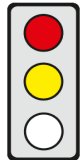


KEY ISSUES

Objective of the Regulation: Oversight and competition in the area of cross-border parcel delivery will be enhanced, and "unjustifiable tariff differences" reduced, with the aim of promoting online trade.

Parties affected: Parcel delivery service providers, particularly universal service providers, and their customers; national regulatory authorities for the postal sector.



Pro: More precise information obligations for all parcel delivery service providers facilitate better analysis of the competitive situation to enable better oversight of the development of the markets following the break-up of monopoly structures.

Contra: (1) The proposed "assessment of affordability" for universal service providers is out of line with the principles of competition economics. Where competition fails to function, the wholesale prices must be regulated.

(2) The blanket obligation to grant network access, applicable to universal service providers that have concluded multilateral agreements, constitutes a disproportionate intervention in their fundamental right to own property and freedom to conduct a business. Instead, the Commission should ensure strict application of competition law.

CONTENT

Title

Proposal COM(2016) 285 of 25 May 2016 for a **Regulation** of the European Parliament and of the Council **on cross-border parcel delivery services**

Brief Summary

► Context and objectives

- In order to enhance cross-border online trade, the Commission wants to improve the functioning of cross-border parcel delivery markets.
- The Commission criticises significant tariff differences between domestic and cross-border parcel delivery as "possibly unjustified". It wants to reduce the tariffs for private customers and small businesses, especially in remote areas.
- The Commission proposes four measures:
 - For all parcel delivery service providers: information obligations.
 - For all universal service providers that deliver parcels:
 - information obligations on terminal rates and tariffs,
 - an assessment of the "affordability" of their tariffs,
 - the basic duty to allow other parcel deliverers access to their networks.

► Scope and definitions

- The Regulation supplements the Postal Services Directive [97/67/EC, see [cepPolicyBrief](#)]. Its definitions also apply to this Regulation (Art. 2(1); some additional terms are also defined.
- "Postal items" are addressed items of correspondence, books, catalogues, newspapers, periodicals and postal packages containing merchandise (Art. 2 No. 6 Directive 97/67/EC).
- "Parcel delivery services" are all services involving the clearance, sorting, transport and distribution of postal items not exceeding 31.5 kg with the exception of letters.
- Parcel transport alone, not in conjunction with one of the steps in the postal chain, is not a parcel delivery service. (Art. 2 (2) (a))
- Universal service providers are providers of postal services that have been designated as "universal" vis à vis the Commission and are constantly providing nationwide postal services in a member state that are of a "specified quality" and are offered at "affordable" prices (Art. 2 No. 13, Art. 3 Directive 97/67/EC).
- "Terminal rates" are payments by the universal service provider in the country of origin to the universal service provider in the country of destination, in respect of the costs of transport, sorting and delivery of cross-border items (Art. 2 (2) (c) and p. 9).

► Information obligations for all parcel delivery service providers

- Parcel delivery service providers must submit the following information, to the national regulatory authority in the country in which they are established, on a form provided by the Commission (Art. 3 (4)) (Art. 3 (1) (a)-(c):
 - core data about the company, i.e. name, legal form, company registration number and VAT number, address and contact person of the provider,
 - information about the nature of the services provided,
 - its general terms and conditions and a description of the complaints procedure.
- They must report any changes within 30 days (Art. 3 (2)).
- Parcel delivery service providers must submit to the national regulatory authority of the country in which they are established annually (Art. 3 (3) (a)-(c):
 - the annual turnover in parcel delivery services broken down into purely national services, incoming cross-border postal items and outgoing cross-border postal items,
 - the number of staff involved in the provision of parcel delivery services,
 - the number of postal items - other than letters and items exceeding 31.5 kg - handled, broken down into purely national services, incoming cross-border postal items and outgoing cross-border postal items.
- The national regulatory authorities may impose additional information requirements where they are necessary to ensure conformity with this Regulation (Art. 3 (5)).
- Parcel delivery service providers are exempt from the information obligations if they employ fewer than 50 employees and are only established in one Member State (Art. 3 (6)).

► Information obligations specifically for universal service providers on tariffs and terminal rates

- For 15 specified letter and parcel formats which are frequently used by private customers and small businesses, universal service providers that provide parcel delivery services must submit the following information annually to the national regulatory authority in the country in which they are established (Art. 4 (1) and (3), Annex):
 - the "public list" of their tariffs and
 - the terminal rates for delivery of postal items originating from other Member States.
- The national regulatory authorities pass this information on to the Commission. They will also pass the terminal rates on to the regulatory authorities in the relevant originating countries. (Art. 4 (2) and (4))
- The Commission publishes the tariff lists on a dedicated website (Art. 4 (2)).

► Assessing affordability of the tariffs of universal service providers

- The national regulatory authorities have to assess the "affordability" of the cross-border tariffs submitted by the universal service providers within three months.
- In this regard, they consider (Art. 5 (1) (a)-(c):
 - the domestic tariffs of comparable parcel delivery services in the originating and destination countries,
 - the submitted terminal rates and
 - the possible existence of a uniform customer tariff for a limited geographical area, e.g. the whole territory of one or more Member States.
- Where the national regulatory authority concludes that the tariffs of a universal service provider are "not affordable", the provider must "justify" them within 15 days (Art. 5 (2) and (3)).
- The national regulatory authority sends its assessment and the justification from the universal service provider to the Commission, the other national regulatory authorities and the competent national competition authority. The Commission publishes a "non-confidential version" of the assessment on a dedicated website. (Art. 5 (4), (5))

► Access to network elements of universal service providers

- Universal service providers who deliver parcels and have concluded multilateral agreements on terminal rates
 - must allow all parcel delivery service providers to have access to their network elements, facilities, services and information systems insofar as this is necessary for the provision of cross-border parcel delivery services (Art. 6 (1));
 - must, in principle, demand the same terminal rates from other parcel delivery service providers as those which apply on the basis of multilateral agreements between universal service providers; divergences may be permitted if the terminal rates do not cover costs (p. 11);
 - must publish a reference offer which also contains the network access prices; the national regulatory authority examines the reference offer and may require amendments - e.g. of the prices - to "give effect to" the Regulation (Art. 6 (3)-(5));
 - must submit an individual offer based on the reference offer to parcel delivery services that request access and, on this basis, negotiate the detailed conditions "in good faith"; where the parties cannot agree, the national regulation authority may amend the individual offer in order to "give effect to" the Regulation (Art. 6 (6) and (7)).

- Operative access to the network elements must be granted within a “reasonable” period of time, not exceeding three months from the conclusion of the contract (Art. 6 (8)).

Main Changes to the Status Quo

- ▶ Until now, postal service providers only had to comply with reasoned requests for information from national regulatory authorities. In future they must report itemised figures for turnover and postal items of their own accord.
- ▶ The existing information obligations for universal service providers will be extended. In future, they will also specifically have to report tariffs and terminal rates for the most common postal items (Art. 4).
- ▶ New: the obligation of the national regulatory authorities to assess the affordability of tariffs for cross-border parcel delivery services.
- ▶ New: the obligation for universal service providers with multilateral agreements to allow all parcel delivery service providers to have access to their networks.

Statement on Subsidiarity by the Commission

Cross-border parcel deliveries cannot be overseen by national regulatory authorities that are independent of each other, or without information about the costs in other Member States. For this, measures at EU level are necessary.

Policy Context

As part of the Digital Single Market Strategy [COM(2015) 192; see [cepPolicyBrief](#)], the Commission announced that, in the first half of 2016, it would launch measures relating to cross-border parcel delivery in order to improve price transparency and regulatory oversight.

Legislative Procedure

25 May 2016	Adoption by the Commission
Open	Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

Options for Influencing the Political Process

Directorates General:	DG Internal Market, Industry, Entrepreneurship and SMEs
Committees of the European Parliament:	Transport (leading), Rapporteur: TBA; Industry, Research and Energy; Internal Market and Consumer Protection
Federal Ministries:	Federal Ministry for Economic Affairs and Energy (BMWi)
Committees of the German Bundestag:	Economic Affairs and Energy (leading); Legal Affairs and Consumer Protection; EU Affairs
Decision mode in the Council:	Qualified majority (adoption by 55% of the Member States making up 65% of the EU population)

Formalities

Legal competence:	Art. 114 TFEU (Internal Market)
Form of legislative competence:	Shared competence (Art. 4 (2) TFEU)
Legislative procedure:	Art. 294 TFEU (ordinary legislative procedure)

ASSESSMENT

Economic Impact Assessment

More precisely defined information obligations for all parcel delivery service providers will result in a standard EU-wide data record of cross-border deliveries. This sort of data is not currently available because national regulatory authorities collect data in very varied amounts and formats. The new information obligations thus **facilitate a better analysis of the competitive situation** in the individual markets. This is necessary **to enable better oversight of the development of the affected markets following the break-up of former monopoly structures.**

From an economic point of view, the blanket nature of the additional provisions proposed in the Regulation for universal service providers - information obligations on tariffs and terminal rates, assessment of affordability of tariffs and network access obligations for parties to multilateral agreements - is misguided: the information obligations include tariffs that are in any case freely accessible. They therefore primarily create red tape rather than transparency.

The proposed "assessment of affordability" of cross-border end-user tariffs, **aimed at universal service providers**, is expected to put pressure on the universal service providers to reduce their tariffs. It is **out of line with the principles of competition economics**. Where competition is functioning properly, it is superfluous. **Where competition is not functioning properly, the wholesale prices must be adjusted**, following a proper analysis in line with the principles of competition economics - and only where unassailable market dominance exists. Subsequent adjustment of the tariffs will not then be necessary.

Both the envisaged blanket obligation for universal service providers, that have concluded multilateral agreements, to allow all parcel delivery service providers to have access to their network elements, facilities, services and information systems, and the proposed right of the national regulatory authorities to carry out price adjustments in the case of terminal rates, constitute radical interventions in the freedom to conduct a business.

Both may be justified under competition law but this requires that (1) the relevant market has been defined and (2) an analysis has been conducted as to whether, and if so which, providers in this market are conducting an abusing and unassailable exploitation of a dominant position. The Commission waives both requirements and generally imputes monopolistic market power to all universal service providers. This is inefficient and distorts competition and also gives rise to the suspicion that the Commission simply wants to enforce lower prices.

Instead, the Commission should ensure strict application of existing competition law and examine the competition situation in the individual markets. The responsible Directorate General would, however, be "Competition" rather than "Internal Market".

If necessary, it could propose sector-specific access and price regulation - as has existed in the telecommunications sector since 2002. This also requires a precise definition and analysis of the market, however, which is not proposed here by the Commission. It differs from the application of general competition law in that all providers with a dominant market position are subject to regulation irrespective of whether they are "abusing" this position. Both alternatives avoid the blanket approach proposed by the Commission.

Legal Assessment

Legislative competence

The Regulation is correctly based on the power to approximate laws in the internal market (Art. 114 TFEU).

Subsidiarity

Unproblematic. An improvement in the functioning of the cross-border parcel delivery markets is only feasible at EU level.

Proportionality with respect to Member States

A less drastic - and more obvious - measure would be a revision of the Postal Service Directive.

Compatibility with EU Law in other respects

The obligation for universal service providers, that have concluded multilateral agreements, to grant access, constitutes a disproportionate intervention in the fundamental right to own property (Art. 17 EU Charter of Fundamental Rights, CFR) **and in the freedom of the universal service providers to conduct a business** (Art. 16 CFR):

The right to conduct a business also includes the right to free choice of contracting partner and freedom to decide on contractual content, particularly prices. The former is infringed by the access obligation, the latter by the fact that national regulatory authorities can influence the content of contracts between universal service providers and third-party providers where these are unable to agree on the conditions. This sort of access obligation could at best be justified for providers that occupy a dominant position on the relevant market. The blanket obligation is then appropriate for stimulating competition on the cross-border parcel service market. It is not, however, absolutely necessary. It is disproportionate to impose these obligations generally on all universal service providers that have agreed terminal rates multilaterally. Possible "less drastic" measures would be a sector-specific access and price regulation or application of EU competition law in the individual case following proper market definition and analysis.

Impact on German Law

Even though the Regulation applies directly, for clarity the German Post Act must be amended.

Alternative Approach

The Commission should exercise its powers under competition law or alternatively - as in the case of the telecommunications market - create a legal basis for sector-specific regulation, e.g. by correspondingly extending the Postal Service Directive. This will ensure that regulation only takes effect where it is actually required.

Conclusion

More precisely defined information obligations for all parcel delivery service providers facilitate better analysis of the competitive situation to enable better oversight of the development of the markets following the break-up of monopoly structures. The proposed "assessment of affordability" for universal service providers is out of line with the principles of competition economics; where competition is not functioning properly, the wholesale prices must be adjusted. The blanket obligation for universal service providers, that have concluded multilateral agreements, to allow all parcel delivery service providers to have access to their network elements, constitutes a disproportionate intervention in the network owners' fundamental right to own property and in the freedom of the universal service providers to conduct a business. Instead, the Commission should ensure strict application of competition law.