



ERGP (16) 16 – MTS

ERGP Medium Term Strategy

2017-2019

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1 ABOUT ERGP

The European Regulators Group for Postal Services (ERGP) was established by Commission Decision 2010/C 217/07 of 10 August 2010.

The group serves as a body for reflection, discussion and advice to the Commission in the postal services field. It facilitates consultation, coordination and cooperation between the independent national regulatory authorities in the Member States (MS), and between those authorities and the Commission, with a view to consolidating the internal market for postal services and ensuring the consistent application in all MS of Directive 97/67/EC.

ERGP's tasks, as outlined in Art.2 of the Decision establishing it, are to advise and assist the Commission:

- i)* on any matter within its competence;
- ii)* in consolidating the internal markets for postal services;
- iii)* on the consistent application in all MS of the regulatory framework for postal services.

The ERGP carries out its tasks through consultation, in agreement with the Commission, with stakeholders in an open and transparent manner.

2 SCOPE

The first ERGP Medium Term Strategy (MTS) covers the period 2017-2019 and was drafted taking into consideration the positions of the stakeholders as expressed during a public consultation period culminating at a workshop held in the margins of an ERGP Plenary meeting in June 2016, in Sofia (Bulgaria).

The MTS identifies the core areas of focus for ERGP's work in the reference period, taking into account the challenges that the postal sector is facing as a result of changes in consumers' needs due to electronic substitution and e-commerce. The implications of these challenges with respect to the utilisation of the postal network and services, their potential influence on the scope and the sustainability of the universal service, as well as the initiatives of the European Commission (EC) in the Digital Single Market (DSM) concerning electronic commerce, will formulate the objects of the MTS's focus.

The ERGP MTS aims to enhance the transparency and predictability of the ERGP's work as laid down in the annual work programme to benefit: *a)* the postal stakeholders (e.g. end-users, operators, governments etc.) who could be affected by the ERGP's work; *b)* the EC, whom the ERGP advises; and *c)* the ERGP members themselves in terms of coordination and cooperation at the European level and in order to allow for the allocation of the necessary resources to ERGP work.

The ERGP MTS is built around the following three strategic Pillars:

- i)* Promoting sustainable provision of a universal service;
- ii)* Promoting a competitive EU postal single market; and
- iii)* Empowering and protecting end-users.

The strategic pillars reflect the policy and regulatory principles that derive from the Postal Service Directive (PSD), namely: ensuring a sustainable universal service; contributing to the development of an internal postal market including promotion of competition; and protecting end-users.

Moreover the MTS addresses the horizontal issue of ERGP's effectiveness and efficiency.

3 THE EUROPEAN POSTAL SECTOR'S CHALLENGES AND OPPORTUNITIES

Decreasing volumes, changing user needs, endangered sustainability of USO

In recent years, there have been significant developments in postal markets due to changing consumers' needs or preferences and innovative electronic services such as transactions using electronic platforms. As a result of e-substitution and the economic crisis, letter volumes, i.e. the traditional mail service, have been continuously declining in recent years for most EU countries. This e-substitution trend is expected to continue for most countries at least in the short to medium term. The change in the way consumers are using the postal service and the decline in letter volumes may lead to a reflection on the scope of the universal postal service (content and quality of service obligations) including an analysis of its sustainability given the changing conditions in the sector.¹ While universal postal services are likely to still play a crucial role in integrating business into the global economy and in maintaining social and territorial cohesion, in most European markets there is only limited, or even an absence, of competition on the important letter markets. This impacts negatively the development of letter post markets (as regards notably price innovation). On the flip side, the importance of parcels services to both business and consumers is increasing due to e-commerce.

E-commerce effect: increasing parcels volumes

The development of e-commerce is driving growth in both domestic and international parcel and express volumes. These growing parcel and express volumes provide prospects not only for established postal operators but also for new market players. On the delivery side, e-commerce offers operators the opportunity to diversify their portfolio (e.g. different types of deliveries), establish new business models (e.g. same day or environmentally friendly shipping), implement new and improve existing quality initiatives (e.g. real-time parcel tracking) and establish new postal infrastructures (e.g. parcel lockers). E-commerce offers a dynamic setting for a wide variety of operators, including the incumbent operators, already established competitors as well as new market entrants.²

The European Commission in its communication on DSM³ acknowledges for cross-border deliveries that '*...stakeholders complain about a lack of transparency, the excessive costs of small shipments and the lack of inter-operability between the different operators typically*

¹ ERGP Report on the outcome of the ERGP public consultation on the evolution of the Universal Service Obligation (June, 2015)

² Joint BEREC-ERGP Opinion on Price transparency and regulatory oversight of cross-border parcels delivery, taking into account possible regulatory insights from the electronic communications sector (December, 2015)

³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'A Digital Single Market Strategy for Europe', Brussels, 6.5.2015 COM(2015) 192 final

involved in a cross-border shipment and the resulting lack of convenience for the final consumer...’.

Substitution from other, less regulated services and new business models, insufficient powers of postal regulators

NRAs are currently tasked with overseeing “postal services” provided by “postal services providers”, which generally covers some but not always all parcel delivery operators and the scope of which varies across MS.⁴ The Courier Express Parcel (CEP) services are not only covered by the European regulation (and specifically by the PSD) applying to the postal sector, but also by other transversal legislation, for instance transport law. The boundaries as regards the applicable law for these services may not always be clear.⁵

Advice on need for fresh legal provisions

Directive 97/67/EC of the European Parliament and of the Council on common rules for the development of the internal market of Community postal services and the improvement of quality of service was amended by Directive 2002/39/EC and by Directive 2008/6/EC of the European Parliament and of the Council. Nonetheless, the postal market continues to evolve rapidly and ongoing close monitoring and further analysis of the efficacy of the regulatory framework in the general context of the evolutions of the postal market, are needed.⁶

Need for relevant statistical data

Monitoring of the European postal market is essential to guarantee that the market opening benefits all users, while also promoting competition. Having accurate and comparable oversight is of utmost importance to the taking of sound regulatory decisions. At the same time, this is a difficult task due to the absence of common definitions across MS, both on the scope of the postal services and of services that fall within the scope of the universal service.

Moreover the borders of the CEP market are unclear and include a wide variety of services. Different countries and NRAs do not always have definitions and, where definitions are in place, different concepts are applied. This is due to different interpretations of the universal service regime set out by the PSD which in some MS has led to a limitation of NRAs’ powers and duties with regard to the monitoring of the provision of the universal services. Regarding data collection, there are different approaches of collection and publication of data on CEP. As a consequence, the CEP statistics might not always be comparable.⁷

⁴ ERGP Report to the European Commission on Legal regimes applicable to European domestic or cross-border e-commerce parcels delivery (December, 2015).

⁵ ERGP internal report on the courier, express and parcels segments statistics (June, 2015).

⁶ Report from the Commission to the European Parliament and the Council on the application of the Postal Services Directive (November, 2015).

⁷ ERGP internal report on the courier, express and parcels segments statistics (June, 2015).

4 ERGP'S STRATEGIC PILLARS

The ERGP Medium Term Strategy is built around the three following strategic pillars:

- i) promoting sustainable provision of a universal service;
- ii) promoting a competitive EU postal single market; and
- iii) empowering and protecting end-users;

The strategic pillars reflect the policy and regulatory principles that derive from the Postal Directive, namely: ensuring a sustainable universal service; contributing to the development of an internal postal market including promoting competition; and protecting and empowering end users.

4.1 Promoting sustainable provision of a universal postal service

In the past, the degree of development of postal markets was generally closely linked to income levels and to population size – i.e. the higher the income and the number of inhabitants of a country, the higher the postal volumes were. In addition, growth in postal volumes was often linked to countries' economic growth. This correlation remained valid until traditional postal services began to feel the effects of e-substitution from digital services: traditional mail by electronic means (both private and for business purposes), mail distribution of editorial products (magazines and newspapers) by distribution on-line, registered mail by certified e-mail, etc.

Due to the trend towards digitalisation and the corresponding changes in communication and purchasing preferences, in recent years the relevance of postal services in economies and every-day life has fundamentally changed.

The development of e-commerce platforms triggered an increase in demand for parcel delivery services, especially B2C, which supports the importance given by the Commission to cross-border trading in the DSM initiative.

Conversely, traditional letter volumes, upon which the sustainability of the Universal Service was historically based, are expected to continue to decline due to e-substitution. Many Universal Service Providers (USPs), in order to cope with this downturn, have diversified their activities and expanded into other related sectors (such as finance, insurance and transport), leveraging the ubiquity of their post office networks.

Moreover, the forecasted continuation of the decline in letter volumes may, *ceteris paribus*, increase the net cost of the universal service provision which might result in the economic sustainability of the postal universal service being jeopardized in the long term.

In such a context, ERGP will explore the possibilities available for the USPs to adjust their postal networks in order to make the provision of the universal service sustainable for years to come. Such possibilities may require Member States to revisit the scope of the universal service within the flexibility provided for by the current Directive and take into consideration the more innovative solutions and technologies put forward by the industry as long as they

cater to consumer needs and do not distort competition. In a more forward looking approach ERGP will look into the possibility of a redefinition of the scope of the USO.

ERGP has already foreseen in the 2016 working programme a “*Report on Universal Services in light of changing postal end users’ needs*” whose purpose is to identify any potential common patterns in terms of users’ needs, and at the same time, to assess the extent to which other means of communication are fulfilling (part or all of) these needs.

Building on this analysis, ERGP will consider the extent to which the current scope of the universal service is sufficient to meet the identified common EU users’ needs or, conversely, whether it is specified in excess of the identified needs. Considering the differences in circumstances between countries, ERGP will then assess whether there is sufficient flexibility provided for in the current directive to allow MS to manage any under or overspecification by pursuing those efficiency adjustments relevant to the overall sustainability of providing the universal service in the medium to long term.

Furthermore, ERGP will also investigate, possibly in cooperation with BEREC, the extent to which the profound transformation of postal markets and the ever increasing convergence between the postal sector and electronic communications may require a comprehensive redefinition of the USO concept.⁸

Should the need to revise the PSD be confirmed, the ERGP will provide the necessary advice to the EC for a redefinition of the scope of the US through a modification of the Directive, so as to reflect current consumers’ communication needs as they continue to change. Any change of the PSD will have to assess which safeguards are required for the technical and financial sustainability of the US in the digital age, while not distorting competition, but taking advantage of it where it is the case.

4.2 Promoting a competitive EU postal single market

Since the PSD (2008/6/EC) entered into force, MS and NRAs have been promoting a competitive EU postal single market to bring benefits to European consumers and businesses.⁹

⁸ In this regard, a recent CERRE dossier for the European Commission, in relation to the observation that postal services are affected by the evolution of other sectors, particularly competition from electronic communication service, concluded that “*The European Commission should initiate a discussion on whether USO is still meaningful in mail alone, as there are alternative technologies that allow communications to benefit also more remote areas. The Commission should therefore consider a comprehensive redefinition of the USO concept, towards a more general “right to communicate.”* Fabra, N., Çarouche, P., Peitz, M., Valletti T., Waddams, C., and Liebhaberg, B. (2014), network industries: efficient Regulation, affordable and & adequate service, CERRE dossier for the European Commission (2014-2018), pp. 40-41.

⁹ Cf. recently the Report from the Commission to the European Parliament and the Council of 17.11.2015 on the application of the Postal Services Directive (Directive 97/67/EC as amended by Directive 2002/39/EC and 2008/6/EC), COM(2015) 568 final. Available at:

<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52015DC0568&from=EN>

Nonetheless, in most European markets there is still only limited or even an absence of competition in the important letter mail markets. This could negatively impact the development of letter post markets, particularly in relation to price competition and innovation and could ultimately fail to respond to users' needs.

As far as parcels are concerned, at the end of 2013 the Commission presented its Roadmap for completing the single market for parcel delivery,¹⁰ which emphasized the importance of delivery for e-commerce. The importance of e-commerce for the EU economy as a whole and as a driver for growth was then most recently highlighted again in the DSM.¹¹

In order to tap into the potential of e-commerce,¹² it is important to build consumer trust in cross-border online sales. For this purpose, it is necessary to remove barriers such as lack of transparency or excessive costs for small shipments that prevent cross-border online commerce from flourishing. Above all, it is important to ensure that e-retailers and consumers have access to affordable and high quality cross-border parcel delivery while recognizing that e-commerce parcel delivery, especially cross-border, depends on a wide range of factors some of which are beyond the control of the NRAs.¹³

In order to resolve these issues, the DSM Strategy aims at increasing price transparency and regulatory oversight of parcel delivery as well as promoting interoperability of delivery services. In particular, regarding the latter NRAs and ERGP will have an important role to play in the implementation of such measures. The ERGP MTS will include exploring how ERGP can contribute to realizing the benefits of growing cross border e-commerce in the EU.

Already the 2013 Roadmap used the term "parcel delivery" more widely than a US postal parcel.¹⁴ On the contrary, the PSD contains no definition of postal parcel nor does it determine any parcel related weight thresholds except in the case of the universal service.

¹⁰ COM(2013) 886 final; http://ec.europa.eu/growth/sectors/postal-services/parcel-delivery/index_en.htm .

¹¹ COM(2015) 192 final; <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1447773803386&uri=CELEX:52015DC0192> ; see also: http://ec.europa.eu/growth/single-market/digital/index_en.htm .

¹² In its Joint BEREC–ERGP Opinion "Price transparency and regulatory oversight of cross-border parcels delivery, taking into account possible regulatory insights from the electronic communications sector" (ERGP PL (15) 32) the benefits of an increased cross-border e-commerce are described in more detail.

¹³ Cf. Press Release "Commission presents roadmap for completing the Single Market for parcel delivery", IP-13-1254.

¹⁴ The Roadmap refers to "*parcels as any items (other than groceries) ordered online and delivered to the consumer.*" and considers that "*A parcel [...] includes all items weighing between 100g and 30 kg.*" Furthermore, in the merger case UPS/ TNT Express (COMP/M.6570, paragraph 37) the EU Commission found that the upper weight limit commonly used in the small package market is 31.5 kg (70 imperial pounds), which is an estimate of the maximum weight that can be handled by one man. In a similar fashion the Commission proposal for a regulation on cross-border parcels delivery [COM(2016)285 final] sets out that the delivery of items exceeding 31.5 kg shall not be considered a parcel delivery service. However the upper weight limit for small packages may be higher under the current jurisdiction of some EU Member States.

The ERGP MTS uses the term “*delivery service providers*” in a wide sense (“*e-commerce parcel*”) as the physical delivery of goods ordered online is a key element of e-commerce. Given the lack of definitions for these terms in the PSD, any such definitions at national level, and associated regulatory powers, may go wider than the minimum universal service limits. ERGP notes that also the EC Draft Regulation on cross-border parcel delivery services (COM 2016)285 final) suggests to define “*parcels delivery services*” in a wide sense (“*e-commerce parcel*”) and to mandate NRAs to collect data from in principle all undertakings that provide one or more such parcel delivery services. Taking the wide definition as a starting point, ERGP will look into its implications for the tasks of the NRAs.

ERGP will look into the available instruments to pursue the goal of completing the single market for cross-border parcel delivery according to the final provisions of the Regulation on cross-border parcel delivery services.¹⁵ Furthermore it will continue its work on the appropriate regulatory approaches to promote a competitive single market for postal items both in relation to end-to-end and access-based competition. Furthermore, it will also look into the impact of the recent related ECJ ruling on special tariffs.¹⁶

Within this strategic pillar, and taking into account the EC Draft Regulation on cross-border parcel delivery services, published on 25th May 2016, ERGP will look into issues such as transparency of conditions and prices, while identifying critical factors for the affordability of cross-border parcel services. ERGP will also play an important role in the consistent implementation of future EU legislation concerning parcels delivery, as outlined by DSM Strategy and proposed in the draft Regulation on cross-border parcel delivery services

With a view to the additional (data collecting and other) powers proposed in the Draft Regulation on cross-border parcel delivery services (nr. 2016/285) ERGP will evaluate their relevance and advise the Commission on the need for potential enrichment or clarification and, once adopted, work out how they can best be implemented consistently by NRAs in order to ensure the objectives of the regulation will be achieved. ERGP will also assess whether and how the purpose of collecting complete and comparable data for a comprehensive overview and a proper analysis of the market can be ensured. Furthermore, the analysis will include looking at how open technology solutions and open standards can be fostered

Regarding the proposed dedicated website to increase price transparency, ERGP will analyse how this can serve best its purpose and become a useful tool for end-users to make a better

¹⁵ Currently discussion revolves around the provisions of the draft Regulation on cross-border delivery services (COM 2016) 285 final.

¹⁶

<http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d0f130dee6fa5d68ddea423fa0e4d56090da965c.e34KaxiLc3eQc40LaxqMbN4Obxa5e0?text=&docid=162222&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=323047>.

informed decision. ERGP may also analyze which complementary measures might be required to translate the benefit of increased price transparency into more competition.¹⁷

4.3 Empowering and protecting end-users

One of the most important postal regulatory objectives is guaranteeing the protection and empowerment of both individual and business postal end-users. This includes ensuring the availability of postal services for consumers.

In this context, ERGP has been monitoring postal market developments and postal trends, including quality of service levels, prices, complaints procedures and the development of the market in terms of market concentration, employment, volumes and revenues. Also ERGP is monitoring closely the evolution of number of collection and delivery days and the related national exceptions due to circumstances or geographical conditions deemed as exceptional.

In terms of consumer protection ERGP will assess the challenges stemming from technological change in the provision of postal services and the implications for market dynamics which may require adjustments to ensure consumers are adequately protected. With the development of e-commerce, the variety of players active in the B2C delivery poses challenges regarding consumer protection that ERGP will explore as long as they belong to NRAs' competences.

ERGP will also analyse the possible existence of different requirements in terms of mail integrity, complaints handling procedures (e.g. the existence of a redress scheme) and compensation requirements between universal service operators and other operators, identifying if there is a level playing field in terms of consumer's protection. Given the pace of change and the impact in relation to regulatory decisions, understanding market dynamics through the monitoring of the market, is of utmost importance for NRAs and ERGP as a means to forecast the market's evolution. It is therefore important that work on reviewing and developing the monitoring of relevant indicators is pursued by both ERGP and NRAs. ERGP will continue monitoring the postal market with a focus on the different needs of the end-users and considering also that the boundaries of the market are changing. Furthermore NRAs shall exercise the necessary regulatory oversight to empower end users and ensure the consistent enforcement of rules that are designed to protect them.

The DSM Strategy, as mentioned before, aims at increasing price transparency and regulatory oversight of cross border parcel delivery. In particular, regarding the latter, NRAs and ERGP will have an important role to play in the implementation of such measures.

Within this strategic pillar, and taking into account the contents of the draft Regulation on cross-border parcels delivery, ERGP will look into issues such as data collection on key statistics for the parcels sector to allow for greater market monitoring by NRA. ERGP will assist the European Commission in the monitoring exercise of the parcel delivery market,

striving to safeguard that the new reporting requirements are proportionate, and that the reliability, comparability and confidentiality of all the data provided is ensured.

5 ERGP EFFECTIVENESS AND EFFICIENCY

The ERGP MTS addresses ERGP efficiency as a horizontal axis supporting the three strategic pillars with the primary objective of advising and assisting the Commission in consolidating the internal market for postal services.

Towards all the stakeholders, transparency, accountability and predictability are recognised as constituent parts of ERGP's efficiency. These are safeguarded through:

- i. The timely publication of
 - a. the ERGP MTS and the annual draft work program (ahead of the year for which it is valid), reflecting topics of interest for the NRAs and taking into account the needs of users and the actors in the market.
 - b. The deliverables of the annual work program.
- ii. Engaging with the stakeholders on specific issues of interest to the market, through, *inter alia*, workshops and/or consultations carried out in a fashion that allows the stakeholders to prepare well thought out contributions.

On the operational level, ERGP will strive to be effective through:

- i. assisting NRAs in their efforts to implement the PSD and contribute to the development of the DSM, through the production and dissemination of reports, and focus on best practices and common positions, based on robust evidence to support informed decision making, in the understanding that there is still varying maturity and national specificities in postal markets in Europe,
- ii. focusing its efforts on the most critical areas of postal regulation, ensuring transparency, accountability and consistency,
- iii. improving ERGP's working methods including internal communication, dissemination of information and Expert Working Group (EWG) coordination, which will reflect in the overall quality of its output,
- iv. monitoring the work of EWGs throughout the year to ensure the consistency and quality of deliverables and their timely completion.
- v. establishing itself as a body of expertise in the postal market.

6 APPENDIX

CEP: Courier Express Parcel

EC: European Commission

EWG: Expert Working Group

DSM: Digital Single Market

ERGP: European Regulators Group for Postal Services

MS: Member State

MTS: Medium Term Strategy

PSD: Postal Service Directive

USO: Universal Service Obligation

USPs: Universal Service Providers