



## Guide to postal market checks

As part of the postal market checks it carries out, the Bundesnetzagentur checks at the provider's premises whether it meets the requirements for inclusion in the list of providers and, in the case of registered postal service providers, if it continues to meet them. In addition, the Bundesnetzagentur checks the provider's compliance with the legal provisions on postal secrecy. The following explanations give postal service providers a guide to the checks carried out by the Bundesnetzagentur.

### 1. Obligation to apply for inclusion in the provider register

The main legal requirements for this obligation are set out in the Postal Act (PostG). The law requires postal service providers to apply to be included in the postal service provider register but they must meet certain requirements that are laid out in the PostG.

Section 4 PostG **requires postal service providers to be listed in the Bundesnetzagentur's provider register**. Under that provision, anyone planning to provide postal services must apply to be included in the list of providers before starting any service activity. Activities requiring registration are the conveyance on a commercial basis of letters, parcels and consignments of goods and of books, periodicals, catalogues and newspapers if this is done by persons and companies that also transport letters, parcels or consignments of goods. In this context conveyance also refers to individual processing steps, which means that individual activities that are part of the distribution chain also create an obligation to be listed in the Bundesnetzagentur's provider register before a service provider can start the activity. These individual activities include the acceptance or collection of postal items, sorting, forwarding, transporting or delivering postal items.

To apply for inclusion in the provider register or to notify us that the provider's activities operations have changed or ceased, please visit the Bundesnetzagentur website (available in German) at [www.bundesnetzagentur.de/Post-Anbieterverzeichnis](http://www.bundesnetzagentur.de/Post-Anbieterverzeichnis) for further information and a link to the online form.

**Note:** anyone who intentionally or negligently provides postal services without first being listed in the provider register is generally acting unlawfully. This regulatory offence may be punished with a fine of up to €500,000 (see section 111(3) in conjunction with section 111(1) para 1 PostG). The same applies to providers who intentionally or negligently hire persons or companies not listed in the provider register to provide postal services.

## 2. Postal secrecy and data protection

### a) Postal secrecy

The **obligation to maintain postal secrecy** applies to anyone involved in providing postal services on a commercial basis (section 64(2) PostG). This obligation also applies after postal service operations have ceased. Detailed circumstances of postal traffic and the content of postal items are subject to postal secrecy. Training on maintaining postal secrecy must be provided to all employees involved in postal services and the employees must comply with postal secrecy obligations.

### b) Data protection

Section 67 PostG lists the provisions on the admissibility of the **collection, processing or use of personal data by companies and persons who provide postal services**. Where there are no arrangements in the sector-specific data protection provisions of the PostG or other special legal provisions, the provisions of the General Data Protection Regulation (GDPR) and the Federal Data Protection Act (BDSG) apply. The provisions of the GDPR and BDSG also apply where the legal provisions of the PostG have been in place for some time and do not meet the minimum requirements of the GDPR.

The following personal data may be collected, processed and used for their respective purpose:

- *Inventory data* (data of natural or legal persons required for establishing, designing or modifying a contractual relationship, in particular the name, address of the customer (sender) and type of postal services used)
- *Traffic data* (data of postal customers necessary for the purpose of the contract, in particular the frequency and scope of the postal services used)
- *Delivery data* (data necessary to prove proper handling, delivery or return of the shipment)
- *Billing data* (data required for the proper determination, billing, evaluation and proving the correctness of postal charges)

Data not related to the content of postal items may not be processed. Sections 68 and 69 PostG contain special provisions on the collection, processing and use of address or identification data.

The unauthorised storage, alteration or transfer of personal data protected by the PostG, the Ordinance regulating data protection for companies providing postal services (PDSV), the BDSG or the GDPR is prohibited outside the above legal framework. **Violations of data protection provisions can lead to sanctions under sections 41- 43 BDSG.**

There are also numerous special criminal and administrative offence provisions on electronic data processing, which prohibit the unauthorised inspection, storage, modification, sharing, use or other

procurement of data, or deleting or making such data unusable and any violation is punishable by penalties or fines (eg sections 202a and 303a StGB and section 41f BDSG).

Further information, downloads (including an information sheet on postal secrecy and data protection) and a template for a declaration of commitment for employees can be found on the Bundesnetzagentur website.

### **3. Monitoring and enforcement of obligations by the Bundesnetzagentur (postal market checks)**

The Bundesnetzagentur is responsible for **monitoring and enforcing postal secrecy obligations** (section 66(1) PostG). To carry out this responsibility the Bundesnetzagentur can request information from postal service providers to review and examine whether they comply with regulations at their business premises (section 66(1) sentence 1 PostG). To check whether there is an obligation to apply for inclusion in the provider register, the Bundesnetzagentur can also conduct inspections of business records at the premises of companies active in the postal sector during regular business hours (section 7 PostG).

Based on these authorisations, the Bundesnetzagentur's auditors conduct **checks at the provider's premises** to ensure that:

- the postal operators have made arrangements to ensure compliance with postal secrecy;
- and/or
- the requirements for the obligation to apply for inclusion in the provider register have been and continue to be met.

Checks at the premises of postal service providers are performed **at regular intervals and on a recurring basis**. Checks on an individual basis and on the requirements for the obligation to apply for inclusion in the provider register may also be conducted as needed. These checks are normally agreed upon and confirmed in writing with the postal service provider.

**a)** Postal secrecy checks cover the following general issues:

- How is postal secrecy ensured? Is the knowledge used for its intended purpose in accordance with section 64(3) PostG?
- Is the exhaustive list of exceptions in section 64(4) PostG followed?
- Who is the contact person in the company for postal secrecy matters?
- Have the employees involved in postal services been trained to ensure postal secrecy and signed the Declaration of commitment?
- How are undeliverable postal items handled?

**b)** If the check (also) involves determining whether and to what extent the requirements for the obligation to apply for inclusion in the provider register have been and continue to be met, the check at the provider's premises covers the following issues:

- Sites, business premises and business operations of the postal service provider - which services within the meaning of the PostG are provided?
- Inspection and examination of the business records where applicable to answer the question of which services are provided within the meaning of the PostG.

#### **4. Contact at the Bundesnetzagentur**

If you have any questions about the contents of this guide, on-site checks or postal service providers' obligation to apply for inclusion in the provider register, please contact us by phone at 0228 14-2160 or by email at [314.postfach@bnetza.de](mailto:314.postfach@bnetza.de).