



Raising standards for consumers

POSITION PAPER

The new EU Delivery Act: building a fair and user-oriented postal market

ANEC position on the Call for Evidence for an Impact Assessment on the EU Delivery Act



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1 | The problems from a consumer perspective

1.1 Starting point: Market distortion

When discussing possible new regulations, the question of market failure often arises. For this reason, we too have asked ourselves what fundamentally distinguishes the postal market from other functioning free markets. And there is indeed a significant difference in this sector. A free market is characterized by the fact that quality of service plays a central role in competition. It is assumed a consumer of a service will no longer use it, or will switch to another comparable service, if they are not satisfied with the service offered. And this is precisely where there is a significant difference between the postal services market and a free market. In the field of e-commerce services in particular, it is important to take into account the special feature that in most cases the consumer of the service - in this case the recipient - has no influence on the service chosen. In the case of e-commerce services, it is usually the sender - and thus the seller - who commissions a postal service to transport the goods. However, the consumer of the service is the recipient, who in such a scenario has very little or usually no say at all. This circumstance demonstrates the dysfunctionality of the market. The client commissioning the service and the recipient are two different parties. This tends to mean that the quality of the service offered is not given the priority it would if the client and the consumer of the service were one and the same person. However, this is the reason why natural market mechanisms function only to a very limited extent in this field. This is because, in general, the interests of the selling sender and the buying recipient diverge. The main focus of the selling sender is on the price of transportation but, for the receiving consumer, a number of other factors play a role, in particular the quality of transport service offered. This mixture of interests undermines natural market mechanisms.

For this reason, two things would be essential to consider when re-regulating this market segment. On the one hand, it would be important to recognize the divergence of interests and, on the other hand, to create a balance of interests for this situation. This could be achieved, for example, by standardizing the quality of services, or introducing at least a minimum quality standard for all transport companies and not just for the universal service. This would ensure that the recipient, as the consumer of the service, can expect a predictable (good) quality of service, which would make different services actually comparable. The resulting comparability of services would also make the decisive factor for the sender commissioning the service - namely the price of the service - a much more meaningful factor. This is because harmonizing the scope of services would make the different services offered comparable. In such a case, price competition would promote fair and free competition - in contrast to the current situation where price is also a factor, if not the decisive factor - but the quality of the service plays only a subordinate role which means that the services being compared are not comparable.

Such minimum quality requirements for the entire industry should include the following:

- Mandatory home delivery option at no extra charge
- Mandatory deposit/out-of-home delivery option within a 2 km radius of the delivery location (either at the customer's request or if home delivery is unsuccessful)
- Track and trace service, and
- Complaint management available by telephone

1.2 Selection by the receiving consumer

Another way to address this problem would be to give the receiving consumer a say. As in any other free market, this would mean the quality of a service offered would play a comparably important role to that of the price. In this scenario, however, it would be important from a consumer protection perspective to maintain the content of Article 20 of the Consumer Rights Directive in its current form, whereby the consumer's choice of a transport service from several options to be provided by the sender has no effect on the passing of risk. It would be unacceptable for the risk of transport to be transferred to the consumer solely on the basis of their choice of transport service.

There are several reasons for this: it would lead to problems with the rights to which consumers are entitled, such as the exercise of their right of withdrawal, the period for which, for good reason, begins only upon delivery to the customer. It should also be borne in mind that the option of choosing between two different transport services, for example, does not yet allow the customer complete freedom of choice. Although the choice between at least two services would already represent a significant improvement for customers (and also from the point of view of free competition), this would still be far from achieving genuine free competition, in which natural market mechanisms lead to the desired result: namely, that the best service at the best price prevails in the long term.

Furthermore, in times of increasing market concentration in the field of e-commerce, it would be a mistake to conclude that, in addition to the goods or services offered, the chosen transport service or its quality already plays an adequate role in determining whether a consumer actually consumes a good or service. This is simply because, in most cases, the necessary transparency for the customer is lacking. In most cases, consumers will not know which transport service the provider will actually choose, and even if this is known, the question arises from the consumer's point of view as to whether they actually have a choice, i.e., whether the goods or services in question are offered at similar conditions in combination with another transport service.

1.3 Complaint management

Closely linked to the question of the quality of the transport service offered and its impact on the choice of transport service is the question of complaint management.

Complaint management involves several fundamental factors that are essentially the *raison d'être* of consumer protection regulations. First and foremost is the imbalance of power between the parties involved. We see a consumer confronted with a large, anonymous, and superior partner who also knows that his handling of complaints from the receiving consumer will, if at all, have only a very indirect effect on whether he will continue to be used for shipping services in the specific case. This is a situation that highlights the need for regulation like no other. For this reason, it would be particularly important to introduce a minimum quality standard in this area for the entire industry, which can generally be classified as part of service quality. Specifically, it would be advisable to provide for a mandatory complaint system that is also mandatorily accessible via multiple channels (in particular, by telephone and not only via a contact form) and which guarantees a certain minimum response time.

1.4 Current quality standard and Universal Service Obligation (USO)

The USO currently contains a number of quality regulations (supplying the population with a branch network, delivery days, delivery times, etc.). This is a reason why, by and large, the USP is a reliable and high-quality delivery service. This also has an impact on other delivery services that compete with the USP. Even though the services offered by other delivery services in many cases do not match quality of the USP, private delivery services still have to align themselves with the USP to a certain extent in order to be able to compete at all. For this reason, if provisions relating to the USO concerning the quality of delivery and related services were to be abolished, it is likely that there would be a downward levelling of service quality, as there would no longer be any competing service whose service quality is clearly guaranteed by regulation.

2 | ANEC recommendations on how to create fair competition and shape the postal services market according to the needs of users

2.1 The dysfunctional market and the possibility of a “free delivery” claim

In light of the interests described above, which prevent free competition from functioning, the claim of “free shipment” should be addressed by the EU Delivery Act. There is no such thing as “free shipment” or “free delivery.” Even if an e-commerce operator does not show separate costs for delivery, these are of course included in the price of the goods or services offered. This circumstance stands in the way of price transparency and a transparent breakdown of the costs of an order. This circumstance further exacerbates the problem described above, as the only decisive criterion for a selling shipper is the price of the transport service, especially since any inconveniences and problems due to poor quality of the transport service are almost exclusively faced by the purchasing recipient. In particular, the business concept of “free delivery” also prevents the necessary co-determination of the purchasing recipient, whose decision, if he were free to choose, would naturally include other factors besides price, such as the quality of the transport service; previous experience with a particular delivery service; customer service and complaints management of a carrier, and much more. It must therefore be concluded the “free delivery” business model contributes significantly to the dysfunction of the market and free competition in transport services. It should also be noted at this point that the “free delivery” business model and the resulting competition focusing exclusively on price promote several negative side effects, such as precarious working conditions and negative environmental impacts. The latter is caused on the one hand by induced deliveries and returns due to the concept of “free delivery,” but also by lack of any environmental considerations—such as CO₂ emissions from the vehicle fleet used by the carrier—when choosing a transport service.

This circumstance must therefore be identified as a barrier to investment and as a dissenting factor for a business model based on the principles of basic corporate social responsibility. Whereas a free choice of transport service by the receiving consumers themselves would minimize many of these negative effects, promote the functioning of genuine free competition, and also contribute to cost transparency.

For all these reasons, we must therefore advocate for the concept of “free delivery” to be prevented as far as possible by future regulation within the framework of an EU Delivery Act.

We also see a role for legislators to raise awareness and promote the use certain **standards** of consumer interest. We ask for attention to complaints handling through the promotion of EN 14012 ‘Postal services - Quality of service - Complaints handling principles’ or ISO 10002 on complaints handling.

2.2 The USO and the essential right for e-commerce packages

Even though the postal services market has changed significantly over the last 15 years and the situation in the Member States varies considerably in some cases, there has been a general decline in letter mail and a sharp increase in parcel deliveries. This is a development that a new EU Delivery Act will not be able to escape.

Fundamentally, therefore, the question of whether the general, inexpensive, and equal provision of parcels (especially from e-commerce) to EU citizens constitutes an essential right - comparable to the existing right to such provision of letter mail - will have to be addressed and answered. This is a question that European legislators have already answered by making the wise decision almost 30 years ago to include parcel deliveries weighing up to 10 kg in the scope of the USO, in addition to conventional letter deliveries weighing up to 2 kg. This is a decision that should not be revised in the context of an EU Delivery Act.

It is all the more important for social and economic participation that affordable parcel delivery services continue to be guaranteed, regardless of place of residence or business location in Europe. Particularly in view of the observable shift from letter mail to parcel deliveries, it would be essential to keep parcel deliveries within the scope of the USO, as this guarantees delivery under reasonable conditions to consumers in remote locations or islands in the European Union, while also allowing small businesses in these areas to continue to distribute their products in a reasonable manner.

The essential question in this context, however, is how to prevent economically unviable transport services from being outsourced to a USP, while economically lucrative shipments are carried out by a private delivery service or an in-house delivery service (or through an exclusive subcontractor). A forward-looking regulation should provide an answer to this question in particular, unless it considers abandoning businesses and consumers in more remote locations.

In our view, a possible answer to this problem consists of two components. On the one hand, the complete inclusion of delivery services under the umbrella of a new EU Delivery Act and, on the other hand, the obligation of all industry participants to maintain and thus co-finance the USO.

2.3 Complete inclusion of all industry participants

All industry participants should be included in the scope of a new Delivery Act. This means that all players who provide delivery services on a larger scale should be considered postal service providers. In particular, attention should be paid to the emerging phenomenon of companies and platforms that carry out deliveries themselves on a larger scale.

As soon as a retailer or platform carries out delivery services on a larger scale, either itself or through an exclusive subcontractor, particularly in e-commerce, it should be regarded as a postal service provider and consistently subject to minimum quality standards and an obligation to co-finance the USO. The only exception could be the direct delivery of perishable goods within a certain manageable geographical radius (i.e., food deliveries within a city), as these actually follow a different business model from own deliveries by an e-commerce retailer.

2.4 Financing the USO

The proposed measures - namely the mandatory requirement for certain minimum quality standards for all delivery service providers, the right of recipients of delivery services to have a say in the selection of such providers, and the comprehensive inclusion of delivery services under the umbrella of an EU Delivery Act - mean that the question of how to finance a USO is likely to be of secondary importance, as this would already lay the foundation for a functioning market.

If these measures are still not sufficient, it would be advisable to establish compensation funds as a harmonized minimum level in all Member States, to be financed by all industry and market participants (in particular, including self-performed or exclusive sub-deliverers, as proposed above).

This measure could effectively address the problem described above, namely that economically lucrative deliveries are carried out by the postal service itself or by a delivery service outside the USP, whereas economically unviable deliveries are outsourced to USPs due to their obligation to offer universal and affordable prices.

2.5 The need for agreed definitions

The Applied Research Project (ARP) developed for ANEC by The Hague University of Applied Sciences (THUAS) ***'The impact of the implementation of the Universal Service Obligation on vulnerable consumers – a comparative analysis of European Member States and abroad'*** (<https://tinyurl.com/59k2e47z>) also identified the need for the legislative revision to introduce following definitions:

- a. The 'vulnerable consumer',
- b. Sender and addressee (or "Recipient" as referred to in ERGP report)
- c. Affordability

In addition, the future legal framework should expand on the term 'user'. To safeguard the consumer, the current system of using bilateral contracts between retailers (sender) and postal companies must be repealed. Instead, postal deliveries should rely on trilateral contracts between retailer, postal provider and consumer (addressee). In order for this to be effective in protecting the consumer, the title of ownership of the relevant ordered item should be shouldered by the postal provider for the duration of the process and transfer to the

consumer only on explicit confirmation that the goods have been delivered in good condition. This system would mimic ‘Bills of Lading’ seen during the transportation of cargo.

A definition for vulnerable consumer would allow flexibility to better tailor services to demographic and regional needs. In this context, we continue promoting the use of the standard **ISO 22458 ‘Inclusive Service: identifying and responding to consumers in vulnerable situations’**. The standard also defines **consumer vulnerability** as: *state in which an individual can be placed at risk of harm, during their interaction with a service provider due to the presence of personal, situational and market environment factors*. All consumers, irrespective of age and/or knowledge, can become vulnerable at certain times – for example, in having access to knowledge needed to make an optimal choice. The standard specifies requirements and guidelines for organizations on how to design and deliver fair, flexible and inclusive services that will increase positive outcomes for consumers in vulnerable situations and minimize the risk of consumer harm. Different measures of accommodation may be taken for different types of vulnerability.

Aspects that should definitely be taken into account when defining vulnerable consumers in the postal sector are: **Remote location, low income, digital outsider** and a combination of these factors as well as the **(current) weak legal position of addressees**.

As regards the policy Option 2 description of “clarify tariff principles”, we call on increasing transparency and ensuring the principles outlined in the PSD, through the inclusion of a definition for ‘**affordability**’ in the upcoming revision. A useful reference for this definition is the approach used by the German USP DeutschePost which considers actors such as inflation, average wages, labour costs, and national purchasing power when setting postal fees¹.

¹ Deutsche Post, Letter Prices‘ (Deutsche Post, 2021) <https://group.dhl.com/content/dam/deutschepostdhl/en/media-center/media-relations/documents/2021/letter-prices-in-europe-2021.pdf>.

3 | Conclusion

Having in mind the crucial objectives identified in the Call for Evidence for modernisation of the EU postal regulatory framework, ANEC favours policy Option 2 provided our recommendations above are taken into consideration.

Option 2 is the **best and most balanced solution** from the consumer's point of view because it combines a **modernization of postal regulations** with the **preservation of important social services**, in particular the universal service.

It offers the opportunity to modernize the system; **strengthen consumer rights**; improve **complaint options**; and ensure greater **transparency**, especially for cross-border deliveries in online commerce. Thus it could strike a better **balance between economic efficiency and social responsibility**.

However, it is essential that there be no significant change to the existing universal service. In our view, a future legal framework must continue to guarantee **comprehensive and affordable universal service for all citizens**. The **interests of particularly vulnerable groups** – such as older people, people with disabilities, or those in structurally weak regions – should **be taken into account even more**. This will ensure that everyone in the European Union – including those in rural or remote regions – can continue to use postal services **reliably and at fair prices**.

Furthermore, in this context, we would like to emphasize, with regard to the proposal for a “targeted universal service” as proposed in Option 3, that anyone can find themselves in a vulnerable situation at any time, which is why the concept of a targeted universal service should be rejected in any case.

This leads ANEC to underline the importance of the USO staying in place, while we recognise the need for a reduced number of deliveries. These should however certainly not fall below three days per week, given the importance of postal services especially for people who are vulnerable and/or have disabilities, and/or live in rural or remote areas.

There is a need for better **consumer satisfaction and complaint resolution** to ensure that the needs of vulnerable users are effectively met. We also acknowledge the positive examples already established in France and Ireland, where specialised customer service lines and feedback mechanisms facilitate easier reporting of issues by vulnerable consumers.

Moreover, the revision of the Postal Services legislative framework, presents an important opportunity to help ensure that everyone will be able to **choose** how to receive their messages and notifications, in particular but not limited to essential administrative communication such

as tax forms, election documents, bills and statements without facing any disadvantage. In light of this, adapting the scope of the Universal Service Obligation cannot come to the overwhelming detriment of the consumer. Member States need to ensure that emergency deliveries are still covered by the USO or can be serviced alternatively with a comparable quality of standard and cost. This includes documents of high importance, mentioned above, and also medical supplies.

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ANEC is the European consumer voice in standardisation, defending consumer interests in the processes of technical standardisation and the use of standards, as well as related legislation and public policies.

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