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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the application of the Postal Services Directive (Directive 97/67/EC as amended by Directive 2002/39/EC and 2008/6/EC)

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I. INTRODUCTION

The EU postal services (letter mail and parcels) sector is a key enabler of the economy and of trade, underpinning other sectors and contributing to the growth and resilience of the EU economy. Companies of all sizes use postal services to build their business, supply goods and receive payments. All levels of government and public administrations rely on postal services for public communications. Vulnerable users and citizens in rural remote areas need postal services to remain connected to an increasingly digitalised economy. The postal services sector hence plays an essential role in ensuring the right to communication and in promoting territorial, social and economic cohesion. With many EU citizens confined in their homes during the COVID-19 pandemic, postal services have proven more important than ever. They provided affordable and quality postal services, delivered products for medical purposes and offered other relevant services such as financial services to citizens.

The regulatory framework governing postal services has been in place for more than 20 years. Directive 97/67/EC[1] (the "Postal Services Directive") came into force in 1997. Its objective was ensuring the harmonization of national universal service obligations while at the same time gradually introducing competition in the postal services sector, in particular in relation to letter mail services that were traditionally reserved for national postal incumbents. It was amended in 2002 to provide for further market opening, and again in 2008 to complete full market opening. With the exception of these two amendments and the Regulation on cross-border parcel delivery[2] adopted in 2018 to provide more transparency and regulatory oversight regarding parcel delivery services, the postal services framework at EU level has remained the same since 1997. During this period, however, postal services markets have undergone a major shift largely driven by technological innovation, digitization and e-commerce. Letter mail has increasingly been replaced by electronic communication, especially in the context of e-government. In addition, many traditional bulk senders (e.g. banks; utility companies) switched to electronic communication solutions after the financial crisis. At the same time, e-commerce has led to a significant increase in parcel delivery services. This transformation, which has become increasingly apparent during

[1] Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, as amended by Directive 2002/39/EC and 2008/6/EC, OJ L 15, 21.1.1998, pages 14 to 25.

[2] Regulation (EU) 2018/644 of the European Parliament and of the Council of 18 April 2018 on cross-border parcel delivery services, OJ L 112, 2.5.2018, pages 19 to 28.

the COVID-19 pandemic, has affected both demand and supply in all Member States, albeit to a different extent.

Prompted by the fundamental changes to the market context, the Commission carried out an ex-post evaluation to assess whether the Postal Services Directive has achieved its objectives, is still fit for purpose and matches the present and future needs of postal users and operators.

This Report, drafted pursuant to Article 23 of the Postal Services Directive, presents the main findings of the evaluation. It draws on information from the Commission Staff Working Document on the evaluation of the Postal Services Directive ("Commission Staff Working Document"),[3] which is to be read in conjunction with this Report, as well as from the Commission's open public consultation on the evaluation of the Directive.

The main takeaway of the Report is that maintaining some form of universal postal service for all EU citizens is justified, although with an appropriate level of flexibility for Member States to design postal policies at national level. At the same time, on the basis of the available evidence[4], the evaluation has identified issues that are not sufficiently reflected in the current Postal Services Directive or where the Directive has not delivered the expected results: (i) the benefits of universal postal services to society have been declining while universal service provision has become increasingly costly; (ii) the achievement of an internal market and stimulating effective competition in the letter mail segment has not taken place in the scope envisaged; and (iii) standards are insufficiently used; this reduces legal certainty and may lead to interoperability issues. In addition, while the focus of the regulatory intervention was traditionally on letter mail services, the digitalization of the society and growth of e-commerce have increasingly made parcel delivery services the point of attention of market operators and policy makers. Within this context, the large price differentials between tariffs for domestic and cross-border parcel deliveries deserve particular attention, as they may undermine the functioning of the internal market and up-take of cross-border e-commerce.

II. MARKET DEVELOPMENTS: A MAJOR TRANSFORMATION DRIVEN BY DIGITIZATION AND TECHNOLOGICAL INNOVATION

Digitalization and technological developments have transformed consumer and business needs, leading to the creation of new products, services and business models. The postal sector is no

[3] See the Commission Staff Working Document *Evaluation of Directive 97/67/EC on common rules for the development of the internal market of Community postal services and the improvement of quality of service amended by Directives 2002/39/EC and 2008/6/EC*.

[4] The Commission's consultations and other surveys were based on a limited number of responses. This is particularly the case for the public consultation. The level of quantification in the analysis is therefore constrained by the availability of relevant data at EU level. This affects especially the efficiency section and the establishment of a causality link between market developments and the Directive. It also affects the robustness of some of the conclusions drawn in the analysis especially when it comes to user needs and user satisfaction for which evidence is essentially based on national surveys but sometimes remain weak at EU level.

exception. Since the financial crisis in 2008, there has been a steep decline in letter mail as electronic substitution of traditional mail services is accelerating when governments, businesses and consumers increasingly adopt electronic processes across multiple domains. During the COVID-19 pandemic, five major EU universal service providers[5] have reported a drop in letter mail volumes, ranging from -10 percent in the Netherlands to -18 percent in France.

In contrast, growth in parcel delivery services has accelerated because of the significant increase in e-commerce. Before the COVID-19 pandemic, it was predicted that global online sales would roughly double between 2019 and 2024; current trends suggest the pandemic will push this timeline forward. In 2020, growth in the volume of parcels delivered by universal service providers ranged from 14 percent in Denmark and Sweden, to 42 percent in Italy and 49 percent in Belgium. Major global express operators registered growths in parcel volumes of up to 23 percent.

The two starkly contrasting trends of letter mail and parcel mail will likely continue and intensify over the coming years. If so, compared to 2016, the EU letter mail segment would end up losing more than 12 percent of revenue and 32 percent in volume by 2025. Revenue in the EU parcel segment would more than double.[6]

Because the postal business model relies on economies of scale, the decrease in letter mail volumes (-4.9 percent on average every year since 2008) drives up the delivery cost per unit. To offset increases in costs, many postal operators across the EU have been innovating their business models. Universal service providers with their established networks and high fixed cost structure have looked for ways to increase efficiency, improve customer-oriented solutions, diversify their services and find new markets to grow. The rise of e-commerce has given them the possibility to grow in parcel distribution and many universal service providers are now fiercely competing with other parcel delivery operators. With only very few exceptions[7], the market share of universal service providers in the parcel segment remains however relatively small in comparison to letter mail where they have always held (and continue to hold) very significant market shares or even remain the only relevant market operator.

Profitability of universal service providers has been maintained by cutting (mainly labour) costs, increasing productivity through technological innovation (for example automated sorting systems), relying on the offer of more basic products and services and/or increasing prices. Prices for domestic letter mail under universal service have increased constantly in nominal terms since 2008. The price of the most commonly used letter product, a domestic single piece letter of 20 gram, has increased by 7 percent annually in nominal terms. For the deliveries of parcel falling under universal service, there was a moderate price increase during the same period, in spite of the increase in volumes. Between 2014 and 2019, domestic prices for a standard 2-kilogram parcel

[5] Belgium, Denmark, Germany, Italy, the Netherlands and Sweden. PostNord operates in Denmark and Sweden.
[6] Commission Staff Working Document *Evaluation of Directive 97/67/EC*, p.15.
[7] Commission Staff Working Document *Evaluation of Directive 97/67/EC*, pp.15 and 134.

increased on average by 1 percent annually, and the nominal price of the cheapest and most expensive cross-border destination increased by respectively 2.6 percent and 0.3 percent.

The sector is among the domestic largest corporate employers and provided citizens across the EU with around 1.5 million jobs in 2018[8]. In both the public and private sector, there has been an increase in more flexible employment, including outsourcing, now used by the majority of universal service providers.

While it is difficult to identify the direct causal relationship between the market developments and the Postal Services Directive, it is important to understand the context within which the regulatory framework has been applicable and to view the following findings of the Commission's evaluation from the perspective of changed user needs.

III. THE PAST AND THE PRESENT: FINDINGS OF THE EVALUATION OF THE POSTAL SERVICES DIRECTIVE

The Postal Services Directive pursues three principal objectives: (1) guaranteeing the provision of affordable, high-quality universal postal service to all users; (2) establishing a well-functioning and competitive internal market for postal services; and (3) establishing harmonizing principles for the regulation of postal services. The findings of the evaluation can be grouped under the heading of each objective.

1. Findings related to the provision of affordable, high-quality universal postal service to all users

Even though the market context has changed, the Postal Services Directive has broadly been successful in ensuring that citizens and businesses across the EU could benefit from basic postal services. It is clear that the universal service obligation has protected a fundamental means of communication and economic participation throughout the EU. A sizeable part of the population across the EU, especially those living in remote or rural regions still rely on universal postal services to stay connected and are likely to continue doing so for the next five to ten years. Numerous businesses and government institutions still use letter mail for communication. Moreover, as internet penetration is not yet complete nor uniform across the EU, some citizens are still entirely dependent on letter mail. The physical distancing and confinement measures during the Covid-19 pandemic has illustrated that postal services have played a vital role ensuring that letters and parcels have arrived at homes and businesses across the country.

Maintaining a minimum level of affordable postal universal service for letter mail therefore remains justified. However, certain parts of the Postal Services Directive are less well adapted to address changes related to the market context and user needs which means that some costs related

[8] Eurostat (2021), annual detailed enterprise statistics for services, as quoted in *Commission Staff Working Document Evaluation of Directive 97/67/EC*, p.1.

to the universal service provision increase while the broader benefits to society decrease, and adjustments may be warranted. A majority of the respondents to the Commission's open public consultation also supports that conclusion.

Faced with increased costs of universal service provision, Member States have adapted the universal service

The needs of postal users and businesses have changed in response to market developments and the diminishing demand for letter mail has increased the costs of universal service provision. To address these phenomena and find less costly ways of operating, 11 Member States have relied on derogations allowed by the Postal Services Directive to reduce the features and scope of the universal service obligation. The minimum frequency of delivery of postal items has sometimes been reduced. Member States have also narrowed the relevant letter mail and parcel products and services subject to universal service. Importantly, many Member States have reduced night shifts and introduced ground transport instead of flights, which in turn have led to lower quality of service (longer transit time performance). The benefits of the quality of services requirements have therefore been declining too. These developments suggest that minimum requirements regarding the product/service scope, five-day delivery and quality of service in the Directive are not fully aligned with current market expectations and demand and pose challenges for the designated providers. The evaluation therefore underlines that there may be a case for reassessing what products, services and related features need to be included in the universal service obligation and how they should be regulated. This would include reassessing the level of flexibility needed by Member States to adapt their national regulation of universal services to domestic circumstances.

The state of parcel delivery services raises questions regarding the extent to which parcel delivery services should be part of the universal service obligation

The presence of multiple operators and delivery options available in the parcel delivery market raises questions about the necessity of having parcel delivery in the scope of the universal service and whether postal users could be equally served at the same (or lower) price without a universal service obligation. Indeed, for business-to-business and business-to-consumer parcels the existence of alternative offers available to users at equivalent or lower prices than those offered by universal service providers may speak in favour of concluding that such parcels should not be part of the universal service. In fact, many Member States already exclude such parcels from the scope of the universal service. This however does not exclude the need to monitor the dynamics of these market segments.

Conversely, the evaluation highlights that for consumer-sent parcels, in some Member States, or parts of Member States, individual consumers may not have much choice of parcel delivery operators providing services in their area or may just not be aware of the variety of operators available. They therefore rely on the universal service provider for parcel delivery. This may especially concern vulnerable users in rural and remote areas. Some consumers also rely on the

universal service provider out of convenience, as it is the most familiar and hence the easier, accessible option available for sending and returning items. For these consumers the evaluation indicates that it could be justified to have at least consumer sent parcels within the universal service obligation. The universal service has also kept prices affordable to a large extent (except in a limited number of cases for certain specific cross-border parcel deliveries for which tariffs were unreasonably high[9]), as parcels within the universal service obligation have benefitted from a VAT exemption and have been subject to price control under the Postal Services Directive's tariff rules.

The Postal Services Directive's tariff principles have helped maintain price for universal services affordable notwithstanding price increases. A lack of transparency regarding the use of these principles can create issues of unlevelled playing field in cross-border transactions among universal service providers

The tariff principles enshrined in the Postal Services Directive aim to ensure that price for universal services remains cost-oriented and affordable. Even though universal service prices for both letter mail and parcel delivery have increased, the tariff principles used for price regulation have likely contributed to avoiding even steeper price increases, in particular in the segments where volumes declined and unit costs increased, such as letter mail. On the other side, the information and evidence collected does not allow the Commission to conclude at this point why, despite increasing volumes, the tariffs for parcel delivery are increasing, even marginally.

Member States apply and interpret these principles very differently, or sometimes do not apply all of them. This may reduce clarity, legal certainty and transparency around the use of these principles. Moreover, most, if not all, national regulatory authorities also lack the necessary tools to verify if, and how, universal service providers apply those tariff principles to the price they charge one another for the delivery of cross-border postal items (so-called "terminal dues"). This may have negative effects on the postal market and the e-commerce sector. As the volumes of cross-border e-commerce deliveries continue to rise the need for information and transparency on the tariffs for parcel delivery may become increasingly relevant.

Complaint handling lags behind

The European Regulators Group for Postal Services has also devised a quality indicator based on the publication of the number of complaints received and the number of resolved/unresolved complaints for letters and parcels.

Complaint handling by universal service providers has improved in recent years. Most national regulatory authorities are now competent to handle complaints. The majority of Member States require providers to publish information regarding complaint procedures, compensation schemes and dispute resolution. The ERGP has also developed a quality indicator based on the publication of the number of complaints received and the number of resolved/unresolved complaints (for letters

[9] See Report from the Commission to the European Parliament, the Council, the Economic and Social Committee on the application and implementation of Regulation (EU) 2018/644 on cross-border parcel delivery services, COM(2021) 675.

and parcels). It shows that there are still a number of Member States that neither keep track of the number of complaints and how they have been handled, nor publish the outcome of the complaint procedure (i.e., if it was resolved to the satisfaction of the complainant or not). Furthermore, only around half of Member States apply the mandatory technical standard on complaints handling, which in addition is not mandatory for parcel delivery. This does not promote consumer confidence in postal services.

The options for financing the universal service are not always efficient

The provision of universal services entails a net cost. The net cost of the universal service obligation represents the difference between the difference between the cost for a designated universal service provider of operating with the universal service obligation and the cost for the same postal service provider operating without the universal service obligation. The net cost of universal service provision can be substantial. If the universal service provider had to bear such costs on its own, it would put that provider in a disadvantaged position vis-à-vis its competitors. Member States may therefore compensate the universal service provider for the net cost through State aid. Member States may also set up so-called compensation funds to finance the net costs. Such funds operate in a way that the universal service providers and other major postal services providers in a given Member State have to contribute to finance the net cost if it constitutes an unfair burden for the universal service provider.

There are weaknesses in relation to how compensation funds operate. Providers' contribution to the fund is often not sufficient to cover the entire cost, especially as the cost is growing in a declining letter mail market and the universal service providers have a strong position. In these situations, State aid funding is also required to finance the costs. It also seems that the administrative costs of the sharing mechanism are relatively high in proportion to the contribution fees. Moreover, sharing the burden among postal operators sets low incentives for a universal service provider to improve its efficiency and may deter market entrance. In its current form, the provision of the Directive on the compensation fund is not working in an optimal manner to fund the universal service. This may also explain why Member States very rarely use this way of funding the net costs of universal service provision.

2. Findings related to establishing a well-functioning and competitive internal market for postal services

The Postal Service Directive has been only marginally effective in contributing to the achievement of an internal market and stimulating effective competition in the letter mail segment. Full market opening has taken place as required by the Postal Services Directive but there is very little competition in the letter mail segment in all Member States and full market opening has not lead to the appearance of European wide providers of letter mail services. Promoting a well-functioning and competitive internal market remains valid and relevant for postal users, undertakings and employees alike, especially in Member States or regions where there has been less decline in letter

mail. Evidence shows that where there has been some competition this has resulted in lower prices, better quality and more innovation. Respondents to the Commission's open public consultation confirm that the promotion of competition remains important.

The absence of more developed provisions on access to the postal network may have contributed to the low uptake of competition in the letter mail segment

The main reasons for the very concentrated letter mail segment include high entry costs for alternative postal operators and the need for substantial economies of scale and scope while the market has been and continuously experiences diminishing volumes. However, the absence of harmonised rules allowing national regulatory authorities to set terms for access to the network (providing for the possibility to introduce ex ante competition), as well as the absence of procedural access rules (e.g., dispute resolution powers of national regulatory authorities) may also have contributed to the low uptake of competition in the letter mail segment.

Available evidence suggests that in Member States where there has been some competition this has helped stimulate demand and supply and led to lower prices

Some universal service providers argue that the need for a competitive internal market for postal services should be reassessed in the current context of shrinking demand for letter mail. The argument rests on concerns that selective entry into the most lucrative parts of the letter segment by competing operators would make it even more difficult to sustain the universal service, which is already constrained by declines in letter mail volumes. While this is an important argument to consider, available evidence does not support such concerns. To the contrary, evidence also suggests that in Member States where there has been some competition this has helped stimulate demand and supply and enabled the letter mail market to expand. This also provided incentives for universal service providers to become more efficient and thus contribute to guaranteeing the universal service. Importantly, available evidence suggests that where access to the incumbent's network was granted under transparent and non-discriminatory conditions to different types of operators and consolidators, postal users, especially businesses, have benefited from lower prices.

In contrast to the universal service providers, the European Regulators' Group for Postal Services considers that promoting competition in letter mail markets remains valid and important. This is because a lack of competition, or even potential competition, deprives users of potential benefits in terms of choice of providers, lower prices, better quality and product innovation. Promoting competition is especially important in Member States and markets where volumes of letter mail are still or are likely to remain significant such as, for instance, bulk mail from large business senders and public administrations. There may therefore be a case for reviewing access and price transparency provisions.

The use of public procurement for the designation of the universal service provider could have contributed to increased competition and led to higher quality and more affordable universal services

Procurement procedures have not been used to date for ensuring universal service provision (except in limited cases for the distribution of newspapers), neither for the entire territory of a Member State nor for parts of it, even though public procurement can encourage competition. Member States continue to designate a single universal service provider for the entire national territory. Available information did not allow a proper assessment of why Member States do not use public procurement procedures. Despite the fact that letter mail volume is declining it cannot be excluded that public procurement could still be a relevant means to encourage competition, especially in Member States and for market segments where letter mail is still important. The issue merits further consideration.

In contrast to the letter mail segment, the parcel delivery segment is highly competitive

The developments in the parcel delivery segment stand in stark contrast to developments in the letter mail segment. As opposed to letter mail where the statutory monopoly was abolished with the 2008 amendment to the Postal Service Directive, there was never such a monopoly for parcel delivery. In most Member States, there is competition in the parcel delivery segment, which has led to innovative improvements to delivery services. Demand is continuously increasing mainly because of e-commerce and options for delivery of parcels are following suit, contrary to the trend seen in the letter mail. At the same time, despite what could be expected from an effective competitive environment with growing volumes, the public tariffs of parcel delivery services are slowly growing. The information and evidence collected for the purpose of the present evaluation does not allow firm conclusions on the reasons behind this trend.

The relationship between the Regulation on cross-border parcel delivery services and the Postal Service Directive

To increase transparency over the EU parcel delivery market, the Commission adopted the Regulation on cross-border parcel delivery services in 2018 as a self-standing legal act, independent from the Postal Services Directive. The Regulation is a targeted legal act focusing on regulatory oversight in relation to parcel delivery services, on transparency and assessment of single-piece tariffs for cross-border parcel delivery services, and information to consumers concerning cross-border parcel delivery services.

The Regulation in particular increases the transparency of publicly listed tariffs for certain single-piece parcels and provides for an assessment procedure to identify tariffs that are unreasonably high. It also requires parcel delivery service providers to report certain key information about their activities, including turnover, volumes, and staffing, to the national regulatory authority where they are established. The Regulation therefore extends the regulatory oversight of national regulatory authorities and increases transparency for users of single-piece, non-negotiated, parcel services. At the same time the functioning of cross-border parcel markets for the bulk of e-commerce volumes, i.e. negotiated tariffs, is not subject to specific transparency mechanisms, including the principles underpinning the tariff structures for cross-border and domestic services.

3. Findings regarding harmonizing principles for the regulation of postal services

The purpose of establishing harmonized principles for the postal services sector was to create similar competitive conditions for postal operators across the EU. The objective was to facilitate the establishment of postal service providers and to ensure that postal users across the EU enjoy the same level of postal services. However, as the Postal Service Directive is a minimum harmonisation directive and is principle-based, differences in national implementation and application have occurred. Since postal markets continue to be very diverse and evolve differently and in many Member States the universal service providers are still controlled by the State, establishing a set of harmonised and unbiased principles at EU-level for the regulation of the postal sector remains relevant both for the Single Market and international trade.

There are repeated claims that the existing concepts do not allow for proper market delineation and are implemented in different ways, leading to legal uncertainty and inconsistency

The current definitions have remained unchanged since the adoption of the Postal Services Directive in 1997. There have been repeated claims that the lack of harmonization of terms and definitions of postal products and services has led not only to legal fragmentation and legal uncertainty but also to incoherencies with other EU regulatory frameworks, which use the same terms but with a different meaning. A recent report of the European Regulators Group for Postal Services also points to these issues, highlighting that in the context of a changing postal market some definitions may not properly capture services that should be captured because of their similarity with postal services.

None of the above has resulted in any measurable problems from the perspective of postal service providers. Moreover, stakeholders have not been able to demonstrate an actual negative impact on postal providers and users. Available evidence has not indicated that any lack of clarity has caused any relevant internal market problems or barriers to entry for postal service providers. To the contrary, the situation has sometimes provided Member States with much welcomed flexibility in determining the scope of their own postal services regulation.

At the same time, it is recognised that structural and technological changes in the postal sector may inevitably call into question their continued relevance and suitability. In response to the Commission's open public consultation, postal operators favoured preserving the current definitions, while the majority of national regulatory authorities favoured a review of certain definitions.

Technical standards are not sufficiently used which may negatively impact interoperability

Regarding technical standards, the evaluation concludes that postal standardization has not led to sufficient harmonization and interoperability. The interconnection of postal networks is becoming

increasingly relevant to promote quality of service, innovative services and European interoperability of letter and parcel delivery operations. With the exception of the standard regarding the measurement of cross-border mail quality and the standard on complaint handling, standards drawn up by the European Committee for Standardization are of a voluntary nature. Where standards are mandatory they are still not always applied. This means that universal service providers sometimes use different technical standards or possibly no standards at all. There is insufficient information on the effective implementation and application of the voluntary standards by postal operators. The situation reduces clarity and legal certainty and may lead to unnecessary costs and interoperability issues. Therefore, there is a case for assessing the use of standards by postal operators.

Oversight by national regulatory authorities has improved

Alignment of the Directive with strong independence provisions such as those in the European Electronic Communications Code appears to be an effective way to ensure that, in the exercise of its tasks, a national regulatory authority is protected against external intervention or political pressure liable to jeopardise its independent assessment of matters coming before it. During the reference period, national regulatory authorities have received more and better information to perform their tasks and regulatory oversight has as a consequence significantly expanded and improved, with the exception of information regarding terminal dues, as noted above. As more and more cross-border issues have become an integral part of regulatory activity, close cooperation of national regulatory authorities contributes to a more consistent and harmonized approach among national regulatory authorities in enforcing the Directive.

IV. THE FUTURE: CONCLUSIONS AND OUTLOOK

To ensure that postal operators and users can fully benefit from technological developments, innovation and e-commerce, while also securing the continued provision of an affordable and high quality universal service, it is desirable, building on the evaluation and the experience of more than 20 years of application of the Postal Services Directive to further explore potential adaptation in the future of the regulatory framework in a way that would also provide the necessary conditions for the EU postal service to continue to play its role effectively in the economy. Any such steps must also be coherent with, and support, EU level horizontal actions taken within the context of the EU Green Deal and the EU Digital Agenda. In doing so, the Commission will continue its efforts to engage with Member States and other stakeholders.