



EUROPEAN COMMISSION

*Brussels, 19.10.2016
C(2016) 6657 final*

*Mr Călin POPESCU-TĂRICEANU
President of the Senat
Calea 13 Septembrie nr. 1-3, sector 5
RO – 050711 BUCHAREST*

Dear President,

The Commission would like to thank the Senat for its Opinion on the proposal for a Regulation on cross-border parcel delivery services {COM(2016) 285 final}.

Affordable, efficient and reliable parcel delivery services are essential for e-commerce, yet at present high delivery costs often stop e-retailers and consumers from buying and selling more online. Making cross-border delivery more affordable would help consumers to get a better deal and allow them to choose from a wider range of products. It would also support e-retailers to reach new consumers and create more business for parcel delivery providers.

The proposal is a targeted measure to improve parcel delivery services that complements the Commission's wider work to implement the Digital Single Market strategy¹ and to facilitate cross-border e-commerce. Building on the Postal Services Directive², this proposal would provide regulators with access to the data they need to monitor cross-border parcel markets and check the affordability of prices. The Commission would like to emphasise that this proposal would introduce price transparency measures, not price regulation.

The Commission welcomes the Senat's overall support and notes the concerns expressed regarding the definitions in the proposal, the scope of universal service, possible circumvention of the exemption criteria and confidential information. In response to these concerns, the Commission would like to refer the Senat to the attached annex.

The points made above and in the annex are based on the initial proposal presented by the Commission which is currently in the legislative process involving both the European Parliament and the Council, in which your government is represented.

¹ COM(2015) 192 final.

² OJ L 15, 21.1.1998, pp. 14-25; as amended in 2002 and 2008.

The Commission hopes that these clarifications address the issues raised by the Senat and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Elżbieta Bienkowska
Member of the Commission*

ANNEX

The Commission has carefully considered the issues raised by the Senat in its Opinion and is pleased to offer the following clarifications.

On the definitions in the proposal:

The definitions in the proposal are consistent with those in the Postal Services Directive. Article 2 of the latter defines items of correspondence, books, catalogues, newspapers, periodical and postal parcels as "postal items". The Commission's Glossary of Postal Statistics³ clarifies that the term "postal services" refers to postal operations and courier, express and parcel (CEP) services.

The Postal Services Directive does not contain a definition of a parcel (or a postal parcel). A definition of a parcel (or a packet) referring to the contents would be impractical as postal operators are, in principle, not permitted to open postal items in order to, for example, distinguish between an item containing merchandise or a set of newspapers or catalogues. The annex to the proposal therefore proposes a definition based on dimensions and weight, which is also an approach identified in the applicable international agreements of the Universal Postal Union. "Letters" that fall within the scope of the annex must have a combined length, width and depth no greater than 900 mm, with the greatest dimension no more than 600 mm and the smallest at least 200 mm.

The Commission's Glossary of Postal Statistics defines a "universal letter post service item" as an item addressed in the final form in which it is to be carried by a licenced postal service provider. They may include: items of correspondence, ordinary letters and postcards and addressed bulk mail (if included in the universal service); other (addressed) letter-post items including printed papers (generally weighing less than parcels) such as printed matter (journals, newspapers, catalogues, periodicals) and other specific items (i.e. literature for the blind and, as applicable in the domestic service, samples of merchandise, "phonopost" items). Small packages containing merchandise with or without commercial value are included in this definition of a letter in countries where small packages are part of the letter mail stream, whereas unaddressed items and parcels are excluded.

The Commission's Glossary of Postal Statistics defines "ordinary parcels" as items normally containing merchandise and sent by a standard/ordinary service, i.e. non-express and non-courier, and are carried by the designated universal service provider or other postal operators. Parcels are distinct from letter-post items and transportation freight respectively in consideration to lower and upper weight and size limits.

³ <http://bookshop.europa.eu/en/glossary-postal-statistics-pbET0415666/>

On universal services:

As the Senat indicates in its Opinion, the list of services set out in the proposal's annex may go beyond the universal service in some Member States. The Postal Services Directive is a framework Directive meaning that Member States have a significant amount of discretion over what they include in the scope of the universal service. Consequently, there are variations between Member States. For example, in some Member States all universal service parcels are tracked and traced whereas in others no universal service parcels are tracked and traced. The annex to the proposal therefore makes no reference as to whether or not parcels form part of the universal service and they are defined by product category – standard, registered and track and trace – instead. Indeed, for the price transparency measure to be effective, it is essential that the prices shown are comparable and they should therefore not be limited to the universal service in each Member State.

On the exemption to reporting requirements:

While it is important for regulators to have data about cross-border parcel markets, administrative burdens for the smallest companies should be minimised. As delivery providers use a range of employment contracts, they would only be exempt from the obligation to provide information to regulators if they employ fewer than 50 employees and are established in only one Member State. Larger companies would therefore fall within the scope of the requirements, regardless of the contractual form they use for their workforce.

The Commission is aware that parcel delivery providers use a range of legal forms for contracting labour. Article 3, subparagraph 3(b) of the proposal therefore sets out that parcel delivery providers should submit "the number of persons working for the provider and involved in the provision of parcel delivery services" to regulators in order to cover the range of contracts that might be used. Moreover, recital 10 states that the threshold should be based on the number of persons working for the service provider and involved in the provision of parcel delivery services.

On confidential information:

The information that would be requested under the proposal is limited to that required by regulators to monitor the development of the parcel market and assess the affordability of some prices. Only non-confidential market data and a non-confidential version of the affordability assessments would be published in order to protect commercially sensitive information such as terminal rates.

On the time for processing information:

The dates were set out with the aim of striking a balance between allowing national regulators and parcel delivery companies sufficient time to compile the information and preventing delays. Their consistency is being reviewed by the co-legislators to ensure they fully achieve that objective.

On non-discriminatory cross-border access (article 6):

The provision for non-discriminatory access contained in Article 6 is largely a codification of the principles analysed in the Commission's decision on REIMS II renotification⁴ ("REIMS II decision") and its Communication "A roadmap for completing the single market for parcel delivery: Build trust in delivery services and encourage online sales"⁵. The REIMS II decision stated that the provisions of what is now Article 101 of the Treaty on the Functioning of the European Union and Article 53(1) of the Agreement on the European Economic Area were not applicable to the REIMS II from 1 January 2002 until 31 December 2006, subject to compliance with certain conditions, i.e. level 3 access between the REIMS II Parties and non-discriminatory third-party access to REIMS II terminal dues and conditions. The condition of non-discriminatory third-party access to REIMS II terminal dues required that each REIMS II party should provide to any third-party postal operator competing with the REIMS II parties for the provision of outgoing cross-border mail services in any other REIMS II country, delivery of incoming cross-border mail in its country at terminal dues and under conditions which are non-discriminatory as compared to those that the REIMS II party offers to the REIMS II party(ies) in the sender's country. The roadmap stated that solutions to improve network interoperability should be based on open standards and infrastructure and non-discriminatory access to these. Moreover making better use of universal service providers' existing networks could help lower average costs and help sustain universal service providers' networks in rural areas.

⁴ Case COMP/C/38.170.

⁵ COM(2013) 886 final.