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Committee on Economic and Monetary Affairs

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DRAFT OPINION

of the Committee on Economic and Monetary Affairs

for the Committee on Transport and Tourism

on the proposal for a European Parliament and Council directive amending
Directive 97/67/EC on the full accomplishment of the internal market of
Community postal services
(COM(2006)0594 – C6-0354/2006 – 2006/0196(COD))

Draftsman: Gilles Savary

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SHORT JUSTIFICATION

On 18 October 2006, in accordance with the second postal directive of the European Parliament and of the Council of 10 June 2002 (2002/39/EC), and on the basis of a study undertaken by the consultants PricewaterhouseCoopers in 2006¹, the Commission adopted a proposal for a directive seeking to complete the internal market in Community postal services.

The main plank of the proposal for a directive is the elimination of the 'reserved area' (residual monopoly) for mail weighing less than 50 grams, with effect from 1 January 2009.

The main question raised by this final stage in the liberalisation of postal service is the financing of universal service and possible additional public postal service obligations.

I - The two main points of the Commission proposal

1) Ensuring compatibility between liberalisation and the financing of universal service

➤ The main focus of the Commission's proposal is to be found in the provisions of the new Article 7 it is introducing into the postal directive, which:

- abolishes the 'reserved area' with effect from 1 January 2009;
- introduces the principle of ensuring provision of universal service, in a framework of competition and with due regard for public procurement rules (paragraph 2) by those Member States which so desire;
- introduces the principle of evaluating the net cost of public service obligations and the possibility of sharing their cost (paragraph 3):
 - by state aids;
 - by a compensation fund which may be financed by service providers' and/or users' fees
 - or by a 'pay-or-play' mechanism, making the granting of authorisations subject to universal service obligations or the financing of a compensation fund.

➤ The Commission proposal also introduces procedures for authorisation and granting of licenses which are subject to compliance with essential universal service obligations (Article 9), transparent and non-discriminatory access to the downstream sector (distribution) of postal infrastructure (Article 11a), and rules on accounting separation and cost calculation distinguishing between providers of market services and providers of universal service (Article 14).

➤ It lays down rules on consumer protection, dealing with complaints and means of redress (Article 19) and spells out the tasks to be undertaken by national regulatory authorities (Article 22).

2) Financing of universal service: a choice of options for Member States

➤ In place of the 'reserved area' the Commission is proposing several financing options

¹ 'The impact on universal service of the full market accomplishment of the postal internal market in 2009', PricewaterhouseCoopers, 2006.

for Member States (subsidiarity principle), including:

- a compensation fund financed either by levies either on entrants or items.
- an authorisation procedure including a profitable and a non-profitable zone.
- a 'pay-or-play' type procedure, which would entail either choosing to finance universal service or paying a fee, which would be tantamount to a combination of the two preceding procedures.

II - New proposals by draftsman:

1) First proposal: retain the 'reserved area' as one of the ways of financing universal service offered to Member States

While the various methods of financing universal service proposed by the Commission in its proposal for a directive are worthy of examination, there is no objective reason why the 'reserved area' option should be ruled out:

- In fact, none of these new modes of funding has provided irrefutable proof of superiority over the 'reserved area' system, which is accepted without challenge by users, is transparent and neutral, does not entail state aid, involves low transaction costs and few disputes and is generally validated by economic theory.
- Secondly, the need to comply with the subsidiarity principle when choosing the mode of financing universal service means that the directive should not exclude any of the options.

Since recent scientific studies² clearly show that national variables such as topography, population density and the habits of postal services consumers (average number of items delivered per inhabitant) produce considerable disparities in the cost of supplying the same universal services, it is not so much the 'reserved area' system that appears questionable, but rather the setting of a standard threshold in all Member States (currently 50 grams).

There is therefore no economic or logical reason for ruling out the 'reserved area' system as a possible means of financing universal postal services, provided the cost of supplying that service can be calculated accurately in each Member State on the basis of the abovementioned national variables.

2) Second proposal: adjusting the 'reserved area' threshold for individual Member States on the basis of the principle of actual costs/threshold proportionality.

While it is perfectly natural that new types of mechanisms for financing universal service should be proposed to the Member States, it is to be regretted that:

- the Commission has not taken the time to have a serious and independent comparative

² Boldron F., Joram D., Martin L. and Roy B., - « *From Size of the Box to the Costs of Universal Service Obligation: A Cross-Country Comparison* », in "Liberalization of the Postal and Delivery Sector", edited by Michael Crew and Paul Kleindorfer, Edward Elgar, 2006

study carried out into their cost, and the established or theoretical benefits of the various modes of financing universal service put forward, including the 'reserved area'.

➤ the Commission has at no time proposed adjusting the 'reserved area' threshold on the basis of the cost of providing universal service in the various Member States, as calculated by various scientific studies³, so as to rid this method of financing of the abuses of monopoly position and distortions of competition it currently entails as a result of not being based on actual costs.

Accordingly, your draftsman proposes that:

1. **the reserved area system be reintroduced in Article 7 as one of the methods for financing universal service offered to Member States**, subject to it being based on the actual costs incurred for providing the universal service in the Member States.
2. **the Commission be asked to draw up an accurate and comparative assessment of the different financing methods**, based on an independent study entailing a comparative assessment of the various financing methods used worldwide, to be undertaken between now and 1 January 2009.
3. **a proposal for full liberalisation of the internal market in postal services be drawn up based on the conclusions of this study, proposing either a choice between the various methods of financing universal service or the adoption of one of these methods.**

AMENDMENTS

The Committee on Economic and Monetary Affairs calls on the Committee on Transport and Tourism, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission ⁴	Amendments by Parliament
Amendment 1	
TITLE	
Directive of the European Parliament and of the Council amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services	Directive of the European Parliament and of the Council amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services <i>and the financing of universal postal service obligations</i>

³ Ibid.

⁴ Not yet published in OJ.

Justification

Compatibility between the financing of universal service obligations and the completion of the internal market in postal services is central to this proposal and should therefore be included in the title.

Amendment 2
RECITAL 7

(7) 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 postal internal market 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.***

(7) 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 postal internal market in 2009 has been carried out. ***Between now and 1 January 2009, the Commission should undertake a comparative assessment study and submit a report on the costs and benefits of the various possible mechanisms for financing universal postal service obligations.***

Justification

The studies undertaken by the Commission have failed to assess the impact of the various mechanisms for financing universal service proposed in this directive and some of those mechanisms, such as the compensation fund in Italy or the call for tender in Finland, have not proved effective with regard to the internal market in postal services. So as to prevent further distortions of competition, an assessment is needed of the impact of these various tools, particularly as regards neutrality, transparency, disputes and state aids.

Amendment 3
RECITAL 8

(8) According to the prospective study the basic aim of safeguarding 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.

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Justification

There is no basis at present for excluding the reserved area system out of hand as one of the mechanisms for financing universal service obligations in the Member States, although suitable improvements may need to be made to it.

Amendment 4

RECITAL 9

(9) 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 the new market conditions, and enabled Member States to adapt their regulatory systems to a more open environment. Member States may furthermore avail themselves of the opportunity offered by the period of transposition, as well as the substantial time necessary for the introduction of effective competition, to proceed with further modernisation and restructuring of the universal service providers as necessary. *deleted*

Justification

The annexes to the 2006 study by PricewaterhouseCoopers showed that national situations vary significantly. Some operators encountered difficulties in taking all the measures necessary in order to adapt to the opening-up of the market. It should be borne in mind in particular that postal operators in the enlargement countries have not reached the same level of preparation as those in other Member States.

Amendment 5

RECITAL 10

(10) 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

(10) The prospective study shows that the reserved area *is not the only method financing universal service*. This assessment takes into account the interest of the Community and its Member States in the accomplishment of the internal market and

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 date of 1 January 2009 as the final step in the accomplishment of the internal market for postal services.***

its potential for delivering growth and employment, as well as ensuring the availability of an efficient service of general economic interest for all users.

Justification

Neither existing data nor economic theory offer grounds for excluding the reserved area system as a means of financing universal service obligations in the Member States. This financing mechanism, whose use is accepted without question by users, has to date made it possible to ensure a high level of universal service in Europe and offers a unique and robust system of financing without recourse to state aid.

Amendment 6 RECITAL 12

(12) 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 facilitating the creation of new jobs in other operators, new entrants and associated economic activities. The present Directive is without prejudice to the competence of Member States to regulate employment conditions in the postal services sector.. ***deleted***

Justification

In its resolution of 2 February 2006, the European Parliament stressed that the effects of the reforms on quality, efficiency and customer-orientation in the postal sector had yet to be analysed in detail and thus the opening up of postal services to competition had not always resulted in increased or maintained employment levels in the postal sector. The annexes to the 2006 PWC study concerning the situation in the different Member States confirm the disparity in national situations.

Amendment 7 RECITAL 17

(17) 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 way of ensuring the financing of the universal service.

(17) The 'reserved area' has demonstrated its effectiveness in ensuring the financing of universal postal service without recourse to state aid, with full transparency, in a uniform, simple and harmonised manner across the whole of Europe and without giving rise to unnecessary transaction costs, disputes and litigation; there is no objective and rational reason for excluding it from the range of mechanisms for financing universal service offered to the Member States.

Justification

Neither existing data nor economic theory offer grounds for excluding the reserved area system as a means of financing universal service obligations in the Member States. This financing mechanism, whose use is accepted without question by users, has to date made it possible to ensure a high level of universal service in Europe and offers a unique and robust system of financing without recourse to state aid.

Amendment 8
RECITAL 17A (new)

(17a) The 'reserved area' creates distortion of competition and possible monopoly positions only because it is not proportionate to the actual cost of providing universal service in each Member State. Accordingly, it should be proposed that the threshold be adjusted proportionate to the costs incurred.

Justification

The 'reserved areas' threshold should be adjusted on the basis of the cost of providing universal services in the various Member States, in line with the method proposed by various scientific studies. This method of financing would do away with abuses of monopoly positions and distortions of competition, which occur at present because it does not correspond to actual costs.

Amendment 9
RECITAL 17b (new)

(17b) Economic science is now able to

reliably calculate the cost of universal service based on national variables such as population density, postal service use or topography.

Justification

Recent scientific studies have proposed a method for calculating the cost of providing universal service.

Amendment 10
RECITAL 18

(18) The external financing of the residual net costs of universal service may still be necessary for some Member States. It is therefore appropriate to explicitly clarify the alternatives available 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 and, whenever universal service obligations entail net costs of universal service and represent an unfair burden for the designated undertaking, public compensation and cost sharing between service providers and/or users in a transparent fashion by means of contributions to a compensation fund. Member States may use other means of financing permitted by Community Law, such as deciding that the profits accruing from other activities of the universal service providers 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 they are compatible with the present Directive.

(18) The external financing of the residual net costs of universal service may still be necessary for some Member States. It is therefore appropriate to explicitly clarify the alternatives available 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, ***inter alia***, the use of public procurement procedures and, whenever universal service obligations entail net costs of universal service and represent an unfair burden for the designated undertaking, public compensation and cost sharing between service providers and/or users in a transparent fashion by means of contributions to a compensation fund. Member States may use other means of financing permitted by Community Law, such as deciding that the profits accruing from other activities of the universal service providers 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 they are compatible with the present Directive.

Justification

While it is natural for the Commission to propose new types of instrument for financing universal service, there is no economic or rational reason for excluding the 'reserved area' from possible financing methods.

Amendment 11
ARTICLE 1, POINT 8

Article 7, paragraph 1 (Directive 97/67/EC)

1. *With effect from 1 January 2009 Member States shall not grant or maintain in force exclusive or special rights for the establishment and the 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 EC Treaty.*

1. *Between now and 1 January 2009, the Commission shall undertake a comparative assessment study and submit a report on the costs and benefits of the various possible mechanisms for financing universal postal service obligations, including those set out in paragraphs 2, 3 and 4, making it possible to assess their effects in terms of competitive neutrality, transparency, legal certainty, operational reliability and state aids.*

Justification

In accordance with Article 1 of Directive 2002/39/EC of the European Parliament and of the Council, the Commission is required to undertake a prospective study intended to assess, for each Member State, the impact on universal service of the full accomplishment of the postal internal market in 2009. This study should take stock of the costs/benefits of the various financing mechanisms proposed, with particular reference to existing practices in Europe and elsewhere in the world.

Amendment 12
ARTICLE 1, POINT 8

Article 7, paragraph 2 (directive 97/67/EC)

2. Member States **may** ensure the provision of universal services by procuring such services in accordance with applicable public procurement rules.

2. Member States **shall** ensure the provision of universal services by procuring such services in accordance with applicable public procurement rules.

Justification

It is important for the Member States to undertake to ensure the provision of universal service, whatever mode of financing is selected.

Amendment 13
ARTICLE 1, POINT 8

b a) introduce an exclusive rights threshold, proportionate to the costs for provision of universal service obligations incurred by each Member State.

Justification

The 'reserved area' system currently makes it possible to provide a high level of universal service in Europe under a single, sound funding rule and without recourse to state aid. Accordingly, your draftsman proposes that the reserved area be reintroduced as one of the methods of financing universal service offered to Member States, with the proviso that the threshold be adjusted to take into account the cost of providing universal service in the various Member States.