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PART 4/4

**COMMISSION STAFF WORKING DOCUMENT**

**IMPACT ASSESSMENT**

*Accompanying the document*

**Proposal for a Regulation of the European Parliament and of the Council on cross-border parcel delivery services**

{ COM(2016) 285 final }  
{ SWD(2016) 167 final }

## **ANNEX 7: PROBLEM ANALYSIS**

### **1.1. The problems**

#### **1.1.1. Problem 1: High cross-border delivery (and return) prices for SMEs and individuals**

Several aspects may be drivers behind the identified problem of high level of cross-border (and return) prices. This annex will analyse them in the section below.

##### **1.1.1.1. Driver1 – Underlying economic factors of the sector**

###### **1.1.1.1.1. Driver 1.1 - Low volumes of SMEs decreases their negotiation power and increase delivery costs for delivery operators**

High prices are commonly attributed to low volumes and lack of bargaining power by infrequent low volume senders, typically SMEs and individual consumers.

Shipping profiles (volumes, shape and size), frequency and predictability of dispatch (how many times per day, week, month), and the degree of shipping preparation done by the sender (SMEs, large retailers or individual customer) are all important criteria on which delivery operators base themselves to provide discounts, as they help them reduce risks and therefore costs. The more delivery operators know about their customer profile, the more predictable this profile is, and the higher the volumes, the lower the unit costs of delivery operators will be. Infrequent, low-volume senders (such as individual consumers, micro enterprises or low volume SMEs) are the most affected as they difficultly can provide certainty to delivery operators on these criteria. High frequent volumes that correspond to certain formats and shapes, and to a predictable traffic profile are less costly and have a lower unit cost. Large senders normally correspond to these characteristics and thus contribute to reducing delivery operators' fixed costs. For this reason they are usually charged lower delivery prices. On the contrary, low volumes generate a higher cost per unit. Unlike large retailers, volumes from SMEs are generally low and not as commercially attractive for delivery operators, as **unit costs are higher** than for customers with higher volumes. Therefore, the cross-border parcel delivery market is characterised by a two-tier market<sup>372</sup>, with large senders facing lower delivery prices and low volume infrequent senders facing higher prices. The same argument of low volumes applies to returns, which usually are single piece and in low volumes because only a small share of deliveries is returned and individuals may be responsible for returning the item themselves. This means that unit costs are higher. According to IMRG, the cost of processing returns might be more than twelve times the cost of delivering a parcel<sup>373</sup>.

Although in most Member States there are typically more than three delivery operators<sup>374</sup> in both domestic and cross-border delivery, this does not mean that they all provide the delivery service e-retailers need (e.g. a simple, cheap, traceable and reliable delivery) to all customer segments. As small, infrequent senders have an unpredictable traffic which has a large impact on collection costs, they are very costly for integrator type of operators to serve and are therefore charged high prices for delivery services. Thus competition, both in terms of

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<sup>372</sup> FTI (2011), pg 6

<sup>373</sup> CE (2013), p. 207

<sup>374</sup> Okholm, H. B. et al., *e-Commerce and delivery - A study of the state of play of EU parcel markets with particular emphasis on e-commerce*, Copenhagen Economics for the European Commission, 2013

delivery options and of number of competitors within each option, increases as demand for large, frequent volumes of cross-border parcel shipments increases.

Pricing of delivery operators depends not only of the costs they bear in the market but also on the elasticity of demand they face from their customers (and different customer segments) regarding their products. Elasticity of demand depends on the available alternatives, and the fewer the alternatives there are (or are perceived by the customers), the higher the ability of the operator to charge higher prices. As observed in a study by Copenhagen Economics on "Pricing behaviour of postal operators"<sup>375</sup> demand for single piece parcel demand is likely to be less elastic than demand for single piece letter mail due to fewer possibilities of substitution. On the other hand SMEs with low infrequent volumes may be willing to accept paying a higher delivery price as long as their profit margin is not largely affected by these costs when they really need to send a packet or parcel abroad, as elasticity of demand may be low for infrequent low-volume senders. Large retailers have access to more choice from delivery operators and competition (more delivery services substitutes) and may therefore have higher elasticity of demand than smaller retailers. In the same study Copenhagen Economics states *"The possibility for national postal operators to raise cross-border intra-EU mail prices more than domestic mail prices can be explained by the lower elasticity of demand for cross-border intra-EU mail. The low elasticity may, in turn, be affected by several factors. For example, lack of developed competition in the cross-border mail market may make mailers less sensitive to price increases. Low price sensitivity may be enhanced by an infrequent use of cross-border mail. In general, individuals sending only few cross-border mail items per year are not very sensitive towards price increases since the consumption of cross-border mail services only makes up a very small part of their household budget."*<sup>376</sup> Although this analysis refers to cross-border single piece mail items, a similar analogy can be drawn for cross-border single piece parcels (B2C) as compared to bulk parcels (parcels sent in large volumes).

Facing low volumes and a limited number of suppliers, SMEs are in a weaker position to negotiate lower tariffs for both domestic and cross-border delivery and thus have **less bargaining power** than large retailers. The French Autorité de la concurrence found 20 delivery companies guilty of collusion between competitors regarding annual prices increases and 15 companies guilty of a common method for passing on the costs of a 'diesel surcharge'. SMEs suffered most from these practices as, unlike the operators' largest clients, they lacked negotiating power that would have enabled them to reject, or at least renegotiate, the price increases.<sup>377</sup>

Due to the combination of the above mentioned factors, delivery operators may define pricing strategies where they may lose profit margins on large retailers that are cross-subsidised by prices charged to SME customers.

#### 1.1.1.1.2. **Driver 1.2 - Parcel delivery is a network industry with high fixed costs**

The delivery industry is a network industry with large economies of scale and scope. The larger the density of the network, the lower the unit costs of the provision of the service for delivery operators. Market entry will be reduced where there are fewer chances of economies of scale through high volumes. In addition to high fixed costs, operators willing to enter the delivery market also face other barriers such as the strong national postal operator brand

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<sup>375</sup> Okholm, H. B. et al., *Pricing behaviour of postal operators*, Copenhagen Economics for the European Commission, 2012

<sup>376</sup> Copenhagen Economics (2012), p.36

<sup>377</sup> [http://www.autoritedelaconcurrence.fr/user/standard.php?id\\_rub=607&id\\_article=2679](http://www.autoritedelaconcurrence.fr/user/standard.php?id_rub=607&id_article=2679)

recognition, lack of knowledge of alternative delivery operators and lack of trust in small operators. It is important to differentiate this network industry business model from a courier business model type, focusing on local delivery and B2B niche segments, where entry costs are significantly lower. In this case, operators willing to enter the market mainly need to invest in a few vehicles and drivers who also are responsible to collect and deliver the items. We are not focusing on those in our analysis.

In general, market entry will also be dependent on the different market segments within the CEP sector, such as:

a. *Domestic versus cross-border*

National postal operators have an established ground network, with extensive territorial coverage in their domestic markets and sunk investment costs that have been made throughout the years. They provide delivery throughout the territory, including rural and remote areas, which represent the most costly areas and higher unit costs. Delivery operators often highlight the need for constant investment in their networks, from vehicles and transport modes to sorting facilities, machines and IT systems. Delivery is also a labour intensive industry and labour costs account for more than half of the total costs of most of the NPOs<sup>378</sup>. Processes have also become ever more automated, as operators have invested in modern technology. Since the 1990s, in a context of letter volume mail growth and postal reform that lead to full market opening and the adoption of the Postal Services Directive, operators have been making large investments in the traditional postal network in order to modernise its letter mail services. Network design was nevertheless traditionally optimised for domestic letter traffic, the dominant geographic and product segments, and not for cross-border or for parcel delivery. In addition, NPOs parcel networks are usually optimised for domestic flows and not for cross-border flows, given that 85% of the total flows are domestic<sup>379</sup>. This is why in most cases, delivery to another city across the border may not take place along the shortest route, but may require a longer time (e.g. transport to national hub, followed by transport to foreign hub and only then transport to the final destination) and additional costs.

However, the financial crisis and e-substitution changed the postal and parcel market structure with the letter segment declining and the parcel segment increasing its importance in terms of value (while letter post was worth 56% of the total postal sector value in 2007 it was worth 48% in 2011, with the parcel share increasing from 44% to 52%)<sup>380</sup>. E-commerce growth has been increasing the size of the parcel segment, particularly the B2C segment which is expected to continue growing at higher rates than the B2B segments. (6-8% vs 2% respectively), estimating that by 2030 30% of total parcel flows will be cross-border<sup>381</sup>.

Switching from a domestic to a cross-border network would require either the development of one's own network, which is costly and lengthy, or the use of commercial agreements with sub-contractors or partners in other countries<sup>382</sup> and

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<sup>378</sup> Cost simulations in the B2C cross border delivery performed by the University of Antwerp show that for every 100 units of total transportation costs, attended home delivery (final mile) is responsible for 75 units of costs.

<sup>379</sup> Copenhagen Economics (2013), p. 193

<sup>380</sup> WIK (2013), p.163

<sup>381</sup> WIK (2013), p.

<sup>382</sup> C(2013) 431 Commission decision of 30.01.2013, case no COMP/M.6570 – UPS/TNT Express, p40

subcontracting of transportation operation to freight forwarders<sup>383</sup>. Achieving a cross-border density of network is therefore more complex than setting up a domestic one. The larger the geographical coverage, the bigger the investments in fixed costs, in operations management and in regulatory compliance. In addition, in order to cover the extensive investments in a cross-border network, significant volumes would be needed.

Some of the biggest NPOs have expanded their domestic network across borders to extend their geographical coverage, by creating pan-European<sup>384</sup> or regional<sup>385</sup> networks: they created subsidiaries in other MS that enable them to offer delivery services in those countries as well as a more integrated cross-border solution. In the destination country these operators either use their own operations or sub-contract to a third party for the final delivery.

Integrators traditionally operate in the international CEP market, primarily focusing on the B2B and express segments. They have the competitive advantage of having an integrated network, comprising transport modes (e.g airplanes and trucks), and hubs that enable them to transfer traffic from one country to the other in one or two days and offer speed and reliability to their traditional B2B customers. Their traditional "time certain" business model implies high sunk costs resulting from their extensive networks, which makes entry in this segment more difficult. According to a survey from Copenhagen Economics, integrators have a share of about 50% of all cross-border e-commerce<sup>386</sup>.

The cross-border CEP market accounts represent about 30 percent of the revenues and 9% of the volumes of the total CEP market. Generally it is a highly concentrated segment, although the level of concentration varies across customer segments<sup>387</sup>. Almost 90 percent of cross-border volumes are delivered by NPOs or multinational integrators<sup>388</sup> and in many countries market concentration of domestic CEP is high, with the top three competitors having a combined market share of more than 60 percent (revenues)<sup>389</sup>. In a few other countries, market concentration is lower and therefore there is more competition<sup>390</sup>. Operators who wish to enter the cross-border market and particularly the B2C parcel market may therefore be faced with existing competition in that segment of the market at the same time as they may face significant investments of building a new network (and associated costs) or may have difficulties in accessing existing ones that are long established in the market. In order to use the existing parcel networks, new entrants will need to negotiate terms and conditions of access with long established operators in the market and may obtain conditions that are commercially unattractive to enter or stay in the market.

*b. Rural versus urban*

Delivering in urban areas where volumes and population density are higher than in rural areas means lower unit costs. In urban areas, many NPOs who deliver both

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<sup>383</sup> Universtiy of Antwerp (2015) cross border parcel logistics

<sup>384</sup> La Poste (Geopost); Royal Mail (GLS); Deutsche Post (DHL) – Annex Market Overview

<sup>385</sup> PostNord AB (Sweden and Denmark); Post NL (Belgium and Netherlands); CTT Correios (Portugal and Spain); Omniva (Baltic region) – Annex Market Overview

<sup>386</sup> Copenhagen Economics (2013), pg 20

<sup>387</sup> WIK (2013), pg 241

<sup>388</sup> Copenhagen Economics (2013), pg 28

<sup>389</sup> AT, BE, CH, CY, EE, EL, FR, FK, FI, HR, HU, LT, MT, NO, PL, PT, SE, SI, SK- WIK (2013), pg 237

<sup>390</sup> DE, UK, IT, BG, RO – WIK (2013), pg 237

letters and parcels have set differentiated operations for each of these products segments. As parcels in most cases do not fit in letter boxes and may take more storage space when transporting to the final delivery destination, operators have established a dedicated network for parcels that allows more flexibility. This consists of different machines to read parcels in sorting centres, vehicles to transport the parcels, different routes and different personnel.

Almost one third (27%) of all B2C shipments in the EU are in rural areas, reaching almost fifty percent in certain group of countries<sup>391</sup>. Delivery in rural and remote areas is typically more costly, linked to lower population density and sometimes more difficult geographic access. Cost simulations performed by the University of Antwerp in selected trading routes show that the B2C cross border parcel delivery cost might induce € 1,6-3.6 costs per parcel in an urban to urban scenario and up to 5,4-10 € in an extreme rural to rural scenario. As universal service providers, NPOs are obliged to cover all territory and are therefore the operators who are present in these areas. They have a minimum five day delivery obligation stemming from the Postal Services Directive. In rural and remote areas the co-existence of separate networks is too costly and operators use therefore the same network to collect, sort and deliver both parcels and letters (a model delivery operators call co-production). Postmen, who traditionally deliver letters, also deliver parcels. According to the rural to rural delivery costs can be moderated as the national postal operators have the capacity to combine parcel flows with the letter mail flows (NPO example of co-production). Replicating a network in these areas is highly costly and there are few operators who enter these geographic segments of the market. Most delivery operators who wish to provide the final mile in these areas usually engage in commercial arrangements with either local operators (where they exist) or the NPOs.

c. *Packet versus parcel*

This distinction is mostly relevant for NPOs or delivery operators who are active in both the letter and the parcel market. Different types of investments are needed for the traditional postal network (where packets are treated) and the parcel network. Packets follow the normal letter stream of NPOs. Parcels' handling need different IT systems, collection and sorting centres processes and delivery routes than letters, especially if operators are serving the whole postal and parcel market (deferred and express, B2C and B2B, large and small senders, domestic and cross-border). Parcel networks are built to maximise the scale around the network and make it more efficient.

Fixed costs are higher for parcels (compared to packets) due to network optimisations and final mile delivery and for for express services<sup>392</sup> (compared to deferred) due to higher investments in transport modes, hubs, automation and more efficient processed focused on speed. On average the price difference between a packet and a parcel for NPOs is 65%, reaching 80% in countries which have a lower cross-border domestic performance<sup>393</sup>.

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<sup>391</sup> CE(2013), p.360

<sup>392</sup> The express segment accounts for about 14% of the total EU CEP market and usually refers to B2B shipments (CE (2013), p.101). Express is usually stronger in countries with poor quality of service standards, in remote areas, as well as in areas with high share of volumes originating from non-EU countries. (AT Kearney(2012) - Annex Market overview)

<sup>393</sup> CE(2013),p.108

d. *Single piece versus bulk*

Due to economies of scale in parcel delivery, unit costs of bulk parcels are significantly lower than of single piece parcels, which are often reflected in the final prices. Large senders are the most profitable segment of the market, where already a few operators are competing. Copenhagen Economics reports that on average prices for bulk parcels are 18% lower than for single piece parcel<sup>394</sup>. However, in a group of countries with good domestic and cross-border e-commerce performance discounts for bulk parcels is almost 50% for cross-border shipments to the most expensive countries. They suggest that in countries with competitive pressure NPOs have more incentives to reduce their price-cost margins for cross-border bulk parcel delivery than for domestic ones<sup>395</sup>. Prospects of high margins in the segment of large senders of parcels are thus declining and high network investment costs to serve low volume infrequent users may deter new entrants to come in the parcel market. Integrators are also present in bulk segments.

Competition for large senders is therefore increasing as national operators are entering each other's market by setting up subsidiaries that target CEP segment and customers. On the other hand, consolidators and parcel brokers are entering a few markets<sup>396</sup> where there are large volumes that they can consolidate, prepare and inject directly into the postal pipeline of cross-border delivery. They have wholesale agreements with operators in the country from where the parcels originate.

In addition, if NPOs use cross-subsidies to bring prices below costs for certain segments preventing market entry, it also may lead in the long run to fewer choices for customers and higher prices<sup>397</sup>. This may leave the low volume infrequent senders segment facing limited competition from different delivery operators, with consequences on the level of quality of service and prices.

e. *B2C/C2C versus B2B*

NPOs have traditionally been providing services to all segments of the market, with a focus on C2C and B2C. On average the market share of NPOs in the B2C segment is 35%, higher than in the total CEP market (27%).<sup>398</sup> They have the advantage of having the domestic territorial coverage. However, most NPOs, depending on the cross-border destination, may need to engage in agreements with other delivery operators in the destination country.

B2B is the most profitable segment as it very predictable, high value (be in volumes or in unit value), and collection and final delivery costs are relatively low since delivery operators can pick it up and deliver the shipments at the business premises of the sender and the receiver. On the contrary the B2C segment is more costly to serve, mostly due to costly collection (when applied) and failed deliveries, which translate into extra transport, delivery and handling costs. According to Copenhagen Economics<sup>399</sup>, on average 17.3% of home deliveries fail at the first attempt because the recipients are not home increasing delivery costs,

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<sup>394</sup> CE (2013), p.106

<sup>395</sup> CE(2013), p. 107 (those countries are: FI, FR, DE, DK, NL, SE, UK. On the contrary in countries of group 2 (AT, BE, CY, EL, ES, IT, LU, MT, PT) large senders will have bigger discounts for domestic bulk parcels than for cross-border ones.

<sup>396</sup> Belgium, France, Germany, Greece, Ireland, Italy, the Netherlands, Portugal, Spain and the UK - FTI (2011)

<sup>397</sup> FTI (2011)

<sup>398</sup> CE (2012), p.105

<sup>399</sup> CE (2013), p.207

Blackbay estimates that the cost of failed first delivery attempts in the UK amounts to 1 billion Euro (corresponding to an average failed delivery attempt of 12.4%)<sup>400</sup> As integrators are traditionally focused on B2B and urban areas, senders or receivers who live in remote or peripheral areas might not be served at all or be served with a reduced quality of service by integrators. However, with the growth of e-commerce, integrators are adapting their business models and investing in their collection and delivery network and processes in order to focus on B2C business as well. For integrators the B2C market is a new challenge that translates into the need for a wider territorial coverage and last mile delivery to end consumer, which is more costly.

The take up of e-commerce has created the need for more efficient, cheaper and more accessible B2C delivery services. It is attracting the attention of all delivery operators – national postal operators, integrators and alternative delivery operators. The B2C segment accounts for about 60% of total CEP volumes and 30% of total CEP value. The domestic B2B segment is the most competitive segment and where national postal operators usually report lower market shares than in the B2C and C2C segments<sup>401</sup>. However, with e-commerce growth, competition in the B2C segment is increasing as traditional B2B delivery operators are extending their activities in that segment.

*f. Express versus deferred parcels*

The express segment accounts for about 14% of the total EU CEP market and usually refers to B2B shipments<sup>402</sup>. Express is usually stronger in countries with poor quality of service standards, in remote areas, as well as in areas with high share of volumes originating from non-EU countries<sup>403</sup>. Express services have usually a next day guaranteed/committed delivery while deferred parcel delivery has a delivery time of two or more days<sup>404</sup>. These services normally respond to a very specific customer need (time certainty, urgency of delivery) and in general have limited price sensitivity (only a minority would react to a price increase by changing to deferred delivery services<sup>405</sup>). Customers are willing to pay higher prices for this reliable service.

Express and deferred services are often organised differently. In order to provide the speed and predictability of service, delivery operators offering express services often need to invest in transport modes, more automated treatment centres (to sort more quickly in hubs), hubs or more tailored made processes. Although for short distances road transport can still be a solution for express delivery, long destinations may only be able to be reached with this time certainty by air. Integrators have invested in their own air network that enables them to reach any European destination overnight. They also may use road transport for short distances, using for example vans instead of big trucks. Subsidiaries of NPOs and other pan European operators such as DPD and GLS, may also be able to offer some express services using road (for short distances) or airline capacity (for longer distances). This has implications in the reliability of the service they can offer and in the costs resulting from the negotiations with airline companies.

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<sup>400</sup> Blackbay (2012), p.13

<sup>401</sup> WIK (2013), pg 241

<sup>402</sup> CE (2013), p.101

<sup>403</sup> AT Kearney(2012) - Annex Market overview

<sup>404</sup> C(2013) 431 final, Case No. COMP/M.6570 – UPS/TNT Express, p.43

<sup>405</sup> C(2013) 431 final, Case No. COMP/M.6570 – UPS/TNT Express, p.44



Investments in express networks are therefore very high and a significant barrier to entry in this market segment.

To conclude, limited market entry may be the result of high network costs, leading to weak competitive pressure in specific segments of the cross-border delivery market and to high prices. The higher the number of competitors in the country of destination in a specific segment, the higher the possibility for the operator in the country of origin to obtain discounts from tendering out deliveries, which can be reflected in the final delivery price<sup>406</sup>.

#### **1.1.1.2. Driver 2 – Lack of market and price transparency**

##### **1.1.1.2.1. Driver 2.1 – Low awareness of market operators and services**

Information is crucial both for e-shoppers when buying online and for e-retailers when deciding which delivery service to choose. For consumers, unclear information or lack of information about delivery services are often mentioned as a reason for e-shoppers to abandon online shopping. Furthermore, access to information about delivery options and delivery operators is key for e-retailers in order to decide which delivery service to use. However, the significant amount of time required to find out about different delivery options and prices, leads to lack of trust and knowledge about the quality of service, often preventing e-shoppers and e-retailers from using alternative delivery operators.

###### *a. Diversity and complexity of delivery offer*

Delivery services are complex services, based on different dimensions such as weight, size or format. In addition there is a degree of heterogeneity and diversity of the offers depending on the destination, type of product, value added features, number of items, etc. Delivery information is often difficult and costly to obtain, indicating e-retailers experience high search costs. Delivery operators sometimes provide complex and non-transparent information to e-retailers, making comparison of information across delivery operators more difficult for e-retailers. An example of this complexity and non-transparency are the prices offered by delivery operators, often based on several parameters such as a combination of weight, size and volumes of the consignments, as well as the degree of work-sharing<sup>407</sup>. E-retailers find it difficult to compare prices and quality of service across operators and thus, to take a decision on the best offer by delivery operators. Delivery information is heterogeneous, fragmented and managed by each delivery operator separately. Practices of operators vary in the information tools they provide e.g. brochures, price and product information on webpages, downloadable pdf pricelists, price calculation tools. Some operators offer a combination of information tools to their customers, others only offer a quote on the basis of certain parameters.

E-retailers have difficulties in finding delivery operators who provide the service they need: a simple, reliable and cheap delivery service. They could choose to combine several offers from different delivery operators in order to offer a wider choice of delivery services to their customers. Nevertheless, integrating these different services increases costs to e-retailers. Evidence shows that the cost and complexity of having commercial relations with multiple operators and the risks of losing volume discounts are important reasons for e-retailers to choose to engage with one operator only. E-retailers want to offer their customers easy, cheap and reliable shipping services (e.g. track-and-trace, on time

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<sup>406</sup> FTI (2011)

<sup>407</sup> Copenhagen Economics (2013), pg 185

delivery). E-retailers therefore, declare that there is need for more easily useable information in order to make better choices that will contribute to decrease costs and to quality improvements.

*b. Dynamic fast changing market*

B2C e-commerce is a dynamic and fast changing market. As more products are being sold online, different needs in terms of delivery may materialise. All types of operators (NPOs, integrators, etc.) are slowly adapting their business models to this growing segment and hoping to profit from this growth rate. They need to be attentive to changing customer needs, both from the e-retailers side and from the e-shopper side, and develop matching delivery solutions.

In a recent UK survey<sup>408</sup>, lack of pre-purchase information was seen amongst the reasons frustrating online shoppers: it does not allow them to make the right delivery choice and leads them to abandon their basket because the right options are either not available or additional delivery costs are too high. Another point of frustration is in-transit delivery information, as the ability to anticipate when the order will arrive and defer or divert to a time or place more convenient is valued by 85% of respondents. In another survey<sup>409</sup> 58% of shoppers from six European countries say they have abandoned a cart due to lengthy delivery times or no date being given, while 52% of shoppers prefer to see the expected date of arrival in the cart. Delivery speed (information) was the fourth most important factor (behind product information, reputation, and product selection) when comparing retailers prior to selecting where to shop. In another survey conducted by Worldpay<sup>410</sup> in 2012, the number one reason for abandoning a online shopping cart was the presentation of unexpected costs, mentioned by 56% of the respondents. In the European Commission recent public consultation to consumers 81% of the 213 respondents indicated they had abandoned an online purchase in the last twelve months because of concerns about delivery. A better understanding of the information about delivery would also help e-retailers to provide their online consumers with the information they need to make their decisions.

Evidence shows that the need for information has become ever more important. If delivery operators do not follow the needs of their users (e-retailers and e-shoppers), the former will not be able to provide the adequate information to both e-retailers and e-shoppers.

Some actions have been put in place in order to improve transparency of information in the cross-border parcel delivery market. The Consumer Rights Directive (CRD) has established common rules to improve information provided by e-retailers and to reduce search costs for e-shoppers. Particularly on delivery, the CRD requires the e-retailer to provide information to consumers on: (i) total price, including taxes and delivery costs; (ii) payment, time and delivery options; (iii) right of withdrawal; (iv) cost of returning goods. The CRD also requires traders to reimburse all payments received from the consumer, including the costs of delivery in case of his withdrawal from the distance or off-premises contract.

Furthermore, as a complement to the CRD, EMOTA has launched in July 2015 a European trustmark ensuring compliance with criteria that cover, amongst others: transparent information about the e-retailer, the product, the pricing (including delivery), delivery times, delivery according to the specifications and timing indicated to the customer and clear returns

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<sup>408</sup> IMRG UK Consumer Home Delivery Review 2015

<sup>409</sup> UPS Pulse of the online shopper, ComScore, March 2015

<sup>410</sup> Copenhagen Economics (2013), pg184-185

process and prompt reimbursement. E-commerce Europe have also launched a pan-European trustmark. Although national trustmarks already existed they were mostly circumscribed to the domestic borders and provide different levels of guarantees and protection to consumers. A European trustmark provides an enhanced cross-border coordination of trustmarks, increased legal certainty and credibility and broader cross-border recognition amongst consumers.

In order to improve information transparency in this market, the Commission has also published a call for proposals under the COSME programme, with the intention of granting € 360,000 to support the establishment of an information platform. This platform aims at providing retailers with information on the type of services provided by various delivery operators in different markets, as well as on the characteristics of those markets.

These actions will contribute to increased information transparency for the e-shopper and can help reducing search costs and information asymmetries regarding delivery, and therefore improve trust in delivery and e-commerce.

Lack of market transparency also affects NRAs, as without the right information on delivery operators in the market NRAs can neither properly execute their monitoring task in the cross border parcel delivery market nor properly enforce current regulatory principles enshrined in the Postal Services Directive.

#### **1.1.1.2.2. Driver 2.2 - Inter-operator wholesale prices are not transparent**

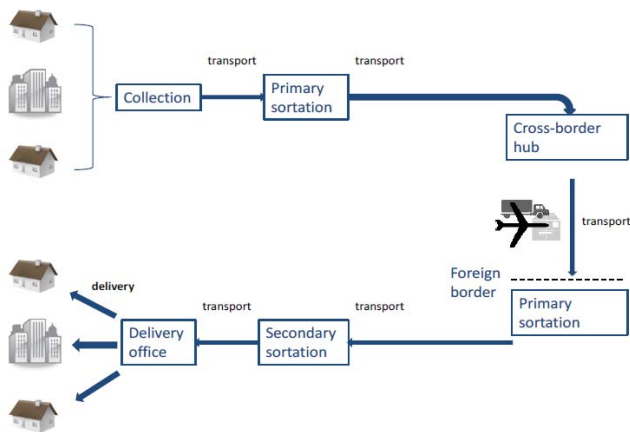
##### *a. Cross border delivery pipeline involves extra costs*

The cross- border pipeline contains more steps than the domestic network. In a traditional pipeline, where two or more delivery operators need to interconnect, after collection and primary sortation, cross-border parcels are transported to a cross-border hub where they are again sorted according to the country and place of destination<sup>411</sup>. They will be then transported to the destination country by land or by air and handed to the destination operator. In the destination country the operator will receive the parcels and sort them before they will be transported to regional centres where parcels undergo a secondary sortation. They are then transported again to the delivery office close to the destination before being delivered to the final consumer. Non-integrated operators need to purchase final delivery in the country of destination from an operator who is active there.

Fig 1 – Cross-border delivery traditional pipeline

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<sup>411</sup> FTI(2011) pg.97



Source: FTI(2011)

Although the sending operator avoids the costs of last mile delivery in a cross-border operation, it faces additional costs from:

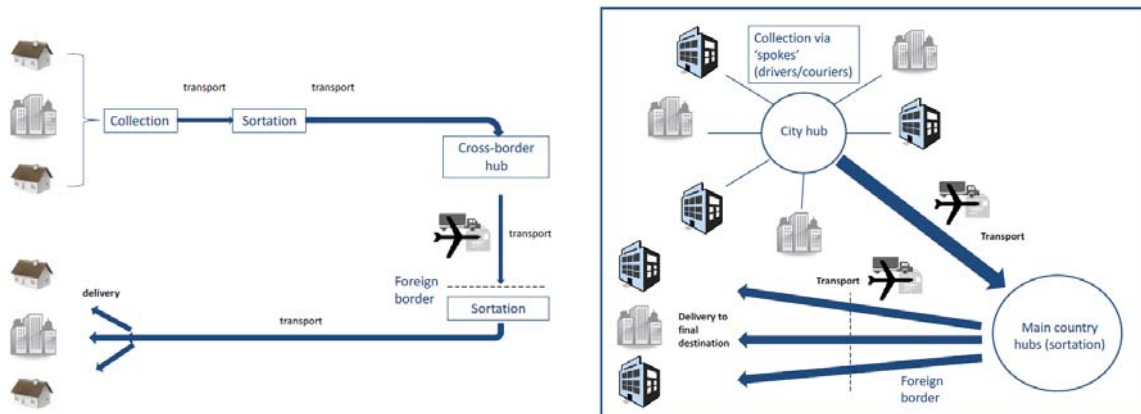
- Preparing the parcels to send cross-border, including sorting and administrative process of transferring the parcels to another operator. This may include further administrative requirements for cross-border products such as border checks, transport documentation, security procedures to comply with security regulation, customs procedures (if origin/destination is outside the EU) or VAT procedures.
- Transporting the parcels to hand them to the destination operator (either by air or by land)
- Paying a fee to the destination operator for the final delivery in the country of destination

On the other hand, the destination operator will bear any relabeling costs needed, cost related to data management, primary and secondary sortation costs after having received the cross-border flows from the sending operator and the last mile delivery costs of the cross-border pipeline.

Cross-border pipelines from subsidiaries and integrators have fewer steps and are much leaner. The costs split will be different than the one from the traditional NPOs pipeline.

Figure 2 – NPOs subsidiaries cross-border network

Fig 3- Integrators' cross-border network



Source: FTI(2011)

Cross-border delivery of goods is a more complex process than domestic delivery, particularly if more than one delivery operator is involved. Delivery handled by two or more operators always implies conciliation of different cost structures, cost efficiency and the interconnection of different networks. Inter-operator wholesale prices paid between the operators involved is supposed to reflect these cost differences, although there is no public information available to test if it does or not. At the same time it is an important part of the overall cross-border costs for NPOS.

Delivery operators who don't have a presence or network in the destination country need to pay the operator in the destination country for delivery to the recipient of the parcel. This payment is supposed to cover the costs of the country of destination delivery operator to receive the items from the initiating delivery operator at the border, as well as sortation, transport and delivery to the final recipient.

The mechanism for establishing the fees charged by one operator to another is not transparent, as neither the terms and conditions, nor the inter-operators wholesale prices (except for UPU) are publicly available. There are several types of agreements that can be used between the parts for packet and parcels.

#### *b. Types of international agreements*

As members of the Universal Postal Union<sup>412</sup>, national postal operators comply with a set of rules on tariffs for packets (terminal dues or inter-operator wholesale prices) or parcels (inward land rates – ILR), which, as some studies suggest, do not reflect the real costs incurred<sup>413</sup>. Under the target system of UPU, terminal dues should be aligned with 70 percent of the domestic tariff for a priority letter post item of comparable weight. However, the system has not fully implemented this principle and only in 1 out of 28 target countries the terminal dues are aligned with the 70 percent domestic postage rate. In 25 countries the terminal dues charged are actually established by a price cap and in 2 countries by a price floor<sup>414</sup>. The ILR pricing system is twofold: The total termination charge is composed of a base rate and a bonus which rewards the supply of defined services with a markup on the base rate. The base rate is either calculated as 71.4% of a country's ILR taken at 2004 levels (plus any inflation-linked adjustment) or set to the "global minimum base rate" at 2.85 SDR per

<sup>412</sup> The United Nations' specialised agency for the postal sector

<sup>413</sup> Campbell, J. I. Jr et al., *Study on the External Dimension of the EU Postal Acquis*, WIK-Consult for the European Commission, 2010; Copenhagen Economics, *The Economics of Terminal Dues*, 2014

<sup>414</sup> Campbell, J. I. Jr et al., *Study on the External Dimension of the EU Postal Acquis*, WIK-Consult for the European Commission, 2010, p.127

parcel plus 0.28 SDR per kg..In addition to the base rate, a DO(designated operator) can qualify for additional bonus payments of between 5% and 40% of the base rate when meeting certain quality criteria such as the provision of track and trace, home delivery, fulfilling delivery standards or the usage of the common internet-based inquiry system . Studies find that the ILR rates in some countries are excessive compared to domestic parcel price : values for the ILR inbound rates of up to 347% of domestic parcel prices are reported (see eg UPU, 2010). Trinker et al provide additional evidence that the current ILR termination system is too limited in its accounting for quality<sup>415</sup>.

Furthermore, delivery operators can engage in bilateral agreements or multilateral agreements such as REIMS<sup>416</sup>, Express Mail Service (EMS)<sup>417</sup> or E-Parcel Group (EPG)<sup>418</sup>. Most EU universal service providers are parties to the REIMS V agreement, which sets inter-operator wholesale prices among European operators, and came into force in 2012.<sup>419</sup> On 23 October 2003 the Commission adopted a decision under EU competition rules, notably Article 81 EC Treaty (now Article 101 TFEU), prolonging for an additional five years the exemption of the REIMS II agreement under EU competition rules subject to a condition that non-discriminatory access to REIMS terms and conditions would be provided to third parties.<sup>420</sup> Following the adoption of Regulation 1/2003<sup>421</sup> and modernisation of EU competition rules, the parties to an agreement have to ensure its compliance with EU competition rules ("self-assessment" mechanism). The current REIMS V agreement sets that the inter-operator wholesale prices applied to the core system for priority mail items are a fixed percentage of the receiving party's domestic tariff excluding VAT (with some exceptions)<sup>422</sup>. The inter-operator wholesale prices paid through REIMS also take into account penalties for not complying with quality of service standards.

### *c. Lack of level playing field*

The UPU system creates distortions in the market that are estimated by WIK to be about one third of the value of the market<sup>423</sup>, with the actual terminal dues rate set by the target system ranging from an overpayment of 17 percent to an underpayment of 41 percent<sup>424</sup>. It creates as well net winners (low or average cost countries that export more mail than they import) and net losers (high cost countries that import more mail than they export<sup>425</sup>. The amount that each NPO (designated operator) wins or loses in the traffic exchanged depends on factors such as the relative costs levels of the NPOs involved, the imbalances in the volumes exchanged, the relation between actual costs and the terminal dues rate and in differences in the composition

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<sup>415</sup>Termination Charges in The International Parcel Market

<sup>416</sup> The Remuneration of Mandatory Deliveries of Cross-Border Mails is a voluntary multilateral agreement between postal operators setting out rules for calculation of terminal dues, i.e. the remuneration that postal operators pay each other for the delivery of incoming cross-border mail (applicable to mail items, such as letters and packets up to 2 kg)

<sup>417</sup> EMS is an international postal Express Mail Service for documents and merchandise, offered by postal operators of the Universal Postal Union (UPU)

<sup>418</sup> The EPG is made up of 31 postal parcel operators committed to deliver their priority parcel products through an integrated delivery network. The network uses a track-and-trace system and an automated customer service system linking each postal operator's call centres to ensure stable and reliable quality of service for their customers.

<sup>419</sup> [http://www.ipc.be/en/operational-services/intercompany\\_pricing/reims\\_v](http://www.ipc.be/en/operational-services/intercompany_pricing/reims_v)

<sup>420</sup> See [http://ec.europa.eu/competition/publications/cpn/2004\\_1\\_25.pdf](http://ec.europa.eu/competition/publications/cpn/2004_1_25.pdf), *Official Journal L 275*, 26/10/1999 P. 0017 – 0031, *Official Journal of the European Union*, C 94, 23 April 2003, Case COMP/C/38.170 and WIK-Consult, *Main Developments in the Postal Sector (2010-2013)*, p 94 and 95 for further background.

<sup>421</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, 4.1.2003, p. 1–25.

<sup>422</sup> REIMS V Agreement, 2012

<sup>423</sup> WIK (2013), p.101

<sup>424</sup> WIK (2010), p. 127

<sup>425</sup> WIK (2013), p.102 – net winners: LU, PT, UK, NL, ES, DE, EL, and net losers: IT, NO, FI, DK, BE, AT, IE, SE, CH

(e.g. weights and shapes) and preparation (e.g. sorting) of the type of mail exchanged<sup>426</sup>. This results in a transfer of money between some NPOs within the UPU system which may be distortive if consumers are affected (e.g. via increased taxes).

In addition, some anecdotal evidence points to the fact that UPU agreements are regarded by some NPOs as legally established default rates in the absence of alternative agreements, affecting negotiations of bilateral agreements<sup>427</sup>. The originating NPO has all the incentives to remain using the below cost UPU terminal rates, instead of switching to a more cost-oriented type of agreement. In case this situation materialises it creates difficulties for NPOs in high costs Member States who wish to align the inter-operator wholesale prices to their much higher domestic costs.<sup>428</sup>

Only national postal operators can join international agreements such as EPG or UPU's terminal dues or ILR. Alternative operators have therefore no access to these agreements and cannot pay the same fees that may be more advantageous for NPOs participating in the system. Non NPOs have thus, a competitive disadvantage as they may pay a higher price for the last mile delivery in the destination country. According to a study by Copenhagen Economics<sup>429</sup>, the UPU terminal dues system creates distortions both in the last-mile and first-mile handling of cross-border delivery, as an efficient delivery operator cannot compete with the NPO for the last mile given that it does not have access to the terminal dues system.

The same study<sup>430</sup> also indicates that the terminal dues may also disproportionately increase demand for delivery services covered by the system, such as packets as the rates that operators charge each other for the transport of packets (which are classified as letters) are lower than for parcels. This is particularly relevant for e-commerce and low weight shipments that can be sent either as packets or parcels. Another distortion introduced by the UPU system is the possibility of excessive cross-border traffic in relation to domestic traffic, in the event terminal dues are too low (cross-border prices disproportionately low compared to domestic prices), leading some senders to ship from other countries instead of domestically or some shoppers to buy cross-border online instead of domestic online. Finally, the terminal dues system may incentivize excessive cross-border traffic from countries with particularly low terminal dues (mostly transition countries within the UPU system<sup>431</sup>) to other countries (typically target countries within the UPU system<sup>432</sup>).

The UPU system is therefore a discriminatory system, as it not only discriminates towards third party operators (non NPOs) but also between NPOs participating in the system.

In relation to other types of agreements, third party operators also indicate access issues; for example, they say access to REIMS conditions is virtually impossible for other operators than NPOs, although in theory access is open. According to evidence to date there is only one private operator currently accessing REIMS<sup>433</sup>.

This situation creates distortions in the cross-border market, as neither all operators can benefit from the system nor is the system reflective of the true domestic delivery costs.

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<sup>426</sup> WIK (2010), p.131

<sup>427</sup> DE, ES, FI, HU, LT, PT, IS use UPU as default rates. WIK (2013), p.95

<sup>428</sup> WIK (2013), pg 95

<sup>429</sup> Okholm, H.B. et al., *The Economics of terminal dues*, Copenhagen Economics, 2014, p. 12

<sup>430</sup> Okholm, H.B. et al., *The Economics of terminal dues*, Copenhagen Economics, 2014, p. 12

<sup>431</sup> Usually those in developing countries

<sup>432</sup> Usually those in industrialised countries

<sup>433</sup> Okholm, H.B. et al., *The Economics of terminal dues*, Copenhagen Economics, 2014, p. 22

Terminal dues that are not aligned with domestic rates can harm the transparency and the competitiveness of the cross-border market and harm the market equilibrium as prices may be higher, quality lower and innovation reduced.

*d. Inter-operator wholesale prices are affected by the bargaining power of operators and savings may not be passed on to consumers*

The type of agreement used and the fees applied may depend on the type of operator with whom there will be interconnection and on the cost structure of that operator, the type of items (packets or parcels) to be delivered, the scale of the cross-border operations and the bargaining power of both operators. For instances, costs associated with packets and parcels are usually different as they entail different processes and generally use different networks (packets use the letter network and parcels use a dedicated parcel network), except in rural areas where operators (mostly NPOs) use co-production. This should also be reflected both in the domestic costs and in the termination rate charged.

Volumes and frequency of shipments have an impact on a delivery operator's costs. The higher the volume and the more regular they are, the lower the unit cost. The same economic principle applies between operators from different countries exchanging traffic flows. The more frequent and larger the proportion of cross-border parcel volumes sent from sending operator in country A to the destination operator in country B, the lower the unit costs of processing these volumes. The larger the volumes of the sending operator and its proportion of cross-border flows in the destination operator<sup>434</sup>, the larger the bargaining power of the sending operator towards the destination operator as unit costs will be lower. This is expected to be reflected in a lower termination rate<sup>435</sup> charged by the destination operator to the sending operator. If these savings are reproduced in the sending operator' prices then consumers in country A will face lower cross-border prices as well. Thus, some operators, especially from large (export) markets with large volume flows may have more bargaining power than operators in small volume countries. This may create imbalances in the negotiation of inter-operator wholesale prices between operators. A recent econometric study commissioned by the EC<sup>436</sup> found indications that online import shares in the destination country seem to decrease inter-operator wholesale prices for the sending operator and this is reflected in the cross border price. This implies that some NPOs are in a better position to negotiate.

However a lower termination rate does not necessarily translate in lower prices for consumers. On the one hand, the sending operator can decide not to pass the costs savings to the final customers and therefore the final cross-border price, instead of being proportionate to the terminal rate paid, might remain higher. On the other hand, even if the destination operator in country B faces lower unit costs from volumes received from the sending operator in country A, the former may decide to keep this savings and charge a higher termination rate. In this case, prices would remain high as well.

An indication for this is that labour costs in the destination country, which are a tangible part of the costs of the cross border delivery, do not seem to statistically influence cross border prices<sup>437</sup>. In addition to that according to research from FTI (2011) found final cross-border prices observed do not reflect savings from lower inter-operator wholesale prices originated

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<sup>434</sup> FTI (2011)

<sup>435</sup> Tariffs charged by the delivery operator in the destination county to cover the delivery to the final destination of cross-border flow.

<sup>436</sup> Universite Saint-Louis, Econometric study on cross-border prices (2015, forthcoming): on average, operators from countries that have an important online import share in the destination country have a lower cross-border differential and had lower cross-border prices.

<sup>437</sup> University of Saint Louis (2015)



by scale (high volumes) savings. This implies that either the sending operator is not reflecting possible lower inter-operator wholesale prices on their final prices or the operator in the destination country is not reflecting their costs savings on the termination rate charged to the sending operator. We would need information on terminal rates to assess which of these two scenarios is in place. This information is however publicly unavailable.

Finally, differing degrees of competition and market power in the home and cross-border market may result in higher prices as it may affect the bargaining power of operators willing to interconnect. FTI concludes in its study that high domestic competition however, does not necessarily translate in lower cross-border public prices, especially if competition in the cross-border market is limited, since delivery operators are able to separate the effects of domestic competition from the cross-border market, indicating the possible existence of market power<sup>438</sup>. Where cross-border competition is higher however, the differential between domestic prices and cross-border prices are lower.

In peripheral regions or countries, where there is low population density and low parcel flows, the delivery alternative operator may need to interconnect with the designated delivery operator (NPO), which may be the only delivery operator present in those areas. Once again, the bargaining power of both operators will determine the level of fees and conditions that will affect the cross-border delivery operation.

Inter-operator wholesale prices paid between operators add to the potential high costs of cross-border delivery and returns. Operators using their end to end network (such as integrators) or using their subsidiaries for cross-border delivery bypass these inter-operator wholesale prices as their networks are integrated. As part of a larger group they may charge internal prices, set bilateral agreements or other sort of pricing scheme for the service of delivering in a certain destination country. This information is not publicly available. However, the University of Saint-Louis study on cross-border prices<sup>439</sup> found strong evidence that vertical integration (e.g. integrated networks) decreases cross-border prices in the sending country. Vertically integrated firms have an incentive to set transfer prices on an arm's length basis (reflecting marginal cost) to maximize joint profits.

### **1.1.1.3. Driver 3 – Ineffective, inconsistent or inexistent regulatory oversight creates obstacles to the single market**

#### **1.1.1.3.1. Driver 3.1 - NRAs have insufficient regulatory powers**

A joint BEREC/ ERGP report recently concluded that "NRAs need the appropriate regulatory powers to intervene and ... such powers do not seem to be present in all Member States, mainly due to the differences in interpretation of what is or not a postal services".<sup>440</sup> Only a very few postal national regulatory authorities (NRAs) focus their responsibilities also on cross-border delivery markets and have a limited mandate to monitor the cross-border parcel segment<sup>441</sup>. Historically NRAs have focussed on the domestic letter market (that was dominated by universal service providers) rather than the parcel market which has a larger

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<sup>438</sup> FTI (2011), p.11, 217

<sup>439</sup> Universite Saint-Louis, Econometric study on cross-border prices (2015 , forthcoming)

<sup>440</sup> Joint BEREC/ ERGP Opinion, Price transparency and regulatory oversight of cross-border parcels delivery taking into account possible regulatory insights from the electronic communications sector (ERGP (15) 32)

<sup>441</sup> ERGP report (2014) "European cross-border e-commerce parcels delivery 2014 ERGP opinion to the European Commission On a better understanding of European cross-border e- commerce parcels delivery markets and the functioning of competition on these markets"

number of operators and has been perceived to be more competitive. Regarding the implementation of tariff regulation principles for universal service obligation, the ERGP concludes that there are heterogeneous practices across the Member States. For example tests on affordability and cost orientation are not practiced in all Member States, with 8 countries mentioning they do not test it; methodologies used also differ from one country to the other. Furthermore, almost half of the countries do not define criteria for price transparency. Most NRAs have however put in place ex-ante or ex-post measurements to assess whether prices are non-discriminatory<sup>442</sup>. Thus, even for the domestic market we observe a wide heterogeneity of approaches in terms of application of tariff principles.

Currently, information on the delivery market is fragmented and only partly available to national postal regulatory authorities due to limited mandates. While there is already a general collection of information on basic parcel delivery offers in most Member States, based on Article 22a of the Directive, this does not currently provide a broad picture of the full postal market. Some regulators have confirmed that they do not/ cannot comprehensively collect data on parcels.<sup>443</sup> Some of the restrictions to collect data on the CEP market mentioned by NRAs are the need to have a clear purpose to collect the data, the limited power to collect data on some of the CEP segments or the inexistence of legal basis to collect data<sup>444</sup>.

The ERGP, in its reports on the cross-border parcel delivery market<sup>445</sup> concluded that there was no need for a full market analysis or a collection of information based on full formal definition of the market and found no indication of a competition problem that it believed could best be dealt with by ex-ante regulation. However, they concluded that having comprehensive information to understand the functioning of the parcel market and possible competition problems in it could be useful.

Given the increasing importance of e-commerce related parcels for all postal operators and the need to ensure a single market in cross border parcel delivery, an improved market monitoring would contribute to show developments in the market, assess whether the principles of the directive (cost orientation, non-discrimination, transparency) are being implemented for USO services, and ensure effective competition, for example by identifying market and regulatory concerns. Enforcement powers must also include being able to require third-party access to the network of the NPO. Allowing smaller operators to use NPOs' networks and benefit from their economies of scale would encourage market entry and competition.

Furthermore the essence of Article 13 of the Postal Services Directive seem thus to be that Member States need only to encourage USPs to apply the principles of the Directive in setting their inter-operator wholesale prices. Research shows<sup>446</sup> that only 28 percent of NRAs collect information about the inter-operator wholesale prices charged by NPOs for processing and delivery of incoming cross-border parcels (compared to 36 percent that collect this information for letters). Forty percent indicate they collect information about the costs of processing and delivering incoming cross-border letters and parcels.

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<sup>442</sup> ERGP report (November 2014), "ERGP report on tariff regulation in a context of declining volumes", p11-13

<sup>443</sup> Postal statistics survey 2014 and ERGP (2015), "ERGP internal report on the courier, express and parcels segments statistics"

<sup>444</sup> ERGP (2015), "ERGP internal report on the courier, express and parcels segments statistics"

<sup>445</sup> ERGP (14) (26) ERGP Opinion on a better understanding of European cross-border e-commerce parcels delivery market(s) and the functioning of competition., ERGP (13) 37 ERGP Opinion on cross-border parcel delivery

<sup>446</sup> Okholm, H. B. et al, Study of the state of play of EU parcel markets with particular emphasis on e-commerce, 2013, p.200

#### **1.1.1.3.2. Driver 3.2 - Regulatory fragmentation increases compliance costs of delivery operators and hinders regulatory oversight**

The regulatory landscape of the parcel delivery markets is highly fragmented. Procedures and conditions in parcel markets are quite distinct, with different sets of national legislation and regulatory tasks across the EU-28.

For delivery operators this regulatory diversification and fragmentation in the sector translates into additional administrative burden for those delivery operators who operate cross-border and need to comply with the different rules in place both at the EU and Member States level. According to the European Express Association, this relates to the diversity of regulatory regimes, procedures and conditions to provide delivery services across Member States, and to differences between Member States in road transport policies across Europe (e.g. road charging systems, cabotage rules, administrative requirements)<sup>447</sup>. This affects particularly those operators who operate in several Member States and face different rules: It affects integrators, pan European operators, and NPOs with subsidiaries in other Member States. The need to comply with the different regulatory regimes increases inefficiencies as well as compliance costs for delivery operators, adding fragmentation to the single market.

E-retailers on the other hand, are also affected by this regulatory fragmentation and divergence as it may increase the delivery prices they face from operators.

The multitude of regulatory frameworks affecting the parcel delivery market, as described in the legal context section (Annexes 6 and 11) also hinders regulatory oversight in this sector, making the work of postal NRAs more difficult when it comes to market monitoring and regulation. There are therefore blurring regulatory competence areas in the parcel delivery market that impact the regulatory activities of the NRAs, a situation that has been acknowledged by the ERGP<sup>448</sup>. In addition, the growth in e-commerce and B2C delivery has brought some new players in the delivery market, specially targeting the most profitable segments (e.g. business with large volumes of shipments) who occasionally argue they are not active in the postal market and thus are not under the scrutiny of postal national regulatory authorities.

The Postal Services Directive regulates packets and parcels (up to 10Kg or 20Kg depending on the Member States) falling under the scope of the universal service, which represents only a small share of the total parcel delivery market (5-8% of the total CEP market<sup>449</sup>). It does however, not cover the largest share of parcels that are originating from e-commerce.

Definitions of universal service parcels are usually related to standard items subject to regulatory/ legal definition (as it is defined in the Postal Services Directive and transposed on the national legislations). On the other hand, CEP definitions beyond the universal service, when they exist, are often unclear and heterogeneous across Member States<sup>450</sup>. This lack of clear definitions not only of the scope of the universal service but also of other products and segments in the delivery market, hampers the NRAs regulatory tasks on market monitoring.

Finally, the boundaries of the CEP sector is another important issue for regulatory authorities of Member States where a maximum weight limit was not introduced for postal parcels (e.g. Portugal, Spain, etc.). Those NRAs face difficulties in distinguishing transport and freight

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<sup>447</sup> EEA Express carriers fully committed to efficient parcel delivery for the Digital Single Market, 6 May 2015, response to the 2015 public consultation

<sup>448</sup> ERGP (2015), "ERGP internal report on the courier, express and parcels segments statistics"

<sup>449</sup> CE(2013), p.197

<sup>450</sup> ERGP (2015), "ERGP internal report on the courier, express and parcels segments statistics"

services from the parcel delivery markets. The existence of this blurred regulatory area in these Member States poses problems to NRAs who wish to monitor operators active in transporting and delivering parcels in those markets but where a few operators argue they are active in the transport sector instead<sup>451</sup>.

#### **1.1.1.3.3. Driver 4 – High profit margins added to delivery costs by e-retailers**

Delivery prices charged to consumers by retailers do not always reflect the prices delivery operators charge to retailers because some **retailers mark up the delivery prices** that are charged by delivery operators. The price the consumer pays for 'delivery' (as stated on the retailer's website) may therefore be significantly higher than the price the retailers pay, but the consumer thinks it is the delivery element that is expensive. Several retailers acknowledged in their responses to the public consultation that they charge consumers more for delivery than they pay themselves<sup>452</sup>. Furthermore, the prices that consumers pay for delivery may not fall if delivery operators lower their prices as consumers are dependent on e-retailer making a corresponding reduction in their delivery charges.<sup>453</sup> Research for the Consumer Council (Northern Ireland) noted that only half of online retailer offer the same delivery service across the UK, and when free delivery is not available to Northern Ireland destinations, consumers pay up to £10 for delivery (to Northern Ireland).

### **1.2. Summary of problem tree:**

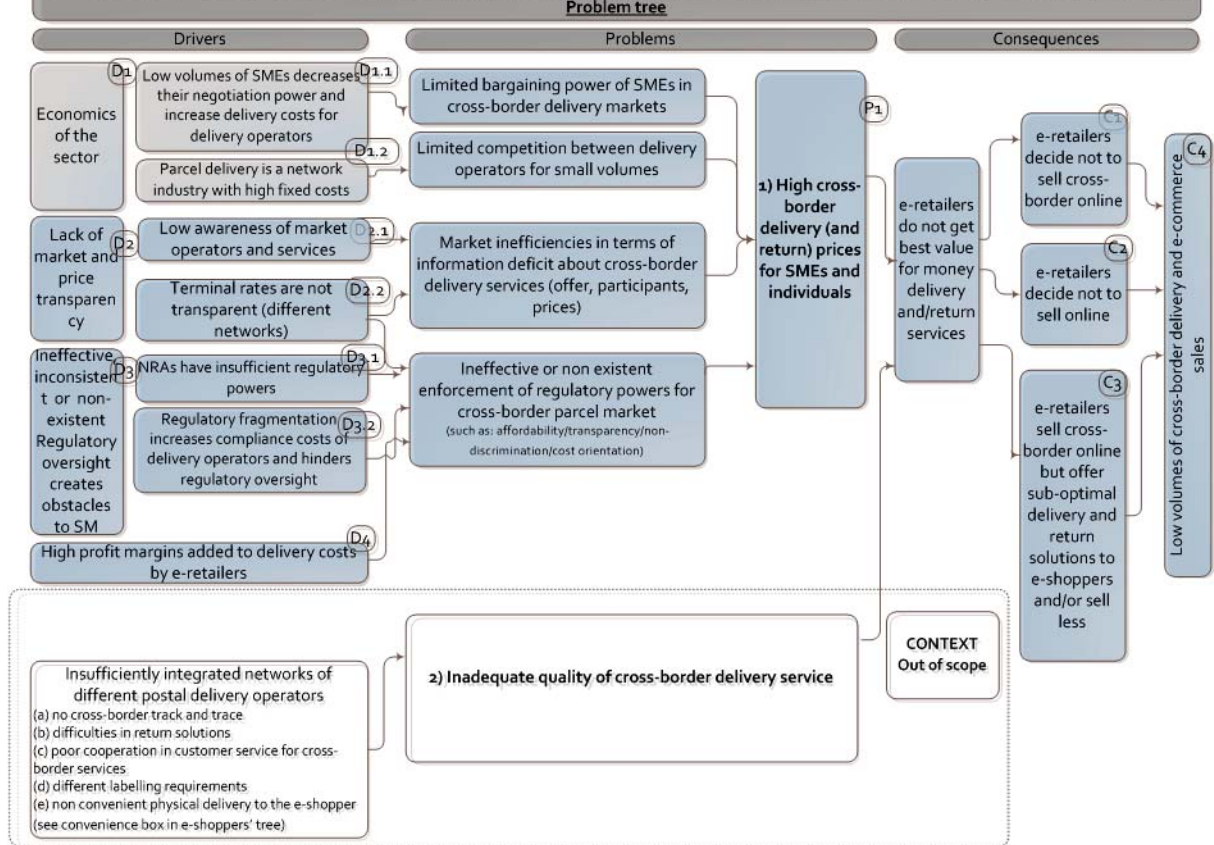
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<sup>451</sup> ERGP (2015), "ERGP internal report on the courier, express and parcels segments statistics"

<sup>452</sup> Retailer question 19b

<sup>453</sup> PostEuop's response to the 2015 public consultation on cross-border delivery made this point. Citizens Advice and Citizens Advice Scotland acknowledged that mark ups exist, though stated they are not a rationale for price caps as mark-ups are present throughout the supply chain.

**Main problem: Lack of affordable, transparent, reliable and convenient cross-border delivery and returns for single piece parcels (SMEs and individuals)**



## **ANNEX 8: DESCRIPTION OF POLICY OPTIONS AND COMPARISON OF POLICY OPTIONS (TABLES)**

### **1. POLICY OPTIONS**

#### **1.1. Option 1: Baseline scenario/ No action**

Without any further policy initiative, the main driver for change will be market forces, in that growing e-commerce flows would continue to provide incentives for delivery operators to compete for the B2C market segment in particular. Some actions to the 2013 Roadmap are also likely to continue, in particular improving the quality of cross-border services and the provision of information to consumers and retailers about the delivery services on offer.

- The Interconnect Programme of the national postal operators has been designed to improve the quality of service (e.g. through improved track-and-trace capabilities), by using common procedures for cross-border services (e.g. through harmonised labelling standards, complaints handling).
- Plans to establish an information platform (supported by COSME funding) is likely to address some of the information deficits in the market (e.g. by providing smaller e-retailers with a better understanding of the delivery options available to them). If properly designed, the platform could also help to promote new business opportunities and enhance competition between delivery operators, and, consequently, lead to lower prices.

In addition to the current postal and parcel operators (including the express industry), other economic operators are likely to enter this market, or to expand business practices that are already being tested today. For example large online platforms have been trying to bridge (at least partially) the gap between e-retailers and their customers themselves (e.g. by installing parcel locker stations in densely populated areas, by offering consolidation services for small platform members, by establishing co-operations with the collaborative economy for last-mile delivery, by investing in new technologies such as drones, etc.).

This will increase choice for retailers and customers as well as the competitive pressure on traditional delivery operators, given the high price sensitivity of online consumers. It may, however, also increase the complexity and fragmentation of the regulatory framework, potentially raising issues where operators providing comparable services will be governed by different legal frameworks, and, as a consequence, not subject to the same levels of regulatory oversight.

Most of the above developments will continue to focus on the commercially attractive parts of the (delivery) market, where the return on investment can be considered highest. This implies that most of the pro-competitive effects will manifest themselves for large volume flows – i.e. for larger e-retailers (who create economies of scale due to high volumes on the first mile), and for densely populated areas (which create economies of scale due to high volumes on the last mile). It is much more questionable, by contrast, to what extent small e-retailers and individual consumer, especially sellers and buyers located in more peripheral regions will be able to benefit from these developments.

Given the importance of size and scale in the logistics business, which becomes even more relevant in a trans-European (i.e. cross-border) context, one can also expect a considerable extent of concentration on the side of delivery operators. This is bound to increase already existing entry

barriers for potential competitors, and make it even harder for ill-equipped regulatory bodies to investigate and intervene in case of competition concerns.

With regard to regulatory oversight, postal regulators across Europe currently focus almost exclusively on domestic letter services, as provided by the incumbent postal operators. The 2013 Roadmap already invited Member States to extend the mandate and tasks of regulators to (cross-border) parcel deliveries, but no changes have been observed since as a result of the Roadmap. It is hence more than doubtful that, in the absence of another EU-level initiative, Member States would reconsider their positions.

There have also been no indications that the affordability of cross-border services is improving for individuals and SMEs.

## **1.2. Alternative policy approaches**

The main problem to be tackled by this initiative relates to the high prices charged for cross-border delivery and returns where low volumes are concerned. The importance of "volumes" and scale leads to a situation where "size matters" (both for e-retailers and delivery operators), and "trade imbalances" play a role where market entry barriers are high, where (partial) access to the networks or infrastructure of competitors may be important, and where there is a strong economic incentive for all competitors to focus on profitable market segments. All of this leads to a reduced choice of options and higher prices for small and infrequent senders of parcels (i.e. small e-retailers).

While the fundamental economics underlying this sector can hardly be changed, the content options below show different ways in which the resulting problems could at least be alleviated. Not all of these options are necessarily "mutually exclusive" – some of them could, at least in theory, be applied as a package (e.g. "consolidation of volumes" and "price transparency"). Also, some of the more "advanced" options (such as "enhance regulatory tools") would build on some of the more "basic" ones (such as "enhance market knowledge") – hence could not be implemented in isolation.

For each of the options below, a number of technical sub-options will be presented (but, for the sake of readability, analysed in greater detail at a later stage). The "option of changing nothing" has already been described in Section 4.1 above.

### **1.2.1.Option 2: Consolidate volumes of small e-retailers**

As the small and irregular volumes generated by SME e-retailers are the single most important driver behind the problems observed, the most immediate impact could be expected from any initiative that promotes the consolidation of volumes from a number of smaller e-retailers. Such services already exist, but only in the largest EU markets<sup>454</sup>. However, after the judgement in C-340/13, under the PSD volume discounts may be recognised only at the sender' level (not at the consolidator using intermediary or proxy discounts), reducing the potential impact of this option.

The information platform which is currently being developed is expected to address this issue, at least in the medium term, by helping to share good practice, and by offering a consolidation option for

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<sup>454</sup> UK, FR, DE

participating SMEs, including for cross-border shipments. This work stream will be supported through funding from the COSME Programme.

For these reasons, the current impact assessment will **discard the option of further initiatives to be taken in the field of consolidation.**

### **1.2.2.Option 3: Enhance the transparency of prices**

#### **Option 3a - Enhancing the transparency of public list prices and public discounts.**

Though public list prices (not sensitive or confidential prices) are already in public domain often on the website of the delivery operator, they are not easily accessible or comparable. Sometimes they are difficult to find on website of the operator and due to different names and characteristics are often difficult for users to compare. Ideally, this option would make the information on public prices (and discounts) of around 15 USO or similar services from all EU national postal operators freely available and easily accessible in a standardised form to all EU e-retailers and consumers, through a centralised pan-European website. NRAs would also be required to assess the affordability and cost-orientation of these prices and to send their assessments to the Commission NRAs and national competition authorities and national consumer authorities.

#### Operational sub-options

*Transparency of public prices would be provided directly towards the users (consumers and e-retailers)*

The information would be disclosed to the general public and not be restricted to specific organisations only, such as the National postal regulators or public institutions. This would provide benefits for the target group as it highlighting relatively higher prices might encourage users (consumers and smaller e-retailers) to seek out a better deal.

*The publishing and management of the EU cross-border delivery public prices information would preferably be provided on a centralised website by a pan European institution or organisation in a standardised form*

Publication of public prices by operators on their own websites alone seems insufficient, since we are aiming for “easy comparability” between different operators. Therefore, the publication through a centralised European website would ensure independence, avoid conflict of interests and reduce searching costs for users. The information would be freely available in a standardised form. Such an institution would bring more credibility to the published information and would ensure comparability.

*Collection of public prices information would be undertaken at national level by National postal regulators and communicated to the organisation responsible for managing and publishing the intra-EU public price information.*

Regulators would collect this information on a regular basis from NPOs. Consequently they would have access to a comparable set of public prices which could facilitate both identifying competition concerns and market inefficiencies and enforcing regulatory principles under the Postal Services Directive. Collecting the data from NPOs via NRAs would ensure comparability and therefore credibility.



*The frequency of public price information collection would be on an annual basis*

Frequency options could include the collection of prices on monthly/quarterly/bi-annually or annually basis. As published prices are most likely to be changed annually, price collection on an annual basis would achieve the objective of transparency and accuracy and at the same time ensure that the costs of data collection are proportionate. The higher the frequency of price information collection would be the higher the costs. For this reason, we would aim at limiting the periodic price collection to once a year in order to reduce administrative burden both to operators and to regulators.

*Transparency of public prices requirement would preferably focus on a selected group of categories of delivery services, based on features such as type of product (letter, packet, parcel), weight or format, extra options (e.g. track and trace, insurance), delivery time*

There are numerous cross-border delivery services with different characteristics. Publishing public prices of all delivery services available in a comparison website would be very burdensome and costly for delivery operators (which would need to provide the information) and for regulators (which would need to collect and process the information). In addition, it would create complexity for users – consumers and retailers – when trying to compare such a large amount of services. A wider range of products would be therefore, disproportionate. For transparency and comparison purposes, information collection of a pre-selected group of USO or similar delivery services (excluding express) is preferable, ensuring that they are relevant for users and for e-commerce use. To establish a reasonable and relevant overview, we would suggest collecting prices on data for two categories: packets and parcels. For each of those categories, price data would be collected on 3 weights: 500g, 1 kg, and 2 kg for packets, and 1, 2 and 5 kg for parcels. Furthermore, a differentiation should be made between various service levels, namely the cheapest alternative or tracked delivery (for parcels), or the cheapest alternative, registered or tracked delivery (for packets). This would in total involve 15 types of product. Information would be collected for flows between all EU Member States.

*Transparency of public prices requirement would be limited to the National postal operators.*

Each Member State has a National postal operator which is the designated (or defacto) postal operator for the delivery of universal postal service and has full national territorial coverage, covering all segments of the market. It is the operator which by default covers the remote and peripheral areas and social disadvantaged users. This could indirectly lead to more pressure for transparency of prices of other operators in the market. Enhancing transparency of public prices to all delivery operators in the cross-border market would be too cumbersome and would create disproportioned costs for all delivery operators (including SMEs) and for regulators. Furthermore information about the range and prices of cross-border delivery services provided by all delivery operators will be provided in the information platform supported by COSME.

*NRA Assessment of affordability*

NRAS would be required to assess NPOs prices for affordability and cost-orientation (as they already do for domestic products, especially letters). Sending the assessment to national competition authorities would encourage closer cooperation and enable better enforcement of competition policy,.

The combined 'name and shame' effect of the price comparison website, alongside the NRAs' assessments of affordability would create pressure on NPOs with excessive cross-border prices to make prices more affordable.

**Option 3b - Enhancing the transparency of individually negotiated prices between delivery operators and larger e-retailers ("account" customers).**

These prices concern the largest portion of current e-commerce transactions, and are a result of individual sending characteristics and negotiating power. Individually negotiated prices are related to high volume senders, which are the most profitable segment of the delivery market and therefore the one where more competition exists.

The large retailers part of the market is subject to the highest competitive pressure, as it is the most profitable segment of the market; market forces are therefore considered to be the prime response. Trying to increase transparency in this segment would not only be very difficult (because of the infinite number of individual circumstances), but also disproportionate as it would interfere with sensitive business and pricing information deemed confidential by operators.

**Option 3c - Enhancing the transparency of inter-post wholesale prices ("terminal dues" and similar charges).**

Where two postal operators jointly perform a delivery transaction, the sending post pays the receiving post for last-mile delivery on the latter's territory. As discussed in the problem definition section, these prices are meant to be in line with certain regulatory principles of the PSD, such as the principle of cost-orientation, transparency and non-discrimination. However inter-operator wholesale prices are not transparent. Only the delivery operators involved in a specific delivery flow are aware of the inter-operator wholesale prices applied, even if this is a crucial element for the total costs of cross-border delivery. This lack of transparency also makes it difficult to assess whether the other principles are being complied with<sup>455</sup> or whether market power (between large and small operators) is a potential issue. Although for competition reasons, this information should not be made publicly available, disclosing these prices to NRAs would enable them to assess the cost orientation of the selected services (see option 3a).

**Operational sub-options**

*Transparency of inter-post wholesale prices would be restricted to National postal regulators*

Inter-post wholesale prices are confidential information resulting from business agreements. However, due to its importance, regulatory bodies should be required to have access to this information for transparency purposes so that they may be able to identify market inefficiencies concerns deriving from these wholesale prices. As confidential business information, at this stage it should not be required that this information would be made publicly available and disclosed to the markets.

*Collection of Inter-post wholesale prices information would be undertaken at national level by National postal regulators and part of their monitoring tasks*

Regulators would collect this information on a regular basis. Consequently they would have access to this information which is an important part of the cross-border delivery costs of a sending operators and a source of revenue for the receiving operators. This would facilitate assessing prices, identifying market inefficiencies and enforcing regulatory principles under the Postal Services Directive.

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<sup>455</sup> It should be noted that both the sending and the receiving operator usually have enough market power to be price setters. This may lead to "double marginalization" of their customers (i.e. retailers), leading to higher prices than would be the case if the whole cross-border delivery was undertaken by one single (integrated) operator.

*The frequency of public price information collection would be on a periodic basis (bi-annual or annual basis)*

Frequency could be aligned with the frequency of collection of public prices in order to build on synergies and limit data collection process costs.

*Transparency of inter-post wholesale requirement would apply both for inbound and outbound cross-border delivery*

In addition, as terminal dues depend on specific flows, information both on (i) what are the terminal dues applied by the NPO when delivering in its national territory (inbound) and on (ii) what are the terminal dues paid by the NPO when sending cross-border parcels (taking into account that it depends on the destination country) (outbound) would be important for the regulators. Only in this case, would regulators have enough transparency to access whether the regulatory principles are being complied with or whether market power is a potential issue.

*Transparency of inter-post prices requirement would be limited to the National postal operators.*

National postal operators need to pay each other an interconnection rate for the delivery of cross-border delivery services in each other's national market, when they don't have a delivery network in the country of destination. As national postal operators are often the designated universal service provider, covering their whole domestic geographical territory, due to the universal service obligation, it is the default operator when others are not.

**Option 3d - Enhancing the transparency of delivery prices charged by e-retailers, i.e. the extent to which the delivery price they charge to the final consumers reflects the prices that retailers themselves pay to delivery operators.**

Delivery operators often claim that high delivery charges (by e-retailers) are not reflecting their own pricing systems, in the sense that retailers often charge their customers much more for delivery than they themselves pay to delivery operators. Anecdotal evidence confirms the claim by delivery operators that retailers often charge their customers higher delivery charges than the ones they pay to delivery operators.

This option would require that e-retailers disclose to what extent and why the delivery price they charge to the final consumers reflects the prices that e-retailers themselves pay to delivery operators. This would provide consumers with more information about delivery charges and regulators with information on possible discrepancies between the price charged by the e-retailer and the price charged by the delivery operators.

However, for the reasons given below, we suggest that this option is discarded.

- Requiring information in this area would be highly intrusive, forcing retailers to publicly justify their pricing policy (and thus sharing sensitive information with their competitors);
- If a consumer does not like the price of a given retailer, he can use another retailer offering a similar product (online or offline); however, if a small retailer in a peripheral region cannot afford the prices asked by the national postal operators, he may not find any alternative operator serving him (see essential facility doctrine);
- Delivery prices charged by e-retailers go beyond the delivery network infrastructure which is the focus of this initiative.

### 1.3. Option 4: Enhance regulatory powers of postal regulators

National postal regulators can perform their tasks only if they are provided with a clear legal basis for their activities, a clear mandate outlining their tasks, as well as the independence and financial and human resources required to carry out these tasks. The following options (not necessarily mutually exclusive) could be envisaged:

#### **Option 4a - Powers to collect data from operators.**

As discussed in the problem definition section, national postal regulators often have little information about the existence and/or activities and/or behaviour of parcel delivery operators, especially in a cross-border context. The objective would therefore be to empower regulatory authorities in a way that they can properly monitor how competition unfolds on their markets, and on cross-border markets. The information collected should be essential for regulators to perform effective oversight. The process should be organised in the most efficient way, so as to keep administrative burdens imposed on operators and regulators at a minimum. A very basic set of information should be made available by operators. At the very least, information on the existence of the operator should be provided (e.g. through a notification requirement for any operator providing parcel delivery services into any given Member State).

National postal regulators often don't have neither data nor the power to collect data from operators, making their monitoring task more difficult to implement. In possession of market data they can assess the level of competition in the market and any potential competition concerns that may arise as well as compliance with certain regulatory principles. For this reason this option should be retained.

*Delivery operators would be requested to notify their presence in the market and would be requested to provide basic information on a yearly basis*

Some regulators acknowledge they do not have the means to verify who is acting on the cross-border delivery market. Delivery operators should be requested to inform about their activities in the delivery market to the regulators. In addition, basic information such as information on types of services provided (e.g. express versus deferred), information on prices, volumes, turnover and employment, would also be provided by the delivery operators on a periodic basis. In order to reduce administrative burden, the frequency should be reduced to once a year. A threshold could be imposed under which reporting requirements to the regulators would be dismissed to limit the burden on the smallest firms. The threshold could be based either on turnover or on size. However, there are wide variations in the level of turnover across Member States, due to the different sizes of the economies and the sectors in each Member State, which would make a decision on turnover complicated. A threshold based on the size of the SME is more proportionate and relevant in order to apply it consistently at an EU level. It is estimated there are 54.679 SMEs in the delivery sector within the EU-28<sup>456</sup>. By exempting SMEs with less than 49 employees it would be excluding 99% of the total SMEs in the sector. Those SMEs who would be affected by the package (744 firms, corresponding to 1% of the total SMEs in the delivery market) would face administrative burden costs related to the need to provide information to the regulators. In total there almost 1200 delivery operators in the EU-28 would be affected by this option, from which 744 SMEs (still accounting for about 63% of the delivery operators affected in this market by this option).

The purpose of the data collection exercise could be: (i) statistical reporting (e.g. on evolution of cross-border deliveries); (ii) monitoring of the market (e.g. market share, affordability of USO products, overall pricing trends); (iii) monitoring and reinforcement of the regulatory principles (e.g.

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<sup>456</sup> Eurostat, Services by employment size class (NACE Rev. 2, H-N, S95) [sbs\_sc\_1b\_se\_r2]

access to networks and infrastructure); (iv) identification of shortcomings and market inefficiencies. If NRAs would have concerns about possible market inefficiencies this may trigger inquiries within the scope of competition law by the relevant national competition authorities.

#### **Option 4b - "Ex-ante powers" for national regulators, notification of price increases.**

This option would require all delivery operators to notify NRAs one month in advance of changing their published cross-border prices. NRAs would not be required to examine the prices, and if no response from the NRA was received within one month the operator would be able to introduce the price change. The NRA would be able to take issue with the prices on the basis of information about costs, volumes, revenues etc.

#### **Option 4c - Powers to enforce market access, where appropriate, to NPOs' multilateral cross-border wholesale remuneration agreements and cross-border services**

NPOs would be required to grant third party access based on fair terms and conditions (which is not synonym to "for free") to their multilateral agreements on terminal rates and to their cross-border networks by publishing a reference offer.

- **Multilateral remuneration agreements** such as terminal-dues type agreements, REIMS, etc.

Such access is already required under EU competition law – in that this was one of the conditions for DG COMP to stop requesting for ex-ante notification of the so-called REIMS agreements (fixing inter-post termination rates). However, for lack of transparency (and formal complaints by competitors), this requirement has never been enforced. Yet again, operators are more likely to comply if they know they are being monitored

- Other cross-border agreements amongst NPOs such as the **interconnect programme** (e.g. participation in the common tracking system, in the common barcodes used by the incumbents).

There are concerns that the reinforced cooperation, under the interconnect programme, between incumbent operators might have anti-competitive effects. Already the Roadmap asked for "open systems" and "non-discriminatory" access for other operators. For this reason it is important to give the powers to regulators to enforce market access in these cases.

This option would ensure that all delivery operators in the same situation have access to same terms and conditions when accessing the cross-border networks and multilateral remuneration agreements of NPOs. NPOs would also be required to ensure that their tariffs are non-discriminatory. This principle is already enshrined in the PSD for the universal postal service (e.g. when it comes to access to networks or postal infrastructures). Moreover, to the extent that non-discriminatory access to agreements delivery terms and conditions such as REIMS is already required under EU competition law, this principle could be reinforced and/or when it comes to specific access issues (e.g. access to terminal dues, access to the interconnect programme of the national postal operators). This option should be combined with option 5c.

#### **1.4. Option 5: Regulate cross-border parcel prices**

This would directly introduce the regulation of cross-border parcel prices within the EU, as the regulations on international roaming have progressively limited the maximum tariff that can be charged for intra EU voice, SMS and data services, and from 15 June 2017 roaming charges will cease

to exist<sup>457</sup>. Price caps would be introduced for cross-border parcel delivery which could be a simple mechanisms (e.g. solely based on distance ) or a more advanced models that would take into account the actual cost of cross-border delivery (for example reflecting additional transport costs and domestic price levels).

There are however substantial differences between the postal and telecoms markets. Most mobile phone contracts are chosen based on domestic use, while cross-border parcel services are likely to be purchased without reference to the domestic offer. Cost differences for postal services are much greater than for telecoms due to the impact of geography, population density, labour, delivery and transport. Furthermore the potential items that would have to be scoped are far more complex than the products subject to the roaming regulation. Historically the market for international roaming services was less competitive than the postal one with weaker consumer pressure.<sup>458</sup>

Direct price regulation risks distorting competition in a complex market environment particularly given the current lack of knowledge of the cross-border parcel market.<sup>459</sup> Restricting direct price regulation to universal service products might also create distortions given the differences in the scope and features of USO products between Member States, and the growth of B2C services provided by other operators (though not always throughout a country or throughout the EU). Finally it would be disproportionate and contrary to better regulation principles to conclude that direct price regulation is the optimal solution to the failure of self-regulation to eliminate prohibitive cross-border delivery prices.

## 2. COMPARISON OF POLICY OPTIONS

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<sup>457</sup> [Regulations 2015/2120](#), 531/2012 544/2009 and 717/2007

<sup>458</sup> BEREC/ERGP (2015) p13

<sup>459</sup> The Citizens Advice/Citizens Advice Scotland response to the public consultation stated that price caps were not appropriate and could prove discriminatory and distort the development of competition. BEUC advocated more price transparency and a monitoring scheme. Neither E-commerce Europe nor EMOTA advocated price regulation.

### 1.5. Overview of the effectiveness, efficiency and proportionality of the different policy options

Objectives⇒ Policy options⇓	Effectiveness in achieving the objectives below		Efficiency (cost effectiveness) in achieving listed objectives	Proportionality) in achieving listed objectives
	Render regulatory oversight more effective	Enhance market and price transparency		
1. Baseline scenario / No action	0	0	0	N/A
3. To enhance the transparency of prices				
3.a – NPO Public list prices and public discounts	✓✓✓	✓✓✓	✓✓	✓✓✓
3.b -Individually negotiated prices between delivery operators and larger e-retailers	✓✓	✓✓	×××	×××
3.c - Inter-NPO wholesale prices ("terminal dues" etc).	✓✓✓	✓✓	×	✓✓
3.d - Delivery prices charged by e-retailers.	✓	✓✓✓	×××	×××
4 - To enhance the regulatory powers of NRAs				
4.a - Powers to collect data from operators	✓✓✓	✓✓✓	✓	✓✓✓
4.b - Ex-ante powers, notification of prices changes	✓✓	✓✓	×	×××
4.c – Powers to enforce market access to cross-border agreements	✓✓✓	≈	✓✓	✓✓

Impact on effectiveness and efficiency compared to the situation today,

✓✓✓(Strong) – ✓✓ (Moderate) – ✓ (Weak) positive contribution - ×××(Strong) – ××(Moderate) – × (Weak) negative contribution – ≈ marginal / neutral contribution - ? uncertain; n.a. not applicable  
0 no impact

**Option 3a** would strongly improve the transparency of cross-border prices by comparing the domestic and cross-border prices for a selection of USO or similar products on one website for all Member States. Regulatory oversight would be improved as NRAs would be required to make assessments of the affordability and cost-orientation of these prices. While the website might help this by showing prices for other operators, to have a greater impact this option should be combined with 3c which would give NRAs further information with which to assess costs. The option would cover NPOs only to ensure comparability between USO or similar services, though other operators offering comparable services could also request for their prices to be included, The option would be proportionate as the products would be limited to a set of USO or similar products commonly used for e-commerce and the information would be easily accessible (as the prices would be public) and only requested once a year. It would be moderately efficient in achieving the objectives as while it would improve price transparency and regulatory oversight (with the aim of reducing excessive cross-border parcel prices), it would not be as effective as price regulation in lowering prices.

**Option 3b** would also make regulatory oversight and price transparency of negotiated prices more effective though to a lesser extent as information would only be available to NRAs, not to then general public. It would also not affect the prices which are the focus of this IA, namely the prices paid by consumers and small businesses, therefore making it inefficient at achieving the objective of the policy. It would be disproportionate given the large number of prices involved.

**Option 3c** would make NPOs inter-operator prices transparent (though to NRAs only) and therefore improve regulatory oversight. It would be proportionate, but the provision of the information alone

would not be efficient in achieving the objective if it was not combined with the assessment of affordability contained in 3a.

**Option 3d** would have a small impact on regulatory oversight, as the publication of the prices paid by e-retailers would indirectly inform NRAs of what NPOs (and other operators) were charging customers. It would however not be proportionate as a large number of e-retailers would be required to publicly provide information about the costs of one of their inputs, and if the scope were limited to larger e-retailers to reduce administrative burdens, it is likely that negotiated prices would be disclosed (as larger e-retailers are unlikely to pay public list prices), making this option ineffective in achieving the aims of the policy. Publishing negotiated prices would also have a negative commercial impact on the e-retailers concerned and their delivery operators.

**Option 4a** would have a strong positive impact on regulatory oversight as NRAs would have information about all delivery operators (with at least 50 employees or operating in more than one Member State). Market transparency would be greatly improved through the publication of this statistical information. This option would be proportionate as the smallest delivery operators would be exempted and the information that larger delivery operators would be limited to core market information, and by standardising this information throughout the EU regulatory fragmentation would be reduced, The option would be efficient at achieving the objectives, but the efficiency would be limited by the high overall cost (though the impact on individual operators would be small).

**Option 4b** would have a moderate positive impact on price transparency and regulatory oversight as NRAs would have information about all operators' price changes before they were implemented. It would however not be proportionate as it would limit delivery operators commercial flexibility and it would therefore not be efficient, also as there would be no specific requirement for each price change to be judged on affordability and cost-orientation. If explicit approval was required for each price change, the result would essentially be price regulation.

**Option 4c** would make regulatory oversight more effective as NPOs would be required to enforce access (by other delivery operators) to their cross-border pricing agreements and services such as the Interconnect programme. It would efficiently achieve the objectives and be moderately proportionate as NRAs would only need to act on the basis of complaints or dissatisfaction with reference offers. .

Overall **options 3a, b c, and d** would all be effective, though option 3b and option 3d would significantly increase administrative costs. **Option 3d** would affect only retailers' surcharges, not high prices charged by delivery operators. **Option 4a** would contribute most to the objective of **enhancing regulatory oversight<sup>460</sup> and administrative costs would not be too burdensome. Option 4b and 4c** also achieve more effective regulatory oversight, but **4b** involves significant administrative costs for NRAs and delivery operators so it would not be efficient or proportionate. Administration costs for **4c** (as an ad hoc measure) would be limited, though efficiency would depend on other delivery operators requesting access.

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<sup>460</sup> ERGP internal report on the courier, express and parcel segments statistics, ERGP, September 2015



## 1.6. Overview of effects of the policy options for stakeholders

Stakeholders→ Policy options↓	Consumers	Retailers (SMEs)	NPOs	Other delivery operators	NRAs
1. Baseline scenario / No action	0	0	0	0	0
3. To enhance the transparency of prices					
3.a – NPO Public list prices and public discounts	✓✓✓	✓✓✓	×	≈	✓
3.b -Individually negotiated prices between delivery operators and larger e-retailers	≈	✓	×××	××	×××
3.c - Inter-NPO wholesale prices ("terminal dues" etc).	✓	✓	×	≈	✓
3.d - Delivery prices charged by e-retailers.	✓✓	×××	✓✓	✓✓	×
4 - To enhance the regulatory powers of NRAs					
4.a - Powers to collect data from operators	≈	✓	×	×	✓✓✓
4.b - Ex-ante powers, notification of price changes	✓✓	✓✓	×××	×××	×
4.c – Powers to enforce market access to cross-border agreements	✓✓	✓✓✓	≈	✓	≈

Impact on effectiveness and efficiency compared to the situation today,

✓✓✓(Strong) – ✓✓ (Moderate) – ✓ (Weak) positive contribution - ×××(Strong) – ××(Moderate) – × (Weak) negative contribution – ≈ marginal / neutral contribution - ? uncertain; n.a. not applicable.

**Option 3a** would have a positive effect on consumers and retailers in Member States where prices are currently high (compared to similar countries) as there would be pressure for prices to decrease. As NPOs prices for USO services (or similar) would be included, they would face a weak negative impact (as such prices are in any case already public) and there would be a neutral impact on other delivery operators as they would not be included in this option. There would be a small positive impact on NRAs as they would have clarification about their need to assess the affordability and cost-orientation of cross-border prices, through there would also be clarity about the services within scope. There would however be additional work involved.

**Option 3b** would have an uncertain impact on consumers as while they do not pay negotiated prices, they could benefit from a reduction in the prices charged by e-retailers (assuming that cost savings are passed on). Retailers would benefit from a reduction in negotiated prices (assuming there was one) but they have stated they do not believe that individually negotiated pricing agreements should be subject to regulatory oversight. There would be a negative commercial and practical impact on NPOs and other delivery operators through the disclosure of these prices and the work involved in sending them to the NRA. NRAs would face a significant additional workload through the need to assess the prices.

**Option 3c** would have a small positive impact on consumers and retailers, if it lead to lower prices, although they would not be directly impacted by this option. There would be a weak negative impact on NPOs who would be required to disclose the prices to NRAs, who would benefit from a small positive impact through being made aware of these prices. As they would not be concerned by this option, the impact on other delivery operators would be neutral.

**Option 4a** would have a neutral impact on consumers, who would not be affected by this option. There would be a weak indirect positive impact on retailers, assuming that greater regulatory oversight would provide them with better, cheaper delivery services. There would be a weak negative impact on NPOs and other delivery operators who would be required to provide data, though they might also benefit from a standardised format across the EU. There would be a strong positive impact on NRAs as they would benefit legal clarity about their ability to oversee cross-border parcel markets and the ability to collect statistical data covering the parcel market.

**Option 4b** would have a positive impact on consumers and e-retailers as the option might result in fewer and smaller price increases. There would be a strong negative impact on all delivery operators as they would be required to wait before introducing price changes which might also be queried by the NRA. There would be a weak negative impact on NRAs as they would receive additional data (for which they do not currently see the need).

**Option 4c** would have a moderately positive impact on consumers and a stronger impact on e-retailers who would benefit from a wider choice of operators (assuming other operators do request access to NPOs' cross-border services and price agreements). There would be a neutral impact on NPOs as the need to grant access would be balanced by additional volume could reduce fixed costs. Other delivery operators would therefore benefit. The impact on NRAs would be marginal as they would only need to act in the event of complaints.

Overall, consumers and e-retailers would be most positively affected by **options 3a, 4b and 4c**. Consumers would also benefit from **option 3d**, although this would have a strong negative impact on e-retailers. All delivery operators would, on the other hand, benefit most from option **3d**. They would be most negatively affected by **options 3b and 4b**. NRAs would benefit most from **4a**.

## **ANNEX 9: ASSESSMENT OF ADMINISTRATIVE BURDEN COSTS OF THE DIFFERENT POLICY OPTIONS**

### **Introduction and methodology**

Administrative and compliance costs have been analysed for each measure separately. Administrative costs are defined as “the costs incurred by enterprises, the voluntary sector, public authorities and citizens in meeting legal obligations to provide information on their action or production, either to public authorities or to private parties”.<sup>461</sup> The Commission's Standard Cost Model was used to calculate administrative cost for businesses and public authorities for options 3, and 4. The calculations are based on the assumption of 28 NPOs and, where applicable, a number of other cross-border EU operators meeting a relevant threshold condition.

All estimates of workload resulting from the various options are based on the Commission services' own reasoned judgment and experience of statistical data collection and publication.

Significant burdens are quantified (monetary estimates) on the basis of the EU "Standard Cost Model". The Core equation of the Standard Cost Model is a straightforward product of price (Tariff x Time) and quantity (Number of operators or regulators x Frequency). The calculation is done with the help of the "EU database on Administrative Burdens", which sets a standardized wage rate per hour depending on the staff category concerned. The resulting cost estimates should be seen as a broad indication of the relative costs when comparing options, and not as a measure of exact costs.

Options 3 a)-d) and 4a) would constitute administrative burden, whereas options 4 b)-c) would mainly include implementation and enforcement costs for regulators. The same standard cost model is used for all these costs.

In cases where "other operators" (not only NPOs) are concerned, it is assumed that only companies with at least 50 employees are included, in order to explicitly avoid administrative burden on the smallest companies. Option 3b) is an exception to this, as in that case on average 10 operators per MS would have negotiated prices with e-retailers.

It should be noted that the administrative costs are likely to be higher in the first year, as this will include some staff training, creating templates etc. Some reduction of such costs may be expected from the second year onwards.

### **Option 3 a) Enhancing the transparency of public list prices and public discounts**

As this measure concerns price data that is already publicly available, it would impose only a limited additional burden on NPOs and NRAs. Only NPOs (not other operators) would be included. To establish a reasonable and relevant overview, we would suggest collecting prices on data for two categories; packets and parcels. For each of those categories, price data would be collected on 3 weights: 500g, 1 kg, and 2 kg for packets, and 1, 2 and 5 kg for parcels. Furthermore, a differentiation should be made between various service levels, namely the cheapest alternative or tracked delivery (for parcels), or the cheapest alternative, registered or tracked delivery (for packets). Information

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<sup>461</sup> Commission impact assessment Guidelines.

would be collected for flows between all EU members. The information would be published on a dedicated European web site.

For the purpose of administrative burden calculation, we assume that the prices are compiled and published annually on a [dedicated section on the Commission's EUROPA website](#). This would require a work effort relating mainly to compilation of readily available information. Based on the assumption that the option would require clerk staff to spend around 1 man-day annually compiling and organising the data, the cost would amount to around 4 000 € for NPOs. Some NRAs already perform tests for affordability and cost-orientation for domestic services within the USO, but it is estimated that a streamlined analysis across all NRAs would mean a work load for compilation at NRA level estimated at about twice as high as at NPOs, given the need to assemble and analyse data. In addition, about one work-week of professional analysis would be needed at NRA level, to evaluate the affordability and cost-orientation of prices. This means the administrative burden for NRAs would amount to around 44 000 €.

### **Option 3b Enhancing the transparency of individually negotiated prices between delivery operators and larger e-retailers ("account" customers)**

The tasks under this option would be similar to option 3a, as all delivery operators would normally have this price data available. However, since more data is involved (i.e. one price per individually negotiated contract), the administrative burden for NPOs would be higher than in option 3a. The workload may be estimated at around 4 work-days, which would mean around 16 000 € (around 600 € per operator). In addition, other operators would be included in this option, but to limit the scope (and impact of administrative costs for delivery operators and NRAs), only the major operators (10 operators per Member State) would be included. With this restriction, for other operators the administrative burden would be 163 000 (around 600 per operator), so in total 179 000€ for all delivery operators combined. For NRAs, the administrative burden relating to data compilation is also likely to be more cumbersome than in 3a. The administrative burden for NRAs could be estimated at around 50 000 €, assuming information is collected annually and that around 7 man-days will be needed only for managing the large data sets that are likely to be involved and around 3 man-days for analysis of all prices.

### **Option 3 c) Enhancing the transparency of inter-post wholesale prices ("terminal dues" and similar charges).**

The work related to this option amounts to information sharing and is therefore very similar to what is described in option 3 a) above. The tasks, and resources required, for NRAs and NPOs are similar to the ones above. Each NPO would report how much all other NPOs are charged for delivery into its distribution network, as well as how much they themselves are charged by other NPOs. In practice, this means communicating the algorithm used for calculating terminal dues for each of the other 27 NPOs concerned. The information should be aimed at NRAs to inform the assessment of affordability and would not be published. At NPO level, the added administrative burden amounts to compiling and submitting already available information, and at NRA level, the added administrative burden amounts to receiving, organising and analysing this data, as well as some analysis. The workload is estimated to be marginally smaller for NPOs than in option 3a), as it would normally involve reporting on fewer variables. Thus, given an estimated workload of around 2 man-days, the administrative burden for NPOs could be quantified at around 8 000 €. The cost for NRAs would be around 31 000 €, based on a workload of roughly 4 man-days (i.e. a higher workload than for NPOs) for data compilation, and 2 man-days of analysis.

### **Option 3d) Enhancing the transparency of delivery prices charged by e-retailers**

Even assuming that all delivery operators with 50 employees or more and only the largest 10% of e-retailers would be included, the administrative burden would be significant. As stated elsewhere in this IA, according to Eurostat data it may be estimated that over 296 000 enterprises were active in e-commerce and distance selling business in EU28 in 2012. Around 220 of those companies are not SMEs. Depending on the threshold that may be established for e-retailers to be included, it may be assumed that 10% of all e-retailers could be of relevant size. This would mean that around 30 000 e-retailers would be included. Assuming that relevant data is readily available and that half a man-day would be needed to compile and submit the data, given the number of companies concerned, it would still amount to an estimated administrative burden of over 2 000 000 € for e-retailers only.

### **Option 4) Enhanced regulatory powers of postal regulators**

#### **Option 4a) power to collect data**

Information should be gathered on the types of services offered (e.g. express or other), as well as the prices, volumes, turnover and employment of individual operators. For operators, we assume that this would imply a workload of around 1 man-day annually, as data would be readily available at operator level, but still require a fair amount of administration work.

In addition to NPOs, only delivery operators with 50 or more employees should be included in this information obligation. Eurostat data indicates that this would concern around 1 200 delivery operators.<sup>462</sup> Given the same workload for "other operators" as for NPOs (one man-day), the administrative burden for this scenario would be around 170 000 € for "other operators" (companies with 50 or more employees), and around 4 000 € for NPOs. As to administrative burden on NRAs, DG GROW's experience suggests that while in some countries the NRAs adequately cover their national parcel markets, in others, the parcel markets are simply not visible from a regulatory or even from statistical point of view. If all operators with 50 or more employees are included, the administrative burden on NRAs may be assumed on average to be around 1 man-week of professional analysis, and a considerable effort at clerk-level (around 2 man-weeks), given the number of operators concerned. An average figure is used based on the other overall estimate of the workload, though in reality some NRAs would face lower costs as they already collect some data covering parcel operators whereas other NRAs would probably incur a higher cost, for example if data collection is currently limited to a small number of USO services. Overall, the burden on NRAs would be about 80 000€.

#### **Option 4 b) Ex ante powers for national regulators**

For delivery operators, it is assumed that option 4b would involve similar work to option 3a as many only change their published prices annually. Assuming, however, that all delivery operators (not only NPOs) are relevant (while, as in 4a, assuming that only operators with over 50 employees – i.e. around 1200 – would be concerned), the estimated administrative burden on these (NPOs and other operators) would be around 150 000 €. As operators would be required to notify the NRA of any price change one month in advance of implementation, the workload at operators' level may be estimated at less than one man-day annually.

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<sup>462</sup> NACE H53.

For NRAs, the cost would be related to analysis in addition to collection of data. It may be assumed that far-reaching analysis could be required, in particular as a number of NRAs would likely wish to evaluate the situation in detail with regular intervals, possibly in co-operation with National Competition Authorities. While the number of competition law cases is of course difficult to predict<sup>463</sup>, it may be assumed that the analytical burden could be heavy in this option. Against this background, the estimated costs would be around 250 000 € (assuming around on average 7 extra working weeks of analysis and administration). It should be noted that much of the NRA administrative burden under 4a (data collection) would need to be added to this, as such information gathering is needed for the regulatory powers under option 4 b.

#### Option 4c) Enforce market access

This option would concern only NPOs, not other operators. The administrative burden on NPOs is estimated to be similar to option 3a (involving around one man-day, as it would largely be a matter of providing information). For NRAs, the work would involve ad hoc analysis of reference offers. While there is little empirical evidence on the number of complaints in this area, the Commission estimates that the NRA burden may be around 66 000 €. While an NRA involved in a complex complaint might face a much higher burden, others might not be required to assess any cases. It seems therefore reasonable to assume that on average 2 man-weeks of professional analysis would be needed for each EU NRA for calculation purposes, though in reality the administrative burden would likely differ significantly between NRAs.

#### Estimated administrative burden and compliance costs (€ per year, rounded)

	Estimated cost NPOs	Estimated workload NPOs	Estimated cost NRAs	Estimated workload NRAs	Estimated cost other operators	Frequency	Sum
Option 3a	4 000 (around 150 per operator)	1 man-day (at clerk level)	44 000 (around 1 600 per NRA)	2 man-days (at clerk level) + 5 man-days of analysis (at professional level).	-	Annually	48 000
Option 3b	16 000 (around 600 per operator)	4 man-days (at clerk level)	50 000 (around 1 8000 per NRA)	7 man-days (at clerk level) + 3 man-days of analysis (at professional level).	163 000 (around 600 per operator)	Annually	230 000
Option 3c	8 000 (around 300 per operator)	2 man-days (at clerk level)	31 000 (around 1 100 per NRA)	4 man-days (at clerk level) + 2 man-days of analysis (at professional level).		Annually	39 000

<sup>463</sup> WIK (2013) indicates around 20 ongoing cases over 2009-2013.

Option 3d					E-retailers: Over 2 Million (around 70 per e- retailer)€	Annually	Over 2 Million
Option 4a	4 000 (around 150 per operator)	1 man-day (at clerk level)	80 000 (around 2900 per NRA)	3 man- weeks (around 2 weeks at clerk level and around 1 week at professional level)	170 000 (estimated work-load: 8 hours at clerk level) (around 150 per operator)	Annually	280 000
Option4b	4 000 (around 140 per operator)	1 man- days (at clerk level)	252 000 (around 9000 per NRA)	7 man- weeks (at professional level)	149 000 (estimated workload: 7 hours (at clerk level) (around 140 per operator)	Ad hoc	405 000
Option 4c	4 000 (around 140 per operator)	1 man-day (at clerk level)	66 000 (around 2400 per NRA)	2 man- weeks at professional and clerk level.	-	Ad hoc	70 000

## **ANNEX 10: COMMISSION'S 2013 ROADMAP ASSESSMENT**

### **Introduction**

This Annex provides an update of the actions that address issues identified by the Commission Communication, "A roadmap for completing the single market for parcel delivery Build trust in delivery services and encourage online sales"<sup>464</sup> ( hereafter 'the Roadmap'), adopted by the Commission in December 2013. Many of the initiatives responding to the Roadmap were still being developed in June 2015, when the 18 month 'deadline' following the Roadmap's publication ended in and during the period of the Commission's public consultation in 2015 (which ran from May to August). It is therefore premature to conduct a full evaluation of whether the objectives set out in the Roadmap have been met, so instead this annex sets out progress that has been made as regards the actions set out in the Roadmap, along with a preliminary assessment of whether this might meet the needs of users or whether further measures are needed.

### **Summary of the Roadmap and Stakeholder Consultation**

Following the consensus on the issues and the types of action that was needed following the 2012 Green Paper, 'An integrated parcel delivery market for the growth of e-commerce in the EU'<sup>465</sup>, the Roadmap set out a series of actions for postal operators, e-retailers, Member States (including national regulatory authorities) and the Commission in order to provide e-retailers and consumers with an increase in high-quality, accessible and affordable cross-border parcel delivery services.

Responses to the 2012 Green Paper consultation had expressed a preference for industry driven measures and most responses had also stated that they felt the existing regulatory framework was fit for purpose. The actions contained in the Roadmap were therefore largely of a self regulatory nature, but with the Commission closely monitoring progress and taking stock after 18 months to assess whether additional measures were needed, given the increasing importance of e-commerce to the European economy.

The actions in the Roadmap fell under three main objectives:

- Increased transparency and information for all actors along the e-commerce value chain
- Improved availability, quality and affordability of delivery solutions
- Enhanced complaint handling and redress mechanisms for consumers

During the course of the Roadmap, the Commission hosted several major workshops to bring together delivery operators and e-retailers to assess developments, including an assessment workshop on 29 June 2015, 18 months after the Roadmap's publication. This workshop brought together delivery operators, e-retailers, consumer representative, regulators and Member States to discuss the progress that had been made and the problems that persisted in

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<sup>464</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2013:0886:FIN>

<sup>465</sup> [http://ec.europa.eu/internal\\_market/consultations/docs/2012/parcel-delivery/121129\\_green-paper-parcel-delivery\\_en.pdf](http://ec.europa.eu/internal_market/consultations/docs/2012/parcel-delivery/121129_green-paper-parcel-delivery_en.pdf)



cross-border delivery markets. Delivery operators presented the services on offer to e-retailers, and e-retailers spoke about developments in returns solutions, an e-logistics information platform and a trustmark. In April 2015 Vice President Ansip and Commissioner Bieńkowska met the Chief Executives of 21 national postal operators to stress the importance of making rapid progress to improve the quality and price of cross border services, and the former Commissioner for the Internal Market, Michel Barnier, met postal operators in June and September 2014. The Commission services have also held regular meetings at a technical level.

A LinkedIn group, Improve parcel delivery in European e-commerce, was also created to act as a permanent online workshop to share views and ideas, whether about practical concerns with parcel delivery or to put forward solutions. The 2014 Postal User Forum focussed on parcel delivery, and the Commission's work in this area was also presented at the May 2015 European Social Dialogue Committee for the Postal Sector. Discussions have also taken place in the Postal Directive Committee and the E-commerce Expert Group, as well as the Council Working Party in October 2015. The 2015 open public consultation provided further evidence of the obstacles that e-retailers and consumers face when selling to/buying from other Member States and the improvement they would most like to see. For further details please see the Annexes on Evidence and Studies and Stakeholder Consultation.

### **Objective 1: Increased transparency and information for all actors along the e-commerce value chain**

#### **Action 1: Improve information for consumers on the characteristics and costs of different delivery and return solutions offered on the websites of e-retailers.**

Surveys have shown that that a lack of information about (high) delivery costs, (long) delivery times and returns procedures are responsible for a significant share of abandoned online purchases<sup>466</sup>. E-retailers, including their representative organisations, were therefore asked to provide easily understandable information on delivery and return options, potentially including a code of conduct, trustmarks and customer feedback options. The Commission committed to arranging meetings with e-retailers and consumer representatives to support this work.

One of the options that was tested in the 2014 study<sup>467</sup> (requested by the European Commission) of initiatives to support e-commerce through better functioning parcel delivery services was trustmarks. Trustmarks aim to improve consumer confidence that certain standards are being met and are particularly important for SMEs who may lack the financial and technical capabilities of larger retailers to advertise product features to consumers. Research undertaken as part of the study showed there were many trustmarks for e-retailers, and most European countries in fact had several, though at least one member state did not have any comparable ones for e-commerce. Instead of creating a new EU wide trust mark the

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<sup>466</sup> Copenhagen Economics (2013) *E-commerce and delivery* p154.

[http://ec.europa.eu/internal\\_market/post/doc/studies/20130715\\_ce\\_e-commerce-and-delivery-final-report\\_en.pdf](http://ec.europa.eu/internal_market/post/doc/studies/20130715_ce_e-commerce-and-delivery-final-report_en.pdf)

<sup>467</sup> WIK (2014) *Design and development of initiatives to support the growth of e-commerce via better functioning parcel delivery systems in Europe*

study therefore recommended work to improve existing trustmarks, by requiring more information about delivery elements (such as status or tracking services) to be made available, given that the importance of delivery information for consumers and the fact that it was not part of many existing trustmark standards. The study also suggested an umbrella certification process and that European initiatives could be particularly helpful for potential cross-border customers who might lack awareness of trustmarks outside their own country and for e-retailers to reach out to customers without going through multiple certification processes in different Member States.

The European Multi Channel and Online Trade Association (EMOTA) formally launched a European Trustmark for e-commerce in Barcelona in March 2014. The EMOTA scheme is based on a co-accreditation model, where websites will display their own (domestic) trustmark(s) in addition to an EMOTA logo/trustmark to show harmonised accreditation criteria have been met. 10 national trustmark schemes are participating and there are over 5,000 accredited online shops. The accreditation criteria include: a code of conduct with a high level of consumer protection, such as required information about prices, availability, delivery and returns; an accreditation process; compliant monitoring; alternative dispute resolution (ADR) schemes; and enforcement and sanctions.<sup>468</sup>

E-commerce Europe, who represent 16 national e-commerce association and over 25,000 companies selling products and/or services online to consumers in Europe, have also developed a pan-European trustmark for the e-commerce sector. The aim is to increase cross-border e-commerce through improved protection for consumers and merchants by establishing one European set of rules which is clearly communicated. This trustmark was rolled out in 11 countries on 30 September 2015 and over 10,000 online shops certified by a national association can join.

Likewise, some individual companies are developing their own standards. Google, for example, offers a certification programme for online shops, though its requirements are less stringent and the information it provides is focused on delivery and customer response times.

The Consumer Rights Directive adopted on 23 October 2011 (2011/83/EU) includes pre-contractual information requirements for distance and off-premises contracts. Amongst other things, before concluding a contract a consumer must now be informed about the total price of the good or services, including all additional delivery or postal charges (or where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable). The arrangements for payment, delivery, performance and the time by which the trader undertakes to deliver the goods, as well as any delivery restrictions that apply must also be stated. Information must also be provided about the cost of returning the goods. The DG Justice Guidance Document concerning Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council provided further clarification, among others, about information requirements, delivery, withdrawal rights and returns.<sup>469</sup> The European Commission also

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<sup>468</sup> <http://europeantrustmark.eu/>

<sup>469</sup> [http://ec.europa.eu/justice/consumer-marketing/files/crd\\_guidance\\_en.pdf](http://ec.europa.eu/justice/consumer-marketing/files/crd_guidance_en.pdf)

launched campaigns throughout 2014 to raise the awareness of European consumers about their rights (including the rights laid down by the Consumer Rights Directive) in Bulgaria, Cyprus, Spain, Greece, Italy, Latvia, Poland and Portugal. In 2015 the consumer awareness raising campaign was extended to six more Member States, namely the Czech Republic, Lithuania, Estonia, Slovakia, Hungary and Slovenia.

Furthermore, the open public consultation on parcel delivery indicated that consumers find locating information about delivery services on retailers websites far less problematic than obtaining certain delivery features (such as a specified time and day) or obtaining low prices or free delivery. Clearer information about delivery options and prices was however cited by nearly three quarters of consumers who responded as a something that would make them very likely or likely to buy more online. Some responses to the consultation noted the role that trustmarks and the Consumer Rights Directive could play in increasing information and consumer confidence in online purchases.

**Assessment:** No further action needed.

Existing initiatives from e-commerce associations to create trustmarks should encourage e-retailers to provide consumers with even better information about delivery and returns options, and give consumers even greater confidence to buy online from other Member States. The involvement of the representative bodies should also help raise awareness of the trustmarks among e-retailers, the use of existing trustmarks as a basis should also help recognition by consumers.

Furthermore, since the Roadmap was adopted, Member States should have transposed the Consumer Rights Directive. E-retailers throughout the EU are therefore now required to provide consumers with information about delivery and returns options and charges.

## **Action 2: Improve information for e-retailers on the delivery services available to them**

Many e-retailers, in particular SMEs, lack information about the different delivery options that are available to them. Research has often shown a need for more neutral and transparent information on service availability as existing tools fail to provide a comprehensive and up to date service. This is particularly true for cross border services. Poor information for SMEs also restricts choices for customers if the result is fewer delivery options, acting in a disincentive to purchase from that particular e-retailer.

To combat these issues, another option that was tested in the 2014 study<sup>470</sup> was an information platform on delivery services. The study recommended that the Commission should support the development of such information platforms and that public authorities might need to consider promoting or funding them. Therefore in July 2015 the European Commission launched a call for proposals for an information platform on parcel delivery services, supported by COSME funding. The objective was to seek proposals for the creation and

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<sup>470</sup> WIK (2014) *Design and development of initiatives to support the growth of e-commerce via better functioning parcel delivery systems in Europe*

maintenance of a web information platform for e-retailers to provide them with information about the different options for parcel delivery available to them, including for cross border deliveries.

E-commerce Europe, a European e-commerce trade association, have previously recommended the development of an e-logistics information platform to help e-retailers, particularly smaller ones, to find out about the range of delivery services on offer and help them understand different markets. The e-logistics platform would provide information such as legal requirements which impact logistics (customs, recycling); delivery and market intelligence, including local delivery habits and preferences (e.g. cash on delivery); quality of service and satisfaction data; and include a matchmaking and marketplace feature to help e-retailers find the most relevant suppliers. To reduce costs there would also be a feature that would allow e-retailers to combine their volumes and therefore negotiate better discounts with delivery operators, both for first mile freight forwarding and last mile delivery.

As part of a campaign to stimulate digital entrepreneurship, the European Commission has published '10 things to know when doing business online'.<sup>471</sup> This includes information about delivery services such as the different types of delivery operator, national and European requirements, customers' delivery rights, liability for loss or damage and how to deal with complaints.

The 2015 open public consultation indicated that information from delivery operators about their delivery options and prices is less of a problem for e-retailers than obtaining satisfactory delivery features and prices. Indications are however that e-retailers may not be well informed about the range of options available to them, for example on discounts, and that more choice of delivery operators would help e-retailers increase their online sales.

**Assessment:** No further action needed until existing initiatives have been introduced and evaluated. There is still a lack of comprehensive information for e-retailers about the different types of cross-border delivery services available to them. However, when it is introduced, the e-logistics platform should have a positive impact on the information available to e-retailers, helping them to make more informed choices and obtain better deals. The Commission will monitor the number of delivery operators and e-retailers using the platform and the evolution of prices of basic parcel products.

### **Action 3: Increased transparency on (cross border) delivery markets, delivery services and quality standards on the basis of the Postal Services Directive.**

The Postal Services Directive (Article 22a) requires Member States to ensure postal service providers provide all the information national regulatory authorities require to ensure conformity with the Directive or for clearly defined statistical purposes. The Article is not limited to products or services falling within the scope of the universal service, nor to universal service providers. Given the growing importance of e-commerce, it is particularly important that such information covers the parcels market outside the universal service area, as well as within it, and includes cross-border as well as domestic data.

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<sup>471</sup> <https://ec.europa.eu/growth/tools-databases/dem/watify/selling-online?language=en>

Following Eurostat's decision to stop collecting postal statistics, this role was taken over by the Postal statistics team in the Directorate General for the Internal Market, Industry, Entrepreneurship and SMEs in 2014. The first set of statistics was collected in conjunction with the national regulatory authorities (NRAs) in 2014 and published in the Report on the Application of the Postal Services Directive and on the Commission's website in October 2015. The exercise showed that the collection of market data by NRAs is not uniform and is not necessarily considered an aim of regulation or a key duty by NRAs in all member states. NRAs have a strong focus on services within the scope of the USO and data on the wider parcel and express segments of the market is far less reliable. In some instances this is due to the NRA's (legal) mandate, in others it appears to be the result of resource constraints, or market data being a low priority.

The Commission has asked the European Regulators Group for Postal Services (ERGP) to assess and provide opinions on the [functioning] of the cross-border parcel delivery market. They have also noted discrepancies in the definitions used and the data collected by NRAs.<sup>472</sup> NRA's data collection models are centred on letter post markets and that there is much less data available on parcels<sup>473</sup> and for example, many NRAs do not know which operators are active in the parcel market. Many NRAs have a limited mandate to cover parcels: few have the legal power to collect data on all substitutable parcel delivery offers. Although not necessarily proof of a lack of oversight (and could indeed indicate a very well-functioning market) when asked only four NRAs had undertaken legal or regulatory proceedings against a cross-border parcels provider. An ERGP Report on core indicators for monitoring the European postal market is planned for the end of 2015.

The ERGP report on Quality of Service and End User Satisfaction<sup>474</sup> found that 13 Member states measured transit time for parcels, whereas all measures the transit time of priority mail. Six Member States set a D+1 quality of service target for parcels, compared to almost every Member State for D+1 letter post, though a further 11 countries have a slower regulatory target for transit time.<sup>475</sup> For those countries that do measure the transit time of parcels, different methodologies are used. For parcels a minority of Member States are able to take corrective action if the universal services provider fails to meet specified standards for parcels. Again, this is asymmetric to the regulation of letters, where most Member States are able to take action to address the failure to meet targets.<sup>476</sup> The ERGP has continued its work on cross-border parcel delivery for e-commerce purposes in 2015 though the identification of different legal regimes (national or European) that may apply to European domestic or cross-border e-commerce parcels delivery and of any specific provisions that may be in conflict with each other, in order to identify inconsistencies, redundant regulation or possible aspects of primacy. The ERGP has also conducted further work on end-user satisfaction and monitoring of market outcomes in 2015.

The Commission also published a study in 2014 examining initiatives that could improve transparency and therefore encourage cross border delivery. A summary of WIK-Consult's *Design and Development of initiatives to support the growth of e-commerce via better*

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<sup>472</sup> ERGP (15) 28 Legal Regimes applicable to European Domestic or cross-border e-commerce parcels delivery -

<sup>473</sup> ERGP (14) 26 Opinion on Parcel Delivery

<sup>474</sup> ERGP (14)(24) Report on Quality of Service and end-user satisfaction

<sup>475</sup> Seventeen countries have a regulatory routing time for parcels.

<sup>476</sup> Source ERGP (13) (31) Report on the Quality of Service.

*functioning parcel delivery systems in Europe* is provided in the Evidence Section of the Annex on Procedural Requirements. Many of the initiatives it assessed, namely umbrella trustmarks, an information platform on delivery services, interoperability of cross-border delivery operations and measurement of transit time are being taken forwards and are assessed elsewhere in this annex. The information platform will also include information on prices and quality of service, akin to the content suggested for the e-commerce scoreboard.

**Assessment:** Further measures are needed. There has been little improvement to date in the quality of data available for the EU parcel market and it continues to fall short of the transparency on the overall parcel delivery market that was envisaged by the Roadmap. This means that regulators may be unable to ascertain possible anticompetitive behaviour. (See problem definition for further details).

Regarding information for e-retailers and consumers, the information platform will also include information on prices and quality of service, akin to the content suggested for the e-commerce scoreboard.

## **Objective II: Improving the availability, quality and affordability of delivery solutions.**

### **Action 4: Promote enhanced interoperability of parcel delivery operators to support efficient cross-border trade**

Interoperability is a particular issue for cross-border (rather than domestic) ecommerce and is one of the drivers of higher costs and lower quality of service. Traditionally international operators (integrators) have been focussed on the B2B market, rather than B2C or C2C. Two trends have been identified in how this is being addressed: innovative delivery and return solutions, targeted at smaller retailers in particular and cooperation between delivery operators. The latter may however not be based on open interfaces, restricting the delivery operators who can use them, yet on the other hand competition rules limit the level of cooperation to prevent market abuse. In their responses to the public consultation many national postal operators stated that improved interoperability was the main feature that would improve the cross-border delivery services on offer.

Following the 2012 Green Paper, the national postal operators in conjunction with the International Post Corporation and Post Europe agreed to work together to improve the interoperability of their national postal networks. Their e-commerce "Interconnect" programme covers five themes: delivery choice, returns solutions, tracking, labelling and customer service. Progress on these themes is set out in this annex and the operator's final status report also forms part of this impact assessment.

As part of the 'Interconnect' programme, EU national postal operators have committed to make at least two locations available for cross-border deliveries to improve delivery choice and convenience. These options, such as delivery to parcel lockers and post offices as well as home delivery will make it easier for consumers to receive parcels at convenient locations and reduce failed delivery (therefore also reducing operators' costs). Customers will be able to make this choice at the point of purchase, and some will also be able to change their initial decision after the item has been dispatched but before the first delivery attempt is made, for example if the customer will no longer be at home or passing a particular pick up point on the delivery day. Some of these options are already available for cross-border parcel services, though others will not be introduced until mid-2016, even where options are already available

for domestic deliveries. Around three quarters of the consumers who responded to the open public consultation stated that being able to choose the place where the goods will be delivered would encourage them to buy more online.

Returns are being addressed through the "common return platform" which will enable e-retailers to offer a priority pre-paid postage label for cross-border returns, either pre-printed or at the request of the buyer. The return will be able to be tracked through either the website of the e-retailer or the delivery operator. All EU national postal operators have agreed to accept (and return to the country of origin) parcels with this label, as part of the 'industry initiative'. Most will be offering the service to e-retailers in their country by the end of 2016, although there are several exceptions where the service will not be available due to a lack of demand from e-retailers. Over half of the e-retailers responding to the open public consultation stated they were very unsatisfied or not satisfied with the availability of affordable return solutions. Affordable returns processes were mentioned by over three quarters of consumers who responded as something that would encourage them to shop more online.

Lightweight track and trace services are also due to be introduced, based on RFID technology for packets and parcels up to 2kg. Another new barcode data standard for track and trace (EMSEVT3) is also being rolled out and due to be available in most Member States by the end of 2015. Customers will be able to access track and trace information through the website of the e-retailer or delivery operator. The open public consultation indicated that in general e-retailers are satisfied with track and trace capability (over half who responded to the question were either satisfied or very satisfied). Nevertheless, over half of the consumers who responded stated that better track and trace capability would make them buy more online, although this was not the highest priority area. Consumers (and e-retailers) will be able to track their shipments on the websites of e-retailer or postal operators by using an IT tool.

Harmonised labels have been developed to facilitate cross-border exchange and to eliminate the cost of re-labelling, improve track and trace ability and reduce transit times, therefore improving the quality of service. Recognition of the design by the Universal Postal Union and European Committee on Standardisation is also being sought. The use of open standards is important as e-retailers are keen for delivery operators to use common standards, in order to make it easier for e-retailers to work with different operators who currently use different systems.

One of the six priorities in the annual Union work programme for European Standardisation for 2015 was postal services. The Commission aims to issue a standardisation request concerning the specific features of parcel delivery services in 2016 and is also considering whether a request for the revision of any existing European standards is needed.<sup>477</sup> The importance of open standards and infrastructure was also highlighted in the Roadmap, in workshops with stakeholders and in responses to the 2015 public consultation.

The price of cross-border delivery does however continue to act as an obstacle to greater cross border e-commerce. The areas for improvement that retailers said would make them most likely to sell online or increase sales to other countries were related to prices, namely 'if

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<sup>477</sup> COM (2014) 500 final European Commission, *Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee The annual Union work programme for European standardisation for 2015* <http://ec.europa.eu/transparency/regdoc/rep/1/2014/EN/1-2014-500-EN-F1-1.Pdf>

prices for cross-border delivery were cheaper than they currently are' and 'if prices for cross-border delivery were comparable to domestic prices'.<sup>478</sup> Smaller companies were particularly likely to be unsatisfied with the price of delivery services. Nearly two thirds of consumers who responded to the open public consultation stated that lower prices for cross-border delivery and free delivery were "very likely" to make them buy more online. These were the two most popular improvements for consumers.

**Assessment:** No further action is needed on interoperability at present, pending the reaction of consumers and e-retailers to products/services being developed. Track and trace, options for delivery locations and returns are frequently cited by consumers and e-retailers as features that would encourage them to buy or sell more online to or from other Member States. These views were repeated at the Roadmap Evaluation workshop held in June 2015, and in the open public consultation, though the products will need to be brought to market and actually used by e-retailers and consumers before a final judgement is made. E-retailers have called for greater clarity about the improvements postal operators are developing, particular regarding timings, and that consultation with e-retailers forms a part of product development. E-retailers also want postal operators to use open and compatible standards that can be used by all postal operators. The Commission will continue to monitor implementation and whether the new services are based on open standards and infrastructure. An evaluation of the Roadmap will be conducted alongside a review of the initiative on price transparency and regulatory oversight, which could take place two years after the instrument enters into force and four years in its final stage.

Further action is however needed on affordability. Progress in this area has been slower than improvements to the quality of service. Commission research shows that prices for cross-border delivery are often two to five times higher than domestic prices. Progress on affordability has been far slower. Surveys continue to show that the price of cross-border shipments poses a problem for consumer and e-retailers, in particular smaller e-retailers who do not have the volumes to negotiate substantial discounts. Measures to increase the price transparency and through that the affordability of cross-border delivery services are the focus of the current initiative.

### **Objective III: Improving complaint handling and redress mechanisms for consumers**

#### **Action 5: Enhance consumer protection to help consumers solve cross-border disputes**

In 2013, nearly 40% of consumers indicated that problems with delivery were preventing them from shopping online<sup>479</sup> and both consumers and e-retailers complained that product returns and resolving complaints across borders were more problematic than for domestic purchases and sales<sup>480</sup>. Complaints handling by postal operators was the third least satisfactory aspect of European cross border delivery services for e-retailers responding to the

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<sup>478</sup> Q22 - Which, if any, of the following improvements to the delivery process would make you more likely to sell online or increase your online sales. Please select the three most important to you. Chart shows the number of responses

<sup>479</sup> Special Eurobarometer 398 Internal Market

<sup>480</sup> Flash Eurobarometer 413: Companies Engaged in Online Activities; European Commission Consumer Study, Identifying the Main Cross Border Obstacles to the Digital Single Market; and discussions with stakeholders.



open public consultation.<sup>481</sup> The Postal Services Directive Article 19 does however require that Member States ensure that transparent, simple, inexpensive procedures are made available by all postal service providers (as well as the universal service provider) for dealing with postal users complaints. All Member States have done this and most have appointed another competent national authority such as an ombudsman to review complaints that are not satisfactorily resolved.

Cross-border quality of service complaints were assessed in the ERGP's 2014 Report on Quality of Service and End User Satisfaction.<sup>482</sup> Around half the NRAs in EU Member States have data on cross-border complaints, at least for the universal service provider, though a small number of Member States also included other postal service providers. Complaints about cross-border services appeared to have grown in most instances .

As an aspect of the "Interconnect" programme, national postal operators introduced a common protocol of cross-border complaints handling in June 2015. The customer service centres of all the EU28 national postal operators<sup>483</sup> are linked through a web based system with fixed procedures and an initial response target of two days, though for more complex inquires the customer is notified and the target extended to ten days.

In June 2013 the EU legislator adopted a Directive on Alternative Dispute Resolution (ADR) and a Regulation on Online Dispute Resolution (ODR). The new legislation on ADR and ODR allows consumers and traders to solve their disputes without going to court, in a quick, inexpensive and simple way, which will encourage cross-border e-commerce. In February 2016 an EU wide ODR platform was established by the European Commission for disputes that arise from online transactions. The platform links all the national alternative dispute resolution entities notified by the Member States and operates in all official EU languages.

**Assessment:** No further action needed. Specific action to improve the way in which complains are dealt with, notably the common complaints handling protocol, ought to help cross-border customer service when things go wrong, but evidence is needed to show that this service is working in practice and having a positive impact on the perceptions of cross-border buyers and sellers. Measures to simplify the cross-border returns process, as part of the 'industry initiative' common returns platform (see action 4 for details) should also help give online shoppers assurance that they can easily return unwanted products – though the cost of returns may still be a barrier.

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<sup>481</sup> Q13 (retailers) - How satisfied are you with the following delivery features when selling to other European countries?

<sup>482</sup> ERGP (14) 24 ERGP Report 2014 on the Quality of Service and End-User Satisfaction

<sup>483</sup> The Global Customer Service System is in fact used by 182 national postal operators globally.

# **ANNEX 11: EX-POST EVALUATION OF THE EXISTING REGULATORY FRAMEWORK**

## **Retrospective evaluation of the existing regulatory framework (i.e. the Postal Services Directive)**

### **Table of Contents**

#### **1. Purpose and Scope of this Annex**

#### **2. Ex-post evaluation of the Postal Services Directive**

##### *2.1 The Evaluand – the Postal Services Directive*

2.1.1 The problems tackled by the Postal Services Directive

2.1.2 The objectives pursued by EU postal reform, and its "intervention logic"

2.1.3 The provisions of the Postal Services Directive affecting the parcel markets

##### *2.2 Methodology and evidence base*

##### *2.3 Evaluation of the Postal Services Directive (with a special focus on parcels)*

2.3.1 The **effectiveness** of the existing regulatory framework

2.3.1.1 To what extent has the PSD contributed to enhancing competition in the postal and parcel markets?

2.3.1.2 To what extent has the PSD contributed to securing the continuous provision of "universal postal services" across the EU territory?

2.3.1.3 To what extent has the PSD contributed to improving the quality of postal services provided to business and citizens?

2.3.1.4 To what extent has the PSD contributed to enhancing regulatory oversight by national regulatory authorities (NRAs), with a view to ensuring that competition takes place on a level playing field?

2.3.2 The **efficiency** of the existing regulatory framework

2.3.3 The **relevance** of the existing regulatory framework

2.3.4 The **coherence** of the existing regulatory framework

#### **3. Summary and conclusions**

## **1) Purpose and scope of this Annex**

On 19 May 2015, the Commission adopted its Better Regulation Agenda<sup>484</sup>, which stresses that major policies should be continuously assessed and evaluated over their lifetime to ensure they stay fit for purpose. More specifically, the Evaluation Guidelines adopted on the same day emphasised that policy preparation should be supported by both retrospective performance evaluations and forward looking impact assessments.

Annex 1 already described the fact-finding process that has fed this (forward-looking) impact assessment, listing all data sources that have been used for this report (e.g. studies, consultations, surveys, workshops, etc). This annex, focuses on those elements that could be expected from a retrospective evaluation exercise, the purpose of which is to provide evidence-based judgements of the extent to which an intervention has been effective and efficient, relevant given the needs and its objectives, coherent both internally and with other EU policy interventions and achieved EU added-value.

However, the challenge of this annex is that **there had never been a targeted "legislative instrument on cross-border parcel deliveries"** which could now be tested for its effectiveness, efficiency and relevance. The most relevant sector-specific regulatory framework affecting the parcel sector is the **Postal Service Directive (PSD)** – the focus of which had been on **letter mail**.<sup>485</sup> With e-commerce driven B2C parcel deliveries being a fairly recent phenomenon, the PSD had not meant to address parcel delivery over and above a very basic guarantee (i.e. a basic universal service obligation) that all citizens should be able to send and receive parcels. These were essentially "C2C" (citizen-to-citizen) parcels, handed over in a postal office. At that time, today's needs in terms of affordable, convenient and high-quality B2C parcel deliveries simply did not exist, and hence were not part of the PSD's "intervention logic" (see further below for details).

Outside the very limited scope of "USO parcels" sent from citizen to citizen, the "parcel market" had traditionally been ruled by market forces, as parcels had never been covered by the old "postal monopoly" (= reserved area).

Indeed, this impact assessment largely tries to make the case that **the absence of an effective regulatory framework for parcel markets has been a key driver behind the quality and pricing problems identified** (see problem definition of the main body of the impact assessment report), and evidence supporting this claim is being presented throughout the report.

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<sup>484</sup> COM(2015) 215 final

<sup>485</sup> It should be noted that the Commission adopted, on xxxx, an Application Report based on Article 23 of the Directive, which covered the broader postal and parcel markets (with a clear focus on letters). This annex reproduces its key findings, while looking specifically into evaluative information collected on provisions affecting the parcel markets.

The present Annex examines the Postal Service Directive from three perspectives:

- To what extent has the Directive proven successful concerning the overall letter and parcel markets, given the significant changes affecting these markets in the past few years?
- To what extent have those provisions of the Directive which do affect the parcel markets proven to be effective in the light of *today's* e-commerce needs?
- To what extent has the absence of more targeted parcel-related provisions in the Postal Service Directive proven to be problematic in addressing today's needs?

## **2) Ex-post evaluation of the Postal Services Directive**

### **2.1 The evaluand – the Postal Services Directive**

In this section, we are describing the subject of this evaluation - the Postal Services Directive as last amended in 2008 - more closely. What problems did it mean to address at the time of its adoption? What objectives did it mean to attain, and how (i.e. its "intervention logic")? To what extent did it cover parcels?

#### **2.1.1 The problems tackled by the Postal Services Directive**

In line with international practice, postal services had for a long time been provided in the EU Member States by a postal service provider enjoying monopolistic rights (referred to as the "reserved area"). The process of liberalising the EU postal markets was set in motion by a Green Paper in 1992, and gradually implemented through three Directives, adopted in 1997, 2002 and 2008.

While this process has to be seen in the wider context of the creation of the Single Market, therefore with a clear cross-border dimension, the **main problems to be tackled** were probably more of a domestic nature:

- Most national operators were highly **inefficient and unprofitable**, thus requiring systematic support from taxpayers' money.
- The **lack of customer orientation** resulted in **poor quality service** rendered to the users of postal services (i.e. business and citizens).

The main focus at that time clearly was on letters, and postal services were considered to be the most important medium of communication (except for the telephone).

#### **2.1.2 The objectives pursued by EU postal reform, and its "intervention logic"**

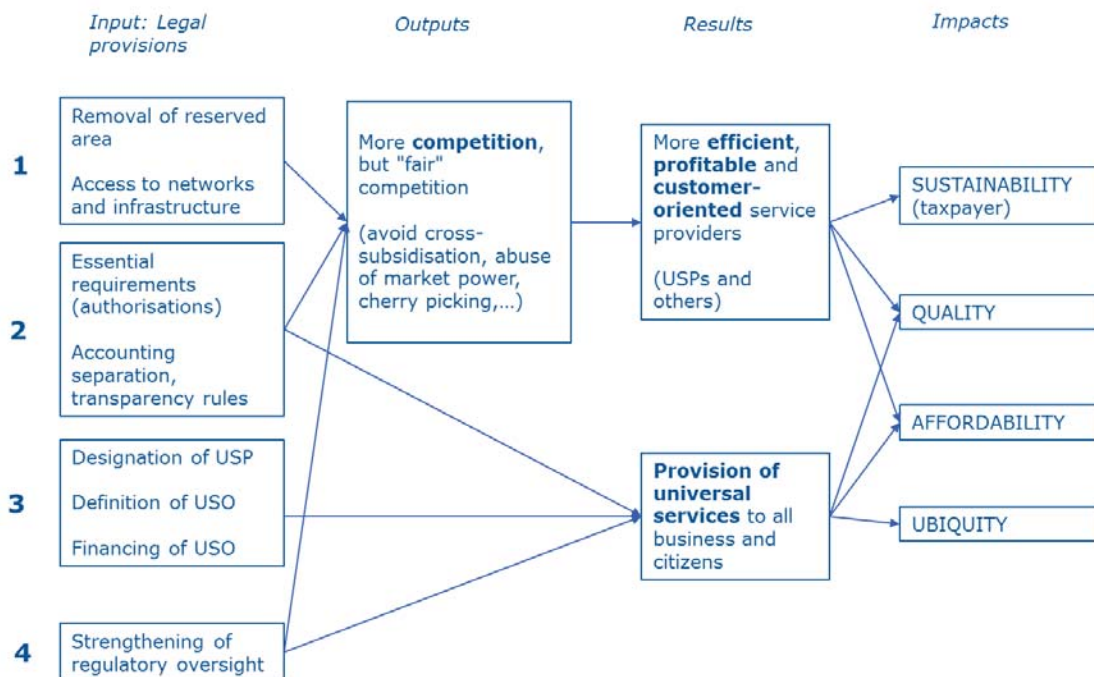
In order to improve the efficiency (and thus **viability/sustainability**) and customer orientation (and thus **quality**) of postal service providers, the introduction of competition was considered the most promising remedy. However, two main risks had been identified, which needed to be catered for:

- The risk that not all users (citizens) would benefit in the same way from a more market-based approach. As purely market oriented operators would naturally concentrate on the "profitable segments" of the market, there was a risk that business or citizens located in peripheral or otherwise geographically challenged areas might not receive the same level of service than those residing in more densely populated areas. In order to ensure territorial and social cohesion, and in the light of the key function of letters as a means of communication, the objectives of "**ubiquity**" and "**affordability**" (which had already been part of postal policy for a long time) were recognised as important counterparts to the above-mentioned objectives relating to "efficiency/sustainability" and "quality".
- The risk that competition between incumbents and market entrants may not unfold in a fair and efficient manner. The postal market is a scale-driven business, depending on large networks which are both capital and labour intense. Market entry is therefore difficult and may require a staged approach, requiring for instance (fair) access to (parts of) existing networks. The gradual introduction of competition in a scale-driven business affected from trade imbalances that is expected to provide essential services to the entire population required certain safeguards for both incumbents and market entrants:
  - Market entrants needed to be supported in the light of the **market power** enjoyed by the incumbents, e.g. by being given access to the latter's networks or infrastructures, by mechanisms that prevent undue **cross-subsidisation** by universal service providers between USO and non-USO services, etc.
  - Incumbents needed to be protected from excessive "**cherry picking**" by new entrants, which might not only focus on profitable market segments (which could be expected from a purely market-driven operator), but do that in a way that neglects all standards that the incumbent would be legally required to meet. The main fear raised at the time was that market entrants might attempt to compete mainly on the basis of lower **social and employment standards** offered to their employees.

The Postal Services Directive therefore pursued the following main policy objectives:

- Gradually opening up the letter markets to competition, so as to enhance the efficiency of operators and improve the price of quality of services rendered to users.
- Ensuring the continued provision of a minimum universal service, and provide for options of financing that service if it creates an unfair burden on the universal service provider.
- Ensuring that the competition between private operators and universal service providers takes place in a fair and transparent manner.
- Ensuring proper enforcement of this legal framework through national regulatory authorities.

The way in which the above objectives and risks were translated into legal provisions is illustrated in the following **intervention logic**:



Explanatory comments:

*Inputs (legal provisions)*

1. Core provisions aimed to open up the letter markets for competition. Gradual phasing out of the so-called reserved area (= monopoly). Additional provisions (in terms of "access" rules") making it easier for potential market entrants to enter a market characterised by the need to build up and maintain large networks (which are labour and capital intense). Rather than building up complete networks from scratch, entrants can focus on some parts of the chain only, while using the incumbent's network for the parts they cannot cover themselves.
2. Core provisions aimed to protect the legitimate interests of incumbent operators and society at large on the one hand and those of market entrants on the other hand. Authorisation procedures based on "essential requirements" are largely meant to avoid undue "cherry picking" by new entrants, by ensuring that they meet certain minimum standards, e.g. in terms of service quality, or social and employment standards. On the other hand, new market entrants are inter alia protected by certain rules (e.g. on accounting, transparency) that aim to reduce the risk of cross-subsidisation by incumbent operators between USO and non-USO services.

3. Core provisions aimed to ensure that a minimum level of universal services are provided in an affordable way at a minimum frequency and quality across the territory, and that those serviced can be financed if the universal service provider suffers from excessive costs.
4. Core provisions ensuring effective oversight of the sector, with national postal regulators ensuring that the provisions of the Directive are met.

### *Outputs*

More competition, in that an increasing number of operators enter the previously monopolised areas. However, as a result of the safeguards under inputs 2 and 4 above, all competitors would have to observe certain rules of the game.

### *Results*

As a result of enhanced competition, all operators (but the former incumbents in particular) are expected to become more efficient, customer oriented and hence profitable.

As a result of the designation of a universal service provider, with the ensuing rights and obligations, the provision of good and affordable services to the entire population should be ensured.

### *Impacts*

Sustainability. With the former incumbents becoming more efficient and profitable, the overall cost of providing universal service to the entire population should be reduced. As a result, taxpayers would have to bear a reduced burden.

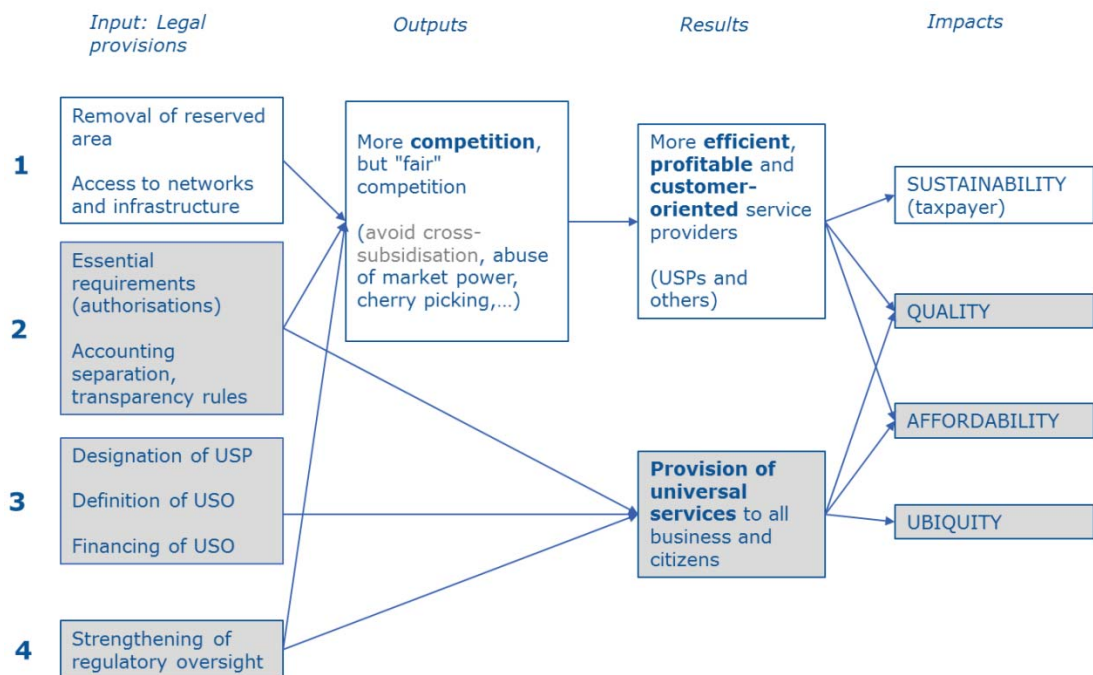
Quality. On the one hand, competition between incumbents and entrants should result in more innovation, both in terms of processes and products, and hence improve the quality of service rendered to customers. On the other hand, the minimum quality requirements imposed on the universal service provider would equally ensure good quality of USO services.

Affordability. On the one hand, competition should exercise a downward pressure on prices (in particular for business customers). On the other hand, the powers given to postal regulators in enforcing the Directives' provisions inter alia aim to ensure the affordability of USO products (e.g. for priority letter mail).

Ubiquity. While new entrants are unlikely to cover the whole territory, the USO-related provisions of the Directive ensure that all business and citizens, whatever their location, will receive minimum universal service.

### 2.1.3 The provisions of the Postal Services Directive affecting the parcel markets

As explained in the previous section, the PSD, while focusing on letter markets, directly or indirectly also concerns the parcel markets. Looking at the PSD intervention logic again, the boxes in shading indicate which parts of it appear particularly relevant for parcels as well:



In contrast to the letter markets, **no specific problems for parcels had been identified at the time**. Parcels had never been part of the postal monopoly, and a number of postal and parcel operators aimed to satisfy the needs emerging on the market. In a very simplistic way, one could say that:

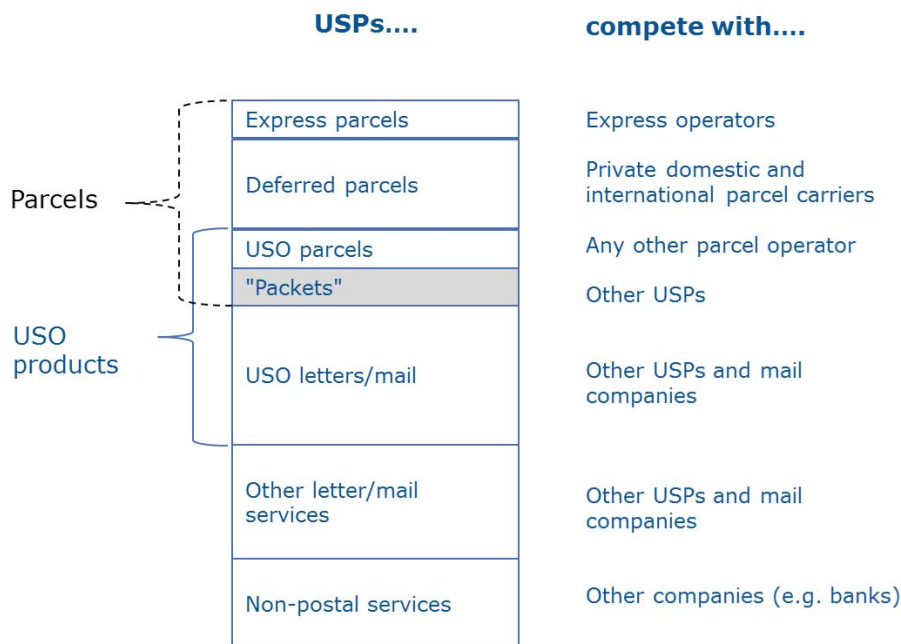
- Incumbent postal operators served the (fairly limited) needs of citizens for C2C over-the-counter parcels, as part of their much broader universal service obligation. (This is why the USO-specific parts of the above intervention logic have been highlighted.)
- A number of incumbent postal operators were also active on the B2B parcel markets, either with standard (i.e. "deferred") or express parcel services.
- Integrated express carriers (such as DHL, TNT, UPS or FEDEX) provided domestic and international express and courier services on the B2B markets.
- A number of private parcel carriers (other than the incumbents or the express carriers) provided domestic or international B2B parcel services, mainly of a standard/deferred nature.



The main relevance of the Postal Service Directive therefore resided in the fact that:

- Citizens should continue to benefit from basic USO parcel services, but provided by more efficient and customer-oriented universal service providers.
- Such basic USO parcel services should also be of a good quality and affordable if provided cross-border, i.e. between Member States.
- Competition on the parcel markets should not be distorted by undue cross-subsidisation by incumbent postal operators between their USO/letter activities and their activities on the (largely) unregulated parcel markets (which is why the Directive's provisions concerning regulatory oversight in principle covered the entire postal *and* parcel markets).

The last bullet point is particularly relevant in that postal incumbent operators not only provide a wide range of services (going well below parcels), but also compete with a wide range of postal and non-postal operators. The boundaries between these services are changing constantly, with some of them getting increasingly blurred. The following chart aims to illustrate this point in a very simplified manner:

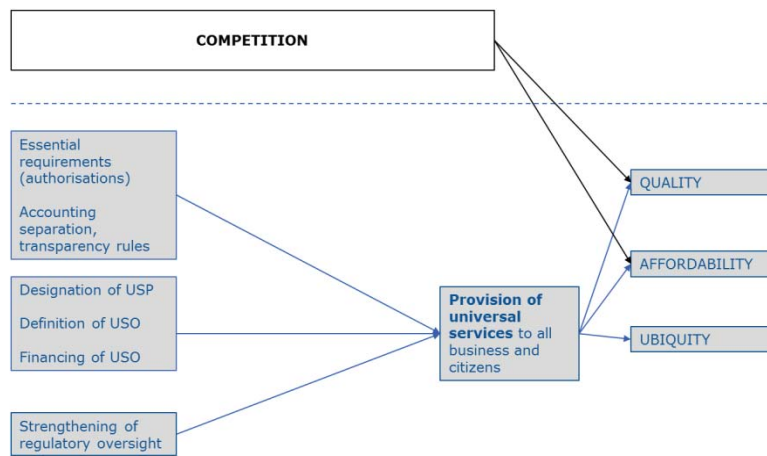


Only a small fraction of parcels delivered by universal service providers would actually qualify as "USO parcels", and very often, operators could not even be able to quantify this part of their business, in that operational flows do not distinguish between "USO" and "non-USO" parcels. "Packets" are meant to describe those parcels which, due to their size and weight, are operationally treated like letters. The scope of the USO for letters/mail varies greatly from country to country (and, as a consequence, the dividing line between "USO letters/mail" and "other letters/mail services"): Some Member States only include single-piece letters in the

scope of the USO, other Member States include bulk mail, direct mail, or even newspapers in that scope."Non-postal services" typically include financial services.

This complexity obviously renders it very difficult for national regulatory authorities to monitor the nature and impact of domestic and cross-border parcel competition, as many different operators provide different parcel-related services which are rarely defined in a comparable manner.<sup>486</sup>

Taking into account the differences in the legal framework as far as the postal and parcel markets are concerned, the **intervention logic for parcels** can be amended as follows:



In contrast to the letter markets, where "competition" had to be introduced in a monopolistic environment through legislative means (i.e. removal of the reserved area, access requirements, etc.), competition has always been the most important driver to meet the needs of users in terms of quality and price. The parcel USO-related provisions in the PSD were only meant to be a safeguard to ensure ubiquity of service.

Below, the most relevant provisions of the PSD affecting parcel delivery are described in more detail:

**The scope of the universal service obligation as far as parcels are concerned**

Article 3(4) stipulates that the universal service obligation at least needs to include the clearance, sorting, transport and distribution of "postal items up to two kilograms" and of "postal packages up to 10 kilograms" (the latter of which can be increased by Member States to "any weight not exceeding 20 kilograms"). It should be noted that the term "postal items" is defined in Article 2(6) as including postal

<sup>486</sup> The above chart is a strong simplification of reality, in that many other economic operators are active on the parcel markets as well, including carriers, freight forwarders and other transport companies, parcel brokers and consolidators, the retailers' own delivery infrastructures, etc.

parcels, and that all universal services cover both national and cross-border services (Article 3(7)).

This means that the universal service provider needs to permanently provide such services "of specified quality at all points in their territory at affordable prices for all users" (Article 3(1)), "not less than five working days a week" (Article 3(3)).

With regard to the notions of postal *items*, postal *parcels* and postal *packages*, it should also be noted that these services are not defined in a homogeneous way across the EU territory, nor do the operational processes of operators necessarily clearly distinguish between them. Parcels below 2 kilograms are often operationally treated like letters, as long as they stay within certain size dimensions (e.g. fit into letter boxes): they therefore follow the "letter flow", e.g. in terms of sorting and final delivery. This implies that a number of rules and processes that actually meant to target letters only also practically cover a (largely unknown) number of (small) parcels. These may fall, for instance, also under the provisions on "terminal dues" for postal items up to 2kg contained in the UPU Convention, and therefore affect the prices that operators can charge one another for the delivery of such items.

It is important to note as well that the minimum universal service obligation relates to "single-piece" items, i.e. individual items entrusted to operators over the counter (although certain Member States have deliberately also included bulk parcels into the universal service obligation). The logic of the PSD had been to ensure that each citizen benefits from the existence of such services, wherever they live, and that such services are affordable to them. The main service concerned would therefore have been the "C2C" parcel, not least because "B2C" parcels had not been a relevant category prior to the rise of e-commerce. B2B parcels were typically provided outside the scope of the USO, usually containing added-value features (such as tracking) that would go beyond "minimum USO quality standards", and predominantly by express operators.

### **Tariff principles and transparency of accounts**

A clear distinction is made between services "forming part of the universal services", and those that do not:

Article 12 stipulates that, within the USO, "prices shall be affordable" and must be such that "all users, independent of geographical location [...] have access to the service provided". "Prices shall [also] be cost-oriented", although a uniform tariff can be provided "throughout their national territory and/or cross border", if the public interest so requires. In addition, tariffs "shall be transparent and non-discriminatory". These principles therefore apply directly to those parcel services that are covered by the USO (see above).

According to Article 14, the universal service providers have to keep separate accounts in order to clearly distinguish between services which are part of the USO and those which are not.

Article 13 states that universal service providers should be encouraged to respect the following principles in their agreements on terminal dues for intra-Community cross-border mail: the principle that terminal dues are fixed in relation to the costs of processing and delivering incoming cross-border mail, and the principle that such dues be transparent and non-discriminatory. ("Terminal dues" are defined in Article 2(15) as the remuneration for the distribution of incoming "postal items" – which in turn inter alia comprise parcels).

### **The scope of regulatory oversight as far as parcels are concerned**

The national regulatory authorities, to be designated under Article 22(1), "shall have as a particular task ensuring compliance with the obligations arising from this Directive", i.e. also those relating to parcels.

Under Article 22a, "postal service providers" (i.e. not only the universal service provider) shall provide information (e.g. financial information, information concerning the provision of the USO) to the national regulators. The purpose of this is to allow regulators to ensure conformity with the provisions of the Directive, and to provide information for clearly defined statistical purposes.

### **The possibility for parcels to be covered by "essential requirements"**

Under Article 9(1), Member States "may" introduce general authorisations also "for services which fall outside the scope of the universal service" (i.e. also for parcel services not covered under the USO, and also those provided by non-universal service providers), to the extent this is necessary to comply with the essential requirements defined in Article 2(19).

### **Complaints handling mechanisms**

According to Article 19(1), Member States shall ensure that "all postal service providers" (i.e. also those providing parcel services) have transparent, simple and inexpensive user-complaints handling procedures in place. Where users qualify as consumers under Directive 2013/11/EU they also have access to the alternative dispute resolution mechanisms established under the ADR Directive.<sup>487</sup>

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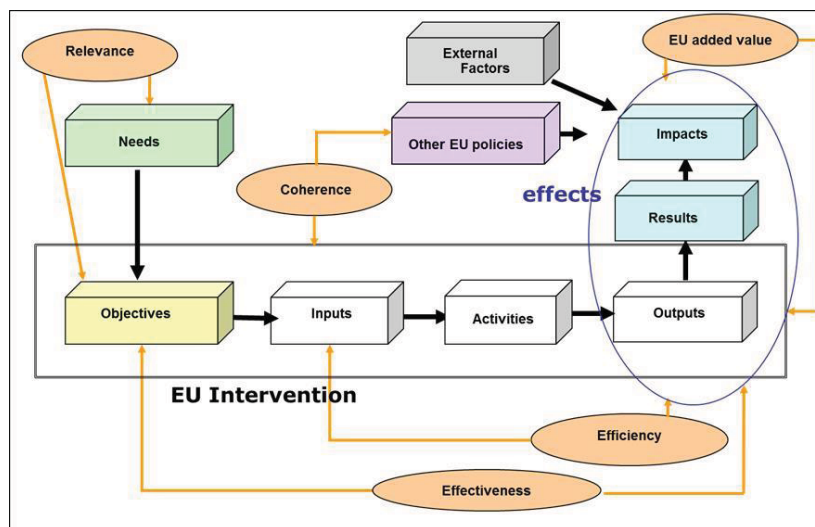
<sup>487</sup> Directive 2013/11/EU of 21 May 2013 on alternative dispute resolution for consumer disputes.

## 2.2 Methodology and evaluation questions

An evaluation typically aims to assess the degree of success of a given policy intervention (e.g. a piece of legislation, an expenditure programme), and it aims to answer the question as to whether that intervention could be improved (or should be discontinued).

The single most important independent study informing this annex – the WIK study on the "main developments in the postal sector (2010-2013)" – had been deliberately designed in a way that allows us to assess the (continued) relevance of the PSD in the light of changing markets and consumer needs.<sup>488</sup> For this reason, the study provides valuable insights into the question as to whether the PSD is still "fit for purpose" in a more and more digitised world, in which letters are being substituted by digital forms of communication (e.g. e-mails, social media, e-invoicing, e-government solutions), whereas e-merchants and consumers increasingly ask for better, more affordable and more convenient (cross-border) parcel deliveries in order to fulfil online e-commerce purchases.

Based on the outcome of the WIK study – enriched by other data sources of an evaluative nature (such as relevant ERGP reports) – this annex will address a series of questions falling under the standard evaluation categories of effectiveness, efficiency, relevance and coherence.



The questions that will be further examined in sections 2.3.1-2.3.4 below are:

- Effectiveness. To what extent has the PSD been successful in meeting objectives such as:
  - Enhancing competition in the postal markets, with a view to increasing the efficiency, profitability and customer orientation of postal operators;

<sup>488</sup> The study, prepared for the European Commission, bases itself on an extensive survey of all stakeholders, interviews with key stakeholders, an economic model analysing the effects of terminal dues, and economic model quantifying the effects of declines in postal volumes, expert panels and extensive desk research.

- Securing the continuous provision of "universal postal services" across the EU territory;
- Improving the quality of service provided to business and citizens;
- Enhancing regulatory oversight by national regulatory authorities, with a view to ensuring that competition takes place on a level playing field.
- Efficiency. To what extent has the PSD been an appropriate framework to secure these universal postal services at acceptable costs to society?
- Relevance. To what extent is the PSD still relevant in the light of changing technologies as well as user and consumer needs (e.g. e-substitution, e-commerce).
- Coherence. To what extent is the PSD in line with policies and market developments taking place in the areas typically covered by the "Digital Single Market"?

The WIK study provides all the relevant answers as far as the "wider postal and parcel markets" are concerned. With regard to "parcel-specific" (i.e. e-commerce related) issues, however, we will have to interpret these concepts rather creatively, in that the regulatory framework in place (i.e. the PSD) had never been designed to meet the needs of sellers and buyers engaged in e-commerce. This will come out clearly when we are going to examine the "relevance" and "coherence" criteria.

That said, also the findings in the areas of "effectiveness" and "efficiency" are not irrelevant from a parcel-specific perspective. For instance:

- If postal operators have indeed become more efficient, profitable and customer oriented, this will obviously also benefit their (new) customers of parcel services.
- If postal operators have indeed proven capable of providing universal service all over their territories, this also means that citizens are able to obtain parcels wherever they live.

There is a grey zone between letters and parcels, in that light-weight parcels that fit into a letter box would often be treated by operators as letters in operational terms. For instance, they would be sorted in letter-sorting centres, and delivered by the postman who also delivers ordinary letters. This means that all parcels falling under this category would automatically benefit from all improvements that postal operators may have achieved in the efficiency, quality or price of letter deliveries.

## **2.3 Evaluation of the Postal Services Directive (with a special focus on parcels)**

### **2.3.1 The effectiveness of the existing regulatory framework**

#### 2.3.1.1 To what extent has the PSD contributed to enhancing competition in the postal and parcel markets?

##### *Competition in declining letter markets remains very limited*

In spite of the gradual elimination of the reserved area, competition in the letter markets emerged only to a very limited extent, and it has been concentrated in a few countries

only. The WIK study observes that *"declining mail volumes discourage new entrants and potential investors, particularly in Western and Southern Member States. Only in few Member States (DE, ES, HR, NL, IT, SE) have competitors been able to achieve market shares above 10 per cent. Even in these Member States, profitability of new entrants appears marginal, and their market shares appear to stagnate. In some Eastern Member States (notably BG, HR, PL), more robust competition is emerging, a process that has developed over the course of the whole postal reform process. This development is important because competition promotes the growth of these relatively underdeveloped mail markets."*<sup>489</sup>

The impact of this development on the (cross-border) parcel markets is limited, in that parcels had never been part of the reserved area.

### ***Restrictive regulatory practices have contributed to low levels of competition***

The WIK study repeatedly stresses that regulatory practices have slowed down market opening, and potentially or de facto restricted competition. This is confirmed by frequent complaints addressed to the European Commission.

For instance, in some cases authorisation conditions imposed on alternative postal operators (e.g. relating to quality, availability and performance) *"protect the universal service provider from competition to some degree"*. In addition, *"non-discriminatory access to the postal infrastructure is proceeding more quickly in some Member States than in others"* and *"special tariffs for universal services are not generally transparent and non-discriminatory"*. Most importantly, however, the *"unequal application of VAT to postal services undermines full market opening"*.<sup>490</sup>

Once again, private parcel operators do not appear to have been affected by this.

### ***The narrower the scope of the universal service obligation, the better for competition***

As the Postal Service Directive only sets minimum standards, Member States enjoy considerable freedom in the definition of the scope of the USO. In this regard, the WIK study observes that *"the range of services denominated as universal services has substantial implications for compliance with the Directive in other respects. The broader the range of services included in the universal service, the broader the responsibility of the Member State to ensure cost-orientation, non-discrimination, transparency, service quality, etc., and the more difficult it becomes to reconcile regulation with the objective of full market opening"*.<sup>491</sup>

This has potential implications on the extent to which various parcel operators benefit from a level-playing field. Services falling under the scope of the universal service

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<sup>489</sup> WIK study, Executive Summary p. x

<sup>490</sup> WIK study, p. ii-iii

<sup>491</sup> WIK study, p. 131

obligation are also exempted from VAT (see above). This may be relevant in particular for those Member States that have included bulk parcels to the scope of the USO.<sup>492</sup>

### ***Parcel markets are characterised by much more competition than letter markets***

While *basic* parcel services had always been contained in the scope of the USO of postal operators, parcels had never been part of the "reserved area" (i.e. covered by the postal monopoly). According to the WIK study, the decision to *exclude* parcels from the monopoly has proven useful: "*Since parcel and express services were never subject to national monopolies, they are generally more competitive than letter post markets. In the past, private parcel and express operators at local, regional, or global levels developed high quality, innovative, and customised delivery services focused mostly on B2B shipments.*"<sup>493</sup>

In other words, competition has resulted in good B2B parcel delivery services, while its ability to provide equally good B2C services – which are at the heart of e-commerce – yet needs to be demonstrated. The universal service providers (USPs) are considered to "*have a first mover advantage in B2C delivery due to their dense nationwide access and delivery networks. USPs also enjoy cost advantages since they combine parcel and mail delivery, at least in rural areas.*"<sup>494</sup> That said, the continuous growth in the B2C market also "*attracts private operators. In the more mature Western countries (DE, FR, UK), specialised parcel operators, often founded by large mail order companies, offer low priced delivery of B2C delivery services. B2B parcel operators are also entering the B2C market increasingly. In particular, they are venturing into many Southern and Eastern Member States that lack a mail ordering tradition.*"<sup>495</sup>

However, as illustrated in detail in Section 1.3.1 of the main report, market entry is not easy in a sector driven by economies of scale. Parcel delivery requires extensive networks, which are both labour and capital intense. The most difficult and expensive part of parcel delivery lies in the so-called "last mile", requiring extensive geographical coverage. The last mile delivery of parcels is even more costly than that of letters. First, the much bigger dimensions and weights of parcels requires more (storage) space and larger vehicles. Second, as parcels usually cannot be put into letter boxes if the recipient is not at home, second if not third delivery attempts might be needed.

### ***Customs laws do not apply in the same way to all postal operators***

Concerned that customs rules and procedures might distort competition among designated postal operators and their private competitors, the WIK study recommends that "*the EU should move towards a more equal application of EU customs laws towards all postal operators and all postal items imported into or exported from the EU, but it should do so in stages that take into account fully, competitive fairness, the practical*

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<sup>492</sup> WIK study, p. 129

<sup>493</sup> WIK study, p. xii

<sup>494</sup> WIK study, p. 32

<sup>495</sup> WIK study, p. 32



*capabilities of foreign postal operators, and the relative importance of different trade flows".*<sup>496</sup>

Universal Service Providers are also designated operators under the UPU (i.e. the Universal Postal Union), and are as such subject to a range of rights and obligations. For instance, they are legally obliged to deliver (mail and) parcels coming from other countries' designated operators (at rates that have been capped by the UPU), but also benefit from certain advantages – compared to non-UPU operators – in terms of customs procedures.

### ***Employment in the sector is undergoing significant change***

The WIK study identifies constant decline in traditional employment in USPs, mainly *"driven by efficiency programmes, increased automation, and volume declines"*. By contrast, *"new employment has emerged in the growing parcel and express business"*, as well as by new entrants in the letter segment, *"in the few Member States where there is noticeable competition in end-to-end delivery of letter post"*<sup>497</sup>

The WIK study also identifies a clear trend towards increased flexibility of employment contracts, with increasing use of temporary and part-time contracts, partially by national postal operators, but even more so *"by new entrants in the letter market and subcontractors in parcel delivery"*.<sup>498</sup>

Given that the *"overall employment trends in the sector are unclear because there is insufficient data on sector employment"*, the WIK study considers it useful for postal regulators to gather employment data more systematically: *"NRAs should be encouraged, and given authority, to collect employment data for the whole sector regularly"*.<sup>499</sup>

#### **Conclusion:**

The PSD key objective of creating more competition in the letter markets has been achieved to a limited extent – and in a few Member States – only. This has partly been due to the constant decline in letter volumes, which has made market entry for potential investors less attractive, and partly to regulatory practices that created considerable administrative or legal hurdles for potential market entrants. At the same time, competition in the parcel market has intensified. However, this phenomenon appears to be unrelated to the implementation of the PSD, which has attributed little importance to the provision of parcel services. Competition in parcel markets has grown as a result of growing e-commerce. These developments have also had a clear effect on employment levels and forms: While employment in the letter segment is in decline, additional jobs

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<sup>496</sup> WIK study, p. 343

<sup>497</sup> WIK study, p. xiii

<sup>498</sup> WIK study, p. xiii

<sup>499</sup> WIK study, p. xiii and 344

have been created in the parcel markets (though often taking the form of sub-contracting).

2.3.1.2 To what extent has the PSD contributed to securing the continuous provision of "universal postal services" across the EU territory?

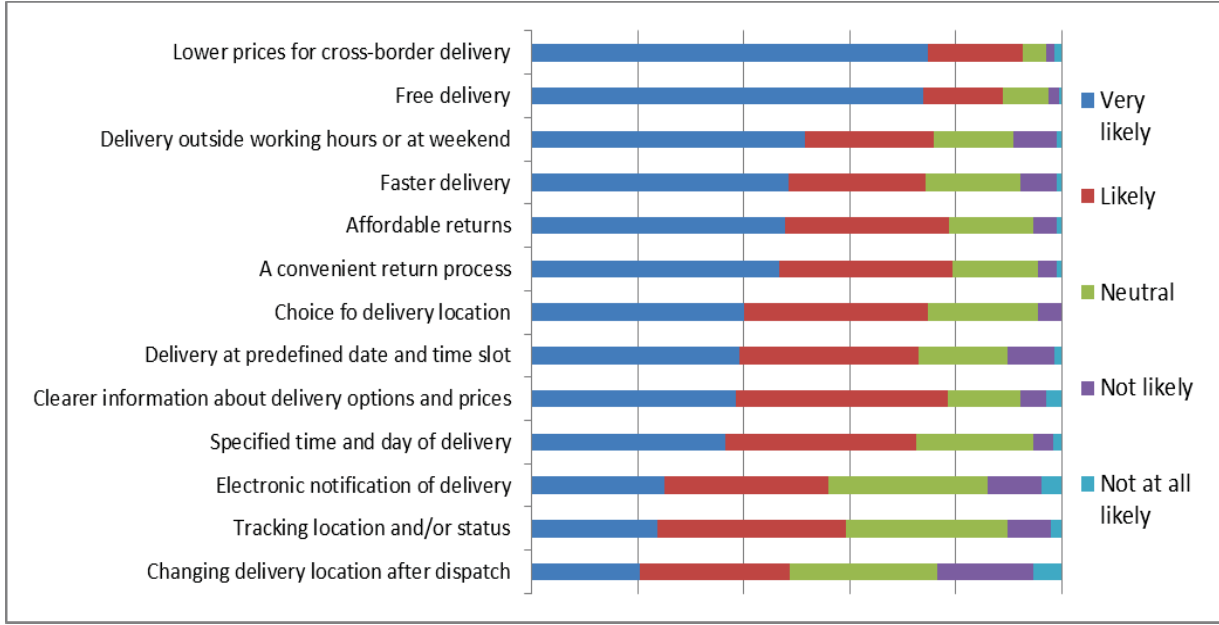
***Universal postal services are provided for all citizens of the EU***

The WIK study clearly states that "all Member States ensure a sufficient range of services to meet the minimum requirements for universal service established by the Postal Directive. Hence, all Member States have fully implemented the Directive in this respect".<sup>500</sup> The type of services covered by the universal service obligation differs however greatly in that "the range of services included in the universal service obligation varies among Member States from single-piece items only to all types of postal services".<sup>501</sup>

For parcels, this implies that citizens are in principle able to engage in e-commerce transactions, wherever they live. However, according to a number of surveys and studies (see main report), many citizens are unsatisfied with the prices that they have to pay for cross-border parcel shipments and returns.

This has also been confirmed by the public consultation launched in May 2015, where (more than 200) consumers identified price as the main obstacle to more cross-border purchases:

Q10 (consumers)- Which, if any, of the following improvements to the delivery process would make you more likely to buy online? Please rank on a scale from 1-5<sup>502</sup>



<sup>500</sup> WIK study, p. 131

<sup>501</sup> WIK study, p. vi

<sup>502</sup> Base size for this chart is 203-207 consumer responses to each subsection. 44 'other' responses not shown.

Conclusion:

The PSD has been successful in securing the provision of universal letter and parcel services across the EU territory. For parcels this means that, in principle, all merchants and all consumers can send and receive parcels to fulfil an e-commerce transaction. However, the universal service provision on parcels only secures the provision of very basic parcel services, and does not appear to meet the expectations of senders and receivers in terms of quality (e.g. track-and-trace), speed or price, especially cross-border – expectations that had not existed when the Postal Services Directive(s) was/were designed.

2.3.1.3 To what extent has the PSD contributed to improving the quality of postal services provided to business and citizens?

***National postal operators provide very reliable letter post services***

The WIK study confirmed that postal operators have made substantial progress in improving the transit time performance of letters.<sup>503</sup> As a result, *"despite declining volumes, letter post services are still highly reliable in almost all Member States. The vast majority of letters are still delivered the next working day ('D+1'). However, progress in transit time, for both domestic and cross-border services, remains limited in some Eastern and Southern Member States"*.<sup>504</sup>

This has direct implications for those parcels that follow the letter stream, i.e. those that normally fit into letter boxes. If indeed they do, this also addresses the issue of failed first deliveries.

***The quality and affordability of (cross-border) parcel services falls short of expectations***

This point has not explicitly been addressed by the WIK study, but a wide range of sources have been quoted throughout the impact assessment to underpin this observation. To mention one source, by means of example, a recent study carried out by Copenhagen Economics<sup>505</sup> identifies services that *"do not seem to be available from delivery operators"*. For domestic deliveries (especially in less mature e-commerce markets), *"this seems to be the case with respect to e.g. return options and more convenient delivery times. [...] We also observe that many services are only available in part of the country"*. For cross-border deliveries, *"we find that delivery operators to a lesser extent offer value added services such as electronic notification of delivery and tracking of parcels, as well as certain return options. The availability of services is in general better*

<sup>503</sup> WIK study, p. 210

<sup>504</sup> WIK study, p. xi

<sup>505</sup> Copenhagen Economics, "E-commerce and delivery: a study of the state of play of EU parcel markets with particular emphasis on e-commerce", July 2013

*for domestic delivery than for cross-border delivery. This leads to service gaps for e-shoppers, notably when comparing domestic and cross-border offerings." Copenhagen Economics adds that "an important finding from our research is that too high delivery prices are a key concern for both e-shoppers and e-retailers".*<sup>506</sup>

A recent Eurobarometer on obstacles to cross border e-commerce found that out of all companies interviewed who currently do not sell online but are currently trying to do so, 62% find delivery costs an obstacle.<sup>507</sup>

Conclusion:

The PSD has clearly improved the quality and reliability of letter services, in particularly those of a cross-border nature. At the same time, the affordability of such services was maintained. As for parcels, the PSD had not anticipated the types of services that the parties to an e-commerce transaction would expect, and did not contain any provisions to secure anything more than a basic C2C parcel service. Such basic services would neither be particularly fast, nor would they be tracked, nor did the PSD anticipate the need for additional last-mile delivery options over and above home delivery. Also, the returning of a parcel would have been considered an exceptional “incident” (e.g. because of a wrong address), whereas returns are an intrinsic part of the e-commerce business model (e.g. when up to 50% of clothing or footwear items are *expected* to be returned by customers). While these features had not been considered relevant for domestic parcel markets, they had even less been anticipated for cross-border transactions. Parcel delivery was almost exclusively a B2B transaction, and largely dominated by the express industry.

In other words, the PSD has certainly not contributed to improving the quality of cross-border parcel deliveries – but it had also never *meant* to do that.

2.3.1.4 To what extent has the PSD contributed to enhancing regulatory oversight by national regulatory authorities (NRAs), with a view to ensuring that competition takes place on a level playing field?

***The powers and resources of national regulatory authorities (NRAs) vary greatly across the EU***

The WIK study concludes that the powers needed by NRAs to ensure compliance with the Postal Services Directive vary significantly: "*Most NRAs report adequate authority to collect data and market statistics. In fact, however, data collection remains incomplete and poorly coordinated among Member States. Furthermore, only about one-*

<sup>506</sup> Copenhagen Economics (2013), p. 26-27

<sup>507</sup> Eurobarometer (413), 2015 [http://ec.europa.eu/public\\_opinion/flash/fl\\_413\\_en.pdf](http://ec.europa.eu/public_opinion/flash/fl_413_en.pdf)

*third of NRAs can levy significant fines (1 per cent of revenue or more) or issue remedial orders and seek court enforcement.*"<sup>508</sup>

Not only the powers given to the NRAs vary greatly, but also the resources – in terms of staffing, expertise and financial means – needed for the performance of their tasks: "*Resources of the NRAs vary widely among the Member States, even in comparably sized postal markets. Up to 13 Member States may need to consider providing their NRAs additional resources to ensure full and effective implementation of the Postal Directive.*"<sup>509</sup>

This factual finding has also been confirmed by various documents produced by the ERGP.

### ***The powers of national regulatory authorities are often limited to universal service provision***

The WIK study repeatedly argues that the scope and practical application of those provisions of the PSD that are intended to ensure fair competition on the postal markets should not be restricted to the services covered by the universal service obligation: "*Provisions in the Postal Directive which are intended to protect fair competition should apply to postal services outside the universal service area.*" This applies in particular to the provisions of the PSD that require "*market dominant USPs to provide transparent and non-discriminatory access to special tariffs, [...] to maintain regulatory accounts, [and] to provide transparent and non-discriminatory access to the postal infrastructure.*"<sup>510</sup>

In order to strengthen the powers of regulatory authorities to safeguard fair competition, the WIK study further recommends that "*Member States should ensure that NRAs have adequate authority to prevent USPs that are market dominant in the provision of non-universal postal services from using anti-competitive means to eliminate lawful competition*".<sup>511</sup>

This is of course of great relevance to the parcel markets. As outlined in Section 2.1.3, USPs provide a wide range of USO and non-USO services, and they compete with a large number of private operators, specialising in letter, parcel or non-postal activities.

### ***National regulatory authorities pay little attention to cross-border B2C parcel markets***

The WIK study points to the fact that the risk of anti-competitive behaviour appears higher in some segments of the postal sector than in others. Enhanced regulatory vigilance should be focused on parcels, on B2C markets and on cross-border services.<sup>512</sup>

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<sup>508</sup> WIK study, p. ii

<sup>509</sup> WIK study, p. ii

<sup>510</sup> WIK study, p. 341

<sup>511</sup> WIK study, p. 340

<sup>512</sup> WIK study, p. 340

The absence of regulatory focus on the (cross-border) parcel markets was also acknowledged in a recent ERGP opinion: "*Many NRAs have a limited mandate to monitor the cross-border parcels segment, and full market analysis is rarely used by postal regulators*".<sup>513</sup>

### ***Data on parcels markets are not collected systematically***

WIK notes that, "*overall, there is no consensus about the size of the European parcel and express market due to different market definitions, especially regarding the weight limit of shipments and the service characteristics. [...] Many regulatory authorities have not provided any market information because, most probably, they do not systematically collect data on domestic and cross-border parcel & express services. To get more reliable data on these markets that are also comparable over time it is necessary to develop a consistent methodology and define clear responsibilities for data collection*".<sup>514</sup>

The WIK study therefore concludes that the "*collection of data in the postal sector appears inadequate to the needs of the EU. Although the Third Postal Directive obliged postal operators to provide compliance and statistical data to NRAs, it did not explicitly oblige NRAs to collect the data nor ensure the comparability of data collected from different Member States*".<sup>515</sup>

The regular collection of standardised data is considered "*necessary to identify which policies are working and which are not. [...] The policy challenges raised by the rapid growth of e-commerce and parcel markets present but one obvious current example of the need for better data*". WIK therefore recommends that "*NRAs should be obliged to collect a minimum level of compliance and statistical data from both USPs and other postal operators, according to categories defined at EU level (and notably including parcel data*".<sup>516</sup>

The lack of understanding of cross-border parcel markets was also acknowledged in the recent ERGP opinion: "*It was generally accepted that the market(s) concerned were not well known and that it could be useful to look further (in a limited fashion) at them to better understand them and to ensure they do develop effectively of their own accord*".<sup>517</sup>

The ERGP opinion adds that "*only three NRAs indicate that they have the legal power to collect data on all substitutable parcels delivery offers, as determined by regular, formal, competition law type market analysis, regardless of the provider. The NRAs are those of Finland, Germany and Malta*".<sup>518</sup>

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<sup>513</sup> 2014 ERGP opinion to the European Commission on a better understanding of European cross-border e-commerce parcels delivery markets and the functioning of competition on these markets, p. 5

<sup>514</sup> WIK study, p. 223

<sup>515</sup> WIK study, p. 39

<sup>516</sup> WIK study, p. 40

<sup>517</sup> 2014 ERGP opinion, p. 4

<sup>518</sup> 2014 ERGP opinion, p. 22

All of this evidence suggests that more data on the EU cross-border parcel markets should be collected. The above ERGP opinion, however, also stresses the need for proportionality: "Any new data collection exercise would need to fall within the scope of existing missions and be necessary and proportionate or, for example, result from a need identified by the appropriate bodies (such as the EC and/ or member states) to extend NRAs' current missions (with the data collection still remaining proportionate)".<sup>519</sup>

### ***UPU-based terminal dues are not aligned with EU regulatory principles***

According to the WIK study, "NRAs have not ensured that terminal dues for cross-border universal services are consistent with the principles of the Postal Directive". It argues that "under Article 13, Member States are 'encouraged' to ensure that prices for delivery of intra-EU/EEA universal services are cost-oriented, transparent, and non-discriminatory. [...] Nonetheless, it seems that NRAs have not implemented the principles of Article 13. No NRA ensures terminal dues relating to cross-border universal service are transparent or cost-oriented. In most or all Member States, the USP charges rates for the delivery of similar postal items which discriminate based on (1) whether the postal item is a domestic or intra-EU postal item and/or (2) which EU/EEA Member State originates the mail. [...] The terminal dues rates established by the UPU are not related to actual costs and not aligned to domestic postage rates. The resulting distortions benefit low cost, postal exporting countries at the expense of high cost importing countries. The UPU terminal dues system, where applied, appears to create substantial distortions in trade between Member States and in trade with other industrialised countries such as the United States."<sup>520</sup>

WIK concludes that several UPU provisions "do not absolutely prohibit competition, they protect each designated operator in its national territory by making it more difficult for foreign designated operators and private postal operators to compete in the supply of outbound cross-border postal services."<sup>521</sup>

It should be noted, though, that terminal dues do not always "protect" designated operators. On the contrary, when receiving mail from developing countries (as defined under the UPU), they may well have to accept terminal dues that are well below their own cost for delivering that mail in their territories. China, for instance, ships an increasing number of packets to Europe (i.e. below 2kg), resulting from e-commerce purchases of EU citizens.

### ***The principles of cost orientation and price transparency are not applied in a rigorous and harmonised way***

In addition to the specific terminal dues issue referred to above, the WIK study generally deplores that Member States apply the principle of cost-orientation quite differently.

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<sup>519</sup> 2014 ERGP opinion, p. 26

<sup>520</sup> WIK study, p. 5

<sup>521</sup> WIK study, p. vi



This is considered important because "*apart from affordability which aims at ensuring access for all users to postal services, this principle aims at ensuring that prices are neither excessive, i.e. harmful to customers nor predatory, i.e. harmful to competition*".<sup>522</sup>

WIK also points out that NRAs "*seem to have no common approach upon ensuring transparency of prices, required by Art. 12 fourth indent of the Postal Directive. Twelve Member States and CH have not defined any criteria for transparency. However, the majority of these thirteen countries ensure transparency in practice, mainly by requiring the USP to publish prices. This practice is in line with CERP's recommendation to oblige USPs to publish prices and service conditions to ensure transparency and non-discrimination. The exceptions are HU, NL and CH where thus neither transparency criteria are defined nor any special measures are taken by NRAs to ensure transparency*".<sup>523</sup>

As far as cross-border parcel delivery is concerned, NRAs have so far not aimed at ensuring compliance by operators with the principles of cost orientation (Article 13) and transparency.

#### Conclusion:

The main focus of the PSD was on the provision of letter services, and in particular on those falling within the scope of the universal service. As a consequence, also the focus of regulatory oversight was placed on the universal service provider (USP), and on the universal services provided by the USP. Last but not least, the focus was placed on *domestic* markets, as Member States are mainly interested in the provision of good services to their own citizens – and it is fair to say that the very low volumes of cross-border mail seems to justify that choice. Alternative postal operators (i.e. operators other than the USP) have usually been on the radar of regulators only when they started to compete with the USPs on services that fell within the scope of the universal obligation – so as to protect the USP from excessive cherry picking by alternative operators, and the latter from anti-competitive practices by the USPs.

Some of the provisions and principles of the PSD also cover parcel services (as far as universal parcel services are concerned) and postal service providers operating outside the universal service (e.g. parcel companies providing deferred or express parcel services). However, very few Member States chose to fully exploit the possibility of widening regulatory oversight (including basic data collection) to cover all parcel services – simply because parcel services had not been considered particularly sensitive or important prior to the emergence of e-commerce. For the same reason, some of the parcel-related provisions of the PSD are also quite vague (e.g. by “encouraging” the cost-orientation for cross-border (USO) parcels, rather than mandating it – with the result that we have not found any evidence that would suggest that the principles of

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<sup>522</sup> WIK study, p. 138

<sup>523</sup> WIK study, p. 139

affordability and cost-orientation are being seriously considered, let alone enforced. Also terminal dues/rates – especially those resulting from the UPU – are neither in line with the PSD’s regulatory principles, nor are they known to most regulatory authorities.

As a result of all of this, many national regulatory authorities currently lack the legal basis, resources and mandate to carry out effective oversight of cross-border parcel markets.

### 2.3.2 The efficiency of the existing regulatory framework

To what extent has the PSD been an appropriate framework to secure these universal postal services at acceptable costs to society?

#### *Maintaining the service levels laid down in the PSD reduces the viability of postal operators*

The WIK study concludes that, declining letter volumes, combined with minimum universal service requirements, have led to declining profit margins of operators: "*Mail operations are characterised by a high share of fixed costs. The profitability of USPs' mail operations has been adversely affected by a continuous and substantial decline in the mail volume. Based on a stylised model, we show that as volumes decline cost savings are less significant than losses in volume and revenue. Thus, profits of postal operators decrease more than proportionally. Reduced profitability, or losses, are to be expected in all Member States where volumes decline most. Even worse, the less the initial volume per capita, the greater the effect on profitability. Even though many USPs have struggled to render their cost base more flexible, universal service requirements (e.g., a minimum delivery frequency) constrain options. [...] Profit margins of USPs from traditional mail delivery services have broadly declined since 2010*".<sup>524</sup>

As a result, "*requiring Member States to guarantee levels of universal postal services that were considered essential in 1997 risks over-investment in postal services. Member States will be subsidizing an older communications technology to the detriment of newer communications technologies. We believe that the definition of universal service must move away from the one-size-fits-all-and-always-will approach reflected in the current Directive. Member States will need greater discretion in determining the scope of the USO*".<sup>525</sup>

Several national studies on the needs of users of postal services (e.g. carried out recently in Italy and Denmark) seem to suggest that citizens are increasingly ready to accept that letters are collected and delivered on less than five days per week. By contrast, when it comes to parcel delivery – needed to fulfil e-commerce purchases – all recent surveys

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<sup>524</sup> WIK study, p. x

<sup>525</sup> WIK study, p. xv

suggest high expectations by customers concerning price and convenience (e.g. in terms of alternative delivery options, flexible delivery windows, delivery on Saturdays, etc.).<sup>526</sup>

### ***The maintenance of current USO levels increasingly requires state aid funding***

The WIK study confirms that Member States increasingly need to resort to state aid to ensure the continued provision of universal service as defined in the PSD: "*The Commission adopted [several] state aid decisions relating to the postal sector in several Member States. Most state aid cases dealt with public service compensation for providing universal services.*"<sup>527</sup> While the PSD allowed for different mechanisms to compensate a USP for the part of the net cost of the USO deemed "unfair" (e.g. through the creation of a compensation fund), "*Member States that provide financial support for universal services do so almost exclusively using general tax revenues rather than compensation funds*".<sup>528</sup>

#### **Conclusion:**

The PSD has defined minimum levels of universal service which are increasingly difficult to maintain, in particular in those Member States that are most affected by e-substitution. With declining volumes, postal operators – confronted with a high proportion of fixed costs (including labour) – are faced with constantly rising unit costs. As a result, more and more USPs are turning to their governments for state aid.

As for parcels, the constantly rising expectations of merchants and consumers with regard to quality, convenience and price require postal operators who wish to benefit from this growth market to invest in new products, processes and services. To the extent that scarce resources partially have to be earmarked for the provision of the letter mail services legally required under the PSD, the PSD may have a constraining effect on the further development of (cross-border) parcel services.

### **2.3.3 The relevance of the existing regulatory framework**

To what extent is the PSD still relevant in the light of changing technologies as well as user and consumer needs (e.g. e-substitution, e-commerce)?

#### ***The postal markets have changed drastically over the past 20 years***

Like many other sources, the WIK study confirms that "*the economic and social role of postal services has been changing rapidly and fundamentally over the last two decades. In the most industrialized countries, paper-based communications are in steep decline while demand for parcel delivery services is rising steadily with continuing development of e-commerce, just-in-time production techniques, and global supply chains.*" The

<sup>526</sup> For evidence substantiating this observation, see other parts of this impact assessment.

<sup>527</sup> WIK study, p. iv

<sup>528</sup> WIK study, p. vii

Postal Directive "was developed at the beginning of this period and reflected the goals and requirements of the postal sector in the 12 Member States of the European Union as it existed in early 1990s. While the benefits for the postal sector in the course of postal reform to date are evident, it is already apparent that many of the premises underlying the Postal Directive must be reconsidered in light of the rapid development of postal markets and the expansion of the EU from 12 to 28 Member States. Moreover, there are no signs that the postal sector has stopped changing. On the contrary, it seems most probable that the EU postal sector in 2035 will far differ from today".<sup>529</sup>

WIK therefore concludes that "the postal sector has changed so much since 1997, the year the Postal Directive was adopted, that it is time for policy makers to think again about the basic architecture of postal regulation in the EU".<sup>530</sup>

### ***The current regulatory framework is challenged by changing market conditions***

With regard to the scope of the universal service, the WIK study observes that "in 1997 the original Postal Directive established minimum conditions for universal postal service based on what was considered to be the minimum appropriate level of service at the time. Economic research underlying the Directive reflected the state of postal services in the EU-12 Member States in 1988, when the average annual volume of postal items per capita was 243. Since 1997 the EU has expanded to include 13 new Member States in which the demand for postal services is only about one-fifth that of the EU-12 Member States in 1988. In almost all Member States, letter post volumes are falling. At the extreme, Denmark in 2012 had only about one-quarter as many letter post items as in it did in 1988".<sup>531</sup>

WIK therefore recommends that the EU should "adopt a more flexible definition of universal service at the EU level while continuing to oblige Member States to ensure universal postal service according to EU-wide principles. [Such] EU-wide principles could include affordability and ubiquity while allowing Member States to adapt parameters such as service quality (or related delivery frequency) to the needs of users".<sup>532</sup>

It should be noted, however, that any review of the current regulatory framework would need to be prepared with utmost care. While the economic arguments put forward in this Annex are quite compelling, the postal sector still performs a vital function in terms of social and territorial cohesion and inclusion. The speed and extent of e-substitution differs widely among Member States, and so do the needs, preferences and behaviours of their citizens.

### **Conclusion:**

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<sup>529</sup> WIK study, p. xiv

<sup>530</sup> WIK study, p. 339

<sup>531</sup> WIK study, p. xv

<sup>532</sup> WIK study, p. 339

The PSD has been developed and revised against the background of the user needs and means of communication dominant at the turn of the century. Prior to the emergence of e-mail and social media, letters had always been the predominant form of (remote) communication, and parcel services were mainly used in a B2B (wholesaler-to-retailer) context. However, given the wide discrepancies between individual Member States (e.g. in terms of e-substitution, broadband penetration, e-literacy, etc.), a rebalancing of the current framework would have to be prepared with the utmost care.

### 2.3.4 The coherence of the existing regulatory framework

To what extent is the PSD in line with policies and market developments taking place in other areas, in particular those covered by the "Digital Single Market"?

#### *The digitalisation process is both a challenge and a chance for the postal sector*

As outlined further above, the links between the postal sector and the "digital economy" are two-fold. On the one hand there is the e-substitution effect, which results in rapidly declining letter volumes in particular in those countries with well advanced electronic communications markets: *"Countries with well-developed letter post markets experienced the strongest decline, particularly where electronic communications are most developed. Denmark and the Netherlands have been most affected by 'e-substitution' so far".*<sup>533</sup>

The fact that the Nordic Member States face the steepest decline is not only due to the quality of their electronic communications networks and the e-literacy of their citizens and business, but also shows the strong effect of initiatives in the area of e-government: *"The Danish example also highlights that if the government forms the 'wave-breaker' for digital communication the e-substitution process accelerates. As soon as the critical mass of consumers is used to communicate electronically for official purposes more traditional companies also jump on the bandwagon. In contrast, it is less likely that single companies (even large ones) take over the role of a 'wave-breaker' to 're-educate' people".*<sup>534</sup>

E-substitution has also been found to limit the strategic options of postal operators in ensuring financial sustainability of the provision of universal postal services, in that "price increases" do not seem to be a viable way forward: *"Although price increases immediately improve revenues, the downside is that price increases also affect demand. Businesses who are typically more price sensitive than private customers might be more inclined to switch to electronic communication. Price increases therefore might further accelerate e-substitution. Stimulating customers to switch may be especially dangerous as customers that already switched are unlikely to ever come back to the letter mail communication".*<sup>535</sup>

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<sup>533</sup> WIK study, p. ix

<sup>534</sup> WIK study, p. 177

<sup>535</sup> WIK study, p. 297

***To sustain e-commerce growth and their own profitability, postal operators are to invest in better parcel services***

On the other hand, postal operators benefit from growing demand for parcels. Domestically, "B2C parcel volumes are highest in high income Member States with a tradition of mail ordering".<sup>536</sup> However, "consumers increasingly order goods [also] from other countries, predominantly from countries with similar language and culture"<sup>537</sup>. But given that the traditional focus of national postal operators had been on domestic letter services, "cross-border [parcel] shipments are still dominated by B2B parcel and express operators".<sup>538</sup>

In response to the Commission's Roadmap on cross-border parcel delivery, the national postal carriers have made considerable efforts to increase the quality of cross-border deliveries, e.g. by investing in seamless track-and-trace solutions, facilitating product returns, enhancing the choice of customers for last-mile delivery, or by linking up their customer call centres. Also the other parcel and express operators keep innovating to improve their B2C offering. The future will show whether they manage to meet the fast rising expectations of consumers.

**Conclusion:**

The PSD has always been relevant in terms of ensuring that business and citizens, wherever they are located on the EU territory, have access to basic communication services. The postal policy framework had been developed prior to the digital transformation process, which not only created powerful substitutes to letters as a means of communication, but also created new needs in terms of fulfilment of remote e-commerce purchases. The PSD had not been designed with these needs in mind, and only very marginally provides answers to the (new) issues that have arisen.

### **3) Summary and conclusions**

The impact that the Postal Services Directive has had on letter and parcel markets respectively, is summarised in two charts below, based on the intervention logics presented in Sections 2.2.2 and 2.2.3.

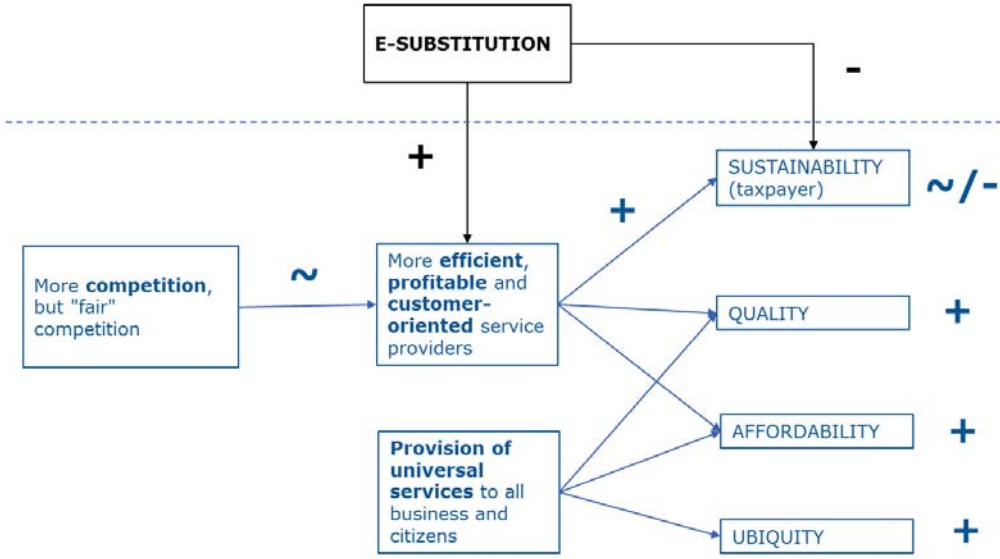
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<sup>536</sup> WIK study, p. xii

<sup>537</sup> WIK study, p. xi

<sup>538</sup> WIK study, p. xi

As far as the **letter markets** are concerned, the situation can be summarised as follows:



Overall, the **Directive's policy objectives have been attained**. Customer orientation and quality of letter services have improved (e.g. the speed of cross-border deliveries of priority mail). All Member States have managed to ensure a very good level of universal service, both in terms of affordability and ubiquity.

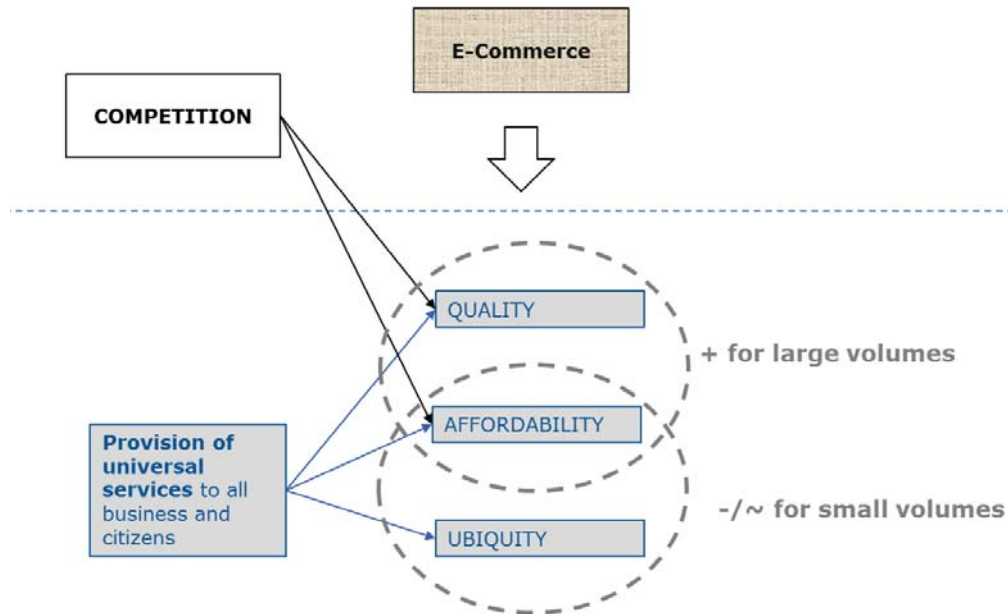
All of this obviously also benefits the USP's **parcel** operations, either directly (when small parcels follow the letter stream) or indirectly (in that more efficient and customer-focused postal operators are bound to benefit from an improved reputation when sellers or buyers choose between alternative parcel service providers). However, in the light of the specific expectations of the sellers and buyers engaged in a (cross-border) e-commerce transaction, the PSD has not had any effect on improving the quality, convenience or affordability of cross-border B2C parcel deliveries.

The main external factor affecting the **letter** market has without doubt been the ongoing **e-substitution** process. Its effects on the above chart are twofold:

- First, e-substitution (= competition coming from alternative forms of communication) has forced postal operators to become more efficient (e.g. through modernisation and restructuring). The pressure from other media has probably much more important than the (originally expected) pressure from new market entrants (= more competition) in the letter business. As a result, most postal operators have become much more profitable as in the past.
- Second, e-substitution has put great pressure on the sustainability of the USO, in that constantly declining letter volumes drive up unit costs. This adverse effect has been

offsetting the positive effect mentioned above in an increasing number of Member States.

As far as the **parcel markets** are concerned, the situation is as follows:



On the parcel markets, the direct effect of the PSD has been fairly limited, in that only a very small part of all (cross-border) parcel deliveries can be considered as "USO parcels" in the narrower sense. And even where such USO parcels were provided, they did not necessarily meet the needs of users in terms of quality or price. All other parcel services have evolved in a competitive environment.

The main external factor affecting the market in the past decade has been **e-commerce**. E-commerce has not only led to the birth and rapid growth of a new market segment (i.e. domestic as well as cross-border B2C parcels), it has also led to constantly rising expectations by users in terms of quality, price and convenience. While the letter business is very much driven by the "sender" (e.g. large banks deciding to send out statements to all of their customers), the B2C parcel business depends primarily on the "recipient" (i.e. the final customer ordering something on the internet).

The competition among the growing number of B2C delivery service providers has so far focused on the profitable parts of the markets – i.e. those involving large and predictable volumes. Users of those services (i.e. large retailers) are clearly benefiting from improvements both in terms of quality and affordability (also for cross-border shipments). However, those customers that are unable to generate high volumes (i.e. SME retailers, SMEs and consumers located in peripheral areas) claim that they do not obtain adequate value for money, in particular in a cross-border context. **This “market failure” has not been**



**successfully addressed by the PSD, because it had never been conceived with these problems and objectives in mind.**

At least, the universal service obligation enshrined in the Postal Services Directive has ensured that those more vulnerable users are able to benefit from e-commerce at all – even though they would arguable sell and buy online much more if the prices they pay were lower. The current high over-the-counter prices for cross-border shipments are not currently under significant pressure from delivery operators other than the USPs, because low-volume and high-cost shipments are not sufficiently economically attractive.

Although the Postal Services Directive *in principle* covered cross-border parcels (as long as they fall under the USO), and although principles such as cost-orientation and affordability apply as well, the PSD has so far not been able to cater for the needs of those that are currently not well served by market forces alone. The main reason for this is that – prior to the emergence of e-commerce – parcels had not been at the center of attention when the PSD was adopted and implemented.

## ANNEX 12: MONITORING AND EVALUATION

### Feasibility/ Proportionality Analysis of the proposed indicators

Indicator	Unit of Measurement	Explanation	Underlying Data	Baseline & Frequency of measurement
1.	number	Broken down by type of information	Annual statistical exercise of DG GROW  <b>Feasibility analysis:</b> (in place/ adjustments might be needed)	<ul style="list-style-type: none"> <li>• 31/12/2015</li> <li>• annual</li> </ul>
2.	number	Broken down by type of access request and by country	NRA registry	<ul style="list-style-type: none"> <li>• 31/12/2015</li> <li>• annual</li> </ul>
3.	% of diff.	Broken down by type of product	Shared Website data manager:  NRA Reports  <b>Feasibility analysis:</b> (NOT in place/ website to be developed throughout the implementation process; no additional data requirements added by this indicator  NRA reports will follow the Requirements set by the initiative)	<ul style="list-style-type: none"> <li>• 31/12/2015</li> <li>• biannual</li> </ul>
4.	number	Broken down by domestic cross border	Postal Statistics Database  <b>Feasibility analysis:</b> (no additional data requirements; process already in place, adjustments might be needed)	<ul style="list-style-type: none"> <li>• 31/12/2015</li> <li>• annual</li> </ul>
5.	HHI index	$H = \sum_{i=1}^N s_i^2$ <i>S= actual or estimated</i> <sup>539</sup> market share of a delivery operator	NRA market analysis:  <b>Feasibility analysis:</b> (no additional data requirements; process already in place, adjustments might be needed)	<ul style="list-style-type: none"> <li>• 31/12/2015</li> <li>• annual</li> </ul>
6.	Number and % respectively	-Broken down by domestic vs. cross border  -Intra EU inbound and outbound	Postal Statistics Database  <b>Feasibility analysis:</b> (process already in place, adjustments might be needed)	<ul style="list-style-type: none"> <li>• 31/12/2015</li> <li>• annual</li> </ul>
6a.	Number and % respectively	-Broken down by domestic vs. cross border  -Intra EU inbound and outbound	Postal Statistics Database  <b>Feasibility analysis:</b> (process already in place, adjustments might be needed)	<ul style="list-style-type: none"> <li>• 31/12/2015</li> <li>• annual</li> </ul>

<sup>539</sup> In the cases NRAs cannot cover 100% of their markets

7.	%		<p>Eurostat <a href="#">Information society statistics</a>,</p> <p><b>Feasibility analysis:</b> (already in place)</p> <p>Main Tables:</p> <p><a href="#">Information society statistics</a> (<i>t_isoc</i>), in particular:</p> <ul style="list-style-type: none"> <li>• Policy indicators (<i>t_isoc_pi</i>)</li> <li>• Individuals using the internet for ordering goods or services from other EU countries (<i>tin00003</i>)</li> <li>• E-commerce by individuals and enterprises (<i>t_isoc_ec</i>)</li> <li>• Value of purchases and sales by Internet and/or networks other than Internet (<i>isoc_ec_evaln2</i>)</li> </ul>	<ul style="list-style-type: none"> <li>• 31/12/2015</li> <li>• annual</li> </ul>
8.	%		<p>1) Eurobarometer Surveys <b>Feasibility analysis:</b> (on demand)</p> <p>2) Eurostat E-commerce survey <b>Feasibility analysis:</b> (already in place): indicator:</p> <ul style="list-style-type: none"> <li>• Obstacles that limit/prevent the enterprise from selling via a website (obstacles related to logistics) (<i>isoc_ec_wsobs_n2</i>)</li> </ul>	<ul style="list-style-type: none"> <li>• 31/12/2015</li> <li>• Every 2 years</li> </ul>
8a.	%		<p>1) Eurobarometer Surveys <b>Feasibility analysis:</b> (on demand)</p> <p>2) Eurostat E-commerce survey <b>Feasibility analysis:</b> (already in place): indicator: Obstacles that limit/prevent the enterprise from selling via a website (obstacles related to logistics) (<i>isoc_ec_wsobs_n2</i>)</p>	<ul style="list-style-type: none"> <li>• 31/12/2015</li> <li>• Every 2 years</li> </ul>

### **ANNEX 13: GLOSSARY OF TERMS USED IN THE IA**

<b>Name</b>	<b>Description</b>
Alternative operators	Delivery operators other than the national postal operators offering postal and parcel services
B2B	Business-to-business. B2B e-commerce identifies trade transactions between businesses taking place via the internet. B2B post identifies postal flows between businesses
B2C	Business-to-consumer. B2C e-commerce identifies trade transactions from businesses to consumers taking place via the internet. B2C post identifies postal flows from businesses to consumers
Base rate	A part of the ILR system (for definition of Inward Land Rate system see below), which comprises a flat charge for any parcel delivered, and then a variable fee that increases in proportion of the weight of the parcel delivered
Bonus payment	A part of the ILR system, specifically an additional amount of compensation on top of the base rate which can be earned by the receiving country's postal operator if it provides a particular level of delivery service
Business consumer	A user of postal services who is a business
C2C	Consumer-to-consumer. C2C e-commerce identifies trade transactions between consumers taking place via the internet. C2C post identifies postal flows between consumers
CEN	European Committee for Standardization
CEP	Courier, express and parcel market
Consolidator	A firm providing preparation of mail/parcels, which are injected into the delivery operator's mail / parcel pipeline
COSME	COSME is the EU programme for the Competitiveness of Enterprises and Small and Medium-sized Enterprises running from 2014 - 2020 with a planned budget of EUR 2.3 billion. COSME will support SMEs in the following areas: Facilitating access to finance, Supporting internationalisation and access to markets, Creating an environment favourable to competitiveness, Encouraging an entrepreneurial culture. COSME is a programme implementing the Small Business Act (SBA) which reflects the Commission's political will to recognise the central role of SMEs in the EU economy.
Designated USP	Designated universal service provider. The postal operator that has the remit of fulfilling the universal service obligation based on entrustment. The designated USP is the only provider who commits to providing nationwide coverage of basic letter and parcel delivery (as identified in universal service requirements). The designated USP is normally the former monopolist
Digital Single Market (DSM)	<i>A single market where citizens, individuals and businesses can seamlessly access and exercise online activities under conditions of fair competition, and a high level of consumer and personal data protection, irrespective of their nationality or place of residence.</i>
EC	<i>European Commission</i>

E-commerce	<i>All purchases and sales made via websites or automated data exchanges, excluding normal e-mail messages that are manually typed.</i> <sup>540</sup> In effect, the e-commerce market is one where goods or services are purchased online
EMS	Express Mail Service. A priority mail service provided by designated postal operators who are members of the Universal Postal Union. The EMS is regulated by the EMS Cooperative, whose members are designated postal operators within the meaning of Article 2 of the Universal Postal Union Convention that joined the cooperative
End consumer	A user of postal services who is an individual
EPG	Enhanced Parcel Group. Comprises 27 postal operators who agree to deliver their parcels through an integrated delivery network and commit to provide a high quality of customer service <sup>541</sup>
E-retailer	A firm selling goods or services online
ERGP	European Regulators Group for Postal Services, a group established in August 2010, which aims to strengthen cooperation between independent national postal regulatory authorities
EU	European Union
Express carrier	Delivery operator providing value added, door-to-door transport and next day or time-definite shipments.
Express product	A postal item (which can be either a packet or a parcel in terms of its dimensions) for which customers pay a premium for faster delivery service and/or other sophisticated services. Express products may be given priority in operators' networks, or separate express designated delivery pipelines may exist, to reduce delivery times
Freight Forwarder	A firm acting as an expert in supply chain management, organising shipments by contracting with carriers to move cargo without moving the goods itself.
GDP	Gross Domestic Product
ILR	Inward Land Rate. A system of payment between parcel postal operators for the delivery of incoming parcels. ILRs apply only between designated operators within the meaning of Article 2 of the UPU convention. To ensure that the payment for the delivery of parcels is linked to the quality of service provided, in 2006 the Postal Operators Council approved a system of bonus payments for the provision of parcels service features added to a base rate. <sup>542</sup> Participating members may choose to enter agreements other than the ILR, such as the EPG or bilateral agreements
Integrator (also global integrators/multinational integrators)	Multi-national delivery operator with world-wide presence, providing time-defined delivery through its owned integrated network or through a network where he has full operational control.

<sup>540</sup> Eurostat news release – Information and Communication Technologies: “E-commerce accounted for 12% of enterprises’ turnover in the EU in 2008”, 12 2010 – 19 January 2010, page 4.

<sup>541</sup> <http://www.ipc.be/en/Services/EPG.aspx>.

<sup>542</sup> <http://www.upu.int/en/activities/parcels/inward-land-rates/about-inward-land-rates.html>.

Interconnect programme	An IT system put in place by national postal operators in conjunction with the International Post Corporation and Post Europ to improve the interoperability of their national postal networks. The "Interconnect" programme covers five themes: delivery choice, returns solutions, tracking, labelling and customer service.
Inter-operator wholesale prices	The prices that delivery operators charge each other for the transport, sorting, and delivery of cross-border parcel items in the destination country. (see also terminal dues)
Large enterprise	A large enterprise is a business which employs more than 250 people, and which has a turnover of over €50m
Letter post (mail)	Under the Universal Postal Convention, "letter post" is the international postal service for the conveyance of letters, postcards, printed papers, and small packets weighing up to 2 kg (with some exceptions). The UPU defines "letter post" as including letters and postcards, printed papers, and small packets. Letter post is also defined is also classified by format as including "small letters"(P), with a maximum weight of 100 grams (3.5 oz.) and maximum dimensions of 165 x 245 x 5 mm (6.50 x 9.6 x 0.2 in.); "large letters" (G), also called "flats", with a maximum weight of 500 grams (17.6 oz.) and maximum dimensions of 305 x 381 x 20 mm (12.0 x 15.0 x 0.8 in.); and "bulky letters" (E), also referred to as "small packets" with a maximum weight of 2 kg (4.4 lbs.) and maximum combined dimensions of 900 mm (35.4 in.)
Logistics intermediary	A specialised firm supplying software solutions or logistics services to firms willing to outsource logistics functions
Long haul transportation	Terminal-to-terminal freight movements in transportation. Such long distance moves are distinguished from local freight movements" (Source: <a href="http://www.universalcargo.com/logistics-glossary">http://www.universalcargo.com/logistics-glossary</a> )
Micro enterprise	The EC <sup>543</sup> defines micro enterprises as those businesses having less than 10 employees and a turnover of €2m or less
MS	Member States. The 28 members of the European Union: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, the UK
National postal operator (also incumbent)	The former state monopoly, or a universal service provider (the USP), which is the operator in most Member States that has been designated under Article 4 of the Second Postal Directive as the national USP, for the entire national territory
Online brokers	Web brokerage services that offer discounted rates to deliver parcels cross-border, available to individual shippers (different to consolidators in that brokers do not perform the shipment themselves). Typically, brokers buy delivery slots in bulk from operators reselling them.
Packages	A generic term encompassing the postal item categories of packs, parcels and express products
Packet	A postal item that is of a similar size to a letter, but that marginally breaches the traditional letter format size dimensions'. Packets have a maximum weight limit of 2kg. "Packet" or "small packet" is loosely but customarily equated with "bulky

<sup>543</sup> [http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/sme-definition/index\\_en.htm](http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/sme-definition/index_en.htm).

	letters” (E) and thus refers to any letter post item that cannot be classified as a “small letter” (P) or a “large letter” (G). The maximum weight of packets may be increased to 5 kg (11.0 lbs.) by agreement between postal operators. Packets are often used to deliver bulky items, such as small e-commerce items, which do not fit into a standard letter envelope.
Parcel	A postal item with higher weight and size restrictions than a packet. Parcels can typically weight up to 20 or 30kg, and can be of a much larger dimension. Parcel delivery, or “parcel post” service in UPU terminology, is used when the item to be sent does not fit within the requirements for letter post services or when the sender requires a value added service that is not available for letter post items. Parcels can thus be both small and large in size and weigh both more and less than letter post items. It should be noted that the outbound services of a national postal operator do not necessarily incorporate UPU terminology or correspond one to one with the underlying UPU packet and parcel services.
Parcel broker	Firm reselling delivery capacity bought in bulk from integrators, national postal operators, and couriers, taking a commission for each parcel booking made
Parcel operator	A company which offers day-certain and parcel delivery services where delivery times are not being guaranteed either domestically and/or cross-border. Parcel operators include the subsidiaries of national postal operators and other private companies.
Postal Services Directive	PSD. Directive 97/67/EC as modified by Directive 2002/39/EC and most recently by Directive 2008/6/EC - OJ L 15, 21.1.1998, p. 14–25; OJ L 176, 5.7.2002, p. 21–25, OJ L 52, 27.2.2008, p. 3–20 (Comprises the First Postal Directive, the Second Postal Directive and the Third Postal Directive)
Postal item	A generic term encompassing the categories of packs, parcels and express products
Postal user	Any consumer of postal products. Postal users can be business consumers or end consumers of postal services
REIMS	The Remuneration of Mandatory Deliveries of Cross-Border Mails (REIMS) is a voluntary multilateral agreement between postal operators setting out rules for calculation of terminal dues, i.e. the remuneration that postal operators pay each other for the delivery of incoming cross-border mail (applicable to mail items, such as letters and packets up to 2 kg)
Return	The reverse of delivery to the final customer. When a consumer sends back a good that s/he purchased online to the e-retailer.
Small customers	A consumer of postal products (either an individual or a business), who only uses products occasionally (no more than a few items at a time, and no more than a few dispatches a month)
Small enterprise	The EC <sup>544</sup> defines small enterprises as those businesses having less than 50 employees and a turnover of €10m or less
SME	Small and medium enterprises. The EC <sup>545</sup> defines SMEs as those businesses having less than 250 employees and a turnover of €50m or less.
Terminal dues	System used by the Universal Postal Union (UPU) to govern payments between designated postal operators for the transport, sorting, and delivery of cross-

<sup>544</sup> [http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/sme-definition/index\\_en.htm](http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/sme-definition/index_en.htm).

<sup>545</sup> [http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/sme-definition/index\\_en.htm](http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/sme-definition/index_en.htm) ..

	border letter post items in the destination country.
Third party operator	A delivery firm that provides service to its customers of outsourced (or "Third Party") delivery services for part, or all of their supply chain management functions.
Track-and-trace	A characteristic of the logistical process where a customer can follow each stage of their item's progress, from posting, to delivery. It typically involves affixing a barcode or radio frequency identification device (RFID) to the postal item, which sends information to a central database on the items position
UPU	Universal Postal Union. A specialised agency of the United Nations, comprising 191 member countries and interacting with postal sector players in an advisory and mediating role as well as collecting certain postal sector data <sup>546</sup>
USO	Universal Service Obligation. The scope of services of general economic interest (SGEI) in the postal sector that is present in each MS. The entrustment of USO commits the designated USP to provide countrywide services, so that all consumers and businesses have access to a basic set of postal services. The products covered by the USO vary by country, but tend to include basic packet, and parcel products (i.e. products without added characteristics such as track-and-trace), and to exclude express products. Right of access to postal services for users. A minimum range of services of specified quality must be provided in all EU countries at affordable prices for the benefit of all users, irrespective of their geographical location;
USP	Universal Service Provider.
VAT	Value added tax. It is a general, broadly based consumption tax assessed on the value added to goods and services. It is a consumption tax because it is borne by the final consumer. It is not a charge on business <sup>547</sup>

<sup>546</sup> <http://www.upu.int/en.html>.

<sup>547</sup> [http://ec.europa.eu/taxation\\_customs/taxation/vat/how\\_vat\\_works/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/vat/how_vat_works/index_en.htm). – EC website.



