

THE PROBLEM OF FRAGMENTATION

The Postal Market liberalisation process has been a substantial achievement of the Single Market and Europe today has the world's most progressive postal market. However, disparities of transposition at national level not only risk minimising the overall benefits that liberalisation can provide but also result in regulatory requirements for parcel and express delivery services, which were already competitively provided prior to the postal liberalisation process.

The regulatory landscape today is highly fragmented. We observe a broad diversity of regulatory regimes. Procedures and conditions in postal markets are quite distinct across the Union. For express operators, that are active at pan-European level, this regulatory fragmentation represents a significant challenge, having to deal with 28 different sets of national legislation and regulation.

Express operators agree with President Juncker's call for a fairer and deeper internal market, which he rightly considers as an asset for the European Union in the global era. A truly functioning European market would enable the express sector to meet its growth potential and contribute to the EU's economic mission. The express sector is already a key enabler of economic growth contributing €10.3 billion to European gross domestic product and delivering around €4 trillion worth of goods, equivalent to 16% of European businesses' sales revenue (projected to increase to over 20% by 2020).

However, the express sector today faces more regulation than prior to the postal market liberalisation, despite the fact that express operators were never part of the traditional mail market nor benefited from full market opening. Examples of countries where the postal regulation does not include express activities show that the express market is already competitive and no regulation is needed.

Issues encountered across Europe can be summarized in the below four categories:

1. Authorisations and licensing

Many Member States may introduce a general authorization for providing express delivery services, being services that fall outside the scope of universal service. It should also be noted that a number of Member States has chosen not to introduce this requirement, relying on general market functioning for express delivery services.

In most Member States this translates into a simple registration or notification such as in Germany. Certain member countries, however, apply procedures and conditions that go far beyond a general authorisation and effectively are the equivalent of, or very close to, an individual license. A most recent case in point is Italy, but there are other countries as well, e.g. Bulgaria and Romania where general terms and conditions need to be approved by the regulatory authority. In Italy, the definition of postal services potentially

includes non-postal transportation services, e.g. freight forwarding or supply chain. The Czech Republic also recently enforced registration requirements.

Moreover, in Luxembourg, EEA members (or their agencies) have been required to notify their services or to apply for an authorization for the services they provide, while other transportation companies, providing comparable services, have not been requested to do so.

2. Regulation of general terms and conditions

A sector specific regulation of terms and conditions beyond the general legal provisions that apply is a problem which EEA members encounter specifically in Central European Member States. Regulations begin by determining what matters need to be covered and end up by regulating content (e.g. regarding liability for delays or specific claim handling procedures and deadlines).

EEA members have been forced to change their global terms and conditions into country specific conditions. Today, express operators need to have, beside our global and globally accepted terms and conditions, country specific conditions for Hungary, Bulgaria, Poland and Romania. We would consider this practice to go beyond the objective to ensure compliance with the essential requirements. The current practice in these markets results in very detailed and prescriptive procedures.

3. Financing the National Regulatory Authorities

Some Member States, such as Austria, Greece, Hungary, Italy, Luxembourg, Latvia, Portugal and Romania, involve express service providers in the financing of the costs of the national regulatory authority, and request a fee based on a percentage of annual revenues which apply equally to all postal service providers. Contributions amount to up to 0.5% of revenues. Whereas this number might appear to be low, the actual amounts involved are significant. They can be 6 digit amounts that clearly are disproportionate for the cost of regulatory activities for non-universal service providers. We also note that the calculation mechanisms and cost at the origin of the calculation are not transparent.

The EEA takes the position that involving express service providers in financing of national regulatory authorities constitutes an infringement of the postal directive.

Even if express service providers are to be involved, the share of contributions should be based on the principle of costs incurrence. Express service providers should not be held liable for costs related to supervising universal services. In fact, regulatory authorities are mainly, if not exclusively, dealing with monitoring or supervising universal service, universal service providers and others active in this area.

Furthermore, in Luxembourg (see above) not all operators have been registered and requested to pay the regulatory fee though providing similar services to registered operators.

Countries requiring express delivery providers to pay for the cost of regulation

Countries requiring express delivery providers to pay for the cost of regulation	
AT	Max. € 5,500 per 1% market share (in terms of turnover); no contributions < € 300
CY	Flat rate of € 1,700
EL	€0-30M: 0.35%, €30M-100M: 0.15%, >€100M: 0.05%
HU	0.113% of turnover
IT	0.068% of turnover
LU	For 2014: €600 plus 0.5% of turnover (yearly adaption); only for operators with turnover > €200,000 per year
LT	Flat rate of €72,41 /month
LV	0,17% of turnover
MT	Flat rate of €150
PT	€2,500 for operators with turnover between €250,000 and €1.5M per year; 0.29% for operators with turnover > €1.5M per year
RO	Possible, max of 0,4% of turnover; suspended since 5 years ago

4. Financing universal service net costs

The majority of Member States provide for a market-based funding of universal service net costs (compensation fund). EEA members expect to be required to contribute to a compensation fund in certain member countries.

For example, the Czech Republic does not make any distinction between services within and services outside the universal service and requires all postal providers to contribute. Recently, EEA members have been approached by the Regulatory Authority asking for services provided, copies of contracts, etc., assuming that express services fall under the postal act. A decision is pending.

In Poland, under the postal act, all postal services are considered to be interchangeable with universal service with only one exemption for courier services, which are defined in a very restrictive way (e.g. including a guaranteed delivery time). All other services not meeting the definition of a courier service are principally interchangeable with universal services.

In Italy, the authority indicated that according to their understanding, services outside the universal service may be nevertheless interchangeable with universal services; therefore, operators providing service under a general authorization (applicable to services outside the scope of the universal service) might well be challenged to contribute to a compensation fund.

Moreover, the contributions as foreseen by some Member States are unreasonably high - in Italy and Hungary up to 10% of revenues, in Croatia up to 5%, in Poland up to 2%, whilst other member countries do not define maximums.



The random methodology used to define whether services are within or outside the scope of universal service and the description based conclusion that services are “interchangeable” illustrates the need for a more clear and consistent methodology to define what services are universal and interchangeable.

CONCLUSION

The EEA appreciates that there are Member States that keep express services fully out of postal regulation or rely on a simple registration with no specific regulatory conditions. These countries, noticeably, have the most efficient and performing postal and express markets in Europe. Examples are France, Netherlands, Sweden, Denmark, Finland, Ireland, Germany and the United Kingdom.

However, in other Member States, in the context of the transposition of the postal directive, express services have become increasingly subject to sector specific regulation.

Given the examples listed above, **the EEA would request that the Commission, in order to protect the integrity of the single market for postal services in Europe, and also to ensure an increasingly seamless and efficient internal market for cross border delivery of good, provides clear political guidelines that clarify the necessary and correct implementation of the postal services directive to Member States.**

ANNEXES

Annex I – Italy’s Authorisation System

In the Authority’s opinion, the current market situation requires the implementation of new rules in order to regulate the access to the postal market.

In October 2014, AGCom called the stakeholders for a public consultation.

EEA members as well as AICAI, participated to the public consultation.

Legal Framework

Legislative Decree No. 261/1999 provides that the Authority is called to adopt a regulation on:

- (i) requirements for the issue of General Authorization;
- (ii) obligations to be fulfilled by General Authorizations holders, including obligations with regard to working conditions;
- (iii) check procedures at the companies’ offices;
- (iv) procedures of formal notice, as well as suspension and revocation of licenses and authorizations, in case of violation of obligations.

Authority position

In the Authority’s opinion, Article 9.2 of the Directive 2008/06/EC provides that Member States can impose (both to Individual licenses and General Authorization holders):

- (i) requirements concerning the quality, availability and performance of services;
- (ii) technical and operational conditions;
- (iii) the respect of the work condition under national law.

Therefore the Authority proposed a draft of regulation aimed to impose some material administrative, operational and technical burdens to all the Individual License and General Authorization holders.

In particular, the draft of regulation provides the following:

- a) Who is subject to the General Authorization regime
 - (i) It is confirmed that the Express Couriers are subject to the General Authorization to run their business, although in other European countries (e.g. the Netherlands) this is not the case;
 - (ii) What is new is that the definition of the businesses subject to the General Authorization regime is so broad to potentially include also all the other EEA members’ divisions’ businesses (Freight Forwarding, Transportation, Supply Chain).
- b) Pre-requisites to obtain the General Authorization

The proposal of the Authority materially enlarges the pre-requisites to obtain the General Authorization, e.g.:

- (i) registration of the company in a specific section of the Company Register;
- (ii) holding of some “ad-hoc” certifications, such as UNI EN ISO 9001, UNI EN ISO 14001, UNI CEI ISO/EC 27001;
- (iii) detailed communication to the authority of the company business model: network set up, infrastructures, preventive measures to grant correspondence secrecy, ect.;
- (iv) copy of the contracts with all subcontractors and partners;
- (v) to avail for the management of services only of suppliers who hold the same General Authorization.

c) Obligations of the General Authorization holders

The proposal of the Authority also materially enlarges the obligations of the General Authorization holders:

- (i) to adopt a separate accounting system for postal services;
- (ii) to publish and regularly update the “Services Quality Charter”;
- (iii) to annually publish and communicate to the Authority a detailed information regarding the number of claims managed as well as the procedures applied;
- (iv) upon request, to provide to the Authority data and documents on our business.

d) Economical contributions requested to the General Authorization holders

The proposal of the Authority “multiplies” the economical contributions for the operators:

- (i) contribution for the release of the General Authorization;
- (ii) contribution for the control of the requisites to be entitled to hold the General Authorization;
- (iii) contribution to the costs for the Authority functioning;
- (iv) contribution to the compensation fund for the universal service, to the extent that the Authority will assess the “interchangeability” of our services.

Authority Resolution after consultation

- (i) AGCom maintains that express couriers cannot be exempted from General Authorization system, because the Legislative Decree No. 261/1999 provides that the services falling outside the scope of Universal Service are all subject to General Authorization.
- (ii) notwithstanding with the objections raised up during the consultation, also the final version of the Regulation is equating – with no reason - the requirements and treatments of General Authorization to Individual License.
- (iii) the Authority does not explain what interchangeability stands for, stating that General Authorization holders are asked to pay to the compensation fund if “*there are the conditions set out in recital 27 of Directive 2008/6/EC*”;

- (iv) the Authority states that Individual License and General Authorization holders have to contribute to the NRA's cost to the same extent, because AGCom's role is the same with regard to all the operators;
- (v) not only express couriers are asked to obtain the General Authorization but also carriers, forwarder and logistic companies. This means that in Italy all business activities (Express, Freight forwarding and Supply Chain) are subject to the regime of the General Authorization and relevant obligations. Moreover, according to the resolution all subcontractors should be obliged to obtain the authorization, with a significant increase of costs in the outsourcing of activities.

The final version of the Regulation is basically the same of the draft circulated in October 2014 (see above), but contains some few improvements:

- (i) the obligation to adopt a separate accounting system is required only for Individual License holder;
- (ii) it is no more requested to hold some "ad-hoc" certifications, such as UNI EN ISO 9001, UNI EN ISO 14001, UNI CEI ISO/EC 27001;
- (iii) it is no more required to provide the Authority with the copy of the contracts executed with all subcontractors and partners.

Annex II – Regulation of Terms & Conditions (Central Europe)

State of Affairs

All Central Europe countries regulate terms and conditions for postal service providers, and European Express operators' global terms and conditions are nowhere fully in line with these respective regulations. The situation though varies across the countries:

- In Bulgaria, Hungary Poland and Romania express operators were requested to adapt/change their global terms and conditions.
- In the Czech Republic the relevant authorities have not yet determined whether express operators fall under the postal act.
- In Slovenia and Slovakia, EEA members' global terms and condition are not fully in line with the postal act, but the respective authorities apparently do not enforce regulations.

Regulations of terms and conditions

Regulations begin with determining the matters to be covered by the terms and conditions and then the content, or how matters need to be dealt with.

List of matters to be covered by the terms and conditions which are not covered by express operators' global terms of carriage

- Type of provided services (ALL) – EEA members' global terms do not specify types of providing services.
- Way of concluding a postal contract (CZ, HU)
- Delivery times (BU, CZ, HU, PL, RO)
- Accepted size and weight limits of postal items (HU)
- Import restrictions and bans in countries of transit and destination (HU)
- Rules on address content and form (HU)
- Max. % of damaged or lost shipments (HU)
- List of items considered dangerous or requiring special treatment (CZ)
- Time limit for reimbursement of the cash on delivery amount to the sender (BU)
- Rules on claiming and compensation procedures (PL, RO, SK)
- Procedure for and manner of paying compensation (PL)
- Modes of payment (HU)
- Rules of data protection (HU)
- Circumstances under which a postal service is considered as not or improperly performed (PL)
- Time period after which an undelivered postal item is considered lost (PL)

Note that some of the above items (e.g. service description, prices, modes of payment) are regulated in other documents (e.g. in price lists) but which is not considered to be sufficient.

Matters dealt with in the terms and conditions of EEA's members, but differently than provided for by the respective postal legislations:

- Guaranteed time of delivery and compensation in case of delay
- Compensation in case of loss or damage
- Time limits for claims
- Right of inspection of the shipment
- Circumstances excluding liability
- Circumstance where liability limits do not apply

Guaranteed time of delivery and compensation for delays

- According to EEA members' global terms and conditions the regular delivery schedules are not binding and do not form part of the contract; express operators are not liable for any damages or loss caused by delays.
- Most Central Europe countries require a guarantee of delivery in time:
 - In HU maximum delivery times are specified (domestic, EU and ROW); compensation in case of delay is set at 2 times the shipping fee.
 - In RO maximum delivery times (local, domestic and international services) are specified; the provider is liable for delays, amounts are not regulated, but need to be specified in the terms and conditions.
 - In PL maximum times need to be specified and guaranteed; compensation for delays is up to 2 times the shipping fee.
 - In BU, delivery times are binding as well; amounts for compensations in case of delay are not regulated, but need to be specified in the terms and conditions.
 - In SK compensation for delays (in case of a time guarantee delivery service) is 3 times the shipping fee.

Compensation in case of loss or damage

- European express operators' liability is limited to \$US 25.00/kilogram or \$US 11.34/lb for Shipments transported by air or other non-road mode of transportation; or \$US 12.00/kilogram or \$US 5.44 /lb for Shipments transported by road.
- In HU, RO and PL the compensation to be paid exceeds these limits; in HU the compensation is 15 times the shipping fee, in RO it's 10 times and in SK 20 times the shipping fee, in PL normal value of the lost or damaged goods.

Time limits for claims

- All claims must be submitted in writing to the express operator within thirty (30) days from the date that the operator accepted the Shipment, failing which it shall have no liability whatsoever.
- In BU and RO the time limit is set at 6 months, in HU and PL at 12 months

Right of inspection

- According to express operators' global terms of carriage, operators have the right to open and inspect a shipment without prior notice to the shipper.
- This is not in line with the provisions in BU, CZ, PL and RO.

Circumstance excluding liability

- According to express operators' global terms and conditions, operators are not liable for any loss or damage arising out of circumstances beyond the operator's control; the terms and conditions list relevant circumstances (non- exhaustive list).
- In BU, CZ, PL, RO and SK the conditions excluding liability are more limited and must not be extended in the terms and conditions.

Circumstances where liability limits do not apply

- European express operators' global terms and conditions limit liability to direct loss and damage (up to specified thresholds); other types of compensations for loss or damage are excluded (including but not limited to lost profits, income, interest, future business), whether such loss or damage is special or indirect.
- In CZ and PL, limits for liability do not apply, for instance, where a service provider caused the damage by gross negligence or by willful misconduct.

Annex III – The Luxembourg Case

In Luxembourg, EEA members (or their agencies) have been requested to apply for an authorization under the postal act to provide postal services.

The IRL publishes a list of all authorized services providers.

On 15/03/15, the list of authorized/notified companies published by ILR lists 25 companies (LINK):

- 16 companies offer both services within the scope of the universal service and services outside the scope of the universal service.
- 2 companies only offer services within the scope of the universal service
- 7 companies only offer services outside the scope of the universal service.

At the same time, the Groupement des entrepreneurs de transports asbl is listing 118 companies active in the national and international transport segment. 82 of these 118 are listed in both national and international (source: <http://www.groupeement-transport.lu/sujet/membres/>)

Quick view at some companies listed by Groupement and not present on ILR lists:

Ziegler

Available in Luxembourg via the subsidiary Intertrans, it offers

Road freight Services



- Daily connections to all main European cities
- FTL - LTL and groupage services
- Door-to-door transport
- Transport of hazardous and non hazardous cargo
- Customs Brokerage
- Local pick-up / delivery
- Track & Trace

Arthur Welter

Found on their web site, some comments about the services they offer. The first paragraph even gives an average weight per shipment of 7kg!

GROUPAGE AND LOGISTICS

GROUPAGE AND LOGISTICS SYSTEMPLUS – EUROPA TRANSPORT WAREHOUSING E-STOCK LOGISPNEU

GROUPAGE AND LOGISTICS

Today Arthur Welter is one of the leading Companies in Distribution and Logistics. Despite the country's small size, we handle an average of 210.000 consignments a year, representing around 30.000 tons.

Arthur Welter is member of the paneuropean Network



with daily connections to almost all European countries. This enables our customers an Europe-wide distribution and procurement logistics with defined transit times.

We offer daily deliveries throughout Luxembourg.

Additional related services such as order preparation, Stockcontrol are offered.

Our skilled and reliable staff, computerized processing of consignments and proven logistical performance ensure that delivery deadlines are met.

We have the possibility to set up a computerized link to facilitate and speed up communication with our customers. We constantly investing in the development of new forms of communication.

Others like Kuehne & Nagel are neither listed on Groupement nor on ILR but offer services similar to the ones falling under the postal law (source: http://lu.kuehne-nagel.com/en_gb/parcel-express-logistics/)

Kuehne + Nagel offers parcel distribution services within an existing setup with the world's leading carriers offering attractive lead times for all of Europe. The carrier selection is based on customer requirements and all shipments can be easily tracked via KN Login.

Standard / Eco Service

- Competitive Lead Times
- Daily Departures to worlds' leading carriers
- Integrated carrier Portfolio
- Reduced time-to-market by using national hubs
- Online Visibility of all shipments

Express Service

- 24 hour service all over Europe
- Guaranteed Lead Times
- Reliable Service due to Kuehne + Nagel's Best-in-Class carrier approach
- Integrated monitoring + visibility through KN Login

Finally some companies do not display their products on the web but are still active in the local transport world: Wallenborn, Offergeld...