



COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT

pursuant to the second subparagraph of Article 189 b (2) of the EC-Treaty

ON THE COMMON POSITION OF THE COUNCIL

**on the proposal for a Directive of
the European Parliament and the Council
on common rules for the development of the internal market of Community postal
services and the improvement of quality of service**

1. BACKGROUND

On 25 July 1995 the Commission adopted a proposal for a European Parliament and Council Directive on common rules for the development of Community postal services and the improvement of quality of service (COM (95) 227)¹.

The Economic and Social Committee gave its opinion on the Commission's proposal on 28 March 1996².

The European Parliament gave its opinion on first reading on 9 May 1996, and proposed 58 amendments to the proposal³.

The Committee of the Regions gave its opinion on the proposal on 13 June 1996⁴.

On 31 July 1996 the Commission adopted an amended proposal in conformity with Article 189a(2) of the Treaty, incorporating a number of the EP amendments⁵.

On 29 April 1997 the Council, acting in accordance with Article 189b(2) of the Treaty, adopted a Common Position on the proposed Directive.

The present Communication gives the Commission's opinion on the Council's Common Position, in accordance with Article 189b(2) of the Treaty.

2. PURPOSE OF THE COMMISSION PROPOSAL

This Directive aims to provide for a regulatory framework at Community level for the postal sector.

It defines the minimum universal service to be provided throughout the Community to all citizens, wherever they are located, at affordable prices. In order to ensure the financial viability of the universal service, the Directive defines harmonised criteria for the services which may be reserved to the universal service providers, to the extent necessary for the maintenance of the universal service, whilst also providing for a gradual and controlled opening up of the postal market to more competition.

The Directive also provides for the establishment of quality of service standards for universal service, in relation to both national postal services and intra-Community cross-

¹ OJ C 322 of 2.12.95, p. 22.

² CES 419/96.

³ A4-0105/96, PV 09-05-96.

⁴ CdR 422/95

⁵ COM(96) 412, 31.07.96

border services, as well as for the development of harmonised technical standards. Furthermore, the proposed Directive sets out common principles for tariff setting and accounting by universal service providers, as well as for national authorisation schemes, and requires separation between regulatory powers and operational functions.

3. COMMENTS ON THE COMMON POSITION OF THE COUNCIL⁶

3.1. SUMMARY OF THE COMMISSION'S POSITION

The Commission considers that the Council's Common Position is acceptable. The compromises reached do not prejudice the fundamental aims of the Commission's original proposal.

3.2. PARLIAMENT'S AMENDMENTS ON FIRST READING

On first reading, the European Parliament proposed 58 amendments to the Commission's initial proposal.

The Commission accepted 10 amendments in full, 5 in part and 1 in principle, making a total of 16.

Amendments accepted in full : 4, 9, 13, 21, 27, 30, 39, 55, 56, 57

Amendments accepted in part : 1, 37, 38, 41, 48

Amendment accepted in principle : 15.

The amended proposal adopted by the Commission in July 1996⁷ presents the reasons why the Commission did not accept the other amendments proposed by the European Parliament.

Parliament's amendments accepted by the Commission and incorporated in the Common Position

Of the Parliament's amendments which were accepted (in whole or in part) by the Commission, the following have been incorporated into the Council's Common Position:

Amendments: 1, 4, 9, 13, 21, 57.

In addition, wording equivalent to the following EP amendments accepted by the Commission is included in the Common Position, representing an acceptance of those amendments in principle:

Amendments: 15, 38, 39, 41.

⁶ Unless otherwise indicated, the following comments refer to Articles as numbered in the Common Position. This numbering may vary from the Commission's original proposal.

⁷ See footnote 5.

Parliament's amendments accepted by the Commission but not incorporated in the Common Position

Council has not accepted six of the amendments proposed by the Parliament which were accepted by the Commission.

Reference to Euro-denominated postage stamps (Amendment 27)

The Council did not accept the inclusion (in recital 37 of the Commission's original proposal) of the reference to studying the possibility of issuing Euro-denominated postage stamps. The Commission could accept the Council's position in view of the fact that this statement does not relate to any specific substantive provision in the Directive and that such studies may be carried out in any event.

Reference to application of Treaty rules (Amendment 30)

The Council chose to retain recital 41 of the Commission's original proposal, which states that the Directive does not affect the application of the rules of the Treaty. The Commission could accept the retention of this recital, since it merely confirms the legal position which will apply in any event, and because its retention compensates to some degree for the deletion by the Council of recital 40 of the Commission's original proposal, which referred to the competition rules of the Treaty.

Derogation from universal service requirements of Article 3.3 for exceptional geographical conditions (Amendment 37)

The Council agreed to retain the words "or geographical conditions" which this amendment had deleted from Article 3.3. The Commission could accept the retention of these words because geographical conditions could in any event fall within the wider term "circumstances deemed exceptional" which is also used in that Article.

Initial "minimum requirement" for quality of service for national mail (Amendment 48)

The Council could not accept the inclusion in the Directive of a specific initial quality of service standard for national mail. The Commission was prepared to accept the removal of this requirement in the interests of compromise, bearing in mind the principle of subsidiarity, and on the basis that Article 17 still requires Member States to set standards which are compatible with those laid down for intra-Community cross-border services.

Commission's report on application of the Directive (Amendments 55 and 56)

The Council removed from Article 23 of the Commission's original proposal (Article 23 of the Common Position) the references to a review body to assist the Commission. Consequently Amendment 55 no longer applies. It also did not accept Amendment 56, which added a provision requiring the Commission's report to include the opinions submitted by interested parties. Although the Commission would have preferred the Parliament's amendments and the retention of the review body, which rightly accentuated the importance of consultation within the postal sector, it could accept the Council's

position on these points, since the Commission may still undertake a wide consultation of interested parties and include these elements in its review and report on the sector, under its own powers of initiative.

3.3. NEW PROVISIONS AND OTHER MODIFICATIONS INTRODUCED BY THE COUNCIL

The Council has made a number of changes to the Commission proposal which, together with the amendments proposed by the Parliament and accepted by the Council, strengthen the proposed Directive or represent compromises which the Commission is prepared to accept because they do not prejudice the fundamental aims of the Commission's original proposal. The major changes are discussed below, where Articles are grouped into six broad categories.

Definitions (Article 2)

A number of the definitions in the Directive have been modified in order to align them with best practice, following work undertaken in the framework of CERP⁸ which took as a starting point the definitions used by the Universal Postal Union. Other definitions such as those of "essential requirements" and "authorizations" have been inserted as a result of changes to other Articles and reflect wording used in other Community legislation.

Scope of Universal Service (Articles 3, 4, 5 and 6)

As regards the daily clearance and delivery requirements of the universal service provided for in Article 3.3, the Council has specified that it is for national regulatory authorities to determine whether the derogation for exceptional circumstances or geographical conditions should apply. Council also introduced the possibility of a derogation from the door-to-door delivery requirement, to allow for alternative methods of delivery where appropriate. The Commission regrets the inclusion of this additional possibility for departure from the universal service requirements set out in the Directive, but could reluctantly accept it in the interests of an overall agreement.

The Council has also reduced to 10 kg the minimum weight limit for universal service provision for postal packages (Article 3.4), but with provision (Article 3.5) for Member States to increase this value up to 20 kg within their own territory, and a requirement that the delivery of postal packages weighing up to 20 kg received from other Member States is ensured.

The Council has also inserted in Article 5 a requirement that Member States ensure that universal service provision guarantees compliance with essential requirements (Article 5.1, first indent), together with a provision confirming Member States' right to take measures in relation to public interest matters recognised by the Treaty (Article 5.2). The definition of "essential requirements" which has been inserted in Article 2 includes both data protection and the confidentiality of correspondence, and therefore encompasses the principles contained in that part of Parliament's Amendment 38 which was accepted by the Commission, as well as the wording in the Commission's original proposal.

8. The European Committee on Postal Regulation.

The Council has deleted Article 7 of the Commission's original proposal, but has retained the principle contained in it by including reference to the guarantee of universal service in Article 5.1.

Although the Commission would have preferred to maintain the scope of the universal service requirements as set out in its original proposal, it could reluctantly accept the Council's position, taking into account the safeguards provided and in the interests of compromise.

Definition of services which may be reserved and timetable for liberalisation (Articles 7, 8, 26 and 27)

The scope of the reservable area and the timetable for liberalisation set out in these Articles is the result of long and difficult negotiations in the Council and represents a delicate compromise between Member States with differing approaches to postal liberalisation within their own national systems.

The compromise reached by the Council retains the basic price and weight limits for the reservable area proposed by the Commission in relation to items of domestic correspondence, while providing that to the extent necessary to ensure the maintenance of universal service cross-border mail and direct mail may continue to be reserved within those same limits for the time being. It also provides that the Parliament and Council shall decide not later than 1 January 2000 (on a proposal from the Commission to be tabled before the end of 1998) on the further gradual and controlled liberalisation of the postal market, in particular with a view to the liberalisation of direct mail and cross-border mail as well as on a review of the price and weight limits, with effect from 1 January 2003.

Article 7 makes it clear that the price and weight limits of the reservable area also apply to items of domestic correspondence which are subject to accelerated delivery (i.e. express mail), but that document exchange may not be reserved.

The Council has included in Article 8 (Article 9 in the Commission's original proposal) a provision stating that Article 7 is without prejudice to Member States' right to organise the registered mail service used in the course of judicial and administrative procedures. This covers similar ground to Parliament's Amendment 41.

The compromise reached by the Council also includes a provision (Article 27) that the Directive shall apply until 31 December 2004 unless otherwise decided under Article 7.3. This means that if Parliament, Council and the Commission are unable to agree on the further step in the liberalisation process provided for in Article 7, the services which may be reserved by Member States will cease to be regulated by secondary legislation.

Article 26 also makes it clear that Member States may introduce measures which are more liberal than those required by the Directive and that in the event that the Directive does lapse, Member States may maintain in force the measures they have taken to implement it so far as they are compatible with the Treaty.

Although the Commission would have preferred to maintain the timetable for liberalisation which it originally proposed, it is prepared to accept the compromise reached in the Council, bearing in mind the safeguards contained in it, in the interests of compromise and in order to speed up the adoption of the Directive.

Conditions governing the provision of non-reserved services (Article 9)

The Council has modified this Article (Article 10 in the Commission's original proposal) and introduced a definition of "authorizations" into Article 2 in order to establish a framework for the authorization of non-reserved services which distinguishes between "general authorizations" and "individual licences". Article 9 provides that only the former may be used for non-reserved services falling outside the scope of the universal service, whereas authorizations including individual licences may be used for those falling inside the universal service.

The Commission could accept these modifications, given the provision in Article 9.3 that all authorization procedures must be transparent, non-discriminatory, proportionate and based on objective criteria.

Tariff Principles and Transparency of Accounts (Articles 13, 14 and 15)

Article 13 (Article 14 in the Commission's original proposal) has been modified by the Council to take more account of the nature of the arrangements between European public postal operators for determining terminal dues, while retaining the principles set out in Article 14 of the Commission's proposal.

The provisions relating to the accounting of universal service providers have been redrafted to provide more detailed requirements concerning the cost accounting systems which must be employed. Article 14.8 provides that these cost accounting systems may not be required in cases where conditions for open competition exist.

The Council could not accept the requirement in Article 15.2 of the Commission's original proposal that the internal accounts of the universal service providers distinguish between collection, transport, sorting and delivery, nor the requirement that their annual reports include separate balance sheets and profit and loss accounts for reserved and non-reserved services.

The provisions concerning the auditing and publication of the financial accounts of the universal service providers have been placed in a separate Article (Article 15).

Quality of Services (Articles 16, 17, 18 and 19)

The Council was unable to accept that the Directive should set out specific minimum quality of service standards for national services.

As regards the minimum quality of service standards for intra-Community cross-border services (now contained in an Annex to the Directive), the Council has reduced these to D+3 for 85% of items and D+5 for 97% of items. The Council also agreed that these targets should be subject to adjustment in accordance with a regulatory committee procedure rather than the advisory committee procedure proposed by the Commission.

The Council has also introduced (in Article 18) a provision allowing national regulatory authorities to determine exemptions from the quality of service standards for intra-Community cross-border mail, with notification thereof to the Commission.

The Commission regrets this weakening of the provisions governing quality of service in the Directive. However, the Council did agree to provide that national regulatory authorities are obliged to ensure that corrective action is taken where performance

monitoring shows that quality standards are not being met, in relation to both national services (Article 17) and intra-Community cross-border services (Article 18).

The Council has modified the provisions relating to the establishment of a system of reimbursement and/or compensation in the context of dispute settlement (Article 19, paragraph 2), so that such systems are not required in all cases but only "where warranted" and are no longer subject to the requirement that they be "efficient and speedy". The Commission believes that the interests of users would have been more effectively served by the wording it originally proposed, but could reluctantly accept the Council's formulation in the interests of compromise.

3.4. COMMITTEE PROCEDURES

The Commission deeply regrets that the Council insisted on introduction, in Article 21, of a type IIIa regulatory committee procedure in an Article 100a Directive, instead of the advisory committee procedure proposed by the Commission. The Commission reluctantly accepted this position in the absence of support for an advisory committee procedure from any Member State, and in the interests of achieving an overall compromise.

4. CONCLUSIONS

The Council's Common Position required both Member States and the Commission to show flexibility in the interests of finding a compromise, particularly in relation to the issue of the timetable for liberalisation, which could enable the Directive to proceed towards its adoption. The political importance for the Community of achieving this objective justifies the flexibility which was shown.

The Council has made a number of changes to the Commission proposal which, together with the amendments proposed by the European Parliament and accepted by the Council, either strengthen the proposed Directive or represent compromises which the Commission can accept because they preserve the key elements needed for a harmonised regulatory framework for Community postal services and do not prejudice the fundamental aims of the Commission's original proposal.