

Proposal for a European Parliament and Council Directive amending Directive 97/67/EC with regard to the further opening to competition of Community postal services

(2000/C 337 E/36)

(Text with EEA relevance)

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(Submitted by the Commission on 14 July 2000)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

principles and conditions which enable them to fulfil their missions.

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

(4) The European Parliament's Resolutions of 14 January 1999 on European postal services⁽³⁾ and its further Resolution of 18 February 2000, also on European postal services⁽⁴⁾, highlight the social and economic importance of postal services and the need to maintain a high quality of universal service.

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

(5) The European Council, meeting in Lisbon, on 23 and 24 March 2000, set out in its Presidency conclusions two decisions applying to postal services, whereby action was requested of the Commission, the Council and the Member States in accordance with their respective powers. The requested actions are: first, to set out by the end of 2000 a strategy for the removal of barriers to services, namely postal services, and secondly, to speed up liberalisation in areas such as postal services, the stated aim being to achieve a fully operational market in postal services.

Having regard to the opinion of the Committee of the Regions,

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 services⁽¹⁾, identified as one of the main objectives of Community postal policy the reconciling of the furtherance of the gradual, controlled opening to competition of the postal market and that of a durable guarantee of the provision of the universal service.

(6) The Commission has 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.

(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 service⁽²⁾ established a regulatory framework for the postal sector at Community level, including measures to guarantee a universal service, 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, 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.

(7) The Community postal sector requires a modern regulatory framework which aims at enhancing the internal market for postal services in order to enable the sector to compete with alternative methods of communication and to satisfy the changing and increased demands of users.

(3) Article 16 of the Treaty highlights the place occupied by services of general interest in the shared values of the Union as well as their role in promoting social and territorial cohesion; the same Article further states that care should be taken that such services operate on the basis of

(8) The basic aim of ensuring the durable provision of a universal service to matching the standard of quality required by Directive 97/67/EC on a consistent basis throughout the Community can be secured under conditions of high efficiency ensured by the freedom to provide services in this area.

(9) The competitive advantages provided by a universal postal network which is efficient and responsive to customer demand can help to offset any additional costs incurred by reason of the obligation to provide a universal service which cannot be self-financing.

⁽¹⁾ OJ C 48, 16.2.1994, p. 3.

⁽²⁾ OJ L 15, 21.1.1998, p. 14.

⁽³⁾ OJ C 104, 14.4.1999, p. 134.

⁽⁴⁾ Resolution B5-0116/2000; not yet published in the Official Journal.

- (10) Experience has shown that referring only to the price limit as a means of determining the added value of express services is no longer a practical proposition due to the development of added value express services below the price limit.
- (11) It is therefore appropriate to define a category comprising 'special services' fulfilling special customer needs, this category should include all services with the required added features. Such services should not be reserved, regardless of the weight or the price of such items. Sending mail electronically for distant printing only will not be sufficient to take it outside the reserved area.
- (12) The increase in demand within the postal sector as a whole, predicted for the medium term, will help to offset the loss of market share that the universal service providers may incur as a result of further market-opening and will thereby further safeguard the universal service.
- (13) Amongst the factors which bring about change affecting employment in the postal sector, technological development and market pressure for efficiency gains are the most important; of the remaining factors for change, market-opening will play a less prominent part. Market-opening will help to expand the overall size of the postal markets, and any reductions in staff levels among the universal service providers due to such measures (or their anticipation) are likely to be offset by the resulting growth in employment among private operators and new market entrants.
- (14) It is appropriate to provide at Community level a timetable for a gradual and controlled opening of the letters market to competition which allows all universal service providers sufficient time to put in place the further measures of modernisation and restructuring required to ensure their long-term viability under the new market conditions. An appropriate period of time is also needed to enable Member States to adapt their regulatory systems to a more open environment. It is therefore appropriate to provide for a step-by-step approach to further market-opening, consisting of an intermediate step representing a significant but controlled opening of the market, followed by a review and proposal for a further step.
- (15) It is appropriate to ensure that the next phase of market-opening is both substantial in nature and achievable in practice for the Member States.
- (16) A general reduction to 50 grams in the weight limit of the services which may be reserved to the universal service providers, combined with opening outgoing cross-border mail and express mail fully to competition, represents a relatively simple and controlled further phase which is nevertheless significant.
- (17) In the Community, items of ordinary correspondence weighing between 50 grams and 350 grams represent on average approximately 16 % of the total postal revenues of the universal service providers, whilst items of outward cross-border correspondence and express services below the price limit represent a further 4 % or so, on average, of the total postal revenues of the universal service providers.
- (18) A price limit for the services capable of being reserved, of two and a half times the public tariff for an item of correspondence in the first weight step of the fastest standard category, is most appropriate in combination with a 50-gram weight limit where applicable.
- (19) A 50-gram weight limit for items of ordinary domestic correspondence is practical, since as it does not present a risk of its circumvention by means way of an artificial increase in the weight of individual items of correspondence, most items of correspondence being below 20 grams in weight.
- (20) Direct mail already represents in most Member States a dynamic and growing market with substantial growth prospects while in the remaining Member States there is considerable potential for growth. Direct mail is already largely open to competition in six Member States. The improvements in service flexibility and pricing resultant from competition would improve the position of direct mail versus alternative communications media, which, in turn, would be likely to lead to new postal items as an additional spin-off and strengthen the position of the postal industry as a whole. Nevertheless, to the extent necessary to ensure the provision of universal service, it should be provided that direct mail may continue to be reserved within the above weight and price limits of 50 grams and two and a half times the basic public tariff.
- (21) Outgoing cross-border mail is already *de facto* open to competition in most Member States; its reservation is not needed to ensure universal service representing on average 3 % of total postal revenues. Opening this part of the market *de jure* would allow different postal operators to collect, sort and transport all outgoing cross-border mail and to deliver it in Member States, but only where the domestic regulation in a particular Member State permits this.
- (22) Opening incoming cross-border mail to competition would allow circumvention of the 50-gram limit through relocation of the posting of a proportion of bulk domestic mail, thereby making its effects unpredictable. Identifying the origins of items of corre-

spendence could present additional enforcement difficulties. A 50-gram weight limit for items of ordinary incoming cross-border correspondence and direct mail, as for ordinary domestic correspondence, is practical as it does not present a risk of circumvention either in this way or through an artificial increase in the weight of individual items of correspondence.

- (23) Setting a timetable now, aimed at a further step towards the completion of the internal market in postal services, is important for both the long-term viability of the universal service and the continued development of modern and efficient posts.
- (24) It is appropriate to provide for a further period within which Member States may continue to reserve certain postal services to their universal service provider(s). This additional period will enable the universal service providers to complete the process of adapting their operations and human resources to conditions of greater competition without upsetting their financial equilibrium and thus without jeopardising the provision of universal service.
- (25) It is appropriate both to define the new weight and price limits and the services to which they may apply and to which provides for a further review and decision on further market-opening.
- (26) Measures adopted by a Member State, including the establishment of a compensation fund or any change in its operation or any implementation of or payment from it, may involve aid granted by a Member State or through State resources in any form whatsoever within the meaning of Article 87(1) of the Treaty necessitating prior notification to the Commission pursuant to Article 88(3) thereof.
- (27) The concept of licensing competitors in the universal service area can be combined with requirements obliging such licensees to contribute to the provision of universal service.
- (28) It is appropriate for national regulatory authorities to link the introduction of all such licenses to requirements that consumers of their services are to have transparent, simple and inexpensive procedures available to them for dealing with their complaints, regardless of whether they relate to the services of the universal service provider(s) or to those of operators holding authorisations, including individual license-holders. It is further appropriate for these procedures to be available to users of all postal services, whether or not they are universal services.
- (29) The universal service providers normally provide services, for example to business customers, consolidators of mail for different customers and bulk mailers, enabling them to enter the mail stream at different points and under different conditions by comparison with the standard letters service. In doing this, the universal service

providers should comply with the principles of transparency and non-discrimination, both as between different third parties and as between third parties and universal service providers supplying equivalent services. It is also necessary for such services to be available to residential customers who post in similar conditions, given the need for non-discrimination in the provision of services.

- (30) It is appropriate in the light of the complaints which have been raised against certain incumbent operators in recent years to provide for Member States to adopt rules to ensure that universal service providers do not cross-subsidise services outside the reserved area by means of revenues from services in the reserved area, except where it is shown to be strictly necessary to fulfil specific universal service obligations. It is therefore appropriate for national regulatory authorities to adopt rules to this effect and for them to communicate these rules to the Commission.
- (31) In view of the amendments, it is appropriate to postpone until 31 December 2006 the date for the expiry of Directive 97/67/EC.
- (32) Directive 97/67/EC should therefore be amended accordingly.
- (33) This Directive is without prejudice to the application of the Treaty rules on competition and on the freedom to provide services, as explained in particular in the Notice from the Commission on the application of the competition rules to the postal sector and on the assessment of certain State measures relating to postal services ⁽¹⁾,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

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

1. In Article 2, the following point is added:

'20. *Special services*: services clearly distinct from the universal service, which meet particular customer requirements and which offer additional service features with added-value not offered by the standard postal service. Additional added-value service features are, for example, delivery on appointment, the option to effect a change of destination or of addressee in course of transit or if delivery to the primary destination fails, tracking and tracing, guaranteed time of delivery, more than one attempt at delivery, delivery according to the priority or sequence specified by the customer.

Home collection without any such features is not a special service.

⁽¹⁾ OJ C 39, 6.2.1998, p. 2.

Electronic transmission to and/or electronic receipt by the operator for sorting, printing and/or preparation of mail shall not be regarded as an additional service feature within the meaning of the first subparagraph.

Express mail is a special service, which, in addition to faster and more reliable collection, transportation and delivery, is characterised by the provision of some or all of the following additional service features: collection from the sender's address, delivery to the addressee in person or to his authorised representative, guarantee of delivery by a given date, possibility of a change of destination and addressee in transit, confirmation to the sender of delivery, tracking and tracing, personalised treatment for customers and the offer of a range of services according to requirements.'

2. Article 7 shall be replaced by the following:

'Article 7

1. To the extent necessary to ensure the provision of universal service, Member States may continue to reserve certain standard mail services to the universal service provider(s). Those services shall be limited to the clearance, sorting, transport and delivery of ordinary items of domestic correspondence and incoming cross-border correspondence within both of the following weight and price limits. The weight limit shall be 50 grams. This weight limit does not apply if the price is equal or more than two and a half times the public tariff for an item of correspondence in the first weight step of the fastest category.

In the case of the free postal service for blind and partially sighted persons, exceptions to the weight and price restrictions may be permitted.

To the extent necessary to ensure the provision of universal service, direct mail may continue to be reserved within the above weight and price limits referred to in the first subparagraph.

2. Items of outgoing cross-border correspondence, document exchange and special services (including express mail) may not be reserved.

For special services, the sending of mail electronically for distant printing only shall not be sufficient to avoid the monopoly on incoming cross-border mail.

3. As a further step towards the completion of the internal market in postal services, the European Parliament and the Council shall decide, not later than 31 December 2005, on a further opening of the postal market with effect from 1 January 2007.

To that end, the Commission shall present a proposal by 31 December 2004, following a review of the sector which will shall focus on the need to ensure the provision of universal service in an appropriate manner in a competitive market environment.

Upon request by the Commission, Member States shall provide all the information necessary for completion of this review.'

3. In Article 9, the following paragraph is added:

'6. Whenever universal service providers apply special tariffs, for example for services for businesses, bulk mailers or consolidators of mail from different customers, they shall apply the principles of transparency and non-discrimination with regard both to the tariffs and to the associated conditions. The tariffs shall 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 delivery of individual postal items and, 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 residential customers who post under similar conditions.'

4. In Article 12, the following indent is added:

'— cross-subsidisation of universal services outside the reserved area out of revenues from services in the reserved area shall be prohibited except to the extent to which it is shown to be strictly necessary to fulfil specific universal service obligations imposed in the competitive area; rules shall be adopted to this effect by the national regulatory authorities who shall inform the Commission of such measures.'

5. In Article 19, the following sentence is added to the first paragraph:

'Member States shall ensure that this principle is also applied to beneficiaries of postal services which do not fall within the universal service.'

6. In Article 27, the date '31 December 2004' is replaced by the date '31 December 2006'.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 31 December 2002. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a 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 texts of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

Article 4

This Directive is addressed to the Member States.
