

CERP



CERP Project Team Consumer Issues

**“Report on regulatory
approaches on Consumer Relations”**

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General Introduction

Consumer interests and the protection of users' rights have always played an important role within the liberalisation of Postal Markets and the EU Postal Reform. In fact the importance of this topic is increasing more and more considering the full market opening within the European Union by the end of 2010 at the latest (for some Member States until 31 December 2012) and the further development of a multi-operator environment. Against this background the Postal Directives have always included consumer aspects and set out the general legal framework for the protection of users' rights.

In this context it is actually already the First and the Second Postal Directive which are setting the scene as follows: "Member States shall ensure that transparent, simple and inexpensive procedures are drawn up for dealing with user's complaints, particularly in cases involving loss, theft, damage or non-compliance with service quality standards. Thus, the focus of the Second Postal Directive can be still seen on the protection of users of USPs services. However, it is worth considering that already the Second Postal Directive provides an extension to users of other postal services when saying that this is "including procedures for determining where responsibility lies in cases where more than one operator is involved. Furthermore the Second Postal Directive requires that the Member States shall "enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement and/or compensation". Finally, Member States are obliged to ensure that users can appeal to a "competent national authority" when they are not satisfied with the dealing of their case by the USP and it is required that the USPs publish data on the handling of users complaints.

The next important step within the "evolution" of users' rights was taken by the adoption of the Third Postal Directive, which entered into force on the 20th February 2008 which must be implemented by the Member States by the end of 2010/2012. In preparation of the complete liberalisation of the postal markets the Third Directive now requires that the "Member States shall ensure that transparent, simple and inexpensive procedures are made available by **all postal service providers** for dealing with postal users complaints, particularly in cases involving loss, theft, damage or non-compliance with service quality standards. Furthermore, the Third Postal Directive maintains the requirement that Member States enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement and/or compensation. However, in addition to the Second Postal Directive it is now included that the "Member States shall encourage the development of independent out of court schemes for the resolution of disputes between postal service providers and users. Finally Member States shall ensure that the USPs **and, wherever appropriate, undertakings providing services within the scope of the US**, publish, together with the annual report on the monitoring of their performance, information on the number of complaints and the manner in which they have been dealt with.

The above highlighted increasing role and importance of consumer issues was also recognised and reflected by the Member States of CERP. Against this background a CERP Project Team was set up in 2006 with the task to develop a "Questionnaire on Consumer Interests" which was circulated to the NRAs of the Member States in 2007.

The main purpose of the Questionnaire was to assess a wide range of situations where there might be interaction between NRAs, postal operators and consumers and it was divided into the following eight sections: Complaints, Compensation, Postal operators,

Statistics, Contact with consumers and their representatives, delivery and collection by the USP, Customer focussed aspects of the Postal Services Directive and Access Points.

In the aftermath of this questionnaire the current CERP Project Team Consumer Issues was mandated by the CERP to use the results and outcome as basis for the work on a "Best Practice Report on Consumer relations".

Therefore the following "Report on possible good regulatory approaches on Consumer relations" is largely structured in accordance with the previous Questionnaire. The structure of the Report is divided into three chapters dealing besides an introduction and some conclusions with the following issues: NRAs Assisting consumers with complaints, NRAs Collecting and Providing Information for Consumers and Ensuring Provision of a High Quality Universal Postal Service.

However, the Project Team agreed after some in depth discussions that the Report cannot provide on the basis of the Questionnaire results a detailed evaluation and judgment on "best or good" regulatory practices. This is mainly due to the fact the survey did not ascertain what practices (concerning complaints handling, statistics and other issues) are considered effective by the NRAs in their national environment.

Having said this, the primary purpose of the Report is to recall the requirements which are set out by the Postal Directives in the field of users rights. The rationale behind this is to raise the awareness of the Member States to those requirements and to assist them in evaluating and effectively developing their systems in place. Another aim of this Report is to describe different regulatory approaches on consumer relations in place in the Member States and to give some useful examples in which ways the requirements of the Directives can be fulfilled. Finally, the Report intends to give some guidance to the Member States especially in respect of the important current process of implementing the Third Postal Directive and all of the implicated challenges.

The outcome of the Questionnaire illustrated quite impressively the remaining general question about the appropriate and most useful role which NRAs should play in the field of consumer protection. It is interesting to recognise that there are different models and approaches in place in the Member States. Generally speaking one can divide them into different categories: NRAs with direct involvement, NRAs with a more indirect role of involvement and NRAs which have no involvement at all within consumer issues.

However, this Report cannot give the final answer to the question of which role the NRA should play as it is up to the Member States to decide and there is certainly no one size fits all solution in place. Nevertheless the different categories and roles of NRAs within the national systems of Members States are reflected within the Report especially in respect of the NRAs involvement in complaints handling. The rationale behind this approach is to give the Member States some ideas and guidance on the different models and roles which they may find useful in considering their national practice.

In this context it seems also worthwhile to make a reference to the recently published Study on "The role of regulators in a more competitive market" by WIK Consult which evaluates inter alia the different regulatory approaches on Consumer relations in place in the Member States.

And last but not least some practical information: you can find at the end of this Report the text of all the relevant provisions of the Postal Directives, an abbreviation list as well as the Report of the previous PT Relations with Consumers to alleviate the reading and "digesting" of the quoted provisions and the terms used within the Report.

Chapter 1: NRAs assisting consumers with complaints

1.1 Complaints & Redress, Standards and Procedures

1.1.1. Introduction

Historically the USP, as a state-owned monopoly, was not held liable for any loss or damage to standard letters, however there a number of emerging trends requiring a move away from this position. In particular recital 34 to the Postal Directive 97/67/EC provides that “Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts applies to postal operators” while Directive 93/13/EEC provides that “a contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.” More specifically the Postal Directive itself requires member states to ensure that there is a system to enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement and / or compensation. Furthermore technological improvements are constantly driving efficiencies in the postal service and it is now possible for standard letters to be tracked more easily, in some cases even to the door of the receiver.

The report by the PT ‘Relations with Consumers’ investigated the application by member states of the European standard for complaints and redress procedures (EN14012) and the results show a divergence between NRAs which have required the USP to implement the standard and those who have not required implementation, with only 7 countries claiming to have fully implemented it. This is quite likely due to the fact that the European Commission’s Postal Directive Committee decided not to make EN14012 mandatory. One might also speculate that the poor uptake of the standard may be a result of its ongoing revision since it was originally published in 2003. A revised version of EN14012 has recently been published in 2008 with a reduction in the number of measurement parameters. It is also intended that the revised standard should only be used as a reference by the NRAs as it is stated in the standard itself that “National regulators may have more specific requirements than those given in this European Standard.” Consequently, the previous Consumer PT report questioned the value of EN14012 due to the poor uptake of the standard’s enforcement by the NRAs.

Nevertheless, the report did not explore the alternatives currently being used in its place. It would be interesting to see what, if any, form of complaints and redress systems are being used and how these differ in comparison to the standard. In a future liberalised market where interoperability is likely to become more of an issue, requiring an increase of consumer protection, it would unquestionably be of benefit to postal service users for all service providers to be using a common standard for dealing with complaints and redress.

1.1.2. Requirements and Guidelines according to the Third Postal Directive

Article 19 of the Directive stipulates that it is obligatory for all service providers to provide transparent, simple and inexpensive Complaints and Redress Procedures for dealing with postal users complaints and that these procedures should include “a system of reimbursement and/or compensation”.

Most postal service providers will already have some form of complaints system in place as from a commercial point of view this is an expected service. However, as previously mentioned it is not likely that all NRAs will require service providers to implement the relevant Complaints and Redress standard EN 14012 as it is not mandatory.

1.1.3. Recommended regulatory approaches

In order to fulfill the obligation under the Directive of ensuring all service providers comply with the requirement of complaints and redress procedures national legislation should clearly specify which service providers this obligation applies to and provide the necessary powers for the NRA to enforce that these obligations are complied with and including the necessary sanctions for any non-compliance.

Once the appropriate powers have been awarded all NRAs should consider using the European Standard EN 14012 as a template for setting out guidelines to service providers on complaints and redress procedures, which should include the minimum information to be provided to consumers, for example

- Relevant and appropriate Information on the Complaints and Dispute Resolution Procedures;
- Minimum requirements regarding communication to complainants that include internal and external appeals mechanisms, response times to deal with complaints and maximum times for complaint resolution;
- The criteria for provision of reimbursement and/or compensation in the event of service failure

NRAs should clearly set out the minimum requirements for all service providers to be provided in their complaint and redress procedures. There should be particular attention paid to compensation rights with differentiation between the service provided under public law with set terms and conditions and the service provided under individual contracts. NRAs should ensure that these procedures are put in place by all service providers and are operating properly to the benefit of users. NRAs should require operators to publish their complaints and dispute resolution procedures and to ensure customers are made aware by publicising it through the usual communication and advertising mediums.

It is appropriate that complaints are always dealt with by the service provider in the first instance and should only be escalated once this process has been exhausted. However it is also recommended that the Member States make a policy decision on how mediation and dispute resolution in the postal area should be organised. There are a variety of bodies where this responsibility may fall to such as, National Ombudsman, Sector Ombudsman, the Courts, the NRA or the National Consumer Agency. Whether the

government appoints the NRA or another competent body as mediator, NRAs should implement one of the following respectively;

- If the NRA is appointed by the government as mediator it is important to establish a very clear and transparent set of rules for mediation on behalf of consumers which fully take into consideration the legal scope of its role for mediating and for enforcing its decisions. The NRA should also build up case laws for the setting of precedence to support its decisions.
- If the government appoints a consumer body other than the NRA it is recommended that the NRA establishes a memorandum of understanding with that body. This is an important issue, as there is a need for the NRA to monitor complaints at a macro level for repeated incidences which can be used to identify reoccurring problem areas with the service.

1.2. Compensation

1.2.1. Introduction

Within the field of consumer issues and consumer/end-users rights compensation plays certainly an important role and is a key factor for users of postal services. It seems to be one of the most powerful means where end-users can develop the main pressure towards the postal operator in charge.

Having said this one would expect that it would therefore be an area where the NRA should be very closely involved. However, the previous questionnaire of the CERP PT Relations with Consumers illustrates at the same time that the work in this area is still in progress and the role and powers of the NRAs should increase in the future.

1.2.2. Key results and findings of the CERP PT Relations with Consumers Questionnaire 2007

The section of the questionnaire dealing with the topic compensation was designed to explore the extent to which compensation is available to customers (on an automatic or discretionary basis – or not at all); the mechanisms by which customers are made aware of their right to compensation and the role played by NRAs in monitoring the process for such payments.

The questions asked in detail were the following:

B.1: Do postal operators give financial compensation for standard letter items in the following circumstances?

Is there any automatic financial compensation for registered/insured items?

B.2: Who (if anyone) uses the following mechanisms to make customers aware that compensation is available?

B.3: Do you, the Regulator, monitor the process for payment of compensation?

One main outcome of the Questionnaire was that at least half of the respondents reported that compensation was not available to any class of user for loss, damage or delay to standard letter items (i.e. those not registered or insured). Furthermore, in only about half of those Member States where compensation was available for such items there was an *automatic* entitlement to compensation.

Another important finding of the Questionnaire was that almost all NRAs appear to rely on the USP to make customers aware of the possibilities for compensation in place. Moreover, it is interesting to note that only NRAs in four Member States (Hungary, Lithuania, Latvia and Norway) claimed in their responses to offer such a service in making use of their website.

Furthermore, the responses to the Questionnaire illustrate that only in three Member States (Malta, UK and Estonia) the process for payment of compensation is monitored by the NRA.

1.2.3. Requirements and Guidelines according to the Third Postal Directive

The Third Postal Directive sets out the requirements in respect of compensation in its Art. 19.

Accordingly “Member States shall ensure that transparent, simple and inexpensive procedures are made available by all postal service providers for dealing with postal users' complaints, particularly in cases involving loss, theft, damage or non-compliance with service quality standards (including procedures for determining where responsibility lies in cases where more than one operator is involved), without prejudice to relevant international and national provisions on compensation schemes”.

The same Article requires furthermore “that Member States shall adopt measures to ensure that the procedures referred to in the first subparagraph enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement and/or compensation”.

Finally, Member States “shall also encourage the development of independent out-of-court schemes for the resolution of disputes between postal service providers and users”.

1.2.4. Recommended regulatory approaches

The Third Postal Directive sets out new guidelines and the legal framework for the compensation schemes in Article 19.

The most important change in this context is probably that the scheme of rights in place for the consumers are now extended to all postal service providers whereas before there was only an obligation for the USP. Thus, the main challenge for the NRAs of the Member States will be to ensure that all operators are acting in compliance with the provisions of the Postal Directive. Important seems in this context to have a clear regulation scheme in place and the NRA should at least be informed in detail about the compensation scheme of the relevant Postal Operator.

In general, NRAs within the Postal sector should take a very keen interest in the nature of claims, the entitlement of users and the whole process by which operators compensate them for service failures in order to help them to regulate the industry.

Against this background it might be an option for NRAs to evaluate means and ways to increase their role and competences in the area of compensation. The aspect of compensation is crucial and will play an even more important role for consumers in the future. Compensation is probably one of the most effective means and gives end-users the most bargaining power against the Postal Operators. In a liberalised market, the existence of alternative providers will also have an important role, as it will allow users to change the provider whenever they are not satisfied with the service acquired.

However, the compensation aspect appears to be driven largely by the operators themselves, both in terms of the provision of information and the decision to provide financial compensation. This is only a problem with USPs as previously there was no compensation provided due to protection from state privilege and no legal contracts with end-users. Furthermore, also the UPU rules¹ in place still state that USPs are not obliged to take account of complaints for standard letter post items.

Against this background, it seems reasonable to establish the scale of the problem and the extent to which end-users are dissatisfied with – or even unaware of – the arrangements considering compensation which exist.

It is of high importance for the NRAs to find adequate and effective means to raise and increase the awareness of the end-users for the compensation schemes already in place, without prejudice of general compensation mechanisms according to the civil law within the existing liability mechanisms and its enforcement by courts. This seems to be the case of many Member States that already have sufficient compensation schemes in place but that end-users are not aware of these rights. According to the results of the Questionnaire only four of the NRAs who responded claimed to offer such a service – all making use of their website. In addition to the adequate publication of the existing compensation rights the NRAs should also make sure that the necessary steps are undertaken so that people

¹ UPU Letter Post Manual, Article 17

are aware that the necessary information is available on the website or in form of other publications.

Finally it seems to be of importance that NRAs and/or consumers associations or ADR schemes have the relevant competences and are active in the field of monitoring the process for compensation payments. This includes that they are having the power to obtain the relevant information from the Postal Operators in charge.

1.3. Complaints Handling

1.3.1. Introduction

End-users of postal services may complain for a wide range of reasons such as poor service, late or non-delivery, compensation, etc. Generally, if they are not satisfied with the service they are using, they complain directly to the provider, to a third party dealing with end-users' complaints (NRAs, enforcement bodies, consumer NGOs, self-regulatory bodies, etc) or even take their complaint to court.

Whatever the entity to which end-users appeal to, one thing is certain: an end-user complaint is an important fact which can be a sign of a systematic problem in the market. A high number of complaints relating to particular services may therefore be an important indicator of market malfunction, by showing what is failing to meet end-users' expectations and even by showing what fails in terms of economic or even social outcomes.

1.3.2. Key results and findings of the CERP PT Consumer relations Questionnaire 2007

According to the report from the CERP PT Consumer relations the results of the Questionnaire concerning complaints is difficult to summarize. The reason for this is that the numerical data provided cover a wide range and are easily open to misinterpretation. However, it is clear that in general NRAs receive only a relatively small number of complaints; most of these concern the USO and most are received from individual consumers.

Among the NRAs that answered that they handle complaints, nearly half only receive end-users' complaints regarding universal service providers after they have not been satisfactorily resolved by the undertakings concerned.

More than half of the NRAs who responded reported that they offered a service to resolve the complaint, although powers to enforce this decision related principally to the provision of US.

According to the Questionnaire, most NRAs do not seem to make great use of the information gathered from complaints.

1.3.3. NRAs' involvement in complaints handling

a) NRAs' not involved in complaints handling

Despite the important role of end-users complaints in helping to identify market failures, and therefore to help addressing the reasons behind failure and suggesting appropriate measures, not all NRAs receive and handle end-users complaints, which may happen for several reasons including legal constraints.

In those cases, the handling of complaints can be left strictly to the postal operators concerned or also to ADR schemes, like consumer agencies, government departments, arbitration or mediation schemes, like the ombudsman, which may regularly provide to the NRAs important data to inform their policy work – looking at trends and developments in the market, understanding new problems, etc.

According to the results of the Questionnaire developed by CERP PT “Relations with Consumers”, this is not the case of most NRAs, since the majority of them report to receive and handle complaints from end-users of postal services.

b) NRAs' involved in complaints handling

Where national legislation permits the NRAs to be involved in the process of handling end users complaints regarding postal services, they may:

- Be led to understand more accurately the issues which are of main concern to endusers of postal services;
- Identify situations where regulatory or supervisory intervention may be necessary;
- In case evidence arises from complaints that service providers have failed to comply with the law in force, initiate the proper legal procedure;
- Ensure the handling and disclosure of relevant complaints' statistics/data.

NRA's involvement in complaints handling may, on the other hand, raise end-users' awareness of NRAs' existence, its functions and powers of intervention before the complaints received, meanwhile it enables end-users to be informed on all means of reaction at their disposal. However, in order to make this role effective, it is also necessary for the NRA's to have the appropriate enforcement powers in place.

According to the results of the Questionnaire developed by CERP PT “Relations with Consumers”, most NRAs receive and handle complaints from end-users of postal services.

However, it should be emphasized that, although involved in the process of complaints handling, NRAs may assume different roles towards the resolution of the disputes that led to the complaints received.

Some of them have specific services to resolve the issues between end-users and the providers concerned, even if, in some cases, those services are only offered to resolve disputes related to the provision of the US or with the USP or even if outside the USO.

Others, instead, do not have powers to arbitrate, mediate or settle disputes between end-users and service providers. If, based on end-users complaints, evidence arises that service providers have failed to comply with the rules in force regarding postal services, they may only initiate procedures which may lead to the application of sanctions to the provider concerned. They do not solve the conflict that led to the complaint, nor impose any obligations to the provider concerned (e.g. the payment of compensations for damages caused to end-users).

1.3.4. Requirements and Guidelines arising from the Third Postal Directive

Apart from imposing Member States to ensure transparent, simple and inexpensive procedures to be made available by postal service providers for handling end users' complaints, Article 19 of the Third Postal Directive, also determines Member States to encourage the development of independent out-of-court schemes for the resolution of disputes between services providers and end-users as well as to ensure that end-users may bring before the competent national authority cases where their complaints to undertakings providing postal services within the scope of the US have not been satisfactorily resolved.

1.3.5. Recommended regulatory approaches

Following the guidelines from the Third Postal Directive, and in order to strengthen end-users' protection, NRAs may:

a) Contribute to develop independent out-of-court schemes for the resolution of disputes between postal service providers and end-users

Without prejudice of appealing to courts and to organisations responsible for the protection and promotion of their rights, end-users should have the possibility to submit disputes with undertakings providing postal services to arbitration and mediation mechanisms legally established.²

⁽²⁾ As set out in Commission Recommendation 98/257/EC, of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes and Commission Recommendation 2001/310/EC, of 4 April 2001, on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes.

In this context, it might be appropriate to require service providers to establish mechanisms for out-of-court resolution of disputes which may arise between undertakings providing postal services and end-users. This requirement should be, as recital (42) of the Third Postal Directive states, applicable to disputes with all postal service providers, and not just to USPs.

For that purpose, NRAs may themselves be required to offer a service to resolve the complaint, some of them acting as an ombudsman/mediator. According to the results of the Questionnaire developed by CERP PT “Relations with Consumers”, this task is already performed by the NRAs of Cyprus, Denmark, Estonia, Spain, Hungary, Lithuania and Latvia, without prejudice of other NRAs not stated in the Questionnaire.

Notwithstanding, it should be emphasized that the Third Postal Directive does not impose to the NRAs the development of out-of-court schemes for the resolution of disputes. NRAs’ actions are mainly intended to regulate the postal sector, bearing in mind the interests of end-users and not to get involved in the day to day management of Postal Operators, including the management of complaints.

Also, it should be noted that some Member States already have an independent ombudsman responsible for handling and resolving complaints concerning postal services. In Belgium, the “Service de Médiation pour le Secteur Postal” (SMSPO) (see <http://www.smspo.be/>) appears to deal with complaints about all postal services from all users, apart from disputes between operators.

IDRS Ltd is a similar company which provides more than 125 ADR services in more than 20 sectors (see <http://www.idrs.ltd.uk/index.asp>). One of the schemes managed by IDRS Ltd is the Postal Redress Service (POSTRS), an independent body set up to resolve disputes between licensed postal operators in Britain and their customers in response to a licence requirement imposed by Postcomm (the British Regulator) that all licensed postal operators be a member of an Alternative Dispute Resolution (ADR) scheme approved by Postcomm. Interestingly while the scheme is open to business users it does not deal with disputes about *‘products or services for which the customer has a contract with the member company.’*

Being so, another possibility of pursuing the Postal Directive’s guideline on this matter is NRAs, instead of offering their own mechanism, to cooperate in the creation of out-of-court schemes (ADR) or establish agreements with entities, public or private (some of them financed by the providers), which have previously carried out the implementation of such mechanisms, and in particular set out a system whereby NRAs, within the scope of their supervision and monitoring powers, receive regular reports in respect of end-users complaints submitted to such mechanisms.

Also, an obligation to be a member of an ADR scheme approved by the NRA would seem to be a proportionate measure for services outside the scope of the US. In this framework,

NRAs receiving and handling end-users complaints can also, further to informing them of their rights and the applicable regulation, provide information on the existence of independent resolution services and how to reach them and impose to providers the obligation of disclosing that same information.

Whatever the form chosen by the NRA to contribute for the development of independent out-of-court schemes for the resolution of disputes between postal service providers and end-users, it is important that the service provided for complaints' resolution is properly advertised. Specifically, end-users should be informed if those services have powers to enforce their decisions.

Last, it is also important that NRAs powers to intervene towards this issue are properly set, without prejudice of legitimate courts intervention.

b) Enable/encourage end-users' to contact them whenever complaints to undertakings providing services within the scope of universal service have not been satisfactorily resolved

In order to comply with the provisions of the Third Postal Directive, NRAs do not necessarily need to be given powers to arbitrate, mediate or settle disputes between end-users and postal service providers, specifically undertakings providing services within the scope of the universal service, nor to impose any obligations concerning the payment of compensation for possible losses.

As a first step, end users, individually or, where permitted by national law, jointly with organisations representing their interests, should have the possibility to address to NRAs or another competent national authority whenever complaints to undertakings providing services within the scope of the US have not been satisfactorily resolved.

Thus being, NRAs may have a clearer perception about the issues which are of direct concern to end-users. Meanwhile, undertakings are given the opportunity to resolve complaints before they are passed to the regulator and that should result in a very small number being appropriate for NRAs' attention.

In addition to not having satisfactory resolution for the complaints presented to undertakings providing services within the scope of the US, end-users should also be able to bring before NRAs complaints that providers have not answered to in a timely and reasoned manner.

As mentioned previously, most of the NRAs responding to CERP PT "Relations with Consumers" Questionnaire, seem to receive and handle end- users' complaints.

Among the NRAs that, according to the report, receive and handle complaints, nearly half only receive end-users' complaints regarding USPs after they have not been satisfactorily resolved by the undertakings concerned (Denmark, Estonia, France, Lithuania, Latvia, and Malta).

The Third Postal Directive does not prevent end-users from using means to present to NRAs' complaints concerning undertakings providing services within the scope of the US without prior problem resolution by them, which means that this may also be possible solution. In fact, this already happens, for example, in Portugal, where it is mandatory, since January 1, 2006, the availability of the complaint book in postal services providers' stores.³

However, that possibility, although allow NRAs to have a clearer perception about the issues which are of direct concern to end-users, should be used carefully.

In Portugal, for instance, in 2008, the main issue for end-users requesting for the book of complaints was customer service in providers' stores. Although it is a relevant issue, it does not relate to the provision of postal services itself, but only to the structure created by undertakings to support the provision of their main activities. Therefore, NRAs' perception about the issues which are of direct concern to end-users should not be entirely based on means of end-users presenting complaints concerning USPs, as the one described.

Moreover, if NRAs have to handle end-users complaints on the provision of US that were not previously presented to undertakings for proper resolution – which may reach, as it happens in Portugal, a very significant number –, it can happen that NRAs may waste resources on trying to handle complaints that could easily and quickly be resolved, if the provider was contacted directly by the end-user.

Another significant issue to be considered is that, by having the possibility of bringing before NRAs cases where their complaints to undertakings acting within the scope of the US have not been satisfactorily resolved, end-users should be able to do it through several/different means of communication, all of them easy to access or use, and properly disclosed.

According to the Questionnaire developed by CERP PT "Relations with Consumers", most complaints to NRAs are already received by letter, telephone or e-mail, but very few through a website (only in Portugal, Latvia and Sweden). However, one should bear in mind that complaints are frequently made verbally to the postmen/local post office and these are not recorded or accounted for.

If, based on cases presented by end-users, evidence arises that USPs have failed to comply with the rules in force, NRAs may initiate the proper legal procedure, depending on the competence they possess for that purpose – according to the outcome of the CERP PT "Relations with Consumers" Questionnaire, amend licenses, withdraw licenses, adjust targets or create new ones, impose fines or issue legally binding directions.

⁽³⁾ After the complaint sheet being completed, the service provider is required to send the original one to the competent NRA, within ten working days.

Also according to that same Questionnaire, most NRAs do not seem to make great use of the information gathered from complaints, which can be considered worrying.

Finally, Article 19, paragraph 1 of the Third Postal Directive extends the application of minimum principles concerning complaint procedures to all postal service providers. However, the same article, in paragraph 2, only refers the possibility of end-users bringing before NRAs or competent national authority cases where end-users' complaints to undertakings providing postal services within the scope of the US have not been satisfactorily resolved.

One reason may explain the limited scope of paragraph 2 of article 19 of the Third Postal Directive on this matter: NRAs have few powers to force undertakings providing postal services outside the scope of the US to take into account end-users needs.

In fact, the provision of services within the scope of the US is subject to public interest obligations and in particular obligations to the addressee. They are used by consumers and business customers. Article 19, paragraph 2 of the Third Postal Directive (which applies solely to these services) makes provision for consumer organisations to act on behalf of end-users and for operators to publish information on the number of complaints and the manner in which they have been dealt with. While the right to take a dispute to the courts cannot be excluded this is not an appropriate remedy given the price paid, the lack of intrinsic value of the contents in most cases, and the lack of any contractual obligations.

As to services outside the scope of US, they are mainly subject to the normal law of contract and there are limited obligations to the Postal Service Provider in charge. Furthermore in most cases the contract will be with a legal person (SME, corporate or administrative body) rather than a private person. When the complaint cannot be resolved between the parties, the user will unfortunately have to go to the courts to find a final arbiter. That's why Article 19 of the Third Postal Directive requires Member States to 'encourage the development of independent out-of-court schemes for the resolution of disputes between postal service providers and users' (see also recital 42 and Commission Recommendation 98/257/EC). It is in the consumer's interest that Member States are encouraged to provide for out-of-court schemes for the resolution for disputes for all postal services. Typical of such schemes are the very many ombudsmen schemes, many of which are set up on a statutory basis and others set up and financed by particular industries. An obligation to be a member of an Alternative Dispute Resolution (ADR) scheme approved by the NRA would also seem to be a proportionate measure for services outside the scope of US.

Notwithstanding, if, according to national legislation, NRAs do enable/encourage end-users' to contact them whenever complaints to any postal service provider have not been satisfactorily resolved, further to informing end-users of their rights and the applicable regulation, they may also, within their statutory powers, address to non-universal service providers recommendations that can be considered justified to ensure a minimum protection for end-users. Those recommendations, if possible, should be widely disclosed.

c) Widely publicize their own existence and let end-users know what they can do to help

Publicizing NRAs' existence by itself, may not achieve the expected benefits.

In this context, the main concern should be to ensure the accurate identification to the public, in particular end-users of postal services, of NRAs' scope of action, notably in relation to the complaints received, and to inform them on the available means of reaction towards service providers.

This can be made by making a good use of technology, specifically websites on the internet, to communicate with end-users.

Also, NRAs' response to complaints/requests for information received from end-users can also be an effective way of providing useful information on this matter.

Chapter 2: NRAs Collecting and Providing Information for Consumers

2.1. Postal Operators - provision of information on services

2.1.1. Introduction and background

It is of enormous importance for the NRAs to obtain information from the Postal Operators about services or changes to services they provide (decision where to put best). Information can be considered as the key element for the regulatory purposes involved.

This includes within liberalised Postal markets the USP as well as other Postal Operators or the USP acting outside the scope of the US. Furthermore it is of great relevance how the NRAs are making full use of the information received to influence their regulatory decision making process in the best way.

2.1.2. Key results and findings of the CERP PT Consumer relations Questionnaire 2007

This section of the questionnaire was designed to explore the frequency with which information on services is provided to NRAs by postal operators (the USPs and others); the power possessed by regulators to obtain such information and the use to which it is put.

C.1. How frequently (eg monthly, annually, never) do you (the regulator) receive information from postal operators on new services or changes to services they provide?

C.2. What powers do you have for obtaining that information?

C.3. What do you do with this information?

The results of the Questionnaire show that all respondents appear to have the power to obtain information from the USP on new services or changes to existing services, and most have similar powers in respect of other licensed or authorised operators. However, whilst such information is provided comprehensively by the USP, considerably less seems to be acquired on other operators' services.

Whilst relatively few NRAs publish this information, the majority of respondents claim to use it for regulatory purposes and/or in assessing the impact on a competitive market.

2.1.3. Requirements and Guidelines according to the Third Postal Directive

According to Article 22a of the Third Directive the Member States shall ensure that postal service providers provide all the information, in particular to the national regulatory authorities, including financial information and information concerning the provision of the universal service, namely for the following purposes:

(a) For national regulatory authorities to ensure conformity with the provisions of or decisions made in accordance with this Directive,

(b) For clearly defined statistical purposes.

Furthermore, "postal service providers shall provide such information promptly on request and in confidence, where necessary, within the timescales and to the level of detail required by the NRA. The information requested by the NRA shall be proportionate to the performance of its tasks. The NRA shall give the reasons justifying its request for information".

Finally "Member States shall ensure that national regulatory authorities provide the Commission, upon request, with appropriate and relevant information necessary for it to carry out its tasks under this Directive"

And lastly, where "information is considered confidential by a national regulatory authority, in accordance with Community and national business confidentiality rules, the Commission and the national regulatory authorities concerned shall preserve such confidentiality".

2.1.4. Recommended regulatory approaches

As a starting point it seems to be the case that there is no reason why every NRA should receive information from the USP and/or other Postal Operators in a similar way and with the same frequency.

It is clearly important from a consumer point of view that the regulatory authority is fully informed about the full range of universal services offered by the USP and it is understandable that NRAs should receive less information about services provided by other operators or by the USP on a non-universal basis. But it is reassuring to note that even these later two categories are considered in the context of a competitive market and for regulatory purposes.

The responsible NRAs of the Member States should especially ensure that there is the necessary information provided by the relevant Postal Operators concerning the provision of the US in line with Art. 22 a of the Third Postal Directive. This seems to be of great importance against the background that all the Member States are obliged according to Art. 4 of the same Directive to ensure that the provision of the US is guaranteed. Therefore, NRAs are at least in need to obtain the necessary information about any changes within the scope of the US to ensure that the provision of the US is still guaranteed.

Another aspect is how NRAs deal with the information they receive. According to the Questionnaire there are only a few NRAs who publish this information. Presumably the majority consider that this is the responsibility of the operators (whether USP or competitors); and presumably it is in their commercial interests to ensure that information on competitive products and services is well advertised. On the other hand, it is important that NRAs should not underestimate the importance of ensuring that comparative data are published in order to encourage competition. Many end-users – including commercial organisations – place great emphasis on aspects of performance (such as reliability of delivery) as well as price when selecting an operator to meet their postal requirements.

Therefore NRAs may play a more active role and publish the information received from the Postal Operators more comprehensively and frequently. NRAs will have then to ensure that the published information is always in accordance with the confidentiality rules set out especially in Art. 22 a of the Third Postal Directive and in their national confidentiality rules.

However, an “active role” of the NRAs as the one described can be controversial: it is not clear that the publication of the information received by the NRAs on their website can be considered, alone, a recommended practice. The information received is prepared by providers in order to inform the NRAs, and therefore it may be quite complex, technical and with details that may not contribute to end-users enlightenment. NRAs will have then the “burden” to prepare and publish it in a user friendly way, which has its costs and also some risks, that include not knowing if the information provided is complete or even accurate. In such case we would not be before a recommended regulatory practice, as any possible measure taken by the NRAs would have under consideration possible incomplete or inaccurate data.

In alternative, it can be recommended that by transposing the Third Postal Directive, national legislation specifies the information to be published by the providers and the correspondent level of detail, so that end-users are properly informed on the services available and choose wisely.

Anyway, it seems important that NRAs make sure that operators publish the relevant information (e.g. information on products and tariffs, opening hours of post offices, complaints and redress procedures,...) regarding the US transparently and correctly. To keep the information updated, one could suggest that the NRAs include on their website a link to the USPs webpage with all the relevant information on these items.

In addition NRAs can publish information regarding quality control and/or consumer satisfaction. A useful tool for consumers that can be put on the NRAs website is a price simulator that compares prices of similar universal postal services offered by different operators.⁴

Finally, the NRAs should bear in mind and explore in more detail the extent to which NRAs satisfy themselves that information in respect of 'monopoly' universal service products and services is indeed readily available and accessible to users.

2.2. Postal Operators - provision of statistical information on complaints

2.2.1. Introduction

It is important that NRAs have the power to obtain from postal operators information on issues of direct importance to end-users, such as the complaints they receive from customers. This information can be particularly relevant for regulatory purposes in the context of the provision of the US. It may also be useful to disclose to the public some of this information. However, the relevant elements to make available to end-users must be carefully selected by the NRAs and confidentiality requirements foreseen in the scope of the Third Postal Directive, must be respected.

2.2.2. Key results and findings of the CERP PT Consumer relations Questionnaire 2007

According to the report of that PT and the answers to the Questionnaire, nearly all NRAs appear to have the power to obtain statistical information from both the USP and other (licensed) operators on general questions or on complaints.

⁴ In Belgium, the NRA has set up a "tariff simulator" for telecommunications services that calculates the best offer that corresponds to your consumer profile (<http://www.besttariff.be/> <http://www.besttariff.be/>).

Furthermore, the results of the survey show that most respondents receive data on complaints from the USP. Such information appears to be more frequently provided on an annual basis and covers the major issues of concern to customers (loss, damage, delay, compensation etc). However, very few NRAs seem to receive such information from other (licensed) operators.

2.2.3. Requirements and Guidelines arising from the Third Postal Directive

Concerning the provision of information on complaints, Article 19, paragraph 2 of the Third Postal Directive, determines “Member States to ensure that the Universal Providers and, wherever appropriate, undertakings providing services within the scope of the universal service, publish, together with the annual report on the monitoring of their performance, information on the number of complaints and the manner in which they have been dealt with”.

2.2.4. Recommended regulatory approaches

In this context, the most important aspect to be emphasized on the new legal framework is that not only it will be mandatory for USP and, where appropriate, undertakings acting within the scope of the US to have organized information on the complaints received and the way they are handled, but it will also be mandatory to make that information publicly available through annual reports – it should be published together with the annual monitoring performance information.

Within the transposition of the Third Postal Directive to national legislation, Member States may consider the possibility of establishing:

- a) The exact content of the information on complaints to be disclosed, for example, by service, by subject, as well as by geographical incidence of complaints, which can turn out be a very important indicator in what concerns the compliance of obligations within the scope of the universal service; and
- b) The mandatory publication of the annual reports in the providers’ website and, eventually, on the NRA’s website.

Specifically concerning the handling of the complaints received, national legislation may establish also that undertakings acting within the scope of the US disclose the time frame in which the complaints were responded to or resolved.

It is not possible to conclude from the questionnaire that it is a good practice to collect statistical information on the complaints received by undertakings providing services outside the scope of the US.

Only few NRAs seem to collect information from undertakings acting outside the scope of the US concerning the number of complaints received from end-users.

Also the Third Postal Directive, as stated in article 19, does not determine Member States to ensure undertakings providing services outside the scope of the US to publish information on the number of complaints and the manner in which they have been dealt with.

However, as mentioned before, complaints are a useful indicator for competent national bodies to gain sensibility to some issues that may be critical to end-users. Also, the public disclosure of information on complaints ensures also that end-users are provided with appropriate information about the services which seem to be raising significant problems for customers, which may help them to decide between services/offers from different providers in the event of the full market liberalisation.

From the above, the public disclosure of information on the complaints received by providers outside the scope of the USO can be considered within the process of transposing the Third Postal Directive into national legislation.

However, the collection of that information and, most of all, its public disclosure should be assessed with caution for the following reasons:

- i. Not all the complaints received from end-users are valid – many of them are not recorded or accounted for statistical purposes, as they are made verbally to providers' staff – or even presented comprehensively;
- ii. Not all the complaints recorded and accounted relate to the provision of postal services itself, but to the structure created by undertakings to support the provision of their main activities, such as customer service in providers stores;
- iii. The number of complaints received might not be related to the level of service given. For example, providers with more clients will most likely have more complaints about their services
- iv. A large number of complaints may reflect the effectiveness of the postal operator's complaint handling process. On the other hand, the existence of very few complaints may not necessarily be an indicator of a very good service – factors like the non-existence in a certain country of a very strong practice of complaining, may also impact on the results obtained; and
- v. Some customers address their complaints to other entities (consumer associations, sector regulators, etc) and it is not possible to have information on the whole universe of complaints.

Therefore, before publishing any information from the operators on complaints and compensation, the NRAs must be sure that it is within their statutory powers to do so.

2.3. NRA's contact with consumers and their representatives

2.3.1. Introduction and background

The role and influence of the consumers and their representatives is rising within more and more liberalised Postal Markets and a multi-operator environment. The NRAs should be aware of this role and the power which consumers and their representatives can have in respect of influencing the performance of the Postal Operators and in developing the competition amongst them. Thus, the interaction between NRAs on the one hand and the consumers on the other hand is a very important mean to obtain and share the necessary information on complaints or on general questions.

2.3.2. Key results and findings of the CERP PT Consumer relations Questionnaire 2007

This section of the Questionnaire was designed to explore the frequency with which NRAs provide statistical information directly to postal users; the level of direct contact, the extent to which consumer surveys are undertaken and how the results are communicated.

Only a small proportion of the respondents claimed to provide regular statistical information to consumers and their representatives. In general the postal regulators who responded to the survey have considerably greater contact with users over complaints than on questions relating to products and services. But all the numbers quoted are relatively low – with the notable exception of Portugal whose complaints book⁵ generated nearly 4,000 contacts.

Over half of the responses (11 out of 18) reported that they are undertaking consumer surveys, with ‘market research’ appearing to be the most popular method. Communication of the results was predominantly by means of the NRA’s website.

2.3.3. Requirements and Guidelines according to the Third Postal Directive

In respect of the legal framework set out by the Third Postal Directive for the contact with consumers and their representatives it is recital 42 which is of relevance. According to this provision “consumer interests would also be furthered through the requirement for cooperation between national regulatory authorities and consumer protection bodies”. Additionally, Article 22, paragraph 1 of the Third Postal Directive establishes that “Member States shall ensure, where appropriate, consultation and cooperation between NRAs and national authorities entrusted with the implementation of consumer protection law on matters of common interest”.

2.3.4. Recommended regulatory approaches

⁵ In Portugal, all postal operators must have a complaint book in each store and send all complaints registered therein to the Regulator.

The outcome of the CERP PT Consumer relations Questionnaire of 2007 shows that there are only few contacts relating to products and services and one might expect users to approach operators directly for this information. However, on the other hand it can also be considered as an indication that NRAs are not well known and that methods for contacting them are not well developed. Therefore, NRAs should evaluate different means and ways to, depending on their legal role, increase their relevance as a contact partner for consumers and their representatives, including national authorities entrusted with the implementation of general consumer protection law.

Against the background of the full market opening is the cooperation between the regulators and consumer protection bodies more and more required and therefore also explicitly mentioned in Recital 42 of the Third Postal Directive. In a monopoly market with only one Postal Operator it was quite clear that there was only a need for the consumer protection organisation to be in a dialogue with this Operator. However, within a multi-operator environment it becomes more and more difficult for the consumer organisations to be directly in touch with all the different Postal Operators at the same time. Thus, the NRAs should take over more responsibilities to coordinate and to closely cooperate with the relevant consumer protection bodies and at the same time make sure to avoid the duplication of work.

The results of the CERP 2007 Questionnaire indicate that consumer surveys are already carried out by a large number of NRAs. The most popular method for the surveys is, according to the Questionnaire, 'market research'. This seems to be an appropriate mean to obtain information about the consumer interests and satisfaction on a more general level. However, it could be valuable for the NRAs to explore the users' needs, attitudes and behaviours with a greater depth and breadth, for example by using focus groups or other qualitative methods. This would allow a better understanding of users' attitudes and quality of the analysis of user requirements could be improved.

Furthermore it is of great importance that NRAs publish the results of the surveys carried out in an appropriate way. Most of the respondents prefer as method to post them on a website. However, in doing so NRAs should bear in mind that a low profile of the NRAs appearance (website) and the proportion of people who do not have access to the internet might cause problem in this context. Thus, the NRAs should consider different means to draw the attention to their existence – for example by an article on the results appearing in the press or a press conference about the results of the survey.

Finally, as we have mentioned the NRAs may consider providing the postal users on a regular basis with information about Postal Operators and the services they offer as well as information about complaints and compensation in percentage to the volumes of the Postal Operator involved. Although this information would be very useful to consumers, operators may oppose to publication on the grounds that the data would not be robust and comparable. Thus, it is very important that the NRAs evaluate the practical and the legal consequences of providing this kind of information. The aim of providing this information is to give the consumers an overview about the Postal Operators on the market and the services they offer to consumers as well as the consumer satisfaction with the different Postal Operators. In doing so the NRA is giving the consumer relevant information in choosing between Postal Operators and at the same time the competition between them is fostered.

Chapter 3: Ensuring Provision of a High Quality Universal Postal Service

3.1. Integrity of postal items

3.1.1. Introduction

A vital component of the postal service is trust – consumers/users place a great trust in the service to safely and securely transport their documents and goods and to deliver these postal items to the required destination. Consequently there is high onus on both the NRA and the service provider to realise a service which ensures the integrity of the postal items for consumers.

3.1.2. Key results and findings of the CERP PT Consumer relations Questionnaire 2007

The previous report issued by the PT Relations with Consumers which is based on a 2007 survey of the NRAs found that all NRAs require the USP to take responsibility for the security of postal items which formed part of the universal service obligation (USO), almost all require the USP to take responsibility for the security of postal items outside the USO and the vast majority also extend this responsibility to the other service providers. The report also found that there is a range of appropriate sanctions which could be imposed by the NRAs on service providers who failed to ensure the integrity of postal items they carried.

The report itself states ***“it can be argued that it is a fundamental responsibility of postal regulators to ensure that all operators take full responsibility for the integrity of the mail they carry.”*** Therefore it leads to say in terms of Best Practice it should not be a question of which category of postal service (USO/Non-USO) or for which service provider (USP/Others) this requirement relates to but instead what it best practice for ensuring that all postal service providers take full responsibility of all postal items which is handled.

In a fully liberalised market it is crucial that the integrity of postal items and the trust in the service is not undermined. Fundamentally postal items must be delivered by the service provider to the correct address or, where and only where this is not possible, returned to the sender. When more than one operator is involved it is vital that there are precise and detailed procedures in place to ensure that these obligations are complied with. Hence it is most likely that a form of structured procedure is necessarily put in place to assist all the parties involved with ensuring the integrity of postal items.

Unfortunately it is not possible from the report to identify what powers each NRA has to enforce the requirement to ensure the integrity of the postal items or more importantly even to what ‘the integrity of the postal items’ encompasses in each member state. Thus

to fill this gap as a basis we refer to the basic legal requirements concerning integrity of postal items which is set out in the third Directive.

3.1.3. Requirements and Guidelines according to the Third Postal Directive

The Third Postal Directive defines essential requirements as:

“general non-economic reasons which can induce a Member State to impose conditions on the supply of postal services. These reasons are the confidentiality of correspondence, security of the network as regards the transport of dangerous goods, respect for the terms and conditions of employment, social security schemes,(..) and, where justified, data protection, (..) Data protection may include personal data protection, the confidentiality of information transmitted or stored and protection of privacy”

Under Article 5.1 of the Directive there is a requirement to ensure that universal service provision guarantees compliance with the essential requirements, while Article 9 provides for authorisation or licensing of other service providers; those providing services within the scope of the universal service and those outside the scope of the universal service, in order to guarantee compliance with the essential requirements.

3.1.4. Recommended regulatory approaches

As previously mentioned and in accordance with the Third Postal Directive all service providers, USPs and those licensed or authorised, may be required to comply with the essential requirements. Although the Directive defines essential requirements it does so in a very broad manner and leaves this term open to interpretation. Therefore as a starting point national legislation should clearly define the precise meaning and scope of the essential requirements, including for which service providers the obligations are imposed on and also provide the necessary powers required for the NRA to “guarantee compliance with the essential requirements”.

Thus in order to establish a basic standard for all service providers in terms of the essential requirements and integrity of postal items it would appear necessary for the NRA or a competent national body appointed by the member state to issue standard guidelines providing the minimum requirements to ensure the security, confidentiality and integrity of the postal items.

Although it might be expected that all postal service providers will of their own accord have some form of basic policies and procedures in place to safeguard the integrity of postal items for example to avoid at a minimum the theft, damage or loss of postal items, without there being an exact definition of the meaning and scope of the essential requirements, these policies and procedures are likely to significantly vary from company to company. For this reason it would appear beneficial to all concerned, service providers and consumers, if there were guidelines setting the required minimum service standard for postal services regarding security, confidentiality and integrity of postal items. Furthermore in a multi-operator environment, interoperability is another important issue with regard to safeguarding the integrity of postal items and it is recommended that procedures should also include agreements between operators for example regarding address changes, undeliverable postal items, etc. Where operators do not reach an agreement, the NRAs should have the powers to impose minimum requirements.

Postal service providers should then implement procedures covering the essential requirements as per the defined guidelines, provide these to the NRAs upon request and make them publically available as well as to the relevant operators. In this connection it should be noted that postal items in the course of transmission by post do not belong to the postal operator and that each item of correspondence is unlikely to have any intrinsic value. National legislation therefore traditionally made it a criminal offence to steal or delay such items, with severe penalties including mandatory imprisonment. With the corporatisation of postal services some postal operators have shown a reluctance to invoke the criminal law and have preferred to use internal disciplinary procedures. The necessity to subject all breaches of the criminal law in respect of mail handling by employees to due process is essential. It is therefore important for the NRAs to receive detailed reports of any incidents or breaches of procedure from service providers.

Finally, under the powers invested, the NRAs or national competent bodies should conduct compliance checks on service providers to ensure that the essential requirements obligations are being fulfilled. Where there has been a clear breach of the essential requirement procedures or the service provider fails/refuses to draw up the necessary procedures the NRA should impose an applicable sanction for any non-compliance, which may, at a national level, be aggravated.

3.2. Delivery and collection by the USP

3.2.1. Introduction

Earlier final collections or later deliveries of mail are very important part of quality of service, especially in the line of transit time and therefore consequently also the question of users satisfaction

If universal service providers would be allowed to collect mail as early in the day as they wish and to deliver it as late in the day as they see fit, users are potentially being deprived of their right to a next-day service.

3.2.2. Key results and findings of the CERP PT Consumer relations Questionnaire 2007

Section F of the Questionnaire was dealing with obligations of the USP to advertise and undertake mail collections and deliveries by a particular time of a day. This section was divided into five questions, but one can combine them into 2 logical sections:

1. Does Regulator receive many questions about earlier final collections or later deliveries, and if so from whom?
2. Is the USP under any obligation to deliver mail by a certain time, and if so, what are the latest delivery times?
3. What is the earliest final collection time allowed by the Regulator?

NRAs receive this kind of questions mainly from individual consumers and SME's, but just a small number of them.

Only three NRAs have imposed a formal obligation about latest delivery times, as regard to the transit time. Two NRAs issues internal regulation, all the rest have not placed any formal obligation on the USP to deliver mail on specific time of a day.

Only three NRAs stated that they define the earliest final collection time, in one case the USP is committed to collect mail differently in rural and urban areas, although according to the questionnaire it is not possible to identify which differences are these.

4. Are the final collections advertised on the collection point?
5. Are consumers advised on the collection point that the final collection has take place that day?

All NRAs responded to the fourth question with an answer YES, in half of cases consumers are advised about the final collection time.

3.2.3. Recommended regulatory approaches

The small number of questions concerning earlier final collections or later deliveries received by NRAs is probably the result of the fact that these kind of problems are usually solved between USP's and users, and therefore are not in the competence of NRA. In most of countries it is "normal" for the USP to have discretion defining their own schedule of collection and delivery of mail, simply because of the need for flexibility to manage its operations effectively.

It is also understandable that the earliest final collection time depends on opening hours of post offices, especially in circumstances when the USP is changing the hours of their post offices and must therefore link these changes with last collections of letter boxes. And last but not least, infrastructure is changing almost every day, so as the process of delivery and consequently logistics planning. So if new routes are designed, different times of delivery could take place.

Concerning this topic it is essential that the USP ensures a sufficient number and geographical stratification of contact points on the national territory taking into account reasonable requests of users and demand of postal services and the fact that the Universal Service has to be performed according to national postal legislation and the requirements set by the Directive. Working hours of contact points and the time of last collection from letter boxes are in majority cases defined by the USP.

Also, the USP has to assure the number of letter boxes in a manner suitable to collect postal items of correspondence, again taking into consideration reasonable demands of users of postal services. At the same time, the USP must assure that letter boxes are emptied at least once every working day and time of last clearing has to be listed on every letter box. The obligation concerning the NRA is in most cases that the USP has to notify the NRA about every abbreviation of the clearing time of the post boxes or changing the working hours of contact points. In Portugal, the designated universal service provider has also to inform the NRA of the opening and closure of post offices.

But again, their only obligation is to assure one clearance and one delivery to every person 5 days a week in urban and rural areas.

In the future it is expectable that many USP's are going to introduce some kind of cost saving program, including modification of their postal network. The process should be done in the agreement with all the interested parties and must not exclude social aspects, especially as regards to rural areas.

This process may affect delivery, since changing of postal routes could also consequently mean later delivery (e.g. addressee is now at the end of a postal route). On the other hand, end-users have or will have a possibility of choice, since many countries already offer added value service of either earlier or fixed time delivery.

Apart from rights of users to gain all the necessary information there is also the decisive role that final collection is playing in measurement of transit time.

The collection of mail from the post boxes is of great influence on the quality: the D+1 target time starts running at the moment of collection. It is therefore imperative that customers are informed of the clearance time of the post boxes.

It is recommended that the NRA monitor if the clearance time of each posting box is indicated on the posting box and is respected.

Article 6.2. of Standard EN 13850 says that: *“for the calculation of the transit time, test items shall be posted before the last collection time of the day for this type of mail stated on the postal letter box, published at the post office or otherwise announced by the postal operator. Test items posted after that time shall be considered as posted the next day.”*

It is therefore very important for the independent organization conducting the measurement to receive from panelists accurate data about the time of last collection of mail as well as working hours of post offices, because day of deposit J or D (the term date of deposit which is used in relation to quality of service measurement based on the First Postal Directive is a day on which postal item is posted, provided posting takes place before the published last collection time of that day at the point of induction of the mail.

Simple saying, if you are sending mail, you will need to get your item to the letter box or post office in time for last collection of the day, otherwise your mail probably won't get

processed until the following working day. It is in the USP's hands to emphasize the importance of this part of the postal chain to their postmen and to control the actual emptying of letter boxes.

It is difficult to assess whether there is a problem when final collections actually take place. In the UK, research indicated that a significant number of post boxes were being emptied before the final advertised collection time – causing a problem for end-users who could not be sure whether or not they had missed the final collection. That is also the reason why in some countries USP's (for example Slovenia) conducts investigations on the actual time letter boxes are emptied, and detecting and suppressing trouble spots. This is also one of the possibilities to improve the quality of transit time.

On the other hand it may be also possible that in some countries no final collections take place earlier than advertised, or it may be that the issue has simply not been investigated.

Summary

In summary the role of the NRA concerning delivery and collection by the USP should mainly be:

- To assure adequate density or number of contact points and letter boxes.
- To assure equal treatment of users in urban and rural areas, without prejudice of certain conditions of supply and demand as well as geographical conditions that may be accepted to influence post offices timetables, number of daily collections and deliveries, etc;.
- To actively follow all the changes in the process of delivery and collection
- To assure reliable and accurate results of the measurement of transit time.
- To assure that the final collections are advertised on the collection point and that they are complied;
- To continually draw the USP's attention to the importance of this last subject.

3.3. Density of Access points

3.3.1. Introduction

The Third Directive points out that Member States should ensure that sufficient access points are established taking into account user needs. An appropriate density of access points must be assured in order to satisfy the USO.

It is a difficult task for NRA's to evaluate whether the density of access points corresponds to the necessary equilibrium between the user needs and in the same time to the cost-efficient provision of the USO. If necessary corrective measures or recommendations regarding post offices as well as post boxes, can be considered by Member States /

NRA's, each taking into account the geographical situation and the specific needs of the inhabitants.

3.3.2. Key results and findings of the CERP PT Consumer relations Questionnaire 2007

This section of the Questionnaire was designed to explore the specific issue of how regulators define the number or density of access points available to consumers. Slightly more than a quarter of the respondents reported that legislation exists requiring the USP to provide a certain number of posting boxes and post offices.

However, nearly twice as many NRAs reported that there is a requirement for the USP to provide a specified density of access points. It is not apparent that there is any preference for defining this with reference to distance, population or a combination of these factors.

3.3.3 Recommended regulatory approaches

Post offices

Measuring density

Recommended regulatory approach:

a) Regarding the establishment of criteria:

- Regulation regarding the number /density of access points is advisable in order to safeguard an appropriate service level;

However, different geographical and demographic conditions require different approaches;

- In order to keep a sufficient network at an affordable cost, one could consider to elaborate alternatives for the traditional post offices to use specific access requirements for different service levels (e.g. post offices/outlets with a full range, a limited range or a basic range of services).

b) Regarding the monitoring of the respect of the criteria: whatever method for measuring the density is used, it should be transparent and verifiable for the NRA.

Promoting innovation

Within Article 5 of the First Postal Directive it is stated that the US "shall evolve in response to the technical, economic and social environment and to the needs of users."

Access points are part of the USO, thus, the functioning of the post offices should evolve according to:

- The technological changes: the use of new technologies in order to cut the costs and reduce waiting queues. For instance: installing self service kiosks for certain services;
- The economic environment: For instance: responding to the e-commerce boom by installing special e-commerce counters;
- The social environment: For instance available not only during working hours but also (a few times week) in the evening and on Saturday;
- The needs of users

Recommended regulatory approach: without interfering in the daily management of the USP, the NRA or a competent national authority should try to promote innovation. This can be done by drafting a recommendation to the USP or by awakening the government regarding this matter (e.g. when possible, assist the government when the government is setting out the service criteria).

Supporting alternative service channels

The closing down of post offices is mostly inspired by financial reasons. In order to guarantee a sufficient service, certain alternatives can be developed:

- *Mobile offices:* by using a traveling van
- *Mail man:* a small range of basic services could be offered by the mail man;
- *Joint venture agreements:* establishing postal counters in shops, municipal building etc. run by personnel that are not employed by the operator but regularly receive training from the operator.

Recommended regulatory approach: without interfering in the daily management of the USP, the NRA or a competent national authority could try to promote the use of alternative service channels in order to guarantee a sufficient service.

Specific needs

- *Businesses*

A post office plays an important role in the functioning of small and medium sized enterprises. Most likely the SME's do not have a collective agreement with the designated operator and are dependent upon their local post office for services. The cost of travelling to an alternative branch and/or reductions in opening hours will have an impact on these businesses.

Recommended regulatory approach: in the frame of a US that evolves in accordance with customers needs, the NRA shall stimulate the creation of business counters.

- *Disabled persons*

As an essential part of the universal postal service, post offices and postal outlets should be accessible for all users. For instance, the access to the premises should be adapted to wheelchair users and the offices and outlets should be equipped to assist other disabled customers (a hearing loop, electronic display systems).

Recommended regulatory approach: NRAs could promote the initiative to organize a survey amongst disabled to disabled persons and/or their representatives. If possible, a recommendation with potential adjustments to the infrastructure can be drawn up. However, there is European and Country specific legislation regarding disabled access rights which the Equality authorities are charged with monitoring under the Postal Directive the NRAs in general do not have this obligation aside from US obligations on articles for the Blind.

Code of practice for closures

Post offices have an important social function and quite often it is the last “commerce” to disappear in small villages. Therefore it is very important that stakeholders are informed in time of the forthcoming closure and of the alternative service channels.

Furthermore, Article 6 of the Postal Directive states that Member States must take steps to ensure that users are regularly given sufficiently detailed and up-to-date information by the USPs regarding the particular features of the US offered, with special reference to the general conditions of access to these services as well as to prices and quality standard levels. This background should not be neglected within the context of implementing the Third Postal Directive.

Recommended regulatory approach: NRA’s could see that the USP elaborates a communication scheme regarding the closure of post offices, taking into account the specific questions of the different stake holders (local authorities, residential users, business users, unions) regarding alternatives and the timing for the closure.

Post boxes

Code of practice for removals

Article 6 of the Third Postal Directive states that Member States could take steps to ensure that users are regularly given sufficiently detailed and up-to-date information by the universal service provider(s) regarding the particular features of the universal services offered, with special reference to the general conditions of access to these services as well as to prices and quality standard levels. This should not be neglected within the context of

the Third Postal Directive transposition. Customers often experience discomfort when they find out a posting box is removed without them knowing.

Recommended regulatory approach: NRA's could see that the USP elaborates a communication scheme regarding the removal of posting boxes. This communication scheme could not only indicate the timing of the removal of the posting box, but also the nearest alternative posting boxes, each with their clearance time.

Customer needs

a) Customers with mobility issues may have difficulty accessing post boxes, for instance when the letter slot is too high to reach, or when parking is difficult.

Recommended regulatory approach: NRAs can organize a survey amongst disabled persons and communicate the results to the designated operator. If possible, a recommendation with potential adjustments to facilitate the access to the posting box (lower the height of the letter slot, parking spot in front) can be drawn up.

b) Elderly and disabled customers may experience problems accessing a posting box further away in case of the removal of posting boxes.

Recommended regulatory approach: supporting alternative service channels: operators should be stimulated to develop alternatives for people that experience difficulties walking to a posting box. For instance, in some Member States, the designated operators have developed a service that enables customers to hand over their mail to the mail men when he passes during his round. In Belgium, the designated universal service provider hands out posters and stickers that customers can put on their window or door in order to ask the mail man to ring the door bell. The mail man can take along letters, parcels and registered mail.

Conclusions

The Report has shown that there are different regulatory approaches in place to deal with the protection of users rights enshrined by the Postal Directives within the Member States. They range from direct via an indirect to a non involvement of NRAs at all. However, it is at this stage a difficult task and a quite complex matter to evaluate and to recommend some regulatory approaches as "best" or even good practice and to state in general which role the NRAs or another competent National authority should play in the field of consumer protection.

In any case, it might be useful for the Member States to reflect and to recall that the main focus behind the protection of users rights is the direct connection between the user and the operator. Against this background it seems on the one hand to be advisable that the NRA or any other competent authority should only take action in the case to lead the way out if there is a "deadlock" as it seems inappropriate to be involved in the daily business

and to act on an operational level. On the other hand it seems quite important that Member States ensure ex ante that there are systems in place regarding the protection of users rights, e.g. complaints handling, compensation schemes etc. which are in line with the requirements set out by the Directive. In this context one solution for the Member States could be that the NRA or any other competent national authority is playing the role of a “mediator”.

Furthermore the Member States should bear in mind that the main future challenge in respect of the protection of consumer interests will be the implementation of the Third Postal Directive and to fulfil the legal requirements set out within.

One of the key points in this respect will be most likely to find the appropriate ways to handle the extension to **users of all postal service providers**. Against this background it seems interesting and worthwhile to share the experiences between the Members States in interpreting and implementing the relevant provisions of the Third Postal Directive.

Finally, it might be useful for the future work of the Project Team to develop a short Questionnaire addressed to the NRAs with the objective to obtain information on what practices (concerning complaints handling, statistics and other issues) they do consider effective in their national environment. This questionnaire should also include the practices that they consider the ones not be encouraged or the ones to be improved.

Annex:**List of Abbreviations**

Country Codes:	
BE	Belgium
FR	France
HU	Hungary
LT	Lithuania
LV	Latvia
MK	Macedonia
MT	Malta
NL	Netherlands
PL	Poland
PT	Portugal
SE	Sweden
SI	Slovenia
UK	United Kingdom

Other Abbreviations:	
ADR	Alternative Dispute Resolution
CERP	
EC	European Committee for Postal Regulation
EEC	European Commission
EU	European Economic Community
First Postal Directive	European Union
IDRS	Directive 97/67/EC Of The European Parliament And Of The Council of 15 December 1997
NRA	International Direct Response Services
POSTRS	National Regulatory Authority
Second Postal Directive	Postal Redress Service
SME	Directive 2002/39/EC Of The European Parliament And The Council of 10 June 2002
SMSPO	Small and Medium Enterprises
SOP	Service de Médiation pour le Secteur Postal
Third Postal Directive	Standard Operating Procedures
UPU	Directive 2008/6/EC Of The European Parliament And Of The Council of 20 February 2008
US	Universal Postal Union
USO	Universal Service
USP	Universal Service Obligation
	Universal Service Provider
Third Postal Directive	Directive 2008/6/EC Of The European Parliament And Of The Council of 20 February 2008

Provisions of the Third Postal Directive

<p><i>Recital No. 42</i> of Directive 2008/6/EC Of The European Parliament And Of The Council of 20 February 2008</p>	<p>In line with existing rules in other service areas and in order to increase consumer protection, it is appropriate to extend the application of minimum principles concerning complaint procedures beyond universal service providers. With a view to increasing the effectiveness of complaint handling procedures, it is appropriate to encourage the use of out-of-court settlement procedures as set out in Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes ⁽¹⁾ and Commission Recommendation 2001/310/EC of 4 April 2001 on the principle for out-of-court bodies involved in the consensual resolution of consumer disputes ⁽²⁾. Consumer interests would also be furthered through the enhanced interoperability between operators resulting from access to certain elements of infrastructure and services, and the requirement for cooperation between national regulatory authorities and consumer protection bodies.</p> <p>In order to protect the interests of users in the event of theft or loss of, or damage to, postal items, Member States should introduce, where warranted, a system of reimbursement and/or compensation.</p> <p>⁽¹⁾ OJ L 115, 17.4.1998, p. 31. ⁽²⁾ OJ L 109, 19.4.2001, p. 56.</p>
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Article 2	For the purposes of this Directive, the following definitions shall apply:
point 1	<i>postal services</i> : services involving the clearance, sorting, transport and distribution of postal items;
point 1a	<i>postal service provider</i> : undertaking that provides one or more postal services;
point 6	<i>Postal item</i> : an item addressed in the final form in which it is to be carried by a postal service provider. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal parcels containing merchandise with or without commercial value;
point 13	<i>universal service provider</i> : the public or private postal service provider providing a universal postal service or parts thereof within a Member State, the identity of which has been notified to the Commission in accordance with Article 4;
point 17	<i>User</i> : any natural or legal person benefiting from postal service provision as a sender or an addressee;

point 19	<p><i>Essential requirements:</i> general non-economic reasons which can induce a Member State to impose conditions on the supply of postal services. These reasons are the confidentiality of correspondence, security of the network as regards the transport of dangerous goods, respect for the terms and conditions of employment, social security schemes, laid down by law, regulation or administrative provision and/or by collective agreement negotiated between national social partners, in accordance with Community and national law and, where justified, data protection, environmental protection and regional planning. Data protection may include personal data protection, the confidentiality of information transmitted or stored and protection of privacy;</p>
Article 4	<p>1. Each Member State shall ensure that the provision of the universal service is guaranteed and shall notify the Commission of the steps it has taken to fulfil this obligation. The Committee referred to in Article 21 shall be informed of the measures established by Member States to ensure the provision of the universal service.</p> <p>2. Member States may designate one or more undertakings as universal service providers in order that the whole of the national territory can be covered. Member States may designate different undertakings to provide different elements of universal service and/or to cover different parts of the national territory. When they do so, they shall determine in accordance with Community law the obligations and rights assigned to them and shall publish these obligations and rights. In particular, Member States shall take measures to ensure that the conditions under which universal services are entrusted are based on the principles of transparency, non-discrimination and proportionality, thereby guaranteeing the continuity of the universal service provision, by taking into account the important role it plays in social and territorial cohesion.</p> <p>Member States shall notify the Commission of the identity of the universal service provider(s) they designate. The designation of a universal service provider shall be subject to a periodic review and be examined against the conditions and principles set out in this Article. However, Member States shall ensure that the duration of this designation provides a sufficient period for return on investments.</p>
Article 16	<p>Member States shall ensure that quality-of-service standards are set and published in relation to universal service in order to guarantee a postal service of good quality.</p> <p>Quality standards shall focus, in particular, on routing times and on the regularity and reliability of services.</p>

	<p>These standards shall be set by:</p> <ul style="list-style-type: none"> — the Member States in the case of national services, — the European Parliament and the Council in the case of intra-Community cross-border services (see Annex II). Future adjustment of these standards to technical progress or market developments shall be made in accordance with the regulatory procedure with scrutiny referred to in Article 21(2). <p>Independent performance monitoring shall be carried out at least once a year by external bodies having no links with the universal service providers under standardised conditions to be specified in accordance with the regulatory procedure with scrutiny referred to in Article 21(2) and shall be the subject of reports published at least once a year.</p>
Article 19	<p>1. Member States shall ensure that transparent, simple and inexpensive procedures are made available by all postal service providers for dealing with postal users' complaints, particularly in cases involving loss, theft, damage or noncompliance with service quality standards (including procedures for determining where responsibility lies in cases where more than one operator is involved), without prejudice to relevant international and national provisions on compensation schemes.</p> <p>Member States shall adopt measures to ensure that the procedures referred to in the first subparagraph enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement and/or compensation.</p> <p>Member States shall also encourage the development of independent out-of-court schemes for the resolution of disputes between postal service providers and users.</p> <p>2. Without prejudice to other possibilities of appeal or means of redress under national and Community legislation, Member States shall ensure that users, acting individually or, where permitted by national law, jointly with organisations representing the interests of users and/or consumers, may bring before the competent national authority cases where users' complaints to undertakings providing postal services within the scope of the universal service have not been satisfactorily resolved.</p> <p>In accordance with Article 16, Member States shall ensure that the universal service providers and, wherever appropriate, undertakings providing services within the scope of the universal service, publish, together with the annual</p>

	<p>report on the monitoring of their performance, information on the number of complaints and the manner in which they have been dealt with.</p>
Article 21	<p>1. The Commission shall be assisted by a committee.</p> <p>2. Where reference is made to this paragraph, Articles 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.</p>
Article 22	<p>1. Each Member State shall designate one or more national regulatory authorities for the postal sector that are legally separate from and operationally independent of the postal operators. Member States that retain ownership or control of postal service providers shall ensure effective structural separation of the regulatory functions from activities associated with ownership or control.</p> <p>Member States shall inform the Commission which national regulatory authorities they have designated to carry out the tasks arising from this Directive. They shall publish the tasks to be undertaken by national regulatory authorities in an easily accessible form, in particular where those tasks are assigned to more than one body. Member States shall ensure, where appropriate, consultation and cooperation between those authorities and national authorities entrusted with the implementation of competition law and consumer protection law on matters of common interest.</p> <p>2. The national regulatory authorities shall have as a particular task ensuring compliance with the obligations arising from this Directive, in particular by establishing monitoring and regulatory procedures to ensure the provision of the universal service. They may also be charged with ensuring compliance with competition rules in the postal sector.</p> <p>The national regulatory authorities shall work in close collaboration and shall provide mutual assistance in order to facilitate the application of this Directive within the appropriate existing bodies.</p> <p>3. Member States shall ensure that effective mechanisms exist at national level under which any user or postal service provider affected by a decision of a national regulatory authority has the right to appeal against the decision to an appeal body which is independent of the parties involved. Pending the outcome of any such appeal, the decision of the national regulatory authority shall stand, unless the appeal body decides otherwise.</p>

Article 22a	<p>1. Member States shall ensure that postal service providers provide all the information, in particular to the national regulatory authorities, including financial information and information concerning the provision of the universal service, namely for the following purposes:</p> <p>(a) for national regulatory authorities to ensure conformity with the provisions of, or decisions made in accordance with this Directive,</p> <p>(b) for clearly defined statistical purposes.</p> <p>2. Postal service providers shall provide such information promptly on request and in confidence, where necessary, within the timescales and to the level of detail required by the national regulatory authority. The information requested by the national regulatory authority shall be proportionate to the performance of its tasks. The national regulatory authority shall give the reasons justifying its request for information.</p> <p>3. Member States shall ensure that national regulatory authorities provide the Commission, upon request, with appropriate and relevant information necessary for it to carry out its tasks under this Directive.</p> <p>4. Where information is considered confidential by a national regulatory authority, in accordance with Community and national business confidentiality rules, the Commission and the national regulatory authorities concerned shall preserve such confidentiality.</p>

Statutory Sources

Directive 97/67/EC Of The European Parliament And Of The Council of 15 December 1997	Common rules for the development of the internal market of Community postal services and the improvement of quality of service
Directive 2002/39/EC Of The European Parliament And The Council of 10 June 2002	Amending Directive 97/67/EC with regard to the further opening to competition of Community postal services
Directive 2008/6/EC Of The European Parliament And Of The Council of 20 February 2008	Amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services
EN 14012:2003	Postal services – Quality of service – Measurement of complaints and redress procedures
Council Directive 93/13/EEC of 5 April 1993	Unfair terms in consumer contracts
Commission Recommendation 98/257/EC of 30 March 1998	The principles applicable to the bodies responsible for out-of-court settlement of

	consumer disputes
Commission Recommendation 2001/310/EC of 4 April 2001	The principles for out-of-court bodies involved in the consensual resolution of consumer disputes
EN 13850	Postal Services-Quality of Service- Measurement of transit time of end-to-end services for single piece priority mail and first class mail

CERP PT Relations with Consumers Report

CERP Working Group Supervision/Market Data

*PT Relations with Consumers***Rationale**

It is clearly essential for postal operators to take account of the needs of large mail customers and of individual consumers, both for commercial and for regulatory reasons. Regulators, on the other hand, when implementing the requirements of the Postal Services Directive, have to strike a balance between developing policies based on economic factors and those (often conflicting) which arise directly from customer needs. The national regulatory framework does not usually establish NRAs with the resources necessary to develop consumer expertise themselves; rather they tend to rely on input from national consumer bodies. However, the CERP Working Group Supervision/Market Data has identified an increasing need for postal regulators themselves to understand the requirements of users – and to communicate with them – in order to fulfil their regulatory responsibilities in the increasingly liberalised European postal market.

Process

Early in 2006 the Working Group therefore resolved to investigate the extent to which postal regulators are in touch with users of postal services. A Project Team was established consisting representatives from 7 member States, ANEC and the European Commission in order to develop a questionnaire which would explore this issue. The questionnaire was developed in the second half of 2006 and circulated in Spring 2007 for completion by CERP members.

Content

The questionnaire attempted to explore a wide range of situations in which there might be interaction between regulators, postal operators and consumers. It was divided into eight sections covering:

- Complaints – the extent to which regulators are directly involved in the process of complaint handling, the powers they exercise to resolve complaints and whether the information received from complaints has led to any form of enforcement action.
- Compensation – the extent to which compensation is available to customers (on an automatic or discretionary basis – or not at all); the mechanisms by which customers are made aware of their right to compensation and the role played by regulators in monitoring the process for such payments.
- Postal Operators – the frequency with which information on services is provided to regulators by postal operators (the Universal Service Provider and others); the power possessed by regulators to obtain such information and the use to which it is put.
- Statistics – the frequency with which regulators receive statistical information on issues of direct importance to consumers (loss, damage, delay etc); the power possessed by regulators to obtain such information and the extent to which it is used for regulatory purposes.

- Contact with consumers and their representatives – the frequency with which regulators provide statistical information directly to postal users; the level of direct contact, the extent to which consumer surveys are undertaken and how the results are communicated.
- Delivery and collection by the Universal Service Provider – a section addressing the specific issue of obligations placed on the USP to advertise and undertake mail collections and deliveries by a particular time of day.
- Customer-focussed aspects of the Postal Services Directive – the extent to which regulators require all operators to take responsibility for mail integrity, and whether they require the USP to implement EN14012 (the complaints and redress standard).
- Access points – a final specific question on how regulators define the number or density of access points available to consumers.

Objectives

The questionnaire was principally intended to provide a preliminary overview of the extent to which practice varied across member States. It was never expected to result in definitive conclusions or recommendations, but rather to give an indication of the level of interaction between regulators and consumers in various areas and – if possible – to identify examples of good practice. It was also intended to help with the identification of areas where more detailed investigations might be useful in the future.

Outcome

18 member States responded to the questionnaire:

Belgium (BE)	France (FR)	Netherlands (NL)
Cyprus (CY)	Hungary (HU)	Norway (NO)
Germany (DE)	Ireland (IE)	Portugal (PT)
Denmark (DK)	Lithuania (LT)	Sweden (SE)
Estonia (EE)	Latvia (LV)	Slovenia (SI)
Spain (ES)	Malta (MT)	United Kingdom (UK)

The questionnaire itself appears at Annex 1 with the detailed results of each section at Annex 2. The remainder of this report provides an overview of the responses received and makes a number of observations on the level of involvement of regulators. It is in no way intended to be critical of the approach in any member State; rather it is intended to help CERP members to understand how interaction with consumers is handled elsewhere in order to assist them in deciding upon the appropriate level of regulatory involvement with consumers and their representatives.

Way Forward

This exercise has succeeded in illustrating that there are many different approaches to postal regulation in Europe and many different ways in which regulators interact with consumers. Whilst it may be thought useful to explore certain issues in more detail in the future, the current study has raised a number of questions which european postal regulators may wish to consider at this stage.

At a high level it appears that there is considerable variability in the extent to which regulators obtain information on customer issues, the way in which they acquire this information, the

powers they have to address problems and how willing they are to use such powers as they possess. NRAs may therefore wish to consider specifically:

- Are they making best use of technology – specifically web pages on the internet – to communicate with consumers?
- Is there also scope for using more direct means of seeking customer views (such as the Portuguese complaints book system or undertaking consumer surveys)?
- Are NRAs doing enough to publicise their own existence and to let consumers know what they can do to help?
- Are they making full use of the consumer information at their disposal to influence their regulatory decision making processes?
- Do they have adequate power to encourage – or ultimately to force – operators to take account of customer needs?

And more specifically:

- Are postal regulators confident that the low level of direct contact by consumers confirms that operators resolve complaints to the customers' satisfaction – especially where there is no alternative resolution available to consumers?
- Should compensation schemes be more widely publicised, and if so – how?
- Should postal operators be required to publish information on the services they provide and the quality of service they achieve?
- Should such requirements apply equally to universal services providers and to their competitors?

Looking to the future, are NRAs preparing for the effects of full market liberalisation and potentially a significant growth in competition? For example:

- Will commercial pressures lead to significant changes in patterns of collection and delivery?
- Will it also lead to a reduction in the availability of access points where the full range of universal service products (eg registered and insured items) is available?
- Are postal regulators satisfied that the criteria specifying the location and density of access points are robust?
- Are regulators confident that they have the powers to ensure a network of access points which fully meets the needs of consumers?

Complaints (Section A)

This section of the questionnaire was designed to explore the extent to which regulators are directly involved in the process of complaint handling, the powers they exercise to resolve complaints and whether the information received from complaints has led to any form of enforcement action.

A.1: Approximately how many complaints about postal services do you, the Regulator, receive each year; and how many of these are not appropriate for you to deal with (eg should have been directed to the USP, or do not relate to regulated services)?

Of the complaints that are appropriate for you, the Regulator, to handle:

A.2: Who do you receive complaints from?

A.3: How do you receive the complaints?

A.4: If you receive complaints, what can you do for the customer?

Once you receive the complaints, do you offer a service to resolve the issue?

If you do offer a service to resolve complaints, do you have the power to enforce your decision?

If you do not offer a service to resolve complaints, who handles them?

A.5: Have you used the information you received from complaints [to...]

A.6: If so, do you undertake a public consultation before taking these steps?

A.7: If you do not handle complaints about postal services in your country or if someone else also handles them, who deals with such complaints?

Once they receive the complaints, do they offer a complaint resolution service?

If yes, do they have power to enforce their decision?

If no, does anyone else have this power?

Results

This section of the questionnaire is particularly difficult to summarise because it invited respondents to provide numerical data in respect of complaints. Inevitably the figures cover a wide range and are easily open to misinterpretation. However, it is clear that in general regulators receive only a relatively small number of complaints; most of these concern universal services and most are received from individual consumers. Most complaints are received by letter, telephone or e-mail, but very few through a website.

More than half the regulators who responded reported that they offered a service to resolve the complaint, although powers to enforce this decision related principally to the provision of universal services.

And whilst a small number of member States reported the existence of a formal ombudsman there remained a few where no alternative dispute resolution procedure appeared to be available to a consumer whose complaint was not satisfactorily resolved by the postal operator.

Relatively few respondents claimed to have used the information received from complaints to amend or withdraw licences, adjust targets or even to impose fines.

Comments

Whilst it is not surprising that most complaints received by the postal regulators come from individual consumers and relate to universal services, this is not necessarily a fair indication of major issues affecting the provision of postal services in a particular country. It does, however, provide an indication of the importance of regulators maintaining regular contact with consumers in order to understand the issues which are of direct concern to them.

That said, it is interesting to note that postal regulators do not seem to make great use of the intelligence they gather from complaints to implement changes to the regulatory enforcement framework.

It is clearly appropriate for the operator (usually the universal service provider) to be given the opportunity to resolve complaints before they are passed to the regulator and that this should result in a very small number being appropriate for the NRA's attention. But it might be interesting to understand whether it is the USP's satisfactory complaints resolution procedure that results in such a small number being directed to the regulator or whether there are other contributory factors such as lack of awareness of the NRA, its functions and powers.

Similarly, although there is no obvious need for regulatory power if complainants are satisfied with the response they receive from the USP, it is somewhat surprising that postal regulators do not have more power to resolve complaints and to enforce their decisions – in case the USP (or other postal operator) is not fulfilling its role responsibly.

Compensation (Section B)

This section of the questionnaire was designed to explore the extent to which compensation is available to customers (on an automatic or discretionary basis – or not at all); the mechanisms by which customers are made aware of their right to compensation and the role played by regulators in monitoring the process for such payments.

B.1: Do postal operators give financial compensation for standard letter items in the following circumstances?

Is there any automatic financial compensation for registered/insured items?

B.2: Who (if anyone) uses the following mechanisms to make customers aware that compensation is available?

B.3: Do you, the Regulator, monitor the process for payment of compensation?

Results

At least half the respondents reported that compensation was not available to any class of user for loss, damage or delay to standard letter items (ie those not registered or insured). And in only about half those member States where compensation was available for such items was there an *automatic* entitlement to compensation.

Almost all regulators appear to rely on the universal service provider to make customers aware that compensation is available. Only four of the regulators who responded claimed to offer such a service – all making use of their website.

Finally, only three respondents said that they monitored the process for payment of compensation.

Comments

This is one of the most surprising – and even disappointing – areas of response. Compensation is a key factor for users of postal services, and it would therefore seem to be an area where the regulator should be very closely involved. Postal regulators might have been expected to take a very keen interest in the nature of claims, the entitlement of users and the whole process by which operators compensate them for service failures in order to help them to regulate the industry.

The process appears to be driven largely by the operators themselves, both in terms of the provision of information and the decision to provide financial compensation. Further work could be undertaken in this area to establish the scale of the problem and the extent to which consumers are dissatisfied with – or even unaware of – the arrangements which exist.

Postal Operators (Section C)

This section of the questionnaire was designed to explore the frequency with which information on services is provided to regulators by postal operators (the Universal Service Provider and others); the power possessed by regulators to obtain such information and the use to which it is put.

C.1. How frequently (eg monthly, annually, never) do you (the regulator) receive information from postal operators on new services or changes to services they provide?

C.2. What powers do you have for obtaining that information?

C.3. What do you do with this information?

Results

All respondents appear to have the power to obtain information from the USP on new services or changes to existing services, and most have similar powers in respect of other licensed operators. However, whilst such information is provided comprehensively by the USP, considerably less seems to be acquired on other operators' services.

Whilst relatively few regulators publish this information, the majority of respondents claim to use it for regulatory purposes and/or in assessing the impact on a competitive market.

Comments

It is interesting to note that there is no standard frequency with which this information is provided. However, there is no reason why every regulator should receive such information in a similar way. It is clearly important from a consumer point of view that the regulatory authority is fully informed about the full range of universal services offered by the USP and it is understandable that regulators should receive less information about services provided by other operators or by the USP on a non-universal basis. But it is reassuring to note that even these later two categories are considered in the context of a competitive market and for regulatory purposes.

It is also somewhat surprising to see how few regulators publish this information. Presumably the majority consider that this is the responsibility of the operators (whether USP or

competitors); and presumably it is in their commercial interests to ensure that information on competitive products and services is well advertised. On the other hand, it is important that regulators should not underestimate the importance of ensuring that comparative data are published in order to encourage competition. Many consumers – including commercial organisations – place great emphasis on aspects of performance (such as reliability of delivery) as well as price when selecting an operator to meet their postal requirements.

Finally, it might be interesting to explore the extent to which regulators satisfy themselves that information in respect of ‘monopoly’ universal service products and services is indeed readily available and accessible to users.

Statistics (Section D)

This section of the questionnaire was designed to explore the frequency with which regulators receive statistical information on issues of direct importance to consumers (loss, damage, delay etc); the power possessed by regulators to obtain such information and the extent to which it is used for regulatory purposes.

D.1. How frequently (e.g. monthly, quarterly, annually, never) do you as a Regulator receive statistical information on general questions or on *complaints about the following issues* from the Postal Operator? Please indicate against each category.

D.2. What powers do you have to obtain this type of information?

D.3. How is this information used for regulatory purposes?

Results

Nearly all postal regulators appear to have the power to obtain statistical information from both the Universal Service Provider and other licensed operators on general questions or on complaints. The results of this survey show that most respondents receive data on complaints from the USP. Such information appears usually to be provided on an annual basis and covers the major issues of concern to customers (loss, damage, delay, compensation etc). However, very few regulators receive such information from other licensed operators.

Moreover, less than half the respondents state that this information is used for regulatory purposes.

Comments

This appears to be an area where regulators have the opportunity to gather information of direct relevance to customers, and more than half the respondents do indeed receive data on a regular basis. However, this is almost exclusively in relation to the performance of the USP (not other licensed operators) and it is not clear that this is being used to any great extent to further the interests of users.

It is surprising to note that a small number of respondents do not claim to receive any of the statistics on the subjects identified in the questionnaire. And again it is interesting to observe that even those postal regulators who do collect statistics do not seem to make great use of the information they gather from them to implement changes to the regulatory enforcement framework.

Finally, it would be interesting to understand whether regulators have taken a conscious decision not to seek information from other licensed operators. Is there any justification for treating the USP and its competitors differently in this respect?

Contact with consumers and their representatives (Section E)

This section of the questionnaire was designed to explore the frequency with which regulators provide statistical information directly to postal users; the level of direct contact, the extent to which consumer surveys are undertaken and how the results are communicated.

E.1. How frequently (e.g. monthly, quarterly, annually, never) do you as a Regulator provide statistical information on general questions or on *complaints about the following issues* to consumers and their representatives?

E.2: How many contacts do you (the Regulator) receive each year from users by the following methods?

E.3: Do you undertake consumer surveys?

If yes, which of the following methods are used to conduct these surveys, and how frequently (e.g. annually)?

E.4: How are users informed of the results of these surveys?

Results

Although the response table at Annex 2 again appears well populated, only a small proportion of respondents claim to provide regular statistical information to consumers and their representatives. Indeed, closer examination reveals that a surprisingly large number of respondents do not provide any such hard data to consumers.

In general the postal regulators who responded to the survey have considerably greater contact with users over complaints than on questions relating to products and services. But all the numbers quoted are relatively low – with the notable exception of Portugal whose complaints book⁶ generated nearly 4,000 contacts.

Over half of respondents (11 out of 18) reported undertaking consumer surveys, with ‘market research’ appearing to be the most popular method. Communication of the results was predominantly by means of the regulator’s website.

Comments

The number of direct contacts between regulators and users is remarkably low. It is not entirely surprising how few contacts relate to products and services – one might expect users to approach operators directly for this information. However, this could be one further indication that regulators are not well known and that methods for contacting them are not well developed. It would also be reassuring to receive confirmation that it is a conscious decision on the part of postal regulators not to provide regular statistical information to consumers and their representatives.

⁶ In Portugal, all postal operators must have a complaint book in each store and send all complaints registered therein to the Regulator

Whilst a commendable proportion of regulators claim to undertake consumer surveys, it would be interesting to explore further the precise nature of these exercises to investigate the breadth and depth of their scope.

And while it is pleasing that the results of the surveys are published, the responses showed that the preferred method is posting them on a website. It would be interesting to explore whether this is a successful means of dissemination given the low profile of the regulators and the proportion of people who do not have access to the internet. Even for those that do, they may not be likely to look for the results unless their attention is drawn to their existence – for example by an article on the results appearing in the press.

Delivery and collection by the Universal Service Provider (Section F)

This section of the questionnaire was designed to explore the specific issue of obligations placed on the USP to advertise and undertake mail collections and deliveries by a particular time of day.

Do you as a Regulator receive many questions about earlier final collections or later deliveries, and if so from whom?

F.1. Is the USP under any obligation to deliver mail by a certain time? If yes, what are the latest delivery times?

F.2. What is the earliest final collection time allowed by you, the Regulator?

F.3: Are final collections advertised on the collection point?

F.4: Are consumers advised on the collection point that the final collection has taken place that day?

Results

No evidence was found of any regulator placing a formal obligation on the Universal Service Provider to deliver mail by a certain time of day. And only three respondents stated that they imposed a condition on the earliest final mail collection time.

All respondents reported that final collection times were advertised on collection points; but a much smaller number stated that confirmation was provided of the final delivery having taken place.

Comments

If universal service providers are allowed to collect mail as early in the day as they wish and to deliver it as late in the day as they see fit, users are potentially being deprived of their right to a next-day service. Indeed, if mail were collected so early on J1 that it had to be prepared on J0, and it was then delivered 'first-class' 'next-day' – but not until the end of J2 so that it could not in practice be actioned until J3, this is more akin to a 'second-class' J+3 service.

It is difficult to assess whether there is a problem with when final collections actually take place. In the UK, research indicated that a significant number of post boxes were being emptied before the final advertised collection time – causing a problem for consumers who could not be sure whether or not they had missed the final collection. It may be that in other

countries no final collections take place earlier than advertised, or it may be that the issue has simply not been investigated.

Customer-focussed aspects of the Postal Services Directive (Section G)

This section of the questionnaire was designed to explore the extent to which regulators require all operators to take responsibility for mail integrity, and whether they require the USP to implement EN14012 (the complaints and redress standard).

G.1: Integrity of mail – Do you, the Regulator, require all postal operators to take responsibility for integrity of mail?

If yes, what is the sanction if they fail?

G.2: Have you required the USP to implement EN14012 Complaints and Redress standard?

Results

All respondents required the USP to take responsibility for the security of mail which formed part of the universal service obligation; and all but one required the USP to be responsible for the integrity of mail carried outside the USO. The vast majority also extended this mail integrity requirement to other licensed operators.

A range of appropriate sanctions was described which could be imposed on operators who failed to ensure the security of mail they carried.

The picture in respect of EN14012 was, however, much less clear. Approximately equal numbers of respondents reported that this standard was either fully implemented or not implemented at all.

Comment

At first sight, the situation in respect of mail integrity appears very satisfactory – although it would be interesting to understand more about the methods each regulator uses to check that mail is indeed being handled securely and the sanctions which are actually imposed when a breach is identified.

However, it can be argued that it is a fundamental responsibility of postal regulators to ensure that operators take full responsibility for the integrity of the mail they carry. Any relaxation of this duty (for example in respect of mail handled by competing operators, or even ‘non-USO’ mail carried by the USP) is a serious issue. It is also unclear from the questionnaire responses whether all regulators require full protection of USO mail – including that carried by operators other than the USP. There is therefore no room for complacency in this area, and possibly a need to investigate the situation in greater detail to dispel such concerns.

So far as procedures for complaints and redress are concerned, this raises interesting questions over the value of standardisation in this area. Given the crucial importance of this subject to users and the fact that a European standard exists, it is surprising that more regulators have not chosen to require compliance by universal service providers within their countries.

Access points (Section H)

This section of the questionnaire was designed to explore a final specific issue of how regulators define the number or density of access points available to consumers.

H.1: Is there legislation requiring the USP to provide a certain number or density of access points?

H.2: How is access point density measured? Is it by:

Results

5 of the 18 respondents reported that legislation exists requiring the USP to provide a certain number of posting boxes, and one additional country has such a requirement in relation to post offices.

However, nearly twice as many regulators reported that there is a requirement for the USP to provide a specified density of access points.

Where access point density is required, it is not apparent that there is any preference for defining this with reference to distance, population or a combination of these factors.

Comment

The Postal Services Directive requires member States to take steps to ensure that the density of points of contact and of access points takes account of the needs of users. One might therefore have expected all regulators to have introduced a density requirement in respect of access points; but the questionnaire results suggest that this is not the case for about one third of respondents.

Given that both posting boxes and Post Offices are access points, it was to be expected that criteria would be defined which applied to both (although clearly not the same requirement in each case). Both types of access point are essential to customers: a post box is simply a means of introducing pre-paid mail into the postal pipeline whereas the latter is the means by which consumers can gain access to the full range of universal service products.

However, in the future – particularly with the introduction of automated postal centres and the trend towards Post Offices providing a wide range of services among which postal offerings continue to decline – it might be worth considering the extent to which an access point is redefined to ensure that users do indeed have adequate access to universal postal services.

Finally, it is not surprising that there is no consensus over whether to measure access point density with reference to distance, population or a combination of the two. In the absence of any well-defined criteria (or standards) for the application of such criteria there are advantages and disadvantages to both methods.