



ERGP (15) 35 – 2016 Work Programme

## **ERGP WORK PROGRAMME FOR 2016**



## **Introduction**

The ERGP Work Programme for 2016 maintains ERGP's commitment to the development of regulatory best practice amongst the European National Regulatory Authorities responsible for the postal sector (NRAs), leading to independent, consistent, high-quality regulation of the postal market and contributing thereby to the further development of the internal market for the ultimate benefit of Europe and Europe's citizens. Furthermore the Work Programme 2016 mirrors ERGP's commitment to serve as a body for reflection, advice and assistance for the European Commission (EC) in the postal service's field.

The ERGP Work Programme 2016 was discussed and agreed at the ERGP Plenary in Brussels on 3 December 2015. In line with the practice of previous years, the ERGP Work Programme is subject to public consultation. The role of the public consultation is to increase transparency and to provide ERGP with valuable feedback from all relevant stakeholders.

## **Background**

The Work Programme 2016 aims to continue and to develop the actions that have been undertaken in 2015 in the fields of regulatory accounting and price regulation, implementation and evolution of the USO, end-user satisfaction and monitoring of market outcomes and cross-border parcels delivery for e-commerce purposes and in the context of the actions proposed in the Digital Single Market (DSM) Strategy. The implementation of the Work Programme 2016, as in previous years, will be undertaken by the ERGP subgroups, comprised of experts from the National Regulatory Authorities (NRAs) who participate in ERGP as members or observers. Each subgroup is essentially a drafting team, which addresses a number of topics, analysing the relevant issues and preparing inter alia reports for discussion and adoption by the ERGP Plenary. If there is a need, ERGP may revise its work priorities during the course of the year in order to ensure that the work streams remain properly prioritized and resourced and that there will be the ability to react in an adequate way to new topics and ad-hoc requests in a timely manner.



## **I. Regulatory accounting and price regulation**

### Background:

As in many network industries with multi-product/service operators, the treatment of common costs is a significant issue in the postal sector. The appropriate accounting of costs to different services has a material effect on many fundamental regulatory decisions (e.g. price regulation, US net cost calculation) and can strongly influence market outcomes (assessment of cross-subsidisation and anti-competitive behaviours).

Similarly, the way, in which costs will evolve, particularly in the context of volume decline, as recently experienced, by almost all Member States is a key consideration in determining appropriate price regulation.

Legal framework: Application of Article 14 of the Postal Services Directive, concerning the principles of the allocation of costs and Article 12 thereof, which is relevant for provisions related to tariff regulation, in particular cost orientation.

Substantive focus on accounting and price regulation: identifying new regulatory tools and strategies to address market evolutions.

The work to be carried out in 2016 will deal with the following issue:

**Comparative working methods for considering efficiency of postal operators**  
(ongoing work of 2015)

The work will identify how future cost movements could be estimated. It has many implications for NRAs, for instance in the context of multi-year price-cap regulation, or the NRAs' duties with regard to the finance ability and efficiency of the provision of the universal service. As decided in 2015, the work stream is to be limited to consideration of one key parameter, that being efficiency. Efficiency is relevant not only for cost forecasts but also for different regulatory assessments (e.g. the net cost of the USO). Hence, the report will consider both the working methods for estimating efficiency and how its estimation might vary and be applied for different regulatory purposes.

**Deliverable: ERGP Report on comparative working methods for considering efficiency of postal operators** (End of 2016)



## **II. Implementation and evolution of the USO**

### Background:

The postal services sector has been evolving rapidly in recent years, mainly due to the changing market conditions and the development of consumer needs. Concerning the letter mail it has been observed the volume of the traditional letter mail service (upon which the sustainability of the Universal Service was historically based) has been declining continuously in the past years as a result of e-substitution and the economic crisis. On the other hand parcel services, especially B2C, are growing considerable due to e-commerce. In this context the EC's DSM initiative is an important factor.

In ERGP's "Report on the outcome of the ERGP public consultation on the evolution of the Universal Service" it is concluded that, in the event there is a decision to review the Postal Services Directive, a key input of such a reviews the assessment of the services required to support intra-state commerce and social cohesion. Such analysis would need to take account the changing nature of private and public demand to identify a core set of services and, based on that, support any future evolution of the Directive.

As a basis for this ERGP will now initiate an analysis of postal end-users' needs to assess whether any change is needed in the current scope of the universal service and, if this is the case, whether it can be done within the flexibility provided by the current Directive.

Legal framework: Articles 3–6 of the Postal Services Directive.

Substantive focus: The focus of the project is to:

- identify and provide an overview of relevant studies;
- based on these studies, analyse postal end-users' needs and identify a potential common core set of user needs and, on the same time, assess to what extent other means of communication are fulfilling (part of) these needs as well;
- based on this analysis, consider the extent to which the current scope of the universal service is sufficient to meet the identified common EU end-user's needs or conversely is specified in excess of the identified core set;
- assess whether there is sufficient flexibility provided for in the current directive to manage any under or over-specification, taking into account differences in circumstances between countries.



**Deliverable: ERGP Report on the Universal Services in light of changing Postal end users' needs** (End of 2016)

### **III. End-user satisfaction and monitoring of market outcomes**

Background: A particular task of the NRAs is to follow up the quality of service in order to guarantee a postal service of good quality and to ensure that transparent, simple and inexpensive procedures are available to users, particularly in cases involving loss, theft, damage or non-compliance with service quality standards. Furthermore, NRAs should monitor the evolution of the postal market by collecting specific core indicators in order to perform their regulatory task regarding the postal services, with a special focus in ensuring the provision of the universal service.

Legal framework: Article 3 of the Postal Services Directive, in conjunction with Chapter 6 "Quality of service" thereof.

Substantive focus: The ERGP will continue to provide advice to the EC with regard to the collection and aggregation of statistical data in the postal sector, with the purpose of collecting less, but more relevant indicators, focused on regulatory purposes. The ERGP will also continue to assess end-user complaints procedures to ensure that consumers are protected according to the provisions of the Directive.

The work to be carried out in 2016 on quality of service, end-users satisfaction and market developments will deal with the following issues:

#### **1° The quality of service, complaint handling and consumer protection indicators 2015 – an analysis of trends** (recurrent work)

This report will assess the evolution of the quality of service levels, as well as the indicators describing the complaint handling of the postal service providers in Member States and their developments.

**Deliverable: ERGP Report on the quality of service, complaint handling and consumer protection 2015- an analysis of trends** (End of 2016)



## **2° The core indicators for monitoring the European postal market – an analysis of trends** (recurrent work)

This report will cover core indicators for monitoring the European postal markets as defined in previous ERGP reports, without however duplicating the EC's respective reports, providing information for 2015 and outlining trends and the main market developments for the last years.

***Deliverable: ERGP Report on the core indicators for monitoring the European postal market – an analysis of trends*** (End of 2016)

### **IV. Cross-border parcels delivery for e-commerce purposes**

Background: To assist the EC's work to ensure well-functioning parcels delivery markets to the benefit of consumers, the ERGP provided in 2013 - 2014, opinions on the functioning of European cross-border parcels delivery markets (broadly from a competition point of view) and in 2015 on legal regimes applicable to e-commerce parcels delivery. The 2014 work was partly a follow-up to the 2013 EC roadmap. Furthermore in 2015 a BEREC-ERGP joint working group on parcels delivery provided an opinion on price transparency and regulatory oversight of cross border parcels delivery, taking into account possible regulatory insights from the electronic communications sector.

Policy framework: Legal regimes applicable to e-commerce parcels delivery, EC initiatives to build consumer trust in the e-commerce environment, notably its December 2013 document *A roadmap for completing the single market for parcel delivery – build trust in delivery services and encourage online sales*<sup>1</sup> and its May 2015 DSM strategy<sup>2</sup>.

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<sup>1</sup>Communication from the Commission of 16.12.2013, COM/2013/0886 final, „A roadmap for completing the single market for parcel delivery Build trust in delivery services and encourage online sales“ In addition to its January 2012 e-commerce communication on building consumer trust and its November 2012 green paper on an integrated parcels delivery market, all of which are undertaken in the context of the Digital Agenda for Europe (see communication from the EC to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions (COM(2010) 245 final/2) of 26 August 2010, *A Digital Agenda for Europe*: <http://ec.europa.eu/digital-agenda/about-our-goals> and <http://ec.europa.eu/digital-agenda/digital-agenda-europe>).



Substantive focus: providing advice to the EC, concerning e-commerce parcels delivery, particularly in the context of its roadmap and its May 2015 DSM strategy, notably on applicable regimes, the functioning of competition on cross-border parcels delivery markets, on transparency, on regulatory oversight and on related EC initiatives.

The work to be carried out in 2016 will deal with the following issue:

**Transparency for online sellers and consumers as regards cross-border e-commerce parcels delivery** (new work of 2016)

It is important that online sellers and consumers be given clear, concise and complete information on available cross-border parcels offers. Complete information enables users (online sellers and end consumers) to make informed choices. Given the relatively new and evolving nature of e-commerce, the ERGP, in 2016, will assess to what extent online sellers and consumers do currently have access to and receive clear information (on rights, obligations, offer features, prices, delivery times...), if there may be any general gaps, what the gaps relate to, what types of users may be more at risk (small users) and how any issues could best be addressed, notably looking at any role for regulators. The work, taking into account the work pursued by the BEREC-ERGP JWG in 2015 will notably aim at identifying where any gaps may be.

**Deliverable: ERGP Report on transparency for online sellers and consumers as regards cross-border e-commerce parcels delivery** (End of 2016)

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<sup>2</sup>Communication from the Commission of 6.5.2015, COM (2015) 192 final, „A Digital Single Market Strategy for Europe“.



## **V. End-to-End Competition and Access Regulation**

### Background:

Following the work-programme for 2014, the sub-group End-to-End Competition and Access Regulation finalized its work with the ERGP Report on end-to-end competition and access in European postal markets. Now, the recent ECJ judgements (bpost and Post Denmark II) advocate for further evaluating the influence of pricing issues on access to infrastructure and end-to-end-competition. Reactivated sub-group will use the 2015 fact-finding report of the Task Force on Art. 12 of the Postal Services Directive as a basis and closely monitor the developments in the market subsequent to the ECJ judgements. While the Task Force concentrated on establishing a comprehensive review of the status quo with regard to discount regimes, the sub-group will focus on upcoming and future market developments in this field and their impact on access and competition.

In contrast to the work-stream activities of the sub-group “Regulatory accounting price regulation” the emphasis in this sub-group work lies on discrimination issues and on the interpretation of the current jurisdiction, and aims at assessing the potential implications on access regulation and end-to-end-competition.

Legal framework: Article 11a and fifth indent of Art. 12 of the Postal Services Directive to ensure any access to elements of the postal network and infrastructure are non-discriminatory.

Substantive focus: The focus of the project is on:

- specific follow-up on the market developments with regard to discounts (as a continuation of work initiated by the Task Force on Art. 12);
- updating the demographic and mail characteristic figures involving the assessment of the regulatory regimes;
- more in-depth analysis with focus on pricing, discrimination and quality issues;
- assessing the implication resulting from the current jurisdiction with regard to access regulation and end-to-end-competition.

Reviewing the developments in the field of discounts regimes is a substantial part of the project in order to obtain an updated picture of the market situation of alternative operators. This requires an empirical assessment of the end-to-end-competition and





ERGP (15) 35 – 2016 Work Programme

access, including a continuation of the previous stock-taking process aiming at detecting relevant trends in the letter segments. The main emphasis of the follow-up activities lies on the economic factors potentially impacting the successfulness of end-to-end delivery services.

The analysing part of the project focuses on different pricing and discount strategies applied by the incumbents as well as potential legislative and/or regulatory approaches as reaction to the incumbent's pricing behaviour and subsequent market developments.

Current fundamental jurisdiction with regard to pricing in the postal sector might have potentially far-reaching consequences for the postal market. In this context the issue to be addressed should be to what extent, in the light of the current jurisprudence, certain pricing schemes detrimental to the alternative operators are justified, and when would they still need to be considered discriminatory.

***Deliverable: ERGP Report on the development of end-to-end-competition and access regulation across the EU Member States in the light of recent jurisdiction concerning discount regimes in the postal sector*** (End of 2016)

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