

# The External Dimension of the EU Postal Acquis

## Summary Conclusions

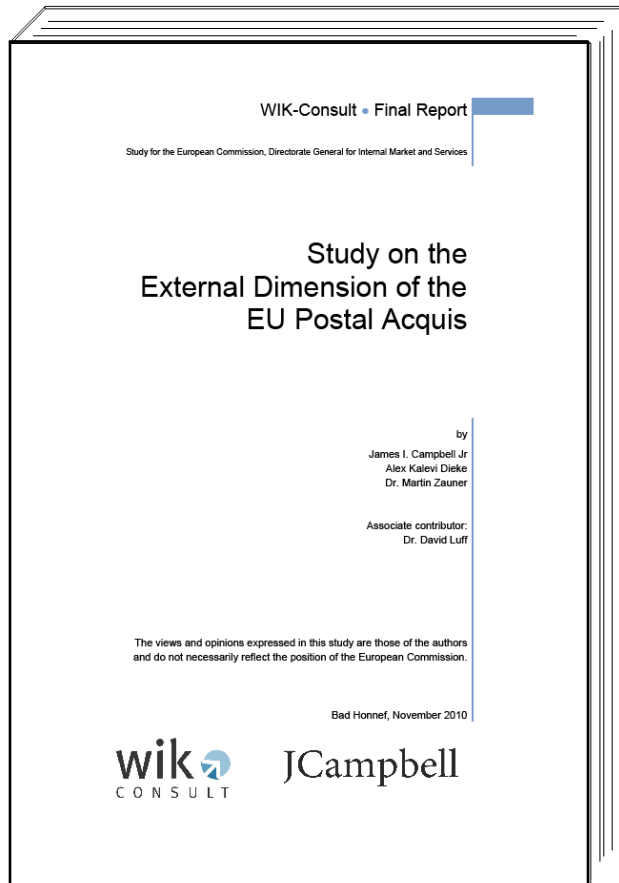
Study for DG Internal Market

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Postal Directive Committee Meeting

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# Contents of the Study



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Full study available for download at  
[http://ec.europa.eu/internal\\_market/post/studies\\_en.htm](http://ec.europa.eu/internal_market/post/studies_en.htm)

# Contents of this Presentation

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- Brief summary of study results
- Detailed presentation on recommendations
- Q & A / Discussion at Postal Directive Committee

# 1. Introduction

## Objectives of Study

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1. To provide recommendations on how to best present the EU postal regulatory framework in international discussions.
2. To provide a balanced view of EU postal acquis in the different dimensions of international postal relations (UPU, trade negotiations, bilateral discussions) and suggest on how to maximize synergies between them.
3. To reflect on the appropriate level of co-ordination between the Commission and the Member States in relation to obligations under Community law and how to maximize synergies in the approach to international postal discussions.

# 1. Introduction

## Basic Terms

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- “Postal services”
  - All types of collection and delivery services (as in Postal Directive)
- ‘EU postal acquis’
  - Equivalent to the EU Postal Directive for this study
- ‘External relations’
  - Intergovernmental agreements and/or discussions between the EU and/or Member States, on the one hand, and foreign jurisdictions
  - Agreements that especially affect trade in postal services

## 2. Postal Acquis and External Relations

### Four Key Legal Regimes

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#### 1) Trade Agreements

- WTO: GATS, GATT
- Bilateral/regional Preferential Trade Agreements (PTAs)

#### 2) Acts of the UPU

- Designated operators only

#### 3) Customs

- Special rules for designated operators

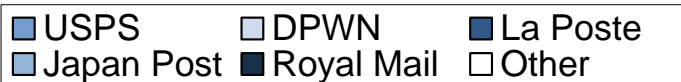
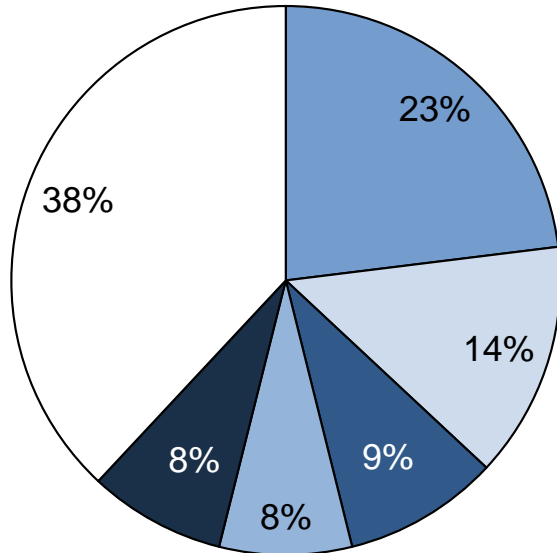
#### 4) Aviation Agreements

- Multimodal provisions of EU-USA Open Skies Agreement

# 3. International Postal Markets

## Global Mail Market in 2008

Total market: EUR 205 bn.



- Domestic letter post
  - About EUR 205 bn
  - >60% by TOP5 player (including DPWN, La Poste, Royal Mail)
  - About 430 bn items
- Cross border letter post
  - About EUR 6.3 bn
  - About 5.6 bn items
  - EU is half of World's cross-border traffic
  - Intra-EU traffic is 74% of all EU cross-border traffic
- Market volume slightly decreasing

Source: Adrenale

# 3. International Postal Markets

## Conclusions

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- Cross-border letter post
  - EU traffic is half of total World cross-border traffic
  - Intra-EU traffic is 74% of all EU traffic
  - Market served mostly by EU operators, primarily incumbents
- Cross-border express & parcels
  - 'Western Europe' is ~36% of World cross-border traffic (all Europe: less than 40%)
  - EU operators have significant traffic with other regions, and business in other regions. Largest EU operators are TNT and DHL
  - EU operator compete with US integrators, and smaller local carriers
- EU technology suppliers invest in other regions. Most importantly: North America, Asia-Pacific



# 4. Regulation of Foreign Postal Markets

## Conclusions (1)

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- International letter post markets are very diverse
  - Top industrialized countries (AU, CA, JP, CH, US): high per capita volume, often above EU level
  - Important transition economies (BR, CN, IN, RU, TR): low volumes (<< 50 per capita)
  - All letter post markets dominated by incumbents
- International parcel/express markets more competitive
  - Big 4 strong in all countries (DHL, FedEx, TNT, UPS), mostly B2B
  - Only some incumbents have significant parcel (B2C) business, notably Australia Post, Canada Post, Swiss Post
- Trend towards corporatising PPOs, but less than in EU

# 4. Regulation of Foreign Postal Markets

## Conclusions (2)

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- No common approach to independent regulators
  - Strong regulators in US and Australia (US: postal only, AU: multi-sector), competent for prices & accounting
  - Less independent regulators in most other countries, limited competences
  - In transition economies, regulators tend to control/license new entrants more than in EU, less regulation for incumbent and universal service
- Definitions for universal service more vague than in EU (except CH, JP)
- Very few non-EU countries have liberalised (e.g. NZ, SG), most have not
- Some protectionist licensing/trade barriers, including for express
  - Important example: Restrictions on foreign investment in China

# 5. Trade Agreements and International Postal Services

## Observations on Classification

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- UN CPC postal/courier classification is out of date
  - Services are no longer distinguished by operator (postal administration vs. other)
  - Commitments to liberalise cannot be expressed meaningfully
- EU 8-part classification is too complicated and Euro-centric
- UPU letter post/parcels/express is most useful
  - Simplest is best
  - Well understood even if not perfectly clear in all cases
  - Distinguishes importance of parcels
- Appropriate “umbrella term” of all collection and delivery services?

## 5. Trade Agreements and International Postal Services

### Observations on Preferential Trade Agreements (PTAs)

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- PTAs as an option to bypass lack of progress at WTO (Doha Round)
- Agreements to date are unlikely to produce significant new liberalisation.
  - Agreement and liberalisation very difficult using UN CPC categories
  - Difficult to sell EU 8-part definition of postal/courier market
  - Multi-sector negotiations makes progress in postal sector difficult.
- “Postal’ services appear to be very sensitive re liberalisation.
  - EU and counter parties reluctant to commit to existing liberalisations
  - Maybe new emphasis on ‘commercial’ services?
- Agreements on outbound international bulk mail: effective liberalisation may be limited on rules on ETOEs and remail

# 6. UPU and International Postal Services

## UPU Overview

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- Acts of the UPU
  - Constitution and General Regulations
  - Universal Postal Convention
  - Letter Post and Parcel Post Regs
  - Postal Payment Services Agreement and Regulations
- Bodies of UPU
  - Congress
  - Council of Administration (CA) - policy issues
  - Postal Operations Council (POC) - operational issues
  - International Bureau

Binding on UPU members

## 6. UPU and International Postal Services

### POC: 4-Term Members, 1994-2011

21 UPU members  
have served on  
POC since 1994

POC 4-term members, 1994-2011

	Region	Country	CA terms
1	Americas	Canada	1
1	Americas	Cuba	3
1	Americas	United States	3
2	East Europe	Russia	3
3	West Europe	Belgium	2
3	West Europe	France	3
3	West Europe	Germany	3
3	West Europe	Italy	2
3	West Europe	Netherlands	2
3	West Europe	Portugal	1
3	West Europe	Spain	2
3	West Europe	Switzerland	1
3	West Europe	United Kingdom	3
4	South Asia	China	4
4	South Asia	India	3
4	South Asia	Japan	2
4	South Asia	Korea (South)	3
4	South Asia	New Zealand	0
5	Americas	Brazil	2
5	Africa	Egypt	3
5	Africa	Morocco	2

## 6. UPU and International Postal Services EU Members in CA and POC, 1994-2008

		POC (40 members)				CA (41 members)			
		1994	1999	2004	2008	1994	1999	2004	2008
BE	Belgium	X	X	X	X			X	X
DE	Germany	X	X	X	X	X		X	X
DK	Denmark				X		X		
ES	Spain	X	X	X	X		X	X	
FI	Finland		X			X			
FR	France	X	X	X	X	X	X		X
GB	United Kingdom	X	X	X	X	X		X	X
GR	Greece	X		X	X				
IE	Ireland		X						
IT	Italy	X	X	X	X	X		X	
NL	Netherlands	X	X	X	X	X	X		
PT	Portugal	X	X	X	X			X	
SE	Sweden			X					X
	West Europe	9	10	10	10	6	4	6	5
BG	Bulgaria		X			X	X		
HU	Hungary	X		X			X	X	
LT	Lithuania								X
PL	Poland		X		X		X	X	
RO	Romania	X		X				X	
SK	Slovakia					X			
	East Europe	2	2	2	1	2	3	3	1
	<b>EU 27</b>	<b>11</b>	<b>12</b>	<b>12</b>	<b>11</b>	<b>8</b>	<b>7</b>	<b>9</b>	<b>6</b>

# 6. UPU and International Postal Services

## UPU Terminal Dues

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- Terminal dues - what postal administrations (after 2008, ‘designated operators’) charge each other for local delivery of inbound international letter post items.
- Target system
  - Governs the exchange of letter post items between 11 significant DOs and a block of 19 DOs from the EU 30 (2010)
  - TDs calculated from 20g priority rates – but dominated by floor and cap rates
- Transitional system
  - Applies to exchanges to, from, or between developing countries
  - Provides per kg rate for all exchanges < 100 tonnes per year. Relatively low item/wt system of other exchanges.



## 6. UPU and International Postal Services Alternative Terminal Dues Systems

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- REIMS
  - Agreement of 13 postal operators (incumbents), recent exits: UK, ES, PT, BE?
  - Establishes terminal dues for 3 standardized formats
  - Terminal dues as percentage of domestic tariffs plus quality incentive
  - EUR not SDR
  - Must be available to third parties
- Bilateral agreements
  - Bilaterally agreed standards for exchange, preparation, pre-announcement etc.
  - Possibly bilateral agreements on rates
- Direct entry: Mail posted at domestic rates – domestic requirements for preparation

## 6. UPU and International Postal Services WIK Terminal Dues Model (“TD model”)

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- EU30 and TOP30 trading partners (countries, not specific operators)
  - Bilateral mail flows between countries estimated based on cross-border volumes and statistics on bilateral trade in services
  - Information on domestic prices and weight distribution
  - Base case: terminal dues set to ‘domestic bulk rate’ := 80% of public tariffs (and additional discount for direct mail)
  - Alternatives: UPU, REIMS, etc.
- Objectives
  - Analyse overall effects of terminal dues regimes (UPU terminal, REIMS etc).
  - Which countries benefit under UPU terminal dues? Under REIMS?
  - Sensitivity to variation in model inputs

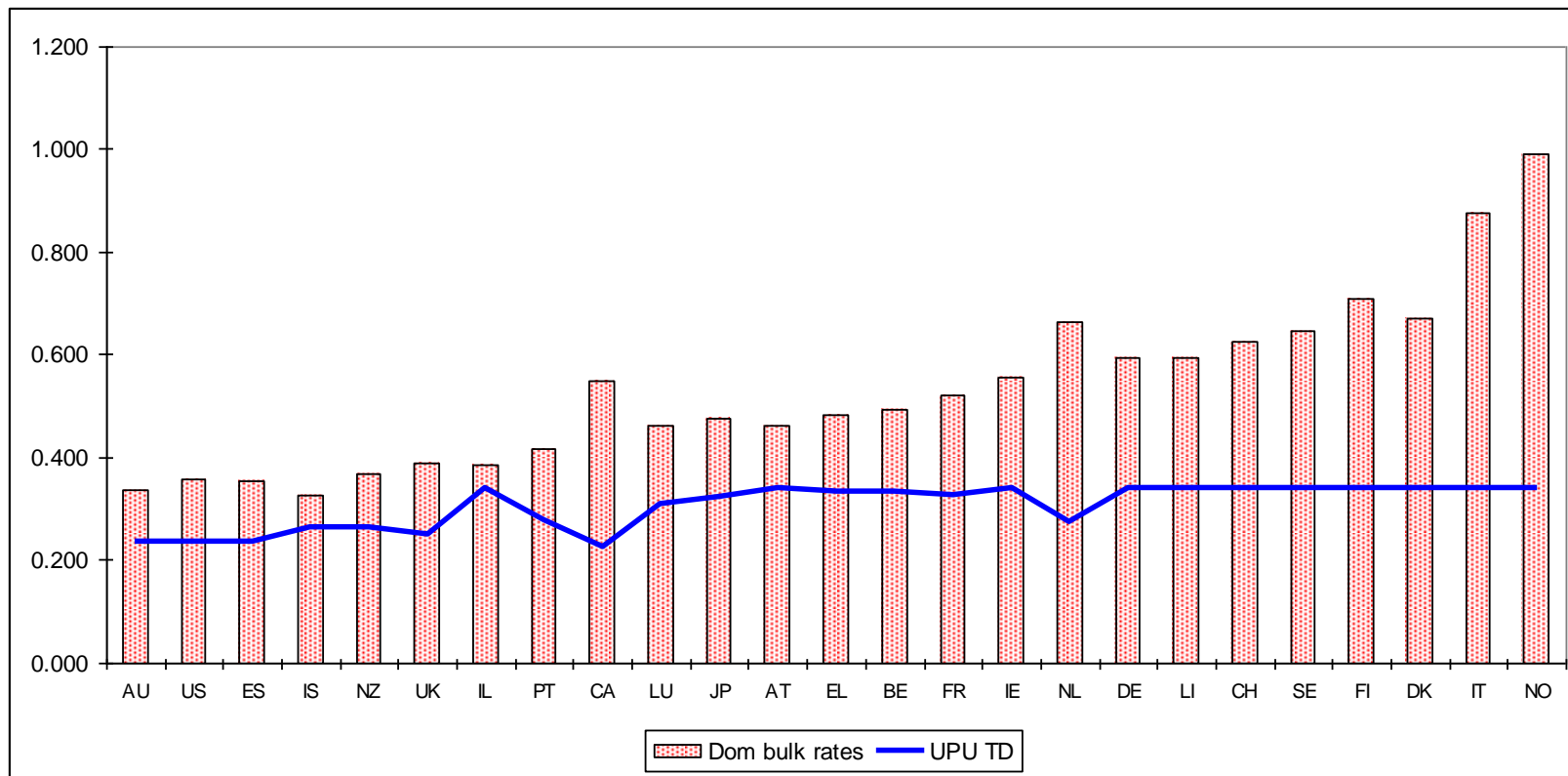
# 6. UPU and International Postal Services

## TD Model Results: Summary

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- Which countries benefit from current UPU terminal dues (with floors/caps)?
  - Net exporting countries
  - Countries with low domestic tariffs
  - E.g. UK, ES, LU (and US!)
- Which countries benefit from tariffs more in line with domestic tariffs?
  - Net importing countries
  - Countries with high domestic tariffs
  - E.g. DE, IT, Nordics
- UPU terminal dues are very different for domestic bulk rates
  - Differences create potential for by-pass/arbitrage
  - In practice, difference means benefits or loss for operators
  - Unclear how terminal dues affect prices (for bulk mailers? for consumers?)

## 6. UPU and International Postal Services TD Model Results: Domestic Bulk Rates vs. UPU TDs

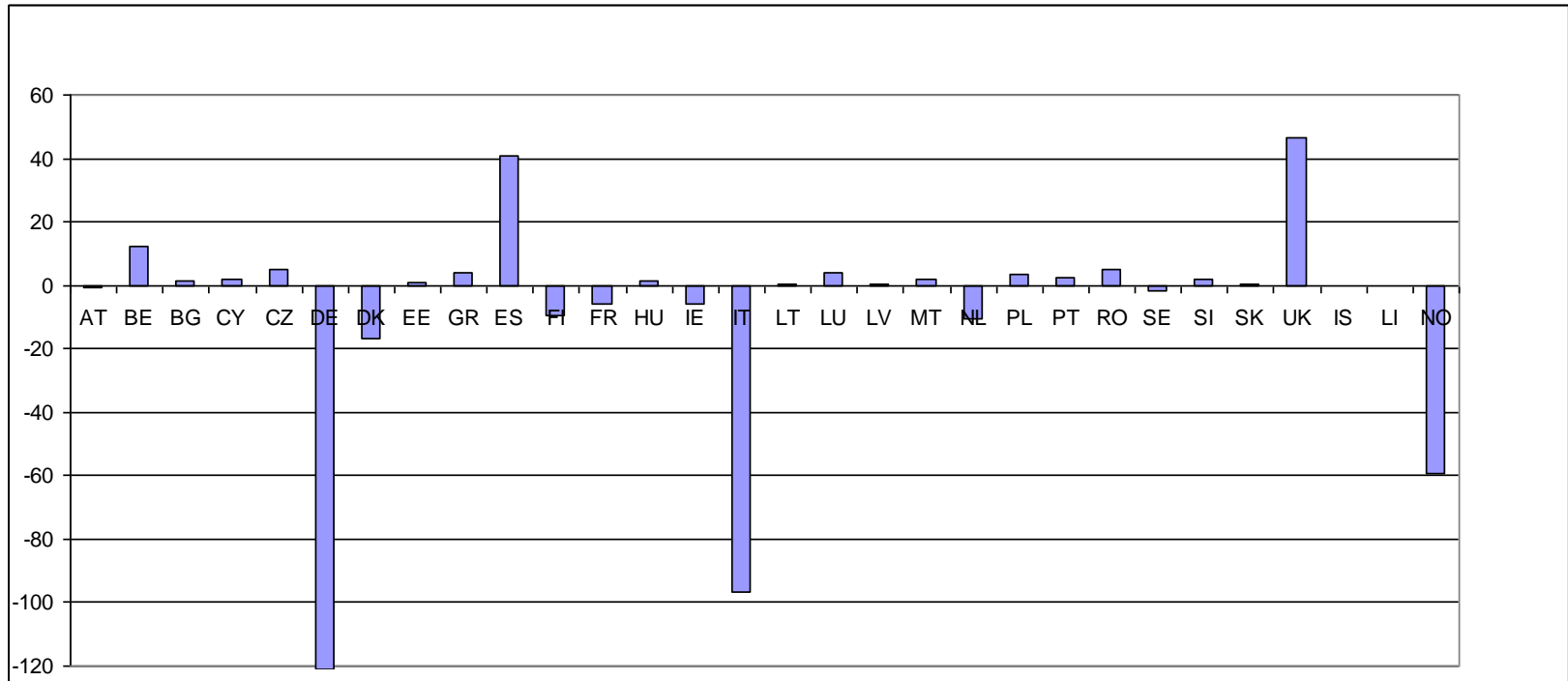


Based on UPU data on 2008 tariffs, and WIK's assumptions on mail structure.  
Chart only includes target system countries.

# 6. UPU and International Postal Services

## TD Model Results: Gains From UPU TDs Compared to Bulk Tariffs

- Results based on various model assumptions and simplifications. Orders of magnitude, not impact on specific operators



WIK/JC model estimations.

# 7. Coordination of the MS Positions at the UPU

## EU Law (1)

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### 1. Duty of coordination

- 'Member States shall coordinate their action in international organisations and at international conferences. They shall uphold the Union's positions in such forums.' (TEU Art. 34)

### 2. Common Commercial Policy

- 'The common commercial policy shall be based on uniform principles, particularly with regard to . . . tariff and trade agreements relating to trade in goods and services' TFEU Art. 207.
- EU institutions have exclusive competence to administer CCP.
- Appears applicable to UPU policies affecting trade in postal services between EU and non-EU countries.

# 7. Coordination of the MS Positions at the UPU

## EU Law (2)

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3. AETR doctrine: MS may not agree to international agreements that are inconsistent with EU legislation or within the scope of common rules.
- '[T]o the extent to which Community rules are promulgated for the attainment of the objectives of the treaty, the Member States cannot, outside the framework of the Community institutions, assume obligations which might affect those rules or alter their scope' (AETR, 1971).
  - '[MS] may not enter into international commitments outside the framework of the Community institutions, even if there is no contradiction between those commitments and the common rules (Opinion 2/91)
  - A MS may not make a national proposal to change an international agreement that has been incorporated into EU law. *'[S]ince it set in motion such a procedure with the contested proposal, the Hellenic Republic took an initiative likely to affect the provisions of the Regulation, which is an infringement of the obligations under [EU treaties]'*. (Hellenic Rep., 2009)

# 7. Coordination of the MS Positions at the UPU

## EU Law (3)

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### 3. AETR doctrine (continued)

- EU has exclusive competence to negotiate such agreements or parts thereof
- Hence, EU and MS must adopt common position on issues covered by or with the scope of the common rules established by the Postal Directive
- Implications of exclusive competence
  - MS positions must be coordinated and approved by EU in line with EU law
  - EU is not required to be a member of an intergovernmental organisation to exercise exclusive competence.



# 7. Coordination of the MS Positions at the UPU

## Scope of MS Coordination

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- What issues need to be coordinated under EU law?
  - Governmental or regulatory (i.e. public policy)
  - NOT: Operational or commercial (i.e., specific to undertaking)
- What are the principles for distinguishing between govt/op issues?
  - EU: Postal Directive Art. 22 (regulatory independence); Transparency Directive (public authority v. public undertaking)
  - GATS: 'services supplied in the exercise of governmental authority'
  - UPU: Convention v. Regulations; member country v. designated operators.

# 8 Conclusions and Recommendations

## 8.1 Intra-EU Cross Border Services

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1. NRAs should consider how to enforce provisions of the Postal Directive relating to intra-EU cross-border international postal services
  - Postage rates for outbound international universal services should be cost-oriented
    - Art. 12 requires cost-oriented rates for universal services.
    - Cross-border intra-EU services are universal services.
    - Cross-border rates appear to well above costs in some cases
  - Terminal dues and inward land rates should cost-oriented and transparent
    - Art. 13 requires cost-oriented terminal dues and inward land rates for intra-EU universal services (after reasonable transition)
    - Terminal dues/inward land rates do not appear to be cost-oriented and transparent in some cases

# 8 Conclusions and Recommendations

## 8.1 Intra-EU Cross Border Services

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1. NRAs should consider how to enforce provisions of the Postal Directive relating to intra-EU cross-border international postal services (continued)
  - Access to universal services should be non-discriminatory for all, including users from other Member States
    - Arts. 5 and 12 require USPs provide non-discriminatory access of universal services and downstream postal services
    - Applies to users from other MS as well as national users
    - No apparent justification for access discrimination based on UPU-category (designated/target/transitional), sender's use of remail, ownership of originating postal operator (public or private), or location of originating office (ETOE or not)

# 8 Conclusions and Recommendations

## 8.1 Intra-EU Cross Border Services

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1. NRAs should consider how to enforce provisions of the Postal Directive relating to intra-EU cross-border international postal services (continued)
  - NRAs should prepare for a multi-operator intra-EU environment.
    - Art. 11a requires access of postal infrastructure with universal service area; Art. 19 requires protection of users
    - Application to intra-EU postal services has hardly begun
  - NRAs should enforce requirements for designation and authorisation of cross-border postal operators
    - Art. 4 and Dir 2008/6 require designation of operators within universal service area consistent with principles of objectivity, transparency, non-discrimination, proportionality and least market distortion
    - Art. 9 provides only for general authorisation, not designation, of operators outside universal service area

# 8 Conclusions and Recommendations

## 8.2 Coordination of EU External Policies

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2. The EU and Member States should improve coordination in the development of international postal policies.
  - The EU and Member States should develop coordinated positions in advance of the 2012 Doha Congress of the UPU
    - Identify level of coordination required by EU law (competences of Member States and EU)
    - Identify governmental issues for which coordination is required
    - Develop appropriate reservations and/or common declarations if needed
    - Develop a coordinated position on role of MS plenipotentiaries and postal operators with respect to operational issues presented at Doha.
  - Coordination of positions towards international trade, international postal services, and border control

# 8 Conclusions and Recommendations

## 8.2 Coordination of EU External Policies

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2. The EU and Member States should improve coordination in the development of international postal policies. (continued)
  - The EU and Member States should better coordinate positions towards international trade, international postal services, and border control
    - Positions in trade negotiations and UPU can be better coordinated in respect to liberalisation of bulk outbound letter post, remail, and ETOEs
    - Positions in trade negotiations, UPU, and customs regulations can be better coordinated with respect to liberalisation of parcel and express services (designation, customs, etc.)

# 8 Conclusions and Recommendations

## 8.3 Trade Agreements

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3. The EU should reconsider some aspects of its approach to trade agreements relating to postal services
  - The EU should consider a more international (UPU-based) vocabulary in external postal negotiations
    - Embrace letter post/parcels/express categories
    - Avoid use of use of 'postal' as an umbrella term for all types of delivery and collection services
    - Avoid UN CPC term 'courier'
  - Focus on liberalisation of 'commercial parcels' and express services
    - Emphasise commercial not postal activities
    - Do not focus on liberalisation of outbound letter post services – May have little practical effect – May not justify efforts needed to achieve any commitments
  - More specific safeguards on authorisation procedures for postal services

# 8 Conclusions and Recommendations

## 8.4 International Regulatory Dialogue

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4. The EU should encourage a dialogue among regulatory and policymaking authorities on the governance of international postal services
  - Benign neglect may be good, but a patchwork of national controls is a risk
  - Trade negotiations cannot replace sector dialogue
  - Why seek a new forum for regulatory dialogue?
    - WTO is too general
    - UPU is too limited (only one class of operators)