

COMMON POSITION (EC) No 23/2002

adopted by the Council on 6 December 2001

with a view to adopting Directive 2002/.../EC of the European Parliament and of the Council of ... amending Directive 97/67/EC with regard to the further opening to competition of Community postal services

(2002/C 110 E/04)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF
THE EUROPEAN UNION,

to competition, for the purposes of creating a single market in postal services.

Having regard to the Treaty establishing the European Community, and in particular Articles 47(2), 55 and 95 thereof,

(3) Article 16 of the Treaty highlights the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion. It goes on to state that care should be taken that such services operate on the basis of principles and conditions which enable them to fulfil their missions.

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

(4) The European Parliament's resolutions of 14 January 1999 ⁽⁷⁾ and 18 February 2000 ⁽⁸⁾ on European postal services highlight the social and economic importance of postal services and the need to maintain a high quality of universal service.

Having regard to the opinion of the Committee of the Regions ⁽³⁾,

(5) The measures in this area should be designed in such a way that the social tasks of the Community pursuant to Article 2 of the Treaty, namely, a high level of employment and of social protection, are also achieved as objectives.

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽⁴⁾,

Whereas:

(6) The rural postal network, *inter alia*, in mountain and island regions plays an essential role in integrating businesses into the national/global economy and in maintaining cohesion in social and employment terms in rural mountain and island regions. Furthermore, rural post offices in mountain and island regions can provide an essential infrastructure network affording universal access to new telecommunications technologies.

(1) In its resolution of 7 February 1994 on the development of Community postal services ⁽⁵⁾, the Council identified as one of the main objectives of Community postal policy the reconciliation of the furtherance of the gradual, controlled liberalisation of the postal market and that of a durable guarantee of the provision of universal service.

(2) Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service ⁽⁶⁾ established a regulatory framework for the postal sector at Community level, including measures to guarantee a universal service and the setting of maximum limits for the postal services which Member States may reserve to their universal service provider(s) with a view to the maintenance of the universal service, and a timetable for decision-making on the further opening of the market

(7) The European Council, meeting in Lisbon, on 23 and 24 March 2000, set out in its Presidency conclusions two decisions applying to postal services, whereby action was requested of the Commission, the Council and the Member States in accordance with their respective powers. The requested actions are: firstly, to set out by the end of 2000 a strategy for the removal of barriers to postal services, and secondly, to speed up liberalisation in areas such as postal services, the stated aim being to achieve a fully operational market in such services.

⁽¹⁾ OJ C 337 E, 28.11.2000, p. 220 and OJ C 180 E, 26.6.2001, p. 291.

⁽²⁾ OJ C 116, 20.4.2001, p. 99.

⁽³⁾ OJ C 144, 16.5.2001, p. 20.

⁽⁴⁾ Opinion of the European Parliament of 14 December 2000 (OJ C 232, 17.8.2001, p. 287), Council Common Position of 6 December 2001 and Decision of the European Parliament of ... (not yet published in the Official Journal).

⁽⁵⁾ OJ C 48, 16.2.1994, p. 3.

⁽⁶⁾ OJ L 15, 21.1.1998, p. 14.

⁽⁷⁾ OJ C 104, 14.4.1999, p. 134.

⁽⁸⁾ OJ C 339, 29.11.2000, p. 297.

(8) The Lisbon European Council also considered it essential that, in the framework of the internal market and of a knowledge-based economy, full account is taken of the Treaty provisions relating to services of general economic interest and to the undertakings entrusted with operating such services.

- (9) The Commission has undertaken a thorough review of the Community postal sector, including the commissioning of studies on the economic, social and technological developments in the sector, and has consulted extensively with interested parties.
- (10) The Community postal sector requires a modern regulatory framework which aims in particular at enhancing the internal market for postal services. Increased competitiveness should enable the postal sector to be integrated with alternative methods of communication and allow the quality of the service provided to ever more demanding users to be improved.
- (11) The basic aim of safeguarding the durable provision of a universal service matching the standard of quality defined by the Member States in accordance with Article 3 of Directive 97/67/EC on a consistent basis throughout the Community can be secured if, in this area, the possibility of reserving services is maintained and, at the same time, conditions of high efficiency ensured by a sufficient degree of freedom to provide services.
- (12) The increase in demand within the postal sector as a whole, predicted for the medium term, could help to offset the loss of market share that the universal service providers may incur as a result of further market-opening and would thereby further safeguard the universal service.
- (13) Amongst the factors which bring about change affecting employment in the postal sector, technological development and market pressure for efficiency gains are the most important; of the remaining factors for change, market-opening will play a less prominent part. Market-opening will help to expand the overall size of the postal markets, and any reductions in staff levels among the universal service providers due to such measures (or their anticipation) are likely to be offset by the resulting growth in employment among private operators and new market entrants.
- (14) It is appropriate to provide at Community level a timetable for a gradual and controlled opening of the letters market to competition which allows all universal service providers sufficient time to put in place the further measures of modernisation and restructuring required to ensure their long-term viability under the new market conditions. An appropriate period of time is also needed to enable Member States to adapt their regulatory systems to a more open environment. It is therefore appropriate to provide for a step-by-step approach to further market-opening, consisting of intermediate steps representing significant but controlled opening of the market, followed by a review and proposal confirming, if appropriate, the date of 2009 for the full accomplishment of the internal market for postal services or determining a relevant alternative step towards it in the light of the review results.
- (15) It is appropriate to ensure that the next phases of market-opening are both substantial in nature and achievable in practice for the Member States whilst also ensuring the continuing of universal service.
- (16) General reductions to 100 grams in 2003 and 50 grams in 2006 in the weight limit of the services which may be reserved to the universal service providers, combined with opening outgoing cross-border mail fully to competition with possible exceptions to the extent necessary to ensure the provision of universal service, represent relatively simple and controlled further phases which are nevertheless significant.
- (17) In the Community, items of ordinary correspondence weighing between 50 grams and 350 grams represent on average approximately 16 % of the total postal revenues of the universal service providers, out of which 9 % corresponds to items of ordinary correspondence weighing between 100 grams and 350 grams, whilst items of outward cross-border correspondence below the 50-gram weight limit represent a further 3 % or so, on average, of the total postal revenues of the universal service providers.
- (18) Price limits for the services capable of being reserved, of respectively three times in 2003 and two-and-a-half times in 2006 the public tariff for an item of correspondence in the first weight step of the fastest standard category, are appropriate in combination with 100-gram and 50-gram weight limits where applicable.
- (19) Direct mail already represents in most Member States a dynamic and growing market with substantial growth prospects while in the remaining Member States there is considerable potential for growth. Direct mail is already largely open to competition in six Member States. The improvements in service flexibility and pricing resultant from competition would improve the position of direct mail versus alternative communications media, which, in turn, would be likely to lead to new postal items as an additional spin-off and strengthen the position of the postal industry as a whole. Nevertheless, to the extent necessary to ensure the provision of universal service, it should be provided that direct mail may continue to be reserved within the above weight and price limits.
- (20) Outgoing cross-border mail represents on average 3 % of total postal revenues. Opening this part of the market in all Member States, with exceptions that would be necessary to ensure the provision of universal service, would allow different postal operators to collect, sort and transport all outgoing cross-border mail.

- (21) Opening incoming cross-border mail to competition would allow circumvention of the 100-gram in 2003 and 50-gram in 2006 limits through relocation of the posting of a proportion of bulk domestic mail, thereby making its effects unpredictable. Identifying the origins of items of correspondence could present additional enforcement difficulties. One hundred gram and 50-gram weight limits for items of ordinary incoming cross-border correspondence and direct mail, as for ordinary domestic correspondence, are practical as they do not present a risk of circumvention either in this way or through an artificial increase in the weight of individual items of correspondence.
- (22) Setting a timetable now, aimed at further steps towards the full accomplishment of the internal market for postal services, is important for both the long-term viability of the universal service and the continued development of modern and efficient postal services.
- (23) It is appropriate to continue to provide for the possibility for Member States to reserve certain postal services to their universal service provider(s). These arrangements will enable the universal service providers to complete the process of adapting their operations and human resources to conditions of greater competition without upsetting their financial equilibrium and thus without jeopardising the safeguarding of universal service.
- (24) It is appropriate both to define the new weight and price limits and the services to which they may apply and to provide for a further review and decision confirming, if appropriate, the date of 2009 for the full accomplishment of the internal market for postal services, or determining a relevant alternative step towards it in the light of the review results.
- (25) Measures adopted by a Member State, including the establishment of a compensation fund or any change in its operation or any implementation of, or payment from, it, may involve aid granted by a Member State or through State resources in any form whatsoever within the meaning of Article 87(1) of the Treaty necessitating prior notification to the Commission pursuant to Article 88(3) thereof.
- (26) The concept of licensing competitors in the universal service area can be combined with requirements obliging such licensees to contribute to the provision of universal service.
- (27) Directive 97/67/EC established that Member States are to designate one or more national regulatory authorities for the postal sector that are legally separate from, and operationally independent of, the postal operators. In view of the dynamics of the European postal markets, the important role national regulatory authorities play should be acknowledged and furthered, in particular concerning the task of ensuring that the reserved services are respected, except in Member States where there are no reserved services. Article 9 of Directive 97/67/EC allows Member States to go beyond the objectives of that Directive.
- (28) It might be appropriate for national regulatory authorities to link the introduction of licences to requirements that consumers of the licensees' services are to have transparent, simple and inexpensive procedures available to them for dealing with their complaints, regardless of whether they relate to the services of the universal service provider(s) or to those of operators holding authorisations, including individual licence-holders. It might be further appropriate for these procedures to be available to users of all postal services, whether or not they are universal services. Such procedures should include procedures for determining responsibility in case of loss of, or damage to, mail items.
- (29) The universal service providers normally provide services, for example to business customers, consolidators of mail for different customers and bulk mailers, enabling them to enter the mail stream at different points and under different conditions by comparison with the standard letters service. In doing this, the universal service providers should comply with the principles of transparency and non-discrimination, both as between different third parties and as between third parties and universal service providers supplying equivalent services. It is also necessary for such services to be available to private customers who post in similar conditions, given the need for non-discrimination in the provision of services.
- (30) It is appropriate to postpone until 31 December 2008 the date for the expiry of Directive 97/67/EC. Authorisation procedures established in Member States in compliance with Directive 97/67/EC should not be affected by this date.
- (31) Directive 97/67/EC should therefore be amended accordingly.
- (32) This Directive is without prejudice to the application of the Treaty rules on competition and on the freedom to provide services, as explained in particular in the notice from the Commission on the application of the competition rules to the postal sector and on the assessment of certain State measures relating to postal services ⁽¹⁾,

⁽¹⁾ OJ C 39, 6.2.1998, p. 2.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 97/67/EC is hereby amended as follows:

1. Article 7 shall be replaced by the following:

'Article 7

1. To the extent necessary to ensure the provision of universal service, Member States may continue to reserve certain standard mail services to universal service provider(s). Those services shall be limited to the clearance, sorting, transport and delivery of ordinary items of domestic correspondence and incoming cross-border correspondence within both of the following weight and price limits: the weight limit shall be 100 grams from 1 January 2003 and 50 grams from 1 January 2006. These weight limits shall not apply as from 1 January 2003 if the price is equal to, or more than, three times the public tariff for an item of correspondence in the first weight step of the fastest category, and, as from 1 January 2006, if the price is equal to, or more than, two and a half times this tariff.

In the case of the free postal service for blind and partially sighted persons, exceptions to the weight and price restrictions may be permitted.

To the extent necessary to ensure the provision of universal service, direct mail may continue to be reserved within the same weight and price limits.

To the extent necessary to ensure the provision of universal service, for example when certain sectors of postal activity have already been liberalised or because of the specific characteristics particular to the postal services in a Member State, outgoing cross-border mail may continue to be reserved within the same weight and price limits.

2. Document exchange may not be reserved.

3. The Commission shall finalise a prospective study which will assess, for each Member State, the impact on universal service of the full accomplishment of the postal internal market in 2009. Based on the study's conclusions, the Commission shall submit by 31 December 2006 a report to the European Parliament and to the Council accompanied by a proposal confirming, if appropriate, the date of 2009 for the full accomplishment of the postal internal market or determining any other step in the light of the study's conclusions.;

2. the following indents shall be added to Article 12:

— whenever universal service providers apply special tariffs, for example for services for businesses, bulk mailers or consolidators of mail from different customers, they shall apply the principles of transparency and non-discrimination with regard both to

the tariffs and to the associated conditions. The tariffs shall take account of the avoided costs, as compared to the standard service covering the complete range of features offered for the clearance, transport, sorting and delivery of individual postal items and, together with the associated conditions, shall apply equally both as between different third parties and as between third parties and universal service providers supplying equivalent services. Any such tariffs shall also be available to private customers who post under similar conditions,

— cross-subsidisation of universal services outside the reserved sector out of revenues from services in the reserved sector shall be prohibited except to the extent to which it is shown to be strictly necessary to fulfil specific universal service obligations imposed in the competitive area; except in Member States where there are no reserved services, rules shall be adopted to this effect by the national regulatory authorities which shall inform the Commission of such measures.;

3. the first and second subparagraphs of Article 19 shall be replaced by the following:

'Member States shall ensure that transparent, simple and inexpensive procedures are drawn up for dealing with users' complaints, particularly in cases involving loss, theft, damage or non-compliance with service quality standards (including procedures for determining where responsibility lies in cases where more than one operator is involved).

Member States may provide that this principle is also applied to beneficiaries of services which are:

— outside the scope of the universal service as defined in Article 3, and

— within the scope of the universal service as defined in Article 3, but which are not provided by the universal service provider.

Member States shall adopt measures to ensure that the procedures referred to in the first subparagraph enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement and/or compensation.;

4. the third subparagraph of Article 22 shall be replaced by the following:

'The national regulatory authorities shall have as a particular task ensuring compliance with the obligations arising from this Directive and shall, where appropriate, establish controls and specific procedures to ensure that the reserved services are respected. They may also be charged with ensuring compliance with competition rules in the postal sector.;

5. Article 27 shall be replaced by the following:

'Article 27

The provisions of this Directive, with the exception of Article 26, shall expire on 31 December 2008 unless otherwise decided in accordance with Article 7(3). The authorisation procedures described in Article 9 shall not be affected by this date.'

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 31 December 2002. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 4

This Directive is addressed to the Member States.

Done at . . .

For the European Parliament
The President

For the Council
The President

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. The Commission sent the Council the above proposal for a regulation on 14 July 2000 ⁽¹⁾. The proposal is based on Articles 47(2), 55 and 95 of the Treaty.
2. The European Parliament delivered its opinion on 14 December 2000.
3. The Economic and Social Committee delivered its opinion on 29 November 2000 ⁽²⁾.
4. The Committee of the Regions delivered its opinion on 4 December 2000 ⁽³⁾.
5. The Commission adopted its amended proposal on 21 March 2001 ⁽⁴⁾.
6. The Council adopted its Common Position in accordance with Article 251 on 6 December 2001.

II. AIM OF THE PROPOSAL

The purpose of this proposal is to respond to the requirement in Directive 97/67/EC to provide for a further gradual and controlled liberalisation of postal services, to take effect from 1 January 2003 and to set out a timetable for further opening. It also proposes to resolve various ancillary issues relating to the smooth functioning of the internal market in postal services.

III. ANALYSIS OF THE COMMON POSITION

The Council fully endorses the aim and the main features of the proposal. In its Common Position it has, however, amended a number of points of the proposal, the most significant of which are as follows:

1. The Council has made a number of adjustments to the proposed timetable for liberalisation in order to ensure a more gradual and controlled market-opening process, taking into account the need to maintain the universal services and the specificity of Member States. The adjustments made by the Council move a long way towards Parliament's position (e.g. higher weight and price limits for the reservable area in 2003, delaying the 50 grams weight step from 2003 to 2006 and the further subsequent step from 2007 to 2009).
2. The Council adopted the European Parliament's view that outgoing cross-border mail may continue to be reserved to the extent necessary to ensure provision of the universal service.
3. The Common Position provides for a decisive step towards the full accomplishment of the internal market for postal services in 2009, ensuring both the right of initiative of the Commission, and the full codecision powers of the European Parliament and the Council. Given the overriding importance of the sub-50 grams category, in terms of percentage volume of the market, the Council considered that any decision to liberalise within this market segment must be taken by way of a further codecision procedure.
4. The Council adopted the European Parliament's view on special services by removing any definition for these services from the text.

⁽¹⁾ OJ C 337 E, 28.11.2000, p. 220.

⁽²⁾ OJ C 116, 20.4.2001, p. 99.

⁽³⁾ OJ C 144, 16.5.2001, p. 20.

⁽⁴⁾ OJ C 180, 26.6.2001, p. 291.

IV. EUROPEAN PARLIAMENT AMENDMENTS

1. European Parliament Amendments accepted by the Council

- Amendment 2: Recital 5
- Amendment 6: Recital 10
- Amendment 7: Recital 11
- Amendment 9: Recital 10 of the Commission's proposal deleted.
- Amendment 11: Recital 11 of the Commission's proposal deleted.
- Amendment 19: Recital 19 of the Commission's proposal deleted.
- Amendment 24: Recital 23
- Amendment 28: Recital 27
- Amendment 29: Recital 28
- Amendment 33: Recital 30
- Amendment 35: Article 1(1) — Special services (deleted)
- Amendment 39: Article 1(2)
- Amendment 41: Article 1(3)
- Amendment 44: Article 1(5)
- Amendment 58: Recital 6

2. European Parliament amendments accepted in part or in substance by the Council

- Amendment 8: This amendment was accepted in principle. The Council endorsed Parliament's view that the possibility for advantages in providing the universal service to offset additional costs arising from this obligation remained to be seen, and therefore preferred to delete the recital in question.
- Amendment 15: The Council agreed that it was necessary to complete recital 15 with a reference to the need to ensure the continuing provision of universal service.
- Amendment 46: The Council welcomed the idea of inserting a new recital 8 establishing the connection between postal services and services of general interest, taking the line set out in the amended proposal from the Commission.
- Amendment 21: The substance of this amendment has been incorporated into recital 20, as well as in Article 1(1) amending Article 7 of Directive 97/67/EC.
- Amendment 43: The Council welcomed the idea of amending Article 22 of Directive 97/67/EC in order to spell out more explicitly the role of the national regulatory authorities, regarding the need to ensure provision of the universal service. The Council however preferred to focus the amendment on provisions aiming at ensuring that reserved services are respected.
- Amendments 16, 18, 22 and 38: These amendments dealing essentially with the weight and price limits of the reservable area were accepted to the extent that Council moved substantially towards Parliament's view on this question (see point III(1)).

3. European Parliament amendments not accepted by the Council

Amendments 17 and 20

The Council considered that recitals 17 and 20 as proposed by the Commission (which Parliament suggested be deleted or shortened) contained useful factual information about the background of the current postal market and the current extent of liberalisation of direct mail in Member States.

Amendments 1, 23 and 26

The Council took the view that it is necessary to provide for a decisive step towards the full accomplishment of the internal market for postal services to take place in 2009, ensuring both the right of initiative of the Commission, and the full codecision powers of the European Parliament.

Amendments 10, 36 and 48

The Council took the view that these amendments are not needed as their purpose can already be achieved within the framework of existing Directive 97/67/EC.

Amendment 12

The Council did not consider that a review of the scope of universal service provision should be imposed as a precondition for defining further market-opening measures. However it should be underlined that the review to be carried out by the Commission under Article 1(1) (new Article 7(3)) of the Common Position must assess the impact on universal service, for each Member State, of full liberalisation in 2009.

Amendment 27

The Council considered this amendment inappropriate as the REIMS II agreement is a commercial agreement between certain universal service providers only, which moreover will expire in December 2001.

Amendments 13, 47, 49 and 54

The Council did not consider it appropriate to alter the objectives of the existing Directive by making the promotion of a high level of employment and social protection a new additional objective.

Amendment 4

The Council considered that this amendment did not properly report on the Lisbon Summit conclusions.

Amendment 31

The Council rejected this amendment as requirements regarding transparency and non-discrimination applicable to universal service providers are very important to ensure fairness to all operators.

Amendment 55

The Council considered that a reciprocity requirement for access to postal services in Member States was not appropriate in the context of the internal market.

Amendments 30 and 42

The Council rejected these amendments as a committee fulfilling the purpose of these amendments is already established by the existing Directive. The provisions of Council Decision 1999/468/EC (the new 'Comitology' Decision) apply automatically.

Amendments 34 and 37

The Council rejected these amendments which are not specific to the postal sector and the purpose of which is already achieved through other directives such as Directive 2000/43/EC.

Amendment 32

The Council preferred to delete the underlying recital (recital 30 of the Commission proposal).

Amendment 5

The Council considered that the wording of this amendment reflects the obligation in Article 23 of Directive 97/67/EC which has already been fulfilled. It should be noted, however, that a further Commission review in 2006 is a requirement of Article 7(3) as revised by Article 1(1) of the Common Position. This review is also referred to in recital 24.

Amendment 25

The Council rejected this amendment on the grounds that the proposal should maintain the neutrality of Directive 97/67/EC with regard to the solutions available to Member States for ensuring that the universal service is maintained.
