

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

Article 1

Directive 97/67/EC is hereby amended as follows:

1. Article 1 shall be replaced by the following:

Article 1

This Directive establishes common rules concerning:

- the conditions governing the provision of postal services,
- the provision of a universal postal service within the Community,
- the financing of universal services under conditions that guarantee the permanent provision of such services,
- tariff principles and transparency of accounts for universal service provision,
- the setting of quality standards for universal service provision and the setting-up of a system to ensure compliance with those standards,
- the harmonisation of technical standards,
- the creation of independent national regulatory authorities.;

2. Article 2 shall be amended as follows:

- (a) point 1 shall be replaced by the following:

1. postal services: services involving the clearance, sorting, transport and distribution of postal items;;

- (b) the following point shall be inserted:

- 1a. postal service provider: undertaking that provides one or more postal services;

- (c) in point 2 the words ‘public postal network’ shall be replaced by ‘postal network’;

- (d) point 3 shall be replaced by the following:

3. access points: physical facilities, including letter boxes provided for the public either on the public highway or at the premises of the postal service provider(s), where postal items may be deposited with the postal network by senders;;

- (e) point 4 shall be replaced by the following:

4. Clearance: the operation of collecting postal items by a postal service provider;;

- (f) point 6 shall be replaced by the following:

6. Postal item: an item addressed in the final form in which it is to be carried by a postal service provider. In addition to items of correspondence, such items also include for instance books,

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catalogues, newspapers, periodicals and postal parcels containing merchandise with or without commercial value;;

- (g) point 8 shall be deleted;
- (h) point 12 shall be deleted;
- (i) point 13 shall be replaced by the following:
 - 13. universal service provider: the public or private postal service provider providing a universal postal service or parts thereof within a Member State, the identity of which has been notified to the Commission in accordance with Article 4;;
- (j) point 14 shall be replaced by the following:
 - 14. Authorisations: any permission setting out rights and obligations specific to the postal sector and allowing undertakings to provide postal services and, where applicable, to establish and/or operate their networks for the provision of such services, in the form of a general authorisation or individual licence as defined below:
 - “general authorisation”: an authorisation, regardless of whether it is regulated by a “class licence” or under general law and regardless of whether such regulation requires registration or declaration procedures, which does not require the postal service provider concerned to obtain an explicit decision by the national regulatory authority before exercising the rights stemming from the authorisation,
 - “individual licence”: an authorisation which is granted by a national regulatory authority and which gives a postal service provider specific rights, or which subjects that undertaking’s operations to specific obligations supplementing the general authorisation where applicable, where the postal service provider is not entitled to exercise the rights concerned until it has received the decision by the national regulatory authority;;
- (k) point 17 shall be replaced by the following:
 - 17. User: any natural or legal person benefiting from postal service provision as a sender or an addressee;;
- (l) point 19 shall be replaced by the following:
 - 19. Essential requirements: general non-economic reasons which can induce a Member State to impose conditions on the supply of postal services. These reasons are the confidentiality of correspondence, security of the network as regards the transport of dangerous goods, respect for the terms and conditions of employment, social security schemes, laid down by law, regulation or administrative provision and/or by collective agreement negotiated between national social partners, in accordance with Community and national law and, where justified, data protection, environmental protection and regional planning. Data protection may include personal data

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protection, the confidentiality of information transmitted or stored and protection of privacy;;

(m) the following point shall be added:

20. Services provided at single piece tariff: postal services for which the tariff is set in the general terms and conditions of universal service provider(s) for individual postal items.;

3. Article 3 shall be amended as follows:

(a) the first subparagraph of paragraph 3 shall be replaced by the following:

3. Member States shall take steps to ensure that the universal service is guaranteed not less than five working days a week, save in circumstances or geographical conditions deemed exceptional, and that it includes as a minimum:

- one clearance,
- one delivery to the home or premises of every natural or legal person or, by way of derogation, under conditions at the discretion of the national regulatory authority, one delivery to appropriate installations.;

(b) paragraph 5 shall be replaced by the following:

5. The national regulatory authorities may increase the weight limit of universal service coverage for postal parcels to any weight not exceeding 20 kilograms and may lay down special arrangements for the door-to-door delivery of such parcels.

Notwithstanding the weight limit of universal service coverage for postal parcels established by a given Member State, Member States shall ensure that postal parcels received from other Member States and weighing up to 20 kilograms are delivered within their territory.;

(c) paragraph 6 shall be replaced by the following:

6. The minimum and maximum dimensions for the postal items in question shall be those as laid down in the relevant provisions adopted by the Universal Postal Union.;

4. Article 4 shall be replaced by the following:

Article 4

1 Each Member State shall ensure that the provision of the universal service is guaranteed and shall notify the Commission of the steps it has taken to fulfil this obligation. The Committee referred to in Article 21 shall be informed of the measures established by Member States to ensure the provision of the universal service.

2 Member States may designate one or more undertakings as universal service providers in order that the whole of the national territory can be covered. Member States may designate different undertakings to provide different elements of universal service and/or to cover different parts of the national territory. When they do so, they shall determine in accordance with Community law the obligations and rights assigned to them and shall publish these obligations and rights. In particular, Member States shall take measures to ensure that the conditions under which universal services are entrusted are based on the principles of transparency, non-discrimination and

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proportionality, thereby guaranteeing the continuity of the universal service provision, by taking into account the important role it plays in social and territorial cohesion.

Member States shall notify the Commission of the identity of the universal service provider(s) they designate. The designation of a universal service provider shall be subject to a periodic review and be examined against the conditions and principles set out in this Article. However, Member States shall ensure that the duration of this designation provides a sufficient period for return on investments.;

5. paragraph 2 of Article 5 shall be replaced by the following:

2. The provisions of paragraph 1 shall not preclude measures which the Member States take in accordance with requirements relating to the public interest recognised in the Treaty, in particular Articles 30 and 46 thereof, concerning, *inter alia*, public morality, public security, including criminal investigations, and public policy.;

6. Article 6 shall be replaced by the following:

Article 6

Member States shall take steps to ensure that users and postal service providers are regularly given sufficiently detailed and up-to-date information by the universal service provider(s) regarding the particular features of the universal service offered, with special reference to the general conditions of access to these services as well as to prices and quality standard levels. This information shall be published in an appropriate manner.

Member States shall notify the Commission, of how the information to be published in accordance with the first paragraph is to be made available.;

7. the heading of Chapter 3 shall be replaced by the following:
Financing of universal services;

8. Article 7 shall be replaced by the following:

Article 7

1 Member States shall not grant or maintain in force exclusive or special rights for the establishment and provision of postal services. Member States may finance the provision of universal services in accordance with one or more of the means provided for in paragraphs 2, 3 and 4, or in accordance with any other means compatible with the Treaty.

[^{X12} Member States may ensure the provision of universal services by procuring such services in accordance with applicable public procurement rules and regulations, including, as provided for in Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts⁽¹⁾, competitive dialogue or negotiated procedures with or without publication of a contract notice.]

3 Where a Member State determines that the universal service obligations, as provided for in this Directive, entail a net cost, calculated taking into account Annex I, and represent an unfair financial burden on the universal service provider(s), it may introduce:

- a a mechanism to compensate the undertaking(s) concerned from public funds;
- or

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- b a mechanism for the sharing of the net cost of the universal service obligations between providers of services and/or users.

4 Where the net cost is shared in accordance with paragraph 3(b), Member States may establish a compensation fund which may be funded by service providers and/or users' fees, and is administered for this purpose by a body independent of the beneficiary or beneficiaries. Member States may make the granting of authorisations to service providers under Article 9(2) subject to an obligation to make a financial contribution to that fund or to comply with universal service obligations. The universal service obligations of the universal service provider(s) set out in Article 3 may be financed in this manner.

5 Member States shall ensure that the principles of transparency, non-discrimination and proportionality are respected in establishing the compensation fund and when fixing the level of the financial contributions referred to in paragraphs 3 and 4. Decisions taken in accordance with paragraphs 3 and 4 shall be based on objective and verifiable criteria and be made public.

9. the heading of Chapter 4 shall be replaced by the following:
Conditions governing the provision of postal services and access to the network;

10. Article 9 shall be replaced by the following:
Article 9

1 For services which fall outside the scope of the universal service, Member States may introduce general authorisations to the extent necessary to guarantee compliance with the essential requirements.

2 For services which fall within the scope of the universal service, Member States may introduce authorisation procedures, including individual licences, to the extent necessary in order to guarantee compliance with the essential requirements and to ensure the provision of the universal service.

The granting of authorisations may:

- be made subject to universal service obligations,
- if necessary and justified, impose requirements concerning the quality, availability and performance of the relevant services,
- where appropriate, be subject to an obligation to make a financial contribution to the sharing mechanisms referred to in Article 7, if the provision of the universal service entails a net cost and represents an unfair burden on the universal service provider(s), designated in accordance with Article 4,
- where appropriate, be subject to an obligation to make a financial contribution to the national regulatory authority's operational costs referred to in Article 22,
- where appropriate, be made subject to or impose an obligation to respect working conditions laid down by national legislation.

Obligations and requirements referred to in the first indent and in Article 3 may only be imposed on designated universal service providers.

Except in the case of undertakings that have been designated as universal service providers in accordance with Article 4, authorisations may not:

- be limited in number,

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- for the same elements of the universal service or parts of the national territory, impose universal service obligations and, at the same time, financial contributions to a sharing mechanism,
- duplicate conditions which are applicable to undertakings by virtue of other, non-sector-specific national legislation,
- impose technical or operational conditions other than those necessary to fulfil the obligations of this Directive.

3 The procedures, obligations and requirements referred to in paragraphs 1 and 2 shall be transparent, accessible, non-discriminatory, proportionate, precise and unambiguous, made public in advance and based on objective criteria. Member States shall ensure that the reasons for refusing or withdrawing an authorisation in whole or in part are communicated to the applicant and shall establish an appeal procedure.;

11. paragraph 1 of Article 10 shall be replaced by the following:

1. The European Parliament and the Council, acting on a proposal from the Commission and on the basis of Articles 47(2), 55 and 95 of the Treaty, shall adopt the measures necessary for the harmonisation of the procedures referred to in Article 9 governing the commercial provision of postal services to the public.;

12. Article 11 shall be replaced by the following:

Article 11

The European Parliament and the Council, acting on a proposal from the Commission and on the basis of Articles 47(2), 55 and 95 of the Treaty, shall adopt such harmonisation measures as are necessary to ensure that users and the postal service provider(s) have access to the postal network under conditions which are transparent and non-discriminatory.;

13. the following Article shall be inserted:

Article 11a

Whenever necessary to protect the interest of users and/or to promote effective competition, and in the light of national conditions and national legislation, Member States shall ensure that transparent, non-discriminatory access conditions are available to elements of postal infrastructure or services provided within the scope of the universal service, such as postcode system, address database, post office boxes, delivery boxes, information on change of address, re-direction service and return to sender service. This provision shall be without prejudice to the right of Member States to adopt measures to ensure access to the postal network under transparent, proportional and non-discriminatory conditions.;

14. Article 12 shall be replaced by the following:

Article 12

Member States shall take steps to ensure that the tariffs for each of the services forming part of the universal service comply with the following principles:

- prices shall be affordable and must be such that all users, independent of geographical location, and, in the light of specific national conditions, have access to the services provided. Member States may maintain or introduce the provision of a free postal service for the use of blind and partially-sighted persons,
- prices shall be cost-oriented and give incentives for an efficient universal service provision. Whenever necessary for reasons relating to the public

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interest, Member States may decide that a uniform tariff shall be applied, throughout their national territory and/or cross-border, to services provided at single piece tariff and to other postal items,

- the application of a uniform tariff shall not exclude the right of the universal service provider(s) to conclude individual agreements on prices with users,
- tariffs shall be transparent and non-discriminatory,
- whenever universal service providers apply special tariffs, for example for services for businesses, bulk mailers or consolidators of mail from different users, they shall apply the principles of transparency and non-discrimination with regard both to the tariffs and to the associated conditions. The tariffs, together with the associated conditions, shall apply equally both as between different third parties and as between third parties and universal service providers supplying equivalent services. Any such tariffs shall also be available to users, in particular individual users and small and medium-sized enterprises, who post under similar conditions.;

15. Article 14 shall be amended as follows:

(a) paragraphs 1, 2 and 3 shall be replaced by the following:

1. Member States shall take the measures necessary to ensure that the accounting of the universal service providers is conducted in accordance with the provisions of this Article.

2. The universal service provider(s) shall keep separate accounts within their internal accounting systems in order to clearly distinguish between each of the services and products which are part of the universal service and those which are not. This accounting separation shall be used as an input when Member States calculate the net cost of the universal service. Such internal accounting systems shall operate on the basis of consistently applied and objectively justifiable cost accounting principles.

3. The accounting systems referred to in paragraph 2 shall, without prejudice to paragraph 4, allocate costs in the following manner:

- a costs which can be directly assigned to a particular service or product shall be so assigned;
- b common costs, that is costs which cannot be directly assigned to a particular service or product, shall be allocated as follows:

- (i) whenever possible, common costs shall be allocated on the basis of direct analysis of the origin of the costs themselves;

- (ii) when direct analysis is not possible, common cost categories shall be allocated on the basis of an indirect linkage to another cost category or group of cost categories for which a direct assignment or allocation is possible; the indirect linkage shall be based on comparable cost structures;

- (iii) when neither direct nor indirect measures of cost allocation can be found, the cost category shall be allocated on the basis of a general allocator computed by using the ratio of all expenses directly or indirectly assigned or allocated, on

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the one hand, to each of the universal services and, on the other hand, to the other services;

- (iv) common costs, which are necessary for the provision of both universal services and non-universal services, shall be allocated appropriately; the same cost drivers must be applied to both universal services and non-universal services.;

- (b) paragraph 8 shall be replaced by the following:

8. Where a given Member State has not used a financing mechanism for the provision of the universal service, as permitted under Article 7, and where the national regulatory authority is satisfied that none of the designated universal service providers in that Member State is in receipt of State assistance, hidden or otherwise, and that competition in the market is fully effective, the national regulatory authority may decide not to apply the requirements of this Article.;

- (c) the following paragraphs shall be added:

9. This Article may, however, be applied to the universal service provider designated before the final date for Full Market Opening as long as no other universal service provider(s) have been designated. The national regulatory authority shall inform the Commission in advance of any such decision.

10 Member States may require those postal service providers which are obliged to contribute to a compensation fund to introduce an appropriate accounting separation to ensure the functioning of the fund.;

16. Article 16 shall be amended as follows:

- (a) the second indent of the third paragraph shall be replaced by the following:
— the European Parliament and the Council in the case of intra-Community cross-border services (see Annex II). Future adjustment of these standards to technical progress or market developments shall be made in accordance with the regulatory procedure with scrutiny referred to in Article 21(2).;

- (b) the fourth paragraph shall be replaced by the following:

Independent performance monitoring shall be carried out at least once a year by external bodies having no links with the universal service providers under standardised conditions to be specified in accordance with the regulatory procedure with scrutiny referred to in Article 21(2) and shall be the subject of reports published at least once a year.;

17. paragraphs 1 and 2 of Article 18 shall be replaced by the following:

1. In accordance with Article 16, quality standards for intra-Community cross-border services are laid down in Annex II.

2. Where exceptional situations relating to infrastructure or geography so require, the national regulatory authorities may determine exemptions from the quality standards provided for in Annex II. Where national regulatory authorities determine exemptions in this manner, they shall notify the Commission forthwith.

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The Commission shall submit an annual report of the notifications received during the previous 12 months to the Committee referred to in Article 21 for its information.;

18. Article 19 shall be replaced by the following:

Article 19

- 1 Member States shall ensure that transparent, simple and inexpensive procedures are made available by all postal service providers for dealing with postal users' complaints, particularly in cases involving loss, theft, damage or non-compliance with service quality standards (including procedures for determining where responsibility lies in cases where more than one operator is involved), without prejudice to relevant international and national provisions on compensation schemes.

Member States shall adopt measures to ensure that the procedures referred to in the first subparagraph enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement and/or compensation.

Member States shall also encourage the development of independent out-of-court schemes for the resolution of disputes between postal service providers and users.

- 2 Without prejudice to other possibilities of appeal or means of redress under national and Community legislation, Member States shall ensure that users, acting individually or, where permitted by national law, jointly with organisations representing the interests of users and/or consumers, may bring before the competent national authority cases where users' complaints to undertakings providing postal services within the scope of the universal service have not been satisfactorily resolved.

In accordance with Article 16, Member States shall 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.;

19. Article 21 shall be replaced by the following:

Article 21

- 1 The Commission shall be assisted by a committee.

- 2 Where reference is made to this paragraph, Articles 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.;

20. Article 22 shall be replaced by the following:

Article 22

- 1 Each Member State shall designate one or more national regulatory authorities for the postal sector that are legally separate from and operationally independent of the postal operators. Member States that retain ownership or control of postal service providers shall ensure effective structural separation of the regulatory functions from activities associated with ownership or control.

Member States shall inform the Commission which national regulatory authorities they have designated to carry out the tasks arising from this Directive. They shall publish the tasks to be undertaken by national regulatory authorities in an easily accessible form, in particular where those tasks are assigned to more than one body. Member States shall ensure, where appropriate, consultation and cooperation

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between those authorities and national authorities entrusted with the implementation of competition law and consumer protection law on matters of common interest.

- 2 The national regulatory authorities shall have as a particular task ensuring compliance with the obligations arising from this Directive, in particular by establishing monitoring and regulatory procedures to ensure the provision of the universal service. They may also be charged with ensuring compliance with competition rules in the postal sector.

The national regulatory authorities shall work in close collaboration and shall provide mutual assistance in order to facilitate the application of this Directive within the appropriate existing bodies.

- 3 Member States shall 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. Pending the outcome of any such appeal, the decision of the national regulatory authority shall stand, unless the appeal body decides otherwise.;

21. the following Chapter shall be inserted:

CHAPTER 9a

Provision of information

Article 22a

- 1 Member States shall ensure that postal service providers provide all the information, in particular to the national regulatory authorities, including financial information and information concerning the provision of the universal service, namely for the following purposes:

- a for national regulatory authorities to ensure conformity with the provisions of, or decisions made in accordance with this Directive,
- b for clearly defined statistical purposes.

- 2 Postal service providers shall provide such information promptly on request and in confidence, where necessary, within the timescales and to the level of detail required by the national regulatory authority. The information requested by the national regulatory authority shall be proportionate to the performance of its tasks. The national regulatory authority shall give the reasons justifying its request for information.

- 3 Member States shall ensure that national regulatory authorities provide the Commission, upon request, with appropriate and relevant information necessary for it to carry out its tasks under this Directive.

- 4 Where information is considered confidential by a national regulatory authority, in accordance with Community and national business confidentiality rules, the Commission and the national regulatory authorities concerned shall preserve such confidentiality.;

22. Article 23 shall be replaced by the following:

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Article 23

Every four years, on the first occasion no later than 31 December 2013, the Commission shall submit a report to the European Parliament and the Council on the application of this Directive, including appropriate information on developments in the sector, particularly concerning economic, social, employment patterns and technological aspects, as well as on quality of service. The report shall be accompanied, where appropriate, by proposals to the European Parliament and the Council.;

23. the following Article shall be inserted:

Article 23a

The Commission shall provide assistance to the Member States on the implementation of this Directive, including on the calculation of any net cost of the universal service.;

24. Articles 24, 25, 26 and 27 shall be deleted;

25. the following text shall be inserted as Annex I:

ANNEX I

Guidance on calculating the net cost, if any, of universal service

Part A:

Definition of the universal service obligations

Universal service obligations refer to the obligations referred to in Article 3 placed upon a postal service provider by a Member State which concern the provision of a postal service throughout a specified geographical area, including, where required, uniform prices in that geographical area for the provision of that service or provision of certain free services for blind and partially-sighted persons.

Those obligations may include, among others, the following:

- a number of days of delivery, superior to those set in this Directive,
- accessibility to access points, in order to satisfy the universal service obligations,
- the tariffs affordability of the universal service,
- uniform prices for universal service,
- the provision of certain free services for blind and partially-sighted persons.

Part B:

Calculation of net cost

National regulatory authorities are to consider all means to ensure appropriate incentives for postal service providers (designated or not) to provide universal service obligations cost efficiently.

The net cost of universal service obligations is any cost related to and necessary for the operation of the universal service provision. The net cost of universal service obligations is to be calculated, as the difference between the net cost for a designated

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universal service provider of operating with the universal service obligations and the same postal service provider operating without the universal service obligations.

The calculation shall take into account all other relevant elements, including any intangible and market benefits which accrue to a postal service provider designated to provide universal service, the entitlement to a reasonable profit and incentives for cost efficiency.

Due attention is to be given to correctly assessing the costs that any designated universal service provider would have chosen to avoid, had there been no universal service obligation. The net cost calculation should assess the benefits, including intangible benefits, to the universal service operator.

The calculation is to be based upon the costs attributable to:

- (i) elements of the identified services which can only be provided at a loss or provided under cost conditions falling outside normal commercial standards. This category may include service elements such as the services defined in Part A;
- (ii) specific users or groups of users who, taking into account the cost of providing the specified service, the revenue generated and any uniform prices imposed by the Member State, can only be served at a loss or under cost conditions falling outside normal commercial standards.

This category includes those users or groups of users that would not be served by a commercial operator that did not have an obligation to provide universal service.

The calculation of the net cost of specific aspects of universal service obligations is to be made separately and so as to avoid the double counting of any direct or indirect benefits and costs. The overall net cost of universal service obligations to any designated universal service provider is to be calculated as the sum of the net costs arising from the specific components of universal service obligations, taking account of any intangible benefits. The responsibility for verifying the net cost lies with the national regulatory authority. The universal service provider(s) shall cooperate with the national regulatory authority to enable it to verify the net cost.

Part C:

Recovery of any net costs of universal service obligations

The recovery or financing of any net costs of universal service obligations may require designated universal service providers to be compensated for the services that they provide under non-commercial conditions. As such compensation involves financial transfers, Member States have to ensure that they are undertaken in an objective, transparent, non-discriminatory and proportionate manner. This means that the transfers result as far as possible in the least distortion to competition and to user demand.

A sharing mechanism based on a fund referred to in Article 7(4) should use a transparent and neutral mechanism for collecting contributions that avoids a double imposition of contributions falling on both outputs and inputs of undertakings.

The independent body administering the fund is to be responsible for collecting contributions from undertakings, which are assessed as liable to contribute to the net

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cost of universal service obligations in the Member State and is to oversee the transfer of sums due to the undertakings entitled to receive payments from the fund.;

26. the Annex shall become Annex II.

Editorial Information

X1 Substituted by [Corrigendum to 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 \(Official Journal of the European Union L 52 of 27 February 2008\)](#).

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(1) [^{XI}OJ L 134, 30.4.2004, p. 114.]

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