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

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

{COM(2008) 884 final}

Ce document ne sera transmis que par voie électronique

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1. INTRODUCTION AND BACKGROUND

1.1. Purpose and scope of the Commission Staff Working Paper

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”)¹. 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. It also helps to identify any shortcomings and problems in good time and allows policy makers the opportunity to take appropriate (legal) action when necessary and implement corrective measures. Market monitoring is also essential to the process of proceeding 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 2002², its second Application Report in March 2005³ and a third Application Report in October 2006⁴. The Reports were accompanied by Commission Staff Working Papers containing more detailed information on regulatory and market developments.

This Commission Staff Working Paper (hereinafter the CSWP) provides a comprehensive assessment of the overall transposition of the Postal Directive in Member States, the application of its key elements as well as detailed market trends (including economic, technical, social, employment and quality of services aspects). The Application Report describes the main developments since the previous Application Report adopted in October 2006 and covers the reporting period is 2006 – 2008. Since the adoption of the 2006 Application Report important achievements and significant changes have occurred in the postal sector. These are captured in this CSWP and are analysed from a Community perspective. To assist comparison with the Commission's 2006 Staff Working Paper, the structure used in the latter has been retained.

¹ 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.

² 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.

³ 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.

⁴ 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.

The main elements and conclusions of the Commission Staff Working Paper are presented in a concise form in the 2008 Report from the Commission to the Council and the European Parliament on the Application of the Postal Directive. The latter also assesses the conclusions of this document in broader context of the Lisbon Agenda and the Single Market Review

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, the Federal Republic of 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, is 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")⁵. The Third Postal Directive sets a deadline for the full market opening by 31st December 2010 for the majority of Member States (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. The purpose and scope of this CSWP is not to provide a forecast on the application of the Third Postal Directive - but to report on the application of the current Postal Directive over the reference period.

1.2. 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 GDP⁶. The postal services sector is also an important employer with around 1.6 million people employed directly by operators in 2006⁷.

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 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 customer needs and to improve efficiency. It can be seen from business solutions that postal operators

⁵ 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.

⁶ "Main developments in the European postal sector (2004-2006)", WIK-Consult, May 2006.

⁷ "Main developments in the European postal sector (2006-2008)", ECORYS, 2008.

are developing (e.g. hybrid mail) that they are rapidly adapting to the changing environment. Moreover, with the continuous opening of segments of the postal services markets, the incumbent postal operators are also facing increasing competition from new entrants. In response to these developments, postal operators have substantially improved their efficiency by restructuring their operations thus resulting in cost control and better quality of service. The 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 important element of the EU's single market policy and are included in the Lisbon Strategy for growth and jobs that was fundamentally re-launched in 2005⁸. The Commission's Communication on a single market in the 21st century Europe⁹ emphasises that initiatives on network industries, including the postal sector and other liberalized network industries, 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, such as postal services, can best be ensured in a competitive market and with the development of the European single market.

1.3. Developments 2006-2008

The following main developments should be highlighted.

- Opening up of the postal market in Germany as of 1 January 2008

Germany is the fourth Member State in the EU to fully liberalise its national postal market. This is an important step in establishing the internal postal market as the German postal market is the biggest national postal market in the EU. It is important to emphasize in this context that in Germany market forces are providing universal postal service. There are however safeguard measures in place in case market forces are unable to ensure the provision of these services.

- Uncertainty regarding the opening of the postal market in the Netherlands

The 2006 Application Report indicated that the Netherlands would fully liberalize its postal market by 1 January 2008. Full liberalization has now been delayed for an indefinite period because of – according to the government – VAT differences with Germany and the UK, developments in Germany as regards employment conditions in the postal sector and allegedly unfair employment conditions in the postal sector in the Netherlands. The Commission is closely looking at these developments in the

⁸ Presidency Conclusions, Brussels European Council, 22/23 March 2005.

⁹ 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

context of Article 7 of the Postal Directive and the conditions under which a Member State can reserve certain services to a universal service provider.

– Regulatory and market developments in the UK

As one of the largest postal markets in the EU, and one of the first to liberalize its postal market on 1 January 2006, developments in the UK have a particular significance for EU postal reform. Competition in postal services has mainly emerged through access competition which has resulted in new competitors winning a market share of 20% of addressed mail volume. Access competition has resulted in lower prices, and more choice for large bulk mailers.

– Developments regarding the application of the 6th VAT Directive

The VAT exemption is still applied in a variety of ways in the Member States. The uneven application of the exemption and the distortions of competition can be considered an important obstacle to the development of effective competition in the postal sector. In July 2007, the Commission opened the second stage of infringement proceedings against the United Kingdom, Germany and Sweden when it issued a reasoned opinion against all three. It is also expected that the European Court of Justice will deliver a preliminary ruling, by the end of 2008, on the application of the exemption as laid down in the 6th VAT Directive when it gives its judgement on a case referred by the United Kingdom High Court¹⁰.

– Terminal dues – REIMS agreement

The REIMS agreement is the instrument by which certain European public postal operators collectively determine terminal dues rates¹¹. The REIMS agreement has been granted individual exemption from antitrust rules by the Commission on two occasions. The second exemption of the REIMS agreement expired at the end of 2006. Due to the reform of antitrust legislation and the adoption of the Council Regulation (EC) No. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty¹², any new agreement on terminal dues would not require an exemption by the European Commission ex-ante. Nevertheless, any new agreement would have to comply with the conditions of Article 81(3) of the EC Treaty, which is now directly applicable.

– Preliminary rulings of the European Court of Justice

The European Court of Justice (ECJ) delivered two important judgments in 2007 and 2008. The first judgement, *Vedat Deniz*¹³, concerns the application of fifth indent of Article 12 of the Postal Directive on access provisions. The ECJ established that different treatment of large mailers and consolidators is not objectively justified and is therefore discriminatory. The second judgement, *International Mail Spain*¹⁴,

¹⁰ Case C-357/07.

¹¹ Terminal dues are the payments that postal operators are paying to each other for the delivery of incoming-cross border mail.

¹² OJ L 1, 04.01.2003, p.1.

¹³ Joined cases C-287/06 to 292/06, *Vedat Deniz*, not yet reported – reference for a preliminary ruling.

¹⁴ Case C-162/06, *International Mail Spain*, [2007], ECR I-9911.

concerns the application of Article 7(2) on the scope of the reserved area. The ECJ said that Article 7(2) of Directive 97/67/EC must be interpreted as allowing Member States to reserve cross-border mail to the universal postal service provider only *in so far as they establish that, in the absence of such a reservation, achievement of that universal service would be precluded or that that reservation is necessary to enable that service to be carried out under economically acceptable conditions.*

1.4. Approach

The analysis presented in this Commission Staff Working Paper draws on the recent study by ECORYS on the Main Developments in the Postal Sector (2006-2008) and builds upon a series of other studies commissioned by the Commission¹⁵. Also a number of other studies have been used and are quoted, where appropriate.

As in the case of previous Commission Staff Working Papers, this one is structured around two main themes: first, an analysis of the transposition process of the Postal Directive into national law and regulatory developments (chapters two and three). Second, the paper will assess market developments over the last two years and the influence of the regulatory environment on these developments (chapter four).

Where appropriate, the CSWP provides an evaluation on possible further regulatory steps would be required in order to facilitate accomplishing the Internal Market for postal services.

2. THE TRANSPOSITION OF THE POSTAL DIRECTIVE

2.1. Aims of the Community regulatory system

The objective of the Community policy in the postal sector is to complete the internal market for postal services and to ensure, through an appropriate regulatory framework, that efficient, reliable and good-quality postal services are available throughout the European Union to all its citizens and businesses at affordable prices.

EU postal reform dates back to 1992 with the publication of the Green Paper on the development of the single market for postal services¹⁶. In 1994, the European Council entrusted the Commission with pursuing an ambitious postal policy. The mandate was to accomplish the internal postal services market with its universal provision through progressive and gradual market opening. Market opening and the introduction of competition were considered a proven tool for creating jobs and achieving better results for consumers. But it was also clear that this competition could not be introduced in the sector over night.

¹⁵ "Main developments in the European postal sector (2004-2006)", WIK-Consult, May 2006;
"The evolution of the regulatory model for European postal services", WIK-Consult, July 2005;
"The development of competition in the European postal sector", ECORYS, July 2005;
"Main developments in the European postal sector", WIK-Consult, July 2004;
"Economics of postal services", NERA, July 2004;

¹⁶ All studies are available under: http://ec.europa.eu/internal_market/post/studies_en.htm.
Green Paper on the development of the single market for postal services, 11.06.1992, COM (91) 476 final.

With the aim of achieving these objectives the First Postal Directive provided for a limited harmonisation of EU postal services¹⁷. It established regulatory provisions including the definition of a minimum universal service, a maximum reservable area, the conditions governing the provision of non-reserved services and access to the network, tariff principles and the transparency of accounts, quality of service requirements and the harmonisation of technical standards. These provisions, mainly focusing on principles and boundaries, established a Community framework which Member States could adapt to their national context.

The Second Postal Directive's reduction of the maximum reservable area also pursues the original key Community objective of introducing a gradual and controlled opening of the postal market to competition¹⁸.

The Third Postal Directive which has to be implemented by the Member States in the coming years provides for the full abolishment of the remaining reserved areas and is the last legal step required for full market opening.

By combining the discipline of harmonised regulation with the stimulus of competition, the Postal Directive seeks to promote regulatory reforms in the Member States that will result in a better, more efficient provision of universal postal services and improvements to the quality of service.

2.2. The requirements of the Postal Directive

The Community framework for the regulation of the postal sector is set out in the Postal Directive. As noted above this is a framework directive which gives a considerable degree of flexibility to the Member States¹⁹.

The Postal Directive contains the following key elements and requirements:

- All Member States are to provide a universal postal service for all users comprising at least one delivery and collection five days a week;
- The maximum size of the reserved area which may be reserved for the USP in each Member State is 50g in weight or two and a half times the basic tariff of an item of correspondence;
- Member States may establish authorisation procedures, which may include individual licences and a compensation fund in the universal service area;
- Member States should ensure that all users are permanently provided with a postal service of specified quality throughout their territory;

¹⁷ 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.

¹⁸ 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.

¹⁹ Recital 10 of Directive 97/67/EC.

- Member States must ensure that tariffs, including special tariffs, for universal services are cost-based, transparent and non-discriminatory and that cross-subsidies from the reserved area to the competitive area are limited to the fulfilment of universal service obligations;
- Member States must ensure that universal service providers (USPs) consistently apply transparent and separated cost accounting principles, and provide separate accounts for reserved and non-reserved universal services and non-universal services;
- The Postal Directive sets quality of service targets for intra-Community cross-border mail (85% for D+3, 97% for D+5 for the fastest standard category of service) and requires Member States to define, measure and enforce compatible national targets;
- Member States are to ensure that adequate consumer protection measures are in place, particularly with regard to complaints and redress procedures;
- The Postal Directive aims to promote greater inter-connectivity between postal networks through greater technical standardisation;
- Member States have to establish National Regulatory Authorities (NRAs) independent from the postal operators.

2.3. Transposition by Member States

All Member States have transposed the Directives 1997/67/EC and 2002/39/EC into national law. Nevertheless, the Commission will continue to monitor the application of the Postal Directive as transposed.

Regarding the transposition process in general, the focus over the next two to three years will now have to turn to the transposition of the Third Postal Directive.

During the reference period and up to 2008 one infringement procedure had been opened. This was against Greece and concerned national measures which may undermine the proper application of Article 9 of the Postal Directive.

Other issues regarding different aspects of the Postal Directive have also been discussed with Member States in recent years. These have however been solved without recourse to formal procedures. This approach often provides more rapid solutions and can help to avoid and prevent problems in the future.

2.4. Transposition of the Postal Directive by the EFTA -EEA States

The Postal Directive is part of the Agreement on the European Economic Area (EEA Agreement) and is referred to in point 5d of Annex XI to the Agreement. The Directive was incorporated into the EEA Agreement on 25 September 1998 by Decision 91/98 of the EEA Joint Committee and entered into force on 1 May 1999. Directive 2002/39/EC of 10 June 2002 amending the Postal Directive, has also been incorporated into the EEA Agreement. That was achieved through the adoption of Decision No 168/2002²⁰. The compliance date was 1 August 2003. The three EEA states, Iceland, Liechtenstein and Norway, were obliged to

²⁰ OJ L 38, 13.2.2003, p. 30 and EEA Supplement No 9, 13.2.2003, p. 21.

have the amending Directive transposed by that date and to notify the EFTA Surveillance Authority (ESA) thereof.

The Directive as amended is implemented in Norway,²¹ Iceland²² and Lichtenstein²³. The ESA has initiated a conformity assessment to evaluate the implementation of the Directive and concluded without any infringement proceedings being initiated.

2.5. Transposition of the Postal Directive by the Candidate Countries

The Candidate Countries, Turkey and Croatia are at very different stages in the transposition process of the postal *acquis*. While it can be observed that Turkey is only at the first stage of the transposition and has to implement the main provisions of the Postal Directive, Croatia is quite advanced. The national postal legislation in Croatia is to a large extent aligned with the postal *acquis* and has also been recently amended in order to provide a legal basis for the National Postal Council, which is acting as the NRA, to become part of a larger NRA for telecommunications and post. It is expected that Croatia will fully liberalize its postal market by 2013.

As regards the third Candidate Country, the Former Yugoslavian Republic of Macedonia (FYROM), negotiations for accession to the EU have not yet been opened. Nevertheless, FYROM is already very active regarding the postal sector and is aligning its legislation with the Postal Directive. Through their attendance as an observer in the Committee established by the Postal Directive (Article 21 of the Postal Directive) Candidate Countries are closely associated with the transposition and implementation of the Postal Directive and are in contact with Member States so that, where appropriate, they can benefit from best practices.

3. THE APPLICATION OF THE POSTAL DIRECTIVE

3.1. A quality universal service for EU citizens

According to Article 3(1) of the Postal Directive 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.

The Postal Directive sets out minimum standards of this service:

- One delivery and one clearance per working day at least 5 days a week (Article 3, paragraph 3),
- Density of access points taking account of the needs of users (Article 3, paragraph 2).

²¹ Act No 73 of 29 November 1996 relating to the provision of universal postal services (The Postal Service Act); Amendments by Acts No 5 of 9 January 1998, No 24 of 30 April 1999. Regulation No 313/2005 on accounting and cost separation for postal operators. The latter was a consequence of the identification of a lack of a cost accounting principles and accounting separation in the framework of the conformity assessment.

²² Postal Services Act No 19/2002, as later amended by Acts No 136/2002 and No 129/2004.

²³ Postal Act of 18 December 1998, Law Gazette 1999 No. 35, as last amended by Act of 10 March 2004, Law Gazette 2004 No 106.

The scope of the universal services comprises postal items of up to 10 kg/20 kg for national and 20kg for cross-border items as well as services for registered and insured items.

Whilst the Directive defines the minimum requirements to be met in all Member States, in certain exceptional locations and circumstances, NRAs may allow derogations from these requirements.

The scope of universal services differs among Member States. This will become even more important in the future if the provision of these services will have to be financed in a liberalized market and in case that funding will be provided to cover the cost of meeting universal service obligations.

Collection and delivery

All Member States comply with the minimum requirements for the number of collections and deliveries, obliging the USP to collect and deliver at least five days a week.

Table 1– Compliance with delivery requirements

MS	Deliveries per week required	Deliveries per week in practice	Exceptions from required delivery frequency possible	Exceptions from delivery at the premises of the addressee
AT	5	5	No	Yes
BE	5	5	No	No
BG	5	5	Yes	n.a.
CY	5	5	No	No
CZ	5	5	No	Yes
DE	6	6	No	No
DK	6	6	Yes	Yes
EE	5	6	Yes	Yes
ES	5	5 - 6	No	Yes
FI	5	5	Yes	No
FR	6	6	No	No
GR	5	5	Yes	Yes
HU	5	5	No	Yes
IE	5	5	Yes	No
IT	5	6	n.a.	n.a.
LT	5	5 - 6	No	No
LU	5	5	No	No
LV	5	5 - 6	No	No
MT	5	6	No	No
NL	6	6	No	n.a.
PL	5	5	No	No
PT	5	5	No	No
RO	5	5	n.a.	n.a.

MS	Deliveries per week required	Deliveries per week in practice	Exceptions from required delivery frequency possible	Exceptions from delivery at the premises of the addressee
SE	5	5	Yes	Yes
SI	5	5 - 6	No	Yes
SK	5	5	Yes	Yes
UK	6	6	Yes	Yes

n.a. = no information available

Based on ECORYS, 2008

Five Member States (DE, DK, FR, NL, UK) have exceeded the minimum of the Postal Directive and are obliging the USPs to collect and deliver six days per week. Also several USPs in EE, ES, IT, LT, LV, MT, SI, mostly for commercial reasons, exceed the number of delivery days on a voluntary basis.

The Postal Directive allows for an exception to or a derogation from the collection and delivery requirements in exceptional circumstance. Several Member States make use of this possibility. Exceptions to the daily delivery, and conditions for applying to them, are defined by national postal legislations of respective Member States and are limited to remote areas, to addresses with accessibility problems or to cases of exceptional circumstances (mainly force majeure or public holidays).

The envisaged exceptions defined by national postal legislations are, with one exception mentioned below, applied only to a limited extent and do not cover more than 1% of the households in the respective Member State applying them. The Commission is closely looking at these developments and reports on them to Member States via the Postal Directive Committee.

The 2006 Application Report from the Commission concluded that, with the possible exception of Greece, where some 7% of the population are exempt from the Directive's requirement for daily postal delivery, the remaining exceptions that exist in Member States are very insignificant. No changes have occurred since the 2006 Application Report.

The basic requirements laid down in Article 3 of the Postal Directive are thus fully respected, while at the same time the flexibility given to Member States enables them to adapt the scope of the universal service to their circumstances and needs. It should be emphasized that requirement for exceptions are not always fully clear. National Regulators should, therefore, make sure that the exceptional circumstances that may give rise to a reduced level of home delivery are clear and fully understood by mail users. The application and effects of derogations under Article 3(3) of the Postal Directive will continue to be carefully monitored by the Commission in the future.

The postal network

Article 3(2) of the Postal Directive requires Member State to ensure that the density of the points of contact and of the access points takes account of the needs of users. The Postal Directive does not set out any specific requirements for USP networks.

Member States thus have the liberty to formulate their own standards. They can transpose the obligation to provide a sufficiently dense network without establishing additional requirements. In those Member States that have established more detailed requirements, three categories of standards can be observed.

Table 2 – Requirements for the Postal Network

Requirements	MS
No specific requirements	CY, ES, GR, IT, LU, MT, RO, SE
Minimum number of access points	CZ, DE, DK, FR, LV, NL, PL, SI
One access point per municipality	BE, BG, DE, FI, HU, LT, LV, SK
Maximum distance to an access point	DE, DK, EE, HU, IE, LT, NL, SK, UK, AT, CZ, FR

Postal products in the universal service

The composition and scope of the universal service varies considerably between Member States. The majority of the Member States extends the scope of the universal service beyond regular letter mail and parcel mail to cover among others courier services, counter services, newspapers, printed matters, addressed direct mail, bulk mail etc. For example, twenty-one Member States (exceptions are AT, CZ, LV, LU, NL and PL) include addressed direct mail in the universal service. In Bulgaria, Poland, Portugal, the Slovak Republic and Spain, money orders are part of the universal service. All Member States except Germany have made special provisions for mail and literature for the blind.

As regards parcels, eighteen Member States (exceptions are BE, ES, FI, LT, LU, LV, NL, PL, RO) have broadened the universal service by adding domestic postal packages above 10 kilograms to the universal service.

Conclusions

Although universal service requirements vary widely among Member States within the framework set by the Postal Directive, the minimum requirements set out in Article 3 of the Postal Directive are fully respected. The provisions of the Postal Directive give the Member States enough flexibility to adapt the universal services to the specific national situation, i.e. the specific economic and geographic situation of the Member States and the needs of customers.

3.2. Reserved area

The Postal Directive (Article 7) allows Member States to reserve services to domestic service providers to the extent necessary to ensure the maintenance of the universal service. As a rule, the reserved services have to be limited to items of domestic correspondence weighting less than 50 grams and with a price less than two and a half times the tariff of an item of correspondence in the first weight step.

Direct mail and (inbound and/or outbound) cross-border mail may, to the extent necessary to ensure the provision of universal service, continue to be reserved within the same weight and price limits.

In 2007 the European Court of Justice delivered a judgement, *International Mail Spain*²⁴, concerning the application of Article 7(2) and laying down the test of necessity and proportionality of reserved area. The ECJ states that Article 7(2) of Directive 97/67/EC must be interpreted as allowing Member States to reserve cross-border mail to the universal postal service provider only *in so far as they establish that, in the absence of such a reservation, achievement of that universal service would be precluded or that that reservation is necessary to enable that service to be carried out under economically acceptable conditions.*

At present, all Member States have limited their reserved areas to the weight and price limits of the Postal Directive. As of 1 January 2008 Germany abolished the remaining reserved area bringing the number of Member States that have fully liberalised their postal market to four (DE, FI, SE, UK).

Another Member State, the Netherlands, plans to liberalise in advance of the timetable set by the Third Postal Directive, but the initial date of April 2007 for full market opening has been repeatedly postponed. Currently, no new date has been set. The reasons for the postponement, according to the Dutch government relate to VAT differences with Germany and the UK, developments in Germany as regards employment conditions in the postal sector and (unfair) employment conditions in the postal sector in the Netherlands. The Commission is analysing the situation in the Netherlands and its compliance with Article 7 of the Postal Directive, which allows Member States to reserve services to domestic service providers only to the extent necessary to ensure the maintenance of the universal service

No other changes occurred since the 2006 Application Report.

Table 3 – Services reserved for the USP in the Member States:

MS	Domestic & inbound cross border	Direct mail	Outgoing cross border
DE, FI, SE, UK	Liberalised		
AT, CZ, EE, NL, SI	X		
BG, IT, ES	X		X
BE, DK, FR, IE, LT	X	X	
CY, GR, HU, LU, LV MT, PL, PT, RO, SK	X	X	X

NB: Reservable areas in the weight and price limits of Article 7(1) of the Postal Directive.

Based on ECORYS, 2008

As can be seen in the above table the majority of the Member States have a reserved area which is substantially smaller than the maximum limit set by the Postal Directive. The most important reason for this seems to be the liberalisation of direct mail which forms a substantial part of the modern letter post. Eight Member States (AT, BG, CZ, EE, ES, IT, NL, SI) have taken the step to liberalised direct mail while four Member States have fully abolished the reserved area (DE, FI, SE and UK). The liberalisation of direct mail is conducive to the creation of competition as it provides new entrants in the postal services

²⁴ See footnote 14.

market with the possibility to generate more volumes and therefore to benefit from economies of scale.

As confirmed by several studies²⁵ and as already mentioned in the 2006 Application Report, the reserved area per se is increasingly no longer seen as being necessary for the maintenance of the universal service. The practical experience in the Member States without a reserved area confirms this assessment.

Conclusions

All Member States fully respect the requirements of the Postal Directive as regards the weight and price limits of the reserved area. The majority of the Member States exceed the requirements of the Postal Directive and have opened up a larger part of their postal markets. In the reporting period, one further Member State, Germany, fully liberalized its postal market. This should give an incentive to Member States still maintaining a reserved area to fully open up their postal markets even ahead of the deadline set of 31 December 2010 set by the Third Postal Directive.

3.3. Licensing and authorisation

Article 9 of the Postal Directive permits Member States to introduce authorisations for postal services provided by public and private operators. Postal services refer to the collection, transport, and delivery of correspondence, printed matter, and packages.

- The Postal Directives allows in principle two different levels of regulatory controls depending on whether the postal activities fall outside or within the scope of the universal service.
- General authorisation: no approval before starting activity;
- Individual license: approval before starting activity.
- For postal activities outside the scope of the universal service, general authorisations may be introduced to the extent necessary to guarantee the compliance with the “essential requirements”. For postal activities within the scope of the universal service, but outside the reserved area, authorisations or individual licences may be introduced to the extent necessary to guarantee the compliance with the “essential requirements and to safeguard the universal service”. Under the Postal Directive a Member State might also refrain from establishing authorisation procedures altogether.
- As regards the application of this provision by the Member States, four approaches to authorization of postal operators inside the universal services area can be distinguished:
 - No authorisation procedure;
 - General authorisation procedure;

²⁵ "An assessment of the cost and benefits of Consignia's current Universal Service Provision", Postcomm, June 2001; "Analysis of costs of universal services in the postal sector", Öhrlings, Coopers & Lybrand, October 1996; Committee report of the development of the Swedish postal market, January 2005, [<http://www.pts.se/en-gb/News/Post/2005>].

- Individual licences for some or all letter post services;
- Individual licences for all universal services.
- An overview on the application of the licensing and authorisation regimes in the various Member States is provided in the table below.

Table 4 – Overview of licensing and authorisation insider the universal service area

Type of authorisation	MS
No authorisation procedure	CZ, NL
General authorisation	AT, DK, IE, SK
Individual license for some or all letter post services	DE, FR, PL, SE, UK
Individual license for all universal services	BE, BG, CY, EE, ES, FI, GR, HU, IT, LT, LU, LV, MT, PT, RO, SI

Based on ECORYS, 2008

The majority of the Member States make use of the possibility to require an individual license for all services within universal services. This is the strictest possible approach under the Postal Directive. However, several of the larger Member States, such as Germany, France and the UK, only require an individual license for (part of the) letter post services. Two Member States (CZ and NL) do not apply any authorisation procedure. There has been no substantive development in terms of authorisation and licensing procedures in the reference period.

As regards Slovenia, it should be clarified, in relation to the 2006 Application Report, that Slovenia has a system of individual licence for services inside the scope of universal service. However this difference is for the purposes of clarification and should not be seen as a material change as the licensing system was not changed from the 2006 Application Report.

As noted above, within the universal service area authorisation procedures can be applied to the extent necessary to guarantee the essential requirements and to safeguard the universal service. The granting of an authorisation can only be made subject to certain obligations.

It can be observed that obligations imposed on postal operator in order to be able to operate within the universal service area differ significantly among the Member States. Whereas in some Member States, such as the Czech Republic and the Netherlands, they do not have any specific obligation, in other Member States they are subject to obligations related to the safeguard of the universal service for example, the obligation to provide all or part of the universal service.

As already stated in the 2006 Application Report, the large divergences in the authorisation procedures and related obligations for obtaining an authorisation may prove problematic from an Internal Market perspective. There is also the risk that the obligations which are imposed on new entrants may constitute a market barrier and hinder competition. With the further opening up of the markets and full market opening by 31 December 2010, the issue of licensing and authorisation procedures and related obligations will become more important.

Compensation Funds

Article 9(4) of the Postal Directive states that "*[I]n 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 aim of such a fund is to cover any uneconomic cost of the provision of the universal service obligation incurred by the USP. An authorisation or licence, for services within the scope of the universal service, may therefore be granted to an operator subject to an obligation to contribute to a universal service compensation fund. A compensation fund may only be used to finance those activities falling within the scope of the universal service.

Several Member States have made provisions for setting up compensation fund arrangements to ensure the financing of the universal services obligation but so far only Italy has actually established one. With the reserved area to be abolished by 31 December 2010 and thus no longer available finance the universal service, the issue of compensation fund will become more important. Some Member States are already preparing legislation for a compensation fund.

Conclusions

There are large divergences in the authorisation and licensing procedures as well as regards the related obligations for obtaining an authorisation or license. This may prove problematic for the Internal Market. More transparency on the obligations and their effect on new entrants is desirable. Obligations must not lead to market entry barriers and thereby undermine the objectives of the EU postal reform.

The practical use of compensation funds has so far been limited. However, with full market opening, further consideration may be needed in the future to see how to make this optional tool more operational.

3.4. Access to postal networks

Access refers to access by third parties to the postal network usually owned by the incumbent postal operator. It concerns access to the postal delivery network, in particular to the sorting and delivery facilities, as well as access to the postal infrastructure, such as the letterboxes of individual consumers and businesses, P.O. boxes, the address database, the postal code system and the possibility to redirect (wrongly addressed or returned) mail.

The Postal Directive does not impose specific access rules, although it empowers the Parliament and the Council, acting on a proposal from the Commission, to adopt harmonisation measures in the field of access to the public postal network, whenever necessary (Article 11 of the Postal Directive).

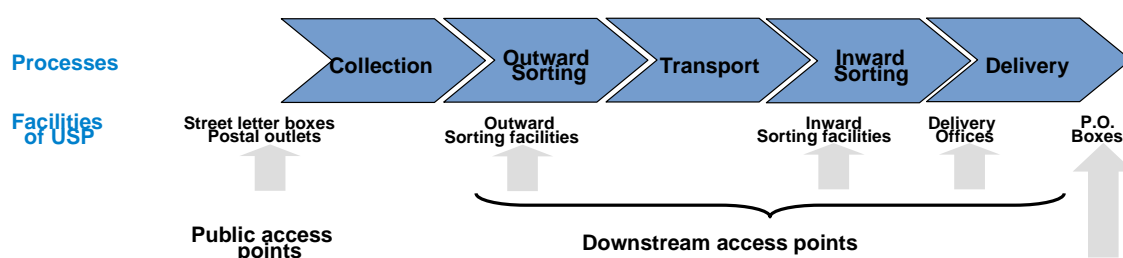
In addition, Article 12 on tariff principles, fifth indent, of the Postal Directive already states that whenever USPs apply special tariffs, they shall apply the principles of transparency and non-discrimination with regard both to tariffs and to the associated conditions. The tariffs shall take account of the avoided costs and shall apply equally both as between different third parties as between the third parties and USPs supplying equivalent services. Any such tariffs shall also be available to private customers who post under similar conditions.

In March 2008, the European Court of Justice has delivered an important judgment, *Vedat Deniz*²⁶, concerning the application of the fifth indent of Article 12 of the Postal Directive and the test of non-discrimination as laid down in this provision. The ECJ clearly established that different treatment of large mailers and consolidators is not objectively justified and is therefore discriminatory.

Access to the postal delivery network ("Downstream access")

A common issue as regards access is "downstream access" to the physical network. As postal markets become more competitive, some private operators and their customers have sought access to portions of the public postal network without paying for the use of the entire system. Downstream access can take place at different points of the postal supply chain. It can consist of access to inward or outward sorting centres or delivery offices (see figure below).

Figure 1 – Access to the postal supply chain:



WIK, 2006

It is argued that notably downstream access could help facilitate market entry for upstream consolidators. New competitors who want to establish a delivery network could also use access for a transitional period to build up customer relationships and volumes, before being able to compete end to end with the incumbent.

Using this model, consolidators and competitors, as well as major business customers could already deliver part of the value chain process before handing mail over to the incumbent.

The special tariffs mentioned in Article 12, fifth indent, may be considered as applicable to downstream access and the principles of transparency and non-discrimination have been specifically enshrined in the Postal Directive.

As the Postal Directive does not determine how access should be provided, Member States have different policies on whether market dominant operators (incumbents) should be obliged to provide access to third parties.

Three (main) kinds of downstream access and downstream access regulation can be distinguished in practice:

- Mandatory access with ex-ante regulation of the access conditions (access points, terms, prices);

²⁶ See footnote 13.

- Mandatory access with market participants negotiating the terms and conditions and potential interference of the NRA if no access agreement can be reached;
- Freely negotiated access.
- Currently, ten Member States (BG, DE, DK, ES, FR, HU, MT, PT, SI and UK) have granted the NRA authority to require downstream access to the public postal network under appropriate circumstances. Compared to the situation described in the 2006 Application Report two years ago, the following changes have occurred:
 - Germany switched from ex ante regulation of access conditions to ex post regulation since 2008. Germany was the only Member State to regulate the access prices ex ante.
 - Mandatory access regimes have been instituted in Bulgaria, Malta and Spain.
 - In the Netherlands, access will be mandatory under the (not yet enacted) new postal law.

The UK NRA Postcomm has particularly been active on access arrangements and developing a licensing regime for new entrants. Postcomm was heavily influential in encouraging Royal Mail to agree access arrangements with new operators and large customers.

– *Access to the postal infrastructure*

- Another important access issue concerns access to key elements of the postal infrastructure such as post office boxes, address databases, buildings and letter boxes as well as to the determination of postal codes and to redirection and return-to-send services. Access to such infrastructure will be of increasing importance in a multi-operator environment. If no appropriate access to the postal infrastructure is provided for third parties, this can constitute a market entry barrier.
- Access to letterboxes was, and partly still is, a problem in a number of Member States (AT, FR, PL, SK and to a less extent DE). For example, in Austria, Austrian Post is the only provider that holds the key that is required to obtain access to private letter boxes. In Germany, the same problem with in-hose letterboxes that are not publicly accessible can be observed, albeit for a relatively small number of delivery addresses. A similar problem existed in France. However, a public consultation has been conducted by the French NRA ARCEP, resulting in a compromise solution by which all licensees will be given access to the access codes (managed by La Poste) in order to be able to deliver to letterboxes.

Conclusions

Arrangements for downstream access vary significantly among Member States. A trend towards mandatory access can be observed. NRAs play an important role in this context. In particular, they have to ensure that access conditions to the postal infrastructure do not constitute a market entry barrier.

3.5. Tariff principles

3.5.1. Tariff regulation and USP tariffs

Tariff regulation

Article 12 of the Postal Directive requires each tariff for universal service to be affordable, geared to costs, transparent, and non-discriminatory.

Special tariffs with individual customers are permitted but should conform to the same principles. In particular, special tariffs must:

- take account of the avoided costs;
- apply equally between third parties and be open to private customers who use postal services under similar conditions.

Cross-subsidisation of universal services outside the reserved sector using revenues from services in the reserved sector shall be prohibited except to the extent to which it is shown to be strictly necessary in order to fulfil specific universal service obligations imposed in the competitive area.

In principle, all Member States have adopted procedures and standards for regulating the prices for key universal services so that they comply with the general standards of the Postal Directive.

The Commission's 2005 and 2006 Application Report already observed a fragmented picture in terms of the actual degree of price control across the Community. In effect, Member States have developed a variety of price control mechanisms.

There are three basic procedures applied by Member States: "ex ante" requiring the USP to obtain approval of the NRA before implementing a price change; "price cap" permitting the USP to change prices according to a pre-approved level or formula and "ex post" allowing the USP to change prices but with the possibility for the NRA to modify any changes.

A distinction based on which categories of services are covered by price regulation: reserved services, universal services, other postal services, can also be made.

Finally there are also different forms of how NRAs set benchmark prices for determining USP prices. These are RPI (retail price index), "minus costs" and RPI plus" costs. An RPI regime means that price increases by the USP are limited to the increase of the retail price index. An RPI minus X regime means that price increases by the USP are limited to the increase of the retail price index minus a factor of X which provides for efficiency improvements. This type of regime stimulates an USP to improve its productivity. An RPI plus regime means that price increases by the USP are limited to the increase of the retail price index plus a factor of X. This regime is rarely used. If the form of control is based on costs, the NRA sets the tariffs on the basis of costs using past costs, efficient costs or future costs as a benchmark.

Price regulation of reserved services

All Member States with a reserved area have a price regulation scheme in place. Where a reserved area is retained, all but five Member States (BE, BG, LT, NL) require "pre-approval"

(ex ante) by the NRA before implementing any price changes. Belgium has a price cap regime of the reserved area, with prices reviewed ex post. Of the Member State with a reserved area, only Portugal applies a RPI minus regime.

Price regulation of universal services

All Member States except Luxembourg have a price control on their universal service provider. It should be recognized that the definition of universal service obligation services varies from Member State to Member States. Sweden appears to have just one control, this being a cap in the form of RPI on the single first class items up to 50 grams.

Price regulation of other postal services

Four Member States (BE, CY, DE, and the UK) have price regulation on postal services that are neither reserved nor universal service. Cyprus has ex-post price reviews of those services provided by the USP that are outside the USO definition and Belgium has maximum tariffs or tariff formulas for non-USO products. In Germany, incidental services have to be verified ex-ante by the NRA whilst in the UK the majority of the bulk mail services (non-USO) are price regulated via a product “basket” with an RPI-minus formula.

As regards price regulation in the Member States where postal services have been fully liberalized, the USP within the UK has a complicated form of RPI minus price regulation that extends beyond the USO area and includes access services. This contrasts significantly with the other liberalized markets. In Finland, the USP is free to set its own prices, subject to ex post review and in Sweden it is only the first class single item mail that is subject to price control. In Germany, since January 2008 the price of bulk mail services (≥ 50 items) does not have to be approved ex-ante, but is subject to ex-post price control. Until the end of 2007, the access tariffs were regulated ex ante in Germany.

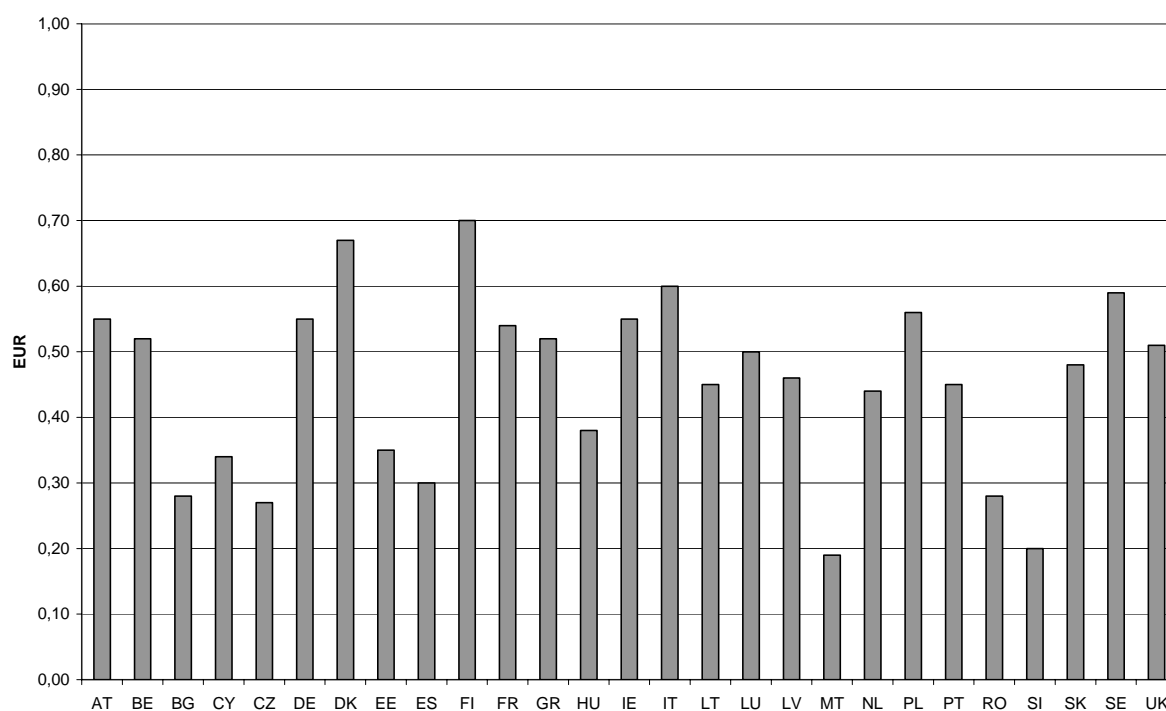
Only three Member States, DE, PT and the UK, stimulate efficiency improvements through using an RPI minus regime for (part of) the prices that are regulated. The fact that many USPs have a price cap linked to RPI or face cost based price regulation has as a consequence that in most Member States price regulation provides little or no incentive for the USPs to reduce costs. Uniform tariffs remain the norm across Member States for USO.

To conclude, putting the pricing principles of the Postal Directive and particularly the aim of affordable, transparent prices geared to costs into practice will require further attention from Member States. Price control constitutes a complex issue that is not only dependent on the modalities of how it is carried out but is also dependent of the appropriate price data collection. Price control is therefore one of the issues where enhanced administrative cooperation between NRAs could be of particular value.

USP tariffs

Tariffs vary significantly among Member States. The figure below gives an overview of prices in form of the USP tariff at the first weight step for letter post. Where a choice of class (first or second) exists, it is the first class mail product that is included here.

Figure 2 – USP Tariffs for first weight step (in EUR) in 2007



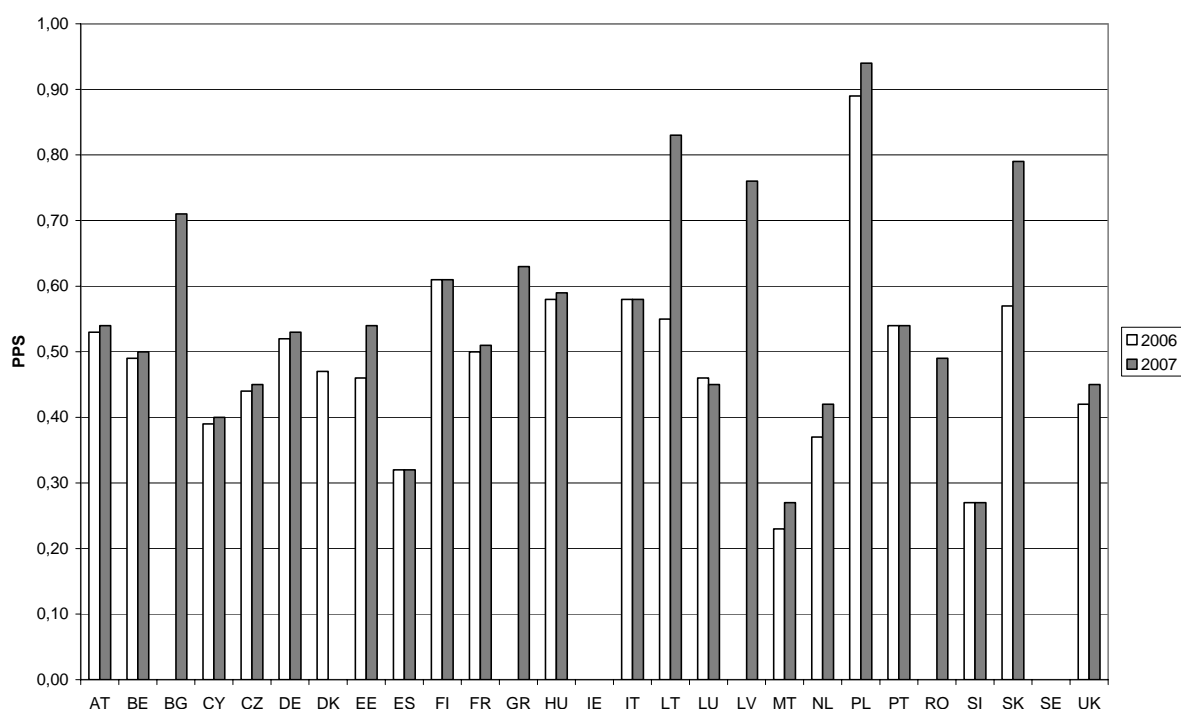
Note: Figures for Spain for second class tariff; Figures for Romania and Sweden for 2008.

Based on ECORYS, 2008

Tariffs vary significantly from below 0.20 EUR in Malta to 0.70 in Finland. In general, tariffs tend to be lower in the new Member States (EU12) than in the old Member States (EU15).

Tariffs measured in EUR may not always provide good information on the affordability of prices of postal services for consumers and businesses, as they do not take into account the general price level and wage level in the Member States concerned. With respect to affordability, the tariffs measured in purchasing price standards (PPS), i.e. tariffs in EUR converted using Purchasing Power Parities, provide a different comparison.

Figure 3 – USP Tariffs for first weight step (in PPS) in 2006 and 2007



Note: Figures for Spain for second class tariff; Figures for Romania and Sweden for 2008.

Based on ECORYS, 2008

The data presented above suggest that postal services are relatively costly for consumers in Poland, Lithuania and Slovakia. On the other hand, postal services are relatively cheap for consumers in Malta and Slovenia.

The tariff for a postal item in the lowest weight step transmitted by fastest standard category can be considered the most basic measurement for the price of postal services. But it should be kept in mind that several factors mitigate against a useful comparison for example, in some Member States second class priority service is also offered. Also postal tariffs including VAT are not fully comparable due to different VAT rates in the Member States. In addition, large users may enjoy significant discounts. Finally, it should be borne in mind that the service that customers get for this tariff may differ among Member States, due for example to different delivery frequencies.

As regards consumers' perception of the affordability of postal services, according to the Special Eurobarometer of July 2007²⁷, 87% of EU-25 considered postal services affordable, while 6% considered them not affordable. In Greece, 99% of citizens considered postal services affordable compared to a 72% in Finland.

The marked differences between the perceptions in the Member States can partly be explained by objective developments such as price changes but some developments might well not be related to the real price levels. In addition, it should be borne in mind that the Eurobarometer

²⁷ Special Eurobarometer 260 Services of general interest, July 2007
[\[http://ec.europa.eu/public_opinion/archives/ebs/ebs_260_en.pdf\]](http://ec.europa.eu/public_opinion/archives/ebs/ebs_260_en.pdf)

only covers individual citizens while a large part of users of postal services are businesses. Also it should be recalled that spending on postal services only constitutes a small percentage of a household's budget.

3.5.2. Terminal Dues

Terminal dues are the remuneration postal operators pay to each other for the delivery of cross-border mail in the country of destination. Article 13 of Postal Directive requires Member States to encourage their USPs to arrange that in their agreements on terminal dues for intra-Community cross-border mail, three main principles are respected:

- The terminal dues shall be fixed in relation to costs of processing and delivering incoming cross-border mail;
- The level of remuneration shall be related to the level quality of service achieved;
- Terminal dues shall be transparent and non-discriminatory.

The REIMS agreement²⁸ is the instrument used by certain European public postal operators to collectively determine terminal dues rates. The REIMS agreement has obtained individual exemption from antitrust rules twice as the Commission determined that conditions for individual exemptions as laid down in Article 81(3) of the EC Treaty were satisfied.

The second exemption of the REIMS agreement expired by the end of 2006. Due to the reform of antitrust legislation and the adoption of the Council Regulation (EC) No. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty²⁹, any new agreement on terminal dues would not require an exemption by the European Commission ex-ante. Nevertheless, it would have to comply with the conditions of Article 81(3) of the EC Treaty, which is now directly applicable

At the same time parties to this kind of an agreement have to comply with the requirements of Article 13 of the Postal Directive, which are: cost orientation of terminal dues, link to the quality of service and transparency and non-discrimination of the agreed system.

3.5.3. Value Added Tax

Under the VAT Directive (Directive 2006/112/EC , Articles 132(a) and 135(1)(h)) the provision of certain services by public postal services and the supply at face value of postage stamps for use for postal services are exempt from VAT. Since the 1970s when these provisions originally were adopted³⁰ the Community legal framework as regards postal services has fundamentally changed following the Postal Directive in 1997 (and amended in 2002 and 2008). Meanwhile, the postal VAT exemption has remained in force.

²⁸ Until now there were two REIMS agreements concluded: REIMS II and renewed REIMS II.

²⁹ OJ L 1, 04.01.2003, p.1.

³⁰ 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.

The VAT exemption is applied in a variety of ways by Member States: some exempt all postal services supplied by the USP; others exempt all services comprised within the universal service obligation; yet others exempt those services which have been reserved to the USP, and lastly, three Member States levy VAT on all postal services.

Table 5 – Postal services exempted from VAT

Postal services exempted from VAT	Member States	
No services	FI, SE, SI	
Reserved services	ES, LV	
Universal services	BE, BG, CZ, DE, DK, EE, FR, GR, LT, LU, MT, NL, SK	
All postal services provided by USP	AT, CY, HU, IE, IT, PL, PT, RO, UK	

The vast majority of USPs benefits from a VAT exemption. Such an exemption gives the USPs a competitive advantage over other postal operators vis-à-vis customers which cannot recover the VAT they have been charged, e.g. final consumers or traders engaged in VAT exempt activities. The scope of the application of the VAT exemption varies however widely. The uneven application of the exemption and the distortions of competition occurring between UPSs that benefit from the exemption and other operators that do not, are considered an important obstacle to achieving effective and non-distorted competition in the postal sector.

To counter this situation the Commission proposed already in 2003 to remove the current VAT exemption on public postal services and postage stamps while introducing an option for Member States to apply a reduced VAT rate to a wide range of postal services in order to limit the impact of the tax on final consumers³¹. Despite its obvious significance for a level playing field in a liberalised market for postal services, there has been no progress in the Council on this proposal. In fact, the proposal has not been discussed in the Council since 2004. Its adoption is now more pressing since the Third Postal Directive sets a definite date for the full liberalization of the national postal markets. As to further discussions in the Council, it is very much in the hands of the Council to decide whether or not to resume negotiations. The Commission has repeatedly signalled its interest and readiness to resume negotiations and to contribute in a constructive manner for a common solution.

In the meantime the Commission needs to ensure the uniform application of the existing VAT postal exemption across the Community. It is the Commission's understanding that the exemption should apply only within the limits of the strict discharge of the universal service obligation and not in other areas. For this reason, the Commission has sent letters of formal notice to the UK, Germany and Sweden in April 2006³² about the unsatisfactory way in which the current provisions are being implemented in those Member States. In July 2007, the Commission opened the second stage of infringement proceedings against these Member

³¹ COM (2003) 234 as amended by COM (2004) 468 Proposal for a Council Directive amending Directive 77/388/EEC as regards value added tax on services provided in the postal sector.

³² Commission Press Release IP/06/484 of 10 April 2006. As explained there, the Commission regards these cases as test cases which show the negative effects non-harmonized application of VAT rules has for the internal market.

States by sending a reasoned opinion³³ to them. It is important 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).

³³ Commission Press Release IP/07/1164 of 24 July 2007.

Conclusions

The Postal Directive can be considered as having been largely transposed. However, the Postal Directive provides the Member States with significant flexibility as how to apply tariff principles. Consequently, the application of the Postal Directive in this field varies widely among Member States.

Given the importance of tariff regulation, tariffs, terminal dues and VAT in a liberalized market and for the creation of competition, this area should be closer looked at in the future.

3.6. Transparency of accounts

Article 14 of the Postal Directive requires the following with respect to the transparency of accounts of the USPs:

- Separation of USP accounts (reserved and non-reserved services, universal services and non-universal services);
- Allocation of costs according to accounting systems as defined in this Article of the Postal Directive;
- Statement of compliance by a competent independent body;
- USPs to disclose detailed accounting data to NRA and Commission on request.

In addition, Article 15 requires the publication of USPs financial accounts after these are reviewed by an independent auditor.

All Member States have transposed the accounting obligations resulting from the Postal Directive. However, as already pointed out in past application reports, the level of transparency of USPs costs data an accounting is extremely varied among Member States and therefore very inconsistent. This concerns the level of accounting detail, as well as which separate accounts are required and the way of allocating costs. It has to be repeated again, that, in practice, transparency of accounts is still only being partially implemented in most Member States.

Cooperation between NRAs is important in this area to exchange best practices.

It is worth noting the efforts undertaken by the European Committee for Postal Regulation (CERP) to devise guidelines for the implementation of cost allocation principles.

Conclusions

The Postal Directive's objective on a transparent cost allocation system of the universal services providers still needs to be fully reached. This conclusion already drawn in the 2006 Application Report still remains valid.

3.7. National Regulatory Authorities (NRAs)

Article 2 (18) of the Postal Directive defines NRAs as “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.” Article 22 of the Postal Directive requires each Member State to designate one or more NRAs for the postal sector that are “legally separate from and operationally independent of the postal operators”. According to the same Article, NRAs “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”.

The effective operation of the (competition and) regulatory authorities is crucial for the proper functioning of the postal markets. Whereas the independence of the NRAs is a key requirement of the Postal Directive and a pre-requisite for its effective operation, there are further issues of significant importance such as the mandate of as well as, the powers and resources attributed to the NRAs.

All Member States have some form of NRA all of which are formally independent from the postal operator. However, some NRAs may still be under ministerial control. However, it seems that this formal independence is not always fully respected when it comes to the daily operations of the NRA in some Member States.

Compared to the situation described in the 2006 Application Report, the main changes are the establishment of the Austrian Regulatory Authority for Broadcasting and Telecommunications (Rundfunk und Telekom Regulierungs-GmbH (RTR-GmbH)) as NRA for postal affairs in Austria as of 1 January 2008. Before 2008, the regulatory tasks in the Austrian postal market were governed by the Ministry of Transport, Innovation, and Technology.

As in almost all other cases the Austrian NRA is also a multi-sector regulator. Apart from the postal sector, most European NRAs regulate electronic communications services, broadcasting, road transport or energy and gas. This might help to take into account experiences gained in other network industries.

In Estonia, there was a reorganisation of a number of regulatory institutions in January 2008 and currently the NRA for posts is the Estonian Competition Authority (Konkurentsiamet).

The resources of postal NRAs vary enormously among Member States even among Member State of roughly the same size. This can be seen by the number of staff employed or responsible for the postal market especially in case of multi-sector regulators. Whereas in the UK the number of staff regulating the postal market amounts to 60 FTE (full time equivalent), some smaller Member States only have 1-3 FTE.

The powers of the NRAs also vary among Member States. This concerns the data that they can require from USPs incl. requiring specific accounting systems, enforcement powers such as cancelling unlawful rate or levy fines and other powers, such as for example the competence to require downstream access (see chapter 3.4. above on downstream access).

NRAs have a substantial role to play in the European postal sector in order to preserve a universal service in line with the Postal Directive and to enable the development of competition. It appears that by the far the vast majority of the NRAs currently still focus on

ensuring the provision of the USO. With postal markets opening up and the road set for full market opening, the role of the NRA will increase. The inequality in the overall level of resources attributed to them and the divergences of the mandates of the NRAs thus gives rise to concern. It seems doubtful that all NRAs are adequately equipped to fulfil their tasks.

Conclusions

All Member States have independent NRAs but it seems that this is not always respected in the daily operation of the NRA in all Member States. The mandate, resources and powers of the NRAs also vary significantly among Member States. The importance of the role of NRAs and their competencies under the Postal Directive should oblige Member States to allocate necessary resources to these independent sectoral regulators in order to preserve benefits of the full market opening and at the same time safeguard the provision of the universal postal service. Member States should further strengthen the position of National Regulatory Authorities and to ensure the allocation of the necessary resources. Administrative cooperation among NRAs should be promoted to allow exchange of best practices and benchmarking.

3.8. Quality of services – Routing time

One of the key aims of the Postal Directive and a core objective of EU Postal Reform is to improve the quality of Community postal services. In order to establish whether this objective is indeed realised, Article 16 of the Postal Directive requires Member States to “*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*”.

Each NRA is required to monitor the performance of the USPs in order to ensure they comply with the prescribed standards. Whilst the Postal Directive does not prescribe penalties when quality targets are not met, each NRA is required to take corrective action.

In terms of setting the quality of service standards, Article 16 of the Postal Directive states that quality standards are to focus, in particular, on routing times and on the regularity and reliability of service. Each NRA has discretion under certain circumstances such as infrastructural difficulties or geography, to allow derogations from adopted quality standards. Whilst the Directive does not prescribe the method for measuring quality standards, it does require adequate measuring of quality, and that an evaluation procedure is put in place.

As to the scope of the application of quality of service standards, Article 16 requires Member States to set quality of service targets for all universal services, including services for correspondence, newspapers, magazines and parcels. In reality, however, the coverage of transit time targets, which is the most important category of quality of service standards, varies widely across Member States.

Domestic transit times

Standards for domestic transit time are usually set as $D + n$ ($D+1$, $D+2$ and $D+3$), where D represents the date of deposit and n the number of working days which elapse between that date and the date of delivery to the addressee. The table below indicates the transit time targets for domestic priority mail as set by the different Member States as well as information on the actual transit times realised by the USPs in 2006.

Table 6 – Regulation and performance of routing times of domestic priority mail (2006)

MS	Regulation			Performance		
	D+1	D+2	D+3	D+1	D+2	D+3
AT	95	98	100 ⁽¹⁾	96.1	unknown	Unknown
BE	95	97		92.0	98.3	
BG ⁽²⁾	78	90	95	88.7	98.0	99.8
CY	90	97		63.6	93.6	
CZ	90			94.1		
DE	80	95		unknown	95.9	
DK	93			94.0		
EE	90			90.5		
ES	unknown	93	99	56.1	89.9	Unknown
FI	85	98		95.7	99.2	
FR	85	95		81.2	97.2	
GR	86		98	80.0		97.4
HU ⁽³⁾	95	97		91.8	99.6	
IE	94		99.5	77		97
IT	88			88.1		
LT	85		97	67.8		97.6
LU	95	99		97.3	99.9	
LV	97			95.6		
MT	92			94.9		
NL	95			96.6		
PL	82	90	94	68.0	87.0	94.4
PT	93.5			94.7		
RO	85	97		unknown	unknown	
SE	85		97	95.4		Unknown
SI	95	99.5		88.0	99.4	
SK	96			96.5		
UK	93			94		

Notes:

(1) D+4

(2) Bulgaria has different standards for different mail items [see p. 63 ECORY]

(3) Hungary has different standards for different mail items [see p. 63 ECORY]

Based on ECORYS, 2008

The above table shows that all Member States have set quality of service (transit time targets D+1) except Spain. The majority of the Member State also has transit time targets for D+2 and several Member States have in addition transit time targets fro D+3.

Targets vary significantly ranging for D+1 for example from 78% in Poland to 97% in Latvia. Also the actual performance of a transit time of D+1 sees a large variation among Member States.

Several Member States have difficulties reaching the D+1 transit time target, however in these Member States only the standard for the fastest transit time is not met, while all other standards (for D+2 or D+3) are met.

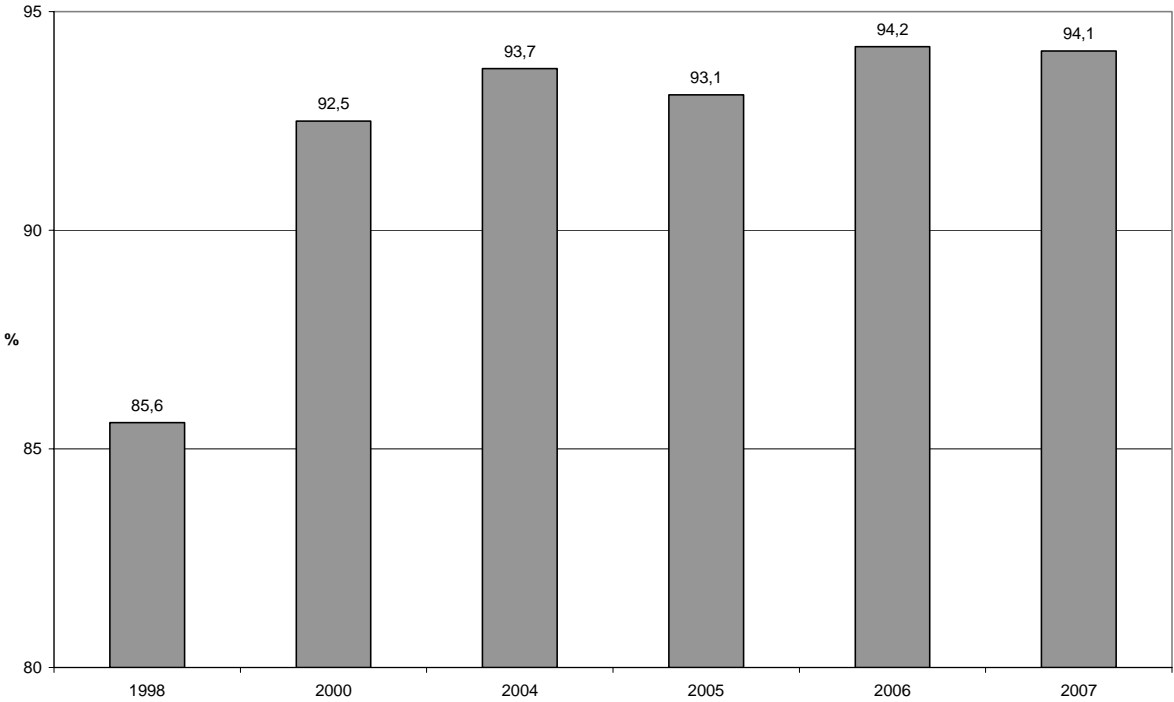
Cross-border transit times

Minimum standards for intra-community cross-border services are set by the Postal Directive. Annex 1 of the Postal Directive provides that for cross-border postal items sent by the fastest standard category, 85 percent of the mail must be delivered by the third working day after posting. A second requirement is that 97 percent of such mail must be delivered by the fifth day after posting. These targets should be achieved both as an overall average and in each bilateral exchange between Member States.

A system to measure the cross-border transit times is the UNEX system for measuring letter service performance which was introduced by IPC (International Post Corporation) in 1994. Until 2004 the UNEX monitoring system included the EU15 plus Iceland, Norway and Switzerland. Since 2005 it the UNEX system includes all EU27 expect Bulgaria, which will be included from 2008 onwards, as well as Iceland, Norway and Switzerland.

The figure below shows the overall trend in transit time performance over the last years measured in terms of D+3.

Figure 4 - Cross border intra-community D+3 in EU 15 and EU29



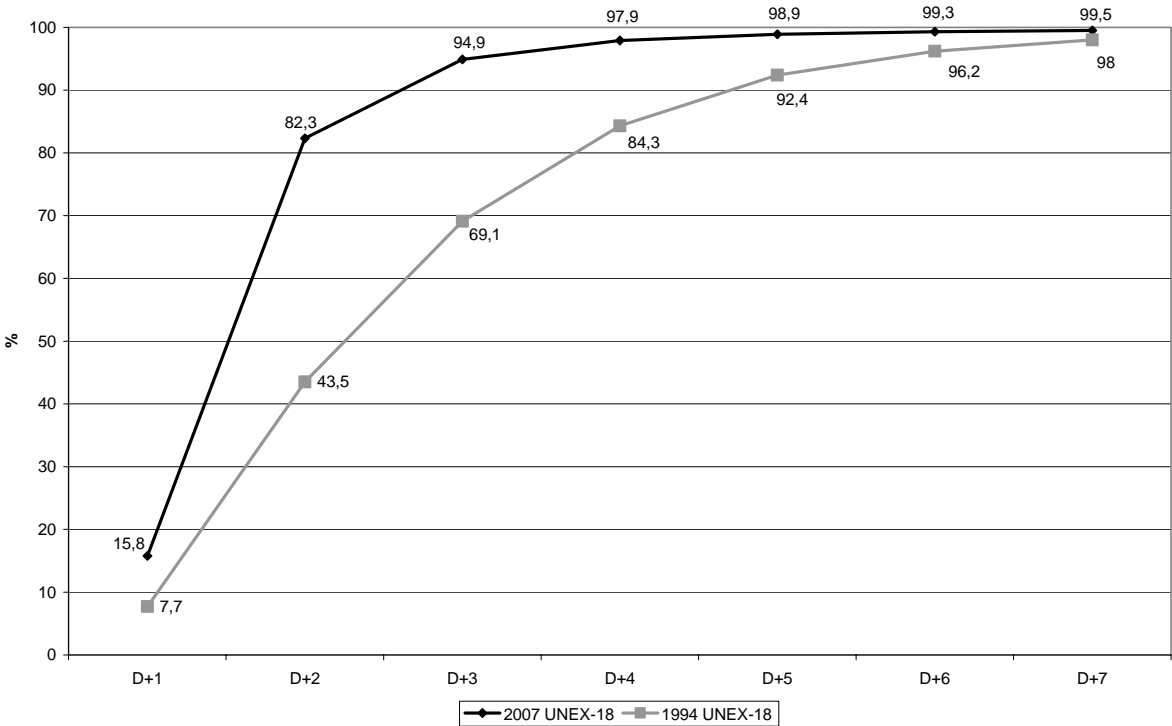
IPC³⁴

³⁴ Results 2002-2005 based on UNEX-18 (EU15 + Iceland, Norway, Switzerland); 2005 -2007 based on UNEX-29 (EU27 without Bulgaria + Iceland, Norway, Switzerland).

The above figure shows that on average cross-border services of postal operators continued to be performed to a high level in 2007. 94% of cross-border mail was delivered within three working days, thus exceeding significantly the target of 85% set by the Postal Directive.

The improvements registered since the implementation of the first Postal Directive 97/37/EC can be seen in the following figure which compares the cumulative performance in 1994 and 2007 for EU15 plus Iceland, Norway and Switzerland, which are the countries monitored by UNEX since 1994.

Figure 5 – Cumulative performance in 1994 and 2007 for EU15 plus ICE, NO, CH³⁵



IPC, 2006

D+3 performance for UNEX-18 went up from 69.1% in 1994 to 94.9% in 2007. D+5 performance increased from 84.3% to 97.9%.

While the overall picture is positive, individual results for bilateral flows between a number of Member States are less so and some performances may give rise to concern.

Conclusions

Overall, quality in terms of transit time has further improved at both the national and European level. However, as regards cross-border transit times, the situation differs among Member States and developments should be closely followed.

³⁵ http://www.ipc.be/index.php?option=com_content&task=view&id=43&Itemid=152. Results are for UNEX-18i.e. EU-15 plus Switzerland, Iceland and Norway.

3.9. Complaint and redress procedures

Article 19 of the Postal Directive requires Member States to ensure that there are adequate consumer protection measures in place and that complaints about poor universal postal service are handled through transparent, simple and inexpensive procedure. This concerns in particular cases involving loss, theft, damage or non-compliance with service quality standards.

The Postal Directive lays down two key procedural requirements to ensure that there is clarity in complaint handling. The first is for Member States to ensure that USPs publish details on the number of complaints received and how these complaints were dealt with and resolved. The second is for Member States to ensure there is an appeal mechanism which allows complaints to be brought before “*the competent national authority*” in cases where grievances were not adequately resolved by the USP.

Despite the establishment of complaint procedures – which have in part also been extended to competitors – in practice there seems to be still dissatisfaction among citizens about the handling of complaints³⁶. According to the Special Eurobarometer 2007³⁷ 43% of the respondents say that their complaints have been dealt with badly and 53% state that they have been dealt with well. It should however be noted that figures improved compared to the situation two years earlier when 53% of the respondents said that their complaints have been dealt with badly and 44% state that they have been dealt with well.

The adoption and enforcement of the CEN standard on measurement of complaints and redress procedures³⁸ should considerably contribute to improving the current situation.

Conclusions

Although consumer satisfaction as regards the handling of complaint procedures has improved, the implementation of the provisions in the Postal Directive relating to complaint and redress cannot yet be considered to be fully satisfactory for all consumers. Complaint and redress procedures are particularly important for end consumers and SMEs, both of which have very limited or no bargaining power and the role of NRAs is of particular importance in this regard.

3.10. Technical standards

In line with Article 20 of the Postal Directive, the harmonisation of technical standards continues and shall in particular take into account the interests of users. The European Committee for Standardisation (CEN) is entrusted with drawing up the technical standards applicable to the postal sector. The Commission entrusts CEN through issuing standardisation mandates.

CEN has focused its work on technical harmonisation and aims to “*increase the interoperability of postal networks in Member States*”³⁹ and to improve the availability of

³⁶ According to Special Eurobarometer (2005) 53% of the respondents say that their complaints have been dealt with badly and 44% state that they have been dealt with well.

³⁷ See footnote 27.

³⁸ Standard EN 14012: Measurement of complaints and redress procedures.

³⁹ See Recital 36 of the Postal Directive.

services offered to users.” The Postal Directive also requires the Postal Directive Committee to assist the Commission in developing measures on technical standardisation (Article 20 and 21 of the Postal Directive).

NRAs must ensure that the implementation of the mandatory technical standards (by the organisations concerned) is completed in compliance with agreed principles, within the regulatory deadlines and in a transparent and non-discriminatory manner.

As regards quality of service, CEN has adopted a number of standards, notably:

- **EN13850: Measurement of transit time of end-to-end services for single piece priority mail and first class mail.**
 - This key standard has been developed in order to provide a standardised technique that can be used throughout Europe to measure the transit time for priority and first class mail through samples representing real mail flows. It specifies conditions for independent measurements of end-to-end transit times with a unique method at the European level which is valid for both national and cross-border mail. It facilitates the full auditing of the results obtained.
- **EN14012: Measurement of complaints and redress procedures (measurement of the number of complaints and the speed with which they are handled).**
 - As noted above, this is a very important standard for consumers. It will help to ensure that information is collected, analysed, and reported in a consistent manner so that it can be used for quality control and audit purposes. It provides a classification system for complaints and some indications on minimum handling requirements for redress procedures.

Overall, CEN has adopted 27 standards. 8 standards are under development.

Currently a new standardisation mandate for CEN is under preparation. The proposal for a new mandate has been discussed in the Postal Directive Committee meeting in November 2007. In the negotiations on the new mandate the Commission will particularly insist on the following points: (a) standards should be used, (b) they should be simplified, (c) standards should be made clearer and consumers/users should be better involved.

Conclusions

In a multi-operator environment the use of technical standards – developed by the postal experts – will become even more important. It is essential that interoperability of various postal networks is achieved and that consumers can benefit from high quality postal services, which can be provided by different operators.

3.11. Conclusions on 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 national 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 their impact on postal service operators and the sector are of equal importance.

During the reporting period, one further Member State, 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 opening is 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 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 VAT exemptions for the incumbent postal operators in Germany and the UK and the introduction of a minimum wage in the postal sector in Germany thus raising costs for new entrants in the postal market. It is clear that these arguments need to be subject to a legal evaluation and set in the context of 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.

As regards access to the postal infrastructure, a trend towards mandatory access regimes to the delivery network by competitors can be observed. 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 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 VAT exemptions for the incumbent postal operators on competition has largely remained. 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 also could lead to uncertainties for postal operators. 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 special "tax", which can amount from 5 to 20 % of its yearly turnover.

The level of transparency of USPs' 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 for 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 NRAs are crucial for the accomplishment of an internal market for postal 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 on whether all NRAs are adequately equipped to (efficiently) fulfil their tasks.

4. MARKET DEVELOPMENTS

4.1. Evolution of the postal market in a wider communications market

The postal sector has undergone a remarkable transformation in the last decade. Driven by technological change and increasing indirect competition as well as by the gradual market opening and the threat of competition, incumbent postal operators have undertaken major restructuring efforts to better serve their customers' needs and increase efficiency.

Postal operators have moved towards more market-driven provision of postal services, in some cases accompanied by partial or full privatisation. Changes have been made to sorting and delivery networks to increase efficiency. Postal operators increasingly diversify their portfolio by entering areas outside universal service provision.

Despite a decline in its relative size to EU GDP, the postal sector continues to be an important part of the EU economy both by virtue of its size as well as employment levels. The modernization of its operations plays a key-role in ensuring a sustainable future for postal services.

Although postal markets have gradually been opened over the last decade, competition in letter mail is evolving slowly and meaningful competition in this market segment has still to develop. It is evident that market opening alone does not lead automatically to competition

4.2. Mail Volumes

Addressed mail volumes have continued to grow during the period 2004 to 2006, although at a moderate pace. Volume growth has been more pronounced in the Member States which joined the EU in 2004 and 2007. In the period from 2004 to 2006, mail volumes grew by 6.5% on average in the new Member States compared to a growth of 1.5% in the other fifteen Member States. A slight decline in addressed mail volumes can be observed for the EU15 in 2006 compared to the previous year.

On average, consumer originating correspondence (C2X) accounts for about 15% of all mail volumes in the EU. Business originating mail (B2X) accounts for about 85% of mail volumes in the EU⁴⁰. The development of business originating mail thus has a far larger impact on the development of total addressed mail volumes than consumer originating correspondence. A distinction can be made between Business to Consumer (B2C) correspondence and Business to Business (B2B) correspondence.

As regards future trends, in those Member States with a less developed mail market, it is to be expected that notably B2C addressed mail volumes will continue to grow. This growth potential relates in particular to direct mail as quality of service levels improve but also – to a lesser extent – to transactional mail. In Member States with mature postal markets the picture is different. Contrary to Germany where there has been moderate growth (1-1.5% annually) in addressed mail volumes, the Netherlands and UK have already experienced declining

⁴⁰ Boston Consulting Group, 2007

addressed mail volumes in the recent years. In the coming years, the UK, Sweden and the Netherlands expect a decline in the range of 1-3% per annum.

As regards e-substitution, increased e-substitution in the B2B market and to a lesser extent in the B2C market seems likely. For consumer originating mail flows, little further e-substitution is expected.

Transactional mail may be more sensitive to e-substitution and senders are more flexible with respect to frequency. It could thus be expected that future growth in transaction mail will be lower or decline faster than direct mail.

Domestic parcel mail increased by 3.5% in the period 2004 to 2006⁴¹. Contrary to letter mail, parcel mail does not appear to be negatively affected by developments in information technologies. On the contrary, mail order services parcels and packages benefit from e-selling and e-commerce.

4.3. Labour Costs and productivity

The postal sector has always been a relatively labour intensive sector. According to a study by NERA in 2004 on the Economics of Postal Services⁴² labour costs accounted on average for 63% of the total costs of USPs. Labour costs are therefore an important item in determining the competitiveness of a postal operator.

Since the first steps towards market opening and market deregulation in the late 1980s, incumbent postal operators have reduced labour costs by restructuring mail processes. On average, the ratio of labour costs as a percentage of total costs has fallen from over 80% for most USPs at the beginning of the 1990s to below 55% for some USPs nowadays⁴³.

Postal incumbent operators can be roughly divided into four categories⁴⁴:

- Postal operators which have been privatised and focus on increasing shareholder value (DE and NL). These operators have invested in mail processing with automated sorting and have high economies of scale;
- Postal operators from Scandinavian Member States which have focused on the modernisation of the postal services and full commercialisation (FI, SE);
- Postal operators which are still investing in postal sector technologies (AT, BE, DK, ES, FR, PT and UK) including, to a lesser degree, new EU entrants (HU, SI, SK);
- Postal operators which are progressing more slowly due to different market conditions such as lower volumes, geography and limitations in investments (BG, CY, CZ, GR, IE, IS, LT, LU, LV, MT and RO).

Relative wage costs are determined by wage levels and productivity. Productivity can be measured as letter output per person employed. As with relative labour costs, there are large

⁴¹ ECORYS, 2008.

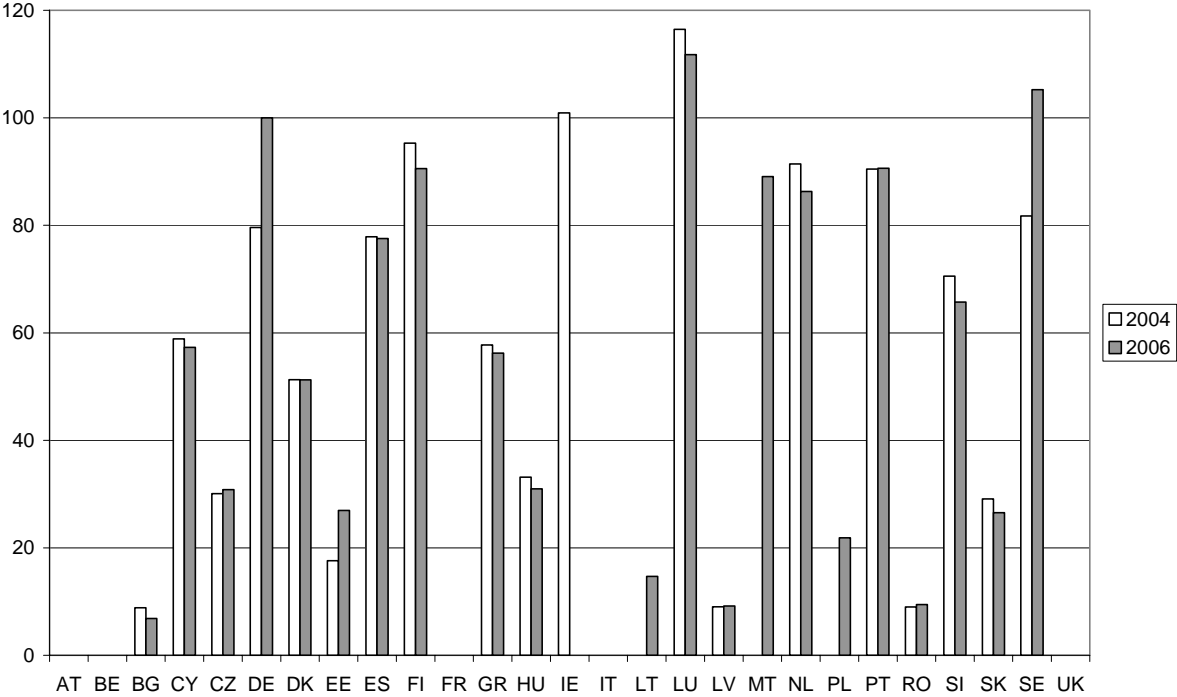
⁴² Study commissioned by the Commission; http://ec.europa.eu/internal_market/post/doc/studies/2004-nera-final-postal-report_en.pdf

⁴³ ECORYS, 2008.

⁴⁴ ECORYS, 2008.

variations in productivity levels between Member States. High productivity is important for operators as it enables them to compete in the market and with other forms of communication.

Figure 6 – Number of letter post items (in 1,000) distributed per employee (2004, 2006)



Note: Indicator refers to the total letter-post services in relation to the domestic employment.

Eurostat, 2008

The above figure shows that productivity levels vary significantly. It also shows that productivity levels are generally higher in the older Member States (EU-15) than in the new Member States (EU-12).

It should be kept in mind that part of the variations of productivity is due to the geographical and market conditions of the Member State in which the USP is operating. The majority of the employees are active in the delivery network. As a delivery network is labour intensive and there are high economies of scale, important factors such as mail volume per capita and population density (letter box density) have an impact on productivity.

For example, in the Netherlands both mail volume per capita and population density are higher than in Greece, which partly explains the difference in productivity levels.

As regards the productivity of competitor operators, only little information is available. However, it can be expected that productivity in the upstream activities are relatively high because of the focus on (pre-sorted) business mail and that productivity in delivery is lower than of the USPs because of lower mail volumes and lower economies of scale⁴⁵.

⁴⁵ ECORYS, 2008.

4.4. Legal Status of Universal Service Providers (USPs)

In the last two years the process of incorporation and privatisation of USPs has continued, albeit at reduced pace. The majority of the USPs remain however State-owned. As regards the already privatised USPs, the German government reduced its shareholding in the German USP (through the public bank Kreditanstalt für Wiederaufbau KfW) from 42% to 31% and the Dutch government sold its remaining shares of 10% in the Dutch USP TNT and gave up its "golden share" in TNT.

MaltaPost has been fully privatised following the Maltese government selling its 65% share in MaltaPost. 100% of the shares of MaltaPost are now listed at the Malta stock exchange. In the Czech Republic and Poland the process to transform the State enterprise into a joint stock company started in 2007. In Poland, the partial privatisation of the USP is under consideration. The USPs in Bulgaria and Romania are both public limited companies and Romania is currently preparing for privatisation.

4.5. Development of competition in the letter mail market

Development of competition in the addressed mail market has been rather uneven across Member States. In general it can however be considered that development of competition is still rather slow across the EU. The table below presents an overview of the development of market shares of competitors in the addressed mail segment form 2004 to 2007.

Table 7 – Market shares of competitors in the addressed mail segment 2004 and 2007

MS	Addressed mail 2004	Addressed mail 2007	Comments
AT	1.6%	≤ 2%	
BE	≤ 2%	≤ 2%	
BG	0%	Unknown (10%)	
CY	0%	0%	
CZ	4.5%	5%	2007: excl. newspapers and magazines
DE	5.3%	10.4%	
DK	3-5%	1-5%	2007: non-bulk
EE	5-6%	4-5%	2007: Direct mail 8%
ES	7-11%	8.2%	
FI	0.5%-1%	0%	2004: excl. newspapers
FR	≤ 2%	1-2%	Exit of Adrexo in 2008
GR	≤ 1%	≤ 1%	
HU	0%	0%	2007: excl. direct mail
IE	0%	0-1%	2007: B2B 10%
IT	1-2%	5-15%	2007: unreliable data
LT	0%	1%	
LU	1-2%	1-2%	
LV	≤ 1%	≤ 1%	
MT	0%	1%	
NL	4.1%	14%	

MS	Addressed mail 2004	Addressed mail 2007	Comments
PL	0%	0%	
PT	≤ 1%	2% (estimation)	
RO	≤ 5%	≤ 5%	
SE	7.0%	9.3%	
SI	≤ 2%	0-5%	
SK	0%	1.9%	
UK	≤ 1% E2E ≤ 5% access	≤ 1% E2E 20.2% access	2007: 03/2007-03/2008

Based on ECORYS, 2008

As can be seen in the table above, in most Member States there is no significant competition in the addressed mail market. End-to-end competition is developing in Spain, Sweden, Germany and the Netherlands with the market share of competitors ranging between 8.2% in Spain and 14% in the Netherlands. In the new Member States, growing end-to-end competition can be observed in Bulgaria, Czech Republic, Estonia and Romania.

In the UK, competition has developed in the upstream part of the market. There are 20 licensed postal operators other than Royal Mail and access volumes have grown to circa 20% of the licensed area in the period 2007/2008 (April 2007 – March 2008). On the other hand, end-to-end competition remains almost insignificant despite the fact that the UK market was fully liberalised at the beginning of 2006.

As already stated in the 2006 Application Report, reducing the reserved area - to 50 grams, i.e. opening up an additional 7% of the addressed mail market, seems to have made very little impact on the development of competition. The opening up of distinct segments of the addressed mail market seems to have been more important for the development of competition.

The liberalisation of direct mail (CZ, EE, IT, NL), intra-city mail (ES), hybrid mail (BG) and issuance of so-called D-licenses (allowing competitors in Germany to provide *value added next day delivery services* until full market opening) has enabled competition to develop, in particular if there are no major barriers to the development of competition other than the reserved area.

The reason behind this is that due to the significance of economies of scale in the postal services businesses, it is crucial that competitors get enough volume in order to be able to reduce costs and compete with the incumbent postal operators. Opening up of for example direct mail provides more volume than the reduction of the reserved area.

It can also be seen that the access regime influences the pattern of competition and 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.

4.6. Business strategies of competitor postal operators

Competitors are using a variety of business models.

- Development of a full service concept;
- Development of a low costs model in certain market segments or certain geographical areas;
- Development of activities in part of the value chain (such as mail preparation upstream or delivery without mail preparation downstream);
- Development of niche markets.

The business models are not mutually exclusive and some can be combined Germany for example, competitors chose a business model of low costs end-to-end delivery five or six times per week through their own delivery and cooperation with many local and regional competitors with a focus on transactional mail. The models are similar in Spain and the Netherlands. In Spain the main competitor to the incumbent operator provides daily end-to-end delivery of direct mail, intra-city mail and addressed mail above 50 grams through their own network. In the Netherlands, two competitor companies apply a low cost model focusing on non daily delivery of non-urgent business mail..

In the UK on the other hand, several companies focus on upstream activities in mail preparation and collection and sorting with the final mile delivery undertaken by the incumbent operator. Other operators in the UK focus on niche markets like for example B2B document exchange.

4.7. Development of competition in the parcels and express market

The parcel and express market in the twelve largest European countries (including DE, FR, IT, ES, PL, UK and Scandinavian countries) represent a total volume of approximately EUR 38.4 bn..⁴⁶ During the period 2004-2006 competition further intensified in the EU market for parcels and express. Innovations in this market segment include new networks for parcel collection and delivery and automated pick-up by customers.

There are six main players active in the EU market whose joint market share is close to 70% of the total market.

⁴⁶ Datamonitor, Express Benchmarking 2008, press release 21 November 2007, quoted by ECORYS, 2008.

Table 8 – Market share in the European parcel and express market in 2006 (Estimation by DPWN)

	Estimation by Deutsche Post
DHL (DPWN)	24 %
UPS	17 %
TNT	14 %
Fedex	7 %
La Poste (DPD)	4 %
Royal Mail (GLS)	2 %
Others	32 %

ECORYS, 2008

European players remain strong in the parcel and express markets. In this context, UPS and Fedex are the only important international providers in Europe which are not backed by a postal administration. The market leaders show strong growth rates and are strengthening their position through acquiring local players.

Recently, the operators who deliver express services face more competition by parcel delivery operators. Postal operators are closing the gap between parcel market and the express industry by increasing quality and value for money.

4.8. Barriers to the development of competition

Over the last couple of years, very little progress has been made with regard to resolving the VAT issue and progress with regard to some other identified obstacles to market entry as for example the access to letterboxes has been mixed.

In Austria, the problem has been addressed in legislation but this was subsequently annulled by the Constitutional Court. In Poland a start has been made by putting new letterboxes in place, while in France following a public consultation conducted by the French NRA, ARCEP a solution allowing access to letterboxes on equal terms has been found.

According to ECORYS, the most important main barriers to competition requiring attention at EC and/or national level of are:

The VAT exemption of many of the USPs;

The access to the letterboxes, most notably in Austria and Poland;

Strategic barriers, in particular arising from (alleged) exclusivity contracts, price discrimination, loyalty bonuses and bundling and tying;

Barriers that may arise from collective arrangements of labour conditions;

Barriers that may arise from how the USO will be defined, its net cost established and the cost of financing of the USO shared between market participants.

In order to safeguard the full benefits of EU postal reform it is essential that market monitoring continues including during the period of the publication of the Third Postal Directive and the date of full market opening. It is therefore vital that the Commission continues with its close market monitoring and takes necessary actions where and when this is necessary to safeguard the objectives of the EU postal reform.

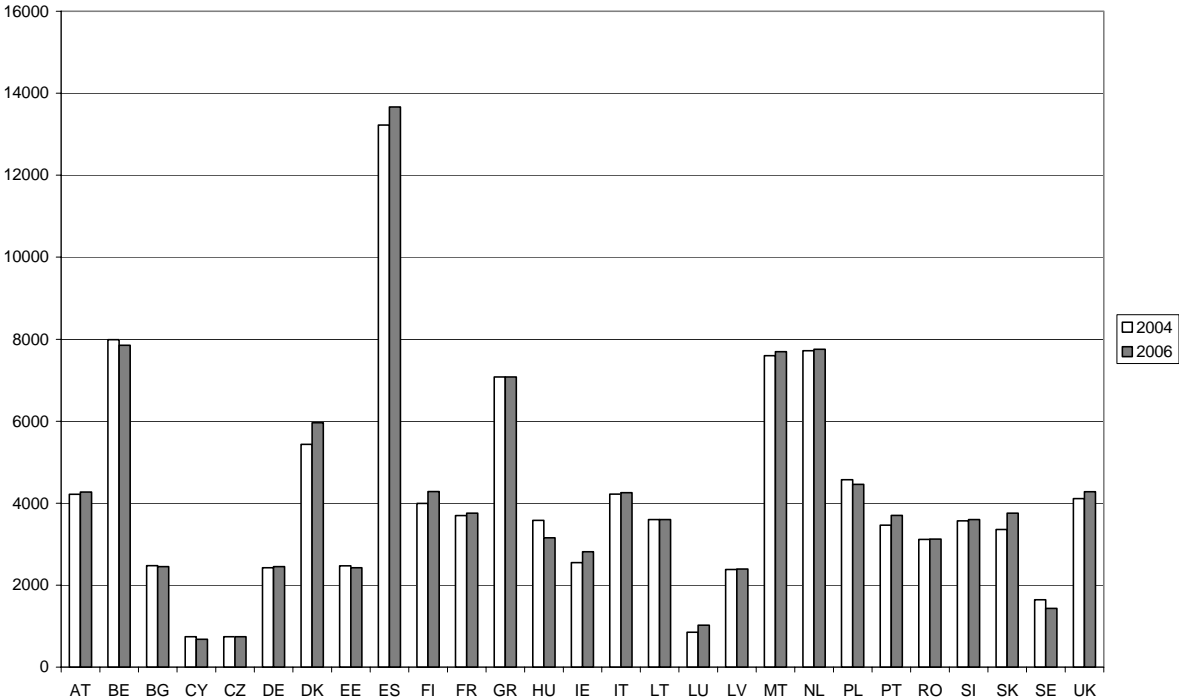
4.9. Social and employment aspects

Access to postal services

Access to postal services is one of the basic requirements of postal services as a service of general economic interest. Access to universal service via postal outlets has a particular importance for consumers as well as SMEs. At the same time, postal operators have been restructuring and reorganising their networks often finding innovative solutions in the interest of the customer.

From 2004 to 2006 the number of people served by one post office increased marginally from 3426 people in 2004 to 3447 in 2006.⁴⁷ The figure below provides an overview per Member State on the number of people served by one post office (including postal agencies, postal outlets and mobile post offices).

Figure 7 – People served by one post office (including postal agencies, postal outlets and mobile post offices)



Eurostat, 2008

⁴⁷ Eurostat, Data in focus 25/2008 – Postal Services in Europe 2006.

It can be noted that the average number of people served by one post office varies significantly among Member States suggesting an over-provision of access in some Member States. While the EU27 average amounts to 3447 people served by one post office, in Cyprus and the Czech Republic this rose to 681 and 742 people respectively. On the other end of the scale, in Spain 13,668 people are served by one office. One should bear in mind that the mere number or density of postal outlets does not necessarily mean the same degree of accessibility for individual customers, for whom opening hours are also important and as well as distance to the postal office.

Levels of employment

Corporate restructuring and the application of new technologies has a clear impact on the employment levels of the USPs. As already presented above, corporate restructuring takes place at different pace and different periods in time. The development of employment levels of USPs thus varies from Member State to Member State and over time.

ECORYS estimates that USPs in EU27 employed about 1.38 million people in 2006 (headcount). In comparison to 1997, employment decreased by 7.7%. This decline is observed in the majority of Member States but it seems larger in the new Member States (EU12) than in the old Member States (EU15). Employment remained relatively stable from 2005 to 2006 experiencing a small decline from 1.40 million to 1.38 million employees.

The decrease in the employment of USPs should, however, not mask the fact that new competitors have also created new employment. Data on employment of competitors are difficult to obtain. ECORYS estimates that employment of competitors amounted to at least 219 thousand people in 2006 (headcount), which is an 8.2% increase compared to the estimate for the previous year. Nearly 70% of the staff of competitors is employed in Germany the Netherlands, France and Poland. In the last years rising employment of competitors appears to offset either fully or partially declines in employment of USPs.

The number of civil servants employed in the sector continues to decline.

A complementary perspective on the importance of the postal sector for EU employment is provided in a study carried out by PLS Rambøll⁴⁸, which assessed the number of persons directly employed in the postal sector, the number of persons employed in services related to the postal sector as well as induced employment, i.e. employment created due to macroeconomic effects of postal activities. On this basis the study indicated that in 2000, over 5 million jobs were directly or indirectly associated with or induced by the postal sector in Europe.

Employment in the postal sector as a whole is therefore of paramount importance. Only an efficient postal sector able to compete with other means of communication will allow the maintenance of employment levels.

⁴⁸ "Employment trends in the EU postal sector", PLS Rambøll, October 2002.

4.10. Technological trends

Gradual market opening has forced incumbent postal operators to increase efficiency of mail processing, which has resulted in cost control and quality of service improvement. It has also given rise to major restructuring of mail handling and sorting operations. Some Member States have reviewed the mail infrastructure and sorting processes during the early phase of market opening, but most have developed their plans in the period after 2004 in anticipation of full market opening (which at that time was envisaged for 2009).

Restructuring of mail handling processes has often resulted in or was induced by the development of new products and concepts. While physical mail will remain one of the main products, it will be increasingly supplemented by multi-channel delivery with tailor-made solutions for different customers. The increasing development and use of hybrid mail services by most postal operators is one example of this development. Incumbent postal operators in Member States such as Finland and Sweden now go a step further and are entering adjacent markets through developing IT services for their customers. The development of hybrid mail blurs existing boundaries between telecommunications, postal services and the advertising and multi-media market.

Market opening has also induced incumbent postal operators to increase their focus on value added services. This has an impact on many areas of activity from generating mailings and mail processing to transport and delivery options.

4.11. Conclusions on market developments

Conclusions on market trends

Addressed mail volumes have continued to grow in the postal market from 2004 to 2006⁴⁹. Volume growth was more pronounced in the new Member States which joined the EU in 2004 and 2007 than among the old Member States. Between 2004 and 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 around 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 for 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 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 being further developed than average in Spain, Sweden, Germany and the Netherlands.

⁴⁹ Latest data available; ECORYS, 2008.

In the UK, which fully liberalised its postal market in 2006, end-to-end competition remains almost insignificant. In contrast, 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. There are indications that 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.

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 exemption for incumbent postal operators, access to letterboxes or other elements of the postal infrastructure in some Member States and authorisation and licensing procedures, there are also strategic barriers which hinder the development of competition. Strategic barriers arise in particular from (alleged) exclusivity contracts, price discrimination, loyalty bonuses and "bundling and tying".

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 for all customers.

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 removed.

Driven by gradual market opening as provided for by the Postal Directive and the threat of competition, 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 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.

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