



### **Draft report of the CERP Working Group Policy**

After plenary meeting in Belgrade in May 2012, WG Policy members did not meet – such decision was taken due to a heavy workload before 25. UPU Congress. However, electronically CERP questionnaire on ex-ante and ex-post price regulation has been distributed. 13 member countries sent their answers.

The questionnaire consists of 2 parts: legal requirements and experience.

In the first part following results were shown.

The answers show that there are differentiated solutions concerning legal basis for price regulations: for domestic US 10 countries use basic law, 6 regulations set by NRAs and 3 by ordinance. It is similar concerning international US.

Applied price regulations are also differentiated – for domestic and international US mostly ex-ante price regulation is applied, followed by single price approval.

In case of regulation dealing with discounts and/or special contracts of domestic US, most countries (6) require publication of those; similarly in international US (5 countries require publication).

There hasn't been many changes in price regulation and not many are foreseen for the future, however some countries plan to introduce changes in this regard:

for domestic and international US: introduction of price cap instead of single approval (2 countries), removal of max prices to cost covering (1 country). 2 countries, with regard to reserved services plan to introduce price cap instead of single approval.

There are not many ex-ante regulations regarding the non-universal services and within last 2 years no changes were made. For the next two years there are several changes foreseen for ex-ante regulation for access and non universal services.

Part of the questionnaire, devoted to experience, showed that concerning bulk and direct mail 3 countries encountered problems with abuse of dominant market position and/or suppressing competition by applying predatory pricing. In this regard one country encountered problems with inability to react on competitive challenges.

In one country regulated postal operator asked for a change in the applied mechanism and/or scope of price approval in outgoing cross-border letter. This was due to a fact that the USP has asked for revisions of the price-cap formula/values that applies to the reserved services.

In one country a competitor complained regarding the applied mechanism and/or scope of price approval. The reasons given were, in case of USO bulk mail, lack of transparency, discrimination and change to ex ante, anti-competitive behaviour. In case of access and US, given reasons were cross-subsidization to competitive services.

Several countries encountered economic problems with regard to competition policy in the non-universal service market, such as abuse of dominant position in direct mail and packets, evidence of cross subsidization in express and packets, problems with VAT exemption or internal access prices for USP subsidiaries.

There have also been two requests from regulated postal operator concerning change in applied mechanism and/or scope of ex-ante regulation. Those concerned competition distortion in VAT regime and scope of ex-ante regulation in direct mail.

Finally, in case of competitors' complaints regarding applied mechanisms and/or scope of ex-ante regulation, there were two cases. Both concerned access to postal network: previous legal framework not allowing the NRA to define ex-ante rules for access to the postal network and demand by private operators to get access.

The evaluation of the answers is shown in annex 1.

I would like to thank all member countries that sent their answers and for the future ask for contributions from ones that couldn't do it for this questionnaire. This would make the results more complete.

Second questionnaire concerned opinions of member countries on the postal directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67/EC. This was an open questionnaire where members could freely express concerning certain articles of the Directive.

Comments mostly concerned scope of universal service – differentiated among members and a fact that in the future we should consider definition of US and e-services as being part of US and customer needs should be taken into account, introducing a concept of universal service providers' network (distinction between postal sector and transport of goods).

Concerning financing of the US, term "unfair financial burden" should be clarified, the service providers that contribute to the compensation fund should be specified.

In case of access, delivery of postal items should be included.

Concerning tariffs there was an idea of making tariffs cost based, what would eliminate the need of compensation mechanism, intra-EU services should be considered as domestic services offered within a single European internal market.

Quality of service could be measured with indicators such as setting transit time targets for parcels, customer satisfaction, waiting time at the post-office, complaints handling etc.

There should also be some basic standards to allow a seamless cross border service.

Concerning the role of NRAs, they shall act independently and shall not seek or take instructions from any other body in relation to exercising these tasks assigned to them under national law implementing Community law.

There should be more consistency and regularity in the publication of the reports, postal statistics data production and much more time coherence to the year they refer.

The evaluation of the answers is shown in annex 2.

The next meeting of the WG Policy is foreseen for March/April 2013.

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## CERP Questionnaire on ex-ante and ex-post regulation

### EVALUATION based on 14 countries

(BE, CH, CZ, DE, EE, ES, GR, HU, LT, PL, PT, RS, SK, UK)

#### 1. Legal requirements:

##### 1.1 What is the legal basis for price regulation?

Service/Product concerned	Basic Law (Postal Act)	Ordinance	Special Regulation (by the NRA)
All US domestic	10	3	6
All US international	10	3	4
US letter SME/single	3	2	
US letter Bulk/Direct	2	1	1
US Parcel	4	2	1
US other	3	1	1
Reserved	3	2	
Non universal			1
Newspaper	1		

##### 1.2 What kind of price regulation is applied?

Service/Product concerned	Single price approval	Price Cap	Ex-ante	Ex-post
All US domestic	6	1	8	3
All US international	6	1	8	3
US letter SME/single		2	2	
US letter Bulk/Direct	1		1	1
US letter 2 <sup>nd</sup> class	1	1	2	
US Parcel	3	1	3	1
US other	4		3	3
Reserved	3	1	5	
Newspaper	1		1	

1.3 Is there any regulation in place concerning the level of discounts and/or special contracts?

Product/Service concerned	Discounts/Special contracts are fixed (part of) price approval	Discounts/Special contracts have to be submitted to the NRA	Discounts/Special contracts have to be published	Others (please specify under No. 3 if needed)
All US domestic	4	4	6	
All US international	3	3	5	
US letter SME/single			1	
US letter Bulk/Direct	1	2	3	1
US letter 2 <sup>nd</sup> class	1	2	1	
Reserved	2	1	2	

1.4 Has there been any change in price regulation within the last two years?

Product/Service concerned	Change in price regulation	Reasoning
All US domestic	2:	Market powers
All US international	2	Market powers
US letter Bulk	1	Market powers

1.5 Is there any change in price regulation foreseen for the next two years?

Product/Service concerned	Foreseen change in price regulation	Reasoning
All US domestic	2 1	Price cap instead of single approval; Remove max prices to cost covering
All US international	2 1	Price cap instead of single approval; Remove max prices to cost covering
Reserved	1	Price cap instead of single approval

1.6 Is there any other ex ante regulation in place specifically regarding the non-universal service market?

Product/Service concerned	Are there any ex ante measures in place to guarantee access to the network of the (former) NPO?	Is cross subsidization between different products/services forbidden?	Are there any other forms of ex ante regulation in place (in addition to network access or price approval)?	Is it possible for the national regulator to apply ex ante regulation with regard to a position of single market dominance (similar to the situation in the telecommunications market)?
Reserved	1			
USO	2	1		1
US to non US		2		
Non-reserved to reserved		1		
Non US	1			

1.7 Has there been any change in ex ante regulation as described in 1.6 within the last two years?

Product/Service concerned	Change in ex ante regulation	Reasoning
None		

1.8 Is there any change in ex ante regulation as described in 1.6 foreseen for the next two years?

Product/Service concerned	Foreseen change in ex ante regulation	Reasoning
Access	2 1	Cost orientation Allow access for all operators to the USP infrastructure.
Non US	1	Forbid cross-subsidization

## 2. Experience

2.1 Have you (or a postal operator) encountered economic problems with the kind of price regulation applied?

Service/Product concerned	Inability to react on competitive challenges	Abuse of dominant market position and/or suppressing competition by applying predatory pricing	Others (please specify under No. 3 if needed)
Bulk/Direct	1	3	

2.2 Has any regulated postal operator asked for a change in the applied mechanism and/or scope of price approval?

Product/Service concerned	Reasoning
Outgoing cross-border letter	1: Change in structure
Reserved services and universal services	The USP has asked for revisions of the price-cap formula/values that applies to the reserved services, but not on the general framework of the price approval and price regulation mechanism.

2.3 Has any competitor complained to you regarding the applied mechanism and/or scope of price approval?

Product/Service concerned	Reasoning
USO bulk	1: Lack of transparency, discrimination 1: Change to ex ante, anti-competitive behaviour
US and access	1: Cross-subsidization from us to competitive services

2.4 Have you (or a postal operator) encountered economic problems with regard to competition policy in the non-universal service market?

Service/Product concerned	Evidence of cross subsidization	Abuse of a dominant market position	Others (please specify under No. 3 if needed)
Direct mail		1	
Access			1: Internal access prices for USP subsidiaries
Non- US			1: VAT exemption of US-provider
Express	1		
Packets	1	1	

2.5 Has any regulated postal operator asked for a change in the applied mechanism and/or scope of ex ante regulation?

Product/Service concerned	Reasoning
VAT regime	1: Competition distortion
Direct mail	1: Scope of ex-ante

2.6 Has any competitor complained to you regarding the applied mechanism and/or scope of ex ante regulation?

Product/Service concerned	Reasoning
Access to postal network	Some competitors complained about the previous legal framework not allowing the NRA to define ex-ante rules for access to the postal network.
Access	1: Demand by private operators

Questionnaire – opinions of member countries on the postal directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67/EC.

Article	Critical points, comments	Ideas for the future
<p style="text-align: center;">CHAPTER 1 Objective and scope</p>		
<p><i>Article 1</i> This Directive establishes common rules concerning: — the conditions governing the provision of postal services, — the provision of a universal postal service within the Community, — the financing of universal services under conditions that guarantee the permanent provision of such services, — tariff principles and transparency of accounts for universal service provision, — the setting of quality standards for universal service provision and the setting-up of a system to ensure compliance with those standards, — the harmonization of technical standards, — the creation of independent national regulatory authorities.</p>	<p>- The way in which universal service is defined in this article, as an obligation of Member States, is the basis and prerequisite for state intervention and the monopoly of these services, and not quite certain that it is always necessary. This, on the other hand, presents an insurmountable obstacle to any effective liberalization of postal services.</p> <p>- The initiative of having a brainstorming session allowing reassessing the Third Postal Directive with the aim of possibly having a new Directive allowing the implementation of a real internal European postal market is welcomed.</p>	<p>- Creating conditions for the provision of universal postal service within the Community on the open market; At the end of the other paragraphs of this Article, as well as in the other Articles related to government intervention to ensure universal service, shall be added if the universal service can not be provided in the free market</p> <p>- With a fourth Directive, the opportunity should be seized to rethink the full concept of the Postal Directive and to take more orientation on sectors where the sector specific regulation has produced competition to a greater extent.</p>
<p><i>Article 2</i> For the purposes of this Directive, the following definitions shall apply: 1. postal services: services involving the clearance, sorting, transport and distribution of postal items; 1a. postal service provider: undertaking that provides one or more postal services; 2. postal network: the system of organization and resources of all kinds used by the universal service</p>	<p>- There isn't a common scope of services considered as postal services between the countries. The scope of the universal service is also different from one country to another. The only postal products that are part of the universal service in every country are single piece correspondence and standard single piece parcel. It is also advised that e-post services should be taken into account when defining the scope of US.</p>	<p>- It could be appropriate to introduce more clear references, criteria, or definitions on the services /products that are included in: - Express/courier services - Logistic/transport services (breakbulk?) It could help, for instance, to better delimit markets (and improve harmonization when comparing different member states) or exclude them from the need of a postal license / general registration.</p>



<p>provider(s) for the purposes in particular of:</p> <ul style="list-style-type: none"> <li>- the clearance of postal items covered by a universal service obligation from access points throughout the territory,</li> <li>- the routing and handling of those items from the postal network access point to the distribution centre,</li> <li>- distribution to the addresses shown on items;</li> </ul> <p>3. access points: physical facilities, including letter boxes provided for the public either on the public highway or at the premises of the postal service provider(s), where postal items may be deposited with the postal network by senders</p> <p>4. Clearance: the operation of collecting postal items by a postal service provider;</p> <p>5. distribution: the process from sorting at the distribution centre to delivery of postal items to their addressees;</p> <p>6. Postal item: an item addressed in the final form in which it is to be carried by a postal service provider. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal parcels containing merchandise with or without commercial value;</p> <p>7. item of correspondence: a communication in written form on any kind of physical medium to be conveyed and delivered at the address indicated by the sender on the item itself or on its wrapping. Books, catalogues, newspapers and periodicals shall not be regarded as items of correspondence;</p> <p>9. registered item: a service providing a flat-rate guarantee against risks of loss, theft or damage and supplying the sender, where appropriate upon request, with proof of the handing in of the postal item and/or of its delivery to the addressee;</p> <p>10. insured item: a service insuring the postal item up to the value declared by the sender in the event of loss, theft or damage;</p>	<p>- In the Application for permit award, local or foreign entity must indicate: postal services the provision of which is to be authorized by the permit, territory covered, time period for which the permit is applied for and the operator's identification mark. Along with the Application, Special Terms and Conditions for the provision of postal services must be submitted. Application for permit award is submitted on the form prescribed by the NRA. The condition for license award is that the requester should dispose of a postal network, the proof of which must be submitted along with the Application. Permit includes: specification of postal services; territory covered; permit validity term and starting date of the provision of postal services; amount of permit issuance fee and dates of payment.</p> <p>- The "Postal Network" also includes providers who do not offer universal services. Unjustified limitation ("throughout the territory") To specific (access by consolidators) Unjustified limitation/important for partial/incidental services</p> <p>It appears extremely important now and for the near future to take into account that postal services are more and more provided within converging environments. That means that the physical conveyance of letter items and parcels has to be seen in connection with the evolving hybrid and electronic services. So the regulations to be found should not concentrate only on parts of the postal market, but should see it as a whole. With this, the corresponding stipulations for the telecommunications part of such services already exist and have to be respected.</p> <p>Ad. 7 To specific. Not precise enough using non-defined expressions</p> <p>Ad. Terminal dues: The terminal dues system</p>	<p>- Ad 5. distribution: the process from <del>sorting at the distribution centre</del> <u>forwarding</u> to delivery of postal items to their addressees;</p> <p>Ad 6. Postal item: <u>an closed or open item, carrying written messages or goods</u> and addressed in the final form in which it is to be carried by a postal service provider.</p> <p>Ad 14: (General) Authorization regime: it is recommended to rethink this regime and to take into consideration alternative solutions, possibly without individual licences. This solution is already implemented in the telecommunications sector as well as in the postal sector in a number of countries.</p> <p>Ad 17: User: any natural or legal person benefiting from postal service provision as a sender, or an addressee <u>or a competitor</u>;</p>
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<p>11. cross-border mail: mail from or to another Member State or from or to a third country;</p> <p>13. universal service provider: the public or private postal service provider providing a universal postal service or parts thereof within a Member State, the identity of which has been notified to the Commission in accordance with Article 4;</p> <p>14. Authorizations: any permission setting out rights and obligations specific to the postal sector and allowing undertakings to provide postal services and, where applicable, to establish and/or operate their networks for the provision of such services, in the form of a general authorization or individual license as defined below:</p> <p>— “general authorization”: an authorization, regardless of whether it is regulated by a “class license” or under general law and regardless of whether such regulation requires registration or declaration procedures, which does not require the postal service provider concerned to obtain an explicit decision by the national regulatory authority before exercising the rights stemming from the authorization,</p> <p>— “individual license”: an authorization which is granted by a national regulatory authority and which gives a postal service provider specific rights, or which subjects that undertaking's operations to specific obligations supplementing the general authorization where applicable, where the postal service provider is not entitled to exercise the rights concerned until it has received the decision by the national regulatory authority;</p> <p>15. terminal dues: the remuneration of universal service providers for the distribution of incoming cross-border mail comprising postal items from another Member State or from a third country;</p> <p>16. sender: a natural or legal person responsible for originating postal items;</p> <p>17. User: any natural or legal person benefiting</p>	<p>should not be limited to the universal service provider. It should be open to all service providers. Intra-EU cross-border mail should be considered and treated as domestic mail.</p> <p>Ad. Sender: Extension for providers of partial services</p> <p>Ad. 19 Essential requirements – mainly concerning the terms and conditions of employment – for the provision of the universal service as well as of other postal services in an internal European market are not to be mentioned in the pertinent directive. These requirements should be freely deliberated between the social partners. Apart from that, the relevant European and respective national stipulations have to be respected.</p> <p>Ad 20 To specific, this provision should be applicable to all providers</p> <p>The price regulation should be dissociated from the provision of the universal service. The price regulation regime should be linked to the concept of dominant market provider or dominant market position, not of the universal service.</p> <p>- Article 2 (definitions) point 14 – Authorizations</p> <p>Concerning the term “individual license”, we would only like to clarify that in the context of our legal framework, “postal license holder” means “designated operator with the universal service obligation”. Nevertheless, in accordance with Article 9 paragraph 2, this notion is also used for historical reasons and in relation to its application in other legal acts (concerning e. g. payment of pensions or collection of radio and TV fees).</p> <p>- The concept of ‘public postal network’ was eliminated in the directive, which only includes now the definition of ‘postal network’, corresponding to the USP's network. This change resulted in some problems in the definitions and terminology to be</p>	<p>Introduce the concept of universal service provider's network (it is understandable that they choose not to use the qualification "public network"), along with the concept of postal network, applicable to any other network provider.</p>
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	Commission questioned this solution and it was eventually abandoned. The weight limit was removed but the problem persists.	
<p style="text-align: center;">CHAPTER 2 Universal service</p>		
<p><i>Article 3'</i></p> <p>1. 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.</p> <p>2. To this end, Member States shall take steps to ensure that the density of the points of contact and of the access points takes account of the needs of users.</p> <p>3. Member States shall take steps to ensure that the universal service is guaranteed not less than five working days a week, save in circumstances or geographical conditions deemed exceptional, and that it includes as a minimum:</p> <ul style="list-style-type: none"> <li>— one clearance,</li> <li>— one delivery to the home or premises of every natural or legal person or, by way of derogation, under conditions at the discretion of the national regulatory authority, one delivery to appropriate installations.</li> </ul> <p>Any exception or derogation granted by a national regulatory authority in accordance with this paragraph must be communicated to the Commission and to all national regulatory authorities.</p> <p>4. Each Member State shall adopt the measures necessary to ensure that the universal service includes the following minimum facilities:</p> <ul style="list-style-type: none"> <li>- the clearance, sorting, transport and distribution of postal items up to two kilograms,</li> <li>- the clearance, sorting, transport and distribution of postal packages up to 10 kilograms,</li> </ul>	<p>- 4. Each Member State shall adopt the measures necessary to ensure that the universal service includes the following minimum facilities:</p> <ul style="list-style-type: none"> <li>- the clearance, sorting, transport and distribution of postal items up to two kilograms,</li> <li>- the clearance, sorting, transport and distribution of postal packages up to 10 kilograms,</li> <li>- services for registered items and insured items.</li> </ul> <p>- The US definition is vague, in terms of: which services it comprises, should bulk-mail be included or excluded, what is comprised into US price regulation, what is/or should be regulated, services from private operators that should contribute to the financing of the US, it varies from country to country. The needs of companies engaged in distance selling are clearly beyond the scope of universal service. However, if universal service providers do not respond to the needs of these customers in their commercial offerings then their ability to provide the universal service might be compromised. It is also advised that by redefining the scope of US, new e-post services should also be taken into account.</p> <p>Therefore in relation to the US provision and Regulation, we remain far from a "single market".</p> <p>- The scope of universal postal services should be aligned with customer needs. It is essential that each Member State shall study the degree of satisfying the needs of users of universal services. In according on this, we will see what services should be included in the scope of</p>	<p>- Number 4 is quite ambiguous: it allows to include within the UPS any type of postal item, which may produce a wide range of interpretations in regard to products that integrate this service and it may generate large differences between member countries.</p> <p>It should define more precisely the products to be included in the universal service scope, and even to adopt a concrete criteria on whether bulk mail should be part of it.</p> <p>As a result, the concept and provision of the universal service throughout the EU territory will be harmonized.</p> <p>- As users define the universal postal service exclusively private individuals, with possible extensions to the individual and small enterprises, in accordance with appropriate development and social policy.</p>

<p>- services for registered items and insured items.</p> <p>5. The national regulatory authorities may increase the weight limit of universal service coverage for postal parcels to any weight not exceeding 20 kilograms and may lay down special arrangements for the door-to-door delivery of such parcels. Notwithstanding the weight limit of universal service coverage for postal parcels established by a given Member State, Member States shall ensure that postal parcels received from other Member States and weighing up to 20 kilograms are delivered within their territory.</p> <p>6. The minimum and maximum dimensions for the postal items in question shall be those as laid down in the relevant provisions adopted by the Universal Postal Union.</p> <p>7. The universal service as defined in this Article shall cover both national and cross-border services.</p>	<p>universal postal service.</p> <p>Most of users of postal services are legal persons, 80-90%, respectively. As legal persons are using postal services and postal network for commercial purposes, there is no clear reason why they would not satisfy their needs on this particular commercial postal market.</p> <p>As it is not quite clear to what extent the universal postal service could be provided on the free market, it is even less certain that in this paragraph these services actually are services of irreplaceable importance for the daily lives of citizens, especially when one bears in mind the intensive development infokomunikacionih substitutes in certain countries.</p> <p>- The definition of the universal service should not be considered as a wish list. The universal postal service should be defined as a set of services considered as absolutely necessary. It should be offered by all service providers on the market and not be assigned to a single universal service provider.</p> <p>Prices should not only be affordable but also efficient-cost oriented.</p> <p>See also Article 12 below</p> <p>Ad 4, first indent: To specific</p> <p>Third indent: No common need for insured items; this may be defined as "Universal Service" nationally.</p> <p>Ad 5: As said before, the intra-EU cross-border items should be regarded and treated as domestic items. It should be analyzed if the linkage to the UPU conditions still makes sense and if it is legally valid in intra-community trade (5, 6 and 7).</p>	
<p><i>Article 4</i></p> <p>1. Each Member State shall ensure that the provision of the universal service is guaranteed and shall notify the Commission of the steps it has taken</p>		<p>In the Directive it should be entered a specialized mechanism for continuous study of real needs of citizens of the Community for the universal postal service.</p>

<p>to fulfill this obligation. The Committee referred to in Article 21 shall be informed of the measures established by Member States to ensure the provision of the universal service.</p> <p>2. Member States may designate one or more undertakings as universal service providers in order that the whole of the national territory can be covered. Member States may designate different undertakings to provide different elements of universal service and/or to cover different parts of the national territory. When they do so, they shall determine in accordance with Community law the obligations and rights assigned to them and shall publish these obligations and rights. In particular, Member States shall take measures to ensure that the conditions under which universal services are entrusted are based on the principles of transparency, non-discrimination and proportionality, thereby guaranteeing the continuity of the universal service provision, by taking into account the important role it plays in social and territorial cohesion.</p> <p>Member States shall notify the Commission of the identity of the universal service provider(s) they designate. The designation of a universal service provider shall be subject to a periodic review and be examined against the conditions and principles set out in this Article. However, Member States shall ensure that the duration of this designation provides a sufficient period for return on investments.</p>		<p>The Member States should also be referred to the same research, while at the same time they should be given wider scope for adapting the universal postal services to the achieved level of development, the specific needs of the citizens of these countries and possible policy development.</p>
<p><i>Article 5</i></p> <p>1. Each Member State shall take steps to ensure that universal service provision meets the following requirements:</p> <ul style="list-style-type: none"> <li>- it shall offer a service guaranteeing compliance with the essential requirements,</li> <li>- it shall offer an identical service to users under comparable conditions,</li> </ul>	<p>Article 5 paragraph 1</p> <p>Only suggestion – wouldn't be better if in paragraph 1 second indent was added "all" before "users"? We think that it would better express non-discriminatory aspect of US.</p>	

<p>- it shall be made available without any form of discrimination whatsoever, especially without discrimination arising from political, religious or ideological considerations,</p> <p>- it shall not be interrupted or stopped except in cases of force majeure,</p> <p>- it shall evolve in response to the technical, economic and social environment and to the needs of users.</p> <p>2. The provisions of paragraph 1 shall not preclude measures which the Member States take in accordance with requirements relating to the public interest recognized in the Treaty, in particular Articles 30 and 46 thereof, concerning, <i>inter alia</i>, public morality, public security, including criminal investigations, and public policy.</p>		
<p><i>Article 6</i></p> <p>Member States shall take steps to ensure that users and postal service providers are regularly given sufficiently detailed and up-to-date information by the universal service provider(s) regarding the particular features of the universal service 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 an appropriate manner.</p> <p>Member States shall notify the Commission, of how the information to be published in accordance with the first paragraph is to be made available.</p>		
<p style="text-align: center;"><b>CHAPTER 3</b> <b>Financing of universal services</b></p>		
<p><i>Article 7</i></p> <p>1. Member States shall not grant or maintain in force exclusive or special rights for the establishment and provision of postal services. Member States may finance the provision of universal services in accordance with one or more of the means provided for in paragraphs 2, 3 and</p>	<p>- 3. Where a Member State determines that the universal service obligations, as provided for in this Directive, entail a net cost, calculated taking into account Annex I, and represent an unfair financial burden on the universal service provider(s), it may introduce:</p> <p>(a) a mechanism to compensate the undertaking(s)</p>	<p>- According to the wording of number 3, to finance the SPU is necessary that two conditions occur:</p> <p>1. There is a net cost calculated according to the criteria described in Annex I</p> <p>2. The net cost represents an unfair financial burden.</p> <p>The concept of net cost is roughly defined and there</p>

<p>4, or in accordance with any other means compatible with the Treaty.</p> <p>2. Member States may ensure the provision of universal services by procuring such services in accordance with applicable public procurement rules and regulations, including, as provided for in Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services (*), competitive dialogue or negotiated procedures with or without publication of a contract notice.</p> <p>3. Where a Member State determines that the universal service obligations, as provided for in this Directive, entail a net cost, calculated taking into account Annex I, and represent an unfair financial burden on the universal service provider(s), it may introduce:</p> <p>(a) a mechanism to compensate the undertaking(s) concerned from public funds; or</p> <p>(b) a mechanism for the sharing of the net cost of the universal service obligations between providers of services and/or users.</p> <p>4. Where the net cost is shared in accordance with paragraph 3(b), Member States may establish a compensation fund which may be funded by service providers and/or users' fees, and is administered for this purpose by a body independent of the beneficiary or beneficiaries.</p> <p>Member States may make the granting of authorizations to service providers under Article 9(2) subject to an obligation to make a financial contribution to that fund or to comply with universal service obligations. The universal service obligations of the universal service provider(s) set out in Article 3 may be financed in this manner.</p> <p>5. Member States shall ensure that the principles of transparency, non-discrimination and proportionality are respected in establishing the compensation</p>	<p>concerned from public funds; or</p> <p>(b) a mechanism for the sharing of the net cost of the universal service obligations between providers of services and/or users.</p> <p>- During the transposition of the Directive we had a problem to determine the compensation fund and specify conditions of the contributors to the fund. Therefore we recommend to specify the service providers that contribute to the compensation fund or further define the term "inter – changeable postal services".</p> <p>- A lot of arguments have been raised and related to the financing of universal postal service. These stem out mainly from the US definition (services included), which services from private operators should contribute to the financing of the US net cost and how the financing could be appropriately placed into force.</p> <p>Clarifications are needed to show how the compensation fund will be divided to among the undertakings.</p>	<p>is also a set of guidelines for calculation, while this is not the case for the unfair financial burden. How do you determine if the net cost represents an unfair financial burden?</p> <p>If the net cost is calculated taking into account the intangible and markets benefits of the designated operator, the reasonable profit and the incentives for cost efficiency, it seems obvious that this cost should be an unfair financial burden for the operator. If so, what criteria or elements should be considered to determine it?</p> <p>It would be advisable to clarify the meaning of "unfair financial burden" on one of two ways:</p> <p>A. - If it is a similar concept to this of net cost, then, this term could be removed from the Directive</p> <p>B. - If it's a different concept, it should be defined and specify the criteria and how to determine when a net cost is an unfair financial burden or not.</p>
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fund and when fixing the level of the financial contributions referred to in paragraphs 3 and 4. Decisions taken in accordance with paragraphs 3 and 4 shall be based on objective and verifiable criteria and be made public.		
<i>Article 8 (97/67/EC)</i> The provisions of Article 7 shall be without prejudice to Member States' right to organize the siting of letter boxes on the public highway, the issue of postage stamps and the registered mail service used in the course of judicial or administrative procedures in accordance with their national legislation.		
<p style="text-align: center;"><b>CHAPTER 4</b>  Conditions governing the provision of postal services and access to the network</p>		
<i>Article 9</i> 1. For services which fall outside the scope of the universal service, Member States may introduce general authorizations to the extent necessary to guarantee compliance with the essential requirements. 2. For services which fall within the scope of the universal service, Member States may introduce authorization procedures, including individual licenses, to the extent necessary in order to guarantee compliance with the essential requirements and to ensure the provision of the universal service. The granting of authorizations may: — be made subject to universal service obligations, — if necessary and justified, impose requirements concerning the quality, availability and performance of the relevant services, — where appropriate, be subject to an obligation to make a financial contribution to the sharing mechanisms referred to in Article 7, if the provision of the universal service entails a net cost and represents an unfair burden on the universal service provider(s), designated in accordance with	- Again, here once the scope of the US is cleared, more advice should be supplied to Member States regarding the authorization system in and outside the scope of the US.  - Article 9 paragraph 2 The text is relatively ambiguous and it may evoke interpretation that the USP should not, or even is not allowed to, contribute to a sharing mechanism. In our opinion, it would be useful to modify the wording so as to reflect the reality that the entire sector is concerned.	

<p>Article 4,</p> <ul style="list-style-type: none"> <li>— where appropriate, be subject to an obligation to make a financial contribution to the national regulatory authority's operational costs referred to in Article 22,</li> <li>— where appropriate, be made subject to or impose an obligation to respect working conditions laid down by national legislation.</li> </ul> <p>Obligations and requirements referred to in the first indent and in Article 3 may only be imposed on designated universal service providers.</p> <p>Except in the case of undertakings that have been designated as universal service providers in accordance with Article 4, authorizations may not:</p> <ul style="list-style-type: none"> <li>— be limited in number,</li> <li>— for the same elements of the universal service or parts of the national territory, impose universal service obligations and, at the same time, financial contributions to a sharing mechanism,</li> <li>— duplicate conditions which are applicable to undertakings by virtue of other, non-sector-specific national legislation,</li> <li>— impose technical or operational conditions other than those necessary to fulfill the obligations of this Directive.</li> </ul> <p>3. The procedures, obligations and requirements referred to in paragraphs 1 and 2 shall be transparent, accessible, non-discriminatory, proportionate, precise and unambiguous, made public in advance and based on objective criteria. Member States shall ensure that the reasons for refusing or withdrawing an authorization in whole or in part are communicated to the applicant and shall establish an appeal procedure.</p>		
<p><i>Article 10</i></p> <p>1. The European Parliament and the Council, acting on a proposal from the Commission and on the basis of Articles 47(2), 55 and 95 of the Treaty, shall adopt the measures necessary for the</p>		

<p>harmonization of the procedures referred to in Article 9 governing the commercial provision of postal services to the public.</p> <p>2. The harmonization measures referred to in paragraph 1 shall concern, in particular, the criteria to be observed and the procedures to be followed by the postal operator, the manner of publication of those criteria and procedures, as well as the appeal procedures to be followed.</p>		
<p><i>Article 11</i></p> <p>The European Parliament and the Council, acting on a proposal from the Commission and on the basis of Articles 47(2), 55 and 95 of the Treaty, shall adopt such harmonization measures as are necessary to ensure that users and the postal service provider(s) have access to the postal network under conditions which are transparent and non-discriminatory.</p>		<p>It could be raised if it is necessary to ensure access to the network to providers of postal services and if so execute the provisions of Article 11 in the sense of adopting the harmonizing measures to ensure that the access to the postal networks by postal operators is similar throughout the EU, avoiding very different forms of access by country.</p>
<p><i>Article 11a</i></p> <p>Whenever necessary to protect the interest of users and/or to promote effective competition, and in the light of national conditions and national legislation, Member States shall ensure that transparent, non-discriminatory access conditions are available to elements of postal infrastructure or services provided within the scope of the universal service, such as postcode system, address database, post office boxes, delivery boxes, information on change of address, re-direction service and return to sender service. This provision shall be without prejudice to the right of Member States to adopt measures to ensure access to the postal network under transparent, proportional and non-discriminatory conditions.</p>	<p>Access: Delivery of postal items is not included. It does not necessarily prevents the Member State from doing it, but it should be clearly stated.</p>	
<p style="text-align: center;"><b>CHAPTER 5</b></p> <p style="text-align: center;">Tariff principles and transparency of accounts</p>		
<p><i>Article 12</i></p> <p>Member States shall take steps to ensure that the tariffs for each of the services forming part of the</p>	<p>- Guidance and clear definitions without any vague aspects should be implemented, per service category, which calculation system should be</p>	<p>- One idea is to make the tariffs cost based. Then there would be no need for any compensation mechanism.</p>

<p>universal service comply with the following principles:</p> <ul style="list-style-type: none"> <li>— prices shall be affordable and must be such that all users, independent of geographical location, and, in the light of specific national conditions, have access to the services provided. Member States may maintain or introduce the provision of a free postal service for the use of blind and partially-sighted persons,</li> <li>— prices shall be cost-oriented and give incentives for an efficient universal service provision. Whenever necessary for reasons relating to the public interest, Member States may decide that a uniform tariff shall be applied, throughout their national territory and/or cross-border, to services provided at single piece tariff and to other postal items,</li> <li>— the application of a uniform tariff shall not exclude the right of the universal service provider(s) to conclude individual agreements on prices with users,</li> <li>— tariffs shall be transparent and non-discriminatory,</li> <li>— whenever universal service providers apply special tariffs, for example for services for businesses, bulk mailers or consolidators of mail from different users, they shall apply the principles of transparency and non-discrimination with regard both to the tariffs and to the associated conditions. The tariffs, together with the associated conditions, shall apply equally both as between different third parties and as between third parties and universal service providers supplying equivalent services. Any such tariffs shall also be available to users, in particular individual users and small and medium-sized enterprises, who post under similar conditions.</li> </ul>	<p>adopted, etc.</p> <ul style="list-style-type: none"> <li>- Concerning prices: Discrimination of other disabled people. The wording should be aligned to the Universal Service Directive relating to electronic communications networks (2002/22/EC): disabled and people with special social needs Second indent: Instead using the cost ratio as determined by the operator, the costs of efficient service provision should be the basis. Third indent: This possibility may be given but only as long as these individual agreements are not anticompetitive versus other operators There are no explicit competitive regulations except cost orientation, transparency and non-discrimination. However, even cost-orientated, transparent and non-discriminative tariffs may differ from the competitive/market level. Thus the competitive chances of other market players may be negatively affected. Therefore an additional text should be included. Opposite to Article 14, where special control rights are granted to the National Regulatory Authorities, in Article 12 such competences regarding the control on the application of the tariff principles are missing. Therefore an additional paragraph should be included.</li> <li>- It is not clear enough, how a possibility of application of individual agreements (the third indent) corresponds to the following dispositions about non-discrimination and equal conditions for all. Maybe it would be better if the text was modified to the effect that such agreements can be concluded, but after that they are available to all the others under equal conditions.</li> </ul>	<ul style="list-style-type: none"> <li>- <u>1. Member States shall take steps to ensure that the tariffs for each of the services forming part of the universal service comply with the following principles:</u> — prices shall be <u>efficient</u>-cost-oriented and give incentives for an efficient universal service provision. Whenever necessary for reasons relating to the public interest, Member States may decide that a uniform tariff shall be applied, throughout their national territory and/or cross-border, to services provided at single piece tariff and to other postal items, — <u>tariffs may not include any additions or discounts that effect the competitive chances of other operators.</u> <u>2. National Regulatory Authorities shall ensure the compliance with the principles described in paragraph 1 of this article.</u></li> </ul>
<p><i>Article 13 (97/67/EC)</i> 1. In order to ensure the cross-border provision of</p>	<p>- It is very important to have some basic standards to allow a seamless cross border service, especially</p>	

<p>the universal service, Member States shall encourage their universal service providers to arrange that in their agreements on terminal dues for intra-Community cross-border mail, the following principles are respected:</p> <ul style="list-style-type: none"> <li>- terminal dues shall be fixed in relation to the costs of processing and delivering incoming cross-border mail,</li> <li>- levels of remuneration shall be related to the quality of service achieved,</li> <li>- terminal dues shall be transparent and non-discriminatory.</li> </ul> <p>2. The implementation of these principles may include transitional arrangements designed to avoid undue disruption on postal markets or unfavourable implications for economic operators provided there is agreement between the operators of origin and receipt; such arrangements shall, however, be restricted to the minimum required to achieve these objectives.</p>	<p>for e-commerce. Different standards and requirements from each national provider make it very difficult to have a single European postal market and e-commerce development.</p> <ul style="list-style-type: none"> <li>- No more focusing on the universal service It has to be ensured that the internal market is developed and intra-EU services are delivered in the same way as domestic services. The current regulation is not sufficient. See also Article 12. The intra-community services should be considered as domestic services offered within a single European internal market. Prices should be regulated and must also be cost-oriented. The freedom of trade and services has to be ensured according to already existing rules and regulations.</li> </ul>	<ul style="list-style-type: none"> <li>- 1. In order to ensure the cross-border provision of the universal service, Member States shall encourage their <del>universal</del> service providers to arrange that in their agreements on terminal dues for intra-Community cross-border mail, the following principles are respected (left side of the questionnaire).</li> </ul>
<p><i>Article 14</i></p> <p>1. Member States shall take the measures necessary to ensure that the accounting of the universal service providers is conducted in accordance with the provisions of this Article.</p> <p>2. The universal service provider(s) shall keep separate accounts within their internal accounting systems in order to clearly distinguish between each of the services and products which are part of the universal service and those which are not. This accounting separation shall be used as an input when Member States calculate the net cost of the universal service. Such internal accounting systems shall operate on the basis of consistently applied and objectively justifiable cost accounting principles.</p> <p>3. The accounting systems referred to in paragraph 2 shall, without prejudice to paragraph 4, allocate costs in the following manner:</p>		

<p>(a) costs which can be directly assigned to a particular service or product shall be so assigned;</p> <p>(b) common costs, that is costs which cannot be directly assigned to a particular service or product, shall be allocated as follows:</p> <p>(i) whenever possible, common costs shall be allocated on the basis of direct analysis of the origin of the costs themselves;</p> <p>(ii) when direct analysis is not possible, common cost categories shall be allocated on the basis of an indirect linkage to another cost category or group of cost categories for which a direct assignment or allocation is possible; the indirect linkage shall be based on comparable cost structures;</p> <p>(iii) when neither direct nor indirect measures of cost allocation can be found, the cost category shall be allocated on the basis of a general allocator computed by using the ratio of all expenses directly or indirectly assigned or allocated, on the one hand, to each of the universal services and, on the other hand, to the other services;</p> <p>(iv) common costs, which are necessary for the provision of both universal services and non-universal services, shall be allocated appropriately; the same cost drivers must be applied to both universal services and non-universal services.</p> <p>4. Other cost accounting systems may be applied only if they are compatible with paragraph 2 and have been approved by the national regulatory authority. The Commission shall be informed prior to their application.</p> <p>5. National regulatory authorities shall ensure that compliance with one of the cost accounting systems described in paragraphs 3 or 4 is verified by a competent body which is independent of the universal service provider. Member States shall ensure that a statement concerning compliance is published periodically.</p>		
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<p>6. The national regulatory authority shall keep available, to an adequate level of detail, information on the cost accounting systems applied by a universal service provider, and shall submit such information to the Commission on request.</p> <p>7. On request, detailed accounting information arising from these systems shall be made available in confidence to the national regulatory authority and to the Commission.</p> <p>8. Where a given Member State has not used a financing mechanism for the provision of the universal service, as permitted under Article 7, and where the national regulatory authority is satisfied that none of the designated universal service providers in that Member State is in receipt of State assistance, hidden or otherwise, and that competition in the market is fully effective, the national regulatory authority may decide not to apply the requirements of this Article.</p> <p>9. This Article may, however, be applied to the universal service provider designated before the final date for Full Market Opening as long as no other universal service provider(s) have been designated. The national regulatory authority shall inform the Commission in advance of any such decision.</p> <p>10. Member States may require those postal service providers which are obliged to contribute to a compensation fund to introduce an appropriate accounting separation to ensure the functioning of the fund.</p>		
<p><i>Article 15</i></p> <p>The financial accounts of all universal service providers shall be drawn up, submitted to audit by an independent auditor and published in accordance with the relevant Community and national legislation to commercial undertakings.</p>		
<p>CHAPTER 6 Quality of services</p>		

<p><i>Article 16</i> Member States shall 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. Quality standards shall focus, in particular, on routing times and on the regularity and reliability of services. These standards shall be set by: — the Member States in the case of national services, — the European Parliament and the Council in the case of intra-Community cross-border services (see Annex II). Future adjustment of these standards to technical progress or market developments shall be made in accordance with the regulatory procedure with scrutiny referred to in Article 21(2). Independent performance monitoring shall be carried out at least once a year by external bodies having no links with the universal service providers under standardized conditions to be specified in accordance with the regulatory procedure with scrutiny referred to in Article 21(2) and shall be the subject of reports published at least once a year.</p>	<p>The quality of service can be analyzed in several dimensions, for example by setting transit time targets for parcels as well. Customer satisfaction can also be considered as a dimension of quality of service. There should be additional criteria to cover all potential needs, i.e. waiting time at the post-office, complaints handling.</p>	
<p><i>Article 17 (97/67/EC)</i> Member States shall lay down quality standards for national mail and shall ensure that they are compatible with those laid down for intra-Community cross-border services. Member States shall notify their quality standards for national services to the Commission, who will publish them in the same manner as the standards for intra-Community cross-border services referred to in Article 18. National regulatory authorities shall ensure that independent performance monitoring is carried out in accordance with the fourth subparagraph of Article 16, that the results are justified, and that corrective action is taken where necessary.</p>		



<p><i>Article 18</i></p> <p>1. In accordance with Article 16, quality standards for intra-Community cross-border services are laid down in Annex II.</p> <p>2. Where exceptional situations relating to infrastructure or geography so require, the national regulatory authorities may determine exemptions from the quality standards provided for in Annex II. Where national regulatory authorities determine exemptions in this manner, they shall notify the Commission forthwith. The Commission shall submit an annual report of the notifications received during the previous 12 months to the Committee referred to in Article 21 for its information.</p> <p>3. The Commission shall publish in the Official Journal of the European Communities any adjustments made to the quality standards for intra-Community cross-border services and shall take steps to ensure the regular independent monitoring and the publication of performance levels certifying compliance with these standards and the progress accomplished. National regulatory authorities shall ensure that corrective action is taken where necessary.</p>		
<p><i>Article 19</i></p> <p>1. Member States shall ensure that transparent, simple and inexpensive procedures are made available by all postal service providers for dealing with postal users' complaints, particularly in cases involving loss, theft, damage or noncompliance with service quality standards (including procedures for determining where responsibility lies in cases where more than one operator is involved), without prejudice to relevant international and national provisions on compensation schemes.</p> <p>Member States shall adopt measures to ensure that the procedures referred to in the first subparagraph enable disputes to be settled fairly and promptly with provision, where warranted, for a system of</p>		

<p>reimbursement and/or compensation. Member States shall also encourage the development of independent out-of-court schemes for the resolution of disputes between postal service providers and users.</p> <p>2. Without prejudice to other possibilities of appeal or means of redress under national and Community legislation, Member States shall ensure that users, acting individually or, where permitted by national law, jointly with organizations representing the interests of users and/or consumers, may bring before the competent national authority cases where users' complaints to undertakings providing postal services within the scope of the universal service have not been satisfactorily resolved.</p> <p>In accordance with Article 16, Member States shall ensure that the universal service providers and, wherever appropriate, undertakings providing services within the scope of the universal service, publish, together with the annual report on the monitoring of their performance, information on the number of complaints and the manner in which they have been dealt with.</p>		
<p style="text-align: center;"><b>CHAPTER 7</b> Harmonization of technical standards</p>		
<p><i>Article 20 (97/67/EC)</i> The harmonization of technical standards shall be continued, taking into account in particular the interests of users.</p> <p>The European Committee for Standardization shall be entrusted with drawing up technical standards applicable in the postal sector on the basis of remits to it pursuant to the principles set out in Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations (8). This work shall take account of the harmonization measures adopted at international level and in</p>	<p>As mentioned in <i>Article 13 above</i>, it is very important to have some basic standards to allow a seamless cross border service, especially for e-commerce.</p> <p>Different standards and requirements from each national provider make it very difficult to have a single European postal market and e-commerce development.</p> <p>In addition, IPC measurement system could also be applied to parcels, as recent EU Postal studies have shown.</p>	

<p>particular those decided upon within the Universal Postal Union.</p> <p>The standards applicable shall be published in the Official Journal of the European Communities once a year.</p> <p>Member States shall ensure that universal service providers refer to the standards published in the Official Journal where necessary in the interests of users and in particular when they supply the information referred to in Article 6.</p> <p>The Committee provided for in Article 21 shall be kept informed of the discussions within the European Committee for Standardization and the progress achieved in this area by that body.</p>		
<p style="text-align: center;"><b>CHAPTER 8</b> The committee</p>		
<p><i>Article 21</i></p> <p>1. The Commission shall be assisted by a committee.</p> <p>2. Where reference is made to this paragraph, Articles 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.</p>	<p>The independent national regulatory authority should be defined in conformance with the Telecom Framework Directive (2002/21/EC, Article 3a), i.e. essentially: The NRA shall act independently and shall not seek or take instructions from any other body in relation to exercising these tasks assigned to them under national law implementing Community law. This shall not prevent supervision in accordance with national constitutional law. Only appeal bodies shall have the power to suspend or overturn decisions by the national regulatory authorities. Member States shall ensure that national regulatory authorities have separate annual budgets. The budgets shall be made public.</p>	<p>There should be, perhaps, among the Members, a public consultation around the PDC Agenda (needs, future studies, etc.) also in relation to the ERGP.</p>
<p><i>Article 22</i></p> <p>1. Each Member State shall designate one or more national regulatory authorities for the postal sector that are legally separate from and operationally independent of the postal operators. Member States that retain ownership or control of postal service providers shall ensure effective structural separation of the regulatory functions from activities</p>	<p>Article 22 paragraph 2</p> <p>It is not clear enough, in our view, whether the sentence "The national regulatory authorities shall work in close collaboration and shall provide mutual assistance in order to facilitate the application of this Directive within the appropriate existing bodies" applies to NRA with competences in the postal matters, or also to other national authorities</p>	

<p>associated with ownership or control. Member States shall inform the Commission which national regulatory authorities they have designated to carry out the tasks arising from this Directive. They shall publish the tasks to be undertaken by national regulatory authorities in an easily accessible form, in particular where those tasks are assigned to more than one body. Member States shall ensure, where appropriate, consultation and cooperation between those authorities and national authorities entrusted with the implementation of competition law and consumer protection law on matters of common interest.</p> <p>2. The national regulatory authorities shall have as a particular task ensuring compliance with the obligations arising from this Directive, in particular by establishing monitoring and regulatory procedures to ensure the provision of the universal service. They may also be charged with ensuring compliance with competition rules in the postal sector.</p> <p>The national regulatory authorities shall work in close collaboration and shall provide mutual assistance in order to facilitate the application of this Directive within the appropriate existing bodies.</p> <p>3. Member States shall ensure that effective mechanisms exist at national level under which any user or postal service provider affected by a decision of a national regulatory authority has the right to appeal against the decision to an appeal body which is independent of the parties involved. Pending the outcome of any such appeal, the decision of the national regulatory authority shall stand, unless the appeal body decides otherwise.</p>	<p>mentioned in paragraph 1, and whether it should apply at national or EU level, or both. The wording could be more accurate</p>	
<p style="text-align: center;">CHAPTER 9a Provision of information</p>		
<p><i>Article 22a</i></p> <p>1. Member States shall ensure that postal service providers provide all the information, in particular to</p>	<p>OK. However n the field of Postal statistics data production, such as Eurostat's, it should be mentioned that there should be more consistency</p>	

<p>the national regulatory authorities, including financial information and information concerning the provision of the universal service, namely for the following purposes:</p> <p>(a) for national regulatory authorities to ensure conformity with the provisions of, or decisions made in accordance with this Directive,</p> <p>(b) for clearly defined statistical purposes.</p> <p>2. Postal service providers shall provide such information promptly on request and in confidence, where necessary, within the timescales and to the level of detail required by the national regulatory authority. The information requested by the national regulatory authority shall be proportionate to the performance of its tasks.</p> <p>The national regulatory authority shall give the reasons justifying its request for information.</p> <p>3. Member States shall ensure that national regulatory authorities provide the Commission, upon request, with appropriate and relevant information necessary for it to carry out its tasks under this Directive.</p> <p>4. Where information is considered confidential by a national regulatory authority, in accordance with Community and national business confidentiality rules, the Commission and the national regulatory authorities concerned shall preserve such confidentiality.</p>	<p>and regularity in the publication of the Reports and much more time coherence to the year they refer. They usually come into publicity in delay and in this way, they may appear irrelevant to the degree to which statistics meet/reflect current and potential user's needs.</p>	
<p><i>Article 23</i></p> <p>Every four years, on the first occasion no later than 31 December 2013, the Commission shall submit a report to the European Parliament and the Council on the application of this Directive, including appropriate information on developments in the sector, particularly concerning economic, social, employment patterns and technological aspects, as well as on quality of service. The report shall be accompanied, where appropriate, by proposals to the European Parliament and the Council.</p>		

<p><i>Article 23a</i> The Commission shall provide assistance to the Member States on the implementation of this Directive, including on the calculation of any net cost of the universal service.</p>		
<p><i>Article 28</i> This Directive is addressed to the Member States.</p>		
<p><b>ANNEX I</b> Guidance on calculating the net cost, if any, of universal service</p>		
<p><b>Part A: Definition of the universal service obligations</b> Universal service obligations refer to the obligations, referred to in Article 3, placed upon a postal service provider by a Member State which concern the provision of a postal service throughout a specified geographical area, including, where required, uniform prices in that geographical area for the provision of that service or provision of certain free services for blind and partially sighted persons. Those obligations may include, among others, the following: - a number of days of delivery, superior to those set in this Directive; - accessibility to access points, in order to satisfy the universal service obligations; - the tariffs affordability of the universal service; - uniform prices for universal service; - The provision of certain free services for blind and partially sighted persons.</p>		
<p><b>Part B: Calculation of net cost</b> National regulatory authorities are to consider all means to ensure appropriate incentives for postal service providers (designated or not) to provide universal service obligations cost efficiently. The net cost of universal service obligation is any cost related to and necessary for the operation of the universal service provision. The net cost of universal service obligations is to be calculated, as the difference between the net cost for a designated universal service provider of operating with the universal service obligations and the same postal service provider operating without the universal service obligations. The calculation shall take into account all other relevant elements, including any intangible and market benefits which accrue to a postal service provider designated to provide universal service, the entitlement to a reasonable profit and incentives for cost efficiency; Due attention is to be given to correctly assessing the costs that any designated universal service provider would have chosen to avoid, had there been no universal service obligation. The net cost calculation should assess the benefits, including intangible benefits, to the universal service operator. The calculation is to be based upon the costs attributable to: i) elements of the identified services which can only be provided at a loss or provided under cost conditions falling outside normal commercial standards. This category may include service elements such as the services defined in Part A. (ii) specific users or groups of users who, taking into account the cost of providing the specified service, the revenue generated and any uniform prices imposed by the Member State, can only be served at a loss or under cost conditions falling outside normal commercial standards. This category includes those users or groups of users that would not be served by a commercial operator that did not have an obligation to provide universal service. The calculation of the net cost of specific aspects of universal service obligations is to be made separately and so as to avoid the double counting of any direct or indirect benefits and costs. The overall net cost of universal service obligations to any designated universal service provider is to be calculated as the sum of the net costs arising from the specific components of universal service obligations, taking account of any intangible benefits. The responsibility for verifying the net</p>		

cost lies with the national regulatory authority. The universal service provider(s) shall cooperate with the national regulatory authority to enable it to verify the net cost.

### **Part C: Recovery of any net costs of universal service obligations**

The recovery or financing of any net costs of universal service obligations may require designated universal service providers to be compensated for the services that they provide under non-commercial conditions. As such compensation involves financial transfers, Member States have to ensure that these are undertaken in an objective, transparent, non-discriminatory and proportionate manner. This means that the transfers result as far as possible in the least distortion to competition and to user demand.

A sharing mechanism based on a fund referred to in Article 7(4) should use a transparent and neutral mechanism for collecting contributions that avoids a double imposition of contributions falling on both outputs and inputs of undertakings.

The independent body administering the fund is to be responsible for collecting contributions from undertakings, which are assessed as liable to contribute to the net cost of universal service obligations in the Member State and is to oversee the transfer of sums due to the undertakings entitled to receive payments from the fund.

#### *Part B: Calculation of net cost*

Annex 1 describes in Section B the guidelines, criteria and elements to take into account when calculating the net cost of the universal postal service.

Although the philosophy of the calculation is technically correct, when it comes to putting it into practice and setting up a methodology for the calculation periodically, serious difficulties appear.

Net cost is defined as the difference in costs that would have the operator if he could operate without universal service obligations.

This would require to determine how the operator would operate without such obligations. It does not seem easy to guess which services it would quit to provide, the way it would modify its prices, how it would conduct the distribution depending on the different areas, what would be the frequency of delivery, how it would restructure the network and especially, how all these changes would affect the demand and consequently the revenues.

To complicate more the issue, all the factors mentioned interact with each other and any change in one has implications for the other.

In this context, to quantify the cost difference making forward-looking statements about how an operator could operate if it had not the universal service obligation, may give extremely variable results, from a zero cost when you consider that the operator would continue to provide the same services and in the same way, a very high cost if you consider that the operator could drastically reduce its services, both on the postal network or on the frequency of delivery or on the geographical area.

Neither objective is to quantify the intangible and market advantages which accrue to the designated operator.

Firstly there is no indication about which advantages are these; if you consider some as the greatest recognition of the brand, the benefits derived from the extension of the network and its use for trading other products and services, the ubiquity throughout the territory, the exclusivity of issuing stamps, etc., this measurement could be very complex and expensive to make, especially when it would be necessary to make the measurement regularly.

Evident proof of the difficulty to implement this provision of the Directive are the different interpretations made by Member States.

Therefore it would be advisable that the Directive itself or additional rules develop a specific methodology, clear and easy to implement that could be used by all countries.

Considering the difficult situation of the postal market it may be more appropriate to implement these types of solutions, although not as rigorous, are more practical and less costly at all levels.

## **ANNEX II**

### **Quality standards for intra-Community cross-border mail**

The quality standards for intra-Community cross-border mail in each country are to be established in relation to the time limit for routing measured from end to end (\*) for postal items of the fastest standard category according to the formula  $D + n$ , where D represents the date of deposit (\*\*) and n the number of working

days which elapse between that date and that delivery to the addressee.

Quality standards for intra-Community cross-border mail

Time limit Objective

D + 3 85 % of items

D + 5 97 % of items

The standards must be achieved not only for the entirety of intra-Community traffic but also for each of the bilateral flows between two Member States.

(\*) End-to-end routing is measured from the access point to the network to the point of delivery to the addressee.

(\*\*) The date of deposit to be taken into account shall be the same day as that on which the item is deposited, provided that deposit occurs before the last collection time notified from the access point to the network in question. When deposit takes place after this time limit, the date of deposit to be taken into consideration will be that of the following day of collection.

A corrective mechanism is necessary. However, if the operator chooses a very early last collection time this provision allows for a unjustified additional conveyance time and does not reflect the consumer perspective. Therefore an additional text could be included.

It is however likely that supply and demand will make superfluous any regulation at all in this field.

(\*\*) The date of deposit to be taken into account shall be the same day as that on which the item is deposited, provided that deposit occurs before the last collection time notified from the access point to the network in question. When deposit takes place after this time limit, the date of deposit to be taken into consideration will be that of the following day of collection; however, this is not applicable when the date of deposit takes place prior to 12.00 a.m.

## TOPICS FOR DISCUSSION FROM MEMBER COUNTRIES

### Universal Service

The current definition in the directive is offering space for individual interpretation by Member States. Does the scope of universal services need to be reviewed? To what extent customers (private and commercial) still may regard physical communication services at a minimum range that needs to be guaranteed? Will convergence with electronic services be a part of the universal service? A stronger focus on parcel delivery (e-commerce)? Quality: alternative models for 5-6 days/week delivery, a stronger focus on reliability than on speed for letter mail? Financing: how to ensure financial viability of the universal service in an environment of declining letter mail volumes and demographic challenges? Extended financing mechanisms, more pricing flexibility for the USP, may be in rural areas? Should the Annex 1 (calculation of net costs) be reviewed?

### Definitions:

Some Member States are likely to impose regulations on express services that are related to universal service, express services than may be required to contribute to the financing of the universal service. It should be pointed out more clearly in an amended directive that express services are not a part of the universal service.

### Accomplishment of the single market / Enforcing competitive postal markets

After the complete removal of all reserved rights in all Member States ahead, the single market will be accomplished de jure. It will perhaps be



the point to examine if there really is a level playing field in the meaning of entry barriers created by national licensing conditions based on national legislation – which is restrictive in some national markets today (for example concerning strict conditions for scope, quality, network density, pricing). The actual situation shows that a more precise wording in the directive could be helpful to abolish unfair conditions. While we have extremely competitive parcel markets, there is relatively small actual competition in letter mail market in most Member States – average around 10%. Perhaps a reviewed directive should contain some elements to enforce competition forces.

#### Regulatory Framework

The actual situation on the letter mail markets shows that effective sector specific regulation still is indispensable in the letter mail market to stimulate competition and to prevent anticompetitive practices. Some incumbents try to distort developing competition by dumping pricing strategies on large mail volumes by unfair allocating shared costs to the universal service. In a parcel business the situation is different – little regulatory activity seems to be needed in this important and competitive market.

A possible review of the Regulatory framework details set out in the Postal Directive should be based on relevant national experiences and by analysis of the issues and findings of ERGP. It should be carefully evaluated, to what extent this strategy of harmonizing regulatory activities may be reflected in a future directive.

Financing USO: many countries have reported difficulties to calculate the net cost of the USO. The directive annex which provides guidelines allows to make a step by giving a method, but the implementation of the method is far from easy to set up. Furthermore, the method described (comparison between an operator with USO and a operator without USO) seems to become the reference method in the Commission's mind according to the new framework [http://ec.europa.eu/competition/state\\_aid/legislation/sgei.html](http://ec.europa.eu/competition/state_aid/legislation/sgei.html) related to the services of general economic interest. In which extent the new framework could be useful to calculate the cost?

Scope of the USO: place of new services, especially hybrid and electronic services.