

POSTAL SERVICES DIRECTIVE^A
- CONSOLIDATED VERSION^B -

^A This document is a consolidation of the following three Directives:

- 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;
- Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services;
- Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services.

The recitals of the above Directives are listed in chronological order under the relevant header.

This document equally takes into account Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003 adapting to Council Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty. This Regulation adapted a series of legal instruments including the Postal Services Directive to the Comitology Procedure.

^B This informal document is intended as a working tool provided by Directorate General Internal Market and Services of the European Commission and is not an official consolidated version of the Postal Services Directive.

Directive 97/67/EC

THE EUROPEAN PARLIAMENT AND
THE COUNCIL OF THE EUROPEAN
UNION,

Having regard to the Treaty establishing the
European Community, and in particular
Articles 57 (2), 66 and 100a thereof,

Having regard to the proposal from the
Commission¹,

Having regard to the opinion of the Economic
and Social Committee²,

Having regard to the opinion of the
Committee of the Regions³,

Having regard to the resolution of the
European Parliament of 22 January 1993
concerning the green paper on the

development of the single market for postal
services⁴,

Having regard to the Council resolution of 7
February 1994 on the development of
Community postal services⁵,

Acting in accordance with the procedure laid
down in Article 189b of the Treaty, in the
light of the joint text approved by the
Conciliation Committee on 7 November
1997⁶,

(1) Whereas measures should be adopted with
the aim of establishing the internal market in
accordance with Article 7a of the Treaty;
whereas this market comprises an area

¹ OJ C 322, 2. 12. 1995, p. 22, and OJ C 300, 10. 10. 1996, p. 22.

² OJ C 174, 17. 6. 1996, p. 41.

³ OJ C 337, 11. 11. 1996, p. 28.

⁴ OJ C 42, 15. 2. 1993, p. 240.

⁵ OJ C 48, 16. 2. 1994, p. 3.

⁶ Opinion of the European Parliament of 9 May 1996 (OJ C 152, 27. 5. 1996, p. 20), Council Common Position of 29 April 1997 (OJ C 188, 19. 6. 1997, p. 9) and Decision of the European Parliament of 16 September 1997 (OJ C 304, 6. 10. 1997, p. 34); Decision of the European Parliament of 19 November 1997 and Decision of the Council of 1 December 1997.

without internal frontiers in which the free movement of goods, persons, services and capital is ensured;

(2) Whereas the establishment of the internal market in the postal sector is of proven importance for the economic and social cohesion of the Community, in that postal services are an essential instrument of communication and trade;

(3) Whereas on 11 June 1992 the Commission presented a Green Paper on the development of the single market for postal services and, on 2 June 1993, a Communication on the guidelines for the development of Community postal services;

(4) Whereas the Commission has conducted wide-ranging public consultation on those aspects of postal services that are of interest to the Community and the interested parties in the postal sector have communicated their observations to the Commission;

(5) Whereas the current extent of the universal postal service and the conditions governing its provision vary significantly from one Member State to another; whereas, in particular, performance in terms of quality of services is very unequal amongst Member States;

(6) Whereas cross-border postal links do not always meet the expectations of users and European citizens, and performance, in terms of quality of service with regard to Community cross-border postal services, is at the moment unsatisfactory;

(7) Whereas the disparities observed in the postal sector have considerable implications for those sectors of activity which rely especially on postal services and effectively impede the progress towards internal Community cohesion, in that the regions deprived of postal services of sufficiently high quality find themselves at a disadvantage as regards both their letter service and the distribution of goods;

(8) Whereas measures seeking to ensure the gradual and controlled liberalisation of the market and to secure a proper balance in the application thereof are necessary in order to guarantee, throughout the Community, and subject to the obligations and rights of the universal service providers, the free provision of services in the postal sector itself;

(9) Whereas action at Community level to ensure greater harmonisation of the conditions governing the postal sector is therefore

necessary and steps must consequently be taken to establish common rules;

(10) Whereas, in accordance with the principle of subsidiarity, a set of general principles should be adopted at Community level, whilst the choice of the exact procedures should be a matter for the Member States, which should be free to choose the system best adapted to their own circumstances;

(11) Whereas it is essential to guarantee at Community level a universal postal service encompassing a minimum range of services of specified quality to be provided in all Member States at an affordable price for the benefit of all users, irrespective of their geographical location in the Community;

(12) Whereas the aim of the universal services is to offer all users easy access to the postal network through the provision, in particular, of a sufficient number of access points and by ensuring satisfactory conditions with regard to the frequency of collections and deliveries; whereas the provision of the universal service must meet the fundamental need to ensure continuity of operation, whilst at the same time remaining adaptable to the needs of users as well as guaranteeing them fair and non-discriminatory treatment;

(13) Whereas universal service must cover national services as well as cross-border services;

(14) Whereas users of the universal service must be given adequate information on the range of services offered, the conditions governing their supply and use, the quality of the services provided, and the tariffs;

(15) Whereas the provisions of this Directive relating to universal service provision are without prejudice to the right of universal service operators to negotiate contracts with customers individually;

(16) Whereas the maintenance of a range of those services that may be reserved, in compliance with the rules of the Treaty and without prejudice to the application of the rules on competition, appears justified on the grounds of ensuring the operation of the universal service under financially balanced conditions; whereas the process of liberalisation should not curtail the continuing supply of certain free services for blind and partially sighted persons introduced by the Member States;

(17) Whereas items of correspondence weighing 350 grammes and over represent less than 2 % of letter volume and less than 3 % of the receipts of the public operators; whereas the criteria of price (five times the basic tariff) will better permit the distinction between the reserved service and the express service, which is liberalised;

(18) Whereas, in view of the fact that the essential difference between express mail and universal postal services lies in the value added (whatever form it takes) provided by express services and perceived by customers, the most effective way of determining the extra value perceived is to consider the extra price that customers are prepared to pay, without prejudice, however, to the price limit of the reserved area which must be respected;

(19) Whereas it is reasonable to allow, on an interim basis, for direct mail and cross-border mail to continue to be capable of reservation within the price and weight limits provided; whereas, as a further step towards the completion of the internal market of postal services, a decision on the further gradual controlled liberalisation of the postal market, in particular with a view to the liberalisation of cross-border and direct mail as well as on a further review of the price and weight limits, should be taken by the European Parliament and the Council not later than 1 January 2000, on a proposal from the Commission following a review of the sector;

(20) Whereas, for reasons of public order and public security, Member States may have a legitimate interest in conferring on one or more entities designated by them the right to site on the public highway letter-boxes intended for the reception of postal items; whereas, for the same reasons, they are entitled to appoint the entity or entities responsible for issuing postage stamps identifying the country of origin and those responsible for providing the registered mail service used in the course of judicial or administrative procedures in accordance with their national legislation; whereas they may also indicate membership of the European Union by integrating the 12-star symbol;

(21) Whereas new services (services quite distinct from conventional services) and document exchange do not form part of the universal service and consequently there is no justification for their being reserved to the universal service providers; whereas this applies equally to self-provision (provision of postal services by the natural or legal person who is the originator of the mail, or collection

and routing of these items by a third party acting solely on behalf of that person), which does not fall within the category of services;

(22) Whereas Member States should be able to regulate, by appropriate authorization procedures, on their territory, the provision of postal services which are not reserved to the universal service providers; whereas those procedures must be transparent, non-discriminatory, proportionate and based on objective criteria;

(23) Whereas the Member States should have the option of making the grant of licences subject to universal service obligations or contributions to a compensation fund intended to compensate the universal service provider for the provision of services representing an unfair financial burden; whereas Member States should be able to include in the authorisations an obligation that the authorised activities must not infringe the exclusive or special rights granted to the universal service providers for the reserved services; whereas an identification system for direct mail may be introduced for the purposes of supervision where direct mail is liberalised;

(24) Whereas measures necessary for the harmonisation of authorisation procedures laid down by the Member States governing the commercial provision to the public of non-reserved services will have to be adopted;

(25) Whereas, should this prove necessary, measures shall be adopted to ensure the transparency and non-discriminatory nature of conditions governing access to the public postal network in Member States;

(26) Whereas, in order to ensure sound management of the universal service and to avoid distortions of competition, the tariffs applied to the universal service should be objective, transparent, non-discriminatory and geared to costs;

(27) Whereas the remuneration for the provision of the intra-Community cross-border mail service, without prejudice to the minimum set of obligations derived from Universal Postal Union acts, should be geared to cover the costs of delivery incurred by the universal service provider in the country of destination; whereas this remuneration should also provide an incentive to improve or maintain the quality of the cross-border service through the use of quality-of-service targets; whereas this would justify suitable systems providing for an appropriate coverage

of costs and related specifically to the quality of service achieved;

(28) Whereas separate accounts for the different reserved services and non-reserved services are necessary in order to introduce transparency into the actual costs of the various services and in order to ensure that cross-subsidies from the reserved sector to the non-reserved sector do not adversely affect the competitive conditions in the latter;

(29) Whereas, in order to ensure the application of the principles set out in the previous three recitals, universal service providers should implement, within a reasonable time limit, cost accounting systems, which can be independently verified, by which costs can be allocated to services as accurately as possible on the basis of transparent procedures; whereas such requirements can be fulfilled, for example, by implementation of the principle of fully distributed costing; whereas such cost accounting systems may not be required in circumstances where genuine conditions of open competition exist;

(30) Whereas consideration should be given to the interests of users, who are entitled to services of a high quality; whereas, therefore, every effort must be made to improve and enhance the quality of services provided at Community level; whereas such improvements in quality require Member States to lay down standards, to be attained or surpassed by the universal service providers, in respect of the services forming part of the universal service;

(31) Whereas the quality of service expected by users constitutes an essential aspect of the services provided; whereas the evaluation standards for this quality of service and the levels of quality achieved must be published in the interests of users; whereas it is necessary to have available harmonised quality-of-service standards and a common methodology for measurement in order to be able to evaluate the convergence of the quality of service throughout the Community;

(32) Whereas national quality standards consistent with Community standards must be determined by Member States; whereas, in the case of intra-Community cross-border services requiring the combined efforts of at least two universal service providers from two different Member States, quality standards must be defined at Community level;

(33) Whereas compliance with these standards must be independently verified at regular intervals and on a harmonised basis; whereas users must have the right to be informed of the results of this verification and Member States should ensure that corrective action is taken where those results demonstrate that the standards are not being met;

(34) Whereas Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts⁷ applies to postal operators;

(35) Whereas the need for improvement of quality of service means that disputes have to be settled quickly and efficiently; whereas, in addition to the forms of legal redress available under national and Community law, a procedure dealing with complaints should be provided, which should be transparent, simple and inexpensive and should enable all relevant parties to participate;

(36) Whereas progress in the interconnection of postal networks and the interests of users require that technical standardisation be encouraged; whereas technical standardisation is indispensable for the promotion of interoperability between national networks and for an efficient Community universal service;

(37) Whereas guidelines on European harmonisation provide for specialised technical standardisation activities to be entrusted to the European Committee for Standardisation;

(38) Whereas a committee should be established to assist the Commission with the implementation of this Directive, particularly in relation to the future work on the development of measures relating to the quality of Community cross-border service and technical standardisation;

(39) Whereas, in order to ensure the proper functioning of the universal service and to ensure undistorted competition in the non-reserved sector, it is important to separate the functions of the regulator, on the one hand, and the operator, on the other; whereas no postal operator may be both judge and interested party; whereas it is for the Member State to define the statute of one or more national regulatory authorities, which may be chosen from public authorities or independent entities appointed for that purpose;

⁷OJ L 95, 21. 4. 1993, p. 29.

(40) Whereas the effects of the harmonised conditions on the functioning of the internal market in postal services will need to be the subject of an assessment; whereas, therefore, the Commission will present a report to the European Parliament and the Council on the application of this Directive, including the appropriate information on developments in the sector, particularly concerning economic, social, employment and technological aspects, as well as on quality of service, three years following the date of its entry into force, and in any event no later than 31 December 2000;

(41) Whereas this Directive does not affect the application of the rules of the Treaty, and in particular its rules on competition and the freedom to provide services;

(42) Whereas nothing shall prevent Member States from maintaining in force or introducing measures for the postal sector which are more liberal than those provided for by this Directive, nor, should this Directive lapse, from maintaining in force measures which they have introduced in order to implement it, provided in each case that such measures are compatible with the Treaty;

(43) Whereas it is appropriate that this Directive should apply until 31 December 2004 unless otherwise decided by the European Parliament and the Council on the basis of a proposal from the Commission;

(44) Whereas this Directive does not apply to any activity which falls outside the scope of Community law, such as those provided for by Titles V and VI of the Treaty on European Union, and in any case to activities concerning public security, defence, State security (including the economic well-being of the State when the activities relate to State security matters) and the activities of the State in areas of criminal law;

(45) Whereas this Directive does not, in the case of undertakings which are not established in the Community, prevent the adoption of measures in accordance with both Community law and existing international obligations designed to ensure that nationals of the Member States enjoy similar treatment in third countries; whereas Community undertakings should benefit in third countries from treatment and effective access that is comparable to the treatment and access to the market which is conferred on nationals of the countries concerned within the Community context,

Directive 2002/39/EC

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 Commission⁸,

Having regard to the opinion of the Economic and Social Committee⁹,

Having regard to the opinion of the Committee of the Regions¹⁰,

Acting in accordance with the procedure laid down in Article 251 of the Treaty¹¹,

Whereas:

(1) In its Resolution of 7 February 1994 on the development of Community postal services¹², the Council identified as one of the main objectives of Community postal policy the reconciliation of the furtherance of the gradual, controlled liberalisation of the postal market and that of a durable guarantee of the provision of universal service.

(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 service¹³ 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, 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 Treaty highlights the place occupied 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 goes on to state that care should be taken that such services operate on the basis of principles and conditions which enable them to fulfil their missions.

(4) The European Parliament's Resolutions of 14 January 1999¹⁴ and 18 February 2000¹⁵ on European postal services highlight the social and economic importance of postal services and the need to maintain a high quality of universal service.

(5) The measures in this area should be designed in such a way that the social tasks of the Community pursuant to Article 2 of the Treaty, namely, a high level of employment and of social protection, are also achieved as objectives.

(6) The rural postal network inter alia in mountain and island regions plays an essential role in integrating businesses into the national/global economy and in maintaining cohesion in social and employment terms in rural mountain and island regions. Furthermore, rural post offices in mountain and island regions can provide an essential infrastructure network affording universal access to new telecommunications technologies.

(7) 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 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 such services.

(8) The Lisbon European Council also considered it essential that, in the framework of the internal market and of a knowledge-based economy, full account is taken of the Treaty provisions relating to services of general economic interest and to the undertakings entrusted with operating such services.

(9) The Commission has undertaken a thorough review of the Community postal sector, including the commissioning of studies on the

⁸ OJ C 337 E, 28.11.2000, p. 220 and OJ C 180 E, 26.6.2001, p. 291.

⁹ OJ C 116, 20.4.2001, p. 99.

¹⁰ OJ C 144, 16.5.2001, p. 20.

¹¹ Opinion of the European Parliament of 14 December 2000 (OJ C 232, 17.8.2001, p. 287), Council Common Position of 6 December 2001 (OJ C 110 E, 7.5.2002, p. 37) and Decision of the European Parliament of 13 March 2002 (not yet published in the Official Journal). Council Decision of 7 May 2002.

¹² OJ C 48, 16.2.1994, p. 3.

¹³ OJ L 15, 21.1.1998, p. 14.

¹⁴ OJ C 104, 14.4.1999, p. 134.

¹⁵ OJ C 339, 29.11.2000, p. 297.

economic, social and technological developments in the sector, and has consulted extensively with interested parties.

(10) The Community postal sector requires a modern regulatory framework which aims in particular at enhancing the internal market for postal services. Increased competitiveness should 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.

(11) The basic aim of safeguarding the durable provision of a universal service matching the standard of quality defined by the Member States in accordance with Article 3 of Directive 97/67/EC on a consistent basis throughout the Community can be secured if, in this area, the possibility of reserving services is maintained and, at the same time, conditions of high efficiency ensured by a sufficient degree of freedom to provide services.

(12) The increase in demand within the postal sector as a whole, predicted for the medium term, could help to offset the loss of market share that the universal service providers may incur as a result of further market-opening and would 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 intermediate steps representing significant but controlled opening of the market, followed by a review and proposal confirming, if appropriate, the date of 2009 for

the full accomplishment of the internal market for postal services or determining a relevant alternative step towards it in the light of the review results.

(15) It is appropriate to ensure that the next phases of market-opening are both substantial in nature and achievable in practice for the Member States whilst also ensuring the continuing of universal service.

(16) General reductions to 100 grams in 2003 and 50 grams in 2006 in the weight limit of the services which may be reserved to the universal service providers, combined with opening outgoing cross-border mail fully to competition with possible exceptions to the extent necessary to ensure the provision of universal service, represent relatively simple and controlled further phases which are 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, out of which 9 % correspond to items of ordinary correspondence weighing between 100 grams and 350 grams, whilst items of outward cross-border correspondence below the 50-gram weight limit represent a further 3 % or so, on average, of the total postal revenues of the universal service providers.

(18) Price limits for the services capable of being reserved, of respectively three in 2003 and two-and-a-half times in 2006 the public tariff for an item of correspondence in the first weight step of the fastest standard category, are appropriate in combination with 100-gram and 50-gram weight limits where applicable.

(19) 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.

(20) Outgoing cross-border mail represents on average 3 % of total postal revenues. Opening this part of the market in all Member States, with exceptions that would be necessary to ensure the provision of universal service, would allow different postal operators to collect, sort and transport all outgoing cross-border mail.

(21) Opening incoming cross-border mail to competition would allow circumvention of the 100-gram in 2003 and 50-gram in 2006 limits through relocation of the posting of a proportion of bulk domestic mail, thereby making its effects unpredictable. Identifying the origins of items of correspondence could present additional enforcement difficulties. 100-gram and 50-gram weight limits for items of ordinary incoming cross-border correspondence and direct mail, as for ordinary domestic correspondence, are practical as they do not present a risk of circumvention either in this way or through an artificial increase in the weight of individual items of correspondence.

(22) Setting a timetable now, aimed at further steps towards the full accomplishment of the internal market for postal services, is important for both the long-term viability of the universal service and the continued development of modern and efficient posts.

(23) It is appropriate to continue to provide for the possibility for Member States to reserve certain postal services to their universal service provider(s). These arrangements 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 safeguarding of universal service.

(24) It is appropriate both to define the new weight and price limits and the services to which they may apply and to provide for a further review and decision confirming, if appropriate, the date of 2009 for the full accomplishment of the internal market for postal services, or determining a relevant alternative step towards it in the light of the review results.

(25) 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.

(26) 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.

(27) Directive 97/67/EC established that Member States are to designate one or more national regulatory authorities for the postal sector that are legally separate from, and operationally independent of, the postal operators. In view of the dynamics of the European Postal markets, the important role national regulatory authorities play should be acknowledged and furthered, in particular concerning the task of ensuring that the reserved services are respected, except in Member States where there are no reserved services. Article 9 of Directive 97/67/EC allows Member States to go beyond the objectives of that Directive.

(28) It might be appropriate for national regulatory authorities to link the introduction of licences to requirements that consumers of the licensees' 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 licence-holders. It might be further appropriate for these procedures to be available to users of all postal services, whether or not they are universal services. Such procedures should include procedures for determining responsibility in case of loss of, or damage to, mail items.

(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 private customers who post in similar conditions, given the need for non-discrimination in the provision of services.

(30) 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 this Directive.

(31) It is appropriate to postpone until 31 December 2008 the date for the expiry of Directive 97/67/EC. Authorisation procedures established in Member States in compliance with the Directive 97/67/EC should not be affected by this date.

(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 services¹⁶,

¹⁶ OJ C 39, 6.2.1998, p. 2.

Directive 2008/6/EC

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), Articles 55 and 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee¹⁷,

Having regard to the opinion of the Committee of the Regions¹⁸,

Acting in accordance with the procedure laid down in Article 251 of the Treaty¹⁹,

Whereas:

(1) The Council in its Resolution of 7 February 1994 on the development of Community Postal Services²⁰ 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.

(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 service²¹ 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 manner, and a timetable for decision-making on the further opening of the market to competition, for the purposes of creating an internal market in postal services.

(3) Article 16 of the Treaty highlights the place occupied by services of general economic

interest in the shared values of the European 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.

(4) The positive role played by services of general economic interest was emphasised by Special Eurobarometer 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.

(5) 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 Union. Postal networks have important territorial and social dimensions which make universal access to essential local services possible.

(6) The measures in the area of postal services should be designed in such a way that the tasks of the Community pursuant to Article 2 of the 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.

(7) European postal markets have undergone dramatic change in recent years, a development that has been driven by technological advancements and increased competition resulting from deregulation. Due to globalisation, it is essential to take a pro-active and pro-development stance so as not to deprive Union citizens of the benefits of such change.

(8) 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

¹⁷ OJ C 168, 20.7.2007, p. 74.

¹⁸ OJ C 197, 24.8.2007, p. 37. Opinion delivered following non-compulsory consultation.

¹⁹ Opinion of the European Parliament of 11 July 2007 (not yet published in the Official Journal), Council Common Position of 8 November 2007 (OJ C 307 E, 18.12.2007, p. 22) and Position of the European Parliament of 31 January 2008.

²⁰ OJ C 48, 16.2.1994, p. 3.

²¹ OJ L 15, 21.1.1998, p. 14. Directive as last amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

dynamic economy. These Conclusions remain applicable to postal services as an essential instrument of communication, trade, and social and territorial cohesion.

(9) The European Parliament Resolution of 2 February 2006 on the application of the Postal Directive²² highlighted the social and economic importance of efficient postal services and their important role within 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.

(10) 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 internal market of Community postal services 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.

(11) The prospective study states that the basic aim of ensuring 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.

(12) 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 new market conditions, and enabled Member States to adapt their regulatory systems to a more open environment. Furthermore, Member States may avail themselves of the opportunity offered by the transposition period, and the substantial time necessary for the introduction of effective competition, in order to proceed with further

modernisation and restructuring of the universal service providers as necessary.

(13) 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.

(14) There are a number of drivers of change within the postal sector, notably demand and changing user needs, organisational change, automation and the introduction of new technologies, substitution by electronic means of communication and the opening of the market. 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.

(15) Postal service providers, including the designated universal service providers, are being spurred on to improve efficiency as a result of new competitive challenges (such as digitalisation and electronic communications) which differ from the traditional postal services and this will in itself contribute to a major increase in competitiveness.

(16) 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 facilitate the creation of new jobs in other operators, new entrants and associated economic sectors. This 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.

(17) 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.

²² OJ C 288 E, 25.11.2006, p. 77.

(18) 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 evermore demanding users to be improved.

(19) Rural postal networks, in, inter alia, mountain and island regions, play 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.

(20) Developments in the neighbouring communications markets have had a varied impact in different regions of the Community and segments of the population and on 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 making use of the flexibility provided for in Directive 97/67/EC, it is appropriate to fully maintain the universal service and the associated quality requirements set out in Directive 97/67/EC. 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 the opening of the market continues to benefit all users, in particular consumers and small and medium-sized enterprises, Member States should monitor and supervise market developments. They should take appropriate regulatory measures, available under Directive 97/67/EC, 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.

(21) 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.

(22) 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.

(23) 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 be provided throughout the whole of the national territory. Greater competition and choice means that Member States should be given 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: the provision of the universal service by market forces, the designation of one or several undertakings to provide different elements of the 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 pertaining to the universal service are imposed in a transparent and proportionate manner on the universal service providers. Where a Member State designates more than one undertaking, it should ensure that there is no overlap in the universal service obligations.

(24) It is important that users be fully informed of the universal services provided and that postal service providers be informed of the rights and obligations of universal service provider(s). Member States should ensure that users remain fully informed of the features and accessibility of the specific services provided. Member States should ensure that all such information is made available. It is however appropriate, in line with the enhanced flexibility given in favour of Member States, to ensure the provision of the universal service in ways other than the designation of the universal service provider(s), in order to give Member States the flexibility to decide how such information is to be made available to the public.

(25) 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 means of ensuring that the universal service is financed.

(26) The external financing of the residual net costs of the universal service may still be necessary for some Member States. It is therefore appropriate to explicitly clarify the alternatives available in order 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 for in the public procurement Directives, competitive dialogue or negotiated procedures with or without the publication of a contract notice and, whenever universal service obligations entail net costs of the universal service and represent an unfair burden on the designated universal service provider, public compensation and cost sharing between service providers and/or users in a transparent manner 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 Treaty. Without prejudice to the obligation of Member States to uphold the Treaty rules on State aid, 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 reports that the Commission should present to the European Parliament and Council on the application of Directive 97/67/EC.

(27) 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.

(28) In order to comply with the principle of proportionality when determining the contribution to be made to the costs of the provision of the universal service in a Member State required 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 required to contribute to a compensation fund to introduce appropriate accounting separation in order to ensure the functioning of the fund.

(29) The principles of transparency, non-discrimination and proportionality, as presently provided for in Directive 97/67/EC, should continue to be applied to any financing mechanism and any decision in this area should be based on transparent, objective and verifiable criteria. In particular, the net cost of the universal service should be calculated, under the supervision of the national regulatory authority, as the difference between the net costs of a designated universal service provider operating under a universal service obligation and not operating under a universal service obligation. The calculation should 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.

(30) 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 this Directive, such as pensions and postal orders delivery in rural areas, these services should not be subject 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 Treaty rules on State aid. Except in the case of universal service provider(s), the authorisations may not be made subject to the obligation to provide such additional services.

(31) It is appropriate to provide Member States that have acceded to the Union after the entry into force of Directive 2002/39/EC of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of

Community postal services²³ and may have faced particular difficulties regarding the smooth adaptation of their postal markets because they joined the postal reform process at a late stage, and certain Member States with a small population and a limited geographical size having specific characteristics that are particular to postal services or with a particularly difficult topography, with a huge number of islands with the possibility to postpone the implementation of this Directive for a limited period of time, in order to continue to reserve services to their universal service provider(s), subject to notification to the Commission. Taking into account the exceptional nature of such a possibility, it is also appropriate, within this limited period of time 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.

(32) 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 this Directive.

(33) Member States should be allowed to use general authorisations and individual licences 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 in order 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 concurrently a requirement to contribute to a sharing mechanism and 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 general authorisations and licensing should not apply to designated universal service providers.

(34) 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. As the legal and market situation of these elements or services is different among the 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.

(35) Member States should ensure that postal service providers, when processing personal data pursuant to Directive 97/67/EC, apply 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 data²⁴.

(36) The provisions of this Directive should be without prejudice to national provisions governing the expropriation conditions for organising the universal service provision.

(37) Given the importance of postal services for blind and partially-sighted persons, it is appropriate to confirm that the opening of the market should not prevent the continuing provision 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.

(38) 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 should be achieved by continuing to allow Member States to maintain uniform tariffs for single piece tariff mail, the service most frequently used by consumers,

²³ OJ L 176, 5.7.2002, p. 21.

²⁴ OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003.

including small and medium-sized enterprises. Member States may also maintain uniform tariffs for some other mail items, such as, for example, newspapers and books, to protect general public interests, such as access to culture, ensuring participation in a democratic society (freedom of press) or regional and social cohesion.

(39) 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 line with the cost-orientation principle. Tariffs should take account of the avoided costs, as compared to the standard service covering the complete range of features offered for the clearance, sorting, transport and distribution of individual postal items.

(40) In view of the national specificities involved in the regulation of the conditions under 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.

(41) 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 necessary adaptations. 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. Keeping separate and transparent accounts 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 on the universal service provider,
- ensure that the tariffs applied to the universal service comply with the principles on tariffs as set out in this Directive,

- ensure compliance with the principles on terminal dues as set out in this Directive; and
- monitor fair market conditions until competition becomes effective.

(42) In line with existing rules in other service areas and in order to increase consumer protection, it is appropriate to extend the application of minimum principles concerning complaint procedures beyond universal service providers. With a view to increasing the effectiveness of complaint handling procedures, it is appropriate to encourage 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 disputes²⁵ and Commission Recommendation 2001/310/EC of 4 April 2001 on the principle for out-of-court bodies involved in the consensual resolution of consumer disputes²⁶. Consumer interests would also be furthered through the enhanced interoperability 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 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.

(43) Directive 97/67/EC provides that certain measures are to 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 Commission²⁷.

(44) Decision 1999/468/EC has been amended by Decision 2006/512/EC, which introduced the regulatory procedure with scrutiny for the adoption of measures of general scope designed to amend non-essential elements of a basic instrument adopted in accordance with the procedure referred to in Article 251 of the Treaty, inter alia by deleting some of those elements or by supplementing the instrument with non-essential elements.

(45) In particular, the Commission should be empowered to adopt measures as regards future adjustment of quality-of-service standards to technical progress or market developments as well as of standardised conditions for independent performance monitoring by

²⁵ OJ L 115, 17.4.1998, p. 31.

²⁶ OJ L 109, 19.4.2001, p. 56.

²⁷ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

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.

(46) The Committee assisting the Commission in accordance with Directive 97/67/EC should follow developments in the provision of the universal service in Member States.

(47) 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 ownership laid down in Article 295 of the Treaty. National regulatory authorities should be provided with all necessary resources, in terms of staffing, expertise and financial means, for the performance of their tasks.

(48) 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 relevant bodies charged with sector regulation, the application of competition rules and with dealing with consumer issues to cooperate in order to ensure the effective accomplishment of their tasks.

(49) Any party which 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 validity of national regulatory authorities' decisions in order to guarantee legal certainty and market security.

(50) National regulatory authorities should, where necessary, cooperate with other regulatory bodies of Member States and with the Commission in carrying out their tasks

under Directive 97/67/EC. This would promote the development of the internal market for postal services and help to ensure the consistent application, in all Member States, of the provisions laid down by the Directive, in particular in areas where national law implementing Community law gives national regulatory authorities considerable discretionary powers in the application of the relevant rules. This cooperation could take place, *inter alia*, within the Committee assisting the Commission in accordance with the Directive or within a group comprising European regulators. Member States should decide which bodies are national regulatory authorities for the purposes of the Directive.

(51) 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 in order to allow it to fulfil its obligations under Community law. The recipient of information should ensure confidentiality in accordance with the rules in force.

(52) In order to keep the European Parliament and the Council informed of developments in the internal market for postal services, the Commission should regularly submit reports to those institutions on the application of Directive 97/67/EC.

(53) 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 is in conformity with 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 in line with the principles of transparency and proportionality.

(54) 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.

(55) In order to maintain the framework for the regulation of the postal 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.

(56) Since the objectives of this Directive, namely achieving an internal market of Community postal services, ensuring 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, be better achieved at Community level, the Community may adopt measures in accordance with the principle 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.

(57) Directive 97/67/EC should therefore be amended accordingly.

(58) This Directive is consistent with other Community instruments concerning services. In the event of conflict between a provision of this Directive and 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 market²⁸, the provisions of this Directive will prevail and will apply in full to the postal sector.

(59) This Directive is without prejudice to the application of the Treaty rules on competition and on the freedom to provide services. Insofar as mechanisms for the financing of the universal service 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 Treaty rules on State aid.

(60) In accordance with point 34 of the Interinstitutional agreement on better law-making²⁹, 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:

²⁸ OJ L 376, 27.12.2006, p. 36.

²⁹ OJ C 321, 31.12.2003, p. 1.

Consolidated Postal Services Directive

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.³⁰

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 items³¹;
- 1a. postal service provider: undertaking that provides one or more postal services³²;
2. postal network: the system of organisation and resources of all kinds used by the

³⁰ The former Article 1 reads:

"This Directive establishes common rules concerning:

- the provision of a universal postal service within the Community,
- the criteria defining the services which may be reserved for universal service providers and the conditions governing the provision of non-reserved 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."

³¹ The former Article 2 point 1 reads: "postal services: services involving the clearance, sorting, transport and delivery of postal items;"

³² Point 1a of Article 2 was inserted by Directive 2008/6/EC.

universal service provider(s) for the purposes in particular of³³:

- 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 senders³⁴;

4. Clearance: the operation of collecting postal items by a postal service provider³⁵;

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 value³⁶;

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. (deleted)³⁷;

³³ Directive 2008/6/EC replaced the term "public postal network" with "postal network".

³⁴ The former Article 2 point 3 reads: "access points: physical facilities, including letter boxes provided for the public either on the public highway or at the premises of the universal service provider, where postal items may be deposited with the public postal network by customers;"

³⁵ The former Article 2 point 4 reads: "clearance: the operation of collecting postal items deposited at access points;"

³⁶ The former Article 2 point 6 reads: "postal item: an item addressed in the final form in which it is to be carried by the universal service provider. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value;"

³⁷ The former Article 2 point 8 reads: "direct mail: a communication consisting solely of advertising, marketing or publicity material and comprising an identical message, except for the addressee's name, address and identifying number as well as other modifications which do not alter the nature of the message, which is sent to a significant number of addressees, to

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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. (deleted)³⁸;

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 4³⁹;

14. Authorisations: 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": 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": 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 authority⁴⁰;

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 addressee⁴¹;

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, respect for the terms and conditions of employment, 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

be conveyed and delivered at the address indicated by the sender on the item itself or on its wrapping. The national regulatory authority shall interpret the term 'significant number of addressees' within each Member State and shall publish an appropriate definition. Bills, invoices, financial statements and other non-identical messages shall not be regarded as direct mail. A communication combining direct mail with other items within the same wrapping shall not be regarded as direct mail. Direct mail shall include cross-border as well as domestic direct mail;"

³⁸ The former Article 2 point 12 used to read: "document exchange: provision of means, including the supply of ad hoc premises as well as transportation by a third party, allowing self-delivery by mutual exchange of postal items between users subscribing to this service;"

³⁹ The former Article 2 point 13 used to read: "universal service provider: the public or private entity 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;"

⁴⁰ The former Article 2 point 14 reads: "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 postal 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 undertaking 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 an undertaking specific rights, or which subjects that undertaking's operations to specific obligations supplementing the general authorisation where applicable, where the undertaking is not entitled to exercise the rights concerned until it has received the decision by the national regulatory authority;"

⁴¹ The former Article 2 point 17 reads: "users: any natural or legal person benefiting from universal service provision as a sender or an addressee;"

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regional planning. Data protection may include personal data protection, the confidentiality of information transmitted or stored and protection of privacy⁴².

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. Member States 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 installations⁴³.

Any exception or derogation granted by a national regulatory authority in accordance with

⁴² The former Article 2 point 19 reads: "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 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;"

⁴³ The former Article 3 (3) subparagraph 1 reads: "They shall take steps to ensure that the universal service provider(s) guarantee(s) every working day and not less than five days a week, save in circumstances or geographical conditions deemed exceptional by the national regulatory authorities, 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. [...]".

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 packages 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 territory⁴⁴.

6. The minimum and maximum dimensions for the postal items in question shall be those as laid down in the relevant provisions adopted by the Universal Postal Union⁴⁵.

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

⁴⁴ The former Article 3 (5) reads: "The national regulatory authorities may increase the weight limit of universal service coverage for postal packages to any weight not exceeding 20 kilograms and may lay down special arrangements for the door-to-door delivery of such packages. Notwithstanding the weight limit of universal service coverage for postal packages established by a given Member State, Member States shall ensure that postal packages received from other Member States and weighing up to 20 kilograms are delivered within their territories."

⁴⁵ The former Article 3(6) reads: "The minimum and maximum dimensions for the postal items in question shall be those laid down in the Convention and the Agreement concerning Postal Parcels adopted by the Universal Postal Union."

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of the steps it has taken to fulfil this obligation. The Committee referred to in 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 in order 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 the principles of transparency, non-discrimination and proportionality, thereby guaranteeing the continuity of the 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.⁴⁶

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,

⁴⁶ The former Article 4 reads: "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 and, in particular, the identity of its universal service provider(s). Each Member State shall determine in accordance with Community law the obligations and rights assigned to the universal service provider(s) and shall publish them".

- 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 the public interest recognised in the Treaty, in particular Articles 30 and 46 thereof, concerning, inter alia, public morality, public security, including criminal investigations, and public policy⁴⁷.

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. Member States shall notify the Commission, of how the information to be published in accordance with the first paragraph is to be made available⁴⁸.

CHAPTER 3

Financing of universal services⁴⁹

Article 7

1. Member States shall not grant or maintain in force exclusive or special rights for the establishment and provision of postal

⁴⁷ The former Article 5(2) reads: "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 36 and 56 thereof, concerning, inter alia, public morality, public security, including criminal investigations, and public policy".

⁴⁸ The former Article 6 reads: "Member States shall take steps to ensure that users are regularly given sufficiently detailed and up-to-date information by the universal service provider(s) regarding the particular features of the universal services 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. Member States shall notify the Commission, within 12 months of the date of entry into force of this Directive, how the information to be published in accordance with the first subparagraph is being made available. Any subsequent modifications shall be notified to the Commission at the earliest opportunity."

⁴⁹ Introduced by Directive 2008/6/EC.

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 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 for in 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 (*), 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 in this Directive, entail a net cost, calculated taking into account Annex I, and represent an unfair financial burden on the universal service provider(s), it may introduce:

(a) a mechanism to compensate the undertaking(s) concerned from public funds; or (b) a mechanism for the sharing of the net cost of the universal service obligations between providers of services and/or users.

4. Where the net cost is shared in accordance with 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 manner.

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 in accordance with paragraphs 3 and 4 shall be based on objective and verifiable criteria and be made public.⁵⁰

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 fall outside the scope of the universal service, Member States may introduce general authorisations to the extent necessary to guarantee compliance with the essential requirements.

2. For services which fall 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 ensure the provision of the universal service.

services to universal service provider(s). Those services shall be limited to the clearance, sorting, transport and delivery of items of domestic correspondence and incoming cross-border correspondence, whether by accelerated delivery or not, within both of the following weight and price limits. The weight limit shall be 100 grams from 1 January 2003 and 50 grams from 1 January 2006. These weight limits shall not apply as from 1 January 2003 if the price is equal to, or more than, three times the public tariff for an item of correspondence in the first weight step of the fastest category, and, as from 1 January 2006, if the price is equal to, or more than, two and a half times this tariff. 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 same weight and price limits.

To the extent necessary to ensure the provision of universal service, for example when certain sectors of postal activity have already been liberalised or because of the specific characteristics particular to the postal services in a Member State, outgoing cross-border mail may continue to be reserved within the same weight and price limits.

2. Document exchange may not be reserved.

3. The Commission shall finalise a prospective study which will assess, for each Member State, the impact on universal service of the full accomplishment of the postal internal market in 2009. Based on the study's conclusions, the Commission shall submit by 31 December 2006 a report to the European Parliament and the Council accompanied by a proposal confirming, if appropriate, the date of 2009 for the full accomplishment of the postal internal market or determining any other step in the light of the study's conclusions."

(*) 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).

⁵⁰ The former Article 7 reads:

"1. To the extent necessary to ensure the maintenance of universal service, Member States may continue to reserve

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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 on the universal service provider(s), designated in accordance with Article 4,
- where appropriate, be subject to an obligation to make a financial contribution to the national regulatory authority's operational costs referred to in Article 22,
- where appropriate, be made subject to or impose an obligation to respect working conditions laid down 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 the 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 shall ensure that the reasons for refusing or withdrawing an authorisation in whole or in part are communicated to the applicant and shall establish an appeal procedure.⁵¹

⁵¹ The former Article 9 reads:

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.⁵²

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

"1. For non-reserved services which are outside the scope of the universal service as defined in Article 3, Member States may introduce general authorisations to the extent necessary in order to guarantee compliance with the essential requirements.

2. For non-reserved services which are within the scope of the universal service as defined in Article 3, 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:

- where appropriate, be made subject to universal service obligations,
 - if necessary, impose requirements concerning the quality, availability and performance of the relevant services,
 - be made subject to the obligation not to infringe the exclusive or special rights granted to the universal service provider(s) for the reserved postal services under Article 7(1) and (2).
3. The procedures described in paragraphs 1 and 2 shall be transparent, non-discriminatory, proportionate and based on objective criteria. Member States must ensure that the reasons for refusing an authorisation in whole or in part are communicated to the applicant and must establish an appeal procedure.

4. In order to ensure that the universal service is safeguarded, where a Member State determines that the universal service obligations, as provided for by this Directive, represent an unfair financial burden for the universal service provider, it may establish a compensation fund administered for this purpose by a body independent of the beneficiary or beneficiaries. In this case, it may make the granting of authorisation subject to an obligation to make a financial contribution to that fund. The Member State must 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. Only those services set out in Article 3 may be financed in this way.

5. Member States may provide for an identification system for direct mail, allowing the supervision of such services where they are liberalised."

⁵² The former Article 10(1) reads: "The European Parliament and the Council, acting on a proposal from the Commission and on the basis of Articles 57(2), 66 and 100a of the Treaty, shall adopt the measures necessary for the harmonisation of the procedures referred to in Article 9 governing the commercial provision to the public of non-reserved postal services".

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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.⁵³

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 and return to sender service. This provision shall be without prejudice to the right of Member States to adopt measures to ensure access to the postal network under transparent, proportional and non-discriminatory conditions.⁵⁴

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 universal service comply with the following principles:

– prices shall be affordable and must be such that all users, independent of geographical location, and, in the 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,

– prices shall 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 shall 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 shall not exclude the right of the universal service provider(s) to conclude individual agreements on prices with users,

– tariffs shall 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, who post under similar conditions⁵⁵.

⁵³ The former Article 11 reads: "The European Parliament and the Council, acting on a proposal from the Commission and on the basis of Articles 57(2), 66 and 100a of the Treaty, shall adopt such harmonisation measures as are necessary to ensure that users and the universal service provider(s) have access to the public postal network under conditions which are transparent and non-discriminatory".

⁵⁴ This Article 11a was added by Directive 2008/6/EC.

⁵⁵ The former Article 12 reads: "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 have access to the services provided,

- prices must be geared to costs; Member States may decide that a uniform tariff should be applied throughout their national territory,

- the application of a uniform tariff does not exclude the right of the universal service provider(s) to conclude individual agreements on prices with customers,

- 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 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 private customers who post under similar conditions,

- cross-subsidisation of universal services outside the reserved sector out of revenues from services in the reserved sector 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; except in Member States where there are no reserved services, rules shall be adopted to this effect by the national regulatory authorities who shall inform the Commission of such measures."

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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. 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;

(iv) 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 services⁵⁶.

⁵⁶ The former Article 14 (1,2,3) reads: "1. Member States shall take the measures necessary to ensure, within two years of the date of entry into force of this Directive, that the accounting of the universal service providers is conducted in accordance with the provisions of this Article.

2. The universal service providers shall keep separate accounts within their internal accounting systems at least for each of the services within the reserved sector on the one hand and for the non-reserved services on the other. The accounts for the non-reserved services should clearly distinguish between services which are part of the universal service and services which are not. 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 to each of the reserved and to the non-reserved services respectively in the following manner:

(a) costs which can be directly assigned to a particular service shall be so assigned;

(b) common costs, that is costs which cannot be directly assigned to a particular service, 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 reserved services and, on the other hand, to the other services".

The last two indents of Article 12 were newly introduced by Directive 2002/39/EC.

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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 the provision of the universal service, 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 Article⁵⁷.

9. This Article may, however, be applied to the universal service provider designated before the final date for Full Market Opening as long as no other universal service provider(s) have been designated. The national regulatory authority shall inform the Commission in advance of any such decision.

10. Member States may require those postal service providers which are obliged to contribute to a compensation fund to

introduce an appropriate accounting separation to ensure the functioning of the fund⁵⁸.

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 regulatory procedure with scrutiny referred to in Article 21(2)⁵⁹.

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 regulatory procedure with scrutiny referred to in Article 21(2) and shall be the subject of reports published at least once a year⁶⁰.

⁵⁷ The former Article 14(8) reads: "Where a given Member State has not reserved any of the services reservable under Article 7 and has not established a compensation fund for universal service provision, as permitted under Article 9(4), 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 subvention, hidden or otherwise, the national regulatory authority may decide not to apply the requirements of paragraphs 2, 3, 4, 5, 6 and 7 of this Article. The national regulatory authority shall inform the Commission of all such decisions".

⁵⁸ The last two indents of Article 14 were added by Directive 2008/6/EC.

⁵⁹ The former second indent reads: "the European Parliament and the Council in the case of intra-Community cross-border services (see Annex). Future adjustment of these standards to technical progress or market developments shall be made in accordance with the procedure laid down in Article 21".

⁶⁰ The former last paragraph of Article 16 reads: "Independent performance monitoring shall be carried out 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 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 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 referred to in Article 21 for its information.⁶¹

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

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".

⁶¹ The former first and second paragraph of Article 18 reads: "1. In accordance with Article 16, quality standards for intra-Community cross-border services are laid down in the Annex. 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. 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".

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.

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.⁶²

⁶² The former Article 19 reads:

"Member States shall ensure that transparent, simple and inexpensive procedures are drawn up for dealing with users' complaints, particularly in cases involving loss, theft, damage or non-compliance with service quality standards (including

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 regulations⁶³.

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.

procedures for determining where responsibility lies in cases where more than one operator is involved).

Member States may provide that this principle is also applied to beneficiaries of services which are:

- outside the scope of the universal service as defined in Article 3, and

- within the scope of the universal service as defined in Article 3, but which are not provided by the universal service provider.

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.

Without prejudice to other possibilities of appeal 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 the universal service provider have not been satisfactorily resolved.

In accordance with Article 16, Member States shall ensure that the universal service providers 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.

⁶³ 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).

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.

CHAPTER 8

The committee

Article 21

1. The Commission shall be assisted by a committee.

2. Where reference is made to this paragraph, Articles 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof⁶⁴.

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

⁶⁴ Article 21 was amended by Article 3 of Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003 read in conjunction with No 75 of Annex III to the same regulation.

The former Article 21 reads:

"1. The Commission shall be assisted by a committee.

2. Where reference is made to this Article, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure."

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authorities entrusted with the implementation of competition law and consumer protection law on matters of common interest.

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 shall work in close collaboration and shall provide mutual assistance in order to facilitate the 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 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.⁶⁵

CHAPTER 9a⁶⁶

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 concerning the provision of the universal service, namely for the following purposes:

(a) for national regulatory authorities to ensure conformity with the provisions of, or

⁶⁵ The former Article 22 reads:

"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 shall inform the Commission which national regulatory authorities they have designated to carry out the tasks arising from this Directive.

The national regulatory authorities shall have as a particular task ensuring compliance with the obligations arising from this Directive and shall, where appropriate, establish controls and specific procedures to ensure that the reserved services are respected. They may also be charged with ensuring compliance with competition rules in the postal sector."

⁶⁶ This Chapter and Article 22a were added by Directive 2008/6/EC.

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.

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 appropriate information on developments in the sector, particularly concerning economic, social, employment patterns and technological aspects, as well as on quality of service. The report shall be accompanied, where appropriate, by proposals to the European Parliament and the Council.⁶⁷

Article 23a

⁶⁷ The former Article 23 reads:

"1. Without prejudice to Article 7, every two years, on the first occasion no later than 31 December 2004, 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 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".

Consolidated Postal Services Directive

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.⁶⁸

Article 28⁶⁹

This Directive is addressed to the Member States.

⁶⁸ Article 23a was added by Directive 2008/6/EC.

⁶⁹ Articles 24 (see Footnote 71), 25 (see Footnote 73), 26 (see Footnote 72) and 27 have been deleted by Directive 2008/6/EC. The former Article 27 reads: "The provisions of this Directive, with the exception of Article 26, shall expire on 31 December 2008 unless otherwise decided in accordance with Article 7(3). The authorisation procedures described in Article 9 shall not be affected by this date."

Consolidated Postal Services Directive

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 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 compensation involves financial transfers,

Consolidated Postal Services Directive

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 II

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 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.

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(*) 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.

Structural Articles of Directive 2008/6/EC

Article 2⁷⁰

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 inform the Commission thereof. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of their laws, regulations and administrative provisions with regard to the application of this Directive⁷¹.

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):

- Czech Republic
- Greece
- Cyprus
- Latvia
- Lithuania
- Luxembourg

⁷⁰ Article 1 of Directive 2008/6/EC amended the previous Postal Directive (97/67/EC as in force on 20 February 2008) and the relevant changes are reflected in the previous section (Consolidated Postal Services Directive).

⁷¹ The former Article 24 reads:

"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 these measures, 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."

- Hungary
- Malta
- Poland
- Romania
- Slovakia

These Member States may decide to implement this 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 by 27 August 2008.

3. Member States that abolish their reserved areas by 31 December 2012 may, between 1 January 2011 and 31 December 2012, refuse to grant the authorisation provided for in Article 9(2) of Directive 97/67/EC 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 State⁷².

Article 4

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.⁷³

Article 5

This Directive is addressed to the Member States.

Done at Strasbourg, 20 February 2008.

⁷² The former Article 26 reads: "1. This Directive shall not prevent any Member State from maintaining or introducing measures which are more liberal than those provided for by this Directive. Such measures must be compatible with the Treaty.

2. Should this Directive lapse, the measures taken by the Member States to implement it may be maintained, to the extent that they are compatible with the Treaty."

⁷³ The former Article 25 reads: "This Directive shall enter into force on the 20th day following that of its publication in the Official Journal of the European Communities."

Structural Articles of Directive 2008/6/EC

For the European
Parliament

The President

H.-G. PÖTTERING

For the Council

The President

J. LENAR• I•

Relevant Comitology Rules

Relevant Comitology Rules⁷⁴

Articles 5a, 7 and 8 of Decision 1999/468/EC of 28 June 1999⁷⁵ laying down the procedures for the exercise of implementing powers conferred on the Commission

Article 5a

Regulatory procedure with scrutiny

1. The Commission shall be assisted by a Regulatory Procedure with Scrutiny Committee composed of the representatives of the Member States and chaired by the representative of the Commission.

2. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time-limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 205(2) and (4) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. If the measures envisaged by the Commission are in accordance with the opinion of the Committee, the following procedure shall apply:

(a) the Commission shall without delay submit the draft measures for scrutiny by the European Parliament and the Council;

(b) the European Parliament, acting by a majority of its component members, or the Council, acting by a qualified majority, may oppose the adoption of the said draft by the Commission, justifying their opposition by indicating that the draft measures proposed by the Commission exceed the implementing powers provided for in the basic instrument or that the draft is not compatible with the aim or the content of the basic instrument or

does not respect the principles of subsidiarity or proportionality;

(c) if, within three months from the date of referral to them, the European Parliament or the Council opposes the draft measures, the latter shall not be adopted by the Commission. In that event, the Commission may submit to the Committee an amended draft of the measures or present a legislative proposal on the basis of the Treaty;

(d) if, on expiry of that period, neither the European Parliament nor the Council has opposed the draft measures, the latter shall be adopted by the Commission.

4. If the measures envisaged by the Commission are not in accordance with the opinion of the Committee, or if no opinion is delivered, the following procedure shall apply:

(a) the Commission shall without delay submit a proposal relating to the measures to be taken to the Council and shall forward it to the European Parliament at the same time;

(b) the Council shall act on the proposal by a qualified majority within two months from the date of referral to it;

(c) if, within that period, the Council opposes the proposed measures by a qualified majority, the measures shall not be adopted. In that event, the Commission may submit to the Council an amended proposal or present a legislative proposal on the basis of the Treaty;

(d) if the Council envisages adopting the proposed measures, it shall without delay submit them to the European Parliament. If the Council does not act within the two-month period, the Commission shall without delay submit the measures for scrutiny by the European Parliament;

(e) the European Parliament, acting by a majority of its component members within four months from the forwarding of the proposal in accordance with point (a), may oppose the adoption of the measures in question, justifying their opposition by indicating that the proposed measures exceed the implementing powers provided for in the basic instrument or are not compatible with the aim or the content of the basic instrument or do not respect the principles of subsidiarity or proportionality;

(f) if, within that period, the European Parliament opposes the proposed measures, the latter shall not be adopted. In that event, the Commission may submit to the

⁷⁴ This Annex is not part of the Postal Directive. It is taken from the Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission and serves to make the contents of Article 21 (2) of the Postal Directive more transparent.

⁷⁵ As amended by Council Decision 2006/512/EC of 17 July 2006.

Relevant Comitology Rules

Committee an amended draft of the measures or present a legislative proposal on the basis of the Treaty;

(g) if, on expiry of that period, the European Parliament has not opposed the proposed measures, the latter shall be adopted by the Council or by the Commission, as the case may be.

5. By way of derogation from paragraphs 3 and 4, a basic instrument may in duly substantiated exceptional cases provide:

(a) that the time-limits laid down in paragraphs 3(c), 4(b) and 4(e) shall be extended by an additional month, when justified by the complexity of the measures; or

(b) that the time-limits laid down in paragraphs 3(c), 4(b) and 4(e) shall be curtailed where justified on the grounds of efficiency.

6. A basic instrument may provide that if, on imperative grounds of urgency, the timelimits for the regulatory procedure with scrutiny referred to in paragraphs 3, 4 and 5 cannot be complied with, the following procedure shall apply:

(a) if the measures envisaged by the Commission are in accordance with the opinion of the Committee, the Commission shall adopt the measures, which shall immediately be implemented. The Commission shall without delay communicate them to the European Parliament and to the Council;

(b) within a time-limit of one month following that communication, the European Parliament, acting by a majority of its component members, or the Council, acting by a qualified majority, may oppose the measures adopted by the Commission, on the grounds that the measures exceed the implementing powers provided for in the basic instrument or are not compatible with the aim or the content of the basic instrument or do not respect the principles of subsidiarity or proportionality;

(c) in the event of opposition by the European Parliament or the Council, the Commission shall repeal the measures. It may however provisionally maintain the measures in force if warranted on health protection, safety or environmental grounds. In that event, it shall without delay submit to the Committee an amended draft of the measures or a legislative proposal on the basis of the Treaty. The provisional measures shall remain in force until they are replaced by a definitive instrument."

[Article 6]

Article 7

1. Each committee shall adopt its own rules of procedure on the proposal of its chairman, on the basis of standard rules of procedure which shall be published in the Official Journal of the European Communities.

Insofar as necessary existing committees shall adapt their rules of procedure to the standard rules of procedure.

2. The principles and conditions on public access to documents applicable to the Commission shall apply to the committees.

3. The European Parliament shall be informed by the Commission of committee proceedings on a regular basis following arrangements which ensure that the transmission system is transparent and that the information forwarded and the various stages of the procedure are identified. To that end, it shall receive agendas for committee meetings, draft measures submitted to the committees for the implementation of instruments adopted by the procedure provided for by Article 251 of the Treaty, and the results of voting and summary records of the meetings and lists of the authorities and organisations to which the persons designated by the Member States to represent them belong. The European Parliament shall also be kept informed whenever the Commission transmits to the Council measures or proposals for measures to be taken.

4. The Commission shall, within six months of the date on which this Decision takes effect, publish in the Official Journal of the European Communities, a list of all committees which assist the Commission in the exercise of implementing powers. This list shall specify, in relation to each committee, the basic instrument(s) under which the committee is established. From 2000 onwards, the Commission shall also publish an annual report on the working of committees.

5. The references of all documents sent to the European Parliament pursuant to paragraph 3 shall be made public in a register to be set up by the Commission in 2001.

Relevant Comitology Rules

Article 8

If the European Parliament indicates, in a Resolution setting out the grounds on which it is based, that draft implementing measures, the adoption of which is contemplated and which have been submitted to a committee pursuant to a basic instrument adopted under Article 251 of the Treaty, would exceed the implementing powers provided for in the basic instrument, the Commission shall re-examine the draft measures. Taking the Resolution into account and within the time-limits of the procedure under way, the Commission may submit new draft measures to the committee, continue with the procedure or submit a proposal to the European Parliament and the Council on the basis of the Treaty.

The Commission shall inform the European Parliament and the committee of the action which it intends to take on the Resolution of the European Parliament and of its reasons for doing so.

Commission Statements to Directive 2008/6/EC

Commission Statement Re Recital 27⁷⁶

The Commission confirms that in accordance with Recital 18 of Directive 97/67/EC and the consistent case law of the European Court of Justice (e.g. Case C-320/91 [*Corbeau*]), express and courier services constitute specific services that are characterised by being essentially different from universal postal services.

Commission Statement Re Recital 60 and Article 2

The Commission recalls its position concerning the creation by Member States of correlation tables linking the transposition measures taken by the Member States with the directive, in the interest of citizens, Better Regulation and transparency and to assist the examination of the conformity of national rules with Community provisions.

In this instance, the Commission does not stand in the way of an agreement at Council with a view to the successful conclusion of the inter-institutional procedure on this file. However, it expects this horizontal matter to be considered jointly by the institutions.

⁷⁶ Communication from the Commission to the European Parliament pursuant to the second subparagraph of Article 251 (2) of the EC Treaty concerning the common position of the Council on the adoption of 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. – COM(2007)695 final, 9.11.2007.