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### Legislation

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## I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

## REGULATIONS

**COMMISSION REGULATION (EC) No 170/2008****of 26 February 2008****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector <sup>(1)</sup>, and in particular Article 138(1) thereof,

Whereas:

- (1) Regulation (EC) No 1580/2007 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes

the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto.

- (2) In compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

*Article 1*

The standard import values referred to in Article 138 of Regulation (EC) No 1580/2007 shall be fixed as indicated in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 27 February 2008.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 26 February 2008.

*For the Commission*

Jean-Luc DEMARTY

*Director-General for Agriculture and  
Rural Development*

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<sup>(1)</sup> OJ L 350, 31.12.2007, p. 1.

## ANNEX

**to Commission Regulation of 26 February 2008 establishing the standard import values for determining the entry price of certain fruit and vegetables**

(EUR/100 kg)		
CN code	Third country code <sup>(1)</sup>	Standard import value
0702 00 00	JO	69,6
	MA	47,3
	TN	129,8
	TR	91,7
	ZZ	84,6
0707 00 05	JO	123,3
	MA	64,7
	TR	189,2
	ZZ	125,7
0709 90 70	MA	88,4
	TR	137,1
	ZZ	112,8
0709 90 80	EG	54,8
	ZZ	54,8
0805 10 20	AR	69,8
	EG	45,9
	IL	56,1
	MA	47,8
	TN	49,8
	TR	74,8
	ZA	57,8
	ZZ	57,4
0805 20 10	IL	110,6
	MA	114,0
	ZZ	112,3
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	EG	82,4
	IL	79,7
	MA	136,8
	PK	43,5
	TR	74,0
	ZZ	83,3
0805 50 10	AR	48,9
	EG	85,4
	IL	104,4
	TR	110,0
	UY	52,4
	ZA	79,7
	ZZ	80,1
0808 10 80	AR	104,8
	CA	86,4
	CL	63,5
	CN	77,9
	MK	42,4
	US	108,9
	UY	89,9
	ZA	106,7
	ZZ	85,1
0808 20 50	AR	90,4
	CL	79,1
	CN	167,2
	US	123,2
	ZA	103,6
	ZZ	112,7

<sup>(1)</sup> Country nomenclature as fixed by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

## DIRECTIVES

## DIRECTIVE 2008/6/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 20 February 2008

## amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(2)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(3)</sup>,

Whereas:

(1) The Council in its Resolution of 7 February 1994 on the development of Community Postal Services <sup>(4)</sup> identified as one of the main objectives of Community postal policy the reconciling of the gradual, controlled opening to competition of the postal market with a sustainable guarantee of the provision of the universal service.

<sup>(1)</sup> OJ C 168, 20.7.2007, p. 74.

<sup>(2)</sup> OJ C 197, 24.8.2007, p. 37. Opinion delivered following non-compulsory consultation.

<sup>(3)</sup> Opinion of the European Parliament of 11 July 2007 (not yet published in the Official Journal), Council Common Position of 8 November 2007 (OJ C 307 E, 18.12.2007, p. 22) and Position of the European Parliament of 31 January 2008.

<sup>(4)</sup> OJ C 48, 16.2.1994, p. 3.

(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 <sup>(5)</sup> 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, to be reduced in a gradual and progressive manner, and a timetable for decision-making on the further opening of the market to competition, for the purposes of creating an internal market in postal services.

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

(4) The positive role played by services of general economic interest was emphasised by Special Eurobarometer 219 of October 2005 which indicated that postal services are the most appreciated services of general economic interest according to users throughout the EU, with 77 % of people questioned responding positively.

(5) Since they constitute an essential instrument for communication and information exchange, postal services fulfil a vital role which contributes to the objectives of social, economic and territorial cohesion in the Union. Postal networks have important territorial and social dimensions which make universal access to essential local services possible.

<sup>(5)</sup> OJ L 15, 21.1.1998, p. 14. Directive as last amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

- (6) The measures in the area of postal services should be designed in such a way that the tasks of the Community pursuant to Article 2 of the Treaty, namely, to promote throughout the Community a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, sustainable and non-inflationary growth, a high degree of competitiveness and convergence of economic performance, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States, are achieved as objectives.
- (7) European postal markets have undergone dramatic change in recent years, a development that has been driven by technological advancements and increased competition resulting from deregulation. Due to globalisation, it is essential to take a pro-active and pro-development stance so as not to deprive Union citizens of the benefits of such change.
- (8) In its Conclusions concerning the mid-term review of the Lisbon Strategy the European Council of 22 and 23 March 2005 re-stated the importance of completing the internal market as an instrument to foster growth and create more and better jobs, and the important role that effective services of general economic interest have to play in a competitive and dynamic economy. These Conclusions remain applicable to postal services as an essential instrument of communication, trade, and social and territorial cohesion.
- (9) The European Parliament Resolution of 2 February 2006 on the application of the Postal Directive <sup>(1)</sup> highlighted the social and economic importance of efficient postal services and their important role within the framework of the Lisbon Strategy, indicating that reform measures undertaken so far have brought about significant positive developments in the postal sector, along with increased quality, more efficiency and better user-orientation. In its Resolution, the European Parliament called on the Commission, in view of the sometimes perceptibly divergent developments in universal service obligations in the Member States, to concentrate in particular, when drawing up its prospective study, on the quality of the universal service provided and on its future funding and to propose, in the context of that study, a definition, scope and appropriate financing for the universal service.
- (10) In accordance with Directive 97/67/EC, a prospective study assessing, for each Member State, the impact on universal service of the full accomplishment of the internal market of Community postal services in 2009 has been carried out. The Commission has also 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.
- (11) The prospective study states that the basic aim of ensuring the sustainable provision of a universal service matching the standard of quality defined by the Member States in accordance with Directive 97/67/EC can be secured throughout the Community by 2009 without the need for a reserved area.
- (12) The progressive and gradual opening of postal markets to competition has provided universal service providers with sufficient time to put in place the necessary modernisation and restructuring measures required to ensure their long-term viability under new market conditions, and enabled Member States to adapt their regulatory systems to a more open environment. Furthermore, Member States may avail themselves of the opportunity offered by the transposition period, and the substantial time necessary for the introduction of effective competition, in order to proceed with further modernisation and restructuring of the universal service providers as necessary.
- (13) The prospective study shows that the reserved area should no longer be the preferred solution for the financing of the universal service. This assessment takes into account the interest of the Community and its Member States in the accomplishment of the internal market and its potential for delivering growth and employment, as well as ensuring the availability of an efficient service of general economic interest for all users. It is therefore appropriate to confirm the final date for the accomplishment of the internal market for postal services.
- (14) There are a number of drivers of change within the postal sector, notably demand and changing user needs, organisational change, automation and the introduction of new technologies, substitution by electronic means of communication and the opening of the market. In order to meet competition, cope with new consumer requirements and secure new sources of funding, postal service providers may diversify their activities by providing electronic business services or other information society services.

<sup>(1)</sup> OJ C 288 E, 25.11.2006, p. 77.

- (15) Postal service providers, including the designated universal service providers, are being spurred on to improve efficiency as a result of new competitive challenges (such as digitalisation and electronic communications) which differ from the traditional postal services and this will in itself contribute to a major increase in competitiveness.
- (16) Complete market-opening will help to expand the overall size of the postal markets. It will further contribute to maintaining sustainable and quality employment within universal service providers as well as facilitate the creation of new jobs in other operators, new entrants and associated economic sectors. This Directive is without prejudice to the competence of Member States to regulate employment conditions in the postal services sector, which should not, however, lead to unfair competition. Social considerations should be taken into due account when preparing the opening up of the postal market.
- (17) Transport alone should not be considered as a postal service. Direct mail consisting solely of advertising, marketing or publicity material and comprising an identical message, except for the addressee's name, address and identifying number, may be considered as an item of correspondence.
- (18) Increased competitiveness should furthermore enable the postal sector to be integrated with alternative methods of communication and allow the quality of the service provided to evermore demanding users to be improved.
- (19) Rural postal networks, in, *inter alia*, mountain and island regions, play an important role in integrating businesses into the national/global economy and in maintaining cohesion in social and employment terms. Furthermore, rural postal points in remote regions can provide an important infrastructure network for access to new electronic communications services.
- (20) Developments in the neighbouring communications markets have had a varied impact in different regions of the Community and segments of the population and on the use of postal services. Territorial and social cohesion should be maintained, and taking into account that Member States may adapt some specific service features to accommodate local demand by making use of the flexibility provided for in Directive 97/67/EC, it is appropriate to fully maintain the universal service and the associated quality requirements set out in Directive 97/67/EC. It is appropriate to clarify, in line with existing practice, that Member States should provide clearance and delivery of mail only on the working days of the week that are not defined, by national legislation, as public holidays. In order to ensure that the opening of the market continues to benefit all users, in particular consumers and small and medium-sized enterprises, Member States should monitor and supervise market developments. They should take appropriate regulatory measures, available under Directive 97/67/EC, to ensure that accessibility to postal services continues to satisfy the needs of users, including, by ensuring, where appropriate, a minimum number of services at the same access point and, in particular, that there is an appropriate density of access points to postal services in rural and remote regions.
- (21) The universal service guarantees, in principle, one clearance and one delivery to the home or premises of every natural or legal person every working day, even in remote or sparsely populated areas.
- (22) The provision of high-quality postal services contributes significantly to attaining the objective of social and territorial cohesion. E-commerce, in particular, offers new opportunities for remote and sparsely populated areas to participate in economic life for which the provision of good postal services is an important precondition.
- (23) 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.

- (24) It is important that users be fully informed of the universal services provided and that postal service providers be informed of the rights and obligations of universal service provider(s). Member States should ensure that users remain fully informed of the features and accessibility of the specific services provided. Member States should ensure that all such information is made available. It is however appropriate, in line with the enhanced flexibility given in favour of Member States, to ensure the provision of the universal service in ways other than the designation of the universal service provider(s), in order to give Member States the flexibility to decide how such information is to be made available to the public.
- (25) In the light of the studies carried out and with a view to unlocking the full potential of the internal market for postal services, it is appropriate to end the use of the reserved area and special rights as a means of ensuring that the universal service is financed.
- (26) The external financing of the residual net costs of the universal service may still be necessary for some Member States. It is therefore appropriate to explicitly clarify the alternatives available in order to ensure the financing of the universal service, to the extent that this is needed and is adequately justified, while leaving Member States the choice of the financing mechanisms to be used. These alternatives include the use of public procurement procedures including, as provided for in the public procurement Directives, competitive dialogue or negotiated procedures with or without the publication of a contract notice and, whenever universal service obligations entail net costs of the universal service and represent an unfair burden on the designated universal service provider, public compensation and cost sharing
- between service providers and/or users in a transparent manner by means of contributions to a compensation fund. Member States may use other means of financing permitted by Community law, such as deciding, where and if necessary, that the profits accruing from other activities of the universal service provider(s) outside the scope of the universal service are to be assigned, in whole or in part, to the financing of the net costs of the universal service, as long as this is in line with the Treaty. Without prejudice to the obligation of Member States to uphold the Treaty rules on State aid, including specific notification requirements in this context, Member States may notify the Commission of the financing mechanisms used to cover any net costs of the universal service, which should be reflected in the regular reports that the Commission should present to the European Parliament and Council on the application of Directive 97/67/EC.
- (27) Postal service providers may be required to contribute to the financing of the universal service in cases where provision is made for a compensation fund. In order to determine which undertakings may be required to contribute to a compensation fund, Member States should consider whether the services provided by such undertakings may, from a user's perspective, be regarded as services falling within the scope of the universal service, as they display inter-changeability to a sufficient degree with the universal service, taking into account the characteristics of the services, including added value features, as well as the intended use and the pricing. These services do not necessarily have to cover all the features of the universal service, such as daily delivery or complete national coverage.
- (28) In order to comply with the principle of proportionality when determining the contribution to be made to the costs of the provision of the universal service in a Member State required from these undertakings, Member States should use transparent and non-discriminatory criteria such as the share of these undertakings in the activities falling within the scope of the universal service in this Member State. Member States may require those providers which are required to contribute to a compensation fund to introduce appropriate accounting separation in order to ensure the functioning of the fund.

- (29) The principles of transparency, non-discrimination and proportionality, as presently provided for in Directive 97/67/EC, should continue to be applied to any financing mechanism and any decision in this area should be based on transparent, objective and verifiable criteria. In particular, the net cost of the universal service should be calculated, under the supervision of the national regulatory authority, as the difference between the net costs of a designated universal service provider operating under a universal service obligation and not operating under a universal service obligation. The calculation should take into account all other relevant elements, including any market benefits which accrue to a postal service provider designated to provide universal service, the entitlement to a reasonable profit and incentives for cost efficiency.
- (30) In cases where Member States decide to make accessible to the public, on their national territory, additional or complementary services, with the exception of those relating to the universal service obligations, as defined in this Directive, such as pensions and postal orders delivery in rural areas, these services should not be subject to any compensation mechanisms requiring the contribution of specific undertakings. Where appropriate, Member States may grant financing for such additional or complementary services in accordance with the Treaty rules on State aid. Except in the case of universal service provider(s), the authorisations may not be made subject to the obligation to provide such additional services.
- (31) It is appropriate to provide Member States that have acceded to the Union after the entry into force of Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services<sup>(1)</sup> and may have faced particular difficulties regarding the smooth adaptation of their postal markets because they joined the postal reform process at a late stage, and certain Member States with a small population and a limited geographical size having specific characteristics that are particular to postal services or with a particularly difficult topography, with a huge number of islands with the possibility to postpone the implementation of this Directive for a limited period of time, in order to continue to reserve services to their universal service provider(s), subject to notification to the Commission. Taking into account the exceptional nature of such a possibility, it is also appropriate, within this limited period of time and for a limited number of services, to allow those Member States that have completely opened up their markets to refuse monopolies operating in another Member State authorisation to operate in their own territory.
- (32) The Commission should provide assistance to the Member States on the different aspects of the implementation of this Directive, including on the calculation of any net cost. Moreover, cooperation between national regulatory authorities in continuing to develop benchmarks and guidance in this area should contribute to the harmonised application of this Directive.
- (33) Member States should be allowed to use general authorisations and individual licences whenever justified and proportionate to the objective pursued. However, as highlighted by the Third report on the application of Directive 97/67/EC, further harmonisation of the conditions that may be introduced appears necessary in order to reduce unjustified barriers to the provision of services in the internal market. In this context, Member States may for example allow postal service providers to choose between the obligation to provide a service or to contribute financially to the costs of this service provided by another provider, but should no longer be allowed to impose concurrently a requirement to contribute to a sharing mechanism and universal service or quality obligations that are intended to serve the same purpose. It is also appropriate to clarify that some of the provisions on general authorisations and licensing should not apply to designated universal service providers.
- (34) In an environment where several postal undertakings provide services within the universal service area, it is appropriate to require all Member States to assess whether some elements of the postal infrastructure or certain services generally provided by universal service providers should be made accessible to other operators providing similar services, in order to promote effective competition, and/or protect all users by ensuring the overall quality of the postal service. Where several universal service providers with regional postal networks exist, Member States should also assess and, where necessary, ensure their interoperability in order to prevent impediments to the prompt transport of postal items. As the legal and market situation of these elements or services is different among the Member States it is appropriate to only require Member States to adopt an informed decision on the need, extent and choice of the regulatory instrument, including where appropriate on cost sharing. This provision is without prejudice to the right of Member States to adopt measures to ensure access to the postal network under conditions of transparency and non-discrimination.

<sup>(1)</sup> OJ L 176, 5.7.2002, p. 21.

- (35) Member States should ensure that postal service providers, when processing personal data pursuant to Directive 97/67/EC, apply Community and national provisions on the protection of personal data, in particular those laid down by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data <sup>(1)</sup>.
- (36) The provisions of this Directive should be without prejudice to national provisions governing the expropriation conditions for organising the universal service provision.
- (37) 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.
- (38) 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.
- (39) For the provision of services for all users, including businesses, bulk mailers and consolidators of mail from different users, universal service providers may enjoy more price flexibility in line with the cost-orientation principle. Tariffs should take account of the avoided costs, as compared to the standard service covering the complete range of features offered for the clearance, sorting, transport and distribution of individual postal items.
- (40) In view of the national specificities involved in the regulation of the conditions under which the incumbent universal service provider must operate in a fully competitive environment, it is appropriate to leave Member States the freedom to decide how best to monitor cross-subsidies.
- (41) In view of the transition towards a fully competitive market, and in order to prevent cross-subsidies from adversely affecting competition, it is appropriate to continue to require Member States to maintain the obligation on universal service providers of keeping separate and transparent accounts, subject to necessary adaptations.

This obligation should provide national regulatory authorities, competition authorities and the Commission with the information necessary to adopt decisions related to the universal service and to monitor fair market conditions until competition becomes effective. Cooperation between national regulatory authorities in continuing to develop benchmarks and guidelines in this area should contribute to the harmonised application of these rules.

Keeping separate and transparent accounts should provide Member States and their national regulatory authorities with accounting information of sufficient detail to:

- adopt decisions related to the universal service,
- be used as an input when determining whether the universal service obligations imposed entail a net cost and represent an unfair financial burden on the universal service provider,
- ensure that the tariffs applied to the universal service comply with the principles on tariffs as set out in this Directive,
- ensure compliance with the principles on terminal dues as set out in this Directive; and,
- monitor fair market conditions until competition becomes effective.

<sup>(1)</sup> OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003.

(42) In line with existing rules in other service areas and in order to increase consumer protection, it is appropriate to extend the application of minimum principles concerning complaint procedures beyond universal service providers. With a view to increasing the effectiveness of complaint handling procedures, it is appropriate to encourage the use of out-of-court settlement procedures as set out in Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes<sup>(1)</sup> and Commission Recommendation 2001/310/EC of 4 April 2001 on the principle for out-of-court bodies involved in the consensual resolution of consumer disputes<sup>(2)</sup>. Consumer interests would also be furthered through the enhanced inter-operability between operators resulting from access to certain elements of infrastructure and services, and the requirement for cooperation between national regulatory authorities and consumer protection bodies.

In order to protect the interests of users in the event of theft or loss of, or damage to, postal items, Member States should introduce, where warranted, a system of reimbursement and/or compensation.

(43) Directive 97/67/EC provides that certain measures are to be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>(3)</sup>.

(44) Decision 1999/468/EC has been amended by Decision 2006/512/EC, which introduced the regulatory procedure with scrutiny for the adoption of measures of general scope designed to amend non-essential elements of a basic instrument adopted in accordance with the procedure referred to in Article 251 of the Treaty, *inter alia*, by deleting some of those elements or by supplementing the instrument with new non-essential elements.

(45) In particular, the Commission should be empowered to adopt measures as regards future adjustment of quality-of-service standards to technical progress or market developments as well as of standardised conditions for independent performance monitoring by external bodies. Since those measures are of general scope and are

designed to amend non-essential elements of Directive 97/67/EC, *inter alia*, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

(46) The Committee assisting the Commission in accordance with Directive 97/67/EC should follow developments in the provision of the universal service in Member States.

(47) The role of national regulatory authorities is likely to remain crucial, in particular in those Member States where the transition to competition still needs to be completed. In accordance with the principle of separation of regulatory and operational functions, Member States should guarantee the independence of the national regulatory authorities, thereby ensuring the impartiality of their decisions. This requirement of independence is without prejudice to the institutional autonomy and constitutional obligations of the Member States and to the principle of neutrality with regard to the rules in Member States governing the system of property ownership laid down in Article 295 of the Treaty. National regulatory authorities should be provided with all necessary resources, in terms of staffing, expertise and financial means, for the performance of their tasks.

(48) Due to the frequent involvement of different national bodies in the exercise of regulatory functions, it is appropriate to introduce transparency in the allocation of tasks and require the different relevant bodies charged with sector regulation, the application of competition rules and with dealing with consumer issues to cooperate in order to ensure the effective accomplishment of their tasks.

(49) Any party which is the subject of a decision by a national regulatory authority should have the right to appeal to a body that is independent of that authority. This body may be a court. This appeal procedure is without prejudice to the division of competences within national judicial systems and to the rights of legal entities or natural persons under national law. Pending the conclusion of these procedures there is a need to ensure the temporary validity of national regulatory authorities' decisions in order to guarantee legal certainty and market security.

<sup>(1)</sup> OJ L 115, 17.4.1998, p. 31.

<sup>(2)</sup> OJ L 109, 19.4.2001, p. 56.

<sup>(3)</sup> OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

- (50) National regulatory authorities should, where necessary, cooperate with other regulatory bodies of Member States and with the Commission in carrying out their tasks under Directive 97/67/EC. This would promote the development of the internal market for postal services and help to ensure the consistent application, in all Member States, of the provisions laid down by the Directive, in particular in areas where national law implementing Community law gives national regulatory authorities considerable discretionary powers in the application of the relevant rules. This cooperation could take place, *inter alia*, within the Committee assisting the Commission in accordance with the Directive or within a group comprising European regulators. Member States should decide which bodies are national regulatory authorities for the purposes of the Directive.
- (51) National regulatory authorities need to gather information from market players in order to carry out their tasks effectively. Requests for information should be proportionate and not impose an undue burden on undertakings. Such information may also need to be gathered by the Commission in order to allow it to fulfil its obligations under Community law. The recipient of information should ensure confidentiality in accordance with the rules in force.
- (52) In order to keep the European Parliament and the Council informed of developments in the internal market for postal services, the Commission should regularly submit reports to those institutions on the application of Directive 97/67/EC.
- (53) This Directive does not affect labour law, that is any legal or contractual provision concerning employment conditions, working conditions, including health and safety at work and the relationship between employers and workers, which Member States apply in accordance with national law which is in conformity with Community law. Equally, this Directive does not affect the social security legislation of the Member States. Where necessary, Member States may reflect working conditions in their authorisation procedures in line with the principles of transparency and proportionality.
- (54) Member States should ensure that sufficient access points are established that take account of the needs of users in rural and sparsely populated areas. Member States should ensure an appropriate density of access points in these areas in order to satisfy the universal service obligation.
- (55) In order to maintain the framework for the regulation of the postal sector, the date of expiry of Directive 97/67/EC should be deleted. The provisions that have not been amended by this Directive continue to apply. The services that Member States may continue to reserve, during the implementation period, are those specified in Directive 97/67/EC.
- (56) Since the objectives of this Directive, namely achieving an internal market of Community postal services, ensuring a common level of universal services for all users and setting harmonised principles for the regulation of postal services, cannot be sufficiently achieved by Member States and can therefore, by reason of the scale and effects, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (57) Directive 97/67/EC should therefore be amended accordingly.
- (58) This Directive is consistent with other Community instruments concerning services. In the event of conflict between a provision of this Directive and a provision of another Community instrument, in particular Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market<sup>(1)</sup>, the provisions of this Directive will prevail and will apply in full to the postal sector.
- (59) This Directive is without prejudice to the application of the Treaty rules on competition and on the freedom to provide services. Insofar as mechanisms for the financing of the universal service involve aid granted by a Member State or through state aid resources in any form whatsoever within the meaning of Article 87(1) of the Treaty, this Directive is without prejudice to Member States' obligation to respect the Treaty rules on State aid.

<sup>(1)</sup> OJ L 376, 27.12.2006, p. 36.

(60) In accordance with point 34 of the Interinstitutional agreement on better law-making <sup>(1)</sup>, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public,

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

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

1. Article 1 shall be replaced by the following:

*Article 1*

This Directive establishes common rules concerning:

- the conditions governing the provision of postal services,
- the provision of a universal postal service within the Community,
- the financing of universal services under conditions that guarantee the permanent provision of such services,
- tariff principles and transparency of accounts for universal service provision,
- the setting of quality standards for universal service provision and the setting-up of a system to ensure compliance with those standards,
- the harmonisation of technical standards,
- the creation of independent national regulatory authorities;

2. Article 2 shall be amended as follows:

(a) point 1 shall be replaced by the following:

'1. postal services: services involving the clearance, sorting, transport and distribution of postal items;'

(b) the following point shall be inserted:

'1a. postal service provider: undertaking that provides one or more postal services;'

(c) in point 2 the words 'public postal network' shall be replaced by 'postal network';

(d) point 3 shall be replaced by the following:

'3. access points: physical facilities, including letter boxes provided for the public either on the public highway or at the premises of the postal service provider(s), where postal items may be deposited with the postal network by senders;'

(e) point 4 shall be replaced by the following:

'4. Clearance: the operation of collecting postal items by a postal service provider;'

(f) point 6 shall be replaced by the following:

'6. Postal item: an item addressed in the final form in which it is to be carried by a postal service provider. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal parcels containing merchandise with or without commercial value;'

(g) point 8 shall be deleted;

(h) point 12 shall be deleted;

(i) point 13 shall be replaced by the following:

'13. universal service provider: the public or private postal service provider providing a universal postal service or parts thereof within a Member State, the identity of which has been notified to the Commission in accordance with Article 4;'

<sup>(1)</sup> OJ C 321, 31.12.2003, p. 1.

(j) point 14 shall be replaced by the following:

'14. Authorisations: any permission setting out rights and obligations specific to the postal sector and allowing undertakings to provide postal services and, where applicable, to establish and/or operate their networks for the provision of such services, in the form of a general authorisation or individual licence as defined below:

— "general authorisation": an authorisation, regardless of whether it is regulated by a "class licence" or under general law and regardless of whether such regulation requires registration or declaration procedures, which does not require the postal service provider concerned to obtain an explicit decision by the national regulatory authority before exercising the rights stemming from the authorisation,

— "individual licence": an authorisation which is granted by a national regulatory authority and which gives a postal service provider specific rights, or which subjects that undertaking's operations to specific obligations supplementing the general authorisation where applicable, where the postal service provider is not entitled to exercise the rights concerned until it has received the decision by the national regulatory authority;'

(k) point 17 shall be replaced by the following:

'17. User: any natural or legal person benefiting from postal service provision as a sender or an addressee;'

(l) point 19 shall be replaced by the following:

'19. Essential requirements: general non-economic reasons which can induce a Member State to impose conditions on the supply of postal services. These reasons are the confidentiality of correspondence, security of the network as regards the transport of dangerous goods, respect for the terms and conditions of employment, social security schemes, laid down by law, regulation or administrative provision and/or by collective agreement negotiated between national social partners, in accordance

with Community and national law and, where justified, data protection, environmental protection and regional planning. Data protection may include personal data protection, the confidentiality of information transmitted or stored and protection of privacy;'

(m) the following point shall be added:

'20. Services provided at single piece tariff: postal services for which the tariff is set in the general terms and conditions of universal service provider(s) for individual postal items;'

3. Article 3 shall be amended as follows:

(a) the first subparagraph of paragraph 3 shall be replaced by the following:

'3. Member States shall take steps to ensure that the universal service is guaranteed not less than five working days a week, save in circumstances or geographical conditions deemed exceptional, and that it includes as a minimum:

— 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;'

(b) paragraph 5 shall be replaced by the following:

'5. The national regulatory authorities may increase the weight limit of universal service coverage for postal parcels to any weight not exceeding 20 kilograms and may lay down special arrangements for the door-to-door delivery of such parcels.

Notwithstanding the weight limit of universal service coverage for postal parcels established by a given Member State, Member States shall ensure that postal parcels received from other Member States and weighing up to 20 kilograms are delivered within their territory;'

(c) paragraph 6 shall be replaced by the following:

‘6. The minimum and maximum dimensions for the postal items in question shall be those as laid down in the relevant provisions adopted by the Universal Postal Union.’;

4. Article 4 shall be replaced by the following:

‘Article 4

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.’;

5. paragraph 2 of Article 5 shall be replaced by the following:

‘2. The provisions of paragraph 1 shall not preclude measures which the Member States take in accordance

with requirements relating to the public interest recognised in the Treaty, in particular Articles 30 and 46 thereof, concerning, *inter alia*, public morality, public security, including criminal investigations, and public policy.’;

6. Article 6 shall be replaced by the following:

‘Article 6

Member States shall take steps to ensure that users and postal service providers are regularly given sufficiently detailed and up-to-date information by the universal service provider(s) regarding the particular features of the universal service offered, with special reference to the general conditions of access to these services as well as to prices and quality standard levels. This information shall be published in an appropriate manner.

Member States shall notify the Commission, of how the information to be published in accordance with the first paragraph is to be made available.’;

7. the heading of Chapter 3 shall be replaced by the following:

**‘Financing of universal services’;**

8. Article 7 shall be replaced by the following:

‘Article 7

1. Member States shall not grant or maintain in force exclusive or special rights for the establishment and provision of postal services. Member States may finance the provision of universal services in accordance with one or more of the means provided for in paragraphs 2, 3 and 4, or in accordance with any other means compatible with the Treaty.

2. Member States may ensure the provision of universal services by procuring such services in accordance with applicable public procurement rules and regulations, including, as provided for in Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services (\*), competitive dialogue or negotiated procedures with or without publication of a contract notice.

3. Where a Member State determines that the universal service obligations, as provided for in this Directive, entail a net cost, calculated taking into account Annex I, and represent an unfair financial burden on the universal service provider(s), it may introduce:

- (a) a mechanism to compensate the undertaking(s) concerned from public funds; or
- (b) a mechanism for the sharing of the net cost of the universal service obligations between providers of services and/or users.

4. Where the net cost is shared in accordance with paragraph 3(b), Member States may establish a compensation fund which may be funded by service providers and/or users' fees, and is administered for this purpose by a body independent of the beneficiary or beneficiaries. Member States may make the granting of authorisations to service providers under Article 9(2) subject to an obligation to make a financial contribution to that fund or to comply with universal service obligations. The universal service obligations of the universal service provider(s) set out in Article 3 may be financed in this manner.

5. Member States shall ensure that the principles of transparency, non-discrimination and proportionality are respected in establishing the compensation fund and when fixing the level of the financial contributions referred to in paragraphs 3 and 4. Decisions taken in accordance with paragraphs 3 and 4 shall be based on objective and verifiable criteria and be made public.

(\*) OJ L 134, 30.4.2004, p. 1. Directive as last amended by Council Directive 2006/97/EC (OJ L 363, 20.12.2006, p. 107).;

9. the heading of Chapter 4 shall be replaced by the following:

**'Conditions governing the provision of postal services and access to the network';**

10. Article 9 shall be replaced by the following:

*'Article 9*

1. For services which fall outside the scope of the universal service, Member States may introduce general

authorisations to the extent necessary to guarantee compliance with the essential requirements.

2. For services which fall within the scope of the universal service, Member States may introduce authorisation procedures, including individual licences, to the extent necessary in order to guarantee compliance with the essential requirements and to ensure the provision of the universal service.

The granting of authorisations may:

- be made subject to universal service obligations,
- if necessary and justified, impose requirements concerning the quality, availability and performance of the relevant services,
- where appropriate, be subject to an obligation to make a financial contribution to the sharing mechanisms referred to in Article 7, if the provision of the universal service entails a net cost and represents an unfair burden on the universal service provider(s), designated in accordance with Article 4,
- where appropriate, be subject to an obligation to make a financial contribution to the national regulatory authority's operational costs referred to in Article 22,
- where appropriate, be made subject to or impose an obligation to respect working conditions laid down by national legislation.

Obligations and requirements referred to in the first indent and in Article 3 may only be imposed on designated universal service providers.

Except in the case of undertakings that have been designated as universal service providers in accordance with Article 4, authorisations may not:

- be limited in number,

- for the same elements of the universal service or parts of the national territory, impose universal service obligations and, at the same time, financial contributions to a sharing mechanism,
- duplicate conditions which are applicable to undertakings by virtue of other, non-sector-specific national legislation,
- impose technical or operational conditions other than those necessary to fulfil the obligations of this Directive.

3. The procedures, obligations and requirements referred to in paragraphs 1 and 2 shall be transparent, accessible, non-discriminatory, proportionate, precise and unambiguous, made public in advance and based on objective criteria. Member States shall ensure that the reasons for refusing or withdrawing an authorisation in whole or in part are communicated to the applicant and shall establish an appeal procedure.;

11. paragraph 1 of Article 10 shall be replaced by the following:

'1. The European Parliament and the Council, acting on a proposal from the Commission and on the basis of Articles 47(2), 55 and 95 of the Treaty, shall adopt the measures necessary for the harmonisation of the procedures referred to in Article 9 governing the commercial provision of postal services to the public.;

12. Article 11 shall be replaced by the following:

*'Article 11*

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.;

13. the following Article shall be inserted:

*'Article 11a*

Whenever necessary to protect the interest of users and/or to promote effective competition, and in the light of national conditions and national legislation, Member States shall ensure that transparent, non-discriminatory access conditions are available to elements of postal infrastructure or services provided within the scope of the universal service, such as postcode system, address database, post office boxes, delivery boxes, information on change of address, re-direction service and return to sender service. This provision shall be without prejudice to the right of Member States to adopt measures to ensure access to the postal network under transparent, proportional and non-discriminatory conditions.;

14. Article 12 shall be replaced by the following:

*'Article 12*

Member States shall take steps to ensure that the tariffs for each of the services forming part of the universal service comply with the following principles:

- prices shall be affordable and must be such that all users, independent of geographical location, and, in the light of specific national conditions, have access to the services provided. Member States may maintain or introduce the provision of a free postal service for the use of blind and partially-sighted persons,

- prices shall be cost-oriented and give incentives for an efficient universal service provision. Whenever necessary for reasons relating to the public interest, Member States may decide that a uniform tariff shall be applied, throughout their national territory and/or cross-border, to services provided at single piece tariff and to other postal items,

- the application of a uniform tariff shall not exclude the right of the universal service provider(s) to conclude individual agreements on prices with users,

- tariffs shall be transparent and non-discriminatory,

— whenever universal service providers apply special tariffs, for example for services for businesses, bulk mailers or consolidators of mail from different users, they shall apply the principles of transparency and non-discrimination with regard both to the tariffs and to the associated conditions. The tariffs, together with the associated conditions, shall apply equally both as between different third parties and as between third parties and universal service providers supplying equivalent services. Any such tariffs shall also be available to users, in particular individual users and small and medium-sized enterprises, who post under similar conditions.;

(i) whenever possible, common costs shall be allocated on the basis of direct analysis of the origin of the costs themselves;

(ii) when direct analysis is not possible, common cost categories shall be allocated on the basis of an indirect linkage to another cost category or group of cost categories for which a direct assignment or allocation is possible; the indirect linkage shall be based on comparable cost structures;

15. Article 14 shall be amended as follows:

(a) paragraphs 1, 2 and 3 shall be replaced by the following:

‘1. Member States shall take the measures necessary to ensure that the accounting of the universal service providers is conducted in accordance with the provisions of this Article.

2. The universal service provider(s) shall keep separate accounts within their internal accounting systems in order to clearly distinguish between each of the services and products which are part of the universal service and those which are not. This accounting separation shall be used as an input when Member States calculate the net cost of the universal service. Such internal accounting systems shall operate on the basis of consistently applied and objectively justifiable cost accounting principles.

3. The accounting systems referred to in paragraph 2 shall, without prejudice to paragraph 4, allocate costs in the following manner:

(a) costs which can be directly assigned to a particular service or product shall be so assigned;

(b) common costs, that is costs which cannot be directly assigned to a particular service or product, shall be allocated as follows:

(iii) when neither direct nor indirect measures of cost allocation can be found, the cost category shall be allocated on the basis of a general allocator computed by using the ratio of all expenses directly or indirectly assigned or allocated, on the one hand, to each of the universal services and, on the other hand, to the other services;

(iv) common costs, which are necessary for the provision of both universal services and non-universal services, shall be allocated appropriately; the same cost drivers must be applied to both universal services and non-universal services.;

(b) paragraph 8 shall be replaced by the following:

‘8. Where a given Member State has not used a financing mechanism for the provision of the universal service, as permitted under Article 7, and where the national regulatory authority is satisfied that none of the designated universal service providers in that Member State is in receipt of State assistance, hidden or otherwise, and that competition in the market is fully effective, the national regulatory authority may decide not to apply the requirements of this Article.;

(c) the following paragraphs shall be added:

‘9. This Article may, however, be applied to the universal service provider designated before the final date for Full Market Opening as long as no other universal service provider(s) have been designated. The national regulatory authority shall inform the Commission in advance of any such decision.

10. Member States may require those postal service providers which are obliged to contribute to a compensation fund to introduce an appropriate accounting separation to ensure the functioning of the fund.;

16. Article 16 shall be amended as follows:

(a) the second indent of the third paragraph shall be replaced by the following:

‘— the European Parliament and the Council in the case of intra-Community cross-border services (see Annex II). Future adjustment of these standards to technical progress or market developments shall be made in accordance with the regulatory procedure with scrutiny referred to in Article 21(2).’;

(b) the fourth paragraph shall be replaced by the following:

‘Independent performance monitoring shall be carried out at least once a year by external bodies having no links with the universal service providers under standardised conditions to be specified in accordance with the regulatory procedure with scrutiny referred to in Article 21(2) and shall be the subject of reports published at least once a year.’;

17. paragraphs 1 and 2 of Article 18 shall be replaced by the following:

‘1. In accordance with Article 16, quality standards for intra-Community cross-border services are laid down in Annex II.

2. Where exceptional situations relating to infrastructure or geography so require, the national regulatory authorities may determine exemptions from the quality standards provided for in Annex II. Where national regulatory authorities determine exemptions in this manner, they shall notify the Commission forthwith. The Commission shall submit an annual report of the notifications received during the previous 12 months to the Committee referred to in Article 21 for its information.’;

18. Article 19 shall be replaced by the following:

‘Article 19

1. Member States shall ensure that transparent, simple and inexpensive procedures are made available by all postal service providers for dealing with postal users’ complaints, particularly in cases involving loss, theft, damage or non-compliance with service quality standards (including procedures for determining where responsibility lies in cases where more than one operator is involved), without prejudice to relevant international and national provisions on compensation schemes.

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.

Member States shall also encourage the development of independent out-of-court schemes for the resolution of disputes between postal service providers and users.

2. Without prejudice to other possibilities of appeal or means of redress under national and Community legislation, Member States shall ensure that users, acting individually or, where permitted by national law, jointly with organisations representing the interests of users and/or consumers, may bring before the competent national authority cases where users’ complaints to undertakings providing postal services within the scope of the universal service have not been satisfactorily resolved.

In accordance with Article 16, Member States shall ensure that the universal service providers and, wherever appropriate, undertakings providing services within the scope of the universal service, publish, together with the annual report on the monitoring of their performance, information on the number of complaints and the manner in which they have been dealt with.’;

19. Article 21 shall be replaced by the following:

‘Article 21

1. The Commission shall be assisted by a committee.

2. Where reference is made to this paragraph, Articles 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.’;

20. Article 22 shall be replaced by the following:

*‘Article 22*

1. Each Member State shall designate one or more national regulatory authorities for the postal sector that are legally separate from and operationally independent of the postal operators. Member States that retain ownership or control of postal service providers shall ensure effective structural separation of the regulatory functions from activities associated with ownership or control.

Member States shall inform the Commission which national regulatory authorities they have designated to carry out the tasks arising from this Directive. They shall publish the tasks to be undertaken by national regulatory authorities in an easily accessible form, in particular where those tasks are assigned to more than one body. Member States shall ensure, where appropriate, consultation and cooperation between those authorities and national authorities entrusted with the implementation of competition law and consumer protection law on matters of common interest.

2. The national regulatory authorities shall have as a particular task ensuring compliance with the obligations arising from this Directive, in particular by establishing monitoring and regulatory procedures to ensure the provision of the universal service. They may also be charged with ensuring compliance with competition rules in the postal sector.

The national regulatory authorities shall work in close collaboration and shall provide mutual assistance in order to facilitate the application of this Directive within the appropriate existing bodies.

3. Member States shall ensure that effective mechanisms exist at national level under which any user or postal service provider affected by a decision of a national regulatory authority has the right to appeal against the decision to an appeal body which is independent of the parties involved. Pending the outcome of any such appeal, the decision of the national regulatory authority shall stand, unless the appeal body decides otherwise.’;

21. the following Chapter shall be inserted:

‘CHAPTER 9a

**Provision of information**

*Article 22a*

1. Member States shall ensure that postal service providers provide all the information, in particular to the national regulatory authorities, including financial information and information concerning the provision of the universal service, namely for the following purposes:

- (a) for national regulatory authorities to ensure conformity with the provisions of, or decisions made in accordance with this Directive,
- (b) for clearly defined statistical purposes.

2. Postal service providers shall provide such information promptly on request and in confidence, where necessary, within the timescales and to the level of detail required by the national regulatory authority. The information requested by the national regulatory authority shall be proportionate to the performance of its tasks. The national regulatory authority shall give the reasons justifying its request for information.

3. Member States shall ensure that national regulatory authorities provide the Commission, upon request, with appropriate and relevant information necessary for it to carry out its tasks under this Directive.

4. Where information is considered confidential by a national regulatory authority, in accordance with Community and national business confidentiality rules, the Commission and the national regulatory authorities concerned shall preserve such confidentiality.’;

22. Article 23 shall be replaced by the following:

*‘Article 23*

Every four years, on the first occasion no later than 31 December 2013, the Commission shall submit a report to the European Parliament and the Council on the application of this Directive, including appropriate information on developments in the sector, particularly concerning economic, social, employment patterns and technological aspects, as well as on quality of service. The report shall be accompanied, where appropriate, by proposals to the European Parliament and the Council.’;

23. the following Article shall be inserted:

*'Article 23a*

The Commission shall provide assistance to the Member States on the implementation of this Directive, including on the calculation of any net cost of the universal service.;

24. Articles 24, 25, 26 and 27 shall be deleted;

25. the following text shall be inserted as Annex I:

*'ANNEX I*

**Guidance on calculating the net cost, if any, of universal service**

*Part A: Definition of the universal service obligations*

Universal service obligations refer to the obligations referred to in Article 3 placed upon a postal service provider by a Member State which concern the provision of a postal service throughout a specified geographical area, including, where required, uniform prices in that geographical area for the provision of that service or provision of certain free services for blind and partially-sighted persons.

Those obligations may include, among others, the following:

- a number of days of delivery, superior to those set in this Directive,
- accessibility to access points, in order to satisfy the universal service obligations,
- the tariffs affordability of the universal service,
- uniform prices for universal service,
- the provision of certain free services for blind and partially-sighted persons.

*Part B: Calculation of net cost*

National regulatory authorities are to consider all means to ensure appropriate incentives for postal service providers (designated or not) to provide universal service obligations cost efficiently.

The net cost of universal service obligations is any cost related to and necessary for the operation of the universal service provision. The net cost of universal service obligations is to be calculated, as the difference between the net cost for a designated universal service provider of operating with the universal service obligations and the same postal service provider operating without the universal service obligations.

The calculation shall take into account all other relevant elements, including any intangible and market benefits which accrue to a postal service provider designated to provide universal service, the entitlement to a reasonable profit and incentives for cost efficiency.

Due attention is to be given to correctly assessing the costs that any designated universal service provider would have chosen to avoid, had there been no universal service obligation. The net cost calculation should assess the benefits, including intangible benefits, to the universal service operator.

The calculation is to be based upon the costs attributable to:

- (i) elements of the identified services which can only be provided at a loss or provided under cost conditions falling outside normal commercial standards. This category may include service elements such as the services defined in Part A;
- (ii) specific users or groups of users who, taking into account the cost of providing the specified service, the revenue generated and any uniform prices imposed by the Member State, can only be served at a loss or under cost conditions falling outside normal commercial standards.

This category includes those users or groups of users that would not be served by a commercial operator that did not have an obligation to provide universal service.

The calculation of the net cost of specific aspects of universal service obligations is to be made separately and so as to avoid the double counting of any direct or indirect benefits and costs. The overall net cost of universal service obligations to any designated universal service provider is to be calculated as the sum of the net costs arising from the specific components of universal service obligations, taking account of any intangible benefits. The responsibility for verifying the net cost lies with the national regulatory authority. The universal service provider(s) shall cooperate with the national regulatory authority to enable it to verify the net cost.

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

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

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

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

26. the Annex shall become Annex II.

*Article 2*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2010 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of their laws, regulations and administrative provisions with regard to the application of this Directive.

*Article 3*

1. By derogation to Article 2, the following Member States may postpone the implementation of this Directive until 31 December 2012, in order to continue to reserve services to universal service provider(s):

- Czech Republic,
- Greece,
- Cyprus,
- Latvia,
- Lithuania,
- Luxembourg,
- Hungary,
- Malta,
- Poland,
- Romania,
- Slovakia.

These Member States may decide to implement this Directive at an earlier stage.

2. The relevant Member States shall notify the Commission confirming their intention to make use of the implementation delay set out in paragraph 1 by 27 August 2008.

3. Member States that abolish their reserved areas by 31 December 2012 may, between 1 January 2011 and 31 December 2012, refuse to grant the authorisation provided for in Article 9(2) of Directive 97/67/EC for services within the abolished reserved area in question to postal operators providing services within the scope of the universal service, as well as companies controlled by them, which are granted a reserved area in another Member State.

*Article 4*

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

*Article 5*

This Directive is addressed to the Member States.

Done at Strasbourg, 20 February 2008.

*For the European Parliament*

*The President*

H.-G. PÖTTERING

*For the Council*

*The President*

J. LENARČIČ

## II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

## DECISIONS

## COMMISSION

## COMMISSION DECISION

of 22 February 2008

**concerning certain protection measures in relation to highly pathogenic avian influenza in Israel  
and derogating Decision 2006/696/EC**

(notified under document number C(2008) 679)

(Text with EEA relevance)

(2008/161/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/496/EEC of 15 July 1991 laying down the principles governing the organisation of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC<sup>(1)</sup>, and in particular Article 18(1) and (5) thereof,

Having regard to Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries<sup>(2)</sup>, and in particular Article 22(1) and (6) thereof,

Whereas:

(1) Avian influenza is an infectious viral disease in poultry and other birds, causing mortality and disturbances which can quickly take epizootic proportions liable to present a serious threat to animal and public health and to reduce sharply the profitability of poultry farming. There is a risk that the disease agent might be introduced into the Community via international trade in live poultry and certain other birds and products thereof.

(2) Israel has notified the Commission of an outbreak in poultry of highly pathogenic avian influenza caused by influenza A virus of subtype H5N1. Israel has taken the necessary measures and has informed the Commission thereof.

(3) Commission Decision 2006/696/EC of 28 August 2006 laying down a list of third countries from which poultry, hatching eggs, day-old chicks, meat of poultry, ratites and wild game birds, eggs and egg products and specified pathogen-free eggs may be imported into and transit through the Community and the applicable veterinary certification conditions, and amending Decisions 93/342/EEC, 2000/585/EC and 2003/812/EC<sup>(3)</sup> lays down the veterinary certification conditions for imports into and transit through the Community of those products. Taking into account the information provided by Israel and the level of control of disease applied, it is appropriate to provide for measures that may be applied regarding parts of that third country depending on the epidemiological situation and to derogate temporarily from the requirements as laid down in Decision 2006/696/EC.

(4) In view of the threat to animal health arising from the risk of the introduction of avian influenza into the Community, it is appropriate to suspend imports of live poultry, ratites, farmed and wild feathered game, and hatching eggs of those species from the affected part of Israel.

<sup>(1)</sup> OJ L 268, 24.9.1991, p. 56. Directive as last amended by Directive 2006/104/EC (OJ L 363, 20.12.2006, p. 352).

<sup>(2)</sup> OJ L 24, 30.1.1998, p. 9. Directive as last amended by Directive 2006/104/EC.

<sup>(3)</sup> OJ L 295, 25.10.2006, p. 1. Decision as last amended by Regulation (EC) No 1237/2007 (OJ L 280, 24.10.2007, p. 5).

- (5) Taking into account the risk to animal health, it is also appropriate to suspend imports into the Community from the affected part of Israel of fresh meat of poultry, ratites, farmed and wild feathered game, and imports of minced meat, mechanically separated meat, meat preparations and meat products consisting of or containing meat of those species, as well as certain other products of birds.
- (6) Certain products derived from poultry, ratites and farmed and wild feathered game slaughtered or hunted before 12 December 2007 should continue to be authorised from the whole of Israel, taking into account the incubation period of avian influenza.
- (7) Commission Decision 2007/777/EC of 29 November 2007 laying down the animal and public health conditions and model certificates for imports of certain meat products and treated stomachs, bladders and intestines for human consumption from third countries, and repealing Decision 2005/432/EC<sup>(1)</sup> sets out specific treatments in Part 4 of Annex II to that Decision concerning those imports. Accordingly, imports of meat products of poultry, ratites, and farmed and wild feathered game originating in Israel and treated to a temperature of at least 70 °C which inactivates the pathogen for avian influenza throughout the product should continue to be authorised.
- (8) It is appropriate to limit the period during which the measures provided for in this Decision are to apply. Accordingly, taking into account the time necessary to conclude definitely that the outbreak is contained, these measures should cease to apply to poultry imported after 2 April 2008 and to products produced after that date.
- (9) However, in order to be in a position to sign the veterinary certificates for imports into the Community of live poultry and poultry products, Israel is required pursuant to Commission Decisions 93/342/EEC<sup>(2)</sup> and 94/438/EC<sup>(3)</sup> to be free from highly pathogenic avian influenza for a period of at least six months where a sanitary slaughter policy is practised and if no emergency vaccination has been carried out.
- (10) When Israel regains its former status, it will again be in a position to certify that it is a country free from highly pathogenic avian influenza, in accordance with Decisions 93/342/EEC and 94/438/EC. However, taking into account that the measures applied by Israel can be considered as equivalent to Community measures, imports from the whole territory of that third country should be authorised, subject to certain certification requirements, from 3 April 2008.
- (11) However, from 3 April 2008 to the date of end of application of this Decision, the certificate should mention that the commodities are imported in accordance with this Decision.
- (12) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,
- HAS ADOPTED THIS DECISION:

#### Article 1

#### Derogation from Article 5 of Decision 2006/696/EC

By way of derogation from Article 5 of Decision 2006/696/EC, instead of the entries in Part I of Annex I to that Decision, the entries in the following table shall apply to imports from Israel.

IL — Israel	IL-0	The whole of Israel			
	IL-1	Area of Israel outside the following boundaries: — to the west, the Mediterranean Sea, — to the south, highway number 65, — to the north, highway number 70 (Milek Valley), — to the east, the route of highway number 6 which is under construction along the western ridge of Mount Carmel.	BPR, BPP, DOC, DOR, HEP, HER, SPF, SRP		

<sup>(1)</sup> OJ L 312, 30.11.2007, p. 49.

<sup>(2)</sup> OJ L 137, 8.6.1993, p. 24. Decision as last amended by Decision 2006/696/EC.

<sup>(3)</sup> OJ L 181, 15.7.1994, p. 35.

IL-2	Area of Israel within the following boundaries: — to the west, the Mediterranean Sea, — to the south, highway number 65, — to the north, highway number 70 (Milek Valley), — to the east, the route of highway number 6 which is under construction along the western ridge of Mount Carmel.			
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*Article 2*

**Derogation from Article 15 of Decision 2006/696/EC**

By way of derogation from Article 15 of Decision 2006/696/EC, instead of the entries in Part 1 of Annex II to that Decision, the entries in the following table shall apply to imports from Israel.

IL — Israel	IL-0	The whole of Israel			
	IL-1	Area of Israel outside the following boundaries: — to the west, the Mediterranean Sea, — to the south, highway number 65, — to the north, highway number 70 (Milek Valley), — to the east, the route of highway number 6 which is under construction along the western ridge of Mount Carmel.	WGM	III	
			EP, E, POU, RAT		
IL-2	Area of Israel within the following boundaries: — to the west, the Mediterranean Sea, — to the south, highway number 65, — to the north, highway number 70 (Milek Valley), — to the east, the route of highway number 6 which is under construction along the western ridge of Mount Carmel.				

*Article 3*

**Suspension of certain imports from Israel**

Member States shall suspend imports from Israel of:

(a) live poultry, ratites, farmed and wild feathered game, and hatching eggs of those species coming from the territory IL-2, as defined in the table in Article 1;

(b) the following products produced before 2 April 2008 and coming from the territory IL-2, as defined in the table in Article 2:

(i) fresh meat of poultry, ratites, and farmed and wild feathered game;

(ii) minced meat, mechanically separated meat, meat preparations and meat products consisting of or containing meat referred to in (i);

(iii) raw pet food and unprocessed feed material containing any parts of poultry, ratites and farmed and wild feathered game.

#### Article 4

##### **Derogations from Article 3(b) of this Decision**

By way of derogation from Article 3(b), Member States shall authorise the importation of the products referred to in Article 3(b)(i), (ii) and (iii), which have been obtained from birds slaughtered or hunted before 12 December 2007.

In the veterinary certificates/commercial documents accompanying consignments of those products, the following words as appropriate to the species shall be included:

'Fresh meat/minced meat/mechanically separated meat of poultry, ratites, farmed or wild feathered game <sup>(A)</sup> or meat preparations/meat products consisting of, or containing meat of poultry, ratites, farmed or wild feathered game <sup>(A)</sup> or raw pet food and unprocessed feed material containing any parts of poultry, ratites, farmed or wild feathered game <sup>(A)</sup> obtained from birds slaughtered or hunted before 12 December 2007 and in accordance with Article 4 of Commission Decision 2008/161/EC.

<sup>(A)</sup> Delete as appropriate.'

#### Article 5

##### **Derogations from Article 3(b)(ii) of this Decision**

By way of derogation from Article 3(b)(ii), Member States shall authorise the importation of meat products consisting of or containing meat of poultry, ratites, farmed or wild feathered game provided that the meat product has undergone at least one of the specific treatments referred to under points B, C or D in Part 4 of Annex II to Decision 2007/777/EC.

The specific treatment applied in accordance with the first paragraph of this Article shall be certified by the addition of the following words:

(a) to point II.1.1, column B of the animal health attestation in the animal and public health certificate, drawn up in accordance with the model set out in Annex III to Decision 2007/777/EC:

'Meat products treated in accordance with Commission Decision 2008/161/EC';

(b) to point I.28 in the column 'Treatment type' to the veterinary certificate for transit and/or storage, drawn up in accordance with the model set out in Annex IV to Decision 2007/777/EC:

'Meat products treated in accordance with Commission Decision 2008/161/EC'.

#### Article 6

##### **Certification requirement**

From 3 April 2008, imports into the Community of the commodities referred to in Article 3 shall be allowed from the whole territory of Israel, subject to the inclusion of the following words in the veterinary certificates accompanying consignments of those commodities:

'Consignment in accordance with Commission Decision 2008/161/EC'.

#### Article 7

##### **Compliance**

Member States shall immediately take the necessary measures to comply with this Decision and publish those measures. They shall immediately inform the Commission thereof.

#### Article 8

##### **Applicability**

This Decision shall apply until 2 July 2008.

However, Articles 1 to 5 shall apply until 2 April 2008.

#### Article 9

##### **Addressees**

This Decision is addressed to the Member States.

Done at Brussels, 22 February 2008.

For the Commission

Markos KYPRIANOU

Member of the Commission

## COMMISSION DECISION

of 26 February 2008

**amending Decision 2006/601/EC on emergency measures regarding the non-authorised genetically modified organism 'LL RICE 601' in rice products***(notified under document number C(2008) 743)***(Text with EEA relevance)**

(2008/162/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety<sup>(1)</sup>, and in particular Article 53(1) thereof,

Whereas:

(1) Article 4(2) and Article 16(2) of Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed<sup>(2)</sup> provide that no genetically modified food or feed is to be placed on the Community market unless it is covered by an authorisation granted in accordance with that Regulation. Article 4(3) and Article 16(3) of the same Regulation lay down that no genetically modified food and feed may be authorised unless it has been adequately and sufficiently demonstrated that it does not have adverse effects on human health, animal health or the environment, that it does not mislead the consumer or the user, and that it does not differ from the food or feed it is intended to replace to such an extent that its normal consumption would be nutritionally disadvantageous for humans or animals.

(2) Article 53(1) of Regulation (EC) No 178/2002 provides for the possibility to adopt appropriate Community emergency measures for food and feed imported from a third country in order to protect human health, animal health or the environment, where the risk cannot be contained satisfactorily by means of measures taken by the Member States concerned.

(3) In view of the presumption of risk on products not authorised according to Regulation (EC) No

1829/2003, Commission Decision 2006/601/EC of 5 September 2006 on emergency measures regarding the non-authorised genetically modified organism 'LL RICE 601' in rice products<sup>(3)</sup> required Member States not to allow the placing on the market of certain rice products originating from the United States unless the consignment is accompanied by an original analytical report issued by an accredited laboratory attesting that the product does not contain genetically modified rice 'LL RICE 601' and to carry out systematic official sampling and analysis of each consignment of specific products originating from the United States before their placing on the market.

(4) On 5 October 2007, the United States Department of Agriculture (USDA) published the results of its investigation on, in particular, the presence of 'LL RICE 601' in US commercial rice. While the exact mechanisms of the contamination could not be established, the findings indicate that the source of the contamination by 'LL RICE 601' was limited.

(5) The US Rice federation has adopted a plan aiming to remove 'LL RICE 601' from the US export channels. This plan includes testing of the seeds before planting, as well as documentary and analytical controls at the delivery points of the 2007 harvest. Only some aspects of this plan are subject to regulatory requirements in some US States. It is therefore necessary to ensure that all the consignments of rice originating from the United States of America imported in the European Union were subject to this plan.

(6) On 9 November 2007, USDA submitted a proposal of protocol to the Commission that would ensure that the products falling under the scope of Decision 2006/601/EC are subject to official sampling by the Grain Inspection, Packers and Stockyards Administration (GIPSA) and analysed using the 'P35S:BAR' method referred to in Decision 2006/601/EC in a laboratory participating successfully in the dedicated proficiency program administered by GIPSA. In accordance with that protocol, the consignments of those products would be accompanied by the original of an analytical report and by a letterhead issued by GIPSA indicating that 'LL RICE 601' was not detected.

<sup>(1)</sup> OJ L 31, 1.2.2002, p. 1. Regulation as last amended by Commission Regulation (EC) No 575/2006 (OJ L 100, 8.4.2006, p. 3).

<sup>(2)</sup> OJ L 268, 18.10.2003, p. 1. Regulation as amended by Commission Regulation (EC) No 1981/2006 (OJ L 368, 23.12.2006, p. 99).

<sup>(3)</sup> OJ L 244, 7.9.2006, p. 27. Decision as amended by Commission Decision 2006/754/EC (OJ L 306, 7.11.2006, p. 17).

- (7) The official involvement of the GIPSA, as described in the proposal of protocol, provides appropriate reassurances as to the quality of the controls made. As a consequence, mandatory official sampling and analysis by Member States at the point of entry into the Community is no more considered necessary.
- (8) Those measures should be reviewed within six months in order to assess whether they are still necessary, in the light of their impact and of the practical experience gained on the existing testing requirements.
- (9) Decision 2006/601/EC should therefore be amended accordingly.
- (10) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

*Article 1*

Decision 2006/601/EC is amended as follows:

1. Article 2 is replaced by the following:

*'Article 2*

**Conditions for first placing on the market**

1. Member States shall allow the first placing on the market of the products referred to in Article 1 only if the consignment of those products is accompanied by the following documents:

- (a) a statement from the food business operator responsible for the consignment that the products do only contain rice, from the 2007 or a subsequent harvest, that was subject to the plan of the USA Rice federation aiming to remove "LL RICE 601" from the US export channels; and
- (b) the original of an analytical report issued by a laboratory referred to in Annex II confirming that the products do not contain the genetically modified rice "LL RICE 601". The analytical report shall be accompanied by an official document issued by the Grain Inspection, Packers and Stockyards Administration (GIPSA) of the United States Department of Agriculture (USDA) in accordance with the protocol described in Annex II.

2. If a consignment is split, copies of the documents referred to in paragraph 1 shall accompany each part of the split consignment up to and including the wholesale stage. Those copies shall be certified by the competent

authority of the Member State on whose territory the splitting has taken place.'

2. Article 3 is replaced by the following:

*'Article 3*

**Other control measures**

1. Member States shall take appropriate measures, including random sampling and analysis carried out in accordance with Annex I concerning the products referred to in Article 1 presented for importation or already on the market in order to verify the absence of genetically modified rice "LL RICE 601". They shall inform the Commission of positive (unfavourable) results through the Rapid Alert System for food and feed.

2. Member States shall by 26 July 2008 at the latest submit to the Commission a report of all analytical results of official controls on consignments of products referred to in Article 1.'

3. Paragraph 1 of Article 5 is replaced by the following:

'1. All costs resulting from issuing the accompanying documents pursuant to Article 2(2) shall be borne by the food business operator responsible for the consignment or its representative.'

4. Article 6 is replaced by the following:

*'Article 6*

**Review of the measures**

The measures provided for in this Decision shall be reviewed by 26 August 2008 at the latest.'

5. In the heading of the Annex the word 'Annex' is replaced by 'Annex I'.
6. The text in the Annex to this Decision is added as Annex II.

*Article 2*

This Decision is addressed to the Member States.

Done at Brussels, 26 February 2008.

*For the Commission*  
Markos KYPRIANOU  
*Member of the Commission*

## ANNEX

## ‘ANNEX II

**Protocol for sampling and testing U.S. long grain rice shipments before export from the United States of America to the European Community**

**Sampling.** Each consignment (lot) of U.S. long grain rice to be shipped to Europe shall be officially sampled by USDA's Grain Inspection, Packers and Stockyards Administration (GIPSA) personnel in accordance with established sampling procedures. These procedures appear in GIPSA's *Rice Inspection Handbook, Chapter 2, Sampling*.

The size of the original bulk sample shall be in accordance with Commission Recommendation 2004/787/EC. GIPSA personnel shall prepare a representative 2,5 kg lot composite sample for the testing laboratory and will retain an identical 2,5 kg file sample. GIPSA will apply a seal to the laboratory sample and record the seal number for future reference.

**Testing.** The applicant for service shall forward the sealed sample to one of the commercial testing laboratories participating successfully in the LibertyLink rice proficiency program administered by GIPSA and listed at this location: <http://archive.gipsa.usda.gov/rdd/l/riceprof.pdf> Each laboratory tests pools of samples within its verified detection level to achieve a 0,01 per cent level of detection.

The laboratory shall record the seal number, break the seal, and test four 240 gram samples taken from the single laboratory sample. One extraction will be made from each sample. Two PCR analyses shall be made for each extraction using the 35S:BAR method developed by Bayer CropScience and verified by both GIPSA and the JRC. The lot shall be considered negative only when all sample results are negative.

**Reporting.** The laboratory shall report results, and the GIPSA seal number, on the lab report, and provide it to the applicant for service. The applicant shall provide the lab report to the GIPSA office that sampled the lot. GIPSA will issue an official document as follows, and provide it to the applicant:

“GIPSA officially sampled the lot of rice identified as (*specify lot identification*) and applied seal number (*enter seal number*). (*Enter lab name*), who participates in the LibertyLink rice proficiency program administered by GIPSA, tested a sample identified with this seal number and did not detect LibertyLink rice based on the verified 35S:BAR method. The lab report is attached.”

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## CORRIGENDA

**Corrigendum to Commission Regulation (EC) No 967/2006 of 29 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 318/2006 as regards sugar production in excess of the quota**

*(Official Journal of the European Union L 176 of 30 June 2006)*

On page 31, in the Annex:

*for:*

'ex 38	Miscellaneous chemical products except those of headings 3809 60 and 3824 60 00'
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*read:*

'ex 38	Miscellaneous chemical products except those of headings 3809 and 3824 60 00'
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