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From: Presidency
To: Permanent Representatives Committee

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Subject: Proposal for a Regulation of the European Parliament and of the Council
on cross-border parcel delivery services
- Analysis of the final compromise text with a view to agreement

Introduction

1. The second trilogue on the above proposal was held on 13 December 2017 where an informal agreement was reached on the basis of the text as reflected in Annex.
2. The Permanent Representatives Committee is thus invited to:
 - a. endorse the annexed compromise text as agreed in the trilogue, and

- b. mandate the Presidency to inform the European Parliament that, should the European Parliament adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the form set out in the compromise package contained in the Annex to this document (subject to revision by the lawyer linguists of both institutions), the Council would, in accordance with Article 294, paragraph 4 of the Treaty, approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the European Parliament's position.
3. In the Annex **bold** or ~~strike through~~ indicate a change compared to the Commission's original proposal. Underlined text marks changes compared to the COREPER mandate.

Changes compared to the COREPER mandate

4. The second COREPER mandate was granted on the basis of document 15458/17 and its Annexes, with an understanding that point (d) in art. 5(2) should be either deleted or made voluntary and in art 6a as much of EP position as possible should be rejected.
5. The trilogue mainly focused on articles 5 on assessment of cross-border tariffs and EP new art. 6a on information and quality standards. The changes to the COREPER mandate for those provisions concern the following:
- point (d) has been kept in art. 5(2) as opposed to art. 5(2a), however, it has been made conditional with the phrase 'where possible without disproportionate burden'. In the Presidency's view, this leaves enough discretion for NRAs to decide whether to take this element into account or not;
 - the date for submission of the assessment by NRAs to the Commission has been set to 30 June;
 - minor amendments have been made throughout article 5;

- the text of article 6a has been significantly reduced, in addition it is now subject to the clause `where possible and applicable`, also reducing the scope to `consumers`, as opposed to `users` requested by the Parliament;
 - the above changes required also changes in recitals 12, 14, 16.
6. Agreement has been reached also in all other areas and the textual changes compared to the mandate are following:
- art. 2(2)(-a): definition of parcels have been streamlined;
 - art. 3(3)(b): minor linguistic amendment;
 - art. 3(4): minor amendment;
 - art. 3(6) and new 3(7) and recital 10: text has been agreed with regard to the thresholds. There is no change in substance compared to the mandate, but drafting has been improved by respective legal services;
 - art. 4(1): small amendments to the text;
 - art. 8, 1st subparagraph and recital 21: text has been agreed with regard to the involvement of stakeholders;
 - art. 8(a): text has been streamlined;
 - compromises have been found also on recitals 3, 4, 6, 8, 8a, 25;
 - recital 8aa has been deleted as this point is now covered in recital 8a.
7. During the negotiations, the Presidency was able to keep the main elements of the Council position, in particular:

In Article 2

- rejected the term 'shipment' in the definition of 'parcel';
- kept the Council version of the definition of 'parcel delivery services'.

In Articles 3 and 4

- rejected a delegated act and kept the implementing act;
- ensured that MS can keep their practice on reporting of the number of persons working according to established practices by adding a new recital 10a;
- kept flexibility for NRAs requested by the Council and even further flexibility for NRAs was added by combining the EP and Council flexibilities in articles 3(6), 3(7) and 4(1);
- rejected 'terminal rates' from art 4 and throughout the whole regulation.

In Article 5

- kept a wording of paragraph 1 which establishes that the NRAs should not assess all cross-border tariffs but only tariffs of parcel delivery service providers that are subject to universal service obligation;
- rejected the 3-month deadline in paragraph 1, proposed by the EP;
- included in the recital 14 text that makes it clear that NRAs can use the pre-assessment filter mechanism;
- kept the distinction between mandatory and non-mandatory elements;
- rejected two of EPs elements as mandatory, but kept them as non-mandatory;
- kept bilateral volumes as a mandatory element;
- found a mid-way solution, keeping the element in art 5(2)(d) among the mandatory ones, however, making it conditional with the phrase 'where possible without disproportionate burden' leaving enough discretion for NRAs to decide whether to take this element into account or not;
- kept Commission guidelines on the methodology on the application of the elements for the assessment;
- rejected the obligation to submit the assessment additionally to competition authorities;

In Article 6a

- managed to reduce the provision to the bare minimum, in addition subjecting its applicability to the clause `where possible and applicable`, also reducing the scope to `consumers`, as opposed to `users` requested by the Parliament;
- ensured the consistency with the Directive 2011/83/EU;
- rejected an article on standardisation.

In Article 7

- kept the 18 months deadline in paragraph 2;
- rejected recital 20 on penalties.

Other issues

- kept the deadlines in most articles as in the Council text;
- kept the usage of the term `postal item` instead of “parcels” in relation to the Annex throughout the text and in Annex itself;
- rejected the EP recitals 18 and 18a, in which EP aimed at keeping some of the elements of the old art 6.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on cross-border parcel delivery services

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

~~Having regard to the opinion of the Committee of the Regions²~~

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The tariffs applicable to low volume senders of cross-border parcels and other postal items, particularly small and medium-sized enterprises (**SMEs**) and individuals, are still relatively high. This has a direct negative impact on users seeking cross-border parcel delivery services, especially in the context of e-commerce.

¹ OJ C , , p. .

~~² OJ C , , p. .~~

- (1b) **Article 14 of the Treaty on the Functioning of the European Union (TFEU) highlights the place occupied by services of general economic interest, such as postal services, in the shared values of the European Union, as well as their role in promoting social and territorial cohesion. It states that care should be taken that such services operate on the basis of principles and conditions which enable them to fulfil their missions.**
- (1c) **Protocol No 26 on Services of General Interest annexed to the TFEU and to the Treaty on European Union further highlights that the shared values of the Union in respect of services of general economic interest within the meaning of Article 14 TFEU include the differences in the needs and preferences of users that may result from different geographical, social or cultural situations and a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights.**
- (1d) **Article 169(1) and point (a) of Article 169(2) TFEU provide that the Union is to contribute to the attainment of a high level of consumer protection through measures adopted pursuant to Article 114 thereof.**
- (2) There are fundamental differences between Member States when it comes to competences conferred on national regulatory authorities with regard to market monitoring and regulatory oversight of parcel delivery service providers, **although some authorities can successfully require providers to supply relevant price information.** This has been confirmed by a joint report³ prepared by the European Regulators Group for Postal Services and the Body of European Regulators for Electronic Communications, who concluded that national regulatory authorities need the appropriate regulatory powers to intervene and that such powers do not seem to be present in all Member States. Those differences result in additional administrative burdens and compliance costs for parcel delivery service providers who operate ~~cross-border~~ **across borders**. Those differences therefore constitute an obstacle to the cross-border provision of parcel delivery services and thus have a direct effect on the functioning of the internal market.

³ BoR (15) 214/ERGP PL (15) 32.

- (2b) Due to the international nature of postal and parcel sector, the further development of European and international technical standards is important for the benefit of users and the environment, and to broaden market opportunities for businesses. Furthermore, users often report quality of service issues when sending, receiving or returning cross-border parcels. Thus further improvements in quality of service standards and interoperability of cross-border parcel deliveries are equally needed and should be prioritised further in accordance with Directive 97/67/EC, through the European Committee for Standardisation and otherwise; more progress on the efficiency of services is also needed, which should take into account in particular the interests of users.**
- (2c) Standardisation of postal services and the improvement of quality of service in support of Directive 97/67/EC is a strategic priority of the European Union⁴; it should be continued. Technical standardisation is indispensable for the promotion of interoperability between national networks and for an efficient universal service. The Commission issued in August 2016 a fourth standardisation request to the European Committee for standardisation (CEN) to establish a work programme and to provide a final report in August 2020⁵. This work should take into account in particular the interest of users, environmental considerations, efficiency and should contribute to promoting the creation of a Digital Single Market for the European Union.**

⁴ Annual Union Work Programme for European Standardisation for 2015 - COM (2014) 500 final, 30.7.2014.

⁵ M/548 - C(2016) 4876 final, 1.8.2016.

- (3) The market for cross-border parcel delivery services is diverse, **complex and competitive**, with different providers offering different services and prices depending on weight, size and format of the **parcels** sent as well as destination, added value features, such as traceability **systems**, and the number of **parcels sent**. **In several Member States, universal service providers do not have a majority share of the parcel delivery market**. That diversity makes **it hard for consumers and users** to compare parcel delivery services between different providers **and services**, in terms of quality and price. ~~Furthermore, low volume senders, such as small and medium-sized enterprises~~ **SMEs and individuals** **because they** are often not aware of the existence of different parcel delivery **options for similar** services ~~offered~~ **in cross-border online trade**. **It should be made easier, in particular, for small and medium-sized enterprises and individuals to access the relevant information.** **Moreover, small and medium sized traders identify delivery concerns as an obstacle when selling cross-border.**
- (4) In order to improve the ~~affordability~~ of cross-border parcel delivery services, especially for ~~users~~ **individuals and small and micro businesses, including** in remote or sparsely populated areas **and for those who are disabled or with reduced mobility**, it is necessary to improve the **access to and** transparency of public lists of tariffs for a limited set of cross-border parcel delivery services ~~offered by universal service providers, which are mostly used by small and medium-sized enterprises and individuals~~. Transparency of public lists is also necessary to address the issue of high tariffs of cross-border delivery services and to reduce, where applicable, ~~unjustified tariff differences between national and cross-border parcel delivery services~~. **Making cross-border prices more transparent and easily comparable across the Union should encourage the reduction of unreasonable differences between tariffs, including where applicable unjustified differences between domestic and cross-border tariffs.**
- (4a) **Single piece parcel is part of the universal service in every Member State and is also the service the most frequently used by individuals and small businesses. Improving the transparency and the affordability of single piece tariffs is necessary for the further development of e-commerce.**

- (4b) Many companies that sell, used to sell or tried to sell online considered high delivery costs together with expensive complaints process and guarantees to be a problem; further action is needed to ensure that, in particular SMEs and consumers in remote areas, fully benefit from seamless cross-border parcel delivery services to which they have access and are reasonably priced.**
- ~~(5) In most Member States there are several providers who provide domestic parcel delivery services, while only a few of those providers also provide cross border parcel delivery services. In this context, it is essential to ensure, in order to safeguard and promote effective competition and to protect users, transparent and non-discriminatory access to the services and infrastructure necessary for the provision of cross border parcel delivery services.~~
- (5a) Universal service providers refers to postal operators that provide a universal postal service or parts thereof within a specific Member State. Universal service providers who operate in more than one Member State should be classified as a universal service provider only in the Member State(s) in which they provide a universal postal service.**

- (6) Currently, postal services are regulated by Directive 97/67/EC of the European Parliament and of the Council⁶. ~~This~~ **That** Directive establishes common rules governing the provision of postal services and the universal postal service in the Union. **It focuses primarily, but not exclusively, on national universal services and does not address regulatory oversight of parcel delivery service providers,** ~~transparency of tariffs and terminal rates for certain cross-border parcel delivery services, the assessment of the affordability of tariffs for certain cross-border parcel delivery services and transparent and non-discriminatory access to certain cross-border parcel delivery services and/or infrastructure.~~ **Compliance with the minimum universal service requirements laid down in the directive is ensured by national regulatory authorities designated by the Member States.** This Regulation, **therefore,** complements, insofar as cross-border parcel delivery services are concerned, the rules set out in Directive 97/67/EC. ~~Compliance with the minimum universal service requirements laid down in the directive is ensured by national regulatory authorities designated by the Member States.~~ **The provisions of this Regulation are without prejudice to the rights and guarantees set out in that Directive including in particular the continued provision of a universal postal service to users.**
- (6a) **This Regulation does not introduce any modification regarding the definition of postal item in the meaning of point 6 of Article 2 of Directive 97/67/EC and its implementation.**
- (7) An estimated 80 % of addressed ~~postal items~~ **parcels** generated by e-commerce today weigh less than two kilograms, and are often processed in the letter-post mail stream **although information is lacking on the weight of parcels delivered by other means.** It is important that those ~~postal~~ **lighter** items are subject to this Regulation, ~~notably to the requirements on transparency of tariffs and the assessment of their affordability.~~

⁶ Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ L 1, 21.1.1998, p 14 - 25).

- (8) ~~Therefore~~ **For the purpose of implementing this Regulation**, it is important to provide a clear definitions of **parcels, and of parcel delivery services and parcel delivery service provider** and to specify which postal items are covered by ~~that those~~ definitions. ~~This concerns in particular postal items, other than items of correspondence, which because of their weight are commonly used for sending goods and merchandise. It is assumed that postal items which are over 20mm thick contain goods and not correspondence other than items of correspondence, handled or not by the universal service provider. Postal items consisting only of correspondence should not fall under the scope of parcel delivery services. This Regulation should therefore cover,~~ in line with consistent practice, ~~postal items~~ **parcels containing goods with or without commercial value**, weighing up to 31.5 kg, as heavier items cannot be handled by a single average individual without mechanical aids **and this activity is part of the freight transport and logistic sector**. ~~In line with current practice and Directive 97/67/EC, each step in the postal chain, i.e. clearance, sorting and delivery should be considered parcel delivery services. Transport alone that is not undertaken in conjunction with one of those steps should fall outside the scope of parcel delivery services as it can in this case be assumed that this activity is part of the transport sector.~~

(8a) Providers of parcel delivery services using alternative business models, for example those drawing on the collaborative economy and e-commerce platforms, should be subject to this Regulation if they provide at least one of the steps in the postal delivery chain. Clearance, sorting and delivery, including pick-up services, should be considered parcel delivery services, including when provided by express and courier service providers, as well as consolidators, in line with current practice. Transport alone, that is not undertaken in conjunction with one of those steps should fall outside the scope of parcel delivery services, including when carried out by subcontractors either in the context of alternative business models or not, as it should in this case be assumed that this activity is part of the transport sector, unless the undertaking concerned or one of its subsidiaries or linked undertakings otherwise falls within the scope of this Regulation.

~~(8aa) An undertaking that provides transport alone should not be considered a subcontractor.~~

(8b) This Regulation should not apply to undertakings established in only one Member State that only have domestic in-house delivery networks in order to fulfil orders of goods that they have sold themselves under the sales contract as defined by point 5 of Article 2 of Directive 2011/83/EU. Undertakings that use domestic in-house delivery networks also for the delivery of goods sold by third parties should be subject to this Regulation.

(8c) The minimum confidential information that should be forwarded to the national authorities and procedures followed by the authorities to ensure compliance with the commercial nature of national operators should be defined and secure channels established for the communication thereof.

~~(9) Terminal rates are based on multilateral and bilateral agreements between universal service providers and ensure that the destination universal service provider is remunerated for the costs of the service provided to the originating universal service provider. Terminal rates should be defined in such a way that it includes both terminal dues, as defined in point 15 of Article 2 of Directive 97/67/EC that are applied for letter mail items and inward land rates that are applied to parcels.~~

- (10) It is necessary that national regulatory authorities have knowledge and information for statistical purposes about parcel delivery service providers active on the market **on the basis of appropriate authorisation procedures or other legal requirements. Due to the labour intensive nature of the sector.** ~~However,~~ **and** in order to limit the administrative burden for small parcel delivery service providers who are only active on a ~~national or regional or domestic~~ market, a threshold of **fewer than 50 persons** should be applied, based on the number of persons working for the service provider **over the previous calendar year** and involved in the provision of parcel delivery services **in the Member State in which the provider is established, unless that provider is established in more than one Member State.** ~~The~~ **This threshold of 50 persons is inspired by in line with the Commission Recommendation 2003/361⁷ of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, reflects the labour intensive nature of the sector and captures most of the parcel delivery market and level of market share, especially in countries with low volumes of parcels flows.** That threshold should **in particular** include persons involved in the provision of parcel delivery services such as full-time, part-time and temporary employees and self-employed persons working for the parcel delivery service provider. Breakdown by employment status should **only include the statuses recognised by the relevant applicable** ~~be in accordance with the~~ national law of the Member States concerned. ~~In addition, in order to take into account the Member States' specificities in relation to their market of cross border parcel delivery services~~ **In certain cases, while taking into account the specificities of the Member State concerned, the national Regulatory Authorities could in certain cases either should be able to lower the threshold to 25 persons or request the cross-border parcel delivery service provider to include in the threshold full-time, part-time and temporary employees and self-employed persons working** ~~workers~~ for its subcontractors, in order to increase the transparency of the cross-border tariffs and of the market as a whole.

- (10a) When submitting information on the number of persons working for the parcel delivery service provider to the national regulatory authority, such data should be submitted in accordance with established company reporting practices relating to statistical information. It is important in order to ensure comparability of data while keeping the administrative burden on the providers to the minimum.**
- (11) The place at which a provider is established is to be determined in line with the case law of the Court of Justice. Where a provider has several places of establishment, it is important to determine the place of establishment from which the actual service concerned is provided.
- (11a) When submitting information to the national regulatory authority, the characteristics of the parcel delivery services should include the steps in the postal delivery chain (clearance, sorting, transport and distribution) undertaken by that provider; whether the service is within or outside the scope of the universal service obligation; the territorial scope of the service (regional, domestic, cross-border); and whether added value is offered.**

- (12) ~~When providing information to the national regulatory authority, it should be taken into account that parcel delivery service providers may have already provided certain information to the same national regulatory authority. Parcel delivery services are important for small and medium sized enterprises and individuals and they should be able to compare easily between different providers. Therefore, the services for which tariffs should be provided by universal service providers should be clearly defined. Those tariffs should be published by the Commission on a dedicated webpage and should, together with the confidential regular provision of the underlying terminal rates, constitute the basis for the national regulatory authorities to assess the affordability of tariffs for cross border parcel delivery services. Parcel delivery service providers other than universal service providers may voluntarily provide, in a comparable form, their national regulatory authority with the tariffs for the same items provided that such items are delivered at the home or the premises of the addressee. The list of postal items that are subject to price transparency measures should be limited to facilitate comparability and minimise administrative burdens on cross-border parcel delivery service providers and national regulatory authorities. Standard and registered services should be included as these form the basis of the universal service obligation, and given the importance of track and trace functionality for e-commerce, the prices for track and trace and registered parcels should also be included, whether or not they form part of the universal service obligation to ensure comparability across the European Union. The focus should be on lighter weights which comprise the majority of postal items delivered by parcel delivery service providers, including the prices for postal items over 20mm thick which are processed as letters. Only single piece tariffs should be included as these are the prices paid by the smallest senders. The postal items concerned should be set out clearly in an annex to this Regulation. This Regulation does not oblige cross-border parcel delivery service providers to offer all the postal items listed in the Annex. The tariff information should be provided by cross-border parcel delivery service providers themselves to ensure accuracy. Those tariffs should be published by the Commission on a dedicated website which is neutral and non-commercial in character and should constitute the basis for the national regulatory authorities to assess the tariffs of those postal items listed in the Annex falling under universal service obligation of universal service providers. The assessment of the cross border tariffs that may be unreasonably high should take into account the principles set out in Article 12 of Directive 97/67/EC.~~

~~(13) Because of their small size and dimensions, certain postal items should not be subject to the obligations set out with regard to transparency of tariffs. The postal items subject to those obligations should therefore have a minimum width of 20 mm.~~

~~(14) When national regulatory authorities annually assess the affordability of tariffs, they should base themselves on objective criteria, such as the domestic tariffs of the originating universal service providers and the destination universal service providers and the level of terminal rates. Those common criteria may be complemented by other criteria of particular relevance for explaining the tariffs in question, such as specific transportation or handling costs and bilateral volumes between different cross-border parcel delivery service providers.~~

When national regulatory authorities objectively assess the cross-border tariffs they consider necessary to assess, they should base themselves on elements, such as the domestic and any other relevant tariffs of the comparable parcel delivery services in the originating Member State and in the destination Member State; any application of a uniform tariff to two or more Member States; bilateral volumes, specific transportation or handling costs, other relevant costs and service quality standards and where possible without disproportionate burden the likely impact of the applicable cross-border tariffs on individual and small and medium-sized enterprise users including those situated in remote or sparsely populated areas, and on individual users who are disabled or with reduced mobility.

Those common elements may be complemented by other elements of particular relevance for explaining the tariffs in question, such as whether tariffs are subject to a specific price regulation under national legislation or whether abuses of dominant market position have been established in accordance with relevant applicable law.

In addition in order to reduce the administrative burden for the national regulatory authorities and for service providers subject to universal service obligation and in line with the principle of proportionality, when considering which cross-border tariffs are necessary to be assessed, national regulatory authorities may base its their consideration on objective pre-assessment filter mechanism.

- (15) Uniform tariffs for cross-border deliveries to two or more Member States may be important in the interest of protecting regional and social cohesion. In this context ~~it~~ **consideration** should be ~~considered that~~ **given to the need to promote e-commerce and offers new opportunities for sparsely populated and remote areas to participate in online trade and to enhance their economic life regional economies.** ~~It is therefore necessary to take any uniform tariffs fully into account when assessing the affordability of parcel delivery services.~~
- (16) Significant differences between domestic and cross-border tariffs for parcel delivery services should be justified by objective criteria, **such as additional specific transportation or handling costs for transport and a reasonable profit margin or other relevant costs.** Universal service providers providing parcel delivery services should be required to provide such justification without delay. **It might be necessary for the national regulatory authority to gather evidence for the purposes of the assessment. The evidence together with any justification of the tariffs under assessment should be provided to the national regulatory authority upon request.**
- (17) In order to ensure transparency across the Union, ~~the analysis~~ **a non-confidential version of the assessment** ~~of a~~ **submitted by each** national regulatory authority should be ~~submitted to the national regulatory authorities of the other Member States and to~~ **published by** the Commission. Confidentiality is to be ensured by the national regulatory authorities and the Commission. The Commission may also request the European Regulators Group for Postal Services to provide a Union-wide analysis on the basis of the national contributions.

- ~~(18) Universal service providers providing parcel delivery services may conclude multilateral and bilateral agreements on terminal rates and may set up other programmes to facilitate the interconnectivity of their delivery networks. For reasons of non-discrimination, competing parcel delivery service providers shall be granted equal access to the terminal rates applicable between parties under multilateral agreements. It may be justified that terminal rates payable by third-party parcel delivery service providers, in some cases, exceed those payable by universal service providers that are parties to such agreements. This may be the case where the parties to a multilateral agreement on terminal rates are able to demonstrate that the cost of setting up, operating and administering the agreement, the extra cost incurred by accepting and handling items from non-designated parcel delivery service providers and other such costs are not covered by the terminal rates payable by the third-party service provider in the originating Member State.~~
- ~~(19) In practice and for operational reasons, the point at which access should be provided is the inward office of exchange, which is an office or a facility determined by universal service providers in the destination Member State for handing over postal items other than items of correspondence.~~
- ~~(20) National regulatory authorities should be able to take effective action to monitor and secure compliance with the provisions of this Regulation and in that respect impose effective financial or administrative penalties in the event of any breach thereof.~~
- 20a) In order to limit the administrative burden, the transfer of data by parcel delivery service providers, national regulatory authorities and the Commission should be electronic, and in particular should allow the use of e-signatures, as provided for in Regulation (EU) No 910/2014 (eIDAS Regulation)⁸.**

⁸ **Regulation (EU) 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.08.2014, p. 73).**

- (21) As markets for parcel delivery services are changing fast, the Commission should re-assess the efficiency and effectiveness of this Regulation, **taking into account developments in e-commerce**, and submit a regular report to the European Parliament and the Council. That report should be accompanied, where appropriate, by legislative proposals for review to the European Parliament and the Council. **That report should be produced with the involvement of all relevant appropriate stakeholders including the European Social Dialogue Committee for the postal sector.**
- (21a) **The Commission should build on valuable input from the European Regulators Group for Postal Services composed by representatives of the national regulatory authorities.**
- (22) In order to ensure uniform conditions for the implementation of ~~the obligation for parcel delivery providers to submit information to national regulatory authorities~~ **this Regulation**, implementing powers should be conferred on the Commission to establish a form for the submission of ~~such~~ information **by parcel delivery service providers to national regulatory authorities**. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁹.
- (23) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, and should be implemented in accordance with those rights and principles.
- (24) Directive (EU) 2016/680 of the European Parliament and of the Council and Regulation (EU) 2016/679 of the European Parliament and of the Council apply to the processing of personal data within the framework of this Regulation.

⁹ Regulation (EU) 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13 []).

- (24a) **Member States should lay down rules on penalties applicable to infringements of this Regulation and ensure that they are implemented. Those penalties should be effective, proportionate and dissuasive.**
- (25) ~~Since the objectives of~~ This Regulation ~~has as objectives, namely~~ to establish the regulatory principles and rules necessary to improve regulatory oversight, to improve transparency of ~~prices~~ **tariffs** and establish certain principles as regards cross-border parcel delivery services that should support competition, **with the ultimate goal of fostering better cross-border parcel delivery services for users, and, in doing so, should also increase consumer confidence in cross-border e-commerce.** ~~Since aforementioned goals~~ cannot be sufficiently achieved by the Member States ~~and but~~ can ~~therefore~~ **rather**, by reason of ~~its their~~ scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve ~~that those~~ **this** objectives.

HAVE ADOPTED THIS REGULATION:

CHAPTER I

~~Subject matter and definitions~~ General provisions

Article 1

Subject matter and objectives

This Regulation establishes specific ~~rules~~ **provisions to foster better cross-border parcel delivery services**, in addition to the ~~rules~~ **provisions** set out in Directive 97/67/EC, concerning:

- (a) the regulatory oversight related to parcel delivery services;
- (b) the transparency of tariffs ~~and terminal rates~~ **and assessment of tariffs** for certain cross-border parcel delivery services, ~~and the assessment of the affordability of certain cross-border tariffs~~ **to identify those tariffs that are unreasonably high;**
- (c) ~~transparent and non-discriminatory access to certain cross-border parcel delivery services and/or infrastructure~~ **information for consumers by traders on cross-border parcel delivery services.**

Article 2

Definitions

1. For the purposes of this Regulation, the definitions set out in Article 2 of Directive 97/67/EC shall apply.
2. In addition to the definitions referred to in paragraph 1, the following definitions shall apply:

- (-a) "parcel" means a postal item containing goods with or without commercial value, **other than an item of correspondence with a weight not exceeding 31,5 kg, excluding items of correspondence;**
- (a) "parcel delivery services" means services involving the clearance, sorting, transport ~~or~~ **and** distribution of ~~postal items parcels other than items of correspondence;~~ transport alone shall not be considered a parcel delivery service; delivery of such items exceeding 31,5 kg shall not be considered a parcel delivery service;
- (b) "parcel delivery service provider" means an undertaking that provides one or more parcel delivery services; **undertakings established in one member state alone, and that only provide domestic parcel delivery services as part of a sales contract as defined by point 5 of Article 2 of Directive 2011/83/EU and as part of the contract the undertaking personally delivers goods that are subject of that contract to the user, shall not be considered as parcel delivery service provider;**
- (ba) "subcontractor" means an undertaking that provides the clearance, sorting, transport or distribution of parcels for the parcel delivery service provider;
- ~~(c) "terminal rates" means payments from the originating universal service provider to the destination universal service provider for the costs of cross-border parcel delivery services in the destination Member State.~~
- (ca) **the definitions of "consumer", "trader" and "sales contract" in paragraphs 1, 2 and 5 of Article 2 of Directive 2011/83/EU;**

Article 2a

Level of harmonisation

The requirements laid down in this Regulation are minimum requirements and shall not prevent any Member State from maintaining or introducing additional necessary and proportionate measures, in order to achieve better cross-border parcel delivery services. Such measures shall be compatible with Union law.

CHAPTER II

Regulatory oversight

Article 3

Provision of information

1. All parcel delivery service providers shall submit the following information to the national regulatory authority of the Member State in which they are established **unless the national regulatory authority has already requested and received such information:**
 - (a) the name of the **parcel delivery service** provider, its legal status and form, registration number in a trade or similar register, VAT **identification** number, the address of the establishment and a contact person;
 - (b) the ~~nature~~ **characteristics and where possible a detailed description** of the **parcel delivery** services offered by the **parcel delivery service** provider;
 - (c) the **parcel delivery service** provider's general **terms and** conditions of sale for **parcel delivery services**, including ~~a detailed description~~ **details** of the complaints procedures for users and any potential limitations of liability that may apply.

2. ~~In case of any change concerning information referred to in the first subparagraph, p~~Parcel delivery service providers shall inform the national regulatory authority of ~~this any change concerning information referred to in paragraph 1~~ **any change concerning information referred to in paragraph 1** within 30 days.
3. By ~~31 March~~ **30 June** of each calendar year, all parcel delivery service providers shall submit the following information to the national regulatory authority of the Member State in which they are established **unless the national regulatory authority has already requested and received such information:**
- (a) the annual turnover in parcel delivery services for the previous calendar year in the Member State in which the **parcel delivery service** provider is established, broken down into ~~parcel delivery services relating to national domestic~~, incoming and outgoing cross-border ~~postal items~~ **parcel delivery services;**
 - (b) the number of persons working for the **parcel delivery service** provider **over the previous calendar year** and involved in the provision of parcel delivery services in the Member State in which ~~the that~~ provider is established ~~in the previous calendar year~~, **including breakdowns by reference to employment status, and in particular of the number of persons working full-time, part-time, temporary employees and self-employed;**
 - (c) the number of ~~postal items other than items of correspondence and not exceeding 31,5 kg~~ **parcels** handled **over the previous calendar year** in the Member State in which the **parcel delivery service** provider is established ~~in the previous calendar year~~, broken down into ~~national domestic~~, incoming and outgoing cross-border ~~postal items~~ **parcels;**
 - (ca) **the names of their subcontractors, involved in the provision of parcel delivery services, together with any information held by the parcel delivery service provider on the characteristics of parcel delivery services provided by the subcontractors;**

(d) where available, any publicly accessible price list applicable on 1 January of each calendar year for parcel delivery services.

4. **By four months after the entry into force of this regulation**, the Commission shall, by means of an implementing act, establish a form for the submission of the information referred to in paragraphs 1 and 3 of this Article. ~~Those~~ **That** implementing acts shall be adopted in accordance with the examination procedure referred to in Article 9.
5. The national regulatory authorities may impose information requirements additional to those referred to in paragraphs 1 and 23 ~~where~~ **provided that** they are necessary and **proportionate** ~~to ensure conformity with this Regulation~~.
6. ~~A~~ **This Article shall not apply to any** parcel delivery service provider which employs had, over the previous calendar year, on average fewer than 50 persons working for it and involved in the provision of parcel delivery services in the Member State in which that provider is established, ~~shall not be subject to the obligations under paragraph 1 and 2,~~ unless that provider is established in more than one Member State. **A national regulatory authority may include in the threshold the persons working for parcel delivery service provider's sub-contractors;**
7. **Notwithstanding paragraph 6, a national regulatory authority may request the information to be submitted under this Article by any parcel delivery service provider which employed over the previous calendar year, on average between 25 and 49 persons where the specificities of the Member State concerned so require and provided that it is necessary and proportionate to ensure conformity with this Regulation.**

Article 4

Transparency of **cross-border** tariffs and terminal rates

1. ~~Universal~~ **All cross-border parcel delivery** service providers **other than those excluded by Article 3(6) and 3(7)** ~~providing parcel delivery services~~ shall provide the national regulatory authority of the Member State in which they are established with the public list of tariffs applicable on 1 January of each calendar year for the delivery of **single piece** postal items, **other than items of correspondence, falling within the categories** listed in the Annex. That information shall be provided by 31 January of each calendar year ~~at the latest.~~
2. The national regulatory authorities shall without delay and by 28 February of each calendar year at the latest submit the public lists of tariffs obtained in accordance with paragraph 1 to the Commission. The Commission shall publish them on a dedicated website by ~~30 April~~ **31 March** of each calendar year at the latest, **and shall ensure that the dedicated website is neutral and non-commercial in character.**
- ~~3. Universal service providers providing parcel delivery services shall provide the national regulatory authority with the terminal rates applicable on 1 January of each calendar year to postal items originating from other Member States. That information shall be provided by 31 January of each calendar year at the latest.~~
- ~~4. The national regulatory authorities shall submit the terminal rates obtained in accordance with paragraph 3 to the Commission and the national regulatory authorities of the originating Member States by 28 of February of each calendar year at the latest.~~

Article 5

~~Assessing affordability~~ **Assessment of cross-border single piece postal items parcel tariffs**

1. The national regulatory authority shall ~~assess the affordability of cross-border tariffs included in~~ **identify based on** the public lists of tariffs obtained in accordance with Article 4₂(1) ~~within 3 months of receipt of that information~~ **the cross-border tariffs of the parcel delivery service provider originating in its Member State which are subject to universal service obligation, it objectively considers necessary to assess for each of the single piece postal items listed in the Annex.**

2. **The national regulatory authority shall assess objectively the cross-border tariffs identified under paragraph 1 in line with the principles in Article 12 of Directive 97/67/EC in order to identify those cross-border tariffs that it considers to be unreasonably high.** In that assessment, in particular the following **criteria elements** shall be taken into account:
 - (a) the domestic **and any other relevant** tariffs of the comparable parcel delivery services in the originating Member State and in the destination Member State;

 - ~~(b) the terminal rates obtained in accordance with Article 4(3);~~

 - (**eb**) any application of a uniform tariff to two or more Member States;

 - (c) **bilateral volumes, specific transportation or handling costs, other relevant costs and service quality standards;**

 - (d) **the likely impact of the applicable cross-border tariffs on individual and small and medium-sized enterprise users including those situated in remote or sparsely populated areas, and on individual users who are disabled or with reduced mobility where possible without disproportionate burden.**

- 2a. In addition to the criteria elements in paragraph 2, the national regulatory authority may when it deems necessary also take into account in particular the following criteria elements:
- (a) whether tariffs are subject to a specific price regulation under national legislation;
 - (b) ~~whether any~~ abuses of dominant market position ~~has been identified~~ established in accordance with relevant applicable law.
- 2b. The Commission shall set out guidelines on the methodology for the application of the criteria elements provided for in paragraphs 2 and 2a.
- ~~2. Where the national regulatory authority concludes that cross-border tariffs referred to in paragraph 1 are not affordable, it shall request further necessary information and/or justification in relation to the level of those tariffs from the universal service provider.~~
3. ~~The universal service provider shall provide the national regulatory authority with the information and/or justification referred to in paragraph 2 within 15 working days of receipt of the request.~~ For the purposes of the assessment referred to in paragraph 2, if the national regulatory authority deems it to be necessary, it ~~may~~ shall request any further relevant evidence in relation to those tariffs that may be required for the assessment to be made.
4. The evidence referred to in paragraph 3 shall be submitted provided to the national regulatory authority within 1 month of receipt of the request, together with any justification of the tariffs under assessment.

45. The national regulatory authority shall submit electronically its assessment, ~~including any information and/or justification provided in accordance with paragraph 3,~~ to the Commission **by 30 June of the relevant calendar year at the latest,** ~~the national regulatory authorities of the other Member States and the national authorities within the Member State of the submitting national regulatory authority entrusted with the implementation of competition law.~~ **In addition, the national regulatory authority shall provide** Aa non-confidential version of that assessment ~~shall also be provided to the Commission and, upon justified request, to any of the national regulatory authorities of affected Member States.~~

The information required by this paragraph shall be provided by 31 May of each calendar year at the latest.

56. The Commission shall publish the non-confidential version of the assessment provided by the national regulatory authorities ~~in accordance with paragraph 4 on the dedicated website by 30 April of each calendar year at the latest~~ **without delay and in any event within 1 month of receipt.**

Article 6

Transparent and non-discriminatory cross-border access

1. ~~Whenever universal service providers providing parcel delivery services conclude multilateral agreements on terminal rates they shall meet all reasonable requests for access to all network elements and associated facilities as well as relevant services and information systems, necessary for the provision of cross-border parcel delivery services.~~
2. ~~The point at which access should be provided shall be the inward office of exchange in the destination Member State~~

- ~~3. Universal service providers referred to in paragraph 1 shall publish a reference offer. The reference offer shall contain all the relevant associated terms and conditions, including prices.~~
- ~~4. The reference offer shall include all components necessary for access as referred to in paragraph 1, including any conditions limiting access to and/or use of services where such conditions are allowed by Member States in conformity with Union law.~~
- ~~5. Before the reference offer is published, it shall be approved by the national regulatory authority. The national regulatory authority may, where necessary, impose changes to the reference offer to give effect to obligations set out in this Regulation.~~
- ~~6. Universal service providers referred to in paragraph 1 shall upon request, and based on a reference offer, make an individual offer available to a parcel delivery service provider requesting access within the meaning of that paragraph at the latest one month after the receipt of the request. Universal service providers receiving an access request and providers requesting access shall negotiate in good faith.~~
- ~~7. When no agreement is reached on the basis of the individual offer referred to in paragraph 6, the parcel delivery service provider requesting access may submit the individual offer made by the universal service provider to the national regulatory authority. If necessary, the national regulatory authority shall change the individual offer to give effect to the obligations laid down in this Article.~~
- ~~8. The access shall be operationally ensured within a reasonable period of time, not exceeding three months from the conclusion of the contract.~~

Article 6a
Information to consumers

Without prejudice to Article 3 and 6 For contracts falling in the scope of Directive 2011/83/EU, all traders concluding sales contracts with consumers that include the sending of cross-border parcels shall, where possible and applicable, make available ~~to consumers~~ at the pre-contractual stage, ~~the following~~ information on cross-border delivery options in relation to the specific sales contract and on charges payable by consumers for cross border parcel delivery, as well as, where applicable their own complaints handling policies. ~~if that information is not already apparent from the context:~~

- (a) ~~charges payable by consumers for cross border parcel delivery in relation to the specific sales contract including any applicable alternative or discounted rates or, where those charges cannot be reasonably calculated in advance, the fact that such additional charges may be payable;~~**
- (b) ~~where applicable, cross border delivery options offered under the specific sales contract, including any choice of providers, available arrangements for track and trace, redelivery or collection times or locations;~~**
- (c) ~~where applicable, their own and relevant parcel service providers' complaints handling policy as well as the possibility of having recourse to an out-of-court complaint and redress mechanism, to which the trader is subject in accordance with Article 13 of Directive 2013/11/EU.~~**

CHAPTER III

~~Implementation, review and entry into force~~ Final provisions

Article 7

Penalties

1. Member States shall lay down the rules on the penalties applicable for infringements of the provisions of this Regulation, and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.
2. ~~Each~~ Member States shall notify the Commission ~~of those~~ **the provisions of its law which it adopts pursuant to paragraph 1 by 18 months after the entry into force of this Regulation** and, ~~shall notify to it~~ without delay, any subsequent amendment affecting them.

Article 7a

Confidentiality

Any confidential business information provided in accordance with this Regulation to national regulatory authorities or to the Commission shall be subject to strict confidentiality requirements under the applicable provisions of national and Union law.

Article 7b
Application

Except as specifically regulated herein, this Regulation shall be without prejudice to national and Union law and appropriate authorisation procedures applying to parcel delivery service providers including social and employment rules and requirements to submit information to national regulatory authorities.

Article 8
Review

~~Before XX/XX/2019, By ... [two years after the date of entry into force of this Regulation]~~ and **thereafter** every ~~four~~ **three** years ~~thereafter~~, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee an evaluation report on the application **and implementation** of this Regulation accompanied where ~~appropriate~~ **necessary** by a **legislative** proposal for its review. ~~A consultation with a~~ **All relevant stakeholders should be foreseen involved and informed** before the production of this report.

The Commission shall evaluate at least the following:

- (a) ~~whether the affordability~~ **assessment has contributed the contribution to the improvement** of ~~the~~ cross-border parcel delivery services ~~has improved~~, including **the affordability** for ~~users~~ **individuals and small and medium sized enterprises, especially those** located in remote or sparsely populated areas **and whether the transparency of cross-border tariffs has improved;**
- (b) ~~the extent to which transparent and non-discriminatory wholesale cross-border access as referred to in Article 6 has been granted by universal service providers providing parcel delivery services~~ **the impact of the Regulation on cross-border parcel delivery levels and electronic commerce, including data on delivery charges;**

- (c) the extent to which national regulatory authorities have had difficulties applying this Regulation, **including a quantitative analysis of the administrative consequences;**
- (d) progress on other initiatives for completing the single market for parcel delivery services, **in particular on consumer protection and development of standards.**

Article 9

Committee procedure

1. The Commission shall be assisted by the Postal Directive Committee established by Article 21 of Directive 97/67/EC. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 10

Entry into force

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. **This Regulation shall apply from ... [date of entry into force of this Regulation], with the exception of Article 7, which shall apply from ... [18 months after the entry into force of this Regulation]**

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

Annex I

~~Postal items for which the public list of national and all cross-border tariffs to other Member States shall be notified to the national regulatory authorities:~~

Single piece postal items for which parcel delivery service providers' tariffs shall be subject to the price transparency measures and assessment provided for in Articles 4 and 5:

- (a) a 500 gr (domestic and intra Union) standard letter;
- (b) a 1 kg (domestic and intra Union) standard letter;
- (c) a 2 kg (domestic and intra Union) standard letter;
- (d) a 500gr (domestic and intra Union) registered letter;
- (e) a 1 kg (domestic and intra Union) registered letter;
- (f) a 2 kg (domestic and intra Union) registered letter;
- (g) a 500gr (domestic and intra Union) track and trace letter;
- (h) a 1 kg (domestic and intra Union) track and trace letter;
- (i) a 2 kg (domestic and intra Union) track and trace letter;
- (j) a 1 kg (domestic and intra Union) standard parcel;
- (k) a 2 kg (domestic and intra Union) standard parcel;

- (l) a 5 kg (domestic and intra Union) standard parcel;
- (m) a 1 kg (domestic and intra Union) track and trace parcel;
- (n) a 2 kg (domestic and intra Union) track and trace parcel;
- (o) a 5 kg (domestic and intra Union) track and trace parcel.

The postal items, ~~as defined above,~~ **listed in points (a) to (o)** shall meet the following criteria:

- (a) The size limits of the postal items **listed in points (a) to (i)** (letter mail products) shall follow the following rule: Length, width and ~~depth~~ **thickness** combined: 900 mm, the greatest dimension ~~may~~ **shall** not exceed 600 mm, the smallest dimension shall exceed 20mm;
- (b) The parcels **listed in points (j) to (o)** shall not be smaller than the size prescribed for ~~letters~~ **those listed in points (a) to (i)**

Elements to be taken into account when providing the information on the tariffs for points (a) to (o):

- (*) The tariffs corresponding to the postal items shall **be single piece and** not contain any special discounts on the basis of volumes or on any other special treatment.
- (**) The value of the tariffs shall be provided to the national regulatory authorities net of VAT.
- (***) Providers who offer more than one ~~product~~ **postal item** meeting the criteria above should report the least expensive ~~price~~ **tariff**.
- (****) The tariffs above shall correspond to **postal** items delivered at the home or **other premises of the addressee** in the **destination** Member State ~~of destination~~ **or at other premises requested by the addressee if such tariff includes that option without additional charge.**