



ROYAL NORWEGIAN  
MINISTRY OF TRANSPORT

EFTA Surveillance Authority (ESA)  
Avenue des Arts 19H  
BE-1000 Brussels  
Belgium

Your ref  
Case No: 89968

Our ref  
20/1125-

Date  
7 June 2024

## Request for information concerning the conformity assessment of Directive 2008/6/EC

The Ministry of Transport refers to the Authority's letter of 24<sup>th</sup> of April 2024 and the ongoing conformity assessment of Norway's transposition of Directive 97/67/EC (as amended) – the Postal Services Directive.

We note that our initial reply of 29<sup>th</sup> of September 2023 to your first request for information, as well as the completed Table of Correspondence, has been well received and that your subsequent assessment has raised some additional issues. In the following we will do our best to clarify and comment.

### ***Functioning of the universal service***

*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?*

The Postal Act Sections 7 and 8 give the core framework for the universal service obligation. In order to have a certain degree of flexibility in defining and adjusting the elements of the universal service obligation to cater for evolving circumstances, limited derogative powers have been incorporated for the national regulatory authority (in this case the Ministry of Transport). Those powers are limited and cannot be used for e.g. lowering the universal service minimum already defined in the Postal Act; i.e. by going beyond the 2.5 days delivery frequency per week which is stipulated. It should also be noted that the state still ensures six days a week delivery of subscribed newspapers as part of a separate USO, as already communicated to the Authority.

Postal address  
Postboks 8010 Dep  
0030 Oslo  
postmottak@sd.dep.no

Office address  
Akersg. 59  
www.sd.dep.no

Telephone  
+47 22 24 90 90  
Org. nr.  
972 417 904

Department  
Department of Civil  
Aviation, Postal  
Services and  
Procurement of Non-  
Commercial Transport

Reference  
Tor Simonnæs  
+47 22 24 83 33

*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.*

This is in general close to 0% as the obligation for letter “*delivery to the home or premises of every natural or legal person*” since 2020 has been reduced to 2.5 days delivery frequency per week.

Although normal letter distribution is reduced, subscribed newspaper distribution is ensured six days a week.

Distribution of letters to postal boxes is also five days a week. Domestic or cross-border packages within Posten Bring’s USO are distributed to pick-up points (*post-i-butikk*) also on a five days a week basis.

Commercial services for certain products and certain areas supplement the basic offer ensured through Posten Bring’s USO.

*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?*

This is in general close to 100% as the obligation for letter “*delivery to the home or premises of every natural or legal person*” since 2020 has been reduced to 2.5 days delivery frequency per week. However, commercial services for certain products and certain areas supplement the basic offer ensured through Posten Bring’s USO.

The increased digitalisation in the society has led to a fast decline in letter mail volumes. For this reason, the Ministry commissioned a report from Copenhagen Economics in 2017. The objective was to provide a solid knowledgebase and understanding of potential and suitable alternatives for the future postal universal service obligations in Norway, the associated impact on users and on public procurement of postal services. As we previously have communicated to the Authority, this was the background for the decision to change to 2.5 days delivery frequency a week, implemented from 1<sup>st</sup> of July 2020.

Beyond an assessed change in users’ needs, a continuation of the 5 days delivery frequency would have led to a rapid and steadily increasing economic compensation to Posten Bring as the net cost compensation claim is based on Posten Bring’s profit loss incurred by having to

comply with its USO, instead of the services it would otherwise have offered according to its business strategy.

*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.*

Two derogations from the normal delivery frequency of 2.5 days a week have been implemented. One relates to 'extraordinary circumstances' and the other to 'geographical conditions deemed exceptional'. Please refer to Posten Bring's annual report for 2023, paragraph 1.2.1, enclosed for your convenience. It contains the details and the extent at which Posten Bring has made use of this limited justification in 2023.

We would like to bring to your attention that the Ministry of Transport has recently appointed a committee which will produce recommendations aimed at shaping the future of Norwegian postal policy<sup>12</sup>. The committee will assess which services the state should ensure access to for individuals as well as businesses throughout the country, bearing in mind the need for a sustainable long-term solution. As part of their work, it will assess the opportunities of a further reduction in delivery frequency, (once a week) or solutions for distribution within the *post-i-butikk* network, currently five days a week.

In particular, the committee will be looking into the existing postal distribution network, and whether it could be used for other useful tasks for society in addition to handing out letters. The committee will also assess and give recommendations on how to cater for the needs of those among us who, for various reasons, are less digital and therefore more dependent on traditional postal services.

The decline in letter mail volumes is continuing and has led to a change of Posten Bring's commercial strategy where it would discontinue delivery altogether of letters "*to the home or premises of every natural or legal person*" and instead ensure delivery through the network of *post-i-butikk* used already for package delivery under its USO.

*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?*

Depending on population density, commercial offers are available from Posten Bring, but this is not part of their USO.

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<sup>1</sup> Press release from the Ministry of Transport - <https://www.regjeringen.no/no/aktuelt/utvalg-skal-vurdere-fremtidens-posttjenester/id3022386/>

<sup>2</sup> Homepage of the Postal Committee - <https://postutvalget.no/>

*6) What is the concept of 'extraordinary circumstances' under the Norwegian law?*

In the context of the Postal Act, and its section 8, 'extraordinary circumstances' is meant to cover on the one hand the situations when Posten Bring should be relieved (temporarily) from its USO whenever there is an extraordinary circumstance that prevent normal postal service or make it unreasonably costly. Also, and similarly, section 8 contains the possibility for the regulatory authority to pass more detailed regulations with reference to what could qualify as 'extraordinary circumstances' as well as derogations or adaptations to the USO where geographical conditions are deemed exceptional. For examples of the use of these powers, please refer to Posten Bring's annual report for 2023, paragraph 1.2.1.

In our view this gives the state some additional flexibility to adapt the USO where the conditions underlying the obligation substantially have changed. This should include societal changes and possibilities that come with digitalisation leading to changes to the user's needs as well as considerations for the spending of public money.

*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'?*

For all practical purposes Posten Bring carries out its obligations to the letter. The possibility to suspend or deviate from the obligations on the basis of it being disproportionately costly, is an additional safeguard in order to limit costs in situations where the regular chain in the planned distribution would be disrupted and alternatives are non-available or disproportionately costly. Typically, this would correspond to 'force majeure'-situations. For instance in the case of extraordinary weather leading to disrupted infrastructure and other similar situations which interrupt the normal postal services. The limited use of this opportunity is reported in detail in Posten Bring's annual reports to the postal authority.

**Access to the postal infrastructure**

*8) Why the decisions of the national regulatory authority concerning access to the postal network may not be appealed?*

The main rule is that individual decisions by Nkom can be appealed to the Ministry of Transport. Appeals are only limited for homeowners/owners of joint post box facilities with regard to possible decisions by Nkom whereby a postal provider is given or refused access to the zone key system operated by Posten Bring. The postal providers themselves are of course able to appeal a decision by Nkom to grant or deny such access.

*9) Are there any other decisions of the national regulatory authority affecting users or postal service providers which are final?*

Decisions by Nkom to dismiss a case that relates to access to the zone key system (the Postal Act Section 33) can not be appealed, see the Postal Act section 41.

### **Quality requirements**

*10) Does the universal service provider assign this task to an independent body? Please provide the name of this body.*

Quality measurements are performed by a German company (Quotas GmbH) on behalf of Posten Bring. They monitor and produce both national as well as European Intra-community quality assessment. The assessments are restricted to the letter mail segment and the compliance with the standards of D+3/D+5 is monitored on a quarterly basis for the national services. For monitoring of the quality standard with regard to cross-border mail, to our knowledge this is also performed by Quotas GmbH on behalf of the European USPs and in a standardised way.

*11) Have the results of the monitoring been published and how often?*

The results of the monitoring is reported to Nkom (as well as the Ministry of Transport). Nkom has not published the results of the monitoring but seek to do so on a yearly basis in the future.

### **Complaints**

*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?*

Posten Bring has annually reported on its performance and complaint handling in accordance with the requirements of the Postal Regulation section 26.

Nkom has not published the results of the monitoring but seek to do so on a yearly basis in the future.

### **Compensation**

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

We refer to the elaborate explanations and documentation provided in relation to the complaint registered as ESA Case No 88382, latest submission 13 October 2023.

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

We refer to the elaborate explanations and documentation provided in relation to the complaint registered as ESA Case No 88382, latest submission 13 October 2023.

To conclude, we trust to have given you satisfactory information in reply to your questions. Should you need any further information, please do not hesitate to contact us.

Yours sincerely

Øyvind Ek  
Deputy Director General

*This document is signed electronically and has therefore no handwritten signature.*

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