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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on cross-border parcel delivery services

(Text with EEA relevance)

{SWD(2016) 166 final}

{SWD(2016) 167 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Background

EU consumers and e-retailers do not take full advantage of the single market. In 2014, only 15 % of consumers bought online from other EU countries, although 44 % did so in their own country; over three quarters (84 %) of online sales in 2014 came from the country in which the selling company was located.¹ A European Parliament study estimated that the potential contribution to European GDP of achieving a fully functioning Digital Single Market could be in the range of EUR 415 billion². The benefits from cross-border e-commerce are estimated at 0.27% of GDP.³ Cross-border e-commerce also directly benefits citizens and businesses, allowing them to enjoy a wider variety of goods and services and lower prices due to increased price competition.

There are many reasons for not buying from or selling to other Member States. The Commission's Communication "A Digital Single Market Strategy for Europe"⁴ set out a range of measures to improve access for consumers and businesses to online goods and services across Europe. These measures include: tackling unjustified geo-discrimination and other forms of discrimination based on residence or nationality⁵; further harmonising consumer contract rules for online and other distance sales of goods and the supply of digital content; and a review of the Regulation on Consumer Protection Cooperation.

The Commission's 2012 Communication on e-commerce⁶ identified improving the physical delivery of goods ordered online as one of the key elements for e-commerce growth. Subsequently, its 2013 Parcel Roadmap⁷ set out actions to achieve three sets of objectives: (i) increasing transparency and information for all actors along the e-commerce value chain, (ii) improving availability, quality and affordability of delivery solutions and (iii) enhancing complaint handling and redress mechanisms for consumers. There have been some improvements relating to (i) quality of service, including an interoperability initiative by universal service providers and a fourth standardisation request to CEN/TC331⁸ and (ii) in the provision of information for consumers by the development of European Trustmarks for online shopping⁹. However, complementary measures are needed in the areas of price transparency and enhanced regulatory oversight given that the prices for some cross-border services are still high and not all national regulatory authorities have the ability to collect the data needed to monitor the evolution of the parcel markets¹⁰ due to differences in their competences and in the definition of the parcel services. When the current European

¹ Flash Eurobarometer 413

² European Parliament Research Service, *Mapping the cost of Non-Europe*, 2014-19, (2015).

³ SWD(2015) 100 final.

⁴ COM(2015) 192 final.

⁵ http://ec.europa.eu/priorities/digital-single-market/docs/dsm-communication_en.pdf

⁶ 83.5% of the customers who replied to the Commission's consultation on geo-discrimination considered that geo-discrimination is not justified when cross-border delivery is easily accessible and the customer is prepared to pay additional shipping costs (<https://ec.europa.eu/digital-agenda>).

⁷ COM(2011) 942 final.

⁸ COM(2013) 886 final.

⁹ The standardisation request is foreseen in the Annual Union Work Programme for European Standardisation for 2015 - COM (2014) 500 final, 30.7.2014; it is currently under adoption.

¹⁰ See <http://www.emota.eu/#!/publications/c1351> and <http://www.ecommerce-europe.eu/trustmark>

¹⁰ BEREC-ERGP Price Transparency and regulatory oversight of cross-border parcels delivery, taking into account possible regulatory insights from the electronic communications sector, 2015.

regulatory framework for postal services, i.e. Directive 97/67/EC, was established, its focus was primarily letter post, and most parcel delivery services were outside the scope of the universal service¹¹, whereas now letters account for less than half the European postal sector's revenues.¹²

Consumers and small businesses report that problems with parcel delivery, in particular high prices, prevent them from selling more to or buying more from other Member States.¹³ Research shows that the public cross-border prices charged by universal service providers are often three to five times higher than the domestic equivalent¹⁴ and that these differences cannot be explained by labour or other costs in the destination country. Prices from seemingly similar originating Member States over comparable distances sometimes vary significantly without obvious explanatory cost factors.

There are multiple reasons for the existence of high prices for cross-border parcel delivery. First, the cross-border parcel delivery market is characterised by relatively high barriers to market entry (e.g. sunk costs). These may limit geographically wide competitive entry as operators incur high fixed costs when developing large delivery networks (and regular or permanent services). Where competition occurs it focusses on high volume senders such as larger e-retailers, who are able to negotiate prices with delivery operators based on individual discounts. Smaller retailers and individual consumers (who often do not send sufficient volumes to qualify for individual negotiated discounts¹⁵) pay significantly higher public¹⁶ prices for cross-border parcel delivery and are served by fewer operators, especially in remote areas¹⁷, where it is even possible that only the universal service provider delivers without surcharges.¹⁸

Second, ineffective, inconsistent or inexistent regulatory oversight creates obstacles to the single market. Divergent national legal frameworks and differences in how Directive 97/67/EC has been implemented by Member States have resulted in many national regulatory authorities having a limited mandate to monitor the cross-border parcel delivery market. They therefore lack the information necessary to identify possible market failures or regulatory

¹¹ Parcel services were also traditionally not subject to a reserved area as was the case for letter mail services.

¹² As late as 2007, letter post still accounted for over half (52%) of the European postal sector's revenues. By 2011, the parcel and express segment was responsible for over half (52%). WIK, Main developments in the postal sector, (2013).

¹³ European Commission, Consumer survey identifying the main cross-border obstacles to the DSM and where they matter most, 2015. Special Eurobarometer 398 of October 2013 which concluded that nearly 40% of consumers indicate that problems with delivery prevent them from shopping online.

¹⁴ University St Louis (2015) Econometric study on cross-border prices.

¹⁵ Over half the retailers who responded to the Commission's 2015 public consultation on cross-border parcel delivery, a majority of which were SMEs, stated they did not receive discounts.

¹⁶ A study by University St Louis found that the public cross-border prices charged by universal service providers are often three to five times higher than the domestic equivalent. While these public prices may sometimes also be discounted, if relevant conditions would be met, they would still be comparatively higher than prices for individually negotiated tariffs.

¹⁷ FTI (2011) Intra-Community cross-border parcel delivery concluded that the parcel delivery market was two tier, especially in areas of low population density, with small and infrequent senders often having no alternative to national postal operators and paying higher prices, whereas the market for large senders was found to be competitive.

¹⁸ For example DHL charge EUR 20.00 (or EUR 0.30/kg if higher) for remote area delivery or collection in Finland. UPS charges 30% more to send from Amsterdam to Den Burg (Island Texel) than from Rotterdam to Amsterdam. Most universal service providers charge a uniform tariff, i.e. the same price, throughout the national territory.

concerns. Fragmentation in the postal regulatory landscape also creates complexity for cross-border parcel delivery service providers.

Third, there is a consistent lack of information about the parcel delivery market, including available delivery services, providers and prices. Many businesses and individuals are only aware of a few of the operators that they could use and often default to using the universal service provider. This makes it more difficult for new operators to gain market share and reduces the competitive pressure on existing operators, leading to fewer incentives to improve the quality of service and to higher prices. To tackle the information deficit the Commission is using COSME funding¹⁹ to support the development of an information platform on delivery services. This will help e-retailers to be better informed of possible delivery alternatives and to make better choices. The platform is also expected to develop in the medium term a means of allowing smaller senders to consolidate their shipments, which may make them eligible for lower prices. The dedicated Commission website that is to be set up under the provisions of this Regulation will contain a specific link to this platform.

Finally some e-retailers charge their customers more for delivery than they pay themselves²⁰. Mark-ups appear to be higher when sending to other countries or to remote or peripheral regions within a country, for example islands. While some delivery operators do charge higher prices for delivery to more remote areas, this is not the case for all: most universal service providers have a uniform tariff throughout their national territory.²¹

1.2. Objectives

The general objective of this Regulation is to address specific issues relating to cross-border parcel delivery services; it is thus complementary to the industry-related, regulatory and standardisation activities outlined above. It also builds on and complements the rules on cross-border parcel delivery services provided by Directive 97/67/EC²² as amended by Directive 2002/39/EC²³ and Directive 2008/6/EC²⁴ (hereinafter 'Directive 97/67/EC;').

The specific objectives of this proposal are to:

- 1) make markets work more effectively by a) making the regulatory oversight of the parcels markets more effective and consistent and b) encouraging competition; and
- 2) increase the transparency of tariffs in order to a) reduce unjustifiable tariff differences and b) lower the tariffs paid by individuals and small businesses, especially in remote areas.

These specific objectives support the wider Digital Single Market objectives of increasing cross-border e-commerce and digital inclusion.

¹⁹ <http://ec.europa.eu/growth/smes/cosme/>

²⁰ See for example Copenhagen Economics (2016) Principles of e-commerce delivery prices.

²¹ Exceptions include La Poste (France), which has an '*outré mer*' tariff and Correos (Spain) which has the same tariffs for the peninsula and the Balearic islands and separate ones for the Canary Islands, Ceuta, Melilla and Andorra.

²² 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 015 of 21 January 1998, p. 14 - 25).

²³ Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services (OJ L 176, 5.7.2002, p. 21–25).

²⁴ Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services (OJ L 52, 27.2.2008, p. 3–20).

1.3. Political background

Improving online access to digital goods and services is one of the three pillars of the Digital Single Market Strategy, one of the ten priorities for the Juncker Commission. In the Digital Single Market Strategy the Commission committed to launch measures to improve the price transparency and regulatory oversight of cross-border parcel delivery in the first half of 2016.

At their meeting on 25-26 June 2015, the European Council supported the Digital Single Market Strategy and confirmed that it should be used to promote inclusive growth in all EU regions.

Telecoms ministers discussed the Digital Single Market Strategy at a meeting of the Transport, Telecommunications and Energy Council on 11-12 June 2015. They welcomed its objectives and reiterated the importance of a digitised economy to promote jobs and growth and boost the EU's competitiveness. The need to make parcel delivery pricing more transparent across the EU was highlighted.

In its 'Towards a Digital Single Market Act',²⁵ the European Parliament stressed that accessible, affordable, efficient and high-quality delivery services are an essential pre-requisite for cross-border e-commerce to thrive. It also supported measures to improve price transparency and regulatory oversight directed at the smooth functioning of cross-border parcel delivery markets.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

2.1. Stakeholders' Views

The Commission held a public consultation on cross-border parcel delivery between May and August 2015 and received 361 responses. The main delivery problems that consumers reported were uncertainty or lack of choice of date and time of delivery, followed by prices. Over two thirds of consumers who had considered an online purchase, but then abandoned it because of delivery-related concerns, had done so because of a high delivery price. Smaller companies were particularly likely to be unsatisfied with the prices of delivery services. National Postal Operators considered system interoperability to be the main feature that could improve delivery services, while many other delivery operators stated that increased competition would lead to progress.²⁶ Responses to the consultation were in line with a number of survey findings.²⁷

At a workshop held to mark 18 months since the publication of the 2013 Parcel Roadmap, E-retailers explained that while they felt that the delivery services on offer had improved, there was more to be done. The high tariffs of cross-border deliveries and returns were highlighted as particular concerns, along with low interoperability and the lack of ease of using (and switching between) different delivery operators. At the June 2015 meeting of the Postal Directive Committee the different approaches taken by National Regulatory Authorities towards the parcel delivery market were reported and previous Postal Directive Committee meetings have also been used to discuss the cross-border parcel delivery market following the adoption of the 2012 Green Paper.

²⁵ 2015/2147 (INI).

²⁶ Further information about the consultation can be found here:
http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item_id=8169

²⁷ See for example Flash Eurobarometer 413 and the Digital Single Market Consumer Study.

2.2. Expertise

FTI Consulting²⁸ found evidence universal service providers having market power in the cross-border parcel market for small infrequent senders. Copenhagen Economics²⁹ established that prices for cross-border delivery were often three to five times higher than their domestic equivalents. The University of St Louis concluded that universal service providers' published cross-border parcel prices (paid by individuals and small businesses) were almost five times higher than their domestic equivalents and that labour or other costs in the destination country did not seem to statistically influence the cross-border price differential.³⁰

The European's Regulators Group for Postal Services (ERGP) has examined a number of issues related to cross-border parcel delivery including legal regimes,³¹ the nature of the market and functioning of competition³² and market analysis.³³ In 2015, a joint working group was created alongside the Body of European Regulators for Electronic Communications (BEREC) to look at whether regulatory insights from the electronic communication sector could be transferred to the parcel sector.³⁴ A study by the University of Antwerp has noted the lack of data on the EU parcel market.³⁵

2.3. Assessment of the impact of the proposed Regulation

In line with its 'better regulation' policy, the Commission services carried out an impact assessment on policy alternatives.

Five groups of policy alternatives were examined. Additional measures that would lead to the consolidation of parcel volumes from small retailers were rejected because the information platform supported by COSME funding is expected to develop this capability for smaller retailers. Price regulation was rejected as an option as it would risk distorting competition in a complex market environment, particularly given the lack of regulatory and market knowledge of the sector. Moreover there are significant differences between the telecommunications and the parcel sectors, for example in the cost structures, confirmed by the joint ERGP/BEREC Report. Maintaining the baseline scenario was also rejected because action to date has not resulted in improvements in the affordability or regulatory oversight of cross-border parcel services.

Two groups of options were retained, focussing on price transparency and regulatory oversight. Making the prices that postal operators individually negotiate with larger e-retailers more transparent³⁶ was rejected because larger senders can benefit from discounted and negotiated tariffs. A requirement for e-retailers to publish the prices they pay to delivery operators was also discarded. Requiring all operators to notify national regulatory authorities of any price changes in advance was rejected due to administrative burdens and the possible deterrent to investment and innovation.

The impact assessment recommended a package of measures to improve the transparency of tariffs of universal service providers and strengthen the regulatory oversight of all parcel

²⁸ FTI Consulting (2011).

²⁹ Copenhagen Economics (2013) E-commerce and delivery.

³⁰ University St Louis (2015).

³¹ ERGP (15) 28.

³² ERGP (14) 26.

³³ ERGP (13) 37.

³⁴ ERGP PL (15) 32.

³⁵ University of Antwerp (2015) Cross-border parcel logistics.

³⁶ This option was also rejected because it would require publication of commercially sensitive information that would deprive competitive process of its effectiveness.

service delivery providers, complementing wider work to improve the quality and accessibility of cross-border delivery services.³⁷

The preferred options would have no direct or indirect negative social impacts. Indirectly, increased e-commerce due to improved affordability of cross-border delivery prices would impact positively on growth and jobs and consumer welfare, particularly for vulnerable users in peripheral areas.

No direct environmental impacts are expected. Indirectly, enhanced market efficiency due to increased price transparency may balance possible negative environmental impacts (e.g. more vehicle emissions) with positive impacts (e.g. freight pooling). No negative impact on fundamental rights is expected.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Legal basis

The proposal is based on Article 114 of the Treaty on the Functioning of the European Union as it relates to the internal market of parcel delivery services and its functioning.

3.2. Subsidiarity

The current regulatory framework (Directive 97/67/EC) has not been implemented in a way that delivers affordable cross-border parcel services across the European Union beyond the universal postal service³⁸. Cross-border delivery by its very nature involves delivery services in more than one Member State and therefore cannot be overseen by national regulatory authorities acting independently of each other and without information about the cost of delivery in other Member States, such as for example terminal rates that the operator in the destination Member State charges to the operator in the originating Member State. Measures at Union level are needed to tackle the underlying causes of the problem. National Regulatory Authorities will be responsible for assessing whether cross-border services are affordable, in light of market conditions in the relevant Member State.

Furthermore, the divergences in national rules governing the regulatory oversight of parcel operators, while as such not being incompatible with Directive 97/67/EC, create legal uncertainty and barriers to the single market in postal services. Measures at Union level are needed in order to set minimum requirements for the regulatory oversight of all postal operators across the Union and therefore to avoid regulatory fragmentation³⁹. The principle of subsidiarity is respected as Union intervention is necessary to remove specified internal market barriers.

3.3. Proportionality

Union action proposed by this Regulation is limited to what is necessary to achieve the objectives identified. Self-regulation by parcel service delivery operators has not led to changes in regulatory oversight, transparency of tariffs and tangible improvements in the affordability of cross-border parcel delivery services for small senders.

³⁷ The impact assessment documents are available from http://ec.europa.eu/smart-regulation/impact/ia_carried_out/cia_2016_en.htm

³⁸ Even for cross-border parcel delivery services that are part of the universal service concerns have been expressed that these services are not affordable in sense of Article 12 of the Postal Services Directive.

³⁹ For example national regulatory authorities taking different approaches that impose larger burdens on parcel delivery service providers who would need to comply with significantly different data requests in each Member State in which they operate.

The measures to improve transparency of tariffs are proportionate as they are limited and primarily target the segments of the market where there is evidence of limited choice, which, together with structural characteristics of the cross-border parcel delivery markets (e.g. high sunk costs; economies of scale), results in high prices of cross-border delivery services for small volume senders. The individual commercially negotiated prices mainly used by larger e-retailers (and also offered by operators other than universal service providers) are outside the scope of the price transparency measure, although ex-post competition controls will continue to cover all operators and all market segments. The parcels that fall within the scope of the universal service obligation, which requires tariffs to be affordable, cost-oriented, transparent and non-discriminatory, differ between Member States so these services cannot be directly compared across the Union and enforcement of Directive 97/67/EC would not achieve the desired outcome.

Small and micro enterprises (delivery operators with fewer than 50 employees) which are only established in one Member State will be exempt from this in order to minimise administrative burdens on the smallest companies who do not operate cross-border. For those who are within the scope of the measure, this Regulation will bring improved certainty about legal obligations and avoid fragmentation across the Union.

3.4. Choice of the instrument

The Commission proposes a Regulation as this ensures the removal of single market barriers by complementing the existing regulatory framework for postal services. This notably includes specific, directly-applicable obligations for national regulatory authorities and for parcel delivery service providers; it also includes a mechanism at the European level to establish transparency and assess the affordability of cross-border parcel delivery tariffs. Furthermore, a Regulation allows swift action and minimises the transposition-related administrative burden for Member States, while preventing any further regulatory fragmentation that could result from other legal instruments (such as a Directive).

3.5. Structure of the proposal and main rights and obligations

Subject matter and scope, definitions (Article 1 and 2)

Articles 1 and 2 contain the general provisions on the subject matter and scope including relevant definitions. The definitions complement those contained in Article 2 of Directive 97/67/EC as far as parcels are concerned; they are fully consistent with those established in the Directive. As laid down in the relevant provisions adopted by the UPU the term terminal rates is used so to encompass both terminal dues (that are applicable for letter mail items⁴⁰) and inward land rates (that apply to parcels⁴¹). In line with relevant practice of parcel service providers and Member States parcels considered for the scope of this Regulation are those with a maximum weight of 31.5 kg. Therefore, this Regulation will not apply to logistics; it will also not apply to transport alone, that is when it is not undertaken in conjunction with clearance, sorting or distribution⁴². Also fully in line with the corresponding provisions of Directive 97/67/EC, notably Article 2, paragraphs 1 and 1a,⁴³ there is no requirement that all activities under Article 2(2) lit a and b are undertaken cumulatively.

⁴⁰ UPU Convention Article 29.

⁴¹ UPU Convention Articles 35, 36.

⁴² See Recital 17 of Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67/EC, OJ L 52, 27.2.2009, p. 5.

⁴³ See Opinion of Advocate General Jääskinen in Case C-148/10 DHL International NV, formerly Express Line NV, EU:C:2011:351, at para. 59.

Provision of information (Article 3)

This provision clarifies that the provision of information to national regulatory authorities, applies to all parcel delivery service providers beyond the threshold of 50 employees, and those who are established in more than one Member State. It obliges national regulatory authorities to monitor the market and gather a limited set of statistical data. Only larger operators in addition to those established in more than one Member State and thus providing cross-border services would be included so to ensure that national regulatory authorities have the core data on the range of parcels that are used for e-commerce. The provision obliges all parcel delivery providers with over 50 employees to annually submit a limited set of information. The aim is to unify and clarify the currently fragmented regulatory competences and build on existing best practice. Furthermore, these more consistent obligations are also in the interest of pan-European parcel delivery service providers, who are currently subject to differing information requests from different Member States. Although the basic information requirements are defined in Article 3, the form as such would be adopted by implementing act. In this regard, technical advice should be provided by the ERGP, while it would be for the Commission to establish the form.

Transparency of tariffs and terminal rates (Article 4 and Annex)

Article 4(1) contains a targeted obligation only for universal service providers to annually submit (on 31 January at the latest) to the national regulatory authority the public list of tariffs applicable on 1 January of each calendar year for a specific set of services contained in the Annex. The 15 postal items provided by universal service providers contained in the Annex are the most relevant and used ones for individual customers and small businesses. Other parcel delivery services providers are not in the scope of this targeted provision, given also that they in principle focus on different market segments (namely business-to-business services and larger e-retailers). While not all of the items contained in points (a) to (o) of the Annex might be provided by all universal service providers, the list contains the most relevant non-express items that are used in national and cross-border e-commerce and that are in principle available for all Union citizens, independent from their location. This provision of regular tariff information to national regulatory authorities provides an indisputable data set for (a) the publication on a dedicated website hosted by the Commission and (b) their assessment of affordability under Article 5.

This obligation is limited to public list of tariffs and does therefore not include any discounted tariffs or individually negotiated tariffs (that are subject to commercial considerations). The Commission shall publish tariffs by 30 April of each calendar year on a dedicated section on the Commission's EUROPA website. This website is not commercial in character and is not primarily intended to contain data from other providers, including express delivery service providers. However, delivery service providers other than universal service providers may also voluntarily have tariffs of their delivery services included on the website, as long as that the delivery services in question are comparable and subject to delivery at the home or the premises of the addressee, and as long as other applicable criteria are met (see also Recital 14).

Furthermore, under Article 4(3) and (4) the universal service providers should submit to the national regulatory authorities – and in turn to the Commission - annually their terminal rates (i.e. the payments from the originating universal service provider to the destination universal service provider for the costs of transport, sorting and distribution of cross-border items in the destination Member State). Since these data is of a commercially sensitive character it will not be published and will constitute an input for the overall tariffs only. However, it is essential that national regulatory authorities and the Commission have access to and knowledge about

the terminal rates as they provide necessary information for the assessment of affordability under Article 5. Both the provision of tariffs and terminal rates constitute a very limited administrative burden for universal service providers.

Assessing affordability of tariffs (Article 5)

Article 5 (1) is to oblige national regulatory authorities to assess the affordability of the tariffs of universal service providers obtained under Article 4(1) on the basis of objective elements. The most common and important input elements for this assessment are subject of a non-exhaustive list in points (a) to (c). These include common criteria such as the domestic tariffs of the universal service providers or origin and destination or the level of terminal rates. They may be complemented by other criteria of particular relevance for explaining the tariffs in question, such as specific transportation or handling costs or bilateral volumes between delivery service providers. If the national regulatory authority concludes that cross-border parcel delivery tariffs are not affordable, it shall ask the parcel delivery service provider in question for further information and/or justification. The deadlines set are operational and are intended to avoid delaying providing information or justification (paragraph 1, 3 and 4). In accordance with Article 5(4) the assessment together with the justification, if applicable, are to be communicated not only to the Commission but also to the other national regulatory authorities. Furthermore, the assessment should also be communicated to the relevant authorities entrusted with the implementation of competition law, who are equally bound by confidentiality obligations. This enhanced transparency should create significant pressure to modify those tariffs that are substantially higher and that might be considered non-affordable or even prohibitive. The Union wide transparency should be ensured through Article 5(4) that foresees the publication by the Commission on the same dedicated website of a non-confidential version of the assessments and the justifications, which should be provided to it by the relevant national regulatory authorities. This publication would allow all interested parties, including the authorities entrusted with the implementation of consumer law, to be regularly informed about this issue.

The regulatory principles of affordability, cost-orientation, transparency and non-discrimination set out in Article 12 of Directive 97/67/EC apply only to parcels (and letters) that fall within the scope of the universal service obligation. National regulatory authorities should ensure that tariffs for universal services are in line with these principles. National regulatory authorities however focus more on domestic markets than they do on cross-border ones, including when ensuring the affordability of services within the universal service. The present article will thus explicitly extend the regulatory oversight of the national regulators to a set of cross-border services provided by the universal services provider, that are largely similar but not equivalent to the universal service obligation in all Member States.

Transparency and non-discriminatory cross-border access (Article 6)

Article 6 is largely a codification of the principles that have been analysed in the so called REIMS decisions (relating to the multilateral cross-border agreements on terminal dues that universal service providers have established on letters/parcels)⁴⁴, and is inspired by the procedural elements established in Article 3 of Regulation 531/2012⁴⁵ relating to wholesale roaming access. It should provide legal certainty for universal service providers – which are the addressees of this provision – and other parcel delivery services providers that might want

⁴⁴ Commission Decision of 23 October 2003 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement Case COMP/C/38.170 — REIMS II renotification (notified under document number C(2003) 3892), OJ L 56/76 of 24.2.2004.

⁴⁵ OJ L 172/10 of 30.06.2012.

to access cross-border services. This provision does not address general downstream access issues, which are subject to possible national rules and the fifth indent of Article 12 of Directive 97/67/EC. It also does not cover specific access issues to certain elements of infrastructure as under Article 11a of Directive 97/67/EC. It is necessary for reasons of legal security and to apply the non-discrimination and the transparency principles to grant competing alternative postal operators equal access to the terminal rates applicable to the parties (i.e. the universal service providers) of the multilateral terminal rates agreement. Subject to a case-by-case assessment it may be justified that terminal rates payable by third-party postal operators, in some cases, exceed those payable by universal service providers. This may be the case where the parties 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 postal operators and other such costs are not covered by the terminal rates paid by the originating operator. The point at which access is provided is in principle the inward office of exchange determined by the universal service provider. It is also important that the cross-border access should include all related associated network elements, notwithstanding the difference to downstream access at large, including notably software and information elements (paragraph 2 and 3) – as they constitute an integral part of the agreements currently under way such as Interconnect and any similar potential future agreements.

Penalties (Article 7)

This is a standard provision aiming at providing the national regulatory authorities with effective, proportionate and dissuasive penalties for breaches of EU law.

Review clause (Article 8)

Article 8 contains a regular review obligation for the Commission. This review notably contains not only the issues related directly to the Regulation (lit. a-c) but also includes other measures to improve the availability, accessibility, affordability of cross-border parcel delivery that have been taken in the context of the 2013 Parcel Roadmap (including industry initiatives, standardisation etc.) and which complement this Regulation.

4. BUDGETARY IMPLICATION

The proposed Regulation has no implications for the budget of the Union.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on cross-border parcel delivery services

(Text with EEA relevance)

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 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.
- (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 providers. 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. 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) The market for cross-border parcel delivery services is diverse and complex, with different providers offering different services and prices depending on weight, size and format of the items sent as well as destination, added value features, such as traceability solutions, and the number of items sent. That diversity makes parcel delivery services hard to compare between different providers, both in terms of quality

¹ OJ C , , p. .

² OJ C , , p. .

³ BoR (15) 214/ERGP PL (15) 32.

and price. Furthermore, low volume senders, such as small and medium-sized enterprises and individuals are often not aware of the existence of different parcel delivery services offered.

- (4) In order to improve the affordability of cross-border parcel delivery services, especially for users in remote or sparsely populated areas, it is necessary to improve the 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.
- (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.
- (6) Currently, postal services are regulated by Directive 97/67/EC of the European Parliament and of the Council⁴. This 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. This Regulation therefore complements, insofar as cross-border parcel delivery services are concerned, the rules set out in Directive 97/67/EC.
- (7) An estimated 80 % of addressed postal items generated by e-commerce today weigh less than two kilograms, and are often processed in the letter-post mail stream. It is important that those postal items are subject to this Regulation, notably to the requirements on transparency of tariffs and the assessment of their affordability.
- (8) Therefore, it is important to provide a clear definition of parcel delivery services and to specify which postal items are covered by that definition. This concerns in particular postal items, other than items of correspondence, which because of their weight are commonly used for sending goods and merchandise. This Regulation should therefore cover, in line with consistent practice, postal items weighing up to 31.5 kg, as heavier items cannot be handled by a single average individual without mechanical aids. 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.

⁴ 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).

- (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. However, in order to limit the administrative burden for small parcel delivery service providers who are only active on a national or regional market, a threshold should be applied, based on the number of persons working for the service provider and involved in the provision of parcel delivery services.
- (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.
- (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.
- (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.
- (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 should be considered that e-commerce offers new opportunities for sparsely populated areas to participate in the economic life. 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 costs for transport

and a reasonable profit margin. Universal service providers providing parcel delivery services should be required to provide such justification without delay.

- (17) In order to ensure transparency across the Union, the analysis of a national regulatory authority should be submitted to the national regulatory authorities of the other Member States and to 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.
- (21) As markets for parcel delivery services are changing fast, the Commission should re-assess the efficiency and effectiveness of this Regulation and submit a regular report to the European Parliament and the Council. That report should be accompanied, where appropriate, by proposals for review to the European Parliament and the Council.
- (22) In order to ensure uniform conditions for the implementation of the obligation for parcel delivery providers to submit information to national regulatory authorities, implementing powers should be conferred on the Commission to establish a form for the submission of such information. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁵.
- (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.

⁵ 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 - 18).

- (24) Directive (EU) 2016/680 of the European Parliament and of the Council⁶ and Regulation (EU) 2016/679 of the European Parliament and of the Council⁷ apply to the processing of personal data within the framework of this Regulation.
- (25) Since the objectives of this Regulation, namely to establish the regulatory principles and rules necessary to improve regulatory oversight, to improve transparency of prices and establish certain principles as regards cross-border parcel delivery services that should support competition, cannot be sufficiently achieved by the Member States and can therefore, by reason of its 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 objective.

HAVE ADOPTED THIS REGULATION:

CHAPTER I

Subject matter and definitions

Article 1 *Subject matter*

This Regulation establishes specific rules, in addition to the rules 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 for certain cross-border parcel delivery services and the assessment of the affordability of certain cross-border tariffs;
- (c) transparent and non-discriminatory access to certain cross-border parcel delivery services and/or infrastructure.

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:

⁶ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA. (OJ L 119, 4.5.2016 p. 0089 – 0131).

⁷ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). (OJ L 119, 4.5.2016, p. 1 - 88).

- (a) "parcel delivery services" means services involving the clearance, sorting, transport or distribution of postal items 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;
- (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.

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:
 - (a) the name of the provider, its legal status and form, registration number in a trade or similar register, VAT number, the address of the establishment and a contact person;
 - (b) the nature of the services offered by the provider;
 - (c) the provider's general conditions of sale, including a detailed description of the complaints procedure.
2. In case of any change concerning information referred to in the first subparagraph, parcel delivery service providers shall inform the national regulatory authority of this change within 30 days.
3. By 31 March 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:
 - (a) the annual turnover in parcel delivery services for the previous calendar year in the Member State in which the provider is established, broken down in parcel delivery services relating to national, incoming and outgoing cross-border postal items;
 - (b) the number of persons working for the provider and involved in the provision of parcel delivery services in the Member State in which the provider is established in the previous calendar year
 - (c) the number of postal items other than items of correspondence and not exceeding 31,5 kg handled in the Member State in which the provider is

established in the previous calendar year, broken down into national, incoming and outgoing cross-border postal items.

4. The Commission shall, by means of an implementing act, establish a form for the submission of the information referred to in paragraph 1 of this Article. Those 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 2 where they are necessary to ensure conformity with this Regulation.
6. A parcel delivery service provider which employs fewer than 50 persons shall not be subject to the obligations under paragraph 1 and 2, unless that provider is established in more than one Member State.

Article 4

Transparency of tariffs and terminal rates

1. Universal service providers 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 postal items 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 of each calendar year at the latest.
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 of tariffs

1. The national regulatory authority shall assess the affordability of cross-border tariffs included in the public lists of tariffs obtained in accordance with Article 4(1) within 3 months of receipt of that information. In that assessment, in particular the following elements shall be taken into account:
 - (a) the domestic 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);
 - (c) any application of a uniform tariff to two or more Member States.

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.
4. The national regulatory authority shall submit its assessment, including any information and/or justification provided in accordance with paragraph 3, to the Commission, 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. A non-confidential version of that assessment shall also be provided to the Commission. That information shall be provided by 31 March of each calendar year at the latest.
5. 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.

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.

CHAPTER III

Implementation, review and entry into force

Article 7 Penalties

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.

Member States shall notify the Commission of those provisions by XX and shall notify to it without delay any subsequent amendment affecting them.

Article 8 Review

Before XX/XX/2019, and thereafter every four years, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee an evaluation report on the application of this Regulation accompanied where appropriate by a proposal for its review.

The Commission shall evaluate at least the following:

- (a) whether the affordability of cross-border parcel delivery services has improved, including for users located in remote or sparsely populated areas;
- (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;
- (c) the extent to which national regulatory authorities have had difficulties applying this Regulation;
- (d) progress on other initiatives for completing the single market for parcel delivery services.

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

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

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