



ERGP (14) 22 – draft report – tariff regulation

## ERGP report on tariff regulation in a context of declining volumes

November 2014



ERGP (14) 22 – draft report – tariff regulation

## Table of contents

I. – Purpose and context of the report .....	3
I.1 – Background .....	3
I.2. – Methodology.....	3
II. – Rational for price control and legal requirements .....	4
II. 1. – Background concerning price regulation in network industries.....	4
II. 2. – Price cap mechanism .....	4
II.3. – Legal framework.....	10
III. – Overview of tariff regulation in Europe.....	11
III.1. – Implementation of tariff regulation principles .....	11
III.2. – Forms of tariff regulation.....	14
III.3. – Scope of tariff regulation.....	15
III.4. – Information available for price regulation.....	18
IV. – Analysis of country cases studies .....	21
IV. 1. – Scope of price regulation .....	21
IV. 2. - Improvement of efficiency .....	23
IV. 3. – Level of authorized price increases.....	25
IV.4. – Methodology for calculating the X factor .....	27
IV.5. – Quality of services provisions.....	28
IV.6. – Affordability test .....	29
IV.7. – Cost orientation.....	32
IV.8. – Transparency .....	34
IV.9. – Non discrimination .....	36
V. – Conclusion .....	38
Appendix 1: responses to the questionnaire on tariff regulation (updated in 2014) ..	40
Appendix 2: references.....	41
Appendix 3: country case studies – tariff principles and control mechanism .....	42



ERGP (14) 22 – draft report – tariff regulation

## **I. – Purpose and context of the report**

### **I.1 – Background**

In the last years, the volumes of postal services have declined in the majority of Member States. Postal service providers need to adapt to this new situation by, for instance, reducing costs and/or prices changes.

The economic model of postal operators is characterized by the presence of economies of scale (the more volumes are delivered, the lower the unit cost). Operators may have both a significant proportion of labor costs and obligations of public service. These factors may limit the ability of postal operators to adapt to the decline of volumes whilst also taking into account their USO obligation.

In particular, the volume decline brings different problems to tariff regulation, among others:

- for service providers with a certain amount of fixed costs and economies of scale, this development leads to an increase of unit cost increasing tension between the principles of affordability of universal service, which would tend to favour stable or declining prices, and cost orientation, which would tend to favour price increase to match increased unit cost;
- price cap mechanisms as well as other price regulation regimes may require a traffic forecast over a few years horizon and of unit cost evolution, which takes into account efficiency gains.

This project aims at producing a public report on tariff regulation, building on an internal ERGP report made in 2013. The report includes:

- a review of the rationale for price control;
- a review of current price control mechanisms in the different member states and how the tariff principles (according to Article 12 of the postal directive), like affordability, cost orientation and transparency are adopted (updating already available information);
- an analysis of country cases studies that provide a detailed description of tariff regulation in a sample of countries.

### **I.2. – Methodology**

To carry out this task, the ERGP relied on two sources of information:

The first one was a questionnaire that was sent to NRAs early 2014. It included answers to previous studies such as Copenhagen Economics and ERGP (tariff regulation 2013 questionnaire). Respondents had to confirm or update the answers. The data used in this study are slightly different than the original aforementioned



ERGP (14) 22 – draft report – tariff regulation

studies because many countries updated their data. The answers to this questionnaire provided a wide overview of tariff regulation in Europe (due to the number of countries responding). Nevertheless the information provided was not detailed as it was basically a yes or no questionnaire.

NRAs were also asked to provide a “country case study” covering a description of the regulation regime in place and the economic situation in their country. Country case studies were filled by 15 ERGP members. This questionnaire provided a more in depth description of the mechanisms that are in place in those countries for regulating prices even though it does not cover all member states.

## **II. – Rational for price control and legal requirements**

### **II. 1. – Background concerning price regulation in network industries**

This section provides a short<sup>1</sup> overview of the economic background of the price regulation regimes as a form of incentive regulation.

In principle, price control mechanism can be viewed as an effective regulatory toolkit to ensure an appropriate balance between the interests of the incumbent, consumers and competitors’ thus enabling a level playing field. When in place, a price cap should allow pricing flexibility for the incumbent acting in highly dynamic market environments and protects consumers against excessive prices.

In times of significant market changes such as that in the postal sector, the design and scope of the price regulation may need some reflection. Accordingly the decrease of letter volumes should be considered when specifying the guidelines for the price regulation regime.

### **II. 2. – Price cap mechanism**

The postal directive requires that Member States “*take steps*” to ensure that the tariffs for each of the services forming part of the universal service comply with the principles listed in the directive.

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<sup>1</sup> For more comprehensive information, the reader can refer to the CERP’s document “Recommendation on best Practices for Price Regulation”, available at <http://www.cept.org/files/1049/documents/List%20of%20documents%20%28history%29/CERP%20Recommendation%20on%20best%20Practices%20for%20Price%20Regulation.pdf>



ERGP (14) 22 – draft report – tariff regulation

Thus the NRAs have to implement, within the scope of their competencies, a price-regulation regime that facilitates an effective control and evaluation of prices. This should ensure that prices for universal services are in line with the tariff principles laid down in the European Directive. Given the legal framework and the regulatory guidelines with respect to the envisaged market outcomes, attention shall be turned to the different forms of price regulation in place with the potential to yield outcomes in terms of economic efficiency. The relevance of the regulation regime in place largely depends on national features such as the legal background, on the economic circumstances and on the degree of competition. Thus, a disparity of price control systems can be observed. In the various European countries, NRAs set up various systems whose designs largely differ in terms of scope (universal services, services of the dominant provider...) and form (price cap, single price approval, ex-post review).

This section will review the different types of price control systems, namely ex ante price approval, ex post price control and price cap in the light of the liberalization process and the observed market trends.

Price cap mechanisms are pre-defined caps set to changes in price for one service or basket of services over a certain period of time. The price control mechanism is implemented (ex ante)

A price cap is a price control widely used in the utility industries. It was first devised by UK Treasury economist Stephen Littlechild in 1980s<sup>2</sup>. The analysis of the price cap mechanism in the postal sector is provided for in Bouin, Curien, and Lacroix (2010)<sup>3</sup>. Price-cap-regimes contrast to strict cost based regulation whereby prices of services are set to recover their costs together with a margin rate over cost (e.g. the cost of capital). The traditional approaches were criticised because of the lack of incentives for the incumbent to minimize costs and to improve service performance. Price-cap regimes are usually seen as an effective instrument to incentivize the incumbent to increase the efficiency of its operational and administrative processes and activities surrounding the postal conveyance value-chain.

The price cap sets a price trajectory over time, in reference to some index (in general inflation as measured by the consumer price index (CPI)) and, possibly, an amending factor (the X-factor, which include expected productivity gains, differences in input price against CPI and expected changes in costs due to volume changes). The

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<sup>2</sup> Littlechild, Stephen C. (1983), *Regulation of British Telecommunications Profitability*, London: Department of Trade and Industry.

<sup>3</sup> Bénédicte Bouin, Nicolas Curien and Guillaume Lacroix (2010), 'Price-cap Postal Regulation: The French Experience', in M.A. Crew and P.R. Kleindorfer (eds), *Heightening Competition in the postal and delivery sector*, Cheltenham, UK and Northampton, MA, USA: Edward Elgar, pp. 85-96.



ERGP (14) 22 – draft report – tariff regulation

operator is incentivized to reduce costs as it benefits from any extra cost reduction going beyond the expected trajectory.

The main characteristics of a price cap are:

1- Objective (e.g. maintain the price to cost margin)

When establishing a price-cap mechanism a priority of the NRA is to ensure that universal services prices comply with the criteria of affordability and cost-orientation. It is also to incentivise greater cost efficiency, investments and quality. Against these objectives the price-cap system is largely based on the costs presuming efficient provision of the universal services. The compliance with the cost of efficient service provision reflects the costs incurred under workable competition and thus considers the incumbent's gains in recent years (resulting from technical advancements in the sorting and delivery process).

By focusing on the efficiency criterion the risk of abuse in the form of excessive pricing or cross-subsidization can be effectively limited under price cap regime.

2 - Scope (e.g. single piece mail, parcels, all services within the scope of the USO)

A price cap may apply to a single or different products supplied by the USP. The choice of the postal products to be subject to price regulation may depend of national legislation.

Due to the fact that price cap seeks to identify the rate at which prices would be allowed to increase, it can be deemed as an adequate mechanism to limit price rises. The price cap is related to those segments of the postal market where fewer substitutes in the form of electronic messages (e-Mail, MSN, SMS etc.) exist and where the incumbent is experiencing less indirect market pressure on prices. Furthermore, the price-cap can be an adequate instrument in order to secure the affordability of the universal services.

The bulk mail segment is where the incumbent, in some countries, is increasingly exposed to competitive pressure. Here, the freedom of the incumbent to design its own discount scheme, within the limits allowed by sector specific regulation and/or competition law, may be a competitive asset. In response to upcoming competition, the incumbent will tend to reduce prices by granting further discounts to large mailers. Thus, in this segment, a scenario where prices are decreasing in response to the presence of alternative providers is more likely than excessive pricing.



ERGP (14) 22 – draft report – tariff regulation

### 3 - Rationale for basket composition

The next step within the price-cap implementation process deals with possible basket composition. With respect to the services regulated via price-cap control, the NRA has to decide on whether the services should be grouped together in one or more price-capped baskets. Due to the potentially far reaching and long-term implications on both the incumbent's performance and the market structure this task can be considered to be one of the most important decisions within the price-cap design.

Services may need to be grouped into separate baskets if the intensity of competition of services is expected to differ significantly. Otherwise, there is a risk of allowing the cross-subsidy of services in competitive segments by surcharges in segments where there is no competitive pressure. Hence, services in competitive segments may be separated from services in which there is no serious competition. In this context the term monopoly is not only limited to the existence of a legal monopoly, but also refers to the economic market structure.

The higher the degree of heterogeneity of services in terms of their logistic processes and network infrastructure the more difficult the regulator's task to determine an appropriate productivity growth rate for this basket. When integrating services in the same basket, the NRA may firstly carry out a productivity analysis of the relevant logistical processes, then conduct a supplementary detailed assessment on the structure of the services.

Therefore it may be advisable to group only services with comparable commercial conditions in terms of operational and administrative processes together in a same basket. Such a procedure is not absolutely necessary, but facilitates the determination of an expected productivity growth rate that considers the degree of existing productivity of the underlying logistic infrastructure and thus the potential of organizational optimization.

### 4 - Inflation rate

Inflation rate should be selected such that there is a high correlation between the index and changes in costs faced by the regulated firm (Costs should be forecast separately to the index in determining the charge control.) It should be noted that the cost changes of the incumbent for the price-cap services are mainly triggered by wage increases. According to a survey of the consultant WIK<sup>4</sup> payroll costs account for more than 60 per cent of the total conveyance costs. For that reason the Labour

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<sup>4</sup> Main developments in the postal sector (2010–2013), study for the DG for Internal Market and Services, August 2013, updated by ERGP members.



ERGP (14) 22 – draft report – tariff regulation

Cost Index (LCI) could theoretically be used to mirror the wage development in the sector.

## 5 - Determination of the x-factor

The X factor may reflect:-

- the removal of excess revenues
- efficiency – both productivity and cost efficiencies
- differences in input price trend vs inflation index trend
- differences in unit costs due to volume movements

Depending on the USP's economic and operational situation, in particular, its efforts to optimize the logistical processes in the past and thus the potential of efficiency the X-factor can be positive, negative or equal to zero.

Concerning the removal of excess revenues, NRAs may firstly look at the initial price level of the universal services and assess the extent of cost-orientation. In the case that prices exceed costs, the benchmark for the x-factor shall take into account the arising gap between prices and costs in the initial period. Accordingly, a correspondingly higher x-factor may be required to approximate prices to the cost of efficient service provision level.

Concerning efficiency, the incumbent has to demonstrate its efforts with regard to the modernization of the postal process. Based on this assessment the NRA examines to what extent there exists a potential of optimization. During the last decade the majority of the USP reorganized their logistic processes. The major element of their program was the restructuring delivery operations and increasing the degree of automation within the sorting process thereby reducing the labour required. The restructuring initiatives also involve the implementation of sequencing machines and the optimization of delivery activities. These activities induce large-scale process-related cost savings depending on the already achieved efficiency.

Any difference between the index trend and the input price costs trend could be captured by the X.

Finally, the value of the X-factor determined for the USP may also reflect the impact of volume effects on unit costs for universal service.

## 6 - Procedure concerning quality of service

Besides the determination of the X-factor, price cap control may take into consideration the level of quality of service within the universal service segment. The main objective of such quality related price-cap is to prevent cost savings driven by





ERGP (14) 22 – draft report – tariff regulation

price cap efficiency goals leading to a significant deterioration of the service provision and its quality level.

Indicators of performance in quality of service are needed to track and detect any worsening of quality which may arise due to cost reductions. Parameters to be used as relevant surrogates for quality performance such as transit time and/ or the geographical/ territorial coverage must be defined and measured at the beginning of the procedure.

In order to prevent any form of underperformance as consequence of price cap induced cost-reductions a price-cap mechanism may contain constraints which define the initial value for the service level parameters as reference for measuring the eventual divergence between the fixed level for quality of services and the actual services being provided. To this purpose the USP would have to report on the service performance. In particular, the incumbent would thus be compelled to submit detailed documentation that includes information of the fixed-location facilities, letter boxes, transit time.

The constraints fixed in the price-cap could also contain threshold values which, if not met, may be used to assume that the benchmark have significantly changed and thus should be revised. In the event of a significant deterioration in terms of transit time or other quality parameters this would entail legal consequences. Depending on the constraints in the price-cap mechanism it could mean that the price-cap would be revised or that the defined benchmarks would be revoked. Eventually it could make a revaluation of the X factor necessary in a sense that the allowed variation in prices is reduced when the operator fails to comply with the quality targets.

## 7 - Duration

As a general rule, a longer price cap provides a greater degree of planning certainty to the service provider. But this approach, however, harbours the risk of making wrong decisions which do not take into account changes in the market conditions. In general a few years is the timeframe used for price cap regulation in the postal sector. When deciding on the duration, the price-cap regime should be based on the following considerations:

- under the aspect of planning certainty a long duration for the price-cap would be advisable. Given the present uncertainties regarding the future development of mail volumes, limiting the period of validity may be considered. This is due to the fact, that there are no reliable objective data on the future of the mail market and there is a wide divergence between international forecasts and actual, current developments.



ERGP (14) 22 – draft report – tariff regulation

- in particular, neither the USP nor the NRA are able to fully forecast the extent to which electronic substitution will establish in the future on the market as substitutes for the traditional physical conveyance of letters, and thus possibly cause a steeper decline in mail volumes.

Those parameters, when relevant, have been examined in the country case studies provided in the appendix of this report.

### II.3. – Legal framework

In the postal sector, the liberalization has gone with the development of the universal service which guarantees to all postal users, whatever their geographical location, a minimum range of services of specified quality provided at an affordable price.

The postal directive 97/67/EC, as amended by the directives 2002/39/EC and the 2008/6/EC, contains a chapter dedicated to price regulation, article 12 of chapter 5, which sets the tariff principles that each of the services forming part of the universal service shall comply with European Union level: affordability, cost-orientation and giving incentives for an efficient universal service provision, uniformity, transparency, and non-discriminatory. In this view, tariff regulation combines both affordability and balanced financial conditions based on the cost orientation principle: *“Member States shall take steps to ensure that the tariffs for each of the services forming part of the universal service comply with the following principles:*

- *prices shall be affordable and must be such that all users, independent of geographical location, and, in the light of specific national conditions, have access to the services provided. Member States may maintain or introduce the provision of a free postal service for the use of blind and partially-sighted persons,*
- *prices shall be cost-oriented and give incentives for an efficient universal service provision. Whenever necessary for reasons relating to the public interest, Member States may decide that a uniform tariff shall be applied, throughout their national territory and/or cross-border, to services provided at single piece tariff and to other postal items,*
- *the application of a uniform tariff shall not exclude the right of the universal service provider(s) to conclude individual agreements on prices with users,*
- *tariffs shall be transparent and non-discriminatory,*
- *whenever universal service providers apply special tariffs, for example for services for businesses, bulk mailers or consolidators of mail from different users, they shall apply the principles of transparency and non-discrimination with regard both to the tariffs and to the associated conditions. The tariffs, together with the associated conditions, shall apply equally both as between different third parties and as between*



ERGP (14) 22 – draft report – tariff regulation

*third parties and universal service providers supplying equivalent services. Any such tariffs shall also be available to users, in particular individual users and small and medium-sized enterprises, who post under similar conditions.”*

### **III. – Overview of tariff regulation in Europe**

This chapter is based on data collected in 2014 which consist in some information of the 2012 Copenhagen Economics<sup>5</sup> report to the Commission, updated by members of the ERGP, as well as answers to questionnaires sent to the members of ERGP. It explores the diversity of price regulation frameworks in Europe.

All information correspond to the situation of each respondent NRA at the time the questionnaire was answered (between March and July 2014) and must be interpreted in this context only.

32 NRAs provided answers to all or a part of those questionnaires.

#### **III.1. – Implementation of tariff regulation principles**

All four principles of Article 12 of the Directive are implemented in national laws. In most cases, national legislation however do not add clarifications regarding these concepts which lead to various practices from one country to another:

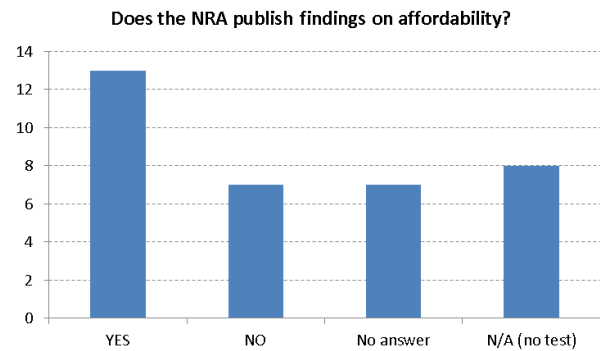
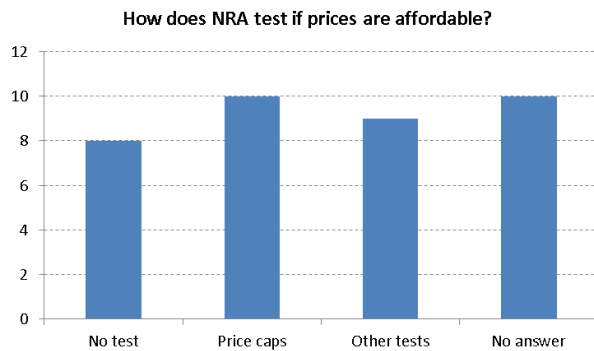
- tests regarding affordability are not carried out in all countries. As for their methodologies, they differ from one country to another: some NRAs estimate that the existence of a price cap is sufficient to ensure affordability. Some other countries have put in place different kind of tests to check whether prices are affordable. The results of the tests on affordability are published by many regulators, most often as price cap regulation decisions.

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<sup>5</sup> Pricing behaviour of postal operators, study for DG internal Market and Services, 21<sup>st</sup> December 2012.

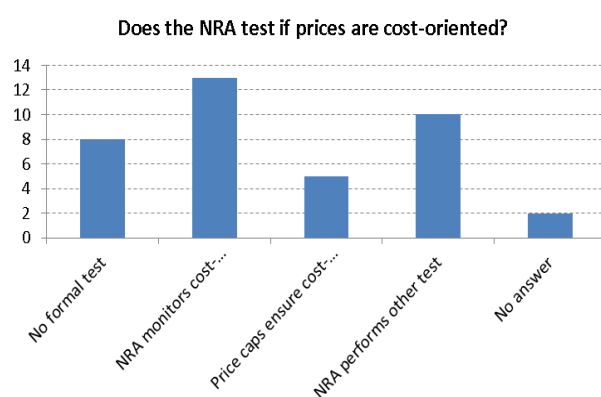
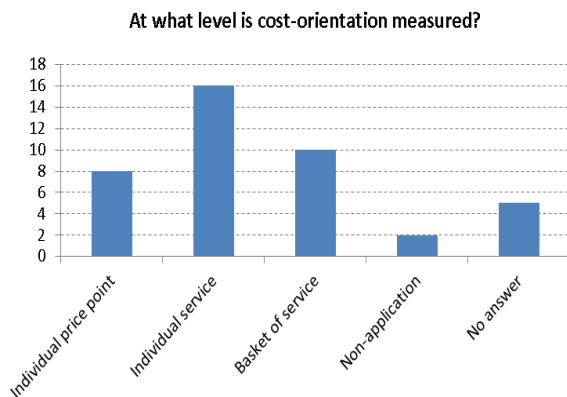


ERGP (14) 22 – draft report – tariff regulation



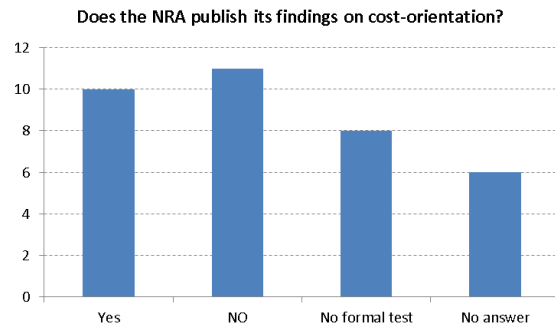
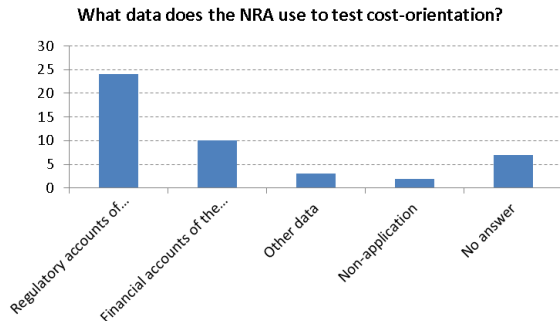
Source: Copenhagen 2012 report, updated by ERGP members. Answers are not exclusive

- there are also very heterogeneous situations regarding the implementation of the cost orientation principle. Most of NRAs have put in place a methodology to measure whether prices are actually geared to costs. A majority of NRAs proceed to cost orientation measurement on the level of individual services. Measurements on the level of a basket of service or individual price point are also commonly used. To ensure cost orientation, the majority of NRAs use the regulatory accounts of the USP. 10 NRAs use financial accounts. The difference between these two sources of information lies in the fact that regulatory accounts are, in principle, prepared for the purpose of regulation and that financial accounts are produced for stakeholders. The majority of NRAs that proceed to a measurement of cost orientation does not publish the results of their analysis. 8 NRAs indicated that they do not proceed to formal test for what concerns cost orientation.



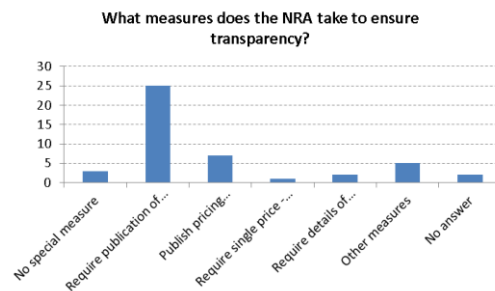
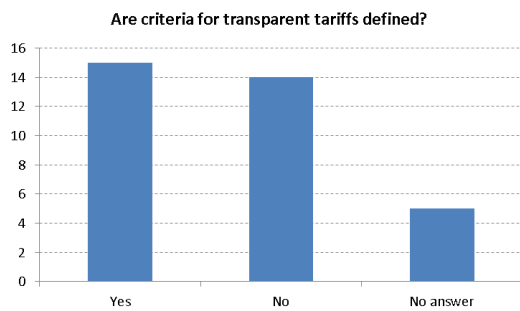


ERGP (14) 22 – draft report – tariff regulation



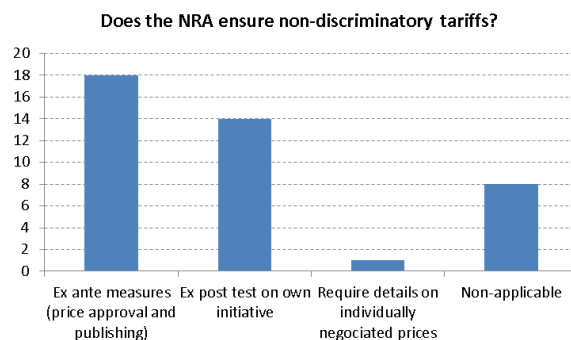
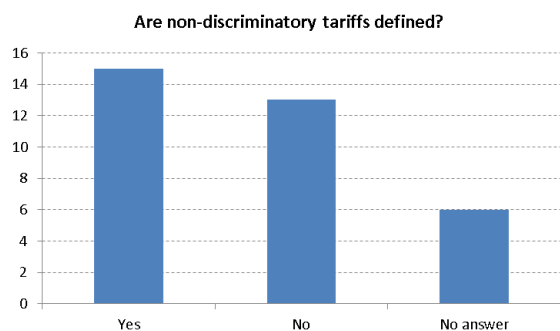
Source: Copenhagen 2012 report, updated by ERGP members. Answers are not exclusive

- almost half of the countries do not define criteria for transparency. However, almost all NRAs request the publication of public prices list.



Source: Copenhagen 2012 report, updated by ERGP members. Answers are not exclusive

- most of NRAs have put in place tools to appreciate whether tariffs are non-discriminatory. 18 NRAs mentioned that they proceed to ex ante measures to check whether prices are compliant with non-discriminatory principles. 14 NRAs proceed to ex post measurement.



Source: Copenhagen 2012 report, updated by ERGP members. Answers are not exclusive



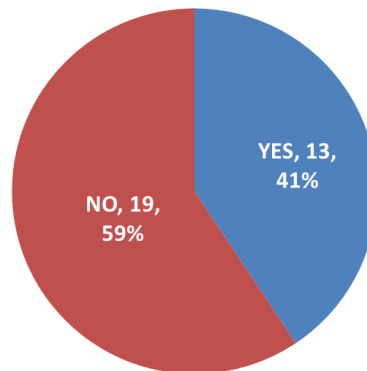
ERGP (14) 22 – draft report – tariff regulation

### III.2. – Forms of tariff regulation

Responses to the questionnaires indicate that tariff regulation mainly consists in two schemes:

- the *price cap* scheme appears to be a widespread regulation tool as 41% of NRAs (13 member states) indicate that a *price cap* applies to the USP in their country. The next part of the report investigates different forms of the *price cap* implemented, as responses to the questionnaire and country case studies suggest the absence of a “unique” *price cap* standard. This heterogeneity does not exclude these schemes to rely on the same basic concepts, aimed at maintaining affordability and a certain level of profit of services regulated, on a specific period of time and a specific basket of products (usually included in the scope of the USO), as long as the latter adapts its costs to the traffic evolution.

Does a price cap apply in your country?



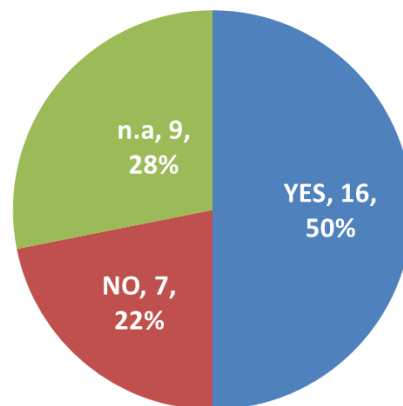
Source: questionnaire to ERGP members

- individual price control is another tool used by NRAs for price regulation. It is implemented in line with the affordability, cost-orientation, transparency and non-discriminatory principles. Its relevance varies depending on the country; individual price control can range from an opinion provided by the NRA, with no compulsory effect, to the power, for the NRA, to revoke and/or amend individual tariffs. Almost half of the ERGP members indicate to have an individual price control in their country.



ERGP (14) 22 – draft report – tariff regulation

**Does an individual price control apply in your country?**



*Source: questionnaire to ERGP members, n.a means not answered*

Other form of tariff regulation exist such as overall tariff control procedure (Austria) or veto power in case of infringement of national regulatory and legal framework (Italy). Some countries, as France for instance, have both in place a price cap and an individual price control.

### **III.3. – Scope of tariff regulation**

According to article 12 of the directive, the Member States shall take steps to ensure that the prices of the universal services products comply the principles of affordability, cost-orientation and giving incentives for an efficient universal service provision,, transparency and non-discrimination. Nevertheless, the scope of the universal service may be quite different from one country to another. The Directive actually sets a minimum requirement for the universal service and gives room for Member states to specify in the country what products belongs to the postal universal service. Information collected by WIK and updated by ERGP members in 2014 show that its scope differs between countries:

- half of the respondents indicate that the USO scope in their country covers correspondence, books, catalogues, newspapers, periodicals and parcels (domestic and international);
- all countries include correspondence in their USO. However, the correspondence items taken into account are not always the same: exclusion of direct mail (Bulgaria, Czech Republic, Estonia, Germany, Italy, Poland, Portugal, Romania), and/or of bulk mail (Bulgaria, Czech Republic, Denmark, Estonia, Finland, Lithuania, Poland, UK);



ERGP (14) 22 – draft report – tariff regulation

- parcel is also part of USO in all countries, but not with the same weight limit. Three cases emerge from the responses: 10 kilograms, 20 kilograms, and there case where no limit is stated;
- some USO scope bears only on single piece letters and packets.

Beyond these differences between USO scopes, the scope of tariff regulation schemes concerning price changes does not always match the scope of USO. One common pattern seems to be the exclusion of inbound international mail. In some cases, the scope of the tariff regulation schemes for price changes is also significantly narrowed compared to the USO scope. Country case studies show that *price caps* in Belgium, Germany, Portugal<sup>6</sup> Sweden and UK are designed for a limited fraction of USO services, mainly single piece items. In Belgium for instance, the “small users” basket of the *price cap* consists in domestic priority and non-priority items up to 2 kilograms, priority or non-priority outgoing cross-border postal items up to 2 kilograms, outgoing domestic and cross-border postal parcels up to 10 kilograms, and registered items and outgoing domestic and cross-border insured items. In Sweden, the scope of the price cap is also limited to first class single piece letters up to 500 grams.

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<sup>6</sup> In the table below, for Inbound international parcels with origin in the Members States of the European Union, the weight limit is 20Kg in Portugal. For parcels incoming from other countries, the weight limit is 10Kg.





ERGP (14) 22 – draft report – tariff regulation

Scope of the universal service in different countries

Code	Country	Domestic correspondence	Outbound correspondence	Inbound correspondence	Domestic books	Outbound books	Inbound books	Domestic catalogues	Outbound catalogues	Inbound catalogues	Domestic newspapers	Outbound newspapers	Inbound newspapers	Domestic periodicals	Outbound periodicals	Inbound periodicals	Domestic parcels	Outbound parcels	Inbound parcels	Domestic express	Outbound express	Inbound express
AT	Austria	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	NO	NO	NO
BE	Belgium	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	NO	NO	NO
BG	Bulgaria	YES	YES	YES	YES	YES	YES	YES	YES	YES	NO	NO	NO	NO	NO	NO	YES	YES	YES	NO	NO	NO
HR	Croatia	YES	YES	YES	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	YES	YES	YES	NO	NO	NO
CY	Cyprus	YES	YES	YES	YES	YES	YES	YES	YES	YES	NO	NO	NO	NO	NO	NO	YES	YES	YES	YES	YES	YES
CZ	Czech Republic	YES	YES	YES	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	YES	YES	YES	NO	NO	NO
DK	Denmark	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	NO	NO	NO
EE	Estonia	YES	YES	YES	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	YES	YES	YES	NO	NO	NO
FI	Finland	YES	YES	YES	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	YES	YES	YES	NO	NO	NO
FR	France	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	NO	NO	NO
DE	Germany	YES	YES	YES	NO	NO	NO	NO	NO	NO	YES	YES	YES	NO	NO	NO	YES	YES	YES	NO	NO	NO
EL	Greece	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	NO	NO	NO
HU	Hungary	YES	YES	YES	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	YES	YES	YES	NO	NO	NO
IS	Iceland	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a
IE	Ireland	YES	YES	YES	YES	YES	YES	YES	YES	YES	NO	NO	NO	NO	NO	NO	YES	YES	YES	NO	NO	NO
IT	Italy	YES	YES	YES	YES	YES	YES	YES	YES	NO	YES	YES	YES	YES	YES	YES	YES	YES	YES	NO	NO	NO
LV	Latvia	YES	YES	YES	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	YES	YES	YES	NO	NO	NO
LIE	Lichtenstein	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a
LT	Lithuania	YES	YES	YES	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	YES	YES	YES	NO	NO	NO
LU	Luxembourg	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	NO	NO	NO
FY	Former Yugoslav Republic of Macedonia	YES	YES	YES	YES	YES	NO	YES	YES	YES	YES	YES	YES	NO	NO	NO	YES	YES	YES	YES	YES	YES
MT	Malta	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	NO	NO	NO
NL	Netherlands	YES	YES	YES	NO	YES	YES	NO	NO	NO	NO	NO	NO	NO	NO	NO	YES	YES	YES	NO	NO	NO
NO	Norway	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	NO	NO	NO
PL	Poland	YES	YES	YES	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	YES	YES	YES	NO	NO	NO
PT	Portugal	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	NO	NO	NO
RO	Romania	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	NO	NO	NO
RS	Serbia*	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	NO	YES	YES	YES	YES	YES	NO	NO	NO
SK	Slovak Republic	YES	YES	YES	YES	YES	YES	YES	YES	YES	NO	NO	NO	NO	NO	NO	YES	YES	YES	NO	NO	NO
SI	Slovenia*	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	NO	NO	NO
ES	Spain	YES	YES	YES	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	YES	YES	YES	NO	NO	NO
CH	Switzerland	YES	YES	YES	NO	NO	NO	NO	NO	NO	YES	YES	YES	YES	YES	YES	YES	YES	YES	NO	NO	NO
SE	Sweden	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	NO	NO	NO
UK	United Kingdom	YES	YES	YES	YES	YES	YES	YES	YES	YES	NO	NO	NO	NO	NO	NO	YES	YES	YES	NO	NO	NO

Up to 1kg Up to 15kg Non bold Restricted to non bulk  
 Up to 2kg Up to 20kg YES Excluding direct mail  
 Up to 5kg Up to 100kg   
 Up to 10kg No limit stated

Source: Main developments in the postal sector (2010–2013), study for the DG for Internal Market and Services, August 2013, updated by ERGP members.  
 \* In Serbia and Slovenia, newspapers, catalogues, periodicals and books are all in the same category called printed papers



ERGP (14) 22 – draft report – tariff regulation

### III.4. – Information available for price regulation

The ability of the USP to adapt its cost, in the light of volume changes is crucial for price regulation. If costs are fully variable to volume, then the decline in traffic has no impact on unit cost, therefore there is no need to take into account declining volumes for tariff regulation. On the contrary, if costs are mostly fixed, then any decline in volume leads to an increase in unit cost, which could lead to an equivalent increase in price under the principle of cost orientation in absence of any efficiency gains.

In this context, when applying a price control regime, especially a price cap that runs over a multiannual time span, it would be useful for NRAs to have access to some information regarding the relation between volumes and costs (weight of fixed costs) for price regulation. In particular, regulators need to know to what extent costs are fixed in a given organization of postal operators and to what extent it can be modified and restructured in order to gain efficiency to adapt to the decline of volumes.

From the answers to this question, it appears NRAs have limited knowledge about the relation between costs and volumes. Only 34% of NRAs mention that they have some indication whether postal costs are fixed or variable with respect to volume.

When they have such information, some NRAs indicate that they consider that postal costs are mostly fixed, whereas others consider that costs are variable. This latter result can be based on the observation that the USP has been able to match the decline in volume by cost reductions thanks to reorganization. For a relevant discussion on the fixed vs variable costs debate, a specific time frame would need to be defined for future investigation.

In this situation, tariff regulation depends on the information available to the NRA and, more specifically, the capacity of the latter to properly assess the dynamics of costs for the universal service provider. The availability of information, and its forms (degree of accuracy, reliability, control, and so forth), depends on the legal framework under which the NRA operates; the capacity of the NRA to assess the dynamics of costs of the USP depends both on the accounting information it has access to (depending also on the legal framework) and/or complementary work, like *bottom-up* models. The issue of accounting information has been subject to investigations by ERGP in its previous common position.<sup>7</sup>

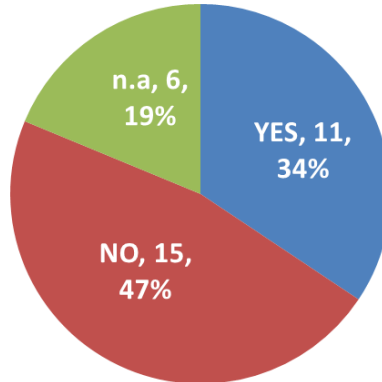
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<sup>7</sup> [http://ec.europa.eu/internal\\_market/ergp/docs/documentation/2012/ergp-12-28rev1-common-position-on-cost-allocation-rules\\_en.pdf](http://ec.europa.eu/internal_market/ergp/docs/documentation/2012/ergp-12-28rev1-common-position-on-cost-allocation-rules_en.pdf)



ERGP (14) 22 – draft report – tariff regulation

**Do you have an indication whether postal costs are fixed or variable with respect to volume?**



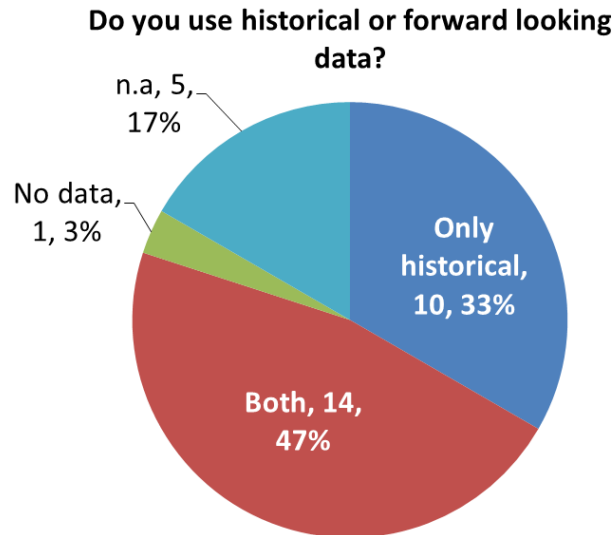
*Source: questionnaire to ERGP members, n.a means not answered*

Price regulation requires specific data regarding traffic, prices, and costs. If historical data exist for this purpose, reliable forward looking data are much more difficult to obtain. This is due to the uncertainties of traffic forecasts, and also to the complexity of the cost structure of a postal operator and the difficulty to apprehend its deformation following substantial traffic changes. The use of historical versus forward looking data is not neutral, though, as it might lead to biased estimation of the break-even point for postal operators in the future. However, the use of historical data is almost inevitable in order to adjust tariff control based forward looking information, once effective information is known.

As already mentioned, the use of historical data versus forward looking data could be considered as two opposite solutions. In practice, it appears they are more complementary. Historical data are, for instance, necessary for estimating forward looking data as those latter are an evolution of the historical costs. 47% of NRAs are relying on both historical and forward looking data and 80% of NRAs have access to at least historical data. No respondents declared having access to only forward looking data.



ERGP (14) 22 – draft report – tariff regulation



Source: questionnaire to ERGP members, n.a means not answered

For price regulation to be effective, it can prove necessary to access databases with prices and quantities for regulated services. This information is also required if one wants to compute a global price index for postal services. In line with inflation index, a price index for postal services can be calculated through the following formula (Laspeyres index)<sup>8</sup>:

$$(dP/P)_n = \frac{\sum [(P_n - P_{n-1}) \cdot Q]}{\sum [P_{n-1} \cdot Q]}$$

where  $(dP/P)$  is the yearly price change,  $P_n$  is the average price for year  $n$ , and  $Q$  is the reference traffic.

Currently, detailed information about price and quantities is available for the majority of NRAs (with 44% of NRAs which have access to both price and quantities databases). This result reflects the diversity of price regulation schemes used by the NRAs.

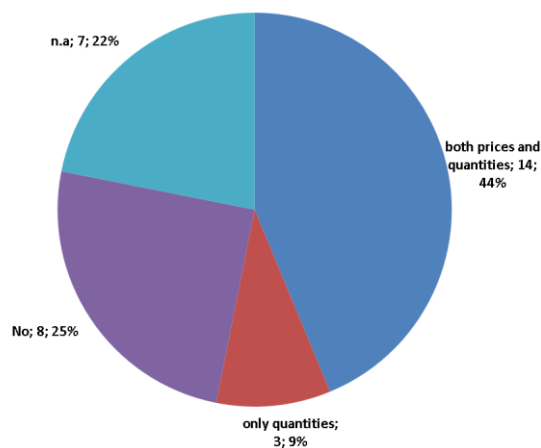
The availability of forward looking data may allow regulators to put in place multiannual price regulation mechanisms in order to forecast the costs of the USP in this rapidly changing environment.

<sup>8</sup> The Laspeyres index compares the price of a basket of goods for former and new prices.



ERGP (14) 22 – draft report – tariff regulation

Do you have a data base with postal prices?quantity?



Source: questionnaire to ERGP members, n.a means not answered

## IV. – Analysis of country cases studies

The analysis of the country cases studies provide more details on price regulation mechanisms that was put in place in those different countries. This section explores then more in depth the different aspects of price regulation for the sample of countries for which a country case study is available. It also reports when country have mentioned a specific issue concerning the decline of volumes.

### IV. 1. – Scope of price regulation

The table beneath shows that, in the sample of countries which provided a country case study, the scope of price regulation may be very different from one country to another.

Some countries such as Denmark, Germany, Sweden or the United Kingdom have put in place a very narrow scope of price regulation. In that case, price control applies only to a limited range of basic products (i.e. single piece letters) that are supposed to remain affordable to anyone.

Narrowing the scope of price regulation can be seen as a way to ensure that the USP has ability to change its prices in a flexible way as the postal sector environment is rapidly changing. Countries may also consider that the position of the USP could be threatened by e-substitution. In 2012, Ofcom reduced the scope of price regulation to safeguard caps on stamped second class letters, large letters and parcels up to 2 kg. Ofcom argued that “traditionally regulators have used either competition (actual or potential) or price controls to incentivise efficiency in regulated companies. Given



ERGP (14) 22 – draft report – tariff regulation

*Royal Mail's financial position and the fact that the postal market was, on the whole, declining, we considered that Royal Mail had inherent efficiency incentives when we put the regulatory framework in place in March 2012. This was an important factor in our decision not to impose a comprehensive price control despite there being very little competition in parts of the postal pipeline<sup>12</sup>*. It also put in place a comprehensive and effective monitoring regime to allow Ofcom to recognise any issues with the regulatory framework at an early stage. Among other things this monitoring regime includes ensuring that quality of service standards are met; there is clear and sustained improvement in efficiency and that universal services remain affordable, particularly for vulnerable consumers. It was designed to provide more tariff flexibility for the USP and to focus the tariff regulation on the affordability of basic postal services.

On the contrary, in Austria or France the price regulation is rather broad and covers a wide range of products including bulk mail. In France, the tariff regulation bears on all USO products (except inbound international mail) and USO products represent the vast majority of postal items provided by La Poste. Then a large part of the postal activities of La Poste are under price regulation. In this context, the decisions of ARCEP on this matter have a strong influence of the turnover that the USP may gain in the future and therefore on its financial viability.



ERGP (14) 22 – draft report – tariff regulation

### Scope of price regulation

Country	Domestic single piece mail	Domestic bulk mail	Registered mail	Single piece parcels	Bulk parcels	Newspapers
Austria	x	x	x	x	x	x
Belgium	x		x	x		
Cyprus	x	x		x		
Czech Republic	x		x	x		
Denmark	x (cheapest letter)					
France	x	x	x	x		x (partly)
Germany	x (up to 50 grams)		x			
Ireland	x	x	x	x		
Italy	x	x	x	x		
Lithuania	x		x	x		
Norway	x	x	x	x	x	
Portugal	x	x	x	x	x	x
Romania	x			x		x
Spain	x	x		x	x	
Sweden	x					
United Kingdom	x			x		

#### IV. 2. - Improvement of efficiency

As stated before, the decline of volume may jeopardize the financial viability of the USP. The ability of the USP to improve efficiency has been a prime concern of NRAs. The table underneath shows different actions taken by NRAs in order to incentive the USP to reduce the costs per unit.



ERGP (14) 22 – draft report – tariff regulation

Country	Efficiency measures
France	<p>The evolution of costs and the actions taken by the USP to improve its efficiency was discussed when the price cap regime for the years 2014-2018 was defined. For this, ARCEP could rely on the 2013 audited regulatory accounts and on series of forward-looking information set by La Poste, in particular those resulting from the development of its strategic plan to 2020. Regarding the scope of the company, the anticipated trajectories detailed key drivers of costs and anticipated mail and parcel volumes was provided.</p>
Germany	<p>The ordinance specifies that – when benchmarks are specified and in particular when the expected rate of growth in productivity is determined – the relationship between the initial rate level and the cost of the efficient provision of services including neutral expenses must be taken into account. In the same context the Ordinance requires the productivity growth rates of undertakings in comparable competitive markets to be taken into account as well. Seeing this regulation the expected growth rate takes into account:</p> <ul style="list-style-type: none"> <li>a) the gap between the initial rate level and the cost of efficient provision and</li> <li>b) the expected productivity changes during the next years within the price-cap periods</li> </ul> <p>The latter issue considers the potential for improving the productivity by rationalization and optimization of operational procedures taking into account the productivity diminishing impacts of mail decline.</p>
Ireland	<p>ComReg has used a year-on-year efficiency target for defining its price cap decisions for 2015/16 - 2018/19, which if met would result in a 2% per annum improvement in efficiency in universal postal service provision over the 5-year period of the price cap control.</p>
Portugal	<p>The determination of the price cap takes into consideration an efficiency factor of 0,4 %.</p>
United-Kingdom	<p>The monitoring regime that was put in place by Ofcom includes ensuring that there is clear and sustained improvement in efficiency (as measured by cost reduction) and that universal services remain affordable, particularly for vulnerable consumers.</p> <p>Ofcom has published the 17th of January 2014 two reports regarding efficiency in the postal sector. The first report, “Approaches to measuring the efficiency of postal operators” by NERA Economic Consulting, sets out the advantages and disadvantages of different approaches to assessing the efficiency for postal operators in general and for Royal Mail in different policy contexts. The report also considers the appropriate metrics to use in measuring efficiency.</p> <p>The second report, “Review of Postal Operator Efficiency” by wik CONSULT, is a study on the efficiency initiatives undertaken by postal operators in six European Countries (Austria, Denmark, France, Germany, Netherlands and Sweden). It provides a useful background for understanding efficiency initiatives in the postal sector.</p>





ERGP (14) 22 – draft report – tariff regulation

### IV. 3. – Level of authorized price increases

The table beneath shows the room for price increases that is currently allowed by regulators which have put in place a price cap or a comparable mechanism. The formula is most of the time of the form  $P=CPI-X$  with the exception of Italy. Austria was added to this category even though there is no price cap per se since it was indicated in the country case study that prices are supposed to increase in line with inflation.

Country	Formula	Overall authorized price increase	Period
Austria		Geared to inflation	
Belgium	CPI-X+Quality bonus	CPI (health index) +2,82% (quality bonus 2014)	
France	CPI-X	CPI+3,5	2015-2018
Germany	CPI-X	CPI – 0,2	2014 - 2018
Ireland	CPI-X	CPI+14,98 (2014/15) then CPI+1,35	2014/15 2015/16 - 2018/19
Italy	No CPI-X approach	As for judicial acts, single piece priority items and single piece registered mail, AGCOM fixed maximum tariffs <sup>9</sup> ; as for parcels and bulk mail (priority, non-priority and registered), AGCOM established fair, reasonable and non-discriminatory pricing obligations.	2014-2016
Portugal <sup>10</sup>	CPI+CPIAF-X	CPI+CPIAF-0,4 %	
Sweden	CPI-X	CPI	
United Kingdom	CPI-X	CPI	

The table shows that among the 9 countries studied which have implemented a price cap or a mechanism alike, 3 of them have currently in place a system that allows the price to raise above inflation. In 2 countries, the level of price increase is strictly geared to inflation. We may add Austria to this category as there is no price cap but tariffs can increase in line with inflation<sup>11</sup>. Germany and Portugal appear as

<sup>9</sup> 0,95 € for single piece 20 g priority letters (and proportional price increases for the other weight categories up to 2 kg); 5,4 € for single piece 20 g registered letters (and proportional price increases for the other weight categories up to 2 kg).

<sup>10</sup> Price regulation in Portugal essentially consists in the enforcement of the rules established by the Price Convention of 2008 on prices for the universal postal service, which is transitorily in force until ANACOM defines new criteria for fixing the prices of the universal service. ANACOM approved in August of 2014 a draft decision on the criteria governing the formulation of pricing for the universal postal service, submitted to public consultation.

<sup>11</sup> In addition prices in Austria have to be cost oriented.



ERGP (14) 22 – draft report – tariff regulation

exceptions considering these are the only countries in which the price cap allows the price to rise beneath inflation. We may nevertheless notice that the scope of the price cap is rather narrow in those two countries and then has little influence on the turnover of the USP. The levels of price cap authorized by the NRAs of the table above show then substantial discrepancies among the countries.

Due to country specific circumstances and taken into account the existing national legal framework, some countries have allowed price increases beyond inflation to secure the financial viability of the USO.

In its decision n° 2014-0841 of the 22nd of July 2014, the French regulator, ARCEP argues that La Poste faces a profound change in its economic environment related to the acceleration of the decline in mail volumes. Between 2008 and 2012, the number of mail pieces per capita decreased in France by 4.3% per year. In 2013, the flows corresponding to the scope of universal service decreased by 5.5%. This is why the multi-year tariff framework, which covers the period 2015-2018 and which replaces the one in effect that covered the period 2013-2015 sets a price cap equal to the index of consumer prices increased by 3.5% per year in order to ensure the financial viability of the USP.

In its decision 14/59 of the 18th of June 2014, ComReg, the Irish regulator, expressed the view that “*price cap decision should bring the price-controlled universal postal services back to profitability*”. In this regard, ComReg has set a price cap fixed at 14,98% beyond the inflation rate between the 18th June 2014 and the 17th June 2015, and at 1,35% beyond the inflation rate for each 12 month period between 18th June 2015 and 17th June 2019. Beside this, ComReg added an additional sub-control on the maximum annual percentage change in charges that can be imposed for two categories of universal postal services, namely “Standard Letters – Stamp and Label” and “Standard Letters – Meter”. For these two products, the maximum annual percentage change in charges is:

- 13% for the 12-month period 18 June 2014 to 17 June 2015 ;
- 2.5% for each successive 12-month period in the period commencing 18 June 2015 to 17 June 2019.

According to the decision n. 728/13/CONS of AGCOM, the Italian regulator, the USP can increase tariffs of US services up to the limit of fair and reasonable prices and in respect of non-discrimination obligation. In particular, the main tariffs’ provisions are as follows:

- as for single piece items (priority and registered mail), AGCOM fixed maximum prices;
- as for parcels and bulk mail, AGCOM established fair, reasonable and non-discriminatory pricing obligations;



ERGP (14) 22 – draft report – tariff regulation

- as for judicial acts' notifications (legal reserved area), AGCOM fixed maximum prices;
- changing in pricing notified to AGCOM are not subject to ex-ante approval. However, AGCOM can inhibit at any time price changes in case of infringement of national regulatory and legal framework.
- prices of priority bulk mail and registered bulk mail must be at least 10% below the tariffs of single piece priority mail and single piece registered mail, respectively;
- in order to stimulate metered mail, franked-mail prices of priority and registered mail must be lower than prices of bulk priority mail and bulk registered mail, respectively.

#### **IV.4. – Methodology for calculating the X factor**

As stated above, the level “X” may reflect:

- the removal of excess revenues;
- differences in input price trend vs inflation index trend;
- differences in unit costs due to volume movements;
- efficiency – both productivity and cost efficiencies.

In some countries, the level of price increase allowed by the price cap may also be influenced by some other factors such as the level of quality of service as in Belgium and Germany (see next section).



ERGP (14) 22 – draft report – tariff regulation

Country	Key inputs for calculating factor X
Germany	<ul style="list-style-type: none"> <li>• Volumes</li> <li>• Expected rate of productivity</li> </ul>
Sweden	None (geared to inflation)
United Kingdom	None (geared to inflation)
Belgium	None (geared to inflation and bonus quality)
Ireland	<ul style="list-style-type: none"> <li>• Base year</li> <li>• Volume forecast</li> <li>• Cost marginalities</li> <li>• Efficiency factors</li> <li>• Opex and capex forecasts</li> <li>• Return on turnover</li> </ul>
France	<ul style="list-style-type: none"> <li>• Volumes</li> <li>• Expected rate of productivity</li> <li>• Rate of turnover</li> </ul>
Portugal	<ul style="list-style-type: none"> <li>• Efficiency factor</li> <li>• Volumes and cost forecasts</li> </ul>

It is interesting to notice that volumes are not taken into consideration for calculating the X factor in Sweden and in the United Kingdom (increased pricing flexibility was provided to enable the USP to respond more effectively to volume decline). The decline of volume has then no impact on the level of price changes that is authorized.

At the contrary, in France and Ireland, volumes are an input of the formula for calculating the X factor. This is then one of the factors, after consideration of required efficiency adjustments, which have led those two countries to allow a price increase beyond inflation.

#### IV.5. – Quality of services provisions

In Germany, in order to prevent any deterioration of quality of service, the level of the price-cap can be revised in case of any significant reductions of the service. In order to monitor the performance the incumbent is required to submit annual information on the service level as well as data concerning transit times. These information concern the existing branch locations (with address and coordinates) with details of branch format and company structure and details of measurement of handling times for letter delivery shown separately by country and postal routing regions; in each case as seen by consumers and businesses; delivery of pertinent source data record as required under EN 13850 and details of the number, location (address and coordinates) and collection times of the letter boxes.



ERGP (14) 22 – draft report – tariff regulation

In Belgium the price cap formula takes account of a quality bonus which is calculated on the basis of the average quality reached by the USP on a minimal period of 12 months from September the 1st of year Y-2.

#### IV.6. – Affordability test

- Some NRAs estimate that the existence of a price regulation is sufficient to ensure that prices are affordable.

To secure affordability there is a rule in the Danish postal law, that the Danish NRA (The Danish Transport Authority) shall approve the tariff for the cheapest letter (called a B-letter – a non-priority letter) and that the tariff shall be the same for sending such a letter overall in Denmark. So, the Danish price regulation seems to focus primarily on affordability on basic postal products. The choice to restrain price regulation to a single product can then be understood in this perspective.

In the same way, PTS reported that The Swedish price cap mechanism that has been in place since the late 1990's aims to ensure the affordability to private consumers and SME's of the most common letter product provided by the USP (first class single piece letters up to 500 grams). It also should give incentives for efficiency gains and counteract the possibility for the USP to cross-subsidise its competitive products with revenues from the de-facto monopoly product first class single letter. Here again, price regulation is limited to a single product which is first class single piece letters up to 500 grams.

The Portuguese NRA tests affordability through price caps, when applicable, and in conjunction with the cost orientation principle, which, according to the Price Convention (which is temporarily in force until ANACOM establishes the new criteria to which the setting of prices obeys) must be applied progressively, so as to allow for a gradual rebalancing of tariffs and to ensure the affordability of prices. In the case of legal persons it is also taken into consideration if a price increase may hinder the commercial viability for the user (sender), if the service is a critical input for their activity and their financial position depends on expenses with the postal service.

Besides, the price cap that covers a wide range of postal products provided by La Poste, the French NRA checks when the USP intend to change prices whether those letters remain affordable. The affordability criterion has been used to give negative opinions on some tariff increases (for instance ARCEP's opinion n° 2009-0115: [http://www.arcep.fr/uploads/tx\\_gsavis/09-0115.pdf](http://www.arcep.fr/uploads/tx_gsavis/09-0115.pdf));

- Some other countries have put in place specific tools to determine whether prices are affordable



ERGP (14) 22 – draft report – tariff regulation

Ofcom committed a study on the scope of the universal service that concluded that universal postal services are affordable for both residential consumers (including low income and other vulnerable consumers) and businesses (including small and medium businesses) at 2012 prices. Ofcom also reviewed the price changes that took effect from 2 April 2013 (as announced by Royal Mail in March 2013), and noted that universal postal services would continue to be affordable based on these new prices.

ComReg considers separately affordability issues for residential postal service users and businesses / SMEs. This is because price increases, according to ComReg, are unlikely to cause affordability issues for residential postal service users, who generally send relatively low volumes of post. However, ComReg investigates whether the universal postal service remains affordable for businesses / SMEs, who generally send higher volumes of post. For businesses / SMEs, ComReg indicated in its document “Response to Consultation and Decision on price cap control for universal postal services” published the 18th June 2014 that affordability will be ensured under the price cap and will be further ensured by the additional sub-caps on Standard Letter Post – Stamp, Label, and Meter.

In Cyprus, OCECPR analyses the proposed prices submitted by the universal service provider and checks if the prices are cost oriented and affordable. For affordability of the tariffs OCECPR has used in the past a benchmark based on a study from Copenhagen Economics. With the new decree that took effect in November 2014 affordability of the tariffs is evaluated using the tariffs of comparable universal service providers adjusted for purchasing power parity (PPP).

In Czech Republic, the regulator CTU is currently working on specific methodology to evaluate price affordability which has not been finished in cooperation with a consultant firm.



ERGP (14) 22 – draft report – tariff regulation

Country	Test for affordability
Austria	Prices can increase in line with CPI <sup>12</sup>
Belgium	Price cap on small users basket
Cyprus	Benchmark based on the tariffs of comparable universal service providers adjusted for purchasing power parity (PPP)
Czech Republic	Progress on a specific methodology to evaluate price affordability in cooperation with a consultant firm.
Denmark	NRA approves the tariff for the cheapest letter
France	Price cap and public opinion when price are changing
Germany	Price cap on single piece letter
Ireland	According to ComReg, USO prices are unlikely to cause affordability issues for residential users since they generally send relatively low volumes of post. For businesses / SMEs, ComReg indicated that affordability will be ensured under the price cap and the additional sub-caps on Standard Letter Post – Stamp, Label, and Meter.
Italy	Affordability is evaluated on the basis of a maximum level of prices for both single piece priority items and single piece registered mail. The maximum level of prices is determined by both European price comparison and assessment of the impact on households' annual expenditure.
Portugal	NRA tests affordability through price caps, when applicable, and in conjunction with the cost orientation principle, which, according to the Price Convention (which is temporarily in force until ANACOM establishes new criteria to which the setting of prices obeys) must be applied progressively, so as to allow for a gradual rebalancing of tariffs and to ensure the affordability of prices. In the case of legal persons it is also taken into consideration if a price increase may hinder the commercial viability for the user (sender), if the service is a critical input for their activity and their financial position depends on expenses with the postal service.
Spain	The indicators used were the international price comparison and the number of minutes that an industrial worker should be employed before taxes to pay for a particular postal item (as proposed in the study "Pricing behavior of Postal operators").
Sweden	price cap mechanism to ensure the affordability of the most common letter product provided by the USP (first class single piece letters up to 500 grams)
United Kingdom	The UK pro-actively monitors whether universal postal services are affordable as part of the regulatory framework. The approach to assessing affordability, findings and method of monitoring is outlined in Ofcom statement which can be found at <a href="http://stakeholders.ofcom.org.uk/post/affordability/">http://stakeholders.ofcom.org.uk/post/affordability/</a> .  Ofcom has set safeguard caps on the prices of 2 <sup>nd</sup> class letters, large letters and packets (up to 2kg) to ensure that they remain affordable and continue to monitor affordability, by means of market research, to ensure that this is still the case.

<sup>12</sup> In addition prices in Austria have to be cost oriented.



ERGP (14) 22 – draft report – tariff regulation

#### IV.7. – Cost orientation

Cost orientation is commonly addressed when the USP applies for price changes or when a price cap is defined. Verification appears to be made on the basis of accounting documents provided by the USP.

Country	Test for cost orientation
Austria	RTR checks the figures from Austrian Post when they plan to change tariffs. These data have to cover one full year in the past and an outlook for one full year in the future. Single piece letter, letter, direct mail, newspapers and parcels are calculated separately but the basket of USO products as a whole has to be cost oriented (prices must not be exact the cost, a strict limit is not defined). This calculation could also be done for an individual service within USO.
Belgium	In case of a tariff increase of the universal postal services for the products included in the small users basket, all documents relating to the cost calculation shall be communicated to the Institute prior to the change and by 1 September of year n-1 at the latest, for the purpose of approving the tariff increase. The Institute shall verify whether the tariff principles of cost orientation are observed.
Cyprus	OCECPR analyses and evaluates the proposed postal prices submitted by the universal service provider and checks if the prices are cost oriented with the following procedure: 1. An audit of the FDC costing system is performed to verify that all the costs have been correctly allocated to the relevant costing pools. 2. An Electronic Inquiry Form (EIF) has been developed that is completed by the USP and feeds a calculation model. A sanity check is performed using the FDC data provided by the USP and any corrections are made if needed. 3. The model produces ATC (Average Total Cost) wholesale prices 4. The prices produced by the model are fed into a competition monitoring tool and tested for margin squeeze vs the proposed postal retail prices. In case of margin squeeze OCECPR asks the Post Office to make all the necessary adjustments 5. Furthermore, OCECPR developed a forecasting model that allows a projection of the volumes and unitary costs over a period of 3 years, making it possible to regulate retail and wholesale prices for a 3 years period.
Czech Republic	CTU judges cost-orientation of prices according to data from accounting separation. Cost orientation is measured for the basket of USO products as a whole but it can be done also for an individual service within USO. For individual services – profitability can be different, but price must cover at least relevant costs. Reasonable return is set as mark-up to cost (8,7%) and is evaluated jointly for the whole group of USO products.
Denmark	To approve the tariff for B-letters the Danish NRA looks at volume of B-letters and the share of the USP costs which can be referred to these letters. Independent Actors shall approve the accounting and presentation of the accounts before they are delivered to the Danish NRA.
France	Cost orientation is checked for the whole universal service when the price cap is defined. For individual tariffs, ARCEP publish an opinion that takes into account cost orientation when La Poste submits changes.
Germany	The expected rate of growth in productivity is determined – the relationship between the initial rate level and the cost of the efficient provision of services including neutral expenses is taken into account. In the same context the Ordinance requires the





ERGP (14) 22 – draft report – tariff regulation

	<p>productivity growth rates of undertakings in comparable competitive markets to be taken into account as well. Seeing this regulation the expected growth rate takes into account:</p> <ul style="list-style-type: none"> <li>c) the gap between the initial rate level and the cost of efficient provision and</li> <li>d) the expected productivity changes during the next years within the price-cap periods</li> </ul> <p>The latter issue considers the potential for improving the productivity by rationalization and optimization of operational procedures taking into account the productivity diminishing impacts of mail decline.</p>
Italy	Cost-orientation is checked at individual service level according to data from accounting separation of the USP.
Lithuania	Cost-orientation is measured at the level of individual service and of individual price point. The universal postal service provider must determine cost-based universal postal service tariffs (Art. 16-9, Postal Law).
Portugal	ANACOM takes into account the estimated evolution of the margin of the service(s), so apart from specific exceptions (i) where the margin is positive, a price proposal is considered to comply with the principle of cost orientation, in case the price proposal does not lead to a (estimated) margin increase (ii) likewise, where the margin is negative, a price proposal is considered to comply with the principle of cost orientation of prices, in case the price proposal does not lead to a (estimated) margin deterioration.
Spain	<p>CNMC indicated that not only nominal prices but real or effective prices, including prices after discounts, have to comply with the principle of cost orientation. As CNMC checked the analytical accounting of the USP it realized that extremely high rebates to large mailers (already sanctioned recently in a margin squeeze anti-trust procedure) are setting prices under costs and might be one of the most important reasons of the USP's global deficit and of the competition restrictions in the postal sector. However, neither those prices nor the rebates are public in Spain and the USP argued that only list prices for single piece should be analyzed under the cost orientation principle.</p> <p>The price of each product, individually, has to be analyzed.</p> <p>The verification must take into account each product individually, as this method has been considered the most consistent with the existing model to compensate the unfair financial burden that does not allow to compensate for the losses with profits between baskets or products, that means deficit products increase the amount of the net cost of the universal postal service, while surplus products generate a margin that fully corresponds to the USP.</p> <p>Special attention has to be paid to some asymmetric margins and price increases.</p> <p>As CNMC checked the price lists for single piece and the USP's analytical accounting we also realized that there were margin variations between products from 25% to 82%. We also noticed that margins and price increases were much lower for deficitary products whereas the highest margins and price increases were charged on superavitary products. The USP argued that there is no obligation under article 12 of the Directive to set equal margins on all products to comply with the cost orientation principle.</p>



ERGP (14) 22 – draft report – tariff regulation

Sweden	PTS has been using the cost orientation principle in one decision regarding the allocation of common cost between first and second class products (PTS ref.nr. 10-9595). The decision was later upheld by the second level administrative court, as it concluded that the Directive was clear enough in its definitions to make such rulings without support of more detailed national regulations. Thus, PTS is currently investigating if a more detailed regulation defining relevant concepts in more detail should be implemented.
UK	Whilst the UK has not formally defined what is meant by cost orientated prices, the March 2012 regulatory framework set regulatory financial reporting obligations on Royal Mail such that costs are allocated and reported against products according to the principles of cost causation. The regulatory accounts are used to monitor the relative profitability and cost orientation of the prices of both universal service products and other products using the universal service network.

#### IV.8. – Transparency

Transparency of tariffs is a criterion that appears to be rather well defined in the sample of countries studied. Conditions, most of the time, indicate how prices must be made public.

Country	Conditions regarding transparency
Belgium	The Belgian Law does provide clarifications regarding transparency. In the Belgian law there are special obligations regarding the USP regarding transparency (article 144 § 1 and § 2 of the Belgian Law). Also we refer to our “per sender decision” of 20 July 2011 regarding special tariffs in which specific transparency engagement has been taken by bpost, namely: - on the bpost website the tariff policy (including the tariffs itself and all discounts) will be published in September for the forthcoming year - on the bpost website all tariff changes during the year will be published before it enters into force - bpost informs the BIPT as soon as the board has approved the conventional tariffs for next year
Czech Republic	Price list and business conditions must be published on USP website and at every post office. (Business senders can agree with USP on specific conditions for collection and specific prices in an individual contract. In the case of individually negotiated prices USP is obliged to offer everyone this individually negotiated price under the similar conditions.)
Cyprus	The postal companies must publish their tariffs and level of services for each product and service they deliver.
Denmark	The licenced postal companies shall all publish their tariffs and level of services for each product and service they deliver.
France	Secondary legislation foresees that the USP shall all publish its tariffs for each product and services at every postal outlets.
Ireland	In making its price cap decision, ComReg has had regard to the tariff requirements set out in section 28(1) of the 2011 Act, which among others require that prices for



ERGP (14) 22 – draft report – tariff regulation

	universal postal services shall be transparent
Italy	The USP must notify AGCOM of any prices' changes of US products 90 days in advance before the entry into force, and publish new prices 30 days in advance. Price changes notified to AGCOM are not subject to ex-ante approval, but AGCOM can inhibit them at any time in case of infringement of national regulatory and legal framework.
Lithuania	The NRA takes measures to ensure transparency of tariffs: requires publication of public price lists and pricing principles. The NRA ensure non-discriminatory tariffs applying ex post test on own initiative. No ex ante measures for price approval and publishing are applied.
Portugal	Anacom considers that all customers who meet the same requirements and conditions must pay the same prices. The publication of prices and of any discounts associated to the provision of the universal service must include information on all applicable prices, discounts and conditions, in a clear language that allows any user to understand and calculate the price to be paid for the service, irrespective of the service and available modalities of delivery.
Spain	The publication of the USO price list in the USP's and CNMC's web would be enough to comply with this principle. However CNMC has stressed the need to improve the transparency regarding the discounts granted by the USP to bulk mailers and, specially, the criteria to set such discounts.
Sweden	The transparency and non-discrimination criteria has been clarified in decisions on the USP's license conditions, the most recent formulation given in the license conditions decided on 2012-09-11 (PTS ref.nr. 12-8354). <i>For the services which are included in universal services, Posten AB shall keep the general terms and conditions available for the public on Posten AB's website. Prices and discounts, if any, shall be offered to all those who fulfill the conditions and the said conditions shall be publicly available on Posten AB's website. Posten AB shall no later than 1 January 2013 disclose all volume discounts for each service, stating the reduced rate and the applied intervals. Exceptions are allowed if the price, after deduction of the rebate, instead is published on Posten AB's website. Condition 1.5: Posten AB shall transparently publish the principles forming the basis for the calculation of special prices. 'Special prices' means prices that deviate from the public price list, as well as discounts offered due to preparatory services. 'Preparatory services discounts' means discounts that are offered to customers due to a cost reducing action taken by the customer and which is not publicly disclosed at Posten AB's website in its entirety. Posten AB shall, in the same manner, also show the principles for any other special conditions that may deviate from the general terms and conditions published on Posten AB' website. Moreover, Posten AB shall transparently publish any additional tariffs. ... To the extent those license conditions admit Posten AB not to report a reduced rate for a discount (or the end price after deduction) on Posten AB's website, and Posten AB is not voluntarily reporting the reduced rate (or the end price after deduction), then Posten AB shall in any way present the maximum reduced rate that can be obtained and also the conditions applied to receive the maximum discount. ... Information which shall be provided according to this Section 1.5 shall be published on Posten AB's website.</i> <sup>13</sup>

<sup>13</sup> Translation of license conditions taken from Levin, Gustafsson, Hildingsson & Selander, *Transparency and non-discrimination in postal pricing*, in M.A. Crew and T.J. Brennan (eds), "The



ERGP (14) 22 – draft report – tariff regulation

<p>United Kingdom</p>	<p>Transparency of prices within the UK is realised through the requirement both that universal service prices and non-price terms are published and that one month's notice of price and non-price changes are provided as a minimum (more notice is mandated where this is required to meet the reasonable needs of universal service customers). Further details are available through the price and non-price publication requirements set out in our March 2012 Statement (<a href="http://stakeholders.ofcom.org.uk/binaries/consultations/review-of-regulatory-conditions/statement/statement.pdf">http://stakeholders.ofcom.org.uk/binaries/consultations/review-of-regulatory-conditions/statement/statement.pdf</a>)</p> <p>Further, the monitoring program of Ofcom seeks to increase transparency through:</p> <ul style="list-style-type: none"> <li>- external publication by Royal Mail of some annual financial data;</li> <li>- presenting market developments in the postal sector in Ofcom's annual Communications Market and International Communications Market reports;</li> <li>- publication of additional key postal data in an annual monitoring report.</li> </ul>
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#### IV.9. – Non discrimination

Most of the NRAs who provided a country case study indicated that tools were put in place to ensure non-discrimination. The goal is that any customer in comparable situations must benefit from equivalent tariffs and conditions.

Several countries have expressed the view that transparency is a tool to tackle non-discrimination issues. The idea is that customers, especially when they benefit from discounts, must be able to understand how the price they pay was calculated. Good information on prices would then be an adequate tool to ensure that any customer benefit from the same conditions.

Country	Criteria for non discrimination
<p>Belgium</p>	<p>Whenever a universal service provider applies special tariffs, for example for services for businesses, bulk mailers or consolidators of mail from different users, he shall apply the principles of transparency and non-discrimination with regard both to the actual tariffs and to the associated conditions. The tariffs, together with the associated conditions, shall apply equally both as between different third parties and as between third parties and universal service providers supplying equivalent services. Any such tariffs shall also be available to users, in particular individual users and small and medium-sized enterprises, who post under similar conditions.]<sup>5</sup></p>

Role of the Postal Service in a Digital Age”, Cheltenham, UK and Northampton, USA: Edward Elgar, 2014, p. 325.



ERGP (14) 22 – draft report – tariff regulation

	In case of a tariff increase of the universal postal services for the products included in the small users basket referred to in § 1, 1°, all documents relating to the cost calculation shall be communicated to the Institute prior to the change and by 1 September of year n-1 at the latest, for the purpose of approving the tariff increase. The Institute shall verify whether the tariff principles of cost orientation, uniformity, non-discrimination and transparency, as well as affordability are observed.
Cyprus	In order to guarantee non-discriminatory pricing obligation, USP must apply equivalent technical and economic conditions in equivalent circumstances
Czech Republic	Business senders can agree with USP on specific conditions for collection and specific prices in an individual contract. In the case of individually negotiated prices USP is obliged to offer everyone this individually negotiated price under the similar conditions.
Denmark	To secure non-discrimination, the postal companies – the USP included – shall follow the Danish Competition Law.
France	the non-discrimination criteria has been used to analyze special tariffs on transactional and direct mail (opinion n° 2010-1352: <a href="http://www.arcep.fr/uploads/tx_gsavis/10-1352.pdf">http://www.arcep.fr/uploads/tx_gsavis/10-1352.pdf</a> )
Germany	The kilo-based rates for Brief International, with service features as defined in terms of the service specifications set by the benchmark procedure, can only be changed by applying the same percentage to the unit price and kilo price elements. Otherwise it is necessary to demonstrate arithmetically that the rate change involves neither discounts nor discrimination.
Ireland	In making its price cap decision, ComReg has had regard to the tariff requirements set out in section 28(1) of the 2011 Act, which in summary require that prices for universal postal services shall be non-discriminatory.
Italy	In order to guarantee non-discriminatory pricing obligation, USP must apply equivalent technical and economic conditions in equivalent circumstances
Lithuania	The NRA ensures non-discriminatory tariffs applying ex post test on own initiative.
Portugal	ANACOM considers that all customers who meet the same requirements and conditions must pay the same prices. The publication of prices and of any discounts associated to the provision of the universal service must include information on all applicable prices, discounts and conditions, in a clear language that allows any user to understand and calculate the price to be paid for the service, irrespective of the service and available modalities of delivery.
Spain	This principle would be matched with the existence of uniform prices throughout the country but CNMC have considered that it could be addressed more fully if applied also to prices after discounts. The more transparency is achieved on discounts the better can be assessed the lack of discrimination.
Sweden	See transparency



ERGP (14) 22 – draft report – tariff regulation

## V. – Conclusion

The analysis of the answers to the questionnaires and of the country case studies show that different kind of price regulation is in place among member countries to ensure that the requirements of the directive are fulfilled.

First of all, the implemented concept of price cap mechanism aims at cost orientation and efficiency. Both contribute to prevent excessive prices in the universal service and to prevent cross subsidization via abusive practices in competitive segments.

Moreover, the principle of affordability is ensured through price cap as well as through individual control or other mechanisms. Besides this, some countries have put in place specific tests to appraise affordability of universal service products.

The price regulation mechanisms put in place and the flexibility they provide rely heavily on domestic factors such as the level of historical costs or prices and on the capabilities of the USP for productivity improvements.

NRAs have explored the possibilities for the USP to reduce costs by improving efficiency in order to achieve financial sustainability in a context in which the decline of volumes may have a negative impact on turnover superimposing the positive productivity effect resulting from optimization efforts.

Besides the efforts for productivity improvements and optimization of the logistical network, due to country specific circumstances and taken into account the existing national legal framework, some NRAs, have allowed price increases beyond inflation in order to maintain the sustainability of an efficient provision of the USO. This is the case of France, Ireland and Italy where regulators made clear in their decisions that maintaining the financial viability of an efficient USO was critical and where efficiency improvements have to be undertaken. More tariff flexibility was then granted through the tariff regulation scheme (e.g. inflation rate corrected by a negative X factor). It is important to notice that actions taken in those examples were driven by national circumstances including among others the initial prices or other aspects such as the extent of forecast volume declines, efficiency improvements required etc. Then, a decision that appeared necessary in one country may not be needed in another.

In some other countries, the scope of price regulation was limited. In Germany only single piece letters have been included in the price cap regulation, whereas bulk mail is monitored in an ex-post-regime. In the United Kingdom, Ofcom gave more pricing flexibility to the USP by removing most of the price control by limiting it only to second class items. Here again, it has to be taken in a context of specific national circumstances and may not be regarded as a proper answer for any other countries to the changing environment of the postal market.



## ERGP (14) 22 – draft report – tariff regulation

	Article 12 of the Directive		Position of NRA on tariff principles	Tariff control schemes				
	Law - implementation	Law - clarification		Price cap	Individual price increase		Information available	
<b>Austria</b>	YES	YES	No additional formal text	NO	Possible overall tariff control procedure Scope: USO	Checking of cost-orientation (USO as a whole), no cross substitution, and affordability (CPI)	Historical volumes and costs, consolidated level down to single cost category and single cost centre	
<b>Belgium</b>	YES	YES	No additional formal text	YES	Scope: "small users" basket Formula: $\Delta CPI$ and quality bonus	Approval Scope: small users basket	Checking of cost-orientation, uniformity, non discrimination, transparency and affordability	All documents related to cost calculation
<b>Cyprus</b>	YES	NO	No additional formal text	NO	Opinion Scope: USO	Checking of cost-orientation, and affordability (based on tariffs of comparable universal service providers adjusted for PPP.)	Costing system of the operator and volumes	
<b>Czech Republic</b>	YES	YES	In progress	NO	Opinion Scope: USO	Checking of cost-orientation (USO as a whole and by product), affordability (impact on consumers, average wages, CPI)	Historical volumes and costs, consolidated level down to the main categories of product	
<b>France</b>	YES	NO	No formal text but practices	YES	Scope: USO* Formula: $\Delta CPI - X$ ( $X = -3,5\%$ for each year between 2015-2018)	Opinion and veto power Scope: USO*	Checking of cost-orientation (USO as a whole), and affordability (impact on consumers)	Historical and forecasted volumes and costs, consolidated level down to the main categories of product
<b>Germany</b>	YES	-	-	YES	Scope: Single piece letters up to 50 items Formula: $\Delta CPI - X$ ( $X = 0,2\%$ for each year between 2014-2018)	-	-	-
<b>Ireland</b>	YES	NO	No additional formal text	YES	Scope: USO Formula: $\Delta CPI - X$ ( $X = -14,98\%$ from 18 June 2014 to 17 June 2015, $-1,35\%$ for each 12 month period between 18 June 2015 and 17 June 2019)	Opinion Scope: USO	Checking of cost-orientation, affordability, transparency and non-discrimination	-
<b>Italy</b>	YES	NO	No additional formal text	NO	Veto power Scope: USO; Fixing maximum tariffs and checking of transparency, non-discrimination, cost-orientation and affordability.		Cost, revenues and volumes for each USO service according to the USP accounting separation.	
<b>Lithuania</b>	YES	YES (for cost-orientation)	No additional formal text	NO	Opinion Scope: USO	Checking of cost-orientation, affordability, transparency	-	
<b>Norway</b>	YES	-	-	NO	Approval Scope: non priority letter	Checking of cost-orientation, affordability, transparency	-	
<b>Portugal</b>	YES	NO	No formal text but practices	Yes (under revision)	Scope: Reserved services Formula: $\Delta CPI + CPIAF - X$ ( $X = 0,4\%$ )	Opinion Scope: USO*	Checking of cost-orientation, non discrimination, transparency and affordability	Historical volumes, revenues and costs, consolidated level down to the each categorie of product
<b>Romania</b>	YES	NO	No additional formal text	NO	Approval Scope: USO	Checking of cost-orientation, non discrimination, transparency and affordability	-	
<b>Spain</b>	YES	NO	YES	NO	Opinion No veto Scope: USO	Checking of cost-orientation (for each products), non discrimination, transparency and affordability	-	
<b>Sweden</b>	YES	NO	YES	YES (defined by the government)	First class single piece letters up to 500g $\Delta CPI$	No opinion	Historical volumes, revenues and costs, consolidated level down to the individual products	
<b>UK</b>	YES	NO	YES	YES	Stamped Second Class letters, Large letters and Parcels up to 2kg $\Delta CPI$ (2013-2019)	No opinion	-	

\* except inbound international mail

\*\* except packets

Source: country case studies

## Appendix 1: responses to the questionnaire on tariff regulation (updated in 2014)

Country	Does a price cap apply in your country?	Does an individual price control apply in your country?	For price regulation, do you rely on historical data or forward looking analysis?	Do you rely on volume forecast for price regulation?	Do you have an indication whether postal costs are fixed or variable with respect to volume?	Do you have a data base with postal prices?quantity?	Has the price regulation mechanism changed recently?	Is the price regulation mechanism going to change in the near future?
Austria	NO	NO	Both	YES	NO	YES	NO	NO
Belgium	YES	NO	Historical data	NO	n.a	n.a	NO	n.a
Bulgaria	NO	YES	Historical data	NO	NO	YES	NO	NO
Croatia	NO	YES	Historical data	NO	NO	YES	YES	NO
Cyprus	NO	YES	Both	YES	YES	NO	YES	NO
Czech Republic	NO	NO	Both	NO	NO	Quantity	YES	NO
Denmark	YES	n.a	n.a	n.a	n.a	n.a	n.a	n.a
Estonia	YES	n.a	n.a	n.a	n.a	n.a	n.a	n.a
Finland	NO	n.a	n.a	n.a	n.a	n.a	n.a	n.a
France	YES	YES	Both	YES	YES	YES	NO	NO
Germany	YES	n.a	Both	YES	n.a	n.a	NO	YES
Greece	NO	NO	Both	NO	NO	YES	NO	YES
Hungary	YES	n.a	Both	NO	NO	n.a	YES	NO
Ireland	YES	n.a	Both	YES	YES	YES	n.a	NO
Italy	NO	YES	Both	YES	YES	YES	YES	n.a
Latvia	NO	YES	Historical data	NO	NO	NO	NO	NO
Lithuania	NO	YES	Historical data	NO	NO	Quantity	NO	NO
Luxembourg	NO	YES	Historical data	NO	NO	NO	NO	NO
Former Yugoslav Republic of Macedonia	NO	YES	Historical data	NO	NO	YES	NO	NO
Malta	NO	YES	Both	YES	NO	NO	NO	NO
Netherlands	YES	NO	Both	NO	YES	NO	NO	YES
Norway	YES	NO	Historical data	YES	YES	NO	NO	n.a
Poland	YES	n.a	Both	YES	NO	NO	YES	NO
Portugal	YES	YES	Both	YES	NO	YES	NO	YES
Romania	NO	YES	Historical data	NO	NO	YES	NO	NO
Serbia	NO	n.a	n.a	n.a	n.a	n.a	n.a	n.a
Slovak Republic	NO	YES	Both	YES	NO	YES	NO	NO
Slovenia	NO	YES	Historical data	NO	YES	YES	NO	NO
Spain	NO	YES	Historical data	YES	YES	YES	YES	NO
Sweden	YES	n.a	Historical data	NO	YES	YES	NO	unknown
United Kingdom	YES	NO	NO	NO	YES	NO	YES	NO
Switzerland	NO	YES	n.a	n.a	YES	Quantity	NO	NO



## Appendix 2: references

- Littlechild, Stephen C. (1983), *Regulation of British Telecommunications Profitability*, London: Department of Trade and Industry.
- Bénédicte Bouin, Nicolas Curien and Guillaume Lacroix (2010), 'Price-cap Postal Regulation: The French Experience', in M.A. Crew and P.R. Kleindorfer (eds), *Heightning Competition in the postal and delivery sector*, Cheltenham, UK and Northampton, MA, USA: Edward Elgar, pp. 85-96.
- ERGP common position on cost allocation rules  
[http://ec.europa.eu/internal\\_market/ergp/docs/documentation/2012/ergp-12-28rev1-common-position-on-cost-allocation-rules\\_en.pdf](http://ec.europa.eu/internal_market/ergp/docs/documentation/2012/ergp-12-28rev1-common-position-on-cost-allocation-rules_en.pdf)

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## Appendix 3: country case studies – tariff principles and control mechanism

### AUSTRIA

#### I. – Implementation of Directive principles in the national law

The Austrian law implements the principles of Directive Article 12 (affordability, cost-orientation, transparency, non-discrimination) regarding USO products tariffs, but it does not provide additional clarifications. The relevant sections are 21 to 23:

[http://www.rtr.at/en/post/PMG/PMG\\_english.pdf](http://www.rtr.at/en/post/PMG/PMG_english.pdf)

An ordinance gives superficial guidance on cost orientation principles (only German version available): <http://www.bmvit.gv.at/post/recht/downloads/b4332010.pdf>

Content of this ordinance:

- Austrian Post has to submit a description of its cost accounting system (including minimum content of this description)
- An Activity Based Costing-approach has to be implemented
- rudimental rules including treatment of overhead cost, internal transfer charges, structure of cost categories and cost centers

#### II. – Position of NRA on tariff principles

No additional formal text has been published on tariff principles or regarding their definition.

#### III. – Tariff control schemes

RTR checks the figures from Austrian Post which they have to provide when they plan to change tariffs. These data have to cover one full year in the past and an outlook for one full year in the future. Single piece letter, letter, direct mail, newspapers and parcels are calculated separately but at the moment only the basket of US products as a whole has to be cost oriented (prices must not be exact the cost, a strict limit is not defined). This approach could be changed to the calculation of individual services within USO. The tariff control procedure also has to ensure, that there is no cross substitution from US to non-US products. We check that the same cost drivers, internal transfer charges etc. are used for US and non-US products.

Cost of capital is taken into account (WACC-CAPM based on market values).

At the moment, the Universal Service as a whole has to be cost oriented (prices must not be exact the cost, a strict limit is not defined) and affordable (price may change in line with CPI), but this calculation could be based on the level of individual products.

RTR can start an overall tariff control procedure, when it assumes, that revenue/cost structure has changed significantly.

#### Price cap

No price cap regulation in Austria

#### Information available to the NRA

RTR has access to the historical costs and volumes from a consolidated level down to each single cost category and each single cost center. RTR checks the figures on the basis of samples in the operative cost accounting system.

## **Opinion on individual price increase**

### ***Scope***

Individual price increases may lead to an overall tariff control procedure (including all US products). Before doing so, we check whether the change of the tariff has a significant influence on the revenues and/or cost of the whole US. There is no strict limit when we start an overall tariff control procedure.

### ***Price reference***

All tariffs for US products and some prices for non-US products are made public by the USP.

**BELGIUM****I. – Implementation of Directive principles in the national law**

The Belgium law implements almost literally the principles of Directive Article 12 (affordability, cost-orientation, transparency, non-discrimination) regarding USO products tariffs in Belgian Law (Article 144 ter, § 3 of the Belgian Law):

**Article 144ter, § 3**

§ 1. The tariffs for each of the services forming part of the universal service provided by the universal service provider are laid down in compliance with the following principles:

1° prices shall be affordable and must be such that all users, independent of their geographical location, have access to the services provided.

A set of services representative of residential and small business users is called “small users basket”. This set, to which single piece tariffs apply, comprises:

- domestic priority and non-priority items up to 2 kg;
- priority or non-priority outgoing cross-border postal items up to 2 kg;
- outgoing domestic and cross-border postal parcels up to 10 kg;
- registered items and outgoing domestic and cross-border insured items.

The universal service provider shall limit his annual tariff increases for the products included in the small users basket based on a price cap, procedures and terms regarding the Institute's intervention, apart from those referred to in § 2, laid down by the King <sup>6</sup>[...] by a decree deliberated in the Council of Ministers. The price cap arrangement as laid down Articles 29, 31 and 32 of the Royal Decree of 11 January 2006 implementing Title IV (Reform of the “Postal Authority/Regie der Posterijen”) of the Act of 21 March 1991 on the reform of certain economic public companies shall apply and be maintained in this decree.

For letter post items included in the universal service the universal service provider shall offer at least one public reduced rate, which depends on minimum deposit volumes. This reduction shall be based on avoided cost as compared to standard services;

2° prices shall be cost-oriented;

3° a uniform tariff shall be applied, throughout the territory of the Kingdom, independent of the place of collection and delivery

4° tariffs shall be transparent and non-discriminatory. Both prices and terms shall be applied without any discrimination;

5° whenever a universal service provider applies special tariffs, for example for services for businesses, bulk mailers or consolidators of mail from different users, he shall apply the principles of transparency and non-discrimination with regard both to the actual tariffs and to the associated conditions. The tariffs, together with the associated conditions, shall apply equally both as between different third parties and as between third parties and universal service providers supplying equivalent services. Any such tariffs shall also be available to users, in particular individual users and small and medium-sized enterprises, who post under similar conditions.]<sup>5</sup>

§ 2. In case of a tariff increase of the universal postal services for the products included in the small users basket referred to in § 1, 1°, all documents relating to the cost calculation shall be communicated to the Institute prior to the change and by 1 September of year n-1 at the latest, for the purpose of approving the tariff increase. The Institute shall verify whether the tariff principles of cost

orientation, uniformity, non-discrimination and transparency, as well as affordability are observed. The Institute shall verify the affordability based on the observance of the principles explained in § 1, 1°. If one of those principles is not observed, the Institute shall refuse the tariff increase proposed by the designated universal service provider.

Starting from the day of receipt of the request for tariff increases the Institute has a month's time to make its comments. If the Institute thinks the file is incomplete, it has to announce within ten working days following the receipt, what information is lacking.

A working day is understood to mean every calendar day other than a Saturday, Sunday or legal holiday.

The one month period is suspended until the information lacking in the file is received

...

## **II. – Clarification regarding transparency**

But the Belgian Law does provide additional clarifications regarding transparency. In the Belgian law there are special obligations regarding the USP regarding transparency (article 144 § 1 and § 2 of the Belgian Law)

### **Art. 144**

§ 1. The User's Charter of the universal service provider is made available to the users in the universal service provider's offices, omitting the information included in paragraph 2, item d), and it is published in full on his website and in the Belgian Official Gazette.

The date of entry into force of the provisions of the Users' Charter is laid down in the Users' Charter itself.

Amendments to the Users' Charter are also announced by the universal service provider in the way referred to in the first paragraph, and are first notified to the Institute.

§ 2. The Users' Charter shall contain at least:

a) the terms and conditions of the offer and provision of the services forming part of the universal service;

b) the single piece tariffs of the services forming part of the universal service;

c) as to the reduced public tariffs of the services forming part of the universal service:

- the tariffs;
- the technical characteristics;
- the terms of provision, including regarding volume and mail handling;

d) the tariff model for conventional tariffs of the services forming part of the universal service, containing at least the following information:

- the basic tariffs that apply to the conventional tariffs and the payment methods;
- the various classes and formulas, if any;
- the contract duration and the terms regarding cancellation and renewal;
- the terms regarding price adjustment.

The tariff model mentioned above with the elements listed above is valid for at least one year starting from the date mentioned in the Users' Charter, except for the basic tariffs.

### III. – Price cap mechanism for the small users basket

Please find below the current price cap mechanism:

#### III.1. – Definition small users basket

In accordance with Article 144ter, § 1, 1°, the small users basket consists of the following services:

- domestic priority and non-priority items up to 2 kg;
- priority or non-priority outgoing cross-border postal items up to 2 kg;
- outgoing domestic and cross-border postal parcels up to 10 kg;
- registered items and outgoing domestic and cross-border insured items.

#### III.2. – Principles to be upheld

Within the framework of the tariff increases for the full rates of the small users basket the Belgian legislator has laid down the terms, procedure and rules for calculating the tariff increases.

Also the fifth management contract<sup>14</sup> concluded between bpost and the State mentions in Article 5 mentioned principles regarding the small users' basket.

In Article 144ter, § 1, last subsection but one<sup>15</sup>, it says that tariff increases for the full tariffs of the small users basket have to be calculated by the universal service provider, i.e. bpost, according to a "price cap".

This legal provision has to be applied in accordance with the formula below, defined in Article 31 of the Royal Decree of 11 January 2006.

$$\frac{\sum_{j=1}^N W_{j,n-2} \times M_{j,n}}{100} \leq 100x \left( \frac{I_{n-1}}{I_{n-2}} * [1 + QB] - 1 \right)$$

en

$$QB = (GGK - 90)^2 / 1000$$

The elements of the price cap formula are described below:

-“M<sub>j,n</sub>”: tariff adjustment of service j in year n compared to the same service the year before, expressed in %.

-“W<sub>j,n-2</sub>”: share of the turnover of that same service j in year n-2, divided by the total turnover of the basket that same year, expressed in %.

-“N”: the number of services included in the basket.

-“n”: the year in which the tariff increase is implemented.

-“I<sub>n-1</sub>”: the health index value in August of year n-1 preceding the implementation of the tariff increase.

-“I<sub>n-2</sub>”: the health index value in August of the penultimate year n-2.

<sup>14</sup> "Vijfde beheerscontract – toevertrouwen van de Universele Dienstverplichting en Diensten van Algemeen Economisch Belang aan bpost", *Belgian Official Gazette* 7 June 2013, 35969-36030.

<sup>15</sup> "[...] The universal service provider shall limit his annual tariff increases for the products included in the small users basket based on a price cap [...]".

-“KB”: quality bonus, which is calculated on the basis of the average quality reached (GGK). If the GGK is lower than 90%, the KB’s value is nil.

-“GGK”: the average quality reached is an index corresponding with the percentage of single piece items delivered on time and which according to the terms laid down in Article 16 of the management contract is calculated over a period of at least 12 months.

When applying this formula account is taken of the principles mentioned below, as listed in Article 29 of the Royal Decree of 11 January 2006:

- 1° the tariff changes can be applied each year from 1 January and be spread over the year;
- 2° When in the course of a calendar year, the universal postal service provider increases his prices to a lesser extent than is allowed according to the application of the formulas, he can use the remaining margin in the course of the next three years. The same applies if there is no tariff change;
- 3° The prices obtained are rounded off;
- 4° No account is taken of price decreases when applying the price cap formula;
- 5° Regarding the outgoing cross-border mail and the outgoing cross-border postal parcels, the tariff increases that immediately stem from an increase of terminal dues paid by the universal service provider are not included in the formula.

### **III.3. – Procedure to be followed**

Article 144ter, § 2 of the Act of 21 March 1991 stipulates the way in which the universal service provider, i.e. bpost, has to proceed to actually implement this tariff increase:

*"§ 2. In case of a tariff increase of the universal postal services for the products included in the small users basket referred to in § 1, 1°, all documents relating to the cost calculation shall be communicated to the Institute prior to the change and by 1 September of year n-1 at the latest, for the purpose of approving the tariff increase. [...]"*

The application of this procedure is also confirmed in Article 7.2 of the fifth management contract.

### **III.4. – Quality bonus**

Based on the price cap formula described above a tariff increase can be introduced. Apart from an adaptation based on the inflation (by way of the health price index) this price cap formula also takes account of a quality bonus ("QB"), which is calculated on the basis of the average quality reached.

In Article 31, 1° of the Royal Decree of 11 January 2006 the average quality reached is described as an index corresponding with the percentage of single piece items delivered on time and which according to the provisions of Article 32 of this decree is calculated over a period of at least 12 months counting from 1 September of year n-2.

## **IV. – Special tariffs**

For special tariffs we refer to the ERGP report on “access” to the postal network and elements of postal infrastructure at page 20 till 22.

Also we refer to our “per sender decision” of 20 July 2011 regarding special tariffs:

<http://www.bipt.be/nl/operators/post/universele-en-niet-universele-postdiensten/besluit-van-de-raad-van-het-bipt-van-20-juli-2011-met-betrekking-tot-de-conventionele-tarieven-van-bpost-voor-het-jaar-2010>

**V. – References on the BIPT website:**

BIPT Council decision of 17 December 2013 regarding the analysis of bpost's tariff proposal for full rates per piece for the year 2014

<http://www.bipt.be/en/operators/postal/universal-and-non-universal-postal-services/bipt-council-decision-of-17-december-2013-regarding-the-analysis-of-bpost-s-tariff-proposal-for-full-rates-per-piece-for-the-year-2014>

Decision of the BIPT Council of 7 May 2013 on bpost full tariffs for the year 2013

<http://www.bipt.be/en/operators/postal/universal-and-non-universal-postal-services/decision-of-the-bipt-council-of-7-may-2013-on-bpost-full-tariffs-for-the-year-2013>



**CYPRUS****I. – Implementation of Directive principles in the national law**

The Cyprus law implements the principles of Directive Article 12 (affordability, cost-orientation, transparency, non-discrimination) regarding USO products tariffs, but it does not provide additional clarifications:

**II. – Position of NRA on tariff principles**

No additional formal text has been published on tariffs principles or regarding their definition. OCECPR however has been using the principles of affordability and mainly cost-orientation in its price control decisions and/or its opinions on individual tariffs:

**III. – Tariff control schemes**

OCECPR analyses the proposed prices submitted by the universal services and checks if the prices are cost oriented and affordable.

For affordability OCECPR has used a benchmark based on a study from Copenhagen Economics.

OCECPR analyses and evaluates the proposed postal prices submitted by the universal service provider and checks if the prices are cost oriented with the following procedure:

1. An audit of the FDC costing system is performed to verify that all the costs have been correctly allocated to the relevant costing polls.
2. An Electronic Inquiry Form (EIF) has been developed that is completed by the USP and feeds a calculation model. A sanity check is performed using the FDC data provided by the USP and any corrections are made if needed.
3. The model produces ATC and LRIC wholesale prices and also calculates the USO.
4. The prices produced by the model are fed into a competition monitoring tool and an evaluation of the retail prices is done.
5. Using a forecasting model a projection of the volumes and unitary costs over a period of 3 years is made, making possible to regulate retail and wholesale prices for a 3 years period

***Information available to the NRA***

OCECPR has access to all the costing system of the Cyprus post and volumes

**Opinion on individual price increase****Scope**

All individual tariffs of all USO products (by weight class) are covered.

**Price reference**

All retail tariffs are made public by the USP.

## CZECH REPUBLIC

### I. – Implementation of Directive principles in the national law

The Czech Postal Act (29/2000 Sb.) implements the principles of Directive Article 12 (affordability, cost-orientation, transparency, non-discrimination) regarding USO products tariffs.

- Article 3 section 2 describes how USO products must be provided (continuously on entire territory of the Czech Republic, within a specified quality, for affordable tariffs, every working day).

- **Cost-orientation** is mentioned in Article 33 section 5. Prices of USO products must be cost-oriented. The definition of cost orientation: Price should cover effective cost and allow reasonable profit, it ensures return of investment in adequate period with respect to relevant risk.
- **Transparency and non-discrimination** is mentioned in Article 33 section 7. Price list and business conditions must be published on USP website and at every post office. (Business senders can agree with USP on specific conditions for collection and specific prices in an individual contract. In the case of individually negotiated prices USP is obliged to offer everyone this individually negotiated price under the similar conditions.)
- **Affordability** is mentioned in Article 34a. NRA (CTU) evaluates price affordability. We are currently working on specific methodology, it has not been finished yet, we co-operate with a consultant firm.

Article 33a set the obligation of accounting separation for USP that provides NRA with a report every year. NRA has issued a decree (secondary act) on the method of regulatory accounting and accounting separation and rules for reporting of annual cost data. The report of cost accounting system (accounting separation) must be audited by an independent company. The auditor is chosen by USP and must be approved by NRA. The auditor provides audit of the most important allocation principles and accounting operations.

Article 32a: USP is obliged to provide on request any information (data) to NRA, which are necessary for NRA's activity. NRA must announce the purpose.

Article 34a: NRA monitors and assess the development of price level of USO products. NRA evaluates price affordability (average wages, inflation, consumer prices). When NRA find out that prices of USO products are not affordable, then NRA is allowed to set the prices and issue price decision (current situation – all prices are affordable, so there is no need to regulate prices in the meaning to set specific price)<sup>16</sup>.

### II. – Position of NRA on tariff principles

- The Czech Postal Act was amended on 1. January 2013 due to liberalization of postal sector. It extended authority of NRA concerning price regulation of domestic prices. Before year 2013 price regulation of domestic prices was in competence of Ministry of finance and price regulation of international prices was in competence of NRA.
- Every year USP provides NRA with reports of accounting separation.
- NRA has right to ask for all information and data and to examine them any time (for example in compliance with accounting system).
- Last year (2013) USP changed the prices (valid from 1. August 2013). According to Postal Act USP must inform NRA about planned increase of prices 90 days before and NRA may use this period to assess price affordability. CTU is currently working on detailed methodology for examining the affordability.

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<sup>16</sup> Revised information.

### III. – Tariff control schemes

The price control is established by the law. On the basis of the Czech Postal Act the universal service provider is obliged to apply cost-orientation of prices.<sup>17</sup> CTU judges cost-orientation of prices according to data from accounting separation. Cost orientation is measured for the basket of USO products as a whole but it can be done also for an individual service within USO. For individual services – profitability can be different, but price must cover at least relevant costs. Reasonable return is set as mark-up to cost (8,7%) and is evaluated jointly for the whole group of USO products.

#### **Information available to the NRA**

CTU has access to the historical costs and volumes at a consolidated level down to the main categories of products.

#### **Opinion on individual price increase**

##### **Scope**

All individual tariffs of all USO products are covered, is dealt for all USO products according the mentioned methodology on cost orientation and price affordability (see above).

##### **Price reference**

All tariffs are made public by the USP.

USP in Czech Republic (Czech Post) has uniform prices voluntarily, it is not determined in Postal Act.

#### **Additional details**

Regulation in Czech Republic is primarily based on assessing cost-orientation and price affordability. CTU is currently working on detailed methodology for examining the price affordability.

Regarding cost-orientation – CTU judges data from accounting separation. We have access to the historical costs and volumes at a consolidated level down to the main categories of products.

For allocating costs, USP uses ABC methodology based on FAC. In last year (2013) we issued decision on approval of revised costing methodology (it will be used for 2014 and next years), which is in accordance to new situation of USP after liberalization and enable CTU to get information in more details.

As mentioned before, cost orientation is measured for the basket of USO products as a whole but it can be done also for an individual service within USO. For individual services – profitability can be different, but price must cover at least relevant costs. Reasonable return is set as mark-up to cost (8,7%) and is evaluated jointly for the whole group of USO products.

Last year (2013) USP changed the prices (increase of price for: single piece letter, registered letter, insured letter) and CTU then assessed cost-orientation. We asked USP for detailed cost calculation for all USO services. We assessed cost, revenues (including mark-up to cost) estimated change of cost and revenues depending on estimated change of volume. Then we considered how big impact to customers would be caused by increased prices. CTU concluded that, all prices will be affordable.

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<sup>17</sup> Revised information.

## **DENMARK**

### **I. – Implementation of directive principles in Danish law**

Regarding USO product tariffs, the Danish postal law implements EU-Directive (Directive 2008/6/EC of 20 February 2008) Article 12.

The tariffs for all sorts of USO products shall follow the rules in Article 12 in the Directive and thereby be affordable, cost-orientated, transparent and non-discriminate. This follows of the implementation of the EU-Directive in Danish law and a Danish regulation about accounting and presentation of accounts.

### **II. – Affordability**

To secure affordability there is a rule in the Danish postal law, that the Danish NRA (The Danish Transport Authority) shall approve the tariff for the cheapest letter (called a B-letter – a non-priority letter) and that the tariff shall be the same for sending such a letter overall in Denmark.

For other types of USO-products/services offered by the nominated Danish Universal Service Provider (Post Danmark A/S) there is no demand for approval by Danish NRA, but the tariffs shall be the same for each product overall in Denmark for individual letters and for individual or a small number of parcels.

In Denmark there is keen competition on the parcel market.

Bulk mail and direct mail are not included under USO.

To secure affordability in the long run the Danish USP can claim compensation from other postal companies in accordance with the principles of Article 7 in the Directive. The compensation is calculated after the USP's costs and the volume of USO mail delivered by the USO contractor and each of the other postal companies after their part of USO mails.

### **III. – Cost-orientation**

To approve the tariff for B-letters the Danish NRA looks at volume of B-letters and the share of the USP costs which can be referred to these letters.

In the Danish rules for accounting and presentation of accounts, the Danish NRA has determined how the Danish USP shall benefit costs to fulfil the Directive.

The Danish USP shall deliver accounts for each USO product according to the rules.

Independent Actors shall approve the accounting and presentation of the accounts before they are delivered to the Danish NRA.

### **IV. – Transparency**

The licenced postal companies shall all publish their tariffs and level of services for each product and service they deliver. In addition they shall deliver and publish the number of complaints and the number of complainants the postal company has accepted.

### **V. – Non-discrimination**

These rules shall also secure that there is no cross-subsidization from USO products to non USO-products.

To secure non-discrimination, the postal companies – the USP included – shall follow the Danish Competition Law.

## **VI. – Other**

To secure that the postal companies fulfil their obligations according to Danish Postal Laws, the Danish NRA can claim to get both economic information and information about the services from the companies.

## FRANCE

### I. – Implementation of Directive principles in the national law

The French law implements the principles of Directive Article 12 (affordability, cost-orientation, transparency, non-discrimination) regarding USO products tariffs, but it does not provide additional clarifications:

- affordability, cost-orientation and non-discrimination are mentioned in Article L. 1 of the French postal code, transparency in Article R. 1-1-7;
- article L. 2-1 of the French postal code, which deals with special contracts designed for bulk mails and contravening with the general terms and conditions of USO products, stresses also on accessibility, cost-orientation, transparency and non-discrimination;

Article L. 5-2 of the French postal code provides with tariff control schemes (cap and opinion on individual tariffs) for all USO products.

Articles L. 2-1, R. 1-1-13 and R. 1-1-16 of the French postal code involve the provisions allowing the NRA to have access to data.

### II. – Position of NRA on tariff principles

No additional formal text has been published on tariffs principles or regarding their definition. ARCEP however has been using these principles in its price cap decisions and/or its opinions on individual tariffs:

- the affordability criteria has been used to give negative opinions on some tariff increases (opinion 2009-0115 for instance: [http://www.arcep.fr/uploads/tx\\_gsavis/09-0115.pdf](http://www.arcep.fr/uploads/tx_gsavis/09-0115.pdf));
- the *price cap* relies on cost orientation (see below);
- all prices are published in each opinion on prices increase;
- the non-discrimination criteria has been used to analyze special tariffs on transactional and direct mail (opinion n° 2010-1352: [http://www.arcep.fr/uploads/tx\\_gsavis/10-1352.pdf](http://www.arcep.fr/uploads/tx_gsavis/10-1352.pdf))

### III. – Tariff control schemes

ARCEP relies on a price cap mechanism to provide the USP with incentives for efficiency gains whereas ensuring the customers would receive a fair share of those gains. The objective of the price cap is to maintain the margin rate of the universal service and to ensure the financial sustainability of the universal service.

Until now, ARCEP has set five price cap: for the period 2006-2008 (decision n° 2006-0576), 2009-2011 (decision 2008-1286) extended to 2012 (decision 2011-1451), 2013-2015 (decision 2012-1353) and 2015-2018 (decision 2014-0841) which abrogates the decision 2012-1353 on the 1<sup>st</sup> January 2015.

ARCEP also gives an opinion on each individual tariff raise; this opinion is based on the compliance of the price increase with the price cap. The opinion is not binding to the USP; however, ARCEP has a veto power if the tariff principles of the USO are not observed.

#### Price cap

##### Scope

The price cap applies to all products provided under USO (except inbound international mail), which encompass single piece mail items, bulk mails and single piece parcels. The majority of direct mail is not included within the scope of the universal service<sup>18</sup>.

##### Duration

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<sup>18</sup> If universal service products do not exactly match the entire scope of mail and parcels products of the USP (74% of mail revenues come from universal service products in 2012), the USO economy is very close the traditional postal economy with a preponderance of fixed costs.

Previously, price cap used to be set for a three year period. A new price cap has been set by ARCEP in July 2014 (decision n° 2014-0841) for the period 2015-2018, namely a four year period. A 'rendez-vous' provision at mid-term is set.

### **Basket composition**

From 2009 to 2012, the price cap involved 2 different baskets: a global basket covering all products, and a sub-basket covering franked mail. Since 2013, there is only global one basket; the new price cap on the 2015-2018 period contains one basket.

### **Price reference**

Average prices (and average price of the universal service) are considered. They are based on public prices. They are weighted by the traffic of the corresponding products and take into account pre-sorting rebates (but not revenue rebates). Rebates are also public.

### **Price cap formula – X factor**

The price cap scheme involves:

- the following formula:  $dp/p = \text{Inflation} - X$ , where X gives the efficiency gains. The X factor is determined in order to maintain the margin rate of the USP as long as the latter adapts its costs to the traffic evolution. In the current price cap, the X factor is set to -1%. In the new price cap taking effect on the 1<sup>st</sup> January 2015, the X factor is set to -3.5%.

- the price evolution is measured with a Laspeyres index based on N – 1 volumes;

- the price cap is therefore given by  $X = (I + t - dc/c) / (1 + e)$ , where:

- X is the efficiency factor,

- I is the inflation (measured through the Consumer Price Index. The reference value is the forecast used for the state budget law.)

- t is the traffic forecasts,

- dc/c the evolution of costs, based on historical attributable costs<sup>19</sup> elasticity to traffic evolutions,

- e the price elasticity of the demand (based on ad hoc studies).

Price cap validity	2006-2008	2009-2012	2013-2015	2015-2018
X factor	-0.3%	-0.3%	-1.0%	-3.5%

### **Adjustment procedure**

The price cap relies on exogenous hypothesis: traffic forecasts ("economic traffic", corresponding to traffic weighted by unit prices, are set to -6.3% in the new price cap), and inflation forecasts (1,7% per year on the 2015-2018 period according to government forecasts). If the actual traffic and/or inflation diverge from the forecasts, partial adjustments are possible the following year.

If the CPI measured by the French statistical institute (INSEE) is significantly different from the reference forecasted value (difference larger than 0.5%), a partial adjustment of 50% of the error can be made the next year.

If the observed traffic in year N-1, is different from the forecasted reference value, then a partial adjustment of 70% of the error can be made on year N.

The adjustments can be decided by the NRA or requested by the USP, without any veto from the other party.

### **Additional provisions**

The current price cap also sets 2 additional provisions.

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<sup>19</sup> Attributable costs (to products) incorporate all costs except general overheads that cannot be assigned to any specific product, service or cost center (see ERGP common position on cost allocation rules, p. 21): e.g corporate costs.

Franked-mail price increase shall increase less than stamped-mail price increase over the period 2015-2018. This provision is intended to ensure that franked mail benefits from the avoided cost compared to stamped-mail.

The “Lettre Verte” (Green Letter), which is a recently introduced single-piece letter delivered in D+2, should be cheaper than the priority letter, to ensure the two products are well differentiated.

***Information available to the NRA***

ARCEP has access to the historical costs and volumes at a consolidated level down to the main categories of products.

**Opinion on individual price increase**

***Scope***

All individual tariffs of all USO products<sup>20</sup> (by weight class) are covered.

***Price reference***

All tariffs are made public by both the USP and the NRA.

***Criteria***

If no formal clarification has been brought by ARCEP regarding tariff principles, ARCEP can still use them to motivate its opinions (especially in case of a veto, see above).

***Information available to the NRA***

The USP shares with the NRA the margin rate (on attributable costs) of each product (no distinction between weight classes).

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<sup>20</sup> Except inbound international mail.



## **GERMANY**

### **Scope of price-cap**

Pursuant to the Postal Act in conjunction with the ordinance on tariff regulation individual letters up to mailings of 50 items are subject to the price cap regulation as a form of ex-ante regulation whereas business mail and parcels are only regulated via ex-post processes. This tariff regulation applies only to the incumbent postal provider Deutsche Post.

### **Period of validity**

The provisions of price cap regulation have a fixed timescale running from 1 January 2014 to 31 December 2018. This is divided into two price cap periods of two years each.

### **Basket composition**

In line with the ordinance on tariff regulation only those services with similar conditions concerning competition can be integrated in a basket (services belonging to the same relevant market, in a competition law sense). This regulation in the ordinance aims at preventing illegal cross-subsidy. Otherwise the price-cap-requirement could be abused and lead to non-justified lowering of prices for competitive products below incremental costs.

Based on these considerations the NRA decided to group all single piece letters (basic letters, registered mail and cross-border mail) in a single services basket. Due to the fact that the services concerned can be viewed as homogeneous in terms of scope of competition a further differentiation is not justified. During the consultation process some market players argue that national and international mail would differ in the degree of competition. Thorough investigations made by the WIK revealed that discrepancies could not be observed. For the entire C2X-segment regardless whether these products are part of the national or international segment there are no differences in the competition levels.

### **Initial rate level**

A basket's initial rate level is the weighted average of the rates for the products included in the basket. The volumes estimated for the duration of the price-cap-regime beginning with 2014 and lasting until 2018 are defined as the reference for determining the average rate as prerequisite for the calculation of the expected growth rate.

### **Service level**

In order to prevent any deterioration of the service level and of the delivery times the German NRA defined a service level which match the cost situation. In case of any significant reductions of the service level the benchmarks for the price-cap can be revised. In order to monitor the performance the incumbent is required to submit annual information on the service level as well as data concerning on transit times. These information concern the existing branch locations (with address and coordinates) with details of branch format and company structure and details of measurement of handling times for letter delivery shown separately by country and postal routing regions; in each case as seen by consumers and businesses; delivery of pertinent source data record as required under EN 13850 and details of the number, location (address and coordinates) and collection times of the letter boxes.

During the discussion of the key elements the ruling chamber considered establishing a stronger link with service quality as the output parameter for the benchmarks and thus the subsequent rate approvals. This could be done by not only setting the service level on which the decision was to be based but also laying down specific threshold values. If the values were not reached there would automatically be a check on compliance with the preconditions for the decision.

### Expected rate of growth in productivity - X factor

The ordinance specifies that – when benchmarks are specified and in particular when the expected rate of growth in productivity is determined – the relationship between the initial rate level and the cost of the efficient provision of services including neutral expenses must be taken into account. In the same context the Ordinance requires the productivity growth rates of undertakings in comparable competitive markets to be taken into account as well. Seeing this regulation the expected growth rate takes into account:

- e) the gap between the initial rate level and the cost of efficient provision and
- f) the expected productivity changes during the next years within the price-cap periods

The latter issue considers the potential for improving the productivity by rationalization and optimization of operational procedures taking into account the productivity diminishing impacts of mail decline.

For assessing the mail decline the ruling chamber segmented the total mail volumes. For each of these segments the triggering factors as well as the extent of mail decline were estimated for each of these segments. Within the C2X-segment the mail trend will predominantly influenced by the substitution of letters by electronic mail. In contrary, within the B2X-segments we expect a more tremendous decline of mail volumes. This is due to the fact that in addition to the substitution effect there are further mail declines as result of the upcoming competition (migration effect. Both substitution and migration effect are decisive factors for the development in the price-cap-segment.

The expected rate of growth in productivity (X factor) is determined as follows:

An expected rate ranging from 0.0% to 0.5% will be set for each of the years 2014 and 2018. As the drafted decision will currently be discussed the exact value of the X-factor will be published at the end of October.

### X-factor values

PCV 2002					PCV 2007				PCV 2011	
2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
7,2 %	1,8 %	1,8 %	1,8 %	1,8 %	1,8 %	1,8%	1,8 %	1,8 %	0,6 %	0,6 %

### Rate of price increases in the economy overall – Reference index I

The retail price index for Germany issued by the Federal Statistical Office (Federal Statistical Office, Fachserie 17, Reihe 7) is used as reference index.

### Collateral conditions

- a) Rates in full and reduced rates within a basket may not be anti-competitive within the meaning of Section 20(2) of the Postal Act.
- b) The kilo-based rates for Brief International, with service features as defined in terms of the service specifications set by the benchmark procedure, can only be changed by applying the same percentage to the unit price and kilo price elements. Otherwise it is necessary to demonstrate arithmetically that the rate change involves neither discounts nor discrimination.
- c) Rates approved under the price cap regime are net rates for the purpose of the Turnover Tax Law. Turnover tax liability is governed by the provisions of the Turnover Tax Law.
- d) Changes to the service specifications provided by the Party Concerned in the benchmark procedure are dealt with as required by Section 27 of the Postal Act.
- e) The initial rate level is determined by the quality of letter delivery, a report on which must be submitted to the Ruling Chamber in IT format two months after the end of each quarter. The electronic

form used must make evaluation possible by means of a database. The following information is required:

- Overview of existing branch locations (with address and coordinates) with details of branch format and company structure
- Details of measurement of handling times for letter delivery shown separately for country and postal routing regions; in each case as seen by consumers and businesses; delivery of pertinent source data record as required under EN 13850
- Details of the number, location (address and coordinates) and collection times of the letter boxes.

## **IRELAND**

### **I. – Implementation of Directive principles in the national law**

The Irish law implements the principles of Directive Article 12 (affordability, cost-orientation, transparency, non-discrimination) regarding USO products tariffs, but it does not provide additional clarifications.

### **II. – Position of NRA on tariff principles**

ComReg has been using these principles in its opinions on individual tariffs and in its decision on its price cap mechanism.

### **III. – Tariff control schemes**

As required by Irish law, ComReg implemented a price cap mechanism to ensure the provision of an efficient universal service.

#### **Price cap**

##### **Scope**

The price cap applies to all universal postal service products (except 4 services which do not require to be price controlled). As required by Irish law, the price cap will apply for 5 years.

##### **Price cap formula – X factor**

As required by Irish law, the price cap formula is  $CPI - X\%$  where CPI is the annual percentage change on the consumer price index (inflation adjustment) and X is the adjustment specified by ComReg to provide incentives for efficient provision of the universal postal service.

A price cap decision was taken in July 2014; see

<http://www.comreg.ie/fileupload/publications/ComReg1459i.pdf>

and

<http://www.comreg.ie/fileupload/publications/ComReg1459.pdf>

**ITALY****I. – Implementation of Directive principles in the national law**

Italian law implements Article 12 of the Directive regarding US products tariffs: obligations on affordability, cost-orientation, transparency and non-discrimination are implemented in Article 13 of the Italian decree 261/1999.

**II. – Position of NRA on tariff principles**

AGCOM applied the Directive principles related to tariffs of US products by fixing maximum prices of postal services included in the USO scope for the period 2014-2016 (decision n. 728/13/CONS, available in Italian at

<http://www.agcom.it/documents/10179/540185/Delibera+728-13-CONS/031435b0-c9e2-44c8-9612-d5fdb0f9dbf?version=1.1>).

**III. – Tariff control schemes**

AGCOM fixed maximum tariffs of services included in the USO scope, binding on the USP.

**Scope**

The price control mechanism applies to all products provided by the USP under USO.

According to AGCOM's decision n. 728/13/CONS, Italian USP can increase tariffs of US services up to the limit of fair and reasonable prices and in respect of non-discrimination obligation.

In particular, the main tariffs' provisions are as follows:

- as for single piece items (priority and registered mail), AGCOM fixed maximum prices;
- as for parcels and bulk mail, AGCOM established fair, reasonable and non-discriminatory pricing obligations;
- as for judicial acts' notifications (legal reserved area), AGCOM fixed maximum prices;
- in order to ensure transparency, USP must notify AGCOM of any prices' changes of US products 90 days in advance before the entry into force, and publish new prices 30 days in advance;
- changing in pricing notified to AGCOM are not subject to ex-ante approval. However, AGCOM can inhibit at any time price changes in case of infringement of national regulatory and legal framework.

**Additional provisions**

The price control framework sets by AGCOM also foresees the following additional obligations:

- prices of priority bulk mail and registered bulk mail must be at least 10% below the tariffs of single piece priority mail and single piece registered mail, respectively;
- in order to stimulate metered mail, franked-mail prices of priority and registered mail must be lower than prices of bulk priority mail and bulk registered mail, respectively;
- in order to guarantee non-discriminatory pricing obligation, USP must apply equivalent technical and economic conditions in equivalent circumstances;
- USP must implement obligations on cost accounting and accounting separation;
- the burden of proof of regulatory compliance is on the USP.

**Information available to the NRA**

USP shares with AGCOM information on US products' prices and cost accounting and accounting separation, including information on costs, revenues and volumes for each service provided under USO.

## LITHUANIA

### I. – Implementation of Directive principles in the national law

Lithuanian Postal Law implements the principles of Directive Article 12 (affordability, cost-orientation, transparency, non-discrimination) regarding universal postal service. The tariffs for universal postal service must be based on the costs of the provided universal postal service; however they must be affordable to all the users of postal service, transparent and non-discriminatory (Art. 14-5, Postal Law).

Lithuanian postal legislation doesn't provide a definition or guidelines of the **tariff affordability**.

**Cost-orientation** is measured at the level of individual service and of individual price point. The universal postal service provider must determine cost-based universal postal service tariffs (Art. 16-9, Postal Law);

### II. – Position of NRA on tariff principles

The NRA does not publish findings **on affordability**. No additional clarifications how the NRA shall tests if prices are affordable.

The NRA establishes the fundamental principles of **cost accounting** in respect of the universal postal service provider (Art. 6-2.13, Postal Law).

The NRA takes measures to ensure **transparency of tariffs**: requires publication of public price lists and pricing principles. The NRA ensures non-discriminatory tariffs applying ex post test on own initiative. No ex ante measures for price approval and publishing are applied.

### III. – Tariff control schemes

The NRA is obliged to approve tariffs for the USP from the beginning of 2013 when new Postal Law came into force. The NRA approves tariff ceilings for the USP according to the weight steps of postal items (Art. 6-2.5, Postal Law), and supervises compliance with the requirements defined in postal acts (Art. 6-2.18, Postal Law).

#### **Supervision of the USP tariffs**

Price cap method is not applied in Lithuania. Individual price control mechanisms applied considering the costs of postal services. The USP uses ABC methodology for cost accounting. Costs incurred are allocated to the one of the categories of direct, common and joint costs, according to the principles of causality, accumulation, neutrality, stability, transparency and publicity. The costs from the activities to the products are allocated according to the following structural parts of each service: post office counter and (or) collection costs; distribution costs; transportation (carrying) costs; delivery costs; other costs. The NRA supervises if the USP tariffs are cost-based, according to the rules and principles referred.

The USP provider may apply **special tariffs** in accordance with agreements entered into with users. The USP provider shall apply to these tariffs and related conditions the principles of transparency and non-discrimination. Such tariffs must be set taking account of avoided costs, as compared to standard costs of the normally provided universal postal service. The tariffs shall be the same for all users of the universal postal service of the same category (Art. 16-3, Postal Law).

#### **Information publicly available**

The USP provider must regularly provide and publish at access points and on its website comprehensive and continuously updated information for users and postal service providers on prices regarding of the USP (Art. 16-2.2, Postal Law).

According to the Rules for USP provision (Paragraph 9.9), the USP provider must publish special tariffs on its website as well and inform the NRA on the special tariffs applied.

#### **Individual price increase**

In 2014 I half the NRA received the application from the incumbent operator concerning changes for the certain UPS tariffs. The last time UPS tariffs were reviewed and set in 2007.

Since 1th August 2014 the NRA approved new tariff ceilings for the UPS according to the weight steps of postal items and sizes. Size limits are defined for correspondence items according to the following dimensions: small correspondence items (381x305x20mm, weight is up to 500 g) and large correspondence items (the sum of length, width, and thickness – not more than 900 mm, the greatest dimension may not exceed 600 mm, weight is up to 2000 g). According to the format, different tariffs are applied for the correspondence items of the same weight step. No changes for domestic and international parcels; registration and insurance fees.

### ***Additional provisions***

According to the Rules of Postal Service Provision (Paragraph 17.9), other postal service providers have to inform the NRA on the tariffs applied to the postal services.

The postal service provider which manages the postal network must ensure that an agreement on the use of the postal network is entered into in compliance with non-discriminatory, proportionate and transparent terms and conditions (Art 8, Postal Law).

The USP provider regularly publishes updated information on prices and discounts for bulk mail on it's website (in Lithuania bulk mail is outside the scope of the USP). The USP provider applies discounts for postal items depending on quantity and distribution conditions, as well to sorted postal items.

## PORTUGAL

### I. – Implementation of Directive principles in the national law

The Portuguese postal law implements the principles of Directive Article 12 (affordability, cost-orientation, transparency, non-discrimination) regarding USO products tariffs, but it does not provide additional clarifications. The mentioned principles are stated in paragraph 1 of article 14 of the Portuguese postal law<sup>21</sup>.

Paragraph 3 of article 14 indicates that ANACOM shall establish the criteria to which the setting of prices obeys. This is supported with specific permissions granted to ANACOM, detailed in the paragraph 8 of article 14 of the Portuguese postal law. In this regard, ANACOM may:

- a) Determine, for duly substantiated reasons relating to the public interest, that the price of postal items weighting less than 50 g shall comply with the uniform tariff principle, a uniform tariff being applied throughout the national territory, without prejudice to the right of universal service providers to conclude with users individual agreements on special prices;
- b) Impose price control mechanisms, including price caps, to the extent necessary to promote effective competition or to protect the interest of users;
- c) Determine that some postal services for the use of blind and partially-sighted persons are provided free of charge;
- d) Determine the amendment of prices of postal services that integrate the universal service provision, as well as the amendment or removal of conditions associated to prices, duly substantiated as regards compliance with the tariff principles, taking into account the quality of service provided, to the extent necessary to promote effective competition or to protect the interest of users.

ANACOM must be provided with information, at its request, as stated in article 45 of the Portuguese Postal Law.

### II. – Position of NRA on tariff principles

As said before, there are no additional clarifications, in the Portuguese Law, regarding the tariff principles. The shown below is the practice taken by ANACOM to ensure that the principles are achieved.

Affordability: NRA tests affordability through price caps, when applicable, and in conjunction with the cost orientation principle, which, according to the Price Convention (which is temporarily in force until ANACOM establishes the above referred criteria to which the setting of prices obeys) must be applied progressively, so as to allow for a gradual rebalancing of tariffs and to ensure the affordability of prices.

In the case of legal persons it is also taken into consideration if a price increase may hinder the commercial viability for the user (sender), if the service is a critical input for their activity and their financial position depends on expenses with the postal service.

Cost Orientation: ANACOM takes into account the estimated evolution of the margin of the service(s), so apart from specific exceptions (i) where the margin is positive, a price proposal is considered to comply with the principle of cost orientation, in case the price proposal does not lead to a (estimated) margin increase (ii) likewise, where the margin is negative, a price proposal is considered to comply with the principle of cost orientation of prices, in case the price proposal does not lead to a (estimated) margin deterioration.

<sup>21</sup> Law nr. 17/2012 of 26 of April, as amended by Decree-Law nr. 160/2013 of 19 of November and Law nr. 16/2014 of 4 of April, available at <http://www.anacom.pt/render.jsp?categoryId=331843&languageId=0>.



Transparency and non-discrimination: ANACOM considers that all customers who meet the same requirements and conditions must pay the same prices. The publication of prices and of any discounts associated to the provision of the universal service must include information on all applicable prices, discounts and conditions, in a clear language that allows any user to understand and calculate the price to be paid for the service, irrespective of the service and available modalities of delivery.

Additional information:

- Decision of 21 March on a proposal for prices for reserved services  
<http://www.anacom.pt/render.jsp?contentId=1195432&languageId=1>
- Decision of 27 March on a proposal for prices within the universal service  
<http://www.anacom.pt/render.jsp?contentId=1196213&languageId=1>.

### III. – Tariff control schemes

Under the paragraph 3 of article 14 of the Portuguese postal law, the definition of new pricing rules by ANACOM is under way. Until then, the following rules are defined by the current price convention (<http://www.anacom.pt/render.jsp?categoryId=301635>) are transitory in place.

#### **Price cap**

##### **Scope**

The price cap only applies to the reserved services: registered mail service used in court or administrative proceedings.

##### **Price reference**

Average annual prices are considered, based on listed prices. The annual weighted average variation is calculated using each price variation weighted by the proportion of its gross invoicing, in the total amount of the gross invoicing of the reserved postal services, both related to the second calendar year prior to that for which the variation is calculated.

##### **Price cap formula**

The price cap is:

The weighted average price variation of non-reserved postal services shall not exceed (CPI+CPIAF)-0.4%, in nominal terms, in which:

CPI (Consumer Price Index) – level of inflation officially expected for each year (the year of application of the price cap) by the Government and referred to as such in the State Budget Report for each year.

CPI adjustment factor (CPIAF) – is a measure of the difference between the verified inflation value for the previous year and the level of inflation that was officially expected by the Government for that same year. In practice, corresponds to an adjustment in the price cap of the next year. If inflation diverges from the forecasts, an adjustment is made the following year.

0.4% – Efficiency factor

##### **Additional provision**

The price variation for a given year depends on the compliance with the levels of quality of service in the previous year.

Source: Article 5 of the Universal postal service quality convention (<http://www.anacom.pt/render.jsp?contentId=980404>).

##### **Information available to the NRA**

ANACOM has access to the historical costs, volumes and revenues at a disaggregated level down (weight class), including the unit cost by operational phase. Cost include cost of capital.

##### **Opinion on individual price**

##### **Scope**

All individual tariffs of all USO products<sup>22</sup> (by weight class) are covered.

**Price reference**

All tariffs are made public by both the USP and the NRA.

**IV. – Special tariffs for services within the universal service**

These prices are subject to the rules established by article 14<sup>o</sup>-A of the Portuguese Postal Law (Law nr. 17/2012 of 26 April, as amended by Decree-Law nr. 160/2013 of 19 November and Law nr. 16/2014 of 4 April, which states that (unofficial translation to English):

- 1 - Special tariffs and associated conditions of postal services within the universal service provision, applied by the USP, namely for services for businesses, bulk mailers or consolidators of mail from different users, shall comply with the principles of transparency and non-discrimination, taking account of the avoided costs, as compared to the standard service covering the four operations integrated in the postal service;
- 2 - The special tariffs and conditions referred to in the preceding paragraph shall be applied equally, regardless of the type of beneficiary, and shall be available to users who post under similar conditions, in particular individual users and small and medium-sized enterprises;
- 3 - The USP shall notify ICP-ANACOM of special tariffs to be applied for postal services within the universal service provision, before the date on which such prices take effect;
- 4 - In the scope of special tariffs, and after they take effect, ICP-ANACOM may determine their amendment, as well as the amendment or removal of conditions associated to prices, duly substantiated as regards compliance with principles provided for in paragraphs 1 and 2, taking into account the quality of service provided, to the extent necessary to promote effective competition or to protect the interest of users.

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<sup>22</sup> Except inbound international mail.

## **ROMANIA**

### **I. – Implementation of Directive principles in the national law**

The Romanian law that implements the principles of Article 12 of the 3<sup>rd</sup> Postal Directive is the Government Ordinance 13/2013. It takes into account the economic efficiency, the right of access to the universal service and the deployment of the postal network. The tariffs for each of the services under the universal service area should be affordable, transparent, non-discriminatory and cost orientated. (art. 16-1).

The USP has to submit to the NRA approval the tariffs for the services provided under the universal service area and to publish them at least 30 days before their application. (art. 16-2)

The NRA can impose the means to establish or to modify the tariffs for the services provided under the universal service area. (art. 16-4).

The NRA can also provide for a uniform level of the tariffs throughout the national territory. (art. 18).

**SPAIN****I. - Implementation of Directive principles in the national law**

The Spanish postal law, passed in 2010, regulating the Universal Postal Service, the users' rights and the postal market, implements the principles set in article 12 of the Directive regarding USO products tariffs.

- Affordability is mentioned in a general way in articles 1.2 and 8.
- Article 34 states that the prices set for USO products must be affordable, transparent, non - discriminatory and fixed taking into account the real cost of the service.
- Transparent and non-discriminatory prices (and linked conditions) are also required when granting special discounts to bulk mailers under article 35.
- Article 45, regarding access to the public postal network, also mentions transparency and non-discrimination.

**II. - Position of NRA on tariff principles**

In Spain the supervision of the regulation in the postal sector is now part of the CNMC (National Markets and Competition Commission, a new authority in charge of both, competition and regulatory matters) that became fully operational in October 2013.

Although there is no formal public document interpreting or defining tariff principles, the tariff control system relies on the verification of the compliance of USO prices with such principles (article 34 already mentioned). According to this, the CNMC has recently published its Resolution on the compliance of 2014 USO tariffs with the above mentioned principles concluding that some tariffs prices do not comply with all principles.

[http://www.cnmc.es/Portals/0/Ficheros/Transporte\\_Postales/resoluciones\\_postal/2014/1404\\_Abril/20140402\\_Res\\_precios\\_servicio\\_publico\\_POSTAL.pdf](http://www.cnmc.es/Portals/0/Ficheros/Transporte_Postales/resoluciones_postal/2014/1404_Abril/20140402_Res_precios_servicio_publico_POSTAL.pdf)

[http://www.cnmc.es/Portals/0/Ficheros/Transporte\\_Postales/resoluciones\\_postal/2014/1404\\_Abril/20140402\\_Res\\_precios\\_servicio\\_publico\\_POSTAL\\_anexo.pdf](http://www.cnmc.es/Portals/0/Ficheros/Transporte_Postales/resoluciones_postal/2014/1404_Abril/20140402_Res_precios_servicio_publico_POSTAL_anexo.pdf)

**III. - Tariff Control schemes**

As already mentioned, the control scheme in Spain is based on verifying the compliance of USO tariffs with the principles set in article 12 of the Directive. The USP has to communicate, yearly, the new USO prices to be verified by the CNMC.

- The CNMC has the power to declare whether the tariffs comply or not with such principles but not to set the tariffs or to forbid tariffs which do not comply with them.
- The lack of compliance with the principles will be taken into consideration in order to calculate the compensation to be received by the USP for the unfair financial burden it assumes.

However, it is relevant to mention that section 4 of article 34 of the Spanish postal law foresees the power of the Government to set maximum and minimum prices.

**Scope**

The verification of compliance with the principles was performed as follows.

Affordability:

The indicators used were the international price comparison and the number of minutes that an industrial worker should be employed before taxes to pay for a particular postal item (as proposed in the study "Pricing behavior of Postal operators").

Transparency:

The publication of the USO price list in the USP's and CNMC's web would be enough to comply with this principle. However we have stressed the need to improve the transparency regarding the discounts granted by the USP to bulk mailers and, specially, the criteria to set such discounts.

Non-discrimination:

This principle would be matched with the existence of uniform prices throughout the country but, as in the previous point, we have considered that it could be addressed more fully if applied also to prices after discounts. The more transparency we achieve on discounts the better we can assess the lack of discrimination.

Cost orientation: The CNMC has established some criteria regarding this principle.

- Not only nominal prices but real or effective prices, including prices after discounts, have to comply with this principle.

As we checked the analytical accounting of the USP we realized that extremely high rebates to large mailers (already sanctioned recently in a margin squeeze anti-trust procedure) are setting prices under costs and might be one of the most important reasons of the USP's global deficit and of the competition restrictions in the postal sector. However, neither those prices nor the rebates are public in Spain and the USP argued that only list prices for single piece should be analyzed under the cost orientation principle.

- The price of each product, individually, has to be analyzed.

The verification must take into account each product individually, as this method has been considered the most consistent with the existing model to compensate the unfair financial burden that does not allow to compensate for the losses with profits between baskets or products, that means deficit products increase the amount of the net cost of the universal postal service, while surplus products generate a margin that fully corresponds to the USP.

- Special attention has to be paid to some asymmetric margins and price increases.

As we checked the price lists for single piece and the USP's analytical accounting we also realized that there were margin variations between products from 25% to 82%. We also noticed that margins and price increases were much lower for deficitary products whereas the highest margins and price increases were charged on superavitary products. The USP argued that there is no obligation under article 12 of the Directive to set equal margins on all products to comply with the cost orientation principle.

CNMC's Resolution

The final Resolution approved by the CNMC's Council states that:

- All prices for USO products, what includes prices after rebates for large mailers, have to comply with the principle of cost orientation.
- Prices under costs, even because of the rebates, are not cost orientated.
- Specific margins could be excessive and thus not cost orientated.
- Margin variations between 25% and 82% reflect, at least, a lack of uniformity when interpreting what the cost orientation principle consists on.

As a result of the verification made, some issues have arisen as key aspects to be addressed in the near future:

- The need of more transparency; that means that not only price lists for single piece but also rebates for large mailers and, specially, the criteria to set them should be public.
- The need of changes in the regulatory accounting to be presented by the USP, especially with regards to the bulk mail.
- The need of a reflexion on the scope of the USO.

## SWEDEN

### I. – Implementation of Directive principles in the national law

The Swedish law implements the principles of Directive Article 12 (affordability, cost-orientation, transparency, non-discrimination) regarding USO products tariffs, but it does not provide additional clarifications:

- cost-orientation, non-discrimination and transparency, and prices that support an efficient provision of universal services, are mentioned in Chapter 3 Paragraph 2 of the Swedish Postal Act (2010:1045),
- that prices in the universal service should be affordable follows from the definition of universal postal service in Chapter 1 Paragraph 2 of the Swedish Postal Act.

Paragraph 9 of the Swedish Postal Ordinance (2010:1049) provides a tariff control scheme (cap) for overnight (first class) single piece letters weighing up to 500 grams.

Chapter 4 Paragraph 14 of the Swedish Postal Act allows the NRA to on request have access to any data needed for its supervision. Thus, PTS has access to the historical costs, revenues and volumes at a consolidated level down to individual products.

### II. – Position of NRA on tariff principles

The transparency and non-discrimination criteria has been further clarified in decisions on the USP's license conditions, the most recent formulation given in the license conditions decided on 2012-09-11 (PTS ref.nr. 12-8354):

*Condition 1.4: For the services which are included in universal services, Posten AB shall keep the general terms and conditions available for the public on Posten AB's website. Prices and discounts, if any, shall be offered to all those who fulfill the conditions and the said conditions shall be publicly available on Posten AB's website. Posten AB shall no later than 1 January 2013 disclose all volume discounts for each service, stating the reduced rate and the applied intervals. Exceptions are allowed if the price, after deduction of the rebate, instead is published on Posten AB's website.*

*Condition 1.5: Posten AB shall transparently publish the principles forming the basis for the calculation of special prices. 'Special prices' means prices that deviate from the public price list, as well as discounts offered due to preparatory services. 'Preparatory services discounts' means discounts that are offered to customers due to a cost reducing action taken by the customer and which is not publicly disclosed at Posten AB's website in its entirety. Posten AB shall, in the same manner, also show the principles for any other special conditions that may deviate from the general terms and conditions published on Posten AB' website. Moreover, Posten AB shall transparently publish any additional tariffs. ... To the extent those license conditions admit Posten AB not to report a reduced rate for a discount (or the end price after deduction) on Posten AB's website, and Posten AB is not voluntarily reporting the reduced rate (or the end price after deduction), then Posten AB shall in any way present the maximum reduced rate that can be obtained and also the conditions applied to receive the maximum discount. ... Information which shall be provided according to this Section 1.5 shall be published on Posten AB's website.<sup>23</sup>*

Besides this, no additional formal text has been published on tariffs principles or regarding their definition. PTS however has been using the cost orientation principle in one decision regarding the allocation of common cost between first and second class products (PTS ref.nr. 10-9595). The decision was later upheld by the second level administrative court, as it concluded that the Directive was clear enough in its definitions to make such rulings without support of more detailed national regulations. Thus, PTS is currently investigating if a more detailed regulation defining relevant concepts in more detail should be implemented.

<sup>23</sup> Translation of license conditions taken from Levin, Gustafsson, Hildingsson & Selander, *Transparency and non-discrimination in postal pricing*, in M.A. Crew and T.J. Brennan (eds), "The Role of the Postal Service in a Digital Age", Cheltenham, UK and Northampton, USA: Edward Elgar, 2014, p. 325.

### III. – Tariff control schemes

The Swedish price cap mechanism has been in place since the late 1990's, to ensure the affordability to private consumers and SME' s of the most common letter product provided by the USP (first class single piece letters up to 500 grams). It also should give incentives for efficiency gains and counteract the possibility for the USP to cross-subsidise its competitive products with revenues from the de-facto monopoly product first class single letter.

The mechanism is defined by the Swedish government through the Postal Ordinance.

#### **Price cap**

##### **Scope**

The price cap applies only to first class single piece letters up to 500 grams.

##### **Basket composition**

There is no basket, since the cap is on only one product.

##### **Price cap formula**

The price cap setting is very simplistic and can be written as:

$$P_t \leq P_{t-1} \left( \frac{CPI_{t-1, July}}{CPI_{t-2, July}} \right)$$

where

$P_t$  = postage price in year  $t$

$CPI_{t,m}$  = consumer price index in month  $m$  in year  $t$ .

##### **Adjustment procedure**

The price cap relies solely on the development of the consumer price index, and is currently not adjusted. However, if a possible price increase is unused, the possibility can be saved up to three years. The USP has also the possibility to round off its price to the nearest 50 öre (0,50 SEK).

## *UNITED KINGDOM*

### **The Legal and Regulatory Framework for Post in the UK**

In the UK, Ofcom is the economic regulator for postal services. It gained the powers and duties to regulate postal services in October 2011 when the Postal Services Act 2011 came into force. The Postal Services Act also replaced the previous licensing regime with a general authorisation regime which allows operators to provide postal services without prior authorisation from the regulator (subject to any relevant regulatory conditions that have been imposed by Ofcom).

Ofcom's principal duty under the Postal Services Act is to carry out its functions in a way that it considers will secure the provision of a universal postal service. In performing this duty, Ofcom must have regard to the need for the universal service to be financially sustainable (including the requirement that any universal service provider make a reasonable commercial rate of return on related expenditure) and the need for the provision of a universal service to become efficient within a reasonable period of time and remain efficient.

Further, Ofcom's duties under the Communications Act 2003 also apply to the regulation of the postal sector. Its principal duty under the Communications Act is to further the interests of citizens and consumers in relevant markets, where appropriate by promoting competition. The Act sets out that if there is a conflict between these duties, Ofcom's primary duty is to secure the provision of a universal postal service takes precedence.

Ofcom has powers to impose a defined set of regulatory conditions on postal operators (under the Postal Services Act 2011) as well as ex post competition law powers, under the Competition Act 1998 and the Treaty on the Functioning of the European Union.

Ofcom has designated Royal Mail to be the UK's universal postal service provider and has made the Universal Postal Services Order which sets out the characteristics of the universal postal service in the UK. Ofcom has also imposed regulatory conditions on Royal Mail which require it, amongst other things, to provide the universal postal service.

### **The Price Control Regime**

In 2012, when the current regulatory framework was put in place Ofcom's priority was to secure the financial sustainability of the universal service.

In its review of the regulatory framework, Ofcom considered that a price control based approach was not likely to be effective given Royal Mail's financial position and the uncertain market context at the time. In light of its primary duty, Ofcom did not consider that a traditional price control would be likely to give Royal Mail sufficient pricing flexibility to adapt to changes in the market and/or its operating environment, or to provide sufficient incentives for it to become efficient.

However, Ofcom recognised that removing price controls alone would come with some serious risks, particularly in relation to ensuring that Royal Mail looked to reduce costs rather than improving profitability through price rises alone which could run the risk of making some universal services unaffordable to certain consumers. It therefore decided to put the following safeguards in place:

- To ensure a basic universal service is available to all; a cap on the price of second class stamps for letters and large letters and packets up to 2kg. This is structured as an absolute cap on the price for second class stamped letters and a basket increase for second class stamp large letters and packets.
- A comprehensive and effective monitoring regime to allow Ofcom to recognise any issues with the regulatory framework at an early stage. Among other things this monitoring regime includes ensuring that quality of service standards are met; there is clear and sustained improvement in efficiency (as measured by cost reduction) and that universal services remain affordable, particularly for vulnerable consumers.



- To ensure that the benefits of competition are maintained in a way that supports effective competition. This included mandating access at the inward mail centre for letters and large letters; an ex ante price control to prevent margin squeeze between Royal Mail's retail and access products and a requirement that prices for mandated access products are set on "fair and reasonable" terms.

Further, Royal Mail is required to provide Ofcom with detailed financial information.

For ease of comparison with the situation in other countries, the main characteristics of the price control regime are listed below:

**Period of validity**

This framework was put in place for seven years from March 2012 (until 2019).

**Scope of the price-cap**

A cap is imposed only to second class stamps for letters and large letters and packets up to 2kg. The cap on large letters and packets apply from April 2013 (base year is 2012-13).

**Basket composition**

The cap is structured as an absolute cap on the price for second class stamped letters and a basket increase for second class stamp large letters and packets.

**Service level**

This monitoring regime includes ensuring that quality of service standards are met.

**Price cap formula**

The mechanism for instilling efficiency incentives under an RPI – X formula does not work effectively in circumstances where Royal Mail is struggling financially and Ofcom has a primary duty in relation to the continued provision of the universal service.

The safeguard cap for standard Letters is set at 55p for 2012-13. It is then linked to inflation for the duration of the regulatory period

The safeguard cap for the basket of large letters and packets up to 2kg is set at 53% above the maximum price during the reference year (2012-13). It is then linked to inflation for the duration of the regulatory period.

See <http://stakeholders.ofcom.org.uk/binaries/post120713/dusp3.pdf> for the details of the price cap formula.

**Inflation index**

In light of responses to the public consultation and the fact that the cap is intended to protect vulnerable consumers, Ofcom have also decided that the consumer prices index (CPI), and not the retail prices index (RPI) should be used for future increases in the safeguard cap. This is because the CPI is used as the basis for indexing benefits payments.