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Present and Future of the Universal Postal Service after the Lisbon Treaty

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- I. The Lisbon Treaty: main institutional and procedural changes
 - II. Unchanged postal “*acquis*”: the Postal Directive, Articles 106(2) and 114 FEU
 - III. Lisbon Treaty innovations: Article 14 FEU, Article 36 of the European Charter of Fundamental Rights and Protocol 26 on SGIs
 - IV. Conclusion: limited impact but increased responsibilities?

I. The Lisbon Treaty

Main institutional and procedural changes

- **General provisions and institutional changes**
 - Modification of the existing treaties
 - Treaty EU, Treaty on the functioning of the EU
 - President of the European Council, High Representative FASP, increased qualified majority voting in Council
- **Main procedural changes**
 - Generalisation of the co-decision procedure
 - Modification of the infringement procedure (Article 258 FEU)
 - Non communication of national transposition measures
 - Accelerated procedure in case of second infringement

II. Unchanged postal “*acquis*”

Postal Directive, Articles 106(2) and 114 FEU

- **The Postal Directive**

Dir. 97/67/EC, amended by Dir. 2002/39/EC and Dir. 2008/6/EC

- **Infringement proceedings:** if transposition measure is not notified, Commission can refer to CJEU and immediately propose financial sanctions applicable upon the 1st judgment

- **State aid**

- **Article 106 (2) FEU (ex 86(2) EC)**

“[u]ndertakings entrusted with the operation of services of general economic interest [...] shall be subject to the rules contained in the Treaties, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Union”

- **Related case law** (C-320/91, *Corbeau*; C-280/00, *Altmark*)

- **General legal basis: Article 114 FEU (ex 95 EC)**

III. Lisbon Treaty innovations

- ❑ Article 14 FEU
- ❑ Article 36 Charter of Fundamental Rights
- ❑ Protocol 26 on SGIs

Article 14 FEU

- Article 14, first sentence (*ex Article 16 EC*):
Mixed impact of the first “historical” Treaty provision on SGEIs
“given the place occupied by [SGEIs] in the shared values of the Union [...], the Union and the Member States [...] shall take care that such services operate on the basis of principles and conditions [...] which enable them to fulfil their missions”
 - Limited direct impact of Art. 16 EC expected to be transferred to Art. 14 FEU
- Article 14, second sentence: new legal basis for SGEIs
*“[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”*
 - Great expectations due to first specific legal basis for SGEIs
 - Commission’s position on the need of a general framework on SGEIs

Article 36 Charter

- Legally binding force of the Charter (Article 6 EU)
 - Previous protection of the rights included in the Charter
- Article 36 Charter

“[t]he Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaties, in order to promote the social and territorial cohesion of the Union”

 - Limited impact on SGEIs
 - Increased references to the Charter by and before the CJEU

Protocol 26 on SGIs (1/3)

■ Protocol 26

“The High Contracting Parties [...] have agreed upon the following interpretative provisions [...]:

Article 1

The shared values of the Union in respect of [SGEIs] within the meaning of Article 14 of the [TFEU] include in particular:

- 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;*
- the diversity between various services of general economic interest and the differences in the needs and preferences of users that may result from different geographical, social or cultural situations;*
- a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights.*

Article 2

The provisions of the Treaties do not affect in any way the competence of Member States to provide, commission and organise non-economic services of general interest.”

Protocol 26 on SGIs (2/3)

- **First Treaty provision on Services of General Interest**
 - Value of Protocol 26 FEU
 - SGEIs (Article 1) and non economic SGIs (Article 2)
- **Shared values of the EU in respect of SGEIs**
 - ✓ Essential role and wide discretion of national, regional and local authorities in providing, commissioning and organising SGEIs
 - ✓ Diversity between various SGEIs and the differences in the needs and preferences of users
 - ✓ A high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights

Protocol 26 on SGIs (3/3)

- **Impact of the Protocol on SGEIs: a sufficient framework for action?**
 - Diverging positions of EU and national institutions
 - Absence of clarifications of the notion of SGIs (*e.g.*, no definition, no precise indication on the distinction between SGEIs and NESGIs)
- **Little relevance of the Protocol on the universal postal service**
 - The universal postal service is incontestably economic (SGEI)
 - Existing secondary law and related case law

IV. Increased responsibilities in the field of universal postal service

- Limited impact of the Lisbon Treaty on currently applicable EU regulation on universal postal service
- Reinforcement of the Treaty legal basis for universal services
- *“High level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights”* (Article 1, Protocol 26): new ground for action in the context of full postal market liberalisation?
 - Commission v. MS before the CJEU on the basis of postal operators’ claims?
 - Customers v. postal operators before national courts?
 - To what extent can this provision be relied on? Direct effect?

Thank you!

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