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Ms Hadja Lahbib  
Minister of Foreign Affairs,  
European Affairs and Foreign  
Trade and the Federal Cultural  
Institutions  
Rue des Petits Carmes 15

BE - 1000 Brussels

**Subject: Notification 2023/466/BE**

**Preliminary draft law amending the law of 26 January 2018 on postal services – Article 3**

**Delivery of comments pursuant to Article 5(2) of Directive (EU) 2015/1535 of 9 September 2015**

Madam,

Within the framework of the notification procedure laid down by Directive (EU) 2015/1535 <sup>(1)</sup>, the Belgian authorities notified to the Commission on 26 July 2023 the ‘*Preliminary draft law amending the Law of 26 January 2018 on postal services – Article 3*’ (hereinafter, ‘the notified draft’).

According to the notification message, Article 3 of the draft stipulates that ‘postal service providers are obliged to distribute parcels to homes fitted with a parcel box conforming to the regulations issued in that area, or of a letter box placed directly at the border of the public highway, in accordance with the relevant regulations’.

Examination of the notified draft has prompted the Commission to deliver the following comments pursuant to Article 5(2) of Directive (EU) 2015/1535.

## **COMMENTS**

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<sup>1</sup>() Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services, OJ L 241, 17.9.2015, p. 1.

The Commission notes that Belgian law already establishes in theory the possibility of access to the postal infrastructure of the universal service provider, based on Article 11a of Directive 97/67/EC <sup>(2)</sup> (as amended by Directives 2002/39/EC and 2008/6/EC), although it does not specifically mention parcel locker boxes. The Commission understands that Belgium has now extended the grounds for this in so far as the element of promoting the sustainable environmental development of postal services has been added. However, it should be remarked that this is not an aim contained in Article 11a of the Directive.

First, the Commission would like to draw the attention of the Belgian authorities to the fact that Article 11a is an enabling provision that does not contain a reference to promoting sustainability. It reads as follows:

‘Whenever necessary to protect the interest of users and/or to promote effective competition, and in the light of national conditions and national legislation, Member States shall ensure that transparent, non-discriminatory access conditions are available to elements of postal infrastructure or services provided within the scope of the universal service, such as postcode system, address database, post office boxes, delivery boxes, information on change of address, re-direction service and return to sender service (...)’.

Second, it should be borne in mind that Article 11a is limited to ‘elements of postal infrastructure provided within the scope of the universal service’, i.e., of the universal service provider (see below). These are integral parts of the postal network which has been defined in Article 2, point 2 as follows:

‘postal network: the system of organisation and resources of all kinds used by the universal service provider(s) for the purposes in particular of:

- the clearance of postal items covered by a universal service obligation from access points throughout the territory,
- the routing and handling of those items from the postal network access point to the distribution centre,
- distribution to the addresses shown on items’.

Therefore, Article 11a is limited to infrastructure elements belonging to the universal service provider. In Belgium, bpost is the sole designated universal service provider. Consequently, Article 11a does not provide a sufficient legal basis to extend access rules to non-designated postal service providers.

Third, the provision that is extensively invoked by the Belgian authorities as basis for their domestic provision (Article 11a of the Directive), is limited to services falling within the scope of the universal service. However, it is unclear if non-designated postal service providers in Belgium in fact provide, solely or in a major part of their operations,

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<sup>2</sup>) Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of services, OJ L 15, 21.1.1998, p.14.

parcel delivery services that would fall within the scope of the universal service (e.g., express services in the sense of Recital 18 of Directive 97/67/EC).

Fourth, according to the answer given by the Belgian authorities, only about 1% of the total parcel and express volume – so B2C, B2B and C2X combined – was being delivered in a locker in 2021 in Belgium. On this basis, it would be questionable if the parcel delivery boxes of the universal service provider (which form the biggest part of the existing parcel locker boxes, namely 692 out of 823, in 2022) would constitute essential facilities for operators. The same would all the more be true for parcel delivery boxes of non-universal service providers, the low number of which (131 in 2022) means that they cannot be considered an ‘essential facility’ to which access should be imposed.

In this context, apart from the very low volume of parcel distribution by parcel locker boxes and their limited number, it could be mentioned that each provider could also set up its own boxes, and that such boxes are in any case not essential for delivery because, for example, stores also can be and are used. From an economic point of view, if the rates of growth indicate that parcel lockers are in Belgium developing in an incipient phase regulation might not be warranted so not to discourage investments. This may jeopardise the further development of parcel lockers in Belgium and the associated benefits for the environment.

Fifth, on the one hand, the Belgian authorities state in their answer that

‘(U)nder the conditions set out in Art. 9 of the Belgian Postal Act implementing article 11bis of directive 97/67, postal service providers are already required to give each other mutual access to their postal infrastructure (and therefore to their parcel lockers)’.

On the other hand, the Belgian authorities state that

‘(W)e currently have no view on the agreed fee, given that it concerns commercial agreements that postal service providers are under no obligation to communicate until now and as long the notified draft is not adopted’ and also ‘Some operators rather expressed concern about the difficulty of obtaining satisfactory financial and operational conditions for access to parcel lockers’.

As mentioned above, the network of bpost seems to be the only network that is shared. Access conditions are, according to bpost, set on the basis of commercial negotiations. From this information, the Commission deduced that the regulatory authority did not effectively arbitrate access conditions and prices up to now. If this is the case, then the intended change – introducing arbitration by BPIT and eventually imposing tariffs – would constitute a substantial change.

To conclude, the Commission has serious doubts as to the scope of the access provision (which, if based of Article 11a of the Directive 97/76/EC as amended, would have to be limited to the universal service provider and universal services provided by the incumbent), the necessity and intended effects (in particular taking into account the low number of items distributed via parcel lockers in relation to the overall number of

parcels), as well as the feasibility and efficiency (as the implementation would likely require substantial resources by the regulator).

Therefore, the Commission invites the Belgian authorities to take the above comments into account.

The Commission furthermore recalls that once the definitive text has been adopted, it must be communicated to the Commission in accordance with Article 5(3) of Directive (EU) 2015/1535.



For the Commission

Kerstin JORNA  
Director-General

Directorate-General for Internal  
Market, Industry, Entrepreneurship  
and SMEs