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Accompanying document to the

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending Directive 97/67/EC concerning the full accomplishment of the internal market
of Community postal services**

Executive Summary of the Impact Assessment

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1. INTRODUCTION

This document relates to the Commission's work plan item 2006/MARKT/006 on postal services. The **purpose of this document is to provide an executive summary of the full Impact Assessment**, focussing on the options considered for the proposal, their impacts and recommendations.

This document covers:

- 1 - Introduction
- 2 - Consultation of interested parties
- 3 - State of play and challenges
- 4 - Objectives
- 5 - Policy options and evaluation
- 6 - Conclusion

The 1997 Postal Directive (97/67/EC) provided for a first phase of harmonisation of EU postal services. The 2002 amendments to the Postal Directive (2002/39/EC) provided for reductions to the reservable area in 2003 and 2006, and thus the gradual and controlled opening of the postal market to competition. **The Postal Directive implicitly endorses the objective of full market opening and also sets a target date of 2009 for the accomplishment of the internal market for postal services, or an alternative step towards this (Article 7(3) and Recital (24)).** In 2006 the European Parliament reaffirmed this general direction¹.

The overall context and starting point for this proposal is as follows:

- the Commission is required under the current Postal Directive to submit (according to Article 7) a proposal "for the full accomplishment of the postal internal market or determining any other step in the light of the [prospective] study's conclusion";
- according to its "sunset clause" in Article 27, the Postal Directive will lapse on 31/12/2008 and without a further Commission proposal adopted by that date, the sector will be primarily subject to EC Treaty rules (in particular Article 86 EC).
- the Commission's Application Report² (on the current Directive), and the Prospective Study³ (on the impact of full market opening on universal service) concluded that given certain safeguards full market opening can be achieved by 2009 for all Member States;
- many Member States are already in rapid development towards readiness for full market opening – a process which has been accompanied by improvements in service quality, and which has not undermined the universal service.

2. CONSULTATION OF INTERESTED PARTIES

The Commission has undertaken a range of consultation activities, including:

- a public consultation, where 2 295 replies to a questionnaire and 103 written submissions were received;

¹ European Parliament Resolution on the application of the Postal Directive (2006 (0040)).

² COM(2006) 595.

³ COM(2006) 596.

- 6 major studies, commissioned between 2004 and 2006, on issues related to future postal policy orientations and 10 public workshops, in addition to 14 other studies since 1997;
- the 'Eurobarometer' survey on consumer satisfaction and 25 focus groups in all EU countries to understand the needs and satisfaction of individual postal users;
- discussions with Member States, operators and all other stakeholders including social partners, and consumers' organisations.

3. STATE OF PLAY AND CHALLENGES IN THE EU POSTAL SECTOR

State of play

Postal services in the EU earned revenues of about 90bn EUR in 2004, and continue to make a significant contribution to the EU economy. Direct contribution to EU GDP is estimated at 37bn EUR (0.4%) providing employment to 1.7 million. Additional revenues of approximately 150 billion EUR and 3.5m jobs come from postal - related or induced sectors. In terms of customers or *users* of postal services, individual users *send* 12.5% but *receive* 70% of all postal items; business users send 87.5% and receive 30% of postal items. In terms of scope, this proposal focuses mainly on *universal postal services*. It covers the letter market (letters and cards, small packets, etc.), parts of the parcel market and some non-postal items (e.g. newspapers).

The EU postal sector is currently undergoing significant changes including gradual market opening, the rapid growth and falling costs of substitutive electronic media, new automation technology and new ownership structures. They increase the pressure on the sector to become more competitive and efficient otherwise it might have negative consequences for employment and the sustainability of services. Different legal and market environments for European postal operators create distorted competition and discourage further reform. Additionally, there are a number of barriers preventing effective competition in the postal market, e.g. remaining monopolies, or varying authorisations and licensing systems. The obligation to provide postal universal service may imply an uneconomic cost in some areas of some countries, but it is vital for EU citizens and companies that the provision of universal service in all geographical areas is maintained.

Therefore the main issue for structuring the remaining steps of EU postal reform is how to ensure an efficient and competitive EU postal sector that continues to provide affordable and high quality service for European citizens and companies. The main focus is on the following issues:

1) Universal service scope: it means the permanent and obligatory range of postal products that should be subject to universal service. The more extensive the scope, the greater the risk it would not be provided by commercial/market forces alone in the absence of a monopoly. *The issue at Community level is whether to harmonise the scope of universal service more narrowly for all Member States.*

2) Universal service standards: the Postal Directive places specific standards on Member States regarding collection and delivery at least 5 working days a week to all points of a Member State's territory, requires affordability and accessibility, and permits uniform tariffs.

The issue at Community level is whether to change any of these standards, in particular, the application of uniform tariffs.

3) The reserved area: it is the largest barrier to the completion of the Internal Market as the provision of letters up to 50g (that accounts for the majority of all postal items) may still be monopolised. So far, FI, SE and UK have already abolished the reserved area while DE and NL intend to abolish their reserved areas entirely by 2008. Several other Member States have opened up the market of direct mail and other mail streams in advance of the 2009 target date. *The issue at Community level is whether to confirm the EU legislator's target date of 2009 for the abolition of the reserved areas.*

4) Alternative financing mechanisms to a monopoly: without a reserved area *the issue at Community level is whether alternative measures for financing universal service are needed, if so which ones, and if the Directive should offer any choice in this respect.*

5) Access to certain facilities/means of the postal infrastructure: at national level there are many legal restrictions on the use (or 'access') of postal infrastructure elements such as postal and delivery boxes, postcode and change of address databases. These may restrict the development of competition and could also undermine users' confidence if mail quality standards fell. *The issue at Community level is whether, in a multi-operator postal environment, to strengthen Member States' or National Regulatory Authorities' role in the monitoring and /or in mandating of access to such facilities, and in the establishment of procedures that will ensure integrity and users' confidence in mail.*

6) Downstream Access: it refers to access by third parties to the incumbent operator's infrastructure, particularly its sorting and delivery facilities. This is currently not explicitly regulated by the Postal Directive. The issue is whether the natural development of different models of competition or, where that Member State judges it necessary, the facilitation or imposition of one model, may continue to co-exist or call for ex-ante Community intervention. If so, the follow on issue is *whether the Community should harmonise and/or strengthen Member State's ex-ante role in the monitoring or mandating of downstream access.*

4. POLICY OBJECTIVES

The Commission has identified the following policy objectives for this proposal:

To achieve an Internal Market for postal services where the benefits of reform are shared by all citizens and businesses

- to maintain affordable and high quality universal service for all
- to achieve full market opening
- to reduce market distortions / barriers to the internal market

More specifically:

- to continue to pursue the reduction and the eventual abolition of the reserved area

- to ensure proportionate use of alternative universal service safeguards or financing mechanisms
- to ensure fair access to the postal infrastructure

5. POLICY OPTIONS

Two levels of policy option have been considered in the Impact Assessment:

- **four 'high level' options** corresponding to the broad political choices facing the Community concerning how to act, and
- **16 specific policy options** on detailed ways forward for each of the issue areas identified. Table 2 in section 5.3 of the full Impact Assessment indicates which specific options are feasible under which of the 'high level' policy options.

5.1. High Level Policy Options

The following four high level policy options have been identified:

Option A: no action (no legislative proposal) would mean, given the expiry of the current Postal Directive on 31 December 2008, the postal sector would be primarily governed by EC Treaty rules (namely Article 86) which requires Member States to justify any reserved services, makes the use of monopolies subject to the Community interest in the development of trade, and allows the Commission to address decisions and Directives to Member States as appropriate. Member States could furthermore individually determine universal service and associated quality standards throughout their territories, in accordance with international agreements and treaties such as the (more general, less demanding) Universal Postal Union obligations.

Assessment: a more divergent legal framework and universal service standards could have negative impacts on social cohesion, and would lead to a more 'uneven' playing field with increased barriers to an Internal Market.

Option B: a substantially new and comprehensive Postal Directive anticipating a fully competitive postal market in 2009 and providing a fully harmonised approach to all sector issues.

Assessment: although there remains some doubt that all provisions of the current Postal Directive are being applied with equal rigour across the Community, there is no evidence that the current Community framework is substantially inadequate. Moreover, national characteristics and differences in users' needs are likely to preclude a universally valid, proportionate and acceptable solution to Member States.

Option C: prolongation of the existing Postal Directive beyond 2009 - in this option the sunset clause ("expiry clause") in Article 27 would be deleted, but all other elements would remain unchanged.

Assessment: such a de facto withdrawal of Community impetus to market opening is likely to delay important sector restructuring, inhibit dynamic efficiency, limit the development of choice and innovation, and in the longer term could undermine the comparative

competitiveness of the postal sector. A comparative decline would have implications for overall demand (lower mail volume) – and in addition impacts on sustainable employment and the ability to provide citizens with access to affordable postal services.

Option D: adapting the existing Postal Directive to the extent necessary for an open postal market - judges that the maintenance of a high quality universal service and full market opening are compatible and allows the closer attainment of the Community's objectives for the sector.

Assessment: this option would maintain and build on the existing Postal Directive's framework, with modifications only where needed given recent and expected market developments including the abolition of the reserved area. This option does not trigger a 'back to basics' review of Community objectives.

Impact on Consumers: Options A and B, and in the medium term (given the risk of declining sector competitiveness) Option C also, may trigger a lowering of universal service standards as defined at EU level, and consequently this risks a negative impact for consumers, and for territorial and social cohesion. Option D retains the current universal service standards affordability requirements and possibility for uniform tariffs, however because market opening would also bring about a closer alignment of prices to costs, it may result in some single item price increases.

These 'high level' options A/B/C/D were assessed according to their contribution to the postal sector objectives. High level options A and B were rejected at the initial screening stage. Conclusions on high level options C and D were made in the light of more detailed analysis of impacts of retained specific policy options.

5.2. Specific Policy options

Ten specific policy options have been shortlisted covering policy areas of: i) universal service scope, ii) universal service standards, iii) reserved area and universal service financing mechanisms, iv) access to essential means, v) downstream access. The table below presents a summary of impacts and to which 'high level' option each specific option corresponds. For a description and fuller analysis of all options, see sections 5 and 6 of the full Impact Assessment.

| Issue | Options | User Impact | Employment Impact | Economic Impact |
|-----------------------------|--|-------------|-------------------|-----------------|
| Scope of Universal Service | Option 1 (options B/C/D) no change: existing flexibility | ☺☺ | ☺ | ☺ |
| | Option 2 (option D) - scope focussed on consumer / SME products | ☺ | ☺ | ☺ |
| Universal service standards | Option 4 (options C/D) - no change: current standards remain Community minimum rules | ☺ to ☺ | ☺ | ☺ to ☹ |
| | Option 5 (option D) - no change: current standards remain Community minimum rules, but uniform tariff permitted for single items only | ☺☺ | ☺☺ | ☺☺☺ |

| Issue | Options | User Impact | Employment Impact | Economic Impact |
|---|--|-------------|-------------------|-----------------|
| Reserved Area and universal service financing mechanisms | Option 8 (option C) - maintain the current Directive through a deletion of Article 27 - reserved areas, obligations on entrants and compensation funds retained | ☹ to ☹ | ☺ to ☺ | ☹ to ☹☹ |
| | Option 9 (option D) - exhaustive financing mechanisms list in the absence of a reserved area, but including state aids, procurement procedures, internal cross-subsidies, cost sharing or compensation fund, and universal service fees on universal service market players | ☺☺ | ☹ to ☺ | ☺ to ☺☺ |
| Access to essential means | Option 11 (option C) - no change: leaving access issues to the market and to competition rules | ☹ to ☹ | ☹ | ☹ |
| | Option 12 (option D) - oblige NRA to identify the essential means, to assess if access is necessary for postal code database, PO boxes, information on change of address and re-direction services, and ensure that access is transparent and non discriminatory | ☺☺ | ☹ | ☺ |
| Downstream access | Option 15 (option D) - oblige the dominant operator/the operator using a former public network not to refuse downstream access under appropriate conditions | ☺ | ☹ | ☺ |
| | Option 16 (option C/D) - no change: non discriminatory access taking into account avoided costs | ☺☺ | ☹ to ☺ | ☺ |

For these specific policy options, the following choices are recommended:

Regarding universal service scope - restricting the universal service scope to postal products that would not be provided for by market forces cannot be harmonised at this point because competition will occur at varied speeds across the EU, and national markets and users' needs differ. *Option 1 is recommended – i.e. the main Community obligations concerning the general scope of postal services that must be provided should remain unchanged.*

Regarding universal service standards - there is limited demand for a harmonised reduction of the standards or for limiting Member States' discretion to apply quality and service standards in excess of the minimum Community level. However, following market opening, uniform tariffs on competitive postal products could create an incentive for inefficient market entry, which in turn could undermine the ability of the present incumbent to finance universal service. Yet individual users value tariff uniformity, and its contribution to social cohesion.

Option 5 is recommended – i.e. a minimum change of restricting Member States' freedom to apply tariff uniformity to single item mail and certain other items only. It also addresses one of the principal underlying motivations for stakeholders who are advocating the need for a narrower universal service scope which would merely serve as a 'consumer safety net'.

Regarding the reserved area and financing models – maintaining the reserved area would continue to distort competition; however in order to finance the universal service in the absence of a monopoly, it is necessary to have a range of alternative options for exceptional use. *Option 9 is recommended i.e. abolition of the reserved area and therefore leaving Member States a choice of financing options to include: public procurement of services (as an indirect source of public financing), state aids, a sector fee and a universal service cost sharing fund as alternatives to the reserved area.*

Regarding access to essential means of the postal infrastructure - it is advantageous for users, and existing and potential market entrants, that the benefits of competition are not diluted because market players fail to agree on the terms of access to such means. *Option 12 would explicitly authorise the National Regulatory Authority to intervene if required to avoid this, and is therefore recommended.*

Regarding downstream access to sorting and delivery networks - because few (if any) elements of the core postal network are an 'essential facility', strengthened provisions or the mandatory imposition of such downstream access do not seem justified at Community level. Equally however, it does not seem appropriate for the EU legislator to restrict the development of access competition. *Option 16 is recommended, i.e. decisions on mandatory downstream access could still be taken at Member State level, taking into account relevant economic and competitive factors. Access may be judged appropriate for some national markets but not in others, but the current Postal Directive is not proposed to be changed in this respect.*

6. CONCLUSION

In the light of the impacts and recommendations on specific policy issues, high level option D has been proposed: **to adapt the existing Directive to the extent necessary for an open postal market, ensuring a high level of universal postal service⁴.**

⁴ Option D was also implicitly confirmed by the Commission's Prospective Study which concludes that given the availability of additional safeguards there are no reasons to delay the transition to full market opening beyond 2009.