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ERGP Chair
European Commission
DG GROW
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Dear Dr. Pantelis,

In response to the **ERGP Report on Postal Definitions (ERGP PL I (20) 7)**, which is currently under public consultation, PostEurop would like to take the opportunity to share some reflections on it. We wish to continue the dialogue with the ERGP to discuss further how definitions lead or not to concrete dysfunctions in the functioning of markets, competition and customer satisfaction.

The review of the Postal Services Directive will imply looking at the postal definitions in order to address whether or not they are up-to-date and fit for purpose. In that respect, the ERGP report touches upon interesting questions. What about “self-delivery” of marketplaces and websites, delivery of food or platform intermediary activities related to delivery services. A level playing field presupposes that, where appropriate, regulatory conditions (for instance, authorization, reporting or redress procedure requirements) apply to all players alike, “traditional” as well as “new” players and new business models. Whether the definitions of the Postal Services Directive actually need updating is another question, which deserves further analysis.

The more fundamental question concerns the purpose and need for regulation. The report assumes that an additional regulatory framework (including a sector-specific regulation of competition) is needed. PE members disagree (see below); the focus should remain the provision of a sustainable universal postal service and related aspects.

Background and context

For more than a decade, letter mail volumes have been decreasing and parcel/small packet volumes have been growing fast, essentially due to digitalization and the development of e-commerce. The ongoing pandemic crisis confirms and amplifies both trends in an irreversible way.

Nevertheless, these market trends do not mean that the legal postal framework is no longer suitable. On the one hand, the crisis has confirmed the need for a postal universal service which is at the heart of the current postal regulation. On the other hand, the delivery market has shown its ability to address the continuous growth of e-commerce. The fact that the

e-commerce sector is growing fast does not mean that there is a need for new sector-specific regulation. Moreover, the existence of market failures in respect of delivery services has not been identified.

In this context, we would like to challenge the assumption that postal definitions should be changed and adapted to a digital environment with the objective to probably widen the scope of regulation beyond universal services and related aspects.

A regulatory framework that leaves space for subsidiarity

The Postal Directive has led to the full liberalisation of the postal markets in Europe in 2011 (in 2013 for some specific countries) and has organised the postal sector around common structuring principles such as affordability, accessibility, universality, cost-oriented prices and market monitoring by national independent regulatory authorities.

Postal markets have significant local and national dimensions. The implementation of the Postal Directive enabled Member States to adapt the legislative framework to their national specificities and to determine a universal service in accordance with local needs. For this reason, Regulators may have different powers and scope of intervention as shown by the report.

Postal markets were already different before the Postal Directives and since then they have been evolving differently. That is why PostEurop Members are in favour of maintaining a high level of subsidiarity regarding postal regulations.

Extension of the scope of regulation – only if market failures not addressed by horizontal regulation are identified

The ERGP report on definitions suggests a possible broadening of the scope of postal regulation to a widely defined set of delivery activities, yet leaving some delivery activities out of scope (no sorting, food, etc). PostEurop Members note that the subject is complex and that the need for regulation of the delivery sector as such is not demonstrated as competition is fierce and there is no sign of market failure.

In our opinion, we should first define what has to be regulated (and why) and then revise the definitions accordingly, and not the other way around. The starting point for legislation on postal services, postal definitions included, should remain the provision of the universal service. We agree with the statement on page 4 in the report that the parcel delivery sector is very dynamic. This sector is competitive, with new players and innovative service offerings. Consequently, new sector-specific regulation is not needed, as concluded in WIK study for the EC Commission.¹ This conclusion is also supported by Copenhagen Economics (CE) in a recent study commissioned by UPS², and the approach is confirmed by Regulation

¹ WIK report on "[Development of Cross-border E-commerce through Parcel Delivery](#)" (February 2019): In the report WIK states that "Overall, parcel delivery markets in the EU are developing well" (page XIII) and "The landscape for parcel delivery services is competitive" (page XVIII). Furthermore, WIK recommends that "Given the progress made towards higher quality parcel delivery, further EU and Member State level action on prices, transparency and quality of service would not be appropriate at this stage." (page 297).

² CE report on "[Principles of EU postal regulation and implications for the future](#)" (June 2020): In the report CE e.g. states that "In conclusion, the evidence reviewed and gathered for this study does not support a case to introduce additional regulation of the provision of parcel delivery services for e-commerce purchases." (page 7).

(EU) 2018/644 on cross-border parcel delivery services as it has been limited to more transparency and regulatory oversight.

PostEurop believes that public intervention should only take place in situations of identifiable market failures. No market failure, however, is demonstrated in the report. The fact that the importance of the parcel and delivery sector has become even more evident with the Covid-19 outbreak³, is of course not an argument for more postal regulation. To the contrary, the sector is functioning well.

Besides, horizontal legislation such as competition law and consumer rights regulation also apply to the postal sector, as well as to transport and logistics activities. This is barely mentioned in the report but should be properly assessed.

Consistent case-law already in place

The question of whether an operator should be considered as a postal operator has often been raised at Member State level and has led to some case law, especially in the recent Confetra case. The definition of “postal operator” has been clarified by the European Court of Justice. As judgements are binding for all Members States, there is no need for a review of the “postal operator” definition.

The addressees already benefit from a high level of legal protection

In a context where competition is fierce and consumer satisfaction is key, several points should be considered prior to granting new rights to the final addressees:

- Even if there are no legal relations between the delivery operator and the addressee, the addressee benefits from a high level of protection ensured by the e-retailer as defined by the European consumer protection law;
- EU horizontal consumer protection rules which have been recently enhanced to apply to postal users;
- Article 19 of the Postal Services Directive ensures already a high level of consumer protection;
- Article 7 of the cross-border delivery Regulation obliges retailers to give information to the addressees on the different delivery modes, costs and complaint handling procedures.

Thus, we question the ERGP analysis (page 33-34 in the report). The issue, if any, is horizontal in nature, not unique to e-commerce, and should therefore be handled with care.

Parameters used for postal concepts

The parameters proposed to define the postal concepts are accurate, but one of these parameters alone is not enough to cover the postal concepts.

³ Page 4, last paragraph, of the report.

For example, we would like to underline that the content of a shipment is not enough to say whether the item is a parcel and / or mail. Goods can be processed through the letter mail channel and documents can be sent through the parcel channel.

Regarding digital services, more and more postal services include a digital component, but that digital components are already regulated by the framework of electronic communication. Digital communications are also part of the communications market and in direct competition with physical mail. However, the definition of universal services in the Postal Services Directive is flexible enough to include hybrid or digital solutions that can be considered in all respects as a substitute for physical mail.

Final remarks

Posteurop believes that the basis of any discussion on the scope of Postal Services, be its definitions or other, should remain the provision of the universal service. Any change to the scope should be based upon the EU postal policy objectives. Regulation of horizontal topics like competition, labour and consumer rights is more efficient when they are seen as a general set of rules instead of additional sectoral regulation.

PostEurop and its members thank the ERGP for its attention and remain open to further discuss these interesting and specific issues.

Yours sincerely,



Jean-Paul Forceville
Chairman



Botond Szebeny
Secretary General

CC: Mr João Cadete de Matos, ERGP Vice-Chair