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COMMUNICATION FROM THE COMMISSION

**on guidelines to national regulatory authorities on the transparency and assessment of
cross-border parcel tariffs pursuant to Regulation (EU) 2018/644 and Commission
Implementing Regulation (EU) 2018/1263**

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I. Introduction

The impact of Regulation (EU) 2018/644 on cross-border parcel delivery services¹ (the Regulation) will largely depend on the ability of national regulatory authorities to collect information and to undertake the necessary follow-up activities (in particular the assessment of the tariffs under Article 6). The work of national regulatory authorities is thus essential to achieve the aims of the Regulation. This is why this Communication builds on input from the European Regulators Group for Postal Services (ERGP)².

This Communication contains guidance on the use of the forms laid down in the Commission Implementing Regulation (EU) 2018/1263 establishing the forms for the submission of information by parcel delivery service providers³ (based on Article 4 of the Regulation) and on the submission of information to the Commission pursuant to Article 5(2) of the Regulation in an electronic database that has been set up for this purpose. The Communication also sets out guidelines on the methodology to be used in respect of the elements to be used for the assessment of cross-border single-piece tariffs provided in Article 6(2) and(3) of Regulation (EU) 2018/644. Furthermore, the Communication provides guidance on the objective pre-assessment filter mechanism to identify those tariffs. This guidance is provided in line with Article 6(1) of the Regulation (which requires prior identification of tariffs to be assessed). Such a prior identification will reduce the administrative burden on the national regulatory authorities and on parcel delivery service providers subject to the universal service obligation.

II. Provision of information

Annex II of the Commission Implementing Regulation (EU) 2018/1263 contains forms for the submission of information pursuant to Article 4 of Regulation (EU) 2018/644 by the parcel delivery service providers.

¹ Regulation (EU) 2018/644 of the European Parliament and of the Council of 18 April 2018 on cross-border parcel delivery services, OJ L 112, 2.5.2018.

² In particular, document ERGP (18) 36 — input for the Commission's Guidance related to Article 6.

³ Commission Implementing Regulation (EU) 2018/1263 of 20 September 2018 establishing the forms for the submission of information by parcel delivery service providers pursuant to Regulation (EU) 2018/644, OJ L 238, 21.9.2018.

Tables 1.1, 1.2 and 1.3 of the Annex II of this Implementing Regulation include a distinction between parcels to be reported as '*contracted with the sender*' and '*handled on behalf of another provider*'. This distinction is necessary to avoid the double counting of parcels.

When reporting such information, in the number/turnover of incoming parcels, parcel delivery service providers should distinguish between those cases where they have contracted directly with the sender abroad (in another Member State or a third country) and those cases where they have received parcels from another parcel delivery service provider abroad, who has a direct contract with the sender.

The Annex of this Communication sets out practical examples on the reporting of such information in different commercial/operational scenarios.

The overview of intra/extra-EU/EEA parcels is necessary to get an accurate picture of the market, notably the relative size of imports/exports. This is especially necessary given the recent growth in e-commerce with countries outside the EU and EEA. This overview is also necessary to evaluate the effects of imports/exports on the different steps in the postal delivery chain.

III. Transparency of cross-border tariffs

According to Article 5(1), 5(2) and the Annex of the Regulation, the parcel delivery service providers which have the obligation to report information should provide the national regulatory authority of the Member State in which they are established with the public list of tariffs applicable on 1 January of each calendar year for the delivery of domestic and intra-EU single-piece postal items. This list should contain the tariffs applicable for up to 15 standard, registered and track-and-trace postal items in different weight categories between 500 g and 5 kg.

The parcel delivery service provider should send the price data to the national regulatory authorities by 31 January of each calendar year. At its turn, the national regulatory authorities should transmit the information received to the Commission by 28 February of each calendar year. The Commission should publish all public tariffs received on a dedicated website by 31 March of each calendar year.

Information on the postal items referred to in the Annex of the Regulation

The maximum dimensions of postal items listed in points (a) to (i) of the Annex of the Regulation (letter mail products) take account of the relevant dimensions set out in the Universal Postal Union Convention⁴. Items listed in points (j) to (o) (parcels) should not be

⁴ UPU Convention Article 17-104, 1.1.

smaller than the only minimum dimension set for the letter mail products, which is 20 mm.

For parcel delivery service providers that apply different intra-EU tariffs depending on the destination Member State, the parcel delivery service provider should provide the tariffs applicable for each Member State separately.

If there is more than one postal item falling into one of the categories under (a) to (o) identified in the Annex of Regulation (EU) 2018/644, only the item with the least expensive tariff should be reported. In order to determine this tariff, the parcel delivery service provider should in principle compare the tariffs of different postal items falling under the same category in terms of quality (routing times) but should disregard services that have a different geographic availability or distribution (e.g. a postal item that is only available for a very specific destination in the Member State of destination).

Universal service providers should indicate the products that are subject to a universal service obligation and that may, in principle, be subject to the assessment under Article 6 of Regulation (EU) 2018/644. The providers are also to provide additional information on the products included in this category, such as: (i) the commercial name of the product to allow its identification, (ii) specific product characteristics (including in particular the format), and (iii) information on possible geographical limitations related to the delivery of the product.

Procedure to collect the data

To limit the administrative burden on the national regulatory authorities and parcel delivery services providers, Regulation (EU) 2018/644 suggests that the information to be reported should be transferred electronically.

To achieve these objectives, the Commission developed a web-based application for the national regulatory authorities to send information to it pursuant to Article 5(2) of the Regulation. In addition, to support national regulatory authorities in collecting this information from the providers, this application also supports the transmission of information by providers to the national regulatory authorities.

In the web-based application two modules were developed for this purpose, one for the data-submission under Article 5(1) and one for the data-submission under Article 5(2).

The first module of the application allows parcel delivery service providers (including universal service providers) to submit the public list of tariffs for those services in their offering that fall under the 15 categories identified in the Annex of the Regulation, to the national regulatory authority.

The second module of the application allows the national regulatory authority to send the data to the Commission. Each national regulatory authority is able to check the received data and accept it before submitting it to the Commission.

If, due to decisions taken by the national regulatory authority, the parcel delivery service providers use other means to transmit information to the national regulatory authority, the relevant national regulatory authority should enter the tariff data received in the web-based application and submit this data to the Commission.

IV. Assessment of cross-border single-piece tariffs

1. Pre-assessment filter mechanism

Identification of tariffs

According to Article 6(1), the NRA identifies, for each of the single-piece postal items listed in the Annex of the Regulation, those cross-border tariffs that are subject to the universal service obligation that it considers objectively necessary to assess. For this purpose, the Regulation suggests the use of an objective pre-assessment filter mechanism, in compliance with the principle of proportionality.

The pre-assessment filter mechanism is intended to reduce the administrative burden on the national regulatory authority and on parcel delivery services providers subject to a universal service obligation, as it focuses the assessment under Article 6(2) and 6(3) of the Regulation on a limited number of tariffs. Using a pre-assessment filter is also necessary in order to respect the proportionality principle. . The mechanism should not be intended to replace or duplicate the process of the in-depth assessment provided for in Articles 6(2) and 6(3). The filter mechanism should by no means be used to arrive at a decision as to whether tariffs are ‘*unreasonably high*’, as this is a judgement that can only be made after the assessment made pursuant Article 6(2) and 6(3) has been completed. Instead, the aim of the filter mechanism should be to give objective indications for showing the range of tariffs that (i) can easily be identified on the basis of the information available under Article 5, and (ii) might be unreasonably high, pending a more comprehensive assessment.

Ensuring EU-wide comparability and fairness

The use of different filter mechanisms would result in an uneven assessment process, and would affect the comparability of the results of the assessment. Nevertheless, the national regulatory authorities may also assess other tariffs in addition to those identified under the comparable EU-wide filter mechanism. In this case the national regulatory authority may do this as a result of its own decision (e.g. based on knowledge not obtained under Article 5) or based on an additional pre-assessment filter mechanism.

A flexible and adaptable filter mechanism taking into account changes in the market

To achieve the aims set out above, the national regulatory authorities should use a filter

mechanism⁵ based on a ranking of the cross-border tariffs of all Member States for each of the 15 categories of single-piece items listed in the Annex of the Regulation. This mechanism has the advantage of creating an EU-wide comparison of the respective tariffs, which will be available for the national regulatory authorities on the web-application of the Commission⁶. In addition, it is a simple and clear mechanism. It does not rely on costs (or proxies for costs), which are part of the assessment process. To achieve a true and fair comparison, the tariffs on the Commission's webpage should be corrected according to purchasing-power parities, as laid down by Eurostat. To counter the rigidity linked to a fixed percentage, it is appropriate to set a range of between 25 % and 5 % of the highest tariffs for each category, starting in the first 2 years with the highest percentage (i.e. 25%) and lowering the percentage progressively. Subsequently, the percentage that should be taken into account for this mechanism should be determined through close cooperation between the Commission, national regulatory authorities and the ERGP.

2. Methodology to be used for the assessment of the cross-border single-piece tariffs (Article 6(2) and 6(3))

Article 6(2) identifies four elements that national regulatory authorities should particularly take into account when undertaking the assessment of cross-border single-piece tariffs that are subject to the universal service obligation. There is no hierarchy between the elements, and an assessment should therefore address all of them, taking into account the specific conditions set out in the relevant points. Article 6(3) identifies two optional elements to be used in this assessment.

(a) the domestic and any other relevant tariffs of the comparable parcel delivery services in the originating Member State and in the destination Member State

The comparable parcel delivery services (in other words: products⁷) will in principle be the corresponding universal service products in the destination Member State. However, it might be still appropriate to verify whether there are other parcel delivery services that can be compared to the products under assessment. Tariffs of single-piece postal items will usually depend to a large extent on service quality and other product characteristics. Thus the product used for the assessment of tariffs should be, if not identical, then as similar as possible, especially concerning quality and other characteristics.

The national regulatory authority should — in addition to the tariffs for postal items subject to universal service obligation — also take into account in the assessment other postal items by

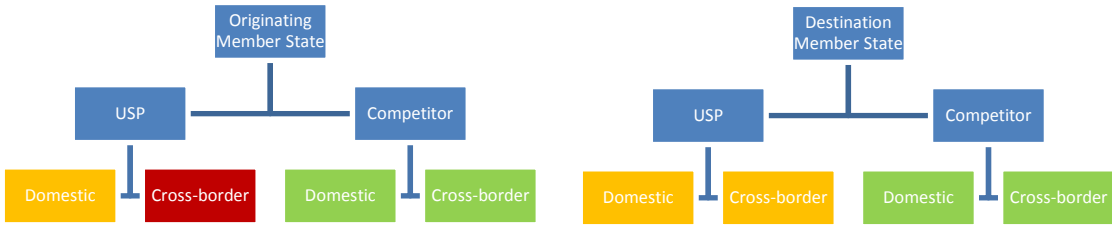
⁵ This has taken into account the input received from ERGP, see: ERGP (18) 36.

⁶ This will include a functionality to calculate the tariffs to be assessed.

⁷ The notion of a product for the purpose of these guidelines is the same as the notion of ‘postal items’ in point 6 of Article 2 of Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on the common rules for the development of the Community postal services and of the improvement of quality of service, OJ L 15, 21.1.1998, p. 14.

parcel delivery service providers that are not subject to a universal service obligation. For such items to be taken into account, it will be essential to obtain beforehand specific product characteristics and information on the quality of service (e.g. insurance/liability, delivery speed, guaranteed or average travelling time, territorial coverage) to ensure that the services are substitutable under market conditions.

It may be the case that there is not enough information showing that such products are, from a user’s perspective, interchangeable to a sufficient degree with the products under assessment (taking into account the characteristics of the services, including any added-value features, as well as the intended use, and the pricing). In this case, the comparison should be made only for products subject to a universal service obligation.



The graphic illustrates the potential items that may be part of the comparison; red is the item to be assessed, orange the primary possible comparative services, and green the secondary possible comparative services.

Therefore, the following tariffs should be taken into consideration for undertaking the comparison with the tariff(s) under assessment:

- firstly, the sum of the domestic tariff of the universal service provider in the originating Member State and the domestic tariff of the universal service provider in the destination Member State (primary comparison);
- secondly, the sum of the domestic tariff of the universal service provider in the originating Member State and the domestic tariff of a relevant competitor, which provides interchangeable⁸ services (see above) in the destination Member State (secondary comparison).

Furthermore, the assessment should also consider that different principles are used to set the

⁸ Note that this may be particularly relevant in cases where the universal service provider in the originating Member State has a delivery agreement with a competitor of the universal service provider in the destination Member State, and would thereby by-pass the traditional cross-border delivery value chain of two universal service providers.

tariffs. The tariffs for universal postal services are drawn up under the obligation to uphold the principles contained in Article 12 of the Postal Services Directive⁹. This means that these tariffs must be cost-oriented, affordable, transparent and non-discriminatory.

If the assessment results in substantive differences between the tariff under assessment and the sum of domestic tariffs or the comparable cross-border tariffs, it will be important to assess in particular, the underlying respective costs of the service under assessment.

(b) any application of a uniform tariff to two or more Member States

The application of a uniform tariff may itself be considered a legitimate deviation from the cost-orientation principle, as this possibility is provided for in Article 12 third indent of the Postal Services Directive. In this regard, the Regulation refers to the fact that uniform tariffs for cross-border deliveries to two or more Member States might be important for the protection of regional and social cohesion. As a result, the national regulatory authorities should take into consideration that there may be a justified gap between the cost of a specific service (i.e. the underlying costs of a postal item sent to a specific destination) and the tariff of the service. In these cases, a certain averaging takes place between different destinations and therefore between items with different cost structures¹⁰.

In practice, most universal service providers charge a single uniform tariff for letters, and often also for parcels dispatched to all other Member States. Some universal service providers also have several uniform tariffs linked in general to geographic proximity (e.g. neighbouring Member States/rest of EU; two or three regions). Only very few universal service providers have more distinctions or differentiated tariffs to all Member States¹¹.

(c) bilateral volumes, specific transportation or handling costs, other relevant costs and service-quality standards

The elements listed in Article 6(2) c) of the Regulation relate to costs in a broad sense and should constitute the core of the assessment undertaken by the national regulatory authority. The list is non-exhaustive, and it covers all kinds of possible costs (see below under '*other costs*').

The initial (and possibly main) source of the relevant information in this regard will be the cost-accounting system of the universal service providers, which is set up in accordance with Article 14 of the Postal Services Directive (providing, for example, information on volumes and costs per service). The cost information will only be comparable with the services listed in the Annex of Regulation (EU) 2018/644, if the cost information is broken down into

⁹ Directive 97/67/EC.

¹⁰ The averaging may be different depending on whether it applies to all destinations/items or is focused on a limited number of Member States.

¹¹ For details see ERGP (18) 36, p. 6/7.

individual products and separately accounted for. If the relevant detailed information is not available from this source, the national regulatory authority should use their powers under Article 6(5) of the Regulation to request the information in question.

Volumes to a particular Member State will affect the cost per unit. If volumes are high, there will possibly be economies of scale. If volumes are low, there are possibly no such economies of scale (and therefore a higher unit cost). Volumes should be measured in the number of parcels for the service under assessment, and other services that are carried together, if relevant. For example, even if there are very few items of a particular service from Member State A to Member State B, there may still be items of one or more jointly transported service(s) that could create economies of scale, thus lowering the unit cost. If detailed data on volumes are unavailable, the national regulatory authority should make a volume estimate. This volume estimate could, for example, be based on revenue data.

Transportation costs will largely depend on the means of transportation chosen. For example, the cost of air transportation (which may be the only available option for island Member States) is likely to be higher than that of transport by land¹² (including railway). Required service-quality standards¹² may also directly affect the use of a specific means of transportation (this is especially the case for long-distance transport).

Handling costs are likely to vary considerably for the different items in the Annex of the Regulation, as letters are in general sorted by machine. Other items, especially certain parcels, are often handled manually. This may lead to higher labour costs for these items.

There are also **other costs** that should be taken into account. One of these is the cost of terminal rates. As laid down in the relevant provisions adopted by the Universal Postal Union, the term ‘terminal rates’ covers both terminal dues¹³ (that are applicable for letter mail items) and inward land rates¹⁴ (that apply to parcels). In this regard, parcel delivery service providers should be required to provide to the national regulatory authority the specific terminal rates in question for the tariff under assessment.

In addition, there may be other costs specific to a certain (bilateral) route that can be relevant. Such costs may be due to island distribution, or delivery to sparsely populated areas and mountainous areas.

(d) the likely impact of the applicable cross-border tariffs on individual and small and medium-sized enterprise users, including those situated in remote or sparsely populated areas, and on individual users with disabilities or with reduced

¹² Some of the postal items in the Annex of the Regulation fall under the quality standards for intra-Community cross-border mail set out in Annex II of the PSD. These quality standards may in some cases even be more stringent than some domestic quality requirement.

¹³ UPU Convention Article 29.

¹⁴ UPU Convention Articles 35, 36.

mobility, where possible without imposing a disproportionate burden

The likely impact of the cross-border tariff under assessment should be evaluated from a user's perspective (in particular from the perspective of affordability and availability). The impact of such tariffs should therefore not be merely hypothetical character. There should be reasons (e.g. studies) to believe that the users considered vulnerable are in fact impacted by the tariffs in question.

(e) whether tariffs are subject to a specific price regulation under national legislation

According to the ERGP report on tariff regulation in a context of declining volumes¹⁵, different forms of price regulation exist in the different Member States. In principle, price cap regulation or individual price controls are the preferred methods for tariff regulation. However, the price cap regulation or individual price controls would only be useful if the tariff for the specific item of the Annex of the Regulation is subject to a specific individual price control (i.e. that the principle of cost orientation is applied at the level of each individual service).

The national regulatory authority should use the information collected in the process of tariff regulation to determine if there is an objective reason for the cross-border tariff it has identified as potentially unreasonably high (see above under IV.1).

(f) abuse of a dominant market position established under relevant applicable law

The second optional element that the national regulatory authority may take into consideration is previous competition enforcement actions. For example, there may be cases where the competition authority has determined in the past that the universal service provider has abused its dominant market position in providing cross-border items. For the purpose of the assessment, such a determination by the competition authority would be mainly relevant when the abuse of a dominant market position involved the exploitation of end-users (such as excessive pricing practices) rather than the exclusion of a competitor (such as predatory pricing or margin squeezing).

¹⁵ ERGP report (14) 22 on tariff regulation.