



CERP

Implementation Guide

Universal Service

Final version

PT Universal Service

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Introduction

One of the fundamental aspects of the EU postal reform is provision of the universal postal service, its future definition, scope and in consequence it's financing.

The Postal Directive sets out the general legal framework on how to guarantee the provision of the universal service and how to understand its concept in a more competitive market. But it is up to Member States to decide how to define the scope of universal service and to ensure in practice the provision of the universal service within this framework taking into account user requirements in their national markets.

Ensuring sustainable provision of a universal service and its accessibility, satisfying the needs of users remain firm foundations of the internal market of the Community. Yet Directive 2008/06/EC presents a new approach of the EC as far as provision of the universal service is concerned and determines a definitive time scale to bring its regulations into force.

First, provision of universal service must be ensured without the need for the reserved area.

Second, most Member States are obliged to comply to this Directive by 31 December 2010 at the latest. By derogation some Member States may postpone the implementation of this Directive until the end of 2012. However, it does not change the fact that its transposition is a serious challenge for all countries right now or will be very soon.

Setting out some general principles and minimum requirements, the Directive gives Member States some freedom and flexibility about how to proceed. For example, in the case of safeguarding availability of the universal service Directive presents three possibilities in this respect - they may apply one or combination of: market forces, designation of one or several undertakings to provide different elements of the US or to cover different parts of the territory and public procurement of services. The problem the MS face on this and other issues is to find a good solution based on analysis of theoretical and practical circumstances that would be adequate to their specific situation.

The NRAs have been entrusted with particular tasks in this respect. They should monitor and supervise market developments and when necessary take appropriate regulatory measures to guarantee the provision of the universal service and to take care of its identity.

Against this background the Project Team "Universal Service" was mandated by CERP to deal with the issues relating to the universal postal service. In order to come up to these expectations a decision was taken to prepare a kind of "**Implementation Guide**" that would direct the NRAs/Ministries through the complexity of the universal service.

The primary purpose of the **Implementation Guide** is to give member countries assistance, highlighting what options they have and how they may proceed with regard to the universal service issues, as it is crucial to be aware of existing legal and practical/regulatory circumstances, especially while transposing Directive into national laws.

The **Implementation Guide** identifies and assesses problems that may occur in this context. It includes an analysis of status quo, pros and cons and conclusions/recommendations/suggestions to be useful in the regulatory work.

The structure of the **Implementation Guide** is based on identified terms of reference that encompass main areas in relation to the universal service. The document is divided into five main parts (chapters) dealing with the following issues:

Chapter 1 - Legal aspects of universal service provision

- Evolution of postal services,
- Exemptions for certain activities in the public interest,
- Current status of postal services.

Chapter 2 - Scope of the universal service

- Legal context for the scope of universal service,
- Historical background,
- Express/courier services,
- Direct Mail,
- Postal parcels,
- Bulk mail.

Chapter 3 - Implications & Implementation issues

- Uniform tariffs,
- Daily deliveries,
- Accessibility,
- Interoperability.

Chapter 4 - Provision of universal service

- Market forces,
- Designation of the USP,
- Public procurement.

Chapter 5 - Methods to ensure the USO meets the needs of users

- Market research,
- Consultation procedure,
- Statistics.

An **Appendix** contains a list of abbreviations used in the text.

Chapter 1 - Legal Aspects of Universal Service Provision

1.1. Evolution of Postal Services

At the beginning of the last quarter of the 20th Century Postal Services were still predominantly provided directly by Governments or in some cases by independent public bodies (statutory corporations). The terms and conditions (including prices) under which the services were provided were set out in legislation, and usually there was a restriction on the liability of the postal department. International services were subject to the Convention of the Universal Postal Union, an inter-governmental treaty whose provisions had to be incorporated into national law.

There were a number of features about postal services that distinguished them from services provided under contract by private sector companies.

- In particular there were obligations to the addressees as well as to the sender, even though no consideration might pass between the parties.
- There was a geographically uniform price, though contrary to popular opinion, this was not a political decision, but based on economic analysis. Rowland Hill of Britain demonstrated that the transactional costs associated with distance based tariffs, separate charges for transportation and delivery, and administrative costs, including collection of the postage due from the addressee, could be substantially reduced by collecting a geographically uniform charge from the sender. This reform was implemented in January 1840 and postage stamps followed in May 1840.¹ The principle was extended to international mail with the formation of the Universal Postal Union in 1874.²
- There was a state monopoly in the provision of letter services (but not parcels and in some jurisdictions not to newspapers and similar printed matter). The origin of this monopoly lay in the need for the state to control communications, and censor them when necessary, rather than any economic reason.
- Provision of the service by the State, and the implementation of strict obligations on its employees to ensure the integrity of mails, including confidentiality for correspondence, gave customers an enhanced sense of security and trust that warranted exemption from legal proceedings for negligence, etc.
- Prices were still determined by weight, a metric warranted when letters were transported by messengers on horseback, but which gave rise to cross subsidisation of low weight high volume items by heavy but low volume items, once motorised transport became the norm.
- Prices were non-negotiable and were generally the same irrespective of the quantity posted.

The postal departments of governments also provided a number of other services on behalf of the state, including financial and social welfare services, telecommunications and even transportation (especially bus) services.

The European Communities were still emerging as a significant economic block (membership increased to 9 in 1973) and in 1977 adopted its 6th Directive to Member States concerning the harmonisation of Value Added Tax provisions. Article 13 sets out certain exemptions from the application of VAT and section A provided:

¹ France and Belgium introduced postage stamps in 1849 and over the next eight years most European States followed suite.

² In principle the UPU set a uniform tariff for surface mail to all countries, but a surcharge could be applied to reflect the specific extra costs of airmail. The UPU also specified the predominant colour of postage stamps, green for printed papers, red for national letters and blue for foreign letters, and some countries e.g. France, still follow this colour scheme.

Exemptions for certain activities in the public interest

1. *Without prejudice to other Community provisions, Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any possible evasion, avoidance or abuse:*

(a) *the supply by the **public postal services** of services other than passenger transport and telecommunications services, and the supply of goods incidental thereto; ...* [emphasis added]

In principle many postal services, at that time, would be outside the scope of VAT by virtue of Article 4(5) of the Sixth Council Directive:

States, regional and local government authorities and other bodies governed by public law shall not be considered taxable persons in respect of the activities or transactions in which they engage as public authorities, even where they collect dues, fees, contributions or payments in connection with these activities or transactions.

However, when they engage in such activities or transactions, they shall be considered taxable persons in respect of these activities or transactions where treatment as non-taxable persons would lead to significant distortions of competition.

The provisions of Article 13 A.1.(a) therefore reflected the trend to provide postal services through independent public bodies (statutory corporations)³ in competition with private law bodies (e.g. parcel delivery) and anticipated future trends for postal services to be provided by private law bodies. The ECJ addressed this characteristic of postal services on at least two occasions:

▪ **Case 107/84 *Commission v Germany* [1985] ECR 2655**

This case concerned a claim by Germany that supplies to the public postal services were also exempt. The following observations by the court are however particularly relevant with regard to the legal status of postal services:

11. *Although it is true that in some of the language versions the expression ' public postal services ' may be understood , when considered in isolation , as referring to all postal activities , the syntax of the whole phrase clearly shows that the words in fact refer to the actual organizations which engage in the supply of the services to be exempted . In order to be covered by the wording of the provision the services must therefore be performed by a body which may be described as ' the public postal service ' in the organic sense of that expression. That is not so, for example, in the case of a transport undertaking which, without coming into contact with the public, is merely responsible for long-distance transportation between two post offices.*

16. *Moreover , the exemption provided for by article 13 is still completely meaningful where a member state assigns postal activities to an organization which is not a body governed by public law. In this way the directive has specifically avoided influencing the manner in which the member states organize their postal systems. Postal activities are still exempted even if they are carried out by a licensed undertaking. The provision restricts the exemption solely to the supply of services by the postal authority, whether it is a body governed by public law or a licensed undertaking, to the exclusion of services provided for the postal authority by other undertakings.*

³ For example in Britain the Post Office was established as a statutory corporation in 1969.

▪ **Case C-320/91 Corbeau [1993] ECR I-2533**

This case drew a distinction between postal services which are provided in the (general) public interest and those that are provided to meet the special needs of economic operators.

19. *However, the exclusion of competition is not justified as regards specific services dissociable from the service of general interest which meet special needs of economic operators and which call for certain additional services not offered by the traditional postal service, such as collection from the senders' address, greater speed or reliability of distribution or the possibility of changing the destination in the course of transit, in so far as such specific services, by their nature and the conditions in which they are offered, such as the geographical area in which they are provided, do not compromise the economic equilibrium of the service of general economic interest performed by the holder of the exclusive right.*

1.2. Current status of postal services

During the last quarter of the 20th Century and the formative years of the current century postal services have undergone a tremendous transformation. Most important electronic communications, initially the telephone⁴ and more recently the internet and email, have replaced postal services for many types of communications and transactions. Traditional postal services have therefore, in many countries, assumed the role of an advertising medium (Direct Mail) competing with newspaper and television advertising and more recently the internet. The role of the postal parcels service in the distribution of goods and other physical things was overtaken by the emergence of the Express sector, organised on a global basis which recognised the need for faster and more secure services to complement the needs of the global economy. Increasingly the public postal services began to offer special rates and services to its most important customers (in economic terms).

These changes have been reflected in the legal status of the postal services.

- No longer are postal services provided directly by governments.⁵ The joint stock company has become the favoured form, albeit in most cases with the shares owned by the State.⁶
- In many countries, however, postal services continued to be provided under public law with non-negotiable prices and terms of conditions and in many instances those terms set out in legislation. The British government has proposed making provision for operators other than the State owned company 'Royal Mail' to provide their services in this way. In other countries, e.g. NL, postal services are now provided solely under the normal law of contract.
- Even where postal services are provided under public law the state owned company normally has the right to conclude individual contacts with large customers and this right is specifically recognised in the EC Postal Directive.⁷
- Services are now more tailored to the needs of customers and the prices are increasingly 'geared to cost' to eliminate cross subsidies. For example about half of EC countries now have tariffs based on format (volume) rather than weight and discounts (reduced prices) are offered for mail posted in large quantities, reflecting the costs that might be avoided in handling this type of mail.
- Geographically uniform prices continue to be the norm, even where not obliged. For example the German operator DHL offers an express parcel service in Switzerland at a geographically uniform rate of CHF 7.50 for the smallest size (volume) of box.
- The EC Postal Directives require Member States to guarantee a minimum range of postal services in the public interest – 'Universal Service'.

⁴ Although developed in the 19th Century, along with the telegraph, the telephone did not become ubiquitous in most households until around the last quarter of the 20th Century.

⁵ Cyprus is currently the only exception to this rule within the EC.

⁶ In three cases (NL, MT and DE) all or a majority of the shares are owned by private interests, and in two other cases (BE and AT) private interests hold a minority of the shares.

⁷ See Directive 97/67/EC Article 12, third indent.

1.3. Anomalies with regard to taxation

The emergence of economic providers of postal services outside the scope of the traditional postal services provided by the state, and the liberalisation of postal services as required by the EC Treaty, has led to some anomalies with regard to taxation.

- Many of the ‘incumbent’ state owned companies continue to be exempt from the application of VAT for all services that they supply. It is often argued that this gives them an unfair advantage over private sector competitors⁸.
- On the other hand operators in other Member States are now obliged to apply VAT to all postal services. Some argue that this suppresses demand for postal services given that most users of the post cannot reclaim the VAT as an input.⁹

In 2004 the European Commission proposed a new Directive¹⁰ specifically designed to remove these anomalies, but up to now it has not found sufficient support to ensure its adoption.¹¹

A recent decision of the ECJ has attempted to clarify the position - Case C-357/07 TNT Post UK Ltd v The Commissioners for Her Majesty’s Revenue and Customs [2007]. In this case the ECJ confirmed its 1985 decision that the VAT Directive specifically avoids influencing the manner in which the Member States organize their postal systems, so it does not matter who provides the services.

- *“Postal activities are still exempted even if they are carried out by a licensed undertaking.”* [1985]
- *“The concept of ‘public postal services’ ... must be interpreted to cover operators, whether they are public or private, who undertake to provide, in a Member State, all or part of the universal postal service, as defined in Article 3 of Directive 97/67/European Commission ... “* [2007]

On the other hand it confirms that the exemption only applies to services provided in the public interest, and it specifically excludes all services for which the terms have been individually negotiated.

“2. The exemption applies to the supply by the public postal services acting as such – that is, in their capacity as an operator who undertakes to provide all or part of the universal postal service in a Member State It does not apply to supplies of services or of goods incidental thereto for which the terms have been individually negotiated. “ [2007]

It is of course up to individual Member States to amend their national legislation as they see fit in the light of this decision.

It is absolutely clear that all services provided under individually negotiated contracts (i.e. normal private law contracts) cannot be exempted.

It is also clear that only postal services provided under public law – i.e. with non-negotiable tariffs and terms and conditions – can be exempted.

It is unclear whether, in the light of ECJ decision, a distinction should be made between services provided in the public interest under public law, and the universal service which EC Member States

⁸ On the other hand postal operators who are exempt from VAT are unable to reclaim input VAT and this puts them at a disadvantage when competing for the business of customers liable to VAT.

⁹ As well as private individuals, financial services companies, educational establishments, charities, government administrative bodies etc are important companies for postal services that cannot reclaim VAT.

¹⁰ COM (2004) 468 final.

¹¹ Directives concerning matters of taxation require unanimous support from all EC Member States.

are required to ensure are provided to their citizens (see in particular paragraphs 32-36 of the judgment):

“36..., who undertake to supply postal services which meet the essential needs of the population and therefore, in practice, to provide all or part of the universal postal service in a Member State, as defined in Article 3 of Directive 97/67. “ [2007]

This question is further compounded by the wide divergence in the scope of universal service in different Member States, ranging from a very limited range of services for consumers to virtually every service provided by a designed ‘universal service provider’¹². This divergence is discussed further in Chapter 2.

Logically it would seem that the concepts of ‘public law provision’ and ‘universal service’ while related are not substitutes for one another. Services can be provided under public law but not within the scope of universal service, while services might be within the scope of universal service but provided under private contract law. It would seem sensible for the two criteria to be met before services are exempt from VAT.

A European Commission recommendation about this would allow Member States to comply with the obligation to guarantee a minimum range of universal services, while independently deciding whether these should be provided under public law (and therefore be VAT exempt) or under private law (and therefore liable to VAT).

¹² See the Advocate General’s Opinion of 15 January 2009, especially Paragraph 88.[0]

Chapter 2 - Scope of the universal service

2.1. Introduction

A universal postal service provides important benefits for society. It allows citizens, charities, public services and businesses to communicate easily and affordably. Despite the increased importance of the internet and email, a universal postal service continues to provide an element of social cohesion at the local, regional and national level and also between European Union's (EU) Member States. For example, a universal postal service allows or facilitates:

- personal communication between individuals,
- Government at a local, regional and national level to communicate with all its citizens,
- community groups to communicate and organise local events,
- charities to raise awareness and funding,
- customers to receive goods that might otherwise be unobtainable due to factors such as the distance to the retailer, and
- small businesses, especially in rural areas, to distribute their products to addressees wherever they may be.¹³

Universal postal service should be as easy as possible for customers to understand. It can also make commercial sense for operators who see this service as a unique selling point.

A universal postal service is important as it ensures that citizens and businesses, and in particular individual customers and small and medium sized enterprises (SMEs), that have a limited or no choice of postal provider, have an easy access to postal services at an affordable price.

2.2. Legal context for the scope of universal service

2.2.1. European Postal Services Directive

At Community level the universal postal service is conceived as a right of access to a certain range of services (products) of a certain quality to be provided throughout the territory of a Member State at affordable prices. From the customer's perspective an important aspect of the universal service is also security and reliability.

The European Postal Services Directive 97/67/EC as amended by Directive 39/2002/EC and Directive 2008/6/EC (collectively referred to hereafter as "the Directive") puts responsibility on Member States to provide a universal service because it recognises the importance of the postal sector to "the economic and social cohesion of the Community" and that postal services are "an essential instrument of communication and trade".

It sets out the minimum legal requirements of a universal postal service. Member States (subject to certain exceptions) must ensure the provision of a universal service comprising at least:

- one collection from appropriate access points,
- one delivery to all addresses or to appropriate installations,
- every working day service and not less than five working days a week¹⁴.

¹³ The passage above is excerpted from Postcomm's second submission to the independent review of the postal services sector available under link: http://www.psc.gov.uk/postcomm/live/independent-review/Postcomm_Second_submission_to_the_Independent_review.pdf.

¹⁴ Directive 2008/6/EC provides new wording: "at least five working days a week".

By the type of activity universal service includes clearance, sorting, transport and distribution of postal items.

The Directive also determines a minimum of postal products/services:

- postal items up to 2 kilograms,
- postal parcels up to 10 kilograms,
- services for registered and insured items.

The national regulatory authorities (NRAs) may increase the weight limit for postal parcels to any weight not exceeding 20 kilograms.

The universal service should cover both national and cross-border services. The Directive specifically requires Member States to ensure that inbound postal packets up to 20 kg received from other Member States are delivered.

On the other hand the Directive¹⁵ provides that “new services (services quite distinct from conventional services) and document exchange may not form part of the universal service”.

Recital 37 to Directive 2008/6/EC explains that “*given the importance of postal services for blind and partially-sighted persons, it is appropriate to confirm that the opening of the market should not prevent the continuing provision by the universal service provider(s) of certain free services for blind and partially-sighted persons introduced by the Member States in accordance with applicable international obligations.*” Usually those services are a part of the universal service.

The universal service is not seen as a static concept in which services and activities are set in stone. It is worth recognising the importance of the Directive¹⁶ which requires a universal service to “evolve in response to the technical, economic and social environment and to the needs of users”. So, the MS should take into account these circumstances when defining the universal service at national level.

In particular, the scope of the universal service should be regularly adjusted to take account of market developments. The decisive factors to be considered are, first of all, the already mentioned customers’ needs, changes in postal technology, development of e-commerce and other forms of communication and finally the ability of any universal service provider to continue to provide it under economic equilibrium or to offer substitutes/similar services to the universal service by competitors.

Directive 39/2002/EC (“the Second Directive”) continues to focus on liberalisation by further reducing the scope of the reserved area, leaving the issue of the scope of universal service basically untouched.

Except for the end of the reserved area the scope of the universal service in Directive 2008/6/EC (“the Third Directive”) does not change very much in this respect. There is only a slight difference of the term “postal package” that is replaced by the “postal parcel”¹⁷.

The Third Directive envisages the provision of a universal service without the need for the reserved area, but it confirms the existing requirements:

- provision of high quality service,
- at least five times a week delivery,
- delivery throughout the entire territory, and
- price affordability.

¹⁵ See Directive 97/67/EC Recital 21.

¹⁶ See Directive 97/67/EC Article 5 paragraph 1.

¹⁷ See Article 3 paragraph 5 of the mentioned Directive.

In addition, certain free services for blind and partially sighted persons should be continued.

A vital reference to the scope of universal service is provided in the latest already mentioned in a different context opinion of Advocate General on VAT in the postal sector¹⁸. She describes the universal service as any service provided under an obligation to both sender and addressee and subject to a non-negotiable fee to be paid by one or other party. It is up to Member States to determine what these services should be, within the limits set out in the Postal Directive.

According to the paragraph 89 of the said opinion “... only those services of a public postal service which that service also provides as such, that is, the universal services provided in the public interest, are exempt from VAT in accordance with Article 13A(1)(a) of the Sixth Directive. By contrast, those services which are provided on individually negotiated terms and are not subject to the requirements of the universal service are not exempt.”

In particular, the Advocate General recognises that the universal service should encompass all transactional mail posted by businesses under the general tariffs, irrespectively of the quantity¹⁹.

2.2.2. UPU reference

Another legal requirement is laid down by Universal Postal Union (UPU) which obliges its member countries to ensure that “all users/customers enjoy the right to a universal postal service involving the permanent provision of quality basic postal services at all points in their territory, at affordable prices”. Basic postal services in the meaning of UPU rules include the acceptance, handling, conveyance and delivery of letter-post items which are:

- priority items and non-priority items up to 2 kg,
- letters, postcards, printed papers and small packets up to 2 kg,
- literature for the blind up to 7 kg,
- special bags containing newspapers, periodicals, books and similar printed documentation for the same addressee at the same address called “M bags” up to 30kg, and
- postal parcels up to 20 kg.

It is up to member countries to decide how best to fulfil the universal service. However, they are encouraged to determine the universal service for postal items within the framework of their national legislation bearing in mind the scope of the postal services already being offered.

2.3. Historical background

The present concept of universal service in the European Union takes into account some historical aspects of its provision. The universal service is often thought of as protecting social customers in terms of their right to communicate in an affordable and easily accessible way. This understanding has developed as state monopolies have evolved over time towards gradually liberalised markets.

As a consequence, postal services have changed across countries, reflecting the practices of the national postal operators.

For instance, some countries requiring a 5 day delivery instead of a 6 day delivery service already did so before transposing the Directive. The weight limits for parcel services (10 and 20 kg) are another example of preserved practices.

This diversity also refers to the EU tradition of subsidiarity. Although the universal service is defined at Community level, the implementation of its principles is left to the Member States, allowing different traditions and specific national and regional circumstances to be respected.

¹⁸ Opinion of Advocate General Kokott delivered on 15 January 2009 Case C-357/07.

¹⁹ See paragraph 87 of the mentioned Opinion.

This statement inevitably leads us to the question of the detailed composition of universal service across Europe beyond regular letter mail and parcel mail.

Analysing the European markets it is not difficult to find out that the scope of the universal service deeply varies between Member States - from a narrow, very limited range that encompasses basic letter post and parcel post to a wide one comprising of various postal products – see a table below.²⁰

	Basic letter post	Bulk letters	Direct mail	Periodicals	Non-priority letter post	Basic parcel post	Bulk parcels
AT	Yes					Yes	
BE	Yes	Yes	Yes	Yes	Yes	Yes	Yes
BG	Yes			Yes	Yes	Yes	
CY	Yes	Yes	No	Yes	No	Yes	No
CZ	Yes			No	No	Yes	
DE	Yes			Yes	No	Yes	
DK	Yes	Yes	No	No	Yes	Yes	Yes
EE	Yes	No	No	Yes	No	Yes	No
EL	Yes	Yes			Yes	Yes	
ES	Yes	Yes	No	No	No	Yes	No
FI	Yes	No	No	No	Yes	Yes	No
FR	Yes	Yes	Yes	Yes	Yes	Yes	No
HU	Yes	Yes	Yes	Yes	Yes	Yes	Yes
IE	Yes	Yes	Yes	No	No	Yes	No
IT	Yes	Yes	Yes	Yes	No	Yes	No
LT	Yes	Yes	??	Yes	Yes	Yes	
LU	Yes	No	No	No		Yes	No
LV	Yes	Yes	No	No	Yes	Yes	No
MT	Yes	No	Yes	Yes	No	Yes	No
NL	Yes	No	No	No	No	Yes	No
PL	Yes	No	No	No	Yes	Yes	No
PT	Yes	Yes	Yes	Yes	Yes	Yes	Yes
RO	Yes	No	No	No	Yes	Yes	No
SE	Yes	No	No	No	Yes	Yes	No
SI	Yes	Yes	No	Yes	No	Yes	No
SK	Yes	Yes	Yes	No	Yes	Yes	No
UK	Yes	Yes	Yes	No	Yes	Yes	Yes
IS	Yes	Yes	Yes	Yes	No	Yes	No
NO	Yes	No	No	No	Yes	Yes	No

Key to shading: light gray (red) = ensured as a universal service; medium gray (light green) = not confirmed as an ensured universal service by NRA; dark gray (dark green) = not ensured as a universal service.

It should be noted that the above table reflects the current position where there is still a ‘reserved area’ in most Member States. Once the ‘reserved area’ is removed there will no longer be a need to oblige certain services to be provided because other operators will be allowed to provide them, and Member States may decide to reconsider the scope of the services that should be obliged.

Even though there is no explicit obligation to provide certain services, such as bulk mail, this does not necessarily imply excluding these services from the scope of universal services or from price control.

²⁰ “The role of regulators in a more competitive postal market”, WIK-Consult Final Report for the EC, Bad Honnef, September 2009.

2.4. Express/courier services

The European Express Association claims that Express services should not be treated as postal services. This is not consistent with European Law. Postal services are defined by the Postal Directive as “services involving the clearance, sorting, transport and distribution of postal items”²¹. While the European Commission’s Communication COM (2007) 695 final, 9.11.2007, confirms “*that in accordance with Recital 18 of Directive 97/67/EC and the consistent case law of the European Court of Justice (e.g. Case C-320/91 {Corbeau}), express and courier services constitute specific [postal] services that are characterised by being essentially different from universal services.*” Recital 18 of Directive 97/67/EC declares that “*...the essential difference between express mail and universal postal services lies in the value added (whatever form it takes) provided by express services and perceived by customers, [and that] the most effective way of determining the extra value perceived is to consider the extra price that customers are prepared to pay ...*”

The position therefore is that express and courier services cannot be included within the scope of universal service but nevertheless they must be subjected to the same obligations as providers of postal services generally including authorisation / registration, complaints procedures / out of court settlement schemes and the obligation to submit information for statistical / market monitoring purposes.

Meanwhile, the European Communities proposal on classification of postal and courier services presented under the GATS negotiations suggested defining postal/courier services as “services related to the handling of postal items”²². So far, there is no intention to split courier services from the postal business.

2.5. Direct Mail

The Directive defined direct mail as “a communication consisting solely of advertising, marketing or publicity material and comprising an identical message, except for the addressee’s name, address and identifying number ... which is sent to significant number of addresses, to be conveyed and delivered at the address indicated by the sender on the item itself or on its wrapping”.

It is clear that bills, invoices, financial statements (transactional mail) and other non-identical messages are not regarded as direct mail.

The Directive gave Member States some freedom – allowing them, on an interim basis, for direct mail “to continue to be capable of reservation within the price and weight limits provided”²³. Now, as the liberalisation process is advancing, it is rather a question of including or excluding direct mail from the scope of universal service.

Nevertheless, with a few exceptions, direct mail is still part of the universal service in most Member States.

It is expected that unlike correspondence and transaction mail segments of the postal market, direct mail will continue to grow. This is because direct mail can profit from new communication technologies, whereas this can be a substantial constraint in case of traditional letter mail and transaction mail, as the increasing use of e-banking and electronic bills reduces mail volumes. The link between direct mail (advertising mail) and business may, however, induce some countries to drop the idea of direct mail belonging to the universal service.

The relation of direct mail to the business has been pointed out in the already mentioned Advocate General’s opinion of 15 January 2009 on VAT. In paragraph 88 she argues:

²¹ See Directive 97/67/EC Article 2 paragraph 1 as amended by Directive 2008/6/EC.

²² Communication from the European Communities and their Member States, GATS 2000: Postal/Courier services, WTO Document S/CSS/W/61 of 23 March 2001.

²³ See Directive 97/67/EC Recital 19.

.... This could be excluded from the exemption despite the application of a universal postal tariff, since, in the case of these items, the commercial interest in advertising for the sender's products or services predominates. In the end, however, it is for Member States to decide how, in this case, they weight private and public interests. The interest of the undertakings competing with the universal service provider in obtaining access on equal terms to this lucrative market segment must also be taken into account in this context.

For this reason direct mail within the meaning of Article 2(8) of the First Directive²⁴ could be excluded from the VAT exemption, provided the terms for them have been individually negotiated.

2.6. Postal parcels

According to the Directive postal parcels are understood as a sort of postal items (in addition to items of correspondence, books, catalogues, newspapers etc.) that contain merchandise with or without commercial value.

As far as physical features of postal parcels are concerned the Directive refers to the relevant provisions adopted by the Universal Postal Union. Basically, the Directive indicates that domestic postal parcels up to 10 kg and cross-border parcels up to 20 kg should be a part of the universal service. It is a minimum requirement in terms of the product that includes clearance, sorting and distribution.

According to the most recent 'Main Developments' report for the European Commission²⁵ nineteen countries have broadened the scope of universal service to include domestic postal parcels exceeding 10 kg to the universal service. Two countries, out of these 19, have set the weight limit for domestic parcels at 15 kg, while the other countries have set the weight limit for domestic parcels under the universal service at 20 kg.

In case of cross-border traffic, four countries established weight limits that differ from the Directive. One of them is Finland which included outbound cross-border mail up to 30 kg in the universal service. Three other countries – Spain, Luxembourg and Lithuania have reduced the universal services for cross-border mail to 10 kg.

Postal parcels can be considered as a slightly growing market segment due to the intensive use of internet by customers. Electronic communication stimulates parcels volumes as on-line sales companies rely on postal operators to deliver their products. Parcels services are being increasingly combined with logistics services – the postal operators expand their services taking responsibility for storage and forwarding the parcels.

The main user groups of postal parcels services are the sub-segment B2C (business to consumer) and B2B (business to business).

2.7. Bulk mail

Most Member States do not distinguish between single piece mail and bulk mail. Some of them (the Netherlands and Great Britain) have excluded (entirely or partly) bulk mail from the scope of the universal service.

The question of bulk mail raises some questions – whether to include this mail in the scope of the universal service or not. The ongoing debate across Europe indicates that competitive products do not need to be contained in the universal service obligation because the market offers other options.

²⁴ Art 2(8) was deleted by Directive 2008/6.

²⁵ Ecorys study on Main developments in the postal sector (2006 -2008).

There is an argument that bulk mail as a product for large customers does not have to be under protection of universal service. On the other hand, the segment of single-piece mail sent by individual consumers and small businesses does not seem to be of interest to postal operators, at least to the same extent. This could be in some cases regarded as a reason to exclude bulk mail from the scope of the universal service.

If the price and other terms and conditions for bulk mail are individually negotiated between the service provider and the sender the service cannot be exempted from VAT and should not in principle be regarded as part of the universal service.

2.8. Conclusion

The Directive imposes on Member States the obligation to “fully maintain the universal service” giving flexibility how to “adapt some specific features to accommodate local demand”, along with the associated quality requirements. That is why the scope of the universal service considerably varies from country to country. The national postal markets are specific and sometimes unique, although based on the same concept.

Under these circumstances it is impossible to recommend any uniform, model scope of universal service that would come up to expectations of all users.

Thus, the regulatory task of the Member State is rather to find the right market solution for the universal service, ensuring proper balance between guarantee of the provision of the universal service, on the one hand, and reducing unjustified barriers for the development of the competitive environment, on the other.

There is a general tendency to observe a systematic shrinking of the universal service in the postal sector to reflect a range of products where there is currently limited market competition. In these cases only the minimum legal requirements of the Directive are met.

At the same time the USPs would be likely to choose to provide many universal services as a matter of commercial interest, even if they were not obliged to do so.

Some services would need to continue to be price controlled until specific barriers to entry are removed (for example metered mail in Great Britain – in particular issues connected to the provision of franking machines).

The universal service is changing and it must be able to change over time in relation to what customers want, taking into account market and technology changes, in order to survive.

In determining what should constitute a universal service it is necessary first to identify which services should be regarded as a postal service at all. An important point is to distinguish between the transport and postal services as the Directive underlines that “transport alone should not be considered as a postal service”²⁶.

The next step is to determine whether certain postal service should be viewed as a universal service. There are a number of characteristics which could be used to differentiate one kind of postal service from another. Those features are first of all speed and mode of delivery (value added postal services), intended use and the pricing matters.

It seems reasonable that any debate and decision about the future of the universal service must be informed by the best available evidence. Such evidence should include the identification of the needs of postal users (methods discussed in Chapter 5), the costs of providing the current universal service and the impact of any changes on customers, the USP(s) and the mail industry.

²⁶ See Directive 2008/6/EC Recital 17.

In addition, it will be necessary to regularly review the universal service to examine which services users expect to be part of the universal service.

Any proposal to change the scope of the universal service should be subject to regulatory assessment on whether the suggested change is consistent with the legal requirements at the European and national level. The proposals should be also assessed against goals which will deliver the following:

- a secured universal service,
- improved incentives to the universal service provider(s) becoming more efficient,
- competition which brings choice and value to users, and
- over time, a reduced regulatory burden.

However, a basic guiding principle to follow, while determining the scope of the universal service, would be still to reflect the needs of postal users.

Chapter 3 - Implications & Implementation Issues

3.1. Introduction

This chapter discusses certain issues that arise with regard to the provision of universal service:

- uniform tariffs,
- delivery obligation,
- accessibility to the universal service,
- interoperability.

Each subsection will give: (a) a general overview of the subject in the light of the Third Directive; (b) a European overview of the status quo; and (c) conclusions and recommendations.

3.2. Uniform Tariffs

Uniform tariffs are a very common feature for pricing postal items, especially for universal services. Through the process of liberalisation of the postal services market in the European Union - initiated by the Postal Directives - competition in this sector started to grow. Liberalisation of postal markets has already led to direct competition in some countries. Additionally postal operators are also faced by indirect competition through the substitution of letter mail by electronic media like e-mails. The introduction of price differentiation may allow operators to react to such developments and gain competitive advantages in order to face the growing competition.

The regulatory framework in the European Union leaves the decision of requiring uniform tariffs to the Member States. This section gives an overview of the regulatory framework in the European Union and the international status quo and aims to focus on some issues Member States may consider if a decision has to be taken on whether or not to require uniform tariffs.

3.2.1. Legal Framework in the European Union

Article 12 of the Third Directive provides that:

“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,”

Accordingly, Member States are to decide, whenever necessary for reasons relating to the public interest, 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, but without preventing operators from offering discounts or from negotiating individual contracts with their customers.

Recital 38 of the Third Directive clarifies that imposing uniform tariffs should be avoided wherever unnecessary and that uniform tariff requirements should not be required for all postal services, but only for those of public interest:

“In a fully competitive environment, it is important, both for the financial equilibrium of the universal service as well as for limiting market distortions, that the principle that prices reflect normal commercial conditions and costs is only departed from in order to protect public interests. This objective should be achieved by continuing to allow Member States to maintain uniform tariffs for single piece tariff mail, the service most frequently used by consumers, including small and medium-sized enterprises. Member States may also maintain uniform tariffs for some other mail items, such as, for example, newspapers and books, to protect general public interests, such as access to culture, ensuring participation in a democratic society (freedom of press) or regional and social cohesion.”

It should be noted however that many operators will decide to offer uniform tariffs without being obliged to do so. This is because there are significant transactional costs associated with non-uniform tariffs. Also in many member states uniform tariffs will be necessary to comply with the ‘cost orientation’ principle²⁷.

As in the Postal Directive the term “uniform tariffs” is not defined and therefore can be interpreted in different ways. WIK-Consult explained the term as follows:

“Uniform tariffs refer to a postage rate that, for a given class of service, does not vary according to the origin or destination even though it may vary according to the weight or size or other characteristic of the article transported.”²⁸

This is also the interpretation of most of the countries answering a questionnaire set by the Project Team Universal Services. An overview of the answers to the questionnaire will be given in the following sub-section. Further analysis of how the term “uniform tariffs” is interpreted and which kind of postal items might be factually offered at uniform prices are also described in the next part.

3.2.2. International overview of status quo

Uniform tariffs are required in the national Postal Acts in 23 out of the 27 countries²⁹ that answered the questionnaire. Although Latvia and Slovakia do not have specific requirements in their national law uniform tariffs are required by decisions of the NRAs.

Table 1: Uniform Tariff Requirements

Does your national Postal Act require Uniform tariffs?		
yes	23	AT, BE, CH, DK, EE, ES, FR, GB, GR, LT, LU, MK, MT, NO, PL, PT, RO, RS, SE, SI, TR, LV, ³⁰ SK ³¹
no	4	CZ, DE, HU, IE

However, the definition of uniform tariffs strongly differs among the countries. In three countries uniform tariffs have to be applied only to postal items up to 50 g (reserved area). Yet the majority of the countries answering the questionnaire have a uniform tariff requirement for all universal postal services. Countries also differentiate between single piece items and bulk mail. Twelve countries have a uniform tariff for both. Eight countries are less restrictive and the requirement is only applicable for single piece items. Except for Turkey, in all of the countries the postal operators have to apply the same tariff for a certain postal item irrespective of the destination within the country, so nationwide uniform tariffs are required, as shown in Table 2 below.

Table 2: Application of uniform tariffs to postal items

²⁷ Published studies in Britain and the USA suggest that high cost areas are principally in urban areas, although in France it is rural areas that appear to be the most costly to deliver. In all cases it is only a small proportion of deliveries that cost significantly more than the average.
²⁸ “The Evolution of the Regulatory Model for European Postal Services”, WIK-Consult, 2005.
²⁹ 27 countries (AT, CH, CZ, DE, DK, EE, EL, ES, FR, HU, IE, LT, LU, LV, MA, MT, NO, PL, PT, RO, RS, SE, SK, SI, TR) answered to the questionnaire.
³⁰ NRA decisions which require uniform tariffs.
³¹ NRA decisions which require uniform tariffs.

Uniform tariffs have to be applied to...		
postal items up to 50g (reserved area)	3	CH, ³² LU, NO
all universal services	20	AT, BE, DK, EE, ES, FR, GB, GR, LT, LV, MK, MT, PL, PT, RO, RS, SE, SK, SI, TR
single items only	8	DK, FR, LU, MK, RS, SE, SK, SI
single items and bulk mail	14	AT, BE, EE, ES, GB, GR, LT, LV, MT, NO, PL, PT, RO, TR
nationwide	20	AT, BE, CH, EE, EL, ES, FR, GB, LU, LV, MK, MT, NO, PL, PT, ³³ RO, RS, SE, SK, SI

With the exception of Estonia and Turkey, the uniform tariff requirement is only obligatory for the Universal Service Provider (USP). This is because either the USP is the only active postal operator (which is the case in most of the countries), or because the requirement is only applicable for postal items up to 50 g (reserved area), for which most of the European incumbents still have the exclusive right, see Table 3 below.

Table 3: Which operators are obliged to offer uniform tariffs?

Uniform tariff requirement is applicable for...		
Universal Service Provider	21	AT, BE, CH, DK, ES, FR, GB, GR, LT, LU, LV, MK, MT, NO, PL, PT, RO, RS, SE, SK, SI
All postal operators	2	EE, TR

The questionnaire also asked if national postal legislation allowed postal operators to have individual agreements with its customers, as it is set out in Art 12 of the Third Directive. Most of the countries answered that they do not allow any exceptions. In a few countries operators are allowed to make individual agreements as long as the tariffs meet the other requirements of the Directive, which are: cost-orientation, transparency, affordability and non-discrimination.

Some countries (AT, EL, ES, LT, LU, MK, NO, PL, PT) require, that their operators have to either publish individual agreements (or at least the criteria for those) or to inform their NRAs about such agreements.

Table 4: Application of uniform tariffs for cross-border mail

Are uniform tariffs required for cross-border mail?		
yes	8	BE, EE, GB, LU, ³⁴ PT, RO, RS, TR
no	15	AT, CH, DK, ES, FR, GR, HU, IE, LT, LV, MK, PL, SE, SI, ³⁵ SK ³⁶

³² Outside the reserved area, uniform tariffs are in place without a legal requirement.

³³ Uniform tariffs have not to be applied to parcels. Prices for parcels can differ between the geographical areas.

³⁴ Only for EU Member States.

³⁵ Not required, but exist for cross-border mail within the Universal Service.

³⁶ Not required, but used.

One of the last questions was, whether the uniform tariff requirement is also applicable to cross-border postal items. The majority of the countries do not have such requirements in their national Postal Acts. But still in seven European countries postal operators have to apply a uniform tariff to postal items sent to cross-border addresses.

3.2.3. Highlighting the Pros and Cons

Uniform Tariffs have been a feature of postal services since the postal reforms of the 19th Century. As noted in Chapter 1 contrary to popular opinion, this was not a political decision, but based on economic analysis. Rowland Hill of Britain demonstrated that the transactional costs associated with distance based tariffs, separate charges for transportation and delivery, and administrative costs, including collection of the postage due from the addressee, could be substantially reduced by collecting a geographically uniform charge from the sender. The principle was extended to international mail with the formation of the Universal Postal Union in 1874.

This is still the case. Published studies in Great Britain and the USA suggest that while there is some variation in delivery cost it is only a small proportion of deliveries that cost significantly more than the average. Furthermore the high cost areas are principally in urban areas, although in France it is rural areas that appear to be the most costly to deliver. Even where the underlying costs might warrant a departure from uniform pricing the transactional costs associated with charging costs based on high cost and low cost areas will be high both for the operator and the customer

There are a number of legal considerations:

- Under the Third Postal Directive (Article 12) it is permissible to require uniform tariffs only for single piece items and other postal items. As regards the latter, recital 38 indicates that *“Member States may also maintain uniform tariffs for some other mail items, such as, for example newspapers and books to protect general public’s interests, such as access to culture, ensuring participation in a democratic society (freedom of press) or regional and social cohesion.”*
- On the other hand under the Third Postal Directive (Article 14) tariffs for universal services must be cost-oriented, so non-uniform tariffs can only be implemented if they can be justified by the underlying costs.
- In the latter regard the definition of any zones for non-uniform tariffs becomes crucial as a number of cases before the Swedish Competition Authority have established.

In summary therefore the benefits of uniform pricing might seem to be:

- They are easy to understand
- Transaction costs are minimised
- They are by no means unique to the postal industry – many products are advertised at a single ‘national’ price
- They have been the norm for so long
- They avoid problems with regard to setting zonal tariffs, in particular the difficult of defining zones so that there is cost orientation³⁷

The disadvantages of uniform prices are two-fold:

³⁷ For example, a two zone system comprising Capital City and other areas might result in cost differences within zones being greater than differences between zones.

- First, where an operator may wish to discriminate between customers in two different areas. For example the volume of mail he processes in a particular area may be below the national average, and by reducing his price he might be able to reverse this trend.
- Second, if those cases where it is established there are significant cost differentials between zones competition may emerge in the low cost zone and be discouraged in the high cost zone.

Mandating Uniform Pricing as part of a Universal Service Obligation may be unnecessary. As noted in Chapter 1 uniform pricing is the norm even when not obliged, e.g. the German operator DHL offers an express parcel service in Switzerland at a geographically uniform rate of CHF 7.50 for the smallest size (volume) of box. It would be preferable to deal with any proposals to depart from the Uniform Pricing by investigating whether the proposal complied with the ‘cost orientation’ principle and in particular that cost variations within the proposed zones did not exceed those between zones³⁸.

3.2.4. Conclusions

Article 12 of the Third Directive allows a Member State to require that prices for postal items have to be applied uniformly throughout the national territory. Almost all of the countries, that answered the questionnaire, require uniform prices for all universal services. Some countries limit the requirement to non-bulk mail or only to reserved services (postal items up to 50 g). To conclude, it can be noticed that countries with (partly) liberalised postal markets have less restrictive requirements concerning uniform tariffs.

Price differentiation should at least be allowed for bulk mail as incumbents are more flexible and can react on market entry. However, the scope of price setting for the former monopolists without an obligation for uniform tariffs is still limited by other requirements set out in the Third Directive like non-discrimination, cost orientation, affordability and transparency.

Nevertheless, it might still be appropriate for some countries to maintain uniform tariffs for single piece letters for consumer protection reasons in order to ensure equal opportunities for every individual consumer to consume the services within the scope of the USO irrespective of the distance or the area in which he lives.

3.3. Delivery Obligation

The Universal Service guarantees one clearance and delivery every working day, in urban and rural areas. Concerning delivery the Directive is very clear (Article 3), in saying that:

“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:

- one clearance,

- 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.’

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.”

According to some studies (CTcon³⁹, WIK⁴⁰, European Commission⁴¹) one can establish that exceptions from delivery are common in the majority of European countries.

³⁸ See ComReg document 02/94 especially section 6.2.

³⁹ Study on the conditions governing access to universal postal services and networks (Final report CTcon; July 2001).

However, how countries deal with this problem varies. In some countries a user has to receive mail in the post office (at the counter, from a PO Box or using the service of Poste Restante).

On the other hand, in some other countries the postal service provider doesn't deliver mail every single day to every address (exceptions are islands, mountains...), and there are countries where the postman delivers mail to detached mailboxes (different name in different countries⁴²).

Following a study carried out by the CERP Project Team Universal Service, on how European countries interpret this obligation on the Members States (no more USPs), this section will give an overview of the responses received on this issue which has been divided in the following areas:

1. Frequency of the delivery
2. Exceptions from the delivery
3. Legal regulations.

3.3.1. Frequency of Delivery

In most of the cases the USP provides a five day delivery, but there are ten countries (CH, DE, GB, TR, NO, MT, LV, FR, DK and BE⁴³) where the delivery is done even 6 days a week in all the territory of the country, except for Turkey, where this kind of service is performed only in large cities.

Among all the countries that answered the questionnaire only Latvia stated that the USP delivers mail more than once per day in all the territory of the country. In Estonia this service is available only in urban areas and in Poland, this is an operational decision of local managers, and is used for example in the case of mail congestion.

There are nine countries where the regulator noticed differences in delivery in urban and rural areas. In Romania there is the possibility for the USP to assure a shorter working program in the areas where postal traffic is very small. A similar system is used in Serbia where in a large part of the countryside the USP is obliged to deliver mail just two times a week, similarly as in Macedonia where the frequency is set to three times or once a week.

In Turkey six days delivery is done only in urban areas, the same case as in Estonia.

In Slovakia the parcels are delivered to the households in cities and in the rural areas only if the postman has a car. Currently, more than half of the rural areas are without motorized delivery and parcels are therefore delivered to the post offices.

In Sweden there are just few exceptions concerning delivery for users living in remote rural areas.

In Poland delivery in rural areas is often done via detached mailboxes, similarly as in Spain where in general there are no differences in delivery in urban and rural areas. It is only in environments, where the population is largely scattered and houses are at a certain distance from the main road, that the delivery is secured via detached mailboxes. This kind of service is also used in many other countries.

3.3.2. Exceptions from the delivery

3.3.2.1. General

Among all the countries that answered the questionnaire only eight have no exceptions from the daily delivery obligation⁴⁴.

⁴⁰ The Evolution of the Regulatory Model for European Postal Services - Frequency of universal service (Report WIK; July 2005).

⁴¹ Report on the exceptions and derogations to the quality standards and the universal service in Member States (European Commission – DG Internal Market – Postal services; November 2005).

⁴² Kerbside delivery; End of the road delivery point; Roadside box; etc.

⁴³ In Belgium the USP delivers newspapers 6 days per week.

In countries where they have data on exceptions, the percentages are being presented in **Figure 1** below.

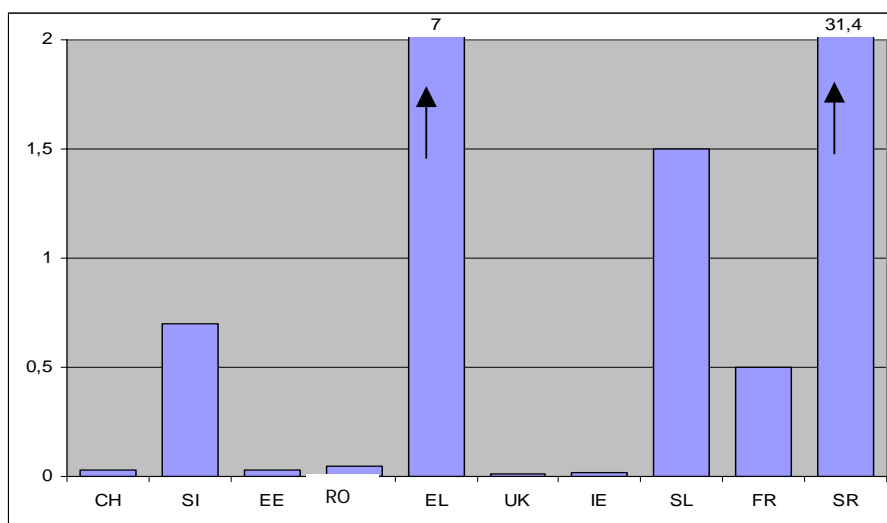


Figure 1: Exceptions from the delivery in 10 European countries (%)

An extremely high percentage of the population which is currently being serviced with alternative ways of delivery is Serbia, where the USP in many of these cases delivers mail less than 5 days a week. A significant percentage is noticed also in the case of Greece (7 %), surprisingly not regarding delivery of mail on islands, but in sparsely populated or mountainous areas.

Norway stated that the number of addressees affected by alternative ways of delivery is due to the following reasons:

1. **Extraordinary circumstances:** 1,119 addressees in 2008 (this is related to 89 cases where there has not been delivery for more than 3 days),
2. **Special geographic conditions:** 695 households and 30 undertakings had their mail delivered on 5 days or less per week in 2008.

Among all the countries that stated a percentage or number of exceptions one can also include Austria, since there is a portion of population affected with the delivery via detached mailboxes. The number of detached mailboxes is fixed, so new ones can only be installed with the agreement between the USP and users of postal services.

In Sweden there are just a few exceptions from delivery, for people living in remote rural areas who receive mail via detached mailboxes less than 5 days a week.

In Poland the USP has the right to install detached mailboxes in rural areas and areas with sparsely distributed buildings. These can be set individually or as a group. The number is unknown to the NRA, but the estimated number could be high, since one third of the Polish population lives in villages or small towns.

The rest of the countries that mentioned exceptions from delivery did not have any data on the number or percentage of addressees affected by alternative ways of delivery.

The alternative way of delivery through PO boxes⁴⁵ is of course known in all countries, while delivery via detached mail boxes in eighteen of them. Eleven countries answered that their USP delivers mail

⁴⁴ Some countries stated that they are aware of alternative way of delivery in their country but anyway in the questionnaire marked that they have no exceptions from the daily delivery.

⁴⁵ Also »Poste restante«

in exceptional circumstances less than 5 days a week, and six USPs offer users the possibility to receive mail at the post office counter (not via PO box).

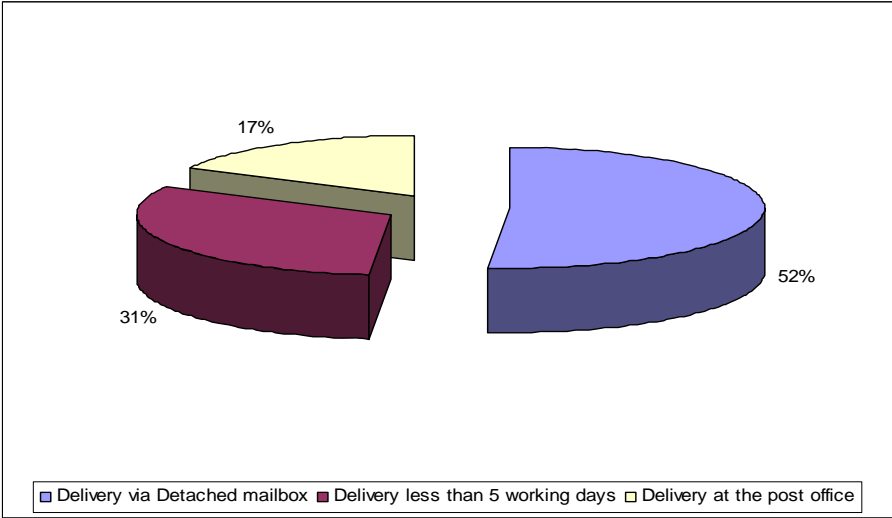


Figure 2: Alternative ways of delivery in 27 European countries (%)

There are countries where delivery via a detached mailbox is just one way of providing a customer with their mail in the event of an exception to delivery, but previously mentioned arrangements are also in place. Also, customers that have a six day delivery arrangement sometimes choose to have their mail delivered to detached mailboxes, even though that is not treated as an exception.

3.3.2.2. Delivery via detached mailboxes

With the exception of Greece, Hungary, France and Denmark delivery via detached mail boxes is arranged in an agreement between the USP and users of postal services. In six countries the USP does not inform the NRA about any exceptions from the daily delivery obligation.

In the majority of cases, detached mailboxes are installed because the delivery points are located in sparsely populated areas. However, in some other countries (Czech Republic, Denmark, Great Britain, Norway, Slovakia, Spain and Slovenia) health and safety reasons relating to the person delivering the mail are also mentioned.

Mountainous territory is a reason for installation of detached mailboxes in 19 % of the countries which answered to the questionnaire, while delivery in islands is the reason mentioned in two countries.

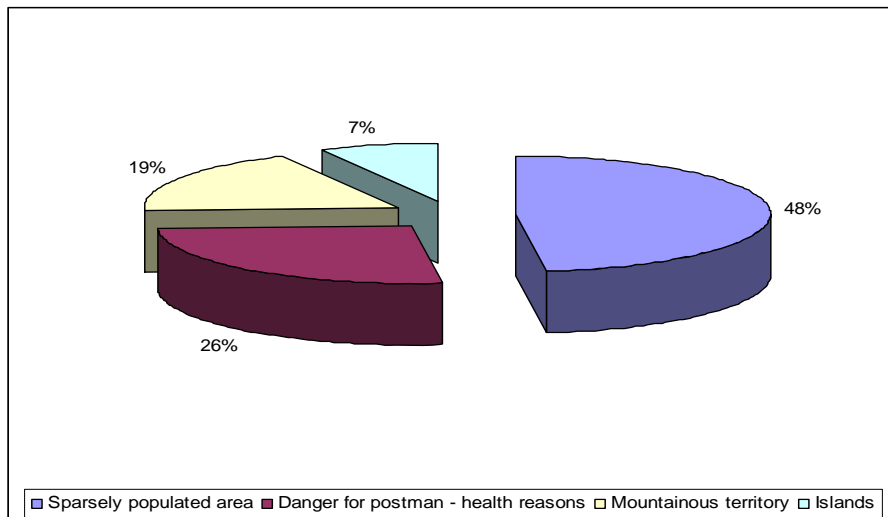


Figure 3: Criteria for installation of detached mailboxes (%)

3.3.2.3. Reasons for determination of exceptions from daily deliveries

In the figure below it is shown that the most frequent reasons for the determination of exceptions from daily delivery are economical reasons, namely high costs of delivery.

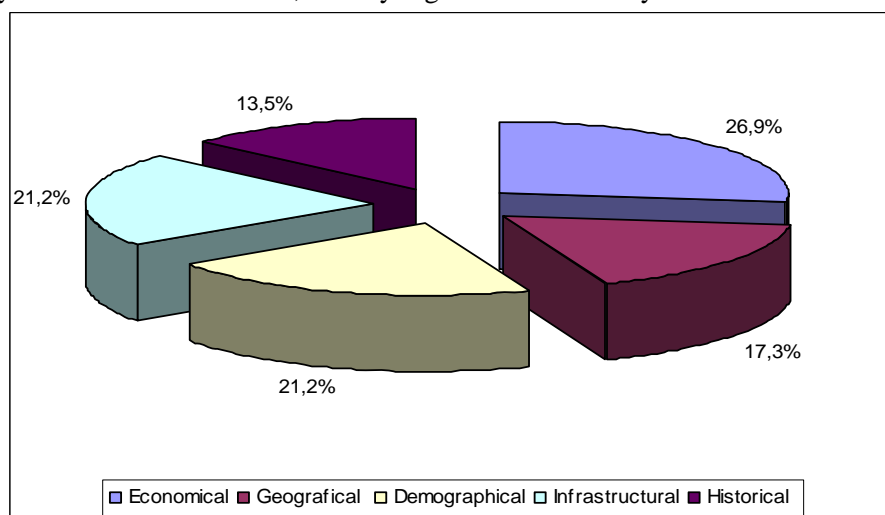


Figure 4: Reasons for determination of exceptions delivery in 27 European countries (%)

Demographical and infrastructural reasons are represented by equal percentages (21.2%). As regards demographical reasons all of the answers referred to sparsely populated areas. As for infrastructural reasons, these are divided according to different sub reasons as shown in Figure 5 below. Impassable roads are the reason for exceptions in half of the cases, while roads driveable on own responsibility and forest roads represent the other half.

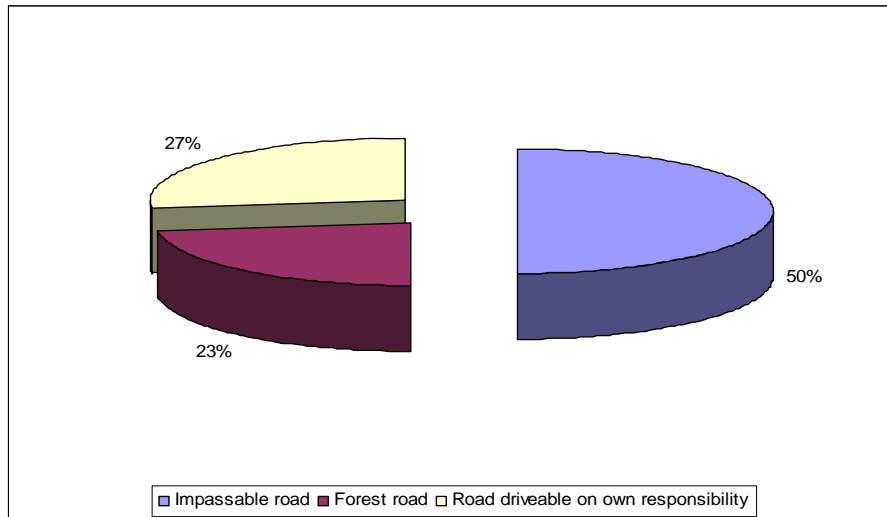


Figure 5: Infrastructural reasons for installation of detached mailboxes (in %)

Geographical reasons represent 17.3 % of all answers and most of these reasons are connected with the mountainous character of the country, followed by delivery on islands. In Romania there is also a special area (the Danube Delta) where these reasons also apply. In Hungary exceptions are noticed in areas outside the administrative limits of the town where it is not possible to satisfy this obligation or it is possible only with disproportionate difficulties due to exceptional geographic or infrastructural circumstances.

Less important reasons for installation of detached mailboxes are historical reasons. Seven countries stated that tradition or users' habit is one of the reasons for installation.

3.3.2.4. Complaints regarding exceptions from delivery

Fourteen countries deal with complaints regarding exception from daily delivery, and the yearly number of received complaints in most of these countries is very small. The way these complaints are dealt with varies from country to country.

In **Greece** where the NRA received eight such complaints in 2008, with regard to the provision of the universal service, the USP has entered into an Administration Contract with the Greek State, which contains, among others, in particular: its obligation to investigate any complaints lodged by users (stated also in Article 19.10.f, Law 2668/1998). Following such complaints, the NRA has carried out a verification exercise to examine real-term circumstances and has called for certain hearings regarding the cases. In relation to the improvement of alternative ways of delivery, the NRA has also submitted certain proposals to the Ministry of Transport and Communications for approval.

The NRA has created the Consumer Service Sector aiming at: processing consumer queries and complaints regarding postal services, informing the consumers about postal services issues, such as the options and facilities available, and eventually, adopting measures aimed to improve the terms of provision of postal services. The NRA also carries out inspections to check that the USP complies with the terms of its concession, which includes living up to the service and quality standards determined inter alia for letters and parcels. The following regulations and actions taken by the NRA and Government can be indicated:

- Regulations on NRA auditing procedures concerning the examination of postal services users' complaints and settlement of disputes arising between the Public Sector and postal enterprises, between postal enterprises, as well as, between postal enterprises and postal services users (Ministerial Decision 36809/1027 - Official Gazette 1083/B/2004).

- Regulations concerning the audit and the auditing procedure to ensure the exclusive rights of USP (Ministerial Decision 36810/1028 - Official Gazette 1186/B/2004).
- Establishment of the cases where flat-rate compensation is required as a result of defective postal service provision M.D. 29030/816/2000.

In **Serbia** and **Switzerland** received complaints are handled on a case by case basis. There is no general policy on handling such complaints.

In the **United Kingdom** the customer must complain first to the USP. The USP then has a formal appeals process. If this process is exhausted the complainant can then contact the NRA.

A similar process can also be found in **Slovenia**. In 2008 the NRA received 65 complaints regarding delivery via detached mailboxes. After inspection of the actual situation of the location (geographical, infrastructural and other reasons) of the detached mailboxes the NRA decided whether delivery via detached mailbox is justifiable or not. In most of the cases the NRA decided in favour of the complainant.

In **Slovakia** the NRA examined each complaint on the spot. One complaint was justified and the USP had to start to deliver mail like in other parts of the country. The second complaint was attributed to the distance and bad path and conditions of the detached mailbox. However, this was found to be without merit.

In **Sweden** and in **Norway**, where NRAs receive yearly around 5 complaints, they check if exceptions comply with the regulations set. The same case is noticeable in **Portugal**, where necessary, the NRA also proceeds with the process of inspection.

In **Spain** when the NRA receives a complaint (about 100 cases in 2008) it forwards it to the UPS's shareholder 'the Deputy Direction' which makes a decision on the matter. The decision is officially communicated to the incumbent and can be appealed.

In the **Czech Republic** the NRA receives 5 to 10 complaints a year and it eventually checked if conditions are in line with their secondary legislation.

3.3.2.5. Legal regulations

Legal regulations concerning exceptions from daily delivery are specified differently in the legal acts of the various countries who answered the questionnaire.

Czech Republic

According to the basic quality requirements issued by the NRA, the licence holder is not obliged to make an attempt at standard delivery, if:

- a) the route to the place indicated in the postal address or the delivery in this place are dangerous for the natural person which ensures delivery,
- b) the route to the place indicated in the postal address or the delivery in this place are connected with a serious risk of damage to the postal items and the remitted money amounts or to the property of the postal licence holder,
- c) the place of delivery indicated in the postal address is a remote place and the access to it is connected with serious problems or costs inadequately high compared to the paid price,
- d) the place of delivery indicated in the postal address is not accessible from the public route whose quality corresponds to the way in which it is transported by the natural person providing the delivery,
- e) total value of postal items and remitted money amounts, which would have to be carried by the natural person providing the delivery, is extremely high with regard to the risk of damage in the case of assault on the natural person ensuring delivery,
- f) the addressee doesn't dwell in the place indicated in the postal address during the working days,
- g) the addressee dwells in the place indicated in the postal address only irregularly and rarely.

Denmark

The exceptions are determined in Executive order on the Concession to Post Denmark A/S, no. 1312 of 14th December 2004. The concession holder may omit to distribute items on Constitution day (5th June) and Christmas Eve (24th December).

The NRA may restrict postal distribution to certain recipients or categories of recipients in rural areas in the case of:

- particularly remote or inaccessible sites,
- island communities without regular ferry or boat services,
- parcels, where justified by special circumstances.

Estonia

An alternative way of delivery is determined in the Postal Services Act where it is stated that the delivery in islands should not fall into the same quality of service obligations as in other parts of the country.

The USP has therefore the right to establish permanent exceptions from the frequency of clearance and delivery of postal items in the following circumstances:

- on national and public holidays,
- in the case of an island which does not have a regular ferry, boat or flight connection.

These cases allow the USP to deliver postal items outside of the frequency prescribed by law.

France

Exceptions of daily deliveries by La Poste can only occur in case of exceptional circumstances. They have been determined by secondary legislation “Decree 2007-29 of 5 January 2007 on the universal postal service and the rights and obligations of La Poste” (Article R 1-1-1):

“When the transport infrastructure or geographical features of certain areas preclude proper fulfilment of the obligations laid down in the first paragraph, the USP shall draw up a special management plan in order to provide the service on the best terms. It shall forward this plan to the Minister for Postal Services, who has the power to object to it through a reasoned decision notified within two months of receipt of the plan. In the absence of such an objection, the universal service provider shall communicate the plan to the NRA”.

Germany

No exceptions are defined in the Postal Services Act in Germany, and as regards the secondary legislation the Postal Universal Services Ordinance provides the possibility of excluding single addressees from delivery if their homes are accessible only under “exceptional difficulties”.

Great Britain

Royal Mail’s licence, which follows the provisions of the Postal Services Act (2000) and of the European Postal Services Directive, requires it to provide:

- *at least one delivery every working day to the home or premises of every individual or other person in the United Kingdom (or to approved delivery points),*
- *and at least one collection of relevant postal packets every working day from each access point (post office or post box) in the United Kingdom, except in such geographical or other circumstances that Postcomm (NRA) designates as exceptional.*

The document “Exceptions to Royal Mail’s Universal Delivery Service” explains the circumstances in which Postcomm (NRA) exempts Royal Mail (USP) from its licence requirement to deliver letters to every home or premises on every working day. It also lists the alternative identifiable points, approved by the NRA, for the delivery of letters and illustrates the circumstances where universal service deliveries may be temporarily suspended.

The document also specifies two categories for long term exceptions to the universal service daily delivery obligation, namely:

- health and safety reasons, and
- difficulty of access.

There are also three categories for temporary suspension:

- health and safety reasons,
- difficulty of access, and
- customer request.

The NRA has also published a Universal Service Exceptions Policy⁴⁶.

The policy explains the circumstances in which Postcomm exempts Royal Mail from its licence requirement to deliver letters to every home or premises every working day. It also lists the alternative identifiable points for the delivery of letters approved by Postcomm and provides circumstances where universal service deliveries may be temporarily suspended.

The policy specifies two categories for long term exceptions to the universal service daily delivery obligation:

- health and safety, and
- difficulty of access

and three categories for temporary suspension:

- health and safety,
- difficulty of access, and
- customer request.

The NRA must consult before it can designate other circumstances, as exceptions to the universal service, which are not covered by the existing Directions.

Greece

The USP has to provide one clearance and one home delivery for each person on all working days, and not less than five days a week, save in circumstances or geographical conditions deemed exceptional by the Minister of Transport and Communications. The decision shall establish, by way of derogation, the appropriate premises.

As it is stated in the Law the regular provision of the Universal Service consists in collecting and providing home delivery to every person (natural or legal) during every business day of the week and at least for five days of the week, with the exception of some small communities located in certain regions of Greece. The Hellenic Post shall issue a separate list for each prefecture that shall note the communities that are excluded from the above and the frequency at which these communities shall be served (one, two, three or four times a week). The list shall be posted at all post offices established within the Prefecture and it shall be communicated to both the Municipal and Community Districts thereof and to the Hellenic Telecommunications & Post Commission (EETT).

The Ministry's decision (Secondary Legislation) No. 28977/811/2006 (Hellenic Government Gazette 856/B/10-07-2006) states that: *"In order to maximize the economic and social coherence of the country, as well as taking into consideration the particular importance of communication for the development of the Greek region (outside the big cities), from the regularity in the provision of the*

⁴⁶ http://www.psc.gov.uk/postcomm/live/policy-and-consultations/consultations/universal-service--services-to-be-provided-exceptions/2008_10_01_Direction_Delivery_letter_direction_policy_v1_0.pdf

universal service are exempted: the areas consisting of islands, as well as mountainous areas where the access through road/coastal/areal network is extremely difficult. Collection and delivery of postal items in such areas shall, at least, take place during the working days of the week when road, coastal or aerial time-tables are realised. The exempted areas are examined by a Common Board (Committee) composed of three Members, two from the Ministry of Transport and Communications and one from the Regulator (EETT).

The exempted areas as agreed by the Committee represent an Annex to the Administration Contract, which is stipulated between the Greek State, signed by the Minister of Transport and Communications and the Universal Services Provider (the Hellenic Post – ELTA)”.

Hungary

The Document “Provision of Postal Services and the Related Quality Requirements”, stated that the NRA can on request excuse the USP from delivery at the premises of the addressee in case when the delivery is treated as impossible or unreasonable. The NRA bases its estimates on the ground of unusual geographical or infrastructural circumstances (only in rural areas).

Ireland

The USP can apply for derogation, which is the case as regards to exceptions concerning delivery in islands (less than 5 days delivery) as well as delivery to detached mail boxes in the case of impossible access to an addressee from the public road.

Latvia

As regards secondary legislation exceptions are determined by Postal Regulations approved by the Cabinet of Ministers.

Luxembourg

Postal Act states that exceptional conditions concerning delivery can be approved by the NRA.

Malta

The Postal Services Act indicates that the services shall not be interrupted or stopped, except in the case of force majeure.

Norway

Exceptions to delivery to the 6 days per week may be made in cases of extraordinary circumstances or special geographic conditions, according to the postal law.

According to the License to Norway Post (the USP), the USP may make exceptions in cases of extraordinary circumstances and the NRA in cases of special geographic conditions.

Extraordinary circumstances are circumstances that in a limited time period make it impossible or unreasonably costly to deliver 6 days a week. The USP is obliged to deliver in alternative ways in these cases as far as possible. Special geographic conditions mean settlements in places where it is impossible or unreasonably costly to deliver 6 days a week. Scattered population / settlements are as a main rule not within this category.

The USP shall in all circumstances deliver at least 3 days a week. The NRA may give exemption from this requirement in special cases.

Portugal

Until now the NRA hasn't acknowledged any exceptional circumstances or conditions.

Republic of Macedonia

In case of force majeure, in state of war or due to safety reasons exceptions from daily delivery is possible.

Romania

The exceptions are determined according to circumstances or geographical conditions deemed exceptional by the NRA.

The USP has the obligation to ensure, in each settlement/territorial administrative unit, on the Romanian territory, at least one clearance from every point of access and at least one delivery to the home or premises of every natural or legal person, during every working day and not less than 5 days a week. By derogation from previous provision, the USP has the obligation to ensure at least two clearances from every access point and at least two deliveries to the home or premises of every natural or legal person, every week, in the case of circumstances or geographical conditions deemed exceptional by the NRA.

Serbia

Article 18 of the Postal Services Act states that the division of delivery areas of the postal network units, to which a universal postal service has to be provided, shall be determined by the public postal operator so as to include all inhabited places in the country, such as:

- inner delivery area of the postal network unit at which universal postal service is provided according to article 17 of this Law,
- wider delivery area of the postal network's unit at which universal postal service is provided at least two times a week, and
- the widest delivery area of the postal network's unit at which universal postal service is provided at least once a week.

The secondary legislation concerning this matter is called the General Plan of National Postal Network (1994). This is currently under revision.

Slovakia

While the Postal Services Act does not mention any exceptions from the delivery, exceptions are defined in the Postal License, Annex "Requirements for the Quality of the Universal postal service", Article 8, reads as follows:

1. *The postal items shall be delivered on every working day, at least once a day up to 16.00 o'clock.*
2. *The delivery according to par. 1 of this article is not insured to:*
 - a) *places where security and health of employees of the universal service provider is endangered,*
 - b) *places with difficult access,*
 - c) *reclusive settled places,*
 - d) *settled place or residential unit with less than 50 inhabitants and if it is more than 1 km from the border of the village with delivery service,*
 - e) *business that receives less than 20 items a week and is more than 400 m from the built-up border of the village with delivery service,*
 - f) *business that receives less than 50 items a week and is more than 1,000 m from the built-up border of the village with delivery service:*
 - i. *up to 400 m from the village in each case,*
 - ii. *from 400 to 1,000 m, if the settlement place has more than 25 inhabitants or business and receives more than 20 postal items a week.*
 - iii. *over 1 000 m from the border of the village – to the settlement unit with more than 50 inhabitants or to the businesses that receive more than 50 postal items a week.*
3. *For addressees who live in places according to the par. 4 a) to f) of this article, or persons who permanently stay in a place with orientation number or registered number (par.4 a) to f) of this article) the delivery is insured by:*
 - a) *delivery at least twice a week (par.4c) to f) of this article),*
 - b) *delivery to the delivery boxes (according par. 7) of this article),*
 - c) *taking items away from the post office,*

- d) other way according to what the customer agreed with the universal service provider. Places according to points (a) and (b) are places with restricted delivery while places according to points (c) and (d) are places where delivery of postal items is not possible.*
6. *The exceptions from the universal service – places with restricted delivery and places without delivery are approved by the Postal Regulatory Authority.*
 7. *On the request of the addressee a delivery post box can be established. The universal service provider shall inform the addressee of the time of the delivery to the delivery box.*
 8. *Conditions of delivery of the postal items are comprehensively specified in the Postal terms and conditions of the universal service provider including cases when certain obstacles may occur.*

Slovenia

Article 36 of the Postal Services Act states that if the housing unit or premises of the user of postal services is located outside a densely populated settlement and it is concurrently more than 200m from the deliverer's route, the postal items may be delivered in detached mailboxes. The user of postal services shall install the detached mailbox in accordance with the USP at the adequate location along the deliverer's route. The USP must notify the NRA of the installation of the detached mailbox. The user of postal services shall be liable to maintain the detached mailbox.

If the persons referred to in the preceding paragraph fail to fulfil their obligations, the USP must give them a warning in writing and invite them to clear the violations by defining an appropriate time limit for clearing.

If the persons referred to in the first paragraph fail to remedy such violations within the time limit referred to in the previous paragraph, the USP shall not be liable to deliver the postal items. However, the USP must notify this to the NRA.

The persons referred to in the first paragraph hereof may request from the NRA to decide on the justification for delivering postal items via detached mailboxes.

A new postal law (in force from August 2nd 2009) gives the NRA the right and obligation, with respect to geographical circumstances, to issue a general act to lay down exceptions to the universal postal service.

The NRA is so far convinced that health and safety reasons should be the most important criteria for exceptions from daily delivery.

Sweden

The exceptions are not determined in the postal law but in the Postal Services Ordinance where they are determined as circumstances or geographical conditions that the USP and NRA consider to constitute reasons for exception.

Switzerland

In special circumstances delivery can be performed less than 5 days a week or through detached mailboxes. Criteria for installation are connected with distance from the post office to the housing unit as well as height differences.

In the Postal Services Act exceptions concern the areas that are not inhabited throughout the year and the secondary legislation repeats the terms and conditions found in the Postal Services Act. It also adds the following provisions:

1. If the place of residence of the addressee is exceedingly difficult to access, the USP may ask the recipient to pick up the postal items at the nearest post office instead of delivering them. The USP may also reduce the frequency of delivery. The recipient must however be contacted.
2. The mailbox must be placed on the property, close to the usual access to the house or group of houses. If, in relation to this provision, different locations are taken into account, the one that is

closest to the road will be chosen. A road is defined as a traffic lane allowing the delivery of postal items with motorized vehicles.

3.3.3. Highlighting the Pros and Cons

Concerning clearance and delivery the Directive is very clear in saying that the MS must guarantee on every working day and not less than five days a week, save in circumstances or geographical conditions deemed exceptional by NRAs, a minimum of one clearance and delivery to the home or premises of every natural or legal person or, by way of derogation, under conditions at the discretion of the NRA, one delivery to appropriate installations.

Among the twenty-seven European countries that answered the questionnaire, all of them provided the frequency of the delivery included in the Directive, although there are cases where in some areas (rural) the USPs delivers mail less than 5 days a week. This kind of service should only be exceptional and must always be confirmed by the NRA. It is not acceptable that communities living in rural areas are in a disadvantaged position with respect to communities living in urban areas, especially if these alternative ways of delivery are due to the costs of providing the universal postal service.

Only eight countries have no exceptions from daily delivery. Others have different ways of alternative delivery, as well as a different percentage of the population affected by this kind of service. It is very important that almost all the USPs prescribe an agreement with users of postal services about delivery at alternative points and that the USPs inform the NRAs about all exceptions.

A two way approach is being adopted whereby according to their legislation the NRA should be the one which determines the exceptions. However, in practice the USP has the discretion to determine any single exception without even notifying the NRA.

In most of the cases alternative ways of delivery are performed in sparsely populated areas and are related to higher costs of delivery. However, as has already been highlighted, this should not be the main driver for exceptions from daily delivery. As it is stated in the Directive the MS must guarantee frequent delivery and therefore all exceptions should be determined and handled very carefully and in line with the user's legal right for daily delivery.

3.3.4. Conclusions

According to the study carried out by the CERP PT Universal Service on how European countries interpret exceptions from daily delivery the following **recommendations and proposals** can be put forward:

- Collection and delivery on 5 days a week is mandatory in urban and rural areas and only exceptional circumstances can reduce that frequency.
- There should not be any differences between urban and rural areas save in circumstances or geographical conditions deemed exceptional by the NRA.
- Economic reasons (costs of delivery) should not be the leading criteria for exception from the delivery obligation.
- The USP must inform the NRA about every single exception from the delivery and it is in the NRA's interest to have a list of all exceptions.
- The USP should not have the discretion to determine possible exceptions from the delivery.
- NRAs should play a leading role in the process of determination of exceptions from the delivery taking into account the needs of users.
- Installation of detached mailboxes should in the first place be done with the agreement between the USP and the user of that kind of service.
- NRAs have to pay attention on exceptions from the delivery and if possible examine real term circumstances on the field, by:

- ✓ Detecting the number and legitimacy of exceptions, according to legislation.
- ✓ Detecting whether the exceptions are the result of exceptional geographical or infrastructural circumstances or just (like in many cases) an economical issue. Historical reasons (tradition or user's habit) as criteria for installation of detached mailboxes should not be accepted.
- ✓ Detecting whether infrastructural changes may demand from time to time an alternative way of the delivery to take place.
- ✓ Carrying out the research on users' satisfaction with alternative ways of delivery.

All stakeholders should be involved when decisions are made to allow exemptions.

There should be agreement on alternative delivery arrangements when exemptions are granted.

The criteria for exceptions from delivery should be determined with extreme caution by the NRA.

3.4. Accessibility

Directive 2008/06/EC defines access points as “*physical facilities, including letterboxes 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.*”

Article 3(2) of the Directive 97/67/EC requires Member States to ensure that the density of the points of contact and of the access points takes account of the needs of users. This point has been reiterated in the Third Postal Directive. However, the Directive does not set out any specific requirements for USP networks.

It is also important to highlight that article 11 of the Directive states that “*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 harmonisation 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*”

The postal network is defined in the Third Postal Directive as:

- the system of organisation and resources of all kinds used by the universal service provider(s) for the purposes in particular of:*
- *the clearance of postal items covered by a universal service obligation from access points throughout the territory,*
 - *the routing and handling of those items from the postal network access point to the distribution centre,*
 - *distribution to the addresses shown on items;*

Member States thus have the liberty to formulate their own standards unless the Commission decides otherwise. They can transpose the obligation to provide a sufficiently dense network without establishing additional requirements.⁴⁷ It is also interesting to note the perception expressed by European countries on the changes being experienced in the postal network.

3.4.1. International Overview of Status Quo

This section will give a general overview of the commitments of the universal service providers of the European countries who responded to the questionnaire circulated by the Project Team. They have been divided into commitments related to collection letter boxes and post offices and general commitments related to accessibility to universal services.

⁴⁷ *Accompanying Document to the Report from the Commission to the European Parliament and the Council on the application of the Postal Directive (Directive 97/67/EC as amended by Directive 2002/39/EC.*

3.4.1.1. Collection Letter Boxes

The table below gives an overview of whether the countries who responded to the questionnaire apply or not requirements or standards to ensure that an adequate number of collection letterboxes are provided by the USP. It can be deduced that the majority of countries (18) apply some form of requirements/standards.

Table 5: Requirements/standards applied on collection letter boxes

Requirements/Standards in place to ensure an adequate number of collection letterboxes		
yes	18	AT, BE, CZ, DE, EE, GB, GR, HU, IE, LT, MK, MT, NO ⁴⁸ , RO, RS, SK, SI, TR
no	9	CH, DK, ES, FR, LU, LV, PL, PT ⁴⁹ , SE ⁵⁰

The Table 6 below gives an overview of the type of standards applied with respect to collection letterboxes. It can be observed that the type of criteria vary from country to country. This is understandable in view of the fact that demographic and geographic characteristics vary considerably.

Table 6: Type of Standards applied on the provision of collection letterboxes

Distance related criteria	AT, DE
Community or locality related criteria	BE
Community or locality⁵¹ + population related criteria	GR, RO, SI
Community or locality + distance related criteria	HU, IE, RS, SK
Community or locality + Collection letter boxes per number of population + distance related criteria	CZ, EE, MK
Population Density	TR
Density/%of population + distance related criteria	GB, LT, MT

Austria stated that in densely settled residential areas there must be enough collection letterboxes in a way that a customer living in a closed settlement area must be able to reach a letterbox within a maximum distance of 1km from his/her home. In **Germany** the distance between letterboxes in inhabited areas⁵² should not be more than 1km.

In **Belgium** there should be at least one access point for the deposit of postal items in each community.

⁴⁸ It must however be stated that in the case of Norway the requirement is very vague and it is stated that the USP should provide an adequate number of collection letterboxes.

⁴⁹ There are no quantitative requirements/standards in place. However, an agreement between ICP-ANACOM and the USP is under negotiation. This relates to development objectives of the public postal network and minimum services to be provided.

⁵⁰ SE does not set out a particular requirement in number. However the Swedish Postal Services Ordinance states that the density of the points of contact and of the access points shall take account of the needs of users.

⁵¹ By community or locality this includes the following: (a) urban or rural; and (b) criteria based on density.

⁵² These are intended to be developed areas within towns and villages.

In **Greece**, Hellenic Post is obliged to place one collection letterbox in each community located in a rural region and at least one collection letterbox for every 1,000 persons in urban regions. On the other hand in **Romania** there should be a letterbox for every 1,500 inhabitants in rural areas, at least one letterbox for every 3,000 inhabitants in urban areas, and at least one letterbox for every 20,000 inhabitants in the Bucharest area. Moreover, there should be at least 1 access point per locality. In **Slovenia** the USP has to distribute collection letterboxes as follows: (a) one in localities with at least 300 inhabitants; (b) in cities with less than 50,000 inhabitants there should be a letterbox for every 600 persons; (c) in cities between 50,000 and 100,000 inhabitants there should be a letterbox for every 800 people; (d) in cities between 100,000 and 300,000 inhabitants there should be a letterbox for every 1,000 persons; and (e) in cities with more than 300,000 inhabitants there should be a letterbox for every 1500 inhabitants.

In **Hungary** the USP has to install one collection letterbox in every town with a permanent postal service point. The distance that a consumer has to travel must not exceed 1km, while the distance between any two collection letterboxes must not exceed 2 km. If a locality is serviced by a mobile post office a collection letterbox must be installed in the town centre. Through a 2003 decision ComReg (the NRA of **Ireland**) specified that there should be a posting point as near to the commercial centre of each town as practical. Moreover, no one has to travel more than 1km within the town area to post a letter. On the other hand, in rural areas no one has to travel more than 3km to post a letter.

On the other hand in **Serbia**, though the criteria applied are tied both to the type of community and the distance that must be travelled, a more detailed standard is applied. In fact in: (a) areas with a population of less than 3,500 inhabitants the longest distance to the letterbox should not be less than 2.5kms; (b) areas with a population of more than or equal to 3,500 but less than 20,000 inhabitants the longest distance should not be less than 1.5kms; (c) areas with a population of more than or equal to 20,000 but less than 50,000 inhabitants the longest distance should not be less than 0.7km; and (d) areas with a population of more than 50,000 inhabitants the longest distance to be travelled should not be less than 0.5km. In **Slovakia** in a residential unit with 300 to 500 inhabitants there must be a collection letterbox if the nearest one in another residential unit is distant more than 4kms. In a residential unit with more than 2,000 inhabitants there should be at least one letterbox for each 2,000 inhabitants. In the centre of residential units with more than 10,000 inhabitants the distance between collection letterboxes should not be greater than 0.5km.

In the case of the **Czech Republic**, for localities up to 10,000 inhabitants there must be 1 letterbox for every 1,000 inhabitants. Distance related criteria apply for localities above 10,000 inhabitants. The maximum distance that one has to travel in the latter must not exceed 0.75km. In **Estonia** every town or parish must have at least 2 letterboxes. The average distance that each customer must travel must not be greater than 0.5km in a town and 2kms in a parish. In **Great Britain** the USP has to provide collection letterboxes.

As for the **Republic of Macedonia** in settlements or areas: (a) with less than 500 residents the USP has to provide at least one collection letterbox; (b) with 500 to 2,000 residents there should be at least 2 collection letterboxes; (c) with 2,000 to 5,000 residents there should be at least 4 collection letterboxes; (d) with 5000 to 10000 residents the distance between collection letterboxes should not be more than 1km; and (e) with more than 10,000 residents the distance between collection letterboxes should not be more than 1.5 km.

Criteria based on density or the percentage of the population living in a particular area together with distance are applied in Lithuania, Malta and the United Kingdom. In **Lithuania** 90% of users in urban residential areas have to be no farther than 2km on a straight line distance method. On the other hand in rural areas, with more than 200 receipt letter boxes, there must be one collection letterbox. In **Malta** in localities where the population density is higher than the national average not less than 98% of users or potential users of postal services should be within 0.4km of a letterbox. In localities where the population density is lower than the national average not less than 98% of users or potential users of postal services should be within 0.8km of a letterbox.

The table below indicates where these criteria are to be found. It is to be noted that in: (a) Greece the criteria are found both in the legislation and in the licence, (b) while in Slovakia the criteria can also be found both in the licence and in a Directive/Standard issued by the NRA. It can be observed that in most countries (12), the type of criteria to be applied for the distribution of collection letterboxes, are found in the Legislation.

Table 7: The documents where the criteria used for collection letterboxes are found

Criteria applied found:		
Legislation	12	AT, BE, DK, EE, GR, HU, LT, MK, NO, RO, SI, TR
Licence	4	GB, GR, NO, SK
Directive/Standard Issued by NRA	4	CZ, IE, MT, SK
Other	2	DE ⁵³ , RS ⁵⁴

The questionnaire conducted by the Project Team also probed whether USPs in European countries have decreased the number of collection letterboxes. The results which are portrayed in the table below show that in fifteen European countries the USP has decreased the number of collection letterboxes. However, this cannot be considered as an “absolute majority” as in another twelve countries the number of collection letterboxes has not been reduced. Thus, while certain trends can be observed, it cannot be said that the postal networks as regards collection letterboxes is being scaled down across all European countries.

Table 8: Has the USP decreased the number of collection letterboxes?

Has the Universal Service Provider decreased the number of letterboxes?		
Yes	15	AT, BE, CH, CZ, DE ⁵⁵ , GB, HU, LT, LV, MK, NO, PL, PT, SI, TR
no	12	DK, EE ⁵⁶ , ES, FR, GR, IE, LU, MT, RO, RS, SE, SK

The following table gives an overview of the numbers given by some European countries on the numbers of collection letterboxes that have been reduced:

Table 9: Number of collection letterboxes reduced in particular countries

CH	CZ	HU	LT	LV	NO	PL	PT	SI
4,600	361 ⁵⁷	1170 ⁵⁸	453	200	836 ⁵⁹	5050 ⁶⁰	359 ⁶¹	1.3%

The reasons given, for such a reduction, by the countries who responded to the questionnaire, were the following: (a) **scarce use of the collection letterboxes removed** (Belgium, Norway); (b) **optimisation of collection** (Switzerland, Czech Republic); **problems with house owners** (Czech Republic); (c) **rationalisation of the network** (Hungary); (d) **decreased demand and high costs**

⁵³ This is found in a Postal Universal Services Ordinance drafted by the Ministries.

⁵⁴ These are internal legal acts of the USP.

⁵⁵ DE did not give the number by which the letterboxes decreased. However, it confirmed that this is still above the minimum requirements.

⁵⁶ EE specified that in 2008 the number of letterboxes was not reduced. However, this was reduced in previous years due to lack of use. Thus for example in 2005 there were 3725 collection letterboxes while in 2008 the number amounted to 3123.

⁵⁷ This applies for the period 2005 to 2008.

⁵⁸ This refers to the period between 2007 and 2008.

⁵⁹ This refers to the period between 2007 and 2008.

⁶⁰ This refers to the period between 2006 and 2008.

⁶¹ This refers to the period between 2007 and 2008 and constitutes a 2 decrease with respect to the whole network.

(Lithuania); and (e) **collection letterboxes were reduced because certain areas were already being served according to the parameters set out in law** (Lithuania).

It is interesting to note that Sweden commented that although the number of collection letterboxes was not decreased the USP is currently making a review which will aim to optimise and therefore decrease the current network. The Swedish USP has however highlighted that accessibility will not be reduced. The density of the current network varies throughout the country. Nonetheless this is currently not based on facts but on historical reasons.

3.4.1.2. Post Offices

The table below gives an overview of whether the countries who responded to the questionnaire apply or not requirements or standards to ensure that an adequate number of post offices are provided by the USP. It can be deduced that the majority of countries (22) apply some form of requirements/standards. It can also be deduced that this number is greater than the number of countries who applied some form of criteria vis à vis collection letterboxes.

Table 10: Requirements/standards in place to ensure that an adequate number of post offices are provided by the USP

Requirements/Standards in place to ensure an adequate number of post offices by the USP		
yes	22	AT, BE, CH, CZ, DE, DK, EE, FR, GB, GR, HU, LT, LV, MA, MT, NO, PL,RO, RS, SK, SI, TR
no	5	ES, IE ⁶² , LU, PT ⁶³ , SE ⁶⁴

The type of criteria applied can be summarised in the following table:

Table 11: Requirements/standards applied on how post offices have to be provided by the USP

Sustainability of post office	AT
Definite number of post offices	BE, GR, MT, NO
Density/% of population + distance related criteria	CH
Density/% of population + population	LV, SI
Density/% of population + population + distance related criteria	FR, GB, LT
Distance related criteria	CZ, MK
Minimum number of post offices + population related criteria	EE, PL, RO
Minimum number of post offices + population + distance related criteria	DE, DK, HU
Community or locality	TR
Community or locality + distance related criteria	SK
Community or locality + population + distance related criteria	RS

⁶² Ireland commented that standards are not provided for post offices as these are outside the scope of the universal service.

⁶³ Same argument as for collection letterboxes applies here.

⁶⁴ The only obligation on the USP is that the density of access points must take account of the needs of users.

In **Austria** the USP has to submit annually to the Authority the universal service concept. All measures concerning the universal service, such as the restructuring of the branch network, are included in this concept. Post offices may only be closed if they cannot be run at a sustainable profit making level and if the provision of the universal service is secured through an alternative means.

In **Belgium** this criterion is however not applied in a standalone manner. The basic criterion however is that La Poste must provide at least 1,300 postal service points.⁶⁵ There must also be a minimum of one post office per community (589). Moreover, for each “postal service point” with a basic assortment of services there must be one post office that has the full assortment at a maximum of 10 kms distance to the postal service point.

In **Greece**⁶⁶, Hellenic Post must guarantee a sufficient number of access points through which the universal service must be provided. In **Malta** the USP should guarantee as a minimum not less than 59 postal outlets. On the other hand in **Norway** there should at least be one post office in each municipality.

In **Switzerland** 90% of the population has to be able to reach, on average in 20 minutes, the nearest post office on foot or by public transport.

In **Latvia** in the Riga area there should be a post office for every 5,000 residents. On the other hand in the rural area there should be one for every 3,000 residents if the population is above 500 residents per km², and one for every 2,000 residents if the population is below 500 residents per km². In **Slovenia** the USP has to distribute post offices as follows: (a) in localities with more than 50,000 residential units there should be a post office every 3,800 units; (b) in localities between 20,000 and 50,000 residential units there should be one post office every 3,500 unit; (c) in localities between 3,000 and 20,000 residential units there should be one post office every 3,000 units; (d) in cities between 1,000 and 3,000 residential units there should be one post office for every 1,500 residential unit; and (e) in cities with less than 1,000 residential units there should be one post office for every 500 residential unit

In **France** post office branches providing public access to services other than bulk mail must be so located that at least 99% of the national population and at least 95% of the population of each *department* is less than 10 km from a post office branch. Moreover, all communes with over 10,000 inhabitants must have at least one post office branch per 20,000 inhabitants. In **Lithuania**, in rural residential areas having more than 500 receipt letterboxes (addressees), there must be one stationary or mobile post office or an agent of the USP. Moreover, in urban residential areas 90% of users must not be farther than 3kms (calculated on the straight line distance method) from the nearest post office. On the other hand, in rural residential areas the distance should be 8km.

In **Great Britain** the USP is required, under Condition 3 (2) of its License, to ensure that for access points capable of receiving the largest relevant postal packets and registered mail in the authorised area as a whole not less than 95% of users or potential users of postal services should be within 5kms of such an access point and in all postcode areas the premises of not less than 95% of users or potential users of postal services should be within 10km of such an access point. It is important to note that there is no mention of post offices – Royal Mail chose to use post offices as access points in order to meet this obligation. Separately, in May 2007 the British government announced that it would close 2,500 post offices (just under 20% of the network) in order to make the network more sustainable. As part of the proposed closures, the Government announced that, to ensure reasonable access to post offices, Post Office Ltd will be required to adhere to a number of geographically-based access criteria when it implements the programme and selects post offices for closure. The minimum access criteria introduced by the Government are, nationally:

⁶⁵ This is the generic term used for both post offices and postal service points.

⁶⁶ Ministerial Decision No. 2897/811/2006(Hellenic Government Gazette 856 B/10-07-2006).

- 99% of the GB population to be within 3 miles and 90% of the population to be within 1 mile of their nearest post office outlet
- 99% of the total population in deprived urban areas across the GB to be within 1 mile of their nearest post office outlet
- 95% of the total urban population across the GB to be within 1 mile of their nearest post office outlet
- 95% of the total rural population across the GB to be within 3 miles of their nearest post office outlet.

In addition, for each individual postcode district:

- 95% of the population of the postcode district to be within 6 miles of their nearest post office outlet.

In the **Czech Republic** people must be able to reach the post office through public transport. If this is not the case distances within residential areas must not be higher than 2kms. In the **Republic of Macedonia** in settlements or areas with: (a) less than 500 residents the maximum distance that a consumer has to travel to reach the nearest post office which can also be a mobile unit should be between 5 to 7 km; (b) from 500 to 2,000 residents the distance shall not be less than 3 to 5 km; (c) from 2000 to 5000 residents the distance shall not be less than 3 to 5kms; (d) from 5,000 to 10,000 residents the distance between post offices shall not be less than 2kms; (e) more than 10,000 residents the distance between post offices shall not be less than 3km.

In **Estonia** every town and parish must have at least one post office. If there are more than 2,500 residents within that parish an additional post office must be opened. On the other hand in a town, if there are more than 20,000 residents an additional post office must be opened for every 20,000 residents. In **Poland** there should be a minimum of 8,240 post offices. These should be distributed for every 7,000 inhabitants in urban areas and for every 65km² in rural areas. In **Romania** there should be at least one post office in every locality with more than 1,500 inhabitants.

In **Germany** there must be a minimum of 12,000 post offices nationwide. Moreover, localities with more than 2,000 inhabitants must have a minimum of one post office, while in localities with more than 4,000 inhabitants the distance between post offices must not be more than 2km. In **Denmark** there should be one postal service outlet in each municipality. In towns with more than 5,000 inhabitants there should be at least one full service outlet. Moreover, the maximum distance that a consumer has to travel to any postal service outlet may not exceed the distance of 5kms measured in a straight line method. In **Hungary**: (a) in towns with less than 600 inhabitants the USP must provide a permanent postal service point or post office; (b) in towns with more than 600 but less than 1,000 inhabitants the USP must provide a permanent postal service point or – when a relevant contract has been concluded with the municipality of a town – a mobile post office; (c) in towns with more than 1,000 inhabitants, a permanent postal service point; and (d) in towns with more than 20,000 inhabitants there should be at least one permanent postal service point for every twenty thousand inhabitants. In the latter case the maximum distance that a consumer has to travel to reach a post office must not exceed “3,000 air meters” and the distance between the two post offices may not exceed “6,000 air meters”.

In **Turkey** main offices, branch post offices and postal agencies are distributed according to the type of the locality (urban or rural) and the needs of the community.

In **Slovakia** there should be at least one post office in every village with more than 2,500 inhabitants and in every residential unit with more than 5,000 inhabitants. If the build-up area of the more neighbouring village unites, this is considered as one residential unit. The maximum distance that anyone has to travel from any inhabited place of the residential unit should not be more than 6kms, or 10kms in the case of long, narrowly or incoherently built up areas. In residential areas with a substantial demand for the universal service, more post offices shall be established.

In **Serbia** in communities with a population of 1,250 to 3,500 inhabitants, and if the distance to the nearest post office is more than 5kms, another post office can be opened. In localities with a population of 3,500 to 20,000 inhabitants there should be at least one post office. In urban areas with a population of 20,000 to 50,000 inhabitants there should be at least one post office for every 10,000 inhabitants, if the distance to the nearest post office is more than 1.25kms. On the other hand, in urban areas with a population of more than 50,000 inhabitants there should be one post office for every 10,000 inhabitants if the longest distance to the nearest post office is more than 1km.

The table below indicates the document in which the criteria relating to post offices are found. It is to be noted that similarly to collection letterboxes the majority of countries insert these criteria in the legislation.

Table 122: Type of document in which the criteria relating to post offices are found

Criteria applied found:		
Legislation	14	AT, DE ⁶⁷ , DK, EE, FR, GR, HU, LT, LV, MK, NO, RO, SI, TR
Licence	4	GB, GR, NO, SK
Directive/Standard Issued by NRA	2	CZ, MT
Others	4	BE ⁶⁸ , CH ⁶⁹ , PL ⁷⁰ , RS ⁷¹

The table below indicates whether a USP, who has to provide a definite number of post offices, can outsource these to private entities. The majority of countries (17) give this possibility. With respect to the table below, Portugal commented that although it does not impose an obligation to provide a certain amount of post offices, the latter can also be outsourced to private entities.

Table 13: Possibility to outsource post offices to other entities by the USP

If the USP has to provide a certain amount of post offices, have these to be provided uniquely by the Universal Service Provider or can these be outsourced to private entities?		
Provided Uniquely by the USP	5	CZ, LV, MK, RO, SK
Outsourced to Private Entities as well	17	AT, BE, CH, DE, DK, EE, FR, GB ⁷² , GR, HU, LT, MT, NO, PL, RS, SI, TR

The questionnaire also probed whether any particular requirements are outlined on the number of days and hours during which post offices provided by the USP have to remain open. The findings are highlighted in Table 14 below.

Table 34: Requirements on the number of days/hours during which post offices provided by the USP have to remain open

Are there any particular requirements on the number of days and hours during which these post offices have to remain open?

⁶⁷ Postal Universal Service Ordinance drafted by the Ministry.

⁶⁸ This is applied through a management contract between La Poste and Government.

⁶⁹ This is applied through a message of the Government.

⁷⁰ This is found in an Ordinance issued by the Ministry for Infrastructure.

⁷¹ Internal Acts of the Public Postal Operator.

⁷² In the GB most post offices are run as franchises.

Yes	14	AT, CZ, DE, EE, GR, HU, LT, MK, NO, PL, RO, RS, SK, SI
No	10	BE, CH, DK, ES, FR, GB, MT, PT, SE, TR ⁷³

In **Austria** postal service points are open on a 5 day week and their weekly hours of operation must not be less than 20 hours. In the **Czech Republic** opening hours depend on the demand of the local populace. In **Germany** post offices have to remain open on every working day. However, the opening hours depend on the demand within a particular locality.

In **Estonia** post offices are to be opened on every working day and for at least 2 hours a day.

In **Greece** the requirements are defined by the USP and approved by the Ministry of Transport and Communications. In **Hungary** post offices should remain open at least for 2hrs between 08:00 and 17:00 o'clock. In towns with at least fifteen thousand inhabitants at least one postal service point shall at least be open for 6 hrs daily on every working day of which one hour shall be before 08.00 or after 17.00.

In **Lithuania, Poland,** and the **Republic of Macedonia** postal offices have to remain open on every working day and not less than 5 days a week. However, working hours are not defined. In the **Republic of Macedonia** these depend on the location of the post office.

In **Norway** the post offices run by the USP shall be open on each working day. However, opening hours depend on local needs. On the other hand for those post offices run by third parties opening hours depend on the agreement struck by the USP. In **Romania** the USP has to ensure that post offices remain open for 8 hours a day. However, where the postal traffic is not sufficient, shorter opening hours may be justified.

In **Serbia**, in the case of post offices providing services in: (a) urban areas with a population under 3,500 inhabitants, post offices should remain open for at least 3 hours; (b) urban areas with a population from 3,500 to 5,000 inhabitants, post offices should remain open for at least 6 hours ; (c) urban areas with a population from 5,000 to 10,000 inhabitants one post office should at least be open for 6 hours while from those post offices located at the centre of a municipality should be open for at least 7 hours; (d) in urban areas with a population from 10,000 to 25,000 inhabitants one post office should at least be open for 9 hours; and (e) in urban areas with a population of over 25,000 inhabitants one post office should at least be open for 10 hours a day.

In **Slovakia** in localities with less than 5,000 inhabitants a post office shall be open till 17:00 o'clock, including breaks. In areas with more than 5,000 inhabitants a post office shall be open from 8:30 till 16:00, including breaks. In these areas once a week the post office shall remain open till 17:00. In residential units with more than 10,000 inhabitants, at least one post office shall be open from 8:00 till 17:00 and on Saturdays the same post office shall remain open for at least 2 hours. In cities with more than 10,000 inhabitants one post office shall be open from 8:00 till 18:00. Assigned post offices shall also open at 7'o clock in the morning. In these cities 30% of post offices must open for at least 4 hours on Saturdays.

In **Slovenia** post offices are to be open daily on working days. Moreover, permanent contact points have to be opened for at least 2hrs a day. The USP can change the latter's working hours after performing an economic analysis and notifying the Agency about it.

The study conducted by the CERP Project Team also tried to determine the trends being experienced in European countries as regards the post office network. In fact countries were asked how their national post office network is changing.

The Table below portrays the results.

⁷³ Working days and traffic are determined according to the postal traffic handled by the post offices.

Table 45: Trends in the post office network

Do you notice in your country any increase or decrease in the number of post offices?		
Increase	3	ES ⁷⁴ , PL ⁷⁵ , PT ⁷⁶
Decrease	14	AT, BE, CH ⁷⁷ , CZ, DE ⁷⁸ , DK, EE ⁷⁹ , GB, HU ⁸⁰ , IE, LT, RO ⁸¹ , SK ⁸² , TR
No change	10	GR, FR, LU, LV, MK, MT, NO ⁸³ , RS, SE ⁸⁴ , SI

The reasons given for the changes experienced in the post office network were the following: (a) **high cost of postal network** (Belgium); (b) **optimisation of post office network** (Switzerland, Lithuania⁸⁵, Turkey, Portugal); (c) **technological advances** (Czech Republic); (d) **ownership of buildings** (Czech Republic); (e) **post offices being outsourced to private entities** (Denmark); (f) **lack of use** (Estonia); (f) **oversupply in the past and reluctance to apply for post office vacancies** (Ireland); (g) **reducing costs due to financial losses being incurred especially in rural areas** (Poland and Slovakia); (h) **rationalisation of costs** (Portugal).

In the United Kingdom post offices were losing money largely due to the rise of direct debit payments (less people paying their bills at post offices), the electronic payment of benefits (less people collecting pensions and benefits from post offices) and other services going on-line (e.g. car tax renewal).

Countries were also asked on how they perceive this reduction in the number of post offices. The majority of countries (11) do not see the reduction in the number of post offices as a reduction in the quality of services provided.

Table 56: European countries' perception on the reduced number of post offices

Do you consider the reduction in the number of post offices as a decrease in the quality of services provided?
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⁷⁴ ES notices that 200 more post offices have been opened in the last 5 years.

⁷⁵ In PL there was an average increase of 2% although the number of post offices in 2008 decrease by 65 unit compared to 2007.

⁷⁶ PT commented that as at the end of 2008 there were 2873 post offices (896 permanent post offices staffed by the USP, 12 mobile post offices staffed by the USP and 1965 postal service offices). As at the end of 2007 there were 2853 (912 permanent post offices, 12 mobile post offices, and 1929 post service offices). The increase was therefore due to the increase in postal services offices.

⁷⁷ CH commented that there was a decrease of 61 offices in 2008 (-2.5%). Between the period 2001-2008 there was a decrease of 4.8% in the number of post offices. However, the decrease in the number of post offices between 2004 – 2008 was lower as it stood at 1.8%.

⁷⁸ DE commented that Deutsche Post has been continuously decreasing the number of post offices. As per September 2008 the number of post offices operated by Deutsche Post and its franchise partners stood at 12,400. In the meantime, a competitor (Hermes Parcel-shops) has established a network of around 13,000 franchise partner outlets.

⁷⁹ In EE in 2005 the number of post offices was 539. In 2009 the number was decreased to 407.

⁸⁰ Between 2007 and 2008 there was a reduction of 3 post offices. However there was an increase of 90 mobile post offices between 2007 and 2008.

⁸¹ Romania highlighted that between 2007 and 2008 there was a reduction of 7 post offices.

⁸² In Slovakia 110 post offices were closed down in the past 5 years. These were however replaced by 46 secondary post offices operated by Post Partner.

⁸³ In NO there has only been marginal with a decrease of only 8 permanent post offices between 2007 and 2008 which could not be considered as significant for the purpose of this exercise.

⁸⁴ SE commented that there were only small variations in both directions. However, the number of 'service places' i.e. the number of places where they consumers can actually send letters and parcels has increased between 2001 and 2008 by 48.6%.

⁸⁵ It was remarked that these are being changed by mobile post offices.

Yes	9	ES, LT, LV, MK, MT, PL, RO, SK, SI
No	11	AT, CH, CZ, DE ⁸⁶ , DK, EE, FR, GR, NO, PT, RS, TR

Hungary responded that they do not conduct any studies in this respect. However, they commented that some users find mobile post offices a better solution than a fixed post office with a shorter opening time. However, others are of the opposite opinion.

The United Kingdom did not express a definite opinion. However, it highlighted that it is more concerned on the provision of the service rather than on the number of post offices.

3.4.1.3. General Obligations with respect to Accessibility

This sub-section examines general obligations on the USP related to accessibility. In fact the questionnaire conducted probed also on whether there is a procedure in place which the USP has to follow prior to removing a particular access point. The majority of countries do have a procedure in place.

Table 67: Procedure in place to remove an access point

Has the National Regulatory Authority/Ministry established a process which the Universal Service Provider has to follow prior to removing a particular access point (be it a collection letterbox or a post office)?		
Yes	13	AT, CH, DE, EE, FR, GB, LT, MK, MT, NO, SE, SK, SI, PT
No	12	BE, CZ, DK, ES, GR, HU, IE ⁸⁷ , LU, PL, RO, RS, TR

In **Austria** the USP has to show evidence that the access point is no longer profitable, and has to search for alternatives for providing the universal service in agreement with the local mayor.

In **Switzerland**, an extra parliamentary Commission, at the request of the local authorities has to check the conditions of the Decision (closure or relocation of a post office). The Commission then makes a recommendation. However, the final decision rests with the USP.

In **Germany**, the USP has to start consultations with the local authorities, 10 weeks prior to any intended changes to the office network. In **Estonia** the USP has the minimum number of collection letterboxes and post offices specified in its licence. If it wishes to close some of its access points, it has to apply with the NRA to change the terms of its licence.

In **France** the USP has to produce an annual report for each *department* on the accessibility of the postal network, which shall include:

- (a) an overall assessment of the public's needs in terms of postal services, taking into account the *department's* social, economic and demographic characteristics, the geographical features of the *department* itself and neighbouring *departments*, especially in mountain areas, and the existence of rural rehabilitation areas or sensitive urban areas;
- (b) the characteristics of its geographical network and a list and locations of the post-office counters making up this network, indicating whether they are run by a private entity, a public entity or the USP directly; and (c) the nature of the services provided in these different types of post-office counters and the extent to which they match the public's needs.

As detailed above, the Government of **Great Britain** announced in May 2007 that it would close up to 2,500 post offices across the country, in order to make the network more sustainable in the long-term.

⁸⁶ Though this is not considered as a reduction in the quality of service provided it is considered as a case of concern within the context of local politics.

⁸⁷ IE however commented that obligations must be complied with. However, actual provision is in reality in excess of obligation.

To mitigate the impact of the compensated closures, the Government decided to provide funding for 500 new outreach services. Post Office Ltd split the GB into 46 review areas and publicly consulted on its proposals for each review on a rolling basis. For letterbox closures, the USP must notify the NRA and ensure that the conditions set out in its licence are maintained.

In **Macedonia** the USP has to get the NRA prior to approval before removing an access point.

In **Malta** prior to the permanent closure or resiting of a particular access point the USP, must at least 4 weeks in advance, inform the NRA of its intention to permanently close or re-site any existing access point together with:

- (a) particular evidence relating to the reasons mentioned,
- (b) evidence that it has consulted with the local and planning authorities, and
- (c) a justification that customers will still have access to meet their needs.

In **Norway** the USP has to apply with the regulatory authority if it wants to have an exemption from the requirement of at least one permanent post office in each municipality. Moreover, the USP has to give notice to the regulator and the public at least 2 months prior to any intended changes. Changes in the number of collection letterboxes may be done as long as the licence requirement is fulfilled. The change however has to be reported to the regulator as part of the report on the fulfilment of the license.

In **Portugal** in the case of any changes to the network the USP it is bound to inform the NRA, and in the case of post office closure or reduction of daily opening hours to provide justifiable causes for such decisions in terms of necessity of service, as well as the communication demands of the local population and businesses.

In **Sweden** a postal service provider shall inform the NRA of all planned removals of access points that affect more than one user in cases where an acceptable alternative cannot be presented.

In **Slovakia** the USP has the obligation to announce the intended changes in the access points. The NRA then has to verify that the conditions (standards) set in the Postal licence and in the “Requirements for the Quality of the Universal Service” are abided to.

In **Slovenia** the USP can remove collection letterboxes if it finds out that the daily average mail received in that box is less than 20 postal items. This is however not applicable in areas or cities where there is only one collection letterbox and no post office. The USP has to inform the agency in the case of the closure of a post office. For this purpose it must send a notice to the Agency, indicating the reasons for the closure and how the universal service is going to be provided after the closure. The agency agrees only if on the basis of the information gathered, it can determine by certainty that with the closure of a contact point there will not be a deterioration of the universal service in that area.

3.4.2. Highlighting the Pros & Cons

From the outcome of the study it can be observed that:

- As regards collection letterboxes many countries have set requirements/standards to ensure that an adequate number of collection letterboxes are provided by the USP. There are countries which feel that it is not necessary to regulate this area as an adequate number of collection letterboxes are already being provided.
- This is also the case of post offices. However, the number of countries which have felt the need to regulate this area is greater. This may be attributed to the greater sensitivity of the post office to the community with respect to collection letterboxes.
- The level of detail and the type of standards applied both for collection letterboxes and post offices vary from country to country. Thus it cannot be said that there is one ‘common’ standard that is applied, though certain similarities between some groups of countries can be drawn. The differences in requirements could be attributed to geographic and demographic differences. Each country stipulates the type of requirements according to its needs.

- The ‘form’ in which the criteria (for both collection letterboxes and post offices) are stipulated also varies. However, the majority of countries have inserted these criteria in the legislation.
- The majority of countries have experienced a decrease in the number of collection letterboxes. Various reasons were given for this decrease. Rationalisation and optimisation of the network together with an increase in costs were the main reasons given.
- As regards post offices that have to be provided by the USP, the findings have confirmed that in the majority of countries, these can also be outsourced to private entities.
- The majority of countries also set particular requirements on the number of days and hours during which the post offices provided by the USP have to remain open. However, this is concentrated mainly on the days during which the post office has to be open.
- A decrease in the post office network has also been experienced in the majority of European countries. However, many countries do not see this decrease as a reduction in the quality of service as alternative means such as mobile post offices are being provided.
- Many countries have also established a process which the USP has to follow prior to removing a particular access point. This is very important to ensure that the needs of consumers are safeguarded, taking into consideration that many USPs enjoy a dominant position.

3.4.3. Conclusions

Subject to the analysis made the following recommendations can be given:

- Though the Directive does put the onus on Member States to ensure that the density of access points takes account of the needs of users, no specific requirement is set. As has been seen from the study, this has led to a number of requirements being developed in Member States. This has also happened in other countries which are not members of the EU.
- It is not feasible to put in place specific requirements as geographic and demographic characteristics vary from country to country. Nonetheless, some form of guidelines based on countries best practices would help to fill this vacuum.
- It has also been seen that the majority of countries prefer accessibility criteria with respect to collection letterboxes and post offices to be found in the legislation. While the latter ensures that particular obligations are met it would perhaps be more appropriate to favour also directives issued by the regulatory authority. In a fast changing world this may help to take into consideration changing conditions and to modify accessibility criteria accordingly.

3.5. Interoperability

The First and Second Directives aimed at ensuring the best possible service through a gradual opening of the postal market. They had then set the 1st of January 2009 as the possible date for the full accomplishment of the internal market for postal services.⁸⁸

The Third Directive defined 2010, and for some Member States 2012, as the deadline in the gradual opening of the postal sector.

Some European States however have already opened their markets fully to competition. This has initiated the scenario where some countries are already experiencing a multi-operator environment. Nonetheless for a multi-operator market to run smoothly, it must be set out in a clear manner how postal operators are expected to work together whenever necessary, and to make sure that proper systems are in place to deal with any “overlaps” between them, so that users receive a good service.

⁸⁸ This was only a ‘possible’ date as this eventually had to be confirmed (or changed) by co-decision procedure i.e. in agreement of both the European Parliament and the Council.
 European Commission (2009), *EU Postal Legislation* (on-line) : http://ec.europa.eu/internal_market/post/legislation_en.htm#legislative.

Typical overlaps identified within a multi-operator scenario relate to the following aspects:

- (a) **Misdirected postal articles** i.e. postal articles which have entered the postal facilities of a licensee which is not the intended operator due to the postal articles being **reposted** or **misposted**. **Reposted postal articles** are postal articles that have been delivered by a licensee but then “reposted” into the incorrect network by the recipient of the item. **Misposted postal articles** refer to postal articles that due to a sender error have entered the postal facilities of a licensee which is not the intended operator.
- (b) **Miscollected postal articles** refer to postal articles which have been collected in error by a postal operator which is not the intended operator. This problem will relate mainly to the collection of bags, or other containers, rather than individual items. In this case the fault is to be attributed to the miscollecting postal operator and not to the sender or the licensee responsible for those postal articles.
- (c) **“Misdirected enquiries”** are complaints or enquiries received by a postal operator in respect of postal articles for which it is not the intended postal operator.

Within this context it is very important that inter-operator issues are solved so that customers experience a seamless postal service. The survey conducted by the CERP Project team on Universal Services tried to identify the issues within a multi-operator environment within the scope of the universal service and whether countries have put in place a framework to deal with these issues.

3.5.1. International Overview of Status Quo

This section gives an overview of the inter-operator issues experienced and whether countries have put in place a framework to deal with such issues.

3.5.1.1. Common Inter-operator Issues identified

Only **Estonia** (misdirected postal items), **Lithuania** (misdirected and miscollected postal articles and misdirected enquiries), **Malta** (misdirected postal articles and misdirected enquiries), **Poland** and **Turkey** (misdirected postal items) experienced problems associated with ‘overlaps’ between operators’ networks within the universal service. Other countries did mention some problems which however were not being tackled as part of this study such as access to postal infrastructure (e.g. change of address information and PO boxes).

Some countries attributed the reasons that these inter-operator issues are not present on the fact that there is only one postal operator or universal service provider (Hungary, Norway, Slovakia). Other countries highlighted simply that they do not have such issues.

This in turn justifies the position set out in Table below, whereby only 2 countries have put in place a framework to deal with such issues.

3.5.1.2. Interoperator Frameworks put in place in European countries

Table 78: Framework or Guidelines in place to deal with Inter-operator issues

Has your country put in place a framework on guidelines on how these inter-operator issues should be dealt with?		
Yes		GB, LT
No		AT, BE ⁸⁹ , CH, CZ, DE, DK, EE, GR, HU, IE, MK, MT, PT, RO, SE, SK, SI, TR

⁸⁹ Belgium commented that in transposing the new postal directive they will set out certain guidelines which will also give the power to react to certain issues as they arise. However, this proposal has to be approved by Parliament.

In Great Britain Postcomm has established a common operating procedures code. This came into force on 1st January 2006 when the GB mail market fully opened to competition. This code aims to ensure that all the market players share the responsibility and the cost of dealing with misdirected mail and that customers' mail is not unduly delayed because it gets lost into the wrong network.⁹⁰

In fact the Code tackles such aspects as mail identification, reposted mail, misposted mail, miscollected mail and misdirected customer service enquiries. Moreover, licensees are required by the Code to sign up to a default agreement that enters into effect in the absence of bilateral arrangements for managing these issues between operators.

In Lithuania, in its regulations on the granting of authorisations and the provision of postal services, it is specifically stated that the postal service provider shall indicate on the postal item the data allowing it to identify the provider of postal services, its address and the date in which the postal item was received in the care of the postal service provider. In addition, it was highlighted that the regulator organises annual meetings with postal operators where these inter-operator issues are discussed.

In Malta, the MCA⁹¹ has issued a consultation document on a set of minimum standards for managing common operational issues amongst licensed postal operators. The proposed standards set out the duties and obligations of licensed postal operators (i.e. postal operators operating services falling within the scope of the universal service) relating to managing common operational issues in a multi-operator environment.⁹² The common operational issue discussed in the consultation document related amongst others to the identification of mail as carried by a licensed postal operator, the timely and efficient extraction and repatriation of mail which has entered the postal facilities of a postal operator which is not the intended the intended operator and the redirection of misdirected customer enquiries.

Poland expressed its intention of introducing such a framework. Portugal highlighted that it is currently studying the issue.

3.5.2. Highlighting the Pros and Cons

It can be observed that only a few countries have dealt with inter-operability issues. However, with the opening of postal markets to competition these problems may increase.

Though putting in place a framework does not seem necessary in the majority of countries, some countries are already studying the issue or have already put in place such a framework (Great Britain and Lithuania). This is very appropriate especially when taking into consideration that this may in turn enhance more competition as it gives new entrants the regulatory certainty needed to enter the market.

A clear example is Great Britain where in the context of a fully liberalised environment an advanced framework is in place to deal with such issues.

⁹⁰ Postcomm, *Common operating procedures code* (on-line) : <http://www.psc.gov.uk/policy-and-consultations/consultations/common-operating-procedures-code.html>.

⁹¹ The Malta Communications Authority.

⁹² MCA (2009) , *Postal Sector – Managing Common Operational Issues in a Multi-Operator Environment. Consultation Paper* (on-line) : <http://www.mca.org.mt/newsroom/openarticle.asp?id=779>.

3.5.3. Conclusions

It is therefore being recommended that:

- This issue is studied further within the context of CERP in order to provide best practice guidelines. Some countries such as Great Britain which already have in place such a framework could be taken as a model.
- Any model or framework to be applied must be practical. Thus it is important to avoid undue complexities which may in turn hinder the prospects of potential new entrants to the market.
- More awareness on the type of issues that may arise with more competitors operating within the universal service should be drawn by CERP. Lack of awareness may then lead to a 'fire fighting approach' and the introduction of frameworks late in the day.

Chapter 4 - Provision of Universal Service

4.1. Introduction

According to Article 4 of the Directive each Member State shall ensure that the provision of the universal service is guaranteed. The Directive provides different options for the Member States of the European Union to ensure the provision of the universal postal service. The available mechanisms for the Member States are:

- (1) Market forces (entirety of Postal operators should provide the universal service without any previous obligation),
- (2) Designation of one or more universal service provider(s),
- (3) Public procurement procedure (Call for tenders).

Each of these methods is analysed in more detail in the following Chapter.

4.2. Market forces

4.2.1. Outline

So far it seems to be the case that only one country has decided to go for the market forces solution to ensure the Universal Service and that is Germany. After the transition period of exclusive licensing there is at the present time no company formally obliged to provide the universal service.

In this context the question for the arguments in favour and against ensuring of the universal service through the market forces model arises. To address this question it is first of all necessary to explain the system of ensuring the universal service by market forces in more detail. Therefore, the German universal service model will be explained briefly as it is the only market force model being in place at the moment. Afterwards there will be an examination of the pros and cons of this solution to ensure the universal service. The pros and cons put forward are mainly based on the practical experiences in Germany.

4.2.2. Ensuring Universal Service by market forces: the German Universal Service Model

The German universal service model is based on the general assumption that the universal service will be ensured by market forces without intervention of the state like the supply with other basic services and products. Thus, the most important task of the NRA is the permanent monitoring of the market. The benchmark for this monitoring is the so called Postal Universal Services Ordinance. In this Ordinance the universal service is defined, but not the universal service obligations as such.

Moreover there are mechanisms implemented in the Postal Act to ensure the provision of a specific universal service if there has been a deficit detected or imminent. If there is such a case, operators with a turnover of more than 500.000 € are legally obliged to contribute to enable the provision of this specific universal service.

4.2.2.1. Imposition of Universal Service Obligations by NRA

In the case of an imposition of Universal Service Obligations by the NRA the first step is an official statement by the NRA that there is a market failure. This statement will describe exactly what part of the universal service is lacking and will be published in the official Gazette of the NRA.

However, it is also important to bear in mind that the NRA is trying on an informal basis to avoid any case deficit case before this first becomes necessary. In doing so the NRA is taking into account and consideration the incumbent as well as the competitors. Furthermore the Postal Act contains a provision for the case where the incumbent (Deutsche Post) has hitherto provided universal services

and intends in future to discontinue it. In this case the incumbent operator shall notify the NRA accordingly six months prior to the beginning of such curtailment.

The second step after the statement in the Official Gazette is than the possibility for any operator to provide the relevant universal service without compensation or subsidies.

If there is no such operator, the NRA may oblige an operator having a dominant position in the relevant geographical market, to provide the relevant universal service. In the case that this operator provides sufficient prima facie evidence that in case of such obligation it would suffer an economic disadvantage and would be able to claim compensation, the NRA can decide to invite tenders for the relevant universal service.

4.2.2.2. Tender procedure

Within the tender procedure the NRA solicits bids for the universal service concerned. However, it may dispense with a solicitation if this does not appear appropriate. The universal service that is subject of bids solicitation will be awarded to the efficient, reliable bidder with the specialised knowledge who requires the least financial compensation. Where a suitable applicant is not found by tendering, the NRA will oblige the company mentioned above.

4.2.2.3. Compensation for Universal Service Provision by NRA

Where an undertaking is obliged to provide a particular universal service following a tender, the NRA will grant a financial compensation as recognised in the tendering procedure. An undertaking obliged not via a tender procedure may demand compensation from the NRA when it evidences that the long-run incremental costs of providing the relevant service efficiently, inclusive of adequate interest on capital employed, exceed the income from that service. Income will be computed on the basis of the affordable price as laid down in the Universal Service Ordinance. Compensation will be paid at the end of the calendar year.

4.2.2.4. Compensation Levy

Where the NRA grants compensation, any licensee having sales exceeding 500.000 Euro is obliged to contribute to the compensation payable by the NRA by means of a compensation levy. The amount of the levy is computed according to the ratio of the licensee's sales to the total sales of all licensees obliged.

4.2.3. Pros and Cons for the market forces solution

4.2.3.1. Pros

On the one hand, the German model ensures that universal services are provided at the lowest price and it contains strong incentives to avoid "deficit cases". However, the most important argument in favour of the market forces solution is that this system leaves the ensuring of the universal service up to the market and its players itself. The general assumption is that the market itself fulfils the universal service requirements best and that a functioning market needs no intervention from the State at all. There is only a need to step in and to apply regulatory measures if there is a market failure.

Intervention into free competition only occurs, where and as far as this is justified ex-post on the basis of facts and not ex ante by presumptions. Maybe the most important implication of the application of the market forces solution can be seen in the fact that it ensures the development of a competitive market structure.

Furthermore it seems to be a rather effective approach to combine the achievement of two important aims required by legislation: promoting competition and ensuring the universal service at the same time. Finally it tends to avoid any administrative workload in connection with the designation of one

or more operators or in carrying out a public procurement procedure and it reduces the risk of any favouring treatment of the incumbent.

4.2.3.2. Cons

On the other hand, one argument against the market forces system is the permanent task of the NRA to guarantee a close market monitoring. In this context there are many difficult questions which have to be addressed by the NRA: How do we ensure the market monitoring and how do we define and identify a deficit within the universal service? What does the term “market failure” mean in fact? Moreover, in cases of an identified deficit there is an urgent need for the NRA to react very fast and to apply the mechanisms in place to ensure the provision of universal service. Finally, recent experiences show that the market dominant operator may consider testing the limits of the universal criteria by reducing quality and density of those services. Therefore continuous awareness of the NRA seems to be advisable.

4.2.4. Conclusion

The experiences in Germany so far have shown that the market forces model seems to be working in practice. Until now there was no case where the NRA had to identify a deficit. Consequently there was also no need and necessity for the NRA to publish a deficit case in its Official Gazette and to go through the above described system and process of ensuring the universal service. In addition one has to take into consideration that this applied universal service model based on market forces is not a new one in Germany at all. A similar system is also in place for ensuring the universal service in the telecommunications sector since 1996 and was actually used as the role model for the Postal universal service. And so far there was never a situation of a deficit case in the field of telecommunications arising where the NRA had to step in with any ex-post regulatory measures to ensure the provision of universal service.

4.3. Designation

4.3.1. Introduction and legal references

The universal service has traditionally been guaranteed through the designation of the universal service provider. Most of the Member States have used this method considering the phrasing of Article 4 of Directive 97/67. However, designation is no longer necessarily the most recommended method. Recital 23 of Directive 2008/06 reads as follows:

“Directive 97/67/EC established a preference for the provision of the universal service through the designation of universal service providers. Member States may require that the universal service be provided throughout the whole of the national territory. Greater competition and choice means that Member States should be given further flexibility to determine the most efficient and appropriate mechanism to guarantee the availability of the universal service, while respecting the principles of objectivity, transparency, non-discrimination, proportionality and least market distortion necessary to ensure the free provision of postal services in the internal market. Member States may apply one or a combination of the following: the provision of the universal service by market forces, the designation of one or several undertakings to provide different elements of the universal service or to cover different parts of the territory and public procurement of services.

In the event that a Member State decides to designate one or more undertakings for the provision of the universal service, or for the provision of the various components of the universal service, it must be ensured that quality requirements pertaining to the universal service are imposed in a transparent and proportionate manner on the universal service providers. Where a Member State designates more than one undertaking, it should ensure that there is no overlap in the universal service obligations.”
[emphasis added]

Today, Article 4 of Directive 2008/06 confirms that designation is still a valid method of guaranteeing universal service provision, subject to the specific conditions provided in Art. 4(2):

“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 to fulfil 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.

*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.*

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.”
[emphasis added]

4.3.2. Designation in practice

Designation is allowed under certain conditions. According to Article 4, in order for the designation to be valid, it should:

- observe the principles of objectivity, transparency (publication of rights and obligations), non-discrimination, proportionality (e.g. no overlap) and least market distortion,
- be based on objective criteria (e.g. financial resources, experience of the applicant, ...),
- be notified to the European Commission.

The term of this designation should be limited. The designation should be reviewed regularly. The duration of designation shall take into account a sufficient period for return on investment.

In addition it is clear that the Member States are free to choose:

- to designate one or more undertakings,
- to designate different undertakings for different elements of the USO,
- to designate different undertakings 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.

The designation can be taken by:

- law,
- administrative decision (subject to appeal under national law- judicial protection),
- regulation.

4.3.3. Pros and Cons for the designation solution

4.3.3.1. Pros

- legal certainty for all market players,
- judicial protection,
- easy market monitoring,
- guarantee of USO provision.

4.3.3.2. Cons

- room for discrimination and favouring of the historical postal operator,
- difficulty with Altmark test, in combination with USO compensation by public funds,
- may lead to services being provided at an efficiently high cost,
- administrative burden.

4.3.4. Conclusion

Designation is the mechanism traditionally chosen by Member States. Under Directive 2008/06 designation is not necessarily the most appropriate method, but is still recognized as a valid one to guarantee the universal service. The method has - as highlighted above - pros and cons, but it appears according to Article 4 that by choosing designation, Member States have an attractive flexibility.

The decision for one or another system of ensuring the universal service according to the Directive will possibly change over time. Changes in the market dynamics after liberalization could able Member States to review their actual methodology and to choose for other methodologies.

4.4. Public procurement procedure (Call for tenders)

4.4.1. Principles

The call for tenders system for awarding universal service missions is based on the following considerations:

- in certain sectors, the public authorities can define specific objectives accompanied by public service or universal service obligations,
- these are included in precise, detailed general conditions (*cahiers des charges*), on the basis of which the calls for tenders are organised,
- the service is awarded and leads to the signature of a contract for a limited period of time,
- the service can be awarded either to the lowest bidder (lowest cost or lowest subsidy), or to the best bidder (on the basis of criteria set out explicitly in the general conditions).

The call for tenders can be launched at national level or at regional level. In the event of regional calls for tenders, a different service provider may perform each mission.

4.4.2. Call for tenders and reverse auction

The calls for tenders may take the form of a “reverse auction”, where each operator proposes the amount of the subsidy that would enable it to fulfil the universal service obligations. The winning bidder is the operator that requests the smallest subsidy. Another possibility is that the government sets the amount of the subsidy it will pay and the operators each propose a universal service offering that is more or less extensive.

4.4.3. General context

4.4.3.1. Postal Directive

The former Article 7 of the Postal Directive was replaced by the amending Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008:

“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.”

4.4.3.2. Directive on procurement procedures

Directive 2004/17/EC (referred to hereafter as “the Utilities Directive”⁹³) has taken into account that the liberalisation of postal services has been gradual and uneven. That’s why postal services are included in the Utilities Directive. Postal services cover: postal services which are reserved under the terms of Directive 97/67/EC, as well as those which may not be reserved under Directive 97/67/EC; all of the following services are also covered, on condition that such services are provided by an entity which also provides postal services and that the market is not yet open to competition: mail management services (e.g. mailroom management services), added-value services linked to and provided entirely by electronic means (e.g. the secure transmission of coded documents, address management services), direct mail bearing no address, financial services (e.g. postal money orders and postal giro transfers), philatelic services and logistics services;

The criteria used by the contracting entities are:

- either the lowest price only, or, where the contract is awarded to the most economically advantageous tender,
- various criteria linked to the subject-matter of the contract in question, such as: quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, after-sales service and technical assistance, delivery date, and completion date.

The contracting entity should specify the relative weighting it gives to each of the criteria.

4.4.4. Types of public procurement procedures

There are different **public procurement procedures**: the open procedure, the restricted procedure, the negotiated procedure with or without the publication of a public contract notice and the competitive dialogue.

4.4.4.1. Open procedure

All interested parties can submit a tender (albeit only those meeting the contracting authority's selection criteria, if there are any, will be entitled to have their tender assessed). No negotiation with the bidders is permitted.

4.4.4.2. Restricted procedure

All interested parties may express an interest in tendering for the contract but only those meeting the contracting authority's selection criteria will actually be invited to do so. No negotiation with the bidders is permitted.

4.4.4.3. Negotiated procedure

According to the Utilities Directive in the case of negotiated procedures, the contracting entity consults the economic operators of its choice and negotiates the terms of the contract with one or more of these.

Basically, there are two types of negotiated procedure:

⁹³ Directive 2004/17/EC of the European Parliament and the Council on public procurement.

- negotiated procedure without a prior call for competition,
- negotiated procedure with a prior call.

Under the negotiated procedure without a prior call for competition, the contracting entity is not required to issue a notice and may negotiate directly with the supplier of its choice.

Under the negotiated procedure with a prior call, however, a notice must be published. Tenderers are invited to negotiate the terms of the advertised contract with the contracting entity. This procedure can only be used in limited circumstances.

4.4.4.4. Competitive dialogue

All interested parties may express an interest in tendering for the contract but only those meeting the contracting authority's selection criteria will actually be invited to do so.

During the "dialogue" phase, tenderers are able to discuss all aspects of the contract individually with the contracting authority. Once the dialogue has generated solutions to the agreed requirements, final tenders are invited based on each tenderer's individual solution. The best tender can then be selected. It is particularly suited to large complex projects.

4.4.5. Pros and Cons for the public procurement procedures solution

4.4.5.1. Pros

- the most efficient operator is appointed on the basis of efficiency and competitive neutrality criteria,
- it encourages new players to enter the market which are specialised in a given section of the value chain,
- the cost of the universal service decreases,
- it encourages quality service through the regular renewal of service awards,
- avoids the need to justify the compensation paid under state aid rules.

4.4.5.2. Cons

- the small number (or even initially the absence) of players that are capable of providing universal services at a cost that is lower than that of the traditional operator, throughout the territory,
- the amount paid to the successful bidder has to be met from state funds,
- the risk of collusive behaviour between bidders,
- time consuming and expensive administrative procedures,
- in the event of a regional call for tenders, the issue would arise as to the terms and conditions for coordinating the operational processes between the various operators, and the impacts of these links on the quality of service (both in terms of service level and in terms of liability).

It would be necessary to define the regions clearly, in order to minimise any imbalances between them, to guarantee inter-operability between the various regions' services and to establish how franchise holders are indemnified for distributing mail that arrives from a region for which they are not franchised (access charge). The risk of mission fragmentation (i.e. services being spread between several players) could harm the overall quality of the service.

4.4.6. Conclusion

The call for tenders system has now been applied in France for the supply of the electronic communications universal service since 2004, at which time it was considered that genuine competition would make it possible to draw all the benefits from the system.

Article L35-1 of the French Post and Electronic Communications Code states: *"All operators may be entrusted with providing one of the components of the universal service [...] that agree to and are capable of ensuring the supply thereof throughout the national territory"*.

The operator or operators that are entrusted with the universal service are appointed on the basis of a call for applications. This covers the technical and pricing conditions as well as, where applicable, the net cost of the supply of these services. Each of the components of the universal service forms a lot.

If the call for applications does not result in an operator being appointed, the *"Minister for Telecommunications appoints an operator that is capable of providing the service in question throughout the national territory"*.

4.5. General conclusion

The Third Directive provides the Member States with greater flexibility for mechanisms to safeguard the universal service. Even though it seems to be the case that the Third Directive cannot hide a preference for the market forces model, it offers a wide range and it is up to the Member States to decide which way they want to go.

However, the decisive question for any Member State should be which system meets best its national specificity. There is certainly no one size that fits all solution in place. It is depending on the situation and the actual development of the Postal market in question and the conditions involved to find the best solution. But in case of competitive postal markets, it might be a good solution to ensure the provision of the universal postal service by market forces. In this case the risk of a market failure and the need for the NRA to take the necessary action can be considered as not that high.

In a less competitive market, as for some countries domestic postal market, with no other potential universal service provider than the incumbent operator, continued designation of the incumbent postal operator for a limited time combined with regular review may be appropriate.

In any case it seems of vital importance that the Member State should be aware of the consequences and impacts caused in practice by the decision to go for one or the other option in place. Member States may of course be asked to justify that a decision to use a method other than market forces is proportionate and necessary, particularly when the state owns or controls an operator with a mandate to provide services of general economic interests'.

Concluding, the decision in favour of one or another system to ensure the universal service envisaged by the Directive should not be considered as a final one. The universal service as such is a dynamic concept and it is highly depending on the market developments. Therefore, the decision for one or the other solution should be considered and evaluated on a regular basis and against the background of the development of the postal market in question.

Chapter 5 – Methods to ensure the USO meets the needs of users

The universal postal service is crucial to modern society, in both social and economic sense. The opening up of the European market involves new challenges especially for the regulator and incumbent. A most important issue is to define the scope and requirements of the universal service.

The universal service makes it necessary to identify all the components to be regulated, on a liberalized postal market. The first purpose of this regulation is to ensure the provision and maintenance of the universal service. The second purpose deals with protecting the interest of the users. Then of course, the definition of universal service is not the same in different countries. The directive only seeks to ensure that there is a minimum range of services and quality standards, and that the operators have level playing field.⁹⁴ The regulatory framework may be standardized but regarding harmonization of the regulation in practice there is still much to be done.

This toolbox may facilitate the implementation of the new directive, for the Member States. The Directive leaves great flexibility, stressing only some basic conditions regarding what services to be provided, uniform tariffs, service quality and the five-day delivery obligation. For this reason, this chapter aims to give a range of examples on how member countries reflect on the respective universal service and the different methods of to identify the needs to be met.

5.1. Market research

‘Market research’ appears to be the most common method of surveying. Publishing the results of the research is most commonly made on the respective websites by the regulators. Surveying is an effective tool that can be used by the regulator, and the survey results may cover the most relevant areas and capture postal user’s opinion. According to the CERP PT Consumer Issues report, 11 out of 18 respondents claim to conduct consumer surveys. Here are three examples of surveys carried out by BIPT, ANACOM and APEK and, regulators of Belgium, Portugal and Slovenia respectively.

Belgium

BIPT carried out a telephone survey during 2006 that aimed to investigate what people expect and require from the universal postal service. These results could then serve as foundation for decision-making on this matter. In addition, the regulator completed a research amongst small and medium sized companies, during 2007. This is an important group and corresponds to 45 % of the incumbent’s total customer base. The questionnaires pointed at some highly important issues.

The general opinion was that the quality of distribution was sufficient. The time of delivery though seemed to be more problematic, and one third of the respondents wished for an earlier delivery. The opinion on the postal offices was generally good. On the other hand the opening hours could be extended during week days according to the responding companies.

Portugal

One of the researches made was a study about the development of the market. It was carried out by Accenture for ICP-ANACOM between May and August 2006. Its aim was to set out the current situation of the postal market in Portugal and to characterise the factors which are influencing its development, and therefore contribute to a better understanding of the market and establish bases for the forecast of its future development. The study does not cover developments occurring after September 2006, including options announced by the European Commission.

The study brings together two key components: an assessment of the historical evolution and current situation of the Portuguese postal market, looking at indicators and competitive structure (Part I);

⁹⁴ CERP Working Group Regulatory issues, a discussion paper on “Postal Service” definitions, (2001), p. 13.

and a description of likely scenarios for the evolution of the market given its natural trends and the movements of liberalisation (Part II).

The diagnostic report includes: background and historical evolution of the postal market; structural analysis of the postal market and of the factors governing its evolution; characterisation of the postal market's segments and analysis of the respective indicators; identification, characterisation and views of the main companies operating in the Portuguese postal market. The performed analysis was based on an extensive range of information sources, including public statistics and studies, private information from operators and ICP-ANACOM, a survey of the various bodies of the sector and Accenture's own internal information on the sector. Accordingly, the public version of the report omits confidential data. It is concluded that the development of competition has reached different stages in the various segments and that market liberalisation presents attractive opportunities.

Forecasts on the future evolution of the market are based on several international studies and discussion with Accenture sector specialists. The following approach was adopted: identification of the trends of natural evolution; analysis of the strategy and intentions of operators; inference from the experience of markets further along the liberalisation process; and the analysis of the impact of the various possible liberalisation scenarios.

The study concludes by making a comparative assessment of the options for liberalisation, identifying the most desirable scenarios from the point of view of sustainable and controlled development of the market and by setting out the implication of these scenarios with respect to the preparatory measures needed from the regulator.

Slovenia

In 2007 and 2008 two different surveys were carried out by APEK - one focused on households (700 persons) and a second on representative companies (300, especially small companies). The household survey was carried out by telephone, following the method of computer-assisted telephone surveying. All households selected at random from 4213 telephone subscribers. The respondents within this group were selected by a random procedure according to method of the last birthday.

The sample framework used for the company survey was based on the business register of Slovenia. From there the company as well as the representative of the company was selected at random (given that this person has an administrative role and frequent contact with postal issues). The survey was carried out by telephone, following the method of computer-assisted telephone surveying.

For questionnaire and main results see:

“Survey on users’ satisfaction with postal services (general public)” and “Survey on users’ satisfaction with postal services (business public)” by APEK.

5.2. Consultation procedure

The consultation procedure could best be described as a process where opinions and remarks from different stakeholders are gathered. Stakeholders are for instance agencies, consumer groups, organisations, companies, labour unions and other instances involved in the consultation procedure. These are often pointed out by the ministry and cover the different areas of interest. The instances that are consulted does, of course, differ much amongst the European countries. Some examples show that up to 40 instances are consulted.⁹⁵ Here follows three variations of consultations procedure. The first is Postcomm, regulator of Great Britain, which method includes both surveying and consultation. The two other examples of consultation procedure come from Ireland and Sweden.

⁹⁵ ”Postlag och en förenklad verksamhetsform för Postverket” 1993/94:38, (1993), p. 203.

Great Britain

The purpose of Postcomm's review, launched in 2003, was to identify what postal services should be included in the universal postal service and how the universal service provider is required to provide this service. It was all carried out with a year-long consultation, including roadshows and discussions with users at meetings. The first stage of the review asked people what they wanted from the universal service. The second stage dealt with the consultation on Postcomm's proposals, which were based on the results from the first stage. Consultants responded to proposal on the following issues; weight limit on 1st and 2nd class mail services, bulk mail services, support services, services that are not universal services, registered and insured items, international services, services for the blind and provision of access. The whole process resulted in an array of requirements regarding the current product range, specifying how the universal service should be provided through Royal Mail's different services.⁹⁶

Ireland

To formulate a definition of what constitutes the universal service, ComReg launched its consultation 'The Universal Postal Service' in 2005.

Based on the responses, ComReg could formulate a "working definition" that described the basic package of postal services which must remain available nationwide at an affordable price. This customer focused definition safeguards the essential elements of universal service.⁹⁷

Sweden

The universal service obligation in Sweden is merely defined in the license granted to the incumbent. Primary law states more generally what is set out in the Directive. The Swedish model is somewhat of an exception compared to the rest of the European countries. The incumbent sees the positive sides of having nationwide coverage and all services are offered throughout the country with uniform tariffs. This comprehension derives from the concept of "fundamental postal service" that was discussed more thoroughly in the Postal Act Bill in 1993.⁹⁸ The conclusion made there, that the present level of postal service was sufficient, established the standard during the liberalization process and onwards.

The process itself followed the general order in Sweden; a commission or an appointed investigator presents a proposal to the government. The proposal is circulated among different stakeholders who are asked to comment on the topics of investigation and the proposals. Based on the result of this procedure a bill is then presented to the parliament.

5.3. Provision of information

Another method to ensure that users' needs are met may be the information provided by postal service providers, in particular to the national regulatory authorities⁹⁹. This information may concern the provision of universal service.

The collection of such an information, including statistical data, is very important because it:

- provides information to regulators and policy makers and helps them taking decisions with regard to the universal service,
- gives necessary knowledge about the market and enables its monitoring,
- ensures conformity with the provisions of, or decisions made in accordance with the Directive,
- promotes market transparency.

⁹⁶ More information about this review can be found here: <http://www.psc.gov.uk/policy-and-consultations/consultations/universal-service--bulk-mail.html>.

⁹⁷ See ComReg document 05/85.

⁹⁸ "Postlag och en förenklad verksamhetsform för Postverket" 1993/94:38, (1993), p. 73.

⁹⁹ Article 22a of the Directive 2008/6/EC.

Chapter 6 - Conclusions

The **Implementation Guide** highlights key issues in relation to the universal service.

Such a compendium should be helpful especially in the time of dynamic changes in the postal sector where on the one hand the Member States have been facing full market opening challenge (or its consequences) and the need of safeguarding the universal service on the other.

The **Implementation Guide** does not give any recipes which scope of universal service is the most suitable or which model of universal service provision is the best one. By and large it is difficult to give clear-cut recommendations as postal markets differ from country to country. In others words there is no universal model for universal service.

However, the **Guide** considers pros and cons in the analysed areas and tries to draw conclusions giving the Member States some choice and guidance in search for a right solution.

Among all the discussed problems the VAT question – exemption from VAT – seems to be exceptional. In this case the **Guide** was not able to present any conclusion, expecting rather a European Commission recommendation.

List of Abbreviations

ISO 3166 Country Codes

AT	Austria
BE	Belgium
BG	Bulgaria
CY	Cyprus
CZ	Czech Republic
DE	Germany
DK	Denmark
EE	Estonia
ES	Spain
FI	Finland
FR	France
GB	United Kingdom
GR	Greece
HU	Hungary
IE	Ireland
IS	Iceland
IT	Italy
LI	Liechtenstein
LT	Lithuania
LU	Luxembourg
LV	Latvia
MK	Macedonia
MT	Malta
NL	Netherlands
NO	Norway
PL	Poland
PT	Portugal
RO	Romania
RS	Serbia
SE	Sweden
SI	Slovenia
SK	Slovak Republic
TR	Turkey

Other Abbreviations

EU	European Union
EC	European Commission
CERP	European Committee for Postal Regulation
MS	Member State
NRA	National Regulatory Authority
US	Universal Service
USO	Universal Service Obligation
USP	Universal Service Provider