

# Comments on Present and Future of the Universal Postal Service after the Lisbon Treaty

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# Comments

## Key innovations of the Lisbon Treaty

- Key innovations of the Lisbon Treaty with regard to SG(E)I highlighted by Alessandra Fratini
  - Article 14 FEU “Services of General Economic Interest“
  - Protocol (No. 26) that specifies the shared values of the EU in respect of services of general economic interest
  - Recognition of the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union, which shall have the same legal value as the Treaties (Art. 6 of the Treaty)
- These innovations focus on the effective provision and the role of SGEI within the EU

## Comments

### Article 14 FEU

- Article 14 FEU “Services of General Economic Interest” (shared values are specified in Protocol 26)
  - Sentence 1: “[..] the Union and the Member States, each within their respective powers and within the scope of application of the Treaties, shall take care that such services operate on the basis of principles and conditions, particularly *economic and financial conditions, which enable them to fulfil their missions.*”
  - Sentence 2 (new): “The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish these principles and set these conditions without prejudice to the competence of Member States, in compliance with the Treaties, to provide, to commission and to fund such services.”

- Protocol 26 (Clarification of shared values of the EU in respect of SGEI)
  - Stresses importance of the principle of subsidiarity (“the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users”)
  - Highlights the “diversity between various SGEI and the differences in the needs and preferences of users that may result from different geographical, social or cultural situations”, and finally
  - Underlines that SGEI should fulfill the following characteristics: “a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights”
  - Fratini: So far, it is not clear whether the provisions of Protocol 26 is directly applicable. This will be a matter for the Court of Justice of the EU in the near future (?).

# Comments

## Impact Art. 14 FEU and Protocol 26

- This impact appears to be contradictory
  - Introduction of more harmonised high-level requirements on universal postal services by disregarding the principle of subsidiarity (via regulations as foreseen in Art. 14, 2)?
  - Determining the needs and preferences of users as central benchmark for the organisation of SG(E)I in the Member States as highlighted in Protocol 26? (which supports the principle of subsidiarity)
- New arguments for universal service providers to get compensation for USO?
  - “[..] the Protocol can provide interested parties with new grounds for action to pursue their “universal service related” interests.”
  - However, this issue is already addressed in the EU state aid framework and the amended Postal Directive

# Comments

## Impact of the Lisbon Treaty

- Is there any direct effect of the Lisbon Treaty on universal postal services?
- No!
  - Postal acquis is not affected by the innovations of the Lisbon Treaty
  - Application of competition rules on SGEI / state aid is unchanged by the Lisbon Treaty
  - Unclear whether Protocol 26 is directly applicable by interested parties (e.g. universal service providers, postal users)

# Comments

## Role of the Postal Directive

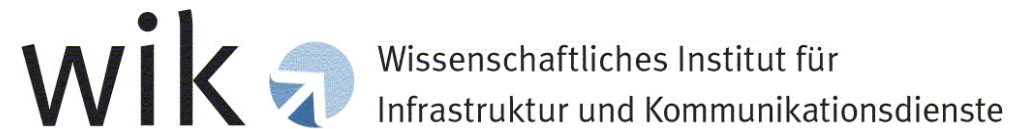
- It appears to me that the Postal Directive has already enshrined the key elements of the innovations of the Lisbon Treaty (especially Art. 1 of the Protocol 26)
  - The needs of users as central benchmark for the development of the universal postal services (Art. 5, par. 1 universal service provision „shall evolve in response to the technical, economic and social environment and to the needs of users“)
  - General and specific conditions to safeguard resp. improve quality of service and to promote the efficient provision of postal services
  - Additional flexibility in delivery frequency in case of „circumstances or geographical conditions deemed exceptional“ (Art. 3, par.3)
- If there are any claims based on Protocol 26: Does this mean that the Postal Directive has not been satisfactorily transposed in the Member State? If so, this should be addressed by an infringement procedure!

# Comments

## Role of the Postal Directive

- The Lisbon Treaty has not an impact on the application of competition rules
- However, the Postal Directive will change the application of state aid rules
  - See presentation of Christian Holzleitner (DG Competition) at Königswinter Postal Workshop in February 2010: While today the incurred loss for universal services is compatible aid within the 2005 framework, in future the benchmark will be the incurred net cost plus further assessment (check for ‚unfair financial burden‘) as defined in the amended Postal Directive
  - In state aid procedures related to universal postal services the amended postal directive will become applicable with entry into force (31 Dec 2010/12)





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