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**REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN  
PARLIAMENT**

**on the application of the Postal Directive  
(Directive 97/67/EC as amended by Directive 2002/39/EC)**

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# REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

## on the application of the Postal Directive (Directive 97/67/EC as amended by Directive 2002/39/EC)

### 1. Background and purpose of this report

The Community framework for EU postal services is set out in Directive 97/67/EC as amended by Directive 2002/39/EC (hereafter referred as “the Postal Directive”)<sup>1</sup>. Article 23 of the Postal Directive requires the Commission to report on the application of the Postal Directive to the European Parliament and Council “every two years”. It also requires that this report should include “appropriate information” on market developments including technical, social, employment and quality of service aspects.

Regular market monitoring and reporting is an important element for the full accomplishment of a postal Internal Market in order to identify any shortcomings and problems in due time and to be able to take appropriate (legal) actions when necessary and implement corrective measures. Market monitoring has also been essential to be able to proceed with the EU Postal Reform in a transparent manner and to establish if it has generated the desired effects and benefits. It should be recalled that the previous Application Reports played an important role in the legislative process of Directive 2008/6/EC.

The Commission provided its first Application Report in November 2002<sup>2</sup>, its second Application Report in March 2005<sup>3</sup> and a third Application Report in October 2006<sup>4</sup>. As in the case of previous Application Reports, this Report provides a comprehensive assessment of the overall transposition of the Postal Directive in Member States, including the application of key elements of the Postal Directive and regulatory developments as well as detailed market trends (including economic, technical, social, employment and quality of service aspects). The Report describes the main developments since the last Application Report adopted in October 2006 and covers the reporting period 2006 – 2008.

The Report is accompanied by a Commission Staff Working Paper containing more detailed information on regulatory and market developments. The Report from the Commission to the Council and the European Parliament on the Application of the Postal Directive presents the conclusions of the Commission Staff Working Paper in a concise form. The Report and the

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<sup>1</sup> Directive 97/67/EC of the European Parliament and 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, OJ L 15, 21.01.1998, p. 14; 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, OJ L 176, 5.7.2002, p. 21.

<sup>2</sup> Report from the Commission to the European Parliament and the Council on the Application of the Postal Directive (97/67/EC), COM (2002) 632 final.

<sup>3</sup> Report from the Commission to the European Parliament and the Council on the Application of the Postal Directive (97/67/EC as amended by Directive 2002/39/EC), COM (2005) 102 final and SEC (2005) 388.

<sup>4</sup> Report from the Commission to the European Parliament and the Council on the Application of the Postal Directive (97/67/EC as amended by Directive 2002/39/EC), COM (2006) 595 final and SEC (2006) 1293.

detailed analysis contained in this Commission Staff Working Paper both draw on the recent study by ECORYS on the Main Developments in the Postal Sector (2006-2008)<sup>5</sup>.

The reporting period is of a particular relevance for the postal sector in the EU, as a number of decisive developments took place in the short timeframe this Report is covering: First, Germany – by far the biggest single (national) postal market in the EU – fully liberalised its postal market on 1 January 2008. Second, an evaluation of the full market opening in the UK, which took place on 1 January 2006, seems now possible and is in fact being undertaken by independent experts in the UK. Third, the effects of the reduction of the threshold for the reserved area to 50 grams by 1 January 2006 throughout the EU – which is the last intermediate step before the full market opening – can now be assessed.

Last but not least it should be recalled that in February 2008 the Council and the European Parliament adopted Directive 2008/6/EC further amending the Postal Directive (hereafter referred to as "the Third Postal Directive")<sup>6</sup>. The Third Postal Directive sets a deadline for the full market opening by 31st December 2010 for the majority of Member States (in fact, 95% of the EU postal markets in terms of volumes) and by 31st December 2012 for the remaining Member States. The Third Postal Directive thus provides the legal basis for the accomplishment of the internal market for postal services. This important decision taken by broad consensus by the European Parliament and Council is not only concluding the reference period of this report but also adding an essential perspective to it. More modestly the purpose and scope of this Report is not to provide an outlook on the application of the Third Postal Directive – that will require a substantial effort of all stakeholders to be put into full effect – but to report on the application of the current Postal Directive over the reference period. Where appropriate, an outlook and trends will nevertheless be provided.

## **2. The importance of postal services and their changing role**

Postal services are a significant industry in the EU economy. In 2004, postal services in the EU earned about 90 billion EUR or approximately 1% of EU GDP<sup>7</sup>. The postal services sector is also an important employer with around 1.6 million people employed directly by operators in 2006<sup>8</sup>.

At the crossroads between communications, advertising and transport, postal services are, together with other transport, logistics and communication services, a key industry for the EU economy. In addition, postal services provide along social benefits which cannot be quantified in economic terms. They are an important means by which individuals can communicate with each other and receive information. Postal services are considered a service of general economic interest.

The postal sector is evolving substantially. At the end of the first decade of the new millennium, postal operators are facing fierce competition from electronic means of communication. This is forcing them to adapt their businesses to better respond to customers needs and to improve efficiency. Moreover, with the continuous opening of the postal services markets, the incumbent postal operators are also facing increasing competition from new

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<sup>5</sup> The study will be available on the following website:  
[http://ec.europa.eu/internal\\_market/post/studies\\_en.htm](http://ec.europa.eu/internal_market/post/studies_en.htm).

<sup>6</sup> 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, OJ L 52, 27.2.2008, p. 3.

<sup>7</sup> "Main developments in the European postal sector (2004-2006)", WIK-Consult, May 2006.

<sup>8</sup> "Main developments in the European postal sector (2006-2008)", ECORYS, 2008.

entrants. In response to these developments, postal operators have substantially improved their efficiency by restructuring their operations thus resulting in costs control and better quality of service. Restructuring of mail handling processes in turn has often resulted in or was induced by the development of new products and concepts.

Physical mail is increasingly being supplemented by multi-channel delivery and tailor-made solutions for customers. One example of this is the development of hybrid mail services which are now offered by most postal operators. Some postal operators even go a step further and are entering adjacent markets through developing IT services for their customers. The development of new and value-added services is a reaction to the threat of e-substitution and the opportunities arising from the development of technology.

Postal services are a crucial element of the EU's single market policy and had also been included in the Lisbon Strategy for growth and jobs that was fundamentally re-launched in 2005<sup>9</sup>. The Commission's Communication on a single market in the 21<sup>st</sup> century Europe<sup>10</sup> emphasises that initiatives on network industries, such as postal services, are showing results on the ground once they are fully implemented. Yet more can be done. There is broad consensus that the sustainable provision of services of general economic interest, especially in a relation to the postal sector and other liberalized network industries, can best be ensured in a competitive market and with the development of the European single market.

### **3. The application of the postal directive and regulatory developments**

All Member States have transposed Directive 97/67/EC as amended by Directive 2002/39/EC through a series of primary and secondary postal law. Compared to the situation described in the 2006 Application Report, Estonia, where transposition had been underway, has now also transposed both Directives.

However, formal transposition is merely the first step in the full implementation of the Community framework. The practical application of the provisions of the Postal Directive and its impact on postal service operators and the sector are of equal importance.

The following main regulatory developments can be observed during the reporting period.

- Germany fully opened its postal market as of 1 January 2008. To date four Member States have thus abolished the reserved area before the date foreseen in the Postal Directive (Germany, Finland, Sweden, UK). The liberalisation of the German postal market coincided with the introduction of a statutory minimum wage in the postal sector in Germany. According to ECORYS the minimum wage is significantly higher than the wages currently paid by alternative postal operator(s) and its introduction could well have an adverse effect on the development of competition.
- However, there seems to be a certain slowdown as far as further market openings are concerned. The Netherlands, where full market opening was envisaged has now postponed liberalisation without setting any concrete date for full market opening. A number of arguments have been put forward by the Netherlands government for this indefinite postponement. These include the labour conditions of the main competitors of the Dutch postal incumbent operator, the absence of a level playing field for postal operators due to

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<sup>9</sup> Presidency Conclusions, Brussels European Council, 22/23 March 2005.

<sup>10</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions, A single market for the 21st century Europe, COM(2007) 724 final:  
[http://eur-lex.europa.eu/LexUriServ/site/en/com/2007/com2007\\_0724en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2007/com2007_0724en01.pdf)

VAT exemptions<sup>11</sup> for the incumbent postal operators in Germany and the UK and the introduction of a minimum wage in the postal sector in Germany raising costs of new entrants in the postal market. While these arguments may be persuasive from a political perspective, any legal evaluation has to look at their compatibility with the existing *acquis* and, in particular, Article 7 of the Postal Directive. This Article states that Member States may continue to reserve services to the universal service provider(s) only to the extent necessary to ensure the maintenance of the universal service. This provision, thus, does not refer to reciprocity situations or other elements present in the national legislative or factual context.

- As regards the development of competition in the postal sector, there is now a trend towards (mandatory or negotiated) access to the delivery network by competitors. In the majority of Member States, the incumbent postal operator has the obligation to provide access subject to appropriate terms and conditions, where these are, in the first instance determined through negotiations and, if these fail, they can (or have to) be determined by the National Regulatory Authority.
- Progress towards reducing legal barriers to entry and levelling the playing field has been mixed. The distortive effect of the VAT postal exemptions on competition has largely remained, even though the Commission proposed a relevant amendment of the 6<sup>th</sup> VAT Directive<sup>12</sup> in 2003.<sup>13</sup> The lack of access to letterboxes by competitor postal operators is still a crucial issue in some Member States. The definition of the Universal Service Obligation and its future financing could also lead to uncertainties for postal operators, especially if implementing national legislation does not provide a clear legal basis (e.g. in relation to the scope of the Universal Service Obligation). Authorisation and licensing procedures and related conditions are not always conducive to the development of competition. In some cases conditions attached to an authorisation or license might even be considered prohibitive, as for example in Finland where a postal operator wishing to obtain a license is obliged to provide a full universal service or to pay a special "tax", which can amount from 5 to 20 % of its yearly turnover. As a matter of fact, the licensing regime has effectively blocked competition in addressed mail delivery in Finland.

Other observations and conclusions from the 2006 Application Report remain valid.

The level of transparency of Universal Service Providers' cost data and accounting is still extremely varied and therefore very inconsistent across Member States. It seems that the main requirements of Article 14 of the Postal Directive are being met (separate accounts for each of the services within the reserved area on the one hand, and for the non-reserved services on the other). However, it is less certain whether the requirements of Article 12, in particular ensuring that tariffs for each service under the universal service obligation are geared to cost, are being met.

It has been confirmed by the Community legislator that well-functioning National Regulatory Authorities (NRAs) are crucial for the accomplishment of an internal market for postal

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<sup>11</sup> More on the issue of VAT exemption below and in point 3.5.3. of the Commission's Staff Working Paper.

<sup>12</sup> Sixth Council Directive 77/388/EEC of 17 May 1977 of the harmonization of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment, OJ 1977 L 145, p.1, which was replaced as from 1 January 2007 by Council Directive 2006/112/EC of 28 November 2006, on the Common system of value added tax, OJ L 347, 11.12.2006, p. 1. The latter Directive is effectively a recast of the Sixth Council Directive of 1977 as amended over the years.

<sup>13</sup> Proposal for a Council Directive amending Directive 77/388/EEC as regards value added tax on services provided in the postal sector, COM(2003) 234 final, as amended by COM (2004) 468 final.

services. Whereas all Member States have established formally independent NRAs, it can be observed that the mandate, resources and powers of the NRAs vary significantly among Member States and there are justified doubts whether all NRAs are adequately equipped to (efficiently) fulfil their tasks.

#### 4. Market trends

Addressed mail volumes have continued to grow in the postal market from 2004 to 2006<sup>14</sup>. Volume growth was more pronounced in the new Member States which joined the EU in 2004 and 2007 than among the old Member States. In the period from 2004 to 2006 mail volumes grew by 6.5% on average in the new Member States compared to an average growth of 1.5% in the other fifteen Member States. The postal market is continuing to evolve towards a one way distribution market with business originating mail accounting on average for 85% of total mail volumes.

It is expected that Member States with a less developed mail market will continue to grow substantively, with a marked growth potential in particular relating to direct mail as quality of service levels improve. In Member States with mature postal markets the situation is different. Some of these Member States can still achieve moderate growth rates whereas other Member States such as the UK and the Netherlands have already experienced declining addressed mail volumes in recent years.

Competition in the letter post market is emerging but is still developing slowly, and meaningful competition still has to emerge. Market shares of competitors, although increasing, remain at a low level even in Member States that have fully liberalised their postal markets. End-to-end competition is further developed than average in Spain, Sweden, Germany and the Netherlands. Estimated markets shares of competitors in these Member States range from around 8% in Spain to 9% in Sweden, 10% in Germany and 14% in the Netherlands in 2007. In the new Member States developing end-to-end competition can be observed in Bulgaria, the Czech Republic, Estonia and Romania. In the majority of the other Member States market shares of competitors remain, with some exceptions, below 2%.

In the UK, which fully liberalised its postal market in 2006, end-to-end competition remains almost insignificant, but competition has developed in the upstream part of the market with competitors having a market share of around 20% of the total volume of addressed mail. The UK NRA Postcomm has been particularly active on access arrangements and developing a licensing regime for new entrants. A number of aspects of the access regime and access regulation have been conducive to the development of access competition rather than end-to-end competition in the UK.

Reducing the reserved area from 100 grams to 50 grams as from 1 January 2006, accounting for the opening up of an additional 7% of the addressed mail market, seems to have made little impact on the development of competition as it only opened up a small share of the postal market in terms of volume. The opening up of distinct segments of the addressed mail market in some Member States seems to have been more important for the development of competition as it opened up bigger shares of the postal market to competitors, for example, the liberalization of direct mail in the Netherlands, the so called "D licence" in Germany (allowing competitors to provide *value-added next day delivery services* until full market opening) and the liberalization of hybrid mail in Bulgaria.

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<sup>14</sup> Latest data available; ECORYS, 2008.

The generally slow development of competition can be attributed to legal barriers, i.e. the fact that in most Member State the reserved areas still count for the majority of postal volumes. As economies of scale play an important role in postal activities, the reservation of services to the incumbent postal operators makes it difficult for new entrants to achieve sufficient volume to also benefit from economies of scale and to efficiently compete on the postal market.

Apart from the reserved area and further legal barriers already mentioned above such as the VAT postal exemption, access to letterboxes or other elements of the postal infrastructure in some Member States and authorisation and licensing procedures, there may also be strategic barriers which hinder the development of competition. Strategic barriers could arise in particular from (alleged) abusive behaviour of the market dominant postal services provider as for example exclusivity contracts, price discrimination, loyalty bonuses and "bundling and tying".

## **5. The market impact of the Postal Directive**

EU postal reform which started in 1992 with the publication of the Green Paper on the development of the single market for postal services has had a very significant impact on the provision of postal services and the postal sector. The Postal Directive and its application by the Member States have led to an improved quality of service and have secured the provision of a universal service accessible to all customers. Provision of a high quality and affordable universal postal service is being provided throughout the European Union at least five times a week, with only limited exceptions due to geographical conditions.

Due to the regulatory and market impact of the provisions of the Postal Directive and gradual market opening, competition is developing in the letter mail market. Market shares of competitors in the addressed mail segment increased considerably in several Member States from 2004 to 2007. Market opening and the introduction of competition are the key instruments for creating jobs and achieving better services for consumers. However, meaningful competition still has to emerge, and identified (or emerging) barriers to entry have to be addressed efficiently.

Driven by gradual market opening as provided for by the Postal Directive and the challenge of competition, incumbent postal operators continued during the reporting period to modernize their operations and to undertake major restructuring efforts to increase efficiency. Postal operators are increasingly moving towards a market-driven and customer-oriented provision of postal services.

On average, quality of service – measured in delivery time – remained high during the reporting period and far exceeds the performance objectives set by the Postal Directive for delivery of 85% of cross-border intra-EU mail within three days and 97% within five days. In 2007, 94% of cross-border intra-EU mail was delivered within three days, virtually unchanged from 2006.

## **6. Conclusions**

During the reporting period gradual market opening of the postal sector continued and Germany fully liberalized its postal market. Competition has continued to evolve. However, the development of competition with its benefits for businesses and consumers – although emerging – remains slower than expected. This, on the one hand, is due to the fact that a large part of the postal market is still reserved for the incumbent postal operators. The adoption of the Third Postal Directive must be seen as being the decisive step in this respect as it provides for the abolishment of the last legal monopolies and represents a unique opportunity for the

postal sector and for the whole economy. Emerging competition, as already identified in Member States that fully opened their market, leads to higher quality and more customer oriented postal services.

But apart from the reserved area, other (legal and strategic) market entry barriers still persist. If the vision of an internal market with sustainable and efficient postal services is to become a reality, these market barriers have to be dealt with efficiently and removed. This is the joint responsibility of the Commission and the Member States as well as all stakeholders. It is essential that a system of efficient regulation is put in place in all Member States and that national postal legislation does not provide a burden for the emergence of competition and its positive impact on customers' needs.

In this context, it should be recalled that in 2003 the Commission submitted to the Council a proposal removing the VAT postal exemption and providing for taxation of all postal service providers. The Council has however not yet been able to agree on this proposal and it has not been discussed since 2004. The adoption of this proposal is now even more pressing since the Third Postal Directive sets a definitive date for the full liberalization of the national postal markets. It might be of interest to add that a referral for a preliminary ruling regarding the scope of the VAT exemption for postal services is currently pending before the ECJ (Case C-357/07).

It has been established that NRAs play an essential role in realising the goal of accomplishing the Internal Market and in a multi-operator environment. The main challenges ahead for the NRAs will be, among others, to arrange interoperability in a multi-operator market, take action against strategic barriers to entry and ensure that tariffs are more geared to costs. In order to allow NRAs to successfully fulfil their tasks, the expertise and staffing of the NRAs should be increased in most of the Member States. This is also an element that has been emphasised in Directive 2008/6/EC.

The focus of the postal sector in the coming years is very clear. It cannot exclusively lie on the transposition process for the Third Postal Directive. Market monitoring and the critically evaluating of the application of the current Postal Directive are of key importance. Member States, especially their NRAs, have to devote their full attention to an efficient transposition of the Third Postal Directive, while at the same time ensuring efficient regulation under the currently applicable Postal Directive. This phase ahead is – as it concerns the transition from several legal regimes to only one – of crucial importance.

On the basis of the commitments by the Community legislator and its obligations, the Commission will actively participate in these processes by providing Member States with the opportunity to establish best regulatory practices and at the same time continue with active and transparent market monitoring in order to safeguard the objectives of the EU postal reform.