

POSITION PAPER ON the proposal for a directive on combating late payment in commercial transactions

Brussels, 25 March 2010

Subject : Proposal for a directive of the European Parliament and of the Council on combating late payment in commercial transactions (recast)¹

PostEuropⁱ, representing 48 Universal Postal Service providers across Europe, welcomes the European Commission's proposal to recast Directive 2000/35/EC on combating late payment in commercial transactions. The proposal aims at improving the effectiveness and the efficiency of remedies for late payments through the introduction of an entitlement to the recovery of administrative costs and compensation for internal costs incurred due to late payment. The proposal, in particular, provides for a differential treatment of undertakings and public authorities; for the latter, it aims at (i) shortening payments periods to 30 days and (ii) reinforcing disincentives to late payments by introducing a flat rate compensation amounting to 5% of the invoiced amount from the first day of the delay, in addition to the interest for late payment and the compensation recovery costs. As such, it will make an important contribution to improving the EU enterprises' cash flow and foster European businesses' competitiveness.

While the Commission's proposal provides for a differential treatment of undertakings and public authorities, the IMCO draft Report (AM 6) suggests including the commercial transactions of utility undertakings within the meaning of the Directive 2004/17/EC (*i.e.*, entities operating in the water, energy, transport and postal services sectors which fall within the scope of application of the Public Procurement Directive 2004/17/EC) in the proposal's regime for public authorities. According to the *rapporteur*, "*similar to public authorities, utility undertakings enjoying special or exclusive rights can rely on constant (or, at least predictable) revenues. Therefore, utility undertakings should be treated in the same way as public authorities*".²

Most of the members of PostEurop are utility undertakings that fall within the meaning of Directive 2004/17/EC. PostEurop objects to the suggested assimilation of utility undertakings to public authorities for the purposes of the mentioned Directive. Utility undertakings cannot be compared, neither structurally or functionally, to public authorities. They do not rely on more "*constant (or, at least predictable) revenues*" than other undertakings. Utility undertakings operate in markets which are directly exposed to competition, are subject to sector-specific regulations (e.g. the postal directive) that guarantee, further to the transparency and correctness of their relationships with the *stakeholders*, the regular functioning of competition and the pursue of service efficiency and quality, to the benefit of the final customer. Accordingly, the Eurostat definition of "government sector" provides that "*public enterprises are included in the business enterprise sector*".³ Including public utilities in the proposal's regime for public authorities would result in an unfair competitive disadvantage being placed upon the former *vis-à-vis* their competitors, which cannot be legally justified.

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0126:FIN:en:PDF>

² See IMCO draft Report, page 18: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-438.475+01+DOC+PDF+V0//EN&language=EN>

³ See Eurostat's Concepts and Definitions Database (CODED):

http://ec.europa.eu/eurostat/ramon/nomenclatures/index.cfm?TargetUrl=DSP_GLOSSARY_NOM_DTL_VIEW&StrNom=CODED2&StrLanguageCode=EN&IntKey=16482485&RdoSearch=BEGIN&TxtSearch=government&CboTheme=&IntCurrentPage=1.

PostEurop would therefore respectfully invite you to reject AM 6 of the *rapporteur* and support instead AMs 27 (Motti-Sartori) and 60 (Muñiz De Urquiza-Masip Hidalgo) or 63/65 (Motti-Sartori/Motti-Bușoi, identical), which aim at excluding utility undertakings from the Directive's regime for public authorities. AMs 60 and 63/65 propose to limit the definition of "public authority" by referring only to the notion of "contracting authority" as provided in Article 2, point 1, a) of Directive 2004/17/EC and to modify recital 13 accordingly.

This position paper is supported by the following postal operators:

Österreichische Post AG (Austria), La Poste / De Post (Belgium), Bulgarian Posts Plc (Bulgaria), Department of Postal Services (Cyprus), Česká Pošta (Czech Republic), Itella Corporation (Finland), La Poste (France), ELTA (Greece), Magyar Posta (Hungary), Iceland Post (Iceland), Poste Italiane (Italy), Liechtensteinische Post AG (Liechtenstein), Lithuania Post (Lithuania), P&T Luxembourg (Luxembourg), Posten AB (Sweden), Posten Norge (Norway), Post Danmark (Denmark), CTT - Correios de Portugal S.A. (Portugal), Posta Romana (Romania), Slovenska posta, a. s. (Slovakia), Pošta Slovenije d.o.o. (Slovenia), Sociedad Estatal "Correos y Telégrafos" S.A. (Spain), Royal Mail Group Plc (United Kingdom).

¹ PostEurop – Association of European Public Postal Operators, www.posteurop.org