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Regulation (EU) 2018/644 of the European Parliament and of the Council of 18 April 2018 on cross-border parcel delivery services (Text with EEA relevance)

REGULATION (EU) 2018/644 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 18 April 2018

on cross-border parcel delivery services

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) The tariffs applicable to cross-border parcels and other postal items for low volume senders, particularly small and medium-sized enterprises (SMEs) and individuals, are still relatively high. This has a direct negative impact on users seeking cross-border parcel delivery services, especially in the context of e-commerce.

(2) Article 14 of the Treaty on the Functioning of the European Union (TFEU) highlights the place occupied by services of general economic interest, such as postal services, in the shared values of the Union, as well as their role in promoting social and territorial cohesion. It states that care is to be taken that such services operate on the basis of principles and conditions which enable them to fulfil their missions.

(3) Protocol No 26 on services of general interest, annexed to the Treaty on European Union (TEU) and the TFEU, further highlights that the shared values of the Union in respect of services of general economic interest within the meaning of Article 14 TFEU include the differences in the needs and preferences of users that might result from different geographical, social or cultural situations as well as a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights.

(4) Article 169(1) and point (a) of Article 169(2) TFEU provide that the Union is to contribute to the attainment of a high level of consumer protection through measures adopted pursuant to Article 114 thereof.

(5) There are fundamental differences between Member States when it comes to competences conferred on national regulatory authorities with regard to market

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monitoring and regulatory oversight of parcel delivery service providers. For example, some authorities are able to successfully require providers to supply relevant price information. The existence of such differences has been confirmed by a joint opinion of the Body of European Regulators for Electronic Communications and the European Regulators group for Postal Services, which concluded that national regulatory authorities need the appropriate regulatory powers to intervene and that such powers do not seem to be present in all Member States. Those differences result in additional administrative burdens and compliance costs for parcel delivery service providers who operate across borders. Those differences therefore constitute an obstacle to the cross-border provision of parcel delivery services and thus have a direct effect on the functioning of the internal market.

(6) Due to the international nature of the postal and parcel sector, the further development of European and international technical standards is important in order to benefit users and the environment, and to broaden market opportunities for businesses. Furthermore, users often report quality of service issues when sending, receiving or returning cross-border parcels. There is, therefore, an equal need for further improvements in the quality of service standards and in the interoperability of cross-border parcel delivery services. Both should be prioritised further in accordance with Directive 97/67/EC of the European Parliament and of the Council[(3)], through the European Committee for Standardization (CEN) and otherwise. More progress is also needed in making services more efficient, which should, in particular, take into account the interests of users.

(7) Standardisation of postal services and the improvement of quality of service in support of Directive 97/67/EC is a strategic priority of the Union, which should be further pursued. Technical standardisation is indispensable for the promotion of interoperability between national networks and for the existence of an efficient universal service. In August 2016, the Commission submitted a fourth standardisation request to CEN with the aim of establishing a work programme and providing a final report in August 2020[(4)]. That work programme should, in particular, take into account the interests of users and environmental considerations, as well as efficiency, and should contribute to promoting the creation of a Digital Single Market for the Union.

(8) The market for cross-border parcel delivery services is diverse, complex and competitive, with different providers offering different services and prices depending on weight, size and format of parcels sent, as well as on their destination, any added value features, such as traceability systems, and the number of parcels sent. In several Member States, universal service providers do not have a majority share of the parcel delivery service market. That diversity makes it hard for consumers and users to compare parcel delivery services offered by different providers, in terms of quality and price, because they are often not aware of the existence of different parcel delivery options for similar services in cross-border online trade. It should be made easier, in particular, for SMEs and individuals to access the relevant information. Moreover, small and medium-sized traders have identified delivery concerns as an obstacle when selling cross-border.

(9) In order to improve cross-border parcel delivery services, especially for individuals and micro and small businesses, including those in remote or sparsely populated areas, and

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for individuals with disabilities or with reduced mobility, it is necessary to improve the access to and transparency of public lists of tariffs for a limited set of cross-border parcel delivery services. Making cross-border prices more transparent and easily comparable across the Union should encourage the reduction of unreasonable differences between tariffs, including, where applicable, unjustified differences between domestic and cross-border tariffs.

(10) Single-piece parcel services are part of the universal service in every Member State and also represent the services that are most frequently used by individuals and small businesses. Improving the transparency and affordability of single-piece tariffs is necessary for the further development of e-commerce.

(11) Many companies that sell, used to sell or have tried to sell online consider high delivery costs together with expensive complaints processes and guarantees to be a problem. Further action is needed in particular to ensure that SMEs and individuals in remote areas fully benefit from seamless cross-border parcel delivery services to which they have access and to ensure that those services are reasonably priced.

(12) The term ‘universal service providers’ refers to postal operators that provide a universal postal service or parts thereof within a specific Member State. Universal service providers who operate in more than one Member State should be classified as a universal service provider only in the Member State or States in which they provide a universal postal service.

(13) Currently, postal services are regulated by Directive 97/67/EC. That Directive establishes common rules governing the provision of postal services and the universal postal service within the Union. It focuses primarily, but not exclusively, on national universal services and does not address regulatory oversight of parcel delivery service providers. Compliance with the minimum universal service requirements laid down in that Directive is ensured by national regulatory authorities designated by Member States. This Regulation therefore complements, insofar as cross-border parcel delivery services are concerned, the rules set out in Directive 97/67/EC. This Regulation is without prejudice to the rights and guarantees set out in Directive 97/67/EC, including in particular the continued provision of a universal postal service to users.

(14) This Regulation does not alter the definition of postal item in point 6 of Article 2 of Directive 97/67/EC or national law definitions based thereon.

(15) An estimated 80 % of addressed parcels generated by e-commerce today weigh less than two kilograms, and they are often processed in the letter-post mail stream. There is a lack of information on the weight of parcels delivered by other means. It is important that those lighter items are subject to this Regulation.

(16) For the purpose of implementing this Regulation, it is important to provide clear definitions of parcels, parcel delivery services and parcel delivery service providers and to specify which postal items are covered by those definitions. It is assumed that postal items which are over 20 mm thick contain goods other than items of correspondence, whether handled or not by the universal service provider. Postal items consisting only of correspondence should not fall within the scope of parcel delivery services. This

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Regulation should therefore, in line with consistent practice, cover parcels containing goods with or without commercial value weighing up to 31,5 kg, since heavier items cannot be handled by a single average individual without mechanical aids and this activity is part of the freight transport and logistics sector.

(17) Providers of parcel delivery services using alternative business models, for example those drawing on the collaborative economy and e-commerce platforms, should be subject to this Regulation if they provide at least one of the steps in the postal delivery chain. Clearance, sorting and distribution, including pick-up services, should be considered parcel delivery services, including when they are provided by express and courier service providers, as well as consolidators, in line with current practice. Transport alone that is not undertaken in conjunction with one of those steps should fall outside the scope of parcel delivery services, including when it is carried out by subcontractors, either in the context of alternative business models or not, as it should in that case be assumed that this activity is part of the transport sector, unless the undertaking concerned, or one of its subsidiaries or linked undertakings, otherwise falls within the scope of this Regulation.

(18) This Regulation should not apply to undertakings that are established in only one Member State and that have domestic in-house delivery networks only in order to fulfil orders of goods that they themselves have sold under a sales contract within the meaning of point 5 of Article 2 of Directive 2011/83/EU of the European Parliament and of the Council[(5)]. Undertakings that also use domestic in-house delivery networks for the delivery of goods sold by third parties should be subject to this Regulation.

(19) The minimum confidential information that should be forwarded to the national regulatory authorities and the procedures followed by those authorities in order to ensure compliance with the commercial nature of national operators should be defined and secure channels should be established for their communication.

(20) It is necessary for national regulatory authorities to have knowledge, and information for statistical purposes, about parcel delivery service providers active on the market on the basis of appropriate authorisation procedures or other legal requirements. Due to the labour intensive nature of the sector and in order to limit the administrative burden on small parcel delivery service providers who are only active on a national or regional market, a threshold of fewer than 50 persons should be applied, based on the number of persons who were working for the service provider over the previous calendar year and who were involved in the provision of parcel delivery services in the Member State in which the provider is established, unless that provider is established in more than one Member State. That threshold is in line with Commission Recommendation 2003/361/EC[(6)], reflects the labour intensive nature of the sector, and captures most of the parcel delivery service market, especially in countries with low volumes of parcel flows. That threshold should, in particular, include persons involved in the provision of parcel delivery services such as full-time, part-time and temporary employees and self-employed persons working for the parcel delivery service provider. Breakdowns showing the number of persons by employment status should be in accordance with the national law of the Member States concerned. In certain cases, while taking into account

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the specificities of the Member State concerned, the national regulatory authority should be able to lower the threshold to 25 persons, or to request the cross-border parcel delivery service provider to include in the threshold full-time, part-time and temporary employees and self-employed workers for its subcontractors, in order to increase the transparency of the cross-border tariffs and of the market as a whole.

(21) Any submission to the national regulatory authority of information on the number of persons working for the parcel delivery service provider should be in accordance with established company reporting practices relating to statistical information. It is important in order to ensure comparability of data, while keeping the administrative burden on the providers to a minimum.

(22) The place at which a provider is established is to be determined in accordance with the case-law of the Court of Justice of the European Union. Where a provider has several places of establishment, it is important to determine the place of establishment from which the actual service concerned is provided.

(23) When submitting information to the national regulatory authority, the characteristics of the parcel delivery services should include the steps in the postal delivery chain (clearance, sorting, transport and distribution) undertaken by that provider, whether the service is within or outside the scope of the universal service obligation, what the territorial scope of the service (regional, domestic, cross-border) is, and whether added value is offered.

(24) The list of postal items that are subject to price transparency measures should be limited in order to facilitate comparability and to minimise administrative burdens on cross-border parcel delivery service providers and national regulatory authorities. Standard and registered services should be included, given that these form the basis of the universal service obligation, and given the importance of track and trace functionality for e-commerce, the prices for track and trace and registered parcels should also be included, whether or not they form part of the universal service obligation, in order to ensure comparability across the Union. The focus should be on lighter weights, which make up the majority of postal items delivered by parcel delivery service providers, as well as on the prices for postal items over 20 mm thick, which are processed as letters. Only single-piece tariffs should be included since these are the prices paid by the smallest senders. The postal items concerned should be set out clearly in an Annex to this Regulation. This Regulation does not oblige cross-border parcel delivery service providers to offer all the postal items listed in that Annex. In order to ensure the accuracy of the tariff information, it should be provided by the cross-border parcel delivery service providers themselves. Those tariffs should be published by the Commission on a dedicated website which is neutral and non-commercial in character.

(25) When national regulatory authorities objectively assess the cross-border tariffs that they consider that it is necessary for them to assess, they should base themselves on elements, such as: the domestic and any other relevant tariffs of the comparable parcel delivery services in the originating Member State and in the destination Member State; any application of a uniform tariff to two or more Member States; bilateral volumes, specific transportation or handling costs; other relevant costs and service