

**POSITION PAPER ON THE EUROPEAN REGULATORS GROUP FOR POSTAL SERVICES  
(ERGP) PUBLIC CONSULTATION OF 29 NOVEMBER, 2011**

Brussels, 23 January 2012

PostEurop, representing 50 Universal Postal Service providers across Europe, wishes to present the conclusions of its analysis of the three documents submitted for consultation.

PostEurop re-iterates that the postal sector is confronted now and over the next years with a huge challenge: the necessity to fundamentally redesign its business model because of the structural decline of its traditional markets and the adverse economic climate.

The objective for regulators should no longer be a matter of introducing mechanisms to regulate monopolies in a growing market but to ensure that there is adequate degree of flexibility left to incumbent operators to sustain appropriate universal service obligations, – subject, of course, to a level playing field with new competitors.

The ERGP should strive to avoid any tendency towards over-regulation and rather promote a “light touch” oversight of the postal market as suggested by experts<sup>1</sup> –; the alternative of developing sophisticated and cumbersome tools for control of the postal market will only put an additional burden on operators.

Moreover, regulators who rely on the experience of network industries for precedents in regulating should bear in mind that the same degree of uniform regulation or parallel approach cannot be attained in the postal sector as – for instance – in telecoms as the postal sector is different by nature and the Postal Directive assigns much more importance to the principle of subsidiarity than those EU directives regulating telecoms.

**1. PostEurop comments on the draft ERGP Work Programme 2012 and Suggestions for 2013 (ERGP (11) 23)**

At a global level, the document reveals plans to coordinate the postal policy of the 27 NRAs. If this was to occur the ERGP may inadvertently cross the boundary between ‘soft’ regulation and the making of formal law which is the sole prerogative of the European Commission. By doing so the ERGP risks exceeding its mandate which is merely to “advise and assist” the Commission<sup>2</sup>.

<sup>1</sup> Ofcom in its consultation paper “Securing the Universal Postal Service” dated 20 October 2011 declared that the traditional approach to regulation in the UK had ‘failed’. It proposes to grant commercial freedom to Royal Mail for a period of seven years subject to certain safeguards. See also P. Andersson, from University of Linköping, Sweden who counselled against the risk of overregulation at the Postal User Forum organised by the European Commission in Brussels on 12 December 2011.

<sup>2</sup> Commission Decision of 10 August 2010 establishing the European Regulators Group for Postal Services (OJ C 217/7 11.8.2010)

More specifically, by combining network access and infrastructural access in one study, the ERGP would be conflating the provisions of Article 11a<sup>3</sup> and the fifth indent of Article 12<sup>4</sup>. The former is distinguished by its emphasis on the principle of subsidiarity and explicitly grants Member States the right to decide how infrastructural access should be granted.

The ERGP appears to interpret the VAT exemption for universal services as being designed to compensate for universal service net costs. This is simply not the case according to the VAT Directive. Offsetting the VAT exemption against universal service net costs would effectively run counter to the actual objective of the VAT Directive exemption, i.e. to keep prices low.

Furthermore, by raising competition law issues in relating to VAT, the ERGP is intruding into an area which goes well beyond its competencies.

## **2. PostEurop comments on the Draft ERGP Report on Common Cost Allocation (ERGP (11) 16)**

PostEurop requests the ERGP to carefully reflect on the following points:

- The exclusive bottom-up approach is not a well-established process in cost accounting and gives rise to a lot of issues. Adoption of bottom-up models would require a huge investment in time and resources and consequently should not be the preferred means to verify the results derived from the proven and reliable top-down approach<sup>5</sup>.
- Attempting to look at a generic level at postal pipeline processes across Europe should not be a priority, given cultural, demographic and market differences. Even today the definition of sub-activities will not necessarily be identical for all operators. They need to conform to the actual design of the production process of the relevant operator.
- The principle of cost causation has to be better recognised in the document. Causality is the basic principle for allocating cost according to the Postal Service Directive. For example, cost drivers for postal activity could be overlooked if the delivery time frames for the different service levels are not taken into account. This could lead to seriously understating the time sensitive aspect of postal services.
- ERGP does not consider thoroughly the applicability of certain theoretical concepts in practice (issue of implementation and clarity at to some of the definitions) :
  - Definitions proposed for common and joint costs require more clarity so that the two can be more easily identified.
  - A clear delineation between fixed and variable costs is neither possible in terms of time periods nor would it be logical; this is because efficient networks are optimised on a permanent basis.

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<sup>3</sup> Article 11a as introduced by the third in Postal Directive 2008/06/EC

<sup>4</sup> Article 12 as amended by the second Postal Directive 2002/39/EC

<sup>5</sup> Article 14 as amended by the third postal directive 2008/06/EC

### 3. Draft ERGP Report on Net USO Cost Calculation and Evaluation of a Reference Scenario (ERGP (11) 17)

- The document tends to be too abstract and theoretical in its structure – for example by diverting attention away from the physical postal pipeline to an attempt at measuring the intangible benefits of the USO. This would yield highly subjective results that would be open to challenge. Moreover, net cost being linked to the obligations of the universal service, it would seem logical to include only the benefits that relate to possible rights that are directly stem from universal service obligations.
- ERGP suggests that the Postal Directive requires the reference scenario to mirror an efficient operator in an ideal world (independently of the actual level of efficiency). This “interpretation” however goes far beyond what the postal directive actually requires, i.e. setting incentives for efficiency when calculating net costs. In countries where no alternative national provider is available, if net costs are calculated on the basis of what an efficient operator would do, reliance will have to be placed on a hypothetical model.
- Point 3.6.6 presupposes that the product cost accounting system is an important and relevant source of data and methods for the calculation of USO–cost, and even states that the “NRA should enforce the USP to use the same cost accounting method the USP is using in its general cost accounting system in the net cost calculation”. However, whereas the purpose of the cost accounting system is to assign costs to products, the purpose of the net USO–cost calculation is to calculate the difference in profit between the actual USO–scenario and a reference scenario. The difference in these two alternative scenarios will typically be such variables as number of delivery days, number of post offices, franchised vs traditional post offices etc, and for this kind of calculations the methods used for assigning costs to products in the cost accounting system will in general be irrelevant. For many USO– and reference scenarios it will instead be correct and relevant to use actual data from other systems, such as the financial accounts. The cost accounting system should therefore not be viewed as a major or even obligatory source of input to the USO–cost calculation.
- The obligations of the universal service obviously generate operational costs. However costs caused by forms of tariff regulation which are unnecessarily intrusive can also contribute to net cost of the USO. In a counterfactual situation different tariff policies are possible.
- The ERGP in its analysis sees the powers and competencies for the NRAs as deriving from the Postal Directive but which the latter does not actually confer on them:
  - (a) to decide (given uncertainties in determining net costs) whether or not or to what extent universal service net costs will be compensated, including “wider considerations”
  - (b) to determine what constitutes an ‘unfair burden’<sup>6</sup> (or, more precisely to determine where universal service net costs represent a burden that may be compensated)<sup>7</sup>

<sup>6</sup> Most of criteria mentioned by ERGP do not appear significant, due to the absence of a direct relation between such criteria and the fairness/unfairness of the financial burden.

<sup>7</sup> Article 7.3 of the Postal Directive 2008/06/EC stipulates that Member States shall be entitled to make the determination as to whether the USO entails a net cost.

- The optimum method of financing the USO is a realistically sized set of universal service obligations: – this study should be founded on the premise that the current level of legislative constraints on universal service providers – such as frequency of delivery and presence/density of network points – should not be viewed as static but could be relaxed. In an industry characterised by a shrinking market, and declining volumes and changing customer demand, the universal service obligations should be allowed to evolve towards more flexibility and to reflect society's changing needs. Indeed, the problem of financing the USO net costs by using a sharing mechanism like a universal service fund, given the market (e–substitution, competition) and regulatory (affordability and price regulation) constraints, is for example still far away from being solved<sup>8</sup>.

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<sup>8</sup> If the USO entails a net cost representing an unfair burden on the designated operator a universal service fund can be used to compensate the undertaking concerned. If all relevant operators including the USP are obliged to contribute financially to the fund according to their market share and assuming that the USP will continue to enjoy a dominant market position, e.g. 95%, the USP has to bear the lion's share of the contributions into the fund. However, the net compensation received by the USP will accordingly account for 5% of the net costs only while 95% remain without any compensation for him. Competition is growing due to both full market opening and electronic substitution. Hence, and additionally due to affordability constraints and stricter price regulation ("efficient service provision") it is almost impossible for the USP to increase prices in order to cover the costs not compensated by the fund.

This position paper is supported by the following universal service providers:

Country	Universal Service Provider
Austria	Österreichische Post AG
Belgium	bpost
Bulgaria	Bulgarian Posts plc
Croatia	Hrvatska pošta d.d.
Cyprus	Cyprus Post
Czech Republic	Česká Pošta
Denmark	Post Danmark A/S – PostNord
Estonia	Eesti Post Ltd
Finland	Itella Oyj
France	Groupe La Poste
Germany	Deutsche Post AG
Greece	Hellenic Post – ELTA S.A.
Hungary	Magyar Posta
Iceland	Islandspóstur hf
Ireland	An Post – General Post Office
Italy	Poste Italiane S.p.A.
Latvia	Latvijas Pasts
Liechtenstein	Liechtensteinische Post AG
Lithuania	AB Lietuvos paštas
Luxembourg	EPT Luxembourg
Malta	MaltaPost p.l.c.
Montenegro	Pošta Crne Gore / Montenegro Post
Netherlands	Postnl
Norway	Posten Norge AS
Poland	Poczta Polska
Portugal	CTT – Correios de Portugal, S.A.
Romania	C.N. Posta Romana S.A.
Slovakia	Slovenská pošta, a. s.
Slovenia	Pošta Slovenije, d.o.o.
Spain	Correos y Telégrafos S.A.
Sweden	Posten AB – PostNord
Switzerland	Swiss Post
Turkey	Turkish PTT
United Kingdom	Royal Mail



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PostEurop is the association which represents the interest of 50 European public postal operators. Committed to supporting and developing a sustainable and competitive European postal communication market accessible to all customers and ensuring a modern and affordable universal service, PostEurop promotes cooperation and innovation bringing added value to the European postal industry. Its members represent 2.1 million employees across Europe and serve to 800 million customers daily through over 175,000 counters. PostEurop is also an officially recognised *Restricted Union* of the Universal Postal Union (UPU).