

EUROPEAN COMMISSION

PUBLIC CONSULTATION ON
POSTAL SERVICES

PART 2

CONSULTATION ENDS JAN 27 2006

NOV 2005

PART 2 –CONSULTATION ON POSTAL SERVICES

Part 2 asks more detailed questions on a wider range issues that have an impact on the sector.

Answering part 2 is optional, but is likely to be of particular interest to specific stakeholders, such as social partners, consumer and industry associations and high volume mailers.

SMEs and private users could however consider passing on their views on the issues raised in part 2 to postal user representative bodies, or national postal consumer groups.

Wherever possible, please answer following the same sequence and structure as the questions in this document.

It will significantly accelerate the evaluation of stakeholder views if all responses were given in English.

The consultation will run until 27 January 2006. It may not be possible to take into account responses received after this date.

Please either mail your response to:

*Postal Services Unit
Office C100 04/55
Internal Market Directorate-General
European Commission
1049 BRUSSELS
BELGIUM*

Or e-mail us at:

markt-e4-part2response@cec.eu.int

GUIDELINES FOR APPROACHING THE QUESTIONS

The following questions address issues of particular interest and/or concern in the postal sector. Questions are ordered by theme, with some questions having a number of components. Respondents are invited to address all of the components in each question.

MARKET OPENING AND THE UNIVERSAL POSTAL SERVICE

UNIVERSAL SERVICE SCOPE

The universal postal service implies that EU Member States have certain basic postal services available for people and businesses for their personal and commercial activities, under conditions of availability, affordability, ensured quality and minimum delivery frequency. Such basic postal service products include postal items (correspondence, books, catalogues, newspapers), postal packages up to 10kg, and a registered and insured items service.

The key policy question is what services should be provided on a universal basis? Should the services provided be a broad range (e.g. include mandatory provision of many types of mail, small packets and parcels) or less broad (e.g. focusing on mandatory provision of single item 'consumer' mail)? Should this be an issue regulated at EU level or left to Member States?

Q1 In relation to the scope of the universal service:

- **What postal services should the universal service include?**
- **What steps should be taken by Member States to ensure that the universal services are clearly defined to reflect the needs of customers?**
- **Should the scope of universal service products be further harmonised at EU level, or should some elements remain an issue for Member States to determine based on users' needs and market developments?**

UNIVERSAL SERVICE OBLIGATIONS

The universal service was incorporated into the Directive to ensure availability of a minimum standard of postal services to all EU Member State users. In addition to the basic postal services that are to be provided (covered in Q1 above) the Directive also places other obligations on Member States, for example:

- Permanent provision of a postal service of specified quality at all points in their territory at affordable prices for all users
- Collection and Delivery of all universal service products at least 5 days per week
- To establish quality of service standards for all national universal services that are consistent with uniform cross-border quality of service standards set in the Directive
- Tariffs must be geared to costs
- The possibility to require uniform tariffs
- Universal service tariffs must be transparent
- No cross-subsidisation of universal services in the reserved area from revenues outside the reserved area

Q2

- **Are the current universal postal service obligations still appropriate?**
- **Should universal postal service obligations be applied uniformly?**

THE RESERVED AREA

The notion of a reserved area was introduced in the 1997 Postal Directive so as to harmonise the areas where monopolies existed and gradually but progressively reduce them. An important policy issue however for full market opening is to ensure that a universal service can be maintained.

Q3

Is a reserved area necessary to maintain a universal service? What are the risks and opportunities to ensuring a universal service in a competitive environment?

CALCULATING THE COST OF THE UNIVERSAL SERVICE OBLIGATION

One safeguard to ensuring universal service is the reserved area, but the Directive authorises a reserved area only to the extent necessary to ensure universal service. However to ensure that any safeguard mechanisms are proportionate, it would be necessary to calculate the costs (if any) of universal postal service. There are several ways to calculate the costs of universal service, but the Directive does not stipulate a methodology for doing this.

Q4

Should a common methodology for assessing the cost of universal service be determined (e.g. following the approach taken in telecoms), and if so, who should determine this? In broad terms what elements should be taken into account in this calculation?

UNIVERSAL SERVICE –SAFEGUARD MECHANISMS

Where it is necessary to ensure the ability of Member States to provide a universal postal service, the Directive envisages a number of safeguards.

Q5

Universal Service Provision - Safeguard mechanisms

In the absence of a reserved area, what safeguard mechanisms are needed to ensure the continued ability to provide a universal service that would be appropriate in a liberalised market, equitable to citizens (as both users and taxpayers) and competing market participants, as well as practical and cost effective to administer?

QUALITY OF SERVICE

According to the Postal Directive, quality of service targets should develop “in response to the technical, economic (e.g. increased technical efficiency of universal service providers) and social environment and to the needs of users.” There is therefore a need to find the appropriate balance between customers’ expectations and appropriate standards. Only cross-border mail targets for the fastest category of letter mail only are currently set at EU level, although domestic targets must also be compatible with it. Since the introduction of the first Postal Directive studies have indicated that overall domestic and cross border quality of service has greatly improved.

Q6

Should minimum domestic quality of service levels be further harmonised, to what degree of convergence, for which product types, and how should targets be set?

CONSUMER PROTECTION – COMPLAINTS AND REDRESS

The Postal Directive does not contain detailed rules or procedures for redress where domestic quality targets are not met, although National Regulatory Authorities are charged with ensuring corrective action is taken where necessary, and ensuring complaint procedures are in place. Member States presently determine whether a redress mechanism is required, and determine the appropriate balance of redress vs. incentives in the form of compensation /penalty fines or incentive schemes through price control regulation.

Q7

Should complaint and redress procedures be strengthened at EU level; if so, what proportionate intervention would be needed, taking into account experience with existing approaches?

STANDARDISATION

The Directive recognises the broad consensus on the role standardisation plays to ensure harmonisation of technical methods at community level within the universal service, in particular for external measurement quality of service measurement using independent and reliable methods. The Directive also envisages facilitating inter-operability of postal service providers. Standardisation may also however provide a level of consumer protection, for example in the areas of quality of service and handling of complaints.

Q8

What role should standardisation play in the future postal marketplace?

ENSURING FAIR COMPETITION VS. REGULATORY BURDEN

AUTHORISATION AND LICENSING

The Postal Directive allows EU Member States to introduce two types of regulatory controls for competitive postal services – general authorisations and individual licensing. In practice however some schemes appear to have created obstacles to the free provision of services/establishment and/or not being proportionate or justified to the public interest at stake in a number of ways: by introducing requirements not directly authorised by the Directive (e.g. capital and technical requirements), by requiring individual licenses to companies that allegedly provide non-universal services, by imposing blanket conditions without ex-ante analysis (e.g. imposing universal service obligations to several companies). Other issues not addressed by the Directive have also been the source of complaints, such as the allegedly excessive penalties imposed for non-respect of authorisation conditions or information requirements.

A number of options exist with respect to authorisation and licensing, these include:

1. Abolishing the use of individual licenses. All sector specific conditions are applied through a general authorisation scheme.
2. Maintain the existing situation (the use of individual licenses and general authorisations continues to be allowed under existing conditions).

3. Widen the conditions for the possible use of licenses and general authorisations.
4. Clarifying and harmonising further: the range of services that may be subject to authorisation, the types/form of authorisations that may be introduced (including individual licenses) and the range of conditions that may be associated with authorisations.

Q9

Respondents are invited to comment on these options, including, where appropriate the nature of conditions that may be associated with authorisations, (in particular universal service obligations), to whom associated conditions should be applied, and how they are to be enforced.

ROLE AND RESPONSIBILITY OF NATIONAL REGULATORY AUTHORITIES

Although the intention of the Directives was to harmonise the NRA activities, recent developments suggest that the flexibility in the current Directive is resulting in asymmetric regulation due to the differences in the legal framework of Member States.

Concerning the financing of separate/independent National Regulatory Authorities by introducing fees on companies that operate in the sector, some common rules/principles intended to achieve minimum uniformity in terms of justification, proportionality and non discrimination, may be appropriate.

Q10

Building on the Postal Directive's objectives, are more precise definitions needed concerning the independence, role and responsibilities of NRAs?

Q11

Should the detailed definition of regulatory tasks and the sharing of best practice be facilitated by setting up a European Group of Postal Regulators, or progressed through existing bodies?

Q12

Should measures determining the financing of NRAs be prescribed at EU level, or left to Member States to determine?

ACCESS TO POSTAL INFRASTRUCTURE - DOWNSTREAM NETWORK ACCESS

The Postal Directive contains non-discrimination requirements that apply “whenever universal service providers apply special tariffs”, to activities such as downstream access. However the Directive does not specify whether downstream access should be required and the situation in MS is diverging in terms of voluntary offer of downstream access, and the extent to which it is regulated.

In this context the key policy issue is to what extent the non-discrimination requirement of the existing Directive complemented by EU competition law, ensures that access based competition is on an equal basis with ‘end-to-end’ or ‘competing network’ based competition.

Q13

Should the Postal Directive's provisions on downstream access be maintained or is a more detailed mandatory model necessary?

ACCESS TO POSTAL INFRASTRUCTURE – OTHER FACILITIES

It has been suggested that removal of limitations on access to some specific postal infrastructure is indispensable in a multi-operator environment. NRAs could become responsible for ensuring that competing market operators should have equal access to:

- Post Office Boxes (i.e. delivery boxes- not collection boxes)
- Postcode data
- Change of Address Data

It has also been suggested that all domestic operators should have the possibility that undeliverable mail can be returned to sender via another universal service provider in their Member State.

Q14

Leaving aside the issue of downstream network access to which elements of the postal infrastructure should equitable access be required, and how should this be remunerated? Which elements, if any, would best be prescribed at EU level?

COST ACCOUNTING AND PRICE CONTROLS

COST COVERAGE AND TERMINAL DUES

The Directive leaves cost coverage, affordability and the choice and application of a uniform tariff largely to Member States' discretion.

Q15

Cost Coverage:

- **Cost coverage: should the authorisation for the imposition of uniform tariffs be applicable to all universal service products? How should the decision on uniform tariffs vs. cost coverage be regulated?**
- **Should the Directive's provisions on terminal dues be maintained?**
- **In the framework of EU competition law, should the postal Directive's provisions for achieving non-discrimination in respect of special tariffs be maintained?**

COST ACCOUNTING RULES

The obligations of the Postal Directive have been substantially transposed by implementing legislation. However transparent accounting practices are not yet in place in all Member States, and their detailed application may differ, with important implications for the existence of a 'level playing field'.

Q16

Cost Accounting

- **Are the current cost-allocation principles in the Directive unnecessarily rigid?**
- **Are the cost accounting rules in the Directive too rigid or too open, or insufficiently clear? Should a common cost allocation methodology be made mandatory?**
- **What should be the level of public disclosure of regulatory accounts of universal service providers, and would full market opening change the appropriate level of disclosure?**

PRICE CONTROLS

Price controls are used by some Member States to ensure the Community objective of affordable universal postal services.

Q17

Should price controls be restricted to postal services provided under conditions of market dominance? If so, in broad terms, how should dominance be assessed, at what level, and by whom?

MARKET OPENING AND ECONOMIC AND SOCIAL IMPACTS

The Postal Directive recognises that the establishment of the internal market in the postal sector is of importance for “the economic and social cohesion of the Community, in that postal services are an essential instrument of communication and trade” (97/67/EC, Recital 2). The 2002 Amending Directive recognises that setting a long term timetable for gradual market opening is important both for the long term viability of the universal service and the continued development of modern and efficient posts. These arrangements, were designed to “enable the universal service providers to complete the process of adapting their operations and human resources to conditions of greater competition without upsetting their financial equilibrium and thus without jeopardising the safeguarding of universal service” (Directive 2002/39/EC, Recital 23).

Q18

Do you envisage overall economic growth in the postal sector following full market opening and how might this develop over time? What will be the impact on employment?

The Directive requires the Commission to produce a “prospective study” on the impact of full market opening on the universal service, which will inform the Commission’s 2006 Proposal, and its impact assessment.

Q19

What positive or negative social impacts could result from full market opening? How might negative impacts be avoided or limited?

OTHER

Q20

Please add any final comments you feel may be helpful to the development of the Commission’s 2006 Proposal on Postal Services.

STAKEHOLDER IDENTIFICATION

Q21

Please explain the nature of your interest in the sector (or that of your organisation), and in what capacity you are responding to this consultation. Anonymous contributions to Part 2 are not possible.

Contact details (OPTIONAL)

If you would like the Commission to be able to contact you to clarify your comments, please enter your contact details.

The name of your organisation/contact person:

Your email address:

Your organisation's website (if available):

This contact details section of the consultation information is subject to a **Data Privacy Statement**.

PART 2 CONSULTATION DOCUMENT ENDS