correos y Telégrafos, S.A. (notified under document C(2018) 4233) (Only the Spanish text is authentic) (Text with EEA relevance)

COMMISSION DECISION (EU) 2019/115

of 10 July 2018

on the measures SA.37977 (2016/C) (ex 2016/NN) implemented by Spain for Sociedad Estatal de Correos y Telégrafos, S.A.

(notified under document C(2018) 4233)

(Only the Spanish text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a),

Having called on interested parties to submit their comments pursuant to the provision(s) cited above[1] and having regard to their comments,

Whereas:

1. PROCEDURE

(1) On 9 December 2013 and 10 April 2014, the Commission received two anonymous complaints against the Spanish State as regards the alleged granting of unlawful and incompatible aid to Sociedad Estatal Correos y Telégrafos, S.A. (hereinafter 'Correos'). Both complaints raised the following issues concerning Correos: (i) alleged overcompensation granted to Correos for the delivery of the USO since 1998, (ii) alleged incompatible tax exemptions granted to Correos, and (iii) alleged unpaid social security contributions for civil servants employed by Correos.

(2) On 14 February 2014, 26 February 2014 and 15 July 2014, the Commission forwarded the non-confidential versions of the two complaints to the Spanish authorities.

(3) On 11 April 2014 and 18 September 2014, the Spanish authorities responded to those complaints.

(4) On 10 July 2014, 22 October 2014 and 4 December 2015 the Commission requested further information from the Spanish authorities.

Changes to legislation: *There are currently no known outstanding effects for the Commission Decision (EU) 2019/115. (See end of Document for details)*

(5) The Spanish authorities responded to those requests on 7 August 2014, 19 December 2014, 19 January 2015 and 21 December 2015 respectively.

(6) By letter dated 11 February 2016, the Commission informed Spain that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty in respect of several measures granted to Correos. The Commission decision to initiate the procedure (hereinafter 'the 2016 Opening Decision') was published in the *Official Journal of the European Union*[(2)].

(7) The Commission received first comments from Spain on the opening decision by letter dated 21 April 2016.

(8) The Commission received comments from Correos on the opening decision by letter dated 11 May 2016.

(9) The Commission received comments from a third party by letter dated 12 May 2016.

(10) The Commission forwarded the comments received to Spain on 8 June 2016.

(11) Spain provided its comments on the comments from third parties by letter dated 6 July 2016.

(12) In the course of the proceedings the Commission received additional comments from Spain on 24 October 2017 and 23 May 2018.

(13) The Commission received additional observations from a former competitor of Correos, Unipost by letter dated 20 March 2018.

2. DETAILED DESCRIPTION OF THE AID

2.1. *THE SPANISH POSTAL MARKET*

(14) Prior to Spain's accession to the European Economic Community (EEC) in 1986, postal services in Spain were operated by the General Administration. The Decree 1113/1960 of 9 May 1960 on the Postal Order, implemented by the Postal Services Regulation, adopted by means of Decree No 1653/1964 of 14 May 1964, defined the postal service and entrusted its provision to the Directorate-General of 'Correos y Telégrafos'. The adoption of the Postal Order and its implementing regulation marked the start of the liberalisation of the Spanish postal market. Whereas 'Correos y Telégrafos' monopoly was restricted to interurban and international letters and postcards, urban mail and parcel services were fully liberalised. In the 1970s the first large private operators entered the Spanish postal market.

(15) Following Spain's accession to the EEC, there was a gradual liberalisation of postal services between 1998 and 2010 based on the European Union Postal Directives. More specifically, Directive 97/67/EC of the European Parliament and of the Council[(3)] was transposed into national law in 1998 by means of Law 24/1998 of 13 July 1998 on the Universal Postal Service and the Liberalisation of Postal Services (the 1998 Postal Law), which for the first time entrusted Correos with the universal

service obligation[4] ('USO'). The law provided for a reduced list of USO services[5] which were reserved for Correos as USO provider ('the reserved area'), whereas all other postal services were liberalised ('non-reserved area').

(16) The liberalisation of postal services in Spain continued with the transposition into Spanish Law of Directive 2002/39/EC of the European Parliament and of the Council[6], by Law 53/2002 of 30 December 2002 on Tax, Administrative and Social Measures, which amended the aforementioned 1998 Postal Law and further reduced the scope of the reserved area.

(17) In 2010 the postal sector was fully liberalised by Law 43/2010 of 30 December 2010 on the universal postal service, users' rights and the postal market (the 2010 Postal Law) which transposed Directive 2008/6/EC of the European Parliament and of the Council[7] into Spanish Law. The 2010 Postal Law redefined the scope of the USO (e.g. the money order service was excluded from the USO) and abolished the reserved area.

2.2. *THE BENEFICIARY*

2.2.1. CORREOS

(18) Correos is a wholly State-owned company which is the parent company of the Grupo Correos, with Sociedad Estatal ('SEPI') as the sole shareholder. SEPI is a holding company for the State's participations in undertakings.

(19) Correos offers postal services, including universal services, courier services and other services (e.g. services related to postal services and associated activities, including money transfer operations, philately, etc.). In 2016, Correos had a turnover of approximately EUR 1 761 million, sent 2 774 million postal items (including parcels) and employed 49 785 workers.

(20) Correos is the largest provider of postal services in Spain, with 8 787 postal points of contact in 2016. It is the market leader in the Spanish postal sector with the biggest market share of the Spanish postal services market, except in parcel services. Until 2017, Unipost S.A. was the main competitor of Correos in the Spanish postal market, however the company underwent financial difficulties and entered into liquidation on 19 February 2018. Other European postal operators (i.e. Deutsche Post, TNT, La Poste, UPS, CTT Correios Portugal and Royal Mail) hold significant market shares in parcel services.

2.2.2. THE LEGAL FRAMEWORK APPLICABLE TO CORREOS

(21) In Spain, the State has directly administered the postal service since 1716. Correos was part of the Public Administration, being embedded within different Ministries like the Ministry of Interior and subsequently the Ministry of Transport and Communications.

(22) The Autonomous Body 'Correos y Telégrafos' was created by the State General Budget Law 31/1990 of 27 December 1990. The autonomous body 'Correos

Changes to legislation: *There are currently no known outstanding effects for the Commission Decision (EU) 2019/115. (See end of Document for details)*

y Telégrafos' was set up in 1992, attached to the Ministry of Transport, Tourism and Communications.

(23) 'Correos y Telégrafos' became a Public Business Entity attached to the Ministry of Fomento under Law 6/1997 of 14 April 1997 on the Organisation and Funtioning of the State General Administration.

(24) Law 14/2000 of 29 December 2000, on Fiscal, Administrative and Social Measures, adopted the legal framework for the 'Sociedad Estatal Correos y Telégrafos, S.A.', the Company being set up in June 2001. On 5 June 2012 all the companies belonging to the Correos Group (i.e. Correos and its subsidiaries Correos Express, Nexea and Correos Telecom) were incorporated into the SEPI holding, which became their sole shareholder.

2.3. *DESCRIPTION OF PUBLIC MEASURES IN FAVOUR OF CORREOS*

2.3.1. THE USO COMPENSATIONS GRANTED TO CORREOS

(25) In 1998, Correos was entrusted with the USO by the 1998 Postal Law. As compensation for delivering the USO, Correos received public funding from 1998 to 2010. Subsequently, the 2010 Postal Law entrusted Correos with the provision of the USO for a period of 15 years starting on 1 January 2011.

2.3.1.1. ***The USO compensations granted under the 1998 Postal Law***

(26) From 11 March 2000, the 1998 Postal Law was complemented with a 'Plan de Prestación' ('the 2000 Plan de Prestación') that sets out the compensation mechanism to estimate Correos' net cost incurred in relation to the fulfilment of its obligation as universal service provider ('USP') and quality criteria for the provision of the USO.

(27) From 2000 to 2010, the USO compensation to Correos was granted on the basis of a methodology developed by the Spanish authorities (the 'Spanish methodology'), which is detailed in the 2000 Plan de Prestación. Moreover, the 2000 Plan de Prestación establishes that Correos should implement analytical accounting with separation of accounts as provided in Article 29 of the 1998 Postal Law.

(28) The Spanish methodology to estimate the net cost of the unfair burden of the USO, consisted of the following steps:

(a) STEP 1: Determining the unit revenue and costs of every product/service and every cost centre according to the cost accounting information of Correos. For any given product/service, those cost centres where the unit costs are higher than the unit revenue stand as loss-making. The other cost centres, where unit revenue is higher than unit costs, stand as profit-making.

(b) STEP 2: For each reserved Service (RSi) assessing which cost centres are loss-making/profit-making for the delivery of that service and calculating the aggregate loss/profit for the delivery of that service (Loss/Profit RSi). The net cost for the reserved Services is calculated as the difference between the sum of Loss RSi and the sum of Profit RSi.

(c) STEP 3: For each non-reserved service (NRSi) assessing which cost centres are loss-making for the delivery of that service and calculating the aggregate loss of these centres for the delivery of that service (Loss NRSi). The net cost for the non-reserved services is calculated as the sum of Loss NRSi

(d) STEP 4: The USO compensation covers the net cost of the reserved and non-reserved Services calculated according to Steps 2 and 3.

(29) Table 1 shows the compensations that were granted to Correos for the delivery of the USO during the 2004-2010 period and that were calculated using the Spanish methodology:

TABLE 1

USO compensations granted to Correos

(EUR Million)

	2004	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**
Net cost RSi	46,171	40,435	39,558	80,823	101,783	176,559	152,521
Net cost NRSi	44,859	47,294	55,199	39,441	40,863	45,919	43,812
USO compensation	91,030	87,729	94,757	120,264	142,646	222,478	196,333

2.3.1.2. ***The USO compensations under the 2010 Postal Law***

(30) The 1998 Postal Law was superseded by the 2010 Postal Law, which entered into force on 1 January 2011. The 2010 Postal Law entrusted Correos with the provision of the USO for a period of 15 years starting on the entry into force of the Law (i.e. until 1 January 2026).

(31) Article 27 and 28 of 2010 Postal Law provides that the USO provider is allowed to receive compensation up to the net cost incurred in discharging its obligations. The net cost should be calculated according to the net avoided cost method (hereinafter 'NAC methodology') as the difference between the net cost for the USP of operating with the USO and the net cost of the USP operating without the USO. The calculation shall take into account all other relevant elements, including any intangible and market benefits which accrue to a postal service provider designated to provide the universal service, the entitlement to a reasonable profit and incentives for cost efficiency in light of Annex 1 of Directive 2008/6/EC.

(32) As provided in Article 22(3) and Article 27(2)(b) of the 2010 Postal Law, the NAC methodology described in recital 31 should be developed in a new '*Plan de Prestación*'. However, up to this date, such a new *Plan de Prestación* has not yet been