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COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

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**

(presented by the Commission)

{SEC(2006) zzz1 }

{SEC(2006) zzz2 }

Document as adopted by the Commission

Official numbered version will be made available soon

EXPLANATORY MEMORANDUM

1. BACKGROUND

As part of the process of reconciling the twin objectives of a gradual, controlled opening of the postal market to competition and that of a durable guarantee of the provision of the universal service, as foreseen by the Council in its Resolution of 7 February 1994 on the development of Community postal services¹, the Postal Directive² provides for a timetable for decisions on further opening to competition of the postal markets. Article 7 of the Postal Directive, states that:

- the Commission must submit by 31 December 2006 a report to the European Parliament and the Council accompanied by a proposal confirming, if appropriate, the date of 2009 for the full accomplishment of the postal internal market or determining any other step.
- the Commission proposal must be based on the conclusions of a prospective study which will assess, for each Member State, the impact on universal service of the full accomplishment of the postal internal market in 2009.

The present proposal is based on the conclusions of the Prospective Study on the impact on universal service of the full accomplishment of the postal internal market in 2009³, as required by the Postal Directive, an Impact Assessment Report⁴ and a Report on the application of the Postal Directive⁵ which includes a thorough review of the sector. In these documents more detailed information can be found regarding the general background and reasoning for this proposal as outlined in the following sections.

2. THE COMMISSION'S PROPOSAL

2.1. Legal aspects

2.1.1. Subsidiarity principle

The objectives of the proposed action are to achieve an internal market for postal services through the removal of exclusive and special rights in the postal sector, safeguard a common level of universal services for all users in all EU countries and set harmonised principles for the regulation of postal services in an open market environment, with the aim of reducing other obstacles to the functioning of the internal market.

These objectives cannot be sufficiently achieved by Member States alone. The most striking example of this is that a number of Member States retain monopolies of varying scope over

¹ OJ C 48, 16.2.1994, p. 3.

² Directive 97/67/EC of the European Parliament and 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, OJ L 15, 21.1.1998, p. 14, as amended by Directive 2002/39 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, OJ L 176, 5.7.2002, p. 21.

³ SEC (2006) []

⁴ SEC (2006) []

⁵ SEC (2006) []

the provision of certain postal services in order to finance universal service, while others have completely or partly removed service monopolies or have firm plans to do so before 2009.

These objectives can, by the reason of the scale or effects of the proposed action, be better achieved at Community level and it is submitted that the Community can therefore adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the EC Treaty.

2.1.2. Proportionality

In accordance with the principle of proportionality, as set out in Article 5 of the EC Treaty, this Directive does not go beyond what is necessary in order to achieve the proposed objectives.

This proposal for an amended Directive continues to provide for a general framework of regulatory elements, rather than a detailed set of rules to regulate the sector.

The principle of proportionality is the reason why the proposal contains a range of choices for Member States on how best to attain the proposed objectives:

- the methods of financing proposed in Article 7 leave Member States a large choice of options to choose from, rather than imposing one single solution;
- the issue of access to the network is addressed in the proposed new Article 11a and leaves it to Member States to assess the need for and extent of regulation concerning access to certain elements of the postal infrastructure or services and to regulate downstream access to sorting and delivery parts of the network;
- it is proposed to remove the requirement to monitor cross-subsidies through sector specific rules currently in Article 12 sixth indent, and to leave the effective regulation of this issue to Member States;
- it is not proposed to create new bodies to coordinate the activities of national regulatory authorities.

3. ELEMENTS OF THE PROPOSAL

3.1. Confirmation of the market opening timetable set in the Directive on the basis of the conclusions of the Prospective Study on the impact on universal service of the full accomplishment of the postal internal market in 2009

The Prospective Study concludes that the achievement of an internal market for postal services in all Member States in 2009 is compatible with the maintenance of a high quality universal service and confirms full market opening by the 1st of January 2009.

The confirmation of 2009 as the date for completion of the internal market for postal services will allow the benefits of greater competition to improve service levels, in terms of quality, prices and choice available to customers and to unlock the growth and employment potential of the sector. It is also a necessary and proportionate response to the needs both of users and of the broader European economy.

In order to maintain territorial and social cohesion, and taking into account that Member States may adapt some specific service features to accommodate local demand by applying flexibility provided in the Postal Directive, it is appropriate to fully maintain the universal service and the associated quality requirements set out in the said Directive.

Consequently, this proposal provides for a new Article 7 which, in its first paragraph, prohibits Member States to grant or maintain exclusive and special rights in the postal sector.

3.2. Complementary and accompanying measures to safeguard the universal service

The Prospective Study has identified a number of accompanying, or "assisting", measures, at both EU and national level that Member States may adopt to safeguard the universal service if this becomes necessary. Some of these are regulatory and some are market based, but all are designed to facilitate and/or safeguard the provision of the universal service under financially viable conditions in a competitive market. These measures are considered sufficient to make market opening possible in all Member States.

Additional safeguards, in the form of specific financing mechanisms have also been identified to compensate, if necessary and proportionate, the uneconomic cost of providing the universal service, in ways which would be less distortive for the internal market than the retention of monopolies.

Some of the regulatory measures designed to safeguard the universal service are already available under the current Postal Directive, such as adapting the provision of universal service to users' needs within the limits of the Postal Directive, introducing service obligations on licensed operators, intervention of regulatory authorities to protect competition and, as appropriate, the introduction of downstream access to the sorting and delivery part of the network. To the extent that additional regulatory assisting measures would be required at Community level, these have been reflected in this proposal.

Furthermore Member States should themselves decide on the measures that are either connected with the operation of the market or are not part of the Community framework. As illustrated in the Prospective Study and sector studies, these may include further increased efficiency measures to be adopted by incumbent universal service providers, diversification of their sources of revenues, and measures to stimulate volume.

In accordance with the proposed EU postal framework, Member States will be able to determine the best adapted combination of the different measures that could be implemented to safeguard the universal service in the new market environment.

3.2.1. Alternative cost effective measures for ensuring the universal service (Articles 3 and 6)

Article 4 of the Postal Directive established a preference for the provision of the universal service through the mandatory ex-ante designation of universal service provider(s). The development of greater competition and choice in the market means that there may be other equally effective ways of ensuring the provision of the universal service. This proposal provides, through proposed amendments to Articles 4 and 3(3), that Member States have the possibility 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.

These mechanisms may facilitate the provision of the universal service or parts of it by, for instance, leaving its provision to market forces or allowing Member States to identify the specific services or regions where the universal service cannot be ensured by market forces and procuring those services in a cost effective manner through public tendering.

Coherent with the enhanced flexibility of Member States to ensure the provision of the universal service in ways other than the ex ante designation of the universal service provider(s), this proposal provides, through an amendment to Article 6, that Member States can decide how best to ensure that the information concerning universal services is made available to the public.

3.2.2. Reinforcing and clarifying the principle that universal service tariffs must be oriented to costs (Article 12, second indent and Article 2, paragraph 20)

The principle that services must be cost oriented has been translated in a different manner in the different language versions of Directive 97/67/EC, leading to possible differences of interpretation. The use of the concept 'cost orientation', in the language versions where this is still not the case at present, will contribute to the uniform application of this principle. Furthermore, the principle that prices must stimulate efficiency gains will improve the application of this provision for the benefit of users. Article 12, second indent, of the Postal Directive allows Member States to deviate from the principle that tariffs of universal services must be cost oriented by applying a uniform national tariff, which applies irrespectively of distance and other service costs, so as to better ensure social and territorial cohesion.

As highlighted by sector studies, the mandatory provision of uniform tariffs in a fully competitive environment may lead to increasing costs for and risks to the viability of certain services, as the universal service provider will risk losing profitable business in those areas subject to competitive pressure. Sector studies also show that the uniform tariff is likely to be maintained by universal service providers after full market opening for a large number of services.

Under these circumstances, Member States should limit regulatory intervention to ensure the financially viable provision of the universal service. By allowing universal service providers the necessary flexibility to react to competition, any risks to the financial equilibrium of the universal service will be limited. For this reason, this proposal provides, through an amendment to Article 12, second indent, that Member States should limit tariff uniformity to items, including those for national and EU destinations, subject to single piece tariffs (such as the ones paid through stamps), which are mostly used by consumers and small enterprises and for which competition is expected to be limited. A definition of the term single piece tariff is included in Article 2, paragraph 20.

The proposed amendment includes also the possibility for Member States to require uniform tariffs whenever other legitimate public interests are at stake, such as in cases where postal services are used for press distribution in absence of other distribution channels. This aspect is further specified in Recital 24.

3.2.3. Financing of the universal service (Article 7)

In some cases following the adoption of accompanying measures to safeguard the universal service, financing the residual costs of the provision of universal service may still be necessary in some Member States. Through a new Article 7 this proposal clarifies the

alternatives available to Member States in cases where there is a need for external financing of the universal service.

Member States should enjoy the freedom to decide the method of financing that is best adapted to their particular situation, while taking care at the same time of avoiding any disproportionate distortions to the functioning of the market.

The financing alternatives in the new Article 7 include public compensation through direct state subsidies (paragraph 3) or, indirectly, financing through the use of public procurement procedures (paragraph 2). As there is a detailed body of Community rules and case law regulating public procurement and public compensation for services of general economic interest, which also applies to the postal sector, it is not necessary to introduce any new rules in these areas.

Finally, the proposed paragraphs 3b and 4 of Article 7, continue to provide for the possibility, previously included in Article 9 of the Postal Directive, to introduce a compensation fund to compensate for the unfair burden incurred by the universal service provider(s) in the provision of the service. To date, experience with the compensation fund as a mechanism for financing universal postal service has been very limited. However, this is not surprising, as the substantial reserved area still in place in most Member States was an obvious source of financing. Without the reserved area however, it is likely that several Member States may revisit the need for a compensation fund, making it a potential safeguard that should be maintained. Article 7 paragraphs 3b and 4 also highlight the possibility of solving any residual net costs of universal service, through the introduction of a fee on service providers and/or users.

3.3. Other measures included in the proposal

3.3.1. Authorisation and licensing (Article 9)

Member States may continue to use authorisation and individual licenses whenever justified and proportionate to the objective pursued, subject to the provisions of Article 9 of the Postal Directive. However, as highlighted by the third Commission Report on the Application of the Postal Directive, further harmonisation of the conditions that may be introduced and the principles applicable to those conditions and procedures appears to be necessary so as to reduce unjustified barriers to the provision of services in the internal market.

This proposal provides for an amendment to Article 9 paragraph 2 which introduces the following list of prohibited conditions, drawn from practical experience and sector studies:

- limiting the number of licensees. This measure has been used in other network industries in which duplication of the infrastructure is not economically, physically or socially desirable, reasons which do not apply in the postal sector.
- The concurrent requirement to contribute to a sharing mechanism and the imposition of universal service or quality obligations for the same quality, availability and performance requirements. The universal service obligations spread the uneconomic costs of the service between several companies while the compensation fund imposes a levy on companies to finance the uneconomic cost incurred by one company, making its combined application unjustified.

- Duplicate conditions which are applicable to undertakings by virtue of other, non sector specific, national legislation; this will limit unnecessary administrative costs on postal service providers.
- Disproportionate or unjustified technical or operational conditions. Any conditions aimed at, for instance, protecting the confidentiality of mail, or facilitating the return of wrongly delivered mail would continue to be acceptable.

These prohibitions do not apply to designated universal service provider(s), which may be subject to a different type of regulation as they may have to meet different objectives or operate under a distinct legal basis, such as public ownership.

3.3.2. *Access to key postal infrastructure and services (Article 11a)*

Drawing on the experience of some Member States, this proposal introduces a new Article 11a in order to require Member States to assess whether, in a multi-operator environment, a number of elements of the postal infrastructure or services:

- may be indispensable for or greatly facilitate the provision of services by operators willing to compete with universal service provider(s); and/or
- benefit users and consumers by reducing the number of items which are wrongly addressed or cannot be returned to its sender, ensuring overall quality of mail and the protection of essential requirements to the benefit of all operators and users.

As the legal status and market situation of these elements of the postal infrastructure or services is different in Member States (e.g. owned or provided exclusively by the universal service provider, owned or provided by several operators), it is proposed to limit this requirement for Member States to that of adopting an informed decision on the need and extent for regulation, the choice of the regulatory instrument and any eventual compensation that may be required.

The proposed Article 11a does not modify the regulation of downstream access to the sorting and delivery part of the network. As regards the latter, Member States must continue to comply with Article 12 fifth indent and may, in the light of national conditions, introduce other measures to ensure access to the public postal network under conditions which are transparent and non discriminatory.

3.3.3. *Control of fair competition (Articles 12, sixth indent, 14)*

In a fully competitive environment, Member States must conduct the delicate exercise of providing sufficient freedom to universal service providers to adapt to competition and at the same time, ensure adequate monitoring of the behaviour of the likely dominant operator in order to safeguard effective competition.

Because this exercise will require an assessment of the market conditions, institutional arrangements and oversight capacities of every Member State, it is appropriate to leave Member States the freedom to decide the precise regulatory mechanisms for the control of the incumbent operator, while maintaining a necessary minimum common ground. This justifies, on the one hand, the deletion of the requirement imposed on Member States to monitor cross-subsidies through sector specific rules and, on the other, the maintenance of the rules on transparency of accounts.

Concerning cross-subsidies, and the absence of a reserved area as a clear source of competitive distortions that justified current rules, this proposal provides, therefore, through the proposed deletion of Article 12 sixth indent, that Member States should decide on how best to ensure that the behaviour of the universal service provider, which will often be a dominant operator in a market, does not lead to competitive distortions. Member States may for that purpose establish specific ex ante controls (as required by the current Directive) or rely on the ex-post application of competition law by competition authorities and/or national regulatory authorities.

Concerning the rules on accounting transparency applicable to universal service provider(s), an adapted cost accounting separation requirement is still necessary during the transition towards a competitive market. The proposed amendments to Article 14 reflect the new situation where there will no longer be a reserved area. Given the existence of cooperation between national regulatory authorities to develop best practices and common approaches in this area (e.g. by the Committee of European Postal Regulators) it is not necessary, in accordance with the principles of better regulation, to introduce more detailed and binding rules on cost allocation in the Directive.

3.3.4. Reinforcing consumer protection (Articles 12, first indent, 19, 22, 22a)

In line with existing rules applicable to other service areas and in order to enhance consumer protection in an evolving market, this proposal provides, through an amendment to Article 19, to extend the application of minimum principles concerning complaint procedures beyond universal service provider(s).

Consumer interests are also further protected through: 1) the enhanced inter-operability between operators resulting from access to certain elements of infrastructure and services, as provided for in the proposed new Article 11a, as further explained above, 2) the requirement for cooperation between national regulatory authorities and consumer protection bodies included in the proposed amendment to Article 22, second paragraph and, 3) the clarification of the role and powers of national regulatory authorities to monitor and supervise the universal service in Article 22, third paragraph and Article 22a, first paragraph.

Finally, given the importance of postal services for blind and partially sighted persons as consumers of postal services, it is proposed to confirm in Article 12 1st indent that the process of market opening should not curtail the continuing supply of certain free services for blind and partially sighted persons introduced by the Member States in accordance with applicable international obligations established in the framework of the Universal Postal Union.

3.3.5. Exercise of implementing powers by the Commission (Article 21)

The Committee established by the Postal Directive is charged with assisting the Commission in the exercise of its implementing powers and, in particular, with the amendment of Annex 1 concerning quality of service objectives for intra-Community cross-border services, and adopting conditions of standardised quality measurement (cfr. Article 16 of the Directive).

As the regulatory functions of this Committee concern the amendment of non essential elements of the Directive it is appropriate to align the rules that govern it with the regulatory procedure recently introduced in the Council Decision laying down the procedures for the

exercise of implementing powers conferred on the Commission⁶, which provides the European Parliament with additional mechanisms to scrutinise such measures.

3.3.6. *National regulatory authorities (Article 22)*

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 order to improve the effective functioning of those bodies, and drawing on the experience in similar regulated areas and discussions in the European Committee of Postal Regulators as well as various sector studies, this proposal provides for the following amendments to Article 22:

- Structural separation of the regulatory functions from activities associated with ownership or control in an operator. In accordance with the principle of separation of regulatory and operational functions, Member States should guarantee the independence of the national regulatory authorities, in particular concerning functions associated with ownership where a clear conflict of interest in government may exist, thereby ensuring the impartiality of their decisions. This requirement, which exists in other network industries, does not necessarily entail the creation of any new administrative structures, but does require that there be a clear and stable separation of the functions exercised by different public bodies (Article 22 1st paragraph).
- Transparency in the allocation of regulatory functions and cooperation between national bodies exercising regulatory functions. Due to the frequent involvement of different national bodies in the exercise of regulatory functions, it is proposed to require that further transparency, and hence clarity, is introduced in the allocation of their tasks. Due to the frequent overlap in the tasks of the bodies responsible for sector regulation, the application of competition rules and the protection of consumers, it is proposed to require these bodies to cooperate in order to better ensure the effective accomplishment of their tasks (Article 22 1st and 2nd paragraph).
- Confirmation of the right to appeal against decisions made by national regulatory authorities and of their temporary standing, in order to guarantee market clarity during the market opening process and without prejudice to Member State's division of competences within their national judicial systems and to the rights of legal entities or natural persons under national law (Article 22 3^d paragraph).
- Enhanced cooperation between EU national regulatory authorities, in order to provide legal support and impetus to the existing work carried out by existing bodies, such as the Committee of European Postal Regulators and the Postal Directive Committee, in promoting best practice and promoting harmonisation of regulatory practices in the internal market without necessarily requiring the creation of new administrative structures (Article 22 2nd paragraph).

3.3.7. *Provision of information to national Regulatory authorities (Article 22a)*

National regulatory authorities need to gather information from market players in order to carry out their tasks effectively. The absence of specific powers to collect information from

⁶ Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ L 184, 17.7.1999, p.23), as amended by Council Decision of 17 July 2006 (OJ L 200, 22.7.2006, p.11).

postal operators has been continuously highlighted by the European Committee of Postal Regulators, statistical bodies and sector studies as a major shortcoming for the enforcement of the Directive and implementing national rules. This proposal provides for the introduction of a new Article 22a to empower national regulatory authorities to collect information whenever proportionate and justified, including for statistical purposes.

3.3.8. Review and reporting on the application of the Postal Directive (Article 23)

This proposal provides for the retention of regular monitoring and reporting on the application of the Directive to Council and Parliament in order to anticipate any further regulatory measures that may be necessary to ensure the universal service and/or the market opening process. Drawing on past experience, it is proposed to amend Article 23 to extend the reporting period from two to three years. This reporting period takes into account the pace of market developments and social aspects of the application of the Directive, and provides a sufficient timeframe on which to base any policy recommendations.

3.3.9. Removal of expiring provision (Articles 26, 27)

In line with the decision to remove special and exclusive rights in 2009 (Article 7 1st paragraph), this proposal provides for the repeal of the existing expiring provision in Articles 26 paragraph 2 and 27 of the Postal Directive.

3.3.10. Coherence and better regulation (Articles 1, 2, 9, 10, 11)

This proposal provides a number of amendments in order to improve the legal clarity and coherence of the Postal Directive.

- Article 1, second indent: the proposed amendment is coherent with the amendment to Article 7 to reflect that postal services may no longer be reserved;
- Article 2, paragraph 6: the proposed amendment clarifies the scope of application of the Directive, and in particular that the Directive applies to all postal service providers and not only universal service providers;
- Article 2, paragraph 8: the proposed amendment is coherent with the amendment to Article 7, as the concept of direct mail has only been used in connection with the services that may be reserved;
- Article 9 paragraph 5: the proposed amendment is coherent with the amendment to Article 7, as the concept of direct mail has only been used in connection with the services that may be reserved.
- Title of Chapter 4: the proposed amendment to the title of Chapter 4 is coherent with the amendment to Article 7 to reflect that the difference between reserved and non-reserved postal services no longer exists under this proposal;
- Article 10: the proposed amendments reflect the new numbering of the EC Treaty and also that the difference between reserved and non-reserved postal services no longer exists under this proposal;
- Article 11: the proposed amendment reflects the new numbering of the EC Treaty;

- Article 12, fifth indent: the term 'private' is deleted as the fact of whether a customer is public or private is irrelevant and may be misleading;
- Article 26 paragraph 1: the proposed deletion of Article 26 (1) is coherent with the amendment to Article 7 to reflect that postal services may no longer be reserved and more 'liberal' measures cannot therefore be introduced.

In order to facilitate consistent transposition of the adapted regulatory framework, the Commission is determined to overseeing and discussing with Member States the proper transposition, implementation and enforcement of the new provisions of the Directive.

Proposal for a

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

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) Article 55 and Article 95 thereof,

Having regard to the proposal from the Commission⁷,

Having regard to the opinion of the European Economic and Social Committee⁸,

Having regard to the opinion of the Committee of the Regions⁹,

Acting in accordance with the procedure laid down in Article 251 of the Treaty¹⁰,

Whereas:

- (1) The Council in its Resolution of 7 February 1994 on the development of Community Postal Services¹¹ 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.
- (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 service¹², 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 way, and a timetable for decision-making on the further opening of the market to competition, for the purposes of creating a single market in postal services.
- (3) Article 16 of the EC Treaty highlights the role played by services of general economic interest in the shared values of the Union as well as their role in promoting social and

⁷ OJ C [...], [...], p. [...].

⁸ OJ C [...], [...], p. [...].

⁹ OJ C [...], [...], p. [...].

¹⁰ OJ C [...], [...], p. [...].

¹¹ OJ C 48, 16.2.1994, p. 3.

¹² OJ L 15, 21.1.1998, p. 14. Directive as last amended by Regulation (EC) No. 1882/2003 of 29 September 2003 (OJ L 284, 31.10.2003, p.1).

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 measures in this area should be designed in such a way that the tasks of the Community pursuant to Article 2 of the EC 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.
- (5) 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.
- (6) The European Parliament Resolution of 2 February 2006 highlighted the social and economic importance of efficient postal services and their important role in 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 customer-orientation.
- (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.
- (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.
- (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.
- (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 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.

- (11) There are a number of drivers for change within the postal sector, notably demand and changing customer needs, organisational change, automation and introduction of new technologies, substitution by electronic means of communication and market opening.
- (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.
- (13) 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 ever-more demanding users to be improved.
- (14) The developments in the neighbouring communications markets have had a varied impact in different regions of the Community and segments of the population and 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 applying flexibility provided in Directive 97/67/EC, it is appropriate to fully maintain the universal service and the associated quality requirements set out in the said Directive. In order to ensure that market opening continues to benefit all users, in particular consumers and small and medium size enterprises, Member States must monitor and supervise market developments. They must take appropriate regulatory measures, available under the Directive, 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.
- (15) Directive 97/67/EC established a preference for the provision of the universal service through the designation of universal service providers. The development of greater competition and choice means that Member States should have 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: provision of the universal service by market forces, designation of one or several undertakings to provide different elements of universal service or to cover different parts of the territory and public procurement of services.
- (16) It is important for users to be fully informed about the universal services provided and for undertakings providing postal services to be informed about the rights and obligations of universal service provider(s). Member States shall ensure that consumers remain fully informed about the features and accessibility to the specific services provided. It is however appropriate, in coherence with the enhanced flexibility of Member States to ensure the provision of the universal service in ways other than the designation of the universal service provider(s), to allow Member States flexibility to decide how this information is made available to the public.

- (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.
- (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.
- (19) 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 substitutable to universal services, taking into account the characteristics of the services, including added value features, and their intended use. In order to be considered substitutable, the services do not necessarily have to cover all the features of the universal service, such as daily delivery or complete national coverage. In order to comply with the proportionality principle when determining the contribution to the costs of the provision of universal service in a Member State asked 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.
- (20) The principles of transparency, non-discrimination and proportionality contained in Directive 97/67/EC must continue to be applied to any financing mechanism and any decision in this area be based on transparent, objective and verifiable criteria. In particular, the net cost of universal service is to be calculated, under the responsibility of the national regulatory authority, as the difference between the net costs for a designated undertaking operating with the universal service obligations and operating without the universal service obligations. The calculation shall take into account all other relevant elements, including any market benefits which accrue to an undertaking designated to provide universal service, the entitlement to a reasonable profit and incentives for cost efficiency.
- (21) Member States should be allowed to use authorisation and individual licenses 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 to reduce unjustified barriers to the provision of services in the internal market. In this context, Member States may for example allow undertakings to choose between the obligation to provide a service or to contribute financially to the costs of this service provided by another undertaking, but should no longer be allowed to impose the concurrent

requirement to contribute to a sharing mechanism and the imposition of 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 authorisation and licensing should not apply to designated universal service providers.

- (22) 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 users and consumers by ensuring the overall quality of the postal service. As the legal and market situation of these elements or services is different in 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 public postal network under conditions of transparency and non discrimination.
- (23) Given the importance of postal services for blind and partially sighted persons, it is appropriate to confirm that the process of market opening should not curtail the continuing supply of certain free services for blind and partially sighted persons introduced by the Member States in accordance with applicable international obligations.
- (24) 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 is achieved by continuing to allow Member States to maintain uniform tariffs for single piece tariff mail, the service most frequently used by consumers and small and medium size enterprises. Individual Member States may also maintain uniform tariffs for some other mail items to protect general public interest reasons, such as access to culture, regional and social cohesion.
- (25) In view of the national specificities involved in the regulation of the conditions in 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.
- (26) In view of the transition towards a fully competitive market, 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 the 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.
- (27) In line with existing rules in other service areas and in order to enhance consumer protection, it is appropriate to extend the application of minimum principles concerning complaint procedures beyond universal service providers. With a view to

increase the effectiveness of complaint handling procedures, it is appropriate that the Directive encourages 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 disputes¹³ and Commission Recommendation of 4 April 2001 on the principle for out-of-court bodies involved in the consensual resolution of consumer disputes¹⁴. 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.

- (28) It is appropriate to adjust the provision concerning implementing powers so as to reflect the amendments made to Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission¹⁵.
- (29) 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 or ownership laid down in Article 295 of the Treaty. National regulatory authorities should be endowed with all necessary resources, in terms of staffing, expertise and financial means, for the performance of their tasks.
- (30) 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 responsible bodies in charge of sector regulation, the application of competition rules and consumer issues to cooperate in order to ensure the effective accomplishment of their tasks.
- (31) Any party who 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 standing of national regulatory authorities' decisions to guarantee legal and market security.
- (32) National regulatory authorities should, where necessary, coordinate their actions with the regulatory bodies of other Member States and with the Commission in carrying out their tasks under this Directive. This would promote the development of the internal market for postal services and help to achieve consistent application, in all Member States, of the provisions set out in this Directive, in particular in areas where national

¹³ OJ L 115 17.4.1998, p 31

¹⁴ OJ L 109 4.04.2001, p. 56

¹⁵ OJ L 184, 17.7.1999, p.23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p.11).

law implementing Community law gives national regulatory authorities considerable discretionary powers in application of the relevant rules. This cooperation could take place, inter alia, in the Committee established by Directive 97/67/EC or in a group comprising European regulators. Member States should decide which bodies are national regulatory authorities for the purposes of this Directive.

- (33) 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, to allow it to fulfil its obligations under Community Law.
- (34) In order to keep the European Parliament and the Council informed on the development of the internal market for postal services, the Commission should regularly submit reports to those institutions on the application of Directive 97/67/EC.
- (35) In order to confirm the framework for the regulation of the sector the date of expiry of Directive 97/67/EC should be deleted.
- (36) Since the objectives of the proposed action, namely achieving an internal market for postal services, safeguarding 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 of the action to be taken, be better achieved at Community level, the Community may adopt measures in accordance with the principles 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.
- (37) Directive 97/67/EC should therefore be amended accordingly.
- (38) This Directive is consistent with other current Community instruments concerning services. If this Directive comes into conflict with a provision of another Community instrument, in particular Directive [2006/..../EC] on Services in the internal market, the present Directive and its provisions shall prevail and fully apply to the postal sector.
- (39) This Directive is without prejudice to the application of the Treaty rules on competition and on the freedom to provide services. Insofar as financing mechanisms would 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 State aid rules of the Treaty.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

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

- (1) In Article 1, the second indent is replaced by the following:

'- the conditions governing the provision of postal services,'

(2) Article 2 is amended as follows,

(a) point 6 is 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 packages containing merchandise with or without commercial value;'

(b) point 8 is deleted

(c) the following point is 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 providers for the transport of individual postal items.'

(3) In the first subparagraph of Article 3 (3), the introductory wording is replaced by the following:

'They shall take steps to ensure that the universal service is guaranteed every working day and not less than five days a week, save in circumstances or geographical conditions deemed exceptional by the national regulatory authorities, and that it includes as a minimum:'

(4) Article 4 is 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 established under Article 21 shall be informed and monitor the evolution of the measures established by Member States to ensure the provision of the universal service.

2. Member States may choose to designate one or more undertakings as universal service providers for a part or all of the national territory and for different elements of universal service. 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 objective, non-discriminatory, proportionate and least market distortion principles, and that the designation of undertakings as universal service providers is limited in time. Member States shall notify the identity of the universal service provider(s) they designate to the Commission.

(5) In Article 5 (2), 'Articles 36 and 56' is replaced by 'Articles 30 and 46'.

(6) Article 6 is replaced by the following:

'Article 6

Member States shall take steps to ensure that users and undertakings providing postal services are regularly given sufficiently detailed and up-to-date information regarding the particular features of the universal services 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, how the information to be published in accordance with the first subparagraph is being made available.'

(7) In Chapter 3, the title is replaced by the following:

'CHAPTER 3

Financing of universal services'

(8) Article 7 is replaced by the following:

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.

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

3. Where a Member State determines that the universal service obligations, as provided for by this Directive, entail a net cost and represent an unfair financial burden for the universal service provider(s), it may:

(a) Introduce a mechanism to compensate the undertaking(s) concerned from public funds;

(b) Share the net cost of universal service obligations between providers of services and/or users.

4. Where the net cost is shared under 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. Only those services set out in Article 3 may be financed in this way.

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(a) and 4(b). Decisions taken under paragraphs 4 and 5 shall be based on objective and verifiable criteria and be made public.

(9) In Chapter 4, the title is replaced by the following:

'CHAPTER 4

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

(10) Article 9 is replaced by the following:

'Article 9

1. For services which are outside the scope of the universal service as defined in Article 3, Member States may introduce general authorisations to the extent necessary in order to guarantee compliance with the essential requirements.

2. For services which are within the scope of the universal service as defined in Article 3, Member States may introduce authorisation procedures, including individual licences, to the extent necessary in order to guarantee compliance with the essential requirements and to safeguard the universal service.

The granting of authorisations may:

- where appropriate, be made subject to universal service obligations,
- if necessary, 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.

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 quality, availability and performance requirements impose on a service provider 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 an authorisation in whole or in part are communicated to the applicant and must establish an appeal procedure.'

(11) Paragraph 1 of Article 10 is replaced by the following:

'Article 10

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) In Article 11, 'Articles 57(2), 66 and 100a' is replaced by 'Articles 47(2), 55 and 95'.

(13) The following Article 11a is inserted:

'Article 11a

Whenever necessary to protect the interest of users and/or to promote effective competition, and in the light of national conditions, Member States shall ensure that transparent and non-discriminatory access conditions are available to the following elements of postal infrastructure or services: postcode system, address database, post office boxes, collection and delivery boxes, information on change of address, re-direction service, return to sender service.'

(14) Article 12 is amended as follows:

(a) the first indent is replaced by the following:

'- prices must be affordable and must be such that all users have access to the services provided. Member States may maintain or introduce free postal service for blind and partially sighted persons,'

(b) The second indent is replaced by the following:

'- prices must be cost-oriented and stimulate efficiency gains; whenever necessary for reasons relating to the public interest, Member States may decide that a uniform tariff should be applied throughout their national territory and/or to the territories of other Member States, to services provided at single piece tariff and to other items,'

(c) The last sentence of the fifth indent is replaced by the following:

'Any such tariffs shall also be available to customers who post under similar conditions,'

(d) The sixth indent is deleted

(15) Article 14 is replaced by the following:

'Article 14

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 providers shall keep separate accounts within their internal accounting systems to clearly distinguish between services and products which receive or contribute to the financial compensation for the net costs of the universal service and those services and products which do not. This accounting separation shall allow Member States to 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:

(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;

(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.

4. Other cost accounting systems may be applied only if they are compatible with paragraph 2 and have been approved by the national regulatory authority. The Commission shall be informed prior to their application.

5. National regulatory authorities shall ensure that compliance with one of the cost accounting systems described in paragraphs 3 or 4 is verified by a competent body which is independent of the universal service provider. Member States shall ensure that a statement concerning compliance is published periodically.

6. The national regulatory authority shall keep available, to an adequate level of detail, information on the cost accounting systems applied by a universal service provider, and shall submit such information to the Commission on request.

7. On request, detailed accounting information arising from these systems shall be made available in confidence to the national regulatory authority and to the Commission.

8. Where a given Member State has not established a financing mechanism for universal service provision, 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. The national regulatory authority shall inform the Commission in advance of taking any such decision.'

(16) Article 19 is replaced by the following:

'Article 19

Member States shall ensure that transparent, simple and inexpensive procedures are made available by undertakings providing postal services 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).

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 undertakings providing postal services and consumers.

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 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.'

(17) Article 21 is replaced by the following:

- '1. The Commission shall be assisted by a committee.
2. Where reference is made to this Article, Articles 5a and 7 of Decision 1999/468/EC shall apply.
3. The Committee shall adopt its rules of procedure.

(18) Article 22 is 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 undertakings

providing postal services 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 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 of the Member States shall work in close collaboration and shall provide mutual assistance in order to facilitate application of this Directive.

3. Member States shall ensure that effective mechanisms exist at national level under which any user or undertaking providing postal services who is 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.'

(19) After Article 22, the following Chapter title is inserted:

'CHAPTER 9a

Provision of information'

(20) The following Article 22a is inserted:

'Article 22a

1. Member States shall ensure that undertakings providing postal services provide all the information, including financial information and information about the provision of the universal service, necessary 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. Undertakings shall provide such information promptly on request and 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.'

(21) Article 23 is replaced by the following:

Article 23

Every three years, on the first occasion no later than 31 December 2011, the Commission shall submit a report to the European Parliament and the Council on the application of this Directive, including the appropriate information about developments in the sector, particularly concerning economic, social, employment patterns and technological aspects, as well as about quality of service. The report shall be accompanied where appropriate by proposals to the European Parliament and the Council.'

(22) Article 26 is deleted

(23) Article 27 is deleted

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2008 at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the fields covered by this Directive.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, [...]

For the European Parliament
The President
[...]

For the Council
The President
[...]