

Position Paper on ERGP Report on the contractual situation of consumers of postal services





ABOUT POSTEUROP

POSTEUROP is the association which represents European public postal operators. It is committed to supporting and developing a sustainable and competitive European postal communication market accessible to all customers and ensuring a modern and affordable universal service. Our Members represent **2 million employees** across Europe and deliver to **800 million customers daily**.

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POSTEUROP'S POSITION ON ERGP REPORT ON THE CONTRACTUAL SITUATION OF CONSUMERS OF POSTAL SERVICES

Background and context

PostEurop appreciates the opportunity to give its opinion on the ERGP Report on the contractual situation of consumers of postal services (ERGP PL I (21) 10) currently under public consultation. In September 2020, PostEurop contributed to the consultation on the ERGP Report on Key Consumer issues (ERGP PL I (20) 8). The inputs shared in September 2020 are still valid. PostEurop here in this position paper would like to recall these positions and make additional comments.

The current regulatory framework provides sufficient protection for consumers in the postal sector

We believe that the current regulatory framework provides sufficient protection for end users. Their rights are enshrined at EU level through horizontal consumer protection rules. These rules are sufficient and quite strict regarding consumer protection. Also, the directive 2019/2161 on the better enforcement and modernisation of Union consumer protection rules recently reviewed this framework and provides an even higher level of protection and more requirements on transparency.

Therefore, the general framework is sufficient and nothing calls for sector specific regulation on this topic. There is no need to introduce in the PSD a specific chapter on users' rights provisions as suggested by the ERGP. The provisions of the Postal Services Directive (Article 19) remain valid and future-proof. Universal Service lies at the core of the postal legislative framework and PostEurop Members believe it should remain the focus of legislation. There is other legislation to regulate issues which impact the postal sector - including employment, customs, taxation, consumer rights, data protection, platforms and competition rules.

On top of that, postal operators in most Member States have over the last years already increasingly adapted their business model to a receiver-oriented market, offering (digital) information and track-and-trace services to the consumer. Many of the improved consumer protection services are already taken up by the market.

Please be reminded, of the role of the e-tailer in the process. As there - with some exceptions related to i.a. redirection to final place of delivery - is no contractual relation between the end-consumer and the postal operator, deriving indirect rights from this relationship would require an overhaul of national contract law and consumer law. Without a clear need, this seems like a disproportionate measure.

Many postal operators offer a wide array of delivery options. The e-tailer makes the final decision which of these options are offered to end-consumers. For operational reasons, they sometimes opt to offer a selection that best fits their business model.

The suggestion that the PSD should contain consumer protection elements for the e-commerce market are in our view misplaced, as for the greater part, the e-commerce market does not, and should not, fall within the scope of the PSD.

There is no need for further harmonization of the definition of user

ERGP recommends in its report to "evaluate the definition of "user" and if necessary, splitting it into separate definitions, for example, definitions regarding the addressee or recipient and consumer". However, as noticed by the ERGP, the recent decision of the Court of Justice has already clarified the notions of users, senders and recipients in the postal services. Therefore, there is no need for harmonization of the definition of user.

On the methodology of the report

The ERGP report is based on the answers by some NRAs to a questionnaire on the different aspects of the contractual situation of consumers.

PostEurop welcomes the initiative. However, we have noticed that some NRAs did not provide answers to the survey. This could lead to biased results in the conclusions.

PostEurop question the methodology and the consistency in NRAs' assessment (perception) leading to the recommendations in the report. One example as an illustration: Figure 6 (page 18) provides a useful overview of the answers from each NRA on level of consumer protection. The majority of NRAs state that there is no lack of transparency (regarding QoS and contractual terms respectively), no lack of information about consumer rights, no lack of clear legal definitions and no lack of enforcement. Surprisingly, most NRAs still conclude that consumers are not sufficiently protected, without further justification.

Furthermore, the majority of NRAs state that further harmonization on European level *might be necessary* (page 20) or *is needed* (Figure 7, page 21). However, it is not possible to see from the following description how each NRA have responded on various indicators. Thus, the report does not provide information needed for PostEurop Members to challenge the assessment (perceptions) at national level, bearing in mind the fact that relevant Directives that cater for strong consumer protection have been implemented in basically all Member States, as confirmed in chapter 4.1 of the report.

Overall, the analysis as well as the suggestions remain quite general and lack sometimes argumentation on why regulatory intervention is needed and justified.

Conclusion

PostEurop remains available to present our positions to ERGP and provide further inputs on consumer protection practices and developments in the postal services.

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