



European
University
Institute

ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES

WORKING PAPERS

RSCAS 2014/117

Robert Schuman Centre for Advanced Studies
Florence School of Regulation

Assessment of EU Postal Sector Policy during the
Second Barroso Administration (2010-2014)

Christian Jaag, Urs Trinkner and Jeffrey Yusof

European University Institute
Robert Schuman Centre for Advanced Studies
Florence School of Regulation

**Assessment of EU Postal Sector Policy during the Second
Barroso Administration (2010-2014)**

Christian Jaag, Urs Trinkner and Jeffrey Yusof

EUI Working Paper **RSCAS** 2014/117

This text may be downloaded only for personal research purposes. Additional reproduction for other purposes, whether in hard copies or electronically, requires the consent of the author(s), editor(s). If cited or quoted, reference should be made to the full name of the author(s), editor(s), the title, the working paper, or other series, the year and the publisher.

ISSN 1028-3625

© Christian Jaag, Urs Trinkner and Jeffrey Yusof, 2014

Printed in Italy, December 2014

European University Institute

Badia Fiesolana

I – 50014 San Domenico di Fiesole (FI)

Italy

www.eui.eu/RSCAS/Publications/

www.eui.eu

cadmus.eui.eu

Robert Schuman Centre for Advanced Studies

The Robert Schuman Centre for Advanced Studies (RSCAS), created in 1992 and directed by Brigid Laffan since September 2013, aims to develop inter-disciplinary and comparative research and to promote work on the major issues facing the process of integration and European society.

The Centre is home to a large post-doctoral programme and hosts major research programmes and projects, and a range of working groups and *ad hoc* initiatives. The research agenda is organised around a set of core themes and is continuously evolving, reflecting the changing agenda of European integration and the expanding membership of the European Union.

Details of the research of the Centre can be found on:

<http://www.eui.eu/RSCAS/Research/>

Research publications take the form of Working Papers, Policy Papers, Distinguished Lectures and books. Most of these are also available on the RSCAS website:

<http://www.eui.eu/RSCAS/Publications/>

The EUI and the RSCAS are not responsible for the opinion expressed by the author(s).

Florence School of Regulation

The Florence School of Regulation (FSR) is a partnership between the Robert Schuman Centre for Advanced Studies (RSCAS) at the European University Institute (EUI), the Council of the European Energy Regulators (CEER) and the Independent Regulators Group (IRG). Moreover, as part of the EUI, the FSR works closely with the European Commission.

The objectives of the FSR are to promote informed discussions on key policy issues, through workshops and seminars, to provide state-of-the-art training for practitioners (from European Commission, National Regulators and private companies), to produce analytical and empirical researches about regulated sectors, to network, and to exchange documents and ideas.

At present, its scope is focused on the regulation of Energy (electricity and gas markets), of Communications & Media, and of Transport.

This series of working papers aims at disseminating the work of scholars and practitioners on current regulatory issues.

For further information

Florence School of Regulation Transport Area

Robert Schuman Centre for Advanced Studies

European University Institute

Via delle Fontanelle 19

I-50014 Fiesole (FI)

Tel.: +39 055 4685 795

Fax: +39 055 4685 755

E-mail: fsr.transport@eui.eu

Web:

www.eui.eu/DepartmentsAndCentres/RobertSchumanCentre/Research/Programmes/FlorenceSchoolRegulation.aspx

Abstract

This paper assesses the EU postal sector policy of the second Barroso Commission from 2010 to 2014. The main goal of the Commission is to achieve a single European market for postal services. The paper distinguishes between the following three objectives, whose implementation should lead to the achievement of an internal postal market: implementation of the Third Postal Directive; fostering e-commerce and parcel delivery; and enforce its State aid framework in the postal sector. The analysis shows that almost all Member States have transposed the Directive into national law and fully liberalized their markets, but nevertheless competition in all Member States has only developed to a limited extent. While there is strong growth of the e-commerce sector, a consistent alignment of State Aid policy with USO and full market opening is still under development.

The current design of the USO and its financing may not be appropriate in times of fast changing technology and consumer needs. Therefore, the paper presents new approaches, suggesting to include new technologies or even proposing to establish an intermodal USO for postal and telecommunication services.

Keywords

Third Postal Directive, single market, e-commerce, state aid, universal service obligations.

1. Introduction

The postal sector in the EU was subject to major regulatory changes in the past two decades. Most importantly, the rollout of full market opening and a European single market for postal services was achieved with the adoption of the Third Postal Directive in 2008.

This paper focuses on the years following 2008. It discusses the objectives with major relevance for the postal sector set by the European Commission during the second Barroso Commission from 2010 and 2014 and whether and how they have been achieved. The main policy goal to which the current European Commission sees itself committed is the achievement of a European single market for goods and services, which includes postal services. In the postal sector, the European Commission follows its goal of single European market along three lines of directions. First, the EC postal directives have to be transposed and implemented on a national level by all Member States. Second, cross-border e-commerce shall be promoted. Third, the scope of support to providers of services of general economic interest (SGEI) within the State Aid framework, such as the compensation for universal service obligations (USO), must be limited to their effective burden in order to avoid discrimination.

The remainder of the paper is structured as follows. In Section 2 the regulatory background for the EU postal sector is reviewed, which was developed before 2010 and sets the basis for the establishment of further regulations. Section 3 describes the different goals for postal services the European Commission has set for the period of the second legislation under Commissioner Barroso between 2010 and 2014. In Sections 4, 5 and 6 the implementation of the discussed objectives are analyzed and finally evaluated in Section 7. The conclusion points to the remaining challenges and possible steps for the new Commission to be taken in the future.

2. Postal Regulation and Legislation in the EU

The main objective for postal-sector policy in the EU was and is the establishment of a single market for postal services. This objective is pursued by opening up the sector to competition in a gradual way and therefore by weakening the (legal and actual) monopoly position of the traditional postal operators step by step. Postal sector policy was implemented in community law through a Framework Postal Directive in 1997, which established a regulatory framework for European postal services (Directive 97/67/EC). The Postal Directive governs a series of aspects of postal markets and universal service provision. It defines the minimum characteristics of the universal service to be guaranteed by each member state (within their territory), it sets common limits for services that may be reserved for the universal service provider (USP) in each member state, and a timetable for further liberalization, it lays down the principles that govern the authorization/licensing of non-reserved services, it defines the pricing principles applicable to the USO, as well as the transparency of the accounts of USPs, it governs the quality of service standards for national and cross-border services and it requires the creation of national regulatory authorities independent of the postal operators. Within the framework of the Postal Directive, member states have considerable freedom in adopting country-specific postal policies (Trinkner 2009).

In 2002, the European Parliament and the Council adopted the Second Postal Directive (2002/39/EC), which amended the initial Postal Directive by defining further steps in the process of market opening, and by further limiting the services that can be reserved to a limit of 100 grams by 2003 and 50 grams by 2006. In addition, all outgoing cross-border mail was opened to competition since January 1, 2003 (approximately an additional 3 percent market opening to competition, see Okholm et al. 2010).

In 2008, the European Parliament and the Council adopted Directive 2008/06/EC, which amended the initial Postal Directive (97/67/EC) as amended by Directive 2002/39/EC. According to this Third

Postal Directive, member states must have abolished any remaining reserved areas by the end of 2010, with the possibility for eleven member states to postpone full market opening by two more years at most.

According to the Commission, the adoption of the Third Postal Directive is an important step towards a fully liberalized postal sector. But with that milestone, a single market has not been completed. The following section discusses what further initiatives were taken by the Commission and the Member States to achieve the target of the single market for postal services.

3. Agenda of the second Barroso Commission for postal services

In the policy guidelines for his Commission, President Barroso described the European Single Market as an important source to boost growth and social cohesion (Barroso 2009). Although the Barroso Commission saw the single market as an important asset of the EU, he acknowledged the importance of updating it to guarantee better quality and to gain higher effectivity and efficiency of businesses and services. Regarding the market for postal services, major steps toward a single market were already taken with the adoption of the Third Postal Directive. Since the majority of the Member States was obliged to transpose the Directive into national law by 2010, a major concern for the Commission was to monitor and ensure the proper implementation of the Third Postal Directive. The Commission realized in its policy guidelines that fostering e-commerce and parcel delivery, especially cross-border services, should be seen as a further target to accomplish a single market for the postal sector. Even though a full liberalization of the postal sector is needed to achieve an internal market, a broad range of USO must still be provided under the Third Postal Directive. The Directive also provides guidance regarding the compensation for the burden of the USO. In order not to overcompensate the universal service provider, according rules on state aid need to be implemented as a flanking measure. The paper will hence discuss the following three objectives and their achievement on both community and member states level:

1. Implementation of the Third Postal Directive
2. Fostering e-commerce and parcel delivery
3. Ensuring the application of a State aid framework.

4. Implementation of the Third Postal Directive

The two main topics of the Third Postal Directive are full market opening and the provision of universal service. Article 22 of the Third Postal Directive requires Member States to ensure the compliance with those obligations by designating one or several national regulatory authorities (NRAs) for the postal sector. In fact, in Article 22 it is emphasized that NRAs not only have to be independent of but also legally separated from the postal operators (Trinkner 2009). As Dieke et al. (2013) state in their study, each Member State has established an independent NRA for the postal sector, although in practically all Member States, except Spain and Slovakia, the NRA is responsible for the regulation of multiple sectors, such as telecommunications, energy, water, gas, railway or other. Besides that Member States established their own regulation authority for postal services, the European Commission set up a European Regulators Group for Postal Services (ERGP) in 2010, with the aim to facilitate consultation, coordination and cooperation between the NRAs and between the NRAs and the Commission by implementing the Postal Directive (European Commission 2014d). The ERGP is composed of twenty eight NRAs from Member States. In addition to the aims above, the ERGP has the mandate to advise the Commission and to monitor the initiatives which are taken by Member States to ensure the implementation of the Third Postal Directive.

Accomplishing the full market opening

Member States are required to adapt their laws to meet the goals laid down in the EU Directives within the prescribed transition period. If certain Member States fail to achieve the set targets by the end of that period, the European Commission has the power of its own to try to end the infringement and even may refer the case to the European Court of Justice, but generally infringement proceedings are settled without the need to bring formal proceedings into court (European Commission 2013d). Since 1 January 2010, Member States have continued to revise their postal legislation. In the context of the implementation of the Third Postal Directive there is no infringement case which was reported to the Court of Justice.¹ According to a request from November 2013, Commission. Cyprus had not put the required provisions in place by the end of the transition period, which was dated on the 31 December 2012, and therefore was requested by the European Commission to implement the Directive. Otherwise the Commission would have referred the cases to the Court of Justice, but there is no report that such proceedings were initiated (European Commission 2013c). Besides that exemption, all Member States have adopted legislation to translate the latest Postal Directive into national law.²

With the implementation of the Directive and the abolishment of the reserved areas by almost all Member States, competition can evolve in all parts of the value chain, from collection to delivery (Jaag 2014). Access to the postal infrastructure (such as postcodes, address database, post office boxes, delivery boxes, change of address database and redirection and return services) is governed by Article 11 and 11a, which requires Member States to ensure transparent and non-discriminatory access conditions to protect users and/or to promote effective competition (Trinkner 2009). Additionally, Article 12 rules that access to downstream services of the USP (mainly delivery services) shall be provided according to the principles of transparency and non-discrimination. In the period between 2010 and 2013 there have been several cases, where refusal or discrimination of access was reported to the National Competition Authorities (NCAs) of the Member States. On 10 December 2012, the Belgian Competition Council fined Belgian postal operator bpost for having abused its dominant position by applying an exclusionary rebate scheme between January 2010 and July 2011. The rebates at issue were awarded by bpost to large customers and intermediaries (but not to consolidators with the same volume of unaddressed mail), either based on the volume of mail or on the extent to which their mail was prepared for further processing by bpost. Further, P&T, the postal incumbent of Luxembourg, refused to grant access to competitors to their P.O. boxes. In that case it was ruled by the NCA of Luxembourg that P&T has to deliver postal items from competitors destined to P&T P.O. boxes for a special tariff (Dieke et al. 2013). The cases show, that not only the NRAs but also the NCAs of the Member States are involved in the process of governing the implementation of the Third Postal Directive.

Universal services:

Guaranteeing a minimum range and quality of service for the benefit of all users

Among others, Cremer et al. (2008) have shown that profit maximizing postal operators would choose a suboptimal quality of delivery in a fully liberalized postal market. Universal service obligations, which define a minimum set of services to be provided, are a possible solution to this problem. The Postal Directive follows this concept and prescribes a minimum set of postal services of specified quality, which must be available and affordable for all users in all Member States (Knieps et al. 2009). Besides the affordability the Third Postal Directive obliges Member States (Jaag 2014):

¹ Although in one case Sweden was referred to the Court of Justice because of their application of Value Added Tax (VAT) on postal services.

² Actually Romania did not fully implement the Postal Directive, but it constitutes an exemption, since Romania has adopted a temporary Government emergency ordinance (Dieke et al. 2013).

- to one collection from appropriate access points every working day;
- to one delivery to all addresses every working day;
- including postal items and packages weighing up to 20 kg; and further
- to uniformity (independent from distance) of prices for single piece mail,
- to offer a service for registered items and insured items.

The concrete specification and implementation is country specific. As documented in Dieke et al. (2013), there are several differences between Member States in the scope of services considered to be universal service: Eleven countries (BG, CZ, DE, EE, FI, LT, NL, PL, SE, SI, UK) have defined a minimalist range of service including single-piece letters and parcels only. Eight countries (AT, BE, DK, IE, LU, MT, RO, SK) with a share of about 9% of the European letter post market include all non-express postal services such as bulk letters and parcels in the USO.

To ensure the provision of universal services, the Postal Directive allows Member States to employ one or a combination of three options, respecting the principles of transparency, non-discrimination and proportionality (Knieps et al. 2009):

- reliance on market forces;
- designation of one or more universal service providers (USPs); or
- public procurement.

In practice, almost all Member States have designated the incumbent operator as the single USP for the entire national territory without considering alternatives. To name an exception, in Germany the NRA has concluded that Deutsche Post and other operators provide satisfactory universal service to the entire national territory in the response to market forces (Dieke et al. 2013). The idea of public procurement to strengthen competition and increase efficiency is going to be applied in Belgium, where postal operators (including specialized press distribution firms) will get the opportunity to bid for a concession for the distribution of newspapers and periodicals from 2016 onwards (European Commission 2014a).

The USO may represent a financial burden and therefore a competitive disadvantage. If so, the USPs should be compensated appropriately. In Europe, USO costing and financing is laid out in the Third Postal Directive. Article 7 states that only the net cost of the USO that constitutes an unfair financial burden should be subject to compensation. The net cost of USO according to profitability cost is the difference in the USP's profit with and without this obligation. Further it is not defined what is regarded as unfair, but the Directive imposes criteria on compensation, such as objectivity, transparency, non-discrimination, proportionality, least distortion, or neutrality (Jaag et al. 2014).

With the full liberalization and the abolishment of the reserved areas the need for alternative funding sources for USO has arisen. Jaag and Trinkner (2011) discuss three potential mechanisms for financial compensation:

- State funding – The USP's net cost of providing universal services is reimbursed with funds provided by the general government budget. In this scheme, no operator in the postal market contributes specifically to the funding of the USO.
- Compensation fund – All operators contribute to a compensation fund with a uniform tax. The USP's net costs are reimbursed by the collected funds. In such a system, the USP has to partly compensate his net cost himself.
- "Pay or play" – Operators that provide universal services (,play') are exempt from contributing to the compensation fund (,pay').

If the burden of the USO can be absorbed by price adjustments, there may be no need for further compensation. According to Dieke et al. (2013), twenty-two Member States have authorized the

establishment of a compensation fund, but only four of these twenty-two States (CY, EE, IT, SK) have actually established one. Three Member States (ES, IT, PL) make use of state funding.

The compensation of USPs for the unfair burden of USO remains a controversial topic, since the term “unfair” as well as the calculation methods for the net cost of USO are not clearly defined in the Postal Directive. Moreover, intangible benefits of the USO (e.g. the exemption from VAT) may reduce the need for financial compensation.

In the EU, public postal services are exempt from value added taxes (VAT) based on the VAT Directive (2006/112/EG). Services outside the USO are taxed at the standard rate. In the United Kingdom, TNT legally challenged the VAT exemption of the domestic USP Royal Mail in 2009 and argued that VAT should be charged on all services in liberalized markets in order to avoid market distortion. The ECJ ruled that Royal Mail, as the operator providing the public postal service, was the only postal service provider in the UK that was eligible for the VAT exemption for services covered by the USO (Dietl et al. 2011). Nevertheless, there are variations in the scope of the VAT exemptions for postal services among the Member States. On the one side, ten Member States appear to grant VAT exemptions that even exceed the scope of the USO (Dieke et al. 2013). On the other side, Sweden does not provide VAT exemptions to postal services at all. Since the European Commission saw the Swedish VAT application as an infringement of the VAT Directive, it referred the case to the European Court of Justice (ECJ) in November 2013. The ECJ clarified that VAT exemptions for universal services have to be applied by all USPs, regardless of whether universal services are provided by a public or a private operator (Gramlich 2014). Dietl et al. (2011a) show that VAT exemption strengthens the USP’s relative competitive position and therefore results in an unlevel playing field. The analysis of Dietl et al. (2011b) elaborates the competitive effects in more detail and argue that VAT exemptions are to be reflected in net cost calculations. This distortion of competition and the unequal application of VAT exemption between Member States may also be an obstacle for accomplishing a European single market for postal services.

5. Fostering e-commerce and cross-border parcel delivery

The e-commerce market, the market to sale or purchase goods and services via the internet, is experiencing a great boom, which resulted just recently in the greatest IPO in world history, performed by the Chinese e-commerce company Alibaba. Stengg (2013) estimates the average European growth of e-commerce to be 17% in 2013, with higher growth e.g. in Germany (23%) and Russia (30%). In the EC, e-commerce is governed by the E-Commerce Directive (2000/31/EC), adopted in 2000 by the European Commission, which sets up the internal market framework for e-commerce. The Directive regulates central issues such as commercial communications, online contracts and liability of intermediaries, with the aim to remove obstacle to cross-border online services (Lodder 2002). To examine the potential of e-commerce, especially for cross-border parcel delivery, the Commission conducted several studies on e-commerce including parcel delivery with the aim of identifying the remaining problems which have to be solved in order to foster an internal market for e-commerce and parcel delivery.³ As a consequence, the European Commission published a Green Paper in 2012 with the objective to boost e-commerce through establishing an integrated parcel delivery market in the EU and to discuss the problems and challenges faced by the consumers and e-retailers (European Commission 2012). The key elements of the green paper can be summarized as follows:

- improving convenience of delivery services for consumers and e-retailers;
- ensuring more cost-effective delivery solutions and better prices;
- promoting improved interoperability of delivery services between operators, and between operators and e-retailers.

³ See, for example, Meschi et al. 2011

The Green Paper was followed by a “roadmap for completing the Single Market for parcel delivery”. Therein the Commission sets three main objectives which have to be accomplished: (1) increased transparency and information for costumers and e-retailers, (2) improved delivery solutions and (3) enhanced complaint handling and redress mechanisms for consumers. The roadmap outlines a portfolio of actions which should be taken in the following 18 months after publication by retailers, delivery operators, Member States and the European Commission itself. For example, e-retailers and delivery operators shall ensure better access to information on delivery solution, Member States must define a statistical framework for data collection on parcel delivery and set clear quality standards for parcel delivery under the USO, and the European Commission together with ERGP shall monitor and supervise the process, report on quality of service performance and analyze consumer complaints referring to cross border delivery (European Commission 2013b). A further point mentioned in the roadmap is that the European Commission should organize workshops, in order to gather the relevant stakeholders to clarify the precise deliverables expected and to discuss the achieved progress. The findings of these workshops and further information concerning e-commerce and parcel delivery were recently published in a study (Dieke et al. 2014). Besides recommendations for further initiatives, the study focuses on the analysis of the e-commerce delivery markets in the different Member States where the workshops were organized.

The Commission sees cross-border parcel delivery as a major challenge for e-commerce, since the majority of users’ complaints refer to cross-border purchases. E-retailers do often not have sufficient information on the delivery services potentially available to them. Since the Postal Directive sets a regulatory framework for cross-border parcel services within the USO only, and since only 5-10% of cross-border parcel delivery flows fall under the USO, the European Commission sees need for further regulatory frameworks for cross-border parcel services in the EU (European Commission 2013b).⁴ The new EU Consumer Rights Directive, which applies since June 2014 in all Member States, can be seen as a step in that direction. It strengthens the rights of the consumers. Among others, it expands the period for consumers to cancel a distance purchase from 7 to 14 days and promotes transparency by obliging retailers to disclose total costs in advance, including extra fees or charges (European Commission 2014b).

On a national level, several initiatives aligning to the roadmap have emerged. The key aspects consider platforms and websites that aim at providing more information for the different e-commerce stakeholders; solutions to interconnect information systems and open interfaces to allow data exchange; certification schemes and trust marks; and new concepts for delivery, especially on the “last mile” (Dieke et al. 2014). There are lots of changes and progresses in the e-commerce delivery sector, on EU level as wells as on national levels. It will therefore be interesting to read the conclusion of the European Commission about the developments in the European parcels market at the end of the 18 months (expected summer 2015).

6. Ensuring the application of the State Aid framework in the postal sector

Postal universal services belong among other services to the Services of General Economic Interest (SGEI), which the European Commission defines as services for the overall public good that would not be supplied by the market without public intervention (European Commission 2013a). Compensations for such services may distort competition if these are set too high. If so, the compensation includes a subsidy. Such a “State aid” is illegal according Article 107 of the Treaty on the Functioning of the European Union (TFEU). The European Commission (2014c) defines State aid as “any aid granted by a Member State or through State resources which distorts competition by favoring certain undertakings and which affects trade between Member States”. On the other hand, the

⁴ On the other hand, Vantomme (2014) states, that the Postal Directive suffice to harmonize European parcel services and that further regulations should lie in the responsibility of national policy makers and regulators.

European Commission has acknowledged that the USO can constitute a financial burden and thus lead to unequal competition conditions comparing the USP with other postal operators. Therefore, the European Commission has elaborated a set of criteria under which compensations for SGEIs (and therefore postal USO) do not constitute State aid within the meaning of Article 107 TFEU and thus are compliant with EU law. This conditions, originally referring to the judgment in the *Altmark* case, are now set out in the 2012 Framework on SGEI (European Commission 2013a).⁵ Besides compensations for USO, the framework allows Member States to grant financial aid to USPs burdened by legacy costs inherited from the past. As a legacy of their past as State administrations, many USPs can be disadvantaged because of higher pension costs for civil servants (European Commission 2014a).

The European Commission primarily focuses on the prevention of overcompensation for provision of SGEI / USO services and performs so-called overcompensation tests, which for example led to a decision in 2012, in which the Commission concluded that the Belgian postal operator bpost had been overcompensated between 1992 and 2010 and therefore was forced to repay substantial amounts to the Belgian State. In a further decision in 2012 the Commission approved compensation payments granted by Germany to the German USP Deutsche Post AG from 1990 to 1995 to cover the cost of USO. However, it ordered the recovery of compensation payments granted after 1995 on the basis that part of the costs incurred had already been compensated through increased price of stamps (European Commission 2014a). In other cases in 2012 concerning compensation for USO, such as in France and Greece, the European Commission declared the compensation payments to be compatible with State aid rules (Dieke et al. 2013). In 2014, the European Court of Justice (ECJ) supported the Commission's decision from 2012, which had ruled that the state guarantee granted by France to La Poste had constituted inadmissible State aid (Gramlich 2014).⁶ As a further measure to prevent abuse of State aid, the postal operators are obliged by the Postal Directive to use separated accounts for activities that receive State compensation and activities that are subject to competition.

Whereas there are several mechanisms and legal frameworks to prevent overcompensation, the problem of USPs being undercompensated has not been tackled by the European Commission. Undercompensation can lead to a serious competitive disadvantage for USPs and therefore to an unlevel playing field, in the competitive market place.

7. Evaluation

In this section the above mentioned objectives and their attainment will be evaluated based on the outcome, more precisely on the market developments and whether the markets have reacted to the regulatory changes in the desired way.

Developments in the letter market

In the past years, letter post items have significantly decreased in terms of volume, as well as in terms of revenue (Dieke et al. 2013).⁷ According to Dieke et al. (2013), letter volumes have declined 4.3% per annum between 2007 and 2010 and 3.3% between 2010 and 2011, whereas revenues have declined 5.2% per year between 2007 and 2010 and 1.4% between 2010 and 2011. Further, it can be observed

⁵ Key criteria for State aid in postal sector according to the 2012 SGEI: clear agreement between State and postal operator on the requirements for public service tasks; postal operators must keep separate accounts; calculation methods for compensation amount have to set out in advance; no overcompensation; compensation mechanism should encourage postal operator to become more efficient; transparency must be ensured (European Commission 2014a)

⁶ For further examples and discussion of State aid cases, see Geradin and Malamataris 2014

⁷ According to Dieke et al. (2013), in 2007 letter post compared to parcels had a revenue share of 56% of the whole European postal sector (total revenue EUR 94 billion). In 2011 the share of letter post decreased to 48% (total revenue EUR 91 billion).

that the strongest declines are in countries where electronic communications are most developed, such as Denmark and the Netherlands. This can be taken as an indicator that the telecommunication services are a serious threat for the letter market, and that declining mail volumes are mainly caused by e-substitution, another form of competition (Cuomo et al. 2013). The strong decrease in letter post items might be a reason that competition within the letter market is emerging rather slow with incumbent postal operators retaining an overwhelming majority market share (ERGP 2014). An example for the nearly absent end-to-end competition can be found in the UK, where the postal services regulator Ofcom acknowledged in 2013 that the incumbent operator Royal Mail has delivered over 99% of all mail items in 2011 (Eccles 2014). Potential reasons for the high incumbent market shares for letters include their good reputation, substantial economies of scale, small margins, good overall quality, and the rather risky sector outlook. In the case of the UK, a strict access regime renders delivery less attractive.

Even though incumbents maintain strong overall market positions, there are important market niches which are attractive to end-to-end competition. These market segments, such as bulk mail and postal services with low delivery frequency or geographic focus on the most densely populated areas, can be interesting for new entrants, since incumbent USPs cannot completely focus on such business models due to the USO (Jaag 2010a). The Swedish competitor Bring Citymail (former CityMail) is a prominent example of postal end-to-end competition in selected market segments, with an approximate overall market share of 12% (ERGP 2014). But since Sweden has liberalized their mail market already in 1993, other examples have to be considered to evaluate the recent regulatory initiatives. According to a report of ERGP (2014), out of the 29 countries, which participated in the questionnaires, market shares of new entrants have exceeded 5% only in six countries (Bulgaria, Latvia, Lithuania, Poland, Romania, Slovakia) that opened up their markets in 2010 or later. In no Member State, including those that liberalized their mail markets before 2010, competitors have achieved market shares above 20%.

Besides competition over the whole value chain, competition also occurs in certain parts of the value chain. Access competition can emerge when new entrants are given the chance to (partly) use the incumbents delivery network (Jaag 2014). An example for an access regime is the UK, where the first access agreement has been established in 2004. Since then, competitors can perform upstream activities, such as collecting, sorting or transportation for the USP. In return they are getting rebates of up to 33% of the end-to-end price of Royal Mail. Another example for access competition can be found in Germany, where 11.4% of the incumbent's letter items are injected by competitors. Considering the countries with full market opening after 2009, only Slovenia has more than 5% access competition by volume (ERGP 2014).

Competition in the market for cross-border letter post is dominated by a few postal operators from the EU and the US. The largest providers of cross-border letter post are Spring Global Mail (a joint venture of Royal Mail and TNT), Asendia (joint venture of La Poste and Swiss Post) and DHL Global Mail (Deutsche Post). Even though cross-border letters from business customers have a significant share, competition has not much changed in the past few years (Dieke et al. 2013).

Regarding the goal of achieving an internal market and to ensure competition for postal services, the evaluation of the mail market is sobering. Even though the idea of a single market would imply cross-border competition, in reality even domestic competition is hardly emerging. Even though incumbents maintain their high market shares in mail, the USPs are facing a challenging financial situation because of the declining letter volumes, caused by competition from alternative means of communication (Cuomo et al. 2013). Due to economies of scale in this sector, as mail volumes decline average costs increase (*ceteris paribus*), which might be compensated by efficiency gains and increasing prices (Veruete-McKay et al. 2013). But since price increases tend to promote substitution to other means of communications. As it is not clear if there has been a change in demand elasticities

for postal services, postal operators have to find further alternatives to adapt to e-substitution.⁸ One possible solution could be to integrate such technologies in postal services and to combine physical postal services with new digital means, also within the scope of the universal service. Potential candidates are, among others, the electronic collection of letters (which are later printed out and delivered physically) or electronic/hybrid delivery of letters, i.e. scanning, instantaneous electronic delivery, weekly physical delivery of scanned mail (Jaag 2014). Further approaches of integrating new technologies in postal services will be presented later in this section.

Developments in the parcel markets and e-commerce

While shopping in a retail store, the customer is immediately handed over the purchased good after the payment. The situation is quite different with customers buying goods through e-commerce; since customer and retailer are not located at the same place at the time of purchase, there is a need for a delivery operator who transports the product from the retailer to its customers. In contrary to the letter market, the parcel sector⁹ is growing; in terms of volumes (6% annually between 2009 and 2011), as well as in terms of revenue (4% annually between 2009 and 2011) (Dieke et al. 2013). Hence, the market for parcel delivery constitutes an attractive opportunity for competition. Okholm et al. (2013) distinguish three key players in the delivery markets:

- National Postal Operators; incumbent postal firms, which are typically subject to USO
- Global Integrators; multi-national operators, such as DHL, FedEx, TNT Express or UPS
- Couriers and other express and parcels specialists, which differ from the already mentioned categories with respect to services, coverage and business models.

Although incumbent postal operators have still a strong position in the domestic parcels market and a share above 20% in most countries, international integrators play an important role and can be seen as serious competitors to the USPs. The three largest operators usually achieve a combined market share above 60%. The domestic competition situation differs between business-to-business (B2B) and business-to-costumer (B2C) deliveries. In almost all Member States parcel providers focus on B2B shipments, which might be explained by the fact that purchases between businesses represent the largest proportion of total e-commerce turnover (Meschi et al. 2011). Thus, the B2B market attracts more competition than the B2C market. As a result, national operators hold a higher share in the B2C business compared to the B2B business. For example, PostNL (Netherlands) reports a market share of 15% in the B2B segment, and in contrast they estimate their share above 70% in the B2C segment. Similar patterns can be observed in other countries, such as in Austria (22% vs. above 70%) and in Germany (20% vs. above 50%) (Dieke et al. 2013).

Having the high growth rates of the e-commerce turnovers in mind, it might surprise that the majority of purchases are made within national borders, and that only 11% of consumers shopped online across borders in 2013 (Stengg 2013). This may be due to higher prices, poorer quality of service or lacking information of cross-border parcel delivery compared to domestic delivery (Meschi et al. 2011). Okholm et al. (2013) found that prices for cross-border deliveries are three to five times higher than prices for domestic deliveries of similar items. Meschi et al. (2011) found five major reasons for significant price differences:

- The cross-border postal process contains more steps than the domestic one

⁸ For example, Cigno et al. (2014) examined that Internet penetration and higher postal prices are leading to more elastic demand behaviour by US postal consumers.

⁹ The term parcel is used generically. There are several definitions for the different products that refer to that generic term. The Universal Postal Union (UPU) differentiates between packets (letter post items, max. 2kg), parcels (max 20kg) and express products (forwarded and delivered in most rapid way). The operational definition of the parcel market is called CEP, distinguishing between couriers (same day delivery), express (time certain delivery) and parcel (day-certain delivery).

- Domestic products are handled end-to-end by a single national postal operator, while cross-border products are handled by two operators: therefore differences in prices can be explained by terminal dues the operators pay for delivery in another country
- There may be qualitative differences between domestic and cross-border products, such as the availability of track-and-trace, insurances or return to sender services
- There may be additional administrative requirements for cross-border products, such as transport documentation or border checks
- Competition situation for cross-border parcel services may vary from the domestic market, in other words, there may be higher market power in cross-border markets.

Regarding the market situation for cross-border parcel services, the latter point seems to be of high relevance for the explanation of price differences, since the cross-border parcel distribution market is highly concentrated. There are mainly four competitors; DHL, TNT, UPS and FedEx while domestic USPs do not hold strong market positions (Dieke et al. 2013). Also Meschi et al. (2011), observed that higher cross-border competition has a strong impact on cross-border price differentials. They found that in the six largest countries (F, GE, I, NL, E, UK), in terms of mail flows, where competition is highest, cross-border price differentials are significantly below average. Regulatory steps toward efficient pricing may be taken in the context of USO parcel deliveries. To this end, a uniform definition of cross-border parcel products that fall under the scope of USO would be needed. Further, NRAs would have to increase their cooperation among each other in order to establish consistent rules for the determination of termination rates, the tariffs that public postal operators charge each other for delivery of cross-border products (Meschi et al. 2011). In Article 13 of the Third Postal Directive it is ruled that termination rates shall be oriented to cost and quality of service and shall comply with the principles of transparency and non-discrimination. But according to Dieke et al. (2013) in reality termination rates are not always related to the principles of the EU, which leads to distortions in trade and even to price discrimination among different countries. Since this problem has to be tackled not only by the European Commission but also by the NRAs, the ERGP may be the right platform for the discussion and the solution of this concern.

E-commerce constitutes a great opportunity for postal operators to boost their business. However, especially the quality of the delivery services has to be improved to promote cross-border e-commerce and thus parcel flows and to achieve an EU single market as final consequence. Even though services like track-and-trace are a standard for most postal operators, customers and retailers have great concerns considering cross-border delivery according to Okholm et al. (2013).

The adequacy of the set goals and future initiatives

This paper showed that a single market has not yet been achieved in the EU postal sector. The sector has undergone significant change, but not mainly due to full liberalization and the implementation of the Third Postal Directive, but rather due to electronic communication enabling e-substitution and e-commerce. The convergence between the postal and telecommunications sector questions the Member States' obligation to guarantee a specifically defined scope of universal service to all citizens. Regarding the developments and the spreading of information and communication technology (ICT), it raises the question, if the USO is even needed and desired by the customer in its current form. For example, Borsenberger (2014) argues that accessibility and proximity in connection with the USO should also contain 'virtual' dimension, regarding the progresses in information and communication technologies. She sees online services, which complement and extend physical postal services, as a solution to reduce economic and social costs of the USO. Jaag and Trinkner (2011) take a similar path by presenting an outline for a future oriented postal USO, which includes electronic complements and substitutes to traditional postal services. Their new USO concept combines old and new means to provide universal service and is based on the following five principles: output orientation, technological neutrality, product neutrality, necessity and viability. In contrast to the current definition

of USO, this concept would allow USPs to adjust the universal service individually to the needs of their customers, to the portfolio of available products and to the technological progress. Due to the convergence of postal and telecommunications markets, Jaag and Trinkner (2012) even propose to establish an intermodal USO for postal and telecommunications services. Such an intermodal USO would consist of two basic services. The first one is a physical delivery service for items of all kind meeting certain speed, reliability, affordability and uniformity requirements. The second one is a fast broadband service at an affordable, fixed rate. While the first service would require good accessibility and availability measured from the point of residence, the second service would need to be available everywhere. In light of the technological advances, especially in telecommunications, it is questionable whether the EU Commissions goals a single *postal* market has been and is still adequate.

8. Conclusion

The main goal of the Commission is to achieve an EU single market for postal services. An important step toward the full liberalization of the European postal market has already been taken with the adoption of the Third Postal Directive in 2008. During the Barroso Commission from 2010 to 2014, three objectives with relevance for the postal sector have been identified: The implementation of the Third Postal Directive, fostering e-commerce and parcel delivery; and ensuring the adoption of the State aid framework.

With one exemption the Third Postal Directive has been transposed by the Member States into national law within the required transition period (end of 2010 for the majority; end of 2012 for few remaining Member States). However, there are several infringement cases related to the national implementation of EU law regarding the liberalization of the postal sector.

Despite full market opening of the letters market, competition has emerged to a limited extent only. Incumbent operators still maintain high market shares. One reason are the developments in the electronic communications sector, which constitute an attractive communication alternative and therefore a threat for letter services (e-substitution). On the one hand, e-substitution causes continuing and steady decreases in letter volumes, and on the other higher risk premia for new entrants. Hence, legislation and regulation of mail should not only focus on the postal sector but take into account relevant (electronic) substitutes and complements.

The strongly growing e-commerce market is a great opportunity for the parcel delivery operators. This has been acknowledged by the European Commission with the adoption of a Green Paper and guidelines which aim to improve cross-border parcel delivery services and consequently to foster e-commerce. Regarding the market developments in cross-border e-commerce, the percentage of cross-border shipments remains rather low (11%) and the cross-border market is still dominated by a few global integrators (DHL, TNT, UPS and FedEx). Therefore it remains to be seen whether the measures which have already been implemented and which re to be implemented yield the desired outcomes.

Since the USO constitutes a financial burden for the providing operator, a framework is needed to regulate the compensation for an unfair financial burden of the USO, which should ensure a level playing field for all competitors. Two main challenges remain: The first is the definition of an unfair burden and the second is the interaction of sector-specific compensation rules with the state aid framework.

From a more abstract perspective, the current rigid definition of USO is questionable. New approaches would allow to include new technologies for the provision of universal services or even suggest to establish an intermodal USO for postal and telecommunications services. The table below presents an overview of the analyzed targets, of the initiatives taken by the EU and the Member States to fulfill the set objectives and of the problems that are still remaining.

Goal	Description	Initiatives EU	Initiatives Member States	Remaining Challenges
Implementation of the Third Postal Directive	<p>Transition into national law:</p> <ul style="list-style-type: none"> – Full market opening (abolishment of reserved areas) – Provision of universal services – Designation of NRA <p>Monitoring and Governance</p>	<p>Establishment of ERGP</p> <p>Infringement procedures</p> <p>Sector studies</p>	<p>Establishment of NRAs</p> <p>Revision of postal legislation:</p> <ul style="list-style-type: none"> – Abolishment of reserved areas – Access to postal infrastructure – Access to downstream services – Guaranteeing universal service and designation of USP – Establishment of compensation mechanism for USO <p>Competition law cases</p>	<p>USO financing with declining volumes</p> <p>USO design</p> <p>→ Inclusion of new technologies and intermodal USO as a possible solution</p>
Fostering e-commerce and parcel delivery	<p>Improvement of:</p> <ul style="list-style-type: none"> – Transparency and Information – Quality and price of delivery – Interoperability – Complaint handling – Cross-border delivery 	<p>Sector studies</p> <p>Green paper</p> <p>Roadmap</p> <p>Monitoring/supervision of adoption of roadmap</p> <p>Workshops</p> <p>Consumer Protection Directive</p>	<p>Implementation of roadmap, e.g. establishment of:</p> <ul style="list-style-type: none"> – Information platforms for stakeholder – Data exchange – Certification schemes and trust marks – New concepts of delivery 	<p>Implementation of roadmap in progress (expected evaluation in 2015)</p>
Adoption of a State aid framework	<p>Framework for the compensation of the unfair financial burden resulting from SGEI and legacy costs to ensure level playing field for all operators</p>	<p>2012 SGEI Framework</p> <p>Overcompensation tests</p> <p>VAT infringement procedures</p>	<p>Compensation payments</p> <p>VAT exemption for universal services</p>	<p>Undercompensation</p> <p>Reflection of VAT exemptions in net cost calculations</p>

References

- Barroso, José Manuel (2009). Political guidelines for the next Commission. Brussels, 9/3/2009.
- Borsenberger, Claire (2014). Accessibility/proximity in the digital age: what does it mean for postal networks and postal services? In: M. A. Crew, T. J. Brennan (Eds.): *The Role of the Postal and Delivery Sector in a Digital Age*. Cheltenham: Edward Elgar Publishing, 267–279.
- Cigno, M. M.; Clendenin, K. K.; Pearsall, E. S. (2014). Are US postal price elasticities changing? In: M. A. Crew, T. J. Brennan (Eds.): *The Role of the Postal and Delivery Sector in a Digital Age*. Cheltenham: Edward Elgar Publishing, 46–64.
- Cremer, H.; Donder, P. de; Boldron, F.; Joram, D.; Roy, B. (2008). Social costs and benefits from the universal service obligation in the postal market. In: M. A. Crew, Paul R. Kleindorfer (Eds.): *Competition and regulation in the postal and delivery sector*. Cheltenham: Edward Elgar Publishing, 23–25.
- Cuomo, M.; Nardone, T.; Rovero, A.; Scarfiglieri, G. (2013). Electronic substitution and USO scope definition. In: M. A. Crew, Paul R. Kleindorfer (Eds.): *Reforming the postal sector in the face of electronic competition*. Cheltenham: Edward Elgar Publishing, 179–193.
- Dieke, A. K.; Bender, C.; Campbell, J. I. Jr.; Cohen, R.; Müller, C.; Niederprüm, A. et al. (2013). *Main Developments in the Postal Sector (2010-2013)*. Study for the European Commission, DG for Internal Market and Services.
- Dieke, A. K.; Hildebrand, A.; Joyce, C.; Niederprüm, A. (2014). Design and development of initiatives to support the growth of e-commerce via better functioning parcel delivery systems in Europe. Study for the European Commission, DG Internal Market and Services.
- Dietl, Helmut; Jaag, Christian; Lang, Markus; Lutzenberger, Martin; Trinkner, Urs (2011a). Impact of VAT exemptions in the postal sector on competition and welfare. In: M. A. Crew, Paul R. Kleindorfer (Eds.): *Reinventing the postal sector in an electronic age*. Cheltenham: Edward Elgar Publishing, 267–280.
- Dietl, Helmut; Jaag, Christian; Lang, Markus; Trinkner, Urs (2011b). Competition and Welfare Effects of VAT Exemptions. *The B.E. Journal of Economic Analysis & Policy* 11(1), Article 19.
- Eccles, Richard (2014). The regulatory treatment of end-to-end competition in the UK postal sector. In: M. A. Crew, T. J. Brennan (Eds.): *The Role of the Postal and Delivery Sector in a Digital Age*. Cheltenham: Edward Elgar Publishing, 93–105.
- ERGP (2014). Report on end-to-end competition and access in European postal markets.
- European Commission (2012). Green Paper. An integrated parcel delivery market for the growth of e-commerce in EU.
- European Commission (2013a). Commission Staff Working Document. Guide to the application of the European Union rules on state aid, public procurement and the internal market to services of general economic interest, and in particular to social services of general interest.
- European Commission (2013b). Communication from the Commission. A roadmap for completing the single market for parcel delivery Build trust in delivery services and encourage online sales.
- European Commission (2013c). Memo. November infringements package: main decisions.
- European Commission (2013d). Application of EU law. Available online at http://ec.europa.eu/eu_law/infringements/infringements_en.htm, checked on 10/14/2014.
- European Commission (2014a). High quality and competitive postal services for citizens and businesses - State aid control in the postal sector. Competition policy brief (6).

- European Commission (2014b). Key Facts on the new EU Consumer Rights Directive.
- European Commission (2014c). Competition. Postal services. Available online at http://ec.europa.eu/competition/sectors/postal_services/competition_instruments_en.html, checked on 10/15/2014.
- European Commission (2014d). The European Regulators Group for Postal Services (ERGP). Available online at http://ec.europa.eu/internal_market/ergp/, checked on 10/15/2014.
- Finger, Matthias and Dominique Finon (2011). From 'service public' to universal service: the case of the European Union. In: Matthias Finger, Rolf W. Künneke (Eds.): *International handbook of network industries. The liberalization of infrastructure*. Cheltenham: Edward Elgar Publishing, 54–69.
- Geradin, Damien and Christos Malamataris (2014). Application of EU competition law in the postal sector: overview of recent cases. In: M. A. Crew, T. J. Brennan (Eds.): *The Role of the Postal and Delivery Sector in a Digital Age*. Cheltenham: Edward Elgar Publishing, 116–130.
- Gramlich, Ludwig (2014). Das Postrecht in den Jahren 2013/2014. *Netzwirtschaften & Recht* 6, S. 257–312.
- Jaag, Christian (2010a). Bestimmungsfaktoren für die Wettbewerbsentwicklung in Briefmärkten. *Swiss Economics* mimeo.
- Jaag, Christian (2010b). Compensating the Net Cost of Universal Postal Services. *Swiss Economics Working Paper* 17.
- Jaag, Christian (2014). Postal-sector policy: From monopoly to regulated competition and beyond. *Utilities Policy*. Forthcoming 2014.
- Jaag, Christian and Urs Trinkner (2011). The future of the USO – Economic rationale for universal services and implications for a future-oriented USO. *Swiss Economics Working Paper* 26.
- Jaag, Christian and Urs Trinkner (2012). Defining and financing an intermodal USO. *Swiss Economics Working Paper* 35.
- Jaag, Christian; Trinkner, Urs; Uotila, Topias (2014). Regulation and the burden of the net cost resulting from the Universal Service Obligation. In: M. A. Crew, T. J. Brennan (Eds.): *The Role of the Postal and Delivery Sector in a Digital Age*. Cheltenham: Edward Elgar Publishing, 204–213.
- Knieps, Günter; Zenhäusern, Patrick; Jaag, Christian (2009). Wettbewerb und Universaldienst in europäischen Postmärkten. In: Günter Knieps, Hans-Jörg Weiß (Eds.): *Fallstudien zur Netzökonomie*. Gabler, 87-109.
- Lodder, Arno R. (2002). Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market. *Law and Electronic Commerce* (14), 67–94.
- Meschi, M.; Irving, T.; Gillespie, M. (2011). Intra-Community cross-border parcel delivery. A study for the European Commission.
- Okholm, H. B.; Thelle, M. H.; Möller, A.; Basalisco, B.; Rolmer, S. (2013). E-commerce and delivery. A study of the state of play of EU parcel markets with particular emphasis on e-commerce. Study for the European Commission, DG Internal Market and Services.
- Okholm, H. B.; Winiarczyk, M.; Möller, A.; Nielsen, C. (2010). Main developments in the postal sector (2008-2010). Report for the European Commission, DG Internal Market and Services.
- Stengg, Werner (2013). Parcel delivery services and cross-border ec-commerce. *Königswinter*, 11/26/2013.

- Trinkner, Urs (2009). Neue Postrichtlinie: Spielräume der Mitgliedstaaten bei der Umsetzung, Konsequenzen für den Binnenmarkt und Folgen für die Schweizer Postpolitik. In: Carl Baudenbacher (Ed.): Aktuelle Entwicklungen des europäischen und internationalen Wirtschaftsrechts. Basel, München [u.a.]: Helbing & Lichtenhahn, 337–424.
- Vantomme, Joost (2014). Re-regulation for parcel delivery in the e-commerce context? In: M. A. Crew, T. J. Brennan (Eds.): The Role of the Postal and Delivery Sector in a Digital Age. Cheltenham: Edward Elgar Publishing, 131–145.
- Veruete-McKay, L.; Sheldon, R.; Burge, P.; Lawrence, A. (2013). Electronic substitution and postal price elasticities: a customer market approach. In: M. A. Crew, Paul R. Kleindorfer (Eds.): Reforming the postal sector in the face of electronic competition. Cheltenham: Edward Elgar Publishing, 226–240.

Author contact details:

Christian Jaag (corresponding author)

Swiss Economics SE AG

Stampfenbachstr. 142

CH-8006 Zürich

Email: christian.jaag@swiss-economics.ch