

EUROPEAN PARLIAMENT

2004



2009

Session document

FINAL
A6-0390/2005

5.12.2005

REPORT

on the application of the Postal Directive (Directive 97/67/EC, as amended by Directive 2002/39/EC)
(2005/2086(INI))

Committee on Transport and Tourism

Rapporteur: Markus Ferber

CONTENTS

	Page
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION	3
EXPLANATORY STATEMENT.....	7
PROCEDURE	11

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

**on the application of the Postal Directive (Directive 97/67/EC, as amended by Directive 2002/39/EC)
(2005/2086(INI))**

The European Parliament,

- having regard to the Commission report on the application of the Postal Directive (Directive 97/67/EC as amended by Directive 2002/39/EC) (COM(2005)0102) and to the accompanying Working Paper (SEC(2005)0388),
 - having regard to the first Commission report on the application of the Postal Directive (COM(2002)0632),
 - having regard to Rule 45 of its Rules of Procedure,
 - having regard to the report of the Committee on Transport and Tourism (A6-0390/2005),
- A. whereas postal services are of major economic importance and their income in 2002 amounted to some EUR 88 billion, or around 0.9% of the GDP of the EU; whereas it is estimated that more than 5 million jobs are directly dependent on or linked to the postal sector,
- B. whereas competitive and efficient postal services are of great significance for economic and social activity in the EU as part of the distribution and communications market, both influencing and being closely interlinked with many economic sectors; whereas postal services therefore also have an important role to play in the context of the Lisbon Strategy,
- C. whereas reforms and economic and technical developments in the postal sector in the EU have led to modernised operations and a greater degree of automation, and whereas reform measures so far have brought about significant positive developments in the postal sector along with increased quality, more efficiency and better customer-orientation,
- D. having regard to the irreplaceable territorial and social dimension of postal networks, which allow universal access to essential local services,
- E. whereas the Commission report seeks to assess to what extent the objectives of Directive 2002/39/EC have been achieved, taking account in particular of the economic, social and technological aspects, and to make observations about employment issues and quality of service,
- F. whereas the European Parliament wishes, in this report, to draw attention to questions and aspects which the Commission should take into account in its forthcoming work,
1. Notes that the transposition of the Postal Directive into national law has made good progress overall; welcomes the fact that the harmonisation framework put in place has enabled Member States to pursue new approaches and go down different routes which may serve as models for other Member States in subsequent measures; notes, however,

that the effects of the reforms on quality, efficiency and customer-orientation in the postal sector have yet to be analysed in detail and that the opening up of postal services to competition has not always resulted in maintained employment levels in the postal sector;

2. Is pleased to note that, judging by the data available, the development of the market so far has led to positive developments; points out in this connection that the development of competition cannot be gauged solely by the degree of market openness or by market shares;
3. Notes, nevertheless, that the implementation of Directive 2002/39/EC is seriously late in a number of Member States, particularly as regards the opening up of the market, with the risk of an imbalance in the European postal market and the potential disadvantaging of market entrants; calls on the Commission, in its report, to state what action it proposes to take in consequence;
4. Recalls that postal markets are undergoing a fundamental transformation resulting not only from increased competition but also from developments in the neighbouring markets of communications, advertising and the transport/logistics sector, as well as from altered communications behaviour; submits that future postal policy should therefore take sufficient account of these issues;
5. Calls on the Commission, in view of the sometimes perceptibly divergent developments of universal service obligations in the Member States, to concentrate in particular when drawing up its prospective study on the quality of provision of the universal service and on its future funding and to propose, in the context of this forthcoming prospective study, a definition, scope and appropriate financing of the universal service;
6. Calls on the Commission to determine whether it is possible to retain the 2009 deadline for completion of the internal market in postal services or whether other stages should be set out in the light of the conclusions of the study;
7. Is of the opinion, considering the fundamental transformation postal markets are undergoing, that the definition of 'universal service' must be reassessed in the light of altered communications behaviour; notes, however, that universal services are qualitatively high-value labour-intensive services focussing on the protection of consumers' interests, and calls on the Commission to take account of these facts in the research framework for its forthcoming prospective study; calls on the Commission in this regard to explore how best to guarantee the involvement by and input from postal customers and to consult social partners affected (chambers of commerce and industry, trade unions, etc.), businesses active in the market and local interest organisations;
8. Acknowledges the achievements by CEN (Comité Européen de Normalisation) in the field of standardisation in the postal sector and calls on the Commission to continue to take appropriate account of standardisation in the interest of consumer protection and in the light of the completion of the internal market;
9. Calls on the Commission to pay particular attention in its forthcoming studies to the impact on geographic coverage and development of networks resulting from future stages in the opening-up of postal services to competition, particularly as regards conditions of access for the EU's most disadvantaged or isolated populations;

10. Notes that the Member States are called on to exercise greater price control, conduct separate cost accounting and check for cross-subsidies; points out, however, that in a market geared to competition, such regulatory interventions require sufficient justification where they go beyond the bounds of general competition law;
11. Believes that the adopting and implementation of service standards developed by CEN is essential to guaranteeing transparency, reliability and quality in the postal market, therefore calls on the Commission and Member States to give priority to progress in this area;
12. Welcomes the fact that the Commission wishes to continue monitoring the regulation of downstream access; points out, however, that regulation in this area in particular would represent a significant intervention in the market and calls, therefore, for a detailed prior investigation of whether and to what extent such intervention can be economically and legally justified, taking account of the fact that a number of business models already exist in various postal markets, in which competitors have successfully entered the market without the need for regulated network access; calls on the Commission to evaluate the impact of these models and to assess the appropriateness of a European framework for network access conditions in order to ensure equality of access;
13. Notes that the funding models for universal service used so far in the Member States have not been very successful and that the tried and tested funding instrument for universal services in the past has been the reserved sector; calls therefore on the Commission to look in detail, in its forthcoming prospective study, at whether the development of the universal service, the retention of which remains relevant in economic and social terms, and a greater flexibility for the regulatory framework can have a positive influence on resolving the problem of funding universal services; calls on the Commission to examine the possibility of differentiating the reserved sector depending on the costs associated with funding the universal service, particularly in view of geographic and demographic constraints;
14. Welcomes the fact that, after some initial difficulties, some Member States have made perceptible progress in creating independent regulatory authorities; stresses that, with greater openness to the market, the accent should be placed on competition law rather than on increased regulation; calls on the Commission, as announced in its report, to promote dialogue with and between the regulatory authorities and the Member States and encourage benchmarking in this respect, so that the task of the authorities can be confined to checking the transposition of the regulations;
15. Urges, given the varying experiences with the existing licensing systems in the Member States, and in the light of the subsidiarity principle, that authorisation procedures should be one of the issues addressed in the study, with particular reference to clarifying the operational scope, the approval process and the obligatory conditions governing authorisation permitted by the Postal Directive and urges that such requirements should not mean the erection of new barriers to market access nor lead to price distortions or cream-skimming practices;
16. Points out that job rationalisation cannot be entirely laid at the door of postal reforms, and recalls that new business models, new products and business methods also have effects on the number of jobs in the traditional postal sector;

17. Calls on the Commission in its study to investigate the question of how the pension liabilities of the public postal operators are being dealt with in order to avoid a disturbance of the market in a liberalised environment;
18. Is concerned at the differences in VAT treatment on the postal market, and calls on the Commission, referring to its resolution of 11 March 2004¹ on the proposal for a Council directive amending Directive 77/388/EEC as regards value added tax on services provided in the postal sector, to submit proposals on how to achieve the necessary legal certainty and non-discrimination between operators;
19. Calls on the Commission to ensure that penalties under administrative law for breaches of the national postal laws are not disproportionately high and do not jeopardise the operation of the postal market; calls therefore on the Commission, in drafting its prospective study, to collect data on current or planned national penalties in all Member States;
20. Instructs its President to forward this resolution to the Council and Commission, and the Member States.

¹ OJ C 102 E, 28.4.2004, p. 814.

EXPLANATORY STATEMENT

I. Background

The EU's legal framework for postal services is Directive 97/67/EC, the 'Postal Directive', which arose in response to the widely differing conditions governing the provision of postal services in Europe. The framework conditions set out in the Directive are intended to contribute to the completion of the Single Market in the postal sector by means of gradual and controlled liberalisation of the market, and thereby to ensure that reliable and high-quality postal services are made available everywhere to all citizens of the European Union at affordable prices.

The Postal Directive was amended in 2002 by Directive 2002/39/EC. The main features of this amendment were the following:

- From 1 January 2003, services may be reserved to universal service providers for domestic correspondence and incoming cross-border correspondence only up to a weight of 100g (or three times the public tariff for an item of correspondence in the first weight step of the fastest category).
- From 1 January 2006 this weight limit will fall to 50g (or two and a half times this tariff).
- The Commission will finalise a prospective study which will assess, for each Member State, the impact on universal service of the full accomplishment of the postal internal market in 2009.
- Based on the study's conclusions, the Commission is to submit by 31 December 2006 a report to the European Parliament and the Council accompanied by a proposal either confirming, if appropriate, the date of 2009 for the full accomplishment of the postal internal market or determining any other step.

Article 23 also requires the Commission to submit a report every two years to the European Parliament and the Council, *'including the appropriate information about developments in the sector, particularly concerning economic, social, employment and technological aspects, as well as about quality of service.'*

The Commission has now – on 23 March 2005 – submitted its second report (COM(2005)0102) on the application of the Postal Directive and an accompanying working document (SEC(2005)0388).

II. The Commission report

The Commission stresses once again the economic importance of postal services, which employed some 1.85 million people in 2002. It also emphasises the significance of postal services for communications and trade, and in particular the dependence on the postal infrastructure of economic sectors such as e-commerce, publishing, mail-order, insurance, banking and advertising.

1. Effects of Directive 2002/39/EC

The Commission states that the reform of the postal market in the EU is making good progress. Significant improvements have been made in

- quality of service,
- business efficiency,
- separation of regulators from operators.

The transposition of the Directive into national law is now largely complete. There had been no problems with the reduction of the reserved sector by 1 January 2003. There have, however, been a few delays in the transposition of Directive 2002/39 in the Member States which joined on 1 May 2004.

In spite of the good progress, particular attention needs to be paid to a number of points, including:

- separation of accounts for individual services,
- cost allocation,
- monitoring prices of universal services.

The Commission points out in particular that, while the national regulatory authorities have become more independent and regulation has clearly become more efficient, there is still a risk of regulatory asymmetry between the Member States, which might in turn foster market asymmetry.

2. Current market developments in the postal sector

The Commission states that the postal market has moved away from the more traditional two-way communications model, and is now largely a one-way (business to consumer) market. This trend, which contradicts pessimistic predictions that postal services are a constantly shrinking market, may lead to new dynamic business models such as home shopping, e-commerce and hybrid mail.

However, competition has yet to develop in the addressed mail market segment outside niche services. There are still many potential obstacles to market access, in particular different tax liabilities faced by incumbents and market entrants as regards VAT.

Finally the Commission states that the market situation varies considerably from one Member State to another. In some, the Universal Service Providers (USPs) continue to enjoy high profit margins, while in others USPs face more difficult conditions. This results from the varying forms of market intervention, differing ownership structures and price levels.

III. Your rapporteur's comments and recommendations for action

The Commission report is timely and your rapporteur welcomes the fact that Parliament has taken the opportunity in this report to express its opinion on the current situation and on possible future measures. The course taken in the next few years will be of decisive importance for postal services, and the forthcoming prospective study and subsequent Commission report thus deserve particular attention. This report cannot seek to anticipate these two documents, due to appear in 2006. The European Parliament will, of course, have to deal comprehensively with the study and the Commission report at the appropriate time.

Your rapporteur thus chiefly sees the task of this report as being on the one hand to assess developments so far on the postal market, and on the other to draw attention to issues which need to be looked at as priorities in the prospective study and in the subsequent report.

First of all it should be noted that experiences with the transposition and application of the amended Postal Directive are positive and encouraging. EU legislation has given major incentives to the postal market. The objective of guaranteeing universal services while gradually opening up the market has been achieved.

The transposition of Directive 2002/39 has so far, in your rapporteur's view, been satisfactory. This is also, happily, the case for the new Member States which joined in 2004. Remaining shortcomings can be ironed out rapidly by the Commission together with the Member States concerned. The Commission itself in its report cites the examples of the licensing and complaints procedures, price controls and the separation of accounts for individual services.

In addition to the formal transposition of the Directive, its application also needs to be assessed, i.e. the way in which the Member States implement the framework set by the Directive and the extent to which the new regulatory system is beginning to take effect. One central issue is the universal service obligation, which is regulated at several points of the Directive (Chapter 2, Chapter 6). As highlighted in the working paper attached to the Commission report (SEC(2005)388), while the requirements of the Directive have been complied with and a high overall quality level maintained, there are significant divergences between the Member States. Several Member States have altered or are considering altering the extent of the universal service obligation. Your rapporteur considers that it is not necessarily damaging if the Member States go down different routes in this respect. However, the Commission figures point to these divergences being significant, thus potentially jeopardising a central objective of the Postal Directive, namely the guaranteeing throughout the EU of a universal service which comprises a minimum level of services of a specified quality at an affordable price. Your rapporteur therefore considers it important to investigate in the forthcoming prospective study whether the definitions in the Postal Directive are clear enough and set an appropriate framework for the Member States.

The same applies to the authorisation procedure for non-reserved services under Article 9 of the Postal Directive: the Commission notes a disturbing level of confusion and misunderstanding as to the circumstances in which authorisation procedures may be used. Here, too, your rapporteur recommends that the clarity of the relevant provisions of the Postal Directive be made a priority in the study.

The Commission's comments on the issue of downstream access are expressed in very

general terms. Naturally one can only agree that developments in this area should be observed and discussed with the Member States. In the absence of specific recommendations from the Commission, your rapporteur merely wishes to point here out that any attempts to regulate downstream access may affect or impede market activity. Any public intervention requires detailed justification.

It is good that the Commission has observed increasing independence on the part of the regulatory authorities. On the basis of the available data, and given the widely diverging structures and approaches in the Member States, it is hard to say to what extent the level of independence so far attained is sufficient. At any rate your rapporteur regards it as too early yet to lower our guard: we must await developments. The increasing opening of the market calls for independent and effective regulation. Your rapporteur stresses, however, that this should not mean an unbridled expansion of regulatory activity. On the contrary, the regulatory authorities must grow into their role as competition authorities. The benchmarking envisaged by the Commission is to be welcomed.

Your rapporteur has carefully noted the Commission's comments on tariff-setting or price regulation. While it states that all Member States have taken measures to guarantee the tariff-setting principles of Article 12 of the Postal Directive, the picture remains fragmentary. More space will have to be devoted to this issue in the forthcoming study, specially when one considers that there is considerable dissatisfaction with pricing in some Member States. In connection with tariff-setting, your rapporteur also stresses the as yet unresolved problem of VAT on postal services. It is very worrying that the relevant proposal remains blocked in the Council. This asymmetry risks doing lasting damage to competition: progress on the basis of Parliament's resolution of 11 March 2004 and the amended Commission proposal (COM(2004)0468) are urgently needed.

To sum up, your rapporteur regards the results of the Postal Directive to date as encouraging. While there is a need to take action, or at least to observe developments, in several of the areas referred to above, and although we still need, of course, to wait and see the 2006 study and report, your rapporteur considers on the basis of the results attained so far that it is appropriate to retain the 2009 deadline for completion of the Internal Market in postal services.

PROCEDURE

Title	Application of the Postal Directive (Directive 97/67/EC, as amended by Directive 2002/39/EC)	
Procedure number	2005/2086(INI)	
Basis in Rules of Procedure	Rule 45	
Committee responsible Date authorisation announced in plenary	TRAN 9.6.2005	
Committee(s) asked for opinion(s) Date announced in plenary		
Not delivering opinion(s) Date of decision		
Enhanced cooperation Date announced in plenary		
Motion(s) for resolution(s) included in report		
Rapporteur(s) Date appointed	Markus Ferber 2.5.2005	
Previous rapporteur(s)		
Discussed in committee	13.9.2005 11.10.2005	
Date adopted	22.11.2005	
Result of final vote	for: 37 against: 8 abstentions: 1	
Members present for the final vote	Inés Ayala Sender, Etelka Barsi-Pataky, Michael Cramer, Arūnas Degutis, Armando Dionisi, Saïd El Khadraoui, Robert Evans, Mathieu Grosch, Ewa Hedkvist Petersen, Jeanine Hennis-Plasschaert, Georg Jarzembowski, Dieter-Lebrecht Koch, Jaromír Kohlíček, Fernand Le Rachinel, Jörg Leichtfried, Bogusław Liberadzki, Eva Lichtenberger, Patrick Louis, Ashley Mote, Michael Henry Nattrass, Seán Ó Neachtain, Janusz Onyszkiewicz, Josu Ortuondo Larrea, Willi Piecyk, Luís Queiró, Reinhard Rack, Luca Romagnoli, Gilles Savary, Renate Sommer, Dirk Sterckx, Ulrich Stockmann, Gary Titley, Georgios Toussas, Marta Vincenzi, Roberts Zīle	
Substitutes present for the final vote	Zsolt László Becsey, Den Dover, Markus Ferber, Jas Gawronski, Zita Gurmai, Elisabeth Jeggle, Sepp Kussstatscher, Helmuth Markov, Rosa Miguélez Ramos, Francesco Musotto, Willem Schuth	
Substitutes under Rule 178(2) present for the final vote		
Date tabled – A6	5.12.2005	A6-0390/2005