



ERGP PL (15) 28, Report Legal Regimes – e-commerce delivery

ERGP 2015 report to the European Commission
on
Legal regimes applicable to European domestic
or cross-border e-commerce parcels delivery

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1. INTRODUCTION

Since 2013, the ERGP has been working on European cross-border parcels delivery for e-commerce purposes. In 2013 and 2014, it provided opinions to the European Commission centred on the delimitation and the functioning (broadly from a competition perspective) of related markets and on potential problems on these markets and their pertinence for ex-ante regulation.¹ In 2015, the ERGP has looked at legal regimes applicable to European cross-border e-commerce parcels delivery and their coherency in what is a fairly new and growing market (if parcels delivery is not new, the strong take off of e-commerce and delivery for e-commerce purposes in recent years are). The linking theme for the work was broadly any provisions (related to users' rights and obligations, to relations between operators...) that could directly or indirectly limit uptake of e-commerce or hamper the further development of competition in the parcels sector.

The ERGP work stems broadly from European Commission initiatives to build consumer trust in the e-commerce environment, notably its December 2013 document *A roadmap for completing the single market for parcel delivery – build trust in delivery services and encourage online sales*. It is based on the premise that current European postal regulation was principally (although not exclusively - the universal service contains a basic parcels offer) set up to oversee letter mail services. Parcels delivery is somewhat different (in terms of, for example, market structures and types of operators) and generally arguably less homogeneous. It has no dedicated single European legal regime and delivery operators could be subject to national provisions in several types of law, for example, postal, transport or freight law. While this is not necessarily problematic per se, it is important for the future growth of parcels delivery markets, particularly given the take-off of e-commerce, that consumers, operators and other parties can rely on consistent legal provisions for comparable services.

The work aimed to identify the different types of legal regimes (national or European) that may apply to European domestic or cross-border e-commerce parcels delivery and any specific provisions, or types of provisions, that may be in conflict with each other. This could broadly concern three relationships:

- Online buyer to online seller;
- Online seller to delivery operator;
- Online buyer to delivery operator.

¹ The 2013 and 2014 ERGP opinions on e-commerce cross-border parcels delivery can be accessed under the following links : http://ec.europa.eu/internal_market/ergp/docs/documentation/2013/131129_cross-border-parcel_en.pdf and http://ec.europa.eu/internal_market/ergp/docs/documentation/2014/ergp-14-26-opinion-parcels-delivery-fin_en.pdf.

The work is a survey of sorts of delivery related potential issues - any aspects of inconsistency (different regimes applying to like services), redundancy or possible questions of primacy between different regimes².

The focus of the work was the delivery of goods bought online from businesses and sent to private individual consumers. Other than the online buyer-seller relationship, it also concerns the relationship between online sellers and delivery operators, particularly as regards smaller sellers and any different legal regimes for the provision of parcel delivery services by delivery operators, particularly those that may be rather different in nature (historical operator, express operator, small alternative operator, in-house operator etc.) but that arguably provide substitutable services³. The work is looking at e-commerce to the extent it relates to delivery, but not at e-commerce per se. As signalled in earlier work, the group notes that e-commerce buying usually gives rise to a contract between the seller and the private individual buyer (for a delivered good) and a (separate) contract between the seller and the delivery operator for delivery in this context.

Current regulatory powers

As per the postal directive, NRAs are tasked with monitoring the provision of “postal services”. Article 22(2) provides that NRAs “*shall have as particular task ensuring compliance with the obligations arising from the Directive, in particular by establishing monitoring and regulatory procedures to ensure the provision of the universal service*”⁴. Article 2(1) of the directive defines “postal services” as “*services involving the clearance, sorting, transport and distribution of postal items*”. Its article 2(2) sets out that a “*postal item is an item addressed in the final form in which it is to be carried by a postal service provider*” and article 2(1a) defines a “postal service provider” as “*an undertaking that provides one or more postal services*”.

The directive provides for the minimum scope of NRAs’ responsibilities. NRAs’ powers may go beyond its provisions and their powers vary from member state to member state. European domestic or cross-border e-commerce parcels delivery is likely wider than the definition of postal services provided by the directive. NRAs’ responsibilities may only cover part of parcel delivery services and again the scope of

2 The aim of the work was neither to increase nor to reduce relevant provisions. The ERGP is not a legislative body, its missions do not directly cover all issues discussed in the document (consumer information, seller websites etc) and it sought only to *identify* possible areas of, for example, inconsistency.

3 The ERGP has not carried out formal analysis on what the relevant markets would be.

4 To note, article 22(2) of the directive also provides that NRAs may be charged with ensuring compliance with competition rules in the postal sector.

their powers vary (for example, express parcels may or may not be in the remit of NRAs and in some cases NRAs only or principally have competencies for universal service parcels).

2. *POSSIBLE DIFFERENCES IN THE APPLICATION OR APPLICABILITY OF CURRENT LEGAL PROVISIONS TO LIKE DOMESTIC OR CROSS-BORDER PARCEL DELIVERY PRODUCTS OR SERVICES IN AN AGE OF ONLINE BUYING*

Legal provisions, sets of provisions or laws that may apply, or be claimed to apply, to certain operators but not to their competitors/ other operators for what are arguably like products or services

In its 2015 questionnaire, the ERGP asked its members if they were “*aware of any legal provisions (sets of provisions, types of law), domestic or European, that may apply (or be claimed to apply) to certain operators but not to their competitors/ other operators for what are arguably like products or services*”? NRAs were asked to give detail (“*what requirements, what do they relate to, what law are they in etc. If you wish, please indicate any particular reasons for the differentiation or if any party may benefit from the differentiation*”).

The table below briefly sums up NRAs’ replies. Of the 28 replies to the 2015 questionnaire, 17 NRAs replied ‘yes’.

<p>The 2015 ERGP questionnaire asked: Are you aware of any legal provisions (sets of provisions, types of law), domestic or European, that may apply (or be claimed to apply) to certain operators but not to their competitors/ other operators for what are arguably like products or services? Give detail: what requirements, what do they relate to, what law are they in etc. If you wish, please indicate any particular reasons for the differentiation or if any party may benefit from the differentiation.</p>	
Yes	Belgium, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Poland, Portugal, Romania, Spain, Slovenia, UK
No	Austria, Croatia, Estonia, Luxembourg, Malta, Netherlands, Serbia, Slovakia
No reply or NA	Bulgaria, Cyprus, Latvia

Liability

Several NRAs mentioned potential differences relating to liability. The Finnish NRA noted that liability for “*damages differ between the UPU regime, domestic and cross-border shipments under the Act on Road Transport Contracts (implementing the Convention on the Contract for the International Carriage*

of Goods by Road ('CMR Convention') and domestic items covered by the Postal Act". The Finnish NRA made the point, however, that this may be of limited importance in e-commerce as the consumer need not notify damage or delay to the delivery operator, but should instead present his or her claim to the online seller, who was responsible for the delivery. Lithuania also notes that the CMR convention and postal law provide for different methods of calculating compensation for lost or damaged parcels (goods).

The Belgian, German and Spanish NRAs noted rather country specific points. In Belgium, there is a royal decree⁵ that limits liability towards third parties (which would include the online buyer in the delivery operator – online seller relationship) for loss, damage or delay of a postal item delivered in the context of a public service. This type of limitation of liability does not exist for other operators. In Germany, according to trade law (§ 425 Handelsgesetzbuch), some courts tend to allow Deutsche Post DHL Group to offer packets without any liability. This practice developed, when the incumbent Deutsche Post DHL Group was a state-owned enterprise and subject to government liability rules, but is still applied by some courts. Other private operators may not offer parcels without any liability.

Various US or other 'postal only' requirements

Several NRAs indicated that there are various provisions related to the universal service or to 'postal' services or providers that could potentially apply inconsistently to like services. Certain of these issues could be exacerbated by the fact that related definitions are not always clear or harmonised.

The Belgian NRA indicated that, depending on whether the operator is the designated operator, a universal service provider (providing correspondence mail items or substitutable services), a non-universal service provider, or an express provider, the need for a licence (if the purchased item can be qualified as a correspondence mail item) and/ or the applicable rules or principles could change (for instance rules of transparency, uniformity and non-discriminatory pricing will be applicable on the USP) although the services may not necessarily be experienced by the consumer as much different (the gap is narrowing between 'value-added' or 'express' services and 'standard' services, when considering the fact that most often, the possibility to track the parcel exists for every type of service, though differences will remain in the time and place of delivery and accordingly the price paid for that specific service). The French NRA, for example, notes that regulators' powers to collect statistical information may not apply to all operators providing like services. In France, the regulator collects statistical information from authorised operators. An authorisation is required for letter mail activity and not for parcels delivery, so

⁵ Royal decree of 11 January 2006 relative to the application of articles 142, § 4, 144quater, § 3, 148sexies, § 1, 1^o and 148septies of the Law of 21 March 1991 on the reform of some economic public companies and for the determination of ceilings for compensation and interest that is due by the postal service providers in case of non-contractual liability for loss, theft, damage and/or delay of a postal item during the execution of a postal service in the context of a public service (Belgium).

this collect is unlikely to reflect the (parcels) market. While this has not created a problem to date, it may be an issue to consider going forward.

The Finnish NRA provided several concrete examples of the types of provisions that may vary depending on the category, somewhat arbitrary, that the services fall into (universal service, postal, parcel or merchandise in letter mail, express...). It gave the opportunity to operators to comment, receiving the following points from the historical operator:

- Small goods sent in letter mail may not be subject to the same rules as parcel post;
- There is a duty on the historical operator to make a postal item available to the receiver even when no valid fee has been paid for the item;
- Undelivered postal packages need to be stored for 6 months after the postal operator has informed the sender or addressee (the Finnish regulator notes however that this would generally apply to over-the-counter postal packages only, which usually are not e-commerce parcels);
- Obligation to redirect, without extra charge, a parcel if the addressee has moved.

The Finnish NRA notes that postal operators (effectively only the USP, Posti, in the e-commerce parcel setting since only letter mail and postal packages within the USO obligation are considered postal services in the Finnish postal act) are also required to draw up terms of delivery with minimum content, provide simple procedures for handling claims and publish data on handling of complaints and on quality of service.

The Danish NRA indicates that Post Nord, the historical operator, has much stricter obligations in terms of handing a package to someone other than the addressee (they must have specified written agreement, which is not the case for the other companies, who can make do with a general clause in their conditions on this point).

Various NRAs noted that many e-commerce parcels may fall outside their missions. For example, the Finnish NRA notes that the domestic postal act (415/2011)⁶ only applies to postal packages within the obligations imposed on the designated USP: *“it follows that other than over-the-counter postal packages sent from Finland, the services being provided by Posti, (and with very limited exceptions, also those that arrive in the country) are currently outside the scope of the Postal Act”*. Certain other regulators noted that defining the boundaries between items falling under postal and transport sector is not always easy.

⁶ Unofficial translation available at <http://finlex.fi/fi/laki/kaannokset/2011/en20110415.pdf>

The French NRA noted that current postal law was principally developed for letter mail. E-commerce and so delivery in this context are fairly new and there may indeed be some provisions in various legal regimes that, when applied to parcels delivery, apply to certain operators but not to others. As one example, it cites current provisions relating to treatment of consumer complaints. Article 19 (1) of the postal directive requires that members states ensure that “...*procedures are made available by all postal service providers for dealing with postal users' complaints*”. Given different definitions of what is “postal”, this requirement could potentially apply to certain operators providing like services but not to others and could apply differently from country to country. Article 19 (2) requires that member states ensure that users “*may bring before the competent national authority cases where users' complaints to undertakings providing postal services within the scope of the universal service have not been satisfactorily resolved. In accordance with Article 16, Member States shall ensure that the universal service providers and, wherever appropriate, undertakings providing services within the scope of the universal service, publish, together with the annual report on the monitoring of their performance, information on the number of complaints and the manner in which they have been dealt with*”. The transposition into national postal law in France (article L. 5-7-1 of the ‘CPCE’) requires that: the French NRA (rough translation) “*treats postal services users' complaints that have not been resolved in the context of procedures put in place by authorised postal service providers*”. It applies thus to authorised providers only (an authorisation is required for letter mail (not parcels) activity) and to postal services (letter mail, parcels, but not express for example) and goes beyond the US. In practice, the historical operator accepts complaints relating to all postal products and so does the French NRA and the procedure generally works well. However, it does not apply to, for example, providers of parcel delivery services that do not provide letter mail services and so are not authorised. In the future, as competition develops, it is possible that this provision (or any others created with letter mail in mind and applied to certain parcels but not all) could create friction between (parcels) operators but, for the time being, France has not had indication of problems. The Spanish NRA, in a similar fashion, noted that all postal operators must put in place a complaints treatment procedure. However, the ministry (the authority charged with a consumer complaints mission in the postal sector in Spain) only intervenes to treat complaints regarding the US. Competences on this matter were transferred effectively from CNMC, the NRA, to the Ministry of Public Works in April 2015. Generally, the above texts on complaints treatment could potentially apply in a different manner to providers of like services and they may also apply differently from country to country depending on transposition wordings and on definitions of ‘postal’, the scope of the universal service and whether the transposition goes beyond the minimum requirements.

VAT

Various NRAs (Lithuania, France, Greece, Germany, Ireland, Poland, UK...) mention VAT exemptions. For instance, the German NRA explained that in the tax law a VAT-exemption is made for operators offering a universal service that covers the entire territory of the Federal Republic of Germany. So far this provision is only applied for Deutsche Post DHL Group for all parcels weighting 10 kg or less. However, other private operators in the parcel sector may benefit from the exemption as well, if they comply with the qualification criteria. The Lithuanian regulator noted that the different VAT rates and current VAT rules may cause difficulties. The Polish NRA pointed out that applicability of preferential (lower) VAT rates to certain postal operators, which are usually the designated USPs, may create distortions in the market.

Customs

Several NRAs referred to differing customs clearance procedures (Greece, Lithuania, France etc). To this end, the Lithuanian NRA referred to simplified customs procedures for the clearance of letter post and parcel post conveyed by USPs pursuant to the Universal Postal Convention and associated regulations adopted by the UPU's Postal Operations Council. In a like manner, the Portuguese and Romanian regulators underlined that certain UPU forms are only available to the designated operator and the Polish NRA indicated that this is the case for UPU IMPC codes.

Other

Both the German and the UK regulators indicate that a dominant position is required for the application of certain postal law and competition law provisions. Finally, Hungary noted that there may be incompatibilities between the time that the e-seller keeps data on the purchase and delivery of it, and the time that the delivery operator must, for example according to UPU regulation, keep information on the delivery and treat and receive complaints.

Different legal provisions that could apply, or be claimed to apply, to a single operator for the same issue and that could arguably be incompatible with one another

In its 2015 questionnaire, the ERGP asked its members if they could “cite examples of where two (conflicting) provisions (or sets of provisions, types of sector based or consumer law etc.) may apply to (or be claimed to apply) to a (single) operator (for a given issue, without being the same provision intentionally contained in several statutes)”. The replies are summed up in the below table. Interestingly, all NRAs that replied ‘yes’ referred in the detail of their replies to questions of terminology or definition meaning that it is not always clear whether postal or transport (or other general law) applies to a given operator. This has sometimes resulted in disputes between the regulator and certain operators.

<p>The 2015 ERGP questionnaire asked: Can you cite examples of where two (conflicting) provisions (or sets of provisions, types of sector based or consumer law etc.) may apply to (or be claimed to apply) to a (single) operator (for a given issue, without being the same provision intentionally contained in several statutes)? Give detail: what provisions, what do they relate to, what law are they in etc. If you wish, please indicate any particular reasons for the differentiation or if any party may benefit from the differentiation.</p>	
Yes	Czech Republic, Finland, France, Italy, Portugal, Romania, Serbia, Slovenia
<p><i>The details of the above 'yes' replies all concern various points related to differences in terminology or definitions meaning it is not always clear if an operator is covered by postal or transport (or other general) law</i></p>	
No	Belgium, Croatia, Estonia, Germany, Hungary, Ireland, Lithuania, Luxembourg, Malta, Netherlands, Poland, Spain, Slovakia, UK
No reply or 'NA'	Austria, Bulgaria, Cyprus, Denmark, Greece, Latvia

The Czech regulator indicates that it has issued legal decisions about nature of services of various providers (including PPL, UPS, GLS, Geis Parcel, DPD and IN TIME SPEDICE) and decided that their services are postal services. These providers argue that they offer transport of goods (delivery services) under the general civil code and have appealed these decisions to the court. The regulator maintains that

the services are substitutes from the consumer point of view, as they have the same purpose – parcel delivery to the addressee.

Both the Italian and Portuguese NRAs highlighted issues relating to the border between postal and non-postal (generally transport) sectors and certain tensions that may result. In Italy, certain operators, notably express companies, that have been granted a general authorization (applicable for services outside the US), claim that they are mainly transport and logistic operators and their postal activity is just a marginal activity compared to their overall business and so they should not be expected to comply with the obligations and duties applicable to a postal operator. The Italian regulator is of the view that it is not the percentage of the activity that is important but its provision or not by the operator. The regulator also notes that the same operators benefit from advantages related to their postal authorisation.

The Portuguese NRA has faced issues relating to the applicable legislation and ascertaining the boundaries between the postal sector and the transportation of goods sector, notably concerning parcels. The lack of clear definitions could lead to a situation where both operators acting within the postal sector and operators acting in the transport of goods sector provide similar services under different frameworks (different authorisation or licensing regimes, different fees...). The Portuguese regulator notes, moreover, that the Portuguese Express Operators Association and one express operator have filed complaints before the government and ANACOM stating that police authorities have been fining operators on the grounds of the breach of obligations established in the legislation applicable to the transport of goods (e.g. obligations related to the publication of the working hours of the driving personnel). This situation results from the lack of clear boundaries between both sectors and can be cited as an example of the application of two sets of conflicting provisions to a single operator – postal sector legislation on one hand and transport of goods sector legislation on the other hand.

The French NRA, ARCEP, has not come across significant problems but, in the context of treating consumer complaints, has had some small discussions with the historical operator concerning the (potential/ argued) application of transport law to postal services (on points where postal law is silent). The discussions have concerned, for example, the time delay for notifying a problem to the operator and the possibility to verify the contents of a parcel in the presence of the delivery operator. They have not created any great problems. The Slovenian NRA noted that providers of courier services are not covered by the postal services act, but presumably there could be a grey area in determining whether an operator is ‘postal’ or not.

A small number of NRAs raised separate issues but relating to the same general point of clarity between the applicable legislation, generally postal or transport law. In Romania, there is a 50 kg weight limit for postal items. Items above 50 kg are considered freight and transport law applies. Thus, in national legislation there is a criterion to distinguish between postal services and transport services. However, regarding international delivery, some operators may be subject to the CMR convention but others may arguably not be: article 1 point 4 of the convention provides that it “*shall not apply (...) To carriage performed under the terms of any international postal convention*”. Arguably then, designated operators for the purposes of the UPU convention or other international treaties are excluded from its scope. The Romanian legislation, pursuant to EC regulation No 1071/2009 of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator, has exempted transport by the universal service provider only. The historical operator in Finland indicated to the Finnish NRA a possible conflict between postal law and the law concerning transport of dangerous goods (the Act on the Transport of Dangerous Goods, 719/1994). Under postal legislation, a postal operator has no right to open a letter to make sure that the content is not hazardous but must deliver it to the NRA, which is entitled to open a letter in such situations. The Finnish NRA also informed that it has recently received a complaint on whether a parcel service provided by Posti is a postal service as defined in the Postal Act. The matter concerns last-leg-delivery for goods bought online, where Posti is acting as a subcontractor for a foreign logistics operator. The matter is still under investigation, but it would appear that the service is not a postal service at least on the basis that it is not within the USO, as the currently imposed obligations relating to postal packages only target a small number of municipalities. The Serbian NRA indicated a possible difference between the national consumer protection act and postal law as regards the deadlines for responding to complaints.

The Danish and Belgian NRAs flagged issues related generally to e-commerce and legislation: an issue whereby the value-limit for goods to be subject to customs duty has remained unchanged bringing it out of line with e-commerce growth and presumably with the value of the goods purchased, which means that many more parcels are now subject to customs scrutiny and subsequent handling fees paid by receivers of such items (Denmark). There are differences in quality of service for the provision of e-commerce parcels delivery since the quality of service provided by USO operators is subject to measurement which is not necessarily the case for other postal service providers (Belgium).

Finally, the Hungarian and Slovenian NRAs illustrated the point that certain elements of definition, some clearer than others, come into play: for example, in Hungary postal items can be up to 40kg yet the international limit is 20kg; and the Slovenian NRA noted that the question of what exactly a postal item

is needs to be asked (it is of the view that the main distinction is that postal item should be addressed in its final form in which it is to be carried by the postal service provider).

3. POSSIBLE DISCREPANCIES IN INFORMATION PROVIDED CONCERNING LEGAL RIGHTS AND OBLIGATIONS RELATING TO ONLINE BUYING

In its 2015 questionnaire, the ERGP asked its members if they were “aware of any possible common (as opposed to errors that may be found on an individual seller’s site) discrepancies about information on legal rights and obligations relating to online buying, for example on the website of an association of sellers, a government body website or a private sector consumer information site”. The replies are summed up in the below table. Out of the 28 NRAs that replied to the questionnaire, 3 NRAs replied ‘yes’, 17 replied ‘no’ and 8 referred to a lack of competence or did not provide an answer to the particular question. Although most NRAs replied no, many still indicated potential related information in their reply or in reply to other sections of the questionnaire, and this is reflected below.

Are you aware of any possible common (as opposed to errors that may be found on an individual seller’s site) discrepancies about information on legal rights and obligations relating to online buying, for example on the website of an association of sellers, a government body website or a private sector consumer information site?	
Yes	Finland, France, Lithuania
No	Austria, Belgium, Croatia, Estonia, Germany, Hungary, Ireland, Italy, Luxembourg, Malta, The Netherlands, Portugal, Romania, Serbia, Slovenia, Spain, United Kingdom,
No competence or no reply	Bulgaria, Cyprus, Czech Republic, Denmark, Greece, Latvia, Poland, Slovakia

Several NRAs referred to concerns regarding the completeness and/or correctness of information provided by e-commerce sellers to online buyers (that is, in the context of the contract for a delivered good):

The Finish regulator reported that it was informed by the Finnish Competition and Consumer Authority that erroneous information is being given quite often on consumers' right of withdrawal and on returning the goods. Such information may relate to e.g. who is responsible for covering the cost of return or what means is to be used in returning the goods. Concerning the probable reasons for this problem, the Finnish NRA referred to the implementation of the consumer rights directive (2011/83/EU) in June 2014 and the need that many businesses still have to acquaint themselves with the related amendments to national legislation as well as misinterpretations of the new provisions.

The Lithuanian regulator highlighted that “e-sellers” sites often provide incomplete or inaccurate information, e.g. concerning delivery conditions, return solutions, complaint handling. There is also a lack of information regarding the relevant laws, regulations, procedures and methods applicable to foreign markets. Consumers are often faced with different national rules and do not know before which institution or court they should bring their action.

In a like manner, the Dutch NRA noted that, although not being aware of concrete examples for common discrepancies, not all online sellers seem to be aware of when the obligation to refund the costs of delivery, if goods are returned by the consumer, applies. It also pointed out that there might be problems regards issues of transparency of costs incurred, delivery on the agreed upon address (legal obligation) and determining the liable party in case of damage or non-delivery.

The French NRA noted that buying online is still a fairly new tool both for buyers and for sellers who may still lack adequate information on their rights and obligations. Indeed, there may be confusion from the part of the consumer generally (not being used to buying online, not aware of rights...) and a lack of clarity in information provided by the seller or the delivery operator (website not clear etc...). For the seller, this could mean their website contains inaccurate information, which it seems in their interest to correct, noting that PMEs may particularly struggle to ensure all information is correct.

It may be useful for private and public authorities with a consumer information role to ensure that the information provided by their authorities is clear, concise and up to date. In France, for example, the website⁷ of the DGCCRF (a department of the ministry of the economy that looks after competition, consumer, and fraud issues) provides some very useful information for consumers on their rights and obligations and could be seen as an example of best practice. However, there remain certain points where buyers (or sellers) could be confused. As an example, concerning the possibility to verify the contents (as opposed to the exterior) of the parcel in the presence of the delivery agent and what to do in case of a problem: the DGCCRF site advises consumers to check the contents and, if it is not conform or is damaged, to refuse the parcel and indicate the issue on the delivery slip. It seems, however, that this may be information from transport law. The French NRA, when treating consumer complaints, has indicated the need for the historical operator to put in place the possibility for the recipient to express written reserves concerning the parcel exterior (which the operator has since put in place). This possibility relates only to the exterior and not to the contents, particularly since La Poste does not control parcel contents and postal legislation does not require it to. Equally, the receiver can express reserves while still

⁷ <http://www.economie.gouv.fr/dgccrf/Publications/Vie-pratique/Fiches-pratiques/Livraison>

accepting the parcel. The French NRA sees the possibility to express reserves as an example of best practice that may be particularly useful in the age of online shopping.

As well as France, the NRAs of Denmark, Romania, Greece, and Poland saw consumer lack of awareness of their rights as an issue. They cited potential areas where consumers may need to be better informed such as:

- information on delays for signalling a problem with a parcel (France and Greece etc.);
- differences between the applicable domestic rules from country to country (Lithuania and Greece);
- the need for the end consumer to seek rectification of any problem from the seller (not the delivery operator), as it is the seller who is responsible to the buyer for the whole contract, including delivery. In France, La Poste accepts complaints both from the sender and the receiver, which is seen as a move (put in place at the request of the French NRA) to protect consumers, but there could still be a small area of doubt (for the consumer), for example, as regards who can receive any indemnity and who is ultimately responsible (the seller is responsible towards the consumer, including for delivery as a general rule, and the delivery operator towards the seller). The Slovak NRA, on a similar point, reported that in cases where a delivered good is damaged or incomplete the customer's complaint can be handled either with seller according to Acts on Consumer Protection or with deliverer (i.e. postal company) according to Act on Postal Services. The Danish NRA noted a similar issue.
- verification of the buyer and payment confirmation and transfer across borders (Poland).
- when return fees can (if the buyer changes its mind it presumably is responsible for these fees) and cannot (if the product is not conform) be charged to the buyer (noted by France).⁸

Finally, as regards notably the historical operator, the French NRA explained that it works extensively to ensure clear information is provided to consumers (for example, in documents summing up the terms and conditions of sale for various products), as is likely the case for other regulators.

The Danish NRA pointed out that, according to the Danish Consumer Council, it is often difficult for consumers to ascertain whether a seller sends his goods from the EU or from a country outside of the EU. Due to the different customs treatment, this can turn into an expensive oversight for the consumer. The uncertainty around customs duties and handling fees could deter the consumers' use of e-commerce. This issue is notably relevant for purchases of goods arriving from outside the EU.

⁸ <http://www.economie.gouv.fr/dgccrf/Publications/Vie-pratique/Fiches-pratiques/Livraison>. The website of the DGCCRF is an example of a site for consumers that has useful information on certain practical issues, that could be even more widely brought to the attention of online buyers (good practise), but also where there may still questions that need clarification.

The Dutch NRA explained in its reply to the above question that in general terms transparency of costs incurred, delivery on the agreed upon address (legal obligation) and determining the liable party in case of damage or non-delivery are points of interest.

The above indicates it may be useful to further clarify what the consumer's rights are in various respects (verifying the contents and action to take in case of a problem...) and whether and how this varies between a postal parcel and transported merchandise etc. The recently revised consumer law (the European consumer rights directive that came into effect in December 2013) seems a step in the direction of ensuring greater clarity.

As a general comment, noting that this issue does not always fall under the missions attributed to postal regulators, it could be useful for the EC and/ or competent national authorities to work on consumer knowledge of their rights and obligations when buying online and of sellers' knowledge as well to help ensure their websites are clear and correct. Guides for buyers on their rights and obligations and for sellers and/ or delivery operators on what information must be given to users could be helpful.

4. CONSUMER COMPLAINTS CONCERNING THE ISSUE OF DIFFERENT LEGAL REGIMES APPLICABLE TO THE DELIVERY OF GOODS BOUGHT ONLINE

The ERGP questionnaire asked whether NRAs, or authorities related to them, had received any consumer complaints concerning the issue of different legal regimes applicable to the *delivery* of goods bought on line. Of the 28 NRA respondents, 19 reported no issues in this regard. These were the NRAs of UK, Austria, Portugal, Luxembourg, Ireland, Estonia, France, Czech Republic, Malta, Italy, Croatia, Montenegro, Bulgaria, Serbia, Netherlands, Denmark, Poland, Belgium and Germany. Of the remainder, a number of different issues were flagged in the questionnaire responses.

One NRA response, that of Hungary, referred to specific related complaints handling. Hungary reported on complaints by recipients of goods who ordered higher value goods by registered mail (e.g. computing items) which did not arrive. Hungary cited two different complaints regimes, one with the postal services provider and the other with the on-line seller. Consumers were not aware of the ability to claim compensation from the on-line seller and complained to the postal services provider instead. When that process proved insufficient due to the terms of the postal compensation scheme, these customers approached the NRA which advised them to use the on-line seller's scheme by which time it was normally too late to start such a procedure.

Although France had not had complaints regarding different legal regimes applicable to the delivery of goods bought online, it reported that through analysing consumer complaints it had noted potential sources of conflict, for example the number of days which a consumer had to notify a delivery problem and the means by which such a notification should be given. This was therefore a question of both consumer rights and consumer knowledge of those rights, which the French response felt could be helped by recent modifications in consumer law at the European and domestic level (the European consumer rights directive that came into effect in December 2013 and the French consumer law of 17 March 2014 transposing this directive into national law). The French NRA has also noted many issues regarding items being sent using parcels products not adapted to the contents (for example, sending items of value using parcel products with limited insurance or no signature). These issues, which could increase as e-commerce grows, create tension between the seller, buyer and delivery operator. They underline the importance of a proper product choice by the seller and/ or buyer, of adequate wrapping of products, of the need for parties to an e-commerce transaction to read the product conditions carefully and to ask appropriate questions, and of the need for the buyer to know who is ultimately responsible to him or her in the event of a problem. It seems in the interest of sellers and parcel operators to ensure clear complaints procedures processes. These issues relate also to consumer knowledge, discussed above.

Several NRAs referred in their replies to the provisions of the EU consumer rights directive (2011/83/EU) and to its incorporation into national law, which was required by end 2013. They generally noted that it applies to all products and services and aims to better protect consumers making sales at a distance.

5. NRAs' OVERSIGHT POWERS AS REGARDS THE COLLECTION, TRANSPORT AND/ OR DELIVERY OF DOMESTIC AND CROSS-BORDER E-COMMERCE PARCELS

The 2015 ERGP questionnaire asked NRAs to indicate for which domestic and cross-border e-commerce parcels their authority was charged with the oversight of the collection, transport and/or delivery. Of the 28 replies received, 18 indicated that the NRA has the legal power to oversee all domestic and cross-border e-commerce parcels, a priori meaning all domestic and cross-border e-commerce parcels in the scope of postal law (which may or may not be the same as all parcels provided by authorised/ licensed providers, depending on the postal law in the country in question). An important point should, however, been kept in mind: the scope of postal law can vary significantly between Member States and may not cover all parcels that might be included in, for example, a relevant market as per competition law principles. For instance, an oversight of express operators is only possible for some NRAs but not all that consider themselves to have the power to monitor domestic and cross-border e-commerce parcels. It was,

however, mentioned by numerous NRAs that there is no specific regulatory mandate concerning domestic or cross-border e-commerce parcels.

In this regard, the Polish NRA mentioned that “Formally, the postal market in Poland is divided in four groups: universal postal services, services within the scope of universal services, courier services and other services. In each of these segments, parcels could be identified. The president of UKE has no powers to specifically monitor cross-border e-commerce parcels.” Also, the Lithuanian NRA noted that *“There is no definition for ‘e-commerce’ parcel. Lithuanian Postal law only defines postal parcel”*. Having in mind the provisions of the postal service directive we consider that this statement is applicable for each member state. The ERGP notes that, while its work refers for convenience sake to ‘e-commerce parcels’, these parcels would not be likely to form a legal subset of all parcels or a relevant market in their own right. Several countries indicate difficulties in identifying precisely which parcels may fall under national or European postal law (what a ‘postal’ parcel is).

In ten countries only a part of domestic and cross-border e-commerce parcels are subject to the supervision of the NRAs, in most cases the parcels falling within the scope of the universal service. Thus, in Portugal the oversight role of ANACOM depends on the parcels being included in the scope of the universal service or falling outside of it (either e-commerce parcels or not). For universal service parcels provided by the USP, ANACOM has the power to regulate the parcels’ prices and the quality of service. For the remaining parcels (parcels provided by other providers and parcels outside the universal service provided by the USP), these powers are not foreseen, as the providers are free to set their own prices and quality of service standards. The Finnish NRA notes that *“...as regards e-commerce parcels originating from Finland, be they domestic or cross-border, practically only over-the-counter parcels would be within FICORA's oversight. (...) As for cross-border parcels originating abroad, with minor exceptions only items considered letter mail would be within FICORA's oversight in the current situation. Currently only the universal service provider Posti provides e-commerce parcels services that are within FICORA's oversight”*. As a singular situation, in Luxembourg the NRA has the supervision power only for parcels showing a standard address field (ISO).

The table below briefly sums up NRAs' replies:

ERGP questionnaire: Please indicate for the collection, transport and/ or delivery of which domestic and cross-border e-commerce parcels your authority is charged with oversight?	
All domestic and cross-border e-commerce parcels ** The analysis of the ERGP indicates that many replies referred to all domestic and cross-border e-commerce parcels <i>in the scope of postal law</i> , which may be only a subset of all parcels delivery offers.	Austria, Belgium, Bulgaria, Croatia, Czech Republic, Estonia, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Netherlands, Romania, Slovakia, Slovenia, Spain, UK
Only a part of domestic and cross-border e-commerce parcels	Denmark, Finland, France, Italy, Luxembourg, Malta, Poland, Portugal, Serbia
No reply	Cyprus

NRA powers and the scope of postal law

Again, it should be noted that the scope of postal law in the different Member States may vary significantly. Although the universal service and postal services may be defined, specific definitions of various types of parcels (postal parcel, ordinary cf. express parcel etc.) may not be in place and in any case the scope of the definitions (what is 'postal' for example, whether express is included etc.) can vary considerably. The information in the above table should, in this context, be read with a caveat. Indeed, the 16 member states who confirm that their oversight includes 'all' domestic and cross-border e-commerce parcels, generally refer to all parcels within the scope of their respective national postal law, which may vary from country to country and is likely a subset of all parcels delivery.

Asked if any other authorities oversee the collection, transport and/or delivery of domestic and/or cross-border e-commerce parcels, 12 NRAs answered affirmatively. The majority of the NRAs that replied 'yes' indicated that these other authorities are responsible for the application of the transport, customs, consumer protection or competition law. Two respondents (PL and SI) noted that in the scope of postal law the NRA is not the only authority responsible for overseeing the collection, transport and /or delivery of domestic and/or cross-border e-commerce parcels⁹. The other 16 countries replied 'no'. For example,

⁹ Thus, in Poland "...in case of a postal operator acting under the postal law the President of UKE has some powers (mainly limited to the universal service), also the Ministry of Administration and Digitization". Slovenia notes that "Market inspectorate is authority with supervisory competencies for inspections concerning the implementation of Postal Services Act and of regulations issued under this Act not subject to supervision by NRA (Agency for Communication Networks and Services of the Republic of Slovenia)."

the French NRA mentioned that *“There is no other sector specific authority but other general authorities could potentially have a role - in particular the competition authority, which is responsible (ex-post) for all sectors of activity”*. The Portuguese NRA notes that *“In the scope of the Postal Law, the responsible authority is ANACOM, which is assisted by the police authorities and by other authorities or public services whose assistance may be requested. In the scope of the transport of goods, the responsible entities are Instituto da Mobilidade e dos Transportes (IMT) and the police authorities (Guarda Nacional Republicana and Polícia de Segurança Pública)”*.

Authorities responsible for the enforcement of consumer rights

As regards the authorities responsible for the enforcement of consumer rights concerning the sending and receiving of domestic and/or cross-border e-commerce parcels, 9 NRAs indicated that they share the legal competence to enforce consumer rights in this field with another authority or authorities. The Czech regulator indicated that *“The Czech Trade Inspection Authority is general authority for protection of consumer rights. The Czech Telecommunication Office is specialized authority for protection of consumer rights in the field of postal services. Consumers can enforce their rights by the Czech Telecommunication Office in such cases (so called “opposition proceedings against the settlement of a complaint”). Consumers can enforce their right also generally by the court as in all other fields”*. The Slovak regulator has the competence to enforce the consumer rights for postal services except the courier services for which the competent body is the Slovak Trade Inspection.

Regarding the same question, the majority of the NRAs responded that other authorities have the competence to enforce the consumer rights. In this sense the Finnish regulator noted that *“Consumer rights under general consumer protection law are enforced by the Consumer Ombudsman functioning at the Finnish Competition and Consumer Authority. Alternative dispute resolution is generally available for consumers at the Consumer Disputes Board, which issues recommendations. In those cases that fall within FICORA's competence (see answer 8), FICORA enforces the Postal Act, but has no authority relating to contractual issues or liability for compensation between a postal undertaking and a customer”*. The Spanish regulator mentioned that the competence regarding complaints from consumers was transferred from the postal regulator (CNMC¹⁰) to the Ministry of Public Works. Romania highlighted that the contractual relationship between online seller and online buyer is a distance contract¹¹

10 These functions have been carried out, provisionally, by CNMC since October 2013 (when created) until April the 6th 2015.

11 According to Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council - OJ L 304, 22.11.2011.

and therefore, according to national legislation, the competent body is the National Authority for Consumer Protection.

Finally, in some member states, the postal regulator is the sole authority responsible for the enforcement of consumer rights concerning the sending and receiving of domestic and/or cross-border e-commerce parcels. The Dutch NRA indicated that the Consumer Department of ACM is responsible for the enforcement of consumer rights.

Two NRAs noted that the consumer rights are also protected by implication of non-governmental organizations. Thus, the German regulator stated that in addition to his competence “...*consumer rights are protected by The Federation of German Consumer Organizations – VZBV – which is a non-governmental organization acting as an umbrella for 41 German consumer associations. VZBV is predominantly state-funded and is assigned by the State with the task to provide consultancy services in the area of consumer protection*”. Also, in Luxembourg besides ILR competence regarding the enforcement of consumer rights, Union luxembourgeoise des consommateurs nouvelle ASBL, a non-profit organization, has the objective to improve consumer protection.

ERGP questionnaire: Which authorities are in your country responsible for the enforcement of consumer rights concerning the sending and receiving of domestic and/or cross-border e-commerce parcels?	
NRAs and another authority or authorities.	Bulgaria, Croatia, Czech Republic, Greece, Hungary, Italy, Ireland, Lithuania, Slovakia
NRAs	Germany, Latvia, Luxembourg, Netherlands, Slovenia, UK
Other authority or authorities than the NRAs	Austria, Belgium, Cyprus, Denmark, Estonia, Finland, France, Malta, Poland, Portugal, Romania, Serbia, Spain

6. CONCLUSIONS

Parties concerned by delivery of e-commerce parcels are diverse and include parcels delivery operators (express, alternative, historical or otherwise...), online sellers, online buyers, regulators, bodies charged with a consumer rights related mission and so on. The work of the ERGP points to three areas that it could be useful for these parties to address.

Firstly, NRAs could benefit from greater guidance as to what is ‘postal’ and what is not. Indeed, to give one example, guidance could be provided notably at the European level on the frontier between postal and transport sectors. Equally, while certain countries specifically include express and others specifically exclude express, others again may ask whether express is postal or not, and many may need guidance on what exactly ‘express’ is. These are examples of questions that are currently being asked by several NRAs. In certain countries, these questions are subject to legal decisions, which may help clarify such definitions, but it could also be useful for work to be undertaken in a prospective manner on these points, where relevant at the European level. To note, many NRAs confirm that often a large proportion of all parcels, and notably parcels that would be used for e-commerce, are outside the scope of their missions. Indeed, as noted in the introduction, NRAs are currently tasked with overseeing “postal services” provided by “postal services providers”, which generally covers some but not all parcels delivery services and the scope of which varies from member state to member state.

Secondly, current postal legislation was thought out principally, although not exclusively - the universal service contains a basic parcels offer, for letter mail products and certain provisions may cover certain but not all operators providing like (parcels) services. This could create tension between operators in the future. Recent strong growth, and likely strong future growth, in parcels delivery services due to the development of e-commerce have somewhat changed the context in which postal regulation is carried out. Indeed, and again noting that definitions vary from country to country, as examples, it is possible that changes might be required concerning provisions relating to complaints treatment, to liability, to collection of statistical information, to the obligation to publish quality of service data, to letter mail provisions that concern letters with merchandise, to consumer rights, to customs and VAT treatment or to various other obligations (obligation to keep an undelivered parcels for a certain length of time...) should they apply to some operators but not to others providing a like service. If certain issues may be able to be dealt with by member states within the scope of current legislation, others could potentially require changes in legislation, including at European level. In this regard the ERGP is noting that current powers may need to be reevaluated in future to ensure regulation remains coherent.

Finally, although this may not entirely or uniquely be an issue that falls under the missions of postal regulators, there may be benefit in the European Commission and/ or competent national authorities increasing their efforts to ensure that consumers and sellers are well-informed of their rights and obligations when buying and selling online. This could include working on initiatives such as guides for buyers on their rights and for sellers to help ensure their websites are clear or on best practice in presenting consumer rights information related to online buying. Such initiatives could be useful to help ensure that there is transparency for users (online sellers and end consumers) in parcels delivery markets and more broadly regarding online buying.