



Reports of Cases

Case C-2/15

DHL Express (Austria) GmbH
v
Post-Control-Kommission
and
Bundesminister für Verkehr, Innovation und Technologie

(Request for a preliminary ruling from the Verwaltungsgerichtshof)

(Reference for a preliminary ruling — Directive 97/67/EC — Article 9 — Postal services in the European Union — Obligation to make a financial contribution to the operational costs of the postal sector's regulatory authority — Scope)

Summary — Judgment of the Court (Fifth Chamber), 16 November 2016

1. *EU law — Interpretation — Methods — Literal, systematic and teleological interpretation*
2. *Freedom to provide services — Postal services — Directive 97/67 — Conditions governing the provision of postal services and access to the network — Granting authorisations in order to guarantee compliance with the essential requirements — Possibility of subjecting the granting of authorisations to an obligation to make a financial contribution to the operational costs of the national regulatory authority — National legislation requiring all postal service providers to contribute to those costs — Lawfulness*

(European Parliament and Council Directive 97/67, Art. 9(2))

1. See the text of the decision.

(see para. 19)

2. Article 9(2), second subparagraph, fourth indent, of Directive 97/67 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, as amended by Directive 2008/6, must be interpreted as not precluding national legislation which imposes on all postal service providers, including those which do not provide postal services falling within the scope of the universal service, the obligation to contribute to the financing of the national regulatory authorities responsible for that sector.

It is clear from an analysis of the overall structure of Article 9(2), second subparagraph, of Directive 97/67 that the obligations laid down in that provision may, depending on the obligation, be imposed either solely on providers which supply services falling within the scope of the universal service, or services considered as such, or on all postal service providers.

On one hand, Article 9(2), third subparagraph, of Directive 97/67 expressly provides that the obligations and requirements referred to in Article 9(2), second subparagraph, first indent, may be imposed only on designated universal service providers within the meaning of Article 4 of that directive.

In addition, Article 9(2), second subparagraph, third indent, of Directive 97/67 allows Member States to subject the granting of authorisations to an obligation to make a financial contribution to the compensation fund provided for under Article 7(4) of that directive. As drafted, that provision does not expressly relate to universal service providers. Nevertheless, it is clear from Article 7(3) of that directive that the right of Member States to establish such a fund is linked to their right to introduce a mechanism for the sharing of the net cost of universal service obligations, where those costs represent an unfair financial burden for the providers. Above all, however, it is clear from recital 27 of Directive 2008/6, regarding the obligation for postal service providers to contribute to the financing of the universal service where provision is made for a compensation fund, that in order to determine which undertakings may be required to contribute to that fund, Member States should consider whether the services provided by such undertakings may, from a user's perspective, be regarded as services falling within the scope of the universal service.

On the other hand, Article 9(2), second subparagraph, second indent, of Directive 97/67 allows Member States to subject the granting of authorisations to compliance with requirements concerning the quality, availability and performance of the relevant services. It is clear from the *travaux préparatoires* for Directive 2008/6 that the EU legislature intended to remove not only the remaining obstacles to full market opening for certain universal service providers but also all other obstacles to the provision of postal services. Failing any indication to the contrary and taking into account the nature of the obligation at issue, it therefore appears that all postal service providers may be required to fulfil the obligation referred to in Article 9(2), second subparagraph, second indent, of Directive 97/67.

Likewise, Article 9(2), second subparagraph, fifth indent, of Directive 97/67 allows Member States to subject the granting of authorisations to an obligation to respect the working conditions laid down by national legislation. Nevertheless, a restrictive interpretation of that provision — as applying only to universal service providers — cannot be upheld since Article 9(1) of that directive subjects the granting of general authorisations — for services which fall outside the scope of the universal service — to compliance with the essential requirements referred to in Article 2(19) of that directive, which includes the obligation to respect the working conditions laid down by national legislation.

As regards the specific obligation, under Article 9(2), second subparagraph, fourth indent, of Directive 97/67, to contribute to the financing of the regulatory authority responsible for the postal sector, it should be noted that the activities for which national regulatory authorities are responsible relate to all postal services and not solely to the provision of postal services falling within the scope of the universal service.

Article 22(1) of Directive 97/67 provides that Member States are to designate one or more national regulatory authorities for the postal sector. Article 22(2) of that directive does indeed provide that those authorities have the task of ensuring compliance with the obligations arising from that directive, in particular by establishing monitoring and regulatory procedures to ensure the provision of the universal service. However, that regulation also provides that those authorities may be charged with ensuring compliance with competition rules across the postal sector as a whole.

Accordingly, given that the EU legislature intended the role and tasks devolved to the national regulatory authorities to have to be of benefit to all operators in the postal sector, Article 9(2), second subparagraph, fourth indent, of Directive 97/67 must be interpreted as meaning that all postal service providers may, in return, be made subject to the obligation to contribute to the financing of the operations of those authorities.

(see paras 23, 24-27, 29-32, operative part)