



Bundesnetzagentur

## Activity Report

### Postal Dispute Resolution Panel 2021





# 2021 Activity Report

## Postal Dispute Resolution Panel

Report in accordance with section 34(1) Consumer Alternative Dispute Resolution Act (VSBG)

As at: January 2022

Reporting period: 1 January 2021 - 31 December 2021

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## Foreword

Since the beginning of the coronavirus pandemic e-commerce has seen unprecedented growth and parcel service providers are invariably predicting that the boom will continue. That means an end to the high volume of parcels is obviously not in sight. The proper conveyance of parcels is therefore becoming increasingly important and plays a special role.

This situation also impacts the work of the postal dispute resolution panel. The high volume of parcels resulting from growth in e-commerce leads in turn to more conflicts and thus to an ever-increasing number of dispute resolution requests. In the past year the number of dispute resolution requests more than doubled and the trend is ongoing.

The vast majority of conflicts involve lost or damaged parcels and their contents, such as valuable or fragile items, jewellery and electronics. Often there are questions that must then be clarified with regard to appropriate packaging, permissible content or the amount of damages.

Because the disputed amount is usually small, many of the consumers affected are often hesitant to go to court. In such situations dispute resolution is an option for quickly settling a dispute outside of court, finding an amicable solution to the specific conflict.

Until mid-March of last year dispute resolution procedures were voluntary. Under the former legal situation postal operators could choose whether or not they wanted to participate in a procedure, regardless of who had submitted the request for dispute resolution. The amended Postal Act, which entered into force on 18 March 2021, requires postal operators to participate in an extrajudicial dispute resolution procedure if the conciliation request is submitted by a consumer. This legislative change has strengthened postal customers' rights and is most likely linked to the increased number of dispute resolution requests.

Once the legal requirements for dispute resolution have been met, the postal operator in question is notified of the dispute and asked to respond to the grievances specified. Ideally the parties are already attempting to reach a compromise during conciliation and they find an amicable settlement. If no agreement is reached during conciliation, the postal dispute resolution panel presents its own proposal for settling the dispute and the parties decide whether or not to accept the proposal. If both parties accept the proposal, it is also binding.

By successfully conducting dispute resolution procedures the postal dispute resolution panel contributes significantly to fostering people's trust in a functioning postal service.



Peter Franke

Vice President of the Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen



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# 1 The Bundesnetzagentur's postal dispute resolution panel

The Bundesnetzagentur's postal dispute resolution panel is an official consumer conciliation body within the meaning of the Consumer Alternative Dispute Resolution Act (VSBG) and is thus recognised by the European Commission as a dispute settlement body within the European Economic Area.

Since the Postal Services Ordinance (PDLV) entered into force in August 2001 the panel has been conducting dispute resolution procedures to resolve disputes between postal operators and their customers. The VSBG has been in effect since April 2016. Its purpose is to improve extrajudicial dispute settlement procedures.

The VSBG sets out procedural and organisational rules implemented by the postal dispute resolution panel. The Postal Act (PostG) makes it clear that the extrajudicial resolution of disputes between consumers and postal operators must meet VSBG requirements. It also stipulates that the procedures are free of charge for both the complainant and the defendant.

Participation in a dispute resolution procedure was voluntary for postal operators until the Postal Act was amended in March 2021. The amended Postal Act gave the dispute resolution procedure a new legal basis and also introduced the requirement that postal operators participate in dispute resolution procedures if the consumer submits the complaint and the other procedural requirements are met.

Dispute resolution procedures are conducted on the basis of the legal provisions of the Postal Act, the PDLV and the VSBG. Details of the procedure are also set out in the postal dispute resolution rules (Schlichtungsordnung Post), which are available in German on the Bundesnetzagentur's website.

The Bundesnetzagentur has published further information on its website about the postal dispute resolution panel and the dispute resolution procedure. There you can also find the required disclosures in accordance with section 3 of the Ordinance on the Obligations to Furnish and Report Information as per the Consumer Alternative Dispute Resolution Act (Ordinance on the Consumer Alternative Dispute Resolution Obligation to Furnish Information – VSInfoV).

The postal dispute resolution panel reports on its work in the Bundesnetzagentur's annual reports and in the postal sector activity reports published every two years.. This dispute resolution report meets the Bundesnetzagentur's obligation to furnish information in accordance with section 34(1) VSBG in conjunction with section 4 VSInfoV.

Up-to-date information and the online form for requesting a dispute resolution procedure are available at

[www.bundesnetzagentur.de/post-schlichtungsstelle](http://www.bundesnetzagentur.de/post-schlichtungsstelle).

The address of the postal dispute resolution panel is:

Bundesnetzagentur, Schlichtungsstelle Post, Referat 318, Postfach 8001, 53105 Bonn.

## 2 Conducting a dispute resolution procedure

Customers of postal operators can request a dispute resolution procedure for conciliation in the event of loss, theft or damage of postal items or if a right set out in the PDLV has been violated. Both senders and recipients of a postal item are entitled to request a dispute resolution procedure. Anyone making the request must have first tried, and failed, to settle the dispute with their postal operator. Also, the sender cannot have made any special agreements with the postal operator and there can be no pending court proceedings concerning the matter in dispute. Both natural persons and corporate entities can request a procedure.

Postal dispute resolution procedures are voluntary. However, if a consumer submits the request for a procedure, the postal operator's participation is compulsory. Dispute resolution procedures serve to resolve disputes outside of court and are a cost effective alternative to court proceedings. The procedures are free of charge for both sides. However, the costs incurred such as postage and other expenses are paid by the participating parties themselves.

Dispute resolution procedures are normally conducted in writing, ie by email, fax or letter. Oral arguments only take place if the postal dispute resolution panel considers it necessary and if both parties agree to it.

Once a dispute resolution procedure is set to take place, both sides are given the opportunity to submit their comments and provide relevant evidence. If the parties do not come to an agreement during the procedure, the postal dispute resolution panel will assess the facts and present its own proposal for settling the dispute amicably. In preparing its proposal, the panel weighs up the arguments brought forward and takes the circumstances and legal situation into account. The aim is to achieve a satisfactory result for everyone that resolves the conflict.. The proposal should be sent to the parties within 90 days of receipt of all the relevant documents and information.

The parties are not required to accept the postal dispute resolution panel's proposed solution. If the parties accept the proposal for settling the dispute, the two sides enter into and are bound by a contractual agreement.

Consumers can find the online form for requesting a dispute resolution procedure on the Bundesnetzagentur's website.

### 3 Assessing the dispute resolution requests and procedures from 2021

The number of postal dispute resolution requests has steadily increased over the past several years. There were 3,752 requests in 2021, more than twice as many as in 2020 (1,861). The numbers demonstrate a very strong need for extrajudicial dispute resolution among postal customers.

#### 3.1 Dispute resolution requests in 2021

In 2021 the postal dispute resolution panel received 3,752 requests for conciliation, which was an increase of around 102% on the previous year (1,861 requests).

### Dispute resolution requests 2014-2021

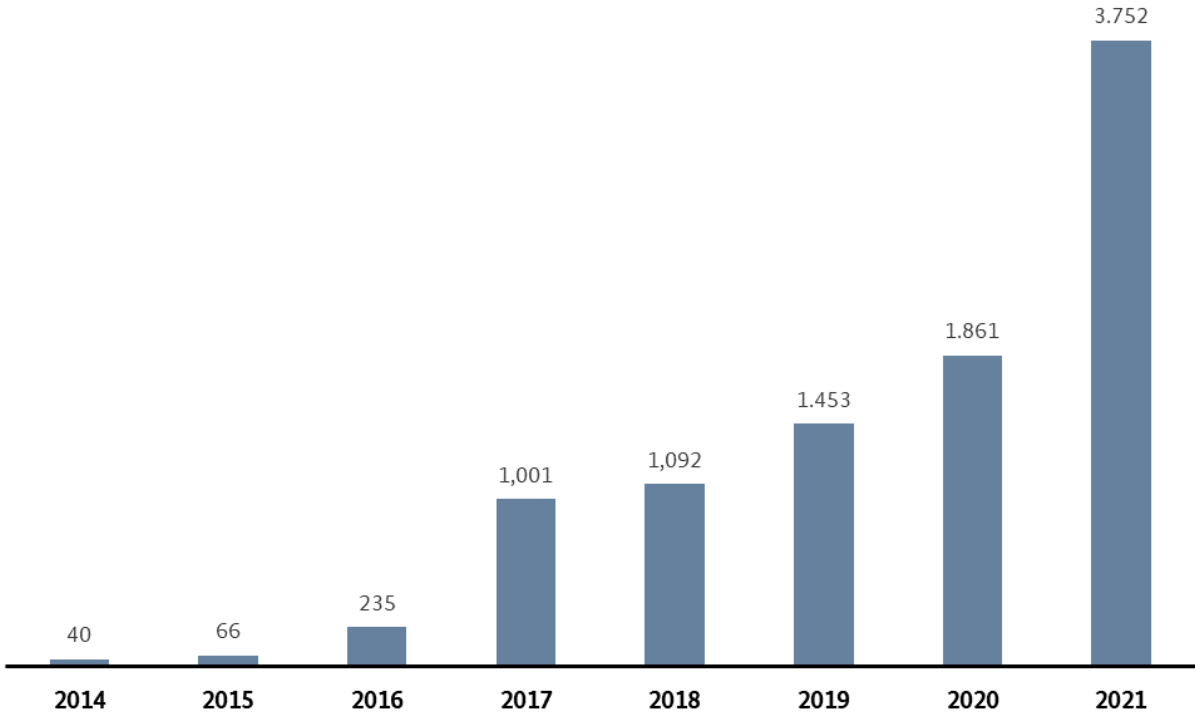


Figure 1: Dispute resolution requests 2014-2021

In 2021 the months with the highest number of requests were April, with nearly 10% of the total number of applications submitted, and June 2021, with 9.5% of the total. During the other 10 months the request volume ranged between 6.7% and 8.7%. By contrast the highest number of requests in 2020 were submitted in the final quarter and ranged between 10% and just over 11% of the year's total.

**Requests received 2019-2021 by month**  
(%)

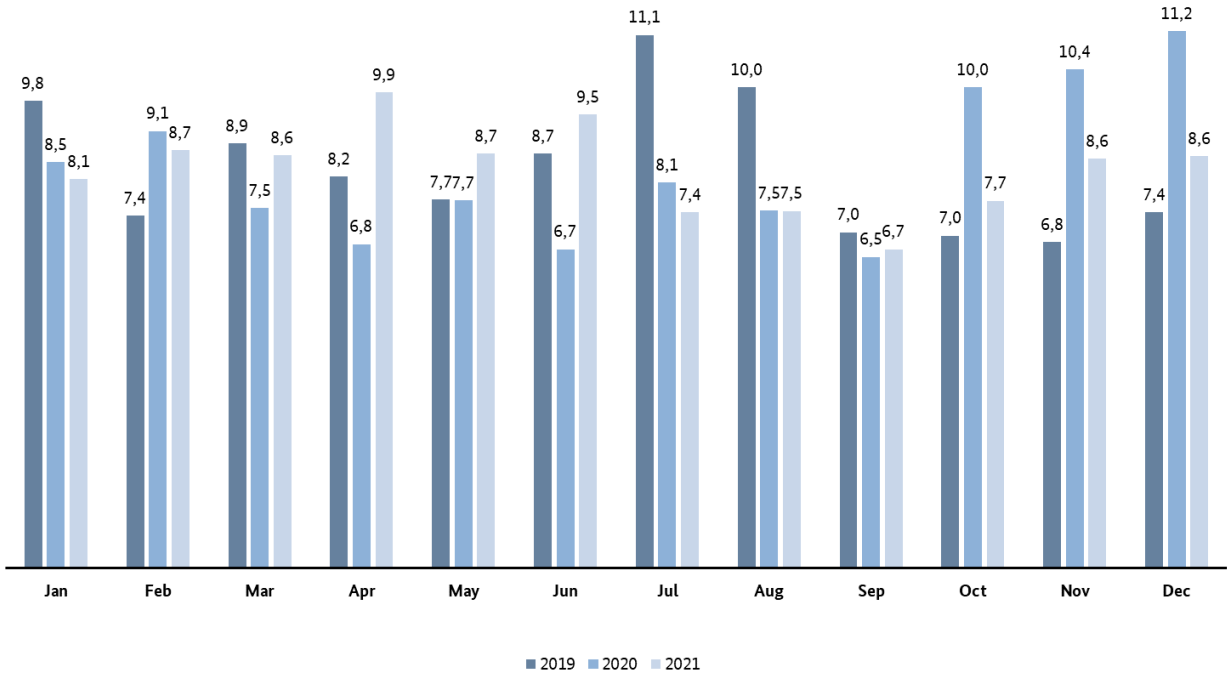


Figure 2: Requests received 2019-2021 by month

Both natural persons and legal entities can request a dispute resolution procedure, which means that all customers, including postal operator companies, can request conciliation if all the legal requirements have been met. Most of the requests received by the postal dispute resolution panel in 2021 came from natural persons (86%) and there were far fewer requests from companies (14%).

As in previous years, senders comprised the majority (around 68%) of complainants in 2021 by submitting 2,561 of the 3,752 requests for dispute resolution. Recipients of postal items submitted 1,191 requests, which was nearly 32% of the total. As was the case in 2020, all requests for dispute resolution in 2021 were from one of those two groups.

**Complainants 2019-2021**  
(%)

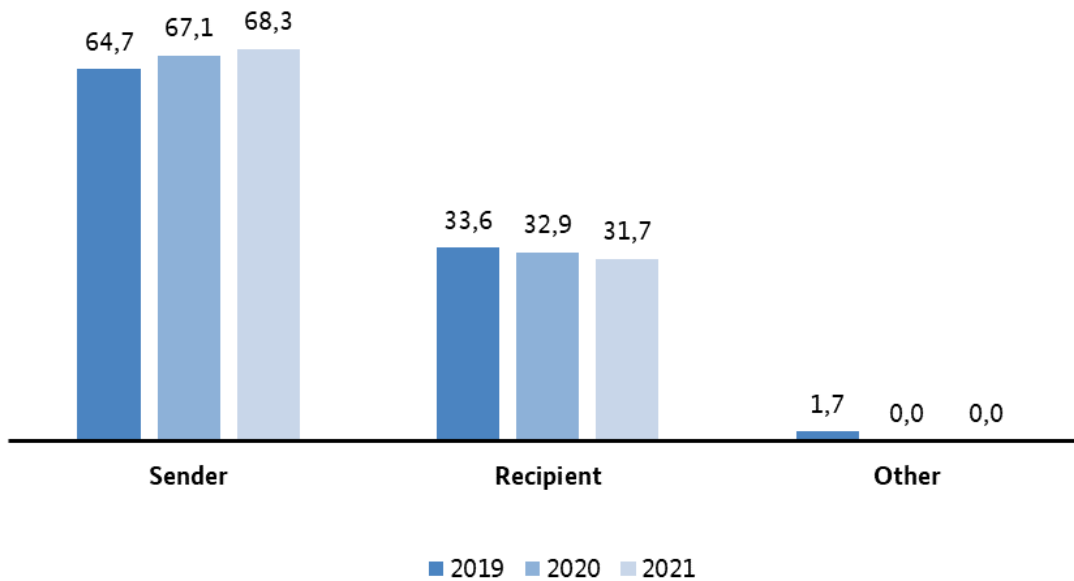


Figure 3: Complainants 2019-2021

As in the previous year, around 46% (1,741) of the 3,752 complainants in 2021 came from Germany's three most populous federal states of Baden-Württemberg, Bavaria and North-Rhine Westphalia. The other dispute resolution cases came from the remaining federal states or from outside of Germany. The number of requests has increased in all federal states.

**Residence of the complainants 2020 and 2021**  
by federal state

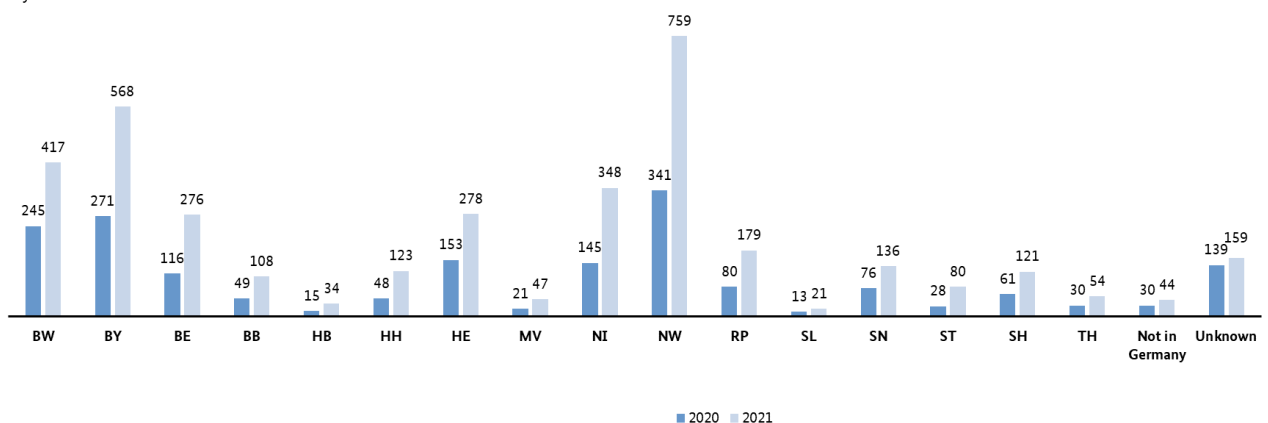


Figure 4: Residence of the complainants by federal state 2020 and 2021

Placing the number of requests in relation to the population of the respective federal states creates the following picture: Berlin leads the way with 7.7 requests per 100,000 inhabitants, followed by Hamburg (6.8), Bremen (5.0), Hesse (4.5) and Bavaria (4.4). The figures were similar in 2020.

### 3.2 Reasons for dispute resolution requests 2021

In the year under review around 50% (1,878 cases) of the 3,752 dispute resolution requests received by 31 December 2021 concerned lost or stolen postal items. The next most common cause of a dispute resolution request was damaged items, accounting for around 27% (1,009 cases) of the total. The remaining 23% (865 cases) concerned, among other things, overly long transit times and delivery irregularities, returns and redirection services. Dispute resolution was generally not possible in those cases because there had been no violation of any right set out in the PDLV. The order of the most common reasons for dispute resolution requests in 2020 was the same and with similar percentages.

#### Reasons for requests 2020 and 2021

(%)

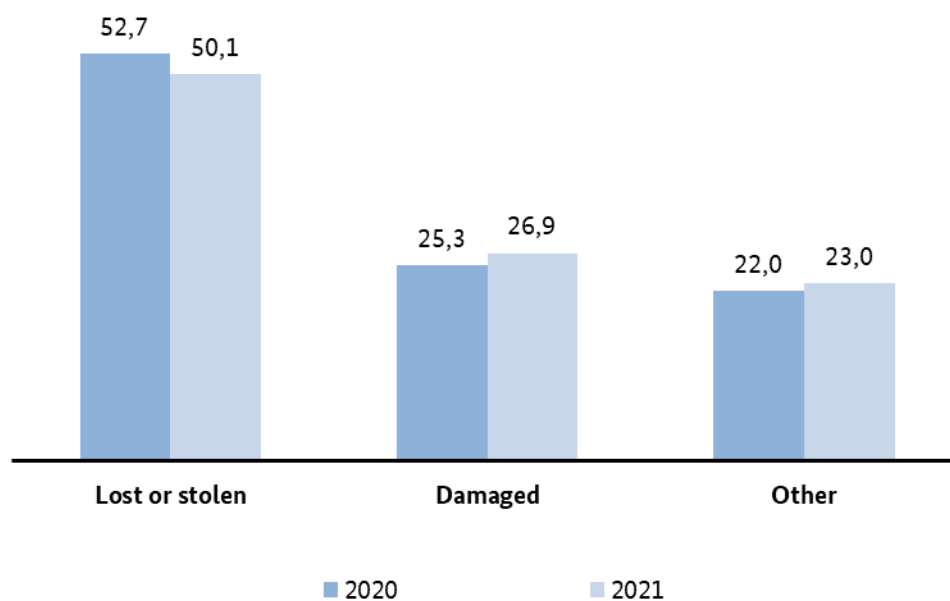


Figure 5: Reasons for requests 2020 and 2021

Postal operators usually offer various products for which different legal and contractual liability conditions apply, and so most postal operators exclude liability for standard letters. Deutsche Post AG extended the exclusion of liability to the conveyance of small parcels. For medium and large parcels, by contrast, the parcel service providers' general terms and conditions include certain liability limits and conditions.

As in the previous year, most dispute resolution requests in 2021 concerned problems with medium and large parcel delivery services. Around 80% of the requests for a dispute resolution procedure (2,990 cases) had to do with contentious demands in connection with parcel delivery. There was a much smaller number of requests for dispute resolution that involved registered delivery (around 5%, 194 requests), letter delivery (more than 5%, 202 requests) and small parcel delivery (more than 5%, 204 requests). The breakdown of requests by shipment type was similar in 2020.

**Dispute resolution requests by shipment type 2020 and 2021**  
(%)

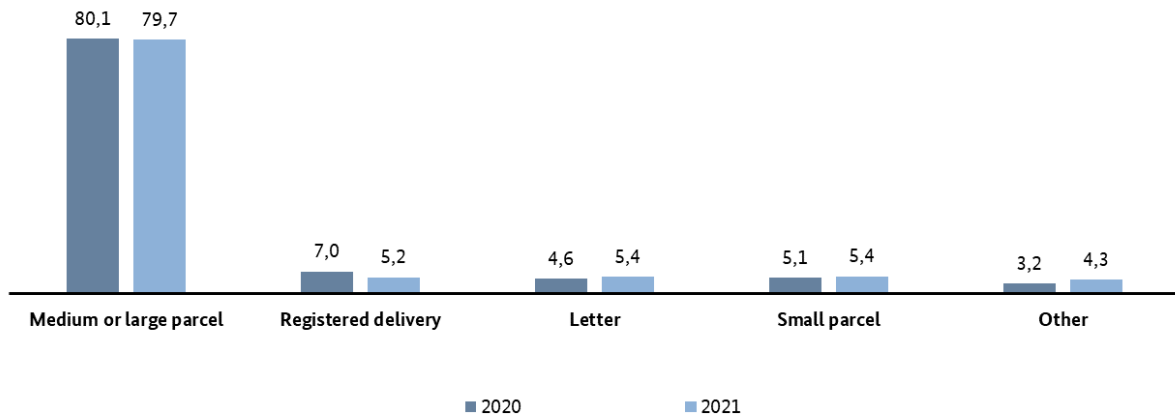


Figure 6: Dispute resolution requests by shipment type 2020 and 2021

The Covid-19-related restrictions, retail closures and steady growth of e-commerce resulted in another increase in parcel volumes in 2021, which in turn increased the potential for error in conveyance processes.

The postal dispute resolution panel found that around 42% (1,585 cases) of all requests were based on problems with a postal service that was initiated as the result of an e-commerce transaction. That is a 6% increase from 2020 (around 36% of the requests or 671 cases). Around 39% (1,476 cases) of the requests were based on problems with a postal service that was not initiated as the result of an e-commerce transaction. That is a 15% increase from 2020 (around 24% of the requests or 455 cases).

In approximately 18% of the cases (691 requests) the postal dispute resolution panel was not able to determine whether the request was linked to an e-commerce transaction. That is a decrease of around 21% from 2020 (around 39% of the requests or 735 cases). The reason for the decrease is that in 2021 the postal dispute resolution panel added a question to the online form for requesting dispute resolution as to whether the object being mailed was or was not from an e-commerce transaction.

A dispute resolution procedure will not be conducted if the sender has made any special arrangements with the postal operator. That is generally the case with large e-merchants. By contrast, most dispute resolution requests that are linked to an e-commerce transaction occur where a (smaller) e-merchant often uses standard postal operator products.

### E-commerce / not e-commerce requests 2019-2021 (%)

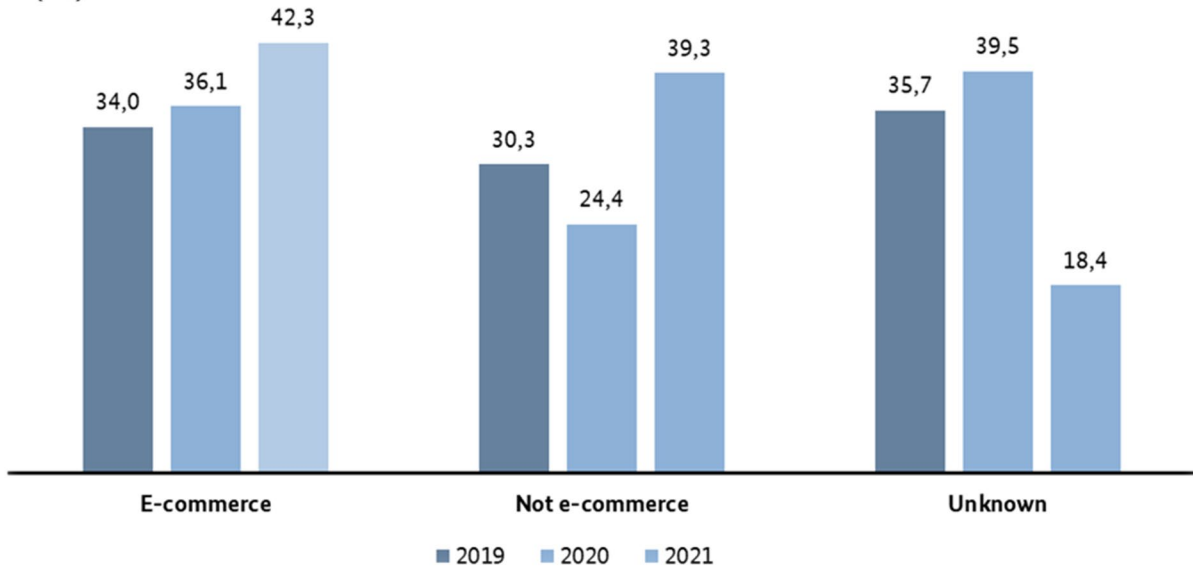


Figure 7: E-commerce / not e-commerce requests 2019-2021

Despite increased cross-border deliveries brought about by e-commerce, most resolution procedure requests in 2021 (around 88% / 3,315 cases) still concerned disputes of a purely domestic scope. The remaining 437 cases involved disputes stemming from international parcels within and outside the EU.

### Location of disputes 2020 and 2021

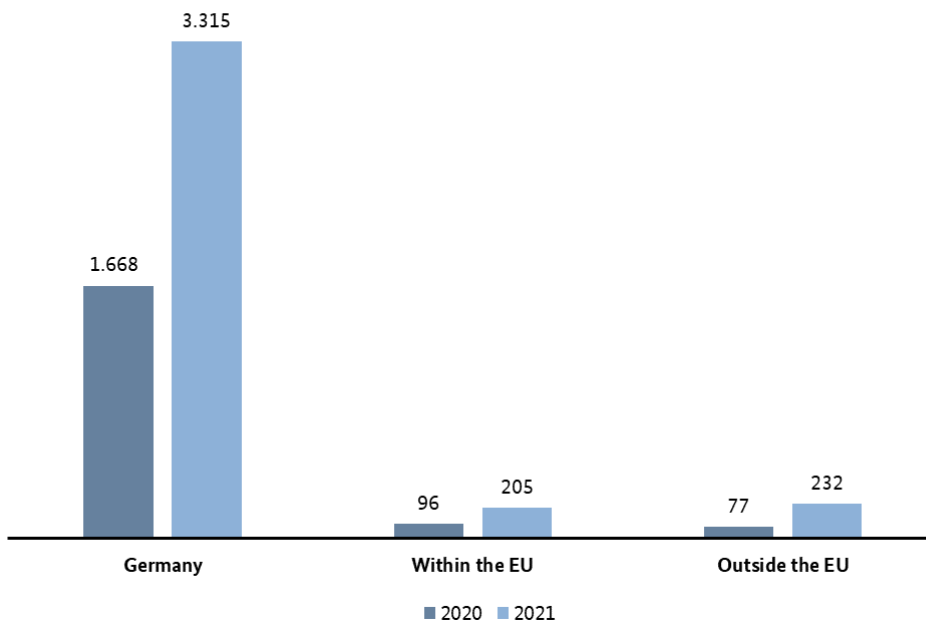


Figure 8: Location of disputes 2020 and 2021



Nearly 84% of the 2,235 admissible requests for dispute resolution in 2021 concerned Deutsche Post DHL, followed by Hermes with almost 10%. The remaining cases were spread out in the single-digit percentage range among the other delivery services. This breakdown also reflects the fact that Deutsche Post DHL and Hermes are more active in the personal customer segment than the other parcel operators.

### Admissible requests by postal operator 2021

(%)

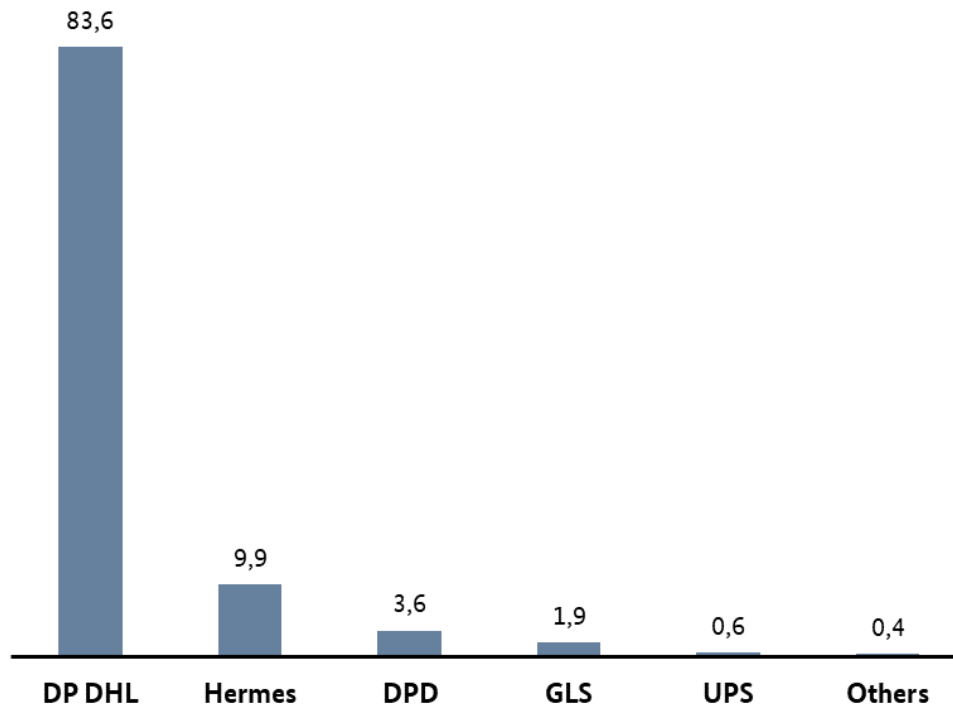


Figure 9: Admissible requests by postal operator 2021

### 3.3 Outcomes of dispute resolution procedures 2021

A total of 3,395 cases had been closed by the 31 December 2021 reporting date. In 1,325 cases there was an amicable settlement and 357 cases were still in progress at the time of going to print. Procedures that ended with an amicable settlement lasted an average of just under four weeks.

Postal operators refused to participate in 402 dispute resolution procedures in 2021. In the reporting period there were 492 cases where the complainant withdrew their request or objected to continuing the procedure.

In 1,160 cases it was not possible to conduct a dispute resolution procedure, most often because the dispute did not fall under the authority of the postal dispute resolution panel since the complainant was unable to demonstrate that there had been a violation of any right set out in the PDLV. There were cases, for example, where conveyance times were too long, items were returned without prior authorisation for a refund of the postage or there was a delivery error. Although these were disputes between postal operators and their

customers, a conciliation procedure through the postal dispute resolution panel was ruled out since the matters in dispute did not fall under the panel's legal authority.

**Dispute resolution procedure requests 2021**

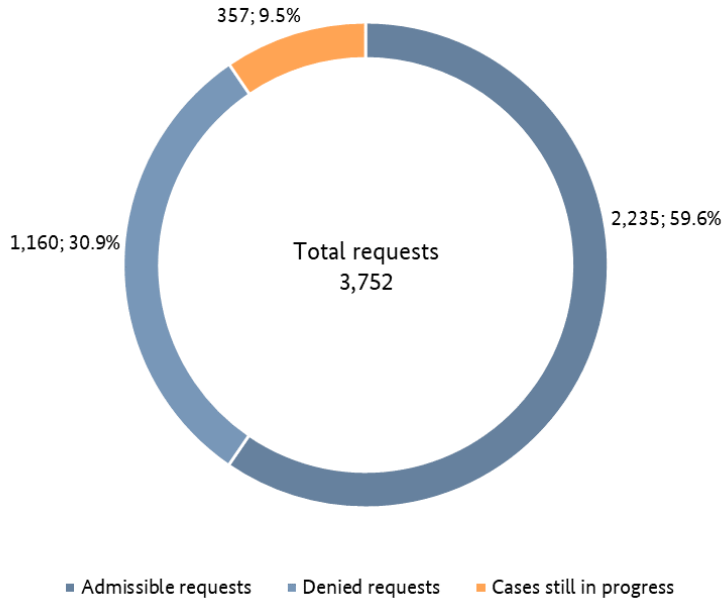


Figure 10: Dispute resolution procedure requests 2021

**Admissible dispute resolution cases 2021**

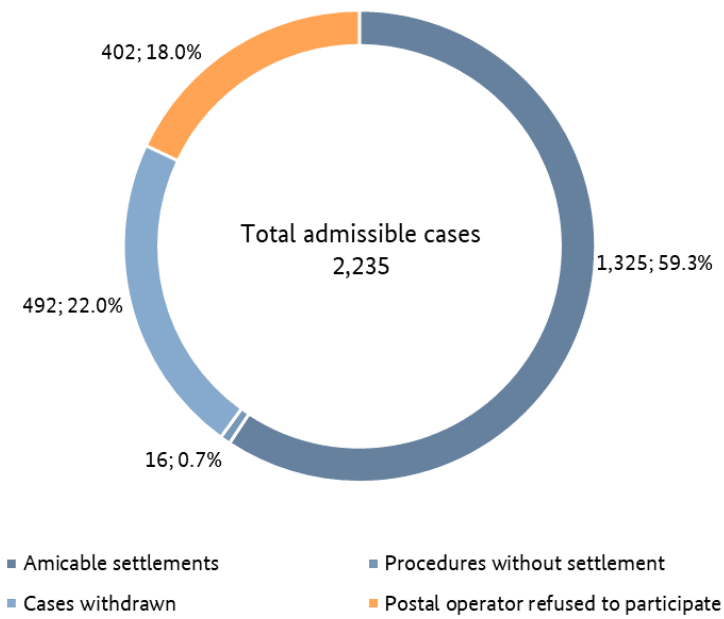


Figure 11: Admissible dispute resolution cases 2021

There were 114 cases still in progress at the end of 2020. The postal dispute resolution panel closed these cases in the course of the reporting period.

### Final outcome of dispute resolution cases 2020

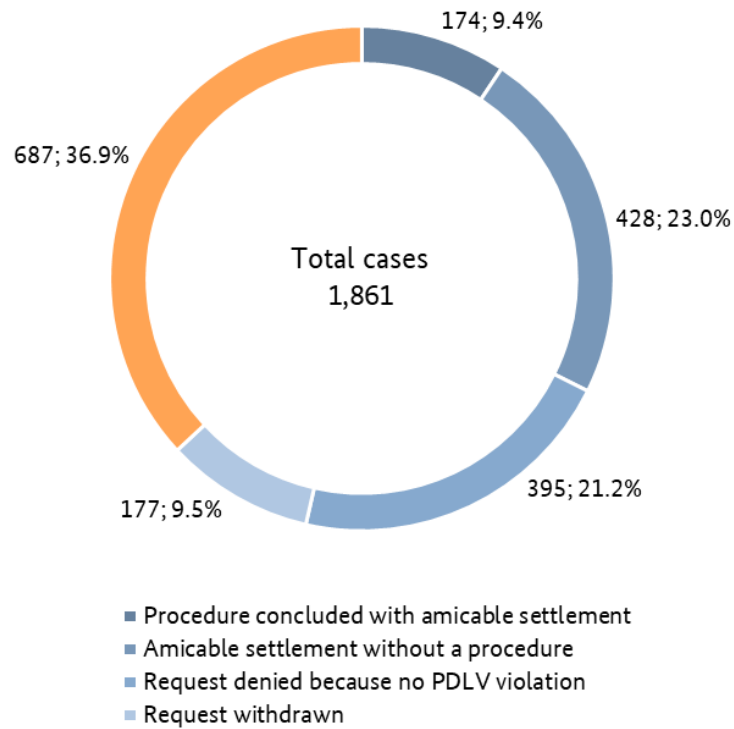


Figure 12: Final outcome of dispute resolution cases 2020

## 4 Frequent issues

The majority of the requests for dispute resolution in 2021 involved liability issues in cases where postal items had been lost or damaged. The agreements made in the contract for conveyance and the postal operator's general terms and conditions, which are regularly included in the contract, provide a legal basis for possible liability in these cases. The freight law regulations of the German Commercial Code (HGB) contain legal provisions on liability issues with regard to contracts for conveyance. In cases of loss or damage the German Commercial Code stipulates that the carrier is liable for damages that occur from the time when an item is accepted for conveyance until it is delivered. However, according to the provisions of the German Commercial Code, the conduct of the recipient or the sender or a defect in the delivered goods (if the sender or recipient contributed to the damage) is taken into account when establishing liability and the extent of that liability.

There were many cases where an attempt to reach a settlement with the postal operator prior to the dispute resolution procedure was unsuccessful due to various difficulties in providing proof. Because the postal dispute resolution panel cannot take evidence, problems with providing proof often also play a key role in the conciliation proceedings. This frequently affects cases where the delivery of a mail item or its contents cannot be proven or suitable proof of the value of the mail item contents cannot be provided.

### 4.1 Regularly recurring problems with regard to lost mail items

Just over half of the dispute resolution requests in 2021 involved lost items. While the underlying circumstances surrounding lost items varied, the postal dispute resolution panel also identified regularly recurring problems.

#### 4.1.1 Liability issues when mail items are delivered to Packstations

The ongoing digital transformation in the postal sector has led to an increase in the number of Packstations (an automated set of lockers for parcel collection and deposit), which are used more and more by customers for the conveyance of postal items. The postal dispute resolution panel received phone calls in 2021 where callers reported having difficulties in using Packstations.

##### **Example of a liability issue when a mail item was posted at a Packstation**

In the reporting period one complainant turned to the postal dispute resolution panel to claim recovery of damages for a lost parcel. He indicated that he had placed a parcel in a Packstation but that the parcel was never delivered to the addressee. He also stated that he had not received any proof of posting at the Packstation. The defendant responded that they had not located the complainant's parcel and denied any liability on the grounds that, without any proof of posting, they could not assume beyond all doubt that the parcel had even been placed in a Packstation locker.

#### 4.1.2 Liability risks associated with drop-off location consent

For some time various postal operators have been providing the option to designate a drop-off location for postal items. At the same time the postal operators point out that liability is ruled out from the moment the mail item is dropped off at the preferred location. The reasoning behind the disclaimer is that when a postal

item is lost or damaged after it has been dropped off at the preferred location it is no longer possible to determine who is responsible for any damage incurred. Postal operators also suggest designating a drop-off location that is as secure and weatherproof as possible. The postal dispute resolution panel dealt with a variety of cases in 2021 where the parties disagreed about whether a delivery was even dropped off and whether or not the mail item was damaged or lost after it was dropped off.

#### **Example of a disclaimer when a drop-off location has been agreed upon**

In 2021 a complainant turned to the postal dispute resolution panel and claimed recovery of damages for a lost parcel. She had made a drop-off location agreement for parcels with the postal operator and indicated the paper recycling bin as her preferred drop-off location. As per drop-off location agreement the postal operator was not liable for loss or damage after the mail item was dropped off. The complainant indicated in the dispute resolution procedure that she had not received any notification that the mail item had been dropped off and for that reason she also did not look in the paper recycling bin. It turned out that the paper recycling bin was emptied two days after the day on which, according to the defendant, the parcel had been dropped off. The defendant responded that there had been a notification of the drop-off and denied liability with reference to the drop-off location agreement.

#### **4.1.3 Liability issues with contactless deliveries**

Due to the pandemic, postal operators continued to rely on contactless delivery in 2021 for reducing the risk of infection. The postal dispute resolution panel received a number of requests for conciliation where the complainants indicated that they did not receive a mail item even though the postal operator in question had documented a successful delivery by means of contactless delivery. These cases are a special situation with regard to proof because, unlike in the standard process where the addressee of the mail item confirms receipt with their signature, in this delivery process the delivery agent documents with their own signature that the handover of the mail item to the addressee has taken place.

#### **Example of a dispute resolution procedure involving contactless delivery**

In the reporting period one complainant turned to the postal dispute resolution panel to claim recovery of damages for a lost parcel. The defendant stated that the parcel had been delivered to the complainant by means of contactless delivery and that the delivery agent had confirmed receipt of the mail item with his signature. The complainant responded that the parcel was neither delivered to him in person nor was it dropped off at the door of his apartment by means of contactless delivery. He continued by saying that he was at home at the time the defendant said the delivery took place and that no one rang his doorbell. The defendant, however, denied liability with reference to the documented contactless delivery.

#### **4.2 Liability issues with damaged mail items**

After lost mail items, damaged items were the second most common reason for contacting the dispute resolution panel in the reporting period. Cases of damaged items are characterised by there being a dispute as to whether or not a mail item was insufficiently packed or improperly conveyed. While the postal operator is

generally liable for damage caused in the time period between when the mail item is picked up for conveyance until it is delivered, the sender must pack the contents in such a way that they are protected from damage and the postal operator also does not incur any damages. Which packaging can be considered sufficient depends in each case on the mail item and any special arrangements that have possibly been made for the conveyance.

#### **Example of a dispute resolution procedure involving a damaged mail item**

A complainant submitted a request for conciliation to the postal dispute resolution panel due to a damaged mail item and claimed recovery of damages totalling €170. The content of the mail item was a bottle of wine. While the defendant lamented that the item was poorly packaged, the complainant was of the opinion that the defendant improperly transported the item. After the defendant had originally declined liability, an amicable settlement was reached by way of a suggestion from the dispute resolution panel.

### **4.3 Liability disclaimer for various types of postal items**

Last year the postal dispute resolution panel saw several cases where the postal operator concerned denied liability for lost or damaged items due to the chosen shipment type. For conventional letter-post items with no additional services, liability is often already precluded in the postal operators' general terms and conditions. A disclaimer for damage to a small parcel during delivery is also frequently included in the general terms and conditions. Legal bases for liability limits and exclusions for various postal items are set out in the German Commercial Code. Within the framework of the German Commercial Code's provisions, postal operators can either use an individual agreement or their general terms and conditions (by, for example, making liability dependent on the shipment type) to limit or even preclude liability entirely. However, these contractually established liability limits and exclusions do not apply under the German Commercial Code for damages that were incurred intentionally or carelessly and while being aware that damage would likely result.

#### **Example of a disclaimer for the loss of a small parcel**

One complainant contacted the postal dispute resolution panel during the reporting period because a small parcel she had mailed was lost on the transport route. The defendant initially responded that a search for the lost item had been unsuccessful and confirmed that the item was lost. Nevertheless the defendant then refused to refund the damages claimed, citing the disclaimer for small parcels in its general terms and conditions.

### **4.4 Limitations of liability if contents are prohibited or exceed the value limit**

In their general terms and conditions postal operators often entirely preclude liability for certain shipment contents. In some cases certain contents are also limited on the basis of their value. Postal operators regularly use their general terms and conditions for setting a monetary limit on the value of the individual shipment's content, eg €500. Violations of the rules concerning permissible content and value limits preclude or limit liability in accordance with the postal operator's general terms and conditions. Customers are often unaware of these liability limits and disclaimers. Prohibited shipment contents are regularly referred to in the general

terms and conditions as prohibited goods. These are often shipments containing cash, precious metals, jewellery, watches, gemstones, artwork and antiques (referred to as Class II valuables) as well as hazardous goods and goods that require special handling, eg perishable foods.

Customers frequently complain about actual transit times being too long and about cases where the postal operator denies liability for the shipment of perishable foods due to the fact that they are prohibited goods. In such cases customers are unaware of the postal operator's disclaimer in the general terms and conditions concerning these shipment contents and that a postal operator only provides what are called normal transit times for standard shipping of its products. Customers do not know in these instances that standard shipping does not include any individual entitlement to delivery of a mail item within a certain time period.

**Example of a limitation of liability when shipment contents exceed the value limit**

One complainant contacted the postal dispute resolution panel during the reporting period because a parcel she had mailed to an address outside Germany was lost on the transport route. She claimed a refund totalling €1,500 for the loss of high-quality clothing, but the postal operator denied full liability, citing the value limit of €500 included in its general terms and conditions. The postal operator did, however, grant a refund up to the value limit.

**Example of a disclaimer for jewellery valued at more than €500 (prohibited goods)**

One customer requested a dispute resolution procedure during the reporting period because a parcel she had mailed was lost on the transport route. She stated that her wedding ring, valued at €1,520, was in the parcel. The defendant denied liability and explained that jewellery valued at more than €500 is a prohibited item and thus exempt from liability. The complainant responded that she was not familiar with the disclaimer. Ultimately the parties were able to reach a settlement through the dispute resolution procedure.

#### **4.5 Limitation of liability to direct damages typical for the contract and assessment of actual damages**

During the reporting period the postal dispute resolution panel again conducted conciliation procedures that dealt with the scope of liability and the assessment of actual damages. The general provisions under civil law and the rules established in the postal operators' general terms and conditions form the legal basis for determining compensatory damages. The postal operators' general terms and conditions frequently limit the liability to the direct damages typical of the contract in question. However, postal operators preclude the assumption of liability for indirect damages or what are also known as consequential damages.

These cases often involved the loss of travel documents that, for instance, had been sent to or returned by an embassy or consulate for a visa application. Customers often claimed not only the costs of purchasing a new travel document but also additional costs beyond the liability limit, for example for travel expenses to the consulate or costs for missed travel. In 2021 the postal dispute resolution panel also dealt with conflicts arising from lost keys, lost or late contract terminations and bills with the result that, for instance, door locks were

changed, contracts were extended and dunning charges were incurred. In each of these cases the respective postal operator cited the limitation of liability in its general terms and conditions to direct damages typical for the respective contract and denied further liability.

A number of dispute resolution requests in 2021 also showed that customers were uncertain about how to assess the actual compensatory damages. For calculating value, the freight law regulations of the German Commercial Code (HGB) differentiate between loss and damage. In the event that goods have been lost, compensation must be made in the amount of the value of the goods at the place and time at which they were accepted for conveyance. If goods have been damaged, compensation will be the difference between the value of the undamaged goods at the place and time of acceptance for conveyance and the value the damaged goods would have had at the place and time of delivery. The costs necessary to reduce and remedy the damage are assumed to be equal to the amount of the difference calculated above. The value of the goods is based on the current market price or otherwise on the basis of the value of goods of the same kind and quality. If the goods were sold immediately before conveyance, the purchase price on the seller's invoice (minus invoiced conveyance costs) is assumed to be the current market price. The postal dispute resolution panel received many cases in the reporting period where the complainant had filed a claim based on the price of new contents even when the shipment's contents were used. Often, however, no account was taken of the age and condition of the shipped object when it was handed over for conveyance.

#### **Example of assessing special damages**

In 2021 the postal dispute resolution panel received a request from a customer who was claiming damages for an item she had mailed that was damaged on the transport route. The parcel contained a used e-bike that was seven years old. The complainant claimed recovery of damages totalling more than €3,000, which was the amount she would need to pay for a new comparable e-bike. The defendant refused to pay the amount claimed, citing the age of the e-bike and its opinion that the parcel was not sufficiently packaged for transport. The two parties were nonetheless able to reach an amicable settlement by way of a dispute resolution procedure. The defendant agreed to pay the complainant €500, which is the maximum amount of liability set out in its general terms and conditions.

#### **4.6 Liability issues with international parcels**

Special liability issues also arose with regard to the conveyance of international parcels. Whereas the postal operators set their own liability provisions for various shipment types in the general terms and conditions of their contracts for international mail, the freight law regulations of the German Commercial Code are often not relevant. Which regulations apply in an individual case (in addition to the postal operator's general terms and conditions) depends on which postal operator transports the shipment and the shipment's countries of origin and destination. Depending on whether the shipment is domestic or international, the liability provisions in the various postal operators' general terms and conditions can differ greatly, even for the same type of shipment.



### **Example of differing liability provisions for international parcels in general terms and conditions**

In 2021 the postal dispute resolution panel received a request from a customer who was claiming damages for two registered items she had mailed that were lost on the transport route. The complainant stated she had mailed €100 of cash in each registered item to destinations outside Germany. The postal operator responded in the dispute resolution procedure that its general terms and conditions preclude liability for cash sent to a destination outside Germany. Whereas customers sending domestic shipments have the option to add liability for the loss of cash up to €100, that option is not available for international parcels. A similar solution was nevertheless found through the dispute resolution procedure.

#### **4.7 Dispute resolution hindered by lack of possibility to enforce mandatory participation**

Participation in a dispute resolution procedure was voluntary until the Postal Act was amended in March 2021. In many instances conciliation procedures could not be conducted because postal operators were often unwilling to participate. The postal dispute resolution panel therefore repeatedly advocated making participation mandatory under the Postal Act. Because participation is now required when dispute resolution requests are submitted by consumers, it is now at least generally possible to conduct a dispute resolution procedure in those cases. Most of the postal operators comply with the requirement to participate and they address the complainants' concerns in the proceedings.

There were, however, still several instances during the reporting period where a dispute resolution procedure could not be conducted in spite of the participation requirement because certain postal operators could not be contacted and there was no way to enforce the requirement. For example, in several cases a contact address for necessary correspondence in the conciliation procedure was not provided over an extended period of time. In other cases a valid postal operator's address was missing. There were also cases that could not be brought to a close because the postal operator had become insolvent in the meantime. The lack of legal options for enforcing mandatory participation hinders the postal dispute resolution panel in such cases in conducting conciliation proceedings and helping to resolve a conflict by means of conciliation. In these cases the postal dispute resolution panel asked the postal operators, even multiple times when it was necessary, to comply with statutory regulations that require their participation and to actively contribute to a speedy conclusion of the proceedings. By repeatedly contacting the postal operators in question, the dispute resolution panel was often able to eventually persuade the postal operators to participate in the proceedings.

## **5 Recommendations for avoiding or resolving disputes**

Complainants' descriptions of the circumstances surrounding their disputes often reveal recurring problems. For this reason the postal dispute resolution panel provides information with recommendations for avoiding and resolving disputes. Information about certain things to be aware of with regard to the conveyance of postal items is usually available for customers on the postal operator's website or at a postal outlet.

### **5.1 Postal operator's provisions relating to shipment contents**

Customers should familiarise themselves with the postal operator's shipment content provisions before handing over their mail item to the postal operator. Not only do postal operators exclude the shipment of

certain goods (prohibited goods), they also often set a limit on the value of the individual shipment's content, for example to €500 per parcel. Customers who do not observe these provisions will need to be prepared for the likelihood that the postal operator will only accept limited liability or possibly deny any liability in the event that a shipment is lost or damaged. Information about permissible shipment content is available in the postal operators' general terms and conditions. Customers who are still uncertain about whether or not content is permissible should also consult the postal operator's website or other information materials provided by the postal operator.

## **5.2 Choosing the right shipping option**

The postal dispute resolution panel recommends that customers seek and assess information to determine the most suitable shipping option. The content and the value of the shipment are key to choosing the right option. It is important to bear in mind that the general terms and conditions for a shipping option can differ significantly among the postal operators. Customers should pay particular attention to each postal operator's liability provisions in the event of damage, loss or theft and possibly consider special services such as insurance.

## **5.3 Documenting the shipment process**

Disputes about how the content of a shipment was wrapped often lead to further difficulties in providing proof. The postal dispute resolution panel therefore recommends packaging that is appropriate for the specific shipment as well as sufficiently documenting (eg with photos) the packaging and the shipment process.

## **5.4 Retaining records to prove shipment content value**

Further problems of providing proof can arise when a shipment is damaged and no suitable proof of the content's value can be furnished. Customers are therefore recommended to retain documents (such as an invoice) that can provide insight about the value of a shipment's content.

## **5.5 Shipments of foreign origin**

There were changes for consumers in 2021 following Brexit and the elimination of the exemption from import turnover tax for shipments with contents valued at no more than €22. For shipments of foreign origin, customers should obtain information in advance about possible customs duties and processing fees and whether any import turnover tax will be due. Postal customers should also familiarise themselves ahead of time with the individual postal operator's terms of liability for international shipments.

## **5.6 Involving the postal dispute resolution panel**

Postal customers can submit a conciliation request to the postal dispute resolution panel to settle a dispute outside of court. One requirement for dispute resolution procedures is that an unsuccessful attempt has already been made to settle the dispute with the postal operator. Further information about procedural requirements is available on the postal dispute resolution panel website. Complainants are asked to use the online form that was created for requesting a dispute resolution procedure so that requests can be processed as quickly and efficiently as possible. The form, which is also available on the Bundesnetzagentur's postal dispute resolution panel website, includes a feature for uploading supporting documents and evidence with the request.

## 6 Outlook

In 2021 the postal dispute resolution panel contributed further to strengthening postal customers' rights in the area of extrajudicial dispute resolution. While the number of dispute resolution procedure requests has been steadily rising in recent years, 2021 had the highest number of requests submitted (3,752) since the postal dispute resolution panel was created, and the number of requests doubled from the previous year (1,861).

The new legal requirement as from March 2021 that postal operators participate in dispute resolution procedures when consumers submit a request has significantly strengthened consumers' rights. Whereas most postal operators previously declined to participate and a dispute resolution procedure could not be conducted, consumers can now most often engage in a substantive discussion to address their concerns in a dispute resolution procedure.

The changes to the conveyance of postal items that were introduced by postal operators in 2020 due to the coronavirus pandemic were continued in 2021. Contactless delivery was maintained in the reporting period to further limit the occurrence of infections. The coronavirus pandemic again led to a further increase in the number of parcels in 2021. For 2022 the postal dispute resolution panel is anticipating a continued increase in parcel volumes as a result of the ongoing boom in e-commerce.

Next year the postal dispute resolution panel will carry on its work mediating between the differing interests of postal customers and postal operators. Comprehensive information about the dispute resolution procedure is available on the Bundesnetzagentur's postal dispute resolution panel website. The online request form and answers to frequently asked questions are there as well. The Bundesnetzagentur also publishes current postal-related topics on its website. Whether or not the number of dispute resolution requests will continue to rise depends largely on the success rate of a complainant's attempts to reach an amicable settlement with the postal operator, which must precede a dispute resolution procedure. A postal operator can contribute significantly to its customers' satisfaction by implementing a successful complaint management system of its own.

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## List of abbreviations

HGB	German Commercial Code
PDLV	Postal Services Ordinance
Postgesetz / PostG	Postal Act
VSBG	Consumer Alternative Dispute Resolution Act
VSBInfoV	Ordinance on the Obligations to Furnish and Report Information as per the Consumer Alternative Dispute Resolution Act

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