

# Legal aspects of a VAT exemption in a liberalised market

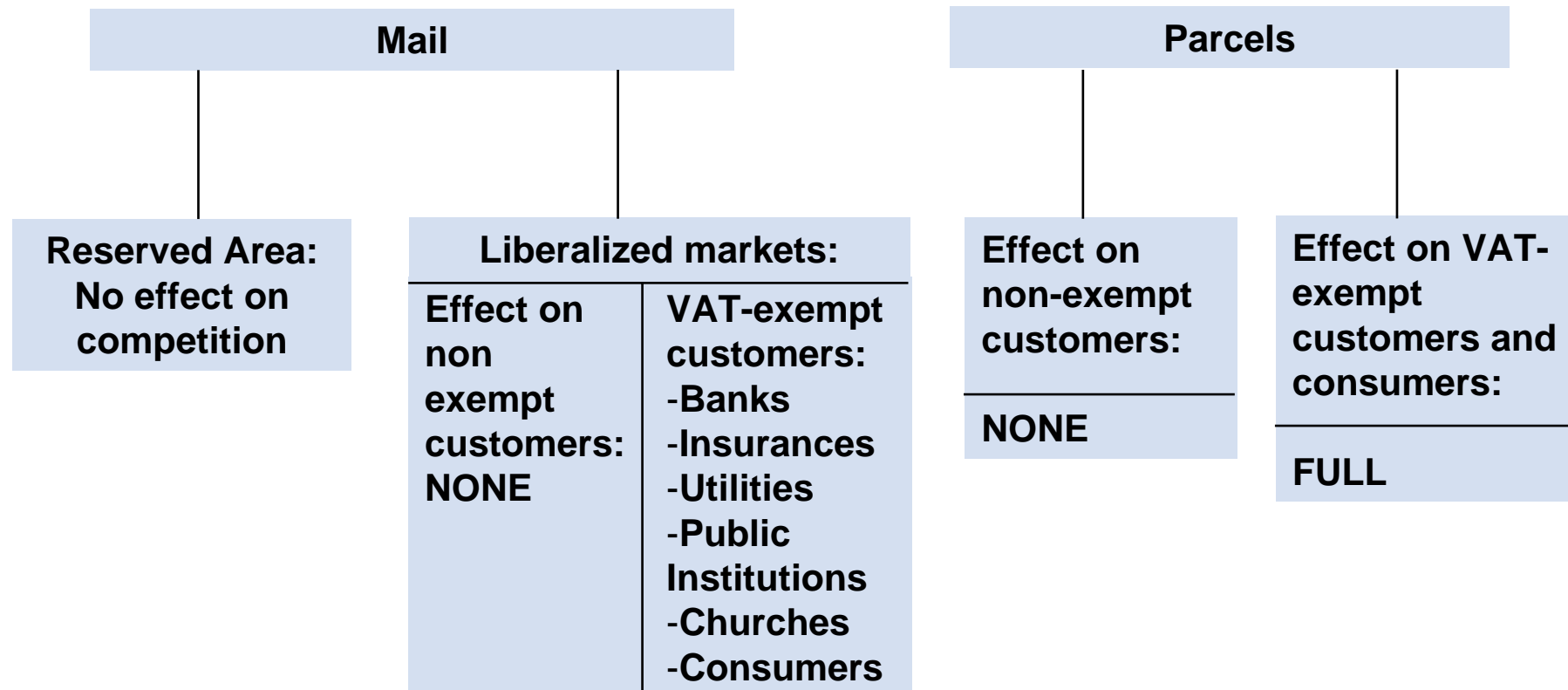
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# Legal Aspects of a VAT exemption in a liberalised market

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## VAT Exemption and Competition



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## Conflicting Principles

### VAT System Directive 2006/112/EC:

- Common system of value added tax
- Uniform basis of assessment
- “a system of value added tax, such as will eliminate ... factors which may distort conditions of competition, whether at national or community level” (4)
- “The common system of VAT should, even if rates and exemptions are not fully harmonized, result in neutrality in competition...” (7)
- Art. 132 (1) exempting services rendered by “public postal services”
- Art. 135 (1) h: supply of postage stamps

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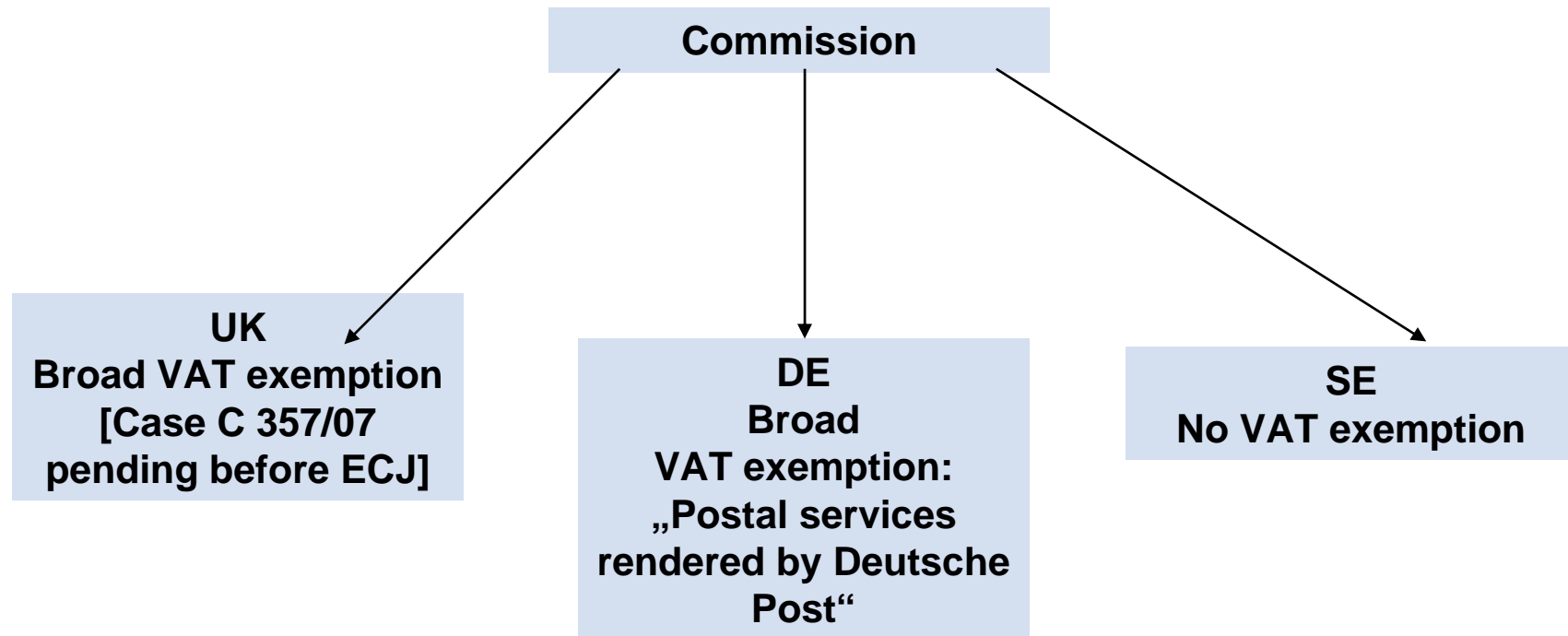
## Postal Directive 97/67/EC (27.02.08)

- It is “essential to guarantee at community level a universal postal service encompassing a minimum range of services ...” (11)
- “... this Directive does not affect the application of the rules of the Treaty, and in particular its rules on competition ...” (41)
- Reserved Area where necessary to ensure USO (old Art. 7, applicable during transition phase )

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## 2006 Infringement Procedure



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## Postal and other public service exemptions under Art. 132 VAT Directive

### Postal services:

- “rendered by public postal services”

### Hospital services:

- “by bodies governed by public law or, under social conditions comparable with these ...”

### Old people’s homes:

- by bodies governed by public law or recognized “as being devoted to social wellbeing...”

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## The German VAT exemption

Art. 4 sec. 11 b UStG:

- “Postal services provided by Deutsche Post AG”

Interpreted as:

- “postal services within the universal service obligation of Deutsche Post” (Ministry of Finance)

Problem:

- Deutsche Post has no USO as of Jan. 1, 2008
- De facto provision of universal service: DP and others (Art. 87 f. GG)

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## The Universal Service Aspect

“Public postal services” (Art. 132 VAT Directive)

Definition of universal service provider:

- the public or private postal service provider providing a universal service or parts thereof within a member state... (Art. 2 (13) Postal Directive)
- postal services are rendered by Deutsche Post “as well as by other providers under public law”, Art. 87 (f) GG



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## Competition Aspect

Postal Directive provides for compensation of financial burden, (Art. 7 (3) Postal Directive):

- **Public funds**
- **Cost sharing between providers – public and private**

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## Funding of financial burden

- requires calculation of net costs (Annex 1):
- Net costs are the difference between operations with and without USO
- Elements of services which can only be provided at a loss
- Users who can only be served at loss
- Principles of transparency, non-discrimination and proportionality apply

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## Solutions

### A. Solution indicated by EU Commission:

- Special VAT rate for postal services rejected
- Exemption restricted to provision of universal service

### Advantage:

- Provider – neutral

### Disadvantages:

- Universal service to business customers included
- Requires national network of mail boxes and contact points
- Unclear if all or part of universal service must be offered
- What if provider fails to meet quality criteria?
- Conflict with funding provisions of Art. 7 (3)

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## **B. German Solution:**

- Any USO provider (w/o obligation)
- Offering the full range of services
- At rates applicable to all users

## **Problems:**

- Only the incumbent offering full range of services
- Rates and services may be limited to large customers (all users meeting certain criteria)

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## **C. Swedish Solution:**

- **No VAT exemption**
- **Compensation according to Art. 7 (3) Postal Directive**
- **Possible conflict with Art. 132 VAT Directive**
- **But: Principle of tax neutrality requires restrictive application**

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## D. General Solution:

- Art. 7 (3) requires compensation by detailed funding mechanism, excluding additional “unspecified” funding through VAT exemption
- Application of Art. 132 VAT Directive must be limited to member states without full liberalization
- Partial liberalization: Limitation of VAT exemption to remaining reserved areas
- Parallel funding under Art. 7 (3) Postal Directive and Art. 132 VAT Directive excluded