



EUROPEAN
REGULATORS GROUP
FOR POSTAL SERVICES

ERGP Report on the contractual situation of consumers of postal services

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1. Introduction

1.1 Background

The boost in e-commerce has sparked the trend of a steady increase in demand for parcel delivery. This evolution has made postal markets less sender-oriented and more receiver-oriented.

The objective of the professional online sellers is to sell by gaining new clients or retaining existing clients. The needs of the online professional sellers' clients regarding the delivery service are likely to be passed on to the postal service operators' products competing for contracting online sellers and especially the big professional online sellers. Therefore, postal services providers are focusing more and more on the receiver's needs as, for e-commerce purchases, the receiver is the one who orders the product to be delivered. Indeed, when an e-commerce transaction occurs, the recipient orders a shipment and pays for it (directly or indirectly). However, in principle, the sender (online seller) concludes the contract with the postal service provider and benefits of the protection of rights stemming from the agreement and other general provisions and contract options as e.g. the choice of delivery method.

Although both senders and recipients are still postal service users, the recipient's needs may not be explicitly considered since postal service providers usually close the contract exclusively with the sender (their customer). Nevertheless, the recipient should also have a right to receive information, file a complaint, and, in some cases, if so warranted, to receive a reimbursement and/or compensation damage if agreed by the sender. What is essential for the e-consumer is a solution if a problem occurs, often with the concerned postal service provider and not with the sender. Protecting both individual and business end-users' rights, especially those of small business users, is often a regulatory objectives at national objective. It is essential to guarantee that all consumers are included and that their needs are taken into account.

Moreover, this issue could also have implications on upstream competition, as e-retailers could be incentivised to enter the delivery market to deal better with their consumers as some e-retailers would like to build a long-term relationship with their customers. Indeed, strong customer orientation on the one hand and the one-shop concept, on the other hand, could be elements to favour those e-retailers who have an own distribution network. Assessing the challenges stemming from the technological changes in postal services provision and the implications for market dynamics may require adjustments to safeguard consumers' interests which are crucial for the regulators.

The "ERGP Opinion on the review of the regulatory framework for postal services" published in 2019 stated that: *"provisions in a new regulatory framework will have to reflect this end, it should identify the minimum requirements needed to protect postal users in terms of, for example, transparency of commercial offers and contracts to make informed choices, proof of delivery, compensation in cases of non-compliance (loss/damage/delay), track and trace options, corrective properties of complaint and compensation procedures to be offered by postal operators."*

This ERGP report attempts to address the issue of the contractual situation of the consumer. These matters will be dealt with essentially through an overview of consumers' specific rights stemming from the different national legal frameworks and by assessing if there is a need for further harmonisation on the European level. In 2020 the ERGP published a report on key consumer issues¹, which was the basis of this report. The 2020 report highlights the changes and developments in the postal sector with a special focus on the situation of consumers in this changing environment.

1.2 Working method

The report was prepared essentially through an analysis of the feedback obtained from the questionnaire regarding the different aspects of the contractual situation of consumers among the ERGP countries.

¹ ERGP report on key consumer issues, [DocsRoom - European Commission \(europa.eu\)](https://docsroom.ec.europa.eu/doclib/interim-abstract.do?docId=32602)

The first part of the questionnaire is dedicated to the legal background to gain insight into the legal framework of the topic concerning the contractual situation of consumers and legal solutions implemented by member states within their national frameworks. In the second part, the questionnaire investigates how consumers of postal services are protected and whether there is a possibility to increase their protection regarding their contractual situation concerning postal service providers. In the third section of the questionnaire, the focus was on the competence of NRAs in collecting information on complaint handling, and the last part was dedicated to identifying which institutions handle the out-of-court dispute procedures in postal services.

The questionnaire was submitted in March 2021 to the ERGP members. The NRAs from the following 28 countries replied to the questionnaire: Austria, Belgium, Bulgaria, Czech Republic, Croatia, Cyprus, Estonia, France, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Serbia, Spain, and Turkey.

The report reflects the situation in the first half of 2021. The draft report will be submitted to open public consultation from 2 July to 12 September 2021 to increase transparency and provide the ERGP with valuable feedback from all interested parties before its approval for publication.

2. Summary of the report on key consumer issues

The 2020 report on key consumers issues <https://ec.europa.eu/docsroom/documents/44124> provides the basis for a specific study on the contractual situation of consumers by attempting to identify fundamental consumer needs in a quickly changing market.

The report on key consumers issues deals with basic legal and economic considerations and is structured around the following elements:

The preliminary analysis of current postal market conditions across the EU clearly shows the importance for consumers of efficient and flexible delivery, the possibility to raise complaints and resolve potential disputes, and also highlights a selection of existing initiatives taken by European postal operators.

The report also looks at the current legal framework at European and national level and provides an overview of all current European consumer protection legislation applicable to the postal market. The main focus is on the provisions of the Postal Services Directive ("PSD") and consumer rights arising from the e-commerce directive. Initial considerations are also given on how contractual relationships affect postal services and first approaches for possible adaptations or improvements of the currently applicable legal framework are outlined. It also provides an overview of the transposition of specific consumer-related articles of the PSD, the Alternative Dispute Resolution ("ADR") Directive and the Consumer Protection Directive (EU) 2019/2161 in the legislation of ERGP member states.

The conclusions of the report relate to the main needs of consumers, especially following the e-commerce boom and the trend towards platformisation, which focuses on the recipient and subsequently on consumers. The provisions laid down in the current PSD may not fully meet the requirements arising from the new consumer issues. The provisions in a new legal framework should reflect this reorientation from a sender-oriented to a recipient-oriented postal market.

A general improvement for consumers could be a confirmation and clarification that the receivers of postal items have the same set of rights as senders, and fall under the same protective shield for consumers, even if they may not be a party in the contractual relationship with the postal service provider.

Considering this first survey of consumer issues in the postal services sector, the following report on the contractual situation of consumers of postal services intends to carry out a deeper analysis of consumer needs at the national level to draw further conclusions for the protection of consumers in the postal sector given the possible revision of the European postal framework.

3. Analysis of the situation of consumers in the field of postal services with a focus on recipients

3.1. Analysing the contractual relationship

Before going deeper into the analysis of this study, let us understand the route of a package. The consumer orders something online, and once the transaction/payment is made, there is a whole process that kicks off, starting from the seller packaging the item and ending when the postal service provider delivers the item to the home of the consumer, or another location determined by the consumer. Figure 1 below provides a simplistic view of this whole process, customer searching and purchasing online to the delivery of the item to the client's address.

Different contractual relationships influence the provision of postal services. It begins with the sender who enters into a contract with the postal service provider concerning the delivery of a postal item (small packets and/or parcels). When consumers conclude a contract for postal services over-the-counter, the agreement is generally oral, although the consumer receives a receipt from the cashier. However, in those cases, the general terms and conditions of the postal service provider often apply depending on the specific product of the postal service provider. Increasingly, contracts for postal services can also be concluded online. The terms and conditions in those cases provide specific consumer rights applying to distance selling contracts². In general, the position of consumers in the provision of postal services is determined by the particular contractual relationship and the relevant terms and conditions.

Packages are not always sent in the context of an online purchase exclusively. They may include shipments not covered by consumer law: B2B transactions (commercial transactions between two companies) or C2C transactions (transactions between two individuals that can be commercial but

² Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts. Amended by: Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002; Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005; Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007. Available at <http://data.europa.eu/eli/dir/1997/7/2007-12-25>.

are also often non-commercial transactions, e.g. a birthday gift). Other contractual relationships may also influence the position of consumers. For example, in the e-commerce context, the underlying distance selling contract conveys specific consumer rights for buying products or services online. Those contractual relationships and their respective consumer rights are mainly outside the scope of the national regulatory authorities for the postal sector set up under Art. 22 of the PSD. Indeed, the powers of the national regulatory authorities for the postal sector are limited to the classic postal services.

If the goods have been purchased from a major commercial e-commerce platform, the latter will mostly arrange for a replacement. However, this may be different if the goods were purchased from a private seller, e.g. on an auction platform or an online marketplace. In this case, the contractual relationship with the postal service provider very often comes into play. In cross-border purchases, it is often even more difficult for the consumer to assert claims because multiple postal service providers are often involved. Also, consumers encounter situations where obtaining some form of acknowledgement or response regarding the complaint takes ages.

Generally, the online vendor concludes a contract with the postal service provider, whereas the addressee will, in practice, be the one that initiate the complaint. The harmed consumer will in general be confronted with limitations in terms of extra-contractual liability of the postal service provider in the event of late delivery of a parcel and damage, loss or theft of a postal item. However, the principle of relativity of contracts, under which contracts only commit the contracting parties, is subject to some exceptions.

3.2. Process overview

Figure 1: Postal Item Delivery Infographic³



Throughout the various steps of the process, several legal requirements and obligations need to be fulfilled. This report focuses on those legal requirements that protect the consumer for postal delivery.

The results of the NRA questionnaire indicate that among NRAs, there is a great effort to enable consumers to exercise their rights in terms of consumer protection. Given that new services, e.g. next day or late delivery, are constantly being offered to customers, and an increasing number turns to e-commerce⁴, there is always potential for improved consumer protection conditions. Based on last year's report, it is necessary to improve the current postal regulations concerning consumer

³ <https://mpk732t12016clustera.wordpress.com/2016/05/16/e-commerce-the-emerging-distribution-channel/>

⁴ <https://ecommercenews.eu/ecommerce-in-europe-e717-billion-in-2020/#:~:text=Ecommerce%20in%20Europe%20is%20expected,the%20European%20ecommerce%20in%202019.>

rights protection in contractual situations. The main improvements are necessary within the context of e-commerce services, especially regarding strengthening consumer rights regarding e-commerce transactions.

Although there are different procedures through which consumers can exercise their rights, some NRAs already handle these topics at their national/ level while others strive to strengthen exercising rights conditions under their competencies. Based on the outcome of the ERGP report of last year⁵, additional EU regulation is probably needed in postal services regarding the protection of the contractual situation on consumers and their rights.

⁵ <https://ec.europa.eu/docsroom/documents/44124>

4. Analysis of the contractual relationships at the national level

4.1 The legal aspects of the contractual relationships in e-commerce

As mentioned previously, the report focuses on the relationship between the consumer and the postal operator, and there are several procedures the postal operator has to observe. The following is an overview of some of the directives that cater for consumer protection within the postal regulations.

The Postal Services Directive (PSD) establishes a regulatory framework for European postal services. The Directive had two amendments, the first of which was in 2002 (Directive 2002/39/EC) and the second one in 2008 (Directive 2008/6/EC), in which Articles 6 and 19 were amended. Below find the key amendments on Articles 6 and 19, namely:

- In Article 6: the second paragraph was deleted, namely: “Member States shall notify the Commission, within 12 months of the date of entry into force how the information⁶ to be published in accordance with the first subparagraph is being made available. Any subsequent modifications shall be notified to the Commission at the earliest opportunity.”
- As to Article 19, in paragraph 1 the text in bold has been added, namely: “Member States shall ensure that transparent, simple and inexpensive procedures are **made available by all postal service providers for dealing with postal users’ complaints, particularly in cases involving loss, theft, damage or non-compliance with service quality standards (including procedures for determining where responsibility lies in cases where more than one operator is involved), without prejudice to relevant international and national provisions on compensation schemes.**

⁶ “Member States shall take steps to ensure that users and postal service providers are regularly given sufficiently detailed and up-to-date information by the universal service provider(s) regarding the particular features of the universal service offered, with special reference to the general conditions of access to these services as well as to prices and quality standard levels. This information shall be published in an appropriate manner.”

Member States shall adopt measures to ensure that the procedures referred to in the first subparagraph enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement and/or compensation.

Member States shall also encourage independent out-of-court schemes to resolve disputes between postal service providers and users.”

In 2008, the European Commission strengthened the importance of providing better and more transparent conditions for users regarding prices and complaint processes and the need for a process to deal with user complaints in a more transparent and publicly available manner.

In the years that followed, regarding the users’ needs in the market, the EU established, through other Directives [Directive 2013/11/EU and Directive (EU) 2019/2161], significant consumer needs and rights. One of the objectives of Directive 2013/11/EU (“Consumer ADR Directive”) was to promote high-quality consumer ADR schemes in the European Union by creating certification processes and regular monitoring by the Member States. This Directive is applicable to procedures for the out-of-court resolution of domestic and cross-border disputes concerning contractual obligations stemming from sales contracts or service contracts through the intervention of an ADR entity that proposes or imposes a solution or brings the parties together to facilitate an amicable solution. Alternatively, the Online Dispute Resolution (ODR) also handles disputes but uses other tools such as online services.

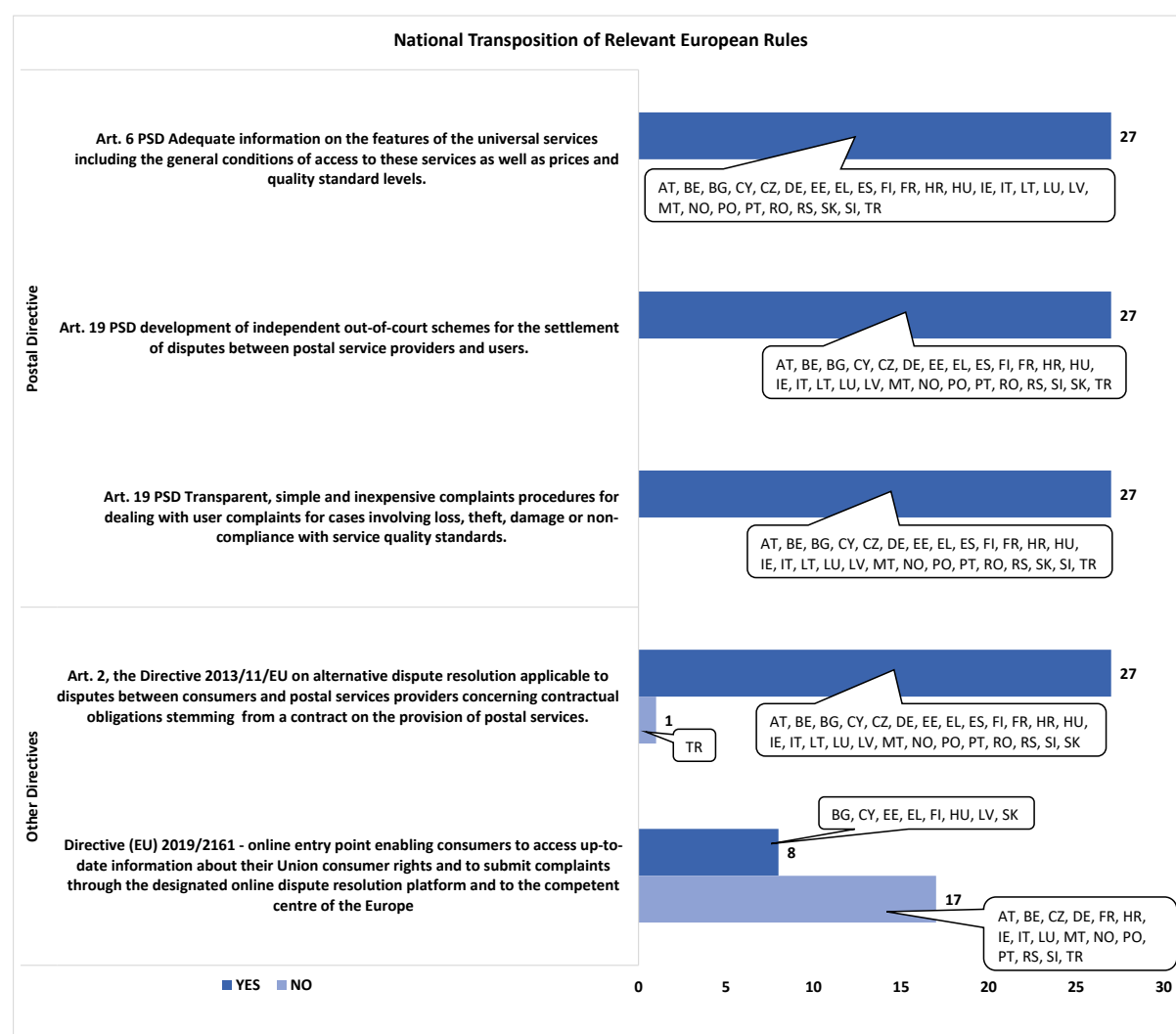
Furthermore, Directive (EU) 2019/2161 of the European Parliament and the Council amended Council Directive 93/13/EEC (Unfair Contract Terms), Directive 98/6/EC (Price Indication), Directive 2005/29/EC (Unfair Commercial Practices) and Directive 2011/83/EU (Consumer Rights) as regards better enforcement and modernisation of EU consumer protection rules. The deadline for the Member States to adopt and publish national measures transposing this Directive is 28 November 2021.

With this legal framework, the position of consumers in the market has significantly improved providing better and more transparent conditions for users regarding prices and complaint

processes, and by more efficient implementation and modernization of EU consumer protection rules. The postal market requires further clarification of the position of the postal service consumer (sender and recipient) and his rights following the market evolution from sender to receiver-oriented, in which the recipient is increasingly becoming a customer through internet platforms. This market development indicates the need to redefine the regulations and provide a legal framework that would enable the protection of both the sender and the recipient, especially in contractual situations, because the recipient is usually the customer of the product/postal item he bought and for which he pays postage in advance.

The first part analysis is dedicated to the transposition of the Directives mentioned above in the Member States (Figure 2).

Figure 2: Transposition of above-mentioned Directives among ERGP members



As shown in the figure above, all respondents have transposed Article 6 of the PSD related to information on the universal services' features, including the general conditions of access to services, prices, and quality standard levels. Also, from the feedback obtained all respondents have implemented in their legislation, the requirements of Article 19 related to transparent, inexpensive and simple complaints procedure for dealing with users complaints, loss, theft, damage or non-compliance with Quality of Service (QoS) standards. Similarly for the other paragraph of Article 19 about developing independent out-of-court schemes for settlement of disputes.

Article 2 of Directive 2013/11/EU on alternative dispute resolution applicable to procedures for the out-of-court resolution of domestic and cross-border disputes concerning contractual obligations stemming from sales contracts or service contracts through the intervention of an ADR, including to disputes between consumers and postal services providers concerning contractual obligations stemming from a contract on the provision of postal services, has been transposed by the majority of countries (27 out of 28 respondents) in their national legislation.

The situation with Directive (EU) 2019/2161 is quite different, for now, only 32% of respondents offer an online entry point enabling consumers to access up-to-date information about their Union consumer rights and to submit complaints through the designated online dispute resolution platform and to the competent centre of the European Consumer Centre Network. However, Member States are required to implement the Directive by 28 November 2021, so implementation in other countries is underway, as was indicated in their feedback. The European Commission provides the European Online Dispute Resolution platform (ODR-Platform).

The answers regarding whether specific changes concerning the directives' defined articles which refers to improvement in national legal framework have been made are presented in Figure 3. The response from the ERGP members show that:

1. More than 70% (16 of 23) of the countries have adjusted Article 6 of PSD regarding general conditions information, prices and QoS.
2. About 58% (13 of 22 and 12 of 22) of NRAs implemented both paragraphs of Article 19 of the PSD for their national legislation;
3. 55% (11 of 20) adjusted Article 2 on alternative dispute resolution of Directive 2013/11/EU.

4. The Directive (EU) 2019/2161 is still in the transposition process.

Figure 3: An overview of the Member States that have adapted the observed articles of the directives to their national legal frameworks.

Article of Directive	YES	No
Art. 6 PSD Adequate information on the universal services features, including the general conditions of access to these services and prices and quality standard levels.	17 NRAs: AT, BE, BG, HR, CY, EE, EL, FR, HU, IE, LV, NO, PO, PT, SK, RS, ES, TR	7 NRAs: CZ, IT, LT, LU, DE, MT, SI
Art. 19 PSD Transparent, inexpensive and straightforward complaints procedures for dealing with user complaints about cases involving loss, theft, damage or non-compliance with service quality standards.	14 NRAs: AT, BE, BG, CY, EE, EL, FR, HU, HR, IE, SK, RS, NO, PO	10 NRAs: CZ, IT, LV, PT, LT, LU, DE, MT, SI, ES
Art. 19 PSD Development of independent out-of-court schemes for the settlement of disputes between postal service providers and users.	14 NRAs: AT, BE, BG, CY, EE, EL, FR, HU, HR, IE, SK, RS, NO, PO	10 NRAs: CZ, FI, IT, LV, LT, LU, DE, MT, SI, ES
Art. 2, of Directive 2013/11/EU on alternative dispute resolution applicable to disputes between consumers and postal services providers concerning contractual obligations stemming from a contract on the provision of postal services.	13 NRAs: AT, BE, BG, EE, EL, FR, HU, HR, IE, SK, RS, NO, PO	9 NRAs: CZ, IT, LV, LT, LU, DE, MT, SI, ES
Directive (EU) 2019/2161 - online entry point enabling consumers to access up-to-date information about their Union consumer rights and to submit complaints through the designated online dispute resolution platform and to the competent centre of the European Consumer Centre Network.	5 NRAs: BG, EE, EL, HU, SK	10 NRAs: AT, IE, IT, LV, LT, NO, PO, SI, ES ⁷

Regarding additional articles related to consumers' specific rights (about postal service providers), apart from the articles mentioned above, there were various answers, so these are clustered as shown in Figure 3. In some countries such as Spain, Greece and Lithuania, articles that strengthen

⁷ The transposition of this Directive in Spain is underway since the deadline to transpose it is until the end of November 2021. Its transposition will take place in the Consumer & User Spanish Law. A draft of the Preliminary Draft Law was submitted for public consultation last June 2020.

the protection of consumers and their rights with general provisions regarding consumer protection are adopted in both Postal Law and Consumer Protection Law⁸.

Figure 4: Answers related to additional protection of consumers rights in national frameworks.

Type of legislation	Countries
Postal law	BE, FR, LT, DE, EL, ES
Secondary legislation	BG
Consumers protection law	FR, IT, LT, FI, PT, EL, ES
Constitution and law on essential public services	PT, ES

Figure 5 below provides an overview of the responses given about the type of legislation and articles related to postal services contractual relationship within national frameworks.

Figure 5: Type of legislation related to postal services contractual relationship.

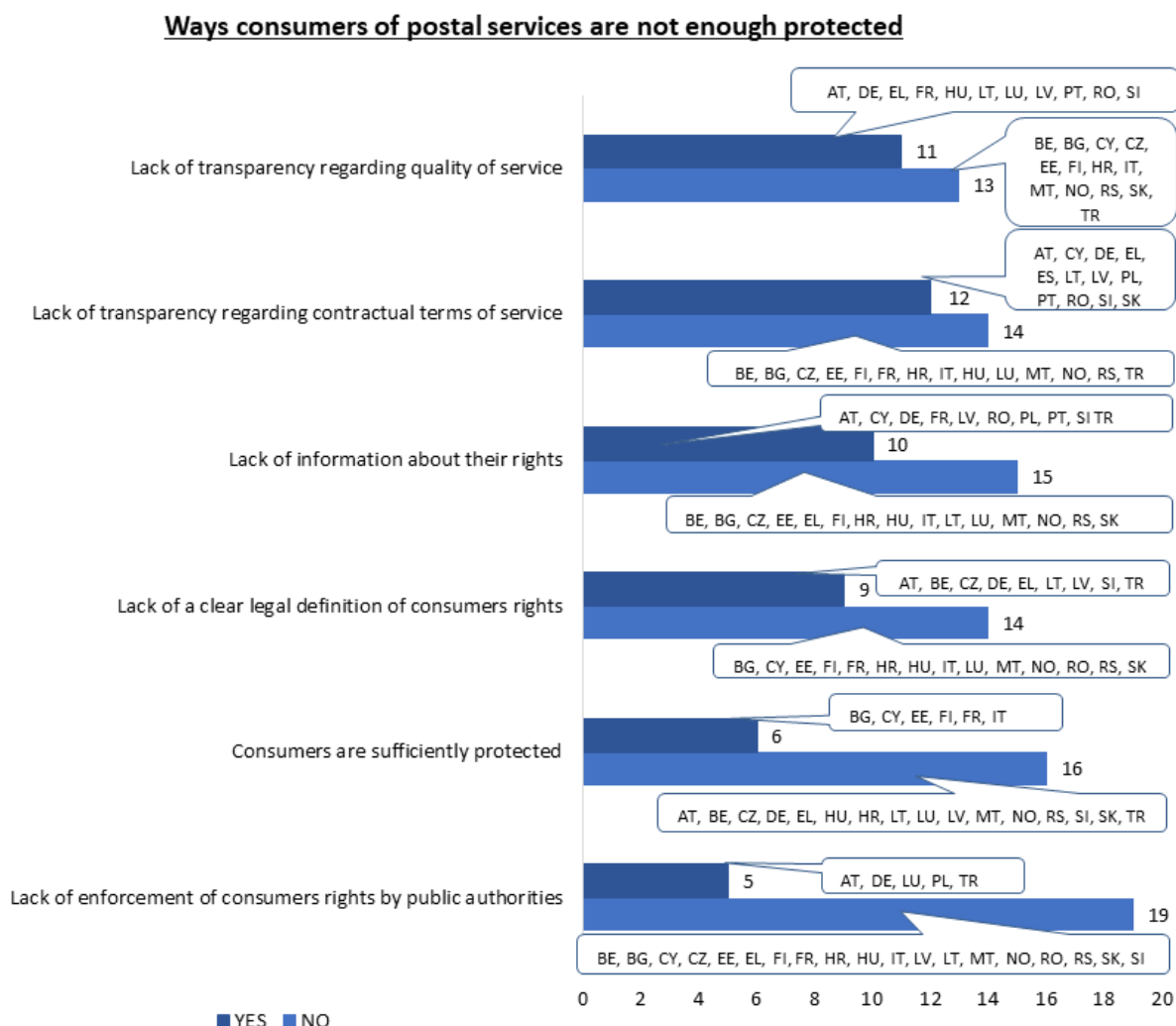
Type of Act	Countries' specifics
Consumer protection	Portugal, Italy, Spain
Postal Act/Postal Law/Postal Code	Belgium, Bulgaria, Czech Republic, France, Greece, Poland, Slovakia, Spain Norway: Rules related to complain schemes offered by postal providers Italy: AGCOM decision -Postal legislation with specific reference to consumer protection Germany: Apart from specific user rights (see below), the Postal Services Ordinance also include obligations of (market-dominant) postal operators affecting the contractual relationship, e.g. obligation to offer a collection of undeliverable letter items for seven working days.
Transport Law /User Rights	Germany: General regulations concerning transport law (national and international carriage of goods); part of German Commercial Code (HGB). If the sender is a consumer, different legal regulations of the German Commercial Code (HGB) may not be modified by the agreement to his disadvantage (e.g. different instruments of liability, limitation or exclusion of liability), unless the contract of carrier does not relate to the carriage of letters or of similar items. § 449 HGB differentiates between various cases and stipulates whether regulation may not be modified in general or may be modified by general terms and conditions or have to be individually negotiated.
Civil Law	All countries General rules on the application of civil responsibility and general provisions of contract law: conclusion, performance, interpretation and termination of contracts

⁸ In the case of Spain: Article 51 of the Spanish Constitution: *1. The public authorities shall guarantee the defence of consumers and users, protecting, by means of effective procedures, their safety, health and legitimate economic interests.*

In 8 countries (BE, BG, CZ, ES, FR, EL, PO, SK), the contractual relationship is highlighted in specific articles of the Postal Act or Postal Law. In some countries, the national specificities that regulate contractual relations are part of the Consumer protection law, Transport Law, and in all countries in Civil law. Eight countries (BG, EE, IT, HU, SK, SI, NO, PO) answered that there are no legal obligations in the postal services contract that favour third parties.

4.2 Consumer Protection Aspects

The following section deals with how consumers (recipients) of postal services are not protected enough in their contractual situation facing postal service providers. The following figure provides an overview of these ways which NRAs consider to be the main ones that lead to insufficient consumer protection.

Figure 6: Ways consumers of postal services are not enough protected

The NRAs' views on this issue differ – although most of the NRAs choose *Lack of transparency regarding quality of service results* (11 NRAs), *Lack of transparency regarding contractual terms of service* (12 NRAs) and *Lack of information about their rights* (10 NRAs) as the most common ways, a larger share of all NRAs (from 12 to 14 NRAs) have another opinion.

Regarding Figure 6, Spain explained that this does not apply in their case since consumers of postal services are already protected by the Postal Regulation, Postal Directive and the national regulatory framework. As Spain mentioned in Figures 4 and 5, the national regulatory framework consists of a combination of Postal law, Secondary legislation, Consumers protection law, Civil law, Constitution

and law on essential public services. However, there is a risk that postal service providers tend to rely on other pieces of legislation that are less burdensome (like transport or logistics). This approach may interfere with the due protection for postal users/consumers.

Regarding the *Lack of enforcement of consumers rights by public authorities*, it is indicated that in practice, the particularity of postal services is that the information about the treatment of postal items (especially transportation and delivery) relies on the operator and its information system. It is not easy for users to assert their rights; for instance, when the postal operator's track and trace system indicates that a parcel was delivered, whereas the recipient did not receive it. In this case, it is difficult for the recipient to challenge the operator's information, and also, in addition, the public authorities cannot assist.

Regarding the quality of service (QoS), France mentions a *Lack of QoS transparency* for the parcel market. Given the ongoing e-commerce growth and the specific context of the Covid-19 crisis, the parcel's quality of service (particularly transparency in parcel delivery) is essential for users. The current regulatory framework (especially the Regulation on cross-border parcel delivery services) does not provide a tool to measure and monitor the QoS results for parcels and to inform users accordingly. The current framework (PSD) envisages only QoS obligations for the USP, which is limited to the Universal Service's scope, which is different in the Member States. There is a need for further harmonisation on the European level to ensure more transparency regarding QoS results on the parcel market. At this stage, a possible first step is to identify and give a state of play of the existing initiatives by Parcel Delivery Providers regarding the QoS of parcels. As far as *contractual terms of service* is concerned, France suggested that to increase transparency further, it would be helpful if the terms and conditions could be available online on the operators' website.

In Italy, due to *Lack of transparency regarding quality of service* and *Lack of transparency regarding contractual terms of service*, there are regulatory provisions (Agcom Decision n. 413/14 / Cons) that protect consumers from all postal service providers. However, their application in some cases does not occur or occurs in part.

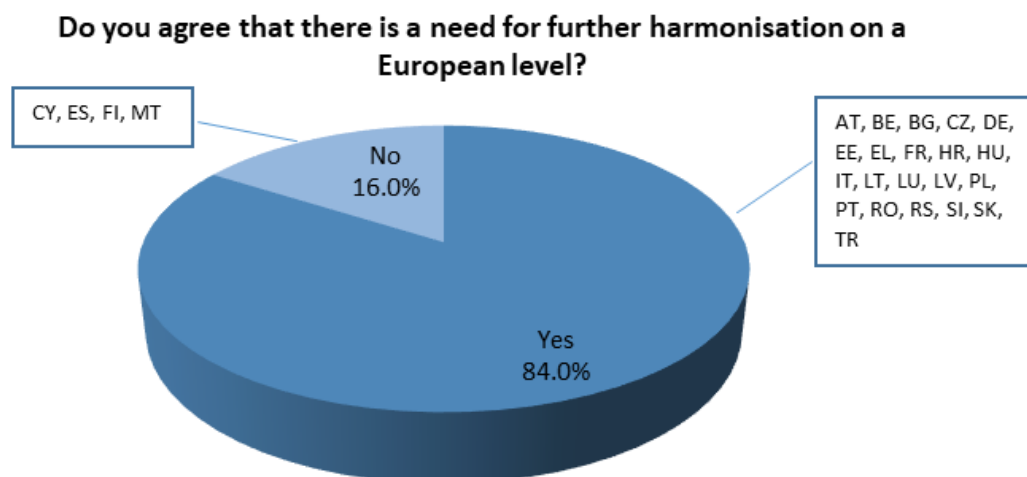
Regarding the *Lack of information about consumers rights*, further clarification is necessary for an easier identification and a better understanding of the users' rights. As Spain emphasised, the problem of *Lack of information about the consumers' rights* is familiar to all relevant actors who have to observe and guarantee compliance with different legislation that affects consumer protection. This issue is not only relevant for the consumer but also for the different authorities, postal operators, platforms, e-retailers and others involved.

According to other responses received, the issues regarding *Lack of information about consumers rights* and *Lack of transparency regarding contractual terms of service* lie with the consumers rather than with the providers. Therefore, it is necessary to improve the protection of consumers in the postal sector.

4.2.1 Harmonisation on the European level

This section is essential to find out if there is a need for further harmonisation on the European level to improve the protection of consumers in the postal sector. Moreover, it is important to see if there is a need to review the national processes, laws or articles to further harmonise on the European level and to identify which instruments need to be harmonised and why.

The majority, 84% (21 out of 25 NRAs), stated that such a harmonisation might be necessary, while 16% (4 out of 25 NRAs) did not agree that there is such a need.

Figure 7: NRAs' perception of a need for further harmonisation on a European level

The countries that agreed that there is a need for further harmonisation on a European level provided some feedback. Most of them (12 NRAs) indicated the need to harmonise e-commerce complaints. As cross-border packages are spreading, e-commerce consumers rights should be improved. Clear rules should be adopted (transparency of the tariff and operational conditions, non-discrimination, proof of delivery, compensation, follow-up and tracking options, and complaint and appeal procedures proposed by operators). Receivers should be granted rights: the right to receive information, to submit a complaint and to receive compensation.

Another important instrument that requires harmonisation and was chosen by 10 NRAs, is the definition of users. The definition of users should be broadened to the specific category of postal services users to better protect their interests. The concept of "user" is defined in Article 2.17 of Directive 97/67 as *"any natural or legal person benefiting from universal service provision as a sender or an addressee"*. Article 2.16 specifies that the concept of "sender" corresponds to *"a natural or legal person responsible for originating postal items"*. However, there is no definition of the concept of "addressee". In its case law, the Court of Justice confirms that postal service "users" within the meaning of Article 2.17 of Directive 97/67 are the natural or legal persons benefiting from the service as senders, but also the recipients of those services. The concept of "addressee" should

be clarified in order to develop the rights the addressee could benefit from, while taking account of the specificities of e-commerce.

Another indicator is the NRA competence (chosen by 9 NRAs), and the feedback indicates that NRAs competences are diverse and very limited. From the NRA's and consumers' point of view, it is desirable that law unambiguously stipulates which authority is competent for solving disputes. However, setting one authority as a "default" competent authority for solving disputes should not preclude alternative, contractually agreed options and dispute resolutions mechanisms. The powers of the authorities involved in the protection of users' rights should be determined in the same way in all Member States and should function accordingly.

9 NRAs considers that it is relevant to harmonise the contractual provisions in favour of third parties. The provisions in this area should be uniform, clear, and transparent and the rights of recipients should be strengthened. Complaint procedures on e-commerce are linked to the issue of contractual provisions in favour of third parties. These aspects are complex and should be harmonised especially in the context of users of postal services. Regarding this matter, in France in 2012, ARCEP asked the USP to change its terms and conditions so that both the sender and the receiver of a postal item have the right to submit a complaint (possible since 1 January 2013). However, regarding e-commerce, it should be stressed that today the specific legislation provides a liability regime which is very protective for consumers. If a parcel is lost or damaged, it is easier (and faster) for consumers to complain to the e-retailer (most of the time another parcel is sent, which is the best solution for consumers) rather than to complain to the postal provider. It should be ensured that the introduction of contractual stipulations regarding third parties would be more protective for consumers and that the e-retailers would not take advantage of such contractual stipulations to discharge their responsibility and that it would not makes the steps to obtain redress more complicated for consumers.

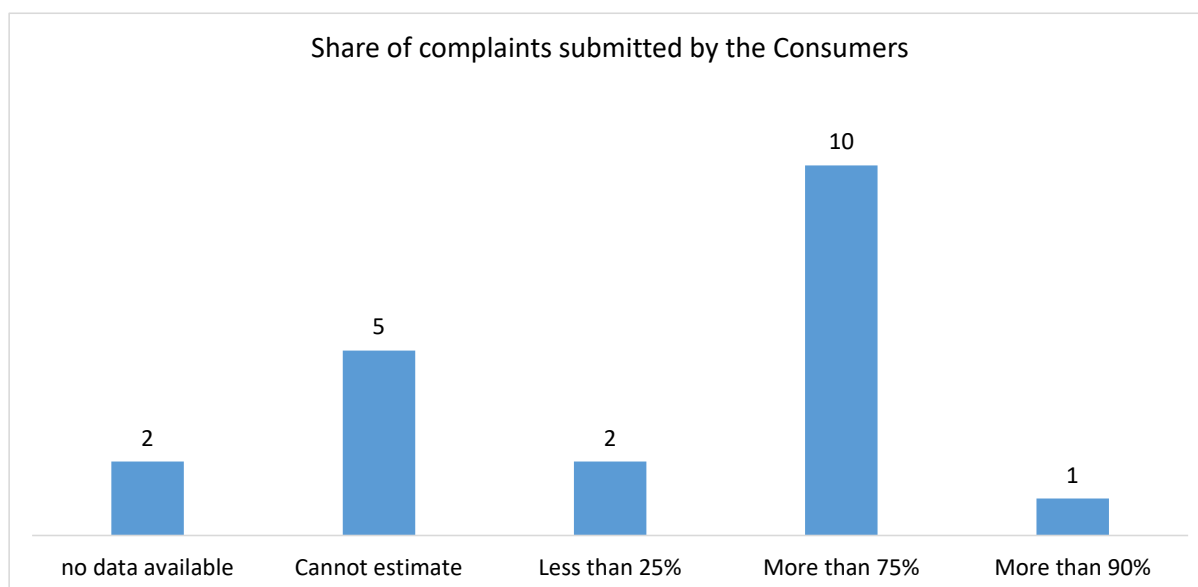
In addition to all the instruments listed, there is also a need to harmonize Article 6 (chosen by 7 NRAs) and Article 19 (chosen by 6 NRAs). Article 6 could be extended to provide obligations for postal operators to make information about their services features, terms and conditions, tariffs and QoS results available for users. Article 19 could be extended to provide obligations for postal operators to publish information about complaints they receive and how they dealt with it.

It is worth mentioning that ANACOM considers that the future regulatory framework needs to outline clear and unequivocal definitions and concepts to easily determine whether specific markets and services can be considered to have a postal nature. To this end, the future regulatory framework should determine and clarify the parameters that are used to identify the services and products that fall within its scope. The current PSD definitions need to be updated in order to reflect the new market reality: the postal sector is not as centred on the universal service provision, though it remains important, and on the activities of the universal service provider, but is rather highly influenced by digitisation and delivery of parcels. Also, possible inconsistencies with the scope and definitions in the Regulation on cross-border parcel delivery services should be clarified.

The feedback of those NRAs that see no need for further harmonisation on a European level, is because consumer issues in the field of postal services should mainly be covered by the general consumer legislation and not by sector specific legislations. Any actions for any further protection fall under the jurisdiction of other competent authorities. Malta replied no to need for harmonisation; however, they strongly believe that Member States should have flexibility and the necessary legal tools to allow them to introduce national provisions that would address any emerging postal issues which are detrimental to end-users.

4.3 Number of Complaints and Dispute Handling

The last part of the questionnaire focused on complaints and out-of-court disputes. The NRAs were requested to indicate whether they collect any complaints information, and the majority, 88% (22 out of 25), indicated that they collect related data. Like the Electronic Communication Services (ECS) market, the postal market comprises of the retail aspect (where the customer is the direct user utilising the service) and the wholesale aspect (where another service provider utilises certain other postal provider services subject to an agreement). The questionnaire's focus is on the consumer, and hence those NRAs that reported that they collect or had some form of complaint information were requested to indicate whether the complaints have originated from the end-user or wholesale operator. The following chart provides a picture of end-users complaints distribution.

Figure 8: Percentage of Consumers complaints in the total number of complaints

The focus of the last part of the questionnaire was on out-of-court disputes, but before delving further into this aspect, it was of interest to see the share of complaints NRAs receive regarding the postal services. The figure above depicts the result in which most of the postal related complaints that NRAs received originated from the consumers and not from third party postal service providers accessing the incumbent network/services.

The next point of interest was understanding which institution handles out-of-court disputes. From the feedback obtained, the NRA (43.8%) is the institution that handled most of these out-of-court disputes, followed by the Consumer Authority (31.3%). One-quarter of the responses (25%) indicated that a dispute board or claims tribunal handled the complaints. Concerning the out of court disputes, the NRAs were asked whether they have any information of such disputes and whether such information is publicly available. The following table represents the distribution of whether the NRAs have such information and whether it is published or not.

Figure 9: Number of out-of-court dispute

Number of out-of-court disputes		Information is publicly available	
		YES	NO
NRA has information	YES	14	3
	NO	4	5

The above table indicates that 14 NRAs have out-of-court dispute information, and it is publicly available. Five NRAs indicate that they do not have such information and that it is not publicly available. The other seven NRAs are split; three indicate that they have the information, but it is not available for the public, while the other four responded that as an NRA they do not have the info but that such information can be retrieved by the public.

Another aspect the NRAs were asked about was whether they have any insight in the types of complaints. Similarly, the NRAs had to respond whether they have such information and whether it is publicly available or not. The outcome is similar to the above table.

Figure 10: Type of out-of-court disputes

Type of out-of-court disputes		Information is publicly available	
		YES	NO
NRA has information	YES	14	2
	NO	3	7

Following the above questions, the NRAs were requested to provide the number of out-of-court disputes during the past three years (2018-2020). Only 19 NRAs replied, providing the 26 responses, and the remaining countries indicated that they have no access to the data or that it is not publicly available.

The table below presents the total number of out-of-court disputes raised that the NRAs are aware of.

Figure 11: Number of out-of-court disputes from 2018 to 2020

The number of disputes in 2018	The number of disputes in 2019	The number of disputes in 2020
11,818	12,243	15,063

Figure 13 shows a constant increase in the number of disputes, especially during 2020, in which there was a growth of 23%. The pandemic brought various restrictions and limitations which impacted the postal delivery service, especially e-commerce services. 2020 data is still under study, but the International Post Corporation report⁹ reflects that e-commerce has accelerated, the mail volumes downward trend increased, and parcels traffic grew further.

When the NRAs were requested to provide an overview of the types of complaints, there was quite a broad spectrum, but the most common cases were items lost, items damaged, undelivered items and delayed items.

So far, the report tackled the number and the various type of out-of-court disputes but not how these were tackled. The last question focused on the most efficient way to resolve such cases. 19 NRAs provided feedback, and the majority (12 NRAs) indicated that mediation is the most efficient way to resolve these disputes.

⁹ <https://www.ipc.be/sector-data/postal-sector/state-of-the-postal-sector>

5. Concrete ways of further harmonisation

As described in the various sections above, some areas require further finetuning. Hence, the general European consumer protection mechanisms are not always sufficient to prevent and resolve certain issues specific to the postal sector, so that a clarification of the existing legal instruments seems desirable. The postal 'users' interest should also be the subject of a principle in the revised postal Directive. No provision of the postal Directive or legislation ensuring its transposition should be interpreted in such a manner as to contradict the safeguard of these specific interests.

It is also essential to ensure consistency between horizontal and sectoral rules that guarantee consumer rights in the postal field. A new regulatory framework should clarify the scope of the postal service concept, identifying the postal services to which it applies, to avoid legal uncertainty.¹⁰

In this section, we have identified areas to develop further in the case of a possible review of the Directive but not concrete drafting of concrete legal proposals.

5.1. Definition of user

The concept of "user" is defined in Article 2 (17) of Directive 97/67/EC as *"any natural or legal person benefiting from universal service provision as a sender or an addressee"*. Article 2 (16) specifies that the concept of "sender" corresponds to *"a natural or legal person responsible for originating postal items"*. However, there is no definition of the concept of "addressee".

In recent case law, the Court of Justice has emphasised that "users" of postal services within the meaning of Article 2 (17) of Directive 97/67 are natural or legal persons who use the service both as senders and as recipients. However, a closer look at the Postal Services Directive reveals that there is only a definition of "sender" but not of "addressee/recipient".

Therefore, it would be desirable to clarify the concept of "addressee" to develop the rights that the addressee can claim, taking into account the specificities of e-commerce.

¹⁰ <https://ec.europa.eu/docsroom/documents/44124>

As noted in the last report, the addressee of postal items is - despite the safeguards enshrined in Directive 97/67/EC - increasingly facing more challenges in asserting his or her rights. Therefore, it seems important to provide the addressee with a clearly defined role and specific rights.

In this perspective, the ERGP recommends evaluating the definition of "user" in the new regulatory framework for postal services and, if necessary, splitting it into separate definitions, for example, definitions regarding the "addressee or recipient" and "consumer" to strengthen the position of the recipients and thus also the consumers as party independent of a sender and postal service provider.

Suggestion 1:

The ERGP recommends evaluating the definition of “user” in the new regulatory framework for postal services and, if necessary, splitting it into separate definitions, for example, definitions regarding the “addressee or recipient” and “consumer” to strengthen the position of the recipients and thus also the consumers as an independent party in relation to sender and postal service provider. This would allow to the reorientation in postal markets from a “sender-oriented” to a “receiver-oriented” service provision and hence to consider users’ rights and interests also concerning the digital services associated with the provision of postal services.

5.2. Introduce a specific chapter in the PSD which regroups users' rights provisions.

The current Directive has chapter 6, which deals with the QoS, but the ERGP is convinced that there should be a much broader view on consumer protection, which could be addressed in the new regulatory framework – in case of its review - to protect the consumers accordingly in this fast and continuous changing sector.

Article 6 and 19, on the one hand, and some of the new legal suggestions in this chapter could be regrouped in a specific chapter of the PSD under the heading of "users' rights provisions".

A new regulatory framework should have enough attention for and focus on empowering and protecting the rights of the end-users so that to allow the consumers to benefit from all services offered on the market and the universal postal service. The review of the provisions concerned in a

new regulatory framework should reflect the reorientation in postal markets from a "sender-oriented" to a "receiver-oriented" service provision and consider users' rights and interests with regard to the digital services associated with the provision of postal services.

In this perspective, it is necessary to regroup all the relevant articles of the current PSD and the legal suggestions in this chapter that deal with empowering and protecting the rights of the end-users in a specific section of the new regulatory postal framework. Furthermore, also the related recitals should be updated due to the evolution of the postal sector.

Suggestion 2:

The ERGP proposes to regroup under a new chapter "Users rights provisions" in the possible new regulatory postal framework all legal provisions which deal with empowering and protecting rights of the users, such as Articles 6 and 19 of the current PSD on the one hand and some of the new legal suggestions in this chapter on the other.

5.3. Review of Article 6 of the PSD

Article 6 provides adequate information on the features of the universal services, including the general conditions of access to these services and prices and quality standard levels.

The PSD Article 19 was widened in 2002 and 2008 so that its scope on the provision on complaints procedures included all postal service providers. Article 6 of the PSD on the transparency requirements has not been extended equally. The provision of information still only refers to universal services.

Based on the NRAs' experience, it is noticed that some postal service providers but also e-retailers do not satisfactorily apply the principle of transparency on tariffs or service provision conditions. A survey among 500 online shops published by the European Commission on 31 January 2020 shows that two-thirds of these online shops do not comply with their consumer rights obligations,

particularly about the right to withdrawal and compensation or the delivery price¹¹, which is a task or duty of the e-retailers. Sometimes parcel service users do not know what service the parcel delivery service providers offer, especially what kind of services and options and the prices involved. Thus, parcel delivery services do not offer sufficient transparency. Increased transparency should help improve postal consumer confidence and will stimulate further development of e-commerce activities.

For postal services outside the universal services, the postal legal framework does not lay down an obligation to provide information on the services' features, prices, quality standards, etc. Spain and Portugal have already extended the provisions of Article 6 to all postal service providers, and in Austria, Belgium, and France, some of these obligations have been partly extended to other postal service providers.

Consequently, for postal users outside the universal service and/or postal users in interaction with postal service providers other than the universal service provider, it is challenging to base their complaint rights on the respective provider's information. The level of knowledge of postal users lags behind the knowledge of those who make complaints in universal service. This fact raises equality issues and is also important for a level playing field, especially in a competitive environment like the parcel sector.

To counteract this imbalance and ensure consistent consumer protection, the scope of the existing provision in Article 6 dealing with information provision on universal service, could be extended to all postal service providers. This extension of Article 6 would be in line with the extension already undertaken in Article 19 so that this would ensure a harmonised protection of consumer rights.

¹¹ V. ALLOO, EU rules on delivery of goods ordered online, Cullen, 01.04.2020; European Commission, Online shopping: Commission and Consumer Protection authorities urge traders to bring information policy in line with EU law, Press release, 31.01.2020; V. ALLOO and O. HRUBA, E-commerce consumer protection rules: challenges and opportunities for parcel operators, Cullen, Bruxelles, 06.02.2020; WIK Consult, Development of Cross-border E-commerce through Parcel Delivery, European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, 04.2019; J. HEARN, "Regulation. Quo vadis?", in The Contribution of the Postal and Delivery Sector: Between E-Commerce and E-Substitution, Topics in Regulatory Economics and Policy, Springer, 2018, p.86.

Furthermore, the list of information obligations could be extended. Given that the complaint procedures in Article 19 especially involve loss and damage, the information required could also include simple and easily accessible information on liability and compensation issues, complaint procedures, and accessibility of the relevant corporate offices. These adaptations would be helpful considering the increasing parcel volumes through e-commerce and platformisation.

In this perspective further improvements of the consumers' position could be assessing to include provisions regarding the choice of the mode of delivery of letter mail and parcels, the time of delivery, and provisions on parcel tracking and investigation procedures in case of loss or exceeding transit times.

Suggestion 3:

The ERGP recommends that to ensure a consistent consumer protection, the scope of the existing provision in Article 6 could be extended to all postal services corresponding with the extension already undertaken in Article 19, so that this would ensure a harmonised protection of consumer rights.

Furthermore, but secondarily the improvements of the position of consumers could include provisions regarding the choice of the mode of delivery of letter mail and parcels, on the time of delivery as well as provisions on parcel tracking and investigation procedures in case of loss or exceeding transit times.

5.4. Review of Article 19 of the PSD

Article 19 of the PSD improves the position of users as a party in the provision of postal services, ensuring that *"transparent, simple and inexpensive procedures are made available by all postal service providers for dealing with postal users' complaints, particularly in cases involving loss, theft, damage or non-compliance with service quality standards (including procedures for determining where responsibility lies in cases where more than one operator is involved)"*. According to subparagraph 2 of Article 19(1) the complaints handling procedures should *"enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement and/or compensation"*.

This provision has undergone some changes during the revision of the PSD in that the focus on universal service in paragraph 1 has gradually dropped, encompassing now all postal service providers.

Furthermore, addressees are included in the broader term "users", defined in Article 2 (17) as "*any natural or legal person benefiting from universal service provision as a sender or an addressee*", so this provision covers addressees. National regulatory authorities are tasked with ensuring compliance with the obligations arising from the postal legal framework (Article 22 (2) of the PSD), which includes the provision on complaints handling procedures set in Article 19.

Based on the paragraphs before, the conclusion could be that no review of Article 19 is needed to safeguard the consumer's position regarding complaints handling. Furthermore, only five NRAs¹² indicated that Article 19 needs further harmonisation to clarify and strengthen consumer protection in the context of the boost of cross-border e-commerce and to facilitate cross-border complaints handling and foster consumer confidence.

Nevertheless, improvements of this article could be considered, namely by clearly establishing that:

- (1) complaints handling procedures of all postal service providers should deal with the complaints of the addressees of postal items;
- (2) complaints handling procedures of all postal service providers should establish deadlines to investigate, where appropriate, and answer complaints, particularly in what regards cross-border complaints;
- (3) complaints handling procedures as well as liability and compensation schemes in place should be disclosed to all postal services users, including addressees;
- (4) postal service providers should publish information on complaints received and the way they were handled, differentiating senders' and addressees' complaints¹³.

¹² AT, BE, DE, HU, LU.

¹³ The impact of a rule such as this one on small postal service providers needs to be considered in order to design a proportionate solution.

As for liability and compensation schemes for individual customers and addressees of postal items, a recommendation on best practices to be adopted by all postal service providers could be further developed based on the information collected in the ERGP Report on the quality of service, consumer protection and complaint handling¹⁴ and successful experiences from the Member States.

As mentioned in the ERGP Report on Key Consumer Issues, another way to improve complaints handling for addressees of postal items could be to promote interprofessional agreements between the postal provider and the professional seller as the sending party. This option would consider that the contractual obligations still lie between the sending professional seller and the postal company and that a solution to a delivery problem often lies with the concerned postal company but not the sender. Such interprofessional agreements could be an effective way to empower the addressees. It could also help smaller e-commerce businesses by transferring parts of the complaint procedure to the postal companies¹⁵.

¹⁴ [ERGP PL II \(20\) 22 ERGP report on quality of service consumer protection and complaint handling.](#)

¹⁵ [ERGP PL II \(20\) 8 ERGP report on key consumer issues.](#)

Suggestion 4:

Although the review of Article 19 does not seem to be essential, improvements to this article could be considered to strengthen the consumer position, namely clearly setting that:

- (i) complaints handling procedures of all postal service providers should deal with the complaints of the addressees of postal items;
- (ii) complaints handling procedures of all postal service providers should establish deadlines to investigate, where appropriate, and answer complaints, particularly in what regards cross-border complaints;
- (iii) complaints handling procedures as well as liability and compensation schemes in place should be disclosed to all postal services users, including addressees; and
- (iv) postal service providers* should publish information on complaints received and the way they were handled, differentiating senders' and addressees' complaints

* Taking necessary attention to the impact on small postal service providers.

Suggestion 5:

Other effective approaches could be adopted such as recommendations on best practices and promoting private interprofessional agreements in the field of complaints handling, liability, compensation, and dispute resolution, with the purpose of reinforcing consumer protection in what regards the provision of postal services.

5.5. NRA competence

At the national level, there should be instruments to monitor the complete postal sector and not only the universal service provider.

Clear rules should lay down consumer protection principles and can be achieved by providing the NRA with ex-ante and ex-post control instruments, enabling them to ensure the correct enforcement of the rules. In the case of a review of the regulatory framework, we should strengthen the regulator's role regarding user protection in the postal sector¹⁶. The applicable regulatory framework should provide NRAs, in a clear, precise, and complete manner, with adequate competencies regarding collecting information from the various postal market players (Article 22). Member States should be able to entrust some of these competencies to another national competent authority if it is more appropriate regarding national specificities.

Each Member State should evaluate whether the NRA requires additional powers to investigate based on the principle of subsidiarity.

Suggestion 6:

The ERGP recommends that NRAs (or other national competent authorities) should have stronger monitoring instruments for all postal operators and not just universal service providers, especially regarding consumer protection, transparency of information and quality standards.

5.6. Complaints on e-commerce items

In e-commerce transactions, the retailer concludes a contract with the postal service provider, whereas frequently, it is the addressee that has a ground for complaint regarding an item lost, damaged or delayed, etc. In these cases, these consumers are confronted with limitations of the extra-contractual liability of the postal service provider, particularly in the event of a late delivery,

¹⁶ This matter is not the case in Spain since such issues are already handled by the consumer authorities at a regional/municipal level. Hence there is no need to revert these competences at a national level.

damage, loss, or theft of a postal item, as well as lack of information on the delivery's contractual terms and conditions and about their rights to redress.

As shown above (Figure 10), most NRAs indicated that the majority of complaints about postal services are submitted by consumers of postal items.

The Consumer Rights Directive establishes information requirements for e-commerce transactions that cover delivery arrangements and costs and that consumers exclusively contract with the e-retailer, and that the transfer of ownership happens when the parcel is delivered. The e-retailer is also encouraged to conclude its delivery contracts with undertakings on a contractual basis but are not obliged to grant additional rights to the addressee according to the postal regulation. In case of a complaint, several postal operators systematically refer the addressee to the sender, as they judge that they only have a contractual obligation to the sender.

The Electronic Commerce Directive, which is under revision (Directive 2000/31/EC), establishes rules regarding contract validity and information provision obligations for companies selling products, which include contract terms and general conditions (section 3, Articles 9 and following), that aim at protecting buyers, including consumers, but does not address specifically the contract terms, quality, and liability regarding the delivery service.

ADR Directive (Directive 2013/11/EU) aims to contribute to the proper functioning of the internal market by ensuring that consumers can voluntarily submit complaints against traders to entities offering independent, impartial, transparent, effective, fast, and fair alternative dispute resolution procedures. It addresses e-commerce disputes, including cross-border ones, safeguarding the position of consumers in electronic purchases. Nevertheless, for ADR mechanisms to be an effective a consumer protection instrument judging contractual breaches and failure to comply with quality of service standards, in particular when affecting addressees of postal items, such as parcels, clear rules about the rights of postal users, as senders and as recipients need to exist.

Article 19 of the PSD imposes a complaint procedure for all users while the provisions of the UPU allow the addressee, in certain circumstances, to receive compensation from the provider delivering the postal item.

Nevertheless, it is noticed that consumer protection schemes may not always be sufficient to solve or favour the resolution of problems that are specific to the postal sector, such as the protection of the postal items that could not be delivered, the loss, damage or delay of returned items.

In this context, new specific rules granting addressees certain rights regarding their position in the triangular nature of delivery services in e-commerce transactions (e-retailer, postal operator, e-buyer) would be necessary. Specifically by inserting in the PSD the definition of the addressee (see section 5.1), clarifying who is who on returning parcels, ensuring that addressees have the right to receive transparent and concrete information about their rights in the delivery process, to access parcel tracking and have proof of delivery, to make a complaint and access investigation procedures in case of loss or exceeding of transit times, etc. and, when justified, receive a compensation for damage suffered.

Suggestion 7:

Considering that the existing European legal framework does not seem to be sufficient to safeguard the position of consumers, specifically addressees in e-commerce transactions regarding the provision of postal services, it would be necessary to establish new specific rights for this type of users.

In particular, defining addressee in the European legal framework, clarifying who's who on returning parcels and clearly ensuring that addressees have the right to receive transparent and concrete information about their rights in the delivery process, to access parcel tracking and have proof of delivery, to make a complaint and access investigation procedures in case of loss or exceeding of transit times, etc. and, when justified, receive a compensation for damaged suffered.

5.7. Streamlining the contractual information

Consumers are not sufficiently informed about the degree of responsibility of the postal operator in case of loss. According to the principle of relativity of contracts, the recipient of a parcel is only bound to the online vendor. Therefore, the e-commerce company is solely liable to compensate its customer according to consumer law if a problem occurs. Thus, several postal operators transfer the addressee's request directly to the sender of the parcel in the event of a complaint since they only have a contractual obligation towards the sender. However, in the event of loss, the solution often lies with the operator. The online shopper faces other constraints when returning packages to the sender. In the absence of scanning of the parcels returned to the seller, it is difficult for the buyer to determine whether the shipment in question has been returned to the sender, is in transit or should be considered lost. In the absence of proof, it is challenging to receive compensation from the seller. The various elements above demonstrate the need for measures to safeguard the rights of the parcel recipients, which can be achieved, for example, by systematically opening an investigation at the request of the parcel recipient, by providing them with more information and by granting them financial compensation in case of failure by postal service provider. The degree of liability of online sellers and postal operators should be clarified¹⁷. Numerous users believe that they have not been adequately informed concerning the various sending methods regarding the operator's level of liability in case of loss of the item. A clear pre-contractual communication, as well as transparent general terms and conditions, are to be encouraged. It would be desirable to impose digital tracking of returned packages in e-commerce when it is applicable. Implementing clear and transparent general terms and conditions for operators with a compensation procedure that complies with consumer law seems essential¹⁸.

The application of stipulation for a third party could also help reduce the undesirable effects of the relativity of contracts by recognising the rights of the recipient of a postal item. The legal mechanism of stipulation for a third party consists in the conclusion of an agreement under which it is agreed,

¹⁷ Article 4 of Directive (EU) 2019/2161 amending Directive 2011/83 lays down that online platforms are required to clearly communicate the mutual responsibilities of the three parties involved, namely the platform used by the consumer to select the postal operator to send his parcel, the postal user and the postal operator offering its services on the online platforms.

¹⁸ Recital 34 of Directive 97/67 indicates that Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts applies to postal operators.

between the contracting parties, that a third party will benefit from the advantages of the contract. A person that is not a party to the contract may thus derive a right from it. For example, within the e-commerce context, the contract between the online vendor and the postal operator could grant a right to the purchaser/addressee. The latter who has declared that (s)he wants to benefit from it makes this stipulation, and thus the right of claim, irrevocable.

Generally, this mechanism is only applicable under specific conditions. The promisor and promisee must have the desire to create a proper direction for the benefit of the third-party beneficiary. The stipulation for a third party must be an ancillary of another contract to which it is attached. Finally, the third-party beneficiary must be determined or at the very least determinable. This third party should not necessarily be mentioned by name but must be identifiable when the stipulation takes effect. The right of claim which arises to the benefit of the third-party beneficiary is his/her right as it exclusively belongs to him/her. It is contractual, which means that the third-party beneficiary will, in principle, only be able to act against the promisor based on the contractual liability and not the extra-contractual liability, except under specific conditions¹⁹. The right of claim is direct; it does not transit by the property of the promisee. It directly integrates into the property of the third-party beneficiary. The latter may thus directly demand the promisor the fulfilment of his/her obligation and bring an action against him/her through direct action for a performance in kind or via equivalent enforcement of his/her obligation²⁰.

The stipulation for a third party, enshrined in horizontal legislation, is applicable in sectoral regulations concerning insurance. The most common case is a life insurance contract under which a third party must receive a sum of money after the death of the promisee.

This mechanism is largely enshrined in the existing national regulations case in point the French, Belgian and Dutch Civil Codes. It is also included in the draft European Civil Code²¹. Also, the

¹⁹ P. WERY, *Droit des obligations, Théorie générale du contrat*, Volume 1, Larcier, 2010, n° 875, p.739; S. BAR, “La stipulation pour autrui”, in *La théorie générale des obligations, suite*, CUP, Université de Liège, 2002, vol. 57, p.279; J. FLOUR, J.-L. AUBERT and E. SAVAUX, *Droit civil, Les obligations, L'acte juridique*, Dalloz, 12th edition, 2006, No. 481 and following, pp. 394 and following.

²⁰ P. WERY, op. cit., No. 876, pp. 739-740; J. FLOUR, J.-L. AUBERT and E. SAVAUX, op. cit., No. 482 and following, pp. 395 and following

²¹ Art. II. - 9: 301-303, Study Group on a European Civil Code & Research Group on EC Private Law (Acquis Group), *Principles, Definitions and Model Rules of European Private Law, Draft Common Frame of Reference (DCFR)*, Sellier, 2009, pp. 222-223.

Contracts (Rights of Third Parties) Act of 1999 introduced this type of exception in English law. The widespread use of the mechanism of stipulation for a third party, for the benefit of the online shopper/addressee, as an ancillary to the contract between the online vendor and the postal operator, could help deal with the issue of the protection of the end-users legal rights. The use of this tool could thus be largely fostered among postal service users. This objective can be reached in a binding way via soft law in relation to the subsidiarity principle. The purpose should be to adapt the mechanism of stipulation for a third party enshrined by the Civil Code and certain sectoral regulations with characteristics that are specific to the activities of the postal sector. It would be expressly stated that the postal service provision contract may be performed on behalf of the sender as a stipulation for a third party to benefit the addressee of the postal item.

Suggestion 8:

The mechanism described above could be a useful tool for the future improvement of parcel recipient protection/rights.

The ERGP suggests applying the legal mechanism of stipulation for a third party through e.g. soft law by concluding an agreement under which it is agreed, between the contracting parties, that a third party will benefit from the advantages of the contract. A person that is not a party to the contract may thus derive a right from it.

Users should be provided with a clear pre-contractual communication and transparent terms and conditions. Addressees should be informed by postal operators on the status of the postal item they should receive. An enquiry must systematically be opened.

6. Conclusion

As presented in the study, the report aimed to highlight the current consumer protection among the various member states and at the same time highlight areas that require further review in the various European level legislation.

The ERGP identified eight suggestions highlighting the areas in which the various directives and legislation require further attention. The following are the ERGP suggestions:

Suggestion 1:

The ERGP recommends evaluating the definition of “user” in the new regulatory framework for postal services and, if necessary, splitting it into separate definitions, for example, definitions regarding the “addressee or recipient” and “consumer” to strengthen the position of the recipients and thus also the consumers as an independent party in relation to sender and postal service provider. This would allow to the reorientation in postal markets from a “sender-oriented” to a “receiver-oriented” service provision and hence to consider users’ rights and interests also concerning the digital services associated with the provision of postal services.

Suggestion 2:

The ERGP proposes to regroup under a new chapter “Users rights provisions” in the possible new regulatory postal framework all legal provisions which deal with empowering and protecting rights of the users, such as Articles 6 and 19 of the current PSD on the one hand and some of the new legal suggestions in this chapter on the other.

Suggestion 3:

The ERGP recommends that to ensure a consistent consumer protection, the scope of the existing provision in Article 6 could be extended to all postal services corresponding with the extension already undertaken in Article 19, so that this would ensure a harmonised protection of consumer rights.

Furthermore, but secondarily the improvements of the position of consumers could include provisions regarding the choice of the mode of delivery of letter mail and parcels, on the time of delivery as well as provisions on parcel tracking and investigation procedures in case of loss or exceeding transit times.

Suggestion 4:

Although the review of Article 19 does not seem to be essential, improvements to this article could be considered to strengthen the consumer position, namely clearly setting that:

- (i) complaints handling procedures of all postal service providers should deal with the complaints of the addressees of postal items;
- (ii) complaints handling procedures of all postal service providers should establish deadlines to investigate, where appropriate, and answer complaints, particularly in what regards cross-border complaints;
- (iii) complaints handling procedures as well as liability and compensation schemes in place should be disclosed to all postal services users, including addressees; and
- (iv) postal service providers* should publish information on complaints received and the way they were handled, differentiating senders' and addressees' complaints

* Taking necessary attention to the impact on small postal service providers.

Suggestion 5:

Other effective approaches could be adopted such as recommendations on best practices and promoting private interprofessional agreements in the field of complaints handling, liability, compensation, and dispute resolution, with the purpose of reinforcing consumer protection in what regards the provision of postal services.

Suggestion 6:

The ERGP recommends that NRAs (or other national competent authorities) should have stronger monitoring instruments for all postal operators and not just universal service providers, especially regarding consumer protection, transparency of information and quality standards.

Suggestion 7:

Considering that the existing European legal framework does not seem to be sufficient to safeguard the position of consumers, specifically addressees in e-commerce transactions regarding the provision of postal services, it would be necessary to establish new specific rights for this type of users.

In particular, defining addressee in the European legal framework, clarifying who's who on returning parcels and clearly ensuring that addressees have the right to receive transparent and concrete information about their rights in the delivery process, to access parcel tracking and have proof of delivery, to make a complaint and access investigation procedures in case of loss or exceeding of transit times, etc. and, when justified, receive a compensation for damaged suffered.

Suggestion 8:

The mechanism described above could be a useful tool for the future improvement of parcel recipient protection/rights.

The ERGP suggests applying the legal mechanism of stipulation for a third party through e.g. soft law by concluding an agreement under which it is agreed, between the contracting parties, that a third party will benefit from the advantages of the contract. A person that is not a party to the contract may thus derive a right from it.

Users should be provided with a clear pre-contractual communication and transparent terms and conditions. Addressees should be informed by postal operators on the status of the postal item they should receive. An enquiry must systematically be opened.

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COUNTRY CODES AND NRA ACRONYMS

Country	Acronym	NRA
Austria	AT	RTR
Belgium	BE	BIPT
Bulgaria	BG	CRC
Croatia	HR	HAKOM
Cyprus	CY	OCECPR
Czech Republic	CZ	CTU
Denmark	DK	FSTYR
Estonia	EE	ECA
Finland	FI	Traficom
France	FR	Arcep
Germany	DE	BNetzA
Greece	EL	EETT
Hungary	HU	NMHH
Ireland	IE	COMREG
Italy	IT	Agcom
Latvia	LV	SPRK
Lithuania	LT	RRT
Luxembourg	LU	ILR
Malta	MT	MCA
Montenegro	ME	EKIP
Netherlands	NL	ACM
Norway	NO	Nkom
Poland	PL	UKE
Portugal	PT	ANACOM
Romania	RO	ANCOM
Republic of North Macedonia	MK	AEC
Republic of Serbia	RS	RATEL
Slovakia	SK	RU
Slovenia	SI	AKOS
Spain	ES	CNMC
Sweden	SE	PTS
Switzerland	CH	PostCom