

European Commission Cross Border Parcel Regulation: *EEA Initial Feedback on the application of Article 4 and 5*

July 2019

1. Introduction

This document contains initial feedback from the European Express Association on the data collection efforts related to the implementation of the 2018/644 (EU) Regulation on cross-border parcel delivery services (the “Regulation”) at Member State level by National Regulatory Authorities (“NRAs”). It provides general comments on the scope of the Regulation and also deals more in detail with the provision of general company information as per article 4 and the provision of tariff information as per article 5. Following the practical experience encountered by EEA members in the recent tariff provision and data collection process, we would like to share our observations and concerns.

2. General comments

The provisions related to regulatory oversight and specifically articles 4 and 5 of Regulation (EU) 2018/644 require NRAs to collect a very large set of data from non-USPs. The Implementing Regulation (EU) 2018/1263 indicates the specific data elements that non-USPs need to provide. We take the position that the data provided as specified in (EU) 2018/1263 should be well sufficient for NRAs to gather knowledge and information for statistical purposes on parcel delivery service providers that are active in the parcel delivery market and that are not engaged in the provision of Universal Service.

However, some Member States also require parcel delivery service providers to complete other questionnaires based on national legislation that pre-existed the EU Regulation, whilst both obligations largely overlap. That results in the duplication of obligations and different compliance timelines to deal with, imposing a disproportionate and unjustified burden on operators. For the sake of efficiency, we would recommend that Member States avoid duplicative questionnaires by limiting their cross-border delivery reporting requirements to the sole EU obligations.

We would also like to remark that the collection of tariffs under article 5 results in an additional administrative burden for non-USPs and adds little to no value to private individuals shipping parcels, users of non-USO related services or regulatory authorities for the following reasons:

- private users do predominantly use traditional postal (USO) services for shipping items;
- business users will negotiate specific tariffs with non-USO service providers based on volume characteristics and not revert to the PARCEL system for tariff information;
- the PARCEL platform has not been designed to allow for an effective comparison of commercial delivery services given the high degree of variety in service characteristics across service providers.

In our opinion the comparison among the operators' tariffs is quite difficult (and potentially misleading) with the information uploaded to the platform due to, for example, the following reasons:

- There is no guideline to upload the information so based on the parameters set out in the Regulation (type of product, size and cheapest price), each operator can have a different understanding of the product to be uploaded. EEA members have obtained different explanations through the mails addressed to the local NRA;
- That the tariff to be uploaded is the cheapest one can be understood in different ways: per product, per destination;
- Parameters as the size is not clear enough in the regulation but the local NRA has its own different interpretation of it.

It should be noted that NRAs have already independently requested and received public price lists of parcel delivery operators under article 4.3 (e) of Regulation (EU) 2018/644 which can be used for market monitoring purposes. It could therefore be argued that the ability to provide tariff information for non-USO related services should be made optional and that it is left to the operator to make a commercial decision whether to enter this data in the PARCEL or related systems.

As a general comment, we note that the terms and scope of the Regulation's obligations are based on criteria and standards that apply to the universal postal service model. As a result, we are required to interpret the Regulation in the light of our own standards and to adjust our data to a format that does not take into account the specificities of our business model. For instance, our industry deals with parcels – regardless of their size, weight, shape and content – and does not distinguish “items of correspondence”. Similarly, the weight limit of 31.5 kg is not a threshold that we would usually consider in our industry. Because of these gaps, the information that our sector reports does not exactly match the intended scope of the Regulation which may ultimately trigger an inaccurate perception of the EU delivery market.

Below we provide some specific observations and suggestions that can make the overall process more efficient and effective for both operators and users.

3. Specific comments on the data collection procedures under articles 4 and 5

Article 4: General provision of data

Our comments have been structured according to the table provided in Annex 1 of Implementing Regulation (EU) 2018/1263

Table Number	Observations	Suggestions
Table 1: Information on the parcel delivery provider	No specific comments	No suggestions
Table 2: contact details of a contact person	We have noticed that access to the PARCEL system used for provision of tariffs is limited to one single registered contact person per local	We suggest having a set up that gives more flexibility with regards to entry of data and allows for one or several

	<p>legal entity. This restriction reduces the possibility to have one or several person(s) enter data for all national subsidiaries in a centralized way.</p>	<p>person(s) to have access to the systems for multiple Member States and enter data (general company information and parcel tariffs) in a centralized way in addition to the current setup, which remains an option.</p> <p>The system should allow for these individuals to be different from the local registered contact person.</p>
<p>Table 3: Characteristics of the parcel delivery services offered</p>	<p>The current set up works as it allows to provide a general description indicating that the operator is involved in the collection, sorting, transportation and distribution of parcels and outside the scope of USO. The terminology used for the various stages of shipment processing is however somewhat confusing as it deviates from the terminology used in the express delivery sector.</p>	<p>Below is our interpretation of the various stages.</p> <ul style="list-style-type: none"> • Clearance = pick up or collection • Sorting = terminal handling • Transport = line haul • Distribution = Delivery
<p>Table 4: Detailed description of the parcel delivery services offered</p>	<p>Given the broad variety of service characteristics offered in the sector it is difficult to capture all the details of the service offered in the current format provided.</p>	<p>We propose that a very generic description of the operator's service offering combined with a link to the company's sales literature and/or website for further detailed information is considered to be sufficient to meet these criteria and no further information is required.</p>
<p>Table 5: General Terms and Conditions for parcel delivery services</p>	<p>Given length of the text, the level of detail and high degree of variety of General Terms and Conditions used by various operators it is not possible to enter the full text in the survey.</p>	<p>We propose to include a link with the Terms and Conditions of the Transportation Services is considered sufficient to meet this requirement.</p>

Submission of information

Table Number	Observations	Suggestions
Table 1.1: Domestic Parcel Delivery	The volume and revenue criteria are generally acceptable. Regarding the revenue element, it should however be taken into account that shipments can be composed of several parcels. The current questionnaire seems to assume that one shipment equates to one parcel.	No need for change but interpretation of data should take the shipment element into account.
Table 1.2: Incoming Cross Border Parcel Delivery Services	This section has in our view little relevance for the overall purpose of the Regulation. This category merely provides a general insight on parcel volume that needs to be delivered by the local operator. These parcels originate in other markets and are already reported as outgoing volume and related revenue. Reporting the volume and revenue again will result in double reporting of these cross-border volumes and revenues at EU level. The only exception is volume that is shipped and paid on a so-called freight collect based: the recipient pays for the delivery upon receipt. This method is very unlikely to apply to cross border e-commerce sales since the transportation cost are included in the overall purchase. Some regulators have indicated to us that they would like us to provide the compensation charged for delivery to the origin delivery company. We would consider this request to be outside the scope of provision of general revenue and volume information as it seeks to understand a cost of doing business rather than e-commerce related shipping revenue.	Revenue should only relate to charges invoiced to customers.
Table 1.3: Outgoing Cross border Parcel Delivery Service	No particular comments	No need for change but interpretation of data should take the shipment element into account.
Table 2: Employment data	No particular comments. We work on the premise that self-employed persons	We propose the following are included: full-time employees, part-time employees,

	are a different category than subcontractors.	temporary employees and self-employed individuals (not employed by a subcontractor).
Table 3: Subcontractors	It is not clear to us what the purpose is of this request from a regulatory perspective. It is required to report the 5 top subcontractors.	We propose “largest” should be defined based on the revenue received from the parcel delivery operator. This element should include only domestic subcontractors.
Table 4: Names of Subcontractors	A subcontractor’s list can be quite large and change significantly over time.	We propose to fix a cap on the number of subcontractors that should be reported, focusing on the most important ones in terms of revenue. For the sake of efficiency and accuracy, we would suggest limiting the reporting obligation to the 10 main subcontractors.
Table 5: Publicly Accessible Price list	The structure and methodology used for public tariffs varies significantly by operator. If the overall purpose of this request is to provide the regulator with a copy of the public tariff we propose that a link to the relevant information on the website of the operator should be considered as sufficient.	We suggest that a URL link to the actual price list on the operator’s website is sufficient to meet this requirement.

Article 5: Transparency of cross-border tariffs

Product Categories - Annex 1 (EU) 2018/644: The Regulation applies to cross-border **parcel** (goods bearing items) delivery services. Annex 1 lists a number of product categories that are based on the postal sector. The distinction between shipment categories in the express sector is different from the postal sector. The EU Regulation 2018/644 (Annex) makes a distinction between “letters” and “parcels” based on UPU definitions/dimensions and based on the separate networks that exist for postal letters and postal parcels, which does not correspond to the express business model. Express delivery service providers manage shipments (containing goods or documents) with a variety of dimensions using the same network. NRAs should acknowledge and understand that express delivery operators have service offerings that are different from traditional postal conventions. Express delivery service providers should be allowed to report public single piece tariffs for shipments without distinguishing between “letters” and “parcels”.

Destinations: NRAs should be aware that parcel delivery operators might not offer services relevant to this regulation to all destinations foreseen by the Regulation and related (PARCEL) system. It should be accepted that the parcel delivery operator does not include tariffs for destinations that are not covered by the relevant service. Delivery operators should not be

required to enter tariffs related to other services that they do not consider to be commercially relevant for the scope of the Regulation and the cross-border e-commerce market in general.

“PARCEL” data entry: We have noticed that access to the PARCEL system used for provision of tariffs is limited to the registered contact person for the local legal entity. This restriction excludes the possibility to have one person enter data for all national subsidiaries in a centralized way. We would prefer to have a set-up whereby one person or multiple persons can have access to the systems for multiple Member States and enter data (general company information and parcel tariffs). Access to the system should not be limited to the registered person.

VAT: We are asked to enter tariffs excluding VAT in the system. We charge our customers VAT when using the service and private users are not able to recover VAT. As a result, the actual price charged will be higher than the tariff entered in the PARCEL system. We also note that a number of postal operators are exempted from VAT for the services and related tariffs listed on the PARCEL website. We recommend that the difference in VAT treatment for postal and delivery services (USO vs non USO) is clarified in the PARCEL system to avoid any confusion on the users’ side.

Country vs Zone specific tariffs: The current system assumes that parcel delivery operators have only one rate per destination country. Some operators use zone-based pricing vs destination country-based pricing in which case one destination country might have different tariffs depending on the exact destination (postal code based). The current solution offered by the regulation is to enter the lowest rate. This solution is acceptable as long as it is made clear to users consulting PARCEL that the rates are indicative and that specific tariffs can only be provided by the delivery operator upon a specific description of the shipment.

4. Conclusion

As reflected in the present note, the terms and scope of the Regulation do not strictly fit with our industry’s business model, which has led us to develop our own interpretation of the requirements in order to fill the gaps of the obligations. Along with the heavy administrative burden placed on our sector, we see a risk of inconsistency in the implementation of the Regulation between the different Member States. We would like to discuss our practical experience with a view to determine potential solutions to concerns encountered.