

Editorial

The Third Postal Directive on Postal Services: Undeniable Challenges

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On 27 February 2008 the Third Postal Directive concerning the full accomplishment of the internal market of Community postal services was published (OJ EU 2008 L 52, 3). The Third Postal Directive makes it mandatory for the Member States to remove all exclusive rights still allowed under the Second Postal Directive. Four Member States have already liberalised their markets, namely Sweden, Germany, Finland, and the United Kingdom. As a rule the European Member States have time until 31 December 2010 to do the same. Only Greece and Luxemburg and the Member States who have joined the European Union after 2004 may postpone implementation until 31 December 2012.

In order to be able throughout the liberalisation process to guarantee a high-quality and affordable universal service the Member States have to choose a financing mechanism. The Postal Directive itself suggests financing by way of public funding (Art. 7.3 lit. a) or a compensation fund (Art. 7.3 lit. b). Financing by way of public funding is legally a delicate matter and a compensation fund is complicated as to its organisation. However, Art. 7 also offers the Member States the possibility to use "any other means compatible with the Treaty". For that matter, when transposing directives Member States are free to choose the method to achieve the result imposed. As such the Member States will choose to impose a "social level playing field". Indeed, Art. 9 of the Postal Directive offers the Member States the possibility to impose equal working conditions on all postal operators. The German government, for instance, imposed as from 1 January 2008 minimum wages on all postal service providers. This measure, although inspired by social concerns, is now the subject of various legal proceedings. The

Chairman of the German regulator, *Matthias Kurth*, has suggested to the sector to handle those minimum wages "creatively".

Without judging this internal German affair – indeed, it is too early to estimate the real impact of the measure – it seems to us that the Member States should keep in mind the general principles of the EC Treaty and especially the proportionality principle. Apart from Art. 9 the proportionality principle should be observed when designating the universal service provider (Art. 4), and when fixing the level of the contributions to a compensation fund (Art. 7). Also the information requested by national regulatory authorities should be proportionate (Art. 22bis). Even though only the latter provision quoted is aimed directly at national regulators, all the Postal Directive's provisions that are sufficiently precise and unconditional are binding on all public authorities, i.e. including national regulators. It would be too simple to devolve the responsibility for these balancing acts systematically to the Member States themselves. Let this also be a challenge for all European regulators.



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