



ERGP (16) 16 – MT-Strategy-Discussion Paper

ERGP Medium Term Strategy

2017-2019

Discussion paper

For Public Consultation

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1 ABOUT ERGP

1. The European Regulators Group for Postal Services (ERGP) was established by Commission Decision 2010/C 217/07 of 10 August 2010.
2. 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, 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 Member States of Directive 97/67/EC.
3. 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 Member States 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

4. At the 8th Plenary of ERGP - held in Brussels on December 3rd, 2015 - the ERGP decided to develop the first ERGP Medium Term Strategy, covering the period 2017-2019.

5. The Medium Term Strategy will identify 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 with implications for the utilisation of the postal network and services, potentially influencing the scope and the sustainability of the universal service.

6. The Medium Term Strategy should also take into consideration the initiatives in the Digital Single Market (DSM) concerning electronic commerce.

7. The ERGP Medium Term Strategy aims to enhance the transparency and predictability of the ERGP's work as laid down in the annual work programme to benefit: *a)* postal stakeholders (e.g. end-users, operators, governments etc.) who could be affected by the ERGP's work; *b)* the European Commission, 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.

8. The ERGP Medium Term Strategy will be built around the three following strategic Pillars derived from the Postal Directive:

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

9. Moreover the Medium term Strategy addresses the issue of ERGP's efficiency.

10. The input of the stakeholders is crucial in driving the ERGP's strategy and as such before the strategy document is finalized, the present discussion paper will be submitted for public consultation. A workshop with stakeholders to further discuss its contents is scheduled for June 30th in Sofia Bulgaria, prior to the ERGP Plenary meeting. Based on the written and oral input of stakeholders, the ERGP Medium Term Strategy for 2017-2019 will then be drafted and published for public consultation. Afterwards the Medium Term Strategy will be the reference basis for the ERGP Work Plan for 2017, 2018 and 2019.

11. The public consultation on this discussion paper will last from the publication of this document until the 23th of June 2016 and stakeholders are welcome to send their submissions to the following address:

ERGP Secretariat

Postal address: European Commission

DG Internal Market, Industry, Entrepreneurship and SMEs

Unit A1: Communication, Access to Documents and Document Management

BREY 7/023

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All contributions will be made public unless marked as confidential by the authors. A brief summary of the written input will be presented at the ERGP stakeholder workshop.

3 THE EUROPEAN POSTAL SECTOR'S CHALLENGES AND OPPORTUNITIES

Decreasing volumes, changing user needs, endangered sustainability of USO

12. 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, volumes of traditional letters mail services 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 Of course 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. However, in most European markets there is only limited or even an absence of competition on the important letter mail markets. This impacts negatively the development of letter post markets (as regards notably price competition and innovation) and could ultimately fail to respond to users' needs. Furthermore, the importance of parcels services to both business and consumers is increasing due to e-commerce.

E-commerce effect: increasing parcels volumes

13. 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

14. 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*

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

typically 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

15. 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 Member States.⁴ The courier, parcel and express (CEP) services are not only covered by the European regulation (and specifically by the postal directive) 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

16. 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 overall postal market, and the effects of the regulatory framework, are needed.⁶

Need for relevant statistical data

17. 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 soundly based regulatory decisions. At the same time, this is a difficult task due to the absence of common definitions across Member States, both on the scope of the postal services and of services that fall within the scope of the universal service.

18. Moreover the borders of the Courier Express Parcel (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 Postal Services Directive which in some Member States has led to a limitation of NRAs’ powers and duties with regard to the monitoring of the provision of the universal services. Regarding data

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).

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

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

4 ERGP'S STRATEGIC PILLARS

19. The ERGP Medium Term Strategy will be 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;

20. 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

21. 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.

22. 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.

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

24. On the other hand, 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 postal service providers, 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.

25. 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.

26. 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. Alternatively, in a more forward looking approach a redefinition of the scope of the US through a modification

of the Directive, which reflects current consumers' communication preferences as they continue to evolve, can be an option to safeguard the sustainability of the US in the digital age.

27. ERGP has already foreseen in the 2016 WP 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.

28. Based 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.

29. Furthermore, ERGP should 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

Q.1 Questions for stakeholders

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

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

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

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

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.

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

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

4.2 Promoting a competitive EU postal single market

30. Since the Postal Service Directive (2008/6/EC) entered into force, Member States and NRAs have been promoting a competitive EU postal single market to bring benefits to European consumers and businesses.⁹

31. 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.

32. 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 "Digital Single Market Strategy for Europe (DSM)".¹¹

33. 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

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>

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.

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

34. 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 Medium Term Strategy will include exploring how ERGP can contribute to realizing the benefits of growing cross border e-commerce in the EU.

35. Already the 2013 Roadmap used the term “parcel delivery” more widely than a US postal parcel. The Roadmap refers to “*parcels as any items (other than groceries) ordered online and delivered to the consumer.*” A parcel is defined here as including all items weighing between 100g and 31.5 kg.¹⁴ However it is worth noting that the Postal Directive contains no definition of postal parcel nor does it determine any parcel related weight thresholds except in the case of the universal service. The ERGP Medium Term Strategy and this discussion paper will therefore use the term “*delivery service providers*” in a wide sense (“e-commerce parcel”). The reasoning behind this is that the physical delivery of goods ordered online is a key element of e-commerce and, given the lack of definitions for these terms in the Postal Service Directive, any such definitions at national level, and associated regulatory powers, may go wider than the minimum universal service limits, while acknowledging that some e-commerce parcels may currently lay outside the responsibilities of regulators under their respective national postal legislation. ERGP will therefore look into the relationship between the definition in the Roadmap and particular national arrangements to draw out the implications for the tasks of the NRAs.

36. ERGP will look into the available instruments to pursue the goal of completing the single market for parcel delivery. Furthermore it will continue its work on the appropriate regulatory approaches to promote a competitive single market for letters both in relation to end-to-end and access-based competition. Finally it will also look into the impact of the recent related ECJ ruling on special tariffs where appropriate.¹⁵

37. Within this strategic pillar, and taking into account the EC Draft Regulation on parcels delivery, expected mid May 2016, ERGP will look into issues such as transparency of conditions and prices, while identifying critical factors for the affordability of cross-border

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

¹⁴ 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 similar fashion COM(2013) 886 final, ft. 6 However the upper weight limit for small packages may higher under the jurisdiction of some EU Member States.

¹⁵ <http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d0f130dee6fa5d68ddea423fa0e4d56090da965c.e34KaxiLc3eQc40LaxqMbN4ObxaSe0?text=&docid=162222&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=323047>

parcel services. ERGP may also develop follow-up work on the regulatory oversight measures provided by the Regulation on cross-border parcel delivery services [COM(2016) 285 of 25 May 2016].

Q. 2. Question for stakeholders:

Promoting a competitive market

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

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

Price transparency

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

4.3 Empowering and protecting end-users

38. One of the most important postal regulatory objectives is ensuring the protection and empowerment of both individual and business postal end-users. This includes ensuring the availability of postal services for consumers, with a particular focus on the protection of the more vulnerable ones.

39. 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.

40. 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.

41. Given the pace of change and the impact in relation to regulatory decisions, understanding market dynamics and therefore the monitoring of the evolution of the market is of utmost importance for NRAs and ERGP. It is therefore important that work on changing or developing the monitoring of relevant indicators is pursued by both NRAs and ERGP.

Furthermore NRAs shall exercise the necessary regulatory oversight to empower end-users and ensure the consistent enforcement of rules that are designed to protect end-users.

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

43. Within this strategic pillar, and taking into account the Regulation on parcels delivery, ERGP will follow-up on the regulatory oversight measures provided by the Regulation [COM(2016) 285 of 25 May 2016] namely will look into issues such as data collection on key statistics for the parcels sector to allow for greater market monitoring by NRA.

Q.3 Questions for stakeholders:

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

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

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

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

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

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

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

5 ERGP EFFICIENCY

44. As already stated earlier the ERGP Medium Term Strategy aims to enhance the transparency and predictability of the ERGP work as laid down in the annual work programme to benefit the relevant postal stakeholders. For this purpose the ERGP will outline the main objectives of its work for the next three years in the strategic document to be published in 2016. This way of working will also allow ERGP to focus on the most relevant issues and allow ERGP members to allocate the necessary resources to execute the ERGP Medium Term Strategy, the annual work plan and the underlying work process.

45. Enhanced communication to all the involved stakeholders could bring added value to the ERGP work. It is therefore appropriate that ERGP also assesses how and when it communicates to stakeholders about ERGP's work to ensure all relevant stakeholders are involved, while being at the same time neutral towards differing stakeholder interests.¹⁶

46. It is also important that ERGP continues to improve its operational methods and be committed to operational efficiency. At a first glance there are a number of areas that could be looked at to increase ERGP internal and external efficiency:

- to further improve the quality of the ERGP, especially by further developing more common positions and best practices;
- monitoring, benchmarking and reporting activities, to provide NRAs, policy makers and stakeholders with robust evidence and accompanying guidance to inform their decision making;
- more efficient and effective engagement with the legislators, including being more involved at all the different stages of the European Commission's initiatives in respect of the postal sector;
- improving internal and external communication;
- improving ERGP's working methods and the quality of its output, through focussing its efforts on the most critical areas of the postal regulation, ensuring at the same time transparency, accountability and consistency.

Q. 4 Questions for stakeholders:

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

¹⁶ As from the start in 2010 ERGP documents, including the annual work programme, have been submitted for public consultation. Furthermore the ERGP has organised a public external stakeholder forum in November 2014, where more than 150 representatives of European important stakeholders and regulators in the field of postal services discussed the perspectives and sustainability of the universal postal service at European Union level.

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

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

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

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

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

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