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THE POSTAL SERVICE WORKER IN
THE EUROPEAN UNION (EU):
RELATIONSHIP AND REWARD



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PREFACE

The EU has taken the decision to come to a gradual liberalisation of the postal service sector. The aim is to accomplish the postal liberalisation in Europe in the period 2011-2013. Today the postal service sector in Europe is still a highly regulated domestic sector. There is a considerable debate amongst most European countries if and how the process of liberalisation can go forward while maintaining socially acceptable conditions for the postal service workers. The main concern is that pay levels and labour conditions as such will become subject to an ongoing race to the bottom.

TNT has asked Allen & Overy to prepare a memorandum which provides guidance for finding solutions on how to make the European postal liberalisation "work", while maintaining a socially responsible and sustainable way of fostering the relationships with postal service workers.

As liberalisation is aiming at increasing the quality of service and thus increasing the employment opportunities, it will be interesting to see to which extent allies can be found among those who believe that real competition under acceptable social conditions can be achieved. I am proud that long-standing client TNT has asked us to be part of this process.

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Amsterdam, july 2009

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I. Introduction

- 1 Today, the postal service sector in Europe is still a highly regulated domestic sector. Incumbent operators are largely protected from competition in most countries in the EU through their monopolies or other legislation/regulations.
- 2 The EU has taken the decision to come to a gradual liberalisation of the postal service sector. The aim is to accomplish the postal liberalisation in Europe in the period 2011-2013. The objective of postal liberalisation is two-fold: (i) complete the internal market for postal services; and (ii) ensure efficient, reliable and good-quality services throughout the EU.¹
- 3 The postal market is in the process of absorbing the impact of the digitalisation of information flows. The relative position of physical mail delivery in the overall communication mix is severely challenged.
- 4 During the last decades, the organisation and delivery of postal services have undergone considerable change. Developments show a picture of rapid and drastic transformation.²
- 5 There is considerable debate in and amongst most European countries if and how the process of liberalisation can be achieved without severe implications for the remuneration levels of the postal service workers going forward. The concern is that pay levels will become subject to a race to the bottom (“social dumping”).
- 6 This memorandum purports to provide guidance for finding solutions how to make the European postal liberalisation ‘work’, while maintaining a socially responsible and sustainable way of fostering the relationships with the postal service workers.

II. Assessment of social and other developments

- 7 The following factors need to be taken into account:
 - (i) The role of mailmen has been the subject of considerable change over the past decades. In the early seventies mailmen performed a variety of tasks: from a combination of delivering social services (like paying pensions) to sorting and full mail delivery. Today, to quite some extent related to technological changes, there is a focus on mail delivery only in most Western European countries. This is especially the case if registered mail and/or customer contact is organised differently. The ensuing job requires relatively low skills needs.
 - (ii) The traditional monopoly situation has (i) tended to freeze existing social circumstances at the incumbent operators; and (ii) resulted in pay levels under Collective Labour Agreements (CLAs) for postal service workers of incumbents (due to the absence of market pressure resulting from competition) exceeding by far levels found in CLAs for jobs with similar skills needs in other service industries (the “monopoly premium”).
 - (iii) A number of new entrants on the postal market make use of self employed deliverymen, requiring only basic skills, paying at or even below the social minimum (mostly without social benefits).

1 Website Dutch Government, Ministry of Economic Affairs: www.ez.nl.

2 Industrial relations in the postal sector, European Foundation for the Improvement of Living and Working Conditions, 2007, www.eurofound.europa.eu, p. 2-3.

8. It is generally recognized that an efficiency improvement is required. This means better use of labour and evaluation of labour cost. New business models can rely on low skilled labour.³
9. Reducing costs is high on the agenda of both incumbent operators and new entrants. It is clear that in a labour intensive sector this entails considerable discussion on remuneration levels.
10. There is a downward pressure on the number of employees in incumbents due to:
 - a) The introduction of new technology/automation;
 - b) The reduction of postal volumes in most EU countries with a more developed postal market as a result of substitution (other modes of communication, e-business);
 - c) A shift of volumes to competition (gradual loss of some economies of scale).
11. In some countries, governments have reacted by legally enforcing wages and benefits at levels which seriously complicate the entrance of new competition to the market and which have no real relationship with the skills required.⁴ If this would be successful, it would leave the field to the incumbent, who can afford to pay the old (higher) wages due to economies of scale and the continuation of a de facto monopoly. Obviously, such protectionist measures threaten to turn the liberalisation of the postal market in Europe into a failure.
12. There are three main delivery job levels visible at this point in time during the transformation period:
 - a) The traditional postman: employment contract, decreasing level of job skills needs, reducing numbers, reducing reward.
 - b) The new delivery man at the incumbent: employment contract, basic skills needs, increasing numbers, part-time, reward just above (social) minimum level.
 - c) The delivery man at the new entrant: sometimes self-employed, basis skills needs, increasing numbers, part time, reward at social minimum level or even below.

This trend is found in most countries where competition has commenced.

13. The 2007 Eurofound report “Industrial relations in the Postal sector” refers to a concern shared by all of reducing costs (p. 30). This aim, allied with the introduction of new technologies and organisational rationalisation, has given rise to employment reduction and qualitative changes in the use of labour. The consequences for the employment conditions of postal workers in the large monopoly providers have been, besides employment reduction, “a progressive erosion – and often loss – of their privileged status” (p. 31). The report continues to point out that the result has been “the emergence of a small but growing competitive sector frequently characterised by employment conditions and labour costs different from, and inferior to, those of the main providers”. The report finds that it is likely that this will erode employment conditions and lead to more conflictual industrial relations once the sector has been entirely opened up to the market. The report concludes that the experience of countries in which liberalisation has already happened suggests that “an alternative to a probably imminent deterioration of employment conditions and industrial relations in this important branch of the services sector is the diffusion of sectoral collective agreements” (p. 31).

³ See Dijkgraaf et al., Jobs and Competences in the Post Sector in the EU: Future scenarios and implications, Final Report, Part II, January 2009.

⁴ On 21 January 2008 TNT Post Germany had to institute proceedings in Berlin, Germany, to obtain an injunctive relief to suspend the decision of the federal Ministry of Labour and Social Affairs of Germany of 28 December 2007 to declare generally binding the CLA between Deutsche Post and Ver.di. The minimum wage contained in this CLA was far above the social minimum. The cost level resulting from this CLA would force TNT, as entrant on the German postal market and competitor of the German incumbent, to cease its German postal activities. A serious issue as TNT employs in its EMN German operations in total around 14,000 employees. TNT won in first instance on 7 March 2008 and, subsequently, in appeal on 18 December 2008. The German government has taken the decision to bring the case before the highest German court and considers other options in trying to secure the generally binding nature of the Deutsche Post CLA. See Documents of the Second Chamber of Dutch Parliament 2008/09, 30 536, nr. 90, p. 2.

III. Country overview

14 See table (Exhibit I).

IV. Conclusions and recommendations

- 15 It is proposed to take the following view on relationships with the workers carrying out the postal delivery service activities in the postal services sectors (addressed delivery) in the various EU-countries going forward:
- Majority of the postal service workers carry out workactivities on the basis of an employment contract.
 - Reward levels shall be agreed on a per EU-country basis.
 - Reward levels shall be in line with the minimum wage standard in the relevant EU-country.
 - In the absence of a minimum wage standard, the reward levels shall be in line with socially acceptable reward levels for jobs with comparable specifications.
 - Employment conditions shall be confirmed in nationwide collective bargaining agreements (CLAs) with the involvement of the key players on the side of both the local employers (associations) and unions, with a view to creating maximum support for different job levels and taking out the risk of a 'race to the reward bottom'.
 - Union involvement shall be local, commensurate with the reach of the CLA.
 - Employers association involvement shall be local, commensurate with the reach of the CLA.
 - The national minimum wage levels for the postal sector must really comply with the local minimum wage standard and should not be (deemed to be) a standard introduced for the purpose of protecting the incumbent operator from outside competitors. In the absence of an existing national minimum wage standard, depending on local rules and practices, such standard shall be introduced upon investigating proper levels (in line with similar jobs with relatively low specifications in other service industries).

Country-scheme Labour Conditions: ADDRESSED MAIL

27 March 2009

| Countries | Minimum wage per month 2009 (full time) | Union density | System achieving labour conditions outside general minimum wage Postal Sector | Status of labour contracts | [1] Chance artificially high CLA Postal sector? [2] Chance generally binding CLA for the postal sector? | Chance for self-employed business models for addressed mail |
|-----------------|--|---|--|--|--|--|
| The Netherlands | €1.381,20 | High at the incumbent, almost non-existent at new entrants (self-employed no employees) | Talks about sectoral minimum CLA moving to 80% labour contract on minimum wage, new entrants work exclusively with self-employed, CLA's at the incumbent | Possibly in the future at least 80% in each company in the sector; new entrants now 0% postmen with labour contract | [1] No chance [2] Possible | Self-employed accepted workform; criticism on the rise of self-employed in liberalized sectors like health care and mail. Legal constrictions for the use of self-employed |
| Germany | No, but there is a sectoral minimum wage: €9,80 per hour (challenged by TNT) | Very high | Sectoral minimum wage, CLA's at companies | Labour contract is the norm | [1] Current situation [2] Yes (new law has passed) | Self-employed is forbidden by the German law system |
| UK | €1.066,12 | Very high in Royal Mail, almost non-existent at other postal companies | No development towards sectoral CLA's in whatever sector, CLA development is company-specific, several CLA's at Royal Mail Group. Labour contracts common at postal companies. | Labour contracts will be the norm for the postal sector due to regulations concerning the integrity of mail | [1] Low risk now [2] No indications for this now. | Self-employed will not be accepted due to regulations concerning the integrity of mail |
| Belgium | €1.387,49 | 80% | here will be a minimum sectoral CLA; now only company CLA's incumbent | Labour contract is the norm, big tradition of reaching CLA's | [1] Real danger [2] Yes | Self-employed is possible but an agreement instituting labour contracts is likely |
| Italy | €1.340,00 | About 40% | There is a CLA at Poste Italiane. There is a sectoral CLA for private operators | Sectoral Labour Contract is the norm | "[1] Not very probable [2] Unions push to have a unique Labour contract for the Postal Sector | Hardly any possibilities to use self-employed models |
| Austria | €1.000 | 80% | Only employees incumbent covered by company CLA | Labour contract is the norm; almost 100% CLA coverage of all sectors in the economy | [1] Real danger [2] Yes | Self-employed will not easily be accepted |
| Czech Republic | €288,81 | 36% | CLA incumbent; bottom level is defined in the Labour Code | Labour contracts widely used | [1] Not very probable [2] Low chance | Self-employed models possible for addressed |
| Slovakia | €295,49 | 65-70% | CLA incumbent; bottom level is defined in the Labour Code | Labour contracts widely | [1] Real danger [2] Possible" | New Post Act will require labour contracts and possibly more mail |
| France | €1.321,02 | NA | National CLA's complemented by local negotiations. All (postal) companies have a CLA. | Labour contract is the norm: almost everywhere CLA's except at companies <50 (discussion on (rigidity labour market)used | 1] Real danger [2] Yes" | Self-employed will not easily be accepted |
| Sweden | No | Very high | Sectoral CLA's (with agreed minimum wages) | 100% | CLA's for the sector already in place | McDonalds without McJobs; self-employed does not fit in the Swedish model where unions can enforce labour contracts |

Sources: Industrial relations in the postal sector, 2007; Comparative overview of Industrial Development, 2008, team analysis A&O."

This sheet aims at giving a first glance impression about:

- the danger of an artificially high CLA for the (addressed) postal sector;
- the possibility for reaching binding CLA's at an appropriate level;
- the acceptance of self employed models which could undermine the above mentioned CLA's.

Curriculum Vitae prof. mr. Leonard G. Verburg

Relevant Experience

Practice Areas: Employment, Co-determination Law, Corporate Governance

Leonard Verburg is a partner of the Employment department of Allen & Overy LLP in Amsterdam. He has experience of a wide range of employment law-related matters such as individual and collective dismissals, strikes, negotiation with unions and employment contracts (both in an advisory role and regarding litigation). In particular, he has knowledge and experience of works council issues and disputes at board room / executive level.

In March 2007 Leonard Verburg got his Ph.D. for his dissertation on the influence of the Dutch works council in international business. Soon after that he was appointed (part-time) professor at the Radboud University Nijmegen. His research and teaching concern the fields of Employment Law and Co-determination Law. Leonard Verburg already had a wide teaching experience giving post-academic lectures at the University of Amsterdam and the Erasmus University Rotterdam (PALA). Furthermore, he is a member of the standing committee of the yearly Employment Law Congress.

Prior to joining Allen & Overy Leonard Verburg was a partner with Loeff Claey's Verbeke.

Publications

Author of *Het territorium van de (Nederlandse) ondernemingsraad in het internationale bedrijfsleven* (The territory of the (Dutch) works council in international business) Kluwer 2007, dissertation University of Amsterdam.

Co-author and editor of the leading book on reorganisations under Dutch law, *Arbeidsrechtelijke aspecten van reorganisatie* (Employment Law-related aspects of reorganisations), Kluwer 2008.

Leonard Verburg is the editor-in-chief of *ArbeidsRecht*, one of the leading magazines on employment law. He is an editor of *Arbeidsrechtelijke Annotaties* ("Annotations on Labour Law"). Over the years he has published numerous articles on employment law and works council issues.

Professional Memberships

Member of the standing advisory committee on employment law of the Dutch Bar Association.

Member of the standing committee of the Employment Law Congress ("Arbeidsrechtcongres"), the annual gathering of Dutch employment lawyers.

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