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Ministry of Transport
Postal address
Postboks 8010 Dep
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Dear Sir/Madam,

Subject: Request for Information concerning conformity assessment of Directive 2008/6/EC - postal services – Norway

The EFTA Surveillance Authority (“the Authority”) has carried out a conformity assessment of the implementation into the national legal order of Norway of the Act referred to at point 5d of Annex XI to the EEA Agreement, *Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services* (“the Directive”)¹.

The Directive entered into force in the EEA EFTA States on 1 February 2023. Norway notified full implementation of the Act by letter dated 26 April 2024 (Document No 1369493). The notification contains references to the following measures implementing the Directive, namely: the Norwegian Postal Act L04.09.2015 nr. 91 (“the Postal Act”).

In addition, upon the request for information dated 29 August 2023 (Document No 1394622), the Authority received a completed Table of Correspondence (ToC) as well as replies to six questions concerning the provision of the universal service in Norway on 29 September 2023.

Based on the information provided, the Authority has carried out a conformity assessment of the implementation of the Directive into the Norwegian legal order. The assessment has raised some issues which the Authority would like to invite the Norwegian Government to clarify or comment on.

Functioning of the universal service

Article 3(1) of the Directive lays down the basic characteristics of the universal service which is to be: (i) provided permanently, (ii) of specified quality, (iii) available at all points in the national territory and (iv) affordable for all users. Under the Directive, the universal service is to be guaranteed not less than five days per week. This principle can be derogated from in circumstances or geographical conditions deemed exceptional. It is the prerogative of the national regulatory authority to allow any derogation from the basic rule.

Under Section 7 of the Norwegian Postal Act, the requirement of ‘permanent’ provision of the universal service seems to be missing. The Postal Act guarantees the universal service only every second day, Monday to Friday, in a two-week cycle (which translates into 2.5 days delivery frequency a week, as explained by Norway in its letter from 29 September

¹ 1 OJ L 52, 27.2.2008, p. 3

2023). Additionally, under Section 7 of the Postal Act, the Ministry of Transport seems to have additional powers to regulate the universal service, and under Section 8, together with the national regulatory authority, powers to further derogate from the universal service obligation.

Finally, while Article 5 of the Directive foresees that the universal service is not to be interrupted or stopped except in cases of force majeure, Section 8 of the Postal Act allows to suspend the service in 'extraordinary circumstances' which prevent the normal delivery of the service or in circumstances which make it 'unreasonably costly'.

Based on the above differences, the Norwegian Government is kindly requested to reply to the following questions:

- 1) How does Norway guarantee the sole prerogative of the national regulatory authority to derogate from the provision of the universal service minimum five working days per week?
- 2) How many individuals and businesses in Norway are covered by the delivery of postal items at least five days per week (% of the population)? Please provide figures for all types of postal items subject to the universal service: trackable shipments and insured shipments, letters up to 2 kg, domestic packages up to 10 kg domestically, cross-border packages up to 20 kg as well as packages for the blind and visually impaired persons up to 2 kg.
- 3) How many individuals and businesses are currently covered by the limited delivery of postal items every second day, Monday to Friday, in a two-week cycle (% of the population)? Please provide figures for all types of postal items subject to the universal service as above. Please also provide information about any in-depth study on the users' needs which preceded the introduction of the delivery of postal items every second day. How many people (% of the population) found this model adequate for their needs?
- 4) Has the national regulatory authority allowed further reduction of deliveries or is it planning to do so? If this is the case, please provide information on how many individuals and businesses are affected (% of the population). Please provide figures for all types of postal items subject to the universal service as above.
- 5) Can individuals and businesses residing in areas subject to delivery of the postal items every second day (Monday to Friday, in a two-week cycle) access a more frequent service and if so, under which conditions?
- 6) What is the concept of 'extraordinary circumstances' under the Norwegian law?
- 7) How does the possibility for the universal service provider to suspend the provision of the universal service if it would be disproportionately costly reconcile with the restrictive concept of 'force majeure'?

Additionally, in reference to the letter from Norway dated 29 September 2023, the Authority would like to remind the Norwegian Government that any exception or derogation granted by a national regulatory authority in accordance with Article 3(3) of the Directive must be formally communicated to the Authority and to all national regulatory authorities.

Access to the postal infrastructure

Under Article 11a of the Directive, states are required to ensure transparent and non-discriminatory access conditions to elements of postal infrastructure or services provided

within the scope of the universal service. Additionally, under Article 22(3) of the Directive, states are required to ensure that effective mechanisms exist at national level under which any user or postal service provider affected by a decision of a national regulatory authority has the right to appeal against the decision to an appeal body which is independent of the parties involved.

At the same time, it seems that under Section 41 of the Norwegian Postal Act, individual decisions concerning access to the postal network cannot be appealed. The same applies if the national regulatory authority decides to reject an access request.

Based on the above requirement, the Norwegian Government is kindly requested to reply to the following questions:

- 8) Why the decisions of the national regulatory authority concerning access to the postal network may not be appealed?
- 9) Are there any other decisions of the national regulatory authority affecting users or postal service providers which are final?

Quality requirements

Article 16(4) of the Directive requires an independent performance monitoring to be carried out at least once a year by external bodies having no links with the universal service providers. The results of the monitoring should be published.

Based on the above requirement, the Norwegian Government is kindly requested to reply to the following questions:

- 10) Does the universal service provider assign this task to an independent body? Please provide the name of this body.
- 11) Have the results of the monitoring been published and how often?

Complaints

Pursuant to Article 19(2), second subparagraph of the Directive, states are obliged to ensure that the universal service providers and, wherever appropriate, undertakings providing services within the scope of the universal service, publish, together with the annual report on the monitoring of their performance, information on the number of complaints and the manner in which they have been dealt with. Section 39, fifth paragraph of the Norwegian Postal Act provides that the Ministry of Transport may issue regulations on the scope, content, reporting and the organisation of the complaint mechanism.

Based on the above information, the Norwegian Government is kindly requested to reply to the following question:

- 12) Has the universal service provider been annually reporting on its performance and complaint handling and have the results of the monitoring been published? What is the relevant legal basis?

Compensation

According to Section 9 of the Postal Act, the compensation for the universal service is calculated based on the net cost, as foreseen by the Directive. Pursuant to Recital 29 of the Directive, the net cost of the universal service should be calculated, under the

supervision of the national regulatory authority. Moreover, in line with Annex I to the Directive, the responsibility for verifying the net cost lies with the national regulatory authority. Therefore, the Norwegian national regulatory is responsible for monitoring the net cost for a designated universal service provider of operating with the universal service obligations.

Based on the above, the Norwegian Government is kindly requested to reply to the following questions:

13) What is the exact involvement/role of the national regulatory authority in the supervision of the net cost calculation?

14) Is the compensation mechanism under Section 9 of the Postal Act detailed further? Please provide the relevant references/documents.

Norwegian Government is invited to submit the above information, as well as any other information it deems relevant to the case, so that it reaches the Authority by *7 June*.

Yours faithfully,

Valgerður Guðmundsdóttir
Deputy Director
Internal Market Affairs Directorate

This document has been electronically authenticated by Valgerdur Gudmundsdottir.