

## Ecommerce Europe's contribution to the ERGP public consultation of September 2020

### Introduction

Ecommerce Europe welcomes the opportunity to reply to the public consultation of the European Regulators Group for Postal Services (ERGP) on the following three documents:

- i) ERGP Work Programme 2021;
- ii) ERGP Report on Postal Definitions;
- iii) ERGP Report on key consumer issues.

The collection / clearing, sortation, transport and final distribution of commercial items is a key component of the service provision of ecommerce in Europe and world-wide.

The internal market for postal services is an integral part of the Digital Single Market, providing an important channel for e-commerce delivery. The Postal Service Directive<sup>1</sup> (PSD), originally designed 20 years ago and last amended in 2008, provided the first stage of the creation of an internal market of postal services in the EU. It set the framework for converting written information on postal items into digital information, harmonizing dimensions and processes to enable automation to raise efficiency and secure a Europe-wide Universal Service Definition.

Through e-commerce and the growth of commercial delivery services, the creation of an internal market of postal services has entered a second stage. Data generated at the point of sale drives the delivery process. E-commerce has played an especially positive force for postal carriers, driving parcel volumes across their networks at a time of decline in letter volumes. Ecommerce Europe believes that the postal channel will continue to be a valuable asset for e-commerce merchants and their consumers, particularly those selling/receiving goods in peripheral regions.

At the same time, the current postal regulatory framework may not be fully fit to address issues that have arisen in recent years related to trends and developments that did not exist or were not fully developed when the PSD was adopted, such as digitalization and e-commerce as well as the subsequent changes in communications, commerce, and consumer behaviour. It is true, as outlined by the ERGP, that the postal market has become less sender-oriented and more receiver-oriented.

As a response to the ERGP consultation, this paper outlines recommendations on behalf of the European digital commerce sector for policymakers and regulators, also in light of the revision of the Postal Services Directive, as well as looking towards the 2-year evaluation of the Cross-Border Parcel Delivery Regulation.

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<sup>1</sup> Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ L 15, 21.1.1998, p. 14), as amended by Directives 2002/39/EC with regard to the further opening to competition of Community postal services and 2008/6/EC with regard to the full accomplishment of the internal market of Community postal services.

## 1. Postal definitions must be harmonized at EU level before assessing the need for new rules

According to ERGP, the scope of the PSD evaluation and recommendation should consider a “fundamental, market oriented greenfield approach”. However, Ecommerce Europe would like to recommend policymakers and regulators to adopt a much more careful approach than the one proposed in the ERGP Work Programme 2021. In particular, any major regulatory intervention should only be proposed when there is a clear, evidence-based justification for intervening, such as market failure.

Moreover, Ecommerce Europe strongly believes that, before discussing the potential need for any major overhaul of regulation in this field, it is of utmost importance to have clarity in terms of definitions. In fact, there is currently a lack of harmonization of terms and definitions of postal products and services, which led to legal fragmentation across the EU and consequent legal uncertainty for businesses. The interdependencies of postal services with associated legal and regulatory frameworks, have also highlighted the need to harmonize definitions and terms. Currently, EU fiscal, customs, consumer rights, data protection, transport, logistics, and security-related EU legislation applies different – and in some cases contradicting – definitions and terms with respect to postal operations. This leads to challenges in compliance and governance at EU level. Furthermore, the situation is exacerbated as most EU regulations are transferred into national legislation in the EU member states, where the sovereignty of the member states adds to the existing complexity.

In this perspective, **Ecommerce Europe first advocates for a harmonization and clarification of postal definitions and terms of reference (e.g. parcel, mail, postal item, postal service, etc.) between the postal regulatory framework and other regulatory frameworks, aimed at introducing improvements to legislation that help to better serve users (sellers) and end consumers.** How these definitions can be harmonized at EU (and global) level remains to be defined. However, only when harmonized definitions will be in place, it will be possible to fully assess if harmonization of terms is enough or if there is any need to further revise the postal legislative framework.

E-commerce is a growing and highly competitive, integrational part of commerce. Postal services, the collection, consolidation, sortation, transportation, and delivery of commercial items are core elements of the European and global digital commerce provision. However, substantial elements of e-commerce are regulated in horizontal legislation, as well as global conventions and trade agreements have been established. Therefore, **Ecommerce Europe believes that e-commerce sector-specific legislation and regulation would be not sustainable, or even an additional burden to the competitive nature of commerce in Europe.**

## 2. Refrain from regulating consumer rights in the postal legislative framework

In its Report on “consumer issues”, the ERGP rightly mentions that technological development and the exponential growth of e-commerce have made consumer demand evolve. The ERGP also raises the question whether the existing provision regarding postal services in the Consumer Rights Directive<sup>2</sup>, are sufficient or whether specific or additional provisions are needed, stating that the future framework for the postal market will need to address this question. At the same time, the ERGP also stresses that the PSD does not include a specific chapter on consumer protection.

**In Ecommerce Europe’s opinion, EU consumer legislation, which was also recently amended by the Omnibus Directive<sup>3</sup>, already provides for sufficient protection for end consumers.** In our view, as far as the end consumer is concerned, the contractual relationship in an e-commerce transaction should remain focused on the one between the seller and the consumer. Consumers buying goods online do not have a contract with the postal operator, as this is taken care of by the seller itself.

In case of problems related to the delivery of purchased goods, in Ecommerce Europe’s opinion, the main point of contact for the consumer should remain the seller. It is the seller who has a relation with the

<sup>2</sup> Directive 2011/83/EU on consumer rights

<sup>3</sup> Directive (EU) 2019/2161 as regards the better enforcement and modernisation of Union consumer protection rules

consumer and not the postal operator, therefore it is up to the seller to take the necessary steps to assist the consumer in this regard. If the seller would be somehow “excluded” from a complaint regarding delivery, because the consumer directly contacted the delivery operator, the seller risks losing its control on how the postal operator is actually performing. This could prevent the seller from taking the necessary steps to ensure that the delivery service it offers is meeting its expectations and those of the end consumers.

Nevertheless, in the case of a non-delivered parcel, online sellers flagged some issues in relation to the efficiency of the complaint handling systems of some postal operators. In such cases, the consumer can obtain a compensation for a non-delivered parcel from the seller (according to EU Consumer Law). However, the seller should, in turn, also be able to obtain compensation from the postal operator, via a sort of redress mechanism. This would ensure proper protection and empowerment of online sellers, especially SMEs, when using postal services to ship their orders.

Policymakers and regulators should therefore adopt a careful approach with regards to consumer provisions and the potential extension of “postal definitions”. If Consumer Law gets somehow integrated into the PSD, Ecommerce Europe identifies a potential risk that consumers could hold all actors that are involved with the delivery liable for a parcel when, for instance, it does not arrive at the indicated time. Any unjustified extension of the definition would have unintended, and potentially negative, consequences for the e-commerce sector, for end consumers and for e-merchants including many SMEs that, for instance, perform fulfilment for other companies in order to be able to provide certain other services.

In its report on “consumer issues”, the ERGP hints to a potential right for the recipient (end consumer) to choose a delivery provider of his/her choice. Ecommerce Europe believes that consumers would lack the required knowledge to make an informed decision in this regard. Moreover, the seller’s choice can depend on several factors, including reliability, quality of service, costs, availability, strategic partnerships, green aspects, and any other services a seller would like to offer to its consumers to serve them in the best way possible. For these reasons, **Ecommerce Europe insists on the fact that it is the seller having a contractual relation with the consumer and with the delivery service provider(s), and it is up to the seller to choose the delivery provider(s) it wants to offer.**

### 3. USO should be preserved and further strengthened

In its Work Programme 2021, the ERGP mentioned that it will develop a position towards ex-ante regulation, including Significant Market Power (SMP) regulation as a regulatory instrument, to be used for establishing a level playing field and promoting a fair and competitive European postal market. In that regard, Ecommerce Europe is concerned by the fact that the ERGP seems to suggest shifting the current regulation away from its focus on the Universal Service Obligation (USO) towards market competition. In fact, **Ecommerce Europe believes that, if any new regulatory intervention in the field of competition is needed, this should always be based on clear evidence of market failure.** Moreover, in this case, the Commission should carefully assess any risk of overlapping with existing rules on dominant position.

With regards to the USO, a basic delivery service for commercial items should be guaranteed, also under extraordinary circumstances such as a global pandemic. The PSD has a fundamental goal of providing universal postal services to all consumers. The USO underpins the postal carriers commercial offering for e-commerce, allowing for low incremental cost for package deliveries and creating a first- and last-mile network that reaches consumers across 100% of a country’s geographical area. The USO for parcels is necessary to keep economic participation high, grow small businesses by expanding their reach, and acts as a great equalizer of opportunity for rural, vulnerable and underserved communities. Reducing the USO would disenfranchise these communities. Unlike urban and high-density environments, rural communities may not have a range of affordable delivery options available to them. Postal carriers keep them connected to the global economy, allowing these communities to participate and thrive from a distance. In addition, based on consumer demand, e-commerce encourages a seven-day service to become even more competitive. For SMEs that rely on the postal carrier, reducing days of service effectively reduces their ability to participate in that economy, hindering small businesses from using postal carrier services to be competitive. Postal carriers are already well positioned for universal service and should be able to use this network for parcel pick-up and delivery. Therefore, **Ecommerce Europe seeks to strengthen the USO,**

especially by ensuring 100% geographical coverage for pickup and delivery operations also in areas that are very costly or remote (eventually via a fund), encouraging seven-day service and ensuring that parcels are covered by the USO and can leverage the same network.

## 4. E-commerce as a bridge between digitalization and sustainable economy

**Ecommerce Europe supports the ERGP in its intention to deliver a Report on the EU Green Deal and the postal sector**, as its effects and measures for postal operators need to be explored in more detail. From a more general perspective, Ecommerce Europe believes that sustainability in all its aspects is one of the most crucial issues of our time. The importance given to our collective and individual impact on our planet, and on the people around us has never been greater and it has never been so needed. As part of a complex social, environmental, and economic ecosystem, businesses from all sectors have rethought the way they produce, the way they exchange, and how and what they sell to consumers. Businesses have become more and more aware of the role they play and their responsibility in fighting climate change, the rarefaction of resources and so on. We believe that the e-commerce sector is a bridge between the digitalization of our society and the transition to a more sustainable economy. It is a sector in constant and rapid evolution, shaped by new technologies, new ambitions and ideas, new demands, making it a sector capable of spearheading innovative sustainable solutions.

Product delivery to end consumers is a fundamental aspect of e-commerce. It is also a topic at the centre of the conversation on sustainability and e-commerce, and part of larger conversations about the future of mobility, urban planning, but also accessibility. E-commerce logistics is therefore shaped by various developments, from the evolution of consumer expectations, the growth of omnichannel commerce or the development of key transport infrastructure. Digitalization represents a clear opportunity for the e-Logistics sector. For example, Artificial Intelligence-based solutions can rationalize business processes through optimized transport routes and stock management, thus reducing their environmental impact. Investment, from retailers, service providers, but also public investment, is crucial to develop sustainable technologies and the underlying infrastructures. Public infrastructures have to create room for connected sustainable business models and governments must secure the necessary conditions for a more sustainable digitalization, from communication networks to multimodal transport.

In order to enable the growth of sustainable solutions and practices all over Europe, an informed assessment of the state of play and concrete examples of existing projects and commitment should guide the discussion around the role of sustainable logistics in e-commerce. From the role of pick-up points and omnichannel solutions relying on the development of local, inner-city shops, to the use of new means of transportation, there is a number of solutions being explored to continue the transition to more sustainable delivery systems and practices. e-Logistics is different from traditional distribution operations, and more complex. The question of sustainability and e-Logistics cannot be answered by addressing one angle of a perceived issue, or by addressing perceived causalities that would link e-commerce with phenomena such as CO<sub>2</sub> emissions and congestion. This also means any efforts to make e-Logistics more sustainable need to be guided by a holistic approach. This is valid not only for business strategies, but also for policymaking. We believe that the ERGP should play a role in this context, by bringing more evidence-based facts and helping avoid unwarranted restrictive regulation. Making e-commerce and its connected logistics more sustainable should not, for instance, come at the expense of their inclusiveness and reach in remote and rural areas.

## Conclusion

Ecommerce Europe and its members stand ready to support the ERGP and the European Commission in their work on the EU postal legislative framework, to ensure that it will be fit for the current and future challenges of the digital commerce sector.

For any questions on our contribution, please [send Ecommerce Europe an e-mail](#).