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► **B** **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

(OJ L 15, 21.1.1998, p. 14)

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► <u>M1</u>	Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002	L 176	21	5.7.2002
► <u>M2</u>	Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003	L 284	1	31.10.2003
► <u>M3</u>	Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008	L 52	3	27.2.2008



**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**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE
EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and
in particular Articles 57 (2), 66 and 100a thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

Having regard to the opinion of the Committee of the Regions ⁽³⁾,

Having regard to the resolution of the European Parliament of
22 January 1993 concerning the green paper on the development of
the single market for postal services ⁽⁴⁾,

Having regard to the Council resolution of 7 February 1994 on the
development of Community postal services ⁽⁵⁾,

Acting in accordance with the procedure laid down in Article 189b of
the Treaty, in the light of the joint text approved by the Conciliation
Committee on 7 November 1997 ⁽⁶⁾,

- (1) Whereas measures should be adopted with the aim of establishing
the internal market in accordance with Article 7a of the Treaty;
whereas this market comprises an area without internal frontiers
in which the free movement of goods, persons, services and
capital is ensured;
- (2) Whereas the establishment of the internal market in the postal
sector is of proven importance for the economic and social
cohesion of the Community, in that postal services are an
essential instrument of communication and trade;
- (3) Whereas on 11 June 1992 the Commission presented a Green
Paper on the development of the single market for postal
services and, on 2 June 1993, a Communication on the guidelines
for the development of Community postal services;
- (4) Whereas the Commission has conducted wide-ranging public
consultation on those aspects of postal services that are of
interest to the Community and the interested parties in the
postal sector have communicated their observations to the
Commission;

⁽¹⁾ OJ C 322, 2. 12. 1995, p. 22, and
OJ C 300, 10. 10. 1996, p. 22.

⁽²⁾ OJ C 174, 17. 6. 1996, p. 41.

⁽³⁾ OJ C 337, 11. 11. 1996, p. 28.

⁽⁴⁾ OJ C 42, 15. 2. 1993, p. 240.

⁽⁵⁾ OJ C 48, 16. 2. 1994, p. 3.

⁽⁶⁾ Opinion of the European Parliament of 9 May 1996 (OJ C 152, 27. 5. 1996,
p. 20), Council Common Position of 29 April 1997 (OJ C 188, 19. 6. 1997,
p. 9) and Decision of the European Parliament of 16 September 1997 (OJ C
304, 6. 10. 1997, p. 34); Decision of the European Parliament of
19 November 1997 and Decision of the Council of 1 December 1997.

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- (5) Whereas the current extent of the universal postal service and the conditions governing its provision vary significantly from one Member State to another; whereas, in particular, performance in terms of quality of services is very unequal amongst Member States;
- (6) Whereas cross-border postal links do not always meet the expectations of users and European citizens, and performance, in terms of quality of service with regard to Community cross-border postal services, is at the moment unsatisfactory;
- (7) Whereas the disparities observed in the postal sector have considerable implications for those sectors of activity which rely especially on postal services and effectively impede the progress towards internal Community cohesion, in that the regions deprived of postal services of sufficiently high quality find themselves at a disadvantage as regards both their letter service and the distribution of goods;
- (8) Whereas measures seeking to ensure the gradual and controlled liberalisation of the market and to secure a proper balance in the application thereof are necessary in order to guarantee, throughout the Community, and subject to the obligations and rights of the universal service providers, the free provision of services in the postal sector itself;
- (9) Whereas action at Community level to ensure greater harmonisation of the conditions governing the postal sector is therefore necessary and steps must consequently be taken to establish common rules;
- (10) Whereas, in accordance with the principle of subsidiarity, a set of general principles should be adopted at Community level, whilst the choice of the exact procedures should be a matter for the Member States, which should be free to choose the system best adapted to their own circumstances;
- (11) Whereas it is essential to guarantee at Community level a universal postal service encompassing a minimum range of services of specified quality to be provided in all Member States at an affordable price for the benefit of all users, irrespective of their geographical location in the Community;
- (12) Whereas the aim of the universal services is to offer all users easy access to the postal network through the provision, in particular, of a sufficient number of access points and by ensuring satisfactory conditions with regard to the frequency of collections and deliveries; whereas the provision of the universal service must meet the fundamental need to ensure continuity of operation, whilst at the same time remaining adaptable to the needs of users as well as guaranteeing them fair and non-discriminatory treatment;
- (13) Whereas universal service must cover national services as well as cross-border services;
- (14) Whereas users of the universal service must be given adequate information on the range of services offered, the conditions governing their supply and use, the quality of the services provided, and the tariffs;
- (15) Whereas the provisions of this Directive relating to universal service provision are without prejudice to the right of universal service operators to negotiate contracts with customers individually;
- (16) Whereas the maintenance of a range of those services that may be reserved, in compliance with the rules of the Treaty and without prejudice to the application of the rules on competition, appears justified on the grounds of ensuring the operation of the universal

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service under financially balanced conditions; whereas the process of liberalisation should not curtail the continuing supply of certain free services for blind and partially sighted persons introduced by the Member States;

- (17) Whereas items of correspondence weighing 350 grammes and over represent less than 2 % of letter volume and less than 3 % of the receipts of the public operators; whereas the criteria of price (five times the basic tariff) will better permit the distinction between the reserved service and the express service, which is liberalised;
- (18) Whereas, in view of the fact that the essential difference between express mail and universal postal services lies in the value added (whatever form it takes) provided by express services and perceived by customers, the most effective way of determining the extra value perceived is to consider the extra price that customers are prepared to pay, without prejudice, however, to the price limit of the reserved area which must be respected;
- (19) Whereas it is reasonable to allow, on an interim basis, for direct mail and cross-border mail to continue to be capable of reservation within the price and weight limits provided; whereas, as a further step towards the completion of the internal market of postal services, a decision on the further gradual controlled liberalisation of the postal market, in particular with a view to the liberalisation of cross-border and direct mail as well as on a further review of the price and weight limits, should be taken by the European Parliament and the Council not later than 1 January 2000, on a proposal from the Commission following a review of the sector;
- (20) Whereas, for reasons of public order and public security, Member States may have a legitimate interest in conferring on one or more entities designated by them the right to site on the public highway letter-boxes intended for the reception of postal items; whereas, for the same reasons, they are entitled to appoint the entity or entities responsible for issuing postage stamps identifying the country of origin and those responsible for providing the registered mail service used in the course of judicial or administrative procedures in accordance with their national legislation; whereas they may also indicate membership of the European Union by integrating the 12-star symbol;
- (21) Whereas new services (services quite distinct from conventional services) and document exchange do not form part of the universal service and consequently there is no justification for their being reserved to the universal service providers; whereas this applies equally to self-provision (provision of postal services by the natural or legal person who is the originator of the mail, or collection and routing of these items by a third party acting solely on behalf of that person), which does not fall within the category of services;
- (22) Whereas Member States should be able to regulate, by appropriate authorization procedures, on their territory, the provision of postal services which are not reserved to the universal service providers; whereas those procedures must be transparent, non-discriminatory, proportionate and based on objective criteria;
- (23) Whereas the Member States should have the option of making the grant of licences subject to universal service obligations or contributions to a compensation fund intended to compensate the universal service provider for the provision of services representing an unfair financial burden; whereas Member States should be able to include in the authorisations an obligation that the authorised activities must not infringe the exclusive or special rights granted to the universal service providers for the reserved services; whereas an identification system for direct mail

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- may be introduced for the purposes of supervision where direct mail is liberalised;
- (24) Whereas measures necessary for the harmonisation of authorisation procedures laid down by the Member States governing the commercial provision to the public of non-reserved services will have to be adopted;
- (25) Whereas, should this prove necessary, measures shall be adopted to ensure the transparency and non-discriminatory nature of conditions governing access to the public postal network in Member States;
- (26) Whereas, in order to ensure sound management of the universal service and to avoid distortions of competition, the tariffs applied to the universal service should be objective, transparent, non-discriminatory and geared to costs;
- (27) Whereas the remuneration for the provision of the intra-Community cross-border mail service, without prejudice to the minimum set of obligations derived from Universal Postal Union acts, should be geared to cover the costs of delivery incurred by the universal service provider in the country of destination; whereas this remuneration should also provide an incentive to improve or maintain the quality of the cross-border service through the use of quality-of-service targets; whereas this would justify suitable systems providing for an appropriate coverage of costs and related specifically to the quality of service achieved;
- (28) Whereas separate accounts for the different reserved services and non-reserved services are necessary in order to introduce transparency into the actual costs of the various services and in order to ensure that cross-subsidies from the reserved sector to the non-reserved sector do not adversely affect the competitive conditions in the latter;
- (29) Whereas, in order to ensure the application of the principles set out in the previous three recitals, universal service providers should implement, within a reasonable time limit, cost accounting systems, which can be independently verified, by which costs can be allocated to services as accurately as possible on the basis of transparent procedures; whereas such requirements can be fulfilled, for example, by implementation of the principle of fully distributed costing; whereas such cost accounting systems may not be required in circumstances where genuine conditions of open competition exist;
- (30) Whereas consideration should be given to the interests of users, who are entitled to services of a high quality; whereas, therefore, every effort must be made to improve and enhance the quality of services provided at Community level; whereas such improvements in quality require Member States to lay down standards, to be attained or surpassed by the universal service providers, in respect of the services forming part of the universal service;
- (31) Whereas the quality of service expected by users constitutes an essential aspect of the services provided; whereas the evaluation standards for this quality of service and the levels of quality achieved must be published in the interests of users; whereas it is necessary to have available harmonised quality-of-service standards and a common methodology for measurement in order to be able to evaluate the convergence of the quality of service throughout the Community;
- (32) Whereas national quality standards consistent with Community standards must be determined by Member States; whereas, in the case of intra-Community cross-border services requiring the combined efforts of at least two universal service providers from

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two different Member States, quality standards must be defined at Community level;

- (33) Whereas compliance with these standards must be independently verified at regular intervals and on a harmonised basis; whereas users must have the right to be informed of the results of this verification and Member States should ensure that corrective action is taken where those results demonstrate that the standards are not being met;
- (34) Whereas Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts ⁽¹⁾ applies to postal operators;
- (35) Whereas the need for improvement of quality of service means that disputes have to be settled quickly and efficiently; whereas, in addition to the forms of legal redress available under national and Community law, a procedure dealing with complaints should be provided, which should be transparent, simple and inexpensive and should enable all relevant parties to participate;
- (36) Whereas progress in the interconnection of postal networks and the interests of users require that technical standardisation be encouraged; whereas technical standardisation is indispensable for the promotion of interoperability between national networks and for an efficient Community universal service;
- (37) Whereas guidelines on European harmonisation provide for specialised technical standardisation activities to be entrusted to the European Committee for Standardisation;
- (38) Whereas a committee should be established to assist the Commission with the implementation of this Directive, particularly in relation to the future work on the development of measures relating to the quality of Community cross-border service and technical standardisation;
- (39) Whereas, in order to ensure the proper functioning of the universal service and to ensure undistorted competition in the non-reserved sector, it is important to separate the functions of the regulator, on the one hand, and the operator, on the other; whereas no postal operator may be both judge and interested party; whereas it is for the Member State to define the statute of one or more national regulatory authorities, which may be chosen from public authorities or independent entities appointed for that purpose;
- (40) Whereas the effects of the harmonised conditions on the functioning of the internal market in postal services will need to be the subject of an assessment; whereas, therefore, the Commission will present a report to the European Parliament and the Council on the application of this Directive, including the appropriate information on developments in the sector, particularly concerning economic, social, employment and technological aspects, as well as on quality of service, three years following the date of its entry into force, and in any event no later than 31 December 2000;
- (41) Whereas this Directive does not affect the application of the rules of the Treaty, and in particular its rules on competition and the freedom to provide services;
- (42) Whereas nothing shall prevent Member States from maintaining in force or introducing measures for the postal sector which are more liberal than those provided for by this Directive, nor, should this Directive lapse, from maintaining in force measures which they have introduced in order to implement it, provided in each case that such measures are compatible with the Treaty;

⁽¹⁾ OJ L 95, 21. 4. 1993, p. 29.

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- (43) Whereas it is appropriate that this Directive should apply until 31 December 2004 unless otherwise decided by the European Parliament and the Council on the basis of a proposal from the Commission;
- (44) Whereas this Directive does not apply to any activity which falls outside the scope of Community law, such as those provided for by Titles V and VI of the Treaty on European Union, and in any case to activities concerning public security, defence, State security (including the economic well-being of the State when the activities relate to State security matters) and the activities of the State in areas of criminal law;
- (45) Whereas this Directive does not, in the case of undertakings which are not established in the Community, prevent the adoption of measures in accordance with both Community law and existing international obligations designed to ensure that nationals of the Member States enjoy similar treatment in third countries; whereas Community undertakings should benefit in third countries from treatment and effective access that is comparable to the treatment and access to the market which is conferred on nationals of the countries concerned within the Community context,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER 1

Objective and scope

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Article 1

This Directive establishes common rules concerning:

- the conditions governing the provision of postal services,
- the provision of a universal postal service within the Community,
- the financing of universal services under conditions that guarantee the permanent provision of such services,
- tariff principles and transparency of accounts for universal service provision,
- the setting of quality standards for universal service provision and the setting-up of a system to ensure compliance with those standards,
- the harmonisation of technical standards,
- the creation of independent national regulatory authorities.

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Article 2

For the purposes of this Directive, the following definitions shall apply:

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1. *postal services*: services involving the clearance, sorting, transport and distribution of postal items;
- 1a. *postal service provider*: undertaking that provides one or more postal services;

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2. **► M3 postal network ◀**: the system of organisation and resources of all kinds used by the universal service provider(s) for the purposes in particular of:

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- the clearance of postal items covered by a universal service obligation from access points throughout the territory,
- the routing and handling of those items from the postal network access point to the distribution centre,
- distribution to the addresses shown on items;

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3. *access points*: physical facilities, including letter boxes provided for the public either on the public highway or at the premises of the postal service provider(s), where postal items may be deposited with the postal network by senders;
4. *clearance*: the operation of collecting postal items by a postal service provider;

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5. *distribution*: the process from sorting at the distribution centre to delivery of postal items to their addressees;

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6. *postal item*: an item addressed in the final form in which it is to be carried by a postal service provider. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal parcels containing merchandise with or without commercial value;

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7. *item of correspondence*: a communication in written form on any kind of physical medium to be conveyed and delivered at the address indicated by the sender on the item itself or on its wrapping. Books, catalogues, newspapers and periodicals shall not be regarded as items of correspondence;

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9. *registered item*: a service providing a flat-rate guarantee against risks of loss, theft or damage and supplying the sender, where appropriate upon request, with proof of the handing in of the postal item and/or of its delivery to the addressee;
10. *insured item*: a service insuring the postal item up to the value declared by the sender in the event of loss, theft or damage;
11. *cross-border mail*: mail from or to another Member State or from or to a third country;

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13. *universal service provider*: the public or private postal service provider providing a universal postal service or parts thereof within a Member State, the identity of which has been notified to the Commission in accordance with Article 4;
14. *authorisations*: any permission setting out rights and obligations specific to the postal sector and allowing undertakings to provide postal services and, where applicable, to establish and/or operate their networks for the provision of such services, in the form of a general authorisation or individual licence as defined below:
 - ‘general authorisation’: an authorisation, regardless of whether it is regulated by a ‘class licence’ or under general law and regardless of whether such regulation requires registration or declaration procedures, which does not require the postal service provider concerned to obtain an explicit decision by the national regulatory authority before exercising the rights stemming from the authorisation,

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- ‘individual licence’: an authorisation which is granted by a national regulatory authority and which gives a postal service provider specific rights, or which subjects that undertaking’s operations to specific obligations supplementing the general authorisation where applicable, where the postal service provider is not entitled to exercise the rights concerned until it has received the decision by the national regulatory authority;

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15. *terminal dues*: the remuneration of universal service providers for the distribution of incoming cross-border mail comprising postal items from another Member State or from a third country;
16. *sender*: a natural or legal person responsible for originating postal items;

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17. *user*: any natural or legal person benefiting from postal service provision as a sender or an addressee;

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18. *national regulatory authority*: the body or bodies, in each Member State, to which the Member State entrusts, *inter alia*, the regulatory functions falling within the scope of this Directive;

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19. *essential requirements*: general non-economic reasons which can induce a Member State to impose conditions on the supply of postal services. These reasons are the confidentiality of correspondence, security of the network as regards the transport of dangerous goods, respect for the terms and conditions of employment, social security schemes, laid down by law, regulation or administrative provision and/or by collective agreement negotiated between national social partners, in accordance with Community and national law and, where justified, data protection, environmental protection and regional planning. Data protection may include personal data protection, the confidentiality of information transmitted or stored and protection of privacy;
20. *services provided at single piece tariff*: postal services for which the tariff is set in the general terms and conditions of universal service provider(s) for individual postal items.

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CHAPTER 2

Universal service

Article 3

1. Member States shall ensure that users enjoy the right to a universal service involving the permanent provision of a postal service of specified quality at all points in their territory at affordable prices for all users.

2. To this end, Member States shall take steps to ensure that the density of the points of contact and of the access points takes account of the needs of users.

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3. Member States shall take steps to ensure that the universal service is guaranteed not less than five working days a week, save in circumstances or geographical conditions deemed exceptional, and that it includes as a minimum:

- one clearance,

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— one delivery to the home or premises of every natural or legal person or, by way of derogation, under conditions at the discretion of the national regulatory authority, one delivery to appropriate installations.

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Any exception or derogation granted by a national regulatory authority in accordance with this paragraph must be communicated to the Commission and to all national regulatory authorities.

4. Each Member State shall adopt the measures necessary to ensure that the universal service includes the following minimum facilities:

- the clearance, sorting, transport and distribution of postal items up to two kilograms,
- the clearance, sorting, transport and distribution of postal packages up to 10 kilograms,
- services for registered items and insured items.

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5. The national regulatory authorities may increase the weight limit of universal service coverage for postal parcels to any weight not exceeding 20 kilograms and may lay down special arrangements for the door-to-door delivery of such parcels.

Notwithstanding the weight limit of universal service coverage for postal parcels established by a given Member State, Member States shall ensure that postal parcels received from other Member States and weighing up to 20 kilograms are delivered within their territory.

6. The minimum and maximum dimensions for the postal items in question shall be those as laid down in the relevant provisions adopted by the Universal Postal Union.

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7. The universal service as defined in this Article shall cover both national and cross-border services.

▼M3*Article 4*

1. Each Member State shall ensure that the provision of the universal service is guaranteed and shall notify the Commission of the steps it has taken to fulfil this obligation. The Committee referred to in Article 21 shall be informed of the measures established by Member States to ensure the provision of the universal service.

2. Member States may designate one or more undertakings as universal service providers in order that the whole of the national territory can be covered. Member States may designate different undertakings to provide different elements of universal service and/or to cover different parts of the national territory. When they do so, they shall determine in accordance with Community law the obligations and rights assigned to them and shall publish these obligations and rights. In particular, Member States shall take measures to ensure that the conditions under which universal services are entrusted are based on the principles of transparency, non-discrimination and proportionality, thereby guaranteeing the continuity of the universal service provision, by taking into account the important role it plays in social and territorial cohesion.

Member States shall notify the Commission of the identity of the universal service provider(s) they designate. The designation of a universal service provider shall be subject to a periodic review and be examined against the conditions and principles set out in this Article. However, Member States shall ensure that the duration of this designation provides a sufficient period for return on investments.

▼ B*Article 5*

1. Each Member State shall take steps to ensure that universal service provision meets the following requirements:
 - it shall offer a service guaranteeing compliance with the essential requirements,
 - it shall offer an identical service to users under comparable conditions,
 - it shall be made available without any form of discrimination whatsoever, especially without discrimination arising from political, religious or ideological considerations,
 - it shall not be interrupted or stopped except in cases of force majeure,
 - it shall evolve in response to the technical, economic and social environment and to the needs of users.

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2. The provisions of paragraph 1 shall not preclude measures which the Member States take in accordance with requirements relating to the public interest recognised in the Treaty, in particular Articles 30 and 46 thereof, concerning, *inter alia*, public morality, public security, including criminal investigations, and public policy.

Article 6

Member States shall take steps to ensure that users and postal service providers are regularly given sufficiently detailed and up-to-date information by the universal service provider(s) regarding the particular features of the universal service offered, with special reference to the general conditions of access to these services as well as to prices and quality standard levels. This information shall be published in an appropriate manner.

Member States shall notify the Commission, of how the information to be published in accordance with the first paragraph is to be made available.

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CHAPTER 3

▼ M3**Financing of universal services***Article 7*

1. Member States shall not grant or maintain in force exclusive or special rights for the establishment and provision of postal services. Member States may finance the provision of universal services in accordance with one or more of the means provided for in paragraphs 2, 3 and 4, or in accordance with any other means compatible with the Treaty.
2. Member States may ensure the provision of universal services by procuring such services in accordance with applicable public procurement rules and regulations, including, as provided for in Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services ⁽¹⁾, competitive dialogue or negotiated procedures with or without publication of a contract notice.

⁽¹⁾ OJ L 134, 30.4.2004, p. 1. Directive as last amended by Council Directive 2006/97/EC (OJ L 363, 20.12.2006, p. 107).

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3. Where a Member State determines that the universal service obligations, as provided for in this Directive, entail a net cost, calculated taking into account Annex I, and represent an unfair financial burden on the universal service provider(s), it may introduce:

- (a) a mechanism to compensate the undertaking(s) concerned from public funds; or
- (b) a mechanism for the sharing of the net cost of the universal service obligations between providers of services and/or users.

4. Where the net cost is shared in accordance with paragraph 3(b), Member States may establish a compensation fund which may be funded by service providers and/or users' fees, and is administered for this purpose by a body independent of the beneficiary or beneficiaries. Member States may make the granting of authorisations to service providers under Article 9(2) subject to an obligation to make a financial contribution to that fund or to comply with universal service obligations. The universal service obligations of the universal service provider(s) set out in Article 3 may be financed in this manner.

5. Member States shall ensure that the principles of transparency, non-discrimination and proportionality are respected in establishing the compensation fund and when fixing the level of the financial contributions referred to in paragraphs 3 and 4. Decisions taken in accordance with paragraphs 3 and 4 shall be based on objective and verifiable criteria and be made public.

▼B*Article 8*

The provisions of Article 7 shall be without prejudice to Member States' right to organise the siting of letter boxes on the public highway, the issue of postage stamps and the registered mail service used in the course of judicial or administrative procedures in accordance with their national legislation.

CHAPTER 4

▼M3**Conditions governing the provision of postal services and access to the network***Article 9*

1. For services which fall outside the scope of the universal service, Member States may introduce general authorisations to the extent necessary to guarantee compliance with the essential requirements.

2. For services which fall within the scope of the universal service, Member States may introduce authorisation procedures, including individual licences, to the extent necessary in order to guarantee compliance with the essential requirements and to ensure the provision of the universal service.

The granting of authorisations may:

- be made subject to universal service obligations,
- if necessary and justified, impose requirements concerning the quality, availability and performance of the relevant services,
- where appropriate, be subject to an obligation to make a financial contribution to the sharing mechanisms referred to in Article 7, if the provision of the universal service entails a net cost and represents an unfair burden on the universal service provider(s), designated in accordance with Article 4,

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- where appropriate, be subject to an obligation to make a financial contribution to the national regulatory authority's operational costs referred to in Article 22,
- where appropriate, be made subject to or impose an obligation to respect working conditions laid down by national legislation.

Obligations and requirements referred to in the first indent and in Article 3 may only be imposed on designated universal service providers.

Except in the case of undertakings that have been designated as universal service providers in accordance with Article 4, authorisations may not:

- be limited in number,
- for the same elements of the universal service or parts of the national territory, impose universal service obligations and, at the same time, financial contributions to a sharing mechanism,
- duplicate conditions which are applicable to undertakings by virtue of other, non-sector-specific national legislation,
- impose technical or operational conditions other than those necessary to fulfil the obligations of this Directive.

3. The procedures, obligations and requirements referred to in paragraphs 1 and 2 shall be transparent, accessible, non-discriminatory, proportionate, precise and unambiguous, made public in advance and based on objective criteria. Member States shall ensure that the reasons for refusing or withdrawing an authorisation in whole or in part are communicated to the applicant and shall establish an appeal procedure.

▼B*Article 10***▼M3**

1. The European Parliament and the Council, acting on a proposal from the Commission and on the basis of Articles 47(2), 55 and 95 of the Treaty, shall adopt the measures necessary for the harmonisation of the procedures referred to in Article 9 governing the commercial provision of postal services to the public.

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2. The harmonisation measures referred to in paragraph 1 shall concern, in particular, the criteria to be observed and the procedures to be followed by the postal operator, the manner of publication of those criteria and procedures, as well as the appeal procedures to be followed.

▼M3*Article 11*

The European Parliament and the Council, acting on a proposal from the Commission and on the basis of Articles 47(2), 55 and 95 of the Treaty, shall adopt such harmonisation measures as are necessary to ensure that users and the postal service provider(s) have access to the postal network under conditions which are transparent and non-discriminatory.

Article 11a

Whenever necessary to protect the interest of users and/or to promote effective competition, and in the light of national conditions and national legislation, Member States shall ensure that transparent, non-discriminatory access conditions are available to elements of postal infrastructure or services provided within the scope of the universal service, such as postcode system, address database, post office boxes,

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delivery boxes, information on change of address, re-direction service and return to sender service. This provision shall be without prejudice to the right of Member States to adopt measures to ensure access to the postal network under transparent, proportional and non-discriminatory conditions.

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CHAPTER 5

Tariff principles and transparency of accounts**▼M3***Article 12*

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 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.

▼B*Article 13*

1. In order to ensure the cross-border provision of the universal service, Member States shall encourage their universal service providers to arrange that in their agreements on terminal dues for intra-Community cross-border mail, the following principles are respected:

- terminal dues shall be fixed in relation to the costs of processing and delivering incoming cross-border mail,
- levels of remuneration shall be related to the quality of service achieved,
- terminal dues shall be transparent and non-discriminatory.

2. The implementation of these principles may include transitional arrangements designed to avoid undue disruption on postal markets or unfavourable implications for economic operators provided there is

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agreement between the operators of origin and receipt; such arrangements shall, however, be restricted to the minimum required to achieve these objectives.

*Article 14***▼M3**

1. Member States shall take the measures necessary to ensure that the accounting of the universal service providers is conducted in accordance with the provisions of this Article.

2. The universal service provider(s) shall keep separate accounts within their internal accounting systems in order to clearly distinguish between each of the services and products which are part of the universal service and those which are not. This accounting separation shall be used as an input when Member States calculate the net cost of the universal service. Such internal accounting systems shall operate on the basis of consistently applied and objectively justifiable cost accounting principles.

3. The accounting systems referred to in paragraph 2 shall, without prejudice to paragraph 4, allocate costs in the following manner:

- (a) costs which can be directly assigned to a particular service or product shall be so assigned;
- (b) common costs, that is costs which cannot be directly assigned to a particular service or product, shall be allocated as follows:
 - (i) whenever possible, common costs shall be allocated on the basis of direct analysis of the origin of the costs themselves;
 - (ii) when direct analysis is not possible, common cost categories shall be allocated on the basis of an indirect linkage to another cost category or group of cost categories for which a direct assignment or allocation is possible; the indirect linkage shall be based on comparable cost structures;
 - (iii) when neither direct nor indirect measures of cost allocation can be found, the cost category shall be allocated on the basis of a general allocator computed by using the ratio of all expenses directly or indirectly assigned or allocated, on the one hand, to each of the universal services and, on the other hand, to the other services;
 - (iv) common costs, which are necessary for the provision of both universal services and non-universal services, shall be allocated appropriately; the same cost drivers must be applied to both universal services and non-universal services.

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

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

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

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

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8. Where a given Member State has not used a financing mechanism for the provision of the universal service, as permitted under Article 7, and where the national regulatory authority is satisfied that none of the designated universal service providers in that Member State is in receipt of State assistance, hidden or otherwise, and that competition in the market is fully effective, the national regulatory authority may decide not to apply the requirements of this Article.

9. This Article may, however, be applied to the universal service provider designated before the final date for Full Market Opening as long as no other universal service provider(s) have been designated. The national regulatory authority shall inform the Commission in advance of any such decision.

10. Member States may require those postal service providers which are obliged to contribute to a compensation fund to introduce an appropriate accounting separation to ensure the functioning of the fund.

▼ B*Article 15*

The financial accounts of all universal service providers shall be drawn up, submitted to audit by an independent auditor and published in accordance with the relevant Community and national legislation to commercial undertakings.

CHAPTER 6

Quality of services*Article 16*

Member States shall ensure that quality-of-service standards are set and published in relation to universal service in order to guarantee a postal service of good quality.

Quality standards shall focus, in particular, on routing times and on the regularity and reliability of services.

These standards shall be set by:

— the Member States in the case of national services,

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— the European Parliament and the Council in the case of intra-Community cross-border services (see Annex II). Future adjustment of these standards to technical progress or market developments shall be made in accordance with the regulatory procedure with scrutiny referred to in Article 21(2).

Independent performance monitoring shall be carried out at least once a year by external bodies having no links with the universal service providers under standardised conditions to be specified in accordance with the regulatory procedure with scrutiny referred to in Article 21(2) and shall be the subject of reports published at least once a year.

▼ B*Article 17*

Member States shall lay down quality standards for national mail and shall ensure that they are compatible with those laid down for intra-Community cross-border services.

Member States shall notify their quality standards for national services to the Commission, who will publish them in the same manner as the

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standards for intra-Community cross-border services referred to in Article 18.

National regulatory authorities shall ensure that independent performance monitoring is carried out in accordance with the fourth subparagraph of Article 16, that the results are justified, and that corrective action is taken where necessary.

*Article 18***▼M3**

1. In accordance with Article 16, quality standards for intra-Community cross-border services are laid down in Annex II.

2. Where exceptional situations relating to infrastructure or geography so require, the national regulatory authorities may determine exemptions from the quality standards provided for in Annex II. Where national regulatory authorities determine exemptions in this manner, they shall notify the Commission forthwith. The Commission shall submit an annual report of the notifications received during the previous 12 months to the Committee referred to in Article 21 for its information.

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3. The Commission shall publish in the *Official Journal of the European Communities* any adjustments made to the quality standards for intra-Community cross-border services and shall take steps to ensure the regular independent monitoring and the publication of performance levels certifying compliance with these standards and the progress accomplished. National regulatory authorities shall ensure that corrective action is taken where necessary.

▼M3*Article 19*

1. Member States shall ensure that transparent, simple and inexpensive procedures are made available by all postal service providers for dealing with postal users' complaints, particularly in cases involving loss, theft, damage or non-compliance with service quality standards (including procedures for determining where responsibility lies in cases where more than one operator is involved), without prejudice to relevant international and national provisions on compensation schemes.

Member States shall adopt measures to ensure that the procedures referred to in the first subparagraph enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement and/or compensation.

Member States shall also encourage the development of independent out-of-court schemes for the resolution of disputes between postal service providers and users.

2. Without prejudice to other possibilities of appeal or means of redress under national and Community legislation, Member States shall ensure that users, acting individually or, where permitted by national law, jointly with organisations representing the interests of users and/or consumers, may bring before the competent national authority cases where users' complaints to undertakings providing postal services within the scope of the universal service have not been satisfactorily resolved.

In accordance with Article 16, Member States shall ensure that the universal service providers and, wherever appropriate, undertakings providing services within the scope of the universal service, publish, together with the annual report on the monitoring of their performance, information on the number of complaints and the manner in which they have been dealt with.

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CHAPTER 7

Harmonisation of technical standards*Article 20*

The harmonisation of technical standards shall be continued, taking into account in particular the interests of users.

The European Committee for Standardisation shall be entrusted with drawing up technical standards applicable in the postal sector on the basis of remits to it pursuant to the principles set out in Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations ⁽¹⁾.

This work shall take account of the harmonisation measures adopted at international level and in particular those decided upon within the Universal Postal Union.

The standards applicable shall be published in the *Official Journal of the European Communities* once a year.

Member States shall ensure that universal service providers refer to the standards published in the Official Journal where necessary in the interests of users and in particular when they supply the information referred to in Article 6.

The Committee provided for in Article 21 shall be kept informed of the discussions within the European Committee for Standardisation and the progress achieved in this area by that body.

CHAPTER 8

The committee**▼M3***Article 21*

1. The Commission shall be assisted by a committee.
2. Where reference is made to this paragraph, Articles 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

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CHAPTER 9

The national regulatory authority**▼M3***Article 22*

1. Each Member State shall designate one or more national regulatory authorities for the postal sector that are legally separate from and operationally independent of the postal operators. Member States that retain ownership or control of postal service providers shall ensure effective structural separation of the regulatory functions from activities associated with ownership or control.

Member States shall inform the Commission which national regulatory authorities they have designated to carry out the tasks arising from this

⁽¹⁾ OJ L 109, 26. 4. 1983, p. 8. Directive as last amended by Commission Decision 96/139/EC (OJ L 32, 10. 2. 1996, p. 31).

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Directive. They shall publish the tasks to be undertaken by national regulatory authorities in an easily accessible form, in particular where those tasks are assigned to more than one body. Member States shall ensure, where appropriate, consultation and cooperation between those authorities and national authorities entrusted with the implementation of competition law and consumer protection law on matters of common interest.

2. The national regulatory authorities shall have as a particular task ensuring compliance with the obligations arising from this Directive, in particular by establishing monitoring and regulatory procedures to ensure the provision of the universal service. They may also be charged with ensuring compliance with competition rules in the postal sector.

The national regulatory authorities shall work in close collaboration and shall provide mutual assistance in order to facilitate the application of this Directive within the appropriate existing bodies.

3. Member States shall ensure that effective mechanisms exist at national level under which any user or postal service provider affected by a decision of a national regulatory authority has the right to appeal against the decision to an appeal body which is independent of the parties involved. Pending the outcome of any such appeal, the decision of the national regulatory authority shall stand, unless the appeal body decides otherwise.

CHAPTER 9a

Provision of information*Article 22a*

1. Member States shall ensure that postal service providers provide all the information, in particular to the national regulatory authorities, including financial information and information concerning the provision of the universal service, namely for the following purposes:

- (a) for national regulatory authorities to ensure conformity with the provisions of, or decisions made in accordance with this Directive,
- (b) for clearly defined statistical purposes.

2. Postal service providers shall provide such information promptly on request and in confidence, where necessary, within the timescales and to the level of detail required by the national regulatory authority. The information requested by the national regulatory authority shall be proportionate to the performance of its tasks. The national regulatory authority shall give the reasons justifying its request for information.

3. Member States shall ensure that national regulatory authorities provide the Commission, upon request, with appropriate and relevant information necessary for it to carry out its tasks under this Directive.

4. Where information is considered confidential by a national regulatory authority, in accordance with Community and national business confidentiality rules, the Commission and the national regulatory authorities concerned shall preserve such confidentiality.

▼BCHAPTER 10
Final provisions**▼M3***Article 23*

Every four years, on the first occasion no later than 31 December 2013, the Commission shall submit a report to the European Parliament and the Council on the application of this Directive, including appropriate information on developments in the sector, particularly concerning economic, social, employment patterns and technological aspects, as well as on quality of service. The report shall be accompanied, where appropriate, by proposals to the European Parliament and the Council.

Article 23a

The Commission shall provide assistance to the Member States on the implementation of this Directive, including on the calculation of any net cost of the universal service.

▼B*Article 28*

This Directive is addressed to the Member States.

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ANNEX I

Guidance on calculating the net cost, if any, of universal service*Part A: Definition of the universal service obligations*

Universal service obligations refer to the obligations referred to in Article 3 placed upon a postal service provider by a Member State which concern the provision of a postal service throughout a specified geographical area, including, where required, uniform prices in that geographical area for the provision of that service or provision of certain free services for blind and partially-sighted persons.

Those obligations may include, among others, the following:

- a number of days of delivery, superior to those set in this Directive,
- accessibility to access points, in order to satisfy the universal service obligations,
- the tariffs' affordability of the universal service,
- uniform prices for universal service,
- the provision of certain free services for blind and partially-sighted persons.

Part B: Calculation of net cost

National regulatory authorities are to consider all means to ensure appropriate incentives for postal service providers (designated or not) to provide universal service obligations cost efficiently.

The net cost of universal service obligations is any cost related to and necessary for the operation of the universal service provision. The net cost of universal service obligations is to be calculated, as the difference between the net cost for a designated universal service provider of operating with the universal service obligations and the same postal service provider operating without the universal service obligations.

The calculation shall take into account all other relevant elements, including any intangible and market benefits which accrue to a postal service provider designated to provide universal service, the entitlement to a reasonable profit and incentives for cost efficiency.

Due attention is to be given to correctly assessing the costs that any designated universal service provider would have chosen to avoid, had there been no universal service obligation. The net cost calculation should assess the benefits, including intangible benefits, to the universal service operator.

The calculation is to be based upon the costs attributable to:

- (i) elements of the identified services which can only be provided at a loss or provided under cost conditions falling outside normal commercial standards. This category may include service elements such as the services defined in Part A;
- (ii) specific users or groups of users who, taking into account the cost of providing the specified service, the revenue generated and any uniform prices imposed by the Member State, can only be served at a loss or under cost conditions falling outside normal commercial standards.

This category includes those users or groups of users that would not be served by a commercial operator that did not have an obligation to provide universal service.

The calculation of the net cost of specific aspects of universal service obligations is to be made separately and so as to avoid the double counting of any direct or indirect benefits and costs. The overall net cost of universal service obligations to any designated universal service provider is to be calculated as the sum of the net costs arising from the specific components of universal service obligations, taking account of any intangible benefits. The responsibility for verifying the net cost lies with the national regulatory authority. The universal service provider (s) shall cooperate with the national regulatory authority to enable it to verify the net cost.

Part C: Recovery of any net costs of universal service obligations

The recovery or financing of any net costs of universal service obligations may require designated universal service providers to be compensated for the services that they provide under non-commercial conditions. As such compensation

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involves financial transfers, Member States have to ensure that they are undertaken in an objective, transparent, non-discriminatory and proportionate manner. This means that the transfers result as far as possible in the least distortion to competition and to user demand.

A sharing mechanism based on a fund referred to in Article 7(4) should use a transparent and neutral mechanism for collecting contributions that avoids a double imposition of contributions falling on both outputs and inputs of undertakings.

The independent body administering the fund is to be responsible for collecting contributions from undertakings, which are assessed as liable to contribute to the net cost of universal service obligations in the Member State and is to oversee the transfer of sums due to the undertakings entitled to receive payments from the fund.

▼ **B**► **M3** ANNEX II ◀**Quality standards for intra-Community cross-border mail**

The quality standards for intra-Community cross-border mail in each country are to be established in relation to the time limit for routing measured from end to end (*) for postal items of the fastest standard category according to the formula $D + n$, where D represents the date of deposit (**) and n the number of working days which elapse between that date and that delivery to the addressee.

Quality standards for intra-Community cross-border mail	
Time limit	Objective
D + 3	85 % of items
D + 5	97 % of items

The standards must be achieved not only for the entirety of intra-Community traffic but also for each of the bilateral flows between two Member States.

(*) End-to-end routing is measured from the access point to the network to the point of delivery to the addressee.

(**) The date of deposit to be taken into account shall be the same day as that on which the item is deposited, provided that deposit occurs before the last collection time notified from the access point to the network in question. When deposit takes place after this time limit, the date of deposit to be taken into consideration will be that of the following day of collection.