

The form of regulation proposed for the postal sector under the law of 20 May 2005

(Law No. 2005-516 of 20 May 2005 on regulation of postal activities)

The law of 20 May 2005 has two main aspects:

- Regulation of the postal sector and in particular compliance with the postal directives;
- Transfer of La Poste financial services to a credit institution, a subsidiary of La Poste all of whose activities will be subject to existing law in the banking field.

This overhaul of the legal framework for postal activities is coupled with a significant advance in terms of accountability. Postal items will now come under ordinary law, although implementing decrees will have to specify under which conditions, taking into account the pricing and features of postal services. The Act also contains provisions relating to regional planning.

This memo describes only those parts relating to regulation of postal activities.

THE EUROPEAN APPROACH TO POSTAL SERVICES

Postal services as defined by **the “Postal Directive”**¹ include a field consisting of items of correspondence up to 2 kg, postal packages up to 20 kg, and registered and insured items, which constitutes the universal service. **In this field, states have two duties and two powers:**

- First duty: ensuring the availability of such services for all users throughout the country on every working day; France has charged La Poste with this mission and has laid out the details in its specification;
- Second duty: ensuring that a national authority independent of the postal operator is responsible for compliance with these principles;
- First power: giving the universal service provider a monopoly of the transport of correspondence within the limits laid down by the Directive in order to guarantee financing of the universal service mission; the Act adapts La Poste’s monopoly to these limits;
- Second power: establishing a system of licensing or prior declaration for competitors of the universal service provider: the Act enacts a system of this type for items of correspondence, including delivery, and for cross-border services.

THE FORM OF REGULATION FOR THE POSTAL SECTOR

Regulation of postal markets consists in reconciling the existence and viability of the universal service with the gradual introduction of competition in the sector covering items of correspondence. The main tasks are shared as follows between the regulator and the Minister for Postal Services:

¹ Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service.

1) The Minister for Postal Services determines the regulatory framework and defines universal service obligations

- **The minister prepares and implements the regulations applying to postal services**
- **The minister defines the particular features of universal service provision**

Article L.1 of the Post and Telecommunications Code lays down the content of the universal service in general terms taken from the Directive:

“It shall include national and cross-border services for mail weighing 2 kilograms or less, packages weighing up to 20 kilograms, recorded delivery items and declared value items.”

Within this framework the exact content of universal service provision is a matter for the minister, who has room for manoeuvre regarding specific services and their particular features:

- Number of services in each category;
- Quality and range of the mandatory service, especially in generic provision for the general public;
- Accessibility standards: density of post-office network, post-box coverage, last posting and delivery times;
- Service-quality standards: universal service provision must be “of specified quality”, which also defines the scope for action of the authority determining the content of the universal service.

If the universal service provider or licence holders fail to comply with obligations, the minister can ask the regulator to impose penalties.

- **The minister approves tariffs for services provided for the press to promote press pluralism.**

2) ARCEP² is responsible for regulation

- **The regulator is responsible for ensuring that La Poste fulfils its universal public service mission properly**
 - a) It has the **power to investigate** and produces a study and an annual report.
 - b) Regarding user **complaints** and claims, the Act requires the universal service provider and licence holders to introduce procedures for handling claims. It will be possible to appeal to the regulator if no agreement can be reached directly with the universal service provider. There are two separate situations:
 - Complaints from individual users;
 - Disputes between La Poste and its major customers on the one hand and between La Poste and licence holders on the other.

² *Autorité de Régulation des Postes et des Communications Electroniques* (Postal Services and Electronic Communications Regulatory Authority). This is the former telecommunications regulator whose powers have been extended to the postal sector.

c) It has the power to impose penalties: in cases where the universal service has not been provided under satisfactory conditions, or if users obtained satisfaction when their complaints were investigated, the regulator may order **administrative and financial penalties**.

- **The regulator ensures fair financing of the universal service**

The public authorities must ensure that revenue from the monopoly matches the amount needed to finance the universal service without obviously exceeding this level, and, in particular, that there is a cost accounting system in place that enables this to be checked.

a) Cost accounting

The regulatory authority will lay down *accounting principles* and ensure *compliance of cost ledgers* with these principles.

b) Tariff supervision

This allows compliance of each tariff with the tariff principles of the universal service to be examined (single price throughout the country for monopoly products, cost orientation, affordability, etc.). The regulator approves reserved-sector tariffs and can decide the particular features of a multi-annual framework for universal service tariffs.

c) The “compensation fund”

The Act has established a “compensation fund for the universal service” to ensure the viability of the universal service if a limited or vanished monopoly was no longer able to finance it.

The fund can be “activated” at the request of the regulator, which guarantees the financing of the universal postal service. It will be provisioned by contributions from licensed postal service providers in proportion to their turnover from the universal service.

- **The regulator is responsible for issuing licences to operators competing with La Poste which are subject to obligations laid down by decree**

This licensing system applies to domestic postal services (including delivery) and cross-border postal services for items of correspondence weighing up to 2 kg;

Licences are issued by the regulator for ten years with the option of renewal and subject to the possibility of withdrawal or total or partial suspension in the event of contravention of the corresponding obligations.