

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

Having regard to the opinion of the Committee of the Regions ⁽³⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽⁴⁾,

Whereas:

- (1) In its Resolution of 7 February 1994 on the development of Community postal services ⁽⁵⁾, 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 service ⁽⁶⁾ 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 1999 ⁽⁷⁾ and 18 February 2000 ⁽⁸⁾ 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 economic, social and technological developments in the sector, and has consulted extensively with interested parties.

⁽¹⁾ OJ C 337 E, 28.11.2000, p. 220 and

OJ C 180 E, 26.6.2001, p. 291.

⁽²⁾ OJ C 116, 20.4.2001, p. 99.

⁽³⁾ OJ C 144, 16.5.2001, p. 20.

⁽⁴⁾ 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.

⁽⁵⁾ OJ C 48, 16.2.1994, p. 3.

⁽⁶⁾ OJ L 15, 21.1.1998, p. 14.

⁽⁷⁾ OJ C 104, 14.4.1999, p. 134.

⁽⁸⁾ OJ C 339, 29.11.2000, p. 297.

- (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 services ⁽¹⁾,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

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

1. Article 7 shall be replaced by the following:

'Article 7

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

⁽¹⁾ OJ C 39, 6.2.1998, p. 2.

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.;

2. the following indents shall be added to Article 12:

— 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.;

3. the first and second subparagraphs of Article 19 shall be replaced by the following:

'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 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.;

4. the third subparagraph of Article 22 shall be replaced by the following:

'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.'

5. Article 23 shall be replaced by the following:

'Article 23

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.;

6. Article 27 shall be replaced by the following:

'Article 27

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.'

Article 2

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

When Member States adopt 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.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Luxembourg, 10 June 2002.

For the European Parliament

The President

P. COX

For the Council

The President

J. PIQUÉ I CAMPS
