



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 31.07.1996
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Amended proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

on common rules for the development of the internal market of Community postal services and the improvement of quality of service

(presented by the Commission pursuant to Article 189 a (2)
of the EC-Treaty)

EXPLANATORY MEMORANDUM

The Commission hereby presents a modified proposal for a European Parliament and Council Directive on common rules for the development of the internal market of Community postal services and the improvement of quality of service. The modified proposal incorporates those amendments proposed by the European Parliament at First Reading which are accepted by the Commission.

1. INTRODUCTION

a) Background

The Commission adopted its proposal on 25 July 1995, and it was formally transmitted to the European Parliament and the Council on 22 November 1995¹.

The Economic and Social Committee gave its opinion on 28 March 1996². The European Parliament adopted a favourable Resolution at its First Reading on 9 May 1996, and proposed 58 amendments to the Commission proposal³.

b) Purpose of the Directive

This Directive aims to provide for a harmonised regulatory framework at Community level for the postal sector.

It provides for a minimum mandatory universal service to be provided throughout the Community to all citizens, wherever they are located, at affordable prices. In order to ensure the financial viability of the universal service, the proposed Directive defines harmonised criteria for the services which may be reserved to the universal service providers to the extent necessary for the maintenance of the universal service, whilst also providing for a gradual and controlled opening up of the postal market to more competition.

The proposed Directive also provides for the establishment of service quality standards both for national postal services and for intra-Community cross-border services, as well as setting out a procedure for the elaboration and adoption of harmonised technical standards. Furthermore, the proposed Directive requires separation between regulatory powers and operational functions.

¹ OJ C 322, 2.12.95, p. 22

² TRA/293, 28.03.96

³ A4 - 0105/96, PV 09-05-96

2. EP AMENDMENTS ACCEPTED BY THE COMMISSION

Of the 58 amendments adopted by the European Parliament at First Reading, the Commission can accept 10 in full, 5 in part and 1 in principle, making a total of 16.

Amendments accepted in full : 4, 9, 13, 21, 27, 30, 39, 55, 56, 57

Amendments accepted in part : 1, 37, 38, 41, 48

Amendment accepted in principle : 15

The Commission has accepted those amendments which :

- emphasise the importance of creating an internal market for postal services within the European Community;
- re-inforce the need for a wide consultation of interested parties in the postal sector;
- increase transparency and ensure the effective provision of relevant information to the public;
- refer to the possibility for Member States to integrate the twelve-star symbol of the EU into their postage stamps and the need to explore the possibilities for introducing Euro-denominated postage stamps;
- make clear that the process of liberalisation should not curtail the right of Member States to make provision for services for blind and partially sighted persons;
- clarify the text in a manner consistent with the aims of the Directive;
- extend the period allowed for implementation of the Directive;
- are consistent with other Community legislation.

3. AMENDMENTS NOT ACCEPTED BY THE COMMISSION

The Commission has not accepted 42 of the 58 amendments proposed by the European Parliament. The reasons are given below, where the amendments are grouped into 9 broad categories.

Reserved services and timetable for liberalisation

(Amendments 10, 14, 16, 19, 20, 28, 34, 40, 41 (in part), 54)

Amendment 10 implies that a reserved area should always exist, whereas Article 8(1) makes clear that services should only be reserved when necessary. Amendments 16, 19, 34 and 40 would effectively freeze any liberalisation of direct mail or cross-border mail for at least 5 years after entry into force of the Directive. This would seriously undermine the delicate balance, called for by the Council in its Resolution

of 7th February 1994⁴, between the gradual, controlled opening of the market and the safeguarding of the universal service.

This open-ended retention of direct mail and cross-border mail within the reserved area forms part of a general postponement of the liberalisation process which (as a result of amendments 20, 28, 40 (3rd part) and 54) would also include postponement of the general review of the application of the Directive from the first half of the year 2000 at the latest, until five years after its entry into force. These amendments are therefore also not accepted by the Commission.

There is also no justification for restricting competition in registered mail services outside the price and weight limits of the reserved area, and hence amendment 41 (first part) is not accepted. The operation of the reserved services must comply with the rules of the Treaty, and with the competition rules in particular, and amendment 14, which implies otherwise, is therefore not accepted.

Declaration and authorisation procedures (Amendments 23, 42 (in part), 43)

As a consequence of the freezing of liberalisation measures referred to above, amendments 42 and 43 would also remove from the Directive the provisions which allow for the implementation and ultimate harmonisation of declaration and authorisation procedures for the commercial provision of non-reserved postal services. The Parliament also rejected recital 22 of the Commission's proposal, which refers to declaration and authorisation procedures, by a separate vote.

Similarly, amendment 23 would delete the reference to the possible establishment of an identification system for direct mail. Those amendments would therefore remove important safeguards designed to ensure the orderly provision of the universal service in the context of the opening up of the market by the Member States, and are therefore not accepted.

Universal Service (Amendments 8, 12, 22, 33, 37 (in part), 38 (in part), 42 (in part), 45)

The minimum requirements for the universal service are set out in detail in Chapter 2 of the Directive, and the limited definition provided in amendment 33 is therefore both insufficient and unnecessary. Special and new services have specific characteristics which distinguish them from services within the universal postal service, and amendments 22 and 42 (first part) (which take no account of such differences) are therefore not accepted. Amendment 38 (which would delete the words "whose circumstances are similar" from the 2nd indent of Article 5) fails to take account of the diversity of the needs of users which the universal service must satisfy.

Amendment 38 also introduces elements (social protection of employees and economic and social cohesion) which, although valid Community objectives, are not intrinsic elements of the definition of the universal service as such. Furthermore, the

⁴ OJ C 48, 16.02.94, p. 3

universal service requirements apply throughout the Community and should not therefore focus only on its provision in the most remote or least advantaged regions (amendment 8).

Amendments 12, 37 and 45 would make the setting of a single uniform tariff a mandatory element of the universal service. While the Commission believes that a uniform tariff structure may often be appropriate, this is for Member States to decide upon in accordance with the principle of subsidiarity, and is not a pre-condition for the existence of a universal service, as experience in some Member States has shown. Users' interests in relation to tariffs are sufficiently protected by the concept of affordability already enshrined in the Directive. The provision of a free service for blind and partially sighted persons is a matter for Member States to decide upon, in accordance with the principle of subsidiarity, and should not therefore be included as a mandatory element of the universal service (amendment 37, final indent).

Quality of Service

(Amendments 5, 48 (in part), 49, 50)

The quality of Community cross-border services is clearly unsatisfactory at present, and the deletion of the reference to this fact in the recitals is not therefore justified (amendment 5). Although the Commission is sympathetic to the additional quality standard for national services introduced by amendment 48 (second part), the exceptions which that amendment would introduce are not acceptable.

Amendment 49, while motivated by a valid concern to improve performance levels, is insufficiently precise to warrant inclusion in a legislative text. On the other hand, the limitations which amendment 50 would place on postal users' rights of access to effective complaint, compensation and appeal procedures would significantly weaken the mechanisms established by the Directive to ensure that quality standards are met.

Terminal Dues

(Amendments 25, 26, 81)

Amendments 25, 26 and 81 would seek to establish a stricter and more detailed set of criteria for the establishment and regulation of a system of terminal dues by Member States and the Commission. However, tariff systems such as terminal dues are primarily the responsibility of the postal operators, who must act in co-ordination with their national regulatory authorities and in compliance with the rules of the Treaty and, in particular, the competition rules. Flexibility is therefore required for the development and continued monitoring of the terminal dues system.

The Commission proposal already sets out, in accordance with the Council Resolution of 7 February 1994, the fundamental principles on which the terminal dues system has to be founded, and takes into account that considerable adjustments will need to be made to tariffs in some Member States in order to ensure their alignment with costs. Recourse to Article 25 of the Universal Postal Convention can only be justified where it does not conflict with the rules of the EC Treaty. Similarly, certain forms of remailing cannot be prevented and a case by case approach to the issue of remailing is necessary. Hence amendments 25, 26 and 81 are not accepted.

Social and Employment issues

(Amendments 3, 7, 11, 17, 18, 24, 40 (in part), 58)

Whilst the Commission fully recognises the importance of taking employment and social issues into account in the ongoing process of liberalisation, it believes that to make the development of employment and social protection within the postal sector an over-riding priority or a pre-condition for liberalisation and the improvement of quality of service would risk undermining the principal objectives of the directive and deprive it of its effectiveness. Hence amendments 3, 11, 24, 40 (end of paragraph 2) and 58 are not accepted. Amendments 7 and 17 are not appropriate because they prejudice the impact on employment of the liberalisation measures proposed.

As regards the requirement in amendment 18 for a study on the implications of the Directive on current levels of jobs, the Directive already contains, in Articles 8(2) and (3), provision for a general review which will include, among other elements, analysis of the implications in the area of employment and services.

Definitions

(Amendments 31, 32, 35, 36)

Amendments 32 and 36 introduce definitions for terms ("public service", "self-provision", "express mail service" and "hybrid mail service") which are not used in the substantive text of the Directive and hence are unnecessary. The definition of "direct mail" in amendment 35 places undue emphasis on the form of the message (requiring that it be "identical") as opposed to its purpose (advertising or marketing), and so is not accepted. Amendment 31 seems unnecessarily to duplicate the existing contents of the definition of "postal item".

Case law of the Court of Justice

(Amendments 6 and 29)

The selective references to the case law of the Court of Justice and its interpretation contained in amendments 6 and 29 are not considered conducive to legal certainty in their present context. Moreover, as regards the reference in amendment 29 to the Commission's draft Notice on the application of the competition rules to the postal sector, it is not appropriate to try to restrict, by means of a Directive, rights and obligations of the Commission which derive from the EC Treaty itself.

Other amendments

(Amendments 2, 40 (in part), 44, 47, 51, 52, 53)

Amendment 47 would result in a weakened requirement for accounting separation between the primary activities within the reserved area and non-reserved services, and introduces additional criteria of uncertain application. Hence it is not accepted.

The Commission believes that it remains appropriate to provide for a future harmonisation of the conditions of access to the public postal network, if necessary, and the deletion of Article 12 (amendment 44) is therefore not accepted. The development of harmonised technical standards in the framework of the internal market is carried out on a voluntary basis, and the more binding wording in amendment 51 is therefore not accepted.

The conduct and procedures of the Advisory Committee established by virtue of Article 21 must be governed by the established rules of comitology agreed between the Community institutions, and the changes to these procedures which amendment 52 would bring about cannot therefore be accepted.

The Commission's original proposal is consistent with Member States' right, in accordance with the principle of subsidiarity, to provide for special services to be made available to blind and partially sighted persons. Amendment 40 (end of paragraph 1) is therefore unnecessary.

Only those bodies whose role in the legislative process is provided for by the EC Treaty should be referred to in the preamble, and hence amendment 2 is not accepted. Article 22 of the Commission's proposal already entrusts national regulatory authorities with the task of ensuring compliance with all obligations (and consequently the protection of corresponding rights) derived from the Directive and the specific reference in amendment 53 to rights provided for in Article 8(1), is therefore inappropriate.

4. CONCLUSION

The Commission has accepted 16 of the 58 amendments proposed by the European Parliament at First Reading, either in whole, in part or in principle.

In accordance with Article 189a paragraph 2 of the EC Treaty, the Commission amends its initial proposal, incorporating these amendments.

Amended proposal for a European Parliament and Council Directive on common rules for the development of the internal market of Community postal services and the improvement of quality of service

Original text

Amended text

Title

Proposal for a European Parliament and Council Directive on common rules for the development of Community postal services and the improvement of quality of service

Proposal for a European Parliament and Council Directive on common rules for the development of the internal market of Community postal services and the improvement of quality of service

Recital 4

(4)Whereas the Commission has conducted wide-ranging public consultation on those aspects of postal services that are of interest to the Community;

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

Recital 8

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

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

Recital 14

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

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

Recital 16a (new)

(16a) Whereas the process of liberalization should not curtail the continuing supply of certain free services for blind and partially sighted persons introduced by the Member States;

Recital 20

(20) Whereas, for reasons of public order and public security, Member States may have a legitimate interest in conferring the right to site letter-boxes intended for the reception of postal items on the public highway on one or more entities designated by them; whereas, for the same reasons, they are entitled to appoint the entity or entities responsible for issuing postage stamps bearing the name of the country;

(20) Whereas, for reasons of public order and public security, Member States may have a legitimate interest in conferring the right to site letter-boxes intended for the reception of postal items on the public highway on one or more entities designated by them; whereas, for the same reasons, they are entitled to appoint the entity or entities responsible for issuing postage stamps identifying the country of origin; whereas the postage stamps may indicate that the country belongs to the European Union by integrating the 12-star symbol;

Recital 37

(37) Whereas the future work on the development of measures relating to the quality of Community cross-border service and technical standardization must be prepared under the aegis of the Commission, assisted by the Member States in consultation with interested parties, including associations of consumers, and with the assistance of a committee set up for this purpose;

(37) Whereas the future work on the development of measures relating to the quality of Community cross-border service and technical standardization must be prepared under the aegis of the Commission, assisted by the Member States in consultation with interested parties, including associations of consumers, and with the assistance of a committee set up for this purpose; whereas the possibility of issuing Euro-denominated postage stamps should be studied in the light of progress towards the third phase of economic and monetary union;

Recital 41

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

Article 3, first four paragraphs

Member States shall ensure that users enjoy the right to a universal service involving the provision of a good-quality postal service for all users at all points on their territory at affordable prices. - Unchanged

To that end, Member States shall take steps to ensure that the density of the points of contact, and of the points where mail is collected, take account of the needs of users. - Unchanged

They shall take steps to ensure that the universal service providers guarantee every working day, and not less than five days a week save in exceptional circumstances or geographical conditions: They shall take steps to ensure that the universal service providers guarantee every working day, and not less than five days a week save in exceptional circumstances:

- one collection from the clearance points, - unchanged

- one door-to-door delivery for every natural or legal person. - unchanged

Each Member State shall take the measures necessary to ensure that the universal service includes the following minimum facilities: - unchanged

- the collection, transport and distribution of addressed mail items and addressed books, catalogues, newspapers and periodicals up to 2 kg and addressed postal packages up to 20 kg, - unchanged

- services for registered items and insured items. - unchanged

Article 5

Each Member State shall take steps to ensure that the universal service meets the following requirements: - unchanged

- it shall offer a service guaranteeing the inviolability and secrecy of correspondence, - it shall offer a service guaranteeing the inviolability and secrecy of correspondence and data protection,

- it shall offer an identical service to all users whose circumstances are similar, - unchanged
- it shall be made available without any form of discrimination whatsoever, especially without discrimination arising from political, religious or ideological considerations, - unchanged
- it shall not be interrupted or terminated, except in cases of *force majeure*, - unchanged
- it shall evolve in response to the technical, economic and social environment and to the demands of users. - unchanged

Article 6, first paragraph

Member States shall take steps to ensure that users are regularly given sufficiently detailed information by the universal service provider(s) regarding the particular features of the universal services offered, with special reference to the general conditions of access to these services as well as to prices and quality standard levels. This information shall be published, in particular, through the use of publicly displayed notices or brochures

Member States shall take steps to ensure that users are regularly given sufficiently detailed information by the universal service provider(s) regarding the particular features of the universal services offered, with special reference to the general conditions of access to these services as well as to prices and quality standard levels. This information must be made available to the public.

Article 9

Member States shall appoint the entity or entities that are entitled to place letter-boxes on the public highway for the reception of postal items and to issue postage stamps bearing the name of the country.

Member States shall appoint the entity or entities that are entitled to place letter-boxes on the public highway for the reception of postal items and to issue postage stamps identifying the country of origin.

Article 17, first paragraph

Member States shall take steps to ensure that standards are laid down for national mail that are compatible with those laid down by the Commission for the intra-Community cross-border services. However, regard being had to specific national conditions, an initial objective shall be to ensure that in all Member States the items of correspondence of the fastest standard category achieve an end-to-end transit time of one working day from the date of deposit to the date of delivery for at least 80% of the items dispatched.

Member States shall take steps to ensure that standards are laid down for national mail that are compatible with those laid down by the Commission for the intra-Community cross-border services. However, regard being had to specific national conditions, the initial minimum requirement shall be to ensure that in all Member States the items of correspondence of the fastest standard category achieve an end-to-end transit time of one working day from the date of deposit to the date of delivery for at least 80% of the items dispatched.

Article 23(2)

2. The review body shall be composed of up to five independent experts, appointed by the Commission, who, together, shall provide the different areas of expertise required. They shall collect all appropriate information on developments in the sector, particularly concerning economic, social and technological aspects, as well as information on quality of service.

2. The review body shall be composed of independent experts conversant with the nature, role and diversity of postal services in the Member States, appointed by the Commission and who, together, shall provide the different areas of expertise required. They shall collect all appropriate information on developments in the sector, particularly concerning economic, social and technological aspects, as well as information on quality of service.

Article 23(2a) (new)

2a In its report referred to in paragraph 1 above, the Commission shall also include the opinions submitted by the representatives of the postal operators, whether public or private, the workers in the postal sector and national consumers concerning the sector's evolution and the application of this Directive.

Article 24, first paragraph

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than six months after the date of its entry into force. They shall immediately inform the Commission thereof.

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than one year after the date of its entry into force. They shall immediately inform the Commission thereof.

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