

Force majeure – Rules and procedures for monthly parcels measurement reports

I. Objective

The objective of this document is to define the rules, conditions and procedures for cases of force majeure that may affect UPU designated operators' performance as reported in the monthly parcels measurement reports.

This document will require endorsement by POC Committee 2 and can be updated according to changes in the technology and procedures used by operators.

II. Introduction

During the 2009.1 POC C 2 QIG and RG meetings, the issue of force majeure that could affect the performance of a designated operator was discussed, and it was agreed to further study the concept of force majeure and its potential impact on the performance results in measurement reports.

It was noted that a common understanding and definition of force majeure had already been adopted by the EMS Cooperative and that the UPU Quality Link User Group also had procedures enabling its members to invoke force majeure.

This document takes its inspiration from the model adopted by the EMS Cooperative, but adapts the provisions for the needs of parcel post operators.

The "Parcels Measurement Reports", which are published on a monthly basis, focus on members' performance, the quality of their tracking data and the use of pre-advised dispatch information messages (PREDES V2 and RESDES). Designated operators that have agreed to share their tracking data receive reports containing details of their own results, and a summary report showing the results for all other postal operators.

Currently, three sets of performance reports are provided:

- all operators inbound performance report (all operators' results);
- outbound item report (each delivery operator's performance for items sent from the originating operator);
- inbound item report (delivery operator's performance for items received from each originating operator).

This document presents a definition of what constitutes force majeure, explains possible cases, and defines the actions that need to be taken by designated operators in order to invoke force majeure. All cases are to be considered in the context of a need to rerun performance reports to address a particular case of force majeure.

III. Force majeure – Definition

In the specific context of monthly parcels measurement reports, force majeure is defined as an event or occurrence in which a designated operator fails, in part or in full, country-wide or only in affected areas, to fulfil its obligations relating to quality of service owing to reasons external to the designated operator that are unforeseeable, unavoidable and independent of the designated operator's control, and which are not attributable to any act or failure to take preventive action by the designated operator concerned.

IV. Force majeure

- 1 Force majeure may thus comprise events such as:
 - a war, whether declared or not, civil war, riots and revolutions, acts of piracy, acts of sabotage, acts of terrorism;
 - b acts of nature, such as violent storms, cyclones, volcanic activity, earthquakes, tidal waves, floods, destruction by lightning. Acts of God such as pandemic;
 - c explosions, fires, or destruction of machines, of factories, or of any kind of installation;
 - d external strikes¹ that disrupt the service. For the purposes of this document, an internal strike by postal employees shall not be considered as a case of force majeure;
 - e external strike that partially disrupts the service;
 - f disruption of the POST*Net and/or GXS postal networks:
 - The Postal Technology Centre (PTC) monitors the POST*Net network:
 - International Post Corporation (IPC) monitors the GXS network.
 - In case of problems with the networks, either the PTC or IPC must notify the IB within 24 hours (excluding holidays and non-working days) of the technical problem occurring.
 - The IB will broadcast this information to all designated operators by EmIS message.
 - When the network is back to normal, either the PTC or IPC must inform the IB within 24 hours (excluding holidays and non-working days) of this occurring.
 - The IB will broadcast the information to all designated operators by EmIS message.
 - For reporting purposes the days in which the network was disrupted will be excluded from the performance calculation.

V. Important notes

- The IB will confirm in each case whether the force majeure will be applied, according to the rules.
- The types of information used to support force majeure cases may include the following: media coverage (e.g. newspaper articles, TV news reports); weather reports (e.g. Internet, meteorological service); official declarations issued by governmental bodies; police reports; written reports by the designated operator describing the situation.
- Any failure to inform the IB within the timeframe defined below will constitute grounds for non-application of force majeure and in such cases reports will not be rerun.

VI. Implementation of force majeure

- Designated operators must notify the IB within 24 hours of the incident (excluding holidays and non-working days) by fax or e-mail using part 1 of the force majeure form – (open case).
- The IB will broadcast this information to all designated operators by EmIS message.
- When the service is resumed, the designated operator must inform the IB within 24 hours (excluding holidays and non-working days) from the moment that the service went back to normal, by fax or e-mail using part 2 of the force majeure form – (close case).
- The IB will broadcast the information to all designated operators by EmIS message.
- For reporting purposes the items affected when the parcel service was disrupted will be excluded from the performance calculation.

¹ An external strike is a strike which does not involve the designated operator itself but nevertheless affects that designated operator's ability to handle parcels or provide on-time transmission about parcels.

- In cases where the disruption occurs close to the end of the month and continues beyond the cut-off date for the reports, thereby affecting two or more months, the designated operator must contact the IB by the last day of the month and by the 10th of the following month to reconfirm that the problem is still in place and describe the actions being taken to resolve the problem. The relevant reports will discount the affected items in the current month and in the following one.
- The above process is also applied if the disruption affects only one part of the national coverage. However, in this case, the designated operator shall make clear to the IB what areas are affected and their respective delivery office codes. Under such circumstances, the items affected will be excluded from the measurement during the period of disruption as far as possible.

VII. Appeal process

In the event of the IB failing to confirm the application of a designated operator's force majeure request as a result of different interpretations of the rules, with implications on the level of inward land rates received for the delivery of inbound parcels, the designated operator can follow the inward land rates appeal procedures.