Internal market of postal services

2006/0196(COD) - 08/11/2007 - Council position

The Council adopted its common position with a view to the adoption of a Directive of the European Parliament and of the Council amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services.

At 1st reading, the European Parliament adopted 64 amendments to the Commission proposal. The common position reflects changes to the Commission proposal by incorporating a considerable number of amendments (20 in total, 9 partially and 16 in principle).

The common position is largely and extensively based on the European Parliament's opinion at 1st reading and reflects the overall balance achieved at the informal negotiations between the European Parliament, the Council and the Commission with a view to concluding an early agreement at the stage of second reading in the European Parliament. The fundamental modification to the Commission's original proposal regards the final date for Full Market Opening. It sets the end of 2010 as the final date for the amending Directive's implementation that is the full accomplishment of the postal services internal market. An implementation delay until 31 December 2012 is provided under strict conditions for certain Member States (Czech Republic, Greece, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, Poland, Romania, Slovakia) which seeks to meet particular difficulties with regard to the postal sector reform process.

These elements led to a number of other substantial changes to the original proposal which can be summarised as follows:

Rationale and Scope: the common position confirms the ultimate goals and the rationale of the Community postal policy and highlights the positive role of postal services as services of general economic interest as well as their contribution to the objectives of social, economic and territorial cohesion in the EU. It mainly clarifies the Directive's scope with regard to the universal service provision, by considering its financing under conditions that guarantee its permanent provision as a key objective of postal reform. This acknowledgment is enshrined in the text and can be used as a guiding principle for the implementation of the amending Directive.

Definitions: the newly inserted term "postal service provider" and its distinction with the "universal service provider", as well as the re-definition of "user", are pivotal and seek to clarify the roles and responsibilities of each of these in a full market opening context. In addition, the common position identifies the key elements qualifying the "services falling within the scope of the universal service" in accordance with the European Court of Justice relevant case law and includes in the list of "essential requirements" (which can induce a Member State to impose conditions on the supply of postal services), respect for the terms and conditions of employment as well as social security provisions, in accordance with Community and national law.

Universal service provision: the common position is based on the principle that universal service provision is a key element for the accomplishment of the postal services' internal market and plays a paramount role in terms of social and territorial cohesion. Against this background, the text aims at strengthening the existing Directive's provisions and safeguarding its swift implementation in the new context of full market opening. It permits Member States a certain flexibility in the designation and operation of the (a) universal service provider(s), whilst on the other hand, ensuring a periodic review of their conformity with the statutory principles set out in the Directive as well as a sufficient period for return on investments.

Furthermore, it makes clear that (a) universal service provider(s) shall provide sufficiently detailed and up-to-date information regarding the particular features of the universal service offered, including the general conditions of access to these services, as well as to prices and quality standard levels. Finally, the common position excludes from the amending Directive's scope the national provisions governing the expropriation conditions for organising the universal service provision and acknowledges that the continuing supply of certain free services for blind and partially-sighted persons introduced by the Member States should not be curtailed.

Financing of universal services: the common position, based on the principles enshrined in the Commission's proposal, devotes particular attention to the means of guaranteeing the universal service financing. The Council agrees in general on the means proposed by the Commission, as they are fully in line with the subsidiarity principle and devote attention to national market conditions. Member States may choose an appropriate enabling measure for that purpose, depending on the specific national market characteristics. In order to meet concerns expressed by some Member States with regard to the net cost calculation and to ensure guidance on the basis of an indicative common methodology, the common position introduced a new Annex to the Directive. This is largely inspired by Annex IV to the Universal Service Directive.

Conditions governing the provision of postal services and the access to the networks: the common position sets out further detailed conditions governing the provision of postal services and the access to the networks with the dual aim of providing legal certainty for (a) universal service provider(s) and other postal service provider(s), as well as avoiding these being used as concealed barriers to new market entrants. The overall objective is the proper functioning of postal markets and the complementary functioning of different postal networks. The Directive's provisions are without prejudice to the right of Member States to adopt measures to ensure access to the postal network under the conditions of transparency, proportionality and non-discrimination. The common position includes, where appropriate, among the conditions for granting authorisations, the possible financial contribution to the national regulatory authority operational costs and the respect of working conditions established by national legislation. Clarification is also provided as regards the exclusion of a "double" imposition (for the same elements of universal service or parts of the national territory) of universal service obligations and, at the same time, of financial contributions to a sharing mechanism (compensation fund).

Employment and social security provisions: the common position includes in the list of "essential requirements", respect for the terms and conditions of employment as well as social security provisions, in accordance with Community and national law. Furthermore, social considerations are addressed in the provisions regarding the conditions for granting authorisations, whereby it may, where appropriate, be made subject to or impose the respect of working conditions laid down by national legislation.

Tariff principles and transparency of accounts (accounting separation): the common position accepts the basic innovations contained in the Commission proposal with regard to the different tariff principles for universal service provision (cost-orientation principle, notwithstanding a certain degree of tariff flexibility under specific conditions). Furthermore, it allows Member States to maintain or introduce the provision of a free postal service for the use of blind and partially-sighted persons. The / a universal service provider(s) is/are obliged to keep separate accounts in order to clearly distinguish between universal services and other services which are not part of it. Specific provisions allow Member States to apply the transparency rules to the universal service provider designated before the FMO final date, as long as no other universal service provider(s) have been designated.

National regulatory authorities and information provision: the common position leaves no doubt about the form of co-operation between the national regulatory authorities, thereby excluding the establishment of new bodies or structures at European level. National regulatory authorities are focused on postal

markets monitoring, including by appropriate information provision by all market players. The general principles governing the information provision and the respect for confidentiality rules are adequately addressed in the text.

The Commission's assistance in the Directive's implementation: the Commission assumes enhanced responsibilities in the new FMO environment, as it is entrusted with the general task of providing assistance during the new Directive's implementation, including on the calculation of any universal service net cost and on evaluating, on a regular basis, all relevant developments, particularly concerning economic, social, employment patterns and technological aspects, as well as in quality of service.

Final date(s) for Full Market Opening: with regard to the final date(s) for the accomplishment of the Community postal services internal market, the Council took into serious consideration the approach enshrined in the relevant European Parliament amendments. The European Parliament considered that the Commission's proposed final date of 1 January 2009 was not proven appropriate and suggested therefore a Full Market Opening of the postal sector from 31 December 2010. In addition, it proposed that Member States that acceded to the EU after the entry into force of Directive 2002/39/EC or Member States with a small population and limited geographical size, or Member States with a particularly difficult topography, especially those with a considerable number of islands, may continue, until 31 December 2012, to reserve services to (a) universal service provider(s) within certain limits and conditions. The common position lists a number of Member States which have explicitly requested a maximal implementation delay till 31 December 2012 at the latest. Such a notification shall be addressed to the Commission, without impeding them from terminating it at an earlier stage. For those Member States wishing to apply the above implementation delay, a reciprocity clause towards Member States that opened up their postal markets completely shall apply for a limited time-period.