

Ecommerce Europe's contribution to the European Commission's public consultation on the evaluation of the Postal Services Directive

Introduction

Ecommerce Europe welcomes the opportunity to provide further feedback to the public consultation of the European Commission on the evaluation of the Postal Services Directive¹ (PSD).

The internal market for postal services is an integral part of the Digital Single Market, providing an important channel for e-commerce delivery. The PSD, originally designed 20 years ago and last amended in 2008, provided the first stage of the creation of an internal market of postal services in the EU. It set the framework for converting written information on postal items into digital information, harmonizing dimensions and processes to enable automation to raise efficiency and secure a Europe-wide Universal Service Definition.

Through e-commerce and the growth of commercial delivery services, the creation of an internal market of postal services has entered a second stage. Data generated at the point of sale drives the delivery process. E-commerce has played an especially positive force for postal service providers, driving parcel volumes across their networks at a time of decline in letter volumes. Ecommerce Europe believes that the postal channel will continue to be a valuable asset for e-commerce merchants and their consumers, particularly those selling/receiving goods in peripheral regions.

At the same time, the current postal regulatory framework may not be fully fit to address issues that have arisen in recent years related to trends and developments that did not exist or were not fully developed when the PSD was adopted, such as digitalization and e-commerce as well as the subsequent changes in communications, commerce, and consumer behaviour. It is true, as outlined by the ERGP, that the postal market has become less sender-oriented and more receiver-oriented.

Besides our reply to the PSD questionnaire, this paper outlines further recommendations on behalf of the European digital commerce sector for policymakers, also in light of the September 2020 public consultation carried on by the European Regulators Group for Postal Services (ERGP).

¹ 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 15, 21.1.1998, p. 14), as amended by Directives 2002/39/EC with regard to the further opening to competition of Community postal services and 2008/6/EC with regard to the full accomplishment of the internal market of Community postal services.

1. Postal definitions must be harmonised at EU level before assessing the need for new rules

According to the 2021 Work Programme of the ERGP², the scope of the PSD evaluation and recommendation should consider a “fundamental, market-oriented greenfield approach”. However, Ecommerce Europe would like to recommend policymakers to adopt a much more careful approach than the one proposed in the ERGP Work Programme 2021. In particular, any major regulatory intervention should only be proposed when there is a clear, evidence-based justification for intervening, such as market failure.

Moreover, Ecommerce Europe strongly believes that, before discussing the potential need for any major overhaul of regulation in this field, it is of utmost importance to have clarity in terms of definitions. In fact, there is currently a lack of harmonization of terms and definitions of postal products and services, which led to legal fragmentation across the EU and consequent legal uncertainty for businesses. The interdependencies of postal service providers with associated legal and regulatory frameworks, have also highlighted the need to harmonise definitions and terms. Currently, EU fiscal, customs, consumer rights, data protection, transport, logistics, and security-related EU legislation applies different – and in some cases contradicting – definitions and terms with respect to postal services. This leads to challenges in compliance and governance at EU level. Furthermore, the situation is exacerbated as most EU regulations are transferred into national legislation in the EU member states, where the sovereignty of the member states adds to the existing complexity.

In this perspective, **Ecommerce Europe first advocates for a harmonization and clarification of postal definitions and terms of reference** (e.g. parcel, mail, postal item, postal services, postal service providers, etc.) **between the postal regulatory framework and other regulatory frameworks, aimed at introducing improvements to legislation that help to better serve users (sellers) and end consumers.** How these definitions can be harmonised at EU (and global³) level remains to be defined. However, only when harmonised definitions will be in place, it will be possible to fully assess if harmonization of terms is enough or if there is any need to further revise the postal legislative framework.

E-commerce is a growing and highly competitive, integrational part of commerce. Postal services, the collection, consolidation, sortation, transportation, and delivery of commercial items are core elements of the European and global digital commerce provision. However, substantial elements of e-commerce are regulated in horizontal legislation, as well as global conventions and trade agreements have been established. Therefore, **Ecommerce Europe believes that e-commerce sector-specific legislation and regulation would be not sustainable, or even an additional burden to the competitive nature of commerce in Europe.**

2. Refrain from regulating consumer rights in the postal legislative framework

Technological development and the exponential growth of e-commerce have made consumer demand evolve, as also rightly mentioned in the ERGP Report on “consumer issues”. Although the Commission’s survey does not raise the question if existing provisions regarding postal services in the Consumer Rights Directive⁴ are sufficient, or specific/additional provisions are needed, Ecommerce Europe considers it very important to clarify this aspect, especially following the ERGP recent statement that the future framework for the postal market will need to address this question.

In Ecommerce Europe’s opinion, EU consumer legislation, which was also recently amended by the Omnibus Directive⁵, already provides for sufficient protection for end consumers. In our view, as far as the end consumer is concerned, the contractual relationship in an e-commerce transaction should

² <https://ec.europa.eu/docsroom/documents/42142/attachments/1/translations/en/renditions/native>

³ Global standardisation: predominantly done by the Universal Postal Union (UPU), a special organisation of the United Nations facilitating the global exchange of postal items between postal operators designated by the 192 member countries of the UPU, to fulfil their obligations entered into by adopting the UPU convention, acts and treaties.

⁴ Directive 2011/83/EU on consumer rights

⁵ Directive (EU) 2019/2161 as regards the better enforcement and modernisation of Union consumer protection rules

remain focused on the one between the seller and the consumer. Consumers buying goods online do not have a contract with the postal service provider, as this is taken care of by the seller itself.

In case of problems related to the delivery of purchased goods, in Ecommerce Europe's opinion, the main point of contact for the consumer should remain the seller. It is the seller who has a relation with the consumer and not the postal service provider, therefore it is up to the seller to take the necessary steps to assist the consumer in this regard. If the seller would be somehow "excluded" from a complaint regarding delivery, because the consumer directly contacted the delivery operator, the seller risks losing its control on how the postal service provider is actually performing. This could prevent the seller from taking the necessary steps to ensure that the delivery service it offers is meeting its expectations and those of the end consumers.

Nevertheless, in the case of a non-delivered parcel, online sellers flagged some issues in relation to the efficiency of the complaint handling systems of some postal operators. In such cases, the consumer can obtain a compensation for a non-delivered parcel from the seller (according to EU Consumer Law). However, the seller should, in turn, also be able to obtain compensation from the postal service provider, via a sort of redress mechanism. The challenge is also that most SME e-commerce businesses with low volumes of parcels do not really have substantial power of negotiation or influence with postal operators, compared to larger e-commerce companies. SMEs also have less resources (time, dedicated teams) to follow through with the complaints. In our opinion, SMEs should be at the same level as any other larger business user.

Policymakers should therefore adopt a careful approach with regard to consumer provisions and the potential extension of "postal definitions". If Consumer Law gets somehow integrated into the PSD, Ecommerce Europe identifies a potential risk that consumers could hold all actors that are involved with the delivery liable for a parcel when, for instance, it does not arrive at the indicated time. Any unjustified extension of the definition would have unintended, and potentially negative, consequences for the e-commerce sector, for end consumers and for e-merchants including many SMEs that, for instance, perform fulfilment for other companies in order to be able to provide certain other services.

Moreover, in its report on "consumer issues"⁶, the ERGP hints to a potential right for the recipient (end consumer) to choose a delivery provider of his/her choice. Ecommerce Europe believes that consumers would lack the required knowledge to make an informed decision in this regard. Moreover, the seller's choice can depend on several factors, including reliability, quality of service, costs, availability, strategic partnerships, green aspects, and any other services a seller would like to offer to its consumers to serve them in the best way possible. For these reasons, **Ecommerce Europe insists on the fact that it is the seller having a contractual relation with the consumer and with the delivery service provider(s), and it is up to the seller to choose the delivery provider(s) it wants to offer.**

3. USO should be preserved and further strengthened

Overall, Ecommerce Europe believes that a basic service for the delivery of parcels should be guaranteed also under extraordinary circumstances such as a global pandemic. With regards to the Universal Service Obligation (USO), the PSD had the fundamental goal of establishing a common market for postal services in the EU and guaranteeing the provision of a basic and affordable postal service, for letter mail and parcels, for all citizens across the entire territory. For that purpose, it introduces the concept of a USO as a safety net where the market fails to provide such a service. The USO guarantees the postal carriers parcel delivery offering for e-commerce, creating a first- and last-mile network that reaches consumers across 100% of a country's geographical area. The USO for parcels is necessary to keep economic participation high, grow small businesses by expanding their reach, and acts as a great equalizer of opportunity for rural, vulnerable and underserved communities. Reducing the USO would disenfranchise these communities. Unlike urban and high-density environments, rural communities may not have a range of affordable delivery options available to them. Postal carriers keep them connected to the global economy, allowing these communities to participate and thrive from a distance. This is true both from a consumer and a seller perspective. In fact,

⁶ <https://ec.europa.eu/docsroom/documents/42142/attachments/3/translations/en/renditions/native>

e-commerce is an important opportunity for shops in smaller towns to reach new buyers beyond their local base, often enabling them to keep their offline storefront open. In addition, based on consumer demand, e-commerce encourages a seven-day service to become even more competitive. For SMEs that rely on the postal carrier, reducing days of service effectively reduces their ability to participate in that economy, hindering small businesses from using postal carrier services to be competitive. Therefore, **Ecommerce Europe seeks to strengthen the USO**, especially by ensuring 100% geographical coverage for parcel pick-up and delivery operations, also in areas that are very costly or remote.

Also linked to the USO discussion, Ecommerce Europe would like to share its concerns with the Commission about the ERGP intention (mentioned in its WP 2021) of developing a position towards ex-ante regulation, including Significant Market Power (SMP) regulation as a regulatory instrument, to be used for establishing a level playing field and promoting a fair and competitive European postal market. In that regard, Ecommerce Europe is concerned by the fact that the ERGP seems to suggest shifting the current framework of the PSD away from its focus on the Universal Service Obligation towards market competition. In this regard, Ecommerce Europe believes that, if any new regulatory intervention in the field of competition is needed, this should always be based on clear evidence of market failure. Moreover, in this case, the Commission should carefully assess any risk of overlapping with existing rules on dominant position and any possible extension of sectorial vertical market definitions in the future.

4. Preserve the principle of Art. 20 PSD and the role of CEN

According to Art. 20 PSD, the European Committee for Standardisation (CEN) shall be entrusted with drawing up technical standards applicable in the postal sector on the basis of standardisation requests adopted by the Commission. Such work should take account of the harmonisation measures adopted at international level and, in particular, those decided upon within the Universal Postal Union. Where useful, we believe that such UPU specifications should be converted into CEN⁷ standards, which are however voluntary.

The method currently established by the PSD is to provide a political framework and leave the definition of the state-of-the-art technical and messaging standards to be adopted through engagement via the CEN. This system has proven to be successful in the past years (see for example the following mandates M/240, M/312, M/428 and M/548). It has been working as a kind of "side regulation" allowed by the PSD. In Ecommerce Europe's opinion, EU policymakers should maintain this system and explore ways of encouraging EU postal service providers to use these standards, in order to achieve the aim of the PSD in the Union while continuing taking into account, in particular, the interests of users (traders).

5. E-commerce as a bridge between digitalisation and sustainable economy

As the Commission's survey partially addresses the issue of the developments of the postal sector in an environmentally sustainable manner, Ecommerce Europe considers it important to share with the European Commission its recommendations on sustainability and e-commerce from a delivery perspective.

From a more general point of view, Ecommerce Europe believes that sustainability in all its aspects is one of the most crucial issues of our time. The importance given to our collective and individual impact on our planet, and on the people around us has never been greater and it has never been so needed. As part of a complex social, environmental, and economic ecosystem, businesses from all sectors have rethought the way they produce, the way they exchange, and how and what they sell to consumers. Businesses have become more and more aware of the role they play and their responsibility in fighting climate change, the rarefaction of resources and so on. We believe that the e-commerce sector is a bridge between the digitalisation of our society and the transition to a more sustainable economy. It is a sector in constant and rapid evolution, shaped by new technologies, new ambitions and ideas, new demands, making it a sector capable of spearheading innovative sustainable solutions.

⁷ CEN: European Committee for Standardisation

Product delivery to end consumers is a fundamental aspect of e-commerce. It is also a topic at the centre of the conversation on sustainability and e-commerce, and part of larger conversations about the future of mobility, urban planning, but also accessibility. E-commerce logistics is therefore shaped by various developments, from the evolution of consumer expectations, the growth of omnichannel commerce or the development of key transport infrastructure. Digitalization represents a clear opportunity for the e-Logistics sector. For example, Artificial Intelligence-based solutions can rationalize business processes through optimized transport routes and stock management, thus reducing their environmental impact. Investment, from retailers, service providers, but also public investment, is crucial to develop sustainable technologies and the underlying infrastructures. Public infrastructures have to create room for connected sustainable business models and governments must secure the necessary conditions for a more sustainable digitalization, from communication networks to multimodal transport. Moreover, new ways for environmentally friendly and sustainable delivery shall also be encouraged, such as a mandatory provision⁸ on parcel boxes in apartments, buildings or homes, just like post boxes have been made mandatory in the last decades in all of the EU.

In order to enable the growth of sustainable solutions and practices all over Europe, an informed assessment of the state of play and concrete examples of existing projects and commitment should guide the discussion around the role of sustainable logistics in e-commerce. From the role of pick-up points and omnichannel solutions relying on the development of local, inner-city shops, to the use of new means of transportation, there is a number of solutions being explored to continue the transition to more sustainable delivery systems and practices. Ecommerce Europe also published a [Collaborative Report](#) on Sustainability and E-commerce⁹ which also includes concrete examples on e-logistics, packaging, returns and second life of products.

e-Logistics deserves a specific focus as it is different from traditional distribution operations, and more complex. The question of sustainability and e-Logistics cannot be answered by addressing one angle of a perceived issue, or by addressing perceived causalities that would link e-commerce with phenomena such as CO₂ emissions and congestion. This also means any efforts to make e-Logistics more sustainable need to be guided by a holistic approach. This is valid not only for business strategies, but also for policymaking. We believe that policymakers and regulators should play a role in this context, by bringing more evidence-based facts and helping avoid unwarranted restrictive regulation. Making e-commerce and its connected logistics more sustainable should not, for instance, come at the expense of their inclusiveness and reach in remote and rural areas.

Conclusion

Ecommerce Europe and its members stand ready to support EU policymakers in their work on the EU postal legislative framework, to ensure that it will be fit for the current and future challenges of the digital commerce sector.

For any questions on our contribution, please [send Ecommerce Europe an e-mail](#).

⁸ Mandatory parcel boxes would decrease postal traffic and related CO₂ emissions as this would stop additional "secondary" traffic of end-consumers, when picking up parcels dropped-off at pick-up places, post offices and parcel locker systems. Given the raising volumes of e-commerce, we expect a doubling of volumes by 2023, reaching as much as 30% of all commerce in EU.

⁹ <https://www.ecommerce-europe.eu/wp-content/uploads/2020/09/Collaborative-Report-on-Sustainability-and-e-Commerce.pdf>