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Subject : Proposal for a Directive of the European Parliament and of the Council amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services
- Political agreement

Delegations will find in Annex the text of the political agreement on the afore-mentioned proposal, as adopted at the 1 October 2007 Transport/Telecommunications/Energy Council.

PROPOSAL for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal service

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 47(2), Article 55 and Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee¹,

Having consulted the Committee of the Regions²,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

- (1) The Council in its Resolution of 7 February 1994 on the development of Community Postal Services³ identified as one of the main objectives of Community postal policy the reconciling of the gradual, controlled opening to competition of the postal market with a sustainable guarantee of the provision of the universal service.

¹ OJ C 168, 20.07.2007, p. 74.

² OJ C 197, 24.8.2007, p. 37.

³ OJ C 48, 16.2.1994, p. 3.

- (2) 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 service⁴, established a regulatory framework for the postal sector at Community level, including measures to guarantee a universal service and the setting of maximum limits for the postal services which Member States may reserve to their universal service provider(s) with a view to the maintenance of the universal service, to be reduced in a gradual and progressive way, and a timetable for decision-making on the further opening of the market to competition, for the purposes of creating a single market in postal services.
- (3) Article 16 of the EC Treaty highlights the role played by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion. It states that care should be taken that such services operate on the basis of principles and conditions which enable them to fulfil their missions.
- (3a) The positive role played by services of general economic interest was emphasised by Special Euro-barometer 219 of October 2005 which indicated that postal services are the most appreciated services of general economic interest according to users throughout the EU, with 77% of people questioned responding positively. (AM 1)
- (3b) Since they constitute an essential instrument for communication and information exchange, postal services fulfil a vital role which contributes to the objectives of social, economic and territorial cohesion in the European Union. Postal networks have important territorial and social dimensions which make universal access to essential local services possible. (AMs 2 and 4)
- (4) The measures in this area should be designed in such a way that the tasks of the Community pursuant to Article 2 of the EC Treaty, namely, to promote throughout the Community a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, sustainable and non-inflationary growth, a high degree of competitiveness and convergence of economic performance, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States are achieved as objectives.
- (4a) European postal markets have undergone dramatic changes in recent years, a development that has been propelled by technological advancements and increased competition resulting from deregulation. Due to globalisation, it is essential to take a pro-active, pro-development stance so as not to deprive European Union citizens of the benefits of such changes. (AM 3)
- (5) In its Conclusions concerning the mid-term review of the Lisbon Strategy the European Council of 22 and 23 March 2005 re-stated the importance of completing the internal market as an instrument to foster growth and create more and better jobs and the important role that effective services of general economic interest have to play in a competitive and dynamic economy. These conclusions remain applicable to postal services, as an essential instrument of communication, trade, and social and territorial cohesion.

⁴ OJ L 15, 21.1.1998, p. 14. Directive as last amended by Regulation (EC) No 1882/2003 of 29 September 2003 (OJ L 284, 31.10.2003, p. 1).

- (6) The European Parliament Resolution of 2 February 2006 highlighted the social and economic importance of efficient postal services and their important role in the framework of the Lisbon Strategy, indicating that reform measures undertaken so far have brought about significant positive developments in the postal sector, along with increased quality, more efficiency and better user-orientation. In its Resolution, the European Parliament called on the Commission, in view of the sometimes perceptibly divergent developments in universal service obligations in the Member States, to concentrate in particular, when drawing up its prospective study, on the quality of the universal service provided and on its future funding and to propose, in the context of that study, a definition, scope and appropriate financing for the universal service. (AM. 4)
- (7) In accordance with Directive 97/67/EC, a prospective study assessing, for each Member State, the impact on universal service of the full accomplishment of the postal internal market in 2009 has been carried out. The Commission has also undertaken a thorough review of the Community postal sector, including the commissioning of studies on the economic, social and technological developments in the sector, and has consulted extensively with interested parties.
- (8) The prospective study states that (AM 6) the basic aim of safeguarding the sustainable provision of a universal service matching the standard of quality defined by the Member States in accordance with Directive 97/67/EC, can be secured throughout the Community by 2009 without the need for a reserved area.
- (9) The progressive and gradual opening of postal markets to competition has provided universal service providers with sufficient time to put in place the necessary modernisation and restructuring measures required to ensure their long-term viability under the new market conditions, and enabled Member States to adapt their regulatory systems to a more open environment. Member States may furthermore avail themselves of the opportunity offered by the period of transposition, as well as the substantial time necessary for the introduction of effective competition, to proceed with further modernisation and restructuring of the universal service providers as necessary.
- (10) The prospective study shows that the reserved area should no longer be the preferred solution for the financing of the universal service. This assessment takes into account the interest of the Community and its Member States in the accomplishment of the internal market and its potential for delivering growth and employment, as well as ensuring the availability of an efficient service of general economic interest for all users. It is therefore appropriate to confirm the final date for the accomplishment of the internal market for postal services.
- (11) There are a number of drivers for change within the postal sector, notably demand and changing user needs, organisational change, automation and introduction of new technologies, substitution by electronic means of communication and market opening. In order to meet competition, cope with new consumer requirements and secure new sources of funding, postal service providers may diversify their activities by providing electronic business services or other information society services. (AM 8)

- (11a) Postal service providers, including the designated universal service providers, are being spurred on to improve efficiency as a result of new competitive challenges which differ from the traditional postal services (such as digitalisation and electronic communications) and this will in itself contribute to a major increase in competitiveness. (AM 9)
- (12) Complete market-opening will help to expand the overall size of the postal markets; it will further contribute to maintaining sustainable and quality employment within universal service providers as well as facilitating the creation of new jobs in other operators, new entrants and associated economic activities. The present Directive is without prejudice to the competence of Member States to regulate employment conditions in the postal services sector, which should not, however, lead to unfair competition. Social considerations should be taken into due account when preparing the opening up of the postal market. (AM.10)
- (12a) Transport alone should not be considered as a postal service. Direct mail consisting solely of advertising, marketing or publicity material and comprising an identical message, except for the addressee's name, address and identifying number, may be considered as an item of correspondence.
- (13) Increased competitiveness should furthermore enable the postal sector to be integrated with alternative methods of communication and allow the quality of the service provided to ever-more demanding users to be improved.
- (13a) The rural postal network, in, inter alia, mountain and island regions, plays an important role in integrating businesses into the national/global economy and in maintaining cohesion in social and employment terms. Furthermore, rural postal points in remote regions can provide an important infrastructure network for access to new electronic communications services. (AM. 12)
- (14) The developments in the neighbouring communications markets have had a varied impact in different regions of the Community and segments of the population and the use of postal services. Territorial and social cohesion should be maintained, and taking into account that Member States may adapt some specific service features to accommodate local demand by applying flexibility provided in Directive 97/67/EC, it is appropriate to fully maintain the universal service and the associated quality requirements set out in the said Directive. It is appropriate to clarify, in line with existing practice, that Member States should provide clearance and delivery of mail only on the working days of the week that are not defined, by national legislation, as public holidays. In order to ensure that market opening continues to benefit all users, in particular consumers and small and medium size enterprises, Member States must monitor and supervise market developments. They must take appropriate regulatory measures, available under the Directive, to ensure that accessibility to postal services continues to satisfy the needs of users including, by ensuring, where appropriate, a minimum number of services at the same access point and, in particular, that there is an appropriate density of access points to postal services in rural and remote regions. (AM. 13).

- (14a) The universal service guarantees, in principle, one clearance and one delivery to the home or premises of every natural or legal person every working day, even in remote or sparsely populated areas. (AM. 14)
- (14b) The provision of high-quality postal services contributes significantly to attaining the objective of social and territorial cohesion. E-commerce, in particular, offers new opportunities for remote and sparsely populated areas to participate in economic life for which the provision of good postal services is an important precondition. (AM 16)
- (15) Directive 97/67/EC established a preference for the provision of the universal service through the designation of universal service providers. Member States may require that the universal service is provided for the whole of the national territory. The development of greater competition and choice means that Member States should have further flexibility to determine the most efficient and appropriate mechanism to guarantee the availability of the universal service, while respecting the principles of objectivity, transparency, non discrimination, proportionality and least market distortion necessary to ensure the free provision of postal services in the internal market. Member States may apply one or a combination of the following: provision of the universal service by market forces, designation of one or several undertakings to provide different elements of universal service or to cover different parts of the territory and public procurement of services.

In the event that a Member State decides to designate one or more undertakings for the provision of the universal service, or for the provision of the various components of the universal service, it must be ensured that quality requirements of the universal service are imposed in a transparent and proportionate way, on the universal service providers. (AM. 17) Where a Member State designates more than one undertaking, it should ensure that there is no overlap in the universal service obligations.

- (16) It is important for users to be fully informed about the universal services provided and for postal service providers to be informed about the rights and obligations of universal service provider(s). Member States should ensure that users remain fully informed about the features and accessibility to the specific services provided. Member States should ensure that all such information is made available. It is however appropriate, in coherence with the enhanced flexibility of Member States to ensure the provision of the universal service in ways other than the designation of the universal service provider(s), to allow Member States flexibility to decide how this information is made available to the public. (AM.18)
- (17) In the light of the studies carried out and with a view to unlocking the full potential of the internal market for postal services, it is appropriate to end the use of the reserved area and special rights as a way of ensuring the financing of the universal service.

- (18) The external financing of the residual net costs of universal service may still be necessary for some Member States. It is therefore appropriate to explicitly clarify the alternatives available to ensure the financing of the universal service, to the extent that this is needed and is adequately justified, while leaving Member States the choice of the financing mechanisms to be used. These alternatives include the use of public procurement procedures including, as provided by the public procurement Directives, competitive dialogue or negotiated procedures with or without publication of a contract notice and, whenever universal service obligations entail net costs of universal service and represent an unfair burden for the designated universal service provider, public compensation and cost sharing between service providers and/or users in a transparent fashion by means of contributions to a compensation fund. Member States may use other means of financing permitted by Community Law, such as deciding, where and if necessary, that the profits accruing from other activities of the universal service provider(s) outside the scope of the universal service are to be assigned, in whole or in part, to the financing of the net costs of the universal service, as long as this is in line with the EC Treaty. Without prejudice to the obligation of Member States to uphold the rules of the Treaty applicable to state aids, including specific notification requirements in this context, Member States may notify the Commission of the financing mechanisms used to cover any net costs of the universal service, which should be reflected in the regular report that the Commission presents to the European Parliament and Council on the application of this Directive. (AM 20)
- (19) Postal service providers may be required to contribute to the financing of the universal service in cases where provision is made for a compensation fund. In order to determine which undertakings may be required to contribute to a compensation fund, Member States should consider whether the services provided by such undertakings may, from a user's perspective, be regarded as services falling within the scope of the universal service, as they display inter-changeability to a sufficient degree with the universal service, taking into account the characteristics of the services, including added value features, as well as the intended use and the pricing. These services do not necessarily have to cover all the features of the universal service, such as daily delivery or complete national coverage. (AMs 21 and 65)

- (19a) In order to comply with the proportionality principle when determining the contribution to the costs of the provision of universal service in a Member State asked from these undertakings, Member States should use transparent and non discriminatory criteria such as the share of these undertakings in the activities falling within the scope of the universal service in this Member State. Member States may require those providers which are subject to contribute to a compensation fund, to introduce an appropriate accounting separation to ensure the functioning of the fund.
- (20) The principles of transparency, non-discrimination and proportionality contained in Directive 97/67/EC must continue to be applied to any financing mechanism and any decision in this area be based on transparent, objective and verifiable criteria. In particular, the net cost of universal service is to be calculated, under the supervision of the national regulatory authority, as the difference between the net costs for a designated universal service provider operating with the universal service obligations and operating without the universal service obligations. The calculation shall take into account all other relevant elements, including any market benefits which accrue to a postal service provider designated to provide universal service, the entitlement to a reasonable profit and incentives for cost efficiency.
- (20a) In cases where Member States decide to make accessible to the public, on their national territory, additional or complementary services, with the exception of those relating to the universal service obligations, as defined in Article 3 of this Directive, such as pensions' and postal orders delivery in rural areas, these services should not be subjected to any compensation mechanisms requiring the contribution of specific undertakings. Where appropriate, Member States may grant financing for such additional or complementary services in accordance with the EC Treaty State aid rules. Except in the case of universal service provider(s), the authorisations referred to in Article 9 may not be made subject to the obligation to provide such additional services.
- (20b) It is appropriate to provide Member States that have acceded to the EU after the entry into force of Directive 2002/39/EC and may have faced particular difficulties regarding the smooth adaptation of their postal markets for the reason that they joined the postal reform process at a late stage and certain Member States with a small population and a limited geographical size, and having specific characteristics that are particular to postal services or Member States with a particularly difficult topography, with a huge number of islands, with the possibility to postpone the implementation date of the Directive for a limited period of time, in order to continue to reserve services to universal service provider(s), subject to notification to the Commission. Taking into account this exceptional period, it is also appropriate, within a limited time frame and for a limited number of services, to allow those Member States that have completely opened up their markets to refuse monopolies operating in another Member State authorisation to operate in their own territory. (AM.23)

- (20c) The Commission should provide assistance to the Member States on the different aspects of the implementation of this Directive, including on the calculation of any net cost. Moreover, cooperation between national regulatory authorities in continuing to develop benchmarks and guidance in this area, should contribute to the harmonised application of these rules. (AMs 22 and 34)
- (21) Member States should be allowed to use authorisation and individual licenses whenever justified and proportionate to the objective pursued. However, as highlighted by the third Report on the Application of Directive 97/67/EC, further harmonisation of the conditions that may be introduced appears necessary to reduce unjustified barriers to the provision of services in the internal market. In this context, Member States may for example allow postal service providers to choose between the obligation to provide a service or to contribute financially to the costs of this service provided by another provider, but should no longer be allowed to impose the concurrent requirement to contribute to a sharing mechanism and the imposition of universal service or quality obligations that are intended to serve the same purpose. It is also appropriate to clarify that some of the provisions on authorisation and licensing should not apply to designated universal service providers.
- (22) In an environment where several postal undertakings provide services within the universal service area, it is appropriate to require all Member States to assess whether some elements of the postal infrastructure or certain services generally provided by universal service providers should be made accessible to other operators providing similar services, in order to promote effective competition, and/or protect all users by ensuring the overall quality of the postal service. Where several universal service providers with regional postal networks exist, Member States should also assess and, where necessary, ensure their interoperability in order to prevent impediments to the prompt transport of postal items. (AM 25) As the legal and market situation of these elements or services is different in Member States it is appropriate to only require Member States to adopt an informed decision on the need, extent and choice of the regulatory instrument, including where appropriate on cost sharing. This provision is without prejudice to the right of Member States to adopt measures to ensure access to the postal network under conditions of transparency and non discrimination.
- (22a) Member States should ensure that postal service providers, when processing personal data pursuant to this Directive, apply the Community and national provisions on the protection of personal data, in particular those laid down by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.
- (22b) The provisions of this Directive, and in particular of Article 7, should be without prejudice to the national provisions governing the expropriation conditions for organising the universal service provision.
- (23) Given the importance of postal services for blind and partially sighted persons, it is appropriate to confirm that the process of market opening should not curtail the continuing supply by the universal service provider(s) of certain free services for blind and partially sighted persons introduced by the Member States in accordance with applicable international obligations.

- (24) In a fully competitive environment, it is important, both for the financial equilibrium of the universal service as well as for limiting market distortions, that the principle that prices reflect normal commercial conditions and costs is only departed from in order to protect public interests. This objective is achieved by continuing to allow Member States to maintain uniform tariffs for single piece tariff mail, the service most frequently used by consumers, including small and medium size enterprises. Individual Member States may also maintain uniform tariffs for some other mail items, such as, for example, newspapers and books, to protect general public interest reasons, such as access to culture, ensuring participation in a democratic society (freedom of press), regional and social cohesion.
- (24a) For the provision of services for all users, including businesses, bulk mailers and consolidators of mail from different users, universal service providers may enjoy more price flexibility in the line with the cost-orientation principle (AM 28). The tariffs should take account of the avoided costs, as compared to the standard service covering the complete range of features offered for the clearance, transport, sorting and distribution of individual postal items.
- (25) In view of the national specificities involved in the regulation of the conditions in which the incumbent universal service provider must operate in a fully competitive environment it is appropriate to leave Member States the freedom to decide how best to monitor cross-subsidies.
- (26) In view of the transition towards a fully competitive market, and in order to prevent cross-subsidies from adversely affecting competition, it is appropriate to continue to require Member States to maintain the obligation on universal service providers of keeping separate and transparent accounts, subject to the necessary adaptations. (AM 30)

This obligation should provide national regulatory authorities, competition authorities and the Commission with the information necessary to adopt decisions related to the universal service and to monitor fair market conditions until competition becomes effective.

Cooperation between national regulatory authorities in continuing to develop benchmarks and guidelines in this area, should contribute to the harmonised application of these rules.

This accounting separation and transparency should provide Member States and their national regulatory authorities with accounting information of sufficient detail to:

- adopt decisions related to the universal service;
- be used as an input when determining whether the universal service obligations imposed entail a net cost and represent an unfair financial burden for the universal service provider;
- ensure that the tariffs applied to the universal service comply with the tariff principles set out in Article 12;
- ensure compliance with the terminal dues principles set out in Article 13; and
- monitor fair market conditions until competition becomes effective.

- (27) In line with existing rules in other service areas and in order to enhance consumer protection, it is appropriate to extend the application of minimum principles concerning complaint procedures beyond universal service providers. With a view to increase the effectiveness of complaint handling procedures, it is appropriate that the Directive encourages the use of out-of-court settlement procedures as set out in Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes⁵ and Commission Recommendation of 4 April 2001 on the principle for out-of-court bodies involved in the consensual resolution of consumer disputes⁶. Consumer interests would also be furthered through the enhanced inter-operability between operators resulting from access to certain elements of infrastructure and services, and the requirement for cooperation between national regulatory authorities and consumer protection bodies.

In order to protect the interests of postal users in the event of theft or loss of, or damage to, postal items, Member States should introduce, where warranted, a system of reimbursement and/or compensation (AM 31).

- (28) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁷.

The Commission has been granted powers to adopt measures, in particular as regards future adjustment of quality-of-service standards to technical progress or market developments as well as to standardised conditions for independent performance monitoring by external bodies. Since those measures are of general scope and are designed to amend non-essential elements of this Directive and to supplement this Directive by the addition of new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

- (28a) The Committee of Art. 21 should follow the development of the universal service in Member States. (AM 32)
- (29) The role of national regulatory authorities is likely to remain crucial, in particular in those Member States where the transition to competition still needs to be completed. In accordance with the principle of separation of regulatory and operational functions, Member States should guarantee the independence of the national regulatory authorities thereby ensuring the impartiality of their decisions. This requirement of independence is without prejudice to the institutional autonomy and constitutional obligations of the Member States and to the principle of neutrality with regard to the rules in Member States governing the system of property or ownership laid down in Article 295 of the Treaty. National regulatory authorities should be endowed with all necessary resources, in terms of staffing, expertise and financial means, for the performance of their tasks.

⁵ OJ L 115, 17.4.1998, p. 31.

⁶ OJ L 109, 4.4.2001, p. 56.

⁷ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

- (30) Due to the frequent involvement of different national bodies in the exercise of regulatory functions, it is appropriate to introduce transparency in the allocation of tasks and require the different responsible bodies in charge of sector regulation, the application of competition rules and consumer issues to cooperate in order to ensure the effective accomplishment of their tasks.
- (31) Any party who is the subject of a decision by a national regulatory authority should have the right to appeal to a body that is independent of that authority. This body may be a court. This appeal procedure is without prejudice to the division of competences within national judicial systems and to the rights of legal entities or natural persons under national law. Pending the conclusion of these procedures there is a need to ensure the temporary standing of national regulatory authorities' decisions to guarantee legal and market security.
- (32) National regulatory authorities should, where necessary, co-operate with other regulatory bodies of Member States and with the Commission in carrying out their tasks under this Directive. This would promote the development of the internal market for postal services and help to achieve consistent application, in all Member States, of the provisions set out in this Directive, in particular in areas where national law implementing Community law gives national regulatory authorities considerable discretionary powers in application of the relevant rules. This cooperation could take place, inter alia, in the Committee established by Directive 97/67/EC or in a group comprising European regulators. Member States should decide which bodies are national regulatory authorities for the purposes of this Directive.
- (33) National regulatory authorities need to gather information from market players in order to carry out their tasks effectively. Requests for information should be proportionate and not impose an undue burden on undertakings. Such information may also need to be gathered by the Commission, to allow it to fulfil its obligations under Community Law. The information receiver should ensure confidentiality in accordance with the rules in place.
- (34) In order to keep the European Parliament and the Council informed on the development of the internal market for postal services, the Commission should regularly submit reports to those institutions on the application of Directive 97/67/EC.
- (34a) This Directive does not affect labour law, that is any legal or contractual provision concerning employment conditions, working conditions, including health and safety at work and the relationship between employers and workers, which Member States apply in accordance with national law which respects Community law. Equally, this Directive does not affect the social security legislation of the Member States. Where necessary, Member States may reflect working conditions in their authorisation procedures following the requirements of transparency and proportionality. (AM 35)
- (34b) Member States should ensure that sufficient access points are established that take account of the needs of users in rural and sparsely populated areas. Member States should ensure an appropriate density of access points in these areas in order to satisfy the universal service obligation. (AM 63)

- (35) In order to confirm the framework for the regulation of the sector the date of expiry of Directive 97/67/EC should be deleted. The provisions that have not been amended by this Directive continue to apply. The services that Member States may continue to reserve, during the implementation period, are those specified in Directive 97/67/EC (AM 61).
- (36) Since the objectives of the proposed action, namely achieving an internal market for postal services, safeguarding a common level of universal services for all users and setting harmonised principles for the regulation of postal services, cannot be sufficiently achieved by Member States and can therefore by reason of the scale and effects of the action to be taken, be better achieved at Community level, the Community may adopt measures in accordance with the principles of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (37) Directive 97/67/EC should therefore be amended accordingly.
- (38) This Directive is consistent with other current Community instruments concerning services. If this Directive comes into conflict with a provision of another Community instrument, in particular Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market⁸, the present Directive and its provisions shall prevail and fully apply to the postal sector.
- (39) This Directive is without prejudice to the application of the Treaty rules on competition and on the freedom to provide services. Insofar as financing mechanisms would involve aid granted by a Member State or through state aid resources in any form whatsoever within the meaning of Article 87(1) of the Treaty, this Directive is without prejudice to Member States' obligation to respect the State aid rules of the Treaty.
- (39a) In accordance with point 34 of the Inter-institutional agreement on better law-making, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.

HAVE ADOPTED THIS DIRECTIVE:

⁸ OJ L 376, 27.12.2006, p. 36.

Directive 97/67/EC is hereby amended as follows:

CHAPTER 1

Objective and scope

Article 1

This Directive establishes common rules concerning:

- the conditions governing the provision of postal services,
- the provision of a universal postal service within the Community,
- the financing of universal services under conditions that guarantee the permanent provision of such services,
- tariff principles and transparency of accounts for universal service provision,
- the setting of quality standards for universal service provision and the setting-up of a system to ensure compliance with those standards,
- the harmonisation of technical standards,
- the creation of independent national regulatory authorities.

Article 2

For the purposes of this Directive, the following definitions shall apply:

1. postal services: services involving the clearance, sorting, transport and distribution of postal items;
- 1bis. postal service provider: undertaking that provides one or more of the postal services mentioned above;

2. 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;
3. access points: physical facilities, including letter boxes provided for the public either on the public highway or at the premises of the postal service provider(s), where postal items may be deposited with the postal network by senders;
4. clearance: the operation of collecting postal items by a postal service provider;
5. distribution: the process from sorting at the distribution centre to delivery of postal items to their addressees;
6. postal item: an item addressed in the final form in which it is to be carried by a postal service provider. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal parcels containing merchandise with or without commercial value;
7. item of correspondence: a communication in written form on any kind of physical medium to be conveyed and delivered at the address indicated by the sender on the item itself or on its wrapping. Books, catalogues, newspapers and periodicals shall not be regarded as items of correspondence;
8. [...]
9. registered item: a service providing a flat-rate guarantee against risks of loss, theft or damage and supplying the sender, where appropriate upon request, with proof of the handing in of the postal item and/or of its delivery to the addressee;

10. insured item: a service insuring the postal item up to the value declared by the sender in the event of loss, theft or damage;
11. cross-border mail: mail from or to another Member State or from or to a third country;
12. [...];
13. universal service provider: the public or private postal service provider providing a universal postal service or parts thereof within a Member State, the identity of which has been notified to the Commission in accordance with Article 4;
- 13bis. [...];
14. authorisations: means any permission setting out rights and obligations specific to the postal sector and allowing undertakings to provide postal services and, where applicable, to establish and/or operate their networks for the provision of such services, in the form of a 'general authorisation' or 'individual licence' as defined below:
- 'general authorisation' means an authorisation, regardless of whether it is regulated by a 'class licence' or under general law and regardless of whether such regulation requires registration or declaration procedures, which does not require the postal service provider concerned to obtain an explicit decision by the national regulatory authority before exercising the rights stemming from the authorisation,
 - 'individual licence' means an authorisation which is granted by a national regulatory authority and which gives a postal service provider specific rights, or which subjects that undertaking's operations to specific obligations supplementing the general authorisation where applicable, where the postal service provider is not entitled to exercise the rights concerned until it has received the decision by the national regulatory authority;

15. terminal dues: the remuneration of universal service providers for the distribution of incoming cross-border mail comprising postal items from another Member State or from a third country;
16. sender: a natural or legal person responsible for originating postal items;
17. user: any natural or legal person benefiting from postal service provision as a sender or an addressee;
18. national regulatory authority: the body or bodies, in each Member State, to which the Member State entrusts, inter-alia, the regulatory functions falling within the scope of this Directive;
19. essential requirements: general non-economic reasons which can induce a Member State to impose conditions on the supply of postal services. These reasons are the confidentiality of correspondence, security of the network as regards the transport of dangerous goods, the respect for the terms and conditions of employment, the social security schemes, laid down by law, regulation or administrative provision and/or by collective agreement negotiated between national social partners, in accordance with community and national law and, where justified, data protection, environmental protection and regional planning. Data protection may include personal data protection, the confidentiality of information transmitted or stored and protection of privacy. (AM 37)
20. services provided at single piece tariff: postal services for which the tariff is set in the general terms and conditions of universal service provider(s) for individual postal items.

CHAPTER 2

Universal service

Article 3

1. Member States shall ensure that users enjoy the right to a universal service involving the permanent provision of a postal service of specified quality at all points in their territory at affordable prices for all users.
2. To this end, Member States shall take steps to ensure that the density of the points of contact and of the access points takes account of the needs of users.
3. They shall take steps to ensure that the universal service is guaranteed not less than five working days a week, save in circumstances or geographical conditions deemed exceptional, and that it includes as a minimum:
 - one clearance,
 - one delivery to the home or premises of every natural or legal person or, by way of derogation, under conditions at the discretion of the national regulatory authority, one delivery to appropriate installations.

Any exception or derogation granted by a national regulatory authority in accordance with this paragraph must be communicated to the Commission and to all national regulatory authorities.

4. Each Member State shall adopt the measures necessary to ensure that the universal service includes the following minimum facilities:
 - the clearance, sorting, transport and distribution of postal items up to two kilograms,
 - the clearance, sorting, transport and distribution of postal parcels up to 10 kilograms,
 - services for registered items and insured items.

5. The national regulatory authorities may increase the weight limit of universal service coverage for postal parcels to any weight not exceeding 20 kilograms and may lay down special arrangements for the door-to-door delivery of such parcels. Notwithstanding the weight limit of universal service coverage for postal parcels established by a given Member State, Member States shall ensure that postal parcels received from other Member States and weighing up to 20 kilograms are delivered within their territories.
6. The minimum and maximum dimensions for the postal items in question shall be those laid down in the relevant provisions adopted by the Universal Postal Union.
7. The universal service as defined in this Article shall cover both national and cross-border services.

Article 4

1. Each Member State shall ensure that the provision of the universal service is guaranteed and shall notify the Commission of the steps it has taken to fulfil this obligation. The Committee established under Article 21 shall be informed of the measures established by Member States to ensure the provision of the universal service.

2. Member States may designate one or more undertakings as universal service providers, so that the whole of the national territory can be covered. Member States may designate different undertakings to provide different elements of universal service and/or to cover different parts of the national territory. When they do so, they shall determine in accordance with Community law the obligations and rights assigned to them and shall publish these obligations and rights. In particular, Member States shall take measures to ensure that the conditions under which universal services are entrusted are based on transparent, non-discriminatory and proportionate principles, thereby guaranteeing the continuity of the postal universal service provision, by taking into account the important role it plays in social and territorial cohesion.

Member States shall notify the Commission of the identity of the universal service provider(s) they designate. The designation of a universal service provider shall be subject to a periodic review and be examined against the conditions and principles set out in this Article. However, Member States shall ensure that the duration of this designation provides a sufficient period for return on investments.

Article 5

1. Each Member State shall take steps to ensure that universal service provision meets the following requirements:
 - it shall offer a service guaranteeing compliance with the essential requirements,
 - it shall offer an identical service to users under comparable conditions,
 - it shall be made available without any form of discrimination whatsoever, especially without discrimination arising from political, religious or ideological considerations,
 - it shall not be interrupted or stopped except in cases of force majeure,
 - it shall evolve in response to the technical, economic and social environment and to the needs of users.

2. The provisions of paragraph 1 shall not preclude measures which the Member States take in accordance with requirements relating to public interest recognized by the Treaty, in particular Articles 30 and 46 thereof, concerning, inter alia, public morality, public security, including criminal investigations, and public policy.

Article 6

Member States shall take steps to ensure that users and postal service providers are regularly given sufficiently detailed and up-to-date information by the universal service provider(s) regarding the particular features of the universal service offered, with special reference to the general conditions of access to these services as well as to prices and quality standard levels. This information shall be published in an appropriate manner. (AM 39)

Member States shall notify the Commission, how the information to be published in accordance with the first subparagraph is being made available.

CHAPTER 3

Financing of universal services

Article 7

1. Member States shall not grant or maintain in force exclusive or special rights for the establishment and the provision of postal services. Member States may finance the provision of universal services in accordance with one or more of the means provided for in paragraphs 2, 3 and 4, or in accordance with any other means compatible with the EC Treaty.
2. Member States may ensure the provision of universal services by procuring such services in accordance with applicable public procurement rules and regulations, including, as provided by the public procurement Directives,⁹ competitive dialogue or negotiated procedures with or without publication of a contract notice.
3. Where a Member State determines that the universal service obligations, as provided for by this Directive, entail a net cost, calculated taking into account Annex I, and represent an unfair financial burden for the universal service provider(s) it may:
 - (a) Introduce a mechanism to compensate the undertaking(s) concerned from public funds;
 - (b) Introduce a mechanism for the sharing of the net cost of universal service obligations between providers of services and/or users.

⁹ Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services, OJ L 134, 30.4.2004, p.1. Directive as last amended by Council Directive 2006/97/EC (OJ L 363, 20.12.2006, p. 107).

4. Where the net cost is shared under paragraph 3(b), Member States may establish a compensation fund which may be funded by service providers and/or users' fees, and is administered for this purpose by a body independent of the beneficiary or beneficiaries. Member States may make the granting of authorisations to service providers under Article 9(2) subject to an obligation to make a financial contribution to that fund or to comply with universal service obligations. The universal service obligations of the universal service provider(s) set out in Article 3 may be financed in this way.

5. Member States shall ensure that the principles of transparency, non-discrimination and proportionality are respected in establishing the compensation fund and when fixing the level of the financial contributions referred to in paragraphs 3 and 4. Decisions taken under paragraphs 3 and 4 shall be based on objective and verifiable criteria and be made public.

Article 8

The provisions of Article 7 shall be without prejudice to Member States' right to organise the siting of letter boxes on the public highway, the issue of postage stamps and the registered mail service used in the course of judicial or administrative procedures in accordance with their national legislation.

CHAPTER 4

Conditions governing the provision of postal services and access to the network

Article 9

1. For services which are outside the scope of the universal service, Member States may introduce general authorisations to the extent necessary in order to guarantee compliance with the essential requirements.

2. For services which are within the scope of the universal service, Member States may introduce authorisation procedures, including individual licences, to the extent necessary in order to guarantee compliance with the essential requirements and to safeguard the universal service.

The granting of authorisations may:

- be made subject to universal service obligations,
- if necessary and justified, impose requirements concerning the quality, availability and performance of the relevant services,
- where appropriate, be subject to an obligation to make a financial contribution to the sharing mechanisms referred to in Article 7, if the provision of the universal service entails a net cost and represents an unfair burden to the universal service provider(s), designated in accordance with Article 4 (AM 44 and 81)
- where appropriate, be subject to an obligation to make a financial contribution to the national regulatory authority operational costs referred to in Article 22,
- where appropriate, be made subject to or impose the respect of working conditions established by national legislation.

Obligations and requirements referred to in the first indent and in Article 3 may only be imposed on designated universal service providers.

Except in the case of undertakings that have been designated as universal service providers in accordance with Article 4, authorisations may not:

- be limited in number,
- for the same elements of universal service or parts of the national territory, impose universal service obligations and, at the same time, financial contributions to a sharing mechanism,
- duplicate conditions which are applicable to undertakings by virtue of other, non sector specific, national legislation,
- impose technical or operational conditions other than those necessary to fulfil the obligations of this Directive.

3. The procedures, obligations and requirements referred to in paragraphs 1 and 2 shall be transparent, accessible, non-discriminatory, proportionate, precise and unambiguous, made public in advance and based on objective criteria. Member States must ensure that the reasons for refusing or withdrawing an authorisation in whole or in part are communicated to the applicant and must establish an appeal procedure.

Article 10

1. The European Parliament and the Council, acting on a proposal from the Commission and on the basis of Articles 47(2), 55 and 95 of the Treaty, shall adopt the measures necessary for the harmonisation of the procedures referred to in Article 9 governing the commercial provision of postal services to the public.

2. The harmonisation measures referred to in paragraph 1 shall concern, in particular, the criteria to be observed and the procedures to be followed by the postal operator, the manner of publication of those criteria and procedures, as well as the appeal procedures to be followed.

Article 11

The European Parliament and the Council, acting on a proposal from the Commission and on the basis of Articles 47(2), 55 and 95 of the Treaty, shall adopt such harmonisation measures as are necessary to ensure that users and the postal service provider(s) have access to the postal network under conditions which are transparent and non-discriminatory.

Article 11a

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, return to sender service. This provision is without prejudice to the right of Member States to adopt measures to ensure access to the postal network under conditions of transparency, proportionality and non discrimination.

CHAPTER 5

Tariff principles and transparency of accounts

Article 12

Member States shall take steps to ensure that the tariffs for each of the services forming part of the provision of the universal service comply with the following principles:

- prices must be affordable and must be such that all users, independent of geographical location, and, in light of specific national conditions, have access to the services provided. Member States may maintain or introduce the provision of a free postal service for the use of blind and partially-sighted persons, (AM 47)
- prices must be cost-oriented and give incentives for an efficient universal service provision. Whenever necessary for reasons relating to the public interest, Member States may decide that a uniform tariff should be applied throughout their national territory and/or cross-border, to services provided at single piece tariff and to other postal items,
- the application of a uniform tariff does not exclude the right of the universal service provider(s) to conclude individual agreements on prices with users,
- tariffs must be transparent and non-discriminatory,

- whenever universal service providers apply special tariffs, for example for services for businesses, bulk mailers or consolidators of mail from different users, they shall apply the principles of transparency and non-discrimination with regard both to the tariffs and to the associated conditions. The tariffs, together with the associated conditions, shall apply equally both as between different third parties and as between third parties and universal service providers supplying equivalent services. Any such tariffs shall also be available to users, in particular individual users and small and medium-sized enterprises (SMEs), who post under similar conditions. (AM 49)

Article 13

1. In order to ensure the cross-border provision of the universal service, Member States shall encourage their universal service providers to arrange that in their agreements on terminal dues for intra-Community cross-border mail, the following principles are respected:
 - terminal dues shall be fixed in relation to the costs of processing and delivering incoming cross-border mail,
 - levels of remuneration shall be related to the quality of service achieved,
 - terminal dues shall be transparent and non-discriminatory.

2. The implementation of these principles may include transitional arrangements designed to avoid undue disruption on postal markets or unfavourable implications for economic operators provided there is agreement between the operators of origin and receipt; such arrangements shall, however, be restricted to the minimum required to achieve these objectives.

Article 14

1. Member States shall take the measures necessary to ensure that the accounting of the universal service providers is conducted in accordance with the provisions of this Article.

2. The universal service provider(s) shall keep separate accounts within their internal accounting systems in order to clearly distinguish between each of the services and products which are part of the universal service and those which are not. (AM.50) This accounting separation shall be used as an input when Member States calculate the net cost of the universal service. Such internal accounting systems shall operate on the basis of consistently applied and objectively justifiable cost accounting principles.

3. The accounting systems referred to in paragraph 2 shall, without prejudice to paragraph 4, allocate costs in the following manner:
 - (a) costs which can be directly assigned to a particular service or product shall be so assigned;
 - (b) common costs, that is costs which cannot be directly assigned to a particular service or product, shall be allocated as follows:
 - (i) whenever possible, common costs shall be allocated on the basis of direct analysis of the origin of the costs themselves;
 - (ii) when direct analysis is not possible, common cost categories shall be allocated on the basis of an indirect linkage to another cost category or group of cost categories for which a direct assignment or allocation is possible; the indirect linkage shall be based on comparable cost structures;
 - (iii) when neither direct nor indirect measures of cost allocation can be found, the cost category shall be allocated on the basis of a general allocator computed by using the ratio of all expenses directly or indirectly assigned or allocated, on the one hand, to each of the universal services and, on the other hand, to the other services.

(iia) common costs, which are necessary for the provision of both universal services and non-universal services, shall be allocated appropriately; the same cost drivers must be applied to both universal services and non-universal services. (AM 79)

4. Other cost accounting systems may be applied only if they are compatible with paragraph 2 and have been approved by the national regulatory authority. The Commission shall be informed prior to their application.
5. National regulatory authorities shall ensure that compliance with one of the cost accounting systems described in paragraphs 3 or 4 is verified by a competent body which is independent of the universal service provider. Member States shall ensure that a statement concerning compliance is published periodically.
6. The national regulatory authority shall keep available, to an adequate level of detail, information on the cost accounting systems applied by a universal service provider, and shall submit such information to the Commission on request.
7. On request, detailed accounting information arising from these systems shall be made available in confidence to the national regulatory authority and to the Commission.
8. Where a given Member State has not used a financing mechanism for universal service provision, as permitted under Article 7, and where the national regulatory authority is satisfied that none of the designated universal service providers in that Member State is in receipt of State assistance, hidden or otherwise, and that competition in the market is fully effective, the national regulatory authority may decide not to apply the requirements of this Article.
9. This Article may, however, apply to the universal service provider designated before the final date of Full Market Opening so long as no other universal service provider(s) have been designated. The national regulatory authority shall inform the Commission in advance of taking any such decision. (AM. 52)

10. Member States may require those postal service providers which are subject to contribute to a compensation fund to introduce an appropriate accounting separation to ensure the functioning of the fund.

Article 15

The financial accounts of all universal service providers shall be drawn up, submitted to audit by an independent auditor and published in accordance with the relevant Community and national legislation to commercial undertakings.

CHAPTER 6

Quality of services

Article 16

Member States shall ensure that quality-of-service standards are set and published in relation to universal service in order to guarantee a postal service of good quality.

Quality standards shall focus, in particular, on routing times and on the regularity and reliability of services.

These standards shall be set by:

- the Member States in the case of national services,
- the European Parliament and the Council in the case of intra-Community cross-border services (see Annex II). Future adjustment of these standards to technical progress or market developments shall be made in accordance with the procedure laid down in Article 21.

Independent performance monitoring shall be carried out at least once a year by external bodies having no links with the universal service providers under standardised conditions to be specified in accordance with the procedure laid down in Article 21 and shall be the subject of reports published at least once a year.

Article 17

Member States shall lay down quality standards for national mail and shall ensure that they are compatible with those laid down for intra-Community cross-border services.

Member States shall notify their quality standards for national services to the Commission, who will publish them in the same manner as the standards for intra-Community cross-border services referred to in Article 18.

National regulatory authorities shall ensure that independent performance monitoring is carried out in accordance with the fourth subparagraph of Article 16 that the results are justified, and that corrective action is taken where necessary.

Article 18

1. In accordance with Article 16, quality standards for intra-Community cross-border services are laid down in the Annex II.
2. Where exceptional situations relating to infrastructure or geography so require, the national regulatory authorities may determine exemptions from the quality standards provided for in the Annex II. Where national regulatory authorities determine exemptions in this manner, they shall notify the Commission forthwith. The Commission shall submit an annual report of the notifications received during the previous 12 months to the Committee established under Article 21 for its information.
3. The Commission shall publish in the Official Journal of the European Communities any adjustments made to the quality standards for intra-Community cross-border services and shall take steps to ensure the regular independent monitoring and the publication of performance levels certifying compliance with these standards and the progress accomplished. National regulatory authorities shall ensure that corrective action is taken where necessary.

Article 19

1. Member States shall ensure that transparent, simple and inexpensive procedures are made available by all postal service providers for dealing with postal users' complaints, particularly in cases involving loss, theft, damage or non-compliance with service quality standards (including procedures for determining where responsibility lies in cases where more than one operator is involved), without prejudice to relevant international and national provisions on compensation schemes. (AM 53)

Member States shall adopt measures to ensure that the procedures referred to in the first subparagraph enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement and/or compensation.

Member States shall also encourage the development of independent out of court schemes for the resolution of disputes between postal service providers and users.

2. Without prejudice to other possibilities of appeal or means of redress under national and Community legislation, Member States shall ensure that users, acting individually or, where permitted by national law, jointly with organisations representing the interests of users and/or consumers, may bring before the competent national authority cases where users' complaints to undertakings providing postal services within the scope of the universal service have not been satisfactorily resolved.

In accordance with Article 16, Member States shall ensure that the universal service providers and, wherever appropriate, undertakings providing services within the scope of the universal service, publish, together with the annual report on the monitoring of their performance, information on the number of complaints and the manner in which they have been dealt with.

CHAPTER 7

Harmonisation of technical standards

Article 20

The harmonisation of technical standards shall be continued, taking into account in particular the interests of users.

The European Committee for Standardisation shall be entrusted with drawing up technical standards applicable in the postal sector on the basis of remits to it pursuant to the principles set out in Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations¹⁰.

This work shall take account of the harmonisation measures adopted at international level and in particular those decided upon within the Universal Postal Union.

The standards applicable shall be published in the Official Journal of the European Communities once a year.

Member States shall ensure that universal service providers refer to the standards published in the Official Journal where necessary in the interests of users and in particular when they supply the information referred to in Article 6.

The Committee provided for in Article 21 shall be kept informed of the discussions within the European Committee for Standardisation and the progress achieved in this area by that body.

¹⁰ OJ L 109, 26. 4. 1983, p. 8. Directive as last amended by Commission Decision 96/139/EC (OJ L 32, 10.2.1996, p. 31).

CHAPTER 8

The committee

Article 21

1. The Commission shall be assisted by a committee.
2. Where reference is made to this Article, Articles 5a(1) to (4) and Article 7 of Decision 1999/468/EC¹¹ shall apply, having regard to the provisions of article 8 thereof.
3. [...]

CHAPTER 9

The national regulatory authority

Article 22

1. Each Member State shall designate one or more national regulatory authorities for the postal sector that are legally separate from and operationally independent of the postal operators. Member States that retain ownership or control of postal service providers shall ensure effective structural separation of the regulatory functions from activities associated with ownership or control.

Member States shall inform the Commission which national regulatory authorities they have designated to carry out the tasks arising from this Directive. They shall publish the tasks to be undertaken by national regulatory authorities in an easily accessible form, in particular where those tasks are assigned to more than one body. Member States shall ensure, where appropriate, consultation and cooperation between those authorities and national authorities entrusted with the implementation of competition law and consumer law, on matters of common interest.

¹¹ Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ L 184, 17.7.1999, p.23) as amended by Council Decision of 17 July 2006 (OJ L 200, 22.7.2006, p.11)

2. The national regulatory authorities shall have as a particular task ensuring compliance with the obligations arising from this Directive, in particular by establishing monitoring and regulatory procedures to ensure the provision of the universal service. They may also be charged with ensuring compliance with competition rules in the postal sector.

The national regulatory authorities of the Member States shall work in close collaboration and shall provide mutual assistance in order to facilitate application of this Directive within the appropriate existing bodies.

3. Member States shall ensure that effective mechanisms exist at national level under which any user or postal service provider who is affected by a decision of a national regulatory authority has the right to appeal against the decision to an appeal body which is independent of the parties involved. Pending the outcome of any such appeal, the decision of the national regulatory authority shall stand, unless the appeal body decides otherwise.

CHAPTER 9a

Provision of information

Article 22a

1. Member States shall ensure that postal service providers provide all the information in particular, to the national regulatory authorities, including financial information and information about the provision of the universal service, namely for the following purposes:

- (a) for national regulatory authorities to ensure conformity with the provisions of, or decisions made in accordance with, this Directive,
- (b) for clearly defined statistical purposes.

2. Postal service providers shall provide such information promptly on request and in confidence, where necessary, within the timescales and to the level of detail required by the national regulatory authority. The information requested by the national regulatory authority shall be proportionate to the performance of its tasks. The national regulatory authority shall give the reasons justifying its request for information. (AM. 55)

3. Member States shall ensure that national regulatory authorities provide the Commission, upon request, with appropriate and relevant information necessary for it to carry out its tasks under this Directive.

4. Where information is considered confidential by a national regulatory authority, in accordance with Community and national business confidentiality rules, the Commission and the national regulatory authorities concerned shall preserve such confidentiality.

CHAPTER 10

Final provisions

Article 23

Every four years, on the first occasion no later than 31 December 2013, the Commission shall submit a report to the European Parliament and the Council on the application of this Directive, including the appropriate information about developments in the sector, particularly concerning economic, social, employment patterns and technological aspects, as well as about quality of service. The report shall be accompanied where appropriate by proposals to the European Parliament and the Council. (AM. 56)

Article 23a

The Commission shall provide assistance to the Member States on the implementation of this Directive, including on the calculation of any net cost of the universal service. (AM. 58)

Articles 24–27

Deleted

Article 28

This Directive is addressed to the Member States.

Done at Brussels, [...]

<i>For the European Parliament</i>	<i>For the Council</i>
<i>The President</i>	<i>The President</i>
[...]	[...]

Annex I

Guidance on calculating the net cost, if any, of universal service

Part A: Definition of the universal service obligations

Universal service obligations refer to the obligations, referred to in Article 3, placed upon a postal service provider by a Member State which concern the provision of a postal service throughout a specified geographical area, including, where required, uniform prices in that geographical area for the provision of that service or provision of certain free services for blind and partially sighted persons.

Those obligations may include, among others, the following:

- a number of days of delivery, superior to those set in this Directive;
- accessibility to access points, in order to satisfy the universal service obligations,
- the tariffs affordability of the universal service;
- uniform prices for universal service;
- The provision of certain free services for blind and partially sighted persons.

Part B: Calculation of net cost

National regulatory authorities are to consider all means to ensure appropriate incentives for postal service providers (designated or not) to provide universal service obligations cost efficiently.

The net cost of universal service obligation is any cost related to and necessary for the operation of the postal universal service provision. The net cost of universal service obligations is to be calculated, as the difference between the net cost for a designated universal service provider of operating with the universal service obligations and the same postal service provider operating without the universal service obligations.

The calculation shall take into account all other relevant elements, including any intangible and market benefits which accrue to a postal service provider designated to provide universal service, the entitlement to a reasonable profit and incentives for cost efficiency;

Due attention is to be given to correctly assessing the costs that any designated universal service provider would have chosen to avoid, had there been no universal service obligation. The net cost calculation should assess the benefits, including intangible benefits, to the universal service operator.

The calculation is to be based upon the costs attributable to:

i) elements of the identified services which can only be provided at a loss or provided under cost conditions falling outside normal commercial standards. This category may include service elements such as the services defined in Part A.

(ii) specific users or groups of users who, taking into account the cost of providing the specified service, the revenue generated and any uniform prices imposed by the Member State, can only be served at a loss or under cost conditions falling outside normal commercial standards.

This category includes those users or groups of users that would not be served by a commercial operator that did not have an obligation to provide universal service.

The calculation of the net cost of specific aspects of universal service obligations is to be made separately and so as to avoid the double counting of any direct or indirect benefits and costs. The overall net cost of universal service obligations to any designated universal service provider is to be calculated as the sum of the net costs arising from the specific components of universal service obligations, taking account of any intangible benefits. The responsibility for verifying the net cost lies with the national regulatory authority. The universal service provider(s) shall cooperate with the national regulatory authority to enable it to verify the net cost.

Part C: Recovery of any net costs of universal service obligations

The recovery or financing of any net costs of universal service obligations may require designated universal service providers to be compensated for the services that they provide under non-commercial conditions. As such a compensation involves financial transfers, Member States have to ensure that these are undertaken in an objective, transparent, non-discriminatory and proportionate manner. This means that the transfers result as far as possible in the least distortion to competition and to user demand.

A sharing mechanism based on a fund referred to in Article 7(4) should use a transparent and neutral mechanism for collecting contributions that avoids a double imposition of contributions falling on both outputs and inputs of undertakings.

The independent body administering the fund is to be responsible for collecting contributions from undertakings, which are assessed as liable to contribute to the net cost of universal service obligations in the Member State and is to oversee the transfer of sums due to the undertakings entitled to receive payments from the fund.

Annex II¹²

Quality standards for intra-Community cross-border mail

The quality standards for intra-Community cross-border mail in each country are to be established in relation to the time limit for routing measured from end to end (*) for postal items of the fastest standard category according to the formula D+n, where D represents the date of deposit (**)* and n the number of working days which elapse between that date and that of delivery to the addressee.

Quality standards for intra-Community cross-border mail	
Time limit	Objective
D + 3	85% of items
D + 5	97% of items

The standards must be achieved not only for the entirety of intra-Community traffic but also for each of the bilateral flows between two Member States.

¹² From the adoption of the new Directive, the sole Annex of the existing Directive 97/67/EC, as amended by Directive 2002/39/EC, shall feature as Annex II.

(*) End-to-end routing is measured from the access point to the network to the point of delivery to the addressee.

(**) The date of deposit to be taken into account shall be the same day as that on which the item is deposited, provided that deposit occurs before the last collection time notified from the access point to the network in question. When deposit takes place after this time limit, the date of deposit to be taken into consideration will be that of the following day of collection.

Amending Directive

Article 1

All the above amending provisions (Article 1 - Annex II) as agreed.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2010 at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the fields covered by this Directive.

New Article 3

1. By derogation to Article 2, the following Member States may postpone the implementation of this Directive until 31 December 2012, in order to continue to reserve services to universal service provider(s):

- Cyprus
- Czech Republic
- Greece
- Hungary
- Latvia
- Lithuania
- Luxembourg
- Malta
- Poland

- Romania
- Slovakia

These Member States may decide to implement the Directive at an earlier stage.

2. The relevant Member States shall notify the Commission confirming their intention to make use of the implementation delay set out in paragraph 1 not later than six months after the entry into force of this Directive.

3. Member States that abolish their reserved areas before 31 December 2012 may, between 1 January 2011 and 31 December 2012, refuse to grant the authorisation provided for in Article 9(2) for services within the abolished reserved area in question to postal operators providing services within the scope of the universal service, as well as companies controlled by them, which are granted a reserved area in another Member State. (AMs. 62 and 64)

Article 4

This Directive shall enter into force on the day of its publication in the Official Journal of the European Union.
