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

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 57 (2), 66 and 100a thereof,

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

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

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

Having regard to the resolution of the European Parliament of 22 January 1993 concerning the green paper on the development of the single market for postal services[(4)],

Having regard to the Council resolution of 7 February 1994 on the development of Community postal services[(5)],

Acting in accordance with the procedure laid down in Article 189b of the Treaty, in the light of the joint text approved by the Conciliation Committee on 7 November 1997[(6)],

(1) Whereas measures should be adopted with the aim of establishing the internal market in accordance with Article 7a of the Treaty; whereas this market comprises an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured;

(2) Whereas the establishment of the internal market in the postal sector is of proven importance for the economic and social cohesion of the Community, in that postal services are an essential instrument of communication and trade;

(3) Whereas on 11 June 1992 the Commission presented a Green Paper on the development of the single market for postal services and, on 2 June 1993, a Communication on the guidelines for the development of Community postal services;

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

(5) Whereas the current extent of the universal postal service and the conditions governing its provision vary significantly from one Member State to another; whereas, in

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particular, performance in terms of quality of services is very unequal amongst Member States;

(6) Whereas cross-border postal links do not always meet the expectations of users and European citizens, and performance, in terms of quality of service with regard to Community cross-border postal services, is at the moment unsatisfactory;

(7) Whereas the disparities observed in the postal sector have considerable implications for those sectors of activity which rely especially on postal services and effectively impede the progress towards internal Community cohesion, in that the regions deprived of postal services of sufficiently high quality find themselves at a disadvantage as regards both their letter service and the distribution of goods;

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

(9) Whereas action at Community level to ensure greater harmonisation of the conditions governing the postal sector is therefore necessary and steps must consequently be taken to establish common rules;

(10) Whereas, in accordance with the principle of subsidiarity, a set of general principles should be adopted at Community level, whilst the choice of the exact procedures should be a matter for the Member States, which should be free to choose the system best adapted to their own circumstances;

(11) Whereas it is essential to guarantee at Community level a universal postal service encompassing a minimum range of services of specified quality to be provided in all Member States at an affordable price for the benefit of all users, irrespective of their geographical location in the Community;

(12) Whereas the aim of the universal services is to offer all users easy access to the postal network through the provision, in particular, of a sufficient number of access points and by ensuring satisfactory conditions with regard to the frequency of collections and deliveries; whereas the provision of the universal service must meet the fundamental need to ensure continuity of operation, whilst at the same time remaining adaptable to the needs of users as well as guaranteeing them fair and non-discriminatory treatment;

(13) Whereas universal service must cover national services as well as cross-border services;

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

(15) Whereas the provisions of this Directive relating to universal service provision are without prejudice to the right of universal service operators to negotiate contracts with customers individually;

(16) Whereas the maintenance of a range of those services that may be reserved, in compliance with the rules of the Treaty and without prejudice to the application of

the rules on competition, appears justified on the grounds of ensuring the operation of the universal service under financially balanced conditions; whereas the process of liberalisation should not curtail the continuing supply of certain free services for blind and partially sighted persons introduced by the Member States;

(17) Whereas items of correspondence weighing 350 grammes and over represent less than 2 % of letter volume and less than 3 % of the receipts of the public operators; whereas the criteria of price (five times the basic tariff) will better permit the distinction between the reserved service and the express service, which is liberalised;

(18) Whereas, in view of the fact that the essential difference between express mail and universal postal services lies in the value added (whatever form it takes) provided by express services and perceived by customers, the most effective way of determining the extra value perceived is to consider the extra price that customers are prepared to pay, without prejudice, however, to the price limit of the reserved area which must be respected;

(19) Whereas it is reasonable to allow, on an interim basis, for direct mail and cross-border mail to continue to be capable of reservation within the price and weight limits provided; whereas, as a further step towards the completion of the internal market of postal services, a decision on the further gradual controlled liberalisation of the postal market, in particular with a view to the liberalisation of cross-border and direct mail as well as on a further review of the price and weight limits, should be taken by the European Parliament and the Council not later than 1 January 2000, on a proposal from the Commission following a review of the sector;

(20) Whereas, for reasons of public order and public security, Member States may have a legitimate interest in conferring on one or more entities designated by them the right to site on the public highway letter-boxes intended for the reception of postal items; whereas, for the same reasons, they are entitled to appoint the entity or entities responsible for issuing postage stamps identifying the country of origin and those responsible for providing the registered mail service used in the course of judicial or administrative procedures in accordance with their national legislation; whereas they may also indicate membership of the European Union by integrating the 12-star symbol;

(21) Whereas new services (services quite distinct from conventional services) and document exchange do not form part of the universal service and consequently there is no justification for their being reserved to the universal service providers; whereas this applies equally to self-provision (provision of postal services by the natural or legal person who is the originator of the mail, or collection and routing of these items by a third party acting solely on behalf of that person), which does not fall within the category of services;

(22) Whereas Member States should be able to regulate, by appropriate authorization procedures, on their territory, the provision of postal services which are not reserved to the universal service providers; whereas those procedures must be transparent, non-discriminatory, proportionate and based on objective criteria;

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(23) Whereas the Member States should have the option of making the grant of licences subject to universal service obligations or contributions to a compensation fund intended to compensate the universal service provider for the provision of services representing an unfair financial burden; whereas Member States should be able to include in the authorisations an obligation that the authorised activities must not infringe the exclusive or special rights granted to the universal service providers for the reserved services; whereas an identification system for direct mail may be introduced for the purposes of supervision where direct mail is liberalised;

(24) Whereas measures necessary for the harmonisation of authorisation procedures laid down by the Member States governing the commercial provision to the public of non-reserved services will have to be adopted;

(25) Whereas, should this prove necessary, measures shall be adopted to ensure the transparency and non-discriminatory nature of conditions governing access to the public postal network in Member States;

(26) Whereas, in order to ensure sound management of the universal service and to avoid distortions of competition, the tariffs applied to the universal service should be objective, transparent, non-discriminatory and geared to costs;

(27) Whereas the remuneration for the provision of the intra-Community cross-border mail service, without prejudice to the minimum set of obligations derived from Universal Postal Union acts, should be geared to cover the costs of delivery incurred by the universal service provider in the country of destination; whereas this remuneration should also provide an incentive to improve or maintain the quality of the cross-border service through the use of quality-of-service targets; whereas this would justify suitable systems providing for an appropriate coverage of costs and related specifically to the quality of service achieved;

(28) Whereas separate accounts for the different reserved services and non-reserved services are necessary in order to introduce transparency into the actual costs of the various services and in order to ensure that cross-subsidies from the reserved sector to the non-reserved sector do not adversely affect the competitive conditions in the latter;

(29) Whereas, in order to ensure the application of the principles set out in the previous three recitals, universal service providers should implement, within a reasonable time limit, cost accounting systems, which can be independently verified, by which costs can be allocated to services as accurately as possible on the basis of transparent procedures; whereas such requirements can be fulfilled, for example, by implementation of the principle of fully distributed costing; whereas such cost accounting systems may not be required in circumstances where genuine conditions of open competition exist;

(30) Whereas consideration should be given to the interests of users, who are entitled to services of a high quality; whereas, therefore, every effort must be made to improve and enhance the quality of services provided at Community level; whereas such improvements in quality require Member States to lay down standards, to be attained or surpassed by the universal service providers, in respect of the services forming part of the universal service;

(31) Whereas the quality of service expected by users constitutes an essential aspect of the sevices provided; whereas the evaluation standards for this quality of service and the levels of quality achieved must be published in the interests of users; whereas it is necessary to have available harmonised quality-of-service standards and a common methodology for measurement in order to be able to evaluate the convergence of the quality of service throughout the Community;

(32) Whereas national quality standards consistent with Community standards must be determined by Member States; whereas, in the case of intra-Community cross-border services requiring the combined efforts of at least two universal service providers from two different Member States, quality standards must be defined at Community level;

(33) Whereas compliance with these standards must be independently verified at regular intervals and on a harmonised basis; whereas users must have the right to be informed of the results of this verification and Member States should ensure that corrective action is taken where those results demonstrate that the standards are not being met;

(34) Whereas Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts[(7)] applies to postal operators;

(35) Whereas the need for improvement of quality of service means that disputes have to be settled quickly and efficiently; whereas, in addition to the forms of legal redress available under national and Community law, a procedure dealing with complaints should be provided, which should be transparent, simple and inexpensive and should enable all relevant parties to participate;

(36) Whereas progress in the interconnection of postal networks and the interests of users require that technical standardisation be encouraged; whereas technical standardisation is indispensable for the promotion of interoperability between national networks and for an efficient Community universal service;

(37) Whereas guidelines on European harmonisation provide for specialised technical standardisation activities to be entrusted to the European Committee for Standardisation;

(38) Whereas a committee should be established to assist the Commission with the implementation of this Directive, particularly in relation to the future work on the development of measures relating to the quality of Community cross-border service and technical standardisation;

(39) Whereas, in order to ensure the proper functioning of the universal service and to ensure undistorted competition in the non-reserved sector, it is important to separate the functions of the regulator, on the one hand, and the operator, on the other; whereas no postal operator may be both judge and interested party; whereas it is for the Member State to define the statute of one or more national regulatory authorities, which may be chosen from public authorities or independent entities appointed for that purpose;

(40) Whereas the effects of the harmonised conditions on the functioning of the internal market in postal services will need to be the subject of an assessment; whereas, therefore, the Commission will present a report to the European Parliament and the