

Final Opinion

Conclusion

Both Chambers of the States General consider that the Community is competent to take the measures proposed in the amended Directive. They also conclude that what is proposed complies with the principle of subsidiarity. As regards the principle of proportionality, both Chambers note that by taking the proposed measures the European Commission is seeking to strike a balance in order to achieve both aims of the proposed Directive simultaneously, namely completion of the internal market in postal services and guaranteeing a universal postal service. In the negotiations on the measures in the proposed Directive, the balance between the two objectives and the resulting measures should be maintained. To this end the two Chambers will closely monitor the negotiations on this proposed Directive at European level and, if desired, consult with the Dutch Government on the chosen approach and the course of the negotiating process. They also intend to involve the present proposal for a Directive closely in the parliamentary consideration of the bill for the full liberalisation of the postal market and the guarantee of the universal postal service (Postal Act 20.., Parliamentary Papers 30536). The above-mentioned points are briefly explained below.

Competence

Both Chambers of the States General note that the Community is competent under Articles 47 (2), 55 and 95 of the EC Treaty to take the proposed measures for the completion of the internal market for postal services.

They also note that the Directive's recitals refer to Articles 2 and 16 of the EC Treaty. Article 2 of the EC Treaty sets out the objectives of the Community and the means by which they are to be achieved. Article 16 of the EC Treaty provides that by establishing a common market the Community and the Member States have a shared responsibility for ensuring the proper operation of services of general economic importance. Although these articles are not strictly relevant to the issue of competence, they do provide the broader treaty framework for the present proposal and also indicate what objectives must be achieved by it. The proposed Directive therefore also contains a number of proposals that are specifically designed to safeguard the universal (postal) service provision in the Member States.

As the Community is empowered under the EC Treaty to take the measures proposed in the Directive, and the Community and the Member States, each within their respective powers and within the scope of application of the EC Treaty, ensure that services of general economic importance are given the opportunity to fulfil their missions, the issues of subsidiarity and proportionality gain in importance.

Subsidiarity

Both Chambers note that the subsidiarity principle has been fulfilled and endorse the views of the European Commission on this point. They agree with the European Commission that it is evident in practice that there are major (undesired) differences between the Member States in the regulation of the postal market and that the aims of liberalising the internal postal market and guaranteeing universal postal services can be better achieved at Community level owing to the scale and consequences of the proposed measures. It should nonetheless be noted that some Member States already have a fully liberalised postal market and that the current Postal Directive does allow the Member States the scope to decide to liberalise this market of their own volition.

Proportionality

Both Chambers consider that the instrument of the Directive and the measures proposed in it are proportional. The proposed Directive is necessary in order to be able to amend the existing Directive and to regulate (in more detail) a 'service of general economic importance'. Quite apart from these considerations a directive must be regarded as the most appropriate legislative instrument in view of the two chief objectives of the proposal. These can be achieved only by means of the harmonised legislative framework provided by the proposed Directive. Harmonisation takes place at European level where this is necessary to complete the internal market, and the Member States retain the scope for regulation at national level where possible and necessary to safeguard the universal postal service.

At the same time, however, both Chambers note that the measures contained in the proposed Directive come within the area of tension between the two specified objectives: completion of the internal market for postal services on the one hand and the guaranteeing of the universal service on the other. The proportionality issue therefore in fact also concerns the contribution which the proposed measures make – in their mutual relationship – to the simultaneous achievement of the two objectives. The Chambers consider this observation to be relevant in particular to the provisions of Article 4 of the proposed Directive (concerning the qualified designation of the universal service providers), Article 7 (4) (which enables Member States to arrange for postal companies other than the designated universal service provider to contribute to the net costs of the universal service), Article 9 (concerning the conditions for authorisation procedures, including individual permits, for services which come within the scope of the universal service) and Article 11 bis (which provides for transparent and non-discriminatory access to parts of the postal infrastructure).

Taking this into account the two Chambers have formulated the political intentions mentioned above under the heading 'Conclusion'. These provide for intensive dialogue with the Dutch Government during the negotiations for the present proposal for a Directive and for this proposal to be taken into account in the parliamentary consideration of bill 30536 (Postal Act 20..).