



# Key principles set out by the Federal Ministry for Economic Affairs and Climate Action for a revision of the Postal Act

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Postal services are part and parcel of people's daily lives – whether it is a holiday postcard, a letter from your insurance company, advertising from your favourite store or the parcel containing your online shopping items. **The expectations placed by users in the different types of postal services have changed over time.** Today, reliability are the priorities for letters, whilst speed and predictability take pride of place for parcels.

**Digital solutions** have been shaping the postal sector – which most people think of as a purely analogue industry – for a long time. There are apps to track and redirect deliveries in real time, you can store parcel labels and postage on your mobile device and receive parcels 24/7 at automated pick-up points. In a **mobile and digital society, transparency and flexibility** are key.

In Germany, a large number of **highly efficient postal service providers** are working to meet the **ever growing expectations** of both recipients and senders. The **competition** for customers **between these providers** is a particularly important factor for ensuring the high quality of the services provided and the development of a variety of innovations.

In order to take adequate account of the importance of postal services for people's lives, drive forward digital progress in the industry and strengthen market-based mechanisms, a **fundamental modernisation of the regulatory framework for postal services** is needed.

By modernising the Postal Act, the Federal Ministry for Economic Affairs and Climate Action is seeking to provide incentives for a **more sustainable delivery of letters and parcels** and **digital solutions** in order to contribute to the **socio-ecological and digital transformation of the postal sector**. An **environment characterised by competition** provides the right framework for the successful transformation of the postal markets. Fair and functioning competition are not only in the interest of postal users but also in the **interest of employees** in the postal sector – a personnel-intensive industry where distortions of competition often result in a deterioration of working conditions.

## I. Ensuring a permanent supply of postal services in urban and rural areas

Even in an increasingly digital society, **postal services** continue to be an **essential part of people's daily lives**. However, digitisation has changed the significance of different types of postal services over the last few years. This is why the nationwide supply of postal services – the universal service – set out in German constitutional law and European law needs to be **adapted to the changed requirements of users in an increasingly digital society**. The special requirements of rural areas and demographic change also need to be taken into account.

The rise of e-commerce has made **parcels** an **integral part of our supply of day-to-day goods**. Increases in delivery volumes have nurtured the development of widespread competition based on the use of parallel infrastructure, ensuring a good supply of parcel delivery services across both urban and rural areas.

Even though **letters** are being increasingly replaced by electronic forms of communication (such as emails, text messages, online user accounts etc.), their **importance** for German users **continues to be remarkable** by European comparison. This not only applies to letters sent to or received from companies and public authorities but also to personal communication. However, the volume of **letter deliveries** is expected to **decrease** further in the coming years. Even though the switch to digital forms of communication is having an impact on users' requirements towards **letter deliveries**, **reliability** remains key.

In light of current **issues regarding delivery quality**, the Bundesnetzagentur has registered a massive rise in complaints from users. This shows that users continue to attach great importance to an adequate supply of postal services and that the Bundesnetzagentur does not have the tools it needs to effectively respond to quality deficiencies. In order to provide it with the **powers to issue effective instructions and sanctions**, a clear definition of the services covered by the universal service and the entity to perform these services is needed.

Statutory requirements on supply must take better account of the fact that the **deliveries made by postal service providers contribute to our carbon footprint**. However, these statutory requirements must not undermine the extensive efforts undertaken by postal companies to reduce their carbon footprint. Instead, **legal requirements should go hand in hand**, as far as possible, **with incentives** to ensure the **sustainability of postal services** in future.

- We want to **strengthen** the Bundesnetzagentur's **powers to ensure compliance with universal service requirements**. Regular quality checks and **effective remedial powers** in cases where an undersupply of postal services occurs – even if it is only temporary or local – should be combined with requirements for universal service providers to submit regular reports. If service providers fall far, repeatedly or permanently short of the requirements, the Bundesnetzagentur needs to have the powers to issue **effective sanctions**.

- **Digital and automated solutions** need to be **adequately taken into account** in the universal service. Automated facilities that are available around the clock could be one way to meet users' needs. However, the supply of products for which no automated solution is available also needs to be ensured across urban and rural areas.
- Inflexible universal service requirements will be unable to meet the needs of a dynamic and mobile society. This is why we want to provide for more flexible requirements that meet the **needs of users** whilst promoting a **universal service that is as sustainable** as possible.
- We want to adapt the **catalogue of universal service products** to users' current needs. The current catalogue includes cash on delivery letters – even though cash on delivery parcels are more common and the service is competition-driven.
- The **current routing times** are not very meaningful and **should be adapted**. For example, the requirement that providers must deliver 80% of the letters they transport on the next business day as an annual average is hardly very helpful. The recipient does not know whether their letter is among the 80%. Requirements providing for longer routing times and greater reliability would better serve the needs of users whilst making the universal service more sustainable. An **effective tracking mechanism** could make postal deliveries more transparent for users and help the Bundesnetzagentur monitor compliance with routing time requirements.

## II. Effective protection of consumers' interests

Whilst the role of the universal service is to ensure an adequate supply of basic postal services, **user interests that go beyond these services are to be increasingly focused on as well**. The aim is to reconcile mass market business, legitimate customer interests and sustainable service provision.

In 2021, **dispute resolution proceedings in the postal sector were strengthened for the benefit of consumers**. Since this date, it has been mandatory for postal service providers to participate in such proceedings if a consumer submits a request for dispute resolution to the Bundesnetzagentur as the Postal Dispute Resolution Panel. This has led to a significant rise in the number of dispute resolution proceedings handled by the Bundesnetzagentur. Whilst in 2020 only 1,861 requests for dispute resolution were submitted, this number rose to 3,752 in 2021. This development shows that consumers defend their legitimate interests if they are given the opportunity to do so. We want to continue to pursue this policy in the revision of the Postal Act.

- We are planning to **create a 'digital atlas'** that will make postal services more visible and more easily accessible for users. As part of this project, the Bundesnetzagentur will provide easy-to-access **information about the postal services available**. Users will be enabled to identify at any time where (locations) and when (opening hours) which postal services are available to them.

- We want to further improve **transparency for end users** by requiring certain basic information to be provided when offering services in post offices or online. This information will make it easier for users to compare different products and providers.
- We also want to help provide users with access to simple and transparent procedures for the appropriate and swift handling of complaints and disputes. Here, it is important to focus on **both the senders and recipients** of the postal items. We want more cases of disputes to be settled by agreement between the service providers and users even before the initiation of dispute resolution proceedings. This is to be achieved by setting out **minimum requirements for service providers' complaints procedures**.
- By requiring postal service providers to submit **regular reports on the carbon footprint** of their postal services and on their sustainability programmes, we are hoping to improve **transparency and comparability** for users and to encourage providers to become more **sustainable**. In this context, it is important for the Bundesnetzagentur to have harmonised standards which are currently being developed at European and international level. This will help illustrate the sector's contribution to our climate targets.
- We will look at possibilities of encouraging users to opt for more efficient and thus **more sustainable delivery alternatives**. Here, cooperative solutions for 'last mile' delivery can also help relieve the burden on inner cities and thus contribute to a more sustainable postal sector.

### III. Easy access to the market, transparent monitoring of markets and effective market surveillance

Germany has a **wide range of service providers** delivering letters and parcels. These include large logistics companies, small and medium-sized transport service providers and operators of branch offices and agencies. It is through interaction between these many stakeholders that the letter and parcel market can work effectively.

The Bundesnetzagentur is responsible for monitoring access to the postal markets and ensuring compliance with postal regulations in this dynamic market environment.

At present, different **market access regimes** exist in parallel: a licensing requirement for letter delivery and a notification requirement for parcel delivery. This makes the Bundesnetzagentur's job of monitoring the market more complicated and renders market access for service providers delivering letters more difficult. In addition, the Bundesnetzagentur has **separate sets of sanctions** for service providers delivering letters and for service providers delivering parcels. In our opinion, this separation is no longer justified.

We want all **service providers** – irrespective of whether they deliver letters or parcels – to abide by the same standards and we want the Bundesnetzagentur to be able to apply the **same sanctions** to all service providers **so it can effectively punish violations of the law**. We also believe that it makes sense for the Bundesnetzagentur to regularly share

with the public important findings on the postal markets that it has gained from its monitoring activities.

- We want **market access** to be governed by a **harmonised digital procedure that applies to all postal service providers** and eliminate unnecessary barriers to market access. In order to ensure extensive market monitoring and effective regulation, all companies operating on the postal markets need to be included.
- In addition to this, the Bundesnetzagentur needs to be equipped with **harmonised monitoring and sanctioning powers**. It needs to be empowered to intervene in cases where any service provider violates the law and also ban service providers from the market as a last resort. The focus of market surveillance is to be on ensuring compliance with postal regulations.
- **Decent working conditions** in the postal sector are of great importance to us. The Bundesnetzagentur is to continue to monitor compliance with statutory working conditions on the postal markets – to the extent permitted by its legal powers and staffing capacities. We will examine the extent to which the current system needs to be changed in order to ensure enforcement of the rules. For example, the Bundesnetzagentur is to make increased use of the Central Trade and Industry Register as it conducts market surveillance activities. This will allow it to take into account infringements of labour or social regulations in its proceedings. A special focus will be placed on **non-transparent contractor arrangements** which make infringements of labour and labour and social regulations more likely.
- **Regular publications** help provide greater transparency for the public. This is why we are seeking to examine which **additional market surveillance insights** the Bundesnetzagentur could publish as part of its established publications (e.g. activity reports, market data, national and international price comparisons) and to adapt information rights accordingly. In this context, we will examine how data can be collected and used effectively so the burden on companies can be kept as low as possible and the Bundesnetzagentur can **process the data in a way that makes sense**.

#### IV. A level playing field for letters and parcels

Postal markets will continue to require **market regulation**. However, the need for regulation differs between different markets.

The **parcel market** has seen the emergence of a dynamic competitive environment in the last few years, particularly in the business customer segment. E-commerce has been a main driver of this. Several large service providers on the market operate their own country-wide infrastructure. Competition in the private customer segment is less intense.

Competition on the **letter markets** continues to require regulatory encouragement. The market shares of competitors in this market have recently stabilised across all segments along with falling delivery volumes. Business consolidation in the letter market has weakened competition rather than strengthened it. The introduction of the margin



squeeze test in 2021 was a first step towards regulating the letter market in a more competition-based manner. However, further steps are needed:

- **Market regulation needs to be readjusted.** In future, the specific need for regulation on the different postal markets is to be continuously investigated based on a market definition and analysis procedure. This will allow market regulation to be used where it is needed and phased out where its use is no longer legitimate (three criteria test) based on findings on the current competitive environment.
- The Bundesnetzagentur will be granted **rights to obtain information** so that it can undertake an appropriate investigation of the postal markets. Where necessary for the assessment of the postal markets, these rights can also be extended to neighbouring markets. This ensures that phenomena such as substitution effects or the impact of upstream and downstream levels of the value chain can be included in the market assessment.
- We are seeking to assess how we can better combine **regulation of the universal service**, for the benefit of users, with **competition-based regulation**. In either case, it is important for detailed information on costs to be submitted to the Bundesnetzagentur on a regular basis. The better the Bundesnetzagentur's data basis, the more effective rates regulation will be. In the area of ex-post rates regulation, a **requirement to notify** planned changes in rates **in advance** can reduce the risk of a dominant service provider charging rates that the Bundesnetzagentur could find fault with. A mechanism for the **disgorgement of benefits** should be provided for to complement and back up rates regulation.
- We want rates regulation to focus more strongly on **network investment** – particularly **investment in sustainable postal logistics** – and a sustainable universal service. The objective is to encourage investment in the postal network rather than hampering investment through regulation. Regulation needs to be consistent to ensure that network investments made by competitors cannot be rendered useless by price measures undertaken by dominant service providers.
- Any changes made to **rates standards** should be designed in a way that ensures a **consistent rates structure** (consistency requirement). This means that rates should stand in a reasonable relationship with the regulatory goals of the Postal Act. And it means that increases in costs are passed on appropriately in various rates. Illicit cross-subsidisation should be effectively eliminated.
- **Access to the network** of the dominant service provider continues to have a considerable impact on the letter market. It is therefore important to ensure that the requirements for access are transparent and access rates are consistent and compatible with competition rules. We will provide **letter service providers** with **access to the network for the delivery of merchandise items** to strengthen competition in this area – as has been repeatedly requested by the Monopolies Commission.
- **Regulation** may also be **required** in a postal market in cases where a company is already dominating a neighbouring market and there is a **risk** of this company

**extending its market power to a postal market in a way that distorts competition.**

In such cases, the Bundesnetzagentur should have the powers to protect competition on the postal markets against the negative impact of abusive practices if general competition law – according to the three criteria test – proves insufficient to solve the problem.

- Alongside rates and access regulation, **control of abusive practices** forms the third pillar of market regulation. In order to effectively combat abusive practices, the Bundesnetzagentur's powers in this important area need to be expanded. This means that the Bundesnetzagentur must be enabled to **effectively access the necessary information** – not least on the opposite market side. Giving the competitors concerned the **right to submit a request** for control of abusive practices could help to further strengthen such control.
- We are also planning to give the **Monopolies Commission** the **power to consult the Bundesnetzagentur's case files** whilst preserving operational or commercial secrets. This will allow it to conduct a more thorough analysis of the relevant regulatory decisions for its regular sectoral reports and thus provide for more transparency.

## V. Resilient postal networks

The last few years have clearly demonstrated the importance of a well-working supply of postal services across the country, not least in **times of crisis**.

Postal services played a **key role for both individuals and companies in Germany** throughout the challenging Covid-19 era. They helped people stock up on vital goods and merchandise during the lockdown by delivering these directly to their homes. And they allowed companies – particularly retailers – to continue to do business despite temporary closures by sending products to their customers by mail.

Other crises – such as the heavy rain disaster in North Rhine-Westphalia and Rhineland-Palatinate in 2021 – have shown how vulnerable **critical infrastructure** can be.

In order to respond better and more quickly to crises, we need to make our **postal networks** more **resilient**.

- We are planning to revise the **Act on Ensuring Postal Service Provision** in order to prepare the postal network for future crises. The goal is to introduce clear procedures and structures that can be used in the event of a crisis without much preparation time.
- It is quite clear that ensuring resilient postal networks is a permanent task. We will assess whether a **regular dialogue between the Bundesnetzagentur and postal service providers** can be established to discuss the course of action to be taken in the event of a crisis.
- The Bundesnetzagentur is to serve as the **central point of contact**, both when it comes to preparing measures for ensuring the resilience of the postal network and **in the event of a crisis**.