

**PostEurop position paper on
the ERGP Medium Term Strategy 2017-2019
Discussion Paper for Public Consultation**

Brussels, 22 June 2016,

Q 1.1 Do you consider that there is a need to redefine the minimum US scope and / or obligations taking into consideration the evolution of postal consumers' needs? What are the main reason(s) for your view?

Q 1.2 If yes (to Q 1.1), how do you suggest that the EU US scope should be legally redefined?

Q 1.3 If no, why do you consider that the current legal framework provides Members States and NRAs with sufficient flexibility to keep up with the evolution of consumer needs?

The universal service remains intrinsic to social and economic inclusion across Europe. It is especially important for vulnerable consumers and small businesses. Thus, the postal industry acknowledges the need for a balanced and flexible regulatory framework at the European level to cope with the current sector challenges and the changing needs of consumers: safeguarding operational efficiency and economic viability in a market environment necessitates a flexible regulatory framework at European level to ensure each post can innovate and invest in order to sustain the USO over time.

Unlike electronic communications networks and services, where a further modernisation of EU framework is deemed inevitable,¹ there is no need to revise the scope of the universal postal service in the Postal Services Directive. The current EU

¹ "Work programme of the incoming Presidency" – Information from the Slovak delegation to the Council, 8802/16 of 20 May 2016.

legal framework still provides Member States and NRAs with sufficient flexibility to keep up with the evolution of consumer needs: a flexible regulatory approach at implementation level is therefore essential for European posts to be successful in a challenging and rapidly changing environment while still providing a universal service that fulfils citizens' needs.

In a context that is characterised by declining mail volumes and growing e-substitution, a "one size fits all" USO could compromise its sustainability particularly in countries where the compensation, if any, is not proportionate to the burden put on the Universal Service Providers (USPs). Each Member State should allow their USPs the appropriate level of flexibility to sustain the USO over time. This would allow them to gradually reduce the net costs of their USO in line with the evolution of their real user's needs. This seems the best option to ensure the sustainability of the USO.

While in some countries a number of studies² demonstrate that the USO is disproportionate compared to the users' needs, in others the USO goes further than that laid down in the EU's Postal Services Directive. Therefore, a "one size fits all" solution is unlikely to be the answer. Taking into account the specificities of the local markets, Member States shall be able to use the flexibility allowed by the Postal Directive, where and when appropriate, to adjust their national USO and regulatory framework pursuant to the principle of subsidiarity. This would enable ensuring the USO sustainability over the long term, by responding to the relevant country specificities and to the changing societal needs and circumstances. PostEurop believes that the Postal Services Directive gives Member States significant discretion in defining "their" universal postal service and – asking for the universal service to evolve in response to the technical, economic and social environment – and to adapt the universal service to local and regional specificities.

For legal certainty purposes, soft law instruments could be developed at the European level, to interpret the existing regulatory framework in the light of the provisions of EU Law as a whole and according to the case law of the European Court of Justice. Guidance from the European Commission in this respect would be welcome.

² Steven Cape & Philip Groves (2016), "Changes to the Universal Service – Influencing Factors, Impacts and Regulatory Implications"; Özhan Zurel (2016), "A Systematic Review of Postal Consumers' Needs Within the USO Framework".

Q 1.4 To what extent is innovation in the European postal sector advancing sufficiently quickly to keep up with evolving consumer needs? Please provide evidence to support your response.

So far, postal operators have managed changes in consumers' needs successfully. Nevertheless, they are still facing the biggest challenge of all: re-inventing the postal business in a rapidly changing global communications market where traditional forms of communications have declined. The emergence of e-commerce together with digitisation have induced overall changes in communication and consumption habits that have a significant impact on some regulatory and competitive issues in the mail and parcel delivery markets.

Innovation has been crucial for the European Postal operators to meet customers' requirements. They innovate to cut costs, reduce delivery times and increase flexibility in the way they deliver parcels, in response to what their customers want.

They now offer a broad range of services which were not widely available a few years ago: same-day-delivery, click and collect, parcel-lockers delivery, track-and-trace and electronic notifications, to name a few. Indeed, European postal operators have made significant investments to improve cross-border parcel delivery through the Interconnect Programme, launched in 2013. These improvements include developing alternative delivery options, improving returns solutions, expanding the use of track and trace, improving global customer service and harmonising labelling. The ERGP recognised this when it states that "postal operators are working together on developing a common service specification for e-commerce delivery in order to fulfil the industry promise to address current e-commerce delivery issues"³.

Q 1.5 To what extent will Europeans' basic right to communicate be fulfilled by digital communications or increased efficiency in the postal sector or both? If gaps remain, what would be the best alternatives to deal with them (adjustment of the scope of the US, others)?

Efficient postal and electronic communications services both guarantee access to the basic right to communicate to which each European citizen may claim.

³ Joint BEREC-ERGP opinion on price transparency and regulatory oversight of cross-border parcels delivery, December 2015

However, it is undeniable that the way people communicate; their habits and their preferences in this regard have dramatically changed in the past few years, with the emergence of the digital technology and more recently social media. People tend to favour digital communications (as proven by the mail volume decline). In our digitised world, postal and electronic communications will become more and more substitutable with the latter more effective than the former.

Therefore Member States should have enough flexibility to use the most appropriate means to adjust US obligations according to the domestic specificities. Again, a “one size fits all” solution is not the right approach.

Q 1.6 Should the European USO rules on post and electronic communications be merged to take account of e-substitution and, if so, in what way?

Merging postal and telecoms USO rules into one universal right of communication is really challenging given the differences between the two markets. However, as said before, the growing e-substitution process calls for enough flexibility to be given to Member States to revise the scope of postal and telecom universal services to take into account the new users' needs and the purpose to ensure a long term sustainability to the Universal Service.

Q. 2. Question for stakeholders:

Promoting a competitive market

Q 2.1 Do you consider that the Postal Directive provides all the instruments needed to promote end-to-end and access competition in the evolving postal market (letter and parcel)? Please explain your answer providing examples where appropriate. Do any of these regulatory instruments need to be adapted to the reflect market developments and trends and, if so, in what way?

Yes. Today operators are confronted with an accelerating decline in the core mail business (between 2012 and 2013 the decline of letter volume is estimated to be 4.85% for EU28⁴) and a challenging financial situation that have also impacted the evolution of the postal market structure since its full opening to competition. In a

⁴ COMMISSION STAFF WORKING DOCUMENT , Accompanying the document Report from the Commission to the European Parliament and the Council on the application of the Postal Services Directive SWD(2015) 207 final

declining market such as the letter mail market, entry at the national level is less attractive to new players. Many made the choice to restrict their activity to niche markets with high-value services. Nevertheless, one can cite some successful examples of alternative operators who have developed their own national network. For example, in the Netherlands, Sandd and Selekt Mail⁵ slowly gained market share from 2002 and together they had a market share of between 10 and 20% in 2012; in Spain, competitors have a high market share of more than 18% (volume-based) and Unipost the largest alternative postal provider is covering 70% of the population; in Poland, InPost was delivering letters and parcels to about 75% of households in 2013.

On the contrary, the European e-commerce sector is thriving, and this has a positive spill-over into the parcel sector, which has never been a monopoly, and on which competition has always been an important driver of development. In many Member States the parcel delivery sector is extremely competitive; in others competition is growing.

European national postal operators deliver millions of parcels a day and play a key part in the B2C delivery sector. But they are facing more and more competitors in this market segment. The express operators have been adapting their networks and processes (initially focused on B2B activity) to the B2C market for several years. Pan-European operators, integrators and local/regional competitors are expanding their infrastructure and widening their service offers. Big e-retailers like Amazon are entering the delivery market and disruptive players like Uber are creating completely new challenges for the sector with business models based on self-employed “lifestyle” workers.

These competitive dynamics prove that barriers to entry in the parcel delivery market are lower than ever before and that there is no need to intervene to promote competition. This is no competitive market failure.

As such, PostEurop opposes article 6 of the draft regulation which mandates unconditional access to the incumbent operators’ multilateral agreements. This provision goes beyond the scope of existing European competition law in that it mandates access regardless of the market position of the USP for the relevant services.

⁵ Selekt Mail was taken over by Sandd in 2012.

Q 2.2 Do you consider that the current terminal dues system (UPU, IRA) is fit for purpose in an e-commerce market?

The purpose of the terminal dues systems is to provide a framework for the global delivery of mail of all types, posted by the complete spectrum of postal users: from members of the public posting single pieces of mail in a post box, through small e-retailers, to the largest business customers. For speed and efficiency, this cross-border mail needs to be despatched and accounted for 'in bulk' – i.e. without the need for detailed sortation and documentation that might apply to a large domestic customer in the country of destination. Moreover, services such as track-and-trace have developed, and continue to develop, to meet customer needs such as those which arise with e-commerce.

The UPU terminal dues system is governed through the UPU, while European agreements are suited to market specifics and have led the world on quality and service development. With the European systems in place, postal delivery in Europe has been the backbone of the development of cross border e-commerce from its very beginnings. As such, the current terminal dues system in Europe remains fit for purpose, and it is for the posts to adapt the system to changing circumstances.

Price transparency

Q 2.3 Is the current overall level of price transparency along with the measures proposed in the Regulation [COM(2016) 285 of 25 May 2016] sufficient to resolve price transparency problems or would it be necessary to have additional measures/solutions to address market developments? If not, please provide suggestions on how price transparency could be improved and which role ERGP should have in terms of enforcing the above EU regulation regarding price transparency measures?

Postal prices are generally transparent: most European postal operators already publish their public list of tariffs online and price comparison websites are widely available in many countries, allowing consumers to make an informed choice when seeking a parcel delivery operator.

The main question in this context is whether there really is a need for the proposed Regulation in order to improve price transparency. PostEurop is of the general opinion that the necessary regulatory tools for obtaining such improved price

transparency, as well as conducting the proposed affordability assessment, already exists under the current Postal Services Directive.

Nevertheless, PostEurop can accept the proposal to improve price transparency by means of publishing public tariffs on a dedicated web-site by the EU Commission allowing for a comparison of domestic and cross-border tariffs across Europe. PostEurop is however concerned by the unconditional annual affordability assessment.

There may be some justification for individual, ad-hoc assessments on the affordability of prices in cases of manifest and unreasonable anomalies. However, this should be done in strict compliance with the principle of proportionality.

It should not put postal operators' prices for cross-border delivery services under general suspicion such that postal operators need to commit significant resources and costs to justify them every year, as is the case in article 5 of the draft regulation; this will need revising. The affordability assessment is disproportionate to the Commission's objective and goes in the direction of price regulation through the back-door in a dynamic and highly competitive market.

Additional measures to address market developments could explore how to address the price the end consumer pays; as the Commission acknowledges, "some e-retailers charge their customers more for delivery than they pay themselves" (explanatory memorandum to the draft regulation, p. 4).

According to PostEurop, ERGP should remain an advisory body to the European Commission as laid down in Commission decision 2010/C 217/07. Such a body is useful in the postal sector to improve the understanding and knowledge of postal sector functioning, given the heterogeneity, the specificities and the complexity of the postal markets through Europe. Enforcement of regulatory measures should be left to the NRAs which can adapt measures to national specificities. The Regulation does not, and according to PostEurop should not, allocate any specific role to the ERGP in enforcing price transparency. NRAs are the competent bodies.

Q.3 Question for stakeholders:

Q 3.1 Do you consider that the provisions of the Postal Services Directive, namely Article 19, are sufficient and future-proof in terms of consumer protection and empowerment? If not, please explain why and propose any associated changes.

The consumer protection measures introduced by the Postal Services Directive are sufficient in this regard.

Regarding e-commerce and parcel delivery services associated to online purchases, the variety of players active in B2C delivery puts many challenges regarding consumer protection which the ERGP may wish to explore, but the essential aspect is general contract law and new regulatory initiatives have been put in place to protect consumers.

Q 3.2 Do you consider that the current regulatory framework, including horizontal consumer protection rules, is sufficient to protect consumers in the area of postal services? Please provide evidence to support your answer.

Q 3.3 Are the generic rules on consumer protection and complaint handling sufficient to address the latest market developments, or do we need sector-specific consumer protection rules, notably covering the increased relevance of deferred and express parcel delivery services? If so, please provide examples.

Q 3.4 Do you consider it is important that the ERGP monitors postal indicators that are relevant for the protection of postal service consumers? Which indicators do you consider to be essential to collect and analyze?

As already mentioned, ERGP should remain an advisory body to the European Commission, as laid down in Commission decision 2010/C 217/07.

Q 3.5 Which indicators should be collected (and reported) as a minimum by NRAs or the EC and how frequently should this be undertaken?

NRAs are already monitoring several indicators relevant for the protection of postal service consumers such as the affordability of tariffs, the accessibility to postal services, the quality of service in terms of shipping delays, the treatment of complaints, etc. This is sufficient to protect consumers and supervise markets.

Q 3.6 Are the additional powers proposed by the Commission in the Regulation [COM(2016) 285 of 25 May 2016] sufficient or which additional powers should NRAs have in order to collect the required information from providers?

National regulatory authorities have enough powers under the Postal Service Directive (art 22a) to collect information and data as required by an efficient and consistent market monitoring. The measures in article 3 of the draft regulation provide sufficient regulatory oversight. It is important however that any new reporting requirements do not place a disproportionately high administrative burden on parcel delivery service providers, in order to ensure the information is accurate and reliable; and further that the confidentiality of the information submitted to the national regulatory authorities is preserved at all times.

The definition of a parcel delivery service provider should ensure that all market operators are captured so national regulators have full oversight of their markets. For example, Amazon launched a pan-European fulfilment service in the UK in May 2016. The new service allows merchants to ship their inventory to a local fulfilment centre for Amazon to take care of the logistics. Amazon is therefore involved in the clearance, sorting, transport and distribution of parcels on behalf of other businesses.

Q 3.7 Do you consider that the measures proposed in the Regulation [COM(2016) 285 of 25 May 2016] will ensure that there is sufficient regulatory oversight in relation to the issues identified by the EC in its DSM initiative regarding the cross border parcels delivery market? If not, in what respects would you favour their amendments?

PostEurop believes that the measures in article 3 of the draft regulation provide sufficient regulatory oversight and the article should be drafted to ensure parcel delivery service providers are able to provide accurate, reliable data. The measures need to be pragmatic, functional and avoid introducing red tape while the information parcel delivery service providers submit to national regulatory authorities should be treated as confidential.

Q. 4 Question for stakeholders:

Q 4.1 Are you satisfied with the quality of ERGP documents and with their publication? Please provide evidence to support your answer. Please provide recommendations and suggestions to improve the process.

Progress in the publication process has already been made but it could certainly be improved in particular to allow a reasonable consultation process.

Q 4.2 Are you satisfied with the current public consultation process? Please provide evidence to support your answer. Please provide recommendations and suggestions to improve the process.

The minimum consultation period should be extended. European and national associations need time to consult their membership in order to produce consolidated and reliable contributions. In its Communication towards a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission (COM(2002) 704 final), the Commission recommended to allow at least 8 weeks for reception of responses to written public consultations and 20 working days notice for meetings.

ERGP's consultation process could be aligned with European Commission public online consultations processes which are open for 12 weeks for Initiatives subject to impact assessments, evaluation and fitness checks or Green papers (policy discussion documents).

Q 4.3 Do you think that external ERGP workshops have added value for stakeholders? Should we keep external workshops? Please provide evidence to support your answer. Please provide recommendations and suggestions to improve the process.

The postal operators, via PostEurop, wish to confirm once again their commitment to build an open dialogue with the ERGP on all important subjects raised by the group of regulators.

The first ERGP dialogue workshop held in Bucharest on 19th November 2014 was a success and the postal operators look forward to the new meeting in Bulgaria.

Q 4.4 Do you agree with the proposed axes (see point 42), which could increase ERGP internal and external efficiency?

Postal operators propose more regular contacts with ERGP working groups on specific topics.

Q 4.5 Do you have any other suggestions to improve ERGP efficiency in general or more specifically?

Q 4.6 Do you think that ERGP should continue to be a group which advises and supports the European Commission or should evolve to other structure? Please provide evidence to support your answer.

As already mentioned, the principle “one size fits all” is not applicable in the postal sector where the situation in the various markets has to take into consideration. ERGP should therefore keep its advisory role towards the EC notably and the enforcement of the Regulation on cross-border parcels should be left to the NRAs.

4.7 Do you consider that the convergency trends between the postal sector and electronic communications suggests closer co-operation between ERGP and BEREC?

Postal and telecoms markets present a number of substantial differences which means telecoms regulation cannot simply be transferred to the postal sector as BEREC and ERGP acknowledge in their joint BEREC-ERGP opinion on price transparency and regulatory oversight of cross-border parcels delivery, December 2015. Maintaining two separate and distinct agencies (the ERGP on one hand and the BEREC on the other hand) is important to take advantage of the differences.

This position paper is supported by the following Public Postal Operators:

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